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亚洲法律杂志 - 中国版 **CHINA**

ALB | APRIL 2020
CHINA EDITION

CHINA'S BEST LAW FIRM EMPLOYERS
2020年度雇主榜单同时揭晓

ARBITRATION TRENDS ALONG BELT & ROAD
“一带一路”沿线仲裁新趋势

CYBERSECURITY IN A REMOTE WORLD
“远程”世界中的网络安全

2020 ALB CHINA

TOP 15 TMT LAWYERS

2020 ALB CHINA 十五佳TMT律师

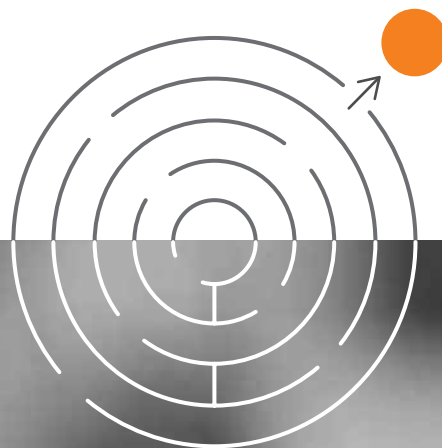
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Mirko Kuzmanovic/Shutterstock.com

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This year's list includes 15 accomplished lawyers from leading firms across China who have excelled in their commitment to clients in the sectors of technology, media and telecoms. 今年的榜单中囊括了15位成绩卓越的律师，他们来自中国多家顶级律所，并在科技、媒体及电信行业严守了对于客户的承诺。

Ranking by ALB,
text by Kristen Liu

With contributions from:

- Hylands Law Firm 浩天信和律师事务所
- Jingtian & Gongcheng 竞天公诚律师事务所

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As the global coronavirus outbreak causes employees everywhere to start working remotely, the risk of cybersecurity breaches is heightened. Lawyers in Asia discuss the steps they are taking to keep their clients secure – and themselves as well. 由于全球新冠疫情蔓延，越来越多员工开始了远程办公，随之而来的网络安全风险也日益加剧。执业于亚洲的律师们讨论了他们协助客户采取的安全措施，以及律所自身的应对办法。

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With Brexit now out of the way, Asian companies may

have to review their investment and trade strategies to adapt. 伴随着英国正式脱离欧盟，亚洲企业也应进一步审视自己在该地区的投资及贸易策略。

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ALB received nearly 3,500 responses from employees of different law firms. Law firms have been ranked based on responses to aspects like job satisfaction, remuneration, training and career development opportunities, knowledge management and IT technical support, work-life balance and more.

ALB评选出了2020年度中国大陆地区法律界最佳雇主。律师事务所员工从工作满意度、薪酬水平、工资结构和透明度、培训

机会、晋升、团队合作、工作生活平衡等方面，对所在律所做出了中肯评价。

With contributions from:

- Chang Tsi & Partners 铸成律师事务所
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As China continues to advance its Belt and Road Initiative, disputes are also growing, and arbitration is the preferred form of dispute resolution for companies. This is bringing growth opportunities for both arbitration lawyers and centres. 随着中国“一带一路”倡议不断推进，随之而来的争议纠纷也日渐增长。仲裁作为企业偏好的争议解决方式，为国际仲裁业带来发展机遇。ALB请来律

师和仲裁中心探讨这一新发展趋势。

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- Anli Partners 安理律师事务所
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- Grandway Law Offices 国枫律师事务所



FROM THE EDITOR

China's era of technology is here. Move over Silicon Valley, the foremost technology hub in the world is now in China. In 2017, the Zhongguancun area, located in Beijing's Haidian District, unseated Silicon Valley in California to become the top destination for the brightest tech talents around the world, and underscored how China is becoming a global leader in the tech scene. This is not by accident. In 2016, Chinese president Xi Jinping outlined his global vision for China and laid out his goals for the upcoming years. According to him, China should be a top ranked innovative nation with pioneering global influence by 2020-2035. And as the country continues to prioritise quality of growth over speed in its economic development, it is clearly on track to become an innovation powerhouse.

According to a list from PE firm Kleiner Perkins Caufield & Byers, China is now home to nine of the world's top 20 tech giants, among them some well-known internationally, like Alibaba, Tencent, Baidu and Xiaomi, and some little-known outside their home country, like Meituan-Dianping and Toutiao. This proliferation of tech companies has also increased the demand for technology lawyers, who need to be versatile, knowledgeable, and at the same time risk-takers to meet their client's needs. This month's list picks 15 of the best practitioners, who are, through their work, helping to change the face of China before the world.

中国的科技时代已经到来。目前，全球最大科技城市已从硅谷转移至中国。2017年，位于北京海淀区的中关村取代了硅谷成为全球最大的科技中心，同时也吸引着全球最有才华的新技术人才不断涌入，这些无不展示中国科技行业发展之快、国际竞争之强。一切的发生绝非偶然。2016年，中国国家主席习近平提出了中国发展的全球愿景，并提出了未来几年的目标。到2020年至2035年，中国将成为世界上最具创新力的国家，具备较强的自主创新能力和全球领先地位。随着中国从追求“高速度”的经济增长转向追求“高质量”的经济增长，中国正步入成为创新强国的既定轨道。

据美国风险投资公司凯鹏华盈一份名单显示，全球20大科技公司中，有9家来自中国，其中包括阿里巴巴、腾讯、百度、小米等国际知名企业，也包括美团点评、今日头条等一些在国外知名度相对不那么高的企业。这些科技巨头的崛起，催生了对科技律师的巨大需求，并要求他们是专业领域的多面手、知识面渊博、同时对风险把控到位、确保最大化实现客户诉求。本月十五佳TMT律师榜单评选出15位行业领先律师，正是他们经手的每个交易和项目在合力塑造着今日的技术强国中国。

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

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The 17th Annual SSQ | ALB

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LAW AWARDS 2020

As the nomination is closed on February 28, the judging work of the 17th Annual SSQ ALB China Law Awards 2020 will commence soon. Winners will be announced at the ceremony held in Beijing.

第十七届 SSQ ALB 中国法律大奖提名已于 2 月 28 日结束, 初选及终选即将陆续开展。奖项最终花落谁家, 答案将在北京举办的颁奖典礼上揭晓。

Recognizing your organization's accomplishments over the past year, ALB would like to invite you to join the SSQ ALB China Law Awards 2020 ceremony. The event will bring together legal and business elites across China. Joining the awarding ceremony are ideal opportunities for law firms and in-house teams not only to establish competitive networks, but also to showcase their expertise and leading position in the legal community.

SSQ 二零二零年 ALB 中国法律大奖旨在肯定和宣传 2019 年在法律界取得巨大成就的法务团队、律所及个人, 致力于鼓励更多的法律团队及从业者在自己的领域做出杰出贡献。颁奖典礼将聚集法律界的大咖与新星, 为您的人脉扩展起到积极作用。与此同时, 参加颁奖典礼也可以向整个法律界展示您及团队的专业水平和风采。

Join the grandest legal celebration in China, and celebrate with the legal and business communities!
我们期待与您同赴盛典, 共享荣耀时刻!

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A NEW ERA OF FOREIGN INVESTMENT

外商投资新纪元

On January 1, 2020, the new Foreign Investment Law (FIL) of the People's Republic of China and its Implementing Regulations came into force, formally replacing the so called "Three Foreign Investment Laws" which has a history of nearly 40 years in China, marking the arrival of a new era of foreign investment. Compared with the old system, the new law has brought changes and breakthroughs to many fields of foreign investment, but it also leaves a blank in the legislation on some tough issues. This is bound to have an impact on law firms.

2020年1月1日，新《中华人民共和国外商投资法》及其《实施条例》生效，正式取代了在中国拥有近40年历史的“外资三法”，也标志着中国外商投资新纪元的到来。和旧有法律体系相比，新法在外商投资诸多领域实现了改变和突破，但也在某些焦点问题上予以立法留白。这都势必对律所的业务产生影响。

BY HU YANGXIAOXIAO 作者：胡阳潇潇

The legislative history of foreign investment in China can be traced back to 40 years ago: in 1979, the Law on Sino-Foreign Equity Joint Ventures was implemented, and in the following years, the Law on Foreign-funded Enterprises and the Law on Sino-foreign Cooperative Enterprises were promulgated respectively. Altogether, they constitute the "Three Foreign Investment Laws" and regulate a number of matters concerning the entry of foreign investment into China in the past decades.

Speaking of the previous foreign investment laws, Jerry Liu, Global Law Office's partner of the Shanghai office and a lawyer with more than a decade of experience in foreign direct investment practice, tells *ALB* that the "formulation of these three laws was closely related to China's reform and opening up in the late 1970s and early 1980s. Take the Law on Sino-Foreign Joint Ventures as an example, when this law and its Implementing Regulations came

into effect, China did not even have a complete Company Law. Our legislative principle at that time was to first practice, then promulgate and set up a law."

Liu continues: "This means that the laws were very quickly drafted, and they were not very specific. In the subsequent implementation process, we had to patch them up as we go. There were not a lot of provisions in the foreign investment laws, but the whole legal system covered many departmental rules and judicial interpretation, many even in the form of notices. This has led to a certain degree of confusion in foreign investment administration in China over the past 30 years. Foreign investment administration also involved many different regulatory departments: including industry and commerce, commission of commerce, foreign administration, taxation, customs, finance and so on."

Vivian Desmonts, partner and head of Gowling WLG's Guangzhou office, points to another issue of the old laws:

中国针对外商投资的立法史可以追溯到40年前：1979年，《中外合资经营企业法》实施，之后几年内《外资企业法》和《中外合作经营企业法》相继颁布，它们共同构成了“外资三法”体系，在过去几十年中规制着外资进入中国的若干事宜。

谈到老“外资三法”，环球律师事务所上海办公室合伙人、拥有十几年外商直接投资执业经验的刘展律师告诉ALB：“这三部法律的制定和中国70年代末、80年代初的改革开放紧密相关。以《中外合资经营企业法》为例，当这部法条和它的《实施条例》生效时，中国甚至还没有一部完整的《公司法》。我们当时的立法原则是先践行出一部，就颁布设立一部。”

刘律师接着说：“这意味着当时法律制定过程比较仓促，法条也较为宽泛。在后来的执行过程中不得不以打补丁的方式调整。‘外资三法’的法条数量并不多，但其整个法律体系涵盖了诸多部门规章、司法解释，很多甚至是以相关监管部门通知、内部规程的形式发布的。这就导致了在过去30

“Although the relevant laws have been regularly amended, Sino-Foreign Joint-Ventures in China have been governed since 1979 by specific rules, which became archaic on many matters such as corporate governance, deadlocks between shareholders, excessively powerful for chairmen of board of directors (i.e. the JV’s legal representative), administrative hurdles not applicable to Chinese domestic companies, etc.”

LEVELING PLAYFIELD

Under such circumstances and after many rounds of discussion and revision, the new FIL and the Implementation Regulations were finalised. The new law grants quasi-national treatment to foreign investors, implements negative list management in the field of investment, and stipulates rules in technology transfer, investment agreements, information reports, intellectual property rights and other issues.

According to Liu, the new law “plays more of a declarative role, demonstrating China’s attitude towards granting national treatment and corresponding protection to foreign investors”.

He interprets the formulation and the role of the new law from two aspects.

“The unification of the former three foreign investment laws has restructured the previous administration mode, and it can be said that one of the main purposes of the new law is to update the old system. We can see that the number of provisions of the new FIL is not large, and it only gives the general direction on many issues. The Company Law can be directly applied in the future to specific issues in company management, operation and so on. Another background of the new law is to better welcome the arrival of a new era of foreign investment.”

“After 2018, the momentum of foreign investment in China has weakened. The development of China’s economy depends on the three ‘carriages:’ foreign direct investment, exports and the domestic market. If the first carriage slows down, it will have an impact on the overall economic development. The promulgation of the new law is also to a certain extent a response to this situation.”

“It was high time the FIL be adopted and national treatment be finally granted to Foreign Invested Enterprises in China. This is one of the most important legal reforms of the legal framework for foreign investors especially those operating under joint ventures,” says Desmonts, summing up the changes brought about by the new law. “Although a few business sectors remain restricted to foreign investors (as listed in the negative list), the Implementing Regulations of the FIL published in late December 2019 confirm FIEs shall benefit from equal treatment with domestic companies in respect of government subsidies, government procurement, intellectual property protection, land supply, tax cuts, qualification licensing, development and application of national standards, HR policies, etc.”

SHIFTING BUSINESSES

Although considered more as a framework statement, there are still some breakthrough provisions in the new law in different areas of foreign investment. And these changes are bound to have an impact on the relevant services law firms provide.

“The FIL brings many major changes,” Desmonts tells *ALB*. “For example, it now finally allows Chinese individuals to directly become shareholders of existing FIEs. This opens a wealth of new opportunities, especially for employee share ownership of stock purchase plans.”

Liu thinks that there are three main areas where the new FIL would affect the business of law firms.

“The first is the prohibition of forcing foreign investors or foreign-invested enterprises to transfer technology. At the beginning of 2019, the State Council actually removed this article by amending the administrative regulations, but this time it was escalated in terms of legislation to show potential investors what China’s attitude on the forced transfer of technology is. Many multinational companies, especially high-tech companies, are worried about this when they enter China, and we hope to see foreign investors enter the Chinese market more freely in the future,” he says.

