ASIAN LEGAL BUSINESS

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SUPER 50

TMT LAWYERS

TOP PRACTITIONERS IN THE TECH AND MEDIA SPACE, AS PICKED BY CLIENTS

+

TOP 15 IN-HOUSE TEAMS
TOP 15 OFFSHORE LITIGATORS
ASIA INSOLVENCY & RESTRUCTURING GUIDE

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第十九届"贸仲杯"19th CIETAC CUP
国际商事仲裁模拟仲裁庭辩论赛
INTERNATIONAL COMMERCIAL ARBITRATION MOOT

CIETAC
培育商事仲裁法律后备人才
托起未来商事仲裁法律之星

Notice for Pre-registration

The CIETAC CUP International Commercial Arbitration Moot is organized by China International Economic and Trade Arbitration Commission("CIETAC"), and has been successfully held for 18 sessions since 2000, attracting over 4,000 students from more than 200 prestigious law schools. The goal of the CIETAC CUP is to foster the study of international commercial arbitration and to train future leaders in the area of alternative dispute resolution by introducing international moot court. The CIETAC CUP is the first official Pre-Moot of Vis Moot, using the same set of case and arbitration rules. The competition is in English.

Date: 28th November 2021 to 3rd December 2021

Location: Virtual Moot via Zoom

Registration: Teams and Arbitrators can register at http://moot.cietac.org/

Further information: Any inquiries can be sent to moot@cietac.org

Looking forward to your participation!

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A trader works during the IPO for Chinese ride-hailing company Didi Global Inc on the New York Stock Exchange (NYSE) floor in New York City, U.S., June 30, 2021. REUTERS/Brendan McDermid

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In its inaugural Asia Super 50 TMT Lawyers list, ALB puts the spotlight on standout lawyers in the technology, media and telecommunications space when it comes to client service. These lawyers were selected based on client recommendations sent directly to ALB. *List by Asian Legal Business, text by Aparna Sai*

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This inaugural ranking recognises the achievements of the top in-house legal teams around the region. For legal leaders, standing out during an especially tough year has required adaptability, empathy, and the ability to blaze a path ahead rather than just keep up. The evolution of the role also continues, as the nature of the job becomes increasingly demanding and exciting.

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FROM THE EDITOR

Meet the lawyers enabling Asia's tech growth.

We might have been broadly aware of the rapid growth of Asia's technology in the past decade or so, but here are some numbers to back it up. According to a report from McKinsey published earlier this year, between 2006-08 and 2016-18, Asia accounted for 52 percent of global growth in the revenue of technology companies. The region's global share of start-up investment – and this includes PE/VC investment and initial public offerings - increased from only 16 percent in 2006-08 to 40 percent in 2017-19, accounting for 43 percent of global growth. The report added that the region was responsible for 87 percent of global growth in patent filings over the past decade.

McKinsey added that there are four areas where Asia has a high share of both start-up investment and strong patents. These are mobile services, artificial intelligence, the Internet of Things (IoT), and manufacturing equipment. In the case of mobile services, the region holds 81 percent of the world's strong patents, and half of venture capital and IPO funding, according to McKinsey. Asia also has a 42 percent share of AI strong patents, and accounts for 48 percent of global start-up investment in AI technologies. When it comes to IoT, the region has 39 percent of global strong patents and 56 percent of worldwide start-up investment in IoT technologies.

Although many of the above products and solutions are now regionally, if not globally, popular, very little is seen or heard about the lawyers making it all happen. But lawyers are involved at nearly all stages; for example, in the journey between an idea and a patent, or the one between a prototype and final product being used by the end consumer. The ALB Super 50 TMT Lawyers list aims to fix that, by spotlighting some of the top practitioners in the region as chosen by clients. May they continue to do their excellent work.

RANAJIT DAM
Managing Editor, Asian Legal Business, Thomson Reuters

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BRIEFS

2021

THE BRIEFING: YOUR MONTHLY NEED-TO-KNOW

IN THE NEWS

I

In a letter written to U.S. law firms, Eric Grossman, the CLO of Morgan Stanley, has said that remote work is not sustainable in the long run, expressing "grave concern that our profession cannot long endure" such a model.

QUOTE UNQUOTE

"I was reminded by my wife in the break I suffered from several bouts of something described as 'global amnesia."

Neil Gerrard, a former head of the white-collar crime team at Dechert, defends himself before the UK High Court during a negligence case involving the Serious Fraud Office.

IN THE NEWS

II

HFW has partnered with maritime cybersecurity company CyberOwl intending to offer "comprehensive technology and legal services to the shipping industry around cyber risk management and compliance."

UK FIRMS RACK UP STRONG FINANCIALS DESPITE PANDEMIC

The impact of COVID-19 on the global business landscape was not enough to derail the financial performances of UK law firms such as Allen & Overy, Ashurst, Clifford Chance and Simmons & Simmons in the fiscal year 2020-21. For Allen & Overy, client revenue rose 80 million pounds ($110 million) to 1.77 billion pounds, with profit per equity partner (PEP) jumping by 17 percent to 1.90 million pounds. Ashurst recorded revenue was 711 million pounds – a 10 percent increase from the previous financial year – and PEP increased 15 percent to 1.038 million pounds. And Clifford Chance saw revenues reaching 1.828 billion pounds, with PEP increasing 9 percent to 1.85 million pounds.

56

56% - Percentage of senior in-house counsel and antitrust law firm attorneys who say evidence collection in competition investigations has become more difficult because of remote working, according to a survey by FTI Consulting and Global Competition Review.

42

42% - Percentage of legal departments globally that nominated contract management technology as being among the top three areas of legaltech they invested the most in, according to a survey from Association of Corporate Counsel and Major, Lindsey & Africa.

U.S. LAW FIRM DIVERSITY CHIEFS GROWING IN NUMBER

More than one-fifth of the 100 highest-grossing U.S. law firms now have a diversity-focused professional with "chief" in their title, according to a Reuters survey of those 100 firms and news reports. Of the 45 firms that responded to the survey, more than 64% said they hired diversity, equity, and inclusion (DEI) professionals in the past year, and 64 percent said they are hiring such professionals this year. Law firm CDO roles are proliferating amid pressure to accelerate change in an industry. But how the position is defined, and the freedom and resources the executives are given, depends on the firm, Reuters added.

FORUM

LONG-DISTANCE RELATIONSHIP

As the COVID-19 pandemic continues to shadow 2021, law firms have had to relook at their long-term strategy for everything from internal working policies to managing client relationships. When it comes to the latter, firm leaders say that it is important to be both innovative and proactive.

HOW ARE YOU MAINTAINING STRONG CLIENT RELATIONSHIPS AT A TIME WHEN BUSINESS IS STILL LARGELY CONDUCTED VIRTUALLY?


BULL


SIAO


ABATE


SER

CAVINDER BULL SC, chief executive officer, Drew & Napier

We have had to be innovative in keeping in touch with clients in the midst of the pandemic. Much of this involves greater use of technology, which has been aided by the fact that we invested heavily in upgrading the firm's technology infrastructure a year before the pandemic began. This has enabled us to make full use of virtual meeting platforms to stay engaged with clients. It has also enabled greater use of webinars which now can have participants and speakers from all over the world. In addition, there has been an increased usage of social media platforms to stay in touch with clients. These less formal platforms are never used for legal work but are very helpful for maintaining personal client relationships that have developed over the years. For clients in Singapore, there has also been the option of in-person meetings, of course always staying within the government guidelines of the day. Respecting the rules is an important way of respecting our clients' health and wellbeing whilst still capturing some valuable time together. If we have genuine concern for our clients' wellbeing, that naturally drives our desire to maintain close contact with them and to be available should they need our help, regardless of the pandemic.

JOHN PHILIP SIAO, co-managing partner, Tiongco Siao Bello & Associates

Since March 2020, when restrictions on movement due to the COVID-19 pandemic were implemented in the Philippines, the firm implemented a work-from-home arrangement. Given this, we took steps to ensure that our clients continued to have constant access to legal services in these challenging times. The firm reached out to our clients to implement regularly scheduled meetings via the different online platforms. In a way, it became so much easier for clients to access our lawyers ever since online meetings became the new norm.

At the beginning of the quarantine period, social media was flooded with misleading or even outright false information. To counter this, we regularly updated our clients and assisted them in complying with the latest laws and regulations such as the new rules on remote working, laying-off of workers and closure of establishments, videoconferencing for stockholders meetings and digital submission of compliance requirements by the SEC, the various health protocols, legislation on suspension of obligations, and rules on taxation, among others. The firm's accounting department was quick to adapt to online banking, which enabled our clients to conveniently and securely settle billing and collections. Documents and communication were digitized and shared among team members and clients such that evaluation and discussion could be conducted electronically. This increased the efficiency of our legal services and substantial savings in electricity, paper, ink and printer, and transportation, which were passed on to clients. Though the measures taken were in place to a certain degree pre-COVID-19, the pandemic compelled us to fully engage with technology.

As the office is slowly returning to normal, we will be keeping our best practices from our years in service while integrating with new practices brought about by the pandemic. The firm will continue to maintain strong relationships with clients both virtually and physically, in order to provide them with the best legal services.

DUNCAN ABATE, partner and chair of the Asia board, Mayer Brown

More than ever, being responsive to our clients' needs and proactively anticipating the issues they face at a local and global level has been critical to maintaining and developing strong client relationships. Communication is really the starting point. Early on we adopted a flexible global communications strategy which empowered our people to leverage a broad range of platforms, including WebEx, Zoom and Teams. This has enabled us to accommodate our clients' different communication preferences while facilitating global collaboration across jurisdictions facing very different pandemic conditions and responses. As the pandemic continues to evolve we have seen this flexibility foster greater innovation in how we support and partner with our clients. For example, client demand for training is probably greater than ever, which we have been able to fully embrace by leveraging our platforms, notably our COVID-19 portal. We have also seen clients increasingly eager to collaborate and engage with us on a broader range of topical issues, such as on diversity and inclusion and ESG, developing thought leadership content through our 10Hundred portal. In this respect, our response has helped to build deeper and richer relationships with our clients.

SHARON SER, managing partner, Withers

Our continuing investment in technology and digitisation empowers our lawyers to efficiently support clients' requests seamlessly from any location. Extending globally across our cloud-enabled offices, these technologies include softphone capabilities, cloud video conferencing capabilities, in-office technology to facilitate the client's preferred cloud communication solution; and widespread adoption of Microsoft collaboration tools. We have also launched a range of mobile applications which allow scanning, expense management, collaboration, time-recording, partner voting, and intranet access to be available from any location. The current pandemic brings about an acceleration of, rather than a change to, our technology strategy. Withers will continue to invest in modern technologies which support and enhance these working practices in order to best serve our clients. A key enabler is our digital strategy, which in conjunction with a review of our working practices across the firm, is implementing modern workflow and automation technologies to drive greater efficiency across our processes. Our efforts in enhancing efficiency through digitisation are set to evolve and grow even beyond the pandemic to enable the delivery of excellent legal advice and services to our clients.

REUTERS/Olivia Harris

SHEARN REPRESENTING MALAYSIA, 1MDB ON $5.6 BLN LAWSUIT AGAINST KPMG PARTNERS

Shearn Delamore is representing Malaysia's government and state fund 1Malaysia Development Berhad (1MDB) in a lawsuit seeking over $5.6 billion in damages from KPMG partners for alleged breaches and negligence linked to a corruption scandal at the fund.

This is believed to be the second 1MDB-related lawsuit filed by Shearn Delamore.

Audit firm KPMG denied the allegations and pledged to "vigorously" contest the suit filed against 44 current and former partners and linked to its audit of 1MDB's financial statements between 2010 to 2012.

The suit, which the finance ministry confirmed had been filed, is the latest in a series of suits filed by Malaysian authorities to recover billions of dollars missing from 1MDB in a scandal that has implicated high-level officials, banks and financial institutions around the world.

"All allegations as reported in the news are refuted and the claim will be vigorously contested," KPMG said in an emailed statement to Reuters, noting it was "disappointed" with the suit.

Malaysia's finance ministry declined to comment further due to sub judice. In June, it said it was negotiating a settlement with the auditor.

Lawyers for 1MDB did not immediately respond to a request for comment.

According to the lawsuit, the plaintiffs allege that about $3.2 billion were misappropriated from 1MDB and its subsidiaries during the period KPMG served as the firm's auditor.

The amount was part of a larger sum of $5.64 billion allegedly siphoned from 1MDB between 2009 and 2014 - losses that could have been avoided if KPMG had obtained sufficient evidence to support its audit findings, the plaintiffs allege.

A proper audit by KPMG would have identified fraud risk warning signs which the firm would have had a duty to report and which would have led to the discovery of the fraud at 1MDB sooner, the plaintiffs said.

The plaintiffs said they would seek the full amount misappropriated, including interest accrued as well as additional costs.

The app logo of Chinese ride-hailing giant Didi is seen through a magnifying glass on a computer screen showing binary digits in this illustration picture taken July 7, 2021. REUTERS/Florence Lo

DIDI CRACKDOWN SEEN AS WARNING SHOT FROM CHINA'S REGULATORS

As a ride-hailing company, Didi continues to face scrutiny from the Cyberspace Administration of China, amid reported national security concerns, the industry watchers interpret it as a warning to tech companies with overseas listing ambitions.

China's Uber alternative, which raised $4.4 billion in its New York IPO in July, has since seen its share prices decline as a result of the crackdown in its home market.

State security officials, regulators, and police have since been sent to the company offices, according to the *Wall Street Journal*. This comes at a time when the Chinese government is closely examining cybersecurity practices and personal data collection. Among the immediate ramifications for Didi are the inability to register new users and apps being removed from app stores.

The fallout has market watchers closely examining how these events will affect the business climate in China, while tech businesses having to consider whether they are indeed fully compliant.

Michael Tan, a partner at Taylor Wessing and head of the firm's TMC practice for China, says the events have created something of a buzz when it comes to compliance in China, particularly in terms of data protection.

"This is a very hot topic," Tan says, adding "Within business circles, there has been quite a heated discussion about the data security law." He notes that the actions against Didi represent a "very strong warning from the regulators."

In particular, Tan says the U.S. IPO was a sign that Didi "chose to cross the line."

"That triggered quite a strong reaction from the regulators, because that certainly means it needs to be scrutinised if there is any kind of data breach cases which could potentially jeopardise not only privacy but also national security, this is for sure," Tan says.

"If you go public in the U.S. instead of China, there are all these public disclosure requirements, that may expose quite a lot of business data to the public and US regulators. This is certainly, no something that is good, let alone, in the internet sector that has long been rampant abuse of privacy. This will mean if some other third parties including foreign governmental agencies want to have a closer look at your case, they could for sure take a closer look," he adds.

Tan says Didi fell under the scrutiny of regulators based on existing concerns around privacy breaches, and regulators have been paying close attention to the business prior to its listing.

"If you read the official announcement, the regulators concluded that there have been privacy breaches, this is the legal basis or argument used to further the investigation," he notes.

For Didi, the nature of the business was already likely to place them somewhat under the spotlight.

"Obviously they have a lot of data in their hands, they also have been expanding quite aggressively in the past. So now there have been certain violations of rules as investigated, at least according to the official announcement," Tan says.

"The biggest hurdle they are facing, is they have been going beyond certain (unspoken) regulatory boundaries, particularly in cybersecurity, data security," he adds.

But while "the business will be jeopardised," Tan says "in reality, you can still use the app, just like today I'm still using Didi, as an existing user, you can still use it."

China's government has been taking data protection increasingly seriously in recent years, with a new data security law coming into effect in September 2021. Tan views the Didi episode as being part of a global greater emphasis on data security.

"Every country is becoming highly alert and also are trying to protect themselves. This is also one of the major concerns behind the Chinese legal framework behind data security. Which is closely linked to the so-called data sovereignty," Tan says.

"If you have business activities in China or are dealing with China, you need to follow Chinese law, I think that's inevitable," he adds.

Q & A

'WE CAN SOLVE PROBLEMS MORE EFFECTIVELY WHEN WE ALL WORK TOGETHER'

The legal industry group Corporate Legal Operations Consortium (CLOC) appointed **Mike Haven** as its president earlier this year. Haven, who is also head of legal operations and associate general counsel for Intel, has landed the role during a time the organisation is broadening its remit and seeking to transform the business of law.

ALB: What are some of the ways you've seen the legal industry evolve over your professional career?

HAVEN: There have been many dramatic changes in the legal industry over the past two decades. When I was a newly minted law firm associate, we worked with paper files. We would go to a file room, pull out binders or folders containing hard copies of correspondence, pleadings, and discovery for the matters we were working on, and return them to the file room when we were done. For document review projects, we would print out all the documents provided by the opposing party and review them one by one looking for a smoking gun. Correspondence with opposing counsel was via formal letter, and if we wanted to get it to them quickly, we would use a facsimile. Using a PowerPoint deck in trial was considered quite sophisticated. Obviously, those days are long gone. The practice of law has transformed as game-changing technologies have been introduced and adopted. Files are now digitised, discovery tasks are streamlined by machine learning and review software, facsimiles seem to be extinct, most correspondence is by email, rapid responses are the norm, and trial lawyers are expected to leverage fancy software in presentations to juries. It's a different world. That said, in many ways the industry has been slow to change. For example, we have not yet shaken off the billable hour. There still is much more change on the horizon.

ALB: Can you tell us a little about your priorities as president of CLOC?

HAVEN: Our vision has not changed. CLOC remains dedicated to transforming the business of law. We will continue to support our members, the organisations they serve, and the industry in leveraging legal operations to apply business principles to running corporate legal departments. But it's not just about advancing the ball for corporate teams. We have welcomed and embraced the entire legal ecosystem – including law firms, ALSPs, technology providers, and educational institutions – so that we all can work together to transform the industry. We have learned that it will require focus from every sector to facilitate meaningful, lasting change, and we are excited that professionals and organisations across the industry are on board. In addition to broadening our membership, we have expanded our focus to include "matters of the heart." As CLOC was ramping up, we were heavily focused on "matters of the mind" – things like legal finance, vendor management, process improvement, technology implementation and business intelligence. These matters obviously are still very important, and we will continue to help our members get and stay on the cutting edge. But we need to focus on other equally important things like empathy, diversity, inclusion, and access to justice. These matters are not just nice-to-haves; they are fundamental to the success of our members and advancement of the legal industry.

MIKE HAVEN

ALB: For the legal industry, what should some of the big takeaways from the pandemic be?

HAVEN: A few things come to mind. First, the pandemic taught us that we can solve problems much more effectively and efficiently when we all work together. The communities that came together for each other, staying home, wearing masks, getting tested, and getting vaccinated are now living their pre-pandemic lives. It was a wonderful display of teamwork to get through a seemingly impossible challenge. That same principle applies to the legal industry. Working together, we can transmogrify. If we remain siloed, things will change much slower, if at all. Second, we do not need to commute to an office every day to work effectively. We can give people balance in their lives. However, that does not mean proximity is no longer important. The pandemic taught us that we need in-person interaction. We should strike a balance between flexibility and proximity in our work lives, and the pandemic has proven that can work. Third, on a more personal level, I think we all have a much deeper appreciation for many of the things we once took for granted. Family gatherings, happy hours at the local pub, watching a youth sports game: These are things that make us happy. Lawyers need to make more time for these things, because mental health is a serious issue in our profession.

