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ASIAN-MENA COUNSEL

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Kroll assess and evaluate new markets

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MAGAZINE FOR THE **IN-HOUSE COMMUNITY** ALONG THE NEW SILK ROAD | Volume 12 Issue 7, 2014-15

M&A

SPECIAL REPORT

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ASIAN-MENA COUNSEL

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Vicente D. Gerochi IV is a partner in SyCip Salazar Hernandez & Gatmaitan. His practice areas include finance and securities, mergers and acquisitions, foreign investment and transport and power infrastructure. He has represented Philippine and foreign corporations, Philippine and international banks and multilateral financial institutions in a range of transactions, including securities offerings, project finance and other financing deals.

Pooja Khanna is an associate in the Delhi office of Phoenix Legal. She focuses primarily on foreign investments, M&A's, joint ventures, legal and regulatory compliance and general corporate matters including issues relating to employment law, real estate and exchange control laws.

Choo Suit Mae joined the Sime Darby Group in August 2006 as Group Head, Legal – Mergers & Acquisitions. In 2010, after the centralisation of the legal functions within the Group, she was designated Group General Counsel, heading a team of over 35 lawyers at group and division level, located at offices in Malaysia, Singapore, Indonesia, Hong Kong, China, Australia and the Netherlands.

Having begun his career as a Judge's clerk in the UK criminal and civil courts, **Mike Williamson** 'crossed the floor' in order to work in-house for UK national companies and more recently, global insurance broker Willis. Holding the title of Employment Counsel, he covers labour law worldwide, excluding the US and Canada.

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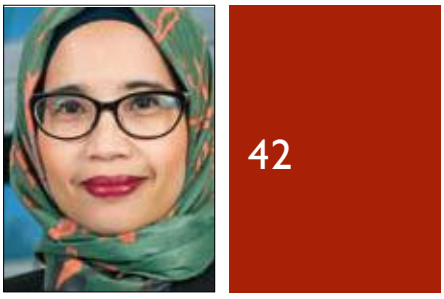

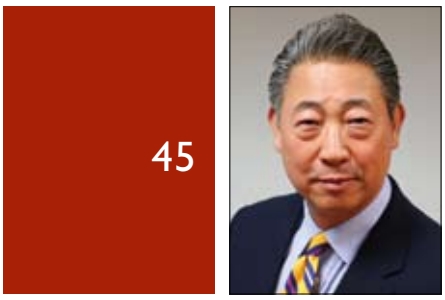

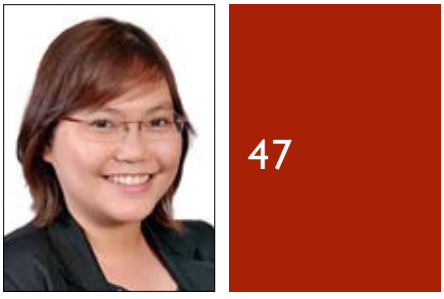

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MOVES

The latest senior legal appointments around Asia and the Middle East

AUSTRALIA

Amanda Banton

Squire Patton Boggs has added one of Australias leading restructuring, insolvency and litigation partners **Amanda Banton** who will join the firms Sydney office with a team of 11 lawyers in January 2015. A former partner at Piper Alderman, Bantons practice encompasses a broad range of corporate, commercial and insolvency related litigation, with a particular emphasis on matters relating to the Australian corporations legislation, bankruptcy, state and federal trade legislation, negligence and contractual disputes. She has led numerous significant disputes in the Federal Court and High Court of Australia and she is the only litigation lawyer in Australia to successfully act against Standard & Poors in respect to the AAA rating of certain financial products.

CHINA

Han Kun Law Offices has added **Ma Chen** as a partner in the firms Beijing office. He joins from Fangda Partners. Mas primary focus is competition law. His practice also covers M&A, foreign direct investment, banking and regulatory compliance. Ma has been practicing law for over 21 years and he is a recognized leading professional in the fields of his practice. He has represented many international and domestic clients in merger filings and cartel investigations in China. He has also advised dozens of multinational companies on their acquisition and greenfield investment projects in China. Moreover, Ma has represented lenders and borrowers in various commercial loan and project finance transactions.

Yufeng (Ethan) Ma

Orrick, Herrington & Sutcliffe has added **Yufeng (Ethan) Ma** as a partner in the firm's Intellectual Property (IP) practice. He will be based in the Shanghai office. Dual-educated in China and the US, Ma most recently served as Director of IP, Asia at Corning Incorporated, a world leader in specialty glass and ceramics. Prior to that, he practiced for more than a decade in the US representing US and Chinese companies in IP matters, with a focus on litigation before the US International Trade Commission and the US federal courts. Ma holds a Bachelor of Laws degree from Peking University School of Intellectual Property and a JD degree from Vanderbilt University School of Law. Ma is admitted to practice in Illinois and New York and is registered to practice before the US Patent and Trademark Office. He is fluent in Mandarin and English. He was previously a partner and member of the Board of McAndrews, Held & Malloy Ltd in Chicago, Illinois. Ma also has extensive experience advising companies on IP aspects of strategic transactions, including licensing, M&As, joint ventures and collaborations.

MALAYSIA

Abdullah Chan & Co has strengthened its corporate practice with the appointment of **Datin Shelina Razaly Wahi** as a new partner in its Kuala Lumpur office. Wahi began her career as a litigation lawyer for three years before moving in-house as corporate counsel with one of the largest downstream multinational petroleum companies in Malaysia. Over the course of six years as in-house counsel for Shell Malaysia, she served various roles, including being the company focal point for all HR-related legal matters, setting up the in-house Litigation Management Program and managing all major litigation matters. In 2007 Wahi was a pioneer member of the senior management team at AirAsia X Berhad. Her first position was Legal & Human Resources Director for three years, moving into a legal and regulatory role at the end of 2010. As Legal Director, she worked across all spheres of aviation, including HR matters, operations and engineering, with particular focus in aircraft leasing and financing, engines and avionics as well as aviation/aerospace regulatory matters. While in AirAsia X, she saw through the successful AirAsia X Berhad IPO on July 2013. A graduate from the University of Bristol, Wahi completed her bar vocational course in London in 1996 and was called to the Malaysian Bar in 1998.

MOROCCO

Patrick Larrivé

Christophe Simonnet

Dentons has expanded its presence in Africa with the arrival of partners **Patrick Larrivé** and **Christophe Simonnet** who join its Casablanca office, bringing additional depth to the firm's existing and longstanding presence in Africa. The firm's Casablanca office is headed by Larrivé who joins as managing partner and works with Simonnet and a team of five associates. The Casablanca office is integrated within and supported by the firm's offices across the globe, including the offices in Egypt and South Africa. The arrival of Larrivé and Simonnet bolsters the service provided to clients in Morocco, the rest of the Maghreb region and other Francophone African regions, as well as further strengthening the firm's unparalleled position across Africa. Larrivé and Simonnet bring the firm additional expertise in corporate M&A, private equity, infrastructure and PPP, energy, real estate and finance.

SINGAPORE

Commercial Counsel (10+ PQE)

One of the world's leading resources companies seeks a senior level technology/commercial lawyer who will work closely with internal business groups to provide legal advice and support to the company's global, large scale technology projects and strategic procurement. Candidates should have international work exposure and in depth experience in technology procurement including outsourcing, privacy and data protection. The candidate will be expected to work independently but also effectively within a team. [A36870]

Vice President (Counsel) (6+ PQE)

A global investor is looking for a lawyer to provide legal support for its wide range of investment activities, in particular, to advise on legal issues and documentation relating to direct private equity investments and structured public equity investments as well as to monitor, review and advise on regulatory compliance issues. Relevant legal experience in investment funds, private equity and/or M&A work will be an advantage. [A37121]

Employment Lawyer (5-10 PQE)

A boutique international law firm seeks a mid-level employment lawyer to expand its employment advisory practice to the firm's Singapore office. The ideal candidate should be common law qualified and have regional exposure to employment and labour issues in Australia and ASEAN. The role will be responsible for working with team members in Europe to support existing clients, as well as develop the firm's practice in Singapore. [A18800]

IT Counsel (5-8 PQE)

Multi billion euro IT company seeks a mid-level lawyer. In a role with APAC wide coverage, with primary responsibility for Singapore and Philippines. The candidate will be expected to play a pro-active role engaging with the business leaders in formulating legally sound and commercially viable strategies and solutions. IT experience is a must. [A37117]

Senior Legal Advisor (4+ PQE)

A leading European MNC in the IT industry seeks a mid-level lawyer to join them in a standalone regional role. This is an exciting challenge for a lawyer keen on working closely with business units to understand customers' needs and shape and drive strategy. The successful candidate will draft and review a range of commercial agreements and advise on compliance and corporate governance. Interested candidates must be qualified in a common law jurisdiction and some IT experience is a must. [A36243]

IP Counsel (4-6 PQE)

A dynamic technology company seeks an IP lawyer who will be responsible for day-to-day management of the company's global trademark portfolio, including new filings and office actions/opposition proceedings worldwide. You will also carry out and advise on preliminary name searches, provide litigation support on intellectual property disputes, advise R&D teams and business units on a wide variety of intellectual property issues, and help establish systems and processes for IP good practices. The ideal candidate would be admitted in an Asian jurisdiction. [A36629]

ASIA

Legal Counsel (8+ PQE), Malaysia

A leading European IT MNC seeks a senior lawyer to join them in a standalone position for their fast expanding business in the region. The successful candidate will take on a regional portfolio, with primary responsibility for Malaysia, Indonesia, Australia and New Zealand. The ideal candidate would be an individual who is highly adaptable and able to respond quickly and effectively in a constantly evolving business. As a senior member of the team, the candidate will be expected to play a pro-active role engaging with the business leaders in formulating legally sound and commercially viable strategies and solutions. Experience in the IT services sector is required and in house experience would be a plus. [A37115]

Corporate Counsel (7-12 PQE), Bangalore/Delhi, India

NASDAQ-listed MNC with a global footprint is expanding and looking to hire a corporate counsel. Principal duties include providing ongoing legal counselling in a wide range of legal areas, including intellectual property, digital media and regulatory compliance and structuring, drafting and negotiating complicated licensing, technology, distribution, marketing and other commercial agreements. Some travel, domestic and international, will be required. Throughout all the above tasks the corporate counsel will closely coordinate with the global legal teams and outside counsel. Excellent interpersonal skills to effectively communicate and coordinate complex issues and projects with diverse levels of management and employees an absolute must. [A37116]

Associate Director (6-8 PQE), Gurgaon, India

Leading MNC in the hospitality industry seeks a mid-level legal counsel to join them as an Assistant Director. Reporting to the VP, Legal Counsel (South Asia), responsibilities entail managing and supervising all aspects of the legal function for the South Asia region (India, Bangladesh, Sri Lanka, Nepal, Bhutan and Maldives). This position has particular emphasis on supporting the India-based Acquisitions & Development, Operations and Design Technical Services teams, while also counseling on a broad range of issue for Sales, Marketing, Finance, Brand Management, IT and HR. This position is responsible for day-to-day legal and regulatory oversight for the South Asia region and coordinates closely with the global legal team in the US and Singapore on IP, IT, Compliance, litigation and antitrust matters. This position, while based in Gurgaon, will require travel within the South Asia region. [A37119]

Regulatory and Compliance Lawyer (5+ PQE), Kuala Lumpur, Malaysia

A boutique law firm is seeking a mid-level Regulatory and Compliance lawyer to join its practice. The firm primarily focuses on advising foreign entities and start-ups doing business in Malaysia. Practice areas include financial regulatory and compliance, company law and corporate governance, as well as securities and competition law. Fluency in Bahasa Malaysia would be a plus as liaising with local regulatory and administrative entities will be required. Somewhat flexible work schedules and very competitive remuneration are on offer. This is an excellent opportunity for a self-starter who is interested in building a reputation in a very interesting and fast growing area of practice in Malaysia. [A37123]

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LEGALLABS

SINGAPORE

Hogan Lovells has added **Mark Cooper** as a partner in its corporate practice in Singapore, with effect on 3 February 2015. Cooper joins from Linklaters in Singapore, having been previously based in London and Hong Kong. He focuses on M&A and private equity transactions across South East Asia in a range of sectors, including healthcare, consumer, financial institutions and energy and natural resources. High profile clients he has advised include Standard Chartered Bank, Noble Group and Macquarie. Cooper is the firms fourth corporate partner hire in Asia in the last 12 months and the 9th partner hire in Asia this year.

Stamford Law recently hired **Ryan Lin** as a partner. Lin will focus on corporate and commercial work throughout Asia. His expertise include M&A transactions, and he also has experience with exquity and debt capital markets.

Gerald Yee

Clyde & Co has boosted its Asia Pacific marine practice with the appointment of **Gerald Yee** to strengthen the firm's rapidly growing Singapore and wider Asia Pacific marine offering. Yee joined from Colin Ng & Partners where he led the admiralty and shipping group. He will be concurrently a director with Clasis LLC, the Singapore firm component of Clyde & Co Clasis Singapore joint law venture. As a Director of Clasis LLC, he will represent clients in Singapore courts. Yee's practice comprises a broad spectrum of contentious and non-contentious matters for clients in the marine industry, both in Singapore and across South East Asia.

AMC

DEALS

Featured below are some recent headline deals from across Asia and the Middle East

AUSTRALIA

Skadden has acted as international advisor to the **Commonwealth of Australia and Medibank Private** in respect of Medibank's A$5.7 billion (US$4.84b) IPO and listing on the ASX on 25 November 2014. Medibank, which was previously 100 percent owned by the Australian government, is Australia's largest private health insurer and provides health insurance cover for over 3.8 million people across Australia. The transaction is the largest Australian IPO since 1997, when the Australian Government sold a stake in the telecommunications carrier Telstra, and is the third largest global IPO in 2014. Sydney partners **Mark Leeman** and **Adrian Deitz** led the transaction.

Allens has advised **WestConnex Delivery Authority** in respect of the widening of Sydney's M4 motorway, the first construction contract for the WestConnex road project. Under the contract which was signed on the first week of December 2014, the Rizzani De Eccher Leighton joint venture will widen Sydney's M4 between Parramatta and Homebush from three lanes to four. Construction will begin in early 2015. Partner **Leighton O'Brien** led the transaction whilst **Ashurst** also acted for Westconnex.

CHINA

Proskauer has represented leading hotel operator **Accor** in respect of its announced agreement to form a strategic and long-term alliance with Huazhu Hotels Group (also known as China Lodging Group) to create the most prominent and diversified hotel company in China, one of the largest and fastest-growing domestic travel markets. Under the agreement, Huazhu will become Accors exclusive master franchisee operating and developing in Mainland China, Mongolia and Taiwan for the economy (ibis and ibis Styles brands) and midscale (Novotel and Mercure brands) segments, as well as the upscale Grand Mercure brand. Accor will continue to lead the ownership and development of all its luxury and other upscale brands in China, including Sofitel, Pullman, MGallery and The Sebel. Moreover, Accor will take a 10 percent stake in China Lodging Group and a seat on its board. The transaction is expected to close upon completion of anti-trust review, legal restructuring, governmental approvals and other closing conditions. Accor is the worlds leading hotel operator whilst Huazhu is a leading and fast-growing hotel group in China. Partners **Jeff Horwitz,** head of the Lodging & Gaming Group and Private Equity Real Estate practice, and **Yuval Tal,** head of the Hong Kong and Beijing offices, supported by partners Stuart Rosow (Tax), Julie Allen, Roberto Bruno and **Peter Castellon** (Capital Markets), led the transaction.

Paul Hastings has advised **Morgan Stanley** as the sole placing agent, global coordinator and book-runner in respect of Ping An Insurance Group Company of China Ltd's US$4.75 billion private placement of new H-shares. The placement marks the largest primary follow-on offering in the financial institutional group sector globally over the past three years. The transaction is also reportedly the largest H-share placement ever and one of the largest primary follow-on offering in Asia Pacific (excluding Japan) over the past 10 years. Ping An is a Shenzhen-based integrated financial services conglomerate with three core businesses, including insurance, banking, and investment. Net proceeds will be used to fund its business development and replenish its equity and working capital. Partner **Sammy Li,** chair of the Hong Kong office, and Hong Kong capital markets partner **Edwin Kwok,** with US capital markets partner **Steven Winegar** advising on the US law aspect, led the transaction.

Lewis Sanders

Legal Recruitment

In-House

PRIVATE WEALTH MANAGEMENT — HONG KONG — 5+ years

Top tier i-bank seeks a mid to senior level lawyer to join its APAC private wealth management team. This is a broad role covering a wide range of wealth management products so the ideal candidate will have a regulatory, funds or derivatives background. Chinese skills preferred. AC5073

BRAND PROTECTION MANAGER — HK/SHANGHAI — 6+ years

US apparel company seeks an experienced brand protection manager to be based in HK or Shanghai. This is a regional role where you will manage brand protection issues, work closely with customs & manage cross-border enforcement actions. Fluent Mandarin is essential. AC4956

CORPORATE/COMMERCIAL — HONG KONG — 3-6 years

US asset manager with an impressive AUM & solid global presence seeks a mid-level legal counsel to focus on general corporate & commercial work. You will have solid M&A, employment or regulatory experience from a top tier law firm or in-house environment. AC5090

DCM — HONG KONG — 3-5 years

European bank is looking to hire a junior to mid-level DCM lawyer to join its legal team in HK. You will have training from an international law firm or i-bank & have solid debt capital markets experience. Chinese language skills not required. Regional exposure on offer. AC5102

COMPLIANCE/DATA PRIVACY — HONG KONG — 3-6 years

A leading international mass media company seeks a junior to mid-level lawyer or compliance professional to manage the compliance & data privacy issues in this regional role. You will ideally have prior experience in a commercial environment & relevant experience in data privacy. AC5087

LITIGATION COUNSEL — HONG KONG — 2-6 years

Professional services firm seeks a mid-level litigator to advise on a range of commercial & regulatory issues across the region. You will have solid commercial litigation experience &/or contentious regulatory experience from an international firm. Chinese skills essential. AC5006

LEGAL COUNSEL — HONG KONG — 2-4 years

Leading global technology/media company seeks a HK qualified lawyer with corporate finance experience to join its legal team. The role will cover corporate governance, compliance & general corporate matters. Solid knowledge of the HK listing rules & fluent Mandarin essential. AC5106

IBD LEGAL – I-BANK — HONG KONG — 2-4 years

Global bank hiring a junior to mid-level corporate lawyer to join its IBD legal team to cover ECM, M&A &/or DCM matters. Good opportunity to work closely with the business. Chinese language skills are advantageous. Candidates with HK, UK or US qualifications are welcome to apply. AC5103

Private Practice

REGULATORY COUNSEL/PARTNER — HONG KONG — 10+ years

Excellent opportunity for a senior regulatory lawyer to join a growing international law firm as a counsel or partner. You will ideally have mixed contentious & non-contentious regulatory experience & the ambition to build your own practice from this existing platform. AC5035

BANKING PARTNER — HONG KONG — 10+ years

Top tier US firm seeks an established partner with solid banking & finance experience in HK & experience growing a practice. You will have significant on-the-ground experience from a reputable US or UK law firm as well as a strong following & portable book of business. AC5110

AVIATION COUNSEL/PARTNER — HONG KONG — 8+ years

International firm with a well-established aviation practice needs an additional partner to join its HK team. You will be a counsel or junior partner with aviation finance experience & a portable book of business. Excellent work environment with a collegiate & dynamic culture. AC5017

LITIGATION COUNSEL/PARTNER — HONG KONG — 8+ years

International law firm with broad client base seeks a commercial litigator to join as a counsel or partner. Strong cohesive team environment & international platform on offer. You will have experience from an international law firm & have the drive/vision to help expand the practice. AC5034

FUNDS — HONG KONG — 6 years - Counsel

Top tier international firm looking for a senior associate or counsel for its well-regarded funds team. You should have PE funds formation experience & any downstream PE experience is a plus. Overseas candidates will be considered. Real prospects for senior candidates. AC4870

M&A — SHANGHAI — 4-7 years

Magic Circle firm is seeking a corporate lawyer to join its well-established Shanghai office. You will have 4-7 PQE & dual qualified in PRC & HK, UK or Australia. Corporate real estate experience in China & private M&A experience would be beneficial. Native Mandarin essential. AC4255

INDIA PRACTICE — HK/SINGAPORE — 2-6 years

Excellent opportunity with the India practice of a top tier US firm. You must be US or UK qualified, have 2-6 years' relevant experience at an international firm in HK or Singapore & have strong capital markets or M&A experience. Experience with derivatives would be a plus. AC5112

BANKING — HONG KONG — 1-8 years

Top international firm seeks banking associates for its banking & finance team. Prior experience in syndicated loans, credit facilities & general banking work is essential. Business level Chinese skills would be highly regarded. Great working environment & quality work on offer. AC5008

This is a small selection of our current vacancies. Please refer to our website for a more comprehensive list of openings.