多年中中国外资管理一定程度上的混乱。外资管理还涉及不同监管部门：包括工商、商委、外管、税务、海关、财政等”

高林睿阁律师事务所合伙人、广州办公室首席代表戴伟宏律师则指出了旧有法律体系的另一个问题：“虽然相关法律法规总处于不断修订之中，但随着时代发展，很多条款都出现了适用问题，比如公司治理、公司僵局、董事会主席权力过大（比如合资企业的法人代表）、特殊的政策性障碍等等。”

平等竞技

新法正是在这样的背景下产生的。在经历了诸轮讨论与修订后，新《外商投资法》及《实施条例》终于尘埃落定。新法赋予外国投资者准入前国民待遇，对于投资领域实行“负面清单”管理，并对技术转让、投资协议、信息报告、知识产权等问题进行了明确规定。

在刘展律师看来，新法“更多起到了一种宣告性作用，体现了中国对外资给予国民待遇和相应保护的态度”。

他从两个方面对新法的产生及其作用进行了解读。“三法合一实际上对之前的‘外资三法’管理模式进行了梳理，可以说规整旧有体系是新法的主要目的之一。可以看到新《外商投资法》的法条数量并不多，在很多问题上只给出了大方向。具体到公司管理、运营等问题，未来则可以直接适用《公司法》。（新法的另一个背景）是为了更好迎接外商投资新纪元的到来。2018年之后，外商投资对中国的投入势头有所减弱。中国经济的发展依靠三驾马车：外商直接投资、外贸和内需。如果第一驾马车速度减慢，对整体经济发展会有影响。新法的颁布一定程度上也是在应对这一情况。”

戴伟宏律师则如此归纳新法带来的变化：“随着新《外商投资法》的生效，外国投资企业现在开始在中国被赋予了准国民待遇。对于外国投资者，尤其是中外合资企业的投资者来说，这相当于整个法律框架的彻底变革。虽然对于外国投资者而言，少数领域仍处于严控之下（如负面清单所示），但新法《实施条例》确认了他们将在政府补贴、政府采购、知识产权保护、土地供给、税收减免、资格证书、适用国家标准、人力管理政策等方面与国内企业一视同仁。”

“The unification of the former three foreign investment laws has restructured the previous administration mode, and it can be said that one of the main purposes of the new law is to update the old system. We can see that the number of provisions of the new Foreign Investment Law is not large, and it only gives the general direction on many issues. The Company Law can be directly applied in the future to specific issues in company management, operation and so on. Another background of the new law is to better welcome the arrival of a new era of foreign investment.”

“三法合一实际上对之前的‘外资三法’管理模式进行了梳理，可以说规整旧有体系是新法的主要目的之一。可以看到新《外商投资法》的法条数量并不多，在很多问题上只给出了大方向。具体到公司管理、运营等问题，未来则可以直接适用《公司法》。（新法的另一个背景）是为了更好迎接外商投资新纪元的到来。”

— Jerry Liu, Global Law Office 刘展，环球律师事务所

“The second one is the regulation of investment agreement. As an experienced foreign affair lawyer, I have accompanied many clients to sign investment agreements with industrial parks or local governments, in which some preferential policies have been stipulated, but the validity of such agreements has always been a problem,” says Liu. “The new law directly recognises the validity of investment agreements through designated provisions; declares that these agreements, including the terms on the implementation of the promises made to the foreign, should be fulfilled to protect the interests of the investors. This part is very practical. In the past, our clients have even litigated and arbitrated in accordance with the investment agreement, but all of them were settled. In the future, such cases would have a stronger legal basis.”

The third aspect is the increase in business from existing FIEs brought about by the new FIL. “The existing foreign-funded enterprises, mainly Sino-foreign joint ventures, need to amend and adjust their corporate governance model, which is not a simple issue of industrial and commercial exchanges as it involves a new round of negotiation

between foreign investors and their domestic partners in joint ventures. This include the renegotiation of shareholder agreements, the interests of minority shareholders, protective clauses and so on, which will produce a considerable amount of additional business.”

GREY ZONES

How will the new law affect the behaviour of foreign investors? Both Liu and Desmonts tell ALB that their firms have been advising clients on the draft versions of the law since they were published a few years ago. “Many of our foreign clients are concerned about how the FIL will ensure they actually get equal treatment in practice when investing in China, especially in terms of IP protection, prohibition of forced technology transfers, equal rights with Chinese partners and level playing field against Chinese competitors,” says Desmonts.

Liu points out that the legitimacy of natural person shareholder status and the legitimacy of the VIE structure are top concerns of the clients, the former has been clearly clarified in the new law - natural persons of Chinese nationality can become shareholders of foreign-funded enterprises, while the latter is

业务变化

尽管被视为某种框架性宣言，新法在外商投资的某些领域仍旧实现了突破性规定，而这些变化势必会对律所的相关服务产生影响。

“新法带来了很多重大改变。”戴伟宏律师告诉ALB，“举例来说，现在中国籍自然人终于可以成为既有外企的股东了。仅这一点就为律所提供了大量新机会，尤其对于推进员工持股计划来说。”

刘展律师则将新法带来的业务影响总结为三点。“第一是新法关于禁止强迫外国投资者或外商投资企业转让技术的规定。2019年初国务院其实已经通过修订行政法规把这条移除了，这次把它上升到法律层面，实际上是向更多潜在投资者昭示中国对强制转让技术的态度。很多跨国公司，特别是高科技公司进入中国时都很担心这点，未来我们希望看到外资客户更无顾虑地进入中国市场。”

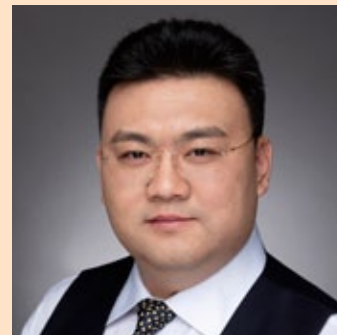
“另一个是针对投资协议的规定。作为一名老外资律师，我陪同很多客户和工业园区或当地政府签订过投资协议，其中约定了某些优惠政策，但这类协议一直存在有效性问题。新法通过专门条文直接承认了投资协议的有效性，宣告了应该履行协议、包括践行投资协议中向外国投资者许诺的政策，保护投资者利益。这一块的实践性非常强。我们过去代理的客户甚至按照投资协议去诉讼、仲裁过，但大都是通过和解解决的。未来这类案子的法律依据会更强。”他说。

刘律师提到的第三点是新法带来的存量业务。“现有的外资企业——主要是中外合资企业，它们的公司治理模式要进行一定的修正和调整，这不是单纯的工商变更问题，而涉及合资企业中外商投资者和内资合作者展开新一轮博弈，其中包括股东协议的重新谈判、小股东利益、保护性条款等问题。这会产生相当规模的存量业务。”

尚存模糊地带

新法的颁布会对未来外国投资者的行动产生哪些影响？刘律师和戴律师都告诉ALB，他们所在的律所自《外商投资法》草案阶段就开始为客户提供咨询。谈到客户疑问比较集中的地方，戴伟宏律师坦言：“我们的很多外国客户担心，在新法之下，他们在中国投资过程中是否真的获得平等待遇，尤其是在知识产权保护、禁

刑民交叉视野下 《中美经济贸易协议》 对中国商业秘密保护的影响



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随着长达22个月、多达13轮的中美贸易战以《中美经济贸易协议》告一段落，协议对我国保护商业秘密提出了更高的要求，本文旨在对我国今后的商业秘密保护，从立法与司法的层面做一展望。

一、中国涉及商业秘密保护案件的司法现状

随着市场经济的深化，商业秘密的法律保护愈显重要，但我国目前关于商业秘密保护相关的法律法规十分分散，且重视程度和对侵犯商业秘密的惩罚程度较弱。据统计，近五年在中国发生的侵犯商业秘密案件共计1858件，其中民事案件1521件，占比78.28%；刑事案件194件，占比9.98%。上述数据可以从侧面反映出我国商业秘密保护的“报案难”，即当事人不得不更多地选择民事救济途径。

二、《中美经济贸易协议》对中国关于商业秘密保护现状的影响

基于美国对知识产权的重视，《中美经济贸易协议》对知识产权进行了大幅度的约定，如果这些条款得以落实，将对我国商业秘密保护立法层面产生深远影响，主要体现在以下几个方面：

1、降低启动刑事执法门槛

《中美经济贸易协议》第1.7条可能是对中国现有关于商业秘密保护法律规定影响最大的条款之一。该条约定，“双方应取消任何将商业秘密权利人确定发生实际损失作为启动侵犯商业秘密刑事调查前提的要求”，同时我国应先后采取过渡措施和后续措施来实质性满足前述要求——即“降低启动刑事执法门槛”。

我国《刑法》第二百一十九条第一款规定了侵犯商业秘密罪的构成要件：行为人实施了特定侵犯商业秘密行为、该行为给商业秘密的权利人“造成重大损失”。上述条款清晰表明，该罪在我国属于“结果犯”，但在司法实践中，如何证明遭受了重大损失以及损失和侵犯商业秘密的行为是否具有因果关系，对于被侵害方实际上很难举证，这也是为何中国侵犯商业秘密的刑事案件数量很少的原因。

而《中美经济贸易协议》第1.7条迈出了一大步，为了满足该要求，我国立法和司法机关需要对现有立法作出修改，比如会颁布司法文件，降低侵犯商业秘密罪的立案要求，不要求报案人在报案阶段证明因侵犯商业秘密遭受了重大损失。此种举措，一方面是为了满足《中美经济贸易协议》的要求；另一方面，通过降低刑事立案门槛达到了加强商业秘密保护的目，这也是对我国立法建设的积极促进。

2、禁止政府披露商业秘密

《中美经济贸易协议》第1.9条约定：为进一步加强商业秘密的保护，更好地鼓励各类企业创新，中国应禁止政府工作人员或第三方专家或顾问，未经授权披露在中央或地方政府层面刑事、民事、行政或监管程序中提交的未披露信息、商业秘密或保密商务信息。

为满足该条款要求，中国立法机关需要对中国政府及有关机构在接触商业秘密的执法过程中需要尽到的保密义务作出详细规定，如调查商业信息必要的范围；调查人员的资质；已调查信息保护制度等。对此，中国目前关于商业秘密保护的刑法、民法、行政法等层面的相关法律法规均需作出相应调整。

3、行政程序与刑事程序衔接制度的建立

《中美经济贸易协议》第1.26条约定，如依据客观标准，存在基于清晰事实的对于知识产权刑事违法行为的“合理嫌疑”，中国应要求行政部门将案件移交刑事执法。

我国目前法律规定中也有关于行政案件移送公安机关处理的规定，但在实践操作中由于没有具体的移送交接制度，导致“移送难”的问题。该条款的约定，将促使我国在商业秘密领域乃至其他领域中行政程序与刑事程序衔接制度的建立。

三、中国下一阶段关于商业秘密的立法规划

在最高人民法院办公厅于2020年3月19日发布的《最高人民法院2020年度司法解释立项计划》中，涉及商业秘密保护的立法规划有：《关于审理侵犯商业秘密纠纷案件适用法律若干问题的解释》

和《关于知识产权民事诉讼证据的若干规定》。

其中，《关于审理侵犯商业秘密纠纷案件适用法律若干问题的解释》解决商业秘密保护的实体性问题，而《关于知识产权民事诉讼证据的若干规定》解决关于知识产权民事诉讼的程序性问题。

笔者认为，这两部司法解释的颁布会依据《中美经济贸易协议》的条款对现有的规定作出修改或补充，且为了配合《中美经济贸易协议》的履行，后续还会出台一系列关于知识产权保护的司法性文件。

综上，我国对于商业秘密保护从立法、司法层面将大幅改善是可期的，同时也对我们律师在作业中更好地维护客户的合法利益提出了更高的要求。

“With the new Foreign Investment Law coming into force, foreign investment firms begin to receive quasi-national treatment in China. For foreign investors, especially those in Sino-foreign joint ventures, this amounts to a complete change in the entire legal framework.”

“随着新《外商投资法》的生效，外国投资企业现在开始在中国被赋予了准国民待遇。对于外国投资者，尤其是中外合资企业的投资者来说，这相当于整个法律框架的彻底变革。”

— Vivian Desmots, Gowling WLG 戴伟宏，高林睿阁律师事务所

still up in the air. Liu says: “The draft Foreign Investment Law promulgated by the Ministry of Commerce in 2015 tried to clarify this issue, but the new law and its Implementation Regulations ultimately did not provide a straight answer. It is indeed sensitive, not only to existing listed companies, but also to private equity and venture capital funds, which play an important role in China’s economic development. The development of Chinese enterprises, especially the ones involved in high and new technologies, needs these external funds. This may not be a problem that legislators can solve at a certain stage, and its shelving also reflects the wisdom of legislation.”

The blanks in the new FIL is bound to challenge law firms, but Liu also says: “Most of the clients with a VIE structure are mature companies, and their understanding of the Chinese market is gradually deepening, which in many cases will not constitute an obstacle for them to continue to be optimistic and enter the Chinese market.”

INCREASING BUSINESS

“The implementation of the FIL as from January 2020 will certainly increase the business volume of our law firm as we anticipate not only many renegotiations of JV contracts in the next five years of legal transition period, but also the development of new programs to allow Chinese individuals or employees to participate in FIEs’ shareholding,” Desmots says of the potential increase in business brought by the new law.

Liu says that as an established law firm serving in the cross-border business field, Global Law Office has a large portion of business in both the outward and inward investment in China. Therefore, “even though there are fewer provisions in the new law and they are quite broad, it still provides a general direction to us and our clients. We are very optimistic about the promulgation and implementation of the new law,” he says.

As for the impact of the new FIL on the business of law firms in 2020, taking into account the COVID-19 pandemic, Liu believes that “the development of the pandemic will certainly have a greater impact on cross-border capital and personnel flow while having some impact on the business of law firms as well. But in general, we are cautiously optimistic that the necessary projects will proceed after the pandemic is over.”

He goes on to say that “the pandemic is a reshuffle of existing businesses, including those online. To a certain extent, it will reshape the landscape of foreign investment. The pandemic will first promote the financing of life science and health care projects, especially the R&D and manufacturing of vaccines; online business will also further increase, which includes not only online shopping but also the services that provide technical support for online shopping, such as artificial intelligence, industrial Internet, consumer Internet and so on.”

