

# ASIAN LEGAL BUSINESS

JUNE 2021 / ASIA EDITION

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AS RECOMMENDED BY CLIENTS

# PHILIPPINES CLIENT CHOICE LAWYERS 2021

WE SPOTLIGHT  
MALAYSIA'S  
LEADING  
YOUNG TALENT

'GOTO' MERGER  
UNDERScores  
INDONESIA  
UNICORN WAVE

BREXIT  
COMPLICATIONS  
BRING ARBITRATION  
TO THE FORE

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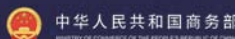
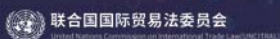




# CISG@40 Celebration Conference

25 June 2021 | Landmark Convention Centre | Beijing, China  
Simultaneous Interpretation of English & Chinese | Offline Venue + Online Live Broadcast

## Co-Organizers



## Supporting Institutions



## PROGRAM

- ◆ 09:00-09:45 **Opening Ceremony**
- ◆ 09:45-10:00 **Special Report on Application of CISG in Chinese Arbitration & Book Launch**
- ◆ 10:00-11:15 **Session I Experiences and Challenges of Application of CISG in China**  
The goal of this session is to share the experience and problems met by Chinese judges, arbitrators, scholars and law practitioners, in interpreting and applying the CISG, and identify tools to promote its uniform application.
- ◆ 11:15-12:30 **Session II CISG - Right Solution for B&R Trade Disputes**  
The goal of this session is to discuss the CISG as uniform law for international sales of goods in B&R countries, in particular, in light of its neutral and modern provisions.
- ◆ 12:30-13:30 **Lunch**
- ◆ 13:30-14:45 **Session III E-CISG**  
The goal of this session is to discuss the application of the CISG to the digital economy.
- ◆ 14:45-16:00 **Session IV Dispute Settlement Regarding Sales of Goods**  
The goal of this session is to widely discuss the latest development in dispute settlement mechanisms regarding sales of goods (litigation, arbitration, mediation etc.), including responses and reforms in face of the pandemic.
- ◆ 16:00-16:15 **Closing Ceremony**



SCAN QR CODE  
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FRIENDS  
IN DEED

Avigator Fortuner/Shutterstock.com

## COVER STORY

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In this inaugural ALB Philippines Client Choice Lawyers list, we put the spotlight on the top lawyers in the country when it comes to client service. These lawyers were selected based on client recommendations sent directly to ALB. The list is in alphabetical order, and certain lawyers have been profiled.

*By Asian Legal Business*

## FEATURES

### 16 ALB Malaysia Rising Stars 2021

The Malaysian legal industry has been seeing young lawyers making their mark in the market by setting high standards and achieving results for their clients. In this annual list, ALB spotlights lawyers below 40 years of age who are doing high-quality work, and in the process earning accolades from their colleagues, superiors, and clients.

### 18 Arbitration to the rescue

For businesses with a presence

spanning the EU and the UK, Brexit was never going to be a clean break. Disputes is just one area where lawyers and businesses have to navigate through ambiguities, and consider in upcoming contracts. While there are mechanisms in place, lawyers say arbitration will likely emerge as the preferred option as litigation becomes increasingly complicated.

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helping their clients navigate obstacles.

**Plus:**  
- *Helmsman LLC*

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# FROM THE EDITOR

## Here's what's coming up in the second half of 2021.

It's hard to believe that half the year is already over. Wasn't it just six months ago that we were all looking optimistically at 2021, more than ready to put a dark year behind us and start afresh? Unfortunately, that hasn't quite happened. Devastating waves in some Asian countries, and unexpected spikes in others, has meant that various forms of lockdown continue to be prevalent. But even if living is on hold for the moment, life continues, as does work. And I'm proud that in spite of all the challenges across our various markets, ALB has had a very strong

first half of the year. We introduced new rankings and lists like the Asia Top 15 M&A Lawyers, Asia Top 15 TMT Lawyers, and Asia Super 50 Disputes Lawyers; we saw significantly increased interest in more established offerings like Employer of Choice and IP Rankings; and we are currently in the process of launching the bilingual ALB Japan e-magazine. And I'm not including ALB China here, which has been a success story in its own right. If the first half is any indication, this year will turn out very strong indeed.

So, what are we looking forward to later this year? Certainly, more rankings and lists. The year's third quarter is quite action-packed: July brings us Asia Top 15 Rising Lawyers; in August we'll have Asia Super 50 TMT Lawyers and Asia Top 15 In-House Teams, to go with Asia Top 10 Offshore Litigators; September will see the M&A Rankings. Our hugely popular Asia 40 Under 40 comes up after that in October. The India edition will have the India Super 50, followed by India Disputes Lawyers and India IP Lawyers, in October and December respectively. For details on how you can take part, please visit the link below.



[www.legalbusinessonline.com/alb-surveys-and-rankings-h2-submissions-open](http://www.legalbusinessonline.com/alb-surveys-and-rankings-h2-submissions-open)

**RANAJIT DAM**  
Managing Editor, Asian Legal Business, Thomson Reuters

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Thomson Reuters  
18 Science Park Drive Singapore 118229 / T (65) 6775 5088 / F (65) 6333 0900  
10/F, Cityplaza 3, Taikoo Shing, Hong Kong / T (852) 3762 3269  
[www.thomsonreuters.com](http://www.thomsonreuters.com)

## ASIAN LEGAL BUSINESS

HEAD OF LEGAL MEDIA BUSINESS,  
ASIA & EMERGING MARKETS

**Amantha Chia**  
[amantha.chia@thomsonreuters.com](mailto:amantha.chia@thomsonreuters.com)

MANAGING EDITOR

**Ranajit Dam**  
[ranajit.dam@thomsonreuters.com](mailto:ranajit.dam@thomsonreuters.com)

JOURNALIST

**Elizabeth Beattie**  
[elizabeth.beattie@thomsonreuters.com](mailto:elizabeth.beattie@thomsonreuters.com)

EDITORIAL ASSISTANT

**Aparna Sai**  
[aparna.sai@thomsonreuters.com](mailto:aparna.sai@thomsonreuters.com)

COPY & WEB EDITOR

**Rowena Muniz**  
[rowena.muniz@thomsonreuters.com](mailto:rowena.muniz@thomsonreuters.com)

SENIOR DESIGNER

**John Agra**  
[john.agra@thomsonreuters.com](mailto:john.agra@thomsonreuters.com)

TRAFFIC/CIRCULATION MANAGER

**Rozidah Jambari**  
[rozidah.jambari@thomsonreuters.com](mailto:rozidah.jambari@thomsonreuters.com)

SALES MANAGERS

**Felix Cheng**  
Sales Manager  
(852) 3462 7799  
[felix.cheng@thomsonreuters.com](mailto:felix.cheng@thomsonreuters.com)

**Hiroshi Kaneko**  
Sales Manager  
(81) 3 4520 1192  
[hiroshi.kaneko@thomsonreuters.com](mailto:hiroshi.kaneko@thomsonreuters.com)

**Ivy Hong**  
Senior Sales Manager  
(65) 6973 8245  
[ivy.hong@thomsonreuters.com](mailto:ivy.hong@thomsonreuters.com)

**Krupa Dalal**  
Sales Manager  
(91) 22 6189 7087  
[krupa.dalal@thomsonreuters.com](mailto:krupa.dalal@thomsonreuters.com)

**Romulus Tham**  
Delegate Sales Executive  
(65) 6973 8248  
[romulus.tham@thomsonreuters.com](mailto:romulus.tham@thomsonreuters.com)

**Steven Zhao**  
Account Manager  
(86) 10 5669 2021  
[s.zhao@thomsonreuters.com](mailto:s.zhao@thomsonreuters.com)

**Yvonne Cheung**  
Sales Director, Key Accounts and South China  
(852) 2847 2003  
[yvonne.cheung@thomsonreuters.com](mailto:yvonne.cheung@thomsonreuters.com)

SENIOR EVENTS MANAGER

**Julian Chiew**  
[julian.chiew@thomsonreuters.com](mailto:julian.chiew@thomsonreuters.com)

AWARDS MANAGER

**Caryl Aquino**  
[mary.aquino@thomsonreuters.com](mailto:mary.aquino@thomsonreuters.com)

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THE BRIEFING: YOUR MONTHLY NEED-TO-KNOW

# 25

**25%** - Proportion of women lawyers in the U.S. who are considering leaving the legal profession because of mental health issues, burnout, or stress, according to a report from counsellor Patrick Krill and University of Minnesota Medical School.

## ESG TOPS GC GOVERNANCE, BOARD MANAGEMENT GOALS

A survey conducted in February this year by U.S. consulting firm Gartner has found the top corporate governance and board management goals of general counsel for 2021 are environmental, social and governance (ESG)-related, with board education the second most common choice, followed by director training. The survey involved 83 general counsel in total. Gartner predicts that the next wave of transformation that organizations face will have a societal focus, which means that, going forward, long-term value creation will require a corporate focus on society. This is driven by numerous broad geopolitical themes and stakeholder expectations around things, such as diversity, equity and inclusion (DEI), and sustainability.

# 83

**83%** - Percentage of general counsel globally who say they have too many outside counsel to manage, according to a survey by Omni Bridgeway. An equal number say they don't have resources to effectively manage existing providers.

### IN THE NEWS

I

Virtual firm FisherBroyles has ranked among top-grossing law firms in the US with its entry into the Am Law 200 list. FisherBroyles reported an annual gross revenue of \$113 million, according to Reuters, and expanded its partnership by 51 over the past year.

II

Linklaters has announced new global carbon reduction targets for 2030. It commits to reducing its "Scope 1 & 2" emissions (primarily energy) by 70 percent, and "Scope 3" emissions (primarily purchased goods/services and travel) by 50 percent.

## ARBITRATION USERS PREFER VIRTUAL HEARINGS TO DELAYS

More than 70 percent of arbitration users now prefer virtual hearings to delaying a proceeding until it can take place in person, according to the results of a survey conducted by White & Case for its report, "2021 International Arbitration Survey: Adapting arbitration to a changing world." Of the survey's more than 1,200 respondents, 72 percent confirmed that at minimum, they had "sometimes" used virtual hearing rooms. In cases where an in-person hearing could not be held, 79 percent said they would elect to proceed on schedule virtually, and just 16 percent would opt to delay a hearing until it can be held in person.

### QUOTE UNQUOTE

**"WE STRONGLY CAUTION PARENTS AND LAW GRADUATES TO BE DISCERNING ABOUT HUNGRY WOLVES IN SHEEP'S CLOTHING WHO SEEK TO PREY FINANCIALLY ON THE VULNERABILITY OF LAW GRADUATES."**

A statement from Gregory Vijayendran, president of the Law Society of Singapore, as the organisation reprimanded lawyer Ang Chong Yi over a website offering 'mentorship' to law students and graduates.

# BRANDING YOUR BUSINESS

Making a favourable first impression is important for businesses, and law firms are no exception. Developing good branding is an important way to communicate identity and positioning to clients, but lawyers say that getting it right requires careful consideration.

## WHAT CONSIDERATIONS SHOULD YOU TAKE INTO ACCOUNT WHEN BRANDING YOUR FIRM, AND WHAT DO FIRMS GET WRONG?



SHAH

### **DARSHI SHAH, partner, Juris Corp, India**

Traditionally, law firms would rely on their personal relations to tap into the minds of the clients and the people at large. And then came a wave of change. With a tougher competitive landscape and client sophistication, law firms are now required to differentiate themselves in the legal arena by being able to position themselves as one with a distinctive and authentic unique brand identity. For strengthening a firm's brand identity, one of the key elements to consider is communication by way of significant content. Consistent and high-quality content go on to highlight the value statements, what the firm does, what sets it apart from the rest, how client needs can be met, and their problems resolved. This not only creates distinctive and meaningful connections but also establishes trust and credibility in an increasingly competitive environment.

What is often overlooked by firms is how to maintain consistent brand identity and how to have effective and clear content that will stand out for creating an organic presence to draw clients.

### **MAUREEN POH, director, Helmsman, Singapore**

Our goal in branding is to have people think of Helmsman LLC as a practical and effective firm that can assist them in various aspects of their trading and shipping businesses. To achieve this objective, we need to understand our firm's purpose and strengths deeply and clearly – what issues do we want to address and what audience do we wish to target? We are fortunate in that our firm comprises experienced trading and shipping legal and trade finance specialists. This naturally helps differentiate us from other firms in a crowded marketplace. We also think about our target audience and what they value most. We listen



POH



SINGH

carefully to identify what is important to them, and then act on it. By doing so, we are able to appeal to them and to communicate our brand to them so that they remember us. We feel that as important as the external messaging is, the internal communication of the Helmsman brand is also equally important. This is sometimes overlooked by firms. We find that lawyers who are able to contribute to the firm's branding strategy feel more passionately about their work. Happy lawyers make for a productive and cohesive firm, which in turn feeds into a strong brand identity.

### **SANTOSH VIKRAM SINGH, partner, Fox Mandal & Associates, India**

Being categorised as a noble profession, the legal industry has not considered branding seriously until very recently, at least not in India. Moreover, law firms have mostly relied upon and used partners' names as the name of the firm and utilised their professional reputation to market the firm and its services. However, the trend seems to have been changing of late as law firms are espousing a formal corporate structure. The key considerations for the successful branding of a law firm would be, first, knowing the desired image you want to create and communicate; second, knowing what changes must be made both internally and externally; third, identifying and setting up the right team to champion it; fourth, knowing how long the exercise must be carried out; and finally, focusing on quality.

What do firms get wrong? The major point where most of the firms go wrong in branding - is when they try to emulate someone else. Here, they do not just lose their identity but end up creating a wrong message and ultimately fail to connect with the right audience. <sup>ALB</sup>

# COMPANIES SEEK TO DE-RISK SUPPLY CHAINS IN ASIA-PACIFIC

De-risking supply chains has become a significant focus for businesses in the Asia Pacific, with many looking to redirect these closer to home, according to a new report from Baker McKenzie.

The report, titled *State of Play: Supply Chains and Trade Realignment*, maps how trade disputes and rising protectionism are leading businesses to carefully consider where their supply chains fall, and what risks this could expose them to.

According to a Q1 2021 survey of 800 business leaders across the Asia Pacific, 67 percent of respondents told the firm they already have or are currently transforming their supply chains and production centres. With businesses in the region near-shoring, insourcing, on-shoring, and seeking new geographies, the report calls this a “huge realignment of global supply chains... [as] geopolitical and regulatory risks overtake cost as a key determining factor.”

Anne Petterd, head of Baker McKenzie’s international commercial and trade practice for Asia Pacific says such a large shift will likely be carried out incrementally.

“The complexity of many supply chains including in terms of sourcing, need for specialised manufacturing, costs of production and supply chain relocation will in practice limit the viable options for bringing substantial parts of the supply chain closer to home. What will be interesting to see is whether there is a trend in the next few years for bringing micro manufacturing closer to home for core components. Businesses being selective and strategic in the parts

of their supply chain they relocate will be key,” Petterd says.

