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A caveat for AI developers



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Q&A with Carina Wessels  
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**Q&A WITH ROBERT LEWIS**

What Non-US Companies Can  
Learn from the Case Against  
Huawei CFO, Meng Wanzhou

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Firms of  
the Year  
— 2021 —  
RESULTS**



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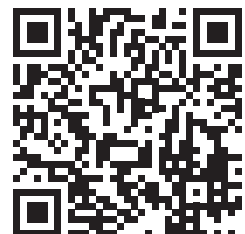


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Published 10 times annually by  
**InHouse Community Ltd.**

**Publishers of**

- In-House Community Magazine
- IHC Briefing

**Organisers of the**

- IHC Events

**Hosts of**

- www.inhousecommunity.com
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# In this issue

## In-House Community Firms of the Year — 2021 — RESULTS

### FIRMS OF THE YEAR 2021

- 24** Introduction
- 26** Survey methodology
- 27** Results, jurisdiction by jurisdiction and pandemic insights

### WINNER'S FEATURES

- 50** Vietnam: New securities laws ease some foreign ownership restrictions
- 52** Q&A with Anuj Shah and Jean Muller of Khaitan & Co.
- 54** Tax relief for Philippine businesses under new law

6



### JURISDICTION UPDATES

6

#### PHILIPPINES

The Employee's Right to Receive or Refuse a Vaccine

8

#### OFF-SHORE UPDATE

Steering steady: Navigating directors' fiduciary duties in insolvency

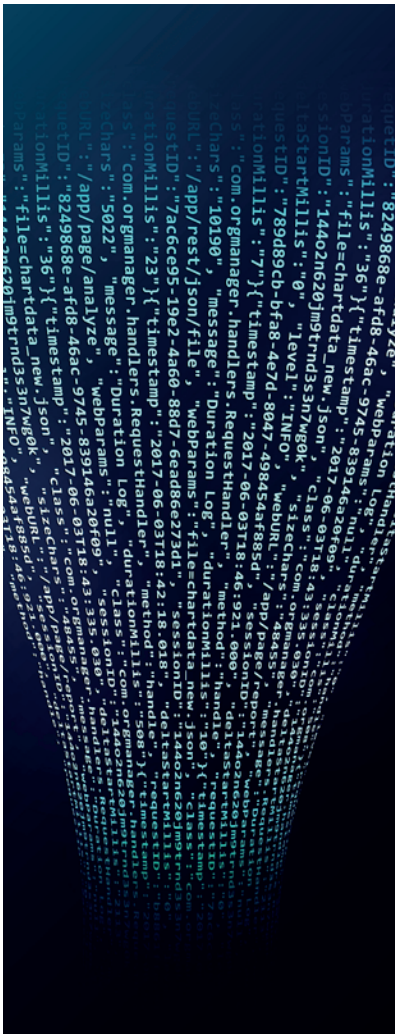
8



### THE IHC BRIEFING

- 10** NEWS
- 12** MOVES
- 14** DEALS

# In this issue



## ARTIFICIAL INTELLIGENCE

17

A caveat for AI developers  
*Protecting the way data is processed is now a competitive advantage when building AI systems. And due to the high costs of implementing such technology, IP and other protections will likely grow in importance.*



## IN-HOUSE INSIGHTS

19

In-House Insights with  
Carina Wessels of  
Alexander Forbes



## Q&A WITH ROBERT LEWIS

56

What Non-US Companies  
Can Learn from the Case  
Against Huawei CFO,  
Meng Wanzhou

## IN-HOUSE DIRECTORY

62

# The Employee's Right to Receive or Refuse a Vaccine

BY CLARENCE DARROW C. VALDECANTOS

A few weeks ago, Metro Manila marked the one-year anniversary of its first Covid-19 quarantine. Now, the National Capital Region and other nearby provinces - dubbed as NCR+ - are back under the Modified Enhanced Community Quarantine (MECQ).

We can still vividly recall the deserted streets when the strictest quarantine was first imposed. Initially, only the businesses doing essential work could operate. Even then, not all employees could work due to safety reasons, not to mention the hardships from no public transportation. The country essentially came to a halt. Eventually, businesses and workers alike accepted the grim reality that everyone had to sacrifice.

Thanks to the wonders of modern science, vaccines for Covid-19 came at breakneck speed. Distribution of vaccines started late last year and the rollout has now reached the Philippines. Businesses are feeling more optimistic and everyone is eager to rebound. At this early stage, though, it is interesting to note that, many

individuals are nervous about being vaccinated. People are asking if employees can refuse the Covid-19 vaccine.

On one hand, refusing the job is a matter of personal choice and the Philippine Constitution and laws guarantee an individual's right to freedom, especially about health matters. The state has the mandate to regulate relations between workers and employers in affording full protection to labour. Presently, an employer is merely required to provide for employee viral testing and maintain a safe work environment. Also, no law mandates the Covid-19 vaccination of employees in the workplace. On the contrary, the Department of Labour and Employment (DOLE) recently issued Labour Advisory No. 03, Series of 2021, on March 12 essentially prohibiting a "no vaccine, no work" policy.

On the other hand, employers can impose any rules and regulations for the conduct of business operations, which includes ensuring a safe and healthy workplace and the integrity of products or services. Accordingly,



the Labour Code grants employers the right to dismiss employees who wilfully disobey lawful and reasonable orders relating to their performance. The DTI and DOLE Interim Guidelines on Workplace Prevention and Control on Covid-19 also mandates employees to comply with all workplace measures for the prevention of Covid-19. This seems to contemplate only frequent handwashing, mask wearing and physical distancing. From a business perspective, businesses which can say their employees have been vaccinated will surely have a market advantage, not to mention avoiding the expense and difficulties of sick leave.

Presently, employers cannot require employees to be vaccinated unless a law or government regulation is passed to require Covid-19 vaccination among employees. And especially considering Labour Advisory No. 03-21, an employer cannot penalise, or dismiss, employees who opt out of the vaccine. Employees can only be dismissed if any of the just or authorised causes provided by the Labour Code are present. And arguably, even the just cause pertaining to “wilful disobedience of the lawful orders of the employer” mentioned above may not be applicable in this case. An exception may be argued only if the requirement for vaccination directly relates to the performance of the employee’s work and the functions of the employee place them at a conceivable risk of transmitting or contracting the disease.

**Presently, employers cannot require employees to be vaccinated unless a law or government regulation is passed to require Covid-19 vaccination among employees.**

The government should consider mandating the vaccination of medical frontliners and workers in essential industries, considering the medical and economic emergency. This has been done in the past when the DOLE issued Department Advisory No. 05-10 requiring Hepatitis B vaccinations for those whose occupations had a conceivable risk of transmission in the workplace, such as healthcare workers.

At this precarious time, the delicate balance between management and labour again comes to fore. As vaccines are rolled out and administered to Filipinos, there is an apparent need for

the state to balance its mandate of promoting the right to health of the people and protecting the economy, versus the fundamental personal freedom of individuals.

This article is for informational and educational purposes only. It does not constitute legal advice or legal opinion.



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# Steering steady: Navigating directors' fiduciary duties in insolvency

BY JEREMY LIGHTFOOT  
XIA LI  
CATIE WANG

In the recent case of *Byers and others v Chen Nanning* [2021] UKPC 4, the UK Privy Council examined the duties of a director in relation to an insolvent British Virgin Islands (BVI) company. Liquidators of Pioneer Freight Futures Ltd (PFF), an insolvent company incorporated in the BVI, brought a claim against Ms Chen, who was a director of the company, for breach of fiduciary duties.

Ms Chen was a director and the ultimate beneficial owner of PFF, via its parent company. PFF had been experiencing financial difficulties since 2008. In May 2009, PFF borrowed US\$13 million from Zenato Investments Ltd (Zenato), a company belonging to a business acquaintance of Ms Chen. PFF repaid Zenato the US\$13 million loan in full with interest in November 2009 (Zenato Payments). At the time of making the Zenato Payments, PFF was insolvent. On 17 December, PFF applied for the appointment of joint provisional liquidators (which later became liquidators) in the BVI on grounds of insolvency. The liquidators subsequently brought proceedings against Ms Chen for breach of a director's fiduciary duties for making the Zenato Payments.

## A DIRECTOR'S DUTIES

The liquidators commenced proceedings in the BVI High Court, claiming Ms Chen breached her duties as a de jure, de facto or shadow director of PFF, or as someone whose role in the affairs of PFF justified the imposition of fiduciary duties. The liquidators also sought an order against Ms Chen on the basis that the Zenato Payments constituted an unfair preference and a voidable transaction under §§.244 and 245 of the Insolvency Act 2003.

After failing to prevail both at first instance and in the Court of Appeal, the board of five judges of the UK Privy Council (the Board) eventually found in favour of the liquidators.

While Ms Chen claimed she was no longer a director of PFF in November 2009 and relied on her letter of resignation dated 29 May 2009 addressed to the board of directors of PFF, there was insufficient evidence the letter was properly delivered to the company. Ms Chen also argued that, as the ultimate beneficial owner of the group of companies to which PFF belonged, she had accepted the delivery of the resignation letter on behalf of PFF by virtue of the *Duomatic* principle, which allows shareholders (or the ultimate beneficial owners making decisions) to informally



approve a company's actions without needing a formal general meeting. The Board accepted the *Duomatic* principle, but did not accept Ms Chen's argument, given that she appeared to act in the same way as before in relation to the business and affairs of PFF, even after her purported resignation.

**This UK Privy Council decision is significant because it highlights the importance of a director's duties, particularly once a BVI company is insolvent.**

The Board held that Ms Chen remained a de jure director. It also clarified that a mere purported lack of involvement in the day-to-day management of the company was not enough to demonstrate her resignation. Further, under §.109 of the BVI Business Companies Act 2004, a BVI company must have at least one director, and since there was not sufficient evidence that another director was appointed following Ms Chen's purported resignation, this gave further support to the conclusion that Ms Chen did not resign.

**BREACH OF FIDUCIARY DUTIES AND INSOLVENCY OF A COMPANY**

Once a company is insolvent, the director's duty is to act honestly, in good faith and in the best interests of creditors of the company. Following this principle, the Board found that the Zenato Payments had been made without justification and so were improper.

Although Ms Chen did not personally arrange the Zenato Payments, she had a fiduciary duty to prevent such payments knowing PFF was insolvent. By delegating to someone else the ability to make payments and by failing to take any action to prevent the improper payments, Ms

Chen authorised and caused those payments to be made. The Board found Ms Chen liable for breach of fiduciary duties, since she was "ultimately the boss." As for unfair preference and voidable transactions under §.244 and 245 of the Insolvency Act 2003, this did not need to be considered further as a parallel remedy, in light of the conclusion already reached regarding breach of fiduciary duties.

**SIGNIFICANCE OF THE DECISION**

This UK Privy Council decision is significant because it highlights the importance of a director's duties, particularly once a BVI company is insolvent. Directors must be aware of their duty to act in the interests of creditors. Given the frequently complex factual circumstances and legal nuances, directors should consider seeking legal advice when navigating the tricky waters of their fiduciary duties of directors.

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## NEWS

## Ashurst's Global Chairman to step down



Ashurst partner Ben Tidswell will step down from the partnership on July 31, after 21 years as a partner and eight years as the firm's global chairman.

Tidswell has accepted a prestigious judicial appointment as a Chairman of the Competition Appeal Tribunal, the UK's specialist competition court.

"I am leaving the firm in a strong position under the leadership of global managing partner Paul Jenkins, his wider management team and an experienced and diverse Board.

"As a partnership, we have developed an exceptionally well-integrated international business. We have great momentum in the market and deep, trusted relationships with global clients," Tidswell said.

He hopes Ashurst's diverse workforce, know-how, commitment to a clear purpose and positive culture will help it emerge with confidence and energy from Covid-19.

Jenkins recognised Tidswell's outstanding career with the firm and excellent leadership.

"Ben's leadership and client relationship skills played a critical role in achieving great outcomes for Ashurst. To me, his tenure is defined by an unrelenting focus on our culture and clients, his strong values and his ability to motivate and inspire all our people," Jenkins said.

The firm will begin the process to find a new global chairman on a four-year rotation on August 1.

Tidswell joined Ashurst in 1993 and became a partner in the London-based dispute resolution team in 2000, specialising in complex

commercial litigation. He was a member and chairman of the New Partners Committee from 2004-07 and was appointed as a board member in 2007 and then as chairman in 2013.