CLOUD-BASED RIMON LAW OPENS KOREA OFFICE

Rimon Law, a law firm operating on a decentralized, distributed model, has opened an office in Seoul.

The office, Rimon's 42nd globally, will be led by Jungwoo Chang, a former managing partner and co-founder of Korean boutique firm Accelsior Partners.

In Asia, Rimon also has an office in Shenzhen, which it opened in January 2019. In August last year, the firm hired Xiaowei Ye, a former managing partner of Morgan Lewis & Bockius' Beijing office, as a partner in Shenzhen and Washington DC.

In Seoul, Chang represents technology companies at all stages of their lifecycles. Prior to launching Accelsior Partners, Chang worked in-house with Yello Mobile, STIC Investments and LG International.

McDERMOTT REVIVES ASIA STRATEGY WITH SG OUTPOST

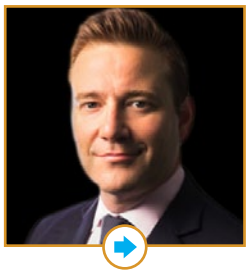
Chicago-headquartered McDermott Will & Emery (MWE) is set to return to Asia after receiving a license to open in Singapore, and also making partner hires from King & Spalding and Squire Patton Boggs.

Last July it seemed MWE's Asia plans were over after it ended a 13-year relationship with Shanghai-based Yuanda China Law Firm. As it had closed its Seoul office, MWE no longer had a physical presence in the region.

However, Singapore appears to be the first stop in the firm's return to Asia. In March this year, it hired Ignatius Hwang from Squire Patton Boggs. Hwang moved from the legacy Bryan Cave to what was then Squire Sanders in 2012.

The most recent addition is energy expert Merrick White, who was a partner at King & Spalding in Singapore.

APPOINTMENTS



CHRIS BAILEY

LEAVING
King & Spalding

JOINING
Stephenson Harwood

PRACTICE
Arbitration & Mediation

LOCATION
London/Singapore

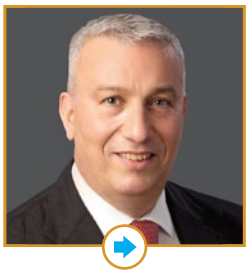
ROBERT CHILD

LEAVING
Clifford Chance

JOINING
Ashurst

PRACTICE
Restructuring & Insolvency

LOCATION
Singapore



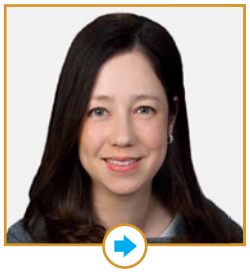
PHILIP HYDE

LEAVING
K&L Gates

JOINING
Mayer Brown

PRACTICE
Capital Markets

LOCATION
Hong Kong



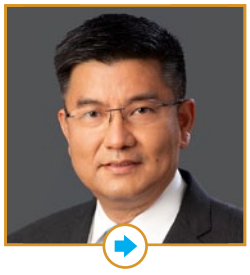
VICTORIA LLOYD

LEAVING
Ropes & Gray

JOINING
Baker McKenzie

PRACTICE
Capital Markets

LOCATION
Hong Kong



GUIPING LU

LEAVING
K&L Gates

JOINING
Mayer Brown

PRACTICE
Capital Markets

LOCATION
Hong Kong

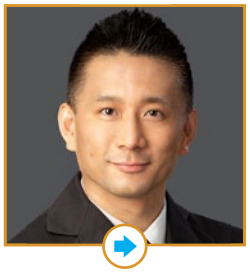
PEGGY WANG

LEAVING
White & Case

JOINING
Norton Rose Fulbright

PRACTICE
Private Equity

LOCATION
Hong Kong



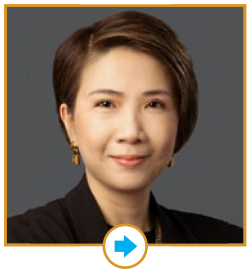
JASON WANG

LEAVING
LC Lawyers

JOINING
Mayer Brown

PRACTICE
Capital Markets

LOCATION
Hong Kong



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ALB *Virtual* Japan Corporate Compliance And Governance Forum

28 OCTOBER 2021

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- Compliance Power Panel Session: Reassessing Your Compliance Strategies to Effectively Address Legal Hurdles in a Post-COVID Recessionary Economy
- Dawn Raid and Unexpected Inspections: What system and policies to put in place to stay fully prepared
- Digital Transformation Benchmarking Exercise: Reinventing Legal Work In Disruptive Times: Addressing Risks Via Design And Delivery
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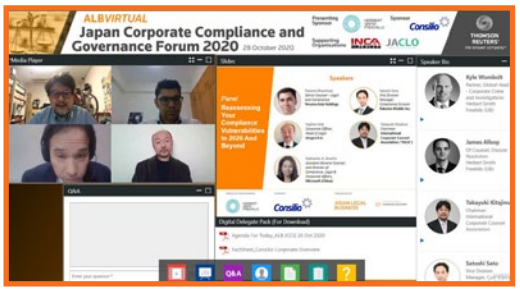

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EXPLAINER

BINANCE HURDLES SHOW CRYPTO ROAD FAR FROM SMOOTH

Changpeng Zhao, CEO of Binance, speaks at the Delta Summit, Malta's official Blockchain and Digital Innovation event promoting cryptocurrency, in St Julian's, Malta October 4, 2018. REUTERS/Darrin Zammit Lupi

Binance, the world's largest cryptocurrency exchange operator with trading volumes of $662 billion globally in June, has sought to expand in Asia. However, it hasn't all been smooth sailing, as regulators around the world – and across the region – clampdown.

1 WHAT'S BEEN HAPPENING TO BINANCE IN ASIA?

Britain's financial watchdog recently banned the cryptocurrency exchange from carrying out regulated activities, just one of the reasons why Binance has been in the headlines lately for all the wrong reasons.

"Binance has made the headlines recently with the FCA issuing a series of requirements in relation to the regulated part of its UK business," says Etelka Bogardi, partner at Norton Rose Fulbright in Hong Kong.

After being singled out by regulators in Europe, the crypto exchange is also struggling to get a foothold in Asia.

Thailand's Securities and Exchange Commission (SEC) has filed a criminal complaint against Binance for operating a digital asset business without a license. Meanwhile in Hong Kong, the Securities and Futures Commission has said Binance was not licensed to sell "stock tokens" in the city; it even name-checked the operation, saying "the SFC wishes to make it clear that no entity in the Binance group is licensed or registered to conduct 'regulated activity' in Hong Kong." And in Japan, the regulator has said that Binance was operating in the country illegally.

2 WHY HAS BINANCE COME UNDER REGULATORY SCRUTINY?

Regulators worldwide are concerned about cryptocurrency exchanges, Bogardi says, noting there are two primary reasons behind this.

"One is the potential to use an exchange to layer illicit proceeds back into the real economy. Many exchanges now have sophisticated levels of AML and CFT compliance controls, and we expect this move to continue, particularly as more and more jurisdictions implement legislation to bring virtual asset services providers (including crypto exchanges) within the AML regulatory perimeter," she says. "The second is the increasing focus on consumer protection, as cryptocurrencies have become more popular in the retail market and as the price volatility has increased. In particular, derivatives and other more complex products that can magnify losses will be of concern."

3 WHAT DO DIFFERENT REGULATORY RESPONSES TELL US ABOUT THE DIFFERENT ATTITUDES TOWARDS CRYPTO EXCHANGES IN ASIA?

Bogardi says that the regulatory approach towards crypto exchanges are "not entirely consistent within the APAC region." This is for a variety of reasons, "including which aspect of the cryptocurrency market a particular jurisdiction is primarily exposed to, as well as the current appetite to expose the retail market to these assets," Bogardi says.

"For example, the proposed new regulatory licensing regime for VASPs in Hong Kong will, at the outset, cover virtual asset exchanges only, as this is the most active sector locally. Singapore has also brought in comprehensive legislation that licenses a wide range of virtual asset-related activities, and the queue of applicants for these licenses is long," she adds.

In the meantime, Binance may provide something of a case study for how regulators act across the region, and where their priorities fall.

DEALS

$7 BLN

China Duty Free's planned HK secondary listing
Deal Type: ECM
Firms: Freshfields Bruckhaus Deringer; Haiwen & Partners; Jia Yuan Law Offices; Linklaters
Jurisdictions: China, Hong Kong

$3.6 BLN

Flipkart's funding round
Deal Type: PE/VC
Firms: Cooley; Hogan Lovells; Shardul Amarchand Mangaldas & Co.
Jurisdictions: India, U.S.

$2 BLN

Xpeng's HK planned dual primary listing
Deal Type: IPO
Firms: Fangda Partners; Freshfields Bruckhaus Deringer; JunHe Law Firm; Sullivan & Cromwell
Jurisdictions: China, Hong Kong

$1 BLN

Monde Nissin's IPO
Deal Type: IPO
Firms: Allen & Overy; Milbank
Jurisdiction: Philippines

$657 MLN

Nayuki Holdings' IPO
Deal Type: IPO
Firms: Davis Polk & Wardwell; Global Law Office; Jingtian & Gongcheng; Kirkland & Ellis
Jurisdictions: China, Hong Kong

$643 MLN

Youran's planned HK IPO
Deal Type: IPO
Firms: Davis Polk & Wardwell; Dentons; Sidley Austin; Tian Yuan Law Firm
Jurisdictions: China, Hong Kong

$537 MLN

Hutchmed 's HK secondary listing
Deal Type: ECM
Firms: DLA Piper; Freshfields Bruckhaus Deringer; Gibson Dunn & Crutcher; King & Wood Mallesons
Jurisdictions: China, Hong Kong

$490 MLN

GoAir's IPO
Deal Type: IPO
Firms: AZB & Partners; Clifford Chance; Khaitan & Co
Jurisdiction: India

PRC FIRM ALLBRIGHT OPENS SINGAPORE OFFICE AS IT EYES SE ASIA GROWTH

Shanghai-headquartered AllBright Law Offices has opened an office in Singapore, the firm's fourth overseas outpost after Hong Kong, London, and Seattle.

The firm said that the office would be headed by Shanghai-based partners John Liu and Amy Ye, who are expected to travel to Singapore in due course, but did not provide any other details.

In a press release, AllBright stated that the new office would give the firm access to both the city-state as well as the broader Southeast Asian region. "With the changing of the geopolitical landscape, Singapore becomes more and more important in the going-out journeys of Chinese companies, with an increasing number of Chinese companies choosing to invest in the city-state or setting up here in order to further expand into the Southeast Asia markets," it said.

Despite Singapore's geographical and cultural proximity to China, very few PRC law firms have opened offices in the city-state. Apart from the Sino-Australian firm King & Wood Mallesons, these include Beijing's Jingsh Law Firm and the Shanghai-headquartered Landing Law Offices.

SG TECH-HUB AMBITIONS ON TRACK, BUT LIMITATIONS REMAIN

Over the past few years, Singapore has worked diligently to develop its reputation as a hub for technology businesses and a home of innovation. With government support and the infrastructure to underpin this ambition, the city-state is often dubbed "Asia's Silicon Valley." But lawyers say while the groundwork is all in place, there are still areas that demand close attention and further development.

Elaine Lew, co-head of Dentons Rodyk's TMT practice, and partner Desmond Chew say strong government support and varied initiatives have helped to create the right environment for innovation in Singapore, and stimulate the growth of ICT firms.

The country also boasts an IP protection regime that has "consistently been ranked as one of the best in the world," say Lew and Chew, noting that IP protection is particularly important to the ICT sector "where protection of innovation is fundamental to many of these businesses."

Other contributing factors in its favour is Singapore's global talent pool, "significant access to private funding sources," and a digitally literate population.

Rajesh Sreenivasan, head of the TMT practice at Rajah & Tann Singapore, says the city-state has been rewarded for its investment in positioning itself as a tech hub.

"[Singapore] has one of the largest numbers of regional headquarters for global Fortune 500 companies compared to other Asian cities and is a leading financial centre," Sreenivasan says, noting it has consistently been ranked as one of the world's most competitive economies.

Its attractions are "numerous and come mostly by design," he says, noting that its strategic location, and pro-business environment with policies and processes make it a compelling choice for companies.

But while Singapore has many benefits, there are still limitations it needs to overcome in order to fully cement its position.

anek.soowannaphoom/Shutterstock.com

One is talent. "There is a limited supply of skilled local talent in the technology sector. With the increase in the number of start-ups and technology firms in Singapore, there is a high demand for technology specialists," Lew and Chew say.

"However, the pace of technological change has outstripped our educational system. Although the global talent pool is large, Singapore faces stiff competition from other markets for the best of global talent. More training and re-training of technology professionals is required in Singapore. Another potential limitation is the disruption brought by COVID-19, which shows that digital talents can practically work remotely from any jurisdiction. This will further exacerbate the lack of supply, and require Singapore to be even more competitive in trying to attract talents to work on-shore," the lawyers add.

Sreenivasan agrees, saying that the shortage of tech talent and the situation is likely to worsen following pressures from Singaporeans to slow the inflow of foreigners due to concerns about jobs and overcrowding.

"The competition for talent will also intensify with growing competition from regional countries such as Indonesia, South Korea and Vietnam. These countries are also building thriving start-up communities and ecosystems and could pose challenges for Singapore's start-up dominance. However, the Singapore Government has implemented policies and worked with private enterprises to grow talent in the tech sector as well as to allow select foreign talent to continue to add to the sector," Sreenivasan says.

Another challenge on the horizon for tech businesses is a lack of clear regulations - and strong enforcement of regulations - when operating in developing parts of Asia, says Sreenivasan.

"This increases business uncertainty and legal compliance risks. Tech companies are also wary of weak IP protection for their innovations. Singapore has an advantage in having a dynamic legislative framework and operational guidance through regulatory guidelines issued by technology sector regulators such as the Infocomm Media Development Authority (IMDA). These guidelines need to be reviewed and industry feedback sought regularly to ensure relevance and resonance as the pace of change is very high in the tech industry and the regulations need to be updated to ensure growth and attractiveness of Singapore as the tech location of choice in Asia," Sreenivasan says.

NORTH ASIA AND SOUTHEAST ASIA/SOUTH ASIA LEAGUE TABLES

North Asia Announced M&A Legal Rankings

Rank	Legal Advisor	Value ($MLN)	Deals	Market Share
1	Nagashima Ohno & Tsunematsu	22,680.2	49	4.3
2	Linklaters	22,588.4	19	4.3
3	Jia Yuan Law Offices	20,776.6	15	3.9
4	Davis Polk & Wardwell	19,041.0	13	3.6
5	Nishimura & Asahi	19,008.7	78	3.6
6	Kim & Chang	18,894.4	75	3.6
7	Fangda Partners	18,617.0	79	3.5
8	Mori Hamada & Matsumoto	17,343.6	77	3.3
9	Anderson Mori & Tomotsune	17,285.2	53	3.3
10	Kirkland & Ellis	15,245.9	11	2.9

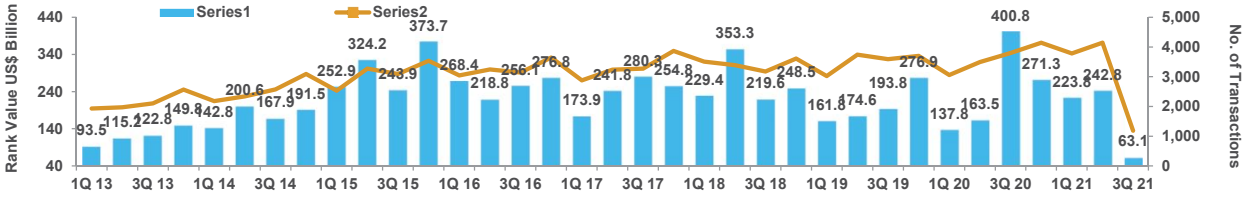
(*tie) Based on Rank Value including Net Debt of announced M&A deals (excluding withdrawn M&A)

North Asia Announced M&A Financial Rankings

Rank	Legal Advisor	Value ($MLN)	Deals	Market Share
1	Goldman Sachs & Co	51,291.9	24	9.7
2	China International Capital Co	48,128.6	53	9.1
3	JP Morgan	44,428.6	23	8.4
4	Morgan Stanley	37,773.5	36	7.1
5	CITIC	30,171.4	27	5.7
6	BofA Securities Inc	26,012.3	19	4.9
7	Credit Suisse	22,564.8	16	4.3
8	Citi	18,068.3	26	3.4
9	Nomura	17,418.3	50	3.3
10	Industrial & Comm Bank China	17,132.5	69	3.2

(*tie) Based on Rank Value including Net Debt of announced M&A deals (excluding withdrawn M&A)

Any North Asia Involvement Announced M&A Activity - Quarterly Trend*



Southeast Asia / South Asia Announced M&A Legal Rankings

Rank	Legal Advisor	Value ($MLN)	Deals	Market Share
1	Skadden	44,927.9	6	20.3
2	Davis Polk & Wardwell	43,907.7	7	19.8
3	Jones Day	38,600.8	9	17.4
4	Sullivan & Cromwell	34,198.5	2	15.4
5	Hughes Hubbard & Reed	32,553.6	2	14.7
6	Ropes & Gray	32,222.1	3	14.5
7	Cooley LLP	31,103.6	3	14.0
8	Cyril Amarchand Mangaldas	24,838.1	66	11.2
9	AZB & Partners	24,282.2	103	11.0
10	Khaitan & Co	17,301.6	80	7.8

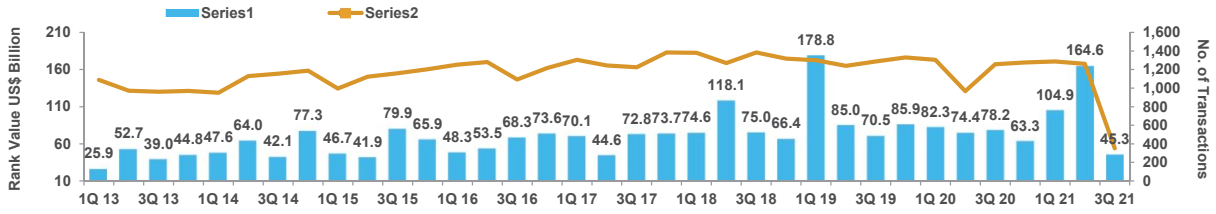
(*tie) Based on Rank Value including Net Debt of announced M&A deals (excluding withdrawn M&A)

Southeast Asia / South Asia Announced M&A Financial Rankings

Rank	Legal Advisor	Value ($MLN)	Deals	Market Share
1	Morgan Stanley	50,180.2	16	22.6
2	JP Morgan	48,983.6	21	22.1
3	Goldman Sachs & Co	34,357.2	21	15.5
4	UBS	31,427.8	5	14.2
5	Evercore Partners	31,103.6	1	14.0
6	BofA Securities Inc	14,893.4	15	6.7
7	Citi	14,727.8	10	6.6
8	Ernst & Young LLP	8,913.3	26	4.0
9	Credit Suisse	8,162.5	10	3.7
10	Lazard	6,625.2	4	3.0

(*tie) Based on Rank Value including Net Debt of announced M&A deals (excluding withdrawn M&A)

Any Southeast Asia / South Asia Involvement Announced M&A Activity - Quarterly Trend*



*League tables, quarterly trends, and deal lists are based on the nation of either the target, acquiror, target ultimate parent, or acquiror ultimate parent at the time of the transaction. Announced M&A transactions excludes withdrawn deals. Deals with undisclosed dollar values are rank eligible but with no corresponding Rank Value. Non-US dollar denominated transactions are converted to the US dollar equivalent at the time of announcement of terms. NORTH ASIA: China, Hong Kong, Japan, South Korea, Taiwan; SOUTHEAST ASIA: Singapore, Malaysia, Philippines, Thailand, Vietnam, Brunei, Cambodia, Indonesia, Laos, Myanmar, Timor-Leste; SOUTH ASIA: India, Afganistan, Bangladesh, Bhutan, Maldives, Nepal, Pakistan, Sri Lanka. Data accurate as of 3 August 2021.