But the development was more pronounced in some markets than others — according to the report, only around half of Mainland Chinese and Hong Kong respondents expected transformations to their supply chains, with near-shoring and insourcing strategies more commonly adopted by Mainland Chinese business leaders and those in Hong Kong tending towards geographic diversification and near-shoring.

For some firms, the supply chain shift will be more significant than others, but regardless, lawyers are playing a significant role in re-examining supply chains and plotting a course ahead.

“In the last few months, we have certainly seen an increase in the number of in-house lawyers explaining they have been given responsibility to examine and address supply chain risks across the business,” Petterd says, calling it “not surprising.”

“Lawyers typically work with many areas of a business and often play a key role in coordinating parts of a business involved in a major transaction or project. So, in many ways, it is logical for an organisation to look to their in-house legal team to support supply chain transformation strategy,” Petterd adds.


In step with this trend, there are also regional incentives encouraging a closer to home approach, including “removal of non-tariff barriers to trade, reduction of red tape and increased transparency and certainty on matters such as invest-

ment rules for new markets could be key in fostering stronger regional supply chains.”

“Many governments in the region are offering investment incentives. Repeat issues we see from businesses looking at these incentives are whether incentives are fit for purpose in addressing what the businesses need and, longer-term certainty as to the investment landscape in the jurisdiction,” Petterd notes.

Working in tandem with such developments are increasing foreign investment restrictions, which is having a significant impact on where companies locate production. According to the report, a third of business leaders are “rethinking” their investment strategies, emphasising their focus on domestic rather than offshore markets.

While geopolitical relations may be a significant motivation for businesses to rethink their placement, or the value of working more regionally, such significant supply chain developments are not a knee jerk reaction to sudden challenges, but more an indicator of a larger trend. For most businesses, says Petterd, this will be a long-term project focusing on risks as well as opportunities.

“These projects may include a combination of business-critical changes including business restructuring, digital transformation, changes to workforces, relocation of manufacturing and/or changes to vendors and customers. These sorts of changes will typically take several years to scope, undertake appropriate diligence and implement,” she says. 



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## EXPLAINER

# HONG KONG SEEKS TO REVITALISE THE REITS

■ The Hong Kong government recently launched a HK\$270 million (\$35 million) plan to encourage property owners to put their assets under real estate investment trusts (REITs) to defray listing expenses. The subsidy plan, to be implemented by the Securities and Futures Commission, will also be offered to fund managers who launch open-ended funds in the city.

For Hong Kong, which has been viewed as trailing behind regional competitors like Singapore and Japan in the REIT space, the developments are expected to be game-changing.

## HOW IS THE HONG KONG GOVERNMENT BOLSTERING THE CITY'S REIT MARKET REPUTATION?

Cindy Shek, a Hong Kong-based partner at King & Wood Mallesons, says the Hong Kong government is looking to revive REITs as a way to bolster the financial services market in Hong Kong.

"The government has been very proactive in rolling out various incentives to revitalise the REITs market, addressing issues from both

the regulatory, investor and cost angles," says Shek, noting these measures will help to promote the city's status as a "leading capital-raising centre and its role as an asset and wealth management hub."

Among the incentives on offer is the relaxation of investment restrictions of REITs by way of amendments to the Code of Real Estate Investment Trusts, "a key piece of the REITs regulatory framework," says Shek.

"Implementing measures to expand the investor base of REITs by allowing greater flexibility in investments in REITs by MPF schemes" and "the latest HK\$270 million grant scheme which will provide up to HK\$8 million subsidy for each REIT listing," notes Shek, calling now a "great time for REIT listings."

While the developments are promising, it may take some time before Hong Kong can rival its competitors. "Japan and Singapore are two dominant market players in the Asian region in terms of market capitalisation," Shek says.

## WHAT CHALLENGES WILL HONG KONG HAVE TO OVERCOME IN ORDER TO BECOME A REIT HUB?

Shek says there have been ongoing efforts by the government to "reduce the hurdles and challenges in the REITs framework."

"The recent measures by the government to provide momentum to the REITs industry are likely to be pull factors that will further the development of the Hong Kong REITs market. Hong Kong has lagged behind a bit in terms of the development of our REIT market and these recently introduced incentives will act as a catalyst for it," Shek adds.

Stephen Chan, Hong Kong-based partner at Dechert says that there have been various initiatives rolled out over the years to improve the market and regulatory environment for REITs in Hong Kong, "including the recent REIT Code amendment in December 2020 (which allowed, among others, REITs greater flexibility in investing in minority-owned properties, in borrowings, and in property development project investments) and also the government grant scheme announced in May 2021."

But more recently, things have changed, and momentum is growing. "As noted in a recent report on revitalising the REITs market published by the Financial Services Development Council (FSDC), among the various asset classes, REIT has gained wide popularity around the globe but is yet to gather remarkable momentum in Hong Kong," Chan adds.

## WHAT ROLE ARE LAWYERS PLAYING?

As is the case with any significant market development, lawyers are playing an important role in navigating any complexities and providing clarity.

"With amendments to the REIT Code having taken effect in December 2020, and with the



rollout of a new grant scheme, lawyers will play an increasingly significant role in helping managers and trustees alike with issues relating to structure and investment types. More importantly, lawyers will help clients to navigate the evolving regulatory landscape to capture growth opportunities," Chan says.

Throughout the REIT lifecycle, lawyers play an important role, Shek says, noting in addition to assisting with the establishment, authorisation and listing of REITs,

"lawyers will also be involved in the acquisitions and disposals of properties, provide legal advice on various financial matters and regulatory requirements in connection with the investment and ongoing operations of REITs, and act for issuers, arrangers and sponsors in the equity/debt capital raising activities in connection with REITs."

Taking a broader view, Shek says the market developments in Hong Kong are encouraging. Given the ever-rising property prices in Hong Kong, "Hong Kong REITs have

again outperformed its Asian peers notwithstanding COVID-19's impact on the financial markets generally," she says.

"Together with the latest governmental incentives, we have seen an increased interest in this space and expect to see further growth in the REITs market. In particular, it would be interesting to see if there is traction from 'new economy' property owners, which has also been forecasted by the Financial Services and the Treasury Bureau," Shek adds. <sup>ALB</sup>

## DEALS

\$18 BLN

**Gojek's merger with Tokopedia****Deal Type:** M&A**Firms:** Allen & Overy; Assegaf Hamzah & Partners; Davis Polk & Wardwell**Jurisdiction:** Indonesia

\$3.2 BLN

**JD Logistics' Hong Kong IPO****Deal Type:** IPO**Firms:** Cleary Gottlieb Steen & Hamilton; Han Kun Law Offices; Maples Group; Shihui Partners; Skadden Arp Slate Meagher & Flom**Jurisdictions:** China, Hong Kong

\$1.1 BLN

**Zomato's IPO****Deal Type:** IPO**Firms:** IndusLaw; J. Sagar Associates; Latham and Watkins**Jurisdiction:** India

\$850 MLN

**GLP's green subordinated perpetual securities****Deal Type:** DCM**Firms:** Allen & Gledhill; Shearman & Sterling; Sidley Austin**Jurisdictions:** Singapore, U.S.

\$800 MLN

**Swiggy's fundraising****Deal Type:** PE/VC**Firms:** AZB & Partners; Shardul Amarchand Mangaldas**Jurisdiction:** India

\$408 MLN

**Worldone's acquisition of stake in Jindal Power****Deal Type:** M&A**Firms:** Cyril Amarchand Mangaldas; Khaitan & Co**Jurisdiction:** India

\$335 MLN

**SF Real Estate Investment Trust's IPO****Deal Type:** IPO**Firms:** Baker McKenzie; Harneys; Hogan Lovells; King & Wood Mallesons**Jurisdictions:** China, Hong Kong

\$250 MLN

**Softbank Vision Fund's funding round in Zeta Investments****Deal Type:** PE/VC**Firms:** Khaitan & Co.; Morrison & Foerster**Jurisdictions:** India, Japan

## CAM TO OPEN NEW OFFICE IN INDIA'S GIFT CITY

India's largest law firm, Cyril Amarchand Mangaldas (CAM), is set to open an office in the Gujarat International Finance Tec-City (GIFT City).

The office which has been approved by the International Financial Services Centre, aims to assist companies navigate the legal and regulatory framework of the GIFT City.

In February, CAM announced the launch of a representative office in Singapore, its first overseas presence.

The GIFT City office will be led by managing partner Cyril Shroff, along with partners L. Viswanathan and Paridhi Adani.

GIFT City, which is located in the western state of Gujarat, is emerging as a preferred destination for financial services and IT/ITes companies. <sup>ALB</sup>

## KHAITAN SET TO ESTABLISH BRANCH IN CHENNAI

Indian law firm Khaitan & Co has announced plans to open an office in the southern metropolis of Chennai. It will be the firm's fifth domestic branch, and the announcement comes on the heels of its plan to establish its first international outpost in Singapore.

The Chennai office will be led by corporate/M&A partner Vivek Sriram and dispute resolution specialist Arva Merchant. Merchant, who recently joined Khaitan as a partner, had been running her independent law practice for nearly seven years. She was also previously a partner at Chennai law firm Arunkungumaraj & Associates.

In a statement, Khaitan said that the "opening of the Chennai office is aligned with the firm's broader strategic view of the southern states."

Founded in 1911, Khaitan also has offices in Bengaluru, Kolkata, Mumbai, and New Delhi. <sup>ALB</sup>

## APPOINTMENTS



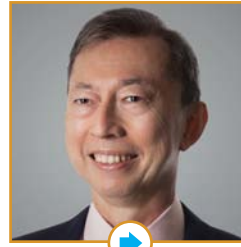
### TIMOTHY COOKE

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**PRACTICE**  
International Arbitration

**LOCATION**  
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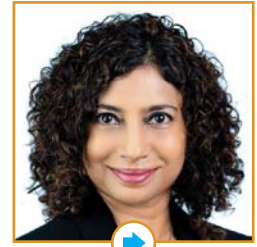
### IAN DEVEREUX

**LEAVING**  
Stephenson Harwood

**JOINING**  
Charles Russell Speechlys

**PRACTICE**  
Private Client

**LOCATION**  
Hong Kong



### SHANTI GEOFFREY

**LEAVING**  
Shanti G and Co

**JOINING**  
Christopher & Lee Ong

**PRACTICE**  
White-Collar Crime

**LOCATION**  
Kuala Lumpur



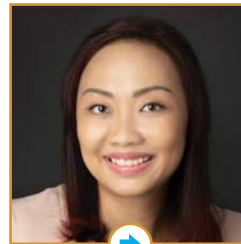
### RAHUL GUPTAN

**LEAVING**  
Clifford Chance

**JOINING**  
White & Case

**PRACTICE**  
Capital Markets

**LOCATION**  
Singapore



### LYNETTE KOH

**LEAVING**  
Mizuho Bank

**JOINING**  
Helmsman

**PRACTICE**  
Corporate

**LOCATION**  
Singapore



### KAY MOON

**LEAVING**  
Linklaters

**JOINING**  
Baker McKenzie Wong & Leow

**PRACTICE**  
Corporate/M&A

**LOCATION**  
Singapore



### SILVIA ON

**LEAVING**  
Stephenson Harwood

**JOINING**  
Charles Russell Speechlys

**PRACTICE**  
Private Client

**LOCATION**  
Hong Kong



### RICHARD WILMOT

**LEAVING**  
Stephenson Harwood

**JOINING**  
Tanner De Witt

**PRACTICE**  
Litigation

**LOCATION**  
Hong Kong



### EUGENE YEUNG

**LEAVING**  
PillsburyWinthropShawPittman

**JOINING**  
K&L Gates

**PRACTICE**  
Restructuring, Aviation Finance

**LOCATION**  
Hong Kong



**Focus** on the bigger picture.

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## AS ASIA SEES AN ESG PUSH, REGULATORS NEED TO PLAY A BIGGER ROLE

Asian regulators should take a more active approach in the ESG matters of boards, advising them on how to better address environmental and social governance challenges, according to recommendations from the Asian Corporate Governance Association (ACGA), an independent, non-profit membership organisation based in Hong Kong.

The published recommendations extend from adjusting codes of practice, to training and composition of boards. "That listed companies need support on ESG reporting seems incontestable," the report said.

Jamie Allen, the secretary-general of ACGA, told Reuters recently that there has been "marked improvement in ESG standards in Asia over the past two years, but corporate governance mechanisms remain fragmented and connections between CG and ESG policies are unclear, limiting meaningful ESG and sustainability efforts."

Awareness and discussion of ESG issues have become increasingly prominent, with Asian governments increasingly prioritising these and developing rules to hold companies more accountable.

This has led to a change in board expectations too. Sven Stumbauer, a senior advisor at Norton Rose Fulbright, says that historically for most companies and boards, the primary focus was on shareholder return, but things are changing.

"However, the emergence of environmental, social and corporate governance (ESG) risks are forcing directors to give equal consideration to the impact a corporation has on society and the environment. Failure to seriously consider ESG issues could lead to directors misinterpreting the risks associated with ESG, leaving a company unprepared and potentially amplifying the financial and reputational impacts on the company," Stumbauer says.

While boards are reflective of a company's approach, their ability to manage ESG matters may provoke changes in the make-up of these.

"Boards, through their risk oversight role, satisfy themselves that the risk management policies and procedures designed and implemented by the company's senior executives and risk managers are consistent with the company's strategy and risk appetite, and are functioning as directed," says Stumbauer, noting, that to effectively fulfil their fiduciary duties, board members must have appropriate composition and experience.

"Depending on the company and its board's composition, I would not be surprised to see regulatory recommendations to potentially alter and/or expand the board's composition at a particular company to ensure that the board's oversight function is coordinated and comprehensive," Stumbauer says of the recent ESG recommendations.

While Stumbauer says Europe and the U.S. have been leading the adoption of ESG standards and disclosures, "Asia is rapidly catching up."

"While we may say that Asia lags behind the Western hemisphere, I would say there has been a greater awareness of ESG, and more companies are adopting sustainability and ESG prac-

tices. ESG without a doubt has become an undeniable market force, regardless of geography. Those companies that will be more proactive in managing ESG now, will emerge as the ‘winners’ compared to those that focus on regulatory minimum standards and black and white compliance with them,” he notes.

One point of note raised by the Asian Corporate Governance Association was that a connection between corporate governance and ESG policies are unclear, something Stumbauer considers concerning.

“The notion that there is a disconnect between corporate governance (CG) and ESG in itself is troublesome and would suggest that some boards and companies still have a significant amount of catching up to do,” he says, adding that if there is a significant

disconnect between CG and ESG, “this would imply that companies are limiting meaningful ESG efforts and potential value creation efforts.”

Beyond doing social good, there are plenty of compelling reasons that companies should prioritise ESG.

“A strong ESG proposition can create value since ESG makes financial sense. From my experience, ESG can facilitate revenue (topline) growth, reduce costs, lower various regulatory and legal involvement, optimise capital expenditure [and] potentially increase employee productivity,” Stumbauer says.