Please contact Emily Lewis, elewis@lewissanders.com +852 2537 7408 or Eleanor Cheung, echeung@lewissanders.com +852 2537 7448
Chris Chu, cchu@lewissanders.com + 852 2537 7415 or email recruit@lewissanders.com

DEALS

Clifford Chance has advised **Asian Development Bank** (ADB) in respect of the sale of its entire 3.95 percent stake in Bank of Hangzhou to China Life Insurance Company Ltd, the largest commercial insurance group in China with assets exceeding RMB1 trillion (US$162b). Bank of Hangzhou is the third largest non-listed city commercial bank in China. The sale, which was conducted through a competitive auction process, completed at the end of October 2014. Corporate partner **Terence Foo** led the transaction.

DLA Piper has acted for **Sinopharm Group Company Ltd**, China's largest pharmaceutical company, in respect of the issuance of HK$5.5 billion (US$709.6m) new shares. The transaction is the third H share placement for Sinopharm since its HK$8 billion (US$1b) IPO in 2009. The placing closed on 01 December and saw approximately 198.8 million shares sold to six to ten non-retail investors at HK$28.40 (US$3.66) per share. Sinopharm will use the net proceeds of the issuance to aid the expansion of its pharmaceutical distribution and retail network as well as for working capital. Beijing office managing partner **Dr Liu Wei** led the transaction. **Sullivan & Cromwell** represented the **placing agents**, which included China International Capital Corp, UBS AG and Morgan Stanley.

Troutman Sanders and Danish firm **Plesner** have represented the China-based Trayton Group in respect of securing a US$6.4 million arbitration award against luxury brand Georg Jensen A/S Denmark for the premature termination of their franchise agreement. The Danish Arbitration Tribunal ruled that Georg Jensen must pay GJ Investment (Hong Kong) Ltd, a Trayton franchise vehicle, damages for all losses sustained, plus interests and costs. **Edward Epstein** from Troutman Sanders and **Frants Dalgaard-Knudsen** from Plesner led the transaction.

HONG KONG

Mayer Brown JSM has represented **Principal Financial Group** in respect of the acquisition of AXA's Mandatory Provident Fund (MPF) and Occupational Retirement Schemes Ordinance (ORSO) retirement schemes businesses in Hong Kong for approximate HK$2.6 billion (US$335.3m). Under the transaction, Principal and AXA will also enter into a 15-year exclusive distribution agreement allowing Principal to offer MPF and ORSO retirement schemes through AXA's proprietary networks in the city. This is the largest transaction of its nature since the MPF scheme was introduced in 2000. Completion of the transaction is subject to regulatory approvals and is expected to take place in the third quarter 2015. Corporate and securities partner **Mark Uhrynuk,** supported by employment and benefits partner **Duncan Abate** and financial services regulatory and enforcement partner **Sara Or,** led the transaction.

Slaughter and May Hong Kong has also advised **MTR Corp Ltd and MTR Corp** (CI) Ltd in respect of the annual update of their US$4 billion medium term note programme. Notes issued under the programme may be listed on the HKSE. JP Morgan is the sole arranger under the programme. Corporate and financing partner **Laurence Rudge** led the transaction.

Simpson Thacher has represented **Alibaba Group Holding Ltd,** the largest online and mobile commerce company in the world in terms of gross merchandise volume in 2013, in respect of its debut offering of US$8 billion aggregate principal amount of senior unsecured notes, consisting of US$300 million floating rate notes due 2017, US$1 billion 1.625 percent notes due 2017, US$2.25 billion 2.5 percent notes due 2019, US$1.5 billion 3.125 percent notes due 2021, US$2.25 billion 3.6 percent notes due 2024 and US$700 million 4.5 percent notes due 2034. The offering was conducted pursuant to Rule 144A and Regulation S. Morgan Stanley & Co International plc, Citigroup Global Markets Inc, Deutsche Bank AG Singapore Branch, JP Morgan Securities LLC, Credit Suisse Securities (USA) LLC and Goldman Sachs (Asia) LLC acted as joint book-running managers for the offering. Alibaba Group intends to use the net proceeds of the offering, together with cash on hand, to repay its existing term facility. Hong Kong corporate partners **Leiming Chen** and **Daniel Fertig** and Palo Alto partners **Bill Hinman, Daniel Webb** and **Katharine Moir** led the transaction which reportedly is the largest corporate bond offering in Asia.

INDIA

Khaitan & Co has advised **Sun Pharmaceutical Industries Ltd (India)** on the Competition law aspects in respect of its acquisition of 100 percent of Ranbaxy Laboratories Ltd (India) in an all-stock transaction for approximately US$4 billion. This is the first transaction in India which was examined in the more detailed Phase II by the Competition Commission of India (CCI). This is also the first transaction in which the CCI has proposed any form of structural remedies, which would eliminate the adverse effects on competition which could be caused by a combination, in the opinion of the CCI. Partner **Avaantika Kakkar** led the transaction.

Amarchand & Mangaldas & Suresh A Shroff & Co has advised in respect of the financing of a 30 MW wind power project being developed by Renew Wind Energy (Rajasthan One) Private Ltd in Dangri Rajasthan. Partner **Jatin Aneja** and principal associate **Anoop Rawat** led the transaction which was valued at approximately INR141 crores (US$22.8m) and closed in September 2014.

INDONESIA

Latham & Watkins has advised **PT Pertamina (Persero)** in respect of the signing of a series of Memoranda of Understanding (MOU) for the upgrade and expansion of five refinery facilities in Indonesia at an estimated cost of approximately US$25 billion. The MOUs were signed with Saudi Aramco, China Petroleum and Chemical Corp (Sinopec) and JX Nippon Oil and include the redevelopment of the Cilicap, Balongan, Plaju, Dumai and Balikpapan refineries. Singapore-based partners **Clarinda Tjia-Dharmadi, Joseph Bevash, Michael Sturrock, Stephen McWilliams** and **Rod Brown** led the transaction.

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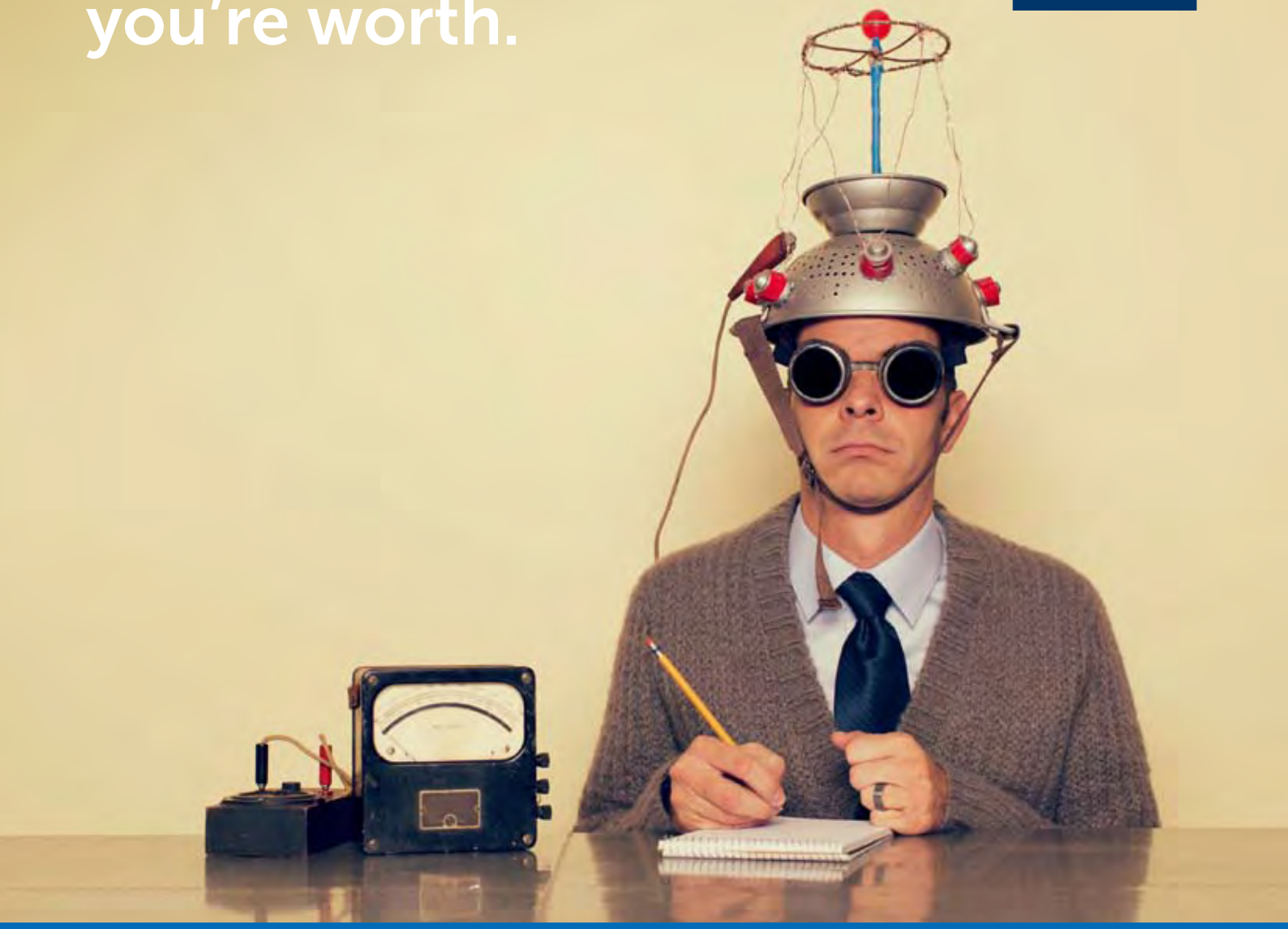

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DEALS

PAKISTAN

Norton Rose Fulbright has advised the **Government of Pakistan** in respect of the issue of its US$1 billion sukuk, almost ten years since its debut sukuk in 2005. This follows the Government of Pakistans conventional US$2 billion bond issue in April 2014, on which the firm also advised. Citigroup, Deutsche Bank, Dubai Islamic Bank and Standard Chartered acted as the deal book-runners. London debt capital markets partners **Farmida Bi** and **Peter Young** led the transaction.

PHILIPPINES

Gibson, Dunn & Crutcher has represented the **placement agents** in respect of Ayala Corps approximately US$275 million top-up placement. Ayala Corp is one of the Philippines largest conglomerates, with interests in real property, banking, telecommunications, water, energy and infrastructure. CLSA Ltd acted as the sole global coordinator and, together with Credit Suisse (Singapore) Ltd, as joint book-runner and placement agent. BPI Capital Corp acted as domestic book-runner and placement agent. The placement was an overnight bookbuilt offering structured as a top-up placement by Mermac Inc wherein all the proceeds will be received by Ayala Corp. Ayala Corp intends to use the raised cash proceeds to fund existing and potential projects in the infrastructure and power sectors. Corporate partners **Patricia Tan Openshaw** (Hong Kong), **Graham Winter** (Hong Kong) and **Alan Bannister** (New York) led the transaction whilst Angara **Abello Concepcion Regala & Cruz Law Office** acted as Philippine counsel.

SINGAPORE

WongPartnership has acted for the **syndicate of lenders** in respect of the S$1.62 billion (US$1.25b) financing to Central Boulevard Development Pte Ltd relating to Marina Bay Financial Centre Tower 3, a prime commercial development located along Marina Boulevard, Singapore. Major stakeholders in Central Boulevard Development Pte Ltd include DBS Bank Ltd and Keppel REIT. Partners **Christy Lim** and **Carol Anne Tan** led the transaction.

Allen & Gledhill has advised the Housing Development Board in respect of the issue of S$1.1 billion (US$834.9m) fixed rate notes, S$500 million (US$379.5m) due 2019 and S$600 million (US$455.36m) due 2026, under its S$32 billion (US$24.3m) multicurrency medium term note programme. Partners Margaret Chin and Sunit Chhabra led the transaction.

Hogan Lovells Lee & Lee has advised **Navis Capital Partners** in respect of its acquisition of MFS Technology (S) Pte Ltd, an established one-stop provider of flexible printed circuits (FPC), printed circuit boards (PCB) and rigid-flex printed circuit solutions serving more than 50 blue-chip customers globally. Navis is a leading private equity investment firm which conducts buyouts, recapitalisations and financial restructuring investments in Asia. Navis currently manages approximately US$5 billion in equity. MFS Technology has production facilities in Malaysia and China, with an additional presence in Germany. The cross-border transaction involved Navis and its consortium partners which include Novo Tellus Capital Partners, a Singapore-based technology focused private equity fund, and a management buy-in team. Singapore office managing partner **Stephanie Keen,** assisted by partner **Alexander McMyn,** led the transaction whilst **Skrine,** a Kuala Lumpur-based law firm, provided support on Malaysian law matters.

Davis Polk has advised **DBS Bank Ltd, Morgan Stanley Asia (Singapore) Pte** and another investment bank, as the arrangers and dealers, and **Oversea-Chinese Banking Corp Ltd** and **The Hongkong and Shanghai Banking Corp Ltd,** as dealers, in respect of the update of the S$8 billion (US$6b) global medium-term note program by SP PowerAssets Ltd, a wholly-owned subsidiary of Singapore Power Ltd, which is in turn wholly-owned by Temasek Holdings (Private) Ltd. It is the sole provider of electricity transmission and distribution services in Singapore and owns and maintains the electricity transmission and distribution network that delivers power to substantially all electricity consumers in Singapore. Corporate partner **James C Lin** and partner **John D Paton** led the transaction. **SP PowerAssets** was advised by **Latham & Watkins** as to US and English laws and **Allen & Gledhill** as to Singaporean law.

UAE

The **Law Office of Salman M Al-Sudairi,** in association with **Latham & Watkins,** has advised **The National Commercial Bank** (NCB) in respect of the US$6 billion IPO of 25 percent of its shares. The 500 million shares sold in the IPO were held by the Saudi Public Investment Fund (PIF) and were divided into 300 million shares allocated for subscription by Saudi individuals and 200 million shares allocated for subscription by the Public Pension Agency (PPA). The individual allocation portion of the IPO was 23 times oversubscribed as of the close of the subscription period on 2 November 2014. The PPA fully subscribed to the shares allocated to it. The IPO is the largest equity offering ever in Saudi Arabia and in the Arab world, and is also the second largest IPO globally so far this year. PIF retained a 44.9 percent stake in NCB after listing on the Tadawul, which took place on 12 November 2014. NCB is currently the largest bank in the Kingdom of Saudi Arabia both in terms of customers' deposits, total assets and operational revenue. GIB Capital and HSBC Saudi Arabia were the financial advisers and lead managers. Latham & Watkins partners **Harj Rai** and **Andrew Tarbuck,** with support from partners **Salman Al-Sudairi, Craig Nethercott, Sami Al-Louzi** and **Scott Ballenger,** led the transaction.

VIETNAM

Clifford Chance has advised **Deutsche Bank, HSBC** and **Standard Chartered** as the joint lead managers in respect of the Socialist Republic of Vietnam's US$1 billion 4.8 percent 10-year bond issuance. The issuance was done in conjunction with a cash tender offer for outstanding bonds with an option to switch into the new issue or tender for cash on notes due 2016 and 2020. Partner **Crawford Brickley** led the transaction.

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Head of Legal and Compliance
Multinational Corporation
12+ Years PQE

This key role will provide operational legal support to management, supervise the Company's corporate governance and compliance as well as provide legal support on mergers and acquisition activities. APAC (including China) experience is required plus fluency in English, Cantonese and Mandarin. Ref: 501343

Team Leader Professional Support Lawyer (PSL)
International Law Firm
5+ Years PQE

A corporate or commercial lawyer is sought to manage and supervise the Asia knowledge management team of this prestigious international law firm. This is a regional leadership role. Hong Kong qualified lawyers preferred with strong Hong Kong corporate or commercial exposure. PSL experience is advantageous. Ref: 501349

Senior Litigator
Financial Services Litigation
15+ Years PQE

A senior litigator is sought to handle litigation matters relating to financial services products (including structured products, Forex and derivatives). You should be admitted in Hong Kong and be familiar with the Securities and Futures Ordinance and other financial related regulations. Fluency in English and Chinese is required. Ref: 501334

Corporate M&A Associate
International Law Firm
4-5 Years PQE

A major US law firm is seeking an associate to join their leading M&A practice. Applicants should be Hong Kong qualified, possess a strong track record in large cross-border M&A transactions with international law firms, and be a confident and fluent speaker of Mandarin and English. IPO candidates with some M&A experience are welcome to apply. Ref: 501338

Construction Lawyer
Leading Conglomerate
6+ Years PQE

This leading corporation is looking for an additional lawyer for their sizeable legal team. You will provide legal support to international construction and other projects, covering both contentious and non-contentious matters. You must be Hong Kong qualified. Fluency in spoken and drafting is required in both English and Chinese. Ref: 501332

Funds Associate
International Law Firm
3-5 Years PQE

An opportunity has arisen for a dynamic funds lawyer to join this global law firm. Applicants should be qualified in a commonwealth jurisdiction and possess strong experience in advising on the formation and operation of a variety of funds. Fluent English language skills is a prerequisite, business-level Mandarin (written and spoken) is a definite advantage. Ref: 501335

For a confidential discussion regarding career opportunities, please contact:

Annie Tang on (852) 2810 9077
annie.tang@staranise.com.hk

Chris Tang on (852) 2810 9078
chris.tang@staranise.com.hk

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EVENT REPORT

Abu Dhabi In-House Congress

On November12, 2014, the In-House Community congregated around 100 of Abu Dhabi's leading in-house lawyers, compliance professionals and senior business executives for our fifth annual event in the jurisdiction. The congress, held at the Hilton Abu Dhabi, commenced with welcoming remarks from His Excellency, Dr Hadef Al Dhaheri, former Minister of Justice. Dr Hadef was followed by an 'Overview of EU and US sanctions', courtesy of White & Case's Richard King.