止强制转让技术、与中国合作伙伴同权以及和中国竞争者公平竞技方面。”

刘展律师则指出，自然人股东身份和VIE结构合法性问题最受客户关注，前者在新法中已经获得了明确解答，即中国籍自然人可以成为外资企业股东，后者则依旧悬而未决。刘律师说：“2015年商务部颁布的《外国投资法》草案中试图对这个问题进行明确，但新法和其《实施条例》最终没有正面回答。它确实比较敏感，不单涉及到现有的上市公司，也涵盖了对中国经济发展起着重要作用的私募和风投基金。中国企业的发展，特别是高新技术的发展，都需要使用这些外部资金。这可能不是某一阶段立法者能解决的问题，对其的搁置也体现了立法智慧。”

立法留白必然会对律所业务产生挑战，但刘律师也说：“涉及VIE结构的客户大多非常成熟，对中国市场的了解也在逐步加深，很多时候这并不会构成他们持续看好并进入中国市场的障碍。”

业务增量

谈到新法给律所带来的未来业务增量，戴伟宏律师告诉ALB：“我们预计在新法规定的五年过渡期内，首先会出现合资企业合同的再商议，其次也会涌现很多新项目，因为现在中国公民或员工也可以持有合资企业股份了。”

刘展律师则说，环球律师事务所作为一家服务于跨境业务的老牌律所，无论中资出海还是外资入境，业务占比量都不小。因此，“新法虽然条文较少，规制较宽泛，但让我们和客户看到了大方向。对于其颁布和实施我们是非常看好的”。

具体到新法对2020年律所业务的影响，考虑到至今悬而未决的新冠疫情，刘律师认为“疫情的发展肯定会对跨境资本、人员流动产生较大冲击，对律所业务也有一定影响。但总体来讲我们持谨慎乐观的态度，疫情结束后该做的项目还会做。”

他接着说：“这次疫情实际上是对既有业务——包括线上线业务的重新洗牌，会一定程度上重塑外商投资的项目领域。疫情首先会推动生命健康领域的很多投融资项目，特别是疫苗研发、生产等；其次是线上服务的进一步增加，不一定是线上购物，也包括为线上购物提供技术支持的服务，比如人工智能、工业互联网、消费互联网等。”

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Cornerstone Investments in Hong Kong IPOs



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Cornerstone investment is an important component of Hong Kong IPOs. Whether reliance on cornerstone investors is healthy for Hong Kong IPOs has been the subject of debate, but the importance and role of cornerstone investments in Hong Kong IPOs cannot be denied. A cornerstone investment allows an issuer in an IPO to allocate its shares on a guaranteed basis to large institutional investors or high-profile individuals, which sends a desirable signal to the market that the IPO is well supported, and hence minimizes the risk of inadequate subscriptions, which is particularly essential in times of a slow market. A cornerstone investment may also garner investment interests from potential investors and can add an element of prestige in an IPO, by boosting the subscriptions of the placing tranche.

Two recent examples are the IPO of Budweiser Brewing Company APAC Limited (1876.HK), the second largest IPO in Hong Kong in 2019 with IPO proceeds of around US\$5.7 billion, which received a single cornerstone investment of US\$1 billion that made up a significant portion of its offering; and the IPO of Shenwan Hongyuan Group (6806.HK), one of the China's leading securities firms, which had 13 cornerstone investors taking up over 70% of its offering and raised around US\$1.16 billion.

Common components in a cornerstone investment agreement

- **Signing parties** – Parties usually include the issuer, the cornerstone investor, the IPO sponsor(s), and/or a guarantor (if the investor is a special purpose vehicle);
- **Subscription size and price** – Cornerstone investors agree to take up a part of the offer shares at the IPO price;
- **Lock-up** – Cornerstone investors are subject to a lock-up period for a minimum of six months after the listing date;
- **No side benefits** – Cornerstone investors must confirm and undertake that there is no arrangement of any direct or indirect benefits by side letter or alike; and
- **Conditions** – The subscription is usually subject to conditions such as Hong Kong

Stock Exchange (“**Stock Exchange**”) listing approval and various conditions as set out under the relevant underwriting agreements.

Features of cornerstone investments in Hong Kong

Placings to cornerstone investors are generally permitted in a Hong Kong IPO, subject to a number of principles set out in the *Stock Exchange Guidance Letter HKEEx-GL51-13* that must be observed. For instance, the cornerstone placing must be placed at the IPO price, and each cornerstone investor shall not have any board representation in the issuer and shall be independent of the issuer, its connected persons and their respective associates.

Cornerstone investments invariably provide endorsement for the IPOs and improve credibility at launch. The regulators acknowledge that the cornerstone investors provide an impression of voluntary commitment to an IPO and gives the perception to potential investors that the issuer is a worthwhile investment. Unlike in the European market where cornerstone investments are generally subject to less scrutiny and allow flexibility in structuring terms, one of the most significant features of cornerstone investments in Hong Kong is that no direct or indirect benefits should be given to any particular cornerstone investor except for a guaranteed allocation of shares at the IPO price. In the event any such side arrangement exists, the investment carrying special rights or features not enjoyed by other investors at the IPO may be classified as a pre-IPO investment, and the listing timetable may be adversely delayed for a maximum of 120 days from the date of completion of such pre-IPO investment (*Stock Exchange's Guidance Letter HKEEx-GL43-12*).

Disclosure in prospectuses and duty of sponsors

Rule 2.13(2) of the Hong Kong Listing Rules requires all information in a prospectus to be accurate and complete in all material respects and not misleading or deceptive. The identity of the cornerstone investor and principal terms, including any commercial arrangements, in the cornerstone investment agreement should be disclosed in the prospectus and should not be false, untrue or

misleading. Additionally, Sections 40 and 40A of the Companies (Winding Up and Miscellaneous Provisions) Ordinance impose both civil and criminal liabilities on persons for the inclusion of any untrue statement (being a statement which is misleading in the form and context in which it is included or a material omission) in a prospectus. If the prospectus contains a material misstatement, it will also breach provisions under the Securities and Futures Ordinance (“**SFO**”). Sections 277 and 298 of the SFO prohibit the distribution of materially false or misleading information that is likely to induce another person to subscribe for or buy securities. In *SFC v Qunxing Paper Holdings Co Ltd (No 2) [2018] 1 HKLRD 1060*, the issuer published false or misleading information in its prospectus and annual reports, which contravened sections 277(1) and 298 of the SFO. The Securities and Futures Commission (“**SFC**”) sought orders to compensate approximately 27,000 public investors who had acquired shares. The issuer and its directors (who were also its ultimate shareholders) were held liable.

The non-disclosure of material terms of a cornerstone investment agreement in a prospectus may also result in civil and criminal liabilities to IPO sponsor, who has the duty to verify the accuracy and completeness of prospectus disclosure under their due diligence obligations (*paragraph 17.6(c) of the Code of Conduct for Persons Licensed by or Registered with the SFC*). In the IPO of Codebank Limited (now dissolved) in 2001, the failure to disclose a private side arrangement made between one of the underwriters, the lead manager and the issuer to vary payment arrangement was also considered to be misleading and the IPO sponsor was reprimanded by the SFC for failure to ensure all public information, including information provided to the regulators to be accurate and not misleading.

Commerce & Finance Hong Kong regularly advises issuers and sponsors to critically analyze any cornerstone investments in an IPO to ensure compliance with regulatory requirements, and are experienced in a wide range of legal matters, including corporate finance, listings for listing applicants and compliance for listed issuers.

PRC'S DHH, HK'S FRED KAN & CO., MACAO'S L&L IN ASSOCIATION

德和衡与港、澳律所结成三地联营

PRC's Beijing DHH Law Firm, Hong Kong law firm Fred Kan & Co. and Macao's L&L Law Firm have entered into a formal association in Shenzhen Qianhai Free Trade Area, the first joint association of firms from three jurisdictions within the Greater Bay Area.

The association, which is called DHH Kan & LL Law Firm, will focus on providing cross-border legal services in areas of finance and investment, capital markets, commercial and dispute resolution. By advising on PRC law, Hong Kong law and Macao law, it aims to provide legal solutions under the conflict of laws and to better assist the flow of people, money and information within the area.

Founded in 1981, Fred Kan & Co. now has nineteen lawyers, advising on areas of commercial, corporate and corporate finance, China and foreign direct investment, urban planning and environmental protection, litigation, arbitration and mediation, intellectual property, employment and construction.

L&L Law Firm was founded in 2008, with numerous lawyers advising on commercial, criminal, administrative procedure, gambling law, M&A and labor litigation procedure.

The association will be led by Tang Zhifeng, with Fred Kan and Leong Wengpun acting as director of managing committee and vice director, respectively. ^{ALB}

北京德和衡律师事务所近日与香港简家骢律师行、澳门梁永本李金月律师事务所在深圳前海自贸区共同设立德和衡简家骢永本金月(前海)联营律师事务所,这是深圳首家粤港澳三地联营律师事务所。

根据德和衡的一份新闻稿,三地联营所专注于为客户提供跨境法律服务,主要业务领域为跨境投融资及资本市场、跨境民商事、跨境争议解决。三地联营所将同时为客户提供中国法、香港、澳门及外国法服务,解决大湾区“三税区、三法域、三货币”背景下人员、物资、资金和信息互融互通所产生的法律冲突问题,为跨境商业交易、企业投融资、科技创新等提供一站式法律方案。

香港简家骢律师行设立于1981年,目前拥有19位执业律师,主要业务领域为商事、公司及公司金融、中国及海外直接投资、城市规划和环境保护、争议解决、知识产权、雇佣法及建设。

澳门梁永本李金月律师事务所设立于2008年,拥有多位执业于民商事、刑事、行政程序、博彩法、并购、劳动诉讼程序等领域的律师。

三地联营所执行主任为唐志峰律师,简家骢律师任管委会主席,梁永本律师任副主任。 ^{ALB}

FORMER RED CIRCLE FIRM LAWYERS LEAVE TO SET UP BOUTIQUE FIRM TIGER PARTNERS

前红圈所律师组建精品律所虎诉,专注争议解决业务

Dispute resolution lawyers Liu Yuxuan, Xu Min and Wan Li have co-founded a boutique firm called Tiger Partners in Beijing, which is dedicated to handling complex commercial dispute resolution cases in the future.

Liu has previously worked for red circle firms Zhonglun, KWM, Fangda and Jingtian & Gongcheng, and Xu has worked for KWM and Fangda, while Wan has left his position as dispute director from a Chinese listed company, with previous working experiences in Global, Grandall and Fangda.

The new firm will focus on investment dispute, corporate governance dispute, commercial contract dispute and IP dispute, with special focuses on industries of finance, internet, technology, entertainment, game, education and real estate. The firm already boasts a number of key clients, including Du Xiaoman Financial, Zhongzhi Capital, Tiger Brokers, Heaven-sent Capital, Telescope investment and Mini-Kaola.

Liu will be the managing partner of the new firm. He specializes on domestic litigation and arbitration, with expertise on private equity, contest of corporate equity and control, media and entertainment, real estate and construction.

Meanwhile Xu and Wan will act as partners. Xu focuses on domestic and international arbitration, and Wan specializes on finance and investment, equity transaction, commercial contract, tort liability, IP dispute resolution and criminal accountability. ^{ALB}

三位争议解决律师刘煜暄、许旻、万力在北京组建了精品律所虎诉律师事务所,未来将专注于高端商事争议解决业务。

刘煜暄律师此前先后就职于中伦、金杜、方达和竞天公诚律师事务所,许旻律师此前先后任职于金杜和方达律师事务所,万力律师此前先后就职于环球、国浩和方达律师事务所,并在某A股上市企业法务部任诉讼总监。

虎诉未来的业务领域主要为投资纠纷、公司治理纠纷、商业合同纠纷、知识产权纠纷,重点服务行业为金融、互联网、高新科技、影视娱乐、游戏、教育、房地产等。目前律所服务客户包括度小满金融、中植资本、老虎证券、硅谷天堂、远镜创投、迷你考拉仓等。

刘煜暄律师将担任虎诉的管理合伙人,其专长于代理国内诉讼及仲裁案件,主要服务领域包括私募股权、公司股权与控制权争夺、传媒及娱乐、房地产及建设工程等。

许旻律师和万力律师出任虎诉合伙人。许律师专长于代理境内外仲裁案件,在投融资、股权交易、公司治理、商事合同审查及纠纷处理、产品责任等业务领域经验丰富,万律师则在投融资、股权交易、商事合同、侵权责任及知识产权纠纷处理、法院执行、刑事追责等业务领域经验丰富。 ^{ALB}



浅析A股上市公司的吸收合并

一、上市公司吸收合并主要类型

结合相关法律法规及市场案例，A股上市公司吸收合并主要类型如下：

（一）上市公司吸收合并其控股股东

控股股东被上市公司发股收购后将不再保留法人主体地位，上市公司法人主体保留，控股股东的全部业务、资产注入上市公司，上市公司财务、业务发生重大的调整或改善。简言之，上市公司“继承祖业”。

（二）控股股东吸收合并上市公司

其实是控股股东与上市公司换股，并利用上市公司的公众资本平台实现控股股东整体上市，同时上市公司法人主体灭失。简言之，控股股东“母凭子贵”，借壳上市公司。

（三）上市公司吸收合并外部主体

包括上市公司吸收合并其他上市公司或非上市公司。其中上市公司之间吸收合并较为特殊，多见于国有控股企业之间的行业整合，吸收合并完成后仅存续一个上市平台。简言之，“兄弟合家”，整合资源。

二、上市公司吸收合并主要法规及基本流程

（一）主要法律法规

1、《公司法》一般规定

《公司法》第一百七十二条至第一百七十四条就公司吸收合并作出一般性规定。主要步骤包括签订合并协议、编制资产负债表及财产清单、通知债权人、公告等。

2、上市公司资产重组相关规定

上市公司吸收合并作为上市公司资产重组的特殊类型，应符合《重大资产重组管理办法》等相关规定。

3、信息披露要求

根据《公开发行证券的公司信息披露内容与格式准则第26号——上市公司重大资产重组》（2018年修订）第七条、第八条，上市公司重大资产重组涉及吸收合并的，应在重组预案及重组报告书中额外披露相关信息。

4、国资相关规定

根据《上市公司国有股权监督管理办法》（国资委 财政部 证监会令 第36号）第五十七条至第六十一条，国有控股上市公司吸收合并需要遵循相关特殊规定，具体包括：

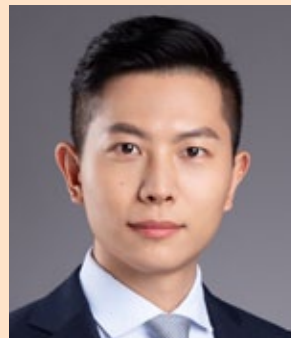
（1）聘请财务顾问；（2）合理确定交易价格；（3）国资委审批等。

（二）具体程序

1、交易磋商及中介机构尽职调查；



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zhengxiao@grandwaylaw.com

2、上市公司分别召开首次董事会、第二次董事，并答复交易所对重组预案、重组草案的问询；

3、上市公司召开股东大会、报送中国证监会审核并答复其反馈；

4、中国证监会重组委审核通过后，中国证监会核发批文；

5、其他主管部门审批程序：（1）涉及国资审批的，上市公司首次董事会时应取得国资主管部门原则性同意，第二次董事会应取得正式批复文件，并在股东大会前办妥国资备案手续；（2）涉及军工事项的，应在首次董事会取得国防科工主管部门的批复；（3）涉及其他行业主管部门批复的，按照重组并联储批要求，至迟应在取得中国证监会批文并实施前取得行业主管部门批复；