## Bonnie Dixon to lead Japanese law firm's New York office



Tokyo-based law firm Atsumi & Sakai has opened a New York office called Atsumi & Sakai New York.

This expansion enables the firm to provide more convenient legal services in both North and South America. The office will be led by Bonnie Dixon, a veteran partner of the firm and the first non-Japanese lawyer to be a partner of a Japanese law firm in the post-WWII era.

As the only Japanese law firm with offices in London and New York, an affiliated office in Frankfurt and an affiliated law firm in Vietnam, Atsumi & Sakai covers all time zones and offers legal services 24 hours a day.

Atsumi & Sakai is a rare example of legal diversity in Japan, employing registered foreign lawyers and other lawyers from 10 jurisdictions, including New York and other US states, the UK, Australia, Germany, Taiwan, India and Vietnam.

The firm said Dixon represents the firm's commitment to gender and racial diversity. Atsumi & Sakai has the highest gender diversity quotient among large law firms in Japan, for which the firm has won numerous awards.

Dixon was admitted in New York and will serve as managing partner of the new office. Rikiya Okuhara, a lawyer admitted

## NEWS

in Japan and New York, will serve as vice-managing partner.

After practising law as a partner at leading US law firms, Dixon returned to Japan in 2002 and joined Atsumi & Sakai in 2005. She serves clients in cross-border transactions and dispute resolution. Dixon will divide her time between the New York and Tokyo offices to meet the needs of her diverse client base.

Okuhara also has extensive experience in international matters, including dispute resolution. He will be stationed full-time in New York.

“Our expansion to New York is a natural move for the first major Japanese law firm to establish a partnership jointly with non-Japanese attorneys,” said Hiroo Atsumi, managing partner of the Tokyo office.

“We are committed to assisting our international clients with their business in Japan, and assisting our Japanese clients with the resolution of their legal issues in North and South America. We are proud that the managing partner of our New York office will be an American woman,” Atsumi said.

## Maxwell Chambers in Singapore gets a new board chairman



Daryl Chew, the present managing partner of Shearman & Sterling’s Singapore office, has been appointed as chairman of the Board of Directors of Maxwell Chambers.

Chew succeeds Philip Jeyaretnam SC who was recently appointed as a Supreme Court Judicial Commissioner. Under Jeyaretnam’s

leadership, Maxwell Chambers, an integrated alternative dispute resolution complex located in Singapore, developed into a leading facility providing hearing rooms.

At Shearman & Sterling, Chew acts as counsel and arbitrator in arbitrations involving a wide range of applicable laws, arbitral rules and seats, with a focus on construction, energy, M&A, joint venture and general commercial disputes.

“I am honoured by the appointment and privileged to have the opportunity to serve an institution that is not only a lodestar for its counterparts across the globe, but also with immense significance to me as a dispute resolution practitioner in Singapore,” Chew said.

According to Chew, Maxwell Chambers has become an unmistakable feature in the international dispute resolution landscape and an icon for ADR practitioners, both in Singapore and abroad.

“As we navigate a more complex, post-pandemic global landscape, where virtual meetings and hearings are commonplace, I look forward to building on our solid foundations and collaborating with management and the Board to develop a shared vision for the next chapter,” he said.

Chew confirmed that Maxwell Chambers will remain singularly focused on refining its core offerings to add value and meet the diverse, evolving needs of users in the global ADR community. He added that the firm is committed to a global footprint by adopting innovative and transformative technologies and exploiting greater synergies within the unique ecosystem of ADR stakeholders.

## MOVES



South Korea-based firm **Yoon & Yang** has added as partners:

**Young Hyun Kim**, a former chief prosecutor; **Su Yeol Lee**, a former presiding judge at the Seongnam Branch of the Suwon District Court; and **Sang Jae Park**, a former presiding judge of the Gwangju District Court.

Kim joins the firm's criminal defence practice group after a life-long career as a prosecutor at the Foreign Criminal Affairs Department of the Seoul Central District Prosecutors' Office. He specialises in prosecutions of environmental crimes and special corporate investigation cases.

Lee joins the Yoon & Yang's corporate litigation practice group. Park joins after a 15-year career serving on the bench of the Incheon District Court, the Seoul Central District Court, the Mokpo Branch of the Gwangju District Court, and the Goyang Branch of the Uijeongbu District Court.



US-based **Squire Patton Boggs** has hired Sydney corporate/M&A partner **Michael Gajic**. Formerly with MinterEllison, Gajic specialises in public M&A transactions, including schemes of arrangement, takeovers (hostile, unsolicited and friendly), takeover defences, take-privates of Australia-listed companies by private equity bidders, and Takeovers Panel matters.

He has extensive experience advising on shareholder activism for Australia-listed companies. Gajic acts for both buyers and sellers on Australian and cross-border

private M&A transactions, including sales, acquisitions, divestments and strategic sale processes. He also advises on capital raisings, placements, block sales of stakes in Australia-listed companies, corporate restructures, recapitalisations and loan-to-own transactions.



Hong Kong-based **King & Wood Mallesons** has strengthened its team with the appointment of banking and finance partner **David Lam**. He brings 18 years of cross-border finance experience, coupled with a deep connectivity with clients in Hong Kong and China.

Fluent in English, Mandarin and Cantonese, Lam has built an effective practice focused on cross-border loan financing outbound from China, where he has advised lenders, sponsors and corporate borrowers on a wide range of financing transactions, with a particular focus on China-related transactions. Lam began at Clifford Chance, spending ten years with the firm before joining KWM as a partner in Hong Kong for eight years. Prior to his latest appointment, he was at Allen & Overy in 2019 as head of the China Desk (Australia).



China-based **Han Kun** has added **Michelle Gon** and **Sophie Shi** as partners in its Shanghai office. Gon is recognised as an expert in cross-border compliance and regulatory areas. She has extensive experience representing multinationals in complicated and challenging compliance and regulatory matters. Before joining the firm, she practiced with Winston & Strawn as a partner and held

## MOVES

senior partner roles at two other international law firms. Shi is experienced in dealing with both Chinese and international legal matters and has handled many complex cases and significant projects in a variety of areas for both international and domestic clients.



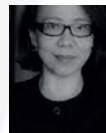
### Clifford Chance

strengthens its Hong Kong-based Greater China litigation and dispute resolution team with the addition of **Soo Khim Keoy** and **Jonathan Wong** as partners. Keoy will join in late May, while Wong joins on April 1. Keoy is a specialist commercial litigation partner with over 20 years' experience. He advises international and Greater China-based listed companies, financial institutions, investors and high-net-worth individuals on complex and contentious matters.

Wong will represent international and Greater China-based financial institutions, asset managers and other intermediaries on regulatory and internal investigations, financial crimes and bank litigation matters, and international and commercial arbitration. His background includes high-profile sponsor investigations, price fixing, insider trading and control failure matters. He joins from Freshfields' Hong Kong office. Both partners are fluent in English, Mandarin and Cantonese.



**K Satish Kumar** has moved from Ramco Systems to **Intellect Design Arena (IDA)**. Kumar was Ramco's global head of legal and the chief data protection officer for six years. He is now IDA's senior vice president and group chief legal officer. A seasoned legal professional, recipient of many prestigious awards and a prolific writer, Kumar is also certified by the World Intellectual Property Organisation. He has rich work experience, including M&A, and time in the finance domain from the Institute of Cost and Management Accountants of India.



**Christopher & Lee Ong**, a member firm of **Rajah & Tann Asia**, has added **Chua See Hua** as a partner to co-head its restructuring and insolvency practice. She brings extensive experience and a wide range of local and international clients. Chua joins the firm at a time when Southeast Asia – especially Malaysia – sees an increase in debt restructuring and insolvency in many industries, due to the impact of Covid-19. She has led notable deals during the Asian financial crisis and the 2008 global financial crisis when she advised borrowers, lenders and administrators on the corporate debt restructuring of huge portfolios of Malaysian public listed groups. Her practice advises major corporations on acquisitions and divestments, banking, property-related

## MOVES

issues, private equity investments and capital markets. Chua and her team join from Chua Associates, a firm specialising in restructuring and insolvency, which she founded in 2010.



### King & Wood Mallesons

continues to expand in Southeast Asia after appointing cross-border dispute resolution partner **Amanda**

**Lees** to its Singapore office. Lees has almost a decade of experience working in the region, most recently at Simmons & Simmons JWS and, before that, with Ashurst. Leveraging Singapore's position as an economic hub for APAC, Lees built a successful practice. She is an expert in international arbitration – both as counsel and arbitrator – with strong experience in Malaysia, Indonesia, Vietnam, Myanmar, India, China, Hong Kong, Singapore and Australia. Lees also specialises in commercial and investment treaty

arbitration and other complex cross-border litigation. Lees is presently a director of the Singapore branch of the Chartered Institute of Arbitrators.



### Paul Hastings

has added corporate lawyer **Jean Yu** to the firm's Hong Kong-based securities and capital markets practice as a partner. Yu focuses her practice on capital market offerings, M&A, compliance and other general corporate matters. She has extensive experience advising on H-share and red-chip companies' successful listings in Hong Kong, along with compliance matters and M&A of listed companies.

## DEALS

India-based firm **J Sagar Associates** has advised **IDFC FIRST Bank** on its qualified institutions placement. IDFC FIRST Bank filed documents on April 6 for the issue of about 523.1 million equity shares to qualified institutional buyers, aggregating to approximately 30 billion (US\$400m). ICICI Securities, Citigroup Global Markets India, Credit Suisse Securities (India), JM Financial and UBS Securities India acted as the lead managers.

IDFC FIRST Bank offers banking products for retail customers in the micro, small and medium enterprises (MSME) and consumer

sectors. It also works with wholesale customers, such as large corporates and nonbank financial companies (NBFCs). Its principal business consists of retail banking, wholesale banking and treasury operations through a variety of channels, including bank branches, ATMs, call centres, internet and mobile phones. Partners Vikram Raghani and Arka Mookerjee led the J Sagar Associates team in the transaction.

Fellow India-based firm **Khaitan & Co** has advised **Kalyan Jewellers India (KJI)** and the lead managers (Axis Capital, Citigroup Global

## DEALS

Markets India, ICICI Securities, SBI Capital Markets and BOB Capital Markets) on KJI's 11.75b (US\$156m) IPO. The deal comprised a fresh issue of KJI equity shares and an offer for sale of equity shares by selling shareholders.

KJI designs is one of the largest jewellery companies in India. It manufactures and sells gold, studded and other jewellery products. It operates 107 showrooms in India and 30 in the Middle East.

The share offer marked a partial exit by Highdell Investment, which is connected to global private equity firm Warburg Pincus. Partners Abhimanyu Bhattacharya and Aditya Cheriyan led the Khaitan & Co team in the transaction. AZB & Partners also advised KJI as to Indian law, while Latham & Watkins acted as international counsel to the lead managers. Cyril Amarchand Mangaldas advised the investor selling shareholder as to Indian law.

Cayman Islands-based **Maples and Calder** has acted as counsel to **CLSA Capital Partners (CLSACP)**, the asset management business of CLSA, on the launch of Sunrise Capital IV investment funds and Lending Ark Asia Secured Private Debt Fund. Sunrise IV was significantly oversubscribed and closed in four months in September 2020, at a hard cap of US\$450m.

Sunrise Capital is a Japan-dedicated mid-cap private equity fund and has raised approximately US\$1.5b to date. Lending Ark is CLSACP's first secured private debt strategy, and it held its final closing in December 2020 with capital commitments of US\$226m. Together with Lending Ark, the secured private debt investment strategy platform manages a total

of US\$626m, including target allocations from separately managed accounts established with Lending Ark. Lending Ark invests in high-quality and secured private debt opportunities across the Asia-Pacific region.

Hong Kong funds and investment management partner Sharon Yap led the Maples and Calder team in the transaction.

US-based **Davis Polk** has advised **Linklogis** on its IPO and listing in Hong Kong, and Rule 144A/Regulation S international offering, raising about \$HK8 billion (US\$1b), prior to exercise of the over-allotment option.

Linklogis is the largest technology solution provider for supply chain finance in China, in terms of transaction volume processed in 2020. During this period, its solutions enabled its customers to process ¥163.8b (US\$25b) supply chain finance transactions, accounting for a market share of 20.6% among supply chain finance technology providers in China. Partners Li He and Yang Chu led the Davis Polk team in the transaction.

