asian-mena Counsel

Volume 17 Issue 8, 2020

DISPUTE RESOLUTION

Dispute resolution in **Hong Kong** **China** and **Singapore** and why virtual and hybrid hearings are here to stay

Plus:

Financial rehabilitation amidst the pandemic

Electronic signatures and virtual meetings

Chinese company, Li Auto's successful US listing

How to brief your stakeholders regarding the legal implications of coronavirus: an online resource for in-house lawyers

https://www.inhousecommunity.com/covid19/

- Webcasts
- Articles
- Updates

Content created specifically for the In-House *Community*

asian-mena Counsel

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

Mark Tan – Research Assistant
mark.tan@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

Dr Chen Fuyong is the Deputy Secretary-General of BAC/BIAC and the Vice-President of Asia Pacific Regional Arbitration Group (APRAG). He has extensive experience in handling various commercial disputes through arbitration and mediation and is a regular speaker at international conferences and seminars.

Kenix Yuen is a Partner at Gall and specialises in cross-border commercial litigation and international arbitrations covering contractual disputes, shareholders' disputes, directors' duties, fraud and asset tracing, misrepresentation and mis-selling claims.

Felda Yeung is a Senior Associate at Gall and has experience in commercial and civil litigation, with a focus on arbitration, contractual disputes and fraud investigations.

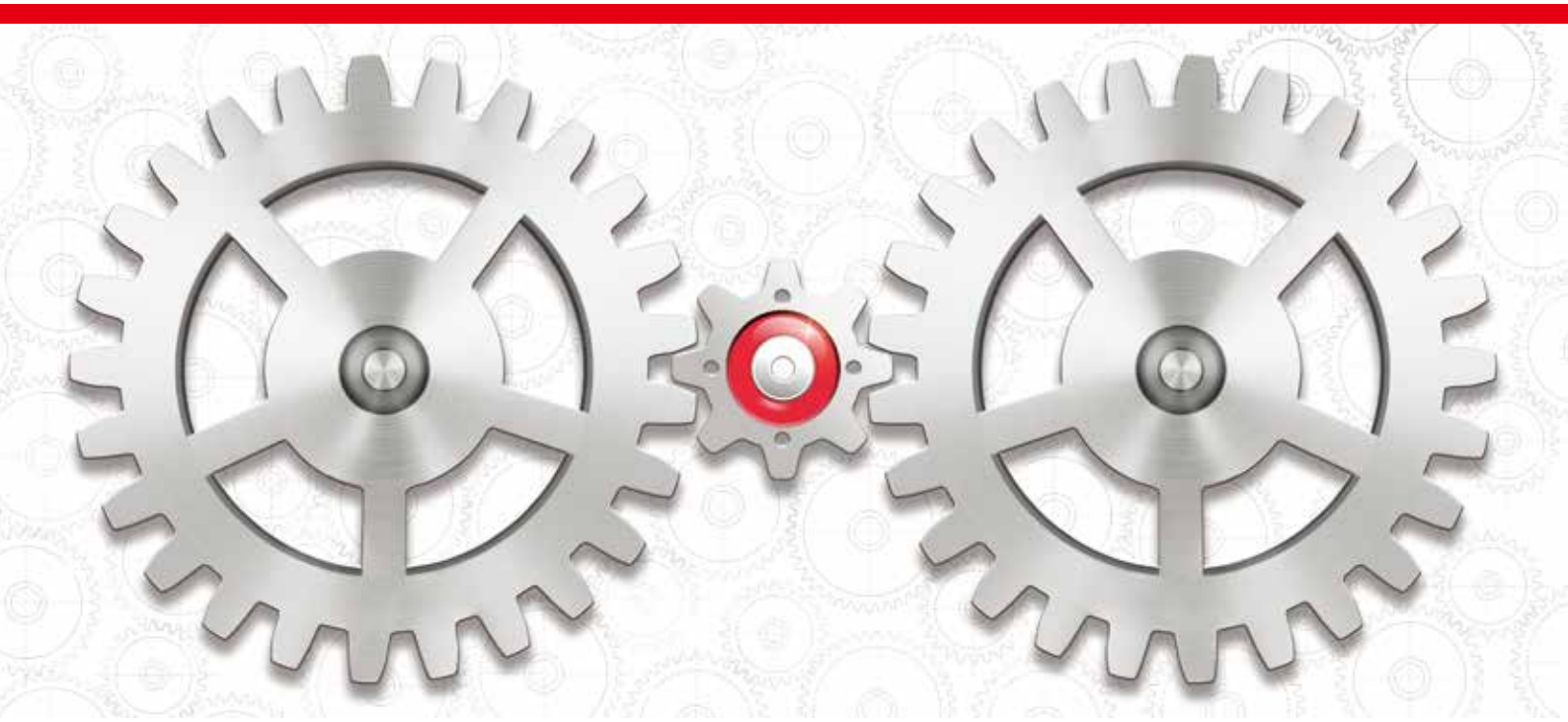
Professor Lawrence Boo, is a board member of *Maxwell Chambers*, head of The Arbitration Chambers and teaches international arbitration at the National University of Singapore and Bond University, Australia. He has been involved in the development of dispute resolution in Singapore since 1991 when he became the first CEO/Registrar of the Singapore International Arbitration Centre and later its Deputy Chairman. He has served on law reform committees, represented Singapore in the UNCITRAL Working Group (Arbitration and Conciliation) and is Singapore's National Correspondent to UNCITRAL's Case Law on UNCITRAL Text.

Philip Jeyaretnam SC is Chairman of *Maxwell Chambers* and the Global Vice Chair and Regional CEO of Dentons Rodyk & Davidson. Appointed Senior Counsel in 2003, Philip specialises in commercial litigation and international arbitration work as counsel, and is described by Chambers Asia Pacific 2018 as a 'pre-eminent disputes practitioner'. His professional and public service has included serving as a member of the Public Service Commission, the constitutional body that oversees the public service in Singapore, and as a member of the Presidential Council for Minority Rights since 2012, and as President of the Law Society of Singapore from 2004 to 2007.

George Lim SC, is Chair of the Singapore International Mediation Centre (SIMC), and former President of the Law Society of Singapore. He received his training in mediation at CEDR, UK and Harvard. In 1997, he helped to set up the Singapore Mediation Centre. Lim is a full-time mediator and has mediated close to 500 disputes. He served as the first Chairman of the Asian Mediation Association (2009-10), and currently sits on the Board of the International Mediation Institute, a global body which promotes professionalism in mediation. Lim was Singapore's mediation consultant to UNCITRAL's Working Group II on Conciliation.

In this issue

Volume 17 Issue 8, 2020



Dispute Resolution

JURISDICTION UPDATES

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

04

06

08

17

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

ACCRALAW®

bizconsult LAW FIRM

CONYERS

CWB

LAW IN ORDER
Where work flows.

UAE

By Richard Gaugeler

Cedar White Bradley IP LLC
Burj Al Salam, 47th Floor, 2 Sheikh Zayed Road, PO Box 66300, Dubai, United Arab Emirates
Tel: (971) 4 381 6888
E: richard.gaugeler@cwblegal.com
E: dubai@cwblegal.com
W: www.cwblegal.com

Assignment of Patent Rights

The potential value of patents, or patent applications, cannot be understated. Only the owner of a patent has the exclusive right to exploit its value to exclusion of all other parties. Therefore, securing ownership of a patent and its associated rights can be very important to a business; and the failure to exercise good practice in acquiring or transferring patent rights can materially impact a business' bottom line.

This article will briefly set out some good practice guidelines to keep in mind when transferring rights in a patent, or patent application – whether acquiring or relinquishing patent rights.

What is a Patent, or Patent Application, Assignment?

The transfer of a patent, or patent application, places the assignee in the position of the assignor. This provides the assignee with the positive rights (such as the right to exploit the invention), as well as the negative rights (such as the right to prevent others from exploiting the invention).

The negative rights come with the right to seek remedies preventing unlicensed exploitation of the invention and even confiscation of infringing articles.

Once an assignment takes place, the assignor relinquishes its rights to the patent or patent application. The assignor is free to license the patent back from the assignee, but no longer has the ability to manage the patent. It is therefore important to note that a partial assignment of a patent, or patent application, is not possible – i.e. an assignor may not assign the right to use the invention to one party while it assigns the right to manufacture to another party. Dividing up patent rights can instead be effected by providing partial licenses to the patent.

When assigning the patent or patent application it is important to cover all aspects of the transfer in a written instrument, known as a Deed of Assignment. The Deed of Assignment should also ensure that the patent or patent application is transferred free of any encumbrances, such that the holder receiving the rights becomes the holder without potential exposure to third parties which may have a legal right to the patent.

> "Once the invention is reduced to writing and filed as a patent application, the individual inventor may assign the application and its rights to any interested party or parties – both individuals and/or companies"

A Deed of Assignment should be filed with the patent office in the country in which the patent or patent application has been filed. The assignment is then recorded in the patent office register and may be viewed by third parties. Failure to record the assignment may limit its effects against third parties.

Assignment of Patent applications

The first owner of any invention is usually the named inventors themselves. Once the invention is reduced to writing and filed as a patent application, the individual inventor may assign the application and its rights to any interested party or parties – both individuals and/or companies.

In most cases, for a Deed of Assignment to be effective, it needs to be made to writing, identify the invention, contain details of the patent application, set out the rights to be assigned, and duly executed by the assignor(s). Most jurisdictions in the MENA region will also require the document be notarised and/or legalised.

If the assignment is incomplete or unclear, by not expressly identifying the invention or application to be assigned, the assignor might not be able to receive the full ownership and title of the invention.

Assignment between Employees and Employers

While most patent and/or labour laws in the MENA region set out the cirumstances in which an employer will own an invention that was created by an employee during the ordinary course of their employment, the laws do not usually cater for all scenarios.

Accordingly, a good approach to ensuring that an employer is entitled to own an invention created by an employee is to include a robust assignment clause in an employment agreement. The employee, by signing their employment agreement, then agrees contractually to the assignment of any rights they may have in an invention created during the course of their employment.

The clause should specify under which circumstances the employee is entitled to retain ownership of an invention, and when the passing of those rights to the employer is expected. An example of passing rights is where the employee is employed to develop and create new products as part of its employment, or when the invention has been created using company resources. Instances where the assignment of rights may not be required would be when the invention is created outside of company time, and preferably is not concerned with the business of the company.