Subsequently, the event's plenary session 'Changing Lead into Gold: the Transformative Role of Legal Counsel in UAE' began, featuring the thoughts of James D. Weier, General Counsel & Board Secretary, Abu Dhabi Airports Company PJSC; Khaled Sifri, Chief Executive Officer, Emirates Investment Bank PSJC; Dr Faraj Ahnish, Managing Partner, Hadef & Partners; Richard King, Counsel, White & Case; and the session's moderator, the In-House Community's Co-Director Patrick Dransfield.

The session touched on issues such as the legal cost/value conundrum, how to improve the region's commercial landscape, risk management and UAE outbound, as well as delving into new ways of working.

More sessions then ensued. The morning gave guests the opportunity to choose between 'UAE Toolkit: Tips and trends: Real Property Rights under UAE Law; Top 5 tips for Commercial Contracts; and Legislative update' and 'How to Conduct an Effective Internal Investigation', which were hosted by Hadef & Partners and Kroll, respectively.

"The session options are great and the topics are very relevant to my role"

In-House Congress Abu Dhabi delegate

The afternoon involved another two workshops, namely Clyde & Co's 'Islamic Finance – Market Insights and Structures' and Reed Smith's 'Regional M&A – A Discussion on Inbound and Outbound Trends'.

As always, the In-House Community and ASIAN-MENA COUNSEL would like to thank our supporters for their assistance in making this event yet another success, namely co-hosts Clyde & Co, Hadef & Partners, Kroll, Reed Smith and White & Case, all of whom deserve to share in the credit.

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

Dr Faraj Ahnish
Managing Partner
Hadef & Partners

Yaser Dajani
Managing Director, Investigations & Disputes
Kroll

Richard King
Counsel
White & Case

Khaled Sifri
Chief Executive Officer
Emirates Investment Bank pjsc

Jade Araoui
Senior Legal Consultant
Hadef & Partners

Patrick Dransfield
Publishing Director
ASIAN-MENA COUNSEL
and Co-Director
The In-House Community

Donald Moore
Partner
Reed Smith

Greg Sweeting
Chief Legal Officer
Media Zone Authority and twofour54

Richard Blair
Group Head of Legal and Compliance
Gulftainer Company Limited

Adil Hussain
Partner and Global Head of Islamic Finance
Clyde & Co

Basil Siddiqi
Executive Partner
Hadef & Partners

James D. Weier
General Counsel & Board Secretary
Abu Dhabi Airports Company PJSC

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TAX/PRIVATE CLIENT · SINGAPORE

This international bank in Singapore seeks a mid to senior level lawyer to advise the wealth planning team in Asia. You should have a strong tax advisory background (in Asia) and preferably exposure to trusts related matters, although a tax background is more important.

Ref: 198341

REGULATORY COUNSEL · SINGAPORE

Global financial services provider seeks an experienced regulatory lawyer to take up this newly created role in Singapore. The role covers Asia but you must have a strong overview of the Singapore regulatory framework, especially in relation to financial market infrastructure.

Ref: 199251

SHIPPING · SINGAPORE

A corporation serving the marine, offshore energy and gas industries seeks a mid to senior level lawyer with at least 8 years' experience in the marine industry. This role covers the Asian region and will involve handling complex agreements related to the industry.

Ref: 199441

TECHNOLOGY · SINGAPORE

Newly created position with a leading technology company for a Legal Counsel to handle the Greater China region. Candidates should have at least 3-5 years of experience and ideally have good Mandarin proficiency.

Ref: 199411

SENIOR LEGAL COUNSEL · NEW YORK

Chinese investment company seeks an experienced lawyer in New York. The role will monitor and oversee the legal procedures of all business projects including corporate, M&A etc. Mandarin language skills would be advantageous.

Ref: 199210

SENIOR LEGAL COUNSEL · SHANGHAI/BEIJING

Fortune 500 company is seeking a Legal Counsel with solid experience in the Greater China region. The successful candidate should work with a leading international/domestic law firm and is familiar with pharmaceutical/healthcare/chemical industries.

Ref: 199220

ASSET MANAGEMENT/FUNDS · HONG KONG

Asset management firm seeking a Legal Counsel to work hand in hand with the business providing legal & regulatory advice on funds authorisation and distribution. A commercially focused role working closely with senior management.

Ref: 198970

IBD LEGAL · HONG KONG

Bulge bracket bank seeks a lawyer to cover its APAC investment banking operations. Solid transactional experinece with DCM, M&A and/or ECM required from a leading law firm in this field. Excellent opportunity to work closely with the buisness.

Ref: 199000

For **Banking and Finance roles** in Hong Kong please contact Hayden Gordine on **+852 2973 6333** or at **haydengordine@taylorroot.com**

For **Banking and Finance roles** in Singapore please contact Helen Howard on **+65 6420 0500** or **helenhoward@taylorroot.com**

For **Commerce & Industry roles** in China please contact Heidy Zhou on **+8621 5117 5879** or at **zhoujie@taylorroot.com**

For **Commerce & Industry roles** in Hong Kong please contact Charmaine Chan on **+852 2973 6333** or at **charmainechan@taylorroot.com**

For **Commerce & Industry roles** in Singapore please contact Joan Oh or Gladys Chew on **+65 6420 0500** or at **joanoh@taylorroot.com** / **gladyschew@taylorroot.com**

Please note our advertisements use PQE purely as a guide. However, we are happy to consider applications from all candidates who are able to demonstrate the skills necessary to fulfil the role.

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EVENT REPORT

Japan In-House Community Symposium

In-House Community recenty held its 11th annual event in Japan on November 27, 2014 at the Hyatt Regency Tokyo. The symposium was attended by a select group of Japan's leading lawyers who, were welcomed by remarks from In-House Community's Co-Director Patrick Dransfield.

Two workshops followed, namely Davis Polk & Wardell's on 'Global Enforcement and Investment Risk in Asia' and Freshfields Bruckhaus Deringer's entitled 'Acquisitions in South East Asia – Keys to Success and Case Studies'.

There followed a high-level panel discussion entitled 'Changing Lead into Gold: the Transformative Role of Legal Counsel', covering the themes of what really matters to General Counsel, solving the cost/value conundrum, risk management and new ways of working with regard to collaboration and competition. This talk was between Asia-Pacific EY Law Partner Evangelos Apostolou; Managing Partner at EY Law Co. Yutaka Kitamura; Catherine O'Connell, Division Counsel, Micro Products Division and Regional Counsel, Asia Pacific North, Molex Japan; and moderator Patrick Dransfield, Co-Director of the In-House Community.

The gathering closed with seasonal community drinks and canapés. We would like to offer our gratitude to co-hosts Davis Polk, Freshfields Bruckhaus Deringer and EY, and endorsers Japan In-House Counsel Network, without whom the event would not have been such a success.

"Very informative .... as always, great organisation"

In-House Congress Tokyo delegate

Japan In-House Community Symposium Tokyo 2014
A sister event to the In-House Congress

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

Evangelos Apostolou
Asia-Pacific EY Law Partner
Ernst & Young Solutions LLP

Tony Foster
Partner, Hanoi, Vietnam
Freshfields Bruckhaus Deringer

Junzaburo Kiuchi
Partner, Tokyo, Japan
Freshfields Bruckhaus Deringer

Catherine O'Connell
Division Counsel, Micro Products Division and Regional Counsel, Asia Pacific North
Molex Japan LLC

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

Yutaka Kitamura
Managing Partner
EY Law Co.

Mörk Murdock
Counsel
Davis Polk & Wardell LLP

James Wadham
Partner
Davis Polk & Wardell LLP

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GENERAL COUNSEL — Hong Kong — 12+ PQE

A well-known market leading sector business in Hong Kong seeks a senior counsel with experience managing large scale and complex contracts to appoint as its General Counsel. The ability to operate at board level is critical for this role as well as the ability to manage a small team. (IHC 11413)

LEGAL COUNSEL/ COMPANY SECRETARY — Hong Kong — 12+ PQE

A well-known Hong Kong listed Group seeks a legal counsel and company secretary to lead the legal and company secretarial teams. Solid and substantive legal and compliance experience is required. Working legal and compliance knowledge in SFC regulations, Listing Rules and Companies Ordinances is critical. (IHC 11464)

SENIOR COUNSEL — Singapore — 10-12 PQE

A leading financial institution is looking for a senior banking lawyer to join their established legal team. This lawyer will be responsible for advising the business on legal matters relating to their cash management and liquidity management business. The ideal candidate should be a Singapore qualified lawyer with experience supporting the transactional banking business. (IHC 11459)

LEGAL COUNSEL — Malaysia — 10-12 PQE

A global property development company is looking to hire senior lawyer to support their expanding business. This lawyer will advise on all legal matters relating to corporate, property funds or investment management in the real estate industry. Candidates should be a Malaysian qualified with experience gained from private practice or as an in-house counsel. (IHC 10773)

SENIOR COUNSEL — Singapore — 8-12 PQE

A major investment firm with global interests across various sectors is looking for a senior lawyer. This lawyer will be involved in a broad range of high profile corporate transactions including private and public M&A, LBOs and capital raising work. Candidates with strong transactional cross-borders M&A experience will be preferred. (IHC 10455)

SENIOR LEGAL COUNSEL — Shanghai — 8+ PQE

A well-known MNC in Shanghai seeks a senior legal counsel to support the legal matters for itsR&D Centre in China. The candidate also needs to manage all litigation/arbitration in China and oversee external lawyers. Fluency in English and Mandarin is essential. (IHC 11292)

SENIOR LEGAL COUNSEL — Shanghai — 8+ PQE

A leading European pharma group is looking for a senior legal counsel. This opportunity carries with it the potential for advancement into a leadership role. A JD degree is required, along with 8+ years of legal experience with at least 5 years gained at an international law firm. Pharma experience and regional/overseas overview is advantageous. (IHC 11455)

REGIONAL COUNSEL — Hong Kong — 6-10 PQE

Leading commercial enterprise with significant interests around the region has a vacancy for a senior corporate/commercial lawyer to handle a mix of transactional work and advise on operational issues. China experience is very important as is fluency in both Cantonese and Mandarin. (IHC 10425)

LEGAL COUNSEL — Shanghai — 6+ PQE

A well-known automotive company seeks a legal counsel to support the sales team relevant to all legal matters in China. The successful candidate will be a qualified lawyer with solid corporate experience from leading a law firm or MNC. Experience in distribution is highly preferred. (IHC 11232)

FMCG — Hong Kong — 5-10 PQE

UK listed company with significant growth plans for Asia Pac has headcount to appoint its first in-house counsel in Hong Kong to support the regional management team that covers Hong Kong, China, Taiwan and Australia. Work will involve negotiating a range of commercial agreements and providing general in-house advice. (IHC 11472)

INSURANCE — Hong Kong — 5-10 PQE

Global insurer is making a first time appointment of in-house counsel to support its growth plans in Hong Kong, Macau, Taiwan and China. You will need a background in dealing with cross-border matters and be able to advise on regulatory issues affecting the business. Fluency in Mandarin is critical. (IHC 11471)

LEGAL COUNSEL — Hong Kong — 4-8 PQE

Global investment bank seeks a corporate lawyer to provide transactional support to ECM and M&A across Asia Pacific region. The successful candidate will be a lawyer with solid experience in corporate finance transactions gained from a leading law firm. Fluency in both spoken and written Chinese is required. The platform offers a strong franchise and excellent team culture. (IHC 11443)

LEGAL COUNSEL — Hong Kong — 3-6 PQE

Well-known international hotel group is seeking a PRC lawyer (Mandarin speaker) to cover the Mainland China market. This role will be based in Hong Kong. Candidates should have a minimum of 3 years of experience from international law firm. Project experience in property industry would be very helpful. (IHC 11353)

LEGAL COUNSEL — Hong Kong — 2-5 PQE

Leading investment bank is looking to appoint a legal counsel to provide legal and risk management advice to the investment banking division across Asia Pacific region. Excellent opportunity to gain exposure in a wide range of transactions in capital markets (ECM & DCM) and M&A to other corporate finance transactions. Chinese language is not required and excellent remuneration is on offer. (IHC 11469)

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EVENT REPORT

Delhi In-House Congress

2014 IN-HOUSE Congress DELHI

The In-House Community held its Delhi event on December 4, 2014. The 50 guests were welcomed by Asian mena Counsel's Publishing Director Patrick Dransfield in the Desire Banquet Hall of Hotel Le Méridien, New Delhi, after which, the event's plenary session got under way.

During the plenary session 'Changing Lead into Gold: the Transformative Role of Legal Counsel' attendees heard the thoughts of Akhil Prasad, Country Counsel – India, Boeing International Corporation; Karthik Mahalingam, Director – Legal, Omidyar Network India Advisors Private Limited; and Mustafa Motiwala, Partner, Clasis Law, moderated by Dransfield. Topics covered included the legal community in India's role in improving the commercial landscape; methods of handling disputes; ways to balance budgets and resources; exploring new paradigms in working relationships with regard to collaboration, competition and risk; and assessment of risk and how external counsel can help.

Afterwards, delegates attended Clasis Law and Clyde & Co's workshop entitled 'International Arbitration and Multi-jurisdictional Disputes; Latest Developments and Perspectives from China, India and Singapore'. During the second session, attendees heard from Kroll about 'The Investigators Perspective: Why and How to Conduct Forensic Reviews Post-investment. Red flags you should be aware of', which was followed by closing remarks and a prize draw.

"A meticulous and excellent event in terms of knowledge and information"

In-House Congress Delhi delegate

As always, we would like to thank our co-hosts, namely Clasis Law, Clyde & Co and Kroll, as well as everyone who was involved in the plenary for their insight and support.

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

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

Karthik Mahalingam
Director – Legal
Omidyar Network India Advisors Private Limited

Prakash Pillai
Partner
Clyde & Co

Patrick Zheng
Partner
Clyde & Co

Reshmi Khurana
Managing Director, India Operations
Kroll

Mustafa Motiwala
Partner
Clasis Law

Akhil Prasad
Country Counsel – India
Boeing International Corporation

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In-house

Head of Legal & Company Secretary | 15+ yrs pqe | HK REF:12502/AC

Tremendous career opportunity for a seasoned, proactive lawyer with at least 15 years' PQE to join this prestigious Hong Kong-listed company as the Head of Legal and Company Secretary based in Hong Kong. You will manage day-to-day operations and corporate governance matters plus providing a full spectrum of legal and compliance advice to the group company and its subsidiaries. You must be Hong Kong qualified with extensive commercial experience gleaned from a reputable law firm and a Hong Kong-listed company. Fluent English, Cantonese and Mandarin skills are essential.

General Counsel | 7-10 yrs pqe | Hong Kong REF: 12659AC

One of the Asia's largest media corporations is seeking a lawyer with 7-10 years' PQE in entertainment law to join its Hong Kong office. You will primarily be responsible for providing legal advice and support on corporate governance and compliance matters relating to the listing rules of the Hong Kong Stock Exchange. You must have experience in film production or music distribution and be familiar with the bespoke business structure. You will also manage the intellectual property portfolio and conduct enforcement actions. A keen understanding of business and accounting concepts is important. You will ideally be Hong Kong or Commonwealth qualified and fluent in written and spoken English and Mandarin.

Head of Legal | 6-10 yrs pqe | Jakarta REF: 12112/AC

A bulge-bracket US investment bank is urgently seeking a lawyer with a banking law background as the Head of Legal for Indonesia to be based in Jakarta. This is a senior leadership and high profile role responsible for supporting the bank in all legal and compliance matters in Indonesia. You will facilitate, develop and promote relationships between the bank and all relevant regulators, as well as key members of the business. You will work closely with the regional legal teams and leverage off subject experts based in the regional hubs. You must be Indonesian qualified with experience in banking/lending/finance matters, working with multinational companies.

Compliance & Investigation Attorney | 6+yrs pqe | Shanghai REF:12672/AC

This Fortune 500 industrial engineering corporation is seeking an experienced compliance and investigation attorney for its Shanghai office. You will cover case investigations and support all compliance initiatives in China. You ideally will be PRC qualified with at least 6 years' PQE in case investigation, compliance monitoring, due diligence and branch inspection with industrial or engineering companies. A postgraduate science degree is highly desirable. Fluency in English and Mandarin is essential. Some travel within the North Asia region is required.

Head of AML Compliance | 5+ yrs pqe | Hong Kong REF: 12679/AC

Lead the anti-money laundering team at one of the biggest regional banks in Asia. You will be based in Hong Kong and be responsible for formulating AML policies and procedures, providing legal advice to business units, conducting compliance training, and monitoring the AML officers. You ideally have a law or an accounting degree with at least 5 years' solid experience in AML compliance. Knowledge of banking systems and major banking operations is essential. Fluency in English and Chinese is mandatory.

Legal Counsel | 5-8 yrs pqe | Singapore REF: 12661/AC

This investment group is seeking an experienced commercial lawyer to join its Singapore company to support its operations in ASEAN and Africa. You will be responsible for providing advice and support to the group on all legal matters with a focus on contract management, M&A transactions and corporate secretarial work. You ideally be Singapore-qualified with 5-8 years' PQE gained in MNCs. You will be a team player and be able to work under pressure. An excellent command of English is mandatory; fluent Chinese and/or French is highly desirable.

Private Practice

Senior Associate | 6-10 yrs pqe | Hong Kong EF: 12655/AC

This international law firm with a strong presence in Asia is seeking a senior corporate associate/of counsel with at least 6 years' PQE for its Hong Kong office. You will have the opportunity to work in a prestigious energy/oil & gas-focused team and oversee junior associates across the Asia network. Ideally, you will be Commonwealth qualified with solid regional corporate experience in the energy sector.