In terms of developing a roadmap for regulatory mandates ahead, and ensuring a successful ESG strategy, companies should focus on five key areas, says Stumbauer. “First, there is baseline setting. The board and senior manage-

ment need to agree on the definition of ESG and its importance to the company. Second, benchmarking: The board and senior management should determine which ESG risks and opportunities are of strategic importance. Third, integration: The risks and opportunities of strategic importance should be incorporated into the overall business strategy. Fourth, stakeholder management and communication: The company should shape its key ESG messaging, relating to strategy, value creation and risk management to its various external stakeholders, like for example: customers, investors, key business partners and regulatory bodies. Finally: Sufficient oversight.”

“The company must ensure that the board has the right composition, experience, structure and processes in place to oversee ESG,” he adds. ALB

## CREDITORS APPROVE RESTRUCTURING PLAN FOR TROUBLED THAI AIRWAYS

**(Reuters)** Thai Airways International’s creditors have voted to approve the airline’s restructuring plan, the flag carrier said, as it seeks to recover from financial problems suffered long before the coronavirus pandemic.

Last year, a court approved the airline’s request for bankruptcy protection and debt restructuring worth about 245 billion baht (\$7.80 billion).

The plan will allow for an extension on bond payments, interest, and the option for debt-to-equity conversion, said Somboon Sangrunjang of law firm Kudun and Partners, which represents creditors including 87 savings cooperatives.

The creditors proposed the appointment of finance ministry official Pornchai Thirawet, acting Thai Airways CEO Chansin Treenuchagron and former chief Piyasvasti Amranand, as plan administrators, the airline said.

Piyasvasti was CEO of Thai Airways the last time it was profitable. Two others were also proposed by Bangkok Bank.

The Thai government holds a 47.86 percent stake in the carrier, but it is not governed by the country’s state-enterprise law.

The airline was in difficulty well before the coronavirus pandemic grounded flights across the globe, booking losses nearly every year after 2012.

It has blamed competition from low-cost carriers and an open skies policy for the poor performance. Last

year it booked a record loss of 141.1 billion baht (\$4.66 billion). So far, it has cut some 200 executive positions and sold a training facility in Bangkok to state-owned oil and gas firm, PTT Pcl for 1.8 billion baht.

The carrier in March said it plans to fly a slightly leaner fleet with 86 jets by 2025 from current levels of 103. Thai Airways says it has cut 30 billion baht (\$954.5 million) in expenses. It had already begun implementing early retirement programmes to reduce staff to a target of under 15,000 from 28,000 in 2019. ALB



REUTERS/Chaiwat Subprasom



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## BUCKING THE GLOBAL TREND, LAW FIRM DEMAND FOR OFFICE SPACE IN MAINLAND CHINA IS ACTUALLY INCREASING

■ The pandemic has likely permanently altered the legal industry globally in a number of significant ways. One of these is a drop in the need for office space; as lawyers continue to work from home at least some of the time, firms are struggling to justify the steep rent they pay each month for prime locations. In London, for example, some of the largest law firms are looking to cut office space by up to 50 percent, according to the reporting from various media earlier this year. In Hong Kong, international law firms are leaving the prestigious locations of Central and Wan Chai to move into smaller units that cost much less in rent.

However, quite the opposite is happening in mainland China, where the demand for office space has steadily risen in the past few years. While the COVID-19 pandemic did pause this somewhat, industry experts expect this to be nothing more than a minor hiccup.

This trend is especially noticeable in first-tier cities like Beijing and Shanghai. “Law firms have been renting bigger offices in Beijing since 2019, and we expect to see more of this due to the recent drop of rental fee of office buildings,” says Jonathan Wei, managing director and head of Project & Occupier services in China at Cushman & Wakefield, a global commercial real estate services firm. “The situation in Shanghai is also looking good, mainly because, on the one hand, domestic large firms keep acquiring small firms, especially after the pandemic; on the other hand, legal demands in medical and intellectual property sectors are increasing, making law firms grow.”

Second- and third-tier cities are also becoming popular. Since the second half of 2020, a few law firms have established new offices in eastern, southern, central and western China. For example, East & Concord set up offices in Chengdu and

Nanjing, V&T in Haikou and Nanjing, Hai Run Law Firm in Dalian, and JunZeJun Law Offices in Zhengzhou. Wei believes that increased demand for legal services, and clients’ ability to afford them, are among the factors pulling law firms to smaller cities.

“As a result of growing foreign trade and domestic economic development, law firms will continue to expand their presence. With the gradual increase of law firms’ business in second- and third-tier cities and the continuous improvement of the payment ability of clients, more large law firms are considering setting up offices in these cities, where business growth is relatively fast and concentrated,” says Wei.

But the growth in demand for office space is not expected to be even among all firms, with larger firms leading the way. In comparison, small and medium-sized firms are slightly more conservative when it comes to expansion. “Larger firms seem to be in a better position and are seizing the opportunity to explore organic and acquisition led growth, whereas a handful of smaller specialist firms downsized during the pandemic,” says James Macdonald, head and senior director of research at Savills China, who adds that foreign law firms are equally conservative. Wei agrees with that latter point, noting that issues like the trade war and rocky relationships between China and certain foreign countries have resulted in foreign law firms showing less interest in renting more office space.

Still, as we reach the halfway point of 2021, Wei expects the trend of expansion to continue for the time being, particularly because of the slight decrease in rents as mentioned above. But he is also optimistic for the long term. “Law firms are very sensitive to market trends; at the meantime, their decisions usually tend to be conservative and careful,” says Wei. “Therefore, the future of law firms’ office renting and moving largely depends on the macroeconomic environment. The better China’s economy develops, the more optimised the legal system will become. We see a bright future of law firms’ development in China because business always needs the guarding of legal.” 

## Q &amp; A

# 'PEOPLE ARE THE DRIVING FORCE IN DIGITAL TRANSFORMATION'

As law firms look ahead to a future when COVID-19 is contained, many in leadership positions have taken the past year to reevaluate the way they work and the role technology plays in their organisations.

**Rama Tiwari**, who has been chief executive of the Singapore Academy of Law since 2019, offers advice about planning for the future.

**ALB:** The past year has been one of significant change for almost every industry. As we slowly emerge from the pandemic, what should lawyers and law firms be prioritising?

**TIWARI:** I see three key areas. First, know-how of laws in Asia. As intra-Asian trade grows, legal professionals, whether they are in-house, or practising will be in greater demand to structure deals and manage disputes. As such, they will need to build and keep current expertise to navigate cross-border legal know-how. Second, leverage on tech solutions to drive productivity. The pandemic has shown the importance of technology in doing business and managing clients/stakeholders. As companies' step up their digitisation initiatives, businesses will look towards counsel to do the same. Counsel should consider opportunities to leverage technology to improve productivity by using technology to drive better collaboration with stakeholders as well as do routine, repetitive and low value-add work.

Third, deepen knowledge of business/industry. Clients and business stakeholders do not want to spend time explaining the industry and related business issues. They expect business solutions to drive their business goals. They are expecting lawyers to be strategic business partners to resolve business problems. To be effective business partners, lawyers need to

be knowledgeable about the various business and operational models (and corresponding issues) of the industries they specialise in. In line with our mission, we will support the legal community with these.

For instance, starting this year we will be shoring up Asian legal content on LawNet for law firms and in-house departments this year so that they get the knowledge they need. Beyond just increasing content, we're also enhancing our search algorithms to make it easier than ever to discover relevant content so that counsel are more productive. We are also rolling out online learning linked to the Legal Industry Framework for Training and Education (LIFTED) competency framework in partnership with LinkedIn Learning to allow counsel to obtain actionable learning to assist them to be better business partners and obtain a better understanding of technology to drive productivity.



**We need to understand the difficulties being faced by teams and whether these are mindset or process issues... The key is to motivate, enable, empower, and reward teams to improve and/or automate processes.**

**RAMA TIWARI**

**ALB:** What are the common mistakes firms make when it comes to technology?

**TIWARI:** I feel firms focus on technology rather than people and processes. People are always the key to driving change. We need to understand the difficulties being faced by teams and whether these are mindset or process issues. Many factors drive mindset issues. The key is to motivate, enable, empower, and reward teams to improve and/or automate processes. Understanding whether technology purchased can provide solutions to existing problems. As we assist law firms to get tech-enabled, we often discover that they are not utilising the full potential of existing software purchased. For example, in our Lighten Up! programme, we try not to propose new technology tools and help lawyers make the most of existing tools or freeware.

**ALB:** What do you hope to achieve during your time in the role?

**TIWARI:** I am very fortunate to "inherit" a very strong organisation. SAL has a good internal team, a strong backing from the board and is supported by key members of the profession, both in the public and private sectors. Over the last 30 years, SAL has laid a strong foundation for the development of the legal sector in many areas: legal research, legal education and training, mediation, publishing, etc. I hope to continue this good work done and build on these strengths: to be in a position to enable future-ready,

trusted legal professionals, which is why we have embarked on our journey of transformation and digitisation. That is my multi-year goal for SAL. ALB



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## RECRUITMENT REBOUND SHOWS LAW FIRM HIRING IN GREATER CHINA BACK ON TRACK

It's official: Law firm hiring has well and truly recovered from the pandemic. Lateral moves across Asia's legal markets in the first quarter of this year have already surpassed the number from the entirety of 2020. In mainland China alone, ALB recorded more than 40 lateral hires in the first two months of 2021.

Betty Chen, a manager at legal recruiter SSQ, tells ALB that for the law firms looking to expand in Greater China, the "black swan" nature of the COVID-19 outbreak is a good opportunity to put some distance between themselves and their competitors. As a result, a number have already embarked on a recruitment drive.

"Beijing, Shanghai and Hong Kong have seen a particularly sharp increase in lateral recruitment," says Chen. For example, Milbank's Hong Kong office has been recruiting partners since late 2020, injecting fresh energy into its capital markets, banking and finance practices.

Another reason for the lateral hiring boom, believes Chen, is the growing demand for specific practice area specialists. A notable recent example of this was the departure of Sidley Austin Hong Kong partner Lu Mengyu, a capital markets expert, and her team to Kirkland & Ellis.


Kirkland was not the only firm looking to bolster its capital markets offering: Cooley recently snapped up

Liu Yiming from O'Melveny, while Davis Polk & Wardwell hired Jason Xu from Freshfields Bruckhaus Deringer. The recent popularity of special-purpose acquisition companies (SPACs) will also impact the hiring of capital markets lawyers, Chen observes.

Another much sought-after area is regulatory and compliance. Chinese regulators are taking tougher anti-trust measures against tech giants, which is becoming a key driver of regulatory work. To beef up in this space, Paul Hastings recently hired Sarah Zhu from Ropes & Gray's Hong Kong office, and Phoebe Yan, a former consultant at Hogan Lovells in Shanghai. Quinn Emanuel Urquhart & Sullivan has likewise hired former Paul Hastings partner Tang Haiyan to further expand its compliance practice.

Another trend is the rising attraction of elite Chinese firms such as Shihui Partners, DaHui Lawyers and Merits & Tree Law Offices, Chen says.

Lawyers looking to change jobs today additionally have a number of options to choose from beyond simply moving to a traditional law firm. For instance, the Big Four firms are steadily establishing themselves in the legal market, with their law firms expanding rapidly in Hong Kong, Beijing, and Shanghai. There are also NewLaw firms.


As a result, Chen advises legal practitioners to "look at new job opportunities with a longer-term perspective and a broader mindset to find the right platform for their development." 

## THAILAND'S WEERAWONG BOLSTERS INTERNATIONAL TRADE PRACTICE AFTER ACQUIRING BOUTIQUE

Weerawong C&P, Thailand's second-largest firm, has expanded its international trade and WTO offering after merging with Apisith & Alliance, including its founder Apisith John Sutham.

Apisith & Alliance was founded in 2002. In January this year, the firm split into two entities, with the trade and customs arm becoming a part of Weerawong. The remaining lawyers, under the name of AWP & Alliance, offer services in corporate/

commercial, IP and dispute resolution. The Apisith team led by Apisith John Sutham has expertise in international trade litigation and WTO work including antidumping, safeguards, countervailing duty and anti-circumvention.

Meanwhile, Weerawong C&P has nine partners and more than 100 lawyers. It was established in 2009 as an independent firm, having been White & Case's Bangkok office since 1993. 



**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	<b>Linklaters</b>	<b>20,159.3</b>	<b>15</b>	<b>5.5</b>
2	Jia Yuan Law Offices	19,897.2	11	5.4
3	Nishimura & Asahi	17,378.0	62	4.7
4	Nagashima Ohno & Tsunematsu	14,706.5	32	4.0
5	Kirkland & Ellis	14,705.4	8	4.0
6	Davis Polk & Wardwell	14,062.8	8	3.8
7	White & Case LLP	13,714.9	24	3.7
8	Fangda Partners	11,644.7	56	3.2
9	Shearman & Sterling LLP	10,003.8	5	2.7
10	AZB & Partners	9,695.0	2	2.6

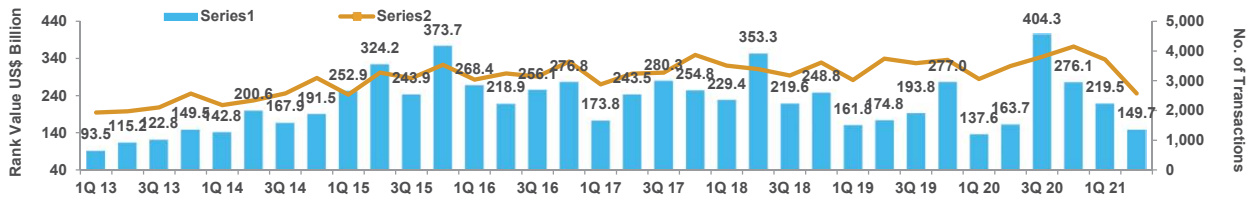
(\*tie) Based on Rank Value including Net Debt of announced M&A deals (excluding withdrawn M&A)

**North Asia Announced M&A Financial Rankings**

Rank	Legal Advisor	Value (\$MLN)	Deals	Market Share
1	<b>China International Capital Co</b>	<b>40,453.2</b>	<b>26</b>	<b>11.0</b>
2	JP Morgan	40,244.1	15	10.9
3	Goldman Sachs & Co	37,549.6	17	10.2
4	CITIC	24,207.2	24	6.6
5	Credit Suisse	24,128.3	12	6.5
6	Morgan Stanley	23,059.6	25	6.3
7	BofA Securities Inc	20,794.1	15	5.6
8	Nomura	13,995.8	42	3.8
9	HSBC Holdings PLC	13,098.1	11	3.6
10	Citi	11,810.2	16	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	<b>Davis Polk &amp; Wardwell</b>	<b>43,697.7</b>	<b>6</b>	<b>29.7</b>
2	Skadden	38,730.7	4	26.3
3	Sullivan & Cromwell	34,198.5	2	23.3
4	Jones Day	33,848.9	6	23.0
5	Hughes Hubbard & Reed	32,553.6	2	22.1
6	Ropes & Gray	32,222.1	3	21.9
7	AZB & Partners	14,395.8	62	9.8
8	Cyril Amarchand Mangaldas	11,824.5	39	8.0
9	Khaitan & Co	10,768.0	37	7.3
10	Trilegal	8,408.6	7	5.7

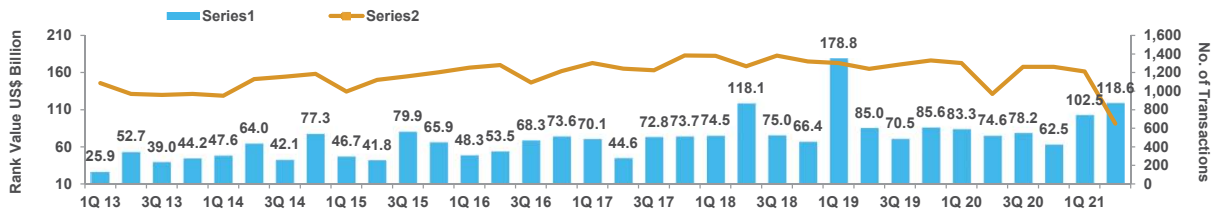
(\*tie) Based on Rank Value including Net Debt of announced M&A deals (excluding withdrawn M&A)

**Southeast Asia / South Asia Announced M&A Financial Rankings**

Rank	Legal Advisor	Value (\$MLN)	Deals	Market Share
1	<b>JP Morgan</b>	<b>41,046.0</b>	<b>13</b>	<b>27.9</b>
2	Morgan Stanley	40,774.9	9	27.7
3	UBS	31,427.8	4	21.4
4	Evercore Partners	31,103.6	1	21.2
5	Goldman Sachs & Co	21,180.5	14	14.4
6	BofA Securities Inc	12,389.9	12	8.4
7	Citi	11,785.7	5	8.0
8	Credit Suisse	6,441.9	7	4.4
9	Barclays	5,596.3	9	3.8
10	Jefferies LLC	2,956.7	6	2.0

(\*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, acquirer, target ultimate parent, or acquirer 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, Afghanistan, Bangladesh, Bhutan, Maldives, Nepal, Pakistan, Sri Lanka. Data accurate as of 7 June 2021.