It is also advisable that universities, and other higher learning or research institutions, specifically point out the requirement to assign rights to inventions created using the institution's resources.

By not clearly defining the obligation to

assign rights from the outset, the company or institution runs the risk of losing any interest to the invention.

The same may be said for consultant-based or part-time contracts, where the employee is employed for a limited period of time, usually with the express intention to collaborate for the purpose of achieving some sort of future, finite goal. In such circumstances the collaboration between company and consultant may result in the creation of an invention, unique and different to the set-out goals. While some employment contracts may cover the assignment of inventions between employer and employee, many consultant contracts typically overlook the necessities of such clauses.

Using a clause which identifies inventions created using a company's resources usually have the effect of covering most employment and collaboration situations.

However, it is always a good idea to have the parties consent to the completion of additional assignment documents at the time filing patent applications. Attempting to assign rights from ex-employees may prove difficult and expensive, especially when the employee has moved away or becomes unreachable. Additionally, the passing of an inventor prior to adequate assignment also raises issues. In order to avoid these complications, providing assignments in addition to clauses in employment contracts, is always advisable.

"Companies, especially those dealing in research and development, should take care to investigate whether a new employee is still under an existing obligation with a previous employer to assign any inventions they may create, even while not directly under their employment"

Companies, especially those dealing in research and development, should take care to investigate whether a new employee is still under an existing obligation with a previous employer to assign any inventions they may create, even while not directly under their employment. Certain employment contracts may include enduring clauses which relate to inventions created using the knowledge and experience they have gained with the previous employer. If a presumption may not be rebutted that the invention was created as a result of the previous employer's influence, the new company may not be entitled to the invention.

Assignment of Patents

An assignee of a patent would usually expect to be able to litigate for acts of infringement which took place prior to taking ownership of the patent. However, it should not be assumed that such a right is part and parcel of the assignment. The terms as to who is entitled to bring an infringement action under the patent should be expressly contained in the Deed of Assignment. If such a clause does not exist, an assignee could find themselves having fewer rights than they intended, as well has an inability to litigate for past or continuing infringers.

Further, an assignor should provide a warranty to the assignee that it is not aware of any acts of infringement and that no infringement matters in relation to the patent are currently pending. Further, it is also advisable to include a clause indemnifying the assignee against any potential matters which may arise after the transfer of the patent.

Conclusion

It is important to ensure that all the requirements are properly met when preparing, executing and recording an assignment of a patent or Patent application. Failure to do so could result in the loss of rights and potential exposure to third parties.

PHILIPPINES

By Zyra G Montefolca

ACCRALAW®

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

Financial rehabilitation amidst the COVID-19 pandemic

In light of the implementation of various community quarantine measures brought about by the COVID-19 pandemic, many business establishments were either prevented from operating or permitted with limited operational capacity. As a result, many entrepreneurs incurred significant financial losses. Due to the uncertainty of the resolution of the pandemic, and to thwart further losses, many businesses were constrained to cease their operation and finally close.

However, it is worthy to note that the law provides for a remedy other than business closure. Republic Act No. 10142, otherwise known as the Financial Rehabilitation and Insolvency Act of 2010, (FRIA) aims to encourage distressed business enterprises, including sole proprietorships, partnerships and corporations, as well as individual debtors, to undergo rehabilitation. The FRIA, however, is not applicable to banks or quasi-banks, insurance companies, and pre-need companies, which are governed by different laws and regulations.

Rehabilitation contemplates a continuance of corporate life and activities in an effort to restore and reinstate the corporation to its former position of successful operation and solvency (Wonder Book Corporation v. Philippine Bank of Communication, G.R. No. 187316, 2012)

Rehabilitation may be (a) court-supervised, which may either be voluntary, if initiated by the debtor, or involuntary, if initiated by the creditor, (b) by way of a pre-negotiated rehabilitation plan, or (c) through out-of-court or informal proceedings.

Court-supervised rehabilitation

If the business is insolvent and is unable to pay its obligations as they become due, an insolvent debtor may voluntarily initiate a court-supervised rehabilitation proceeding by filing a petition with the court.

The persons who can initiate the petition depends on the type of business organisation – it shall be the owner in case of a sole proprietorship, a majority of the partners in case of a partnership, or a majority vote of the board of directors or trustees and authorised by at least two-thirds (2/3) vote of the outstanding capital stock, in stock corporations, or of the members, in case of non-stock corporation.

On the other hand, involuntary court-supervised rehabilitation may be initiated by any creditor or group of creditors with a claim of, or the aggregate of whose claims is, at least PhP1,000,000.00 (c.US$20,394) or at least 25 percent of the subscribed capital stock or partners' contributions, whichever is higher, by filing a petition with the court.

Involuntary court-supervised rehabilitation may be initiated if: (a) there is no genuine issue of fact or law on the claims of the petitioner, and that the due and demandable payments thereon have not been made for at least sixty (60) days or that the debtor has failed generally to meet its liabilities as they fall due; or (b) a creditor, other than the petitioner, has initiated foreclosure proceedings against the debtor that will prevent the debtor from paying its debts as they become due or will render it insolvent.

In both instances, a Rehabilitation Plan must be attached to the petition. This refers to a plan by which the financial well-being and viability of an insolvent debtor can be restored through various means, including, but not limited to, debt forgiveness, debt rescheduling, reorganisation or quasi-reorganisation, dacion en pago, debt-equity conversion and sale of the business (or parts of it) as a going concern, or setting-up of new business entity, or other similar arrangements as may be approved by the court or creditors.

Pre-negotiated rehabilitation

In pre-negotiated rehabilitation, an insolvent debtor by itself, or jointly with any of its creditors, may file a verified petition with the court for the approval of the pre-negotiated Rehabilitation Plan.

The pre-negotiated rehabilitation plan must have been endorsed or approved by creditors holding at least two-thirds (2/3) of the total liabilities of the debtor, including secured creditors holding more than fifty percent (50 percent) of the total secured claims of the debtor and unsecured creditors holding more than fifty percent (50 percent) of the total unsecured claims of the debtor.

Informal restructuring agreement

Lastly, an out-of-court or informal restructuring agreement and rehabilitation plan must meet the following minimum requirements to qualify: (a) the debtor must agree to it; (b) it must be approved by creditors representing at least sixty-seven (67 percent) of the secured obligations of the debtor; (c) it must be approved by creditors representing at least seventy-five percent (75 percent) of the unsecured obligations of the debtor; and (d) it must be approved by creditors holding at least eighty-five percent (85 percent) of the total liabilities, secured and unsecured, of the debtor.

Only when rehabilitation is no longer feasible, despite the appointment of a rehabilitation receiver and a rehabilitation committee, can liquidation of the debtor's assets and the settlement of its obligations ensue as a matter of course.

Given the foregoing remedies for rehabilitation, distressed enterprises need not immediately resort to closure. Through rehabilitation, there might be a possibility for a losing business to gain a new lease on life.

*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. Zyra G. Montefolca is an Associate of the Davao Branch of the Angara Abello Concepcion Regala & Cruz Law Offices (ACCRALAW). She may be contacted through **zgmontefolca@accralaw.com** or (63) 2 8830 0000.*

Professionals
Recruiting Professionals

Specialising in Legal, Financial Services, and Commerce

ALS international

Hong Kong · Singapore · Beijing · Shanghai

CHIEF COMPLIANCE OFFICER

HONG KONG 15+ PQE

This world leading financial institution head-quartered in Hong Kong is looking for a Chief Compliance Officer. This is a global role and will suit a senior lawyer/compliance professional who is familiar with a trading environment dealing with complex financial products including futures and derivatives. You will manage a small team and take responsibility for building this up. (IHC 18516)

PARTNER, FUNDS

SINGAPORE 10-15 PQE

Top tier regional firm is looking for a senior funds lawyer to join their practice in Singapore. The ideal candidate should be admitted to the Singapore or English Bar with experience working in a reputable firm and advising financial institutions on a broad range of cross border private funds. (IHC 18151)

PARTNER, DEBT CAPITAL MARKETS

SINGAPORE 10-15 PQE

Top tier regional firm is looking for a senior debt capital markets lawyer to join their practice in Singapore and will assist in growing and developing their practice in the region. The ideal candidate should be admitted to the English or New York Bar with experience working in a reputable firm. (IHC 18170)

PARTNER, CORPORATE

HONG KONG 10-15 PQE

This City firm is looking to hire a Consultant/Junior Partner with M&A and/or private equity experience to join its corporate practice. Whilst no following is required you will need to take responsibility for expanding the firm's existing practice. You will also take responsibility for supervising a team of associates. (IHC 18504)

M&A REGULATORY COUNSEL

SINGAPORE 6-10 PQE

Major investment company is looking for a corporate regulatory M&A lawyer to join their legal regulatory team based in Singapore. The ideal candidate should be legally qualified in either Singapore, UK, Australia or US with a solid foundation in general corporate law and experience in regulatory issues on cross border M&A. (IHC 18496)

LITIGATION COUNSEL

SINGAPORE 6-8 PQE

Global consulting company is looking for a legal counsel with strong disputes experience to join their team in Singapore. The ideal candidate should be qualified in Singapore with experience in commercial litigation work with a reputable law firm. (IHC 18512)

CONVEYANCING LAWYER

HONG KONG 5+ PQE

Leading property developer looking for a 5+ conveyancing lawyer with both assets and shares experience for their legal team in Hong Kong. You will he be required to provide sound, pragmatic and business-focused legal advice on a wide range of commercial legal issues affecting the functions and operation of company. Cantonese is a must for this role. (IHC 18506)

JUNIOR LEGAL COUNSEL

SINGAPORE 2-3 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 strong legal knowledge and experience in general corporate and/or asset management work at a law firm. (IHC 18480)

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

VIETNAM

By Ha Nguyen

bizconsult
LAW FIRM

Ho Chi Minh: Room 1103, 11th Floor, Sailing Tower, 111A Pasteur, District 1, Ho Chi Minh City, Vietnam
T: (84) 0 28 3910 6559, F: (84) 0 28 3910 6560
E: hant@bizconsult.vn – M: (84) 909 746 643
E: info-hcm@bizconsult.vn
Hanoi: VNA Building, No. 20 Tran Hung Dao Street, Hoan Kiem District, Hanoi, Vietnam
T: (84) 0 24 3933 2129, F: (84) 0 24 3933 2130
E: info-hn@bizconsult.vn
W: www.bizconsult.vn

Tightening regulations on corporate bonds issuance in Vietnam

The Government has just issued Decree No. 81/2020/ND-CP (Decree 81) amending several provisions of Decree No. 163/2018/ND-CP (Decree 163) on corporate bond issuance, effective from September 1, 2020. Decree 81 is said to be an attempt by the Government to tighten and control corporate bonds issuance in Vietnam in the wake of a worrisome proliferation in the amount of issued corporate bonds over the past two years.