Patent Attorney | 6-8 yrs pqe | Shanghai REF: 12663/AC

This prestigious international law firm with a strong presence in PRC is seeking an experienced patent lawyer, ideally with an electrical/mechanics background, to join its expanding IP practice group based in Shanghai. You must be both a registered patent agent and a qualified lawyer in China with 6-8 years' PQE in patent prosecution, patent enforcement and IP litigation. Overseas education or working experience in an international law firm is highly desirable. Fluent written and verbal English and Mandarin are essential.

Corporate Associate | 3-5 yrs pqe | Beijing REF: 12665/AC

Top-tier UK law firm with strong presence in Asia now has an opportunity for a junior-mid level corporate lawyer to join its Beijing office. This role is a unique chance to work with the most notable multinational companies on PE and M&A projects. Ideally, you are PRC-qualified and hold 3-5 years' relevant experience gained at a leading international or local law firm in China. Oversea education background and qualification would be a plus but not necessary. Fluency in written and spoken English is essential.

TMT Associate | 3-5 yrs pqe | Singapore REF: 12654/AC

This leading UK law firm is seeking an ambitious and committed lawyer with a strong general corporate background for its Singapore office. You will work as part of a dynamic TMT team to cover Asia Pacific. UK/Australia qualified lawyers with 3-5 years' PQE in corporate transactions with a top-tier international or local law firm in Singapore are sought. Prior experience in technology, media and telecommunications is essential. Excellent academics and an enthusiastic, team-oriented approach are essential.

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Opportunities of the Month …

mycareerinlaw.com

Head of Legal, East-Asia Pacific
PQE: 8+ yrs, Singapore

A leading European MNC in the construction and infrastructure industry is seeking a senior lawyer to become Head of Legal for East Asia Pacific. The successful candidate will support the sales teams with all tender activities including drafting and negotiating contracts and advising business units on claims management, dispute settlement, and other legal issues, as well as advise on compliance and regulatory matters. Interested candidates must have a strong construction or infrastructure industry background. Experience dealing with government-related tenders and contracts, as well as fluency in either Mandarin or Bahasa Indonesia would be advantageous. [Ref.: A37118]

Contact: Shaan Seth
Email: resume@legallabs.com
Tel: (65) 6236 0166

Legal Counsel
PQE: 4–8 yrs, Hong Kong

A global insurance company is looking to appoint legal counsel in Hong Kong due to the rapid business expansion in Asia. As a sole counsel in Asia, you will work directly with the business leaders in the region, providing legal support to the full spectrum of the business. The ideal candidate will have solid commercial/corporate background with regulatory knowledge. [Ref.: IHC 11471]

Contact: Claire Park
Email: c.park@alsrecruit.com
Tel: (852) 2920 9134

Senior Legal Manager Major logistics related company
PQE: 5-10 yrs, Hong Kong

A private company with a long history in the logistics industry is seeking an experienced in-house Legal Counsel to be responsible for all legal and corporate governance matters pertaining to the operation of the business including advising on family trust structures, transactions and investments, and reviewing contract agreements.

The successful candidate will be a Hong Kong qualified lawyer with 5–10 years' relevant post-qualification experience in reputable law firms and/or companies. Candidates must have excellent English and Cantonese language skills (written and spoken) and the ability to communicate with and advise senior executives confidently. The ability to speak and write Mandarin would be an advantage. [Ref.: 501364]

Contact: Michael Kwan
Email: michael.kwan@staranise.com.hk
Tel: (852) 3462 2745

General Counsel
PQE: 7-10 yrs, Hong Kong

One of Asia's largest media corporations is seeking a senior lawyer with 7-10 years' PQE and experience in entertainment law. You will primarily be responsible for providing legal advice and support on corporate governance and compliance matters with the listing rules of the Hong Kong Stock Exchange. You must have experience in film production and music distribution, and you will advise on bespoke business structure. You will also manage IP and conduct enforcement actions. A keen understanding of business and accounting concepts is important. You will ideally be Hong Kong or Commonwealth qualified. Fluency in English and Mandarin, written and spoken, are essential. [Ref.: 12659/AC]

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

Private Wealth Management Lawyer
PQE: 5+ yrs, Investment Bank, Hong Kong

A top tier investment bank is looking to hire a mid to senior level lawyer to join their private wealth management team for APAC. It is a broad role covering a wide range of wealth management products and candidates who have either a regulatory, funds or derivatives background are sought. Candidates with a broad banking background, familiar with the SFO, the HKMA and professional investors may also be considered. The ideal candidate will join as a VP or ED. Excellent work environment and competitive remuneration on offer available. [Ref.: AC5073]

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

Legal Director SE Asia
PQE: 8+ yrs, Singapore

A multinational leader in the property and property services industry with regional headquarters in Singapore is now seeking to hire a Legal Director for the SE Asia region with at least 8 years' experience, part of which will ideally have been in the property industry. Your role will require the management and mentoring of junior lawyers, as well as dealing with complex contracts and troubleshooting on legal issues for the APAC region. [Ref.: RC/889888]

Contact: Rebecca Collins
Email: rebeccacollins@puresearch.com
Tel: (65) 6809 5082

Legal Counsel, US Organisation
PQE: 4-8 yrs, Singapore

A US organisation in the Maritime sector is looking for a mid-level lawyer to join their Singapore office covering the Asia Pacific region. Reporting to the Associate General Counsel, based in the United States, this lawyer is expected to provide legal expertise and assistance to the entire organisation within the region, including but not limited to, providing counsel on aspects of government relationships, managing external counsel and advising on the legal aspects of all agreements. This role also involves supervision of the staff that supports the legal function.

Candidates should have experience negotiating a variety of contracts. Maritime experience is ideal but not necessary. The successful candidate will ideally have lived or worked overseas, with a strong international perspective. You should also be quick thinking and highly commercial in your approach. You can expect frequent travel to countries in the region and a very dynamic and fast-paced work environment. [Ref.: 199441]

Contact: Joan Oh
Email: joanoh@taylorroot.com
Tel: (65) 6420 0504

Kroll

By Ramon Ghosh,
Associate Managing Director

M&A Reports: Assessing red flags in new markets

Asia-Pacific continues to be an attractive destination for investment, and M&A activity reached a record $367.7 billion during the first half of 2014,[1] with a steady stream of business acquisitions across the region. While there have been numerous M&A success stories, there is also increasing competition to acquire good assets at commercial prices, often in opaque markets where the quality of information can vary greatly and frequently be limited. For example, we often see businesses which have merged or acquired inorganically and are left with legacy issues. Coupled with an increasingly international environment, this can create significant risk. Fraud and corruption risks are often viewed simply as being regulatory issues, but there is also the question of how they will affect a company's reputation and ability to further expand its business into new markets. While these risks can be assessed in a number of ways, a picture of regional cultural and political dynamics is vital to help understand what may be an unfamiliar operating market.

Limited disclosures

When assessing target company information, accounting standards can vary greatly across Asia-Pacific and often, legal disclosures may be limited which provide the buyer with incomplete data points upon which to make a decision. The available data may reveal no major issues in the subject entity, which doesn't necessarily mean a green flag, but rather that there are no obvious red flags. This can lead to a series of deal and compliance related challenges – how can you predict the tone at the top for the purposes of your global compliance program and, from a business perspective, what is true financial health of the target business?

One of the keys to understanding whether a red flag exists is ensuring you have a solid information base and that critical elements of the process are considered laterally and not in isolation. This means putting together your financial, legal, reputational and technical diligence processes and identifying gaps, but equally considering these gaps in the context of the local environment. For example, when looking at the financial health of the business, a projected revenue growth plan out of line with industry standards and not backed up with adequate data can be a red flag. As well as enquiring with the company and auditors, this is a red flag which can be independently tested by obtaining external evidence and benchmarking within the local market.

There are some red flags which cannot be ignored – a promoter of a family-run company diverting funds or cash generated away from the business which could in turn be used for corrupt or unethical purposes, a major issue under FCPA and UKBA regulations. Understanding the real status of the business from those operating in it is often key to assessing the risks, which includes supply chain diligence and being sure that no conflicts of interest exist around functions such as procurement. Likewise, understanding whether compliance procedures exist in reality and whether they are enforced is important.

Understanding the local environment

Good deals can falter through a lack of clarity around the local environment and how business is done. In numerous jurisdictions across Asia-Pacific, information cannot be taken at face value. Key points to consider are:

- Ensuring you have detailed data from legal, operational and financial due diligence. Information gaps cannot only be bridged from requests to auditors and lawyers, but through objective intelligence gathering to assist with your transaction negotiations. This should also include considering the context of the local environment, how business is done and benchmarking the experience of previous foreign investors;
- How you will implement your global compliance program in the region. This will often involve a review of supply chain and how third party vendors interact with the target company in the local market. In light of this, consider your strategy on implementing training, monitoring, policies and procedures in line with regulatory guidelines on bribery and corruption.
- It is critical to understand who the real stakeholders are of a target business and, in turn, who their associates are – details that will generally never show up by way of formal disclosure. This can be reviewed from targeted enquiries in the right networks and communities.

Collating and examining results, even if adverse, can lead to productive conversations with local management to understand how a business is truly operated. Rather than relying on conjecture, the facts should speak for themselves.

Endnote:

1. Dealogic, Wall Street Journal

rghosh@kroll.com
www.kroll.com

The thing about … David Doran

Founding Partner of DFDL David Doran gives his approach to law, paying close attention to how he has managed to create strong relationships and practices in emerging markets. He reveals what in his view is the secret to getting client satisfaction and how this aspiration to please has been a key contributing factor to his success within the ASEAN region.

ASIAN-MENA COUNSEL: **David, first of all, congratulations on your firm's 20th anniversary. Could you give us some insight into the beginning of the firm and its development over the past 20 years?**

David Doran: Thank you. It has indeed been an enjoyable and fulfilling 20 years both personally and for DFDL. The firm was founded by four young lawyers who all shared a strong desire to make a meaningful contribution to the development of the Mekong region through the practice of law and the promotion of the rule of law. Three of us had deep historic ties to the region, and so were returning to participate in the pivotal changes taking place here during the early 1990s. I was born in Thailand and had exposure to Cambodia, the Lao PDR and Vietnam from a young age. One of our partners was a Lao-American woman whose father coordinated with various NGOs in the Lao PDR throughout the height of the Vietnam war, and our Vietnamese partner almost died on a refugee boat in the of the Gulf of Siam fleeing that conflict. In this respect, the resilience of the region as a whole contributed to our mutual belief that the Mekong countries were poised for strong growth, and we all wanted to return to participate in their development.

In September 1994, we descended upon Vientiane to devise a strategy to rapidly open offices in each country of the Mekong region (even including an office in Kunming that still has yet to materialise). Our multi-tiered development focus was to provide ethical and accurate, rule of law-based local legal advice to companies investing in the region, while participating heavily in legal reform measures. We believed this to be the most effective way we could provide a positive and long-lasting contribution. Much of the legal documentation we developed as first movers continues to be used as precedent today.

We also concentrated our efforts on growing the local legal community by giving our local lawyers a solid foundation in the ethical practice of law in a highly motivated and driven professional legal environment. Many of these lawyers have now gone out and set up their own thriving practices – something which gives me great pride.

AMC: Where do you hope the firm will be in 10 years' time?

DD: We have already evolved from being a Mekong Region firm to an ASEAN firm. But above all, we see ourselves as an international frontier markets firm – with certain key areas of expertise, such as tax, M&A and energy (hydropower and other electricity generation). Following this trajectory, we hope to expand into the frontier markets of adjacent regions over the next ten years, applying a similar, but evolved strategy, based on the lessons learned here in the ASEAN region.

AMC: DFDL was founded in the Lao PDR and expanded across Southeast Asia from there. What are the benefits of working in these emerging markets?

DD: I touched on this in my first response, but again I would say that the most fulfilling benefit is the personal and corporate satisfaction that comes from seeing the tangible positive impact of the firm's efforts on development. There is the satisfaction of watching your employees learn and grow alongside the development of the local legal community, and there is the satisfaction of seeing your team's efforts in the revision of laws and legal systems bear tangible fruit. But above all, there is the satisfaction of seeing your clients enjoy a long-term successful investment in the region, partially due to your efforts From a long-term business perspective, emerging markets do become tigers and eventually graduate to the 'developed world', so there is a very big benefit in establishing a presence on the ground floor to ride the growth curve. However, this benefit involves considerable risk. Through our experience having weathered coups, riots and economic implosions, to name a few, we can attest that emerging markets are certainly more volatile than those in the 'developed' world. So it is necessary for one to have a tough constitution and good risk management systems in place to ride the roller coaster effectively.

AMC: What are the particular challenges DFDL faces in being continuously up-to-date with regard to innovations in international law and practice?

"From a long-term business perspective, emerging markets do become tigers and eventually graduate to the 'developed world', so there is a very big benefit in establishing a presence on the ground floor to ride the growth curve"

Photo: Wendy Chan

"We would never want to say that we are opening a new office in a new country to assist clients investing there, because for DFDL, this would mean we are five years too late! Our goal is to welcome our clients to a country, with local expertise and capacity, not fly in with or after them"

DD: Being up-to-date is not nearly as challenging as implementing up-to-date practices and standards in our frontier jurisdictions. We have many sources to draw upon in keeping up-to-date, such as our best friend relationships with a number of leading international law firms, through which we are provided information on such innovations. We frequently work with these firms as co-counsel on projects throughout the region and acquire knowledge through these relationships. And of course, there are the countless seminars and other third party sources. The real challenge is applying these innovations effectively in each country where we operate. There may be opposition to change from the counterparty, their legal counsel, and/or the government. The process takes time, cannot be rushed and requires updated education on behalf of all stakeholders and their representatives.

AMC: You have seen the firm grow from its grassroots to one that is present in 11 jurisdictions. How have you managed this growth? Is there a law firm out there that you took as your model?

DD: It has not been easy. We haven't really followed any existing model as far as I am aware. In fact, our strategy was the opposite of that pursued by many of our competitors in the region. Initially, we used a reverse Hub and Spoke strategy – as first movers, we captured relationships, top local legal talent and expertise before others entered into our 'spoke' markets. We were then able to leverage our knowledge base and relationships to enter into the more competitive 'hub' markets of the region like Thailand and Singapore. Our second strategy was and continues to be to enter a market before our clients invest, which is quite the opposite of the more typical strategy of following one's clients into the new country. We would never want to say that we are opening a new office in a new country to assist clients investing there, because for DFDL, this would mean we are five years too late! Our goal is to welcome our clients to a country, with local expertise and capacity, not fly in with or after them.

We have faced three main hurdles while employing this growth strategy – financial resources, available talent and systems implementation. High cost of debt financing means our growth has been mostly financed by equity. We've also had problems keeping good talent long term, both local and foreign, not because they don't want to work for us, but because, as first movers, we are frequently the first source of recruitment for our competitors, clients and international institutions. Also, as you can imagine, it is not easy to convince a top-quality foreign lawyer to take up a long-term career in some of the countries where we operate. We decided to accept this problem as part of the fabric of our emerging markets business model and built in a strong integration and succession program to bring new lawyers on board and capture their knowledge before they depart. That being said, our continued expansion has certainly helped to keep our junior expat lawyers in our firm for increasingly longer periods; now having the opportunity to rotate around the ASEAN region with DFDL.

AMC: How is DFDL structured and how does this benefit clients?

DD: DFDL has a corporate model, with a board and non-lawyer management. We believe this allows us to adapt to the rapidly changing legal, political and economic environment of our frontier markets quickly and effectively while expanding into new markets and new practice areas.

AMC: Professor Richard Susskind maintains that we are "on the brink of fundamental change in the world of law". Would you agree that this is true across Asia? What are the key drivers of this change?

DD: In my view, the change is more like one of accelerated evolution than being on the brink of any fundamental shift. This evolution arguably began with the advent of the plain English movement just before I started law school. Susskind's theory is not entirely relevant to our emerging markets practice in that his theory is based on the assumption that most aspects of the legal profession are routine, or can be made routine, and therefore be provided with greater cost and process efficiency. In frontier markets, very little is routine, and cuts against this assumption on all fronts. From employees, to government practice, to court implementation, police enforcement, law, regulations, legal documents – all are in flux. But of course as a legal practice, we are trying to carve out those areas that are routine and apply Susskind's efficiency theories to them.

AMC: On Training: our belief is the aim of training is to produce lawyers who can be at the top of their game, where knowledge of the law and a profound grasp of professional ethics and integrity, as well as the necessary commercial acumen to be your own boss, are embedded in the DNA. Do you subscribe to the above and how does DFDL attempt to accomplish the above? Is operating in the challenging business environment of Asia a particular challenge?

DD: Yes I do. Our associates are required to take on a great deal of responsibility immediately. As I mentioned earlier, one of the core pillars of our growth strategy is to develop our local lawyers so they can manage cases and client files to provide high level, ethical and accurate legal advice closely tailored to the clients' needs. Most of such training is on-the-job training, but we are always trying to find additional ways to increase our lawyer's skillsets and improve our knowledge base in a cost-sensitive environment.

AMC: What keeps you awake at night?

DD: The issue of attracting and retaining lawyers mentioned earlier used to keep me awake quite often, as did the rather extreme business cycles we have experienced regularly. However, now that I and DFDL have embraced both as being an inevitable part of our emerging markets practice, I sleep much better. In fact, I sleep pretty peacefully these days with the confidence that our model is one that is right for the times, as the world continues to shift its focus and investments to the developing world. Of course, we will continue to have increased competition in our markets, but we also have increased business opportunities. We also know that our competition will face the same challenges in developing a long term international legal business in frontier markets outside their home countries that we faced.

AMC: On Fees and Service: what are the various ways that DFDL engages with clients regarding compensation for services rendered? Have you seen a shift in preferred billing arrangements in recent years? Is there one particular 'stand-out deal' where you think the firm made an exceptional contribution?

DD: We have had downward pressure on our fees from the very beginning, with fixed fees and capped fees being a core part of our fee structure from day one. So that is nothing new, but of course we also have many hourly billing relationships. As to a stand-out deal, I am sure each of our partners would have their own list, but a few at the top of my list are the Caltex (Chevron) investments in Cambodia's retail petroleum sector over the years; the Nam Thuen 2 hydro-electrical project in the Lao PDR; and Heineken's production facilities and joint ventures throughout the region.

AMC: What advice would you give an ambitious and intelligent young person interested in pursuing a career in law today?

DD: Look for the gaps, and position yourself to fill them. There are many unique opportunities out there for a driven young lawyer, so you don't need to be over 40 to do something innovative and interesting.

AMC: What is your hinterland (i.e. what are your interests outside of the firm)? How do you control your time so that you can pursue them?

DD: Tennis and Travel – but 'travel' is a bit too trivial. It is the cross-culture experiences that I value most. By being able to make firsthand comparisons between my own perspective and those of the people whom I encounter, I acquire a more diverse understanding of different societies; thereby endlessly altering the lens through which I view the world.