**Rajah & Tann** Singapore is acting for **AEM Singapore** on the pre-conditional voluntary offer by PricewaterhouseCoopers Corporate Finance, for and on behalf of AEM, to acquire all the issued and paid-up ordinary shares, excluding any shares held in treasury, in CEI's capital, other than those already held by AEM.

Based on the offer consideration of \$S1.15 (US\$86c) per share, the offer values CEI at approximately \$S101.1m (US\$75.31m). Partner Cynthia Goh is leading the Rajah & Tann Singapore team in the transaction.



## Ashurst helps TymeGlobal trailblaze digital banking in the Philippines

Ashurst, one of the UK's oldest law firms, has helped secure a joint-venture between fintech TymeGlobal and JG Summit Holdings to create a new form of digital banking in the Philippines.

TymeGlobal, a fintech with a banking license in South Africa, announced on February 23 it had inked a deal for the first digital bank in the archipelago after new banking regulations came into force in November.

The Ashurst advisory team was led by Hong Kong-based partner Joshua Cole supported by counsel Hoi Tak Leung and associates Lisette Chan and Jessica Leung.

Cole said the joint venture "will set an example for other potential market entrants in offering innovative financial services to the market."

He added that the legal firm reviewed the proposed business structure and assisted with the joint-venture agreements to "ensure the commercial and regulatory requirements of the new business are reflected."

The deal followed a US\$110 million Series B funding round for TymeGlobal, spearheaded

by JG (which invested US\$5 million) and private equity fund Apis Growth Fund II.

Apis was advised by ENSAfrica, the largest law firm in Africa. TymeGlobal retained South African law firm Webber Wentzel for its part of the capital raise.

The deal is the latest step in the South African digital bank's push into the Asia Pacific region and represents the first major commercial interest in leveraging the Philippines' new digital banking framework.

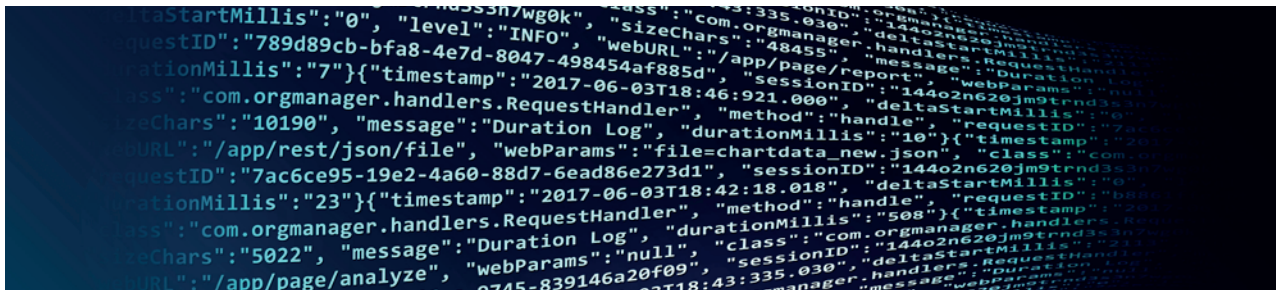
This updated legislation sets equivalent requirements for digital banks as for traditional lenders, with a minimum capital of at least 1 billion pesos (US\$20 million) and outlines governance, infrastructure and data management requirements for digital banks.

According to the BSP, only 22.6% (15 million) Filipinos have a bank account. Of that number, a tiny 1.3% of adults in the country own an electronic account.

TymeGlobal said it will apply for a digital bank license from the Bangko Sentral ng Pilipinas (BSP), the Philippine central bank.



# A caveat for AI developers



BY RON YU

Every decent AI system needs plenty of high-quality data with which to train. This is especially important for adapting to local needs because getting this wrong could be disastrous – as Volvo discovered after finding its Scandinavian-trained autonomous vehicle prototypes didn’t know what to do when they encountered kangaroos in Australia.

## BUILDING EFFORTS

It may be expensive to acquire and curate the right local data to build a good AI system. But it is important to invest in finding suitable training data, collecting it, correcting for any errors and ensuring the data is not corrupted (for example, by a cyberattack).

AI developers have many ways to find good data:

- Use data in the public domain (some risk of bias and data unsuitability);
- Purchase data;
- Generate new data – for example, use a text and data mining (TDM) system which is the automated discovery of new information from different written resources.

After making all that investment, it is critical not to allow a third party to disrupt your

operations and business model through legal action. This is why anyone using a TDM system should be aware of two key copyright concerns.

## WHAT QUALIFIES AS COPYRIGHT?

Most would assume data collected for training by a TDM could be protected as a database. But if the system merely captures and dumps data into a file without any organisation, it may not qualify for copyright protection as a “database” since the data isn’t arranged in an “original” way.

## REGARDING DATABASE PROTECTIONS:

- UK law has provisions for databases defined as collections of independent works, data or other materials arranged in a systematic or methodical way and are individually accessible by electronic or other means (§.3A(1) UK Copyright Designs and Patents Act 1988 or CDPA);
- The US protects databases under copyright law as compilations – defined as a “collection and assembling of pre-existing materials or of data that are selected in such a way that the resulting work as a whole constitutes an *original* work of authorship” (17. USC § 101) – however, a compilation of facts is copyrightable *only* if the selection or arrangement “possesses

at least some minimal degree of creativity” (499 US 340 (1991));

- Europe grants copyright protection to databases selected or arranged in a way that constitutes the “author’s own intellectual creation” and offers additional *sui generis* protection afforded the Database Directive. This is granted to reward the substantial work investment of the database maker and prevent free-riding and exists in parallel to the copyright protection on the structure of the database;
- Hong Kong’s Copyright Ordinance protects “a compilation of data or other material, in any form, which by reason of the selection or arrangement of its contents constitutes an intellectual creation, including but not limiting to a table” as a literary work (§. 4(1)(a)). However, the Copyright Ordinance does not define the standard an intellectual creation must meet to qualify for such protection nor what qualifies as a “database.”

### YET ANOTHER CONCERN

But even if the data collected by a TDM can be protected as a database, do the individual pieces of data have copyright too? For instance, a database of homes may contain pictures or other contents with individual IP rights.

If the use of TDM systems infringes on such rights could the IP rights holders take legal action?

This is not a problem yet. But it could become an issue if copyright and other IP rights holders don’t care to share what they see as their IP.

Exemptions for TDM exist in some jurisdictions:

- The European Union’s Directive on Copyright and Related Rights in the Digital Single Market provides an exception for TDM for scientific research;
- The UK provides an exemption as a right to copy a work for computational analysis of anything recorded in the work;
- US courts hold that the use of large volumes of copyrighted literary work for machine mining fall within the fair use exception and in the relevant cases the data use only delivered a snippet of the work to the public, not an alternate version.

Other jurisdictions lack such exemptions.

**Protecting the way data is processed is now a competitive advantage when building AI systems.**

### IN CONCLUSION

Protecting the way data is processed is now a competitive advantage when building AI systems. And due to the high costs of implementing such technology, IP and other protections will likely grow in importance. So far, issues of IP infringement over data collected by TDM systems have not occurred. But this is a space worth watching for any company developing AI.



#### Ron Yu

Ron Yu teaches intellectual property law and Fintech at the Chinese University of Hong Kong (where he also does research), and has taught at the University of Hong Kong, and the Hong Kong University of Science and Technology.



# In-House Insights with Carina Wessels of Alexander Forbes

## **Carina Wessels**

is the Executive:  
Governance,  
Legal &  
Compliance  
at Alexander  
Forbes and  
Advocate of the  
High Court of  
South Africa.





**Q: TELL US A LITTLE ABOUT YOUR PROFESSIONAL BACKGROUND AND HOW YOU FOUND THIS PRESENT ROLE?**

I am grateful for a varied career, which truly made me a well-rounded and commercially minded executive. I've managed company aircraft, balanced scorecard facilitation and coordination, managed SAP projects, bespoke 20 keys (similar to the Toyota production system principles) and performed many continuous business improvement interventions. Over the last 14 years, I was principally involved in the governance, legal and compliance disciplines. And after a decade and a half in the mining industry, I moved to financial services in 2017 (Alexander Forbes Group Holdings Limited) as Group Company Secretary. Six months later, I was the Group Company Secretary and General Counsel and a year after that I became the Executive of Governance, Legal and Compliance.

**Q: HOW BIG IS YOUR TEAM AND HOW IS IT STRUCTURED?**

I have 26 people in the bigger team, most directly managed by Fiona Rollason, Head of Legal and Group Insurance, Shabnam Parker, Chief Compliance Officer and the Assistant Group Secretary/Assistant General Counsel. But that last position is presently vacant.

**Q: WHAT ARE THE BIGGEST CHALLENGES FOR IN-HOUSE LAWYERS?**

Establishing a solid and mutually supportive relationship with business is a constant challenge. This is especially true if in-house lawyers aren't commercially minded or focused on enabling legal solutions. The ability to operate in "the grey" is crucial.

Also, I have noticed a need to do more with less. Covid-19 revealed how many lawyers have not been exposed to systems thinking, innovation and continuous improvement concepts and they find it hard to deliver better, faster,



Carina with her family



cheaper every day. For the traditionalist lawyer adding new people is often the only answer to a problem. But that should be the last resort, particularly after Covid-19. This approach comes from my time in mining dealing with multiple resource cycles and severe labour cut backs.

**Q: WHAT ARE YOUR OWN BIGGEST CHALLENGES?**

I can draw up an interesting list from just the last few years. But I'll focus on my best career lessons:

It really is the toughest times that teach the most, when you truly think you won't survive. Looking back, you can see how you expanded your comfort and knowledge zone and are better placed to take on future challenges. What carried me through was the supportive ear of my husband, my unwavering drive to not disappoint, de-stressing with cherished family time and exercising (and off course champagne). I also always had a positive goal to work towards – be it a vacation or just the belief that “this too shall pass.”

**Q: DID YOU HAVE A MENTOR EARLY IN YOUR CAREER?**

I've had a number of mentors and strongly believe in the value of such relationships. It's good to surround yourself with people who inspire you to greatness, even on a social basis. That could be as exemplary Christians, parents or generally positive human beings. I also feel a strong sense of responsibility to mentor young professionals. I initially presented pre-exam courses part-time (it's awesome to see my students excel later in their careers), but for the last decade have tried one-on-one mentorship and giving career advice to younger lawyers.

**Q: WHAT DO YOU LOOK FOR IN A LAW FIRM WHEN OUTSOURCING WORK?**

- Definitely speed and responsiveness. They must make me feel my work is their priority because often we require urgent advice;
- Value for money and a willingness to consider discounts;
- Value added services – such as free newsletters, updates or training.

**Q: WHAT NON-LEGAL SERVICES AND TOOLS HELP YOU THE MOST?**

I get a lot of use out of legal process outsourcing services for our supply chain agreements.



**Q: WHAT ASPECTS OF YOUR ROLE DO YOU MOST ENJOY?**

For me it's the merger and acquisition activities when the CEO, CFO and I work as a core negotiating team designing the strategy and transactions.

**Q: WHAT CHANGES DO YOU SEE COMING IN HOW LEGAL SERVICES WILL BE PROVIDED?**

Generally, working online has emphasised the outcome and almost made the process or source irrelevant. Virtual work tools mean we can reimagine a seamless link of resources to get the job done. This extends beyond the traditional debate of in-source versus outsource. It's possible now to create an ecosystem of service providers who are not focused on designation or title, but on expertise, collaboration, delivery, results and customer satisfaction.

We know there are massive court backlogs in even the more efficient countries and new forms of dispute resolution haven't really shifted that needle. The only way to give the world more access to justice is the greater use of digital legal proceedings. It won't be suitable to all litigation, but it can make great strides in transforming a costly, formal, protracted process into a more enlightened and efficient alternative.

Even before Covid-19, traditional law schools were facing stiff competition from digital or virtual learning service providers that are now accessible, affordable and high-quality. In response, schools are being forced to use similar digital solutions and it's inevitable that these may become a more suitable, affordable and flexible option. Will universities die? Probably not. But they will grapple with new and agile competitors, with technology as the key enabler.