The Decree 81 imposes more conditions for issuance of corporate bonds as compared with Decree 163, which, includes, among others, that:

- Each issuance tranche shall be completed within 90 days upon the pre-issuance information disclosure;
- The interval between two tranches of bond issuance must be at least six months and bonds issued within one tranche must be in identical terms and conditions;
- At the time of issuance, total outstanding debt related to corporate bonds raised through private placement of an issuer (including the bonds issued in the given tranche) does not exceed five times of the ownership equity of the issuer pursuant to its most recent quarter financial report;
- There must be an agreement on bond issuance documentation consultancy duly executed between the issuer and an advisory agent, which are licensed securities companies, credit institutions or any entities licensed for the service of bond issuance documentation consultancy service.

The advisory agent shall review the conditions for corporate bond issuance of the issuer before entering into the agreement on bond issuance documentation consultancy.

> "Regarding bond issuance procedure, the time for pre-issuance notification by the issuer to the Stock Exchange is reduced from ten working days under Decree 163 to three working days before the planned issuance date under Decree 81"

In addition, under Decree 163, the bonds shall be issued for only three purposes, including project investment funding, extending capital expenditure, or debt restructure. Decree 81 now further requires the issuer to specify in detail the purpose of issuance in bond issuance documentation. Specifically, the issuance documentation must specify details of the investment project and/or specific business operations funded by bond proceeds, and of the debts to be restructured, including the name, value and term thereof.

The bonds transfer shall still be restricted by Decree 81 to the extent of 100 investors within the first year of issuance. However, Decree 81 clarifies that for those bonds issued in the international market, bonds trading restrictions would be subject to the relevant regulations of the market to which the bonds are issued.

Regarding bond issuance procedure, the time for pre-issuance notification by the issuer to the Stock Exchange is reduced from ten working days under Decree 163 to three working days before the planned issuance date under Decree 81. Decree 81 additionally imposes on the relevant depository agent and advisory agent more obligations on regular post-issuance reports. In particular, the depository agent shall report on the completion of issuance to the Stock Exchange within one working day of the bond issuance, and report to the Stock Exchange on deposit registration of the corporate bonds on a monthly, quarterly and yearly basis, rather than only semi-annually and an annual basis under Decree 163. Under Decree 81, the advisory agent must conduct semi-annual and annual reports to the Ministry of Finance on its consultancy business on corporate bonds issuance, which has not been a requirement under the Decree 163.

HORIZON
RECRUITMENT

LONDON
HONG KONG
SINGAPORE

LEGAL AND COMPLIANCE PLACEMENT

Owned and managed by former Magic Circle lawyers with experience working at top-ranking U.S. and Australian firms as well as several years in-house. Dedicated to being the agency of choice for exceptional lawyers and compliance professionals looking for opportunities with elite international law firms and companies.

Private Practice **In-House** **Compliance** **Contract Roles**

CALL US

Singapore office
+65 6808 6635
Hong Kong office
+852 3978 1369
London office
+44 203 7452 513

EMAIL

mark.deery@horizon-recruit.com
for partners and senior associates

jessica.deery@horizon-recruit.com
for senior in house and associates

bella.schick@horizon-recruit.com
for associates and in house

kiantong.tan@horizon-recruit.com
for associates

VISIT www.horizon-recruit.com for a full list of openings


By Preetha Pillai and Vanessa Ng

CONYERS

9 Battery Road, #20-01 MYP Centre, Singapore 049910
E: Preetha.Pillai@conyers.com – T: (65) 6603 0707
E: Vanessa.Ng@conyers.com – T: (65) 6603 0705
W: www.conyers.com

Electronic signatures and virtual meetings — the Bermuda, British Virgin Islands and Cayman Islands legal framework

The introduction globally of travel restrictions and containment measures arising from Covid-19 has significantly disrupted business, including creating logistical issues in closing corporate or financing transactions or holding board and shareholders' meetings. This article looks at the flexible and enabling legislation in Bermuda, the British Virgin Islands (BVI) and the Cayman Islands, which provides the tools for addressing these issues.

Electronic signatures

With an unprecedented number of people working remotely, parties are exploring different methods to execute contracts and sign board resolutions in a legal and binding manner. Some of these methods are not new — for instance, scanning (or faxing) copies of "wet ink" handwritten signatures and attaching these to a document — and are acceptable under Bermuda, BVI and Cayman law, but even these methods are of little assistance without access to a printer or a scanner; hence the increasing use of electronic signatures by using encrypted e-signature platforms such as DocuSign or Adobe Sign.

The primary meaning of "signature" is the writing of a person's name on a document in ink with the intention of demonstrating that person's agreement to the contents. So, does an electronic signature bind the signatory to the terms of the document in the same way that a "wet ink" signature on a document would? In Bermuda, BVI and Cayman, the answer is yes[1].

All three jurisdictions have enacted electronic transactions legislation that provides a framework for the use of electronic signatures and generally gives electronic signatures the same status as "wet ink" signatures. The legislation permits the use of electronic signatures except in relation to:

- wills or other testamentary instruments (Bermuda, BVI and Cayman);
- real property conveyances or transfers (Bermuda and BVI); and
- deeds (BVI only).

A common theme across the jurisdictions is the reliability test that must be met for an electronic signature to be valid. The Bermuda Electronic Transactions Act 1999 provides that (a) there must be a method to identify a signatory and to indicate that the signatory intended to sign or otherwise adopt the information in the electronic record; and (b) that method is as reliable as is appropriate for the purpose for which the electronic record was generated or communicated, in the light of all the circumstances, including any relevant agreement. This is echoed in the BVI Electronic Transactions Act, 2001 and the Cayman Electronic Transactions Law, 2003, which set out what is "reliable" for this purpose:

- the means of creating the electronic signature is linked to the signatory and to no other person;
- the means of creating the electronic signature was under the control of the signatory and of no other person;
- any alteration to the electronic signature made after the time of signing is detectable; and
- where a purpose of the legal requirement for a signature is to provide assurance as to the integrity of the information to which it relates, any alteration made to that information after the time of signing is detectable.

Board and shareholders' meetings

With the current travel restrictions and quarantine measures, physical meetings of the board and shareholders are generally not permitted for the time being. With advances in technology, companies and their directors will want to look instead at holding such meetings "virtually" — or at least by holding a hybrid meeting, originating at one or more physical locations and linked by way of video or web conferencing (or similar), where shareholders are permitted to attend online.

Bermuda, BVI and Cayman Islands law do not prescribe where meetings of the board or shareholders must be held or require that physical meetings must be held. Indeed, the Bermuda Companies Act 1981 and the BVI Business Companies Act 2004 specifically contemplate participation in board and shareholder meetings by telephone or other electronic means, subject to the relevant company's constitution, while the Cayman Companies Law is silent on this point. A detailed review of the company's constitution would therefore have to be undertaken to consider if the existing provisions are sufficient to permit hybrid meetings and if any amendments to the constitution are required.

Smaller companies could consider passing written resolutions of the directors or shareholders, where permitted by their constitution. Subject to their constitution, these resolutions may be executed by electronic signature and in counterparts.

Conclusion

While the Covid-19 pandemic has created many challenges globally, it has also created opportunities for Bermuda, BVI and Cayman companies to embrace technology and enable more efficient remote working conditions. Befitting their status as international business centres, Bermuda, BVI and the Cayman Islands have the legal infrastructure in place to permit companies to harness current technology to continue their day-to-day operations safely and effectively during these exceptional circumstances.

1. *Assuming (a) there is no restriction in the constitution of the company in question and (b) this is permitted under the governing law of the document to be entered into.*

HUGHES-CASTELL
International Legal Recruitment

Recruiting the best legal and compliance talent in Asia since 1985

In-house

Legal Director, M&A | 10+ yrs pqe | Hong Kong REF: 15878/AC

This multinational technology conglomerate seeks a Legal Director to join its global investment legal team based in Hong Kong. You will provide legal advice and support on investment projects and strategies related to Hong Kong-listed entities. Open to Hong Kong qualified lawyers with 10+ years' PQE and a genuine interest in technology and innovation. Substantial experience in M&A, Hong Kong Listing Rules, and Takeovers Code is necessary. Experience in e-commerce and cross-border transactions is highly desirable. Proficiency in English and Mandarin is required. You should ideally be open to business travels.

Legal Director | 8-15 yrs pqe | SZ/HK REF: 15886/AC

Excellent opportunity for an experienced lawyer to join a well-established manufacturing company taking a leading market share in their particular sector. Reporting to the Group General Counsel, you will be leading a team of lawyers overseeing the China's legal operation for the group, including but not limited to manufacturing, procurement, R&D, sales, and other general corporate matters. You must be PRC qualified with over 8 years' PQE gained in both reputable law firms and in-house corporations. Native-level Mandarin and fluent English skills are required.

Listing Compliance Counsel | 7-8 yrs pqe | Hong Kong REF: 15887/AC

This well-establish manufacturing company seeks a senior lawyer with listing rules compliance experience to join its Hong Kong office. You will provide legal and compliance advice and support on listing regulations of Hong Kong and China A-Stock as we as a company's worldwide investment projects. You will also be responsible for developing its legal risk monitoring mechanism. The ideal candidate will be Hong Kong qualified with over 7 years' PQE, preferably gained in both private practice and in-house environment. Fluency in English and Mandarin is required.

Legal Advisor | 5+ yrs pqe | Shanghai REF: 15867/AC

This chemical MNC seeks a Legal Advisor to join its Shanghai office. You will provide legal advice and support on contract drafting & reviewing, contentious and non-contentious dispute management, compliance matters, and company secretarial work. You must have a good LLB with a minimum of 5 years' relevant PQE with law firms or MNCs. PRC-qualified lawyers with business acumen and experience in the chemical industry are preferred. Excellent drafting skills and fluent English and Mandarin are required.