ASIAN LEGAL BUSINESS

ASIA'S TOP 15 IN-HOUSE TEAMS

This inaugural ranking recognises the achievements of the top in-house legal teams around the region. For legal leaders, standing out during an especially tough year has required adaptability, empathy, and the ability to blaze a path ahead rather than just keep up. The evolution of the GC role also continues, as the job becomes increasingly demanding and exciting.

TEXT BY ELIZABETH BEATTIE, RANKING BY ASIAN LEGAL BUSINESS

- ASIAN DEVELOPMENT BANK
- BHARTI AIRTEL
- COSCO SHIPPING PORTS
- EMPEROR GROUP
- EQUINIX
- GOJEK
- IBM
- INTERGLOBE AVIATION (INDIGO)
- KLOOK
- L'ORÉAL
- NAN SHAN LIFE INSURANCE
- NANYANG TECHNOLOGICAL UNIVERSITY
- SAMSUNG SDS
- TRAVELOKA
- XIAOMI

For years, the evolution of the role of general counsel (GC) has been under something of a magnifying glass. Its transformation has been rapid, resulting in once unimaginable career pathways and a lot of additional pressure thrown into the equitation. For younger lawyers today, the role of general counsel is starkly different to the role it was when their predecessors entered the industry. No longer in the background, GCs are taking charge, and stepping further into the spotlight.

Part of the reason the GC role has evolved is that they are expected to do more with fewer resources. The list of ALB Asia's Top 15 In-house Teams for 2021 is incredibly diverse, spanning industries from education to consumer goods and new-economy companies, and also countries ranging from India to Indonesia and China. However, what connects this disparate group is that, not only are they more streamlined and busier than ever, with an emphasis on adaption and agility.

Complicating all of this has been the COVID-19 pandemic, which brought the whole world to a halt starting from last year. While most of the shockwaves were felt throughout 2020, and vaccines are available in many of the world's developed countries, the Asian region is still coming to terms with the full impact of the pandemic.

As companies scrambled to draw up new strategies to adapt to "the new normal," legal teams were kept incredibly busy providing not just counsel, but also helping their businesses navigate through a rapidly evolving landscape.

When the pandemic hit, the ability of in-house teams to rise to the challenge proved a saving grace, an indication of the tightknit supportive environments and collaborative way of working that standout GCs have succeeded in fostering.

As businesses have suffered immense pressure during the pandemic, and GCs have truly proved their grit as they steered their organisations through the toughest of times and led their teams through the ambiguity.

During the COVID-19 pandemic, Vincent Ng, general counsel at Klook, says his legal team has had to become "even more agile and adaptable during the pandemic."

"Due to the rapid changes in customer expectations and business demands over the past year, our team has had to be creative and adopt an entrepreneurial mindset to drive and support the rapid adoption of new ideas in our business. For example, in the early stages of the pandemic, we've had to support the launch of Klook Live! which uses live streaming as a channel to continue to engage with our customers meaningfully," Ng adds.

"Our institution, like many organisations, attracts people that are very focused on a particular role, or experts in a certain area. While this does work for some organizations, leaner organisations these days do need people who are good generalists and solution providers."

— Greg Chew, NTU

The team has also supported the business during its pivot towards "more domestic and home-based experiences," as borders have remained closed in many places and COVID-19 restrictions changed travel habits.

In addition to managing teams during these types of strategic developments, Ng says there has also been a need to emphasize empathy.

"The team had to be more empathetic with our customers, suppliers and service providers as we are all going through this rough patch. And, of course, with our colleagues who are also facing tremendous business pressures and challenges," Ng says.

During the pandemic, Ng notes that "empathy and frequent communication were key." Another important element has been engagement.

A team of 14 lawyers spread across five offices, Klook's legal team was already "fully set up for working and collaborating remotely even before the pandemic," says Ng. Still, the legal team has been having weekly team meetings online to ensure that "everyone feels engaged and is kept up to date on what other team members are working on."

"When we began working from home more often, we increased the frequency of manager one-on-one catch-ups with team members. We also intentionally added more personal touchpoints, such as setting aside time during our weekly team meetings to have different team members share more about their personal lives. This allowed the team to get to know one another better even when we could not meet up physically," Ng says.

FOSTERING STRONG CULTURE

With so many teams working remotely, much has been written about the need for strong workplace culture – and one that is flexible both online and offline. For legal teams, a resilient internal culture has been more important than ever before, particularly given the greater pressure and rapid developments experienced by businesses.

For Greg Chew, general counsel and chief legal officer at Singapore's Nanyang Technological University (NTU), where the legal department underwent a shakeup following Chew's arrival, internal culture has been a priority.

"We're very clear about our vision, mission and values when we bring on new colleagues," Chew says.

These values of being authentic, being accountable, and appreciation are the guiding principles for the team.

"We call it the triple As, and all members have to live by these behaviours" Chew says. His approach to fostering collaboration includes bringing people together in teams "despite their specialisation in day to day activities", then forming working clusters across divisions and placing people in small teams, and thereby forcing a kind of collaboration, says Chew.

These clusters, each of them named and emphasizing collaboration, focused on a different area. For 'Evolve', the focus was team engagement, 'Discover' focuses on the team's learning and development journey, CSR focuses on what CSR activities the team can engage with that are external to the department, says Chew, offering an example of the CSR team engaging in a beach clean-up during the pandemic – socially distanced of course.

"Innovate by its nature is how do we at legal come up with processes, policies and systems that not only enable our legal and compliance organisation but the University as a whole," he says. "We are not going to single out any individual member for accolades, that's the culture we want to have. We have to succeed as a team or fail as a team."

Ng describes Klook's legal team as "empathetic, collaborative, and supportive of one another," noting the teamwork closely to "empower the company's growth."

"We aspire to be as helpful as possible when approached with any issues. This has enabled us to work closely together and be an effective business partner to our stakeholders," Ng says.

For Ng, team development has also been an important focus this year.

"Besides growing the team by hiring the best talents, we've also always been keen to up-skill and cross-train our team members. For example, we've paired team members from different legal functions and seniority to allow the opportunity for both parties to pick up new legal skills and hone soft leadership skills, as mentee and mentor, respectively," he says.

The team also holds regular sessions where different team members provide "a more in-depth sharing on an interesting project or piece of work that they've worked on."

"From time to time, we also invite guest speakers from law firms and other companies to share on specific topics and insights. In particular, we are going to hold a monthly 'Meet the GC' series, where we invite GCs from other companies and industries to share their professional journey. We hope this gives inspiration to our team across all levels," Ng says.

"When we began working from home more often, we increased the frequency of manager one-on-one catch-ups with team members. We also added more personal touchpoints, such as setting aside time during our weekly meetings to have different team members share more about their personal lives."

— Vincent Ng, Klook

FLEXIBILITY IN DEMAND

For Ng, hiring people who can fit into the team is about balancing the technical along with the outlook. "In addition to technical knowledge and skillset, we look out for individuals with an entrepreneurial mindset as these people tend to be more adaptable and resilient which are important traits in a fast-moving company like ours. The individual also has to have heart and empathy to be effective team players to the legal team and the rest of the business, especially in these challenging times," Ng says.

Chew also prioritizes mindset in his approach to sourcing new talent.

"Our institution, like many organisations, attracts people that are very focused on a particular role, or experts in a certain area," says Chew, adding that while this "does work for some organizations, leaner organisations these days do need people who are good generalists and solution providers".

"You need to have a broad sense of the topics, but frankly we look for attitude more than skills when we are seeking talent or trying to attract talent. Skills you can teach, but attitude is harder to shape, so when you get people with excellent attitudes, they tend to be able to take on a variety of work which then takes your organisation even further," he says.

Agility and versatility are also high up the priority list for Chew, who says NTU typically attract younger staff than most universities.

Chew says the millennial staff the institution attracts are "very keen to learn. Compensation has to be appropriate, but learning and a sense of purpose are even more critical," Chew says.

"When we look to hire, we say to our talent that we may be, given our industry, unique when compared to other organisations, but what we can do is offer you the experience that you seek and directionally enable your career" he says, adding that moving and rotating staff is part of the culture.

INTO THE UNKNOWN

There is no doubt that the COVID-19 pandemic has drastically changed plans for the future and changed the way work is planned and carried out. Ng's priorities for his team in the coming months is to "look to continue to ride the recovery wave and be primed to take advantage of market opportunities once it arises."

"For that, we've been continuously

building our legal operations capabilities to ensure that we remain agile and efficient so that we are able to react fast to business needs," he says.

In the meantime, Ng says there have been leadership lessons to take away from the team during the pandemic. The biggest he says is "That empathy is key."

"Our work tasks and business environment are already tough enough. So sometimes being empathetic and understanding can be the most powerful tool to motivate a colleague or support a business stakeholder in the most challenging times. We are fortunate to have a group of empathetic managers in our team." Ng says.

For Chew, the past year has also been one of personal and professional change. The nature of his daily work, he says, has "completely changed" since last year.

While the request to dive into something new was daunting, for Chew, rising to the challenge has enabled him to take a different perspective in the business. "Ultimately, I got my mind across it and thought, I'm going to do my best to grab it with both hands" he says, despite the role falling radically out of the legal remit.

Despite the role being out of his traditional career path, for the legal team Chew leads as GC, this also provides an opportunity to consider their own careers and the directions these could take – does this have an effect on how they see their futures? "Absolutely", Chew says, noting in some of the strategic streams, he's already invited some of his lawyers to join in.

When the strategy ramps up into the implementation and execution stage, Chew will be encouraging his team to get involved in the process he says, noting this will not only help learning as it goes beyond the traditional career pathway, but it also enables visibility and promotional opportunities as well.

METHODOLOGY

- The ALB Singapore's Top In-House Teams 2021 list showcases the achievements of the finest in-house legal teams in Singapore.
- In-house teams were be selected on the basis of notable work done in the past year, innovations practiced, contributions to the overall business, awards and accolades received and other factors.

CALLING FOR SECURITY

With law firms handling large amounts of sensitive data online, and staff working remotely for prolonged periods, cybersecurity and data protection processes are more critical than ever.

BY ELIZABETH BEATTIE

Law firms have long been targets for cybercriminals; they handle vast amounts of sensitive, valuable data, and work across multiple devices. As firms have sped up their tech adoption, a necessary development during the COVID-19 pandemic, data privacy strategies have also needed to expand and adapt to the new normal.

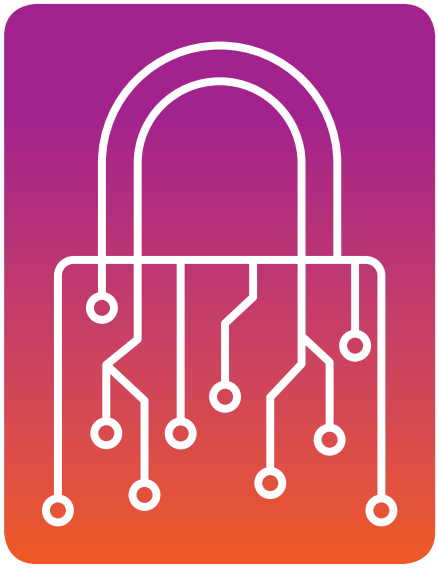
Jenkins Fung, team lead - advisory and corporate development at SS&C Intralinks, says that law firms face a range of potential risks, including leaked information "especially confidential client data or regulated content," which can result in significant fines and reputational damage.

"The increase in cyber-attacks of corporations worldwide, the misuse and abuse of confidential data, and the near-impossibility of creating a functional system with no security weakness all contribute to lawyers' vulnerability to cyber espionage," Fung says.

But law firms can take practical steps to enhance their cybersecurity resilience to ensure greater resistance from cyber-attacks. Law firms, particularly those with higher levels of internal resources, Fung says, may opt for in-house solutions to manage the risks.

"Based on an assessment of their specific needs, new tools are developed to perform functions like e-signatures, e-meetings, e-discovery, and document management," he adds.

For law firms that lack such a scale of resources, or prefer to invest these in other areas of the business, "third-party solution providers, such as Intralinks, have created a suite of often cloud-based products to help law firms safeguard



their data and day-to-day processes while meeting stringent regulatory demands and reducing risks," he says.

With remote work likely to continue to stretch on, both as the result of the global coronavirus pandemic and newly established flexible working arrangements, Fung says there are steps that lawyers can undertake to ensure they follow best cybersecurity practices.

"Now that more of the world is working from home than ever, remote employees need to ramp their digital vigilance and cybersecurity savvy," Fung says.

Among the measures Fung suggests are VPNs and data encryption-in-transit and at-rest. "A requirement in many cases for remote workers, VPNs allow employees to connect securely to their work network over the public internet," he notes.

"Sensitive information is crossing networks, firewalls and geographies more frequently than ever. Some of this information can be materially non-public (MNPI) or personally identifiable (PII) and thereby highly useful for fraudulent activity. This information must be encrypted in-transit (i.e. as it moves through networks as past firewalls) and at-rest (on the device that stores/receives the information)," Fung adds.

Other important things to be aware of include backups and archiving, "We've likely – or at least know someone who has – been victim to losing important files stored locally on our devices, be it work files, personal information, or even photos. Backing up files is part of a holistic data security practice and can be your lifeline in the instance that coronavirus-inspired attackers take your files hostage or corrupt your device. Relying on a secure, cloud-based storage/backup/archiving service (thoroughly vetted by your corporate IT) is perhaps the easiest and most practical method available," he says.

Lastly, firms to ensure to compliance reporting measures remain intact, as a significant workforce working from home means extremely heightened regulatory and operational risk.

"Compliance teams need to step up their game with tools and procedures to monitor, track, audit and report on employee activity, as well as access to and use of sensitive information. They also should keep a keen eye on file sharing and the increased use of collaboration tools to mitigate malicious data use and intercept other operational risks," says Fung.

When handling sensitive data, law firms also need to ensure they put in place processes, measures and tools to secure data management, "such as using secure document exchange as an alternative to emails and Information Rights Management (IRM) to control granular data access," says Fung, adding these also keep track "of data movement and a full audit trail which will serve as proof of compliance with relevant regulations in the event of an incident."

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INTRALINKS

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ASIAN LEGAL BUSINESS

SUPER 50 TMT LAWYERS

LIST BY ASIAN LEGAL BUSINESS, TEXT BY APARNA SAI

In its inaugural Asia Super 50 TMT Lawyers list, Asian Legal Business puts the spotlight on standout lawyers in the technology, media and telecommunications space in the region, when it comes to client service. The list is in alphabetical order, and certain lawyers have been profiled.

METHODOLOGY

- The lawyers were selected on the basis of client feedback sent directly to Asian Legal Business between the months of May and June 2021.
- Not only was the quantity of the feedback taken into account, but also the quality, as well the profile of the clients recommending the lawyers.
- More than 200 in-house counsel across 13 jurisdictions in Asia and overseas sent in their recommendations for this list.

GV ANAND BHUSHAN
Shardul Amarchand Mangaldas & Co

PETER BULLOCK
King & Wood Mallesons

MICHELLE CHAN
Bird & Bird

DONG SHIK CHOI
Kim & Chang

RAHUL DHOTE
Literati Juris

JJ DISINI
Disini & Disini Law Office

JOHN FORMICHELLA
Formichella & Sritawat

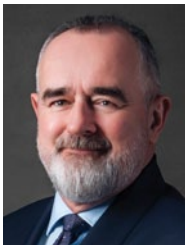
MARK FRASER
Frasers Law Company

SOICHIRO FUJIWARA
Nagashima Ohno & Tsunematsu

ANNA GAMVROS
Norton Rose Fulbright

MARK FRASER

managing partner, Frasers Law Company, Vietnam



Fraser is a barrister and solicitor of the High Court of New Zealand, and also admitted before the Supreme Court of New South Wales. He focuses on corporate and commercial, technology, media and telecommunications, banking and finance, capital markets, competition and antitrust, dispute resolution, employment, insurance, intellectual property, international trade, investigations, mergers and acquisitions, project finance, projects and energy, real estate, restructuring and insolvency and tax matters.

Fraser had earlier worked with Freshfields. In 1994, Fraser began advising clients on transactions in Vietnam when he established the Ho Chi Minh City office of Freshfields. A decade later, he launched Frasers Law Company, the first foreign law firm to be granted a foreign law company license in Vietnam.

Among Fraser's notable work, he has advised a large telecommunications company on its proposed acquisition of the Vietnam-based assets of one of the world's largest telecommunications companies. He has also assisted a global media group in relation to its proposed acquisition of an interest in a Vietnamese media company.

Furthermore, Fraser has acted for a leading Australian software company as Vietnam counsel in relation to all aspects of its large-scale software development operations in Vietnam. He also advised a global electronics manufacturing services (EMS) provider on its acquisition of an electronics robotic equipment manufacturer located in a Hi-Tech industrial park in Vietnam. He has also co-authored numerous publications on doing business in Vietnam.

Fraser is "very calm and professional," says a client. "Provides creative and innovate legal solutions and advice. Reliable and always provides assistance as and when required."

SHEENA JACOB

partner, CMS Holborn Asia, Singapore

Jacob is the head of the highly ranked and leading TMT practice at CMS Holborn Asia. A technology, cybersecurity, media, data protection expert, Jacob is qualified in Singapore, New York and England & Wales. With more than 25 years of experience in Asia, she works closely with a team of technology lawyers and advises on regulatory issues in the media, telecoms and fintech sectors in South-east Asia.

Holding double international privacy certifications from the International Association of Privacy Professionals (IAPP), Jacob has been active in the privacy field for more than 10 years. She also represents numerous industry players in the entertainment and media industry and has strong experience with cybersecurity and data localisation issues across Asia.

Jacob has acted for Equinix (the world's largest data centre provider headquartered in the US) as the lead regulatory counsel in Asia Pacific across 8 countries. She has also worked as lead external counsel for Disney in the launch of both Disney+ streaming service as well as the launch of its South-Asian content OTT Channel, Hotstar.

Additionally, Jacob was the lead partner in litigation strategy for Cisco in a dispute in Singapore against a leading Singapore-based company and successfully reached a resolution for the client involving the application of some unique strategies involving multi-jurisdiction litigation including US and Asian litigation.

Besides this, Jacob is a member of the Global Board of iTechlaw and has written numerous articles on privacy and AI. She was also invited to join the inaugural Asia Advisory Board of the IAPP in 2016.

"Sheena has strong TMT and data protection capabilities and knowledge," says a client. "She is charismatic, dynamic, highly experienced and approachable."