AMC

David D. Doran is a Partner, Chairman and the Founding Partner of DFDL. He has over 20 years' experience as a legal adviser in the Mekong Region in a number of different areas of law. In 1994, he co-founded Dirksen Flipse Doran & Le (DFDL), in Vientiane, Lao PDR. In 1995 he founded DFDL Cambodia, and served as its Managing Director until February, 2003. At that time, he relocated to Bangkok, where he refocused his practice to cover large energy sector projects in the Lao PDR and regional M&A. As the head of DFDL's Regional Energy, Mining and Infrastructure Practice Group, he continues to supervise work in Cambodia, as well as manage various Thai projects. He has special expertise in the energy sector, having represented both sponsors and lenders for major power and energy projects in Cambodia and the Lao PDR. He also has special expertise in M&A in all sectors. Mr Doran is an experienced manager of small and large professional teams. He was born in Thailand and is a Thai national.

Increasing the scale of in-house law

Mike Williamson, who works as Employment Counsel for global insurance broker *Willis,* reveals the hardships he faces working across intercontinental jurisdictions, why one might consider having an in-house lawyer oversee law on a global scale and how he sees law developing in the future. He also advises the next generation on whether to consider a similar career, and states what he feels is necessary for success.

Asian-MENA Counsel: **What are the benefits of having a lawyer oversee law on a global scale?**
Mike Williamson: There are three main benefits, namely: that you can monitor and maintain consistency of the Group's approach to legal issues in each jurisdiction; that you are able to identify any trends in different countries which may cause concern or require further enquiries; and that by channelling all instructions of local lawyers via one source (me) you are able to establish local working relationships with preferred law firms and at the same time control cost.

AMC: **How often do laws within the jurisdictions you cover contradict one another and how do you approach this?**
MW: Unsurprisingly, laws vary widely. As you would expect, there is a degree of consistency within EU Member States, but even there, interpretation of EU law can lead to different results as laws in some countries are interpreted with a greater degree of social policy bias than in others. In other areas, particularly Asia, labour law generally follows an employment 'at will' model, while in Middle Eastern states, there is a high degree of Government involvement in any steps concerning employees. As a result, a global business cannot offer a one size fits all approach and so, when introducing its brand/ethos/values into a country, it has to have a degree of flexibility.

AMC: **Do you believe that the in-house legal profession will incorporate more or less lawyers who focus on a wide scale in the future?**
MW: It's difficult to say. I think it would depend on the in-house model adopted by the company: some have large in-house functions which deal with as much legal work as possible, while others still refer work regularly to a preferred panel of external law firms in different jurisdictions.

AMC: **How do you see technology playing more of a role in in-house law in the future?**
MW: Technology is here to stay, so it is inevitable its use will only increase. If you look back over say, 20 years, there has been a massive increase in the use of electronic mail, web pages and electronic document storage to name but a few things. Also, video-conferencing, skype, facetime etc. brings people around the globe together much more seamlessly. I don't think there will ever be a 'paperless office' as some predicted in the past, but the advancement of technology certainly makes us work smarter.

AMC: **Having experienced law in Asia, Europe and South America, what do you feel each system can learn from each other?**
MW: No system is perfect and laws are often influenced by the political views of the prevailing ruling party. What I have noticed is some countries impose more laws than others which seek to protect the rights of the individual, and this may

"So much more data is being harvested, collated and then analysed to be put to use to provide not only more accuracy on risk (which in turn affects the rates insureds pay) but also for forecasting future potential risk. It is a big area which is only going to grow"

By Mike Williamson, ***Willis Group***

Mike Williamson

"I think it is important to build relationships wherever possible and it does sometimes take time to find the right firm, not only in terms of the expertise and service they provide, but also at the right price. There is always a close control on budgets for legal spend, so value for money is an important (but not the only) driver in choosing external firms"

sometimes influence global companies' decisions on where to invest. By contrast, some countries could perhaps provide greater protection of their citizens from exploitation. Like many things in life, there have to be compromises.

AMC: **Please share with us how you approach external counsel**
MW: I have built relationships with a number of law firms worldwide: some are international firms, others are local ones with an established reputation in labour law. I think it is important to build relationships wherever possible and it does sometimes take time to find the right firm, not only in terms of the expertise and service they provide, but also at the right price. There is always a close control on budgets for legal spend, so value for money is an important (but not the only) driver in choosing external firms.

AMC: **In reference to hourly billing, Richard Susskind said "we will see, in the coming decade, as noted in relation to risk management, more sophisticated mechanisms for aligning the incentives of law firms and their clients". Do you agree with this view and what sort of mechanisms do you foresee coming into play?**
MW: Organisations continually look at ways either to reduce costs or obtain greater value for the money they spend, so it is not surprising that legal services come under scrutiny from time to time. Those organisations which spend a lot on external legal services are more likely to put different proposals to the law firms they use or in any tender process. Equally, law firms that want to attract work from new clients – and retain work with existing ones – are perhaps more likely to present innovative charging mechanisms to attract/retain work. However, in my view, such innovation generally only works for those organisations with larger external legal spend. For those organisations with an established and capable in-house function, alternative pricing mechanisms are likely to be less attractive, and the tried and tested hourly billing model is more likely to be the norm. Or maybe I am just old school and resistant to change!

AMC: **Given how you feel law will develop, what advice would you give to someone starting their career today?**
MW: As with any profession, you have to be committed to it. Some people embark on a law career, but then find it isn't what they thought it would be, so if you don't enjoy it, find something else. The experience and qualification you gain, though, will open doors in many other fields. In insurance, I know many successful people who qualified (and practised) as lawyers but for one reason or another have found their niche in a different field. Law can be a rewarding profession but, if it isn't for you, be confident in your abilities and don't be afraid to change.

AMC: **Can you tell us about the innovations in the insurance industry over recent years?**
MW: I would say the use of 'big data' and the analysis of it by brokers and insurers is the biggest thing. So much more data is being harvested, collated and then analysed to be put to use to provide not only more accuracy on risk (which in turn affects the rates insureds pay) but also for forecasting future potential risk. It is a big area which is only going to grow.

Also, the increase in online sales and use of apps along with major retailers offering insurance services via its own brands such as Tesco, Sainsburys etc. And comparison websites also allow people to shop around much more and deal directly with the insurer instead of instructing a broker.

AMC: **What are your interests outside of law and how do you control your time so you can pursue them?**
MW: Extreme sports are now beyond me, but I am not yet ready to be put out to grass. Regular cycling and gym work keep me active and (hopefully) healthy, although following the fortunes of Everton FC in the Premier League do continue to test my stress levels!

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Dr Justine Walker, *advisor to the* British Banking Association

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M&A

SPECIAL REPORT

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Illustration: www.oweiss.com

M&A Report: a year opened with expectation

With the aid of insight from some of the most reputable and in-the-know sources throughout the region, Chris Thomson sums up what has been and what potentially will be with regard to M&A's in Asia and the Middle East.

Mergers and acquisitions throughout Asia and the MENA region, according to *Dealogic, Wall Street Journal,* saw a record-breaking US$367.7 billion in the first half of 2014, and, as was stated by *Thomson Reuters,* "the first nine months of 2014 grossed US$504.3 billion in value, a 59.1 percent increase over the US$317 billion recorded in the same period last year" in Asia (excluding Japan). The largest single contributor to this figure was CITIC Pacific's acquisition of CITIC Ltd for US$42.2 billion, Asia-Pacific's largest ever M&A deal, beating 2000's previous holder – PCCW's acquisition of Cable & Wireless HKT for US$35.5 billion.

While China may switch from being principally powered by coal to nuclear power, the ASEAN nations will be looking for ways to benefit from their upcoming integration. Japan's lack of resources may see an increase in outbound activity, potentially heading in the direction of one of China's now more relaxed sectors in the short term. However, longer term, investors may look inbound at infrastructure, hospitality and real estate due to the 2020 Tokyo Olympics being a source of revenue, which, after what has in the first three quarters been Japan's "lowest year-to-date value in over a decade at US$19.9 billion, down 45.7 percent compared to the same time in 2013" according to *Mergermarket,* will be highly anticipated. China too may see more outbound investment, as stated by Charles Ching, corporate Partner at Freshfields, who commented "As China enters into a new, consumer-driven phase of its economic development, more investment in the US makes a lot of sense for both sides".

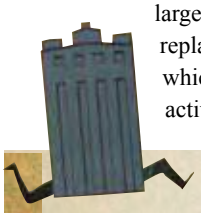
The MENA region too has reason to anticipate growth in infrastructure, hospitality and real estate due to a worldwide event, with the FIFA World Cup set to be hosted in Qatar in 2022. Singapore saw plenty of outbound M&A activity in 2014 by government-backed institutions and, as was pointed out by Clyde & Co's Singapore-based Partner Ian Stewart, historically, a fall in oil prices has led to increased investment activity in the energy sector, this trend looks set to continue into 2015.

China's sector segregation

At the head of the queue for China's big M&A news is the 6th version of the Foreign Direct Investment Industries Guidance Catelogue. Featuring a breakdown of who can own what, and how much of it they can own, the legislation categorises foreign involvement in certain industries ranging from 'Encouraged' to 'Prohibited', with 'Permitted' and 'Restricted' in between.

This Catalogue was first seen in 1995, and the 2014 Draft replaced the 2011 version. The 2014 Draft was released on November 4 of this year, and the National Development and Reform Commission called for public opinion on it until December 3, 2014. Relevant sectors include manufacturing, pharmaceutical and medical, the auto industry, telecommunications and Internet, infrastructure and real property, education and the service sector.

Between the introduction of the 2011 and 2014 Drafts came the Shanghai Free Trade Zone initiative, launched in September 2013. Many of the initiative's regulations bypassed the 2011 Catalogue, as it adopted a Negative List. This list categorises foreign investment in certain sectors and included virtually all of the restrictions and prohibitions set out in 2011, disappointing a large group of foreign investors. It was then replaced by the 2014 Negative List in June 2014, which reduced the number of industries and activities that are 'Restricted' from 190 to 139.



"As China enters into a new, consumer-driven phase of its economic development, more investment in the US makes a lot of sense for both sides"

Charles Ching

By Chris Thomson

"Whilst there have been a number of 'hot sectors' such as real estate, industrials, banking and healthcare, no single sector has been responsible for the increased M&A activity that has been witnessed in this part of the world"

Ian Stewart

These restrictions have been relaxed even further by November's 2014 Draft, which promises to more than half the number of 'Restricted' industrial sectors from 79 to 35, half the number of sectors requiring a Chinese majority shareholder from 44 to 22 and decrease the number of sectors limited to joint ventures and partnerships from 43 to 11.

Giving his thoughts on this, Clyde & Co's Shanghai-based Partner Michael Cripps stated that the general trend has been for sectors to become more lenient in terms of foreign permittance, and that a recurring feature the Catalogue is the reduction of the number of 'Prohibited' industry sectors. This does not include education, which remains far more stringent, as foreign investment in high school and day-care are 'Restricted', while compulsory education is 'Prohibited'. Similarly, the manufacturing of auto vehicles is becoming increasingly more stringent, with it having gone from 'Encouraged' in 2007 to 'Permitted' in 2011, and in the new Draft, due to support domestic auto brands, the regulations have been tightened again to 'Restricted'.

What's new in other jurisdictions

Similar to China's 2014 Draft, the Saudi Arabian General Investment Authority (SAGIA), on October 25, 2014, introduced a programme that will monitor the impact of foreign investment in the Kingdom of Saudi Arabia (KSA). The programme will, as Clyde & Co's MENA Head of Corporate Niall O'Toole informs, focus on six areas, namely: transfer and localisation of technological know-how; diversification of the Kingdom's economy; increasing of exports and decreasing of imports; developing Saudi human resources; reinforcement of economic competitiveness and products (in both domestic and international markets); and balancing the development of different regions within the KSA.

O'Toole also informed that so far in the 2013/14 period, his team has worked on approximately 80 M&A transactions and 60 joint venture ones, which is a slight increase on the previous year. Giving insight into trends, O'Toole said that infrastructure, energy and manufacturing have been the stand-out sectors for joint ventures, while M&A's have tended to focus on infrastructure, retail/consumer, TMT, energy, healthcare and manufacturing.

Meanwhile, Japan's M&A activity, domestic and cross-border, inbound and outbound, has, according to Kenneth Smith, Managing Partner and Japan Area Leader at EY, stabilised at around 2,000 transactions annually, since hitting a peak of nearly 2,800 in 2006. Smith also revealed that 2006 "also saw a ten-year high of just over 15 trillion yen in deal value, with 2013 at 8.6 trillion and this year looking to be slightly shy of the 2013 figure". He went on to state that while approximately 70 percent of the deal volume had been domestic, this traditionally accounted for only about 20 percent of the value. Discussing outbound deals, Smith revealed that since 2010, these have tended to be in the 20 percent range, with them running at 23 percent this year to date. "The outbound deals, however, have accounted for the lion's share of the value, at 68 percent this year", he said.

Stewart remarked that "The Singapore M&A market has seen significant growth over the past 12 months with deal flows increasing by apporoximately 30 percent on last year's figures". Giving evidence, Stewart revealed that "2014 has indeed been a big year in terms of M&A activity, driven in particular by major outbound acquisitions by Singapore government-backed institutions. For example, GIC Pte. Ltd recently agreed to acquire US industrial real estate group IndCor Properties from Blackstone Group LP for US$8.1 billion, making it one of the largest industrial real estate sales to be undertaken.

"Temasek Holdings Pte. Ltd has also undertaken significant acquisitions. Earlier this year it acquired a major stake in Hong Kong based beauty retailer AS Watson Co. for US$5.7 billion. Recent figures suggest that close to a third of the approximately US$59 billion spent on acquisitions by Singapore companies both domestically and overseas can be attributed to deals involving one of GIC or Temasek."

Private equity plus

Andrew Finnemore Capon, Managing Director of China Partnerships, which provides M&A services to corporate and private equity clients, as well as CFO services and advice on equity financing in China and SE Asia, also gave his thoughts on M&A's in the region. China Partnerships advises on a number of sectors, with a particular focus on financial services, natural resources, healthcare and wholesale and retail.

According to Capon, "M&A in China during the last year has seen deal activity by value weighted towards the technology/

Internet and financial services sectors. Domestic industry leaders Lenovo, Alibaba and Tencent, have used healthy balance sheets to complete multi-billion US$ deals at home and abroad. In the financial sector, most deals have been domestic, such as Anbang Insurance's US$2 billion investment in China Merchants Bank.

"In an as yet relatively small segment of financial services, where Internet meets finance, innovation is creating some interesting new businesses, of which two are Internet money market funds and 'person to person' (P2P) lending. The dynamic growth potential of Internet funds in China has already been demonstrated by Alibaba's Yuebao (meaning leftover treasure) money market fund, which, due to attractive terms and competitive interest rates, started around seven percent versus bank deposit typical three percent rate, "disrupted" the banks and catapulted Yuebao to become one of the largest money market funds in the world, with some US$90 billion in assets."

Focussing on the financial sector in the MENA region, O'Toole said "Banks are still wary of lending. We expect to see more activity next year as the economy continues to recover. Politically, the private sector in the Middle East is robust, considering what it has had to handle in recent times. We are keen to see a return to relative stability in Iraq and Afghanistan, and we are excited about potential opportunities in Iran."

Similarly, growth is anticipated in Singapore by Stewart, who claimed "Private equity firms are becoming far more interested in the Singapore market, looking to acquire investments in a stable environment with greater exposure to the large growth markets in the region such as Indonesia and China" when referencing inbound investment. Singapore has, in the opening three quarters of the year according to *Mergermarket,* "been the most targeted country [for M&A's in South-East Asia] with US$17.3 billion-worth of transactions, up 5.3 percent by value from the same period in 2013 (US$16.4 billion)".

Giving further insight into China's financial sector, Capon stated: "Perhaps more interesting in terms of business model is P2P lending. In the US, the UK and other countries, leading P2P firms have already made their mark as successful suppliers of loans to individuals and SMEs, the latter an area in general not yet well served by banks. In China, industry regulations for P2P are still a work in progress and P2P firms vary significantly in quality. One innovation seen among some P2P practitioners is the use of 'big data', where online information about a loan applicant gleaned from social networking, Internet commerce and other online sources, be it Alipay and WeChat in China or Facebook in the US, is used to help improve the credit decision making process on that individual or business.

"Some of the larger P2P firms in China have already attracted well-known investors; Dianrong, known for the quality of its underwriting systems, received an investment from Sun Hung Kai for long-term strategic cooperation to develop the Hong Kong and mainland P2P market. Dianrong also announced in October 2014 an alliance with a regional bank, Suzhou Bank to build an online platform to intermediate loans from the public to SMEs in Jiangsu province."

On change in the healthcare sector in China, Cripps noted "The pharmaceutical and healthcare sectors in China face significant change. The 2014 Draft downgrades investment in certain healthcare products (such as multivitamins) blighted by overcapacity to 'Restricted' but encourages investment in narcotics and class A psychoactive drugs by categorising them as 'Permitted'."

"Deal dynamics arising from the recent devaluing of the Japanese yen to the US dollar will certainly affect both deal frequency and values in the coming months"

Kenneth Smith

"The pharmaceutical and healthcare sectors in China face significant change. The 2014 Draft downgrades investment in certain healthcare products (such as multivitamins) blighted by overcapacity to 'Restricted' but encourages investment in narcotics and class A psychoactive drugs by categorising them as 'Permitted'"

Michael Cripps

By Chris Thomson

There have, therefore, been specific sectors in China that, due to M&A's being 'Permitted' or even 'Encouraged', have seen growth. Sectors seem to have less influence on investment in the MENA region, as O'Toole says " Regardless of sectors, one trend we have seen is the willingness (on the part of both local family businesses and foreign multinationals) to review and refresh their existing structures in an effort to maximise the growth opportunities that exist in the region".

In line with this, on sectors in Singapore, Stewart said, "Whilst there have been a number of 'hot sectors' such as real estate, industrials, banking and healthcare, no single sector has been responsible for the increased M&A activity that has been witnessed in this part of the world".

He went on to say that "There are a number of factors feeding into this increase in activity. Firstly, Singapore companies have benefited in recent times from a far more stable financial and political environment when compared with the fluctuating fortunes of a number of their close neighbours. A desire to pursue greater growth than may be achievable in the domestic market and to diversify have also been relevant factors, along with the desire to gain greater exposure to major markets such as China."

2015's investment hotspots

The investment Stewart referenced will, of course, be more likely to be directed at the sectors in China that are loosening their restrictions, namely manufacturing, telecommunication and Internet, infrastructure and real property and some areas in the service sector (excluding those related to areas such as cultural relics). These areas are becoming more available to foreign investors, and are expected by Cripps to be specifically targeted by certain foreign corporates increasingly over the next 12-36 months.