Legal Counsel | 4-6 yrs pqe | Singapore REF: 15885/AC

A leading international conglomerate with interest in manufacturing and distribution of building materials, water, and housing products equipment seeks an experienced lawyer to support their multiple businesses in the Asia Pacific region (excluding Greater China and Japan) on all legal matters relating to corporate advisory, commercial transactions, projects, business risk, compliance and ethics. The ideal candidate will be Common Law qualified with 4-6 years of relevant experience gained within an international corporate or a leading law firm. Strong legal advisory and documentation experience is essential, as is the ability to manage stakeholders, exposure to manufacturing industry is a plus. Excellent communication and interpersonal skills are required with proficiency in English; fluency in other Asian languages would be desirable.

Private Practice

Senior Associate, M&A | 7+ yrs pqe | HCMC REF: 15893/AC

This leading international law firm is looking for an experienced M&A lawyer to join its busy office in Ho Chi Minh City. You must be a qualified lawyer with at least 7 years' PQE in M&A transaction or cross-border property equity with international law firms. A good team player with the ability to work with multiple stakeholders and build strong relationship with clients is preferred. Vietnamese or foreign qualified lawyers are welcome to apply. Excellent command of written and oral English is required.

Regulatory Attorney | 5-10 yrs pqe | Shanghai REF: 15891/AC

This White-shoe law firm is seeking a senior Regulatory lawyer to join its life sciences regulatory practice group in Shanghai office. You will work closely with the practice leader advising pharmaceutical and medical device MNCs on all regulatory related issues including product classifications, data protection, licensing, trial application, and government investigations. To be considered, you must be PRC qualified with a JD/LLM from a US law school as well as 5-10 years' relevant PQE from international law firms. Familiarity with Chinese medical device and pharmaceutical regulations is essential. You must have excellent command of English and Mandarin for the role.

US Associate, CM | 2-5 yrs pqe | Hong Kong REF: 15835/AC

This White-Shoe law firm looking for a mid-level US capital markets lawyer to join its Hong Kong office. The ideal candidate will be US qualified with 2-5 years' PQE with a reputable capital markets practice. Ideally, you have good academic background and are a team player. Fluency in written and oral English and Mandarin is required.

Associate, CM | 2+ yrs pqe| Singapore REF: 15659/AC

This Magic Circle law firm is seeking a junior Capital Markets Associate to join its international team based in Singapore. The ideal candidate will be Singapore qualified with 2 years' PQE in equity capital markets work. A self-starter with strong drafting and interpersonal skills plus the ability to work within a multicultural environment preferred.

Corporate Associate | 1-2 yrs pqe| Hong Kong REF: 15443/AC

This international law firm is seeking a junior Corporate Associate to join its Hong Kong office. You will work closely with the leading partner on IPO and M&A work. You must be Hong Kong qualified with 1-2 years' PQE of corporate work with leading international or local law firm. Those with IPO and M&A experience are preferred. Fluent English and Mandarin skills are required.

Job Search

To find out more about these roles & apply, please contact us at:
T: (852) 2520-1168
E: hughes@hughes-castell.com.hk
W: www.hughes-castell.com
L: www.linkedin.com/company/hughes-castell/

HUGHES-CASTELL

MOVES

The latest senior legal appointments around Asia and the Middle East

HONG KONG


Cliff Chow

Ashurst has added **Cliff Chow** as a partner in the disputes resolution practice, based in Hong Kong. He is the fourth lateral hire the firm has made in Asia this year. Joining from Allen & Overy, Chow has more than a decade of experience acting for major international and regional banks and financial institutions, in investigations and enforcement actions conducted by financial regulators and law enforcement agencies in Hong Kong, China, US, UK and other European countries. He has acted on a large number of complex, cross-border regulatory, corruption and FCPA investigations, including some of the most significant regulatory matters impacting on Hong Kong's financial institutions in recent years. Chow also has significant experience in managing financial mis-selling, litigation and arbitrations, as well as complex commercial disputes.


Kajal Aswani

Gall has added **Kajal Aswani** as a partner in the family and divorce practice in July 2020. She joins from Robertsons in Hong Kong, where she has been a partner since 2015. Aswani is an experienced disputes resolution lawyer, with a focus on family disputes. She has broad experience handling complex and high-profile matrimonial proceedings involving substantial assets and cross-border elements, and advises on all aspects of family law, including divorce, financial claims and children matters. Aswani is a member of the Hong Kong Family Law Association. An LLB graduate of the University of Sheffield, UK, and holding a PCLL from City University of Hong Kong, Aswani is a native English speaker and is also fluent in Cantonese, Hindi and Sindhi.


Connell O'Neill

Gibson, Dunn & Crutcher has added **Connell O'Neill** as a partner in the firm's Hong Kong office. Formerly with Allen & Overy, O'Neill has a robust cross-Asia practice and strong reputation in the market. His areas of focus are data privacy and cyber security issues, and technology transactions and outsourcing.


Sook Young Yeu

K&L Gates has added **Sook Young Yeu**, **Scott Peterman** and **William Ho** as partners in the firm's integrated funds and private equity practices in Hong Kong. The trio joins from Orrick Herrington & Sutcliffe, where Yeu served as administrative partner of the Hong Kong office for the past 15 years. With extensive experience across the funds industry and in Asia, Yeu and Peterman have represented virtually every type of fund. Their combined credentials include admissions to the California, New York and Hong Kong bars, enabling them to assist clients on a broad range of US and Hong Kong regulatory and compliance matters. On the other hand, Ho focuses on M&A and private equity transactions. His practice includes representing early-to-late stage technology companies on all aspects of their capital raisings, joint ventures, acquisitions and exits. He also represents major private equity funds and venture capital funds in their investments across Asia, with a particular focus in the technology, media and telecommunications sectors.


Scott Peterman


William Ho


Simon WH Wong

Oldham, Li & Nie Lawyers has added **Simon WH Wong** as a partner in its corporate and commercial practice. Wong specialises in corporate finance, securities, M&A, joint ventures, compliance, corporate restructurings and China-related transactions. He has handled IPOs of Chinese and non-Chinese companies in Hong Kong. Over the years, Wong has been involved in advising on pre-IPO private equity investments, post-IPO notifiable transactions, corporate reorganisations, compliance and related transactions. He has also been involved in advising overseas investors in setting up Chinese joint ventures. Prior to joining the firm, Wong has previously worked in the Hong Kong office of two international law firms.


Olivia Ngan

Sidley Austin has welcomed back **Olivia Ngan** as a partner in its China corporate and finance group. Ngan rejoined the firm in Hong Kong from Linklaters. She represents lenders and borrowers, including listed companies, real estate companies, bond issuers, corporate borrowers, financial institutions, and asset managers, on a wide range of domestic and cross-border financing transactions. She has broad experience advising on pre-IPO, structured, acquisition, real estate and equity margin financing, as well as general corporate lending transactions, with a particular focus on mainland China-related transactions.

CHINA

Paul Hastings has added **Haiyan Tang** as a partner in the investigations and white collar defense practice, based in San Diego. Tang has left her recent in-house position as chief legal and compliance officer of a leading private equity healthcare fund in China, and will relocate to Shanghai in the near term. She is an accomplished litigation partner who focuses on advising multinational companies in their global government enforcement, investigation and compliance matters, and advising China-based companies in sensitive cross-border litigation and arbitration. Tang regularly advises clients in a wide variety of

Continued on page 14 ....

DEAL OF THE MONTH

Asian-mena Counsel
Deal of the Month
August 2020

Li Auto's smooth ride to New York via Washington

Li Auto, a five year old Beijing company which manufactures so-called 'Extended range electric vehicles' is the latest Chinese entity to successfully list in the US. The sustained rally of Tesla stocks is a clear indication that the EV market in US is being looked at favourably by both individual and institutional investors. Founded by Li Xiang, who is also known as China's Elon Musk, Li Auto, unlike Tesla, currently manufactures hybrid cars, which are able to run on gasoline as well as electricity, a more suitable model for their domestic market given the current scarcity of fast-charging stations across much of country. The company argues this will "contribute to a wider and earlier adoption of electric vehicles in China", though it does mean that they are subject to the regulatory regimes regulating both internal combustion and 'new energy' vehicles.

What makes this IPO stand out is not just the investment it generated, at UD$1.1 billion it's the largest IPO by a Chinese company in the US since 2018, but it's timing, given the current trade tensions between the US and China.

> "What makes this IPO stand out is not just the investment it generated, at UD$1.1 billion it's the largest IPO by a Chinese company in the US since 2018, but it's timing, given the current trade tensions between the US and China"

Li Auto is backed by Wang Xing, the founder of China's food delivery titan, Meituan Dianping as well as TikTok's owner ByteDance. The latter, following a recent US Presidential executive order is facing the choice of either being shut down in the US or exiting by sale to American company by this September 15. In addition, in May 2020, the US senate passed legislation which can delist Chinese companies if they do not comply with the standards for US audits and regulations.

Skadden advised Li Auto on its Nasdaq IPO, as well as concurrent private placements, which raised a total of approximately US$1.48 billion. Partners **Julie Gao** (Hong Kong) and **Haiping Li** (Shanghai) led the firm's team on the transaction. **Han Kun** acted as PRC counsel to the company on its listing. Underwriters included Goldman Sachs, Morgan Stanley, UBS, and CICC, Tiger Brokers, and SNB Finance. The underwriters were represented by **Kirkland & Ellis** and **King & Wood Mallesons**, with lawyers **Gong Mulong**, **Ma Tianning**, and **Hu Jing** leading from the latter.

See all this month's deal activity, and seach the archive at:

https://www.inhousecommunity.com/deals

Moves, continued from page 12 ....


Haiyan Tang

sectors, including life sciences and private equity, on their high-profile US and Chinese government enforcement actions and internal investigations involving corruption, financial fraud, antitrust and competition issues, government sanctions and trade policies. She is a top expert in designing and assessing compliance programs, having led the development of many sophisticated compliance programs for companies operating in the complex Chinese business environment. Tang has extensive litigation experience in the US, and has guided top companies to victory in high-stake cross-border litigation and arbitration.