RAHUL GOEL
AnantLaw

MIKI GOTO
Anderson Mori & Tomotsune

PAUL HASWELL
Pinsent Masons

ZACKY HUSSEIN
Assegaf Hamzah & Partners

ATSUSHI IGARASHI
TMI Associates

DIVINA ILAS-PANGANIBAN
Quisumbing Torres

ENRICO ISKANDAR
Bagus Enrico & Partners

SHEENA JACOB
CMS Holborn Asia

JUNE YOUNG JANG
Shin & Kim

HIROYASU KAGESHIMA
Ushijima & Partners

RAKESH KIRPALANI

director, dispute resolution & information technology; chief technology officer, Drew & Napier, Singapore

An expert in arbitration, automotive, commercial litigation, corporate litigation, corporate restructuring and workouts, employment, information technology and international arbitration, Kirpalani has worked in the legal field for nearly 15 years. He was appointed as the chief technology officer of Drew & Napier at the age of 37 years.

Kirpalani leads the information technology practice at Drew & Napier. Combining his knowledge in technology and his background in commercial dispute resolution, he advises on risk avoidance, risk management and dispute resolution in matters concerning technology, data, commercial and employment issues. He also assists on cyber and digital business issues, including compliance with technology regulations and cybersecurity.

Kirpalani has advised numerous clients on various matters. Among them, he has represented a group of investment companies in an arbitration brought by its information technologies contractor over the failed deployment of its IT systems in a failed joint venture project.

He has also acted as an international counsel to a reputable multi-national regulated institution in connection with a ransomware attack which impacted services in numerous jurisdictions.

Kirpalani's clients include China National Petroleum Company Performance Motors, Tractors Singapore, CIMB, Mizuho Asia Partners, Cabot Microelectronics, AIA Singapore, Dynapac Road Equipment Asia Pacific and J. Safra Sarasin. Furthermore, Kirpalani also leads DrewTech, Drew & Napier's technology practice.

"Rakesh is fast, practical and solution-based with the ability to achieve a good response combining technical knowledge and legal ability," says a client.

CHIA-LING KOH

managing director, OC Queen Street, Singapore

Koh, who started his career in 1998 at Bih Li & Lee, is a regulatory and intellectual property lawyer and has advised numerous TMT and fintech clients. He joined Bird & Bird in 2001, where he spent 15 years focusing on IP litigation, TMT and financial technology work.

In 2016, Koh co-founded OC Queen Street, which became a member firm of Osborne Clarke.

Koh is trained in building expert systems and cybersecurity. He obtained his Master of Technology degree from the National University of Singapore and Certified Information Systems Security Professional (CISSP) certification while at all times practising law.

In addition, he also advises clients on the law in new technologies like artificial intelligence, blockchain, cryptocurrency and digital payments.

Koh was the lead counsel for 99.co, a geo-spatial search engine for property. The team successfully represented the company in a case dealing with inter alia the issue of copyright infringement in the context of copyright being claimed by PropertyGuru over watermarked photographs loaded onto the PropertyGuru website by property agents.

Koh and his team also represented SingTel and its subsidiary SingNet in proceedings for various applications under section 193DDA of the Copyright Act to block flagrantly infringing online locations (such as an application by the English Premier League).

Koh holds varied roles apart from being a TMT lawyer. He was an independent non-executive director of listed entity Synagie, an eCommerce enabler. Koh is currently the Singapore editor of Stanford's RegTrax Blockchain Initiative.

"Chia-ling is very sharp with detailed domain knowledge, and possesses excellent drafting and negotiating skills," says a client.

CHIE KASAHARA
Atsumi & Sakai

SANJAY KHAN
Khaitan &Co

GABRIELA KENNEDY
Mayer Brown

CHIA-LING KOH
OC Queen Street

DARREN KOR YIT MENG
Zul Rafique & Partners

WONGSAKRIT KHAJANGSON
Chandler MHM

RAKESH KIRPALANI
Drew & Napier

JUSTISIARI KUSUMAH
K&K Advocates

LIM CHONG KIN
Drew & Napier

RAHUL MATTHAN
Trilegal

LIM CHONG KIN

managing director, corporate & finance; head, TMT; co-head, data protection; co-head, competition law & regulatory practice, Drew & Napier, Singapore

Apart from heading three class-leading practices at Drew & Napier, Lim also serves in a leadership role as the firm's managing director in the corporate & finance department.

Among many landmark matters that Lim advised on, he assisted in the liberalisation of the telecommunications, media and postal sectors in Singapore, the establishment of Singapore's Next Gen NBN and the auction of 3G, 4G and 5G spectrums. Lim continues to be relied upon by the regulators to assist on milestone developments. His recent matters include assisting in a comprehensive review of Singapore's Telecom Competition Code (TCC) and Media Market Conduct Code (MMCC), and to draft and implement a harmonised competition code for the converged sectors.

Lim's clients include Singapore's Infocomm Media Development Authority/Personal Data Protection Commission, Brunei's Authority for Infocommunications Technology Industry and many of the top technology MNCs hailing from US, EU and China. They seek him out for his keen insight on market access and deep understanding of the licensing and regulatory frameworks in Singapore and the ASEAN region.

He also established the Drew Data Protection and Cybersecurity Academy in 2020, a first of its kind that offers clients value-add services including training data protection and cybersecurity officers.

"Chong Kin is an exceptional lawyer who approaches legal and regulatory issues with a business-centric and practical mindset," says a client. "It is easy to quote the law and tell your clients to comply. It takes a skilled and experienced lawyer to apply knowledge of the law to a specific scenario and to counsel on various different ways to reach compliance."

JOHN PHILIP SIAO

co-managing partner, Tiongco Siao Bello & Associates, the Philippines

With more than 18 years of experience in the legal industry, Siao is a corporate law and special projects, intellectual property, labour, taxation and litigation expert.

Notable work for Siao includes acting as a counsel with a team of lawyers in the arbitration case of RCBC Capital Corporation vs. Equitable PCI Bank (Banco de Oro Universal Bank) conducted under the Rules of Conciliation and Arbitration of the International Chamber of Commerce (ICC).

Furthermore, Siao provided support and assistance to the PIK Group in establishing its operations in the Philippines. The lawyers of the firm provided and continue to provide legal support and assistance to the company in its creation, implementation, and introduction of its e-commerce platform in the Philippines. Aside from providing counsel to one of Asia's Super Apps, he also represented, advocated, and provided counsel to one of the leading finance and lending companies in the e-commerce space, which was one of the first to introduce and operate a mobile lending application in the country.

Additionally, Siao provided support and assistance to Novateur Coffee Concepts during the pandemic.

According to Siao, one of his significant career achievements is "creating together with my partners a full-service law firm which operates and has an active presence nationwide or in Manila, Cebu, and Davao. This is significant considering that there are only a handful of law firms in the Philippines that provide nationwide coverage."

Says a client: "John combines a best-in-class wealth of experience in complex licensing and regulatory matters in the Philippines with a pragmatic, solution-oriented approach that is grounded in a deep understanding of the regulatory framework and the dynamics of dealing with local regulators."

ANDREW MCGINTY
Hogan Lovells

GORDON MILNER
Morrison & Foerster

AMEET NAIK
Naik & Naik

CONNELL O'NEILL
Gibson Dunn

KWANG BAE PARK
Lee & Ko

ARUN PRABHU
Cyril Amarchand Mangaldas

SUNIL RAI
Dentons

PROBIR ROY CHOWDHURY
J. Sagar Associates

RODNEY RYDER
Scriboard

KWANG HYUN RYOO
Bae, Kim & Lee

DOIL SON

partner and co-head of technology & IP practice, Yulchon, Korea

Son, who has more than 25 years of experience, heads the technology practice of Yulchon. He is serving as senior vice chair, the Technology Law Committee of the International Bar Association. He has also been the vice chair of the TMT committee of the International Pacific Bar Association since 2017.

Among his notable work, Son has worked with Agoda, a global e-commerce company for hotel reservations, as the lead partner on numerous matters since 2013. His team and he successfully assisted Agoda in obtaining a payment gateway (PG) license, which enabled Agoda to implement a more efficient payment system for its customers and merchants. Agoda's was the second instance where a foreign company was able to receive a PG license by establishing a Korean subsidiary. He is now advising two top global fintech companies for similar projects.

Besides this, Son advises Facebook on various regulatory matters including the Korean new regulation on SNS platform (Telecommunication Business Act) and privacy issues. He has also counseled LG CNS, various financial institutions and pharmaceutical companies on their big data projects. Additionally, Son has advised SK Hynix, a top semi-conductor producer, on AI related matters. Cisco and SBS Media Holdings are his long term clients.

From 2019 to 2020, he was deeply involved in the 4th Industrial Revolution Committee established by the Korean government. He is also serving on various government committees relating to data privacy and artificial intelligence issues.

"Doil Son takes interest in understanding our business and issues, and intelligently and resourcefully supports us in protecting our interests legally. He is very accessible, knowledgeable and open to trying creative ideas," says a client.

LUKY I. WALALANGI

managing partner, Walalangi & Partners (in association with Nishimura & Asahi), Indonesia

Luky Walalangi, who has a career spanning more than two decades, specialises in mergers and acquisitions, real estate, TMT and financing.

Walalangi has advised various clients including Mitsubishi Corporation, Nippon Steel Corporation, Mitsui & Co, Mitsubishi UFJ Lease & Finance, Mitbana Juring, Daimler AG, Airbus, Roblox, Capcom Inc, Toyota Tsusho Corporation, Marubeni Corporation, Tokyo Gas, Orient Corporation, MUFG Bank, Tokyo Tatemono and Tokyo Tatemono Asia, PT Dhost Telekomunikasi Nusantara, DeClout, Showa Leasing, Otsuka Holdings, SMBC Nikko Securities, GS Yuasa Corporation, After Fit KK and Hitachi Transport System.

Some of the matters that Walalangi advised on includes counselling one of the most rapid growing companies based in US providing global gaming and social media platform in San Mateo, California, on gaming regulations, gaming applications rating, registration requirements, content requirements and restrictions as well as personal data protection. He also represented PT Dhost Telekomunikasi Nusantara in its financing and acquisition process of indoor telecommunication infrastructure assets from PT XL Axiata Tbk, one of the largest publicly listed companies in cellular telecommunications networks and services provider in Indonesia.

In addition, Walalangi also acted for Tokyo Gas Asia, a wholly-owned Singaporean subsidiary of Tokyo Gas in the acquisition of PT Super Energy Tbk (SE).

"The experience I have of working with Pak Luky is very gratifying," says a client. "I always feel like he will protect my interest and guide me and support my company optimally under any situation."

JOHN PHILIP C. SIAO
Tiongco Siao Bello & Associates

DOIL SON
Yulchon

RAJESH SREENIVASAN
Rajah & Tann Singapore

DHIRAPHOL SUWANPRATEEP
Baker McKenzie

JEREMY TAN
Bird & Bird ATMD

SYLVETTE TANKIANG
V&A Law

GREG JOSEPH SJ TIONGCO
Tiongco Siao Bello & Associates

VU THI QUE
Rajah & Tann LCT Lawyers

LUKY I. WALALANGI
Walalangi & Partners

BAHARI YEOW TIEN HONG
Gan Partnership

BAHARI YEOW TIEN HONG

partner, Gan Partnership, Malaysia

Yeow, who focuses on intellectual property, TMT and dispute resolution, has been in the legal industry for more than 20 years, and is a qualified patent, trade mark and industrial design agent.

Along with his partner Lim Zhi Jian, Yeow is currently representing one of the largest mobile network operators in Europe on a dispute in Malaysia as well as assisting a MNC, a leading IT, digital infra, technological solution provider, digital strategic investment and an e-wallet company on digitalisation and transformation of its online platform.

Yeow is also advising a multi-country project in relation to regulatory compliance for an international MNC with respect to its new online products involving in, amongst others, mobile, landline and all email types validation, data maintenance, data quality and accuracy checks, identity and data verification.

In addition, Yeow is representing a large U.S. technology company in a global trademark dispute against the world's largest watchmaking group and also acting for a Malaysian subsidiary of Japanese telecom giant Nippon Telegraph and Telephone in a claim for alleged breach of a technology agreement.

Yeow is also assisting a cloud based practice management and accounting system company in its agreement to be used by the owner and its customers in countries across Asia.

Besides this, Yeow also sits as a panellist at the Asian International Arbitration Centre. He currently serves as a member of the Group Standing Committee for Copyright of the Asian Patent.

"We are impressed with Bahari Yeow's knowledge, work and service," says a client. "Bahari Yeow is a very impressive litigator and well-respected in the IP and TMT space in Malaysia. He is highly experienced and well-respected by the judges."

ALB Asia Insolvency and Restructuring Guide 2021

ASIA'S AGE OF INSOLVENCY

Half of all B2B invoice payments in Asia are overdue.

This stark finding in the latest edition of The Atradius Payment Practices Barometer for Asia, comes from a poll of 1,200 businesses across China, Hong Kong, Indonesia, Singapore, Taiwan and the United Arab Emirates during the second quarter of this year.

It's all the more surprising since 2021 has been touted as a year of recovery, which it has been to an extent. While this year's figure is a slight improvement from the 52% figure in last year's poll that was done in the middle of the COVID-19 pandemic, it shows that Asian companies are far from out of the woods yet.

With that, the demand for insolvency professionals and their services clearly remains high. There have been a number of developments in this area throughout the region too.

China

On November 21, 2020, China's Vice Premier Liu He convened the 43rd meeting of the State Council Financial Stability and Development Committee to look into the factors behind the rise of bond defaults, but also proposed in-depth solutions to stabilize the market.

The meeting came amidst a tidal wave of financial scrambles and struggles in mainland China, which was actually one of the economies that best weathered the pandemic.

There were around 33,700 bankruptcy investigations in China in 2020, up by nearly half compared to 2019. There were also around 83,600 bankruptcy cases last year, double that of 2019.

A notable trend was insolvent companies being state-owned enterprises from various sectors. To that end, there were many legal measures of note to address the related issues arising from that.

This includes the newly-launched Civil Code and the many judicial interpretations, which include the judicial interpretations of the parts about guarantees.

These also cover the revisions of the judicial interpretations of the Enterprise Bankruptcy Law and the reply of the Supreme People's Court on whether the right to use allotted state-owned land of a bankrupt enterprise shall be classified as insolvent property.

Hong Kong

As one of Asia's most important financial centres, Hong Kong has been making progress with its insolvency developments too. The Hong Kong-China Cross Border Insolvency Agreement could help solve cross border bankruptcy issues by giving foreign investors and offshore creditors of Chinese companies greater access to assets in China.

Hong Kong authorities have stated that the new co-operation framework expressly covers bankruptcy compromise and reorganization in the mainland as well as debt restructuring in Hong Kong,

This move comes in very useful as Hong Kong integrates into the Greater Bay Area, a cluster of nine mainland Chinese cities with Hong Kong and Macau as one hub.

Singapore

In Singapore, bankruptcy orders fell more than 40 percent to 965 in 2020 from 1,645 in 2019.

This means that the number of people in Singapore who were made bankrupt last year sank to the lowest point in five years.

Earlier this year, Singapore decided not to extend most of the temporary changes to the rules governing contracts and insolvency proceedings it enacted early in the pandemic. It also enacted a re-align framework to allow the renegotiation of contracts for businesses that were hit by COVID-19.

It has also introduced a simplified insolvency programme for small businesses in the city state, making proceedings even more sleek than its already attractive insolvency and restructuring framework for bigger companies.

Malaysia

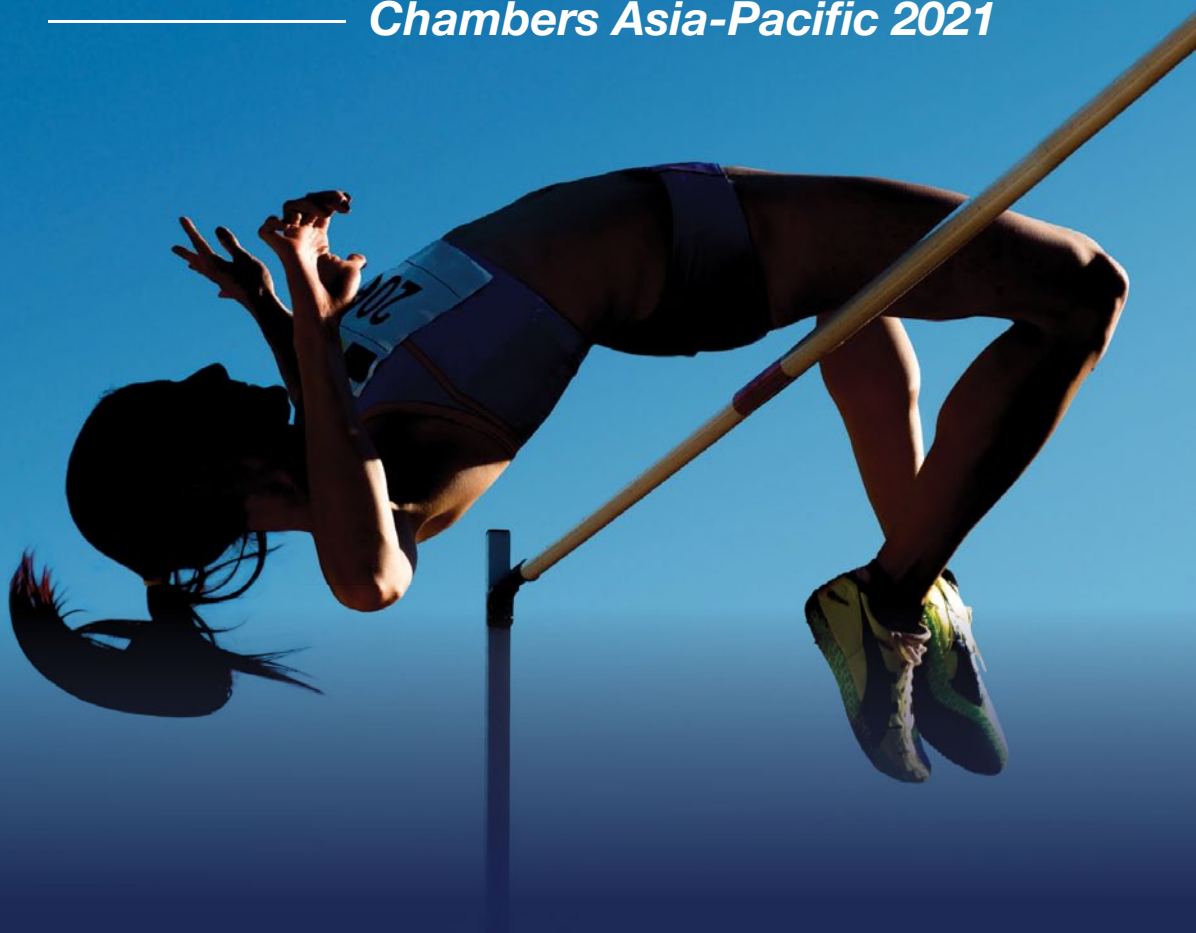
A temporary COVID-19 bill has been set up. It should be consulted and applied in relation to insolvency or bankruptcy-related conflicts until 31 August 2021, subject to any extensions by the government.

The Insolvency (Amendment) Act, 2020, has also been announced, but will come into effect on 1 September 2021. Till then, the temporary COVID-19 bill will be referred to for any issues with insolvency or bankruptcy.