## ASIAN LEGAL BUSINESS

# MALAYSIA RISING STARS 2021

The Malaysian legal industry has been seeing young lawyers making their mark in the market by setting high standards and achieving results for their clients. In this annual list, ALB spotlights lawyers 40 years of age who are doing high-quality work, and in the process earning accolades from their colleagues, superiors and clients. The list is in alphabetical order and two lawyers have been profiled. **BY ASIAN LEGAL BUSINESS**

## LAW FIRMS

### SHARIFAH DALILAH ALBAR

Albar & Partners

### EUNICE CHAN WEI LYNN

Lee Hishammuddin Allen & Gledhill

### CHOR JACK

Christopher & Lee Ong

### NIMALAN DEVARAJA

Skrine

### NIMISHA JAYA GOBI

LAW Partnership

### HAEME HASHIM

Haeme Lew

### LAI ZHEN PIK

Shearn Delamore & Co.

### LEONG WEN NI (NICOLE)

Tay & Partners

### LIM ZHI JIAN

Gan Partnership

### DARSHENDEV SINGH A/L JAJEET SINGH

Lee Hishammuddin Allen & Gledhill

### ETRUS TAN CHEN HEE

Esther Ong Tengku Saiful & Sree

### ABRAHAM TEH TAT HON

Albar & Partners

### JERRY TIEW WEI HSIANG

Adnan Sundra & Low

### KENNETH WONG POH LIM

Daniel & Wong

### TRACY WONG

Christopher & Lee Ong

## IN-HOUSE

### AUZAN SYAIDI ABDUL LATEH

Damansara Holdings

### SUSHEEL KAUR

Mercedes-Benz Financial Malaysia



## LIM ZHI JIAN

35, partner, Gan Partnership

Jian, who is a partner at Gan Partnership, has more than 11 years in the legal industry. He specializes in the areas of intellectual property and dispute resolution. Before joining Gan Partnership, he was a partner at Lee Hishammuddin Allen & Gledhill.

Some of the significant matters that Jian has advised on include representing one of the Big Tobacco in a series of actions before all levels of Malaysian Courts, successfully defending its interests in the multi-jurisdictional dispute and against a \$2.5 million counterclaim.

Together with partner Bahari Yeow, Jian also assisted an Indonesian public-listed food and beverage giant in obtaining a Trade Description Order for a parallel import situation, which was a first in Malaysian history. This is a reported judgment as it involves the novel point on interpretation of the provisions in the Trade Descriptions Act.

Additionally, Jian represented the largest telco and broadband provider in Malaysia in the biggest intellectual property case in its history. The case pertaining to cross-jurisdictional trademark issues against an American tech company was decided in favour of the client, also one of the largest government-linked companies in the country, including a permanent injunction.

Jian has acted for international names such as Moët Hennessy Louis Vuitton, Samsung, Panasonic, Mercedes, Epson, Genting, ZTE, Supreme, Lockheed Martin, Repsol, KPMG, Oppo Mobile, Exxon Mobil, Great Eastern Life Assurance, Hewlett Packard, Tottenham Hotspurs, Orange, an American Grammy Award-winning artist, and an embassy of a European country.

Besides these, his local clients range from startups to listed conglomerates, automobile makers, various statutory bodies, and the Government of Malaysia.

Jian also sits as an IP committee member on the International Chamber of Commerce (Malaysia). ALB



## JERRY TIEW WEI HSIANG

37, partner, Adnan Sundra & Low

A lawyer for 11 years, Jerry has been a partner at Adnan Sundra & Low since 2017, specialising in banking, finance and capital markets.

He has worked on financing deals comprising a variety of structures, including perpetual securities, asset-backed securities and project financing in both conventional and Islamic forms and was involved in the early Murabahah trades done under the Burse Suq al-sila' (BSAS) commodities trading platform.

Jerry counts many significant deals under his belt, having acted for Hong Leong Investment Bank on a 1.1 billion-ringgit (\$266 million) issuance under an asset-backed securitisation program related to Queensbay Mall, Penang, by Special Coral Sdn and Bank of Tokyo-Mitsubishi UFJ (Malaysia) in relation to issuance of medium-term notes, under an asset-backed securitisation program valued at 20 billion-ringgit (\$4.84 billion) with AEON Credit Service and CIMB Bank as originators.

Recognition of Jerry's expertise, include the Best Structured Finance Sukuk from the Asset Triple A Awards in 2017 and the Structured Finance Deal of the Year from Islamic Finance News (IFN) Awards for his work on the pioneering Skyworld Sukuk Programme. That same year, another transaction lead by him was awarded IFN's Commodity Murabahah Deal of the Year for Danajamin Nasional's inaugural Sukuk issuance. In 2018, IFN awarded the Perpetual Deal of the Year award for Sunway's 85-billion-ringgit perpetual Sukuk programme which he played a key role.

To date, his clients include well-known names such as CIMB Investment Bank, Maybank Investment Bank, Hong Leong Investment Bank, RHB Investment Bank, AmInvestment Bank, HNG Corporation, Petroliam Nasional and Paramount Corporation. ALB

# ARBITRATION TO THE

■ On Jan. 1, the European Union regime that had once facilitated litigation for disputes spanning the EU and United Kingdom border fell away. It was replaced with a regime founded on the Hague Convention on Choice of Court Agreements 2005, which relies on a combination of English common law, historic cross-border arrangements, and laws of EU members states.

Ashurst partners James Comber and Michael Weatherley, based in Hong Kong and Singapore respectively, say that for businesses contracting with EU counterparties, there are a variety of considerations parties must bear in mind as a result of Brexit.

But the impacts will depend on the particular types of disputes and contracts in question. Breaking it down, Comber and Weatherley say there are a range of outcomes as a result of Britain leaving the EU.

"Exclusive jurisdiction clauses in favour of English courts: These clauses are potentially less attractive as there is no longer an automatic right to enforce English court judgments throughout the EU," the lawyers say.

"Although we would expect the majority of EU courts to adopt a sensible approach to enforcement, there is a risk, particularly if the relevant member state does not have a good enforcement track record. The Hague Convention provides a potential solution to the issue, but there is a question mark over when that will be regarded as coming into effect for the UK (as opposed to the EU) and that creates a risk. In addition, it does not currently cover the Lugano Convention states (Norway, Switzerland, and Iceland). One possible option is to specify the courts of a member state (where the counterparty or assets are located) as having

exclusive jurisdiction in addition to the English courts. However, post-Brexit, that runs the risk of parallel proceedings and takes the clause out of the Hague Convention," they add.

Meanwhile, non-exclusive jurisdiction clauses, which have complications of their own, may become a preferable option for lawyers.

**"Our advice to clients who still want to litigate in London is to ensure their clauses provide for the exclusive jurisdiction of the English courts. They can be confident that the clause will be respected by EU member state courts and that the resulting judgment will be enforceable throughout the EU under the 2005 Hague Convention."**

— Robert Rhoda, Dentons

"Under these clauses, the parties have the option to sue in the jurisdiction where the counterparty is based or its assets are located, and so the enforcement issue is not as relevant. As such, non-exclusive clauses may be a more attractive alternative where enforcement within the EU is an issue and the parties are happy to be sued

in jurisdictions other than the English courts. However, post-Brexit, there is an increased risk of parallel proceedings as, once the Brussels Regulations and Lugano Convention fall away, the mechanism for preventing parallel proceedings within the EU no longer applies. In addition, the Hague Convention will not apply as, although it can be extended to apply to judgments flowing from a non-exclusive jurisdiction clause, as yet no contracting states have exercised that option," Comber and Weatherley note.

Robert Rhoda, a litigation partner at Dentons, says it is not uncommon to see contracts between Asian and EU counterparties providing for the jurisdiction of the English courts in the event of a dispute.

"Our advice to clients who still want to litigate in London is to ensure their clauses provide for the exclusive jurisdiction of the English courts. They can be confident that the clause will be respected by EU member state courts and that the resulting judgment will be enforceable throughout the EU under the 2005 Hague Convention. Service of English proceedings on EU counterparties is also potentially more cumbersome now given that the Hague Service Convention will now apply as opposed to the EU Service Regulation," Rhoda says.

Given that the Hague Convention agreement, which has replaced the EU regime that previously facilitated litigation for disputes crossing the border, does not provide for reciprocal recognition and enforcement of interim measures, complications arise about the enforceability of such measures.

"If interim relief is obtained in the English courts (such as freezing orders), a party to a dispute can no longer depend on the near-automatic enforcement of those measures across the EU.

# RESCUE

For businesses with a presence spanning the EU and the UK, Brexit was never going to be a clean break. Disputes is just one area where lawyers and businesses have to navigate through ambiguities, and consider in upcoming contracts. While there are mechanisms in place, lawyers say arbitration will likely emerge as the preferred option as litigation becomes increasingly complicated. **BY ELIZABETH BEATTIE**

The chances of recognition and enforcement will now depend on the national law of the particular EU member state in which such recognition and enforcement are sought. This increases the time and cost, and reduces the certainty of recognition and enforcement, all of which tends to undermine the value of the interim order in the first place (particularly if it was obtained on an urgent basis in an attempt to prevent dissipation of assets)," Comber and Weatherley say.

"The obvious challenge this poses," Rhoda says, "is that there is arguably a greater risk of dissipation of assets by an EU counterparty pending the outcome of litigation in the English courts, which risks undermining the very purpose of the litigation itself if there is nothing left to enforce against."

Still, Comber and Weatherley say there is a possibility that other conventions could be applied in the future.

In April 2020, the UK formally applied to join the 2007 Convention on Jurisdiction and the recognition and Enforcement of Judgments in Civil and Commercial Matters (or the Lugano Convention) as an independent member.

"However, in order to accede to the Lugano Convention, there must be unanimous support from the Contracting Parties to the convention," Comber and Weatherley say, noting the application is now pending "although the European Commission gave its views opposing the UK's application on May 4, 2021."

"The European Commissions' main reason for rejecting the application was that the UK is not part of the European Economic Area and the European Free Trade Association. It explained that the Lugano Convention supported the EU's relationship with third countries which have a 'particularly close regulatory integration with the EU'. Describing the UK

as a 'third country without a special link to the internal market', it saw no reason for the EU to depart from its general approach. Instead, it took the view that the Hague Convention provided a framework for future cooperation between the EU and the UK," Comber and Weatherley say.

But the lawyers note that it should be highlighted that the European

**"Almost all of my hearings this year have been via Zoom, you have tribunals that are spread all across different jurisdictions, with witnesses, lawyers all in different time zones and the technology works really well. It's not completely flawless, but it's much, much better than it used to be. That has eased things a bit."**

— Simon Chapman, Herbert Smith Freehills

Commission's recommendation is not binding. "The decision still lies with the Contracting Parties to the Convention (i.e. EU, Denmark, Iceland, Norway and Switzerland)," they say.

## CONTRACT OVERHAULS

With Brexit to consider, businesses are now reviewing their contracts to

"identify weak points and clauses that might sensibly be renegotiated" should a dispute arise, Comber and Weatherley say.

"A key part of this review should be a close look at whether existing dispute resolution clauses are fit for purpose," the lawyers note.

"Given the uncertain enforcement landscape in relation to court judgments as between the EU and UK, now might be the time to think about adopting international arbitration as the default dispute resolution mechanism for such contracts. Arbitration is not affected by Brexit. The New York Convention will continue to apply and to require contracting states to treat arbitration agreements as valid, and to recognise and enforce foreign arbitration awards. The New York Convention currently has 168 contracting state parties, including the 27 EU member states – meaning that arbitral awards, at least in theory, can be enforced almost universally."

While there is currently "a lot of uncertainty," says Simon Chapman, regional head of dispute resolution in Asia and international arbitration specialist focusing on cross-border disputes at Herbert Smith Freehills. "To take a step back, particularly on how this affects Asian parties doing business with Europe — in a disputes resolution context we're looking at both litigation and arbitration, and Brexit only really affects litigation, so we're talking about court judgments rather than arbitration awards."

"That's because arbitration isn't regulated by EU law. So, the enforceability of a London-seated award, for example, is a matter that is governed by another convention that is called the New York convention, so that's completely unaffected by Brexit," Chapman adds.



Burdun Iliya/Shutterstock.com

Arbitration, Chapman says, has been growing for quite some time is likely to prove a popular choice going forward.

"I think the key thing that is driving the rise of arbitration is cross border enforcement," he says, noting while in mainland China, for example, one might struggle to secure a court judgment, "you can take an arbitral award and enforce that quite easily."

"It's a trend we've already seen and this pre-dates Brexit by quite a long time, but I think that will continue," Chapman says.

Another theme emerging, largely driven by the pandemic, is the unstoppable rise of virtual hearings for arbitration, Comber and Weatherley say.