6、上市公司实施重组。

三、上市公司吸收合并案例

（一）上市公司吸收合并控股股东

2016年，无锡华光锅炉股份有限公司（“华光股份”）拟以向无锡市国联发展（集团）有限公司（“国联集团”）发股方式吸收合并控股股东无锡国联环保能源集团有限公司（“国联环保”）。吸收合并完成后，华光股份为存续方，将承继及承接国联环保的全部资产、负债、业务及其他一切权利与义务，国联环保将注销法人资格，国联环保持有的上市公司股份也相应注销。

（二）控股股东吸收合并上市公司

2017年，招商局公路网络科技控股股份有限公司（“招商公路”）以换股方式吸收合并上市公司华北高速公路股份有限公司（“华北高速”），即招商公路与华北高速中小股东进行换股，华北高速退市并注销，招商公路作为合并方暨存续公司，华北高速全部资产、负债、业务及其他一切权利与义务由招商公路承继和承接，招商公路的全部股份申请在深交所主板上市流通。

（三）上市公司之间吸收合并

2016年，中国长城计算机深圳股份有限公司（“长城电脑”）以新增股份换股吸收合并长城信息产业股份有限公司（“长城信息”），即长城电脑向长城信息全体股东发行股票，以取得该等股东持有的长城信息全部股份。本次合并完成后，长城信息注销法人资格，长城电脑作为存续方承继及承接两家上市公司的全部资产、负债、业务及其他一切权利与义务。

APPOINTMENTS 律师转所信息

**DENG QING 邓青**LEAVING 原就任职律所

Tiantong & Partners 天同律师事务所

JOINING 现就任职律所

Hui Ye Law Firm 汇业律师事务所

PRACTICE 业务领域Dispute Resolution, Banking and Finance
争议解决、银行与金融LOCATION 地点

Shenzhen 深圳

**LI FENG 李锋**LEAVING 原就任职律所

Sg & Co PRC Lawyers 上海融孚律师事务所

JOINING 现就任职律所

Boss & Young Attorneys At Law

上海邦信阳中建中汇律师事务所

PRACTICE 业务领域International Trade,
Supply Chain Financing
国际贸易, 供应链金融LOCATION 地点

Shanghai 上海

**LUO HONGBIN 骆宏斌**LEAVING 原就任职律所

Sg & Co PRC Lawyers 上海融孚律师事务所

JOINING 现就任职律所

Boss & Young Attorneys At Law

上海邦信阳中建中汇律师事务所

PRACTICE 业务领域

Dispute Resolution 争议解决

LOCATION 地点

Shanghai 上海

**SHEN XIANGMAN 沈祥满**LEAVING 原就任职律所Stephenson Harwood-Wei Tu (China) Association
广东伟途律师事务所JOINING 现就任职律所

Jingtian & Gongcheng 竞天公诚律师事务所

PRACTICE 业务领域Dispute Resolution, Maritime & Admiralty/
Offshore Engineering, M&A, Foreign Direct
Investment, Outbound Investment诉讼、仲裁、海商海事/海上工程、兼并与收购、
外商直接投资、境外投资LOCATION 地点

Guangzhou 广州

**XIA GUORONG 夏国荣**LEAVING 原就任职律所Beijing Xi Yuan Law Firm
北京熙元律师事务所JOINING 现就任职律所

Hylands Law Firm 浩天信和律师事务所

PRACTICE 业务领域Real Estate and Construction, Corporate,
M&A, Dispute Resolution
房地产与建设工程、公司与并购、争议解决与诉讼LOCATION 地点

Beijing 北京

**ZHAO SHUZHOU 赵淑洲**LEAVING 原就任职律所

Wang Jing & Co. 广东敬海律师事务所

JOINING 现就任职律所

Jingtian & Gongcheng 竞天公诚律师事务所

PRACTICE 业务领域Maritime & Admiralty/
Offshore Engineering, Insurance,
Dispute Resolution

海商海事/海上工程、保险、诉讼、仲裁

LOCATION 地点

Guangzhou 广州

DEALS 交易

\$1.92 BLN

CITIC Securities' acquisition of Guangzhou Securities
Deal Type: M&A
Firms: King & Wood Mallesons, Zhong Lun Law Firm
Jurisdiction: China

中信证券并购广州证券
交易类型：并购
参与律所：中伦律师事务所，金杜律师事务所
管辖地：中国

\$1 BLN

State Grid Corporation of China's acquisition of stake in Oman Electricity Transmission Company
Deal Type: M&A
Firms: Allen & Overy, Herbert Smith Freehills, Al Busaidy, Mansoor Jamal & Co
Jurisdictions: China, Oman

中国国家电网收购阿曼国家电网公司49%股权
交易类型：并购
参与律所：安理国际律师事务所，史密夫斐尔律师事务所，阿曼Al Busaidy, Mansoor Jamal & Co律师事务所
管辖地：中国，阿曼

\$931 MLN

Li & Fung's privatization by Golden Lincoln Holdings
Deal Type: M&A
Firms: Davis Polk & Wardwell, Kirkland & Ellis, Freshfields Bruckhaus Deringer, Slaughter and May, Conyers Dill & Pearman
Jurisdiction: Hong Kong SAR

利丰公司私有化
交易类型：并购
参与律所：美国达维律师事务所，凯易律师事务所，富而德律师事务所，司力达律师事务所，康德明律师事务所
管辖地：中国香港特别行政区

\$639 MLN

Bank of China Macau Branch's issuance of offshore social bonds
Deal Type: DCM
Firm: Allen & Overy
Jurisdictions: China, Macao SAR

中国银行澳门分行发行中小企业专项（疫情防控）双币种社会责任债券
交易类型：债券资本市场
参与律所：安理国际律师事务所
管辖地：中国，中国澳门特别行政区

\$579 MLN

Springland International Holdings' privatization by Octopus (China) Holdings
Deal Type: M&A
Firms: Sidley Austin, DeHeng Law Offices
Jurisdictions: China, Hong Kong SAR

华地国际控股集团私有化
交易类型：并购
参与律所：德恒律师事务所，盛德律师事务所
管辖地：中国，中国香港特别行政区

\$428 MLN

ChinaCoal's issuance of registration-based bonds in Shanghai
Deal Type: DCM
Firm: DeHeng Law Offices
Jurisdiction: China

中煤能源发行上交所首支注册制债券
交易类型：债券资本市场
参与律所：德恒律师事务所
管辖地：中国

\$400 MLN

Toyota Motor's investment in Pony.ai
Deal Type: M&A
Firms: Orrick, Herrington & Sutcliffe, Zhong Lun Law Firm
Jurisdictions: China, Japan

丰田汽车投资小马智行
交易类型：并购
参与律所：中伦律师事务所，美国奥睿律师事务所
管辖地：中国，日本

\$288.75 MLN

InnoCare Pharma's Hong Kong IPO
Deal Type: IPO
Firms: Commerce & Finance Law Offices, Davis Polk & Wardwell, Tian Yuan Law Firm, Skadden, Arps, Slate, Meagher & Flom
Jurisdictions: China, Hong Kong SAR

诺诚健华港交所上市
交易类型：上市
参与律所：通商律师事务所，达维律师事务所，天元律师事务所，世达国际律师事务所
管辖地：中国，中国香港特别行政区

\$285 MLN

China Everbright Group's issuance of registration-based bonds in Shenzhen
Deal Type: DCM
Firm: DeHeng Law Offices
Jurisdiction: China

光大集团发行深交所首支注册制债券
交易类型：债券资本市场
参与律所：德恒律师事务所
管辖地：中国

2020 ALB CHINA

TOP 15 TMT LAWYERS

2020 ALB CHINA 十五佳TMT律师

This year's list includes 15 accomplished lawyers from leading firms across China who have excelled in their commitment to clients in the sectors of technology, media and telecoms.

今年的榜单中囊括了15位成绩卓越的律师，他们来自中国多家顶级律所，并在科技、媒体及电信行业严守了对于客户的承诺。

BY KRISTEN LIU 作者：刘诗宇

METHODOLOGY

Candidates are reviewed comprehensively based on the following criteria:

- 1) Representative deals handled throughout practice experience;
- 2) Major transactions performed in the past 12 months;
- 3) Key clients;
- 4) Awards and accolades won; and
- 5) Client review.

评选方法:

ALB综合分析了各位申报律师在以下方面的成绩：

- 1) 申报律师执业经历中的代表性交易；
- 2) 申报律师过去12个月参与的重大交易；
- 3) 申报律师的主要客户；
- 4) 申报律师所获得的相关奖项；
- 5) 客户的评价。

Top 15 TMT Lawyers 十五佳TMT律师

Winners are listed in alphabetical order.

获奖名单按律师姓氏首字母排序

Lawrence An 安随一

Llinks Law Offices 通力律师事务所

Cai Hang 蔡航

AnJie Law Firm 安杰律师事务所

Dong Xiao 董潇

JunHe 君合律师事务所

Guo Junlei 郭君磊

Anli Partners 安理律师事务所

Jiang Zhihui 姜志会

King & Wood Mallesons 金杜律师事务所

Ivan Jin 金有元

Merits & Tree Law Offices 植德律师事务所

Barbara Li 李晓蓓

Norton Rose Fulbright 诺顿罗氏律师事务所

Sun Chuan 孙川

Morrison & Foerster 美富律师事务所

Yinan (Ian) Wang 王一楠

DeHeng Law Offices 德恒律师事务所

Wu Xiaoliang 吴小亮

CM Law Firm 澄明则正律师事务所

Ye Yusheng 叶玉盛

Jingtian & Gongcheng 竞天公诚律师事务所

Yu Hongwei 于宏威

Zhong Lun Law Firm 中伦律师事务所

Yu Rong 俞蓉

Hylands Law Firm 浩天信和律师事务所

Andrew (Xinyang) Zhang 张新阳

Commerce & Finance Law Offices 通商律师事务所

Zheng Xiaodong 郑晓东

Jincheng Tongda & Neal 金诚同达律师事务所

ALB China has now announced the winners of 2020 ALB China Top 15 TMT Lawyers. While we extend our warmest congratulations to them, we also have interviewed some of them, who shared with us their brilliant career experience and insights of the industry.

TMT LAWYERS' INDUSTRY OBSERVATIONS

Ye Yusheng, a partner at Jingtian & Gongcheng, believes that the TMT industry has entered a "golden age" of development. He predicts that the combination of artificial intelligence (AI) and 5G technology will give impetus to the emergence of new-generation devices. These devices will redefine the word "intelligence". Ye also points to technology, entertainment and telecommunications as the three high-potential sectors for AI in the future.

Jin Youyuan (Ivan), a partner at Merits & Tree Law Offices, saw changes in the direction of innovation gradually

shifting from model to technology innovation. He says innovation will be more technology-related over the next three to five years.

Yu Rong, a partner at Hylands Law Firm, points out that the TMT industry shows a trend of quality content, posing higher requirements for creative teams and the contents. Therefore, M&A, compliance of innovative business models, tax, cybersecurity and data protection will become new growth areas in TMT legal service market.

LAWYERS LEAD THE WAY

Talking about law lags, Wang Yinan (Ian), a partner at DeHeng Law Offices, says that this challenge requires lawyers to be forward-looking from all-round perspectives. Also, lawyers need to be able to not just solve problems, but also creatively find feasible solutions for their clients.

Wang shared a case of Internet crowdfunding platform in 2014. "Back then, there are no clear stipulations

2020 ALB China 十五佳TMT律师榜单揭晓。我们采访了部分上榜律师，聆听他们对TMT行业发展的深刻见解，分享多年来的成功经验以及对未来的期许与展望。

TMT律师们的行业观察

竞天公诚律师事务所的叶玉盛律师深信TMT行业在最近几年已经迎来了发展的“黄金年代”。他认为在未来，人工智能和5G技术的结合将为新一代设备的出现提供动力，这些新设备将随之重新定义“智能”一词的含义。另外，叶律师还指出，未来TMT最具AI潜能的三个板块将集中在科技、娱乐和电信行业。

植德律师事务所的金有元律师表示，TMT行业的创新方向正在从模式创新转向技术创新，加之政策鼓励，这将会成为未来三到五年内的趋势之一。其次，线上与线下的结合也将是未来的发展方向之一。

浩天信和律师事务所的俞蓉律师指出，TMT行业呈现出内容精品

“Not only do they have a supreme command of specialized fields, but provide practical solutions that take into account the client's actual circumstances.”

AnJie Law Firm is a full-service law firm providing commercial legal services on an international basis. Our firm is truly integrated and committed to offering clients the highest quality service through our legal excellence, effective quality control, and sharing of resources. We are deeply passionate about sustaining a uniform standard of legal service and implementing a sound client service system. We offer clients effective, efficient and tailored solutions.

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BEIJING SHANGHAI SHENZHEN HONGKONG Joint Venture with Hwang Hauzen LLP

ANJIE
安杰律师事务所



on the crowdfunding business model. To help our clients achieve their business goals legally, we did a comprehensive analysis of policies and legal issues related to various crowdfunding models, such as equity crowdfunding, product crowdfunding, and public welfare crowdfunding, studies the relevant legislations of foreign countries, and had discussions with regulatory authorities, and finally designed for our clients a creative 'consumer + finance' product model." It was the first Internet crowdfunding project in China, and the legal solutions designed by Wang and his team was widely used for reference later.

better serve our clients and help them avoid risks," Jin says.

Wu Xiaoliang, a partner at CM Law Firm, takes the fintech field as an example. "Finance is subject to intense regulation, while technology is the driving force for innovation. Therefore, working in the fintech field requires the capability of balancing the relationship between the two, and a forward-looking mentality."