**Q: WHAT ADVICE CAN YOU GIVE YOUNG LAWYERS?**

- Surround yourself with greatness. Seek and optimise every opportunity to learn from others;
- Choose to be great yourself. Unless it is brilliant, it is not good enough. Be the hardest worker in the room. Leave a piece of work, a person or a place better off because you were there;
- Actively expand your comfort zone. Be hungry for learning, especially in areas that offer broader experience and exposure.

**Q: WHAT IS YOUR HINTERLAND (WHAT DO YOU MOST ENJOY DOING OUTSIDE OF WORK)?**

Cycling with my husband, movie night with my daughter, precious time with family and friends, travelling. That's when I get lots of reading finished too.

**In-House  
Community  
Firms of  
the Year  
— 2021 —  
RESULTS**

**Firms of the Year  
Survey Results,  
with Pandemic  
Insights from  
In-house Counsel**

**24** Introduction

**26** Survey  
methodology

**27** China

**30** Hong Kong

**33** India

**35** Malaysia

**37** Philippines

**40** Singapore

**41** South Africa

**42** South Korea

**45** Thailand

**46** UAE

**49** Vietnam

**Winner's Features**

**50** Vietnam: New  
securities laws  
ease some  
foreign ownership  
restrictions

**52** Q&A with Anuj  
Shah and Jean  
Muller of Khaitan  
& Co.

**54** Tax relief for  
Philippine  
businesses under  
new law

# Introduction

**N**ow that we're in Q2 of 2021, and 2020 is firmly in the past (but the hangover remains), it's time to put the "Year of the Coronavirus" into perspective.

Few companies emerged from last year unscathed. But as the old saying goes, no one becomes rich in the good times – wealth is generated in the bad times. Legal firms across the Asia Pacific and MENA weathered the Covid-19 storm and worked tirelessly to keep their clients satisfied.

And judging by the scuttlebutt out there, nearly everyone in the profession was run off their feet in 2020 performing work ranging from M&A, Insolvency, Restructuring and HR disputes to personnel rearrangements and advising on critical multi-million-dollar business deals.

Some of the important legal work was done in the office, but most of it had to be done at home due to varying levels of lockdowns that forced people's daily routines to adapt into a "New Normal." On top of the wider business disruption, the constraints of working from home added plenty of extra pressure and learning curves.

According to data from Citi Private Bank, demand for lawyer time fell only 1% in the first half of 2020, dropping by 4.2% in the second quarter – significantly lower than in 2019. But the lawyers who managed to stay busy had plenty of work to do.

The IHC 2021 Firm of the Year award recognises this excellent client service work over the last 12 months.

All the winners showcased standout performance, as measured by buyers of legal services across 11 countries, including: China, Hong Kong, India, Malaysia, Philippines, Singapore, South Africa, South Korea, Thailand, UAE and Vietnam.

As always, we have a list of firms who won the highest number of IHC Firm of the Year awards this year. The firm with the most wins with 27 total wins was Chicago-based firm **Baker McKenzie**.

The firm also continues its run as the winner of "Most Responsive International Firm of the Year" in most jurisdictions. One survey respondent based in Vietnam said "communicating with lawyers from Baker McKenzie is always very easy as they respond timely and carefully". In the UAE, one of the respondents



wrote glowing praise for the firm: “I have worked with Baker McKenzie on various projects and found them extremely professional, methodological with extensive knowledge and experience especially in relation to Joint Venture matters.”

The firm made some tough decisions as the coronavirus emerged in early 2020. To survive the crisis, Baker McKenzie acted swiftly as one of the first firms to send its staff home to work and cut its associate salaries by 15% to help avoid widespread layoffs. As client work dried up, the firm ultimately was compelled to cut about 6% of its staff including lawyers, “timekeepers,” and business professionals in the US, Canada and Mexico. The belt-tightening strategy seemed to work. By December, the firm announced the reimposition of full salaries and even year-end bonuses of \$US15,000 for junior associates and \$100,000 for seniors.

Baker McKenzie revenue for the fiscal year ended 30 June 2020 was \$US2.9 billion, up 1.2% from a year prior. Its markets in Thailand, Singapore, South Korea and others saw high single-digit or double-digit growth in the 2020 year.

In second place for most number of wins with 16 wins is London-based **Allen & Overy**. The firm was a clear standout particularly for counsel operating in Vietnam.

One survey respondent in Hong Kong said “legal advice provided by Allen & Overy is very practical, timely and provided from a commercial perspective.”

Allen & Overy reported revenue growth of 4% in the year ended April 30, hitting \$US2.14 billion. But its profits per equity partner were down 1.7% to \$US2.06 million.

The Middle-East based law firm **Al Tamimi**, with a total 15 wins is third on the list and also has the highest number of wins for a regional law firm. “Al Tamimi’s big number of associates and partners allows for matters to be handled effectively, smoothly and quickly,” said one survey respondent about the firm.

Fourth equal with 12 total wins each were the firms **Clyde & Co** and **Kim & Chang**. Vietnam-based **YKVN** landed a position at number five. And the final group all received nine total wins each is **Clifford Chance**, **Cyril Amarchand Mangaldas** (most number of wins in India), **King & Wood Mallesons** and **ACCRALAW** (most number of wins in Philippines).

# Survey methodology

About 17,000 in-house counsel and buyers of legal services from 11 jurisdictions were invited to participate in the annual In-House Community Survey, either by attending online events, or through a controlled online survey process. The responses from China, Hong Kong, India, Malaysia, the Philippines, Singapore, South Africa, South Korea, Thailand, the UAE and Vietnam have been collected and collated to produce with our Firms of the Year for 2021.

The survey asked respondents which legal services providers made the most significant impression on them over the past year, in terms of responsiveness and their satisfaction with the work done, i.e. the firms they would be most happy to refer to their peers.

The survey is a chance for the community of in-house counsel to recognise stand-out performers. No shortlist was provided, and respondents could nominate any firm of their acquaintance, and provide reasons why their chosen firms deserved

recognition. We considered the weight of these testimonials and aggregated votes to select our category winners across the jurisdictions. The results are not a ranking, and a firm's absence from this list is not a criticism of its legal acumen or service.

Survey respondents were primarily senior in-house or general counsel (85%). The remainder were either company directors (5%), compliance managers (2%) or other (8%). Most survey participants work in financial services, TMT (technology, media and telecoms), and energy and natural resources.

Where applicable, sole category Winners are announced. If results were too close to call, we have selected joint Winners. Honourable Mentions are awarded to law firms that received notable in-house recognition.

Congratulations to all the firms and legal teams listed here that made a positive impact with the in-house community over the past 12-18 months.



# China

Winners in ★ **bold**, honourable mentions in *italics*

## ALTERNATIVE INVESTMENT FUNDS (INCLUDING PRIVATE EQUITY)

- ★ **Fangda Partners**
- ★ **King & Wood Mallesons**  
*Mayer Brown*

## ANTI-TRUST/COMPETITION

- ★ **AnJie Law Firm**
- ★ **Mayer Brown**  
*Clifford Chance*  
*Zhong Lun*

## BANKING AND FINANCE

- ★ **Linklaters**  
*Baker McKenzie*  
*King & Wood Mallesons*

## CAPITAL MARKETS

- ★ **Clifford Chance**
- ★ **JunHe**  
*Global Law Office*  
*Han Kun Law Firm*  
*Linklaters*

## COMPLIANCE/REGULATORY

- ★ **Fangda**
- ★ **Jingtian & Gongcheng**
- ★ **Steptoe & Johnson**  
*FTI Consulting*  
*Sullivan & Cromwell*  
*Zhong Lun*

## CORPORATE AND M&A

- ★ **Commerce & Finance Law Offices**
- ★ **Jingtian & Gongcheng**
- ★ **JunHe**
- ★ **King & Wood Mallesons**
- ★ **Zhong Lun**  
*Fangda*  
*Paul, Weiss*  
*White & Case*

## EMPLOYMENT

- ★ **King & Wood Mallesons**
- ★ **River Delta Law Firm**  
*AnJie*  
*Baohua Law Firm*  
*Simmons & Simmons*

# ANJIE

安杰律师事务所



安杰律师事务所发展迅速，富有创新精神、深刻理解客户需求，提供一流品质的法律服务，在保险与再保险、反垄断与反不正当竞争、知识产权、劳动法、争议解决、资本市场与证券、私募股权投资与风险投资、收购与兼并、境外投资、银行与金融、能源与矿产资源、国际贸易、外商投资、信息通信与传媒、私人财富管理、房地产与建设工程、文化艺术与娱乐体育等领域有着丰富的法律服务经验和卓越的业绩。

AnJie Law Firm is a leading PRC law firm providing full services to both international and domestic clients including Fortune 500 companies, large state-owned enterprises, financial institutions, as well as leading private companies. Since its establishment, AnJie has been growing rapidly and soundly with currently more than 300 professionals. AnJie's lawyers are well-regarded experts in their professional fields. Based on their deep understanding of the regulatory landscape and strong practical experience, they have handled numerous high-stakes cases in Chinese courts.

### Practice Areas

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- Antitrust/Competition
- Labor & Employment
- Private Equity & Venture Capital
- Litigation and Arbitration
- Merger & Acquisition
- Maritime and Admiralty
- Outbound Investment
- Capital Market & Securities
- Banking & Finance
- Energy & Mining
- International Trade
- Foreign Direct Investment
- TMT
- Private Wealth Management
- Real Estate & Construction
- Art Law
- Healthcare & Life Sciences
- Infrastructure & Project Financing
- Bankruptcy & Restructuring
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**ENERGY & NATURAL RESOURCES**

- ★ **Fangda**
- ★ **Pinsent Masons**  
*Broad & Bright*  
*Jun He*

**INTELLECTUAL PROPERTY**

- ★ **AnJie Law Firm**
- ★ **Baker McKenzie FenXun**
- ★ **King & Wood Mallesons**  
*Dentons*  
*Fangda*

**INTERNATIONAL ARBITRATION**

- ★ **King & Wood Mallesons**
- ★ **Pinsent Masons**  
*Linklaters*

**LITIGATION AND DISPUTE RESOLUTION**

- ★ **King & Wood Mallesons**
- ★ **Tian Tong Law Firm**  
*Zhong Lun*

**PROJECTS AND PROJECT FINANCING**

- ★ **Fangda**
- ★ **Pinsent Masons**

**REAL ESTATE/ CONSTRUCTION**

- ★ **Grandall**
- ★ **King & Wood Mallesons**  
*JunHe*

**RESTRUCTURING & INSOLVENCY**

- ★ **King & Wood Mallesons**
- ★ **Zhong Lun**

**MOST RESPONSIVE INTERNATIONAL LAW FIRM**

- ★ **Baker McKenzie**
- ★ **Clifford Chance**
- ★ **King & Wood Mallesons**
- ★ **Linklaters**
- ★ **Mayer Brown**  
*Allen & Overy*  
*Clyde & Co*  
*Freshfields Bruckhaus Deringer*  
*Herbert Smith Freehills*

**MOST RESPONSIVE DOMESTIC LAW FIRM**

- ★ **AllBright Law Offices**
- ★ **Fangda**
- ★ **JunHe**
- ★ **Zhong Lun**  
*Tian Tong Law Firm*

**MOST RESPONSIVE OFF-SHORE FIRM**

- ★ **Conyers Dill & Pearman**

# Pandemic Insights



**Carina Wessels** is Executive: Governance, Legal & Compliance at Alexander Forbes and Advocate of the High Court of South Africa

**1. WHAT WAS THE GREATEST CHALLENGE OF THE PANDEMIC FOR YOUR TEAM?**

Right at the outset we were forced to deal with a shareholder reorganisation which included a share repurchase agreed at a fixed price. But the price no longer made commercial sense after the severe market downturn in March 2020. On completion of the renegotiation in just two days, we still needed a planned shareholder meeting – all while facing an impending hard lockdown in South Africa. The decision was quickly made to hold the meeting online, which led to Alexander

Forbes holding the first fully virtual shareholder meeting in the country.

A key challenge last year was all the new regulation published in response to Covid-19. We spent a lot of time on interpretation and advice to both our internal and external clients. To give you an idea, there was a total of 136 instruments in effect in 2020 compared to 66 a year earlier. And, of course, we also navigated through enabling and adapting to remote work, virtual team management, motivation and maintaining team morale.