SINGAPORE

Withers has further developed its litigation and arbitration strengths in Asia with the hire of new partner **Chenthil Kumarasingam** and his team in Singapore. They join from Oon and Bazul. Kumarasingam offers a broad range of dispute resolution skills. He is an accredited mediator with the Singapore Mediation Centre, serves on the Advocacy and Criminal Practice Committees of the Law Society of Singapore, and is a senior advocacy trainer with the Law Society. His clients include high net worth individuals, senior executives, founders and companies across various industries, including banking, financial services, mining and aviation, with many of his clients based across South East Asia. He advises on cross border investment and joint venture disputes, company and shareholder disputes, banking and securities claims, insolvency, commercial fraud, professional disciplinary matters and white-collar cases.


Chenthil Kumarasingam

Lewis Sanders

Legal Recruitment

Find your next move with us

This is a small sample of the in-house and private practice roles we are currently working on. Contact us for a career discussion or to find out about new opportunities across a diverse range of sectors.

LinkedIn

WeChat

IN-HOUSE

FinTech
9-15 Years | Singapore

A well-known FinTech company is looking for a senior lawyer in Singapore. You will be providing legal and regulatory support for the firm's product lines, and supporting the group's transactional matters. Prior in-house experience in the FinTech space would be an advantage. Business level Chinese skills required. AC8447

Litigation & Regulatory
8-10 Years | Hong Kong

Top tier US bank is looking to add a legal counsel to its strong disputes resolution team. This team has regional coverage of Asia, you will be involved in minimizing and managing the organisation's litigation and regulatory risks for all business units across the region. Mandarin and Cantonese skills are not essential. AC8457

Corporate
7+ Years | HK/Shenzhen

A Hong Kong listed tech company is looking for a senior corporate/ commercial lawyer to be based in Hong Kong or Shenzhen. You are expected to manage the PRC legal team based in China. You should have familiarity with the PRC legal and compliance framework, as well as prior experience in Hong Kong. Native Mandarin skills are essential. AC8459

Compliance
5-10 Years | Sydney

A globally renowned FinTech company seeks a senior compliance officer to its office. You should have experience in dealing with financial regulatory requirements in Australia. Banking compliance professionals will also be considered. Knowledge of regulatory requirements in New Zealand and Mandarin language skills will be a bonus. AC8446

Equity Derivatives
2-4 Years | Hong Kong

A global investment bank seeks a lawyer qualified in a common law jurisdiction for its expanding Asian equities business. You must have experience in derivatives, cash equities or stock loans, and awareness of transactional matters in APAC. Prior experience from an International law firm or other financial institution required. AC8407

PRIVATE PRACTICE

Restructuring Partner
7+ Years | Singapore

Top US firm is looking to add a counsel/partner in Singapore to its global top tier restructuring and insolvency practice. You should demonstrate excellent technical skills in restructuring/distressed debt and special situations together with the ability to build long lasting client relationships. AC8397

Corporate/M&A
1-5 Years | Shenzhen/HK

An International law firm is hiring a corporate associate for its Shenzhen or Hong Kong office. Opportunity to work on a mix of ECM and M&A/PE transactions which cover a range of industries. You should have strong academics and prior experience from a leading PRC or International law firm. Native Mandarin is essential. AC8439

Disputes
3-6 Years | Hong Kong

New opportunity for a disputes associate to join a leading Offshore firm. You will have solid commercial litigation experience, be English & Wales qualified and have prior experience from either an Offshore or International law firm. Contentious insolvency experience is beneficial. Chinese language skills essential. AC8416

Litigation
4-7 Years | Hong Kong

Opportunity for a litigation lawyer with 4 to 7 years' experience to join a reputable International law firm in Hong Kong. You should have experience in a variety of dispute matters. Fluency in English and Mandarin is essential together with the ability to write in Chinese. AC8229

DCM
2-4 Years | Hong Kong

A top Global firm in Hong Kong is looking for a DCM associate to join their DCM team. You should have experience in DCM matters gained from a top International firm. Fluent Chinese language skills are required. Hong Kong qualification is preferable, though lawyers qualified in other common-law jurisdictions may also be considered. AC8436

Contact us

Camilla Worthington
Managing Director
cworthington@lewissanders.com
+852 2537 7413

Chris Chu
Director
cchu@lewissanders.com
+852 2537 7415

Roshan Hingorani
Consultant
rhingorani@lewissanders.com
+852 2537 7416

Samuel Edwards
Consultant
sedwards@lewissanders.com
+852 2537 7630

www.lewissanders.com

2001, Winway Building, 50 Wellington Street, Central, Hong Kong

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.

Chief Compliance Officer

15+ yrs PQE, Hong Kong

This world leading financial institution head-quartered in Hong Kong is looking for a Chief Compliance Officer. This is a global role and will suit a senior lawyer/compliance professional who is familiar with a trading environment dealing with complex financial products including futures and derivatives. You will manage a small team and take responsibility for building this up. [Ref: IHC 18516]

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

Senior technology lawyer – top tier US law firm

6+ yrs PQE, Hong Kong

This is an attractive opportunity for an ambitious senior technology lawyer that is interested in working in a supportive partnership platform with real expansion plans offering strong prospects for individual growth. Candidates with top-tier firm experience in TMT and up to 2-3 years in house experience doing technology-focused work are welcome to apply. You will work on cutting edge, complex, cross-border technology transactions throughout the APAC region. You must be comfortable leading technology transactions in at least some or all of the areas of outsourcing, cloud computing, digital product launches (including in the fintech space), telecoms infrastructure, cybersecurity and data privacy. Experience supervising junior team members will be a plus. Overseas candidates welcome. APAC language skills a plus but not a requirement. [Ref: HZ57-00007]

Contact: Jessica Deery
Tel: (65) 6808 6635
Email: jessica.deery@horizon-recruit.com

Litigation and Regulatory VP/Director

5-10 yrs PQE, Hong Kong

A top-tier US bank is looking to add an in-house legal counsel to its strong disputes resolution team. Based in Hong Kong, this team provides regional coverage for Asia. The role will involve minimizing and managing the organisation's litigation and regulatory risks for all business units across the region. Candidates from both private practice or in-house will be considered but must have prior experience at reputable international law firms, as well as a strong academic record. Mandarin and Cantonese skills are not essential but would be a distinct advantage. [Ref: AC8457]

Contact: Chris Chu
Tel: (852) 2537 7415
Email:cchu@lewissanders.com

Legal Director, M&A

10+ yrs PQE, Hong Kong

This multinational technology conglomerate is seeking a Legal Director to join its global investment legal team based in Hong Kong. You will be responsible for providing legal advice and support on investment projects and strategies related to Hong Kong-listed entities. Open to Hong Kong qualified lawyers with 10+ years' PQE and a genuine interest in technology and innovation. Substantial experience in M&A, Hong Kong Listing Rules and Takeovers Code is necessary. Experience in e-commerce and cross-border transactions is highly desirable. Proficiency in English and Mandarin is required. You should ideally be open to business travels. [Ref: 15878/AC]

Contact: Sharon Siu
Tel: (852) 2520 1168
Email: ssiu@hughes-castell.com.hk

M&A - Tech Company

8+ yrs PQE, Singapore

A top Asia-based tech company is hiring an M&A Counsel with at least 8 years of M&A experience gained at a top international firm (BigLaw), ideally with some experience in a major market such as New York or Silicon Valley. The ideal candidate has a mix of M&A, private equity, and VC experience with some exposure to e-commerce. We have made several placements at this company over the past 18-24 months, and the GC has a track record of hiring straight out of BigLaw for their in-house team. They operate in industries which are poised for aggressive growth in the post-COVID reality, and their stock has doubled in the past 6 months and tripled in the past year. Stock is a key part of the compensation package, which is on par with the international BigLaw scale. [Ref: JVIHC-0045]

Contact: Alexis Lamb
Email: alexis@jowersvargas.com

LAW IN ORDER
Where work flows.

By Phillip Buglass
Consulting Lead
Phillip.Buglass@lawinorder.com

Will we see the end of Keywords in eDiscovery?

Keyword searches have been the norm for identifying potentially relevant documents for legal review. With the advances in Technology Assisted Review (TAR), it raises questions as to whether keywords still have a place in eDiscovery. Justice Peck said:

> *"In too many cases……the way lawyers choose keywords is the equivalent of the child's game of "Go Fish"…. keyword searches usually are not very effective".*[1]

Justice Peck referenced an article by David L. Blair & M. E. Maron[2] studying the effectiveness of experienced lawyers retrieving relevant documents using keywords and other review techniques. The finding was, on average, recall using these methods was only 20 percent.

This finding was supported by Jason R Baron, US National Archives Director, who discovered as much as 78 percent of relevant documents may be left behind if only Boolean searches are used.[3]

Keyword searches have certainly developed since Blair & Maron's 1985 article. Most review tools now include methods for improving efficiency including dictionaries, keyword expansion and fuzzy searches. However, even using these advanced methods, in most cases keywords will still not find all potentially relevant documents, but only a sample of them.

The Alternatives

The EDRM guidelines define TAR as "a review process in which humans work with software to train it to identify relevant documents". Whilst many TAR reviews use sets already culled using keywords, nowadays TAR runs on larger data sets to improve recall and precision in finding relevant data.

Hypothetically, in a 100,000 document set in which 10,000 documents were relevant, if keyword searches were applied using the 20 percent recall rate, we could assume that 2,000 documents would be returned for review. If improvements in keyword searches advances this 100-fold, we would return 40 percent totaling 4,000 documents.

A well-run TAR may see around 12,000 to 15,000 documents reviewed. Initially, it looks like a bad result due to the time and cost to review an additional 6,000+ documents. However, even assuming that the TAR workflow only finds 95 percent of relevant documents, the results are much more accurate and defensible as against only finding 40 percent of relevant documents. To reach the same level of recall in a traditional linear review would statistically require review of at least 95,000 of the 100,000 documents.

These hypothetical numbers are supported by John Tredennick & Andrew Bye[4] who reported the use of keywords only located 39 percent of potentially responsive documents in their matter.

The goal is finding all relevant documents within a proportionate time and cost boundary.

Keywords appear a quick way of culling data, but are based on the current understanding of a matter. If keywords are built on imperfect knowledge, the results will be imperfect.

Judge Lois Bloom described Abbott Laboratories, et al. v. Adelphia Supply USA, et al.,[5] as "…a cautionary tale about how not to conduct discovery in federal court." In addition to other discovery failings that led to a ruling against the Defendant, Judge Bloom emphasised the Plaintiff's argument that the "…defendants purposely designed and ran the 'extremely limited search' which they knew would fail to capture responsive documents."