Several years ago, Wu and her team helped an online loan platform formulate its compliance system and measures, enabling it to meet the regulatory requirements easily when the authority

"We should always keep in mind the principle of public order and good social customs. According to that principle, we should make judgments on the relevant issues and legislative trends, so as to better serve our clients and help them avoid risks."

"法律法规监管总是从社会整体的公共利益、社会整体的秩序以及大多数人的利益出发的。怀着这样的基本原则，对一些相关行为、立法趋势做出判断，从而引导律师更好地服务客户，尽可能地帮助客户避开风险。"

— Jin Youyuan (Ivan), Merits & Tree Law Offices 金有元律师, 植德律师事务所

Jin from Merits & Tree suggests starting with researches on legal theories. Although sometimes there are no specific regulatory provisions to be applied, there are relevant legal theories, principles, and legislative purposes, thus helping lawyers make correct judgments. Legal practitioners could try to predict legal risks according to the regulatory logic and prepare the corresponding risk avoidance measures. Lastly, keep in mind the 'principle of public order and good social customs' "We should make judgments on the relevant issues and legislative trends according to that principle, so as to

implements more intensified regulation. It is quite the same in medical care, education and consumer fields. "Benefiting from being familiar with traditional business models as well as TMT, we can often provide our clients with prudent and optimistic solutions," Wu adds.

Ye from Jingtian & Gongcheng says that lawyers can learn from relevant advanced experiences of other countries to predict future regulatory trends to some extent, in face of law lags. He shared a blockchain case. "A client intended to acquire a blockchain company in Chengdu, and asked us to

化的趋势，行业对创作团队内容创作的严肃程度会不断提高。其次，从传统媒体、新媒体到现在的自媒体，业态将变得更加多元化。第三，技术与内容将加速融合，在这一过程中商业模式会经历连续不断的创新，因而并购、创新商业模式的合规、税务、网络安全和数据保护都会成为未来TMT法律服务市场的新的增长点。

法律虽有滞后，律师前沿领跑

一个行业发展越是迅猛，其法律滞后性就越有可能发生。德恒律师事务所的王一楠律师认为，滞后性首先考验律师的全局观和前瞻性，即律师能否站在立法者的角度来分析问题，并对未来立法走向做出合理预判；其次考验律师解决问题的能力 and 创造性，即律师能否在法律暂时空白的领域内为客户铺出一条可行的道路，而不是简单地以法律没有明确规定为由来否决商业方案。王律师分享了一个案例：“2014年我们参与百度和中信信托合作的互联网消费众筹平台项目时就面临同样的问题，当时众筹这种商业模式在国内没有明确的法律规定。为了达到商业目的并确保合法合规，我们对各类众筹模式的政策和法律问题进行全面分析、研究了国外的相关立法、与监管部门进行沟通探讨，最终设计了一个嵌套多重信托的“消费+金融”的产品模式。”这是全国第一个互联网消费众筹项目，而王律师及其团队所设计的整套法律解决方案被后来类似产品所广泛借鉴。

金律师提出，面对滞后性，首先可以从法律理论入手。有时候虽然没有具体的监管规定可以适用，但总有相关的法律理论、原则以及立法目的可以提供启示。其次，可以根据监管的逻辑来对法律风险做出预判以及相应的规避措施。第三，在前面的两点都不适用的情况下，金律师认为律师们应该谨记法律向善的原则。他指出：“法律法规监管总是从社会整体的公共利益、社会整体的秩序以及大多数人的利益出发的。怀着这样的基本原则，对一些相关行为、立法趋势做出判断，从而引导律师更好地服务客户，尽可能地帮助客户避开风险。”

澄明则正律师事务所的吴小亮律师指出：“金融是个强监管领域，

due diligence. Back then, Chinese laws and regulations did not have clear regulatory measures in this area, but the U.S. already had regulatory experiences in ICO business. So, we studied those regulatory cases, and then pointed out to our client that they might be exposed to great risks if they were engaged in ICO business in China.”

EFFICIENT AND LONG-TERM COOPERATION WITH ENTERPRISES

When it comes to how to build efficient and long-term cooperation with in-house counsels, Wang gives three keywords: respect, initiative and courage.

“Respect” means mutual respect between lawyers and in-house counsels at work. Both work towards helping enterprises navigate business through changes and risks. Remembering this, lawyers could better understand and realize the service requirements. With the support of in-house counsels,

lawyers could come up with legal solutions more suitable for enterprises.

“Initiative” means that lawyers should take the initiative to learn about the business development of the companies, instead of passively waiting for in-house counsels to put forward needs, so that lawyers and in-house counsels can communicate with each other more efficiently.

Regarding “courage,” Wang says that giving conservative advice is usually a safer way of handling cases, however, if lawyers can give more practical legal opinions, it may be more helpful for in-house counsels.

Jin points to professionalism and empathy. He says that lawyers look at things from the legal perspectives while in-house counsels from business aspects. In this case, lawyers need to have empathy, and respond quickly to the demands from in-house counsels.

TMT lawyers’ job is not only pointing out risks for clients, but also proposing

科技是创新的驱动力，除了平衡两者关系，前瞻性也非常重要。几年前我们服务某网贷平台时，就帮助企业做了很多合规预判，在后来整个行业监管升级后，我们的客户就可以相对从容的面对。类似地，在医疗领域、教育领域、消费领域，我们得益于对传统业态和TMT都很熟悉，所以经常能给出谨慎乐观的解决方案。”

叶律师认为，面对一个国家在TMT行业监管上可能存在的滞后性，可以通过学习其他国家的相关先进经验而得到启示，并且在一定程度上预见未来趋势。对此，叶律师分享了区块链领域的一个案例：“曾有客户欲收购一家成都的区块链业务公司，需要我们进行法律尽调并出具尽调报告。当时，虽然中国的法律法规尚没有明确的监管措施，但是美国在这方面走在了时代的前列，因此，我们借鉴了一些美国在ICO业务上的监管经验，及时为客户指出如果在中国从事ICO业务，存在着较大的风险。”

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alternative solutions for clients to solve problems. Lawyers should also set up a good communication mechanism with their clients. After solving problems, lawyers should communicate with the clients regarding the business, industry and regulatory policies. Jin also recommends setting up a follow-up mechanism to actively learn about clients' feedback. Finally, lawyers and client can establish a working mechanism and mode together. "Some of our clients have been working with us for many years. For those clients, we establish a fixed working model to standardise some work, through which to provide clients with quality legal services and improve efficiency," Jin explains.

Yu says that four things are key to the establishment of efficient and long-term cooperation with enterprises. First, professionalism and comprehensiveness, which means that lawyers should be experts in a certain field, but in an all-round way in that field. Second, lawyers need to have profound knowledge of their clients' industries. Third, lawyers should be courageous and good at communication. And fourth, the capability to put into practice the results of communication efficiently.

Wu from CM Law Firm shares her idea about the relationship between lawyers and in-house counsels. There are sometimes conflicts between business plans and rules. Lawyers' role is to help in-house counsels resolve conflicts. Lawyers are, therefore, expected to do three things: (1) Understanding the business logic; (2) Seeing things from the perspective of the other party; and (3) Adhering to principles. "It is quite easy for a company using private domain traffic for e-commerce to constitute a pyramid scheme. TMT lawyers should not reject this business mode; instead, they should give risk warnings and design a complete plan to help their client avoid the risk of multi-level marketing," Wu explains.

Ye believes that it is important to understand the needs of clients, provide demand-oriented legal services, and help clients solve problems effectively. When providing solutions to clients, Ye usually thinks about the issues from

different angles and provides in-house counsels with several different solutions for them to choose the feasible and most suitable one. Meanwhile, lawyers must maintain good communication with in-house counsels: responding to their questions promptly, and seeking their advice immediately when having questions. "A good partnership is often established through good communication and efficient services," he says.


LOOKING FORWARD

Talking about personal development plans, Wang says that given the emerging branches in the fields such as 5G, blockchain and AI, he will focus on studying these new technologies, and concentrate on some of the common and new legal issues such as cybersecurity and data protection.

Jin agrees that 5G-related projects will be a hot area; he plans to continue accumulating experience in related fields, learn new knowledge, and strive to achieve a deeper understanding of industry. Merits & Tree has an IP department, which brings together lawyers who understand IP and technology of various industries.

Yu and her team will continue to provide high-quality legal services to TMT clients, hoping to develop new businesses, with focus on cybersecurity and data protection, taxation and sports laws.

Wu believes that in the cooling-off period after the rapid development of the industry, it is particularly important for lawyers to face the difficulties together with enterprises. "I hope to use my experience to help my clients turn complexity into simplicity, and turn chaos into order, and help them to navigate through the changing environment, to create more value for them," Wu says.

Ye plans to publish a book related to the TMT industry. He also hopes to teach practical courses to help students gain operation and legal skills in schools, to help them shift from their roles as law students towards competent lawyers. Ye is currently teaching legal affairs course at Fudan University, and hopes to establish collaborations with more universities and colleges. 

与企业的高效、长远合作

当聊到如何才能与企业法务进行高效的合作并保持长远的良好的合作伙伴关系时，王律师提出三个关键词：尊重、主动、勇气。“尊重”指的是专业上的尊重。律师与企业法务共同为企业业务的发展保驾护航，深刻地理解了这个使命，律师就会更加容易理解和接受企业法务提出的服务需求。而“主动”代表着律师能主动地去了解自己所服务企业及其所在行业的业务发展情况，这样与企业法务工作时沟通效率就会提高很多。王律师对“勇气”这一关键词的阐释是：尽管律师在给出自己专业意见时趋于保守往往最稳妥，但如果能基于经验和专业判断给出更加切合实际的法律意见，对于企业法务来说可能更有帮助。

金律师亦分享了自己的经验：要有过硬的法律职业素养，还具备同理心。律师更多地处于法律环境下，而法务则更多地站在商业的角度。在这种情况下，律师应该通过换位思考来理解对方的需求，做出快速响应，从而提高合作质量。此外，应该和客户建立起良好的沟通机制。律师在解决了客户的问题后，还要积极地与客户针对业务和法律进行沟通交流，在新的法律法规和政策规定出台后，主动与客户进行分享或为期提供培训。同时还可以建立回访机制，主动了解客户在接受服务过程中的体验。最后，还可以建立一个律师与客户双方共同认可的工作机制和模式。金律师解释道：“有些客户已经与我们建立了多年的合作，对于这类客户我们可以考虑建立一种固定的工作模式，将一些工作长期化、标准化，甚至可以帮助客户制定一套科学的流程，这样既能为客户提供高质量的法律服务，又能提高工作效率。”

俞律师也总结了四点经验：第一，法律服务要做到专业性和综合性。在成为某个领域的专家的基础上，律师要能够解决客户问题的多个方面。其次，要能够充分了解所处的行业，对其中的从业人员、其谈判的位置以及交易的内容都要有深入的了解。第三，要敢于且善于沟通。“俗话说，花一分钟看透事物本质的人与花几年看透事物本质的人的命运是不同的，”俞律师谈到，“如何去看透事物的本质，我认为沟通起到关键的作用。”第四，对于沟

通得来的结果，还要进行快速、高效的执行。

在吴律师看来，商业利益、效率和规则之间有时会存在矛盾，企业法务时常会面对这种矛盾，外部律师很大的贡献是和企业法务一起化解矛盾。基于此，好的律师应该做到三点：1、懂得商业逻辑；2、从对方角度出发；3、坚持原则。吴律师以电商为例做出了进一步阐释：“私域流量的电商很容易构成传销，那么TMT律师要做的不是否定这个方向，而是在充分提示风险的同时，设计出完整的方案帮助这个业务模式避免陷于传销的风险。”

叶律师也给出了精彩见解：要了解客户的需求，以需求为导向提供不同的法律服务，帮助客户切实地去解决问题。提供解决办法时，叶律师通常会进行多角度的思考，为企业法务提供几个不同的解决路径，让其选择可行的方式。同时，还要和企业法务保持良好和通畅的沟通，及时回复企业法务提出的问题，如有疑问的地方，及时向企业

法务提出。“良好的合作伙伴关系往往在良好的沟通与高效的服务中建立。”他说道。

展望未来


谈及个人的未来展望，这些杰出律师们的发展规划显得清晰且有远见。王律师表示，随着5G、区块链和AI等领域纷纷涌现出新的分支，他未来在关注这些新技术和新应用的同时，会着重研究这些数字经济中的一些具共性的和新生的法律问题，比如网络安全和数据保护问题。

金律师也认为与5G相关的项目将会是未来的热门之一，因此他将继续不断积累经验，不断学习新的知识，努力实现对技术、对行业、对商业更深的理解。此外，植德律师事务所还有专门的知识产权部，汇集了了解各行业知识产权和技术的合伙人与律师，能够帮助解决项目中与技术和专业有关的问题。

俞律师表示，她及其团队在未来将继续致力于为TMT行业的客

户提供高质量法律服务，希望在传统TMT领域的基础上拓展出新的业务，其中，几个比较重要的发展方向包括网络安全与数据保护、税务和体育法等。

吴律师多年来的成功经验已经为她赢得客户的信赖。其客户不仅视她为法律服务提供者，还乐于一起探讨业务方向。吴律师认为，在行业高速发展后的冷静期中，和企业一起面对困难尤为重要。“我希望能够利用自己多年的经验，化复杂为有序，为企业发展保驾护航，创造更多的商业价值。”她说道。

叶律师的未来计划则更偏向学术。他计划出版一本与TMT行业相关的书籍，梳理TMT行业的监管脉络以及一个TMT企业如何从零走向IPO。叶律师还希望能够在几所高校开展实务课程，教授学生们实务操作与法律技能，完成从一个法学生到律师的过渡。目前，叶律师已经在复旦大学开展了一门实务课程，未来亦期待能够与更多的高校进行合作。 



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An Suiyi (Lawrence), Llinks Law Offices
安隼一，通力律师事务所

"An is upright, dedicated, and meticulous in his work, and is very proficient in his field. An specializes in private equity funds, venture capital, M&A, and real estate. He has always been committed to providing clients with the most reliable solutions from the legal and business perspective and striving to maximize the benefits for clients. He is a professional and efficient lawyer, and trusted partner at work."