As Asian economies work their way towards recovery, a multitude of measures have been adopted to ensure insolvency and restructuring runs as smoothly as ever. Learn more about it in the ALB Asia Insolvency & Restructuring Guide.

Often when the situation looks hopeless, they are able to come up with solutions."

Chambers Asia-Pacific 2021



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Overview of the Corporate Insolvency Regime

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A. INTRODUCTION

In recent years, Singapore introduced two landmark changes to its insolvency and debt restructuring legislation. In 2017, several amendments were made to the Companies Act to enhance Singapore's debt restructuring framework ("**Companies Amendment Act**") and in July 2020, the Singapore Parliament enacted the Insolvency, Restructuring and Dissolution Act 2018 ("**IRDA**") to consolidate all personal and corporate insolvency and debt restructuring legislation into an omnibus legislation. In addition to the newly introduced provisions under the Companies Amendment Act, the IRDA also introduced further provisions to enhance and strengthen Singapore as an international insolvency hub.

This chapter provides a broad overview of the corporate restructuring and insolvency regime in Singapore, including informal workouts, schemes of arrangement, judicial management and liquidation and highlights the significant reforms brought about by the Companies Amendment Act and the enactment of the IRDA.

B. INFORMAL WORKOUTS

An informal workout comprises consensual contractual arrangements between a debtor company and its creditors and does not require any sanction of court.

As the terms of an informal workout are subject to agreement between the debtor company and its creditors, there are no fixed terms and are highly customizable by the parties involved. Common terms that are agreed between parties usually include the deferment of payment obligations, grant of further security or restructuring of the credit structure.

Debtor companies can consider resorting to informal workouts where there are few creditors and the likelihood and/or rate of recovery will be higher than if the company was wound up.

C. SCHEMES OF ARRANGEMENT

Alternatively, a debtor company may propose a scheme of arrangement or compromise pursuant to Section 210 of the Singapore Companies Act. A scheme is a "debtor-in-possession" regime where the debtor company's existing management is not displaced in favour of a court appointed officer.

A scheme may be effected, provided other requirements are satisfied, where the scheme is approved by a majority in number and at least three-fourths in value of creditors (or any class of them) present personally or by proxy at a meeting of creditors (or any class of them) and voting on the resolution ("**Majority Approval Requirement**").

By avoiding the need to procure unanimous consent from all creditors, it saves the debtor company time, expense and uncertainty of seeking to reach consistent individual consensual agreements with each creditor.

A brief overview of the significant reforms introduced by the Companies Amendment Act to facilitate the debt restructuring process is set out below.

I. The enhanced moratorium

First, debtor companies are entitled to a 30-day automatic

moratorium, upon the filing of a court application for a statutory moratorium by a debtor company that intends to or proposes a scheme of arrangement, against all creditor actions. This ensures that the debtor company is protected from all creditor actions pending the hearing of the application for the grant of a moratorium to a debtor company to propose its scheme of arrangement.

Second, on application, the Singapore Court may extend the reach of the moratorium to restrain creditor action outside of the Singapore jurisdiction on a case-by-case basis provided that the foreign creditors are within or have submitted to Singapore's jurisdiction. The effect of this is similar to an anti-suit injunction.

Third, on application, the moratorium can be extended to a debtor company's subsidiaries or holding company which minimizes the court filings required and facilitates the conduct of group restructurings.

II. Rescue Financing

The Companies Amendment Act also introduced provisions which allow a company planning to propose a scheme of arrangement or undergoing judicial management to obtain rescue financing necessary for the survival of the company.

The application for rescue financing, if granted by the Singapore Court, allows such rescue financing to be repaid before all other administrative, preferential and unsecured claims in a debtor company's winding up. In certain limited circumstances, the rescue financing may also be accorded priority over existing secured creditors.

III. Pre-packaged Schemes of Arrangement

Previously, a debtor company will have to seek the Singapore Court's leave to convene a meeting of creditors to propose a scheme of arrangement, satisfy the Majority Approval Requirement, before seeking the Singapore Court's sanction of the scheme of arrangement.

The Companies Amendment Act introduced the "pre-packaged" scheme of arrangement which allows the debtor company to work out an arrangement with its major creditors without the need to call for any creditor meetings or court hearings, provided that certain requirements are satisfied.

This allows the debtor company to pre-negotiate the proposed scheme terms with its creditors and procure their approval within a shorter time-frame and at a lower cost. In the case of publicly-listed companies, this will also minimize the amount of publicity on its restructuring and minimize any damage to its reputation.

IV. Cross-Class Cram Down

Previously, the inability to satisfy the Majority Approval Requirement was fatal to the proposed scheme of arrangement.

The Companies Amendment Act introduced a cross-class cram-down mechanism which allows a scheme of arrangement to be successfully passed over the objections of a dissenting class of creditors and prevent the scheme of arrangement from being stymied by the minority creditors, provided that certain requirements are satisfied.

V. The UNCITRAL Model Law on Cross-Border Insolvency

The adoption of the UNCITRAL Model law on Cross-Border Insolvency Law to recognize and give effect to foreign liquidation proceedings and officeholders also greatly facilitates cross border restructurings and insolvencies in Singapore.

D. JUDICIAL MANAGEMENT

The judicial management regime in Singapore is based on the English administration regime and is intended to be a debt restructuring procedure led by independent court appointed officers to achieve one of the statutory purposes, namely, (i) to achieve the survival of the company, or the whole or part of its undertaking as a going concern, (ii) the proposal of a scheme of arrangement between the company and its creditors or (iii) to obtain a more advantageous realization of the company's assets or property than on a winding up. Under this regime, the existing management of the debtor company will be displaced by a court appointed officer.

I. The Lowered Threshold to be Placed in Judicial Management

The Companies Amendment Act had also lowered the threshold for companies seeking to enter into judicial management. A company only needs to show that it "is or is likely to become unable to pay its debts" as opposed to the need to show actual or deemed insolvency.

II. Out-of-Court Judicial Management

Previously, a company had to apply to Court to be placed into judicial management. However, under the IRDA, a company may elect to call a meeting of its creditors to pass

a resolution to place itself into judicial management, without having to make any court application provided that the requisite majority of creditors resolves to place the company under judicial management. This is likely to minimise expense, formality and delay in comparison to a court process.

E. Winding Up

Under Singapore law, a winding-up, also known as liquidation, can be categorised into three types, (i) members' voluntary winding up, (ii) creditors' voluntary winding up and (iii) compulsory winding up by the Court.

The voluntary winding up processes can be conducted without having resort to the court procedures and are typically initiated by the company. A liquidator is appointed at a members' general meeting, and if the company is insolvent the creditors may replace the liquidator at a creditors' meeting to be held by the day following the members' general meeting.

In a compulsory winding up by the Court, the liquidator appointed will be subject to the supervision of the Official Receiver.

F. OTHER IMPORTANT IRDA PROVISIONS

I. Ipso Facto Provision

Ipso facto clauses usually entitle parties to terminate or modify the operation of a contract (including accelerating payment) upon the occurrence of certain events, including a counterparty's insolvency or restructuring.

However, under the IRDA, ipso facto clauses which seek to terminate or modify the operation of a contract solely on the grounds of a debtor company's restructuring filing or insolvency are now unenforceable. Thus, other defaults which trigger termination or acceleration are not caught.

Where a debtor company is performing its obligations to key creditors and suppliers, the termination of such contracts solely on account of a restructuring will undermine the debtor company's prospects of a successful rehabilitation and will not serve the interests of the general body of creditors. The ipso facto provision under the IRDA therefore allows the debtor company to continue trading and the chance to pursue a successful rehabilitation of its business.

II. Wrongful Trading

Under the IRDA, a company is deemed to have traded wrongfully if the company, when insolvent, incurs debts or other liabilities without reasonable prospect of meeting them in full or incurs debts or other liabilities without any reasonable prospect of meeting them in full and such debt or other liabilities result in the company being insolvent.

To prevent wrongdoing, the IRDA has expanded the scope of such wrongful trading to include, not just officers of the company, but also any person who knew that the company was trading wrongfully.

汉韬律师事务所
H&T LAW FIRM

ABOUT US
律所简介

汉韬于2004年3月在北京创立，并于2016年3月设立天津分所。汉韬自成立以来即以金融法律业务为核心，重点开拓不良资产、公司、基金、投融资、并购、房地产及建设工程、涉外等业务领域，并提供民商事重大疑难纠纷的诉讼、仲裁和执行法律服务，是一家具备"专"、"精"特色的金融法律服务专业化律所。

Hantao has been founded in Beijing since March 2004 and opened its Tianjin Branch in March 2016. Since its establishment, Hantao has been focusing on financial legal services, while developing disposal of non-performing assets, legal business in corporate, funds, investment and financing, mergers and acquisitions, real estate and construction projects and foreign-related areas and so on. Hantao also provides legal services in litigation, arbitration and enforcement for major civil and commercial disputes. Hantao is a specialized law firm with "professionalism" and "proficiency" characteristics in financial and legal services.

专业领域

不良资产管理及处置法律事务　金融法律服务　涉外和投融资法律事务

重大疑难争议解决　房地产及建设工程　公司法律服务

OUR PRACTICE

Legal affairs of management and disposal of non-performing assets, financial legal services, foreign investment and financing, major difficult disputes resolution, real estate and construction projects, and corporate legal services.

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Overview of Enterprise Bankruptcy System

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I. PREFACE

The enterprise bankruptcy system is a collection of legal norms governing the social and economic relations among debtors, creditors, court, bankruptcy administrator and other participants in the bankruptcy process.

During the transition from planned economy to market economy, China has rolled out a series of laws, administrative regulations and normative documents related to enterprise bankruptcy, which constitute the basic framework of China's enterprise bankruptcy system.

This paper aims to shed light on the establishment and development path and implementation of China's enterprise bankruptcy system and problems encountered by the system during the current stage.

II. ESTABLISHMENT AND DEVELOPMENT OF THE ENTERPRISE BANKRUPTCY SYSTEM

The establishment and development course of China's enterprise bankruptcy system may be divided into the following stages:

(1) The *Enterprise Bankruptcy Law of the People's Republic of China (Trial)* promulgated in 1986 as the core of the policy bankruptcy system.

The *Enterprise Bankruptcy Law of the People's Republic of China (Trial)* was adopted at the18th Session of the Standing Committee of the Sixth National People's Congress on December 2, 1986 and came into effect on January 1, 1988. In addition, the *Civil Procedure Law of the People's Republic of China* came out later as a supplement to China's bankruptcy system. Documents released by the State Council include the *Notice of the State Council on the Relevant Issues concerning the Pilot Implementation of Bankruptcy of a State-Owned Enterprise in Some Cities* and the *Supplementary Notice of the State Council on the Relevant Issues about the Pilot Implementation of the Merger and Bankruptcy of State-owned Enterprises in Some Cities and the Reemployment of Workers*. The ministries and commissions of the State Council have also released supporting administrative regulations and normative documents.

The Supreme People's Court has issued a series of judicial interpretations as to the application of the *Enterprise Bankruptcy Law (Trial)* and the *Civil Procedure Law* in judicial practice, including the *Opinions on Implementing the Provisions on Several Issues Regarding the Civil Procedure Law of the People's Republic of China* (July 14, 1992), the *Notice on Several Issues that the Current People's Court shall Take into Account in Trial of Enterprise Bankruptcy Cases* (March 6, 1997), the *Provisions of the Supreme People's Court on Some Issues Concerning the Trial of Enterprise Bankruptcy Cases* (July 30, 2002) and the *Official Reply of the Supreme People's Court on Whether a Bankrupt Enterprise's Right to Use State-Owned Land Appropriated Shall Be Listed as*

Bankruptcy Property and Other Issues (October 11, 2002).

The *Enterprise Bankruptcy Law (Trial)* is the first law in China governing enterprise bankruptcy, and with the improvement of relevant supporting laws, regulations and judicial interpretations, the legal system governing bankruptcy of state-owned enterprises has taken shape initially. However, due to the facts that the *Enterprise Bankruptcy Law (Trial)* only applies to state-owned enterprises, and the government plays a leading role in the bankruptcy process, the number of bankruptcy cases accepted by courts nationwide is less than 100 in the years following its implementation on January 1,1988. And with the social and economic development of China, large numbers of non-state-owned enterprises have been emerging, the policy bankruptcy system can no longer meet the need of non-state-owned enterprises to withdraw from the market.

(2) The *Enterprise Bankruptcy Law of the People's Republic of China* promulgated in 2006 and its supporting judicial interpretation.

The *Enterprise Bankruptcy Law of the People's Republic of China* was passed at the 23rd session of the Tenth Standing Committee of the National People's Congress on August 27, 2006 (hereinafter referred to as the "Enterprise Bankruptcy Law"), and came into effect on June 1, 2007. On April 23, 2007, the Supreme People's Court released the *Provisions of the Supreme People's Court on Some Issues about the Application of Law for the Enterprise Bankruptcy Cases That Have not Been Concluded When the Enterprise Bankruptcy Law of the People's Republic of China Comes into Effect*.

In order to properly apply the *Enterprise Bankruptcy Law* in the judicial practice, the Supreme People's Court released in 2011, 2013 and 2019 respectively the *Provisions of the Supreme People's Court on Several Issues concerning the Application of the Enterprise Bankruptcy Law of the People's Republic of China (I)* (Interpretation No. [2011] 22), the *Provisions of the Supreme People's Court on Several Issues concerning the Application of the Enterprise Bankruptcy Law of the People's Republic of China (II)* (Interpretation No. [2013] 22) and the *Provisions of the Supreme People's Court on Several Issues concerning the Application of the Enterprise Bankruptcy Law of the People's Republic of China (III)* (Interpretation No. [2019] 3). Moreover, it also passed and released, after deliberation in 2012, the *Reply of the Supreme People's Court on Whether the Liquidation of Sole Proprietorships May Refer to the Procedure for Bankruptcy Liquidation as Prescribed in the Enterprise Bankruptcy Law*.

In order to meet the need for development of the market economy, the *Enterprise Bankruptcy Law 1986 (Trial)* was abolished upon promulgation of the *Enterprise Bankruptcy Law in 2006*, which introduced major reforms in the enterprise bankruptcy system, including expanding the scope of subject of bankruptcy from state-owned enterprises to all legal person enterprises; setting up an administrator system; and clarifying specific reorganization, reconciliation and liquidation procedures in the bankruptcy proceedings. It also defined a bankruptcy threshold: where an enterprise legal person fails to pay off its debt as due, and its assets are not enough to pay off all the debts or it is obviously incapable of paying off its debts, its liabilities shall be liquidated according to the provisions of the present Law; where an enterprise legal person falls under the aforesaid circumstance or if it is obviously likely to lose its solvency, reorganization shall be made hereunder.

(3) The revision of the *Enterprise Bankruptcy Law* was listed as a legislation priority in 2021.

Great changes have taken place in social and economic fields in the past 15 years since the promulgation of the *Enterprise Bankruptcy Law 2006*. Today a large number of businesses are on the verge of bankruptcy due to COVID-19, therefore, it is urgent for China to improve the enterprise bankruptcy system. Against this backdrop, the spokesman of the Legislative Affairs Commission of the Standing Committee of the National People's Congress held a news briefing on December 21, 2020, announcing its decision to list the revision of the *Enterprise Bankruptcy Law* as a legislation priority in 2021. To respond, the Standing Committee of the National People's Congress is currently on law enforcement inspections in Jiangsu and other provinces, in order to make targeted revisions of the law.

III. IMPLEMENTATION OF THE ENTERPRISE BANKRUPTCY SYSTEM

Since the promulgation of the *Enterprise Bankruptcy Law in 2006*, especially the introduction of supply-side structural policies in 2015, the number of bankruptcy cases accepted by a growing number of bankruptcy tribunals of courts at all levels has been on the

rise, including major cases involving big industry players like Chongqing Iron and Steel and Bohai Steel and those involving small and medium-sized financial institutions like Baoshang Bank. The bankruptcy cases are becoming more complicated and specialized.

According to the data from the Supreme People's Court, from 1993 to early 2018, there were more than 36,000 bankruptcy-related cases, including more than 15,000 cases related to bankruptcy liquidation, representing 41% of the total; more than 9,000 cases related to creditors' rights disputes, accounting for 30%; more than 5,000 cases related to disputes over recovery of creditor's rights; and more than 300 cases related to bankruptcy reorganization.[1]

From 2019 to 2020, the Supreme People's Court approved 14 bankruptcy courts in Shenzhen, Beijing, Shanghai, Tianjin, Guangzhou and other places to provide more specialized bankruptcy trial services. From January 1 to December 31, 2020, Shanghai Bankruptcy Court accepted a total of 1567 cases related to bankruptcy, compulsory liquidation and derivative suits, growing by 32.7% year-on-year. Through these specialized bankruptcy courts, the legitimate rights and interests of debtors and creditors of bankrupt enterprises are effectively protected.

IV. PROBLEMS FACED BY THE CURRENT ENTERPRISE BANKRUPTCY SYSTEM

Positive results have been achieved in the 15 years since the implementation of the *Enterprise Bankruptcy Law 2006* and relevant laws and regulations, however, many problems exist, particularly, the contradiction between the urgent need of judicial practice and lagged bankruptcy legislation, including the imperfection of the bankruptcy administrator system.

(1) Imperfection of the bankruptcy administrator system

The bankruptcy administrator refers to, in a bankruptcy case, the agency designated by a court to fully take over the assets of the debtor, and to, under the guidance and supervision of the court, properly keep, liquidate, evaluate, dispose of and distribute such assets. Chapter III of the *Enterprise Bankruptcy Law* is devoted to the introduction of the qualifications and responsibilities of such administrator. The *Provisions of the Supreme People's Court on Designating the Administrator during the Trial of Enterprise Bankruptcy Cases* and the *Provisions of the Supreme People's Court on Determination of the Administrator's Remunerations*, among others, released by the Supreme People's Court constitute the basic framework of the bankruptcy administrator system. However, China's administrator system is still not perfect, which is mainly reflected in the facts such as lack of specific rules concerning the qualification, appointment and supervision of the administrator, and the passive attitude of the administrator in practice. To improve the system, a market-based approach for selection of the administrator shall be established, to allow creditors or the creditor committee to play a bigger role in selecting, appointing and supervising the administrator.

(2) Alignment of pre-reorganization with bankruptcy reorganization

There are no regulations on pre-reorganization in China's existing laws and regulations, except relevant policy documents of the central government and judicial documents of the Supreme People's Court that proposed study on the pre-organization system and encouraged exploration and practice. Such system is mainly deprived from regions with rich pre-organization practice, such as Wenzhou, Shenzhen and Beijing. Pre-reorganization is a way in which the creditors, debtors, contributors, reorganizing party and other interested parties are engaged in, before the bankruptcy petition is accepted, negotiations towards an out-of-court reorganization scheme and secure a speedy approval through official judicial reorganization proceedings. During the process of pre-reorganization, both the free will of the parties concerned and compulsive nature of judicial proceedings are taken into account, which leads to reduced judicial resources and improved reorganization efficiency, and is thus highly valued in judicial practice. There are indeed some cases in which the enterprises' revival is achieved through pre-reorganization. Therefore, room shall be reserved for pre-reorganization during the revision of the *Enterprise Bankruptcy Law* to enable better alignment between the out-of-court reorganization and in-court reorganization.