If using Keywords, ensure they are carefully designed and tested so that their effectiveness can be defended.

Conclusion

Since the decision in Da Silva Moore, TAR has exploded. In a recent report by Research and Markets[6], it was predicted that TAR spend would grow from $3.2b in 2019 to $37.8b in 2026.

In a recent US case Nuvasive, Inc. v. Alphatech Holdings, Inc.,[7] the court ruled:

> *"…electronic discovery has moved well beyond search terms. While search terms have their place, they may not be suited to all productions. Technology has advanced and software tools have developed to the point where search terms are disfavored in many cases…."*

Change is sometimes slow, however. Whilst we may not see the death of keyword searches immediately, advances in TAR may mean we see a decline in the reliance upon them.

Endnotes

1. *Da Silva Moore v. Publicis Groupe - 287 F.R.D. 182 (S.D.N.Y. 2012)*
2. *An Evaluation of Retrieval Effectiveness for a Full-Text Document-Retrieval System, 28 Comm. ACM 289 (1985)*
3. *http://esibytes.com/beyond-key-word-searching-in-electronic-discovery/*
4. *https://catalystsecure.com/blog/2017/12/how-good-is-that-keyword-search-maybe-not-as-good-as-you-think/*
5. *No. 15 CV 5826 (CBA) (LB) (E.D.N.Y. May 2, 2019)*
6. *LegalTech Artificial Intelligence Market by Application and by End-User: Global Industry Perspective, Comprehensive Analysis, and Forecast, 2018 - 2026*
7. *No. 18-CV-0347 (S.D. Ca.) (10/7/2019)*

Mediation in Hong Kong

Kenix Yuen and *Felda Yeung* of **Gall** explore the appetite for this form of alternative dispute resolution.

Kenix Yuen

Hong Kong has been trying for over a decade to grow the commercial space's appetite for mediation as an alternative dispute resolution (ADR) mechanism to resolving commercial disputes. Hong Kong first introduced mediation as a voluntary resolution process under the Civil Justice Reform (CJR) on April 2, 2009. On January 1, 2013, the Hong Kong Mediation Ordinance came into force, providing both a regulatory framework for mediation's promotion as well as its confidentiality. The Practice Direction on Mediation (PD 31), meanwhile, came into effect on November 1, 2014 and created a framework for mediation. Under PD 31, parties are encouraged to attempt mediation and the Court may make an adverse costs order against a party who unreasonably fails to engage in mediation.

Benefits and pitfalls of mediation

Mediation is a faster, more efficient and confidential approach to remedying disputes, and it is also conducted on a without prejudice basis allowing companies to explore settlement without litigation or arbitration. Mediation is particularly useful when a commercial dispute could potentially damage a company's reputation. For example, in view of the size of the claim, general litigation risk and the potential reputational damage which can be caused by a published judgment, a client may be keen to explore settlement on reasonable commercial terms at an early stage and maintain the business relationship with the opposing party. This would be seen as a "*win-win*" result.

The success of any mediation does lie in several key factors though. These include the mediator's skill; the parties' willingness to settle; the attitude of the parties' legal representatives; the respective strengths of the parties' cases, and whether there are any other consequences that are not within the control of both parties.

The difficulty of cross-border mediation

Cross-border disputes can be even harder to resolve by way of mediation. Litigation is preferred as having a judgment in place may allow parties to insulate themselves from possible regulatory consequences. Difficulties

may be brought about not only by the differences between the laws of the jurisdictions, but cultural differences and differences in legal practice too.

The case of *Gao Haiyan & Anor v Keeneye Holdings Ltd*[1], however, can give some reassurances to parties seeking cross-border mediation. In *Gao Haiyan*, the Court of Appeal dismissed the public policy objection to an award rendered as part of a PRC mediation which the first instance judge found to give rise to "*apparent bias*". The higher court agreed that "*one might share the learned Judge's unease about the way in which the mediation was conducted because mediation is normally conducted differently in Hong Kong*" but nonetheless determined that, because the procedures were common practice in China, there was no apparent bias and no public policy basis for refusal.

Gao Haiyan was later applied in *N v W*[2] — it appears that the standard of illegality to justify a refusal to enforce an arbitration award on public policy grounds (despite its high threshold) varies according to the customs and procedures in different jurisdictions. As the Court in *N v W* confirmed: "*bearing in mind the objectives of the [Arbitration] Ordinance and the policy of the Court to uphold the validity of arbitration agreements and the finality of arbitral awards, the Court would only exercise its discretion to set aside an award for the arbitrator's misconduct under section 25 of the Ordinance, if there was likewise serious, even egregious, conduct of the arbitrator which offends the Court's most basic notions of justice, morality, and fairness, and which results in a denial of due process and serious prejudice to a party.*"

Further developments in Hong Kong

Hong Kong launched the Mediate First campaign in May 2009, with more than 100 companies and trade organisations pledging to consider the use of mediation before resorting to other means of dispute resolution. Since then, however, the number has only grown to just over 650, suggesting that the commercial sector has been slow to embrace mediation as an ADR. The Hong Kong government continues its commitment to encourage mediation.

Felda Yeung

> "Mediation is particularly useful when a commercial dispute could potentially damage a company's reputation"

The opening of the West Kowloon Mediation Centre in 2018 marked the first facility dedicated to mediation in Hong Kong and, also in 2018, the eBRAM Centre (Electronic Business-Related Arbitration and Mediation) was set up. This is funded by the Hong Kong government and is an online platform for deal-making and dispute resolution including mediation within the Greater Bay Area and Belt & Road countries.

There is plenty of room for growth in ADR in Hong Kong and only time will tell if there is a strong, lasting appetite for mediation as a means of resolving disputes.

1. *[2012] 1 HKC 335*
2. *[2019] 3 HKC 161*

GALL
www.gallhk.com
kenixyuen@gallhk.com
feldayeung@gallhk.com

ARBITRATION CENTRE UPDATE

Service innovations to meet the pandemic challenge

Covid-19 responses by **Shenzhen Court of International Arbitration.**

2020 has been an extraordinary year. The worldwide outbreak of Covid-19 has thrown all aspects of the world economy and social life into disarray. It has also given rise to many legal disputes that need to be urgently resolved. For arbitration institutions in particular, how to provide effective services while keeping the outbreak under control is an unprecedented challenge. The Shenzhen Court of International Arbitration (SCIA) sees this challenge as both a test and an opportunity. As China transitions from the initial, more drastic Covid-19 responses to the current more moderate and continuing regime, SCIA has also taken steps — upgrading the case-handling system, optimising online services, reducing arbitration fees, increasing case analysis and launching a webinar series — to ensure services are not interrupted by pandemic controls. These steps have resulted in an improvement in all areas, enabling SCIA to deliver world-class, expedient, professional and fair dispute resolution services worldwide.

Technology empowering online arbitration

To facilitate social distancing and thus reduce the risk of transmission, SCIA has quickly upgraded its online platforms for case filing, remote hearing and evidence exchange and storage. These three IT platforms have enabled arbitrating parties to complete case filing, exchange of evidence, mediation and hearing through a one-stop and end-to-end contactless arbitration process, all via their mobile devices. As of June 30, a total of 3,967 cases have been filed online and 341 cases have been

heard online, with 375 times of video connections created for online hearings, exchange of evidence and identity verification, 22,292 times of online service of documents. Compared with the same period last year, SCIA is seeing a doubling of the number of cases handled online. Remote hearings are effective not only in preventing the gathering of people, but also in accelerating case proceedings, benefiting both the parties and the anti-pandemic program as a whole.

Ever since pandemic control became a continuing effort, SCIA has been expanding online arbitration services, including by launching the SCIA iArbitration mini program on May 30 on WeChat, a messaging app with one billion users. Combining arbitration services with mobile technologies, this lightweight, installation-free program is powered by Tencent cloud storage, facial recognition, audio-visual synchronisation and other technologies, enabling parties to complete and track each phase of the case filing, mediation and arbitration proceedings on their phones.

According to the feedbacks of the parties, all these online services have made SCIA's arbitration services more convenient and efficient than ever before, creating a sophisticated, smart and user-friendly platform that showcases the future of internet-based remote arbitration.

SCIA webinar series streaming online

The pandemic has also limited offline seminars that previously often held to share legal updates or opinions on tough questions which had helped inform businesses on their legal affairs. In response, SCIA is moving the discussions online with its constantly published case studies series and livestreaming webinar seminars. In respect of the former, SCIA has been organising experts to release pandemic-related case studies and articles on its official website and WeChat account, covering international trade, foreign-related landlord-tenant disputes, force majeure in international commercial contracts and other key issues, which aim to shed light on the legal issues that companies may have.

In respect of the latter, SCIA has launched its own online seminar series, the SCIA Webinar. For example, the first seminar, themed *'Challenging Legal Issues in the Performance of Import-Export Contracts Amid the Global Pandemic'*, was successfully held on June 5. During the event, experts in international trade and international commercial arbitration shared their thoughts and practical advice on risk prevention and dispute resolution, analysing such topics as the state of import and export for Chinese enterprises during the pandemic, issues in contract performance in real-world cases, contract design and legal response of foreign-trade enterprises, and the mediation and arbitration of international trade and contract disputes. SCIA is planning more seminars for the SCIA Webinar series, where invited experts will focus on prominent legal issues and answer questions from enterprises.

International experts appointed to expand the SCIA panel of arbitrators

Covid-19 has given rise to a large number of international disputes. To facilitate their resolution, SCIA has steadfastly implemented its internationalisation strategy during the pandemic, adding a further 46 internationally renowned experts to its panel of arbitrators, 12 of whom are

members of the International Commercial Expert Committee (ICEC) of the Supreme People's Court. This means that SCIA panels now boast 29 of the first 31 ICEC members recognised by the highest court of China.

> "SCIA has become an ever more international arbitration institution over the past three-and-a-half decades"

SCIA is the first arbitration institution in China to appoint overseas arbitrators. Of the 15 arbitrators first hired by SCIA in 1984, eight were from Hong Kong. In fact, SCIA has become an ever more international arbitration institution over the past three-and-a-half decades, in particular in relation to its panel structure. SCIA now has 933 arbitrators representing 77 countries and regions, including 385, or over 41 percent of the total, from overseas jurisdictions — the highest percentage in China. SCIA's highly professional and international panel of arbitrators is a major assurance to businesses that seek to resolve foreign-related commercial disputes.