Giving insight into China's production of power, Cripps also explained how, due to easy storage and the fact that it's less detrimental to the environment, he expects to see nuclear power gain on coal as one of China's emerging sources of power generation, leading to an increase in nuclear-based M&A activity.

When asked about M&A's between China and the US, Ching felt it necessary to cover healthcare, consumer fields and agriculture, stating that he felt that they would be the most dominant areas for US-China M&A deals in coming years. Ching also said "American companies have established brands and technology which appeal to Chinese companies that are looking to access the rising middle class in China's domestic market", noting that the most significant trend within Chinese-US investment is its increasing diversity.

Looking to Singapore's M&A future, Stewart "anticipate[s] that [the current] upward trend will continue over the next 12 months with market conditions remaining stable. Industries which may see increased activity include the energy sector, which historically has shown increased M&A volumes during times of falling oil prices. And in the insurance space, we also anticipate greater deal flows as overseas insurers under financial pressure continue to shed non-core assets and increasing capital requirements for insurers in emerging economies encourage them to look to attract foreign capital."

On the future of the energy sector with regard to Japan's M&A's, Smith pointed out that "Resource poor Japan has been on a buying spree in the oil and gas, mining and related sectors". In forecasts on other sectors and their influences, Smith also said: "Deal dynamics arising from the recent devaluing of the Japanese yen to the US dollar will certainly affect both deal frequency and values in the coming months. The larger companies will most undoubtedly continue to invest overseas, albeit more cautiously given that relative yen prices of those assets remains high. Smaller to mid-sized firms will have a more difficult time justifying to themselves and to their shareholders that the same asset overseas is now over 40 percent more expensive than it was 18 months ago. This would most likely spell further domestic M&A in the form of sector consolidation in a variety of industries.

"The scenarios for the longer term will be challenging for a purely domestic player, but with some positive ups along the way. There is the persistent declining and aging population challenge, coupled with an extremely low level of immigration thereby hurting the demand for many products and services. The continuing reliance on increasingly expensive imported fossil fuels for almost all of its electric power generation has hurt domestic manufacturing. Somewhat offsetting these factors would be the

Niall O'Toole

"Politically, the private sector in the Middle East is robust, considering what it has had to handle in recent times. We are keen to see a return to relative stability in Iraq and Afghanistan, and we are excited about potential opportunities in Iran"

2020 Tokyo Olympics and the investments this will bring, in particular, infrastructure, hospitality and real estate."

Toyko, of course, is not the only jurisdiction anticipating a change in M&A activity due to a major sporting event, as Qatar is set to host the FIFA World Cup in 2022. Clyde & Co's O'Toole, however, said that this is not the only infrastructure programme in place there, but that he expects to see social infrastructure sectors such as education, healthcare and transport also undergo steady growth in M&A activity, which in turn, he says, will increase demand for the provision of legal services.

The forthcoming ASEAN integration is, perhaps even more so than China's 2014 Draft, sure to be a game changer. 2015 will see Brunei Darussalam, Cambodia, Indonesia, the Lao PDR, Malaysia, Myanmar, the Philippines, Singapore, Thailand and Vietnam implement the ASEAN Trade in Goods Agreement and Agreement on Customs, enabling free trade amongst the nations. According to Capon, "The ASEAN countries are seeing an increasing share of global M&A volumes, as investors are attracted by the economic potential of the ASEAN Economic Community due 2015, with its 600 million inhabitants and with the promise of more connected markets and lower tariffs. We have seen a rise in inbound M&A, as foreign investors build their presence."

Giving examples, Capon cited that "Indonesia, despite uncertainty created by the general election in 2014, has proved to be one of the most attractive to investors: Japanese insurers have invested into local firms to gain exposure to the current low penetration rates and double digit premium growth prospects; Daiichi paid more than US$300 million for a 40 percent stake in Indonesia's Panin Life. Regional M&A is also underway, to build stronger local champions to be better equipped for increased foreign competition, as in the case of Thailand Berli Jucker's acquisition of German Metro's cash and carry business in Vietnam for US$876 million."

Clearly, inbound and out, Asia and the MENA region, as stated by the sources above, should expect to see plenty of M&A activity over the coming year, due to new legislation, worldwide events and consolidation of markets, as well as its already strong financial sector. Different places will be targeted due to their natural resources; a sector that may see a shift due to environmental factors such as coal's detrimental effect on the planet and the savings that can be made in storing nuclear power. China's overall increased leniency towards foreign investment is sure to have an effect too. Time will tell the impact of the ASEAN integration, but considering the area's resources and manpower, this development appears to be one that will unite and strengthen these currently separate jurisdictions, and may well be seen as a very alluring prospect to investors worldwide. As was said by American philosopher Amos Bronson Alcott, "That is a good book which is opened with expectation, and closed with delight and profit". Let's hope 2015 is one Alcott would define as a good year.

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Further liberalisation and consolidation of the banking sector

SyCip Salazar Hernandez & Gatmaitan partner Vincente D. Gerochi IV discusses how new legislation, with the approval of the Monetary Board of the Bangko Sentral ng Pilipinas, qualifies foreign banks for full entry into the Philippine banking system. He delves into the methods and implications of this innovation, as well as looking into the competition that is likely to arise.

Two recent regulatory changes are expected to foster acquisitions and consolidations in the Philippine banking industry.

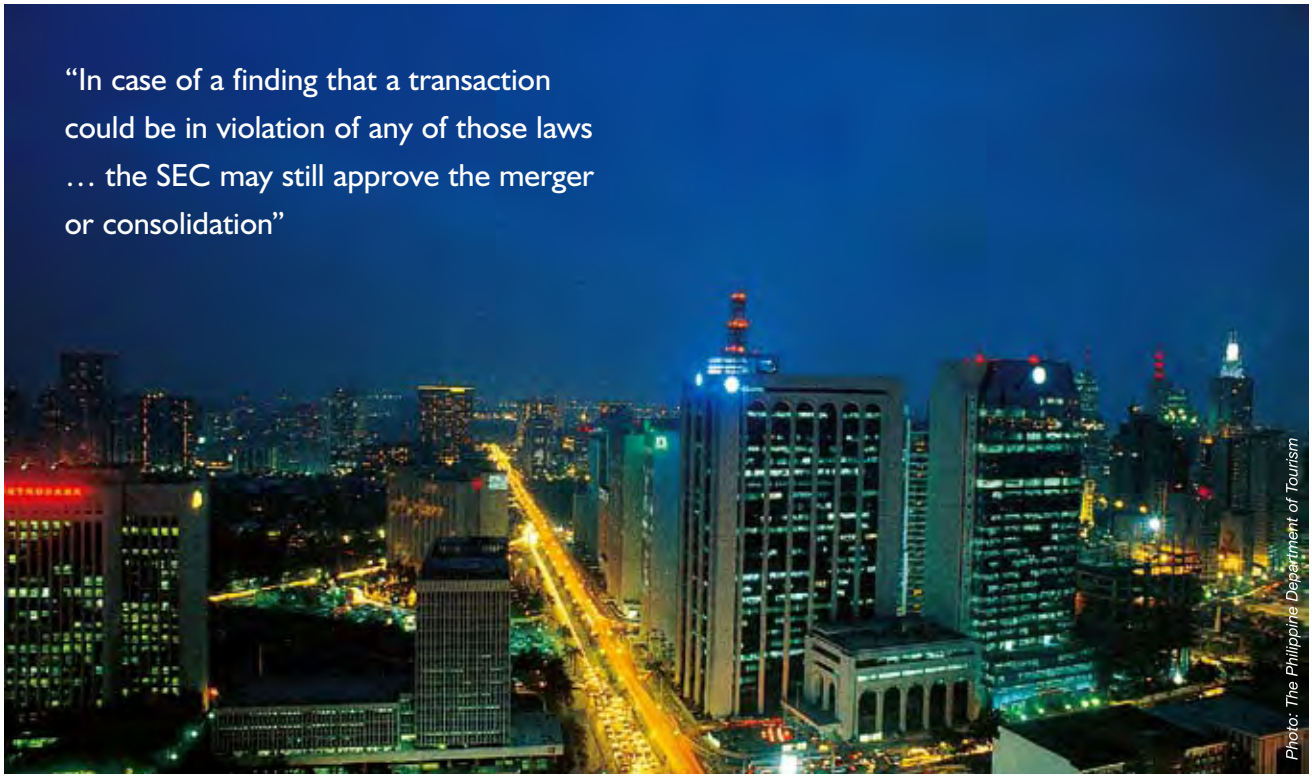
Foreign banks are now allowed full entry into the Philippine banking system. Republic Act 10641 allows the Monetary Board of the Bangko Sentral ng Pilipinas (BSP) to authorise foreign banks to operate in the country by acquiring up to 100 percent of the voting stock of an existing bank, investing in up to 100 percent of the voting stock of a new banking subsidiary incorporated under the laws of the Philippines or establishing branches with full banking authority.

The new law also removed certain restrictive provisions under existing statutes. Previously, only the top 150 foreign banks in the world, or the top five banks in their country of origin, were allowed to set up a local subsidiary or establish branches. Now, any foreign bank can enter the market as long as it is established, reputable, financially sound, and (unless it is owned and controlled by the government of its home country) widely-owned and publicly-listed in its country of origin. Prior to RA 10641, the Monetary Board was mandated to ensure that control of at least 70 percent of the resources or assets of the entire banking sector are held by local banks that are at least majority-owned by Filipinos and shares of domestic banks that are controlled by foreign banks are listed on the Philippine Stock Exchange. RA 10641 brought that percentage down to 60 percent and removed the listing requirement.

In addition, foreign banks authorised to carry on business in the country are now allowed to bid and take part in the foreclosure sale of land mortgaged to them. They can avail of enforcement and other proceedings, and accordingly take possession of the mortgaged property, for a period not exceeding five years from

> "The expected entry of more foreign banks and the tighter competition this will bring about, coupled with the need to raise their capital, could drive domestic banks to merge or consolidate. They could also become potential acquisition targets of foreign or larger local banks"

Vincente D. Gerochi IV



possession. However, they cannot acquire ownership of the property, given the Constitutional restriction against foreign ownership of land. If a foreign bank is the winning bidder in the foreclosure sale, it is required, during the said five-year period, to transfer its rights to a qualified Philippine national.

A few months after RA 10641 took effect, the Monetary Board increased the required minimum capitalisation of banks based on the number of branches they operate. The increase is substantial for banks with a wide network of branches. For instance, universal banks with between 11 and 100 branches must now have a capital of at least Php15 billion, and those with more than 100 branches are required to have a minimum capital of Php20 billion. Commercial banks with between 11 and 100 branches must have a minimum capital of Php10 billion, while the requirement for those with more than 100 branches is Php15 billion. Prior to the increase, the required minimum capital was Php4.95 billion for universal banks and Php2.4 billion for commercial banks. Thrift banks with a head office outside Metro Manila and with between 11 and 50 branches must put up Php400 million, and those with more than 50 branches need to raise their capital to Php800 million. Previously, the required minimum capital for thrift banks with a head office outside Metro Manila was only Php250 million. Non-compliant banks have five years from the effectiveness of the new regulation to meet the required capital. It has been reported that many thrift banks outside Metro Manila will not be able to meet the requirements.

The expected entry of more foreign banks and the tighter competition this will bring about, coupled with the need to raise their capital, could drive domestic banks to merge or consolidate. They could also become potential acquisition targets of foreign or larger local banks.

On the other hand, a recent memorandum of agreement between the Department of Justice (DOJ) and the Securities and Exchange Commission (SEC) has engendered a de facto merger control regime. A merger or consolidation of banks requires the approval of the SEC and the BSP. The MOA added another layer of regulatory review by providing that the Office for Competition (OFC), a unit of the DOJ, will now need to evaluate if a proposed merger or consolidation of two or more corporations is consistent with laws on competition, monopolies and combinations in restraint of trade. The MOA prescribes fixed periods within which the OFC must conduct its review and submit its report to the SEC. In case of a finding that a transaction could be in violation of any of those laws unless the parties meet the conditions or requirements set by the OFC, the SEC may still approve the merger or consolidation, subject to compliance with those conditions or requirements.

Nonetheless, the DOJ and the SEC must ensure that the review periods are strictly followed, and that clear guidelines and procedures on the conduct of the OFC's review are put in place. Otherwise, this process could delay transactions and discourage investments in the banking sector.

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M&A booster – New Companies Act has it all easy and clean

Rikita Ganju and Pooja Khanna of *Phoenix Legal* discuss India's Companies Act of 2013, made effective April 1, 2014, and how its implementations will streamline India's M&A process, making it smooth and transparent.

The Companies Act 2013 (New Act), which was substantially made effective from April 1, 2014, has the potential and capability to be an historic milestone for implementing M&A's. The New Act replaced the nearly 60 year-old Companies Act, 1956 (Old Act) and has done well in recognising the importance and growing need for domestically and internationally operating Indian companies to be involved in restructuring and M&A's. So far, the provisions relating to M&A under the New Act are yet to be noted and made effective, but it seems many companies have put their M&A plans on hold, and are waiting for the M&A provisions of the New Act to be made effective which will hopefully make the process faster and easier.

The New Act seeks to streamline the M&A process and make it smooth and transparent. It appears that the New Act has been equipped with practical solutions, easier norms and tighter regulatory checks to deal with the challenges and complexities that the companies and shareholders continue to face amidst the procedures provided in the Old Act.

There are pragmatic reforms for M&A's under the New Act, which could make the process easier, faster and cleaner for companies. Some of the highlights include: fast track mergers, mergers between foreign companies and Indian companies, setting up of National Company Law Tribunal to hear and decide on M&A proposals, cutting down on the probability and scope of objections to M&A's and easier as well as wider participation of shareholders through postal ballot approval. These, along with other, more creative and hurdle-free approaches towards M&A's have been introduced in the New Act.

Chapter XV of the New Act deals with "Compromises, Arrangements and Amalgamations", and consolidates the applicable provisions and related issues. The Old Act requires for M&A's to be approved by a court process, wherein the court sanctions a scheme of arrangement (Scheme). The said process would continue under the New Act (with certain exemptions and relaxations) but the jurisdiction of courts with regard to such Schemes would be vested in a tribunal.

Establishment of tribunal – National Company Law Tribunal (NCLT)

The New Act envisages creation of a new tribunal, the National Company Law Tribunal, which is contemplated to assume jurisdiction that is presently vested with the state High Courts for the sanctioning of the M&A's/Schemes. Under the Old Act, a Scheme is required to be approved by the state High Courts having jurisdiction over the registered office of the companies seeking the approval of the Scheme. This is done to ensure fairness and an effective oversight of the Scheme, but at the same time, there have been serious concerns regarding huge delays. The New Act seeks to address the concern of undue delay caused owing to time-consuming proceedings before the state High Courts, and entrusts the NCLT with such power. The said change

> "The New Act seeks to address the concern of undue delay caused, owing to time-consuming proceedings before the state High Courts, and entrusts the NCLT with such power"

"The New Act seeks to streamline the M&A process and make it smooth and transparent. It appears that the New Act has been equipped with practical solutions, easier norms and tighter regulatory checks to deal with the challenges and complexities that the companies and shareholders continue to face amidst the procedures provided in the Old Act"

Ritika Ganju

is expected to help in reduce the time that is usually taken in obtaining sanctions in M&A cases.

M&A process

While the New Act prescribes the normal sanctioning process in respect of a Scheme, with certain positive amendments, the recognition for preferable exceptions is well reflected in the New Act. The normal sanctioning process has been kept largely the same as in the Old Act, involving sanctions to be obtained by the NCLT.

One of the glaring differences between the Old Act and the New Act is that the current regulatory framework under the Old Act does not distinguish between M&A's on the basis of companies involved, and the same set of relatively complex and time-consuming processes have to be followed for all M&A's. On the contrary, in order to take away the problems faced in recent times by companies during the M &A process, the New Act has established a simplified procedure for M&A's between wholly-owned subsidiary companies and small companies. It also recognises the need for mergers between Indian and foreign companies, and provides a relatively transparent procedure, which takes care of approvals from relevant regulatory and government authorities.

Simplified M&A procedures

Fast track M&A's – open to small companies and M&A's between holding and wholly-owned subsidiaries

The Old Act provides that the mergers of all companies, irrespective of their nature and size, require court approval. Countering this, the New Act specifically carves out a simplified procedure for M&A's involving small companies and M&A's between holding and wholly-owned subsidiary companies.

As per the provisions of Section 233 of the New Act, a notice with regard to the proposed Scheme is to be placed before the Registrar of Companies, the Central Government and the Official Liquidator[1] to invite objections to the Scheme. The Scheme must be approved by shareholders totalling 90 percent in value, and creditors representing nine tenths of debt in value.

In the event of there being no objection, the Scheme will be approved. However, in the event of any objections being raised against the proposed Scheme, or in case of the Central Government being of the view that the Scheme is not in public interest, the Central Government may request that the NCLT considers the proposed Scheme under the normal M&A process. The exclusivity of fast-track mergers is expected to reduce the time elapsed during court proceedings, and will result in faster disposal of matters. This is definitely a welcome step, as its intention is to reduce the administrative burden, timelines and cost for smaller companies when carrying out M&A's.

The relaxation to fast track M&A's also includes dispensation from sending out notices to regulatory authorities to seek clearance or submission of compliance reports from the auditors.

New enabling provisions

Cross border M&As – Indian companies with foreign companies

The Old Act does not contain provisions for all mergers of Indian companies with foreign ones. It does permit cross-border mergers, but only when the transferor is a foreign company.

On the contrary, the New Act does permit mergers both ways between Indian and foreign companies located in a jurisdiction which is noticed by the Central Government in periodic consultation with RBI. Such a merger would be subject to RBI approval in respect of a foreign exchange transaction that may be involved in the process.

M&A experts have observed that the cross-border merger provision in the New Act would help Indian companies by: restructuring their shareholdings, wherein they can migrate ownership to an international holding structure; facilitating listing of entities, which may have Indian assets in overseas jurisdictions; and providing exit routes to current investors in overseas jurisdictions.

By Ritika Ganju and Pooja Khanna, ***Phoneix***

The cross-border M&A enabling provision could have ground-breaking significance on the global M&A landscape, since corporate deals have failed in the past due to the lack of this provision in the Old Act. Corporates are rightly enthusiastic as an opportunity for growth into India is being foreseen due to this permittance of M&A's.