- Yu Weifeng (David), partner at Llinks Law Offices

"安律师正直、敬业、做事一丝不苟、对所从事的行业领域非常精通。安律师专注于各类私募基金、风险投资、公司并购和房地产等领域，始终致力于从法律和商业角度为客户提供最可靠的解决方案并努力为客户争取最大利益。安律师专业高效、客户满意度高、非常值得信赖。"

- 通力律师事务所合伙人 俞卫锋律师

Cai Hang, AnJie Law Firm
蔡航，安杰律师事务所

"Cai Hang is among the most capable lawyers in the TMT sector. He knows the TMT industry and can provide services to clients from two dimensions: legal profession and industry knowledge. His legal opinions are valuable and down-to-earth. He has a strong sense of service and always provides outstanding services to his clients, which made him one of the most trustworthy lawyers for the clients. Some of the clients have been working with him for many years, regardless of the ups and downs in the industry. Together with his clients, Cai has developed solid win-win relationships. He is also a forward-thinking lawyer, is good at grasping business opportunities in the fierce market competition, and knows when to start to explore new business areas."

- Zhan Hao, managing partner at AnJie Law Firm

"蔡航律师是TMT领域非常有实力的律师，他的过人之处在于：第一、对于TMT行业有精辟的见解，能够从法律专业与行业知识两个维度为客户提供服务，他的法律意见有价值、接地气；第二、有超强的服务意识与能力，拥有一批行业大客户作为拥趸，无论在行业高低潮，这些客户始终对蔡律师不离不弃；也就是说，他与客户能够相互成就；第三、富有远见，知道行业的方向与风口，善于在激烈的市场竞争中捕捉到商业机会，知道如何适时开拓新领域。"

- 安杰律师事务所主任詹昊律师

Dong Xiao (Marissa), JunHe
董潇，君合律师事务所

"Marissa has developed her expertise of TMT area and data privacy over the years in her general practice for multinational operation in China. Marissa is an outstanding lawyer and very capable in dealing with the complicated legal issues. She has been closely working and assisting partners in the firm in case of clients' needs in these areas. She is well recognised by clients not only for providing specific legal advice but also practical solutions where legal requirements are vague and the situation is complex."

- Cui Lixin, senior partner at JunHe

"多年来，董律师在跨国公司在华业务的一般业务中积累了TMT领域和数据隐私方面的专业知识。她是一名杰出的律师，处理复杂法律问题的能力非常

强。她与律所合伙人紧密配合，满足客户在这些领域的需求。她不仅提供具体的法律建议，而且在法律要求模糊、情况复杂的情况下提供切实可行的解决方案，深受客户的认可。"

- 君合律师事务所高级合伙人崔立新

Guo Junlei, Anli Partners
郭君磊，安理律师事务所

"As the leading partner of the TMT Professional Committee of Anli Partners, Guo is recognised by clients for his outstanding services. Anli's TMT team adheres to the concept of winning clients' trust through professionalism, and advocates providing clients with all-round and profound legal services. They know new technologies, new business logic, new social forms, and new industrial patterns, provide clients with forward-looking and creative solutions, and grow together with clients. Under the leadership of Guo, the TMT team provides full-process legal services for clients in the TMT industry, covering enterprise establishment, financing, equity incentives, business model compliance, data compliance, privacy protection, and domestic and overseas listing."

- Wang Qingyou, partner at Anli Partners

"郭君磊律师作为安理律师事务所TMT专业委员会的牵头合伙人，其专业勤勉的服务赢得了客户的一致好评。安理的TMT团队一直秉持专业赢得信赖的理念，倡导为客户提供深度法律服务，他们了解新技术、新的商业逻辑、新的社会形态、新的产业格局，为客户提供前瞻性和创造性解决方案，并与企业一道洞见未来。以郭律师为牵头人的专业团队目前可以为TMT行业的客户提供全流程的法律服务，涵盖了企业设立、融资、股权激励、商业模式合规、数据合规、隐私保护和企业境内外上市等相关环节。"

- 安理律师事务所主任王清友律师

Jiang Zhihui, King & Wood Mallesons
姜志会，金杜律师事务所

"Jiang Zhihui is very innovative, creative, and service-minded. He has worked extensively in the TMT industry such as the Internet and fintech, and has unique insights and rich experience working with projects."

- Gong Mulong, managing partner of Beijing Office of King & Wood Mallesons and member of KWM China Management Committee

"姜志会律师非常具有创新力、创造力和服务精神，他在互联网、金融科技等TMT行业深耕细作，有着独到的见解和丰富的项目经验。"

- 龚牧龙，金杜中国管委会委员、金杜北京办公室负责人

Jin Youyuan (Ivan), Merits & Tree Law Offices
金有元，植德律师事务所

"Jin is an enthusiastic and sincere person; and he is rigorous and meticulous in his work, and always strives for excellence. He specializes in private equity investment and financing, works with me to provide complex asset management product legal services for clients. His professional excellence is greatly recognised by clients. Jin also serves as the firm's director of management committee.

Under his leadership and with the joint efforts of all colleagues, our firm has been growing rapidly and striving for excellence in all our business areas. Jin

is an outstanding TMT lawyer and a great leader of the firm."

- Long Haitao, founding partner of Merits & Tree Law Offices

"金有元律师为人诚恳热情，对待业务严谨细致、精益求精，无论是在他专长的私募投融资业务领域，还是在与我合作为金融机构客户提供的复合型资管产品法律服务领域，均获得了客户的高度赞许。此外，作为植德管理委员会主任，在和全体同仁的共同拼搏下，植德发展迅速、业务领域不断完善，这些成绩的背后是金律师超出常人的努力和付出。我认为，在日益增长的市场需求和日常繁重的律所管理两者之间能够取得如此完美的平衡，实属难能可贵。"

- 植德律师事务所创始合伙人 龙海涛

Barbara Li, Norton Rose Fulbright
李晓蓓，诺顿罗氏律师事务所

"Barbara is an exceptional lawyer with a real ability to demystify the Chinese legal system for western clients. She is an extraordinary contributor to, and leader of, our tech practice in China. There is no doubt that Barbara has her finger on the pulse, she has blazed the trail in China for tech legal advice, especially in the space of tech M&A, data privacy and cybersecurity."

- Nick Abrahams, global head of technology and innovation at Norton Rose Fulbright

"李晓蓓律师是一名极具才干的优秀律师，她擅长深入浅出地向西方客户阐明中国法律制度。作为本所科技、媒体和电信业务中国地区的负责人，她为我们建立并夯实在该领域的出色业绩做出了卓越的贡献。她紧跟业内发展前沿，在并购、个人信息保护和网络安全等科技业务领域向客户提供高效优质的法律解决方案。"

- 诺顿罗氏富布莱特科技与创新业务全球主管 Nick Abrahams

Chuan Sun, Morrison & Foerster
孙川，美富律师事务所

"Chuan's strengths as a TMT lawyer are clear to see both in the stand-alone tech work he does and in the corporate transactional work we do in the TMT sector. He has a technologist's grasp of technology and brings a strong practical approach to his work, offering clients effective business solutions to their most complex legal and regulatory issues. These attributes and Morrison & Foerster's market-leading tech practice have given Chuan the opportunity to work on some of the most cutting-edge matters in the sector since he joined the firm in 2016 and we are delighted to see this important recognition of Chuan's work."

- Paul McKenzie, managing partner of Morrison & Foerster's Beijing/Shanghai offices

"作为一名TMT律师，孙川律师的优势不仅体现于其所擅长处理的各类与技术相关业务，同时亦体现于其所深度参与的本所TMT领域的公司交易业务。他对技术拥有深厚的理解，长于运用非常务实的方法，为客户最复杂的法律和监管问题提供卓有成效的商业解决方案。自2016年加入本所以来，孙律师的个人优势和美富居于市场领先地位的TMT业务，使其有机会在TMT领域最前沿代表客户处理项目。我们很高兴看到孙律师的工作获得此次重要的认可。"

- Paul McKenzie, 美富律师事务所北京/上海管理合伙人



俞蓉
 合伙人
 yurong@hylandslaw.com

俞蓉律师访谈

1. 促使您选择TMT作为执业领域的契机是什么？

深厚的知识产权法律服务底蕴和敏锐的法律服务市场洞察力是浩天TMT团队在法律服务领域成功的关键。多年来，知识产权是浩天的优势法律服务领域，其中版权领域更是浩天的旗帜业务，而文化产业的核心是版权。1998年，我加入浩天信和律师事务所，开始从事知识产权业务。2009年，随着《文化产业振兴规划》的发布，我把视野投向文化产业法律服务。依托知识产权、公司证券等传统法律服务领域的优势，2010年，我在浩天组建TMT法律服务团队，成为所内第一个服务特定行业的法律服务团队。在我的牵头下，浩天组织所内专业法律人才梳理TMT法律服务产品、与国内外知名TMT律所进行交流互访、参加各种国内国际活动、深入进行行业研究，使浩天能够在TMT领域提供专业、全面、务实的法律服务，获得客户的广泛认同。与此同时，浩天TMT团队还为国内TMT企业培养、输出了一批TMT法律服务专家，十年耕耘，奠定了浩天在TMT领域的行业声誉，更坚定了我带领浩天TMT团队开拓新兴法律服务市场的信心。目前，浩天TMT团队已经整合所内TMT、知识产权、刑事合规等领域专业人才，在网络安全、体育、电竞等新兴领域法律服务市场开启新的征程，未来可期。

2. 您在执业过程中遇到的让您印象深刻的重大挑战是什么，您是如何克服和解决的？

2003年，各地政府为了推动当地旅游文化产业发展，逐步将民俗文化与现代艺术形式相融合的山水实景演出开发为旅游项目，“印象”系列应运而生，成为引人注目的经济文化形象。我受张艺谋导演委托，为“印象”系列实景演出项目提供包括法律架构安排、融资、项目运营在内的全流程法律服务。

实景演出项目的开发、运营涉及多领域、全方位的法律问题，包括用地及规划审批、项目核准、多类艺术元素的法律定性和授权、外资准入、税收、知识产权保护等。面对这一挑战，一方面，要借助丰富、扎实的专业知识储备，迅速把握项目的核心法律风险；另一方面，要积极开展跨专业、跨团队合作，协同为客户提供综合法律服务。

3. 互联网技术的进步催生了诸多新兴产业。这会给TMT律师带来哪些新的机遇和挑战？

技术发展日新月异，极大拓展了TMT行业的深度和广度。法律法规具有滞后性，难以直接适用于人工智能、区块链、云计算、大数据等新领域。TMT律师需要做到“一动一静”。一动，系指律师要时刻把握行业动态，分析行业发展趋势；一静，系指律师要了解产业的技术背景，不断积累法律专业知识，并将传统法律知识应用到新的领域中。成为一名优秀的TMT律师，关键是学会在持续的变化中保持对TMT行业的前瞻性，并不断更新专业知识。

1. What prompted you to devote yourself into Technology, Media and Telecom industry?

The success of the Hylands TMT team attributes to extensive practical experience in the field of intellectual property and keen insight into the market. Over the years, Hylands has been widely recognized as a leading firm in intellectual property law. Particularly, copyright law, which is the essence of culture industry has been regarded as Hylands' banner practice. In 1998, I joined the Hylands law firm, practicing intellectual property law. With the release of Plan on Reinvigoration of the Culture Industry in 2009, I turned my attention to focusing on providing legal service for the culture industry. On account of Hylands' advantage in traditional legal practice such as intellectual property, corporate and securities, I set up the TMT team in 2010, which has become Hylands' first team concentrating on providing legal service for a specific industry. Under my guidance, Hylands has organized a group of legal professionals to develop TMT legal service products, visit well-known domestic and foreign TMT law firms, participate in a variety of domestic and international activities and conduct in-depth industry research, which enables Hylands to provide professional, comprehensive and practical TMT legal services, gaining wide recognition of clients. At the same time, the TMT team has also trained numbers of legal experts for domestic TMT enterprises. Ten years of hard work has established the reputation of the Hylands in the TMT field and thus strengthened my confidence in leading the team to explore the emerging market. Currently, the TMT team has consolidated with professionals from various practice areas such as TMT, intellectual property, criminal compliance, etc., and has embarked on a new journey in emerging markets such as Cyber Security, sports, Electronic Sports, etc. The future of Hylands TMT team is no doubt promising.

2. Could you share the most impressive challenge you have faced in your career? How did you overcome it?

In 2003, in order to promote the development of local tourism and culture industry, local governments gradually developed live outdoor performance as a tourist attraction with the combination of folk culture and modern art. Under this background, the live outdoor performance titled "Impression" emerged and became a well-known economic and cultural image. Assigned by Director Zhang Yimou, I provided full-process legal service for the live performance "Impression", including legal framework arrangement, financing and project operation, etc. The development and operation of a live outdoor performance project involves a wide range of legal issues, including approval of land and land use plan, approval of construction project, legal classification and authorization of various artistic elements, admission of foreign investment, taxation, intellectual property protection, etc. When facing with this challenge, on one hand, we should identify the core legal risks of the projects by virtue of abundant and solid expertise. On the other hand, we should actively establish cross-department and multi-team cooperation in order to provide comprehensive legal service for clients.

3. The advances in the field of Internet technology has led to the emergence of many new industries. In what way will this affect TMT lawyers?

The rapid development of technology has greatly expanded the depth and scope of the TMT field. Laws and regulations, which are difficult to apply directly to new fields, such as artificial intelligence, blockchain, cloud computing, big data, cannot keep up with such development. TMT lawyers need to keep updated and accumulate practical experience. On one hand, TMT lawyers should keep track of new development and analyze the development trend of the TMT industry. On the other hand, TMT lawyers should understand the technical background of the TMT industry, continuously accumulate legal expertise, and apply traditional legal knowledge to the new fields. The key to become an excellent lawyer mainly practicing in TMT field is to have foresight of the TMT industry and keep updated with professional knowledge in the face of continuous changes.

TESTIMONIALS 推荐理由

**Wang Yinan (Ian), DeHeng Law Offices
王一楠, 德恒律师事务所**

"As the head of our technology business committee, Wang is one of the few of our many excellent partners who have always been focusing on the cutting-edge development of technology and explore the legal issues involve. He keeps his finger on the pulse of technology development, industry trends, as well as the market and business trends, and he has deep understanding of regulatory requirements. These attributes enable him to provide forward-looking and constructive solutions to TMT companies, especially those are faced with legal challenges due to technological innovation. With his great insights, solid legal skills and profound experience, Wang is among the undisputed experts in the field."