(3) Substantive consolidation in bankruptcy of affiliate enterprises.

In practice, substantive consolidation has been applied to bankruptcy cases of affiliated enterprises in China, but the lack of clear, unified laws and regulations results in varying understanding of conditions for substantive consolidation and practices among local courts and compromises the

[1] Li Shuguang: Discussion on the Direction of the Bankruptcy Law Reform from the Perspective of Implementation of the Law, Caixin.com

protection of legitimate rights and interests of creditors. Although the rules concerning substantive consolidation in bankruptcy of affiliated enterprises were touched on under Article 6 - Bankruptcy of Affiliated Enterprises of the *Minutes of the National Court Work Conference on Bankruptcy Trials* issued by the Supreme People's Court in 2018, such rules are less authoritative, effective or complete. To fill the law gap, rules concerning the petitioner, type of consolidation in bankruptcy, applicable standards, jurisdiction and objection and remedies of creditors shall be added to the revised *Enterprise Bankruptcy Law* to make such rules more complete.

(4) Establishment of summary proceedings for trial of bankruptcy cases

Small and medium-sizes enterprises are seen in great number in China, however, they are less resilient to market risks. Each year, many are on the verge of bankruptcy due to poor performance. In practice, many bankrupt enterprises have no or only a small amount of assets for liquidation. Therefore, the courts in Beijing, Shanghai, Jiangsu, Zhejiang and other places have taken the lead in piloting summary proceedings for trial of bankruptcy cases, to shorten the case settlement time properly in accordance with the law without prejudicing the legitimate rights and interests of the parties concerned. The adoption of the above summary proceedings results in streamlined case trial process, improved trial efficiency, optimized allocation of judicial resources and better protection of the rights and interests of the parties concerned.

(5) Alignment between the Enterprise Bankruptcy Law and the Civil Code of the People's Republic of China

The *Civil Code of the People's Republic of China* (hereinafter referred to as the "Civil Code") came into effect on On January 1, 2021, with greater impact on the *Enterprise Bankruptcy Law* by its relevant provisions. To give full play to the role of the enterprise bankruptcy system, it is necessary to revise the *Enterprise Bankruptcy Law* for better alignment with the *Civil Code*, and to improve the Tax Law, the Company Law, the Labor Law and the Social Security Act simultaneously.

V. CONCLUSION

In summary, great changes have taken place in social and economic fields in China since the promulgation of the *Enterprise Bankruptcy Law* 1986 *(Trial)*. The enterprise bankruptcy system has also experienced changes and reforms in its development course, especially since the outbreak of COVID-19. To mitigate the impact of the pandemic, reform of the enterprise bankruptcy law has become a top option for all countries around the world. Based on the practice and experience over the past years, the law makers of China are expected to reform China's enterprise bankruptcy system and the relevant legal systems in a substantive and innovative manner and ensure the revised *Enterprise Bankruptcy Law* can reflect the concerns of the people and contribute to the bankruptcy cases being tried in an efficient and professional manner, so as to boost the social and economic development.

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Restructuring and Insolvency in Hong Kong

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In Hong Kong, the statutory framework for regulating the affairs of insolvent companies is found in the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) (the "**C(WUMP)O**") and the Companies (Winding Up) Rules (Cap. 32H). The C(WUMP)O also cross-refers to and incorporates certain provisions of the Bankruptcy Ordinance (Cap. 6).

This chapter provides a broad overview of the restructuring and insolvency regime in Hong Kong, including: (i) the options available for companies in financial distress, (ii) the key considerations for stakeholders in an insolvency scenario, (iii) the existing approach to cross-border insolvencies under Hong Kong law, and (iv) the status of proposed legislative reforms.

I. WHAT OPTIONS ARE AVAILABLE FOR COMPANIES IN FINANCIAL DISTRESS?

A. RESTRUCTURING WITHOUT A WINDING-UP

Currently, there is no formal corporate rescue procedure under Hong Kong law. Pursuing informal workouts or schemes of arrangement are the two main ways by which a Hong Kong company in financial distress may restructure its debts without going through a winding-up.

1. Informal workout

A workout comprises contractual arrangements between a debtor company and its creditors. Being an out-of-court process, a workout can be conducted at any point in time, even concurrently with a scheme of arrangement. It is up to the parties to agree on an acceptable arrangement. The terms of a workout plan are therefore highly flexible and may include the amendment and extension of a company's debts or the restructuring of its entire capital structure. Creditors may opt for a consensual workout in which the likelihood and/or rate of recovery are higher than if the company were wound up.

2. Scheme of arrangement

A scheme of arrangement is a court-sanctioned compromise/arrangement between a companyand all its creditors (or a class of them), that is given statutory effect to bind all such creditors, even if they do not all consent to the arrangement. Companies already in liquidation as well as those that are not can use a scheme of arrangement. The scheme procedure involves a three-step process. First, at an initial court hearing, a court decides whether to grant leave for the scheme proponent to convene meeting(s) of creditors. Second, meeting(s) of the company's creditors (or classes of its creditors) are convened for a vote on the proposed scheme. Under Hong Kong law, a majority (that is, over 50%) in number, representing at least 75% in value, of creditors present and voting at a creditors' meeting must vote in favour of the proposed scheme for it to be approved. If there are multiple classesof creditors whose debts would be compromised pursuant to the scheme, all classes must approve the scheme. Third, following the creditors' approval of the scheme, the scheme proponent submits the scheme to the court for final approval. At a second hearing, the court scrutinises compliance with the procedural requirements prescribed

by statute and the fairness of the proposed arrangement between the company and its creditors. Initiation of a scheme process does not activate a moratorium on creditors' actions. This is why creditors' schemes are sometimes coupled with a provisional liquidation, such that companies can take advantage of the statutory moratorium applicable to a provisional liquidation. Even if the company in question is not a Hong Kong company, a scheme may still be sanctioned by the court so long as there is a "sufficient connection" between the foreign company and Hong Kong.

B. WINDING-UP

Under Hong Kong law, a winding-up, also known as liquidation, can be categorised into three types — members' voluntary liquidation ("**MVL**"), creditors' voluntary winding-up ("**CVL**"), and compulsory winding-up by the courts.

A provisional liquidator may also be appointed to protect the assets of a company at any time after the presentation of a petition for the company's winding-up and before the date on which a winding-up order is made. The appointment of a provisional liquidator triggers an automatic stay on legal actions or proceedings against the company subject to the leave of thecourt. This stay does not affect the rights of secured creditors to enforce their security. The court may exercise its discretion to appoint a provisional liquidator if it is satisfied that there is good *prima facie* case for the winding-up order and that the company's assets are in jeopardy. Whilst the powers of a provisional liquidator may include exploring a restructuring of the company; in Hong Kong, a provisional liquidator cannot be appointed solely for this purpose.

1. When the company is solvent: members' voluntary winding-up

Directors of a solvent but defunct company may initiate an MVL by (i) signing a certificate of solvency that declares that the company will be able to pay its debts in full within 12 months after commencement of the winding-up, and (ii) convening a shareholders' meeting to consider resolutions for the winding-up and for the appointment of a liquidator. A director who signs a certificate of solvency without reasonable grounds is liable to a fine and/or imprisonment (the absence of reasonable grounds is presumed if down the line creditors cannot be paid in full within 12 months). Once the company's affairs have been fully wound up, the liquidator will draw up an account of the MVL and call a final shareholders' meeting. The company will be formally dissolved three months after the date on which the liquidator's final statement of account and the return of the final meeting are registered with the Companies Registry.

2. When the company is insolvent: CVL and compulsory winding-up

There are two types of insolvent winding-up — CVL and compulsory winding-up. Although "insolvency" is not expressly defined under Hong Kong law, the test for insolvency is whether a company in a winding-up petition is unable to pay its debts. Under section 178(1) of the C(WUMP)O, a company is deemed to be unable to pay its debts if (i) it fails (for a period of three weeks) to pay, secure, or compound for (to the reasonable satisfaction of the creditor) a sum equal to or exceeding HK$10,000, which is then due and which has been the subject of a statutory demand; (ii) it fails to satisfy (in whole or in part) an execution or other processes issued on a judgment, decree, or order of any court in favour of a creditor; or (iii) it is proved to the satisfaction of the court that the company is unable to pay its debts, taking into account the prospective and contingent liabilities of the company.

a. Creditors' voluntary winding-up: A CVL is usually initiated after the company's directors determine that the company is insolvent and unable to carry on trading. The directors will resolve that a winding-up is necessary and call a shareholders' meeting, at which a special resolution to wind up the company, and a resolution nominating a liquidator, will be voted on. Around the same time, the company will call a meeting of creditors (which must be held within 14 days of the shareholders' meeting) at which creditors may (amongst other things) nominate their own liquidator and vote to establish a committee of inspection to supervise the liquidation. During a CVL, the powers of the directors are suspended, and the liquidator may exercise powers in relation to the company, as prescribed by the C(WUMP)O. There is no automatic stay on proceedings or creditors' actions in a CVL, but the liquidator or any contributory or creditor may apply to the court for directions or other orders. The liquidator will, to the extent possible, realise all of the company's assets and distribute the proceeds to creditors in accordance with the statutory priorities set out in the C(WUMP)O. As soon as the company's affairs are fully wound up, the liquidator will call a final general meeting of the company and make the requisite filings with the Companies Registry to dissolve the company. Section 228A of the C(WUMP)O prescribes a special procedure by which directorsmay commence a winding-up without first holding a shareholders' meeting. This procedure is available only if it is not reasonably practical for the winding-up of the company to commence under another section of the C(WUMP)O. In practice, the procedure is rarely deployed.

b. Compulsory winding-ups: A compulsory winding-up may be instigated by the debtor company, shareholders, liquidators and, most commonly, creditors whose statutory demand has not been paid or satisfied within 21 days of it being served.

The procedure commences with a presentation of a winding-up petition to the court. Once the court is satisfied that one of the grounds set out in section 177(1) of the C(WUMP)O is established (including where the company is unable to pay its debts), it may make a winding-up order against the company. The court may consider the wishes of creditors and what is just and equitable. During a compulsory liquidation, there is an automatic stay on all proceedings and creditors' actions against the company, unless the court grants leave for such proceedings to commence or continue. Again, the directors' powers will be suspended and the court-supervised liquidator will be tasked with realising and recovering the company's assets, investigating thecompany's affairs, adjudicating creditors' claims, and making distributions to creditors out of the liquidation estate. Once the company is fully wound up, the liquidator will apply to the court for a release and for dissolution of the company.

II. STAKEHOLDERS' ROLES AND CONSIDERATIONS IN A LIQUIDATION

A. DIRECTORS AND OFFICERS

It is important for directors and officers of a financially distressed company to be aware of their obligations in an insolvency scenario, as failure to comply with such obligations could result in civil or even criminal liabilities.

A director owes duties to the company, which apply regardless of the company's solvency position. These include, amongst others, the duty to act honestly and in good faith in the interests of the company as a whole; notably, when a company is nearing insolvency, the interests of the company as a whole will encompass the interests of the company's creditors. Directors and officers must also adhere to their fiduciary duties. Should a director or officer commit a breach of any such duties, a subsequently appointed liquidator may bring actions against them on behalf of the company.

There is currently no provision for insolvent trading under Hong Kong law. In other words, directors will not be personally liable for the debts incurred by the company whilst it is insolvent, even if the company subsequently goes into liquidation and there are insufficient assets to pay all creditors in full. However, if a company makes a payment out of capital in respect of the redemption or buy-back of any of its own shares from a shareholder, and a winding-up of the company is commenced within one year after that payment, the directors who signed the solvency statement in relation to the payment out of capital could be jointly and severally liable with the recipient-shareholder to contribute to the assets of the company.

B. SHAREHOLDERS

Shareholders often stand to lose the most in a liquidation scenario, receiving nil or very little return on their shares. In addition, shareholders may face claw-back risks in respect of shares redeemed or bought back within a year before the commencement of a winding-up, any unlawful dividends received whilst the company is insolvent, and any other benefits or property received from the company as part of a transaction at an undervalue or a fraudulent conveyance.

Once a winding-up petition is filed, any subsequent transfer of shares in the company or alteration in the status of its members is void, unless the court otherwise orders.

C. CREDITORS

Creditors who are assessing their options vis-à-vis an insolvent or potentially insolvent company — including petitioning for the company's winding-up, enforcement of their security, and/or the restructuring of the company's debts — should understand the risks and opportunities associated with those options and their likely recovery in each scenario.

At a high level, considerations relevant to creditors in a liquidation scenario include the following:

1. Priority of payment

Generally speaking, the priority of payments in the winding-up of a company in Hong Kong is as follows:

1.	Secured creditors vis-à-vis secured assets (save that, where the company's unsecured assets are insufficient to meet the preferential debts listed in s.265(1) of the C(WUMP)O, the Company's floating charge assets will be applied first in satisfaction of those preferential debts before being paid to the floating charge holders)
2.	Expenses of the winding-up (including the liquidators' remuneration)
3.	Preferential debts as defined in s.265(1) of the C(WUMP)O, including: • Employee entitlements (subject to limits) • Government debts
4.	Unsecured creditors (on a pari passu basis)
5.	Interests of debts (for the period after the company went into liquidation)
6.	Subordinated creditors (such as members in respect of debts due to them from the company in their capacity as members)
7.	Members of the company generally

2. Stays and moratorium

In a compulsory winding-up, court proceedings and legal actions against the company are stayed, subject to the court granting leave for their commencement or continuation. Instead, unsecured claims against the company are replaced by creditors' entitlements to prove in the winding-up and to receive distribution of dividends out of the company's estate.

Notwithstanding that, the liquidation of a debtor-company will not prevent a secured creditor from enforcing its security.

3. Claw-back risks

Once a winding-up petition is filed against a company, any disposition of the company's property, including things in action, is void, unless the court otherwise orders.

In addition, creditors who had received payments, grants of security (in particular, floating charges), and/or transfers of assets from an insolvent company could face claw-back risks in respect of such transactions in the event that the company subsequently goes into liquidation. The key categories of voidable transactions are unfair preferences, transactions at an undervalue, extortionate credit transactions, fraudulent trades, and floating charges granted within a certain period prior to the commencement of the winding-up.

4. Prospect of restructuring

Whilst a restructuring may be implemented in the context of a provisional liquidation or even a formal liquidation, and some creditors may choose to use a winding-up petition to pressure an insolvent company into progressing a restructuring, creditors should bear in mind that:

- The commencement of a winding-up petition (even if the petition is subsequently withdrawn) could potentially have adverse impacts on the prospects of a successful restructuring (e.g. it might trigger defaults/termination of other indebtedness or material contracts); and

- Under Hong Kong law (as it currently stands), a provisional liquidator cannot be appointed to a company solely for the purpose of a corporate rescue.

5. Available assets and potential recovery

The likely return to creditors in a liquidation will depend heavily on: (i) the available assets of the company; (ii) the ease with which, and the amount of, those assets that could be recovered and realised; (iii) out of those assets, the proportion that represents secured assets (that will be used exclusively to meet secured liabilities); and (iv) the availability of liquidators' recovery actions and the likelihood and time required to prosecute those claims and achieve actual recoveries.

6. Outstanding liabilities

The total quantum of provable claims against the company that will share, on a *pari passu* basis, in the distribution of available assets is equally important to the likely return to creditors.

7. Likely delay

Creditors should bear in mind that typically there is a long delay between the commencement of a winding-up and the actual distribution of a dividend (including interim dividends) to creditors. The delay may be caused by difficulties faced by the liquidator in recovering and realising assets and/or complexities (including court proceedings) in connection with the adjudication of claims.

III. CROSS-BORDER INSOLVENCY CASES

Hong Kong is uniquely positioned between the PRC and other offshore jurisdictions, and most insolvency cases in Hong Kong involve cross-border elements. A classic example is when a holding company incorporated in an offshore jurisdiction (such as the BVI, Bermuda, or the Cayman Islands) would be listed on the Hong Kong Stock Exchange and would have shareholding in one or more PRC subsidiaries. The Hong Kong-listed holding company would hold little or no physical assets but could issue bonds (which may be governed by English or New York law) or take loans from banks. The funds so raised would flow down from the holding company to the PRC subsidiaries that would, in turn, hold physical assets in China and operate the actual business. If the holding company is unable to pay its debts, complex cross-border insolvency issues will arise. Below is a summary of some of those issues and the Hong Kong court's current approach to them.

A. WINDING-UP FOREIGN COMPANIES IN HONG KONG

A company incorporated outside of Hong Kong may be wound-up by a Hong Kong court under section 327 of the C(WUMP)O if, amongst other things, the company is unable to pay its debts or if the court is of the opinion that it is just and equitable that the company be wound-up.

In addition, the courts, as a matter of discretion, have generally required three conditions to be satisfied before winding-up a foreign company, namely: (i) the company has sufficient connections with Hong Kong (which typically comprise the presence of assets in

the jurisdiction); (ii) there is a reasonable possibility that the winding-up order would benefit those applying for it; and (iii) the Hong Kong court is able to exercise jurisdiction over one or more persons in the distribution of the company's assets. In exceptional circumstances in which the connection with Hong Kong is so strong and the benefits of a winding-up to creditors are so substantial, a court may order a winding-up even though the third criterion might not be satisfied.

B. RECOGNITION OF AND ASSISTANCE TO FOREIGN PROCEEDINGS

To date, Hong Kong has not enacted the UNCITRAL Model Law on Cross-Border Insolvency. As a result, foreign insolvency practitioners must resort to the Hong Kong court's common law jurisdiction for the recognition of, and assistance to, foreign insolvency proceedings. Typically, a foreign insolvency practitioner would apply to the foreign court (i.e. the court of the jurisdiction in which the insolvency proceeding was commenced) for a letter of request addressed to the Hong Kong court, requesting that assistance be granted to the practitioner (e.g. to protect assets located in Hong Kong). Having obtained that letter of request, the practitioner would apply to the Hong Kong court for the requisite relief.

The Hong Kong court has taken a fairly generous view of its power to assist foreign insolvency proceedings, including provisional liquidations commenced offshore solely for the purpose of restructuring.[1] However, that power remains limited by common law and equitable principles, and the relief that the court may grant is limited to those that would be available to a liquidator under Hong Kong's insolvency law.[2]

As between Hong Kong and the PRC, on 14 May 2021, the PRC Supreme People's Court (the "SPC") and the Hong Kong Department of Justice signed a Record of Meeting on Mutual Recognition of Assistance to Bankruptcy (Insolvency) Proceedings between the Courts of the Mainland and of the Hong Kong Special Administrative Region.

Even before that Record of Meeting was signed, the Hong Kong court was already making recognition orders and granting assistance sought by mainland bankruptcy administrators.[3] With the signing of the Record of Meeting (coupled with opinion and the practical guide published by the SPC and the Hong Kong government, respectively), a Hong Kong liquidator/provisional liquidator may now seek recognition by, and assistance from, the People's Courts in Shanghai, Xiamen and Shenzhen in respect of a Hong Kong liquidation, provisional liquidation, or scheme of arrangement (as approved by a Hong Kong court), provided that the debtor company has had its centre of main interest in Hong Kong for a continuous six-month period at the time of the application. Interim preservation orders may also be sought from the PRC courts at any time after a recognition application has been filed. Once the Hong Kong insolvency proceedings are recognised by the PRC court, there will be a moratorium on creditors' claims and actions in the mainland, and the PRC court may confer powers on the Hong Kong liquidator to, amongst other things, take control of the debtor's books and assets and investigate the debtors' affairs.