> "Though the impact of the aforesaid provisions of the New Act will come to light only after these provisions are made effective, these provisions definitely reflect a genuine effort made to bring about easier, simpler and more transparent norms in relation to M&A's"

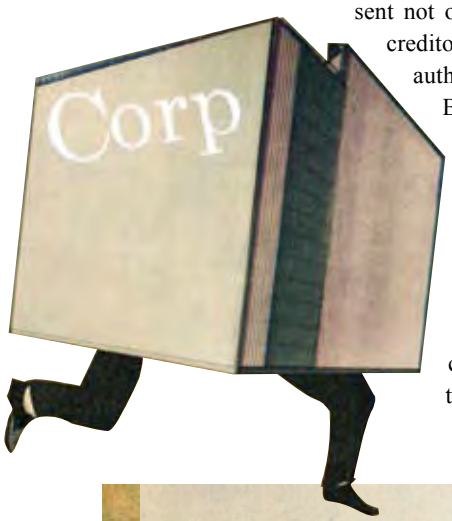
Merger of a listed company with an unlisted company

The New Act provides for the NCLT's order to state that the merger of a listed company with an unlisted one will not ipso facto make the unlisted company listed. Instead, it will continue to be unlisted until the applicable listing regulations and SEBI guidelines in relation to allotment of shares to public shareholders are complied with. Further, in the event that the shareholders of a listed company decide to exit, the unlisted company would facilitate the exit with a pre-determined price formula, which shall be within the price specified by SEBI regulations.

On the contrary, the Old Act does not contain any specific provision governing the merger of a listed company with an unlisted one.

Cleaner procedure – regulatory approvals

Under the Old Act, the requirement of notice and approval is limited to the shareholders and creditors. The New Act requires service of notice of the Scheme along with other documents to be sent not only to the shareholders and creditors, but to various regulatory authorities such as the Reserve Bank of India (where non-resident investors are involved), SEBI (only for listed companies), income tax authorities, the stock exchanges (only for listed companies), the Competition Commission of India (in cases of the prescribed fiscal thresholds being crossed and if the proposed merger could have an adverse effect on competition) and other regulators and authorities which are likely to be concerned with the proposed Scheme. This would ensure compliance of the Scheme with other regulatory requirements imposed on the merging entities.



However, the drafters of the New Act have been careful not to provide the regulators with any reason to delay the process, and have prescribed a 30-day time-frame for the regulators to make representations.

In all, it seems that the existing procedure of submitting documents to the court will become a multi-party process with the involvement of various regulatory authorities, the aim being to conquer all checks and balances simultaneously.

Other ease outs

Approval of the Scheme through postal ballot

The Old Act requires the Scheme to be approved by a majority representing three quarters in value of the creditors and shareholders present, and voting in physical meetings, either in person or by proxy, to cast votes for or against the Scheme.

Under the New Act, the shareholders and creditors will have the option of casting votes through postal ballot while considering a Scheme. The Old Act did not allow this as the shareholders and creditors could only cast votes physically.

> "One of the glaring differences between the Old Act and the New Act is that the current regulatory framework under the Old Act does not distinguish between M&A's on the basis of companies involved, and the same set of relatively complex and time-consuming processes have to be followed for all M&A's"

Pooja Khanna

"Corporates are rightly enthusiastic as an opportunity for growth into India is being foreseen due to this permittance of M&A's"

The right to cast votes through postal ballot will ensure wider participation of the shareholders and creditors, particularly those scattered around the country who find it difficult to be either physically present or provide a proxy.

Valuation report

The Old Act does not mandate disclosing the valuation report to the shareholders. As a matter of transparency and good corporate governance, the companies provide the valuation report to the shareholders, and also the Courts required the valuation report to be annexed to the application which had been submitted for approval before them.

However, the New Act makes it mandatory for the valuation report to be annexed to the Scheme, as well as to the notice for the meetings in order to make it readily available to the shareholders and creditors. The said mandatory requirement of annexing the valuation report with the Scheme will enable the shareholders to understand the business rationale of the transaction and make an informed decision.

Objections

The Old Act permitted any shareholder, creditor or other interested person to raise objections to the Scheme before the adjudicating court, if such person's interests are adversely affected. Such right to object to the Scheme is no longer available to any and every person.

The New Act provides that objections can be raised by shareholders holding 10 percent or more equity, and creditors whose debt represents five percent or more of the total debt as per the last audited financial statements.

In view of the above, the said threshold limit for raising objections and concerns with respect to the Scheme will protect the Scheme from small shareholders and creditors raising frivolous litigation and objections.

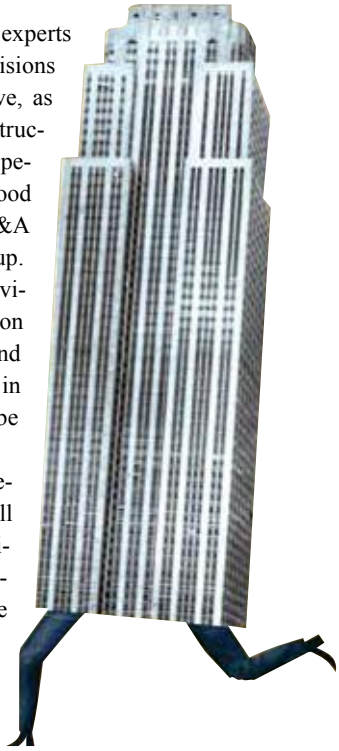
Accounting standards

The New Act provides that no Scheme, whether for a listed company or an unlisted one, shall be sanctioned, unless a certificate by the company's auditor has been filed with the tribunal to the extent that the accounting treatment of the proposed Scheme is in conformity with the prescribed accounting standards. Thus, the significance given to accounting standards and audit compliance is reflected in the New Act as opposed to the Old Act, which did not contain said requirement.

Conclusion

The provisions of the New Act seem to target a positive change and would be welcomed by Indian companies.

In view of the aforesaid discussions on the provisions of the New Act, the idea or proposal behind introducing certain simple and forward-looking concepts is to recognise the need for M&A's to be carried out in practice.



Indian business and legal M&A experts are eagerly awaiting the M&A provisions of the New Act to be made effective, as many deals and internal corporate restructurings are expected to be in the pipeline, and strategically, their likelihood would increase as and when the M&A provisions under the New Act open up.

The implementation of the provisions of the New Act may call upon regulatory authorities such as RBI and SEBI to introduce certain changes in their regulatory framework, so as to be in line with the New Act.

Though the impact of the aforesaid provisions of the New Act will come to light only after these provisions are made effective, these provisions definitely reflect a genuine effort made to bring about easier, simpler and more transparent norms in relation to M&A's.

Endnote

1. an office created under the New Act for the purpose of M&A and implementation of Schemes

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'Planting' her flag on in-house law

Having made the leap from external to in-house, Choo Suit Mae, Group General Counsel of *Sime Darby*, knows from over 25 years working externally what it's like to approach law from that point of view, and applies this constantly when working with external counsel. Giving her thoughts on life and law, she reveals what she believes to be the secrets of success in both, noting that courage in all aspects goes a long way.

Asian-mena Counsel: **Can you tell us what led to your role at Sime Darby? Briefly as well, can you describe your career trajectory?**

Choo Suit Mae: I was a partner in the corporate department of Skrine, one of the largest and oldest all-services law firms in Malaysia, for about 3 years before joining Sime Darby in August 2006. Before Skrine, I was one of the founding partners of Zul Rafique & Pnrs, another major law firm based in Kuala Lumpur. I had also practised corporate/commercial law and corporate finance in Hong Kong for 8 years – first with Victor Chu & Co, Denton Hall (as it then was) and Reed Smith Richards Butler-before returning to Malaysia.

I heard about a new position in Sime Darby – Head of Legal, Strategy – from a friend. The interview with the then CEO took all of 30 minutes. Shortly thereafter, I met my direct boss who was the Head of Strategy, who oversaw functions such as corporate finance, fundraising and value management.

The Sime Darby group was then involved in several major corporate exercises. At one of the 1st meetings I attended with my then boss and his corporate finance team, the question they posed to me within 5 minutes of me sitting down was whether there was a takeover implication arising from a corporate chart showing a morass of companies with direct, indirect and cross-shareholdings. The diagram filled the entire length and breadth of the white board in the conference room. I knew then I would not have the luxury of easing myself into my new role and that the transition from external counsel to in-house counsel would be brief at best.

A few months after I joined, the group was involved in one of the largest mergers in corporate Malaysia – the merger of three listed plantation groups – which culminated into what is Sime Darby Berhad today: the largest listed plantation company in the world. When the company was listed on Bursa Malaysia in November 2007, it had the highest market capitalisation. Today, Sime Darby's market cap is about RM58 billion (approx. US$18.5 billion). Although the plantation division is the largest contributor to the group's earnings, Sime Darby has four other core businesses – property, motors, industrial and energy & utilities. We operate in more than 20 countries and have a workforce of more than 100,000.

Before the centralisation of the legal functions within the Sime Darby group, there were two legal departments at the head office – Group Legal, Strategy which advised on M&A transactions, fundraising, projects and corporate exercises (of which I was head) and Group Legal, Corporate Services, which had oversight of litigation/contentious matters and managed the group's intellectual property issues. In 2010, the two legal departments were consolidated and I was designated Group General Counsel. The heads of the legal department of each of the core businesses/divisions also report to me directly. At head office, I have assigned 'champions' to look after each of the core businesses/divisions. The teams possess different experience and skills sets – ranging from M&A and transactional work to litigation – and have worked on multi-jurisdictional deals. This structure has enhanced reporting (and facilitated the escalation of legal issues/risks so that immediate action can be taken to address them), standardisation of advisory work, optimisation of resources, in-house training, and career development. The entire legal team now comprises 46 lawyers and we operate very much like a legal firm within the organisation.

AMC: **How do you add value to your company?**

CSM: I would say my international experience and having practised for more than 25 years as external legal counsel. The ability to pick up salient legal issues quickly, apply them in a business deal and offer solution-oriented advice – which are skills you accumulate as an external practitioner. I think generally, in-house clients tend to respect advice if given by someone who's been 'round the block' so to speak, and has successfully closed many cross–border transactions. Other strengths include the ability to stand one's ground and not to be intimidated by the business team who some-

Choo Suit Mae

"Increasingly, in-house counsel's role has graduated from being merely that of an adviser to a strategic partner; therefore we expect external counsel to spend more time understanding our business, commercial objectives and be more business savvy and anticipate issues, rather than just providing legal advice"

times pull rank; responsiveness; cross-functional collaboration; and ability to see the big picture. I am also a member of the Group Investment Committee, which comprises senior management, and the legal, risk and strategy functions. This committee reviews and discusses new investment proposals from the business units before they are tabled to the board. Deliberations of the committee are documented and attached to the board papers. This will assist the board in their decision-making as critical legal issues as well as highlight other business risks upfront.

AMC: **What is the best advice you have been given?**
CSM: All this will come to pass… the bad times (as well as the good, unfortunately) so we should not dwell on things and events which hold us back and prevent us from achieving our true potential. While we can, we should give of our best, be true to ourselves, be courageous and always do the right thing.

AMC: **What challenges have you perceived in your current role?**
CSM: One of the major challenges is to keep abreast of the changes in the laws and regulations in the many jurisdictions where the Sime Darby group operates, as well as industry trends in our five core businesses. On top of that, we need to address the expectations of key stakeholders such as major shareholders, the board, senior management and employees. Sometimes, these interests are not always aligned. In relation to human capital, it is a challenge to retain high-performing individuals (since we have to compete with the legal industry on remuneration and compensation), and to keep them engaged and inspired. With the opening up of the lucrative legal market to international law firms in Malaysia, the war for talent will be intensified further. The Malaysian government, through TalentCorp, has implemented various initiatives to stem the brain drain, and to encourage professionals studying or working abroad to return to work in Malaysia.

AMC: **Can you describe how legal practice has changed as the market has developed and clients have become more sophisticated?**
CSM: To some extent, the role of external lawyers has changed in tandem with the different requirements expected of in-house counsel. Increasingly, in-house counsel's role has graduated from being merely that of an adviser to a strategic partner; therefore we expect external counsel to spend more time understanding our business, commercial objectives and be more business savvy and anticipate issues, rather than just providing legal advice. We select external counsel based on those qualities in addition to the usual criteria such as expertise, reputation and responsiveness. We treat external counsel as part of the legal team so that the legal input can be as seamless as possible. We take ownership of the legal function, so if our internal clients are unhappy about the quality of the legal services or advice given, we will have to deal with their complaints and grievances – it can be quite a delicate balance – ensuring that the commercial objectives and the legal issues are aligned. It boils down to good communication, but sometimes we do encounter 'bloody-minded' individuals who refuse to listen…

AMC: **Can you describe a typical work day?**
CSM: Since the Division legal teams are located at different business locations, it is important that I talk to them on a regular basis. We have fortnightly meetings at the head office in KL and the overseas teams dial in. I spend a fair amount of time attending management meetings and also spend quite a lot of my day on administrative matters, which is necessary given the size of the team and support staff. Whenever the group embarks on a major corporate exercise/investment, I sit through meetings with the deal team and external counsel – advising and reviewing the structure, brainstorming on critical issues, project execution and post-closing/integration matters. Due to the nature of the work, it is hard to have a typical day as each day brings with it a new set of challenges and surprises. I suppose ultimately, it is how well you prioritise and manage people and issues.

AMC

INDIA

Need for uniform stamp duty incidence across all States of India

By Sharad Joshi and Anwar Khan

'Stamp Duty' is a tax levied on an instrument by which any right or liability is, or purports to be created, transferred, limited, extended, extinguished or recorded.

Under the Constitution of India, stamp duties are divided into those specified under the Union List (List I of Schedule VII) and under the State List (List II of Schedule VII). Under Entry 63 of the State List, State Governments have the exclusive power to fix the stamp duties for instruments, other than those specified under Entry 91 of the Union List. Most of the States have enacted specific legislation governing stamp duty, while others have adopted the Indian Stamp Act 1899, with state-specific modifications. Since, stamp duty generates substantial revenue; States have been fairly proactive in updating and amending their specific legislation governing stamp duty and as a result of which, at present, the stamp duty incidence, on an instrument, varies from State to State and there is a vast difference in the amount of stamp duty payable across various States.

This article, therefore, focuses on the need of having a uniform chargeability/percentage/slab of stamp duty payable on a document, irrespective of the State in which it is executed, for some of the following reasons.

Avoidance

Because of the high stamp duty burdens in a particular State, individuals & corporates have found a variety of ways to avoid the stamp duty burden. For e.g. the simplest way, of avoiding high stamp duty burden, is to execute instruments in a State, where the stamp duty incidence is not so high. Therefore, this deprives a particular State from earning revenues simply because of high stamp duty implications, in spite of the fact that the transaction may pertain to that particular State.

Anomaly

There are also certain anomalies for e.g. in Entry 91 of the Union List, only the Central Government has power to levy stamp duty on issue of debentures. The States can levy stamp duty only on transfer of debentures, not issue of debentures. However, interestingly, some State stamp laws also provide entries pertaining to payment of duty on issue of debentures which are different from the stamp duty prescribed by the Central Government, which creates confusion among issuing companies.

Stamping of e-Documents

Many of the States have now provided that instruments attracting stamp duty would also include electronic records. A common practice that one comes across is documents being executed in State X, whilst the registered office of the executant company is situated in state Y. If such document is required to be filed with the registrar of companies in state Y, for example, a document creating charge, then the document would have to be uploaded electronically onto the website of the Ministry of Company Affairs. Since the concerned registrar of companies office (State Y in this case) would download the documents in State Y, the electronic records are deemed to have been brought into the state where registered office is located at the time when the registrar of companies downloads the document and this may attract the stamp duty in State Y at that point of time. Therefore, such provisions increase the stamp duty liability of an executant company (simply because it has its registered office in some other state) and further add on to the delay in concluding a transaction.

Conclusion

It is widely believed that the high rates of stamp duties lead to significant under-valuation of the transactions, variety of evasion and avoidance mechanisms, which leads directly to stamp duty revenue losses to a particular State. Unfortunately, there is a degree of 'tunnel vision' with respect to a State's thinking, as their focus is primarily on increasing revenue. This often results in the burden of excessive stamp duty being imposed on documents and transactions.

In light of the above background, it is recommended that a uniform stamp duty law be enacted and levied in all States on all instruments, on similar lines as proposed for indirect taxes through the Goods and Services Tax (GST) in India, so as to avoid incidences of higher stamp duty in one particular State, misinterpretation and confusion created by the various stamp acts and to curb stamp duty evasion.

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INDONESIA

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Franchising rules and regulations

By Ade B. Adamy

With a population of over 250 million, Indonesia is an attractive country for investors, particularly those interested in the distribution, retail and franchise sectors. But 2014 was a nervous time for new and existing investors in Indonesia, many of whom delayed any major actions to see how the country's legislative and presidential elections would play out.

We would expect this situation to continue through the end of the year, despite Indonesia having elected a new President, Joko Widodo, on July 9. Investors are expected to wait and see the direction of the new government and the economic policies of President Widodo, but there is optimism. With his call "to work, work, work" in his inaugural address, President Widodo has engendered hope for a better business environment in Indonesia.

Investors in the franchise sector though must first be aware of the latest changes to franchising regulations issued by the Ministry of Trade just prior to President Widodo's inauguration on October 20.

Before the latest changes, franchising regulations were covered under the following:

1. Law Number 7 of 2014 on Trade, dated March 11, 2014;
2. Government Regulation Number 42 of 2007 regarding Franchises, dated July 23, 2007;
3. Minister of Trade Regulation Number 53/M-DAG/PER/9/2012 regarding Franchises, dated August 24, 2012 (MOT Regulation No. 53/M-DAG/PER/8/2012);
4. Minister of Trade Regulation Number 68/M-DAG/PER/10/2012 regarding Franchises for Modern Store Business, dated October 29, 2012; and
5. Minister of Trade Regulation Number 07/M-DAG/PER/2/2013 regarding Partnership Development in Franchises for the Food and Drink Service Business, dated February 14, 2013 (MOT Regulation No. 07/M-DAG/PER/2/2013).

On September 17, 2014, the Ministry of Trade issued two amendments to the above regulations, as follows:

1. Minister of Trade Regulation Number 57/M-DAG/PER/9/2014 regarding Amendment of MOT Regulation No. 53/M-DAG/PER/8/2012 (MOT Reg No. 57); and
2. Minister of Trade Regulation Number 58/M-DAG/PER/9/2014 regarding Amendment of MOT Regulation No. 07/M-DAG/PER/2/2013 (MOT Reg No. 58).

MOT Reg No. 57 changes the requirements and procedures for a franchisor to obtain a Franchise Registration Certificate (Surat Tanda Pendaftaran Waralaba or STPW). Before entering an agreement with a franchisee, a franchisor in Indonesia must register a franchise prospectus with the Ministry of Trade to obtain the STPW. Under MOT Reg No. 57, instead of directly registering the franchise prospectus, a franchisor must first submit a copy of the draft master franchise agreement of the franchisor. Previously, a franchisor would submit a draft of the franchise agreement together with the franchise prospectus. The Ministry of Trade would then have two working days to review the documents and issue the STPW.

With the new requirement, the Ministry of Trade is strengthening its review process. The ministry now has 20 days to review the draft master franchise agreement of a franchisor to ensure it does not violate Indonesian laws and regulations. If it is found to be in violation, the franchisor cannot register its franchise prospectus.