Model Arbitration Clause:
Any dispute arising from or in connection with this contract shall be submitted to the Shenzhen Court of International Arbitration (the SCIA) for arbitration.

SCIA | 深圳国际仲裁院
Shenzhen Court of International Arbitration
www.scia.com.cn

SCIA

深圳国际仲裁院

SHENZHEN COURT OF INTERNATIONAL ARBITRATION

About SCIA

Established in 1983 as the first arbitration institution in the Guangdong-Hong Kong-Macao Greater Bay Area, the Shenzhen Court of International Arbitration (also known as the South China International Economic and Trade Arbitration Commission, Shenzhen Arbitration Commission, the "SCIA") is an arbitration institution to resolve contract disputes, investment disputes and other property rights disputes among individuals, legal entities and other institutions from China and overseas. SCIA is an explorer to integrate China' s commercial arbitration into international practices and so far its arbitration and mediation service have been extended to 119 countries and regions worldwide.

Corporate Governance Structure

The SCIA is the nationally first arbitration institution established by legislation authorizing its corporate governance structure with an international Council which ensures openness, transparency and independence.

International Panel of Arbitrators

The SCIA is the first arbitration institution in Mainland China to include foreign professionals on its panel of arbitrators since 1984. The current 890 SCIA panel of arbitrators cover 76 countries and regions.

Advanced Arbitration Rules

On 21 February 2019, the new SCIA Arbitration Rules took effect, emphasizing party autonomy, bona fide cooperation, efficiency and effectiveness. By enforcing the new rules, SCIA pioneers an optional appellate arbitration procedure to satisfy the demand of the market for substantive justice and reflect a high-level flexibility of arbitration. Under the new rules, the parties may, as agreed, submit a case for which an arbitral tribunal has rendered an award to SCIA for re-hearing and rendering of a final award by a new arbitral tribunal.

Model Arbitration Clause:

Any dispute arising from or in connection with this contract shall be submitted to the Shenzhen Court of International Arbitration (SCIA) for arbitration.

Office Address I (Headquarters):
41/F, West Square of Shenzhen Stock Exchange, 2012 Shennan Blvd., Futian Distict, Shenzhen, P.R.China

Office Address II:
1/F of Tower A & 13-15/F of Tower B, Zhongmin Times Square, 3012 Sungang East Rd., Luohu District, Shenzhen, P.R.China

Office Address III:
A110, Blk. A, Qianhai Complex, Yueliangwan Avenue, Nanshan District, Shenzhen, P.R.China

Office Address of SCIA North America Hearing Centre:
35 N. Lake Ave, Suite 730, Pasadena, CA 91101, USA

(Service) (Subscription)

Telephone: 86-755-83501700, 86-755-25831662 E-mail: info@scia.com.cn Website: www.scia.com.cn

ARBITRATION CENTRE UPDATE

Shifting landscape of international arbitration in China

Continuous improvement is empowering Chinese arbitration practice to grow rapidly.

By Dr Fuyong Chen, **Beijing Arbitration Commission/Beijing International Arbitration Centre**

In China, amateurs may regard a city-named arbitration institution as the one only handling local arbitration cases. It is not, as a matter of fact. Among the main international arbitration institutions, city-named is more often the case worldwide since the impartiality and professional capability, rather than nationality, plays the upmost role in gaining trust from global arbitration users. This article takes Beijing Arbitration Commission/Beijing International Arbitration Centre (BAC/BIAC), as the leading Chinese arbitration institution, as example, and tries to debrief the developments of its international cases in the past five years and to demonstrate the landscape changes of international arbitration practice in China, which would be valuable for arbitration users' decision-making process.

Caseload overview

With the development and shift of global trade and investment, the market share of international arbitration in China is expanding.

In terms of the caseload, BAC/BIAC's international cases have experienced an increase from 52 in 2015 to 163 in 2019, with an average annual growth rate of 35.95 percent. In terms of the average value of a single dispute, BAC/BIAC's international cases have also had an increase from more than Rmb21 million (US$3m) in 2015 to over Rmb42 million in 2019, with an average annual growth rate of 54.38 percent. In 2019, the largest international case reaches Rmb1.46 billion in its value, and 12 international cases values more than Rmb100 million respectively.

By nationality and region, BAC/BIAC's international cases have involved parties from all over the world in the past five years. Excluding Hong Kong, Macao and Taiwan of China, the number of parties from the Americas (including North America, Central and South America) is 51; the number of parties from Asia is 47; the number of parties from Europe is 39; the number of parties from Africa is nine; and the number of parties from Oceania is six. A total of 43 percent of the non-Chinese parties have applied arbitration at BAC/BIAC, and nearly 57 percent of the non-Chinese parties have participated in the arbitration administered by BAC/BIAC as respondents. Furthermore, among the non-Chinese parties, 35 are from the US, 26 are from the UK and 12 are from Canada, making them the top three of BAC/BIAC's non-Chinese users.

Chen Fuyong

In terms of the type of cases in the past five years, BAC/BIAC has accepted 174 pan-financial cases (131of equity investment, 43 of lending and guarantee), 104 international trade cases (68 of sales and 36 of services), 64 international engineering and real estate (40 of construction and 24 of real estate), 31 intellectual property and technology cases, and 76 cases of other types. Among which, the growth rate of equity investment cases, intellectual property and technology cases are comparatively fast in the past five years.

Handling of cases

By introducing and innovating international practice in institutional arbitration rules, the arbitrators and parties who take part in Chinese international arbitration practice are well equipped with more procedural tools and capacities.

Firstly, in terms of the arbitration language, since the 2015 amendment repeals of the default language provision, which introduced Chinese as the arbitration language if no agreement on arbitration language is specified, more arbitration tribunals and the parties concerned opted for English as the arbitration language. Such cases are being handled more smoothly as more arbitrators (including non-Chinese ones) who are capable of handling international cases preside over BAC/BIAC's international arbitration cases.

Secondly, in terms of the applicable laws and applicable arbitration rules, a variety of situations have been witnessed during the past five years, where the applicable laws involve Hong Kong law, US law of the state of New York, Korean law, Uzbekistan law, Kyrgyzstan law and the UN Convention on Contracts for the International Sale of Goods, and the applicable arbitration rules involve ICC Arbitration Rules and the UNCITRAL Arbitration Rules. In a number of cases, parties from in and out of China even reached amendment on their arbitration agreement that stipulate another well-known international arbitration institution, and replace BAC/BIAC as the eligible arbitration institution for their dispute resolution.

> "By introducing and innovating international practice in institutional arbitration rules, the arbitrators and parties who take part in Chinese international arbitration practice are well equipped with more procedural tools and capacities"

Finally, since the BAC/BIAC's 2015 Arbitration Rules introduced a series of cutting-edge international practices, the joinder and the consolidation of arbitration have already been a frequent practice in BAC/BIAC's international cases. Also, it is worth noting that after the first emergency arbitrator case in mainland China was administered by BAC/BIAC and the interim measures of that case were enforced in 2017, BAC/BIAC has begun to encourage and support more tribunals and the parties to apply for emergency arbitrator proceedings and seek enforcement of interim measures in countries and regions along the Belt and Road.

> "The continuous improvement of China's business environment and the further opening-up empower arbitration practice in China to grow rapidly"

Efficiency and quality

The traditional wisdom in Chinese institutional practice allows a quicker learning curve for more tribunals and parties to become competent conducting arbitration in different but efficient ways.

In terms of case management approaches, BAC/BIAC's international cases have widely adopted the procedural orders and terms of reference, which are believed to be a more effective way of preparing the arbitration. In 2019, furthermore, one of BAC/BIAC's international cases used Redfern Schedules in discovery. In some other occasions, tribunals, parties and witnesses have agreed to online hearings or electronic service, and BAC/BIAC encourages and supports all choices.

In terms of the duration of case management, all aforementioned innovation and measures contribute to the high efficiency of BAC/BIAC's international cases. Taking 2019's statistics as an example, the time limit for BAC/BIAC's arbitration that applies to ordinary international commercial procedures is six months, and the time limit for BAC/BIAC's arbitration that applies to expedited international commercial procedures is 90 days, while the actual average durations for BAC/BIAC's 2019 international cases was 157 days for the former type of procedures and 63 days for the latter type. (Note: the time limit counts from the composition of tribunal to the rendering of award.) The statistics could be very persuasive to the users who are sensitive to the efficiency.

Yet, no awards rendered in BAC/BIAC's international cases have been set aside or non-enforced. The enforcement and recognition of BAC/BIAC's awards, indeed, were witnessed in the US and many other countries and regions.

The platform

In 2019, the BAC/BIAC moved forward with new amendment of its commercial arbitration rules and a set of investment arbitration rules. The former has made a bold breakthrough in the fee structure of Chinese commercial arbitration, while the latter has been an innovative proposal to alleviate the existing concerns about investment arbitration.

With these efforts, the proportion of panel listing arbitrators who are actually sitting in BAC/BIAC's international cases has increased significantly in the past five years. Among which, 526 non-Chinese arbitrators have been appointed or nominated in BAC/BIAC's cases.

As Shakespeare wrote: "What's past is prologue." The continuous improvement of China's business environment and the further opening-up empower arbitration practice in China to grow rapidly. In the meantime, the international arbitration community in China may embrace a better future while profound changes are taking place in the global politics and economies.