C. CROSS-BORDER SCHEMES OF ARRANGEMENT

If cross-border elements are involved in a scheme of arrangement, the Hong Kong court will consider whether there is sufficient connection between the scheme and Hong Kong, and whether the scheme is effective in other relevant jurisdictions, because it would not be a proper exercise of the discretion to sanction a scheme that serves no purpose.[4] Relevant to that second consideration is the rule in *Gibbs*, which provides that a discharge of a debt is not effective unless it is in accordance with the law governing the debt. In that regard, the Hong Kong court has generally followed the rule in Gibbs, with certain exceptions (e.g. where the foreign creditor(s) had submitted to the Hong Kong court's jurisdictions).[5]

Separately, it has become an established practice for Hong Kong-listed companies incorporated offshore to use parallel schemes of arrangement (approved by courts both in Hong Kong and in the offshore jurisdiction) to restructure their debts. This is to ensure that creditors do not disrupt the operation of the scheme by taking hostile action against the company in either jurisdiction. However, the courts have criticised this practice of parallel schemes as being an outmoded way of conducting cross-border restructuring, and have called for better international coordination to enable a substantive recognition of foreign schemes of arrangement in offshore jurisdictions.[6]

[1] Re Z-Obee Holdings Ltd [2018] 1 HKLRD 165.
[2] The Joint Administrators of African Minerals Ltd (in administration) v Madison Pacific Trust Ltd [2015] HKCU 875.
[3] Re CEFC Shanghai International Group Limited [2020] HKCFI 167; Re Shenzhen Everich Supply Chain Co Ltd [2020] HKCFI 965.
[4] Da Yu Financial Holdings Limited [2019] HKCFI 2531.
[5] China Lumena New Materials Corp (in provisional liquidation) [2020] HKCFI 338.
[6] Re Da Yu Financial Holdings Limited [2019] HKCFI 2531.

IV. LEGISLATIVE REFORMS

In November 2020, the Hong Kong government announced its plans to introduce the Companies (Corporate Rescue) Bill (the "**Bill**") in early 2021. The Bill aims to introduce a statutory corporate rescue procedure and insolvent trading provisions into Hong Kong law. Key features of the Bill include:

- *Provisional supervision:* a company that is insolvent or will likely become insolvent may appoint an independent third party as provisional supervisor with the support of the company's major secured creditor. During the provisional supervision period, the provisional supervisor will take control of the company, consider options for rescuing the company and, where appropriate, prepare proposals of a voluntary arrangement for approval by the company's creditors.

- *Statutory moratorium:* during the provisional supervision period, there will be a statutory moratorium on civil proceeding and actions against the company, subject to certain statutory exemptions (including certain rights of employees regarding their pay entitlements).

- *Insolvent trading:* subject to statutory defences, a director of a company will be responsible for insolvent trading if the director at the material time knew or ought to have known that the company was insolvent when the debt was incurred or would become insolvent by incurring the debt or other debts incurred at the same time. Uponinsolvent liquidation of the company, the court may order the director responsible for insolvent trading to make a contribution to the company's assets.

When the Bill will be introduced and when these much-needed legislative reforms will be implemented remains to be seen.

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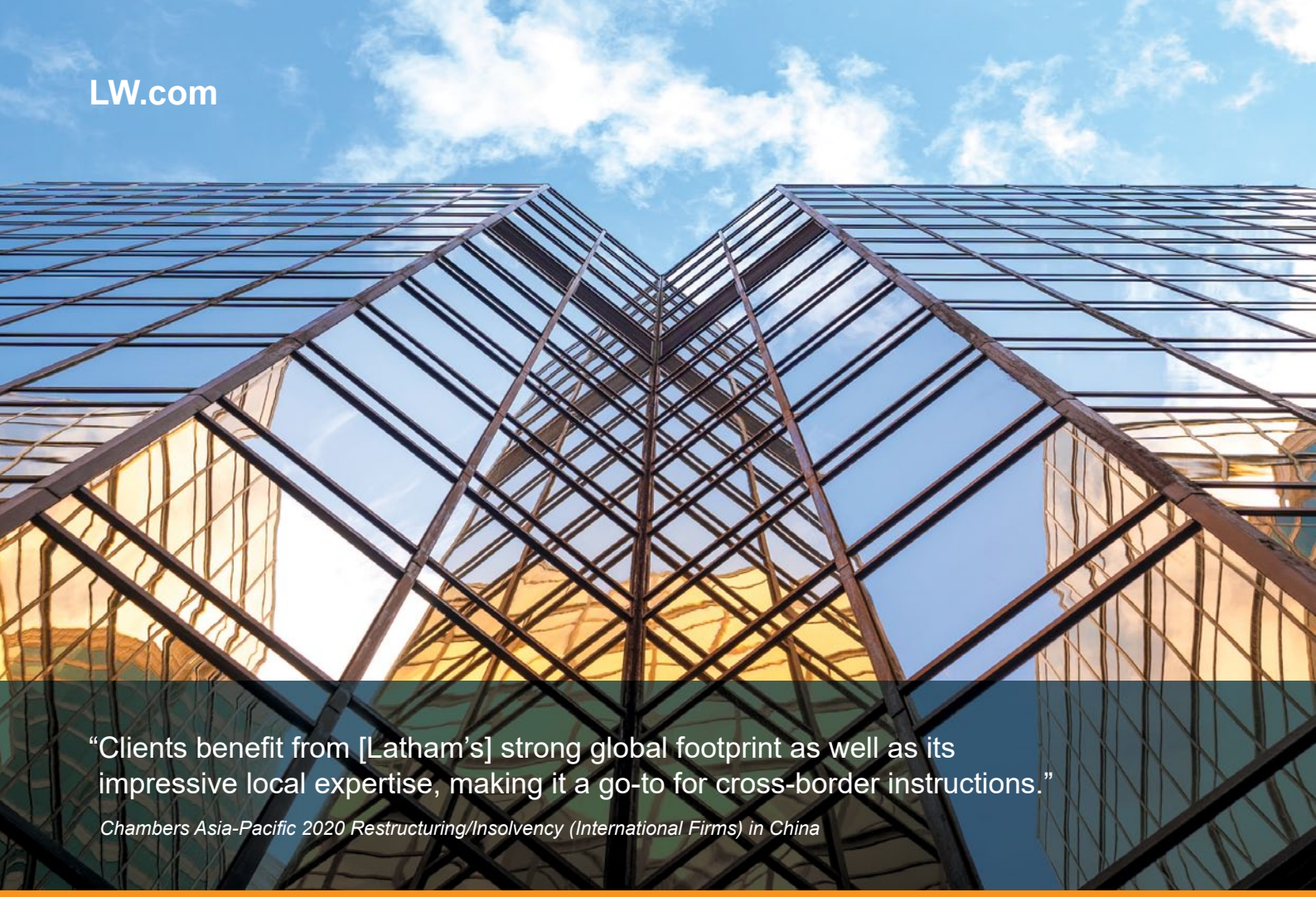

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Wei Meng is a director in the Corporate Restructuring & Workouts team in Drew & Napier LLC, the anchor law firm of Drew Network Asia.

Wei Meng's practice focuses on corporate and individual insolvency and restructuring work. His other areas of practice include investigations, involving fraud, accounting irregularities, securities trading, and market manipulation, as well as commercial litigation work, handling contentious commercial, shareholder, employment and other disputes.

He has been involved in some of the largest restructuring in Asia and has more than 20 years' experience in matters of corporate insolvency, schemes of arrangements and compromise, judicial management, liquidation, and cross-border restructuring exercises. He has advised liquidators and judicial managers on a variety of matters resulting from the liquidation and judicial management of companies, and has been involved with daily operational, management and creditor issues.

Wei Meng has been recognised in Chambers Asia Pacific, Asia Pacific Legal 500, IFLR1000, Who's Who Legal, Best Lawyers and Global Investigations Review 100 for his restructuring/insolvency and investigation work.

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Yong Quan's practice focuses on corporate and individual insolvency and restructuring work. He routinely advises debtor companies and institutional creditors on judicial management, local and cross-border schemes of arrangement, consensual debt restructuring and liquidation. He also advises insolvency practitioners such as liquidators, scheme managers and judicial managers on daily operational, management and creditor issues in the course of the insolvency proceedings.

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LI Ling is the managing partner of Hantao Law Firm. Her legal expertise covers dispositions of non-performing assets, financing and investments, foreign-related and corporate matters, real estate and construction projects, and major and difficult cases handing.

In the recent five years, LI Ling has led all dispute resolution and non-litigation teams of Hantao, which has represented in more than 1100 cases for financing or contract related and other civil and commercial matters as the dispute resolution lawyer, and has provided legal advisory service in more than 700 matters.

LI Ling is a member of the Chaoyang District Youth Federation of Beijing, a member of the China Young Entrepreneurs Association under the Central Committee of the Communist Youth League of China.

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Mr. Lam has advised clients on complex restructuring and insolvency cases in Asia for over 20 years. His clients include debtors, banks, bondholders, distressed investors, direct lenders, insolvency practitioners and other stakeholders.

Mr. Lam, who is recognised by Chambers Asia Pacific as one of the leading restructuring andinsolvency practitioners in China, is an INSOL Fellow, a member of the executive committee of the HKICPA Restructuring and Insolvency Faculty, and a board member of TMA Hong Kong.

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Ms. Innes has significant experience in complex corporate restructurings insolvency proceedings and cross-border disputes. She regularly advises banks, financial institutions, insolvency practitioners, and corporate borrowers.

Prior to joining Latham, Ms. Innes served as a senior associate in the restructuring and insolvency practice of a top-tier law firm in Australia.

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Mr. Wong's practice focuses on leveraged and acquisition finance, syndicated lending, and restructuring. He advises financial institutions, corporations, and private equity sponsors in Asia across a range of financings. He also works closely with leading debt and restructuring advisors.

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HONG KONG HUB

Hong Kong has long been renowned as a key international wealth management centre, but a number of recent developments – such as the GBA Wealth Management Connect – has solidified its status. And lawyers specialising in private wealth have found themselves very busy too. **BY RANAJIT DAM**

In spite of being battered by U.S.-China trade tensions, social unrest and more recently, COVID-19, Hong Kong's private banking and wealth management industry has stood firm. The most recent Asset and Wealth Management Securities Survey from the Securities and Futures Commission (SFC) has found that 32 industry assets under management was HK$9.1 trillion ($1.2 trillion) in 2019, an increase of 19 percent from HK$7.6 trillion (US$ 1 trillion) in 2018. "While these figures pre-date the onset of COVID-19, wealth managers' financial results for 2020 have also shown significant growth," says Big Four firm KPMG in a report. "Furthermore, despite recent perceptions or predictions of capital outflows from Hong Kong, the city has experienced continuous inflows."

Lawyers working in the private wealth space in Hong Kong have also witnessed its resilience over the past year or two and point to a number of key factors that work in the city's favour. "There has been a 20 percent increase in UHNW individuals in China in the past three years, of which more than a fifth are based in the Greater Bay Area," say Simon Green, Jeffrey Lee and Ray Ng, international partners at Charles Russell Speechlys (CRS). "Hong Kong is a unique gateway to Mainland China. Clients who are keen to transact with Chinese counterparties prefer to do so with the familiarity of the common law system in Hong Kong."

The three lawyers add that transparent tax regimes in line with global standards and a proven track record of a business-friendly environment, "for example, immigration policies," are reasons behind Hong Kong's robustness as a wealth management hub. "Hong Kong also has an extensive network of double tax agreements both with China and the rest of the world. This adds to the many factors why Hong Kong remains Asia's largest cross-border private wealth management centre, second globally only to Switzerland," say Green, Lee and Ng. "There has been significant development in terms of the relative ease for Chinese companies to list in Hong Kong as opposed to, for example the U.S."

Kevin Lee, head of the private wealth practice for Greater China at Stephenson Harwood, points out to some recent factors in favour of Hong Kong. "On the policy side, we see Hong Kong regulators catching up with Singapore in taking steps or introducing incentives to attract family offices and onshoring of funds. Hong Kong regulators are also working hard to make the city a ESG financial hub," he notes. "On the market side, more PRC companies are moving their IPO back to Hong Kong due to perceived U.S. antipathy, and also pressure from China such as the regulatory scrutiny on Didi following its listing in the US. China Securities Regulatory Commission (CSRC) may be less rigid about Hong Kong listing in terms of cybersecurity and other related concerns. In terms of the wealth management sector, pre-IPO or post-IPO planning and employee benefits structuring would be very important for lawyers. But for the broader wealth management industry the heavy IPO activity would have more of an impact after the lock-up periods."

EVOLVING NEEDS

The ongoing COVID-19 pandemic has complicated lives for many, and HNWIs are no exception. "From a practical perspective, the restrictions on travel and general mobility (as a result of conservative quarantine measures in Hong Kong) have raised concerns about how easily wealth can be accessed," say Green, Jeffrey Lee, and Ng at CRS.

"Diversification of asset location is now balanced against considerations around challenges associated with access to assets held in wealth structures several time zones away. It usually requires more logistical planning to attend a board meeting in such jurisdictions and this additional layer of administration can raise significant tax implications stemming from central management and control. This has resulted in clients favouring simplification when designing asset protection structures."

They add that departing from mere income generation, clients are also reviewing their personal affairs and in particular, stress-testing their succession plans to ensure that they are fit for purpose in what can be a volatile environment.

This is part of a broader trend of the evolving needs of HNWIs and family offices in Hong Kong and Greater China. "There has been stronger emphasis on the succession plans of individuals and their family offices in recent years," say Green, Jeffrey Lee, and Ng. "Wealth creation without wealth protection is a recipe for disputes and litigation, and this current shift of focus from creation to protection represents progress along a learning curve that is already strewn with hard lessons."

Kevin Lee of Stephenson Harwood points out that the next generation HNWIs are increasingly interested in sustainable investing and ESG. "It's an evolving market and the practice team and the firm as a whole are building up our ESG focus," he says. "Next generation HNWIs also seem to be increasingly interested in digital assets which we also focus on. We work very closely with trustees on issues such as custody and succession of digital assets, how to safeguard password when the owner of the digital assets is mentally incapacitated, and so on."

In terms of actual disputes, Green, Jeffrey Lee, and Ng say that the fact that a significant proportion of Asian wealth is held via offshore trusts and structures means that disputes are often litigated in court proceedings in BVI and/or the Cayman Islands, either exclusively, or in parallel with arbitration and/or court proceedings in Hong Kong.

"Since we are one of very few onshore firms in Hong Kong who can also provide offshore advice and representation, we are able to undertake both the Hong Kong and BVI/Cayman law aspects of any such dispute," note Green, Jeffrey Lee, and Ng. "Although half of the global 100 law firms have a presence in Hong Kong, there are fewer than a handful that provide private client advice, and even fewer with our experience and pedigree. In addition to advising HNWIs and family offices directly, we are very fortunate to receive regular referrals from private banks, trust companies and other law firms that recognise the value that we can add to their clients' succession plans."

As part of building out adjunct services to private clients, CRS now has a 360º property capability that focuses on both residential and commercial property. "Importantly, and uniquely, we are able to advise on local as well as UK property matters, both from teams within our HK office," the lawyers add.

LOOKING FORWARD

In the coming year or two, Kevin Lee sees more activity in Hong Kong and Singapore arising from global minimum corporate tax implementation and the need for economic substance, potentially driving some businesses away from offshore to mid-shore. "As a firm with offices in both locations we will have the benefit of offering both Hong Kong and Singapore as the structuring centres for our clients," he says. "And because we work with many closely held corporations and controlling families, we expect to see more requests for structuring advice from such businesses moves."

Meanwhile, Green, Jeffrey Lee, and Ng note that clients are increasingly concerned with the fragility of the global business environment and are seeking good advice, early. "There will be greater focus on simple, yet robust and flexible wealth structuring," they say. "In recognition of this demand and to keep pace with progressive concepts of relationships and family, key jurisdictions are likely to update their trust and other wealth-planning legislation. BVI has already pioneered this response with its recent amendment to the trust firewall provisions of section 83A of the Trustee Act."

They add that disputes and litigation will continue unabated, as progress along the learning curve continues to expose vulnerabilities in older and less robust wealth-planning arrangements and structures. "From a property perspective, the appetite for investing in and holding real estate (whether locally or internationally) as part of a balanced portfolio of assets is unlikely to dissipate and we expect to continue to be busy supporting our clients on such transactions," say Green, Jeffrey Lee, and Ng.

"Diversification of asset location is now balanced against considerations around challenges associated with access to assets held in wealth structures several time zones away. It usually requires more logistical planning to attend a board meeting in such jurisdictions and this additional layer of administration can raise significant tax implications stemming from central management and control. This has resulted in clients favouring simplification when designing asset protection structures." — Simon Green, Jeffrey Lee, Ray Ng, Charles Russell Speechlys

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ASIAN LEGAL BUSINESS

ASIA'S TOP 15 RISING LAWYERS

This inaugural list highlights the achievements of 15 lawyers under 40 years of age across Asia who have consistently delivered high-quality work and set high standards in their respective legal space, while earning accolades from their colleagues, superiors and clients. **BY ASIAN LEGAL BUSINESS**

The future lies in the hands of the young, the leaders of tomorrow, so law firms need to support promising talent as best they can.

Simon Hawkins, a partner at Latham & Watkins in Hong Kong, and one of ALB Asia's Top 15 Rising Lawyers, understands how important this is.

"Nurturing young talent is vital, not just for individual law firms interested in developing their future leadership but also for the legal profession as a whole, to ensure the profession continues to advance, innovate and adapt," says Hawkins.

Hawkins wants to see junior lawyers develop the skills they need to achieve their professional goals, but also to encourage them to continue to develop their personal interests, pursuits and life outside of work.

He believes that juniors should be given opportunities to stretch themselves and shine in a safe environment that rewards hard work, creativity, enthusiasm and dedication.

"I think law firms should be aiming to provide real-time, honest and helpful feedback to juniors rather than waiting for mid-year and annual performance reviews," says Hawkins. "It's certainly not easy to create an environment that facilitates these objectives a hundred percent of the time, and it does have potential pitfalls, but I think that's what we should be aspiring for as law firm partners in order to get the best out of our junior talent."

Female lawyers also face more hurdles in a landscape that is still dominated by patriarchal norms.

"Many of the challenges women face are institutionally and culturally driven. It is important that we take the initiative to empower women, and to encourage further collaboration opportunities," says Grace Chong, of counsel at Simmons & Simmons in Singapore and Hong Kong, who was also named in the Rising Lawyers list.

To do her part, Chong sits on several boards and participate in various communities to help advance women in their professional networks. However, an inclusive and empowering environment needs to start at the top.

Hawkins remembers benefiting from great leadership as a junior, and given the opportunity to try new areas of work, come up with creative legal solutions, take ownership of important projects.

"Receiving feedback from senior lawyers also cannot be understated. When a junior has performed well on a piece of

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Rising Lawyer Spotlight: Grace Chong, Regulatory Specialist

Please describe your career journey. How did you come to specialise in financial regulatory law across both Singapore and HK?
My career journey over the last 12 years is relatively unusual. I entered private practice in the later part of my career, having spent my formative years in MAS and HSBC HK, and have had the opportunity to be involved in high-profile market misconduct and sanctions cases and legislative reform projects.