In the food and drink franchise business, one of the most attractive areas of the franchise sector in Indonesia, MOT Reg No. 58 now provides administrative sanctions for failure to comply with the requirement for franchisors and franchisees in the restaurant, diner, bar/tavern or cafe business to report to the Ministry of Trade any change in the number of outlets that are self-owned and self-managed, franchised or opened through a capital participation system. Administrative sanctions include warning letters up to the revocation of the STPW. We view these new sanctions as the Ministry of Trade pressuring franchisors and franchisees to comply with reporting rules to help the ministry exercise greater supervisory power over one of the most attractive franchising sectors in Indonesia.

There is some good news for existing franchisors and franchisees. MOT Reg No. 58 now allows franchisors and franchisees in Indonesia that owned more than 250 food and beverage outlets as of September 17, 2014, to continue to operate and own their outlets. Under the previous regulation, they had five years as of February 11, 2013, to comply with the requirement that they own and operate a maximum of 250 outlets.

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MALAYSIA

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Prompt, punctual and paid (the Construction Industry Payment & Adjudication Act)

By Mariette Peters-Goh and Amylia Soraya Aminuddin

The construction industry, which has always been one of the more productive sectors, is constantly contributing to Malaysia's economy. However, its fluctuating growth rates in recent years prompted the creation of the Construction Industry Master Plan (CIMP) to overcome some inherent weaknesses for the economic betterment of the construction industry. The CIMP, which was launched in 2007, is a ten-year plan to motivate, drive and change the mind-set of the construction industry to be more resilient and robust in facing the era of globalisation.

One of the most glaring issues is the fact that the construction industry has been constantly plagued with the chronic problem of delayed and non-payments to contractors and sub-contractors for construction works and services provided. As a result, it has caused tremendous hardship to the industry, evident by the amount of delayed or abandoned development projects over the years.

To provide significant remedy associated with protracted resolution of construction debt disputes and cash flow-related problems, and to ensure fairness, integrity and justice to the industry, the Construction Industry Development Board (CIDB) spearheaded a CIMP-compliant initiative which led to the enforcement of the Construction Industry Payment and Adjudication Act 2012 (CIPA Act), with effect from April 15, 2014.

The CIPA Act

The CIPA Act encompasses a wide range of industries as the words "construction works" have been interpreted to include the construction of buildings, roads, railways and even oil and gas infrastructures. In addition, the CIPA Act also encompasses consultancy contracts in which architects, engineers and quantity surveyors are employed, and where such contracts relate to construction works. In such cases, those architects, engineers and quantity surveyors may refer their payment disputes to the Kuala Lumpur Regional Centre of Arbitration (KLRCA), in accordance with the CIPA Act.

The CIPA Act addresses several stages of the dispute, including payment claim, payment response, notice of adjudication, appointment of adjudicator and the terms of such appointment, the adjudication claim, response and reply, representation, adjudication proceedings and the decision.

The KLRCA has been appointed as the adjudication authority, giving the centre a key role as the default appointing, administrative and training authority for statutory adjudication.

The order and regulations

Complementing the CIPA Act are the Construction Industry Payment and Adjudication (Exemption) Order 2014 (the Order) and the Construction Industry Payment and Adjudication Regulations 2014 (the Regulations), both of which came into force on April 15, 2014.

The Order exempts specified government construction contracts from the provisions of the CIPA Act. The rationale for the exemptions provided under the First Schedule of the Order appears to be justified as it covers construction works that involve emergency, unforeseen circumstances and which relate to national security or security related facilities. However, the temporary exemptions which were extended to construction contracts with the Government, of the contract sum of not more than MYR20 million, received numerous objections from several sectors, most notably from the Malaysian Bar.

The Regulations, on the other hand, provide for detailed information pertaining to the responsibility of the KLRCA as the statutory adjudicator, some of which include the appointment of adjudicators, and the cost of adjudication proceedings. The Regulations were passed to complement the CIPA Act in ensuring that its provisions are strictly adhered to.

Conclusion

The implementation of the CIPA Act looks to provide a platform for the introduction of adjudication proceedings and various methods of resolving payment disputes under construction contracts, to enable construction projects to run smoothly without unduly delay.

Companies however should be mindful of the provisions of the CIPA Act regarding the need to stipulate specific terms in their construction contracts in order to avoid the imposition of the default payment terms. Conditional payment clauses should also be reconsidered following the restrictions under the CIPA Act.

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An overview of medical malpractice in the Kingdom of Saudi Arabia

By Wayne Jones, Shabnam Karim and Louise McDonald

Due to the increasing population and increased awareness of health matters, the number of complaints and claims against healthcare providers and physicians has resulted in an upward trend of medical malpractice litigation.

Medical malpractice litigation in the Kingdom of Saudi Arabia: Saudi Arabia's legal system is based on the principles of Islamic (Shariá) law that are, in general, applied in a more conservative and strict manner than other countries within the Middle East. There is no doctrine of binding precedent, nor comprehensive reporting of cases as would be the case in common law jurisdictions. Higher court decisions in Saudi Arabia and other Middle Eastern countries are persuasive, but not binding (in contrast to others such as England).

A specialist forum, the Insurance Committee, was established in 2007 for the resolution of any insurance disputes on coverage matters.

Pursuant to the Law of Practicing Healthcare Professions, a specialist panel, the Sharia Medical Panel, was established to consider claims in respect of medical malpractice.

Cases in Saudi Arabia are ordinarily heard before a judge and there are no jury trials in Saudi Arabia, but the Sharia Medical Panel is made up of legal and medical experts.

Litigation culture in the Kingdom of Saudi Arabia and the approach to damages awards: As a general proposition, Saudi Arabia is not as litigious as more developed jurisdictions, such as the UK or USA. There has, however, been a noticeable increase in the tendency to resort to litigation.

The tendency with damages awards has been for the courts not to award significant (by western standards) awards over and above the statutory Diyah and indemnity levels. Diyah is the remedy prescribed for wrongful death; Arsh is compensation prescribed for loss of an organ or bodily injury. Diyah payment is presently set by statute and the maximum is SAR300,000. Arsh is similarly payable based on injury to or the loss of a specific body part which depends on the seriousness of the loss/injury up to a maximum which is below the level of Diyah. The current blood money amount is SAR300,000 (US$80,000) for a male Muslim, though this may be doubled during the pilgrimage (hajj). The limit for female Muslims is 50 percent of this figure, and persons of all other religions: 25 percent.

We set out below a few examples of awards which have been made publically available:

- Two doctors were found guilty for causing the death of a child and fined SAR112,000;
- A doctor was found guilty of causing defects for six children during circumcision and fined SAR100,000 in addition to six months in jail and cancellation of their licence; and
- Two doctors were found guilty for the death of a baby and fined SAR330,000.

Although larger awards are starting to be seen, from our experience, the courts are still far more conservative in awarding damages than may be the case in more developed jurisdictions.

Principles applicable to claims for medical liability: The Law of Practicing Healthcare Professions specifically provides that healthcare professionals will be liable in the event they commit malpractice causing harm to a patient.

Standard of care: Under the Law of Practicing Healthcare Professions, a healthcare professional is obliged to "exert due care in line with commonly established professional standards". This is therefore an objective standard.

Criminal liability: The law also sets out the fines and punishment in respect of criminal liability. A healthcare professional can be subject to imprisonment (not exceeding six months) and/or a fine not exceeding SAR100,000 for breaches of the law including:

- Practising healthcare without a licence;
- Providing false information or using unlawful means resulting in obtaining a licence to practise healthcare; and
- Unjustifiably declining to treat a patient.

Disciplinary liability: Any healthcare professional who defaults in performing any duty provided for in the Law of Practicing Healthcare Professions, violates any codes of practice or acts contrary to professional conduct or ethics shall be subject to disciplinary actions, which can include a warning, a fine (not exceeding SAR10,000) and revocation of their licence.

Summary: In general, the lack of certainty regarding damages means the litigation risk is significantly higher in Saudi Arabia compared with other jurisdictions. In comparison, however, the level of damages awards remains much lower than in those jurisdictions which means the uncertainties will affect both parties.

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The latest win by Lone Star against national tax service

By Sung-Eun Stephan Kim

On June 13, 2014, the Seoul Administrative Court ruled in favour of Lone Star Funds and ordered the tax office to refund US$117 million in taxes collected on the sale of a block of shares in Korea Exchange Bank (KEB), overruling the Tax Tribunal's earlier decision upholding the collection of the taxes. Lone Star bought the KEB shares through its Belgian subsidiary in 2003 and sold a part of them in June 2007 for 1.19 trillion Korean won. The local tax authorities withheld 10 percent of the sale proceeds as tax on the capital gains realised by Lone Star.

The court agreed that the Belgian intermediary was a mere conduit and could not benefit from the Korea-Belgium Double Tax Treaty, which would have exempted the gains. However, it ruled that the beneficial owner was a US limited partnership and accordingly, the US-Korea Tax Treaty applied, exempting Lone Star from the Korean taxation. Did the tax authorities win the battle but lose the war?

Although not discussed in the media reports covering the Court's decision, a careful reading of the case reveals that the tax authorities actually argued strenuously that Lone Star had a permanent establishment in Korea when its Korean affiliates actively carried out the investment decisions and later disposition of the shares. Had the tax authorities won that argument, the tax treaties (whether the Korea-Belgium or the Korea-US Tax Treaties) would have been irrelevant. The finding of a Lone Star permanent establishment in Korea would have made it subject to Korean taxes as a domestic corporate-equivalent entity.

The ruling is the latest of Lone Star's decade-long clash with the Korean tax authorities which started with the sale of the Star Tower building in 2004. Lone Star acquired Star Tower through a Korean real estate holding company. The Korean company was wholly owned by Lone Star's Belgian intermediary company which sold the shares of the Korean company to a Singaporean entity, realising a gain of US$206 million. The Belgian intermediary claimed that no tax was due on the capital gains as the Korea-Belgium Double Tax Treaty gives Belgium the taxing authority on gains arising from the sale of Korean company shares.

The Korean tax authorities refused to apply the Korea-Belgium Tax Treaty, claiming that the Belgian company was a mere conduit, having no real presence in Belgium, and under the substance-over-form doctrine, it contended that the actual beneficial owner should be taxed and assessed capital gains tax, under the Individual Income Tax Law, against the Lone Star Fund III. Lone Star Fund III was a US limited partnership, and as the form of the entity did not fit the corporate form under the Korean tax law, the tax authorities assessed individual capital gains tax. The Tax Tribunal sided with the tax authorities and applied the US-Korea Tax Treaty, which gives Korea the taxing power on capital gains from transactions involving real property or a real property holding company situated in Korea. On appeal, the Administrative Court agreed with the tax authorities on the conduit issue, but overruled the individual tax assessment as Lone Star III was a corporate-equivalent (legal person) under the Korean tax law. In other words, the tax authorities won the argument on the substance-over-form issue but lost on the actual tax assessment because it applied the wrong tax. Finally the Supreme Court in its decision rendered on January 27, 2012 affirmed both points and the tax authorities eventually had to cancel the tax assessment.

Unfortunately for Lone Star, that was not the end of the battle. The tax authorities immediately assessed corporate tax against Lone Star III (US), with significantly heavier penalties (30 percent v. 10 percent). Lone Star appealed the assessment and the penalty. Early in 2014, the Seoul Administrative Court sided with the tax authorities and the Tax Tribunal and affirmed the corporate tax assessment with heavier penalties. Although the case has been appealed and the decision is pending at the High Court, it appears likely that the conduit theory will withstand the challenges, given the prior cases where the issue has been fully litigated and now that the Supreme Court has added its judicial gloss.

Several observations can be made from the two lines of Lone Star Cases:

- The conduit issue is settled and any current or future Belgian intermediary will likely be heavily scrutinised by the Korean tax authorities.
- A US limited partnership is now recognised as a corporation for Korean tax purposes.
- The same issues (conduit and permanent establishment) have been litigated over and over again but because of the difference in the actual parties, neither res judicata nor collateral estoppel will prevent future litigation, and the litigation is likely to continue on all fronts. However, Lone Star is not likely to prevail on the conduit issue and the tax authorities will probably continue to lose on the permanent establishment issue: Lone Star will pay taxes on gains from the sale of the Star Tower building but not on the gains from the sale of KEB shares.

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Arbitration agreements – a clause for concern

By John Lewis, Sapna Jhangiani, Sumeet Lall and Kim Barton

When drafting dispute resolution clauses, parties typically focus on the law governing the contract and, where such clauses provide for arbitration, the curial law (or procedural law of the seat). It is, however, common for parties to fail to specify the law that will determine the validity of the arbitration clause itself.

If a party challenges the validity of the arbitration clause, a national court (or tribunal) must generally apply a conflict of laws analysis and determine whether the applicable law to that arbitration clause is (i) the law governing the contract; or (ii) the procedural law of the seat. The outcome of this decision will affect whether or not the arbitration proceeds.

As illustrated by a number of recent cases from different jurisdictions, national courts have been inconsistent in their approach to this issue, which has led to confusion as to how the applicable law of the arbitration clause will be determined if the parties have not specified their choice in the arbitration clause itself (or reached a subsequent agreement).

In the Singapore High Court case of Firstlink Investments Corp Ltd v GT Payment Pte Ltd [2014] SGHCR 12, the Court did not accept that the law governing the contract should automatically govern the arbitration clause. The Court found that it would be "rare" for the law of the arbitration clause to be different from the law of the seat of the arbitration because an arbitration clause has a closer and more real connection with the place where the parties have chosen to arbitrate than with the law governing their obligations under the contract.

In the case of Klöckner Pentaplast GmbH v. Advance Technology (HK) Company Limited HCA 1526/2010, the Hong Kong Court of First Instance emphasised the need to examine the surrounding circumstances to the parties entering into the contract. The substantive law of the contract in question was German law and the arbitration clause provided for any disputes to be submitted to arbitration in Shanghai pursuant to the ICC Rules. In that particular case, the Court found that the substantive law of the contract governed the arbitration clause based on its review of the circumstances.

The Indian Supreme Court was faced with a different challenge in Enercon India v Enercon GMBH Civil Appeal No. 2086 of 2014 (14 February 2014) in which the arbitration clause specified its governing law and the venue of the arbitration, but failed to specify the seat. Applying a test of the "closest and most intimate connection", the Supreme Court held that, as the parties had specified that Indian law governed the arbitration clause, India was intended to be the seat of the arbitration and the procedural laws of India applied to the proceedings.

For arbitrations seated in the UAE (outside of the Dubai International Financial Centre (the "DIFC")), the Civil Procedure Code, which applies to such arbitrations, is silent as to the law applicable to the arbitration clause. In Dubai Cassation Petition 293/1991, the governing law of the contract was deemed to apply to the arbitration clause; however, in the absence of any system of binding precedent and a lack of reported cases, it is uncertain whether the principle is applied consistently.

For arbitrations seated in the DIFC, which is a separate common law jurisdiction within the UAE, in the absence of an express agreement between the parties, the position adopted by the DIFC Courts when determining the parties' choice of seat is likely to follow the approach adopted by the English Courts, however the DIFC-LCIA announced the possibility of amending its rules to be consistent with the position set out under Article 16.4 of the LCIA Rules 2014 which provides that, unless the parties agree otherwise, the law of the arbitration clause will be the law of the designated seat.

The announcement by the DIFC-LCIA follows an emerging trend amongst arbitral institutions to address this issue. Recently, the HKIAC amended its model clause to require parties to specify the applicable law within the arbitration clause itself. Therefore, rather than specifying the "default" law that shall apply to the arbitration clause in the absence of the parties' agreement - as provided in the LCIA Rules 2014 (and as will likely be adopted in the DIFC-LCIA Rules) – the HKIAC's approach is to encourage the parties themselves to make that decision.

These moves have all likely been prompted by the inconsistent jurisprudence emerging from national courts and are considered a positive step towards limiting the scope of disputes arising as to the applicable law of the arbitration clause.

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Foreign exchange control of foreign direct investment

By Nguyen Kim Trang

On August 11, 2014 the State Bank of Vietnam enacted Circular No. 19/2014/TT-NHNN (Circular 19) guiding the foreign exchange control of foreign direct investment activities in Vietnam. There are several noticeable points which significantly affect the activities of capital contribution, account utilisation and overseas remittance for enterprises with foreign direct investment capital (FDI enterprises) and foreign investors (Investors) directly investing in Vietnam.

Investment contribution in VND and bank accounts for direct investment activities

According to Circular 19, FDI enterprises and Investors entering into a business cooperation contract (BBC) are entitled to open a Direct Investment Capital Account (Account) in a selected foreign currency and/or in VND at one authorised bank for the implementation of investment capital contribution and other revenue disbursement transactions. This provision could be deemed as a positive innovation compared to the previous regulations which only allowed Accounts to be opened in foreign currencies.

For the case where a foreign investor directly invests in Vietnam in the form of shares/equity acquisition in a Vietnamese company in order to participate in the management of such company, the target company shall open the Account and comply with regulations of Circular 19 if such acquisition is subject to an issuance of an investment certificate in accordance with the laws of Vietnam.

Available for more than one account

Under Circular 19, the Account is also used by the FDI enterprises for drawdowns and repayment of the foreign loans and domestic loans. In case of borrowing a foreign loan in a different currency from the currency used for opening the Account, the FDI enterprise is permitted to open an additional Account in the currency of the loan, but only at the same authorised bank where it opened the first Account. It is further noted that an FDI enterprise may only have one Account for each foreign currency.

Overseas remittance of investors

Through their Account, the Investors are permitted to remit overseas their direct investment capital in cases of dissolution or termination of the FDI enterprise, reduction of investment capital, or completion, liquidation or termination of the investment project or the BCC. Moreover, the principal, interest and fees of foreign loans, and profit and other lawful income relating to direct investment activity in Vietnam are also permitted to be remitted overseas.

Where the Account of an FDI enterprise is closed due to its dissolution or termination or due to the assignment of its investment capital resulting in a change of its initial legal entity, Investors of such FDI enterprise may use their foreign currency payment account or VND payment account at an authorised bank to purchase foreign currency and, within the next 30 working days, remit their direct investment capital and other lawful income overseas.

Capital transfers for the investment preparation phase

Under Circular 19, Investors may, prior to obtainment of the investment certificate, transfer their investment capital into Vietnam in order to meet lawful expenses of the investment preparation phase in accordance with a written agreement between the parties involved and via their foreign currency payment account opened at an authorised bank. Such investment capital, after the issuance of an investment certificate, may be finalised by conversion into the capital contribution or into the registered foreign loans of an FDI enterprise.

Circular 19 took effect on September 25, 2014 and repealed Article 9 of Circular No. 05/2014/TT-NHNN of the State Bank of Vietnam, dated March 12, 2014, guiding the opening and use of indirect investment capital accounts in order to conduct foreign indirect investment activities in Vietnam.

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