"Virtual hearings have played a significant role during the pandemic in ensuring that cross-border disputes continue to be progressed towards resolution. Courts and arbitral tribunals around the world are, for the most part, embracing technology and making short shrift of attempts to delay proceedings because of the inability to meet in person," the lawyers say, noting that

**"Although we would expect majority of EU courts to adopt a sensible approach to enforcement, there is a risk, particularly if the relevant member state does not have a good enforcement track record. The Hague Convention provides a potential solution to the issue, but there is a question mark over when that will be regarded as coming into effect for the UK and that creates a risk."**

— James Comber and Michael Weatherley, Ashurst

virtual hearings have also been lauded as "reducing the time, cost and environmental impact of cross-border dispute resolution, increasing efficiency, and (in some cases) making justice more accessible to those who would otherwise lack the resources to properly engage in the process (particularly given the significant travel and accommodation costs usually associated with cross-border dispute resolution)."

But they say that virtual hearings are not, without their challenges. "The technology available may not be adequate, witness evidence may have shortcomings in an online setting, and cybersecurity and confidentiality concerns pervade virtual hearings," they add.


Dentons' Rhoda agrees that the rise of virtual hearings have allowed for "business as usual or at least as close to normal as possible."

"In 2020, for example, during the height of COVID, the HKIAC hosted 117 hearings, of which 80 were fully or partially virtual hearings," he says.

Chapman has seen this trend firsthand. "My experience three or four years ago was that there was always a bit of reluctance to get witnesses to come and testify via VC at a hearing, there was always this pressure to get them in a room regardless of where that was. Of course, all of that has changed over the past eighteen months," he says.

"Almost all of my hearings this year have been via Zoom, so you can do them from literally anywhere in the world, you have tribunals that are spread all across different jurisdictions, with witnesses, lawyers all in different time zones and the technology works really well. It's not completely flawless, but it's much, much better than it used to be. That has eased things a bit," Chapman adds.

But while the digitalisation of disputes and the cross-border nature of enforcement may improve the accessibility of arbitration, in the meantime Chapman says Brexit complications are likely to keep lawyers busy.

"There's definitely a lot of work for lawyers to do with these issues," he says, noting, "I think uncertainty does create work for lawyers." 

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**PHILIPPINES  
CLIENT CHOICE  
LAWYERS 2021**

In this inaugural ALB Philippines Client Choice Lawyers list, we put the spotlight on the top lawyers in the country when it comes to client service. These lawyers were selected based on client recommendations sent directly to ALB. The list is in alphabetical order, and certain lawyers have been profiled. **BY ASIAN LEGAL BUSINESS**



## PHILIPPINES CLIENT CHOICE LAWYERS

**JOHN JERICO L. BALISNOMO**

CRUZ MARCELO &amp; TENEFRANCIA

**ARIS GULAPA**

GULAPA LAW

**DANNY E. BUNYI**

DIVINALAW

**SIMEON V. MARCELO**

CRUZ MARCELO &amp; TENEFRANCIA

**NILO T. DIVINA**

DIVINALAW

**MARIA CONCEPCION P. SIMUNDAC**

V&amp;A LAW

**ERWIN JAY V. FILIO**

ACCRALAW

**GREG TIONGCO**

TIONGCO SIAO BELLO

**MARK S. GORRICETA**

GORRICETA AFRICA CAUTON SAAVEDRA

**CLARENCE DARROW C. VALDECANTOS**

ACCRALAW

**METHODOLOGY**

- In the months of April and May 2021, ALB sought recommendations for lawyers in the Philippines from clients, including in-house counsel and business decision makers
- Clients were encouraged to submit their recommendations to ALB directly via a survey link
- More than 120 clients, based across Asia and beyond, sent in recommendations
- The final list was chosen not only on the basis of quantity of recommendations, but also quality

**DANNY E. BUNYI**SENIOR PARTNER,  
DIVINALAW

Bunyi is a senior partner at DivinaLaw in Makati City, Philippines.


He has 31 years of legal experience in a wide range of areas including corporate law, banking and finance, M&As, cross-border transactions, as well as commercial contract drafting and review.

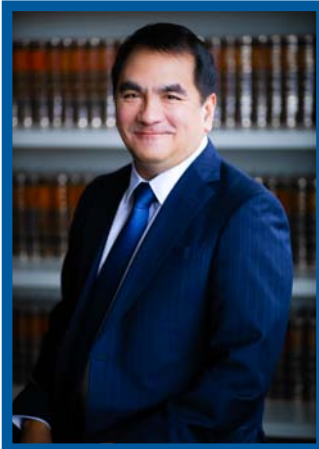
His work in servicing the firms' clients has paid off with multiple awards in areas of banking and finance, corporate and commercial law, private equity and venture capital. He has also been recognized for his work as an external counsel.

Before joining DivinaLaw, Bunyi was senior vice president and corporate secretary for the Development Bank of the Philippines, one of the largest government-owned banks in the country.

He solidified his banking background when he assisted one of the largest banks in the world in establishing a branch in the Philippines. He also handled the acquisition of a foreign bank's assets in behalf of a Philippine bank and eventually helped upgrade the Philippine bank to a full commercial bank. Bunyi also served as counsel for the issuance of preferred shares of a major real estate developer.

Despite the pandemic, he has remained active over the past year. Bunyi served as counsel for a major logistics company to obtain government approval for the entry of a foreign shareholder, assisted a local information bureau in selling the majority of its shares to a foreign entity, and handled the establishment of a trust corporation by the largest insurance company doing business in the Philippines.

"In my interactions with Atty. Bunyi over the years, I have always found him to be extremely professional, efficient and extremely knowledgeable," says a client. "Specifically, his knowledge of the law is outstanding and worth admiring. I would definitely recommend him for his services." 



## NILO T. DIVINA

MANAGING PARTNER,  
DIVINALAW

Divina is the managing partner at DivinaLaw, the firm he launched in 2006 in the Philippines, halfway through a career focused on a wide range of corporate law.


Before starting DivinaLaw, he was executive vice president, general counsel, and corporate secretary at Equitable PCI Bank which is now BDO Unibank, Inc. - the biggest bank in the country.

Divina is also a scholar. He has served as the dean of the Faculty of Civil Law at the University of Santo Tomas since 2009. He has also authored four books in Commercial Law that are considered as primary resource material for law students and lawyers alike, including the recently published *"Questions & Answers on the Revised Corporation Code"* which features a foreword from then-Chief Justice Diosdado M. Peralta. His newest opus, *"Divina on Commercial Law: A Comprehensive Guide"* (Volume 1 and 2) is set to be released this month.

Divina has been practising law for 31 years across a wide range of areas, from immigration to estates and trusts, to family law and insurance. Through those decades, he has worked on a number of high-profile cases and with big names as clients. Between 2004 and 2006, he acted as general counsel for Equitable PCI Bank when it merged with Banco de Oro Universal Bank, then two of the largest banks in the Philippines.

Divina also served as counsel in relation to a cross-border acquisition of a multinational company engaged in manufacturing electrical components, has worked with foreign firms in carrying out due diligence on the corporate organization and business presence in multiple countries, acted as counsel for an international internet-based market research and data analytics firm in the harmonization of its contracts with Philippine law.

Divina has been recognized for his work with multiple awards and is regularly included in top 100 Philippine lawyers list.

"You don't have to talk to anyone else," says a client. "Atty. Divina can cover the legal, strategical and taxation sides of any case with excellent results." 



## MARK S. GORRICETA

MANAGING PARTNER,  
GORRICETA AFRICA  
CAUTON & SAAVEDRA

Gorricketa is the managing partner at Gorricketa Africa Cauton & Saavedra, and also serves as the Head of the Corporate Group and Head of the Technology Media and Telecommunications Group at the firm.


He has in-depth expertise and experience in complex corporate transactions, commercial contracts, and regulatory matters.

ALB named Gorricketa as the Managing Partner of the Year at the ALB Philippine Law Awards 2020 and that same year he was recognised with several other awards. With all those accolades, it is little wonder that he is widely seen as a leading tech lawyer in the country.

In fact, his pioneering work on digital assets, fintech, blockchain, virtual currencies, e-commerce, data privacy and artificial intelligence has made him a sought-after legal counsel to the most impactful technology and online companies in the Philippines.

Gorricketa is particularly versed in the fields of capital markets, M&A and securities law. He was lead counsel to DM Wenceslao & Associates, the real estate developer of Aseana City, on its 8.1-billion peso (\$155 million) initial public offering. He was also the lead Philippine counsel to Universal Entertainment Corporation in its issuance of \$600 million in 8.5 percent senior notes.

The firm, Gorricketa Africa Cauton & Saavedra, has also racked up a fair bit of recognition. In 2020, ALB named the Firm as the Technology Media & Telco Law Firm of the Year and Construction and Real Estate Law Firm of the Year at the Philippine Law Awards. In 2019, the Firm was also named by ALB as the Innovative Tech Law Firm of the Year and Technology Media & Telco Law Firm of the Year. In 2016, the firm won accolades as the Rising Law Firm of the Year at the ALB Philippine Law Awards.

"Mark provides full-service treatment for our firm to address our requirements and challenges," says a client. "He is also very responsive and accessible, providing the time necessary to solve our legal needs." 



## ARIS GULAPA

FOUNDING PARTNER,  
GULAPA LAW

With 17 years of legal experience behind him, Gulapa is the founding partner of Gulapa Law in the Philippines.

Throughout his career, Gulapa has made great strides for himself and his namesake firm. A year after it was established, Gulapa Law had earned recognition from most international legal publications as a leading firm and Gulapa as one of the top lawyers in the country. ALB named Gulapa Law as one of the Firms to Watch in Asia in 2017 and one of the Best Boutiques in Asia in the same year.

Notably, Gulapa's firm is the first, and to-date only, Philippine-based firm to have a full-service office in New York City since 2017 as well as a representative office in San Francisco since 2018. The firm also opened an office in Cebu in December 2020 and is set to open a new office in an emerging Southeast Asian city this year.

Over the years, he has worked with big-name clients such as the Asian Development Bank, the International Finance Corporation (IFC), AC Infrastructure Holdings Corporation, Manila Water, Kyuden International Corporation, Megaworld Corporation, Filinvest Corporation and SM Group among others.

Gulapa himself is qualified to practice law in the Philippines and New York. From 2006 to 2011, he was also licensed as a foreign legal practitioner in Vietnam. He obtained his JD degree (with honours) from the Ateneo de Manila University School of Law and his LL.M. degree in Trade Regulation (as a Vanderbilt scholar) from the NYU School of Law.

Gulapa's own practice areas include project development, project finance, construction, corporate law and M&A, and competition law. Much of his experience lies in trade regulations within the Association of Southeast Asian Nations (ASEAN), which has allowed him to participate in important government projects in the Philippines, Singapore, Vietnam, and Japan.

"Working with Atty. Aris Gulapa makes me confident that we will find practical solutions to complex and seemingly impossible legal and business problems," says a client. <sup>ALB</sup>



## GREG TIONGCO

CO-MANAGING PARTNER,  
TIONGCO SIAO BELLO &  
ASSOCIATES LAW OFFICES

With a range of specialties spanning an 18-year career, Tiongco is the co-managing partner at Tiongco Siao Bello & Associates Law Offices (TSB Law).

Tiongco is best known for his work in corporate law, with particular expertise in M&A. He served as corporate counsel to a number of local and international publicly listed companies and their subsidiaries as well as several well-known non-government organisations and foundations.

He further advised on the acquisition of the National Transmission Corporation (TRANSCO), the biggest privatisation deal in the Philippines. Moreover, he supported China Telecom in its participation in the establishment of the Philippines' "Third Telco" – Dito Telecom. He worked on the establishment of Emerging Power Inc. and advised it on its acquisitions, which facilitated the entry of Nickel Asia into the power sector.

Tiongco also has a long and in-depth labour and management relations practice. He has acted as counsel to one of the biggest international manpower agencies, leading local manpower agencies and to a number of major business process outsourcing companies.

With his seasoned team, TSB Law has participated in various litigations over the last 15 years, including corporate takeovers, contract disputes as well as complex criminal cases.

Tiongco also has extensive experience in data privacy, e-commerce and financial technology regulations having provided advice to various healthcare, financial and technology companies including the owner of one of the biggest super-apps in Asia.

In 2017, he became an accredited arbiter of the Philippine Dispute Resolution Center. Tiongco previously served as Special Legal Counsel for the Presidential Commission on Good Governance (PCGG) and was a legal consultant to Mandaue City in Cebu.

"Greg has assisted me and my team in strategic and extremely complicated regulatory issues that required a firm grasp of the law as well as pragmatism and business acumen," says a client. "It was a pleasure partnering with him and learning about the ins and outs of regulatory legal practice through him and his team." <sup>ALB</sup>



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# NEIGHBOURLY TIES

As two of the world's three largest economies, Japan and China have had strong trade and investment links for decades now. And even as geopolitical tensions appear to be rising, Japanese companies still see China as an attractive investment destination. **BY ELIZABETH BEATTIE**

■ Despite geopolitical trade tensions between China and Western countries, Japanese companies remain largely bullish in China. According to a September Japan External Trade Organisation survey cited by Nikkei Asia, just 7.2 percent of companies said they would move or consider moving their production out of China, and this number had decreased from 9.2 percent in 2019.

While there are regional geopolitical considerations that businesses should consider, China continues to be an attractive destination for Japanese investment, lawyers say.

Cuiping Zhang, a partner at Nishimura & Asahi's Tokyo office, tells Asian Legal Business that historical Sino-Japan relations play a significant role in confidence around Japanese investment in China.

"Since the 1980s, Japan's investments in China has boomed thanks to the signing of the Treaty of Peace and Friendship between Japan and China, the Reform and Opening-up of China, and China's participation in the WTO, etc. The latest peak was in 2012, hitting a record high with \$7.38 billion. However, the amount declined for several successive years due to the territorial disputes between the two countries," Zhang says. "We believe that China and Japan are complementary in their economies and to strengthen cooperation is beneficial to both countries."

"Geographically speaking, Japanese investors had preferred the northeast area in the 1980s, the Pearl River Delta in 1990s, and have then shifted to Shanghai or Jiangsu since the 2000s. We believe this is in accordance with the

gradual evolution of China's economic emphasis," Zhang says.

She adds that Japan and China have been "cooperating in third-party markets under the Belt and Road Initiative, bringing new momentum to Japan's overseas direct investments."

"By enlarging their investment scale in China, Japanese investors can fully exert their leading technologies with China's complete manufacturing system and provide high-quality products to the countries along the Belt and Road routes with a competitive price," Zhang adds.

Still, Shearman & Sterling partner Karl Pires, who is based in the firm's Tokyo office, says the biggest challenge for investors continues to be "uncertainty regarding future ramifications of the always evolving geopolitical role of China regionally and the recently volatile

bilateral trade relationship between China and the United States.”

Both of these can strongly impact Japanese businesses investing in China “due to Japan’s pivotal role regionally and its crucial bilateral relationship with the United States,” Pires notes.

## PRACTICAL CONSIDERATIONS

While navigating complex political developments is an increasingly common challenge, there are other practical considerations to consider that can have equally critical ramifications for businesses.

Zhang says Japanese businesses with investments in China should monitor the country’s laws and policies continuously.