- Xu Jianjun, partner and deputy director of DeHeng Law Offices

"作为我们律所科学和技术业务委员会的主要负责人, 王一楠是我们众多优秀合伙人中少有的几个能一直专注技术前沿发展并愿意深入研究所涉及法律问题的律师之一。他熟悉技术路线、行业动态、市场和业务发展趋势。这些结合他对监管要求的深刻理解使之能为TMT企业, 特别那些因技术创新而面临法律挑战的企业, 提供具有前瞻和建设性的解决方案。开阔的国际视野、扎实的法律功底、以及长期的行业深耕使之成为该领域当之无愧的领军人物。"

- 徐建军 北京德恒律师事务所 副主任

**Wu Xiaoliang, CM Law Firm
吴小亮, 澄明则正律师事务所**

"I have worked with Wu for many years, and we worked together on many projects. Wu has profound legal skills and is quick thinking; and her capability to creatively solve legal problems makes her stand out. She is a great TMT lawyer who pursues excellence in her work all the time. The cases she has handled have become industry models in terms of complexity and creativity of legal technology. She is also a good leader. Under her leadership, CM Law Firm is developing towards a firm that provides the best services to clients in the internet-related sectors and gives broad space for young lawyers to grow."

- Li Qin, partner at CM Law Firm

"我与吴小亮律师共事多年, 与吴律师在很多项目上均有着密切的合作。在法律专业方面, 吴律师法律功底扎实、思维敏捷, 拥有创造性地解决法律问题的突出能力, 深受客户广泛好评, 尤其是在TMT领域, 她对于业务专业性极致追求, 其所参与的项目无论在复杂性以及法律技术的创造性上屡屡成为业内典范; 在事务所管理方面, 吴律师始终带领团队致力于将事务所打造成为向互联网行业客户提供最优质服务、给年轻律师提供最广阔发展空间的新锐律师事务所。"

- 李勤 澄明则正律师事务所 合伙人

**Ye Yusheng, Jingtian & Gongcheng
叶玉盛, 竞天公诚律师事务所**

"Ye is a true professional with an innovation mindset. He is a trusted partner of clients. High efficiency, professional, dedication, and practical are his practice standards. It is an honour to work with Ye."

- Gao Xiang, partner and member of management committee of Jingtian & Gongcheng

"非常钦佩他的专业精神、开拓创新的思维, 以及

为客户负责的认真态度。'高效'、'专业'、'敬业'、'务实'的执业水准, 在赢得客户信赖和赞誉的同时, 也为深得同事钦佩、敬仰。"

- 竞天公诚律师事务所管委会成员、合伙人 高翔

**Yu Hongwei, Zhong Lun Law Firm
于宏威, 中伦律师事务所**

"Hongwei has been specializing in investment and M&A in the TMT sector, and is one of the backbone partners of Zhong Lun's TMT business. Hongwei is very professional and has many well-known clients. He successfully handled many classic projects in the market, and enjoys a high reputation in the industry, and has made considerable contributions to improving Zhong Lun's competitive positioning in the TMT market. Hongwei also makes much of the growth of lawyers, and spends time mentoring them. He sets a good example for being a true professional and good leader. He is a good lawyer and a good partner at work."

- Zhang Xuebing, founding partner of Zhong Lun Law Firm

"宏威律师长期专注于TMT领域的投资并购业务, 是中伦TMT业务的骨干合伙人之一。在业务上, 宏威律师专业性非常强, 拥有众多知名客户, 完成过诸多市场典型项目, 在业界享有很高的美誉度, 为中伦TMT业务市场地位的进一步提升做出了相当的贡献。同时, 宏威律师在工作中亲力亲为, 关注团队律师的成长, 培养了一支战斗力很强的团队, 在敬业精神与团队管理上都起到了表率作用, 是一名不可多得的好律师、好同事。"

- 张学兵 北京市中伦律师事务所创始合伙人

**Yu Rong, Hylands Law Firm
俞蓉, 浩天信和律师事务所**

"Yu Rong has a strong sense of responsibility and a strong sense of service for clients. She has profound legal skills. Moreover, she has extensive experience in the TMT sector and business acumen, enabling her to provide clients with effective legal solutions. In the face of the rapidly changing TMT industry, Yu works hard to help her clients better respond to changes in policies and market environment, and create value for clients; and meanwhile, she continues to participate in and promote the improvement and development of the TMT industry and related legal services."

- Liu Hong, a lawyer

"俞蓉律师对客户和工作具有极强的责任心与服务意识。她不仅具有扎实的法律专业基础, 更难得地是具有TMT行业丰富的市场经验和敏锐的商业洞察力, 能结合法律技能与商业视角, 为客户提供切实有效的法律解决方案。尤其是, 面对急剧变化和发展的TMT行业, 俞蓉律师能秉持开拓精神, 协助客户更好地应对政策和市场环境变化, 并在为客户创造价值的同时, 不断参与并促进TMT行业及相关法律服务完善和成长。"

- 刘鸿律师

**Zhang Xinyang (Andrew),
Commerce & Finance Law Offices
张新阳, 通商律师事务所**

"Zhang Xinyang is knowledgeable about the TMT sector of the new economy. He keeps abreast of various innovative business models and complex business needs in the TMT sector. On the strength of his profound understanding of TMT's various

business models, Zhang always provides clients with innovative and practical business solutions that consider complex business needs and can be legally implemented, making Zhang a highly respected lawyers by clients and in the industry. Zhang is an outstanding TMT lawyer with good business sense. It is a honour to work with Zhang. He is a great asset to our firm."

- Wu Gang, partner and chairman of management committee of Commerce & Finance Law Offices

"张新阳律师一直专注于新经济TMT领域, 紧密跟踪和掌握TMT领域各种创新的商业模式和复杂的商业需求。结合其对TMT各种商业模式和现实问题的深刻理解, 张律师总是能够为客户提供兼顾复杂商业需求又能在法律和现实层面合规落地的创新商业解决方案。正是由于这点, 张律师备受客户和业界推崇, 是一位十分难得的融合商业和法律的复合型卓越TMT律师。我们为拥有张律师这样的优秀合伙人而感到骄傲。"

- 通商律师事务所管理委员会主任吴刚律师

**Zheng Xiaodong, Jincheng Tongda & Neal
郑晓东, 金诚同达律师事务所**

"Zheng is a senior partner of our firm, with excellent business skills and strong comprehensive capabilities. He serves as the managing partner of the firm. Since joining JT&N in 2009, Zheng has been specializing in reorganization and mergers and acquisitions, securities and capital markets, cross-border investment, TMT, private equity and venture capital. And He handled as the lead lawyer many large projects with great industry-wide influence for clients, providing all-round, premium, professional, innovative and efficient legal services to clients. Zhang is also committed to the firm development and team building, as well as mentoring young lawyers. The firm now has a group of very capable young lawyers with international vision and multi-jurisdiction knowledge, who are diligent and responsible. Zheng also led the establishment of a strict quality control system, and the building an internal multi-level resource allocation service platform, through which the firm integrates its domestic and overseas advantageous resources to help Chinese and international clients evaluate investment environment and identify investment risks, and provide them with effective solutions and customized services."

- Pang Zhengzhong (Jason), founding partner of Jincheng Tongda & Neal

"郑晓东律师是本所业务精湛、综合能力极强的高级合伙人, 同时也是我们非常优秀的新生代管理合伙人。郑律师自2009年加入金诚同达以来一直专注于重组并购、证券与资本市场、跨境投资、TMT、私募与风险投资等业务, 主办了众多在业界极具影响力的大型项目, 为客户提供全方位、优质、专业、创新、高效的法律服务, 得到了众多客户的一致赞誉。同时, 郑律师致力于律所建设, 特别是团队建设, 培养了一批兼具国际化视野与多法域知识背景、勤奋负责且专业能力的青年律师。另外, 郑律师牵头建立了一套严格的质量控制制度, 通过以项目需求为引导、以专业研究为基础、以多边合作方式组织实施, 致力于在所内搭建多层次资源配置服务平台, 并通过联合海内外优势资源, 协助中国乃至全球客户在投资、合作、并购、融资过程中, 评估投资环境, 识别投资风险, 提出应对策略, 并提供专业化、个性化的系统服务。"

- 庞正忠律师, 金诚同达律师事务所创始合伙人

競天公誠律師事務所
JINGTIAN & GONGCHENG

跟紧TMT行业发展、领跑TMT法律服务 ——专访竞天公诚律师事务所合伙人叶玉盛律师

Keeping abreast of the cutting-edge development of TMT industry to enable clients to stay at the forefront

—Interview with Ye Yusheng, partner at Jingtian & Gongcheng



叶玉盛 Ye Yusheng
竞天公诚合伙人
Partner at Jingtian & Gongcheng
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ALB: 在多年办理案件的过程中,您认为TMT行业近年来经历了怎样的发展,表现出怎样的趋势?

叶玉盛律师:随着移动互联网的发展,TMT行业正经历巨大变革。互联网+正在改变包括娱乐、零售、金融、医疗等在内的多个行业,并且流量的变现模式也正在被深挖。视频直播、网红经济等新的商业模式走进了现实世界。TMT行业在最近几年迎来了发展的“黄金年代”。

在未来三到五年内,人工智能和5G技术的结合将为新一代设备的出现提供动力。这些新一代设备将会重新定义“智能”这个词:首先,新设备的用户界面将基于触摸和语音界面并行工作;其次,不再使用分散的应用程序来满足用户需求,而是应用人工智能驱动的算法来预测和推断用户的意图。未来,TMT行业中最具有AI潜力的三个板块将集中在科技、娱乐及电信行业。

ALB: 近年来,TMT行业法律法规的制定和行业监管发生了哪些重大变化?

叶玉盛律师:首先,TMT行业的法律监管不可避免地会出现一定的滞后性,例如前几年P2P平台非常的火爆,但是相应的监管措施尚没落地,市场上出现了很多的乱象,但随着P2P监管措施的陆续出台,行业乱象得到了整治;其次,TMT行业的法律监管也越来越精细化,例如,在电商领域,出台了《电子商务法》;在区块链领域,出台了《区块链信息服务管理规定》,等等。法律监管正在深入TMT行业的方方面面。

ALB: 作为一名在TMT行业经验丰富、硕果累累的律师,您是如何不断适应这些行业发展带来的变化的?在办理案件的过程中,您总结出哪些成功经验?

叶玉盛律师:一方面,我会关注TMT行业最新的发展,保持“好奇”的心态,跟上时代的脚步;另外一方面,在每一个关于TMT行业的法律新规发布之后,我也会进行学习,了解最新的监管动态,以适应TMT行业变化与发展。

至于我的经验,首先,业务模式是重中之重,在与客户沟通与交流的时候,第一要义就是只有深入理解客户的业务模式,我们才能够进一步判断如何搭建架构以及合法合规的经营需要的资质证照的类型;其次,要了解客户的需求,站在客户的角度去思考问题,并帮助客户切实地去解决问题。如何解决问题也是一个大学问,我通常会进行多角度的思考,为客户提供几个不同的解决路径,让客户选择其觉得可以做到的方式;最后,律师是一门精细活,并且法律的发展也是日新月异,每一个新的法律法规都可能影响律师对于业务合规性的判断。因此,我会让团队成员在新的法律法规出台之后去撰写相关的解读文章,并在团队内分享学习心得,使得整个团队都能够紧跟法律发展的步伐。

ALB: 未来五到十年,您个人有何发展规划?

叶玉盛律师:首先,我希望能够出版一本关于TMT行业的书,梳理TMT行业的监管脉络以及一个TMT企业如何从零走向IPO;其次,我希望能够在几所高校开展实务课程,使得学生能够在学校里学习到实务操作与法律技能,帮助其完成从一个法学生到律师的过渡。目前,我已经在复旦大学开了一门实务课程,未来希望能够与更多的高校进行合作。

ALB: According to your experience, what developments and trends have you witnessed in the TMT industry in recent years?

Mr. Ye Yusheng (Ye): The TMT industry is undergoing tremendous changes. The Internet plus is changing many industries and sectors, such as entertainment, retail, finance and medical care. Meanwhile, the ways of monetizing live streaming keeps being explored. New business models such as live streaming and the Internet celebrity economy are gaining momentum in the real world. The TMT industry has entered into a “golden age” in recent years.

In the next three to five years, the combination of AI and 5G technology will give impetus to the emergence of a new-generation devices, which will redefine the word “intelligence” by, firstly, working based on both touch screen and voice user interfaces; and secondly, integrating various apps to meet user needs based on predictions derived from AI-driven algorithms. In the future, the three high-potential sectors for AI in the TMT industry are technology, entertainment and telecommunications.

ALB: In recent years, what major changes have taken place in the TMT industry legislation and regulation?

Ye: It is inevitable that there is “law lag” in the regulation of the TMT industry. For example, the P2P platform was very popular in the past few years, but there was no corresponding regulatory measure in place, resulting in market chaos, which, however, has been gradually cleaned up since the promulgation and implementation of P2P regulatory measures. Furthermore, the regulation of the TMT industry has become more specific, for example, regulatory authorities have promulgated the E-commerce Law to regulate e-commerce related matters, and in the field of blockchain, the Administrative Provisions on Blockchain Information Services has been introduced. Authorities are implementing in-depth regulatory measures in all aspects of the TMT industry.

ALB: As an experienced TMT lawyer with great fulfillments and achievements, how do you accommodate yourself to the changes brought about by the development of the industry? What are the keys to your success?

Ye: Paying attention to the up-to-date developments in the TMT industry, remaining relentlessly curious, and keeping up with the times, these are very important; moreover, it is also important to keep abreast of the up-to-date regulatory trends to accommodate myself to the changes and developments of the TMT industry, for example, I would carefully study each newly promulgated laws and regulations concerning the TMT industry.

According to my experience, the business model is the top priority. Learning about the client's business model can help us determine how to build the structure, and the qualifications and credentials required for compliance operation; secondly, we need to understand the needs of the clients, and perceive issues from the clients' perspective, to provide clients with practical and effective solutions. I usually give clients multiple solutions based on different perspectives, so that clients can choose the most feasible and practical one. Being lawyers, we need to give attention to details, and meanwhile keep up with changes in laws and industries. Each new law and regulation may affect the lawyer's judgment on business compliance. Therefore, I ask my team members to write relevant analysis articles after reading those newly introduced laws and regulations, and then share with the whole team what they have learnt, to help the whole team keep up with the pace of legal development.