## Over 45 Years of Committed, Solution-Driven Practice.

Our firm is privileged to be able to offer the following well-established fields of legal practice:-

Banking & Finance, Banking & Finance:Debt Capital Markets,  
Corporate/Commercial:Equity Capital Markets, Islamic Finance,  
Ranked Tier 1 by Chambers Asia Pacific 2021

Banking & Finance, Islamic Finance and Capital Markets  
Ranked Tier 1 by Legal 500 Asia Pacific 2021

Corporate M&A  
Ranked 'Highly Recommended' by Asialaw Profiles 2021

Project Development & Infrastructure  
Ranked Tier 1 by IFLR 1000 2021

We are experienced in advising local and international clients over a wide range of economic sectors and our achievements include advising on many significant and pioneering Malaysian and cross-border transactions.

### Winner, IFLR Asia Awards

National Law Firm Of The Year (Malaysia), 2007, 2014

### Winner, Islamic Finance News Law Awards

ESG, Green, SRI Firm Of The Year 2018, 2019

Energy & Natural Resources Firm Of The Year 2019

### Winner, Triple A Asset Asian Awards

Project Finance Law Firm of the Year, Malaysia 2019

### Winner, Asian Legal Business Malaysia Law Awards

Malaysia Law Firm Of The Year 2016,2020

West Malaysia Law Firm Of The Year 2017- 2020

Islamic Finance Law Firm Of The Year 2016 - 2018

Banking & Financial Services Law Firm Of The Year 2014 - 2020

### Winner, In-House Community 2021

#### Malaysia Firm of the Year

Banking and Finance • Capital Markets • Corporate and M&A

Islamic Finance • Projects and Project Financing

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**Adrian Chee**  
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## 2. HAVE YOU TAKEN ANY POSITIVES FROM THIS TIME?

We learned how critical it is to have an adaptive mindset to adjust to new paradigms. Covid-19 showed us many ways to successfully maintain a business. Activities we never thought possible were achieved virtually. We really pulled together as a team and as an organisation when many of our external clients were in financial distress. Our ability to navigate our own challenges and continue to support them enabled their sustainability. To quote the wise words of Nelson Mandela: “it always seems impossible until it’s done.”

## 3. HOW DO YOU SEE IN-HOUSE LEGAL WORK CHANGING IN THE COMING YEAR OR SO?

We must continue delivering cheaper, better and faster. Innovation was already a key

imperative for many in-house legal teams, but the Covid-19 downturn lifted its importance. My hope is that more lawyers will embrace innovation and continuous business improvement. Many lawyers, if not most, are more traditionalist but Covid-19 threw us all into the discomfort zone. It forced us to recognise that what we did before will not sustain us in the future. Let’s take what worked during Covid-19 and amplify it. We cannot deny the centrality of technology in reimagining this future. Technology truly became the backbone not only of how we work, but how we meet, train, engage clients, socialise, practice our religion and bury our loved ones. But without a focus on innovation and systems thinking, technology can only be an impetus for change, not the driver.



# Hong Kong

Winners in ★ **bold**, honourable mentions in *italics*

### ALTERNATIVE INVESTMENT FUNDS (INCLUDING PRIVATE EQUITY)

- ★ **Baker McKenzie**
- ★ **Deacons**
- ★ **Freshfields Bruckhaus Deringer**
- ★ **Sidley Austin**  
*King & Wood Mallesons*  
*Zhong Lun*

### BANKING AND FINANCE

- ★ **Allen & Overy**
- ★ **Ashurst**
- ★ **Baker McKenzie**
- ★ **Linklaters**  
*Eversheds Sutherland*  
*Jingtian & Gongcheng*  
*Latham & Watkins*  
*Mayer Brown*  
*Stephenson Harwood*

### CAPITAL MARKETS

- ★ **Clifford Chance**
- ★ **Linklaters**  
*Allen & Overy*  
*Shearman & Sterling*

### COMPLIANCE/REGULATORY

- ★ **Baker McKenzie**
- ★ **Clifford Chance**
- ★ **Freshfields Bruckhaus Deringer**  
*Ashurst*  
*Deacons*  
*Herbert Smith Freehills*  
*Mayer Brown*

**CORPORATE AND M&A**

- ★ **DLA Piper**
- ★ **Jingtian & Gongcheng**
- ★ **Linklaters**
- ★ **MinterEllison**
- ★ **Woo Kwan Lee & Lo**

*Deacons**King & Wood Mallesons**LC Lawyers**Winston & Strawn***EMPLOYMENT**

- ★ **Linklaters**
  - ★ **Simmons & Simmons**
- King & Wood Mallesons*

**ENERGY & NATURAL RESOURCES**

- ★ **Herbert Smith Freehills**
- Linklaters*  
*MinterEllison*

**INSURANCE**

- ★ **Mayer Brown**
- Clyde & Co*

**INTELLECTUAL PROPERTY**

- ★ **Deacons**
  - ★ **Mayer Brown**
  - ★ **Wilkinson & Grist**
- Baker McKenzie*  
*Oldham, Li and Nie*  
*ONC Lawyers*

**INTERNATIONAL ARBITRATION**

- ★ **Herbert Smith Freehills**
  - ★ **Pinsent Masons**
- DLA Piper*  
*Baker McKenzie*

**LITIGATION AND DISPUTE RESOLUTION**

- ★ **Baker McKenzie**
  - ★ **Clifford Chance**
  - ★ **Herbert Smith Freehills**
- King & Wood Mallesons*  
*Mayer Brown*  
*ONC Lawyers*  
*Woo Kwan Lee & Lo*

**MARITIME & SHIPPING**

- ★ **Clyde & Co**

**PROJECTS AND PROJECT FINANCING**

- ★ **Eversheds Sutherland**
- King & Wood Mallesons*  
*Linklaters*

**REAL ESTATE/ CONSTRUCTION**

- ★ **Bryan Cave Leighton Paisner**
  - ★ **Pinsent Masons**
- Wilkinson & Grist*  
*Woo Kwan Lee & Lo*

**RESTRUCTURING & INSOLVENCY***Bryan Cave Leighton Paisner***TAXATION**

- ★ **Deacons**

**TELECOMMUNICATIONS, MEDIA & TECHNOLOGY**

- ★ **Hogan Lovells**

**MOST RESPONSIVE INTERNATIONAL LAW FIRM**

- ★ **Allen & Overy**
  - ★ **Baker McKenzie**
  - ★ **Clifford Chance**
  - ★ **Herbert Smith Freehills**
  - ★ **Linklaters**
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# Pandemic Insights



**Navrita Kaur** is the chief legal officer at Omesti Group

## 1. WHAT WAS THE GREATEST CHALLENGE OF COVID-19 FOR YOUR LEGAL TEAM?

The biggest challenge was with communication and coordination as we rapidly shifted from the usual face-to-face discussions and meetings to virtual meetings.

We also began online contract negotiation for the first time in April 2020 just as we landed an important project. All this happened while under Malaysia's Movement Control Order, a form of lockdown. So, we were forced to do all contract reviews and negotiations virtually until things improved and we could finish them in person.

Working from home also blurred our personal and professional lives. I think everyone in my team initially found this to be a bit of a juggle, but we eventually figured out the proper boundaries.

## 2. DID YOU TAKE ANY POSITIVES FROM THIS TIME?

We all learned what can actually be done online. And the answer is: almost everything. The pandemic pushed us out of our comfort zones and we all had to embrace virtual meetings and working from home. Thankfully, my team navigated this new territory superbly while giving 100% effort to every task each day.

On a personal level, another major upside for me was the extra time with my family. I recently had a baby and was just returning to work after maternity leave when the first lockdown started in Malaysia. So it was just nice being around her for longer and capturing milestones along the way.

## 3. HOW DO YOU THINK THE PANDEMIC WILL ALTER IN-HOUSE LEGAL WORK IN THE NEAR FUTURE?

It all boils down to how an in-house counsel can add value to a business. That question must be top of mind. Team leaders should encourage staff to upskill so they can all better serve the company. A good start would be a Continuous Learning programme tailored for in-house lawyers.

Technology will also change in-house legal work. Digitisation of certain tasks will be disruptive, but also free up time for in-house lawyers to focus on more valuable work. Of course, no one-size-fits-all technology solution exists – each in-house team should check what tools work best for them and wrap those into their departments.

I also expect the early adoption of a hybrid workplace will continue once the pandemic is over. That means in-house legal teams should already be thinking about how best to do this and setting up clear guidelines in case it happens.





Winners in ★ **bold**, honourable mentions in *italics*

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INVESTMENT FUNDS  
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- ★ Cyril Amarchand Mangaldas  
*Khaitan & Co*

**CAPITAL MARKETS**

- ★ AZB & Partners  
*Cyril Amarchand Mangaldas*  
*J Sagar Associates*

**COMPLIANCE/  
REGULATORY**

- ★ Cyril Amarchand Mangaldas
- ★ Fox Mandal
- ★ Khaitan & Co  
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# Malaysia

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## ANTI-TRUST/ COMPETITION

- ★ **Christopher & Lee Ong**
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- ★ **Adnan Sundra & Low**
- ★ **Zico Law**  
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## CAPITAL MARKETS

- ★ **Adnan Sundra & Low**
- ★ **Kadir Andri & Partners**  
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## COMPLIANCE/ REGULATORY

- ★ **Raja Darryl & Loh**  
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## INTELLECTUAL PROPERTY

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*Wong Jin Nee & Teo*

## INTERNATIONAL ARBITRATION

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- ★ **Chooi & Company + Cheang & Ariff**  
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## ISLAMIC FINANCE

- ★ **Adnan Sundra & Low**
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## LITIGATION AND DISPUTE RESOLUTION

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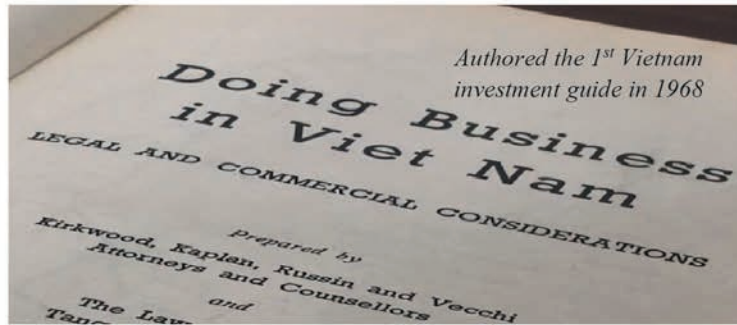
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## Pandemic Insights



**Stanley Lui** is the APAC legal director of TI Fluid Systems and the founder of training platform White Hat Guys.

### 1. WHAT WAS THE GREATEST CHALLENGE OF THE PANDEMIC FOR YOUR TEAM?

The challenge? How about reaching the point of burnout for both myself and the team because there was no clear delineation between work and personal time? It's tough working at home and having your routine disrupted. Seriously, I never thought I'd miss the "me-time" during the daily commute, but I did!

It's ironic that prior to Covid, most people believe spending less time in the office could help achieve better work-life balance. Now the tested results indicate otherwise.

### 2. HAVE YOU TAKEN ANY POSITIVES FROM THIS TIME?

For me, the silver lining was morphing (albeit at glacial pace) from a digital adaptor to a digital native. The key was open-mindedness to conducting daily work virtually and being open to tech in general. I'm rather proud that I managed to film, direct and edit a training video (all done in-house!) on Force Majeure events (how relevant, huh?)

### 3. HOW DO YOU SEE IN-HOUSE LEGAL WORK CHANGING IN THE COMING YEAR OR SO?

Great to see the judiciary has accepted and hashed out relevant guidelines for alternative modes of hearing submissions virtually. I expect – and hope – this process will improve and be widely accepted.



# Philippines

Winners in ★ **bold**, honourable mentions in *italics*

## ALTERNATIVE INVESTMENT FUNDS (INCLUDING PRIVATE EQUITY)

- ★ **ACCRALAW**
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*Villaraza & Angangco*

# Pandemic Insights



**Carl Watson** is the General Counsel of Arcadis Asia.

## 1. WHAT WAS THE GREATEST CHALLENGE OF THE COVID-19 PANDEMIC FOR YOUR TEAM?

Staying connected to the business during the national lockdown restrictions. We are a small regional legal team and pride ourselves on the connectivity to the business as enablers and business partners. The required pivot to MS Teams, for instance, was a hard adjustment but we made it work. It turned out to be a great way during our team meetings to check in with each other's mental health and well-being.