“China is still in the progress of economic transformation and building a country of rule of law, while its Internet-based new businesses emerge in succession. To face such a rapidly changing situation and protect the foreign investments and intellectual properties, China has enacted or amended many new rules accordingly, including those directly related to foreign investments and intellectual property protection, such as the Foreign Investment Law, and the Interpretation of Supreme Court on the Application of Punitive Damages in Hearing Civil Cases of Infringement upon Intellectual Property Right,” Zhang says.

She adds that for Japanese investors in China, navigating how to fully take advantage of favourable policies and meet the compliance requirements simultaneously is an ongoing task.

For Japanese businesses though, moving cautiously is something of a characteristic, says Donald Chen, partner at King & Wood Mallesons’ Shanghai office.

“From my point of view, Japanese investors are considered to be extremely prudent (such as time-consuming requests for managerial decisions or approvals) and have high-level compliance awareness, while they tend to have relatively conservative localisation management capabilities and marketing capabilities,” he notes.

While Japanese businesses may tend towards caution, Nishimura’s

Zhang emphasises Japanese investors should “pay extra attention to laws, and the local practice. The local rules and practice sometimes differ from each other in China.”

“A typical example would be the labour disputes in China. While the labour laws and regulations themselves are already detailed, the situation gets more complicated as some local courts in China may publish some rules or guidance on some specific issues, making the practice of labour laws different from each other,” she says.

“Particularly for Japanese companies considering a restructure, as a failure to properly handle the issue may trigger some unexpected mass incidents, they should be extremely careful and set up precautions in their daily business by improving and perfecting the HR regulations, the deployment of in-house counsels and local lawyers, and communicating with the employees in a timely manner,” Zhang notes.

## IMPROVING CLIMATE

While caution is still recommended the climate for China’s investors has rapidly improved over the years, as a result of hard work to overhaul its business climate.

Pires says investors in Japan are drawn to this improved business environment for foreign investment. On China’s side, this is a result of concerted effort to “streamline ‘red tape’ regulatory rules and procedures (e.g. the issuance of the Foreign Investment Law and shortening of the ‘negative list’ limiting foreign investment to provide a more open market for foreign investors),” he says.

Chen says compared with Southeast Asian countries, “the political stability, the quality of labour force, the financial power and the advanced technologies/infrastructures of China are considered as its apparent advantages.”

Additionally, the market size and urbanisation of China “will enable Japanese investors to fulfil the consumption potential of Chinese customers in the right market segments,” Chen adds.

Lawyers say investment is spread across a number of sectors.

Zhang notes the data regarding the direct investment abroad disclosed by Japan’s Ministry of Finance shows the industries Japanese investors have invested in China include “general machinery, electric machinery, transportation equipment, chemicals and pharmaceuticals, etc. during 2017 and 2020, while having also invested in some non-manufacturing industries such as wholesale and retail, along with finance and insurance.”

Investment in finance and insurance has increased rapidly, reaching “154 billion yen in 2020, compared with only 36 billion yen in 2017,” Zhang says, but she adds the total investment in China in 2020 has dropped somewhat.

Indeed, the pandemic’s impact is continuing to be felt, triggering something of a recalibration.

While in the first half of 2020, the COVID-19 pandemic only had a “moderate impact on new investments by Japanese businesses in China, with the number of investment transactions and total amount of investment decreasing modestly,” Pires says, pandemic-related developments may have a deeper impact.

“In addition, the COVID-19 pandemic triggered a new policy initiative of the Japanese government to secure a \$2.2 billion budget dedicated to assisting Japanese manufacturers with moving portions of production out of China to better avoid future disruptions in the supply chain caused by a concentration of production in one country,” Pires notes.

But Chen is confident that long term there won’t be deep-seated changes to the China-Japan investment relationship.

“Due to the shrinking of the domestic market, the labour shortage and the eroding of competitive advantages of Japan, a new investment boom is expected in China. It may still take certain time for COVID-19 immigration restrictions to ease up; the acknowledgement and acceptance of the industrial policies and markets in China of Japanese investors will also take time. Therefore, the appetite for investment in China is temporarily low at this point but will be back to normal in foreseeable future,” Chen says. 

# UNICORN WAVE

The recently announced Gojek-Tokopedia merger has once again brought Indonesia's booming tech sector into the headlines. And given the country's immense potential, this boom is set to continue for some time to come. **BY ELIZABETH BEATTIE**

It's no secret that tech companies in Indonesia are on the up. The country's digital economy is expected to grow to \$124 billion by 2025, according to a 2020 study by Google, Temasek Holdings and Bain & Company, and over the past few months, a flurry of headlines have mapped formidable growth as companies push towards listing and unicorns expand their ambitions. Lawyers in Indonesia expect this trend to continue, telling Asian Legal Business that what we are seeing now is only the first wave.

In May, Indonesian ride-hailing and payments firm Gojek announced a merger with the country's e-commerce leader Tokopedia. According to Reuters, the merger will create a multi-billion-dollar tech company called GoTo in Indonesia's largest-ever deal. The combined entity, which will span online shopping, courier services, ride-hailing, food delivery and other services in Southeast Asia's largest economy, will also be the biggest privately held technology firm in the region. But that's not the end of the company's ambitions; Reuters reports that it plans to list in Indonesia and the United States and is courting pre-IPO funding.

Gojek and Tokopedia, and others like Bukalapak and Traveloka are just a few examples of the exponential growth of technology companies in Indonesia that has seen unicorns flourish, undaunted by the COVID-19 pandemic. In fact, in some areas, the growth in the tech sector has been assisted by the pandemic. Ride-hailing and food delivery markets in Southeast Asia are gaining traction as

stay-at-home pandemic restrictions turn such tools into a necessity.

Joel Shen, a corporate partner at Withers, says the growth of Indonesian tech companies is a result of a convergence of various factors.

This includes "excess liquidity in the market due in part to the government stimulus programmes; interest rates at a historical low; declining yields from traditional businesses; the recent rise of SPACs, which are now seeking good targets in growth markets; and a maturing tech and venture capital ecosystem in Southeast Asia generally, and in Indonesia in particular. Many of the largest and most well-funded tech companies in Indonesia are backed by venture capital, and are on a runway to exit from the moment they accept their first VC dollar," says Shen.

Shen says he would compare the current Southeast Asian tech scene to the Three Kingdoms period in China, "with Sea, Grab and GoTo being likened to the Cao Wei, Shu Han and Dong Wu kingdoms respectively, with Indonesia being their key battleground."

But unlike third-century China, Shen doesn't believe Indonesia's digital economy is a "winner-takes-all market. "It can likely accommodate more than one dominant player."

## A DECADE IN THE MAKING

Sugianto Osman, a partner at Ginting & Reksodiputro in association with Allen & Overy, says the developments are part of a trend that goes back several years.

"If we look at all these unicorns [and] decacorns, they were set up

in 2010 to 2011, but they really got people's attention in 2015 when substantial fundraising occurred," Osman says, noting his firm has been involved closely with a number of these headline-grabbing tech companies, including Tokopedia.

"Five years is actually nothing if you compare to any other industry but of course in this sector five years feels like a long time," he says.

In Indonesia "there are always new startups," Osman says, noting this is underpinned by the growth of telco infrastructure and the proliferation of accessible personal tech.

"Cheap smartphones are really what makes this possible. This enables everyone to have a sophisticated mobile [device] that allows you to operate apps," Osman says. "Again, without relatively affordable mobiles, we wouldn't be where we are now. If only 10 or 20 percent of the population were holding a smartphone that would be a very different story."

As a result of this, data subscription has become "a priority for everyone now, and this cuts across the board in terms of income level and age level. That's what's really driving this," he notes.

Indonesia's young population are also playing a "significant role" in this development.

"I think that's also one of the key considerations from the investor perspective, coming into Indonesia investing in the tech companies," says Osman. "So, everything is promising in terms of a long term future for their investment."



### RANGE OF INDUSTRIES

The types of tech companies thriving in Indonesia cut across a range of industries.

There's logistics for one example, notes Shen. "Sicepat raised \$170 million this year. Not only is it the largest Series B financing in Indonesia, a record previously held by Grab's \$100 million investment in LinkAja, it is also the largest Series B financing in Southeast Asia, deposing RWDC's \$133 million stapled Series B)," says Shen, adding that he advised on all three landmark deals.

Another hot area is MSME digitisation/empowerment. "BukuKas recently announced its \$50 million Series B and BukuWarung is reported to be in talks to raise a round from Peter Thiel's Valar Ventures. Recent fundraising rounds were also announced by Credibook, Majoo, and Wahyoo," Shen adds.

Then, there are digital banks. "Indonesia is one of the most underbanked markets in the world – 52 percent of all Indonesian adults (92 million adults) are unbanked, and an additional 47 million adult Indonesians

are underbanked, and have inadequate access to even basic financial services such as credit, insurance, and small business loans," says Shen.

Indonesia is also "the largest archipelagic country in the world, and its 17,000 islands span the distance from London to Baghdad, which makes it incredibly difficult for traditional banks to serve customers in small towns and villages," he adds. As a result of this, digital banks have been gaining traction and investor interest too.

Osman notes that the pandemic's impact cannot be overlooked. Food delivery has stood out, but he points to two other sectors. "Of course, health tech is another sector that we're starting to really see. Again, the pandemic really helps in terms of accelerating that," he says. E-commerce is developing rapidly, and "even online travel agencies, which suffered at the beginning of the pandemic have now been making a turnaround."

### SPIKING LEGAL WORK

Such developments are leading to a spike in legal work.

"Every lawyer is now a tech lawyer," says Shen. "From transaction lawyers like me to disputes specialists, IP lawyers to regulatory lawyers. I don't know many lawyers who do not act in some way for a technology business or investor. There is a very quaint term I remember from the late 90's – there was a breed of lawyers who used to call themselves 'Internet lawyers.' The term is, of course, no longer used, because every lawyer is, today, an internet lawyer to some degree. It may not be long before we similarly retire the term 'technology lawyer,'" he adds.

Both the legal work, and Indonesia's tech growth, are unlikely to shrivel any time soon. Looking ahead, despite the current unpredictability the COVID-19 pandemic brings, lawyers are confident it's here to stay. "There will be periods of consolidation and expansion, but I fully expect the current growth trend in the industry to continue throughout the year and, likely, the decade," Shen says.

Osman agrees. "I don't see the trend reversing; it will only continue. This first group of unicorns, decacorns, will actually be paving the way for the next ones," he says. ●



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# FRIENDS IN DEED

In an unprecedented time of challenges for the commodity trading sector, specialist lawyers are helping their clients navigate obstacles. **BY ASIAN LEGAL BUSINESS**

■ The COVID-19 pandemic has thrown up a number of challenges for the commodities sector. These include global logistical bottlenecks and even a historic price drop to negative for oil. Even as the world inches towards recovery, complications and risks stemming from the pandemic have created increased demand for legal assistance, and kept commodity trading lawyers occupied.

“We have been busy advising clients on immediate problems arising out of the commodity trading mishaps, for example, letter of credit payment issues, misdelivery claims and sale and purchase matters,” said Maureen Poh, a director at Singapore’s Helmsman, a law firm that specialises in commodities and shipping.

In order to handle the rising demand for their expertise, law firms need to maintain two key elements to build a strong commodities practice.

The first thing is deep and broad knowledge of their clients’ businesses and understanding of how different parts of the business fit together, says Poh.

The second is to listen and read between the lines to understand what clients truly need.

“Sometimes what clients expressly

present to us may inadvertently conceal their actual underlying concerns,” said Poh. However, if a law firm has a good understanding of the client’s business, it can ask the right questions and draw out from the clients what exactly it is that they need help on.

Helmsman has a good mix of Singapore and English-qualified lawyers and attorneys admitted to the New York Bar with experience in international law. The firm also has credit risk and trade finance specialists with decades of experience in banks and trading houses.

## VARIED AREAS

The practice areas surrounding commodities work are varied. Poh says Helmsman acts for some of the biggest traders in the commodity space, including producers and traders in a variety of commodities from crude oil, refined oil products, LPG and LNG to minerals, to metals and agriproducts. She specifically pointed out that there has been a significant increase in liquefied natural gas (LNG) transactions, as the shift to clean energy sources gathers speed.

According to market data firm Research and Markets, the market for LNG in Singapore is projected to grow at

a compound annual rate of 10.4 percent from 2016 to 2021.

“We have been engaging in a lot of LNG contract reviews, together with advising on their ancillary contracts like LNG tanker charterparties,” says Poh.

Recently, the firm has also advised on many carbon reduction sale and purchase agreements.


“Traders and trade finance banks have also approached us to examine and enhance their internal commodities financing mechanisms,” Poh notes.

Since the Code of Best Practices for Commodity Financing launched in November 2020 by the Association of Banks in Singapore (ABS), many trading houses and trade finance banks have working on how to best take these guidelines on board.

Helmsman advises traders on how to establish a robust and transparent system and put processes in place to secure financing. The firm also works with banks to alert them on what to look out for in respect to a trader’s transparency and control processes when considering trade finance requests.

Looking ahead to future development, “the commodities sector is increasingly sensitized to environmental, social and governance issues, and is responding accordingly,” says Poh.

This means more risk, regulation, and compliance challenges for traders, and the traders would have to pay even closer attention to their internal risk management processes to ensure that they are able to withstand scrutiny from regulators and lenders.

Digitalization will also play a key role in improving the efficiency of trading operations while reducing risks. Says Poh: “Helmsman is excited to be part of these new growth opportunities.” 



## Helmsman LLC

21A Duxton Hill, Singapore 089604

T +65 6816 6660 E [singapore@helmsmanlaw.com](mailto:singapore@helmsmanlaw.com) W [www.helmsmanlaw.com](http://www.helmsmanlaw.com)



## Tang & Co. (in association with Helmsman LLC)

Room 4209, Tower 1, Lippo Centre, 89 Queensway, Admiralty, Hong Kong

T +852 2386 9976 E [hongkong@helmsmanlaw.com](mailto:hongkong@helmsmanlaw.com) W [www.helmsmanlaw.com](http://www.helmsmanlaw.com)



### COMPANY BIO

Helmsman LLC specialises in shipping and commodities trading law. The firm routinely acts for clients in varied and high value commercial transactions and disputes across the world from their offices in Singapore and Hong Kong, the latter through their association with Tang & Co. The breadth of experience and deep expertise of their lawyers in shipping and commodity trading makes them the counsel of choice for the biggest shipping companies and commodity traders across the world. Helmsman LLC is unique in the market in that it comprises not just lawyers, but also experts in areas such as credit risk and trade finance. In addition to their deep subject expertise, Helmsman LLC are well known for their user-friendly approach, and penchant for 'plain practical advice'.