ALB: What are your personal development plans for the next five to ten years?

Ye: First, I hope to publish a book on the TMT industry, sorting out the regulatory context of the TMT industry and how a TMT start-up company goes public; secondly, I hope to be able to provide practical courses in colleges and universities to help students gain practical operation and legal skills, so as to help students grow into a competent lawyer. I am currently teaching legal affairs course at Fudan University, and hope to work with more universities and colleges in the future.

SECURITY IN A REMOTE WORLD

“远程”世界中的安全保障



As the global coronavirus outbreak causes employees everywhere to start working remotely, the risk of cybersecurity breaches is heightened. Lawyers in Asia discuss the steps they are taking to keep their clients secure – and themselves as well. BY ASIAN LEGAL BUSINESS

由于全球新冠疫情蔓延，越来越多员工开始了远程办公，随之而来的网络安全风险也日益加剧。执业于亚洲的律师们讨论了他们协助客户采取的安全措施，以及律所自身的应对办法。作者：《亚洲法律杂志》

There is not a part of the world that hasn't been affected by the novel coronavirus disease (COVID-19) pandemic. As self-isolation and quarantines come into effect, more people are working remotely and connecting online instead of in person.

While corporations and small businesses alike scramble to find digital solutions for the conundrum, cybersecurity concerns need to be on top of the list.

Even the U.S. Federal Bureau of Investigation has warned of a spike in cybercrimes. And those in the legal field are seeing it too.

"In our experience, we are seeing an increase in the amount of businesses being affected by cyberattacks recently, as cybercriminals look to try and exploit IT weaknesses when users are working remotely," says Lauren Hurcombe, a senior associate at DLA Piper's Hong Kong office.

"Organisations should therefore be mindful of these risks and implement effective remote working policies and arrangements as a matter of priority."

Even in January 2020, software consultancy Check Point Research stated that the leading malware threat Emotet was spread during the month using a coronavirus-themed spam campaign. That month, Emotet affected 13 percent of organisations globally.

"The 'most wanted' malicious threats impacting organisations continue to be versatile malware such as Emotet, XMRig and Trickbot, which collectively hit over 30% of organisations worldwide," says Maya Horowitz, the director of threat intelligence & research and products at Check Point.

"Businesses need to ensure their employees are educated on how to identify the types of topical spam emails that are typically used to propagate these threats, and deploy security that actively prevents these threats from infecting their networks and leading to ransomware attacks or data exfiltration."

International groups like the World Health Organization also had to put out a statement warning people of scams run under the guise of coronavirus related issues.

CYBER CONCERNS

Mark Bennett, a counsel at Bird & Bird's Hong Kong office, believes there are certainly increased cybersecurity risks for companies with more employees working from home, as the network is only as secure as its weakest link.

"Many employees may be connected to home networks (or even public networks) or using home devices which are not as secure as office networks and devices - for example, because they do not meet basic security requirements such as requiring unique passwords or using multi-factor authentication, which are usually built into office cybersecurity requirements," says Bennett.

"When you have a large portion of the workforce potentially using unsecured connections or devices, this inevitably increases the risk of exposure to cyber threats and being subject to a cyber-attack."

Bennett also believes the risk increases further where companies have outsourced their IT services to third party providers who would usually only have on-premises access to the company's IT systems but may now be forced to access systems remotely.

Kyung Kim, the senior managing director and head of cybersecurity for the APAC region at FTI Consulting, says several possibilities are arising from this.

"There are several cyber risks associated with a remote working environment: increased COVID-19 related phishing and ransomware attacks; unsecured home Wi-Fi networks; vulnerable Wi-Fi routers that use default login credentials; Internet-connected devices that can be used as access points to a home network; and malware campaigns disguised as distribution of legitimate information regarding COVID-19," he says.

Jeremy Tan, a partner in Bird & Bird's Singapore office, recommends ensuring good cyber hygiene and consistent practices in the normal course of business to avert any mishaps.

"Ensure you have robust cyber policies and procedures in place and more importantly in these circumstances, ensure that all employees are aware of these policies and procedures.

现在，全球几乎找不到任何未受新冠疫情大流行影响的角落了。随着保持社交距离和自我隔离措施的普遍生效，越来越多人开始了远程办公，人们不再面对面交流，而更多采用了网络手段。

大小公司们都在这一难题下忙着寻找数字解决方案，与此同时，网络安全顾虑也应运而生。

甚至连美国联邦调查局都提醒公众注意网络犯罪高潮的到来。法律界人士同样留意到了此种趋势。

"根据我们的经验，近期遭受网络攻击影响的企业数量明显上升，在使用者远程办公的同时，网络罪犯也在寻找和挖掘着IT系统的弱点。"欧华律师事务所香港代表处资深律师Lauren Hurcombe说。

"组织机构因此应该留心此类风险，执行有效的远程办公政策及安排，并将此视为第一要务。"

早在2020年1月，软件咨询公司Check Point Research就曾公开提示，木马程序Emotet正借着和新冠疫情相关的虚假宣传大肆传播。仅在1月，Emotet就影响了全球13%的机构。

"'通缉令'中排名靠前的依旧是类似Emotet、XMRig和Trickbot的恶意程序，它们共同影响了全球超过30%的机构。"Check Point威胁情报&产品及产品部门主管Maya Horowitz说。

"企业需要确保员工得到充足教育，能够识别带有此种木马程序的典型钓鱼邮件，并采取积极安全防护手段，防止此类程序感染内网，引发勒索性袭击或数据泄露。"

甚至连国际卫生组织这样的国际机构都不得不出面警告公众，要加倍留意伪装成疫情相关信息的钓鱼邮件。

网络安全顾虑

鸿鹄律师事务所香港办公室顾问Mark Bennett相信，对于有大量员工在家办公的企业来说，网络安全风险定然会增加，因为他们所使用的网络安全性较弱。

"许多员工使用的可能都是家庭网络（甚至公共网络）设备，而这些网络和设备与办公场所相较，安全性较差。举例来说，这些网络并未达到最基本的安全要求，比如使用特殊密码，或多重认证系统，而这些都是办公室网络的标配。"Bennett说。

"当大量员工使用的都是潜在性非安全网络或设备，就不免加增暴露于网络威胁的风险，成为网络攻击的目标。"

Bennett还相信，如果企业将IT服务外包给第三方供应商，此时风险会进一步增加。因为第三方通常只能实地操作企业的IT系统，现在则不得不改为远程操作。

FTI咨询公司亚太地区资深常务董事及网络安全主管Kyung Kim说，这种情况会导致几种可能性的发生。

"远程办公环境会带来若干网络风险：加增的伪造疫情相关的钓鱼及木马攻击；非安全的家庭Wi-Fi网络；使用默认登录密码的脆弱Wi-Fi路由器；可以用来连接到家庭网络的互联网相关设备；以及伪装成疫情信息的恶意邮件。"他说。

鸿鹄律师事务所新加坡办公室合伙人Jeremy Tan建议，应在正常的业务流程中安排定期的网络清洁措施，避免攻击的发生。

"确保公司具备强有力的网络政策及流程，同时在现今状况下，确保所有员工清晰知晓这些政策和流程。企业应重新审查既有信息安全政策，以及业务连续性/灾难修复计划，确保这些计划都涵盖了远程办公的情况，并保障计划的执行。"Tan律师说。

假使不存在既有政策或计划，公司应制定关于远程办公、连接公司系统时最为基本的规则。

"在任何情况下，员工和合同工必须清楚这些规则，且公司应提供遵守相关规则的实践性指导。此外，企业还应保障应变计划就位，员工在发现既存或疑似危险时应及时向公司报告。"Tan律师说。

对于监管类行业，例如金融服务和电信业，Tan律师也建议它们留意自身在业务连续性、外包及网络安全方面的监管义务，以及安排员工远程办公是否符合此类义务的要求。

"举例来说，假使一家金融服务企业授权部分员工远程登录其系统，就可能引发问题。"他说。

人为因素

老谋深算的网络攻击可能是一方面问题，但人为错误也值得忧虑。

"从网络安全视角看，在家办公的主要风险之一则是控制人为错误。"Hurcombe说。

Companies should review their existing information security policies, as well as business continuity/disaster recovery plans, to check whether they cover remote working scenarios and if so, ensuring that these are followed," says Tan.

And if there are no existing policies or plans, companies should develop at least some basic rules on remote working and access to company systems.

"In any event, all employees and contractors must be aware of the rules and in this respect, it is helpful to provide practical guidance on how to follow these rules. Companies should also ensure that they have incident response plans in place, and that employees are aware of the need to report any actual or suspected incidents," says Tan.

For companies in regulated sectors such as financial services or telecommunications, Tan also advises that they be mindful of their regulatory obligations to business continuity, outsourcing and cybersecurity, and whether their remote working arrangements would comply with their regulatory obligations.

"For example, this may throw up issues where there is a sizeable number of contingent staff deployed by a company in the financial services sector looking to give such staff remote access," he says.

THE HUMAN FACTOR

Sophisticated cyberattacks are one thing, but human error is also a major concern.

"From a cybersecurity perspective, the main risks with working from home arrangements continue to be around managing human error," says Hurcombe.

Hurcombe says that breaches can happen whether through employees being complacent and not adhering to the same protocols as though they were in the office, or due to the difficulties in navigating and properly responding to issues in the event of an incident when key decision-makers and information security teams are spread out across different time zones and geographies.

Ultimately, mindfulness and sensible practices go a long way.

"For those working outside of the office, and in particular, from home,

common sense needs to be exercised. Making sure device screens are not left open or visible to just anyone or taking calls in more private places are good practices to enhance general security," says Mariel Dimsey, a partner in CMS' Hong Kong office.

"Employees may not think they possess data that is valuable to cyber-criminals, but between intellectual property, customer information, or confidential data, odds are they have something sensitive on their machine," says FTI Consulting's Kim.

He emphasizes that when working in a remote setting, employees should also take care to not download or access this sensitive type of information unless they absolutely must and should ensure that they are always operating in a protected environment.

"Furthermore, this data should never be transmitted over unencrypted email," says Kim.

ments within secure systems, which law firms should already have in place.

"Documents circulated in our firm's e-mail system are shielded by a spam filter and our IT team. Messages are filtered and any suspicious messages or attachments will get caught and won't reach our personnel. Our lawyers are notified and additional steps for verification are required to receive a message that has been classified as suspicious," says Dimsey.

Communicating the need and importance for vigilance to remote workers may seem obvious but is still essential.

"From a business perspective, communication is key. Businesses should take the time to remind staff around maintaining compliance with internal security protocols when working remotely," says Hurcombe.

"Organisations should take the time to inform employees of expected ways of working and send out regular reminders and top tips about maintaining good security and data practices, as well as ensure there is appropriate IT support to limit the potential impact of any issues."

Hurcombe suggests that such communications could be in the form of periodic company-wide email reminders

and/or the implementation of e-learning modules.

Workers that aren't digital natives may not easily identify threats online, and then fall for phishing scams. In fact, the World Economic Forum estimates that 98 percent of cyber-attacks use some form of social engineering tactics.

"Most importantly, ensure that employees are adequately trained and are provided with practical guidance on how to protect against cyber threats, and how to recognise any potential threats (e.g. phishing emails). For employees – be sensible and follow the rules. If anything feels suspicious or unsecure, check with your company before proceeding," says Bennett.

"Communication between employers and employees is critical to ensure successful remote working arrangements, especially in the current climate," says Hurcombe.

GET READY

Now is also the time to ensure all systems are in place and updated.

"Organisations should also take the time to ensure that their IT security systems, back-ups and anti-virus software are up-to-date and IT service desks are appropriately staffed to help deal with any issues quickly," says Hurcombe.

Giving IT the resources they need to buff up security online and handle any threats that come their way is also a good idea.

"IT security personnel should be given the resources they need to handle the increase in employees accessing the company network from home, and all staff should be notified of an increase in phishing and malware attacks and how to spot such an attack," says Kim.

He has a couple of recommendations. "All employees working remotely should use a virtual private network (VPN) to access the company network; multifactor authentication should be implemented on all devices; and operating platforms should be regularly updated to ensure known vulnerabilities are fixed," says Kim.

It's a good sign some firms are confident in their setups and seemingly prepared for anything.

“Every firm has different setups and approaches. Even prior to the virus outbreak, we already had very robust measures in place as a lot of our lawyers work remotely when on business trips so remote working has always needed to work well for us,” says Dimsey.

Tan agrees, stating that law firms generally already have robust information security policies and incident response plans in place. “The harder part is making sure that all employees across the firm are aware of what needs to be done, and how to implement good cybersecurity practices at home. In our experience, we have been working with our lawyers and all staff to make sure they have access to a company device (e.g. work laptop) and to only connect to the network using a secure connection through our VPN (and have been stress-testing our network to make sure it continues to function effectively under these circumstances),” he says.


Bird & Bird’s Tan says they are also reminding all employees of their existing information security policies.

“For example, only using work computers for work purposes, not sending any documents using personal email accounts, not storing company data on personal devices or external storage devices (e.g. USB keys), and so on,” he says. “These policies are already in place but become much more pertinent in these circumstances.”

His Hong Kong colleague, Bennett, sees employers playing a vital role in preventing any cyber slip-ups.

“For employers – we would encourage employers to review existing information security policies, or where there are none, developing basic rules on remote working and access. If possible, consider limiting the amount of access to systems or information that employees can access remotely to the bare minimum required,” says Bennett.

That is quite a laundry list of things to think and act on, but maintaining the cybersecurity of any company when most workers are going remote and digital is possible.

“As long as additional precautions are considered, working remotely can be conducted safely and securely,” says Kim. 

Hurcombe说，违规行为可能在两种情况下发生：其一，员工由于过度自信，未像在办公室中一样遵守相同规定；其二，问题发生时，由于决策者和信息安全团队分布在不同时区和不同地区，很难协调他们做出恰当反应。

总的来说，警觉和细腻的操作驶得万年船。

“对于在办公室以外，尤其在家中办公的员工来说，有必要培养他们的普遍共识。不要让电脑屏幕暴露于他人