## 2. HAVE TAKEN ANY POSITIVES OUT OF THIS TIME?

Lots of positives. We could stress test some of our planned process automation tooling and so we could bring its deployment forward. The Office 365 cloud platform has enabled our teams to pivot rapidly into digital operations. Also, working from home cut down travel and commute time and gave us a new agility. We're still figuring out the lessons for when the pandemic ends so we can create a

future-focused operating model. It also became clear we should maintain adequate separation of work and home life. A key lesson there is to set up systems to ensure home working is safe and aligned with our commitments to our people.

## 3. HOW WILL IN-HOUSE LEGAL WORK CHANGE IN THE COMING YEAR OR SO?

I expect to see a real focus on digital legal operations, embedding the process of standardisation/automation/digitalisation thrust upon all in-house legal operations by the pandemic. The basic technology platforms allow for more agile teams and I expect that to stay, along with less business travel trips. The new challenge will be how to influence change, transformation and compliance assurance in businesses without the physical face-to-face time. I also expect a significant shift in how we engage with legal service providers. It will become increasingly harder for traditional law firms that do not embrace innovative approaches to selling their services in a tech-enabled marketplace.



# Singapore

Winners in ★ **bold**, honourable mentions in *italics*

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- ★ **WongPartnership**  
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*Dentons Rodyk*

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- ★ **Allen & Overy**
- ★ **Shook Lin & Bok**  
*Linklaters*  
*Rajah & Tann*

## CAPITAL MARKETS

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- ★ **Shearman & Sterling**  
*Allen & Gledhill*  
*Linklaters*  
*Rajah & Tann*

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- ★ **Rajah & Tann**  
*Bird & Bird*

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- ★ **Dentons Rodyk**
- ★ **WongPartnership**  
*Jones Day*  
*Shook Lin & Bok*  
*Zico Law*

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- ★ **Dentons**
- ★ **Simmons & Simmons**  
*Allen & Gledhill*  
*Baker McKenzie*  
*Rajah & Tann*

## INSURANCE

- ★ **Dentons**
- ★ **Norton Rose Fulbright**  
*Rajah & Tann*  
*Stephenson Harwood*

## INTELLECTUAL PROPERTY

- ★ **Dentons Rodyk**  
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- ★ **Ashurst**
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## LITIGATION AND DISPUTE RESOLUTION

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# South Africa

Winners in ★ **bold**, honourable mentions in *italics*

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- ★ **Herbert Smith Freehills**
- ★ **Werksmans**

*Bowmans*  
*DLA Piper*  
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  - ★ **ENSAfrica**
  - ★ **Webber Wentzel**
- Allen & Overy*

## CAPITAL MARKETS

- ★ **Bowmans**
  - ★ **ENSAfrica**
- Webber Wentzel*

## COMPLIANCE/ REGULATORY

- ★ **ENSAfrica**
  - ★ **Baker McKenzie**
- Werksmans*

## CORPORATE AND M&A

- ★ **Bowmans**
  - ★ **Webber Wentzel**
- Cliffe Dekker Hofmeyr*  
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## EMPLOYMENT

- ★ **Bowmans**
- ★ **Werksmans**

## ENERGY & NATURAL RESOURCES

- ★ **ENSAfrica**

## ENVIRONMENTAL

- ★ **ENSAfrica**

## INSURANCE

- ★ **Hogan Lovells**

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  - ★ **Webber Wentzel**
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## INTERNATIONAL ARBITRATION

- ★ **Bowmans**
  - ★ **Cliffe Dekker Hofmeyr**
- Pinsent Masons*

## LITIGATION AND DISPUTE RESOLUTION

- ★ **Baker McKenzie**
  - ★ **Bowmans**
  - ★ **ENSAfrica**
- MNS Attorneys*

## PROJECTS AND PROJECT FINANCING

- ★ **Bowmans**
- ★ **ENSAfrica**

## REAL ESTATE/ CONSTRUCTION

- ★ **Bowmans**
  - ★ **Werksmans**
- Cliffe Dekker Hofmeyr*  
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## RESTRUCTURING & INSOLVENCY

- ★ **ENSAfrica**
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## TAXATION

- ★ **Bowmans**
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**ANTI-TRUST/COMPETITION**

- ★ **Kim & Chang**
- ★ **Yoon & Yang**  
*Yulchon*

**AVIATION**

- ★ **Lee & Ko**

**BANKING AND FINANCE**

- ★ **Kim & Chang**
- ★ **Lee & Ko**  
*Bae, Kim & Lee*  
*Yoon & Yang*  
*Yulchon*

**CAPITAL MARKETS**

- ★ **Bae, Kim & Lee**
- ★ **Kim & Chang**  
*Cleary Gottlieb Steen & Hamilton*  
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**COMPLIANCE/REGULATORY**

- ★ **Bae, Kim & Lee**
- ★ **Kim & Chang**  
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*Lee & Ko*  
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*Yulchon*

**CORPORATE AND M&A**

- ★ **Bae, Kim & Lee**
- ★ **Lee & Ko**
- ★ **Yoon & Yang**  
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# Pandemic Insights



**Rebecca Hong** is the Managing Counsel at Intel Corporation.

## 1. WHAT WAS THE GREATEST CHALLENGE OF THE PANDEMIC FOR YOUR TEAM?

The lack of proximity due to lockdowns meant the attorneys are working in silo, making it harder for us to exchange knowledge in an ad-hoc manner or participate in impromptu group discussions. There is something to be said about water cooler (pantry) talk and exchange.

## 2. HAVE YOU TAKEN ANY POSITIVES FROM THIS TIME?

It was heartening to see the professional work environment becoming more flexible, and to see the formation of greater trust that employees can get their work done while at home. This trust will hopefully develop into more agile working arrangements in the years to come.

# Pandemic Insights



**Raymond Goh** is the General Counsel, International of China Tourism Group.

## 1. WHAT WAS THE GREATEST CHALLENGE OF THE PANDEMIC FOR YOUR TEAM?

The greatest challenge has been to provide the senior management team, board of directors and various business units around the world with holistic and commercially pragmatic advice in relation to novel and rapidly evolving situations, while subject to budgetary and other constraints.

Our clients, counterparties and colleagues have their own challenges as well, especially since many of them are working in different locations and separated from their families and loved ones.

In a nutshell, helping our internal and external stakeholders achieve their goals in the most efficient manner possible, considering their respective needs and circumstances.

## 2. HAVE YOU TAKEN ANY POSITIVES FROM THIS?

Absolutely. Having to constantly operate and exceed expectations under rapidly evolving circumstances made us more nimble, resilient

and confident that we can overcome other challenges in the future.

There will always be challenges during life's journey that seem, at first blush, impossible to overcome. The key is to approach these challenges with a positive mindset, keep trying and be confident things will get better with time.

## 3. WHAT CHANGES TO IN-HOUSE LEGAL WORK DO YOU EXPECT IN THE COMING YEAR OR SO?

There will be increasing pressure to "achieve more with less." While that is not something new, the pandemic has certainly accelerated this trend. On a positive note, this means more opportunities for in house counsel to take on additional responsibilities and demonstrate their capabilities.

There will always be career advancement opportunities for in-house counsel. While these opportunities may not materialise within our preferred time frames, they will almost certainly come about if we continue to build on our skillsets and value proposition to our organisations.



# Thailand

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Winners in ★ **bold**, honourable mentions in *italics*

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# Pandemic Insights



**Yosr Hamzah** is the director of legal counsel Middle East at Gartner.

## 1. WHAT WAS THE GREATEST CHALLENGE OF THE PANDEMIC FOR YOUR LEGAL TEAM?

The pandemic forced us to handle our jobs remotely, which will change everything for the foreseeable future. Our priorities have also shifted to the more urgent needs brought like supporting our management to make quick, risk-mitigated decisions in an uncertain environment.

## 2. HAVE YOU TAKEN ANY POSITIVES FROM THIS TIME?

Good can come from current events if we let it. Of course, your own list of “things” may be different, but there is no right or wrong here.

For me, social distancing and remote working have forever changed the workplace. Colleagues are now working from home with their pets, kids and partners, blurring the line between their personal and work lives. Once seen as a sign of weakness in the legal industry which values “in-person meetings,” remote work is now centre stage. In the future, those who request flexible time to take care of children will no doubt deal with less push back since employers know work can be done remotely. And in the same way candidates once competed for jobs, employers now advertise their flexibility to help attract talent.

I have mostly found this remote time good for my career since it gave me more control over my schedule. I have found the time to be part of Gartner’s Mosaic ERG board and volunteer as a mentor to law students. In these unprecedented times, gaining work experience and networking is difficult, but hopefully mentors can help students build resilience and perseverance. A lot of uncertainty, stress and anxiety can be relieved with a few supportive words and genuine advice. People never forget when someone goes above and beyond, and even small, daily gestures add up over time. Mentorship is mutually beneficial, as well. After all, a student will likely turn to you for advice throughout their career and maybe even refer a few potential clients or employers your way.

## 3. WHAT CHANGES TO IN-HOUSE LEGAL WORK DO YOU EXPECT IN THE COMING YEAR OR SO?

More companies and law firms are endorsing flexible work in a way the legal profession has rarely seen before the pandemic. Hopefully, the historical barriers of promotion to in-house lawyers or the admission to partnership for private practice lawyers will also be re-thought. Last year I also saw a huge amount of progress in enlightened thinking and racial and gender diversity in the legal industry. Hopefully next year we see even more progress.





# Vietnam

Winners in ★ **bold**, honourable mentions in *italics*

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# Vietnam: New securities laws ease some foreign ownership restrictions

an   
In-House  
Community  
Firm of  
the Year  
— 2021 —

BY DUYEN HA VO

HANH HIEN NGUYEN

The latest HSBC Asia Economics Quarterly report shows Vietnam successfully dealing with the pandemic crisis with the fastest growth in Asia in 2020. The bank forecasts Vietnam will carry the momentum into 2021 and recommends investing in Vietnam's stock market, at least in the short term.

Vietnam's securities authorities are actively working with global providers of financial services in MSCI and FTSE Russell to speed up the process for upgrading Vietnam's stock market to Secondary Emerging Market. Vietnam has also passed a Securities Law and issued Decree 155/2020/ND-CP guiding its implementation, both of which (**New Securities Laws**) took effect on 1 January 2021.

The New Securities Laws includes the relief of some restrictions on foreign ownership of public companies. This article highlights the implications of those changes to foreign investors and public companies.

## REMOVAL OF RESTRICTIONS ON THE PUBLIC OFFERING AND LISTING OF FDI COMPANIES

The old Securities Law states that the government shall regulate the conditions for conducting a public offering by "a foreign invested enterprise being converted to a joint stock company." Under the investment laws prevailing at the time the old Securities Law was in force, such a "foreign invested enterprise" was a foreign direct investment company (**FDI company**), meaning a company initially incorporated as a foreign invested enterprise (in contrast with an enterprise which becomes foreign-owned via an M&A).

Due to controversies, the government never issued a regulation guiding the conditions for public offerings of FDI companies. Consequently, since the old Securities Law took effect in 2007, no FDI company has been approved for conducting a public offering or listing on the Vietnamese stock exchanges.

The New Securities Laws no longer discriminates between an FDI company and other foreign-owned companies in terms of legal requirements for public offering or

listing. FDI companies may now conduct a public offering and listing subject to the satisfaction of relevant foreign ownership restrictions.

### RELIEF OF SOME FOREIGN OWNERSHIP RESTRICTIONS

A public company may have up to 100% foreign ownership unless it falls under one of these cases:

- (a) if it operates in business sectors where Vietnam's World Trade Organisation (WTO) schedule, an international treaty to which Vietnam is a party, or relevant other Vietnamese laws provide for a foreign ownership limit, then such foreign ownership limit applies;
- (b) if it operates in a business sector falling on the *list of sectors subject to market access restriction for foreign investors*, the foreign ownership rule provided therein applies; or
- (c) if it operates in a business sector falling on the list of sectors subject to market access restriction for foreign investors, but the business sector does not prescribe a specific foreign ownership ratio, then the maximum foreign ownership shall be 50%.

The list of sectors subject to market access restriction for foreign investors is included as Annex I to the recently issued Decree 31/2021/ND-CP guiding the implementation of the new Investment Law. Accordingly, if a business sector is on the list in such Annex but the laws and Vietnam's international treaties are silent on any specific foreign ownership ratio, then a public company operating in such business sector would be subject to the foreign ownership limit of 50%.