### KEY PERSONNEL



**Tang Chong Jun, Executive Director, Helmsman LLC and Managing Partner, Tang & Co. (in association with Helmsman LLC)**

A founding director of Helmsman LLC and Tang & Co., Chong Jun specializes in shipping and commodities disputes and commercial advisory work. More recently, Chong Jun successfully represented a Malaysian palm oil producer on two multi-million-dollar GAFTA arbitrations: and, an American trading corporation in its claim against a Chinese company for the latter's failure and/or refusal to take delivery of corn shipments. He was also involved in the handling of several landmark decisions in Hong Kong, including the "Apellis" [2018] Lloyds Law Reports Plus 11 and "Alas" [2015] 1 Lloyds Law Reports 211. Chong Jun is regularly invited to speak at shipping and maritime law conferences, including at the recent International Congress of Maritime Arbitrators in Copenhagen, and the 2017 Shipping Law Seminar in Shenzhen on "One Belt One Road – International Shipping Law and Policy". Qualified to practise law in both Singapore and Hong Kong, he is a fellow and council member (Hon. Secretary) of the Hong Kong Institute of Arbitrators. Expert Guides 2021 has recognized Tang Chong Jun for his expertise in the practice area of Shipping and Maritime Law.



**Maureen Poh, Director, Helmsman LLC**

Maureen specialises in commodity trading and shipping work, both contentious and advisory. Her experience in commodity trading ranges from oil-related commodities like crude oil, refined products, bunkers and LPG to coal and agriproducts. Maureen has particular expertise in the LNG sector, advising on LNG sale and purchase contracts and related transportation contracts such as tanker charterparties. She has a growing practice in sustainable commodities, including advising on biofuels and carbon offsets agreements. Maureen's shipping experience spans the entire shipping spectrum, from shipbuilding, ship sale and purchase, to charterparties, bill of lading matters and ship recycling. She deals with a range of vessels from bulk carriers, oil and chemical tankers to gas tankers and floating storage and regasification units (FSRU). Maureen spent most of her legal career at an international law firm, where she rose to become a partner. Qualified to practise law in Singapore and England and Wales, Maureen sits on the advisory board of the Centre for Maritime Law of the National University of Singapore. She is a regular speaker at seminars and conferences. Expert Guides 2021 has recognized Maureen Poh for her expertise in the practice area of Shipping and Maritime Law and Women in Business.



**Lynette Koh, Director, Helmsman LLC**

Lynette leads Helmsman's Corporate and Finance Practice. Having more than 6 years of experience as Head, Legal of an international bank, Lynette has deep expertise in the finance needs and funding structures across a wide spectrum of industries and has worked on the full range of commodities and trade financing transactions with major trading houses across the world. She is one of few Singapore lawyers who also has expertise in derivatives and structured products, including ISDA documentation. Besides her corporate inhouse experience, Lynette also spent a decade as a litigator at a leading law practice in Singapore specialising in banking and financing disputes, corporate insolvencies and debt restructuring. Lynette was one of the two inaugural recipients of the Singapore Academy of Law Post-Qualification Overseas Attachment Award – set up to expose deserving lawyers to the best practices in litigation or arbitration. She spent time in London working alongside renowned Queen's Counsels with established banking practices.

# BANKING & FINANCE

China's dynamic finance industry has been evolving rapidly in the past year or two in the face of increasing regulatory scrutiny as well as the growing impact of technology. Legal department heads say that while the current landscape poses certain challenges, it also brings with it a number of distinct opportunities that in-house teams are helping their companies take advantage of. **BY HU YANGXIAOXIAO**

**ALB: The financial markets have seen frequent and significant policy and regulatory changes since the second half of 2020. What are some of the newly enacted policies and regulations that have reshaped the business model of your company, as well as the industry generally?**

**ASHLEY DING, general counsel, Aegon THTF Life Insurance:** The numerous regulations issued by regulatory authorities mainly apply to Internet business, investment with insurance funds, and corporate governance. In terms of Internet business, the Measures for the Regulation of Internet Insurance Business sets out sweeping normative requirements for insurance companies and licensed insurance intermediaries in their Internet-based insurance underwriting business, prompting us to examine all internal business channels against our business models.

With respect to investment with insurance funds, the Notice of the China Banking and Insurance Regulatory Commission on Matters Concerning Financial Equity Investment with Insurance Funds allows an insurance institution the discretion to choose the industry sectors in which it employs insurance funds. As far as Aegon THTF is concerned, I believe we can take advantage of this new regulation and have more strategically positive thinking to further explore the use of equity investment to achieve our strategic objectives.

Finally, as to corporate governance, in the second half of 2020, the

CBIRC clarified the corporate governance priorities of the banking and insurance industries in the next three years, which was followed up by new rules governing corporate governance, the performance of duties by directors and supervisors, etc. in such institutions in 2021. Many foreign-funded companies in the industry, particularly those where the Chinese and foreign shareholders each have a 50percent equity stake, have started to ramp up corporate governance efforts as required under the new rules.

**JOE ZHOU, managing director and head of the legal department of legal and compliance, China International Finance Corporation Hong Kong Securities Limited (CICC):** Chinese regulatory authorities have been very busy since the second half of 2020, promulgating an array of new rules and important policies. Two of them have significant impact on CICC: the first is the more stringent management introduced by the State Council in relation to financial holding companies; the second is the revision by the CSRC to the Administrative Provisions on the Equity of Securities Companies in March 2021, which loosened the eligibility requirements on major shareholders of securities companies. Further, the CSRC also tightened regulation in light of the reputation incidents of some securities brokers on self-media.

Looking at the domestic financial market as a whole, the full-scale roll-out of a registration-based IPO system on the ChiNext market and STAR market

in 2020 brought life to the primary market, particularly the stock market. Meanwhile, the CSRC made repeated calls for improving the quality of listed companies for purpose of raising the quality of the financial market. Further, the exchanges and the CSRC issued new disclosure rules in response to the risk incidents on the bond market last year. To comply with the new requirements on due diligence and information disclosure as part of the registration-based IPO reform initiative, CICC has optimised its internal structure and procedures.

Changes in overseas regulatory rules should not be overlooked. Hong Kong, as an international financial centre, is very representative when it comes to regulatory trends in its financial market. As an increasing number of U.S.-listed Chinese companies head home to relist, Hong Kong Stock Exchange (HKEx) published a consultation paper this March seeking views on reforms to the listing regime for overseas issuers. At the same time, the HKEX studied a listing regime for special purpose acquisition companies (SPACs). In addition, with the digital economy thriving, Hong Kong's Securities and Futures Commission (SFC) granted its first license to a crypto trading platform in 2020, the first step to regulate platforms that trade bitcoins and other virtual assets.

**ZHANG XIAOHONG, general counsel, China National Investment and Guaranty Corporation:** China National Investment and Guaranty Corporation, as China's first national guaranty agency,

has witnessed and been deeply involved in the evolution of how China's legal system for guaranty. The Civil Code and its supporting judicial interpretations enacted in the past year have made substantial amendments to China's existing guaranty regime, and many new regulations are substantively different from the annulled Guaranty Law and the Property Right Law, posing a profound impact on our business. Developments in the past year that are closely related to our bond guaranty business include the implementation of the revised Securities Law, the roll-out of the registration-based IPO reform, the promulgation of the Minutes of the National Courts Symposium on the Trial of Bond Disputes, as well as a notable increase of risk incidents in the bond market. Our in-house team focused efforts on basic research, searched for bond dispute cases and distilled key disputes by looking at our business model and legal issues, and proposes pertinent solutions to prevent legal risks on this ground.

**ALB:** Financial institutions are quickening their pace of product and business innovation in response to regulatory changes. What innovative products or business models have your team supported recently and what challenges have you faced?

**DING:** First, as the market is having heated discussions on high-net-worth individuals and wealth inheritance, our in-house team worked with sales department to evaluate the insurance + trust business model. From a compliance perspective, the biggest challenge was how to effectively promote a product to avoid causing confusion between an insurance product and a banking or wealth management product, and how to fully protect the rights and benefits of clients and properly integrate insurance and trust features in one product.

In addition, considering the new regulations on Internet insurance business activities, the in-house team got involved in designing a new business model that enables the use of traditional offline channels to market and promote Internet insurance businesses. The biggest challenges there were how

to differentiate online processes from offline ones; and if such differentiation is impossible, how to put in place management measures to meet the requirements of both online and offline business activities.

Secondly, as regulatory authorities have broadened the scope of industries in which insurance funds may invest, we have been constantly exploring opportunities for the insurance + pension business model. If we are to invest insurance



**“The emerging new products and new business models are breaking away the traditional perception, and the accelerating pace of change in knowledge is driving us to constantly broaden the sphere of our expertise and learn extensively from other professions.”**

— Ashley Ding,  
Aegon THTF Life Insurance

funds in elderly care housing projects, we will be subject to extensive compliance requirements, which must be set out in relevant contracts. The in-house team also needs to assist the investment department in project oversight and post-investment management.

To conclude, the emerging new products and new business models are breaking away the traditional perception, and the accelerating pace of change in knowledge is driving us to constantly

broaden the sphere of our expertise and learn extensively from other professions.

**ZHOU:** In CICC, the in-house team has always been bolstering business innovations. In 2020, due to the COVID-19 pandemic, some domestic companies were faced with operational challenges and became so-called zombie companies. Against this backdrop, CICC stepped-up corporate reorganisation services, which involved the restructuring of the bonds issued by such companies overseas. The in-house team was directly and actively involved in such business activities.

China also kicked off reforms on real estate investment trusts (REITs) in the past year and published new policies in this area. CICC, having a sense of the massive potential in this field, has made a lot of preparation, aiming to become a forerunner in this market segment.

CICC has also attempted many innovations in products and services by taking advantage of its unique strength. The in-house team was actively involved in the design of such new products and services, issuing reminders of and controlling potential legal risks associated with such products and services. In particular, as both domestic and overseas regulations must be followed when it comes to novel cross-border business activities, legal and regulatory compliance is of paramount importance.

In addition to active involvement in all business stages, the in-house team also took part in regulatory and policy research initiated by domestic regulatory authorities. After new regulations are promulgated, the team will, as soon as practical, discuss with the front office the impact of such regulations on CICC's business.

**ZHANG:** Over the past year, our in-house team faced three major challenges. The first was how to deal with and resolve emerging legal issues in fintech-related business areas. To that end, by consulting external professionals and carrying out thematic studies, the team managed to resolve the pain points and difficulties in the areas of data compliance, AI-based compliance, information protection, intellectual property rights and e-signature, providing strong support

for business innovation. The second was how to lessen the COVID-19 disruption to business operations. The third was how to raise the efficiency of legal review without compromising quality. To address this concern, our team made constant efforts to standardise contract review procedures, including by establishing and updating the template library and identifying essential elements of contract review, effectively alleviating conflicts between the growing demand for legal services as a result of business expansion and the limited size of the in-house team.

**ALB: COVID-19 has accelerated the rise of the digital economy, and technologies are reshaping the financial sector. As general counsel, how do you help the business strike a balance between digital innovation and financial security?**

**DING:** Given the fast-accelerating digital economy, both the legislature and regulatory authorities are paying close attention to risks arising from fintech products and emerging technologies, particularly risks related to personal information protection. A general counsel needs to ensure everyone in the company attach greater importance to the security of clients' personal information. This means I must fully communicate with business functions and back-office functions, and add relevant contents in sales scenarios and business documents, so that clients' information is gathered pursuant to the law and the rights and benefits of consumers are protected. As general counsel, I also have to remind the IT department to implement enhanced safety and security measures.

**ZHOU:** The COVID-19 pandemic greatly quickened the pace of digitalisation. CICC not only focuses on the adoption of technological means, but also places more emphasis on having a digital mindset or even strategic perspectives. With digitalisation being one of its strategic focuses in 2021, CICC aims to make considerable headway towards "digital banking". In essence, finance is simply about efficiently bridging the supply and demand of funds, and what CICC needs

to resolve is how to use technology to make this happen.

On the business front, CICC has set up several agile groups to fix pain points in business operations. As these groups possess the corresponding authority, they can be agile in providing solutions and revising or iterating such solutions subsequently. So far, agile group members are mainly from front-office functions, including sales functions and IT staff such as programming



**"We are planning to establish a legal operations team. To promote and even popularise the use of new technology tools, the legal operations team will have data experts to help us with AI-based management and constant monitoring of contracts."**

— Joe Zhou, China International Finance Corporation Hong Kong Securities Limited

experts and data experts. We plan to include legal staff in the agile groups going forward.

In terms of investment strategies, China Capital Investment Group, a subsidiary of CICC, has invested heavily in fintech firms, and some of them are now listed, realising investment returns for CICC. Besides, CICC keeps a close eye on the technology products developed by such firms, to adopt them in future business processes.

The in-house team will get more involved in CICC's digitalisation journey and stay abreast of the latest developments in business and product innovations, to better serve the strategic objective of digital transformation.

**ZHANG:** During the pandemic, contactless digital reform has become an irreversible trend for financial institutions. However, fintech products maintain features and risks that are peculiar to the finance sector, and to some extent, include new risks and demonstrate clustering effects of risk behaviours. Against this backdrop, I asked my team to stay on top of regulatory developments and stick to the bottom line of compliance.

To be specific, this means we must strike the right balance between business growth and risk management, and between ex-ante risk prevention, interim risk control and ex-post remedy. As to the former, financial institutions and practitioners bear the responsibility of maintaining financial security, and they should push ahead with fintech innovation prudently under the premise of comprehensive and effective risk management. For the latter point, an effective risk management framework must be forward-looking. Take petty-sum and scattered online transactions as an example. The contracts should include a service clause that facilitates payment collection and a clause that provides for convenient dispute resolution methods.

**ALB: Over the past year, has your team adopted new technology tools to increase productivity and update the team's operations?**

**DING:** In 2020, the completion of the iteration of the company's anti-money laundering risk control system greatly improved the productivity of the in-house team. The team also embedded a contract management module into the integrated online co-working platform in 2020, thus achieving full process management online and raising contract review efficiency at the company level.

In the past year, we also launched promotional events and training courses by using new media tools such as WeChat

mobile platform, H5 pages, short videos, promotional flyers, and posters, mobilizing all staff to get involved in compliance promotion campaigns.

**ZHOU:** CICC's in-house team started using the iManage system last year. Given remote working/working-from-home arrangements, the team also adopted virtual phone and cloud hosting tools. We started using the corporate WeChat platform for internal communication to meet regulatory requirements on the whole process traceability. Recently we have spoken with PwC to understand NewLaw, a legal technology platform it developed, and will select features on the platform that are suitable for our in-house team.

For the next steps, we will examine AI-based contract review tools. Then we will consider connecting contract management to CICC's in-house unfavourable views monitoring system. Finally, some large law firms or data companies are developing judgment analysis systems. In such a system, when encountering a case, an in-house counsel may enter relevant information into such a system and retrieve relevant precedents by using AI-enabled comparison, thus greatly benefiting the in-house teams in their daily work.

In addition, we are planning to establish a legal operations team. The in-house team has so far collected a massive volume of information. Going forward, we intend to use technology tools to collect such information and set up a system to monitor legal costs. To promote and even popularise the use of new technology tools, the legal operations team will have data experts to help us with AI-based management and constant monitoring of contracts.