Since then I have built my practice around advising banks, asset managers and fintech firms on complex regulatory matters. I also have a special interest in fintech, ESG and data privacy regulatory matters, and have been closely involved in leading regional regulatory reform initiatives with the MAS, SFC and HKMA.

What is the greatest change you have made to your practice?
Since launching S&S' fintech and payments practice in Asia, I have continued to build the practice to expand the scope of support for clients globally. Our market-leading practice now supports some of the largest payments companies, exchanges, and other technology firms with regulatory and commercial work.

As a result of our commitment, our law practice was Highly Commended by Regulation Asia for the Regulatory Law Firm of the Year category, and our Singapore practice was ranked by Chambers for the first time in Fintech in 2021. I was also a finalist for the Innovative Lawyer category in the Financial Time APAC Awards 2021, and was listed in the 40 under 40 data lawyers category by Global Data Review.

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What are some of the key regulatory initiatives you have been involved in?
I currently lead the ESG Working Group in AIMA, and led AIMA's responses to ESG related consultations across both HK and SG. I advise banks and asset managers on the extra-territorial impact of SFDR, licensing and documentation requirements for the launch of ESG products and policy, governance and documentation amendments for climate change related regulations.

I have been involved in drafting Best Practices for Fintech and other industry guidance papers in conjunction with ASIFMA. I also sit on the boards of Singapore's blockchain association, ACCESS, and held the pen on several industry consultations to the MAS and FATF in relation to digital assets regulations, to advocate for fair regulatory policies that strike an appropriate balance between innovation and consumer protection.

What are the key challenges facing women in law, and how do you overcome them?
Many of the challenges women face are institutionally and culturally driven. It is important that we take the initiative to empower women, and to encourage further collaboration opportunities. I sit on several Boards and participate in various communities, including ACCESS, Women in Payments, IAPP Women Leading Privacy, and the Digital Law Association which aim to unite and advance women in these fields to expand their professional networks and promote their representation in the industry.

What do you predict to be the biggest change to the way you practice law over the next ten years?
I believe the practice of law today will no longer be able to function in discrete silos with clients increasingly calling upon us to listen more attentively, gain a clearer understanding and deeper insight of their individual needs and devise new and innovative solutions that addresses their increasingly complex legal and commercial issues.

What advice would you give to young lawyers?
In an age of noise and speed, it is important to step away now and then so that you can see the world more clearly, and adapt and pivot as necessary. As Leonard Cohen said, "If you don't become the ocean, you'll be seasick everyday!"

work, it only takes a few seconds to recognise that hard work with a quick email to say "great job – thanks for your help."

Equally, if a junior has not met expectations, putting in a quick call to provide some constructive feedback can be very impactful," says Hawkins.

CHANGING TIMES

Times are changing and so is the industry, which has implications for younger lawyers.

"I believe the practice of law today will no longer be able to function in discrete silos with clients increasingly calling upon us to listen more attentively, gain a clearer understanding and deeper insight of their individual needs and devise new and innovative solu¬tions that address their increasingly complex legal and commercial issues," says Chong.

Hawkins backs this observation up as he sees this daily, with new technologies posing ever more complex legal questions and requiring continuing education for lawyers to provide the most relevant and timely insights to clients.

"Asia continues to be at the forefront of emerging technology and business innovation, particularly in rapidly developing sectors such as fintech," says Hawkins. "As new products, services and ways of doing business are created, likewise legal professionals will need to innovate the way they work – something that has become increasingly evident during the challenges of the global pandemic."

Hawkins advises young lawyers to find a niche. "Do as much as you can in your early career to identify what most excites you, and then find ways to become the 'go to' person for that area of expertise. This includes making time to participate in firm thought leadership activities to showcase your passion and knowledge," says Hawkins.

He advises young legal professionals to proactively seek out opportunities, both externally and internally, to gain contacts and experience. "Remember to nurture key contacts and build your professional network. Don't forget that your counterparts will grow and develop in their careers too, and in the not-too-distant future a former colleague may be the GC at your key client," says Hawkins.

"Our mentoring program allows junior lawyers to connect at least once a month with a more senior lawyer so they have the opportunity to learn from their mentors. I serve as a mentor to three junior lawyers and it is an extremely rewarding part of my job. I'm pretty sure I get as much (or more!) out of the program as my mentees do."

Chong also encourages lawyers to not lose their view of the bigger picture.

"In an age of noise and speed, it is important to step away now and then so that you can see the world more clearly, and adapt and pivot as necessary. As Leonard Cohen says, 'If you don't become the ocean, you'll be seasick every day!'"

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ASIAN LEGAL BUSINESS

ASIA'S TOP OFFSHORE LITIGATORS

In its annual list of Asia's Top Offshore Litigators, ALB highlights top disputes practitioners working with offshore law firms, who have successfully handled significant cases and exceeded client expectations in the process. The full list is in alphabetical order, and a few lawyers have been profiled here.

LIST BY ASIAN LEGAL BUSINESS, TEXT BY APARNA SAI

METHODOLOGY

- Lawyers were invited to submit for this list between the months of May and June 2021.
- To be eligible, they needed to be either based in Asia full-time, or do a significant amount of work-related to Asian jurisdictions.
- The lawyers were selected based on the profile of their cases, clients recommendations, and feedback from the market.

JOANNE COLLETT
Walkers

STUART D'ADDONA
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AISLING DWYER
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NICOLA ROBERTS
Harneys

JOHN TREHEY
Maples Group

JOANNE COLLETT

partner, Walkers, Hong Kong

Collett, who focuses on insolvency and dispute resolution, represents clients in relation to contentious and non-contentious matters including commercial disputes and fund related matters, complex cross-border restructurings and privatisations, and enforcement of rights.

She is qualified in five jurisdictions, and has been practicing offshore for 11 years. She leads the restructuring practice for Walkers in Hong Kong, and has been helping to build the Walkers Hong Kong-Bermuda offering.

Collett has recently acted on various bank enforcement actions, including Victory City International Holdings for HSBC and a lender syndicate in relation to Luckin Coffee, two large funds disputes involving allegations of fraud, and a shareholders' dispute involving Nam Tai Property.

Additionally, Collett has expertise in representing offshore listed companies in financial distress. She has also assisted for both company and dissenter side since 2015 in relation to appraisal cases of U.S.-listed Cayman Islands companies involving a determination of fair value.

"Jo is unquestionably one of the best, and most experienced, offshore practitioners in Hong Kong and an extremely safe pair of hands. She combines her top notch technical skills with a strong focus on commercial advice which really assists to drive matters forward" says a client.

STUART D'ADDONA

partner, Walkers, Hong Kong

D'Addona is an expert in corporate and commercial litigation across the Cayman Islands, the British Virgin Islands and Bermuda. He specialises in matters which include shareholder disputes, board disputes and advising investment funds and listed companies on contentious matters. He also regularly advises clients on transactional matters by assisting them on the identification of potential issues.

D'Addona has worked for clients in Greater China and across Asia and has been involved in many important cases over the years.

This has included advising one of the world's largest institutional investors in the first ever use of the Cayman Island Court's statutory jurisdiction to grant injunctive relief in support of foreign proceedings, in a case with a value in excess of $230 million; acting as BVI counsel in a shareholders' dispute concerning the management and control of a substantial Asian investment fund; and representing the founders of Yingde Gases Group Company which was involved in a hostile takeover attempt.

"Stuart has deep experience and understanding of cross border litigation and contentious insolvency in Hong Kong and the BVI," says a client. "He approaches problems strategically and offers creative solutions with the client's commercial end goals firmly in mind."

ROBERT FOOTE

partner, Walkers, Singapore

Foote heads the firm's Singapore insolvency, restructuring and dispute resolution department, and specialises in contentious corporate, finance, funds, commercial and trusts disputes and contentious and non-contentious insolvency and restructuring matters, including shareholder disputes, regulatory disputes, contentious trusts and probate disputes and applications for disclosure orders and urgent injunctive relief.

Foote has spent nearly six years in the BVI, where he acted on some of the largest disputes in the region – including the Fairfield Sentry litigation, where he represented 25 investment banks in claims arising out of the Madoff estate. Foote has advised KrisEnergy's restructuring and liquidation of Phoenix Commodities; and was successful in persuading the Grand Court in the Cayman Islands, for the first time, to recognise and appoint a judicial manager in Singapore as a provisional liquidator for the purposes of a large debt restructuring of the China Sky Chemical Fibre, a Cayman Islands company listed on the Singapore Stock Exchange.

"Robert is an excellent lawyer, and a go-to for offshore disputes. He is highly hands-on, responsive and adept at distilling key issues in complex situations. His ability to formulate strategic and practical advice with high efficiency, is a true gem," says a client.

WALKERS

Conversations with Walkers' Asia Insolvency & Dispute Resolution Partners

What are some of your team's recent developments?
The Walkers Asia IDR team continues to focus on client service and standards, and we are really pleased to have promoted two of our team members from Senior Associate to Counsel (Gareth Murphy and Michaela Lam). We have also recently hired Partner Tom Pugh from Mayer Brown in Hong Kong who will be joining the Hong Kong team in September with a focus on the restructuring side of the practice.

On the litigation front, we have had a good year, with the first recognition of a PRC judgment in the BVI early last year, and subsequent enforcement proceedings, a number of ongoing creditor-side mandates including in relation to Luckin Coffee, and an ongoing large shareholders' dispute regarding a BVI incorporated PRC property developer where we successfully obtain a stay of the judgment at first instance pending an appeal. We were also been heavily involved in the very public corporate restructuring and ultimate liquidation of KrisEnergy Limited in Singapore. Finally, the last 12 months has seen a significant increase in our Bermuda practice, and we now have 10 registered associates in the IDR team regionally, with 35 registered associates in Asia more broadly. This practice has largely focused on insolvency and restructuring matters for Bermuda companies listed on the Hong Kong Stock Exchange (with both company and creditor side mandates).

What sets you apart from your competition?
The ethos of the firm is very much people focused – we hire good people and we train them to give the level of service and expertise that should be provided by a Tier 1 firm. Our people are efficient and effective, and are responsive to client needs even with short deadlines or outside of ordinary office hours. We work particularly closely with both our Finance, Corporate and Funds colleagues, who we consider to be our internal clients, but also our colleagues in our home jurisdictions; providing true 24/7 service if needed. We have significant experience across a broad range of insolvency and litigation related matters, good internal Chinese language capability and particular areas of expertise amongst the Partner bench which can be utilised as needed. In this regard the Partners work collaboratively to ensure the best outcome for our clients.

What specific ways do you feel you can benefit your clients?
Our team is highly motivated to achieve good outcomes for clients, and we work consistently to maintain trust and confidence and to deliver. We are solutions focused, with both the technical expertise as to the law, but also a commercial approach. In particular, we are responsive to client requests and queries, we work long hours to make sure that client needs are met, and we provide the additional insight from the team in the home jurisdictions who are regularly in Court, and who can also provide advocacy services, at very short notice, as needed. We also deliver bespoke training, and work closely with our onshore colleagues to devise and implement a coordinated strategy for our clients using both the onshore and offshore world as appropriate. One of our key strengths is providing a life cycle approach for our clients and working very closely with our colleagues as mentioned – the IDR team will assist at the incorporation or structuring phase by providing risk assessment and advice about enforcement and exit, and then as needed help at the end of the life of an investment or deal by implementing the exit plan (be that consensual or otherwise).

What have been some of the major offshore litigation trends recently?
As a result of the pandemic, the offshore world has had to embrace technology, and so we have seen how our day-to-day interactions with the Courts and clients has changed. In terms of work, a number of clients have been enquiring about offshore funds structures with so-called fixed returns, and we have also seen an uptick in insolvency queries and actual insolvency appointments, which we believe is fueled by economic uncertainty. There is still plenty of finance work around (and so to some extent less pure insolvency matters, but rather advisory work), and we are also looking increasingly at offshore asset protection and recovery. There have been some restructuring matters, and we expect these to increase.

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NORMAN HAU

partner, Conyers, Hong Kong

A partner at Conyers in Hong Kong, Hau joined the firm as an associate in 2012 from the dispute resolution team at Freshfields, and became Conyers' first litigation lawyer based in Hong Kong. He was appointed counsel in 2016 and made partner two years later.

Hau is a commercial litigator with extensive experience in restructuring and insolvency matters and shareholders disputes in Hong Kong, Bermuda, the British Virgin Islands and the Cayman Islands. He has acted for listed companies, liquidators, private equity houses, fund managers, and high net worth individuals in their contentious matters involving offshore laws.

Hau also delivers seminars and trainings to clients and onshore lawyers to provide insights from the offshore perspective. He has spoken on topics such as "Recent offshore judgments you need to know" and "Liquidation/restructuring of local and offshore companies, cross-border recognition, strategic considerations and practical notes."

He is also a regular writer, and has most recently written a piece titled "Holding the Fort – Cayman Islands Litigation."

Hau was recognised in the 2020 Edition of IFLR1000. A client commented that "[he is] highly experienced and maintains good relationships with clients. He can provide pragmatic and innovative solutions to tackle problems and, at the same time, has strong technical skills at his feet."

JEREMY LIGHTFOOT

partner, Carey Olsen, Hong Kong

Lightfoot is the head of the litigation, insolvency and restructuring practice in Carey Olsen's Hong Kong office. He is known for his work on high value, complex commercial and corporate litigation, insolvency and restructuring matters under the laws of Bermuda, the British Virgin Islands (BVI) and the Cayman Islands.

Prior to joining Carey Olsen, Lightfoot was based in the British Virgin Islands with another offshore law firm before relocating in 2017 to lead their litigation, insolvency and restructuring practice in Hong Kong. Before moving to offshore law, he practised for a decade as a barrister in London.

Lightfoot graduated from New College, Oxford and was called to the Bar of England and Wales in 2006 (currently not practising). He was admitted as a barrister of the Eastern Caribbean Supreme Court (British Virgin Islands) in 2016 and is enrolled as a registered associate in Bermuda.

He is a member of the Hong Kong ICPA Restructuring and Insolvency Faculty, the International Bar Association, INSOL, IWIRC, the Chancery Bar Association (Overseas Member) and the Inter-Pacific Bar Association. Who's Who Legal Litigation (2020) notes that Lightfoot 'comes highly recommended by peers for his outstanding disputes work and is praised for being "responsive and understanding of what you are looking for."'.

ANNA LIN

counsel, Conyers, Hong Kong

Lin is a counsel in the Hong Kong office of Conyers. She joined the firm in 2016 and was promoted to counsel in 2020. She specialises in commercial dispute and contentious insolvency and has advised clients on share appraisal proceedings, directors liability disputes, professional negligence claims, trust disputes and winding-up proceedings in various jurisdictions, including Bermuda, the Cayman Islands, and the British Virgin Islands.

With regards to general commercial litigation, Lin has advised on shareholder disputes, urgent injunction applications, third party disclosure, enforcement actions, claims on contractual breaches, asset-tracing and protection and other commercial and fund related contentious matters. On the non-contentious side, her experience includes solvent liquidations, grant of probate applications, directors fiduciary duty, company restructuring, family trust and management related advisory matters.

Last year, Lin delivered a lecture on "Knowing and protecting your rights – as minority or majority shareholder" at the 2020 In-House Community eCongress in Hong Kong.

Lin graduated with First Class honours majoring in translation at the University of Hong Kong. She is a native speaker of Mandarin, and is highly valued for her combination of legal expertise and multi-language proficiency.

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CALLUM MCNEIL

partner, Walkers, Hong Kong

McNeil is a highly experienced partner in Walkers' insolvency, restructuring and dispute resolution group. He is a commercial litigator who has developed expertise in contentious funds and cross border insolvency matters. He is qualified in four jurisdictions and has spent the last 15 years working offshore in the British Virgin Islands, the Cayman Islands and the Channel Islands.

Prior to this, McNeil gained five years of home jurisdiction experience in Australia where he also handled a wide range of commercial litigation and insolvency work, regularly appearing before the Queensland Supreme Court and the Federal Court of Australia.

McNeil also specialises in cross border insolvency, investment fund disputes, corporate disputes, banking litigation, trust litigation, fraud litigation and asset tracing.

McNeil has successfully represented American financial services senior banker Chad C. Holm in his claim for breach of an oral contract regarding the Bank of Asia. He acted in a matter which is believed to be the first time that the BVI Court had recognised and given full force and effect to a PRC judgment, making it a landmark ruling. In addition, he represented the successful litigant in recovery of a high value stake in a well-known PRC company, Lunan Pharmaceutical Group Corporation.

JAMES NOBLE

partner, Carey Olsen, Singapore

Noble is head of Carey Olsen's litigation, insolvency and restructuring team in Asia. He is based in Singapore and advises on Bermuda, British Virgin Islands (BVI) and Cayman Islands law. Noble leads the largest offshore litigation team in Singapore.

He is a specialist in shareholder litigation, asset recovery, cross-border enforcement and insolvency. He has over 20 years of legal experience and focuses on various commercial, trust and estate disputes and private wealth matters. As a result of Noble's expertise and reputation in the market, he is frequently instructed to give expert evidence on Cayman or BVI law in foreign proceedings.

Noble represents clients on market leading cases, particularly in connection with companies listed on the Hong Kong and New York Stock Exchanges. He was also recently successful in obtaining a significant judgment in favour of his client in the first ever derivative action brought on behalf of a Liberian company in the BVI Courts.

Some of Noble's clients include Credit Europe Bank (Dubai), Ernst & Young, Global Cord Blood Corporation, Hillhouse Capital Management and Pacific Fiber.

Noble is the only litigation partner in Singapore to be admitted in both Cayman and the BVI and registered in Bermuda. He is an active member of INSOL and IWIRC and is a regular speaker at litigation, insolvency and arbitration conferences.

OLIVER PAYNE

partner, Ogier, Hong Kong

Payne became a partner in 2016 at the age of 35 following his relocation from Ogier's Cayman Islands office to Hong Kong. He is the head of Ogier's dispute resolution and restructuring and insolvency practice in Asia.

He has built a strong Cayman and BVI practice and has overseen the growth of the disputes and R&I team in Asia, which has increased from a team of three to a team of 15 over the last 5½ years.

Among the numerous matters on which he is advising, Payne is acting as the Cayman counsel for Tianrui (International) Holding Company in just and equitable winding up proceedings brought in respect of China Shanshui Cement Group. He is also acting as the Cayman counsel for FamilyMart China Holding, a minority shareholder of a joint venture company which operates more than 1400 convenience stores in the PRC under the FamilyMart brand. Payne also counts Waterwood Group, Bitmain Technologies Holding Company, Adamas Global Alternative Investment Management, PwC, Deloitte, KPMG and EY among his client base.

Payne has counselled numerous dissenters on Cayman fair value cases and, over his more than 12 years practising offshore law, has appeared before the Financial Services Division of the Grand Court of the Cayman Islands. He has also appeared in LCIA and ICC arbitrations in London and Hong Kong.

ALB LAW AWARDS 2021

SAVE THE DATE

INDIA	HONG KONG	JAPAN	INDONESIA
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SE ASIA	KOREA	PHILIPPINES
21 OCT	11 NOV	19 NOV

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