If a public company operates in more than one business sector – each sector subject to different foreign ownership ratios – then the lowest foreign ownership ratio shall apply.

If a public company wishes to apply a lower foreign ownership ratio than which is applicable to its business sectors, it must obtain the approval of its general meeting of shareholders of such lower ratio and specify it in its charter.

Foreign ownership is ownership by (i) foreign investors and (ii) enterprises incorporated in Vietnam in which foreign investors hold more than 50% of the charter capital.

In Vietnam, investments in public companies are in some respects favoured over investments in private companies because foreign investments in public companies are not subject to the M&A approval requirement under the investment laws. Additionally, public companies are subject to higher standards of investor-protection corporate governance and public disclosure requirements.

The new changes to foreign ownership and public offering requirements will likely encourage more investments on the country's stock exchanges.



**Duyen Ha Vo**

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Duyen Ha Vo is the chairperson of VILAF. Duyen is a leading lawyer in Vietnam recognised by Asialaw, IFLR1000 and Legal 500 in the practice areas of M&A, Energy & Infrastructure and Finance.



**Hanh Hien Nguyen**

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Hanh Hien Nguyen is a senior associate at VILAF. She has been with VILAF since 2013, steadily building her practice in Finance, Capital Markets and M&A advising many multinational financial institutions.

# Q&A with Anuj Shah and Jean Muller of Khaitan & Co.



## 1. DESPITE THE PANDEMIC, KHAITAN & CO OPENED AN OFFICE IN SINGAPORE. WHAT DROVE DRIVERS THAT DECISION?

Jean: Over the last two decades, India has gradually integrated into the global economy and now legal advisors here do a lot of cross-border work. Singapore is the preferred hub in the Asia-Pacific for deal-making since it hosts a critical mass of advisors, decision-makers and providers of capital. We wanted to help our clients address this increasingly complicated world and so acted accordingly.

We are seeing unparalleled demand for Indian legal services in Singapore. So, this decision made perfect sense. It took a couple of years to carefully plan our first foray overseas but we believe the market has reached a point where we can add value for our clients by setting up a local presence.

## 2. WHY IS SINGAPORE SO IMPORTANT TO INDIAN BUSINESSES?

Anuj: We see a convergence of factors. Singapore's financial markets were always critical to Indian businesses, even more so nowadays with new sources of funds to tap for stressed and distressed players.

Another factor is the Indian corporate environment is highly litigious. Given the delays to get justice in India, international arbitration has become prevalent, with Singapore-seated arbitrations getting the lion's share of that market. Today, a majority of SIAC cases involve an Indian party, and many of the disputed contracts are governed by Indian laws.

In recent years, many Indian business owners and high-net-worth individuals have relocated their assets and/or families to Singapore. The city-state is a springboard to explore global markets, either through family offices or restructured holding companies.

Lastly, several new Indian businesses set their holding companies in Singapore with an eye on an eventual public listing. This is amplified by the wave of de-SPAC transactions hitting Indian shores. It is much easier to merge a Singapore entity with a SPAC.

## 3. HOW WILL YOU POSITION YOUR FIRM TO COMPETE IN SUCH A SATURATED MARKET?

Jean: Our value proposition is clear and unique. We exclusively provide top-end

Indian law services to Indian and foreign clients based out of Singapore. We will have a team on the ground able to handhold clients through projects and leverage the expertise of 150+ partners based in India.

While Singapore already has a rich ecosystem of law firms, we see that depth as an advantage. We will not compete directly with international or regional firms but will aim to enhance collabora-

tion. For example, global financial sponsors entering the Indian market may want to be supported by a combination of their preferred international advisors and local experts working symbiotically. Similarly, on arbitration matters, we may need to team up with a Singaporean firm for procedural aspects. We could also support international firms in the interpretation of Indian law clauses in a disputed contract.

#### 4. COULD YOU TELL US MORE ABOUT YOUR PRACTICE AND ITS RELEVANCE TO THIS CORRIDOR?

Anuj: I am primarily a cross-border M&A lawyer. Over the years, I have developed niche expertise in two market segments, namely insurance M&A and supporting owners of large Indian businesses on bet-the-company operations, including transformative transactions and critical disputes.

These areas have a significant Singapore angle for us:

- many cross-border JVs in India's insurance sector involve stakeholders based in Singapore;

- a lot of our Indian HNWI clients have a presence in the city-state; and
- many get into cross-border disputes too. For example, my biggest matter in the last few quarters has been a major arbitration, for which I advise a HNWI client in collaboration with our Dispute Resolution team.

#### 5. WHAT ABOUT KHAITAN & CO'S LONGER-TERM AMBITIONS IN THE REGION?

Jean: Our ambition will always be to provide top-quality Indian law advice. Through that office, we may over time cover more practice areas and, depending on the success of our Singapore venture, we may in the longer-run use those lessons to explore offices in other major international legal hubs as well.



**KHAITAN  
& CO**  
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##### Anuj Shah

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# Tax relief for Philippine businesses under new law



BY VIRGINIA VIRAY

PEARL GRACE G. CABALI

**O**n March 26, Philippines President Rodrigo Duterte signed into law the Corporate Recovery and Tax Incentives for Enterprises (CREATE) Law, with several line-item vetoes of the version of the bill endorsed by legislature.

CREATE (Republic Act No. 11534) significantly amends further the provisions of the National Internal Revenue Code (Tax Code) after its overhaul by the Tax Reform for Acceleration and Inclusion Act (TRAIN) which took effect on January 1, 2018. CREATE also amends or repeals various laws granting tax incentives to investors, including incentives under the Omnibus Investments Code, the Special Economic Zone Act and the charters of special economic zones. Except for the specific provisions in the law which provides its effectivity, CREATE is set to take effect 15 days after its publication in the Official Gazette or other media.

## HIGHLIGHTS OF CREATE

### AMENDING TAX CODE:

- Effective from July 1, 2020, the income tax rates of domestic corporations, in general, and resident foreign corporations are reduced from 30% to 25%. For domestic corporations

- with taxable income not exceeding ₱5 million and with total assets not exceeding ₱100 million, the income tax rate is reduced from 30% to 20%. Effective January 1, 2021, the income tax rate of nonresident foreign corporations is reduced from 30% to 25% of gross income. Additionally, regional operating headquarters (ROHQs), previously subject to the preferential income tax rate of 10% of taxable income, will be subject to the regular corporate income tax rate of 25% of taxable income;
- Capital gains on sale of shares in a domestic corporation by foreign corporations is now taxed at 15% of net capital gains, on par with the capital gains tax on sale of shares by individuals and domestic corporations;
- Domestic corporations, taxable on their worldwide income, are generally subject to income tax on their foreign-sourced dividends. Under CREATE, however, foreign-sourced dividends of a domestic corporation, where the domestic corporation owns at least 20% of the outstanding shares of the foreign corporation for at least two years from the dividend declaration, may be exempt from tax provided the funds received or remitted into the Philippines are reinvested in the business operations of the domestic corporation

within the next taxable year. Dividend payments by the domestic corporation qualifies as reinvestment so foreign-sourced dividends may pass through tax-free in the same manner as dividends received from other domestic corporations;

- The improperly accumulated earnings tax (IAET), imposed on closely-held corporations that accumulate their earnings beyond the reasonable needs of the business, was repealed. However, while corporations that inordinately defer declaration of dividends are no longer at risk for 10% IAET, the improper accumulation of earnings is still prohibited under the Revised Corporation Code. Fines and other penalties may be imposed by the Securities and Exchange Commission (SEC).

### PANDEMIC RESPONSE

Temporary reprieve is extended to SMEs and corporations that experienced difficulties during the lockdown:

- the percentage tax on non-VAT registered taxpayers with gross annual sales and/or receipts not exceeding ₱3 million is reduced from 3% to 1% effective July 1, 2020 to June 30, 2023;
- the rate of minimum corporate income tax (MCIT), applied to corporations beginning on the fourth taxable year following commencement of operations, is reduced from 2% to 1% effective July 1, 2020 to June 30, 2023; and
- the income tax rate on proprietary educational institutions and hospitals is reduced from 10% to 1% effective July 1, 2020 to June 30, 2023. The Bureau of Internal Revenue (BIR) has yet to clarify if it will *motu proprio* refund or allow as credit the 2% difference to non-VAT taxpayers who paid their 3% percentage tax for the periods July 1, 2020 to December 31, 2020, or if an administrative claim for refund of erroneously paid taxes must be filed.

### INVESTMENT INCENTIVES

Investments made prior to CREATE and enjoying income tax holiday (ITH) under the Omnibus Investments Code and special laws will continue enjoying ITH pursuant to their registration. However, enterprises enjoying ITH plus the special corporate income tax of 5% of gross income (SCIT) are allowed to avail of the 5% SCIT for only ten years. Under the old rule, the registered enterprises granted 5% SCIT may avail of it continuously if they remain qualified and registered. The President vetoed the proposal to allow existing registered enterprises to apply for further extensions of incentives for the same activity.

Qualified export enterprises may avail of four to seven years ITH, depending on location and industry priorities, to be followed by ten years of 5% SCIT or enhanced deductions. On the other hand, qualified domestic market enterprises may avail of four to seven years ITH, depending on location and industry priorities, to be followed by five years of enhanced deductions.



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# What Non-US Companies Can Learn from the Case Against Huawei CFO, Meng Wanzhou

**H**uawei CFO Meng Wanzhou is currently fighting extradition from Canada to the US to face charges of bank fraud in connection with transactions undertaken by Huawei in Iran allegedly in violation of US sanctions. The case has attracted global attention, and the final commitment hearings will be held soon. Robert Lewis, Senior International Consultant with Chance Bridge Partners in Beijing, recently published an in-depth analysis of the Meng case. IHC interviewed Mr. Lewis to learn more.

**Q. THIS IS A VERY DETAILED LOOK AT THE MENG WANZHOU CASE. WHY DID YOU WRITE IT AND WHO IS YOUR PRIMARY INTENDED AUDIENCE?**

As I followed the progress of the case, I realized that most reports were piecemeal in nature and scope and for the most part were written from a journalistic perspective. With

the key hearings in the extradition case scheduled for April and May of this year, I thought it would be timely to provide a more comprehensive overview of the case as a backdrop against which the upcoming court rulings could be better understood. I also wanted to approach this from a more professional legal perspective for a professional audience, including in-house counsel and compliance officers.

**Q. FOR PEOPLE WHO HAVE NOT FOLLOWED THIS CASE CLOSELY, HOW DID THE CASE ARISE AND WHAT IS THE STATUS?**

A. This is a complex case but the simple answer is as follows: Meng is the CFO of Huawei and the daughter of Huawei founder Ren Zhenfei. Meng and Huawei are alleged, among other charges, to have committed bank fraud in connection with communications with HSBC in August 2013 in a meeting in a



private room at the back of a restaurant in Hong Kong. The meeting had been set up to clarify concerns on the part of the bank regarding two Reuters reports about Huawei's activities in Iran which may have been in violation of US sanctions against Iran and which could have triggered certain legal obligations on the part of HSBC. She was arrested more than 5 years later in the Vancouver airport as she transited to her connecting flight to Mexico, ironically just as then president Trump was sitting down to a private dinner with Chinese president Xi Jinping at the G20 summit in Argentina.



**Huawei CFO Meng Wanzhou is currently fighting extradition from Canada to the US to face charges of bank fraud in connection with transactions undertaken by Huawei in Iran allegedly in violation of US sanctions.**



She has won some small but important victories in the course of the proceedings but most extradition requests are ultimately granted so the bar is high for her in this extradition fight. The Wall Street Journal reported in December of last year that US prosecutors had been quietly talking with Meng's lawyers about a plea deal, but no further progress has been reported. If extradition is granted then she is expected to appeal and ultimately the Canadian Minister of Justice makes the call whether or not to order her extradition. The entire process could drag out a couple of more years.