BAC/BIAC's senior manager Terence Xu also contributed to the article

BIAC
北京仲裁委员会
Beijing Arbitration Commission
北京国际仲裁中心
Beijing International Arbitration Center
www.bjac.org.cn
bjac@bjac.org.cn
chenfuyong@bjac.org.cn

BIAC

北京仲裁委员会
Beijing Arbitration Commission
北京国际仲裁中心
Beijing International Arbitration Center

25 Anniversary

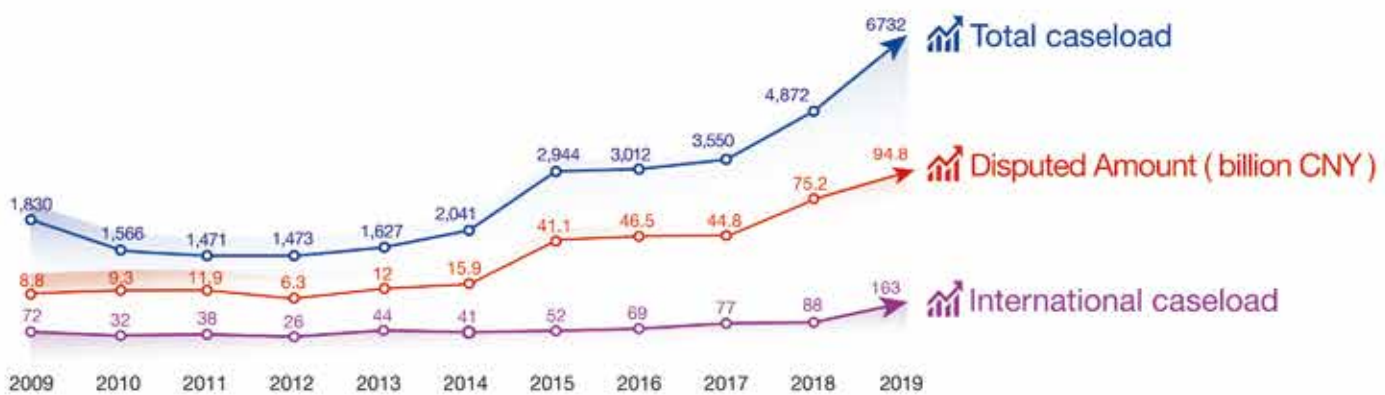
- Commercial Arbitration, Investment Arbitration, Mediation, Dispute Board
- Cost-effective dispute resolution at international standards
  Innovative practice with Chinese culture and traditions
- Safeguard legal and ethical environment of business

16/F, China Merchants Tower, No.118 Jian Guo Road, Chaoyang District, Beijing 100022, China
+86 10 65669856 ext.200/203
+86 10 65668078
bjac@bjac.org.cn

AT A GLANCE

The Beijing Arbitration Commission, also known as the Beijing International Arbitration Center (the "BAC/BIAC") was established on September 28th, 1995. In 1998, the BAC/BIAC became the first self-funded arbitration institution in China. Since 2018, it has been included in the "One-Stop" Diversified International Commercial Dispute Resolution Mechanism as one of the first five institutions by the Supreme People's Court of the People's Republic of China. Over the past two decades, the BAC/BIAC has also been widely accepted as one of the leading arbitration institutions internationally.

The BAC/BIAC delivers reliable dispute resolution services and encourage the exchange of best practices. To this end, the BAC/BIAC organizes the Annual Summit on Commercial Dispute Resolution in China, sponsors the Biennial ICCA Conference, and joins forces with the CAJAC (China-Africa Joint Arbitration Centre) as well as other "Belt and Road" initiatives. It also contributes constructively to the deliberations of UNCITRAL Working Groups as an observer and is the major force promoting institutional cooperation in the international arbitration community.



Model clause for our arbitration services:

All disputes arising from or in connection with this contract shall be submitted to Beijing Arbitration Commission / Beijing International Arbitration Center for arbitration in accordance with its rules of arbitration. The arbitral award is final and binding upon both parties.

ADR in the time of Covid-19,

and why virtual and hybrid hearings are here to stay

Philip Jeyaretnam SC, Chairman, **Maxwell Chambers**, *Professor Lawrence Boo, Board Member,* **Maxwell Chambers** and *George Lim SC, Chairman,* **Singapore International Mediation Centre** (SIMC) spoke to *Asian-mena Counsel* about the latest developments in Alternative Dispute Resolution in light of the pandemic.

Maxwell Chambers is the world's first integrated Alternative Dispute Resolution (ADR) complex housing both 'best-of-class' hearing facilities as well as top international ADR institutions. But what effect has the current global pandemic had on the chamber's activities and ADR in Singapore?

According to Philip Jeyaretnam SC, Chairman of Maxwell Chambers, "The biggest impact of Covid-19 has been forcing parties who do not want to delay proceedings to adopt virtual or hybrid hearings. To many practitioners' surprise, virtual hearings have not been as difficult as feared, and in some ways have advantages over physical hearings, particularly when witnesses are not involved. So virtual and hybrid hearings are definitely here to stay and will endure even when travel restrictions and safe distancing requirements are lifted." He continues, "The technology to support virtual hearings has greatly advanced since the early days of remote witness conferencing, and will continue to improve. Maxwell Chambers has quickly geared up to provide effective support for both fully virtual and hybrid hearings, with the introduction of dedicated moderators coupled with the top-notch systems and software.

"Singapore's strength as an international ADR hub is founded on numerous supportive factors, including a robust legal framework, a deep talent pool and peerless connectivity," says Mr Jeyaretnam. "If no one can travel, then the advantage of being a top international ADR hub lessens. But that is only one of a basket of characteristics conducive to arbitration, and in time ease of air travel will return to

Philip Jeyaretnam SC, Chairman, Maxwell Chambers

importance, because parties still prefer a physical hearing if possible.

"Challenges are inevitable during a time as such. The addition of technology to facilitate hearings increases efficiency but at the same time, introduces multitudinous challenges." For example, "during a physical hearing, cross-border disputes are complex as they involve the management of several parties involved. Gathering each member of the dispute via an online platform to conduct a remote hearing, further accentuates these challenges. However, with the introduction of dedicated moderators coupled with the latest systems and software, we have essentially maintained our stronghold in the ADR landscape without compromising on our offerings."

Professor Lawrence Boo observes, "A whole spectrum of our society has been affected by Covid-19 in one way or another. At this point in time however, the ADR landscape has not, in my view, been too badly mauled. While our mode of operation has significantly changed, conducting remote and hybrid hearings instead of in-person hearings, the cases and the scope of work have not in fact changed much. Although there has been a drop in hearings over the last few months, I can see that hearings are now returning with most legal practitioners accepting that cases cannot be postponed infinitely as businesses have to continue operations and disputes have to be resolved regardless of the current situation.

"With the continuous introduction of new cutting-edge technologies, we should all be prepared for a greater use of Artificial Intelligence (AI) in our daily work," notes Professor Boo, "The assimilation of AI in a traditional hearing set-up will likely come sooner than expected. Whether it's the use of new hardware, better cameras, sensors or the systems as a whole, each and every individual has to be able to adapt to new technologies to maintain our relevancy in the ADR sphere."

On a more personal note, Professor Boo observes that "the prevailing travel restrictions have resulted in most us gaining extra hours during this period. These pockets of time can be harnessed to learn new skills, whether a language or an area of practice interest, and at the same time, think of ways in which we can innovate to better adapt to newer technologies, allowing us to seamlessly integrate ourselves and our skills into the 'new-normal'."

Professor Lawrence Boo, Board Member, Maxwell Chambers

> "I can see that hearings are now returning with most legal practitioners accepting that cases cannot be postponed infinitely as businesses have to continue operations and disputes have to be resolved regardless of the current situation"

Professor Boo concludes, "Maxwell Chambers is one of a kind and its offerings are niche and unique. However, like any other organisation, it has to update, upgrade and upskill its services constantly with the evolving needs of ADR users and offer the most efficient processes (both hardware and software) during and even after the pandemic wanes."

The role of mediation to resolve international commercial disputes has been growing rapidly, and according to George Lim SC, Chairman of the Singapore International Mediation Centre (SIMC), the interest in mediation will continue to grow, especially with the coming into force of the Singapore Convention on Mediation on September 12, 2020, "as businesses realise how much more effective it is to take control of their disputes and collaborate to forge a win-win solution before engaging in legal proceedings, which may not always yield an outcome that they find to be in their favour."

SIMC has now moved to Maxwell Chambers Suites, and Mr Lim notes they are seeing an increasing number of lawyers encouraging their clients to mediate their disputes, "Lawyers who understand mediation and how to act as

mediation advocates play an important role in putting their clients on the road to settlement. Clients value counsel who can propose effective and lasting solutions that also save time and cost. Mediation checks all these boxes. When lawyers propose commercially-sensible solutions, clients are happy and they naturally get repeat business.

"Disputes can and should be mediated. This is especially the case during the Covid-19 pandemic," says Mr Lim. "As businesses come under increasing pressure, companies that use mediation will be able to resolve their disputes quickly instead of being bogged down by protracted legal battles. This puts them in a stronger position despite the economic pressures."

Mr Lim also highlights SIMC's Covid-19 Protocol, which provides an expedited, economical, and effective way for businesses to resolve their disputes. Importantly, mediations can be conducted online, given the current travel restrictions.

With the online component, Mr Lim suggests that designing a mediation session now involves coordinating the participation of mediators, parties and counsel across time zones and levels of technology competency and rethinking the manner by which joint and private sessions take place, with a view to ensuring that an online mediation would be as successful as if parties had all appeared in-person.

However, online mediation throws up new challenges in building bridges across cultures and overcoming constraints, even as it can be seen as a leveller. Mr Lim says, "For example, parties may feel less invested in the mediation when they are comfortable dialling in from home. Some parties who are less technologically savvy may also feel cut out from the proceedings, if they are not run well. To mediate effectively online, we need to learn how to effectively communicate and build rapport online. For example, how do we compensate for the decreased personal touch and the relative lack of body language?"

"Institutional mediation can play an important role in helping mediators and parties adapt to the online context by providing end-to-end support, allowing participants to take their mind off the technology and mediate in peace. In mediations administered by SIMC, we work closely with the Maxwell Chambers team and are present throughout the mediation to ensure that the relevant documents are shared quickly and to move the participants from room to room on the online platforms."

George Lim SC, Chairman, Singapore International Mediation Centre (SIMC)

> "Given the novelty of remote and hybrid hearings, and the growing trend of mediation, in-house counsel and lawyers would need to equip themselves with mediation advocacy skills and ODR techniques"

Mr Lim continues, "Given the novelty of remote and hybrid hearings, and the growing trend of mediation, in-house counsel and lawyers would need to equip themselves with mediation advocacy skills and ODR techniques. As Professor Boo suggests, we can make use of the extra time now to learn new skills and adapt to the 'new-normal'."

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

Oldham, Li & Nie
Tel: 2868 0696
Email: gdoldham@oln-law.com
Contacts: Gordon Oldham
Website: www.oln-law.com
CMA IA IP LDR 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
Email: sales@lawinorder.com
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