**ZHANG:** China National Investment and Guaranty Corporation leads the guaranty industry in terms of new technology adoption. Firstly, with an in-house technology team, we have established a mechanism for most online transactions to be signed off electronically, making full use of the digital signature and electronic seal technology to ensure security and validity in contract signing procedures. Secondly, we are increasingly leveraging IT means to optimise and

nail down contract review procedures and formalities and using IT tools to increase productivity in contract review. Also, the team relies on external information consulting and search tools to improve work efficiency and quality, so that it could share the latest legal news and developments with all staff. Lastly, the company has started to build an integrated management platform to accommodate online business activities, and a data processing and risk control



**“Contactless digital reform has become an irreversible trend for financial institutions. However, fintech products maintain features and risks that are peculiar to the finance sector, and to some extent, include new risks and demonstrate clustering effects of risk behaviours.”**

— Zhang Xiaohong, China National Investment and Guaranty Corporation

system that meets risk management requirements.

**ALB: Where are some of your focus areas in 2021? How do you plan to build an even better team centring around these focus areas?**

**DING:** I will continue to focus on corporate governance, anti-money laundering, related party transactions, and cybersecurity in 2021. These areas require the team to be more forward-looking.

Apart from legal expertise, the team must know many other different fields and be capable of employing technologies to better perform their fundamental duties.

**ZHOU:** Going global is on CICC's top agenda for 2021. Given the current international political landscape, Chinese enterprises going global would rattle the nerves of many. Thus, the top priority for the in-house team is to control risks while CICC grows its business. It is a pressing challenge to structure an in-house team that fits CICC's quick pace of internalisation, to equip the team with the right talents and to train them on corporate culture, so that the in-house team can help the headquarters manage risks associated with its subsidiaries in various regions. Capability building of the in-house team involves not only extensive application of technologies, but more importantly, the acquisition of exceptional talents. It is also a challenge to recruit talents who not only identify with CICC's corporate culture, but also have strong professional backgrounds and capabilities.

**ZHANG:** National economic situations and the guaranty industry landscape are changing constantly. The company likewise has different strategic goals and makes different strategic choices in different stages of development. However, as general counsel, I believe the following ways and thoughts of legal work stand the test of time: to keep sharpening legal skills, stay abreast of legislative updates and ramp up extensive legal research; to persevere in reinforcing the compliance culture; and, to perform legal duties to empower corporate strategies and actively contribute to the rule of law. I will guide my team members to review their departmental objectives and performance from these three perspectives.

After all, ways of working are merely tools. The area of my focus will always be on the people that use such tools. I believe a great in-house team should consist of professionals who are both passionate and humble about the law, and who have a sense of mission to study and resolve legal issues and help the company mitigate legal risks. ALB

# ANTITRUST SCRUTINY

China is increasing oversight and enforcement of anti-monopoly legislation, in a trend that could have a significant impact on the country's platform economy. **BY ASIAN LEGAL BUSINESS**



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China's State Administration for Market Regulation (SAMR) recently fined e-commerce giant Alibaba a record 18.2 billion yuan (\$2.75 billion) for violating the antitrust law. It also issued administrative guidance requiring the tech giant to conduct a comprehensive rectification and submit self-inspection reports for three consecutive years.

The watchdog said that the hefty fine was imposed because Alibaba abused its dominant position in the

online retail service market and implemented "exclusive dealing agreements" that restricted vendors on its platform from opening e-shops or participating in marketing campaigns on competitors' platforms. By taking these steps, the group strengthened its market power and gained an unfair competitive advantage, SAMR noted.

"We accept the penalty with sincerity and will ensure our compliance with determination," Alibaba said

in a statement. "To serve its responsibility to society, Alibaba will operate in accordance with the law with utmost diligence, continue to strengthen its compliance systems and build on growth through innovation."

The penalty was China's largest fine for an antitrust violation. In 2015, Qualcomm, a U.S. chipmaker, paid \$975 million to Chinese authorities to end an antitrust investigation into its patent licensing practices.

Considered the first case after anti-trust guidelines focused on China's digital platform companies took effect, Alibaba's experience may shed some light on how future antitrust investigation may transpire moving forward.

Janet Hui, partner at JunHe, tells ALB that the Alibaba case provides clues on how to define dominant position and anti-competitive practices.

The case demonstrated that China's antitrust investigations will not only target foreign firms but also domestic players. Those who break the law will face administrative penalties, Hui says.

At the same time, the decision is of "high standard", as it mentioned the technical issues and included a comprehensive economic analysis. It also laid out specific details of the misconduct and defences, which made for great progress in transparency.

Lastly, "it acts as a precedent for business operators and clarifies some principles of law and how to comply with the law," Hui notes.

The administrative guidance could serve as a reference for other companies. Other online platform companies can conduct self-inspections on their antitrust compliance based on the administrative guidance and the Antitrust Guidelines for the Platform Economy and implement measures based on the inspection results.

Fay Zhou, an antitrust and foreign investment partner at Linklaters, says that the administrative guidance proposes to "increase access to data, applications and payment systems on the platform and promote cross-platform connectivity and operations." This provides offer guidance for the entire industry and has structural impact on the competitive landscape and business model of China's platform economy.

**SELF-INSPECTION**

The record fine on Alibaba sent a chilling message to other e-commerce giants and prompted them to conduct self-inspections to avoid being seen to be undertaking monopolistic practices such as exclusive dealing agreements,

big data discrimination or blocking links to other platforms.

Speaking of the significance of the Alibaba case to e-commerce platform operators, Hui says Internet firms need to reshape their business models, define which market they belong to, and inspect their technologies. If they have been involved in monopolistic behaviour, their business model and profitability could be significantly affected.

"However, it's an opportunity for smaller internet platforms," says Hui. Without practices such as exclusive dealing agreements, more vendors will



**"Internet firms need to reshape their business models, define which market they belong to, and inspect their technologies. If they have been involved in monopolistic behaviour, their business model and profitability could be significantly affected."**

— Janet Hui, JunHe



be able to join smaller platforms and make them more competitive. Hence, she says, ensure compliance with anti-trust legislation is urgently needed and will provide for a fairer competitive environment.

Linklaters' Zhou adds that the SAMR, the Cyberspace Administration of China and the State Taxation Administration recently ordered 34 companies to conduct self-inspections within one month in accordance with China's antitrust law and make public commitments to abide by the law. This suggests regulators intend to use the new rules and penalties to rectify the

industry and solve anti-competitive issues that have long existed in China's platform economy sector.

"With a new regulatory landscape and stronger regulation as the new normal, internet companies should adjust their mentality and strategy and treat antitrust compliance as the main focus of their operation management as well as risk prevention and control," says Zhou.

"Antitrust enforcement will become a norm and an important tool for regulating the industry and promoting market competition, as China's platform economy has entered a new stage of development. Moving forward, regulators will pay close attention to monopolistic practices such as 'choosing one from two', 'big data discrimination' and 'blocking links from other platforms', among others," she continues.

She advises companies, when conducting the rectification, should comprehensively assess antitrust risks in their business and establish or optimise antitrust compliance programs.

In 2020, the SAMR rolled out the Anti-Monopoly Compliance Guidance for Business Operators to urge companies to establish antitrust compliance programs. With regulation tightening up, such programs are expected to play a more important role in business operations.

Zhou suggests companies take the initiative to develop a compliance program that can

coordinate and deal with investigators to make sure they cooperate and fulfil their legal obligations. Such programs also help avoid risks of procedural violations and more effectively put forward claims and defences during investigations.

Meanwhile, Zhou also says that it is usually complicated to analyse antitrust issues in the Internet sector, and some of the competition laws are still controversial. Although different countries understand and implement regulations differently, the general consensus is to strengthen regulations, including in countries like the U.S. She suggests large platform

operators should keep an eye on the latest developments and adjust their business strategy to match regulatory requirements.

When companies develop and optimise an antitrust compliance program, lawyers can be a great help.

Since regulators issued the antitrust guidelines on the country's platform economy, Hui says JunHe has received queries from many clients to conduct internal audits and seek legal advice on compliance.

Meanwhile, Zhou believes lawyers can help companies protect their procedural rights, understand the legal and factual issues in an investigation, and make claims and defences during antitrust investigations.

"An antitrust investigation involves a lot of complicated factual and legal issues. Effective defence, just cause defence, as well as leniency, exemptions, and suspension of investigation are all allowed by the law. Lawyers should take up a case as soon as possible to help companies minimise their losses and risks and provide effective support to strive for the best outcome for their clients," she adds.

## TARGETING M&A

Other antitrust investigations and enforcement actions are likely to come in the wake of the record-breaking Alibaba fine.

In late April, state antitrust regulators were reportedly planning to fine Tencent at least 10 billion yuan for not properly reporting past acquisitions and investments for antitrust reviews. The SMAR has also initiated an investigation into Meituan for implementing an "exclusive dealing agreement."

And it is not only tech giants that could take a hit. At the local level, the Shanghai Municipal Administration for Market Regulation ruled that English-language food delivery app Sherpa's had abused its market dominance and slapped a 1.16 million yuan fine on the Shanghai-based company.

As regulators have revised China's antitrust law and implemented measures to strengthen antitrust

enforcement, Vivian Cao, partner at Zhao Sheng Law Firm, tells ALB that law enforcement agencies will be more proactive and expects more antitrust enforcement in many sectors.

Looking ahead, state regulators are expected to focus more on launching antitrust investigations in merger and acquisition (M&A) deals and optimising antitrust litigation.

Cao says monopolistic practices in the platform economy sector are not limited to abusing market dominance, but also implementing merger control and monopoly agreements. She explains that the earliest antitrust

**"An antitrust investigation involves a lot of complicated factual and legal issues. Lawyers should take up a case as soon as possible to help companies minimise their losses and risks and provide effective support to strive for the best outcome for their clients."**

— Fay Zhou, Linklaters

enforcement measures taken against the platform economy players were imposing penalties for not properly reporting M&A deals in the Internet industry. Regulators are still investigating deals that have not been properly reported, and the SAMR is looking into the latest investment and M&A transactions in the Internet industry.

"We expect the review of concentrations of business operators will play a key role in containing the disorderly expansion of the capital and preventing high market concentration or structural risks," says Cao. "For M&A deals that see anti-competitive issues, regulators


might impose additional restrictive conditions or even ban the transaction. The antitrust review of M&A deals in China may be able to address issues that are of general concern in other countries, such as data collection and misuse, platform bundling, and self-preferencing."

As the antitrust law has been further refined, Cao points out that it will be more likely to take in more illegal concentrations of business operators. For investment and M&A deals in various industries, the review of concentrations of business operators will have a more prominent impact on the transaction schedule and even the feasibility of deals.

Meanwhile, JunHe's Hui expects to see more antitrust litigation as consumers and stakeholders come to realise that the antitrust law protects their interests.

Cao from Zhao Sheng notes that in recent years, the Supreme People's Court has improved the procedures and systems of antitrust litigation through measures such as setting up intellectual property courts and adopting a leapfrog appeal system. "The Supreme People's Court might roll out new judicial interpretation of the antitrust law in order to provide institutional protection to reduce the burden and difficulty to present evidence for the plaintiff," she says.

She emphasizes that antitrust and unfair competition litigations have become a major task for the Supreme Court's work this year and beyond. Cases such as JD.com suing Tmall for implementing an exclusive dealing agreement and Douyin suing Tencent for abusing its market dominance that are already in judicial proceedings are expected to have a great impact on the industry.

"Deepening antitrust enforcement in the platform economy sector will encourage business operators whose interests have been harmed by monopolistic practices to protect their rights through civil litigation," she says. "This will prompt the court to further clarify the interpretation and application of the antitrust law." 



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# WORKPLACE MENTAL HEALTH: A PRIORITY FOR LEGAL LEADERS

BY JEFFERY TAN

Even before COVID-19, workplaces have been changing rapidly. Organisations have increasingly been required to deal with mental health challenges such as stress, burnout, and executive loneliness. With the economic pressures and accompanying health and safety issues of COVID-19, leaders are increasingly required to think about mental health strategically as it affects the core of the organisation's talent resource over the mid and long term.

There is an urgent need for senior management to take note and lead on mental wellbeing within their organisations. In the same way that corporations view physical health and safety of their employees as a top priority, a similar approach is needed for building long-term mental wellbeing programmes within their companies.

The pandemic has resulted in many now working from their home, thus blurring the line between the workplace and the home - which has hitherto been a source of rest and respite from the pressures and stress of the workplace. This has resulted in a situation where "bringing work home" has introduced a new level of continuing stress on a 24/7 basis.

The impact of stress and burnout is real. In 2020 the World Health Organisation incorporated stress and burnout in its disease classification system, recognising that a chronic syndrome can result from chronic stress unless it is successfully managed. Signs and symptoms of this include energy depletion, exhaustion, negative feelings towards others and an overall reduction in work productivity. Working from home (away from colleagues and the work

community) has also introduced the dimension of loneliness and isolation.

## ADDRESSING MENTAL HEALTH

Given that significant portion of our lives are focused on work, workplace leaders have an obligation (and an opportunity) to address the mental health and wellbeing of their employees. Steps that can be taken include the following:

- **Have an advocate for mental wellbeing at the highest level within a corporation.** Unless there is senior leadership oversight and accountability for mental health and wellbeing, this area will not receive the needed level of focus and attention. Without those at the top setting the tone and being seen to lead in this area, mental health can quickly slip down a corporation's agenda into lessened importance.
- **Awareness and training.** Unless the core of managers in an organisation are made aware of mental health issues and how to respond and refer team members to get the requisite help and support; this will continue to be a challenge for organisations. Making available mental health first aid courses for managers and peers across an organisation gives employees a range of people to turn to, raise awareness of and reduce the stigma around mental health. This is similar to the presence of medical first aid boxes and defibrillator machines in office premises, standing ready for employees that may need to use them for physical health issues in the workplace.

- **Communication.** Making mental wellbeing part of line manager meetings and delivering outreach calls for those experiencing stress, anxieties and other mental health issues related to COVID-19, allows for developing issues to be identified early, when intervention can be at its most effective. Clear communication by leaders to create a safe environment for employees to raise mental health issues and that this will be met with support, and not stigma, is important.
- **Prioritizing social connection and group care.** Professor Jeffrey Pfeffer of Stanford University, an organisational behaviour expert, writes in the McKinsey Quarterly: "Almost anything that brings people into contact in a pleasant and meaningful context – from holidays to community service to events that celebrate employee tenure or shared successes such as product launches – helps build a sense of common identity and strengthens social bonds."

There is no "magic bullet" for workplace mental health, as a large part of mental well-being comes down to creating more human-centred work cultures that put employees first. A human-centred culture emphasizes the connections among employees and the purpose behind their work, especially in these COVID-19 times. As biblical wisdom goes, we are, after all, "our brothers' (and sisters') keeper."

*Jeffery Tan is the Group General Counsel; Director, Group Corporate Affairs; Chief Sustainability Officer; and Group Company Secretary of Jardine Cycle & Carriage Ltd. He has more than three decades of private practice and in-house experience, in both legal and business roles, with UTAC Holdings, Allen & Gledhill, DLA Piper, Siemens, Motorola and more.*



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- **Examining the Proposed Companies (Corporate Rescue) Bill** to be Introduced in Hong Kong
- **Understanding Revisions to the Corporate Governance Code and Listing Rules**
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