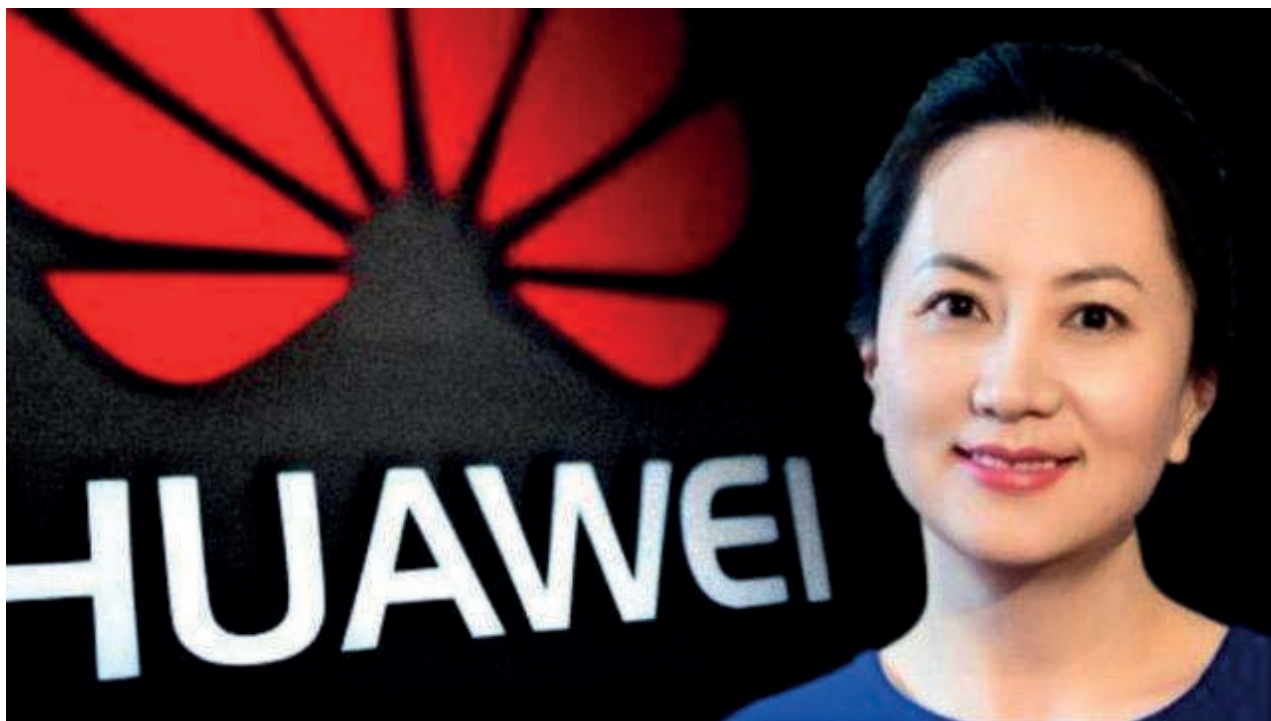
**Q. HOW DO MOST CHINESE VIEW MENG'S ARREST?**

A. Not surprisingly, her arrest sparked a huge outcry in China. It is seen as an attempt on the part of the US and other western countries to contain the growth of Huawei and China as part of a larger campaign to keep China down, and all of the actions taken by the Trump administration last year against WeChat and TikTok are also commonly seen as part of that same effort. Many Chinese feel like they are being unfairly targeted, and Meng's arrest is the most personal example since she is a such a high-profile business executive.

Most everyone in China believes that Trump orchestrated or at a minimum acquiesced in the timing of her arrest to put maximum pressure on China as part of the then pending trade negotiations. However, by all accounts, Trump was out of the loop, and this action apparently was taken independently by career officials at the US Justice Department.

**Q. WHAT IS THE BASIS FOR U.S. AUTHORITIES TO ASSERT JURISDICTION AGAINST MENG? SHE IS A CHINESE CITIZEN, HUAWEI IS A CHINESE COMPANY, HSBC IS A GLOBAL BANK BASED IN LONDON, THE MEETING IN QUESTION WAS IN HONG KONG, AND THE COMMUNICATIONS WERE ABOUT HUAWEI'S ACTIVITIES IN IRAN. WHAT'S THE US CONNECTION?**

A. The transactions at issue were denominated in US dollars and so the related payments typically would be cleared through the US banking system. That alone is enough for US authorities to assert jurisdiction and to require non-US companies to comply with US sanctions against Iran and other countries. It's an extremely aggressive position,



which is unpopular with US allies and rivals alike. It leverages off of the dominance of the US dollar as a global currency. Since the vast majority of international transactions are denominated in US dollars, and banks conducting US dollar business have reporting obligations with respect to restricted payments, virtually any US dollar transaction in the world could give rise to US assertion of jurisdiction over the transaction and the parties involved, and that will continue to be the case so long as the US dollar remains dominant. This could be one of many reasons international companies may in coming years welcome the use of the Euro or even the Yuan as a settlement currency for international transactions.

**Q. WHY DID IT TAKE MORE THAN 5 YEARS AFTER THE ORIGINAL HONG KONG MEETING BEFORE SHE WAS CHARGED AND ARRESTED? WHAT**

**HAPPENED OVER THE INTERVENING PERIOD TO TRIGGER HER ARREST?**

This is where the story gets interesting. The case against Huawei and Meng can only be understood in the context of the prior prosecution of HSBC for its own very egregious violations of US sanctions against Iran and other countries, which ended up with HSBC paying nearly US\$2 billion in fines, being required to fire numerous senior executives in the global management team and having to put in place a court-appointed independent compliance manager. HSBC was able to negotiate a deferred prosecution agreement (DPA), and so as long as the bank complied with the terms of thereof over the five-year term, the original charges would be dismissed.

The two Reuters reports about Huawei's activities in Iran that triggered the bank's enquiries came just a few weeks after HSBC

**The attitude towards compliance in Chinese companies has undergone a complete sea change. This has been a “wake up” call, and many observers now see much more rigorous systems in place in Chinese financial institutions and overseas listed companies.**

signed the DPA, so the bank was already on high alert to potential problems of this type. Eventually, HSBC made their enquiries and decided to maintain the banking relationship with Huawei.

Things remained status quo ante until September 2016, when US prosecutors were considering bringing a separate set of criminal charges against HSBC for foreign exchange trading violations. This allowed federal prosecutors, who had already been looking into Huawei, to exert pressure on HSBC to conduct a more thorough internal investigation of the relationship with Huawei, which produced the information on which the case against Huawei and Meng is based.

**Q. THIS IS A COMPLEX CASE INVOLVING NOT ONLY ALLEGATIONS OF CRIMINAL LAW VIOLATIONS AND INTERNATIONAL EXTRADITION BUT ALSO GEOPOLITICAL RELATIONS. CAN YOU PROVIDE SOME ADDITIONAL CONTEXT?**

A. As most IHC members will be aware, ten days after Meng’s arrest, China detained two Canadian citizens, Michael Kovrig, a former diplomat, and Michael Spavor, a business man, and the two (known in Canada as the “two Michaels”) were later charged with “spying on national secrets” and providing intelligence for “outside entities.” Canada protested the arrest of the two Michaels, suggesting that this was done in retaliation

for Meng’s arrest, but China has denied any connection between the two cases. China recently announced that the trial of the two Michaels would commence soon.

Many Canadians have expressed a desire that the charges against Meng be dropped in exchange for the release of the two Michaels. John McCallum, who at the time served as the Canadian ambassador to China, expressed similar sentiments not long after the arrests, even offering a critique of the extradition case against Meng, for which he was promptly sacked.

The transition from the Trump administration to the Biden administration has also presented some interesting complications. Meng’s lawyers, relying on the doctrine of “double criminality,” challenged the extradition case on the grounds that Canada had no sanctions in place against Iran. The Canadian court rejected that argument, but now with the Biden administration in place, the US is once again expected to remove the sanctions against Iran, which raises the question of whether this case will now be prosecuted with the same level vigor.

**Q. CORPORATE CRIMINAL ACTIONS GENERALLY RESULT ONLY IN MONETARY PENALTIES ON THE COMPANY, SO IN THIS CASE WHY**

**WAS MENG CHARGED IN HER PERSONAL CAPACITY?**

A. This is one point of considerable consternation for many in China. In the HSBC case, arguably involving much more egregious violations of US sanctions laws, no one went to jail, so many have asked the same question – why was Meng Wanzhou singled out in this case? This appears to be a matter of prosecutorial discretion which is heavily fact-dependent. If lower-level management personnel or other employees, acting on behalf of the company, violate applicable laws, then the company can bear criminal liability under the doctrine of respondeat superior, but the senior executives of the company will not necessarily be charged personally. In this case, US prosecutors stated that Meng was charged in her personal capacity for her direct personal involvement.

**Q. WHAT DO WE LEARN FROM THIS CASE ABOUT COMPLIANCE MANAGEMENT IN CHINESE COMPANIES?**

A. Major Chinese companies have had compliance management systems in place for many years, but in many cases it consisted mostly of a policy document posted on the company's website and in practice was not always implemented in full. With the arrest of Meng Wanzhou, the attitude towards compliance in Chinese companies has undergone a complete sea change. This has been

a “wake up” call, and many observers now see much more rigorous systems in place in Chinese financial institutions and overseas listed companies.

One thing that surprised me in my research was to discover that the criminal and administrative liability exposure of Chinese companies internationally is not necessarily disproportionate to the position of China as the world's second-largest economy. In fact, Chinese companies do not even make the list of the top corporate offenders around the world. That dubious distinction goes to many of the biggest name brand companies from the US and Europe.

**Q. WHAT LESSONS DO YOU HOPE OUR IHC MEMBERS WILL TAKE AWAY FROM THIS CASE STUDY?**

The number one take-away is to be aware of the long reach of US authorities and that if you are engaging in US dollar-denominated transactions then you should assume that your bank, or its US correspondent bank, will have reporting obligations.

It is also important to avoid work-arounds, and if confronted or questioned by authorities, it is critical to cooperate and be fully transparent. As detailed in the case study, ZTE tried to be a bit too clever in structuring its deals in Iran and North Korea and then

when confronted tried to cover it up. That only led to more severe penalties.

Finally, all companies need robust compliance management systems that are rigorously enforced. You have to have clear rules that are consistently implemented and where violations are discovered, appropriate actions must be taken. It has to be much more than a simple “paper policy” but must be part of the DNA of the company.



**Robert Lewis**

Robert Lewis has worked in top US, UK and Chinese law firms in China for almost 30 years, and was the first senior foreign lawyer to move from an international law firm to a top Chinese law firm. He has advised Chinese companies on outbound investments around the world, and has assisted leading Chinese companies with the design of compliance management systems. His four-part case study on the Meng Wanzhou case is available in English and Chinese.

English



Chinese



English: <https://www.chancebridge.com/en/zhuoweiresearch2.html>

Chinese: <https://www.chancebridge.com/research.html>

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## — 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

#### Hong Kong International Arbitration Centre

**Tel:** (852) 2525 2381  
**Email:** adr@hkiac.org  
**Website:** www.hkiac.org

#### Maxwell Chambers Pte Ltd

**Tel:** (65) 6595 9010  
**Email:** info@maxwell-chambers.com  
**Website:** 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

#### LOD - Lawyers On Demand

**Tel:** (65) 6326 0200  
**Email:** singapore@lodlaw.com  
**Contact:** Oliver Mould  
**Website:** lodlaw.com

#### KorumLegal

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

#### Vario from Pinsent Masons (HK) Ltd

**Tel:** (852) 2294 3454  
**Email:** enquiries@pinsentmasonsvario.com  
**Website:** https://pinsentmasonsvario.com

## Risk, Investigation — and Legal — Support Services

#### IMF Bentham

**Tel:** (65) 6622 5397, (65) 6622 5396  
**Contact:** Tom Glasgow - Investment  
 Manager (Asia)  
**Email:** tglasgow@imf.sg  
**Website:** www.imf.sg

#### LegalComet Pte Ltd (LEGALCOMET)

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

#### Mintz Group

**Tel:** (852) 3427 3717  
**Contacts:** Jingyi Li Blank  
**Email:** jblank@mintzgroup.com  
**Website:** www.mintzgroup.com

#### 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:** www.thinkbrg.com

## — Legal — Recruitment

#### 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

#### 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

#### Lewis Sanders

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

#### Horizon Recruitment

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

#### Jowers Vargas

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

## — Non-Legal — Recruitment

#### True Recruitment Asia

**Tel:** (852) 5325 9168  
**WhatsApp:** (852) 5325 9168  
**Email:** kannan@truerecruitmentasia.com

## — 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

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#### Splash Diving (HK) Limited

Learn to Dive and Fun Dive with the Winner of the PADI Outstanding Dive Centre/Resort Business Award!  
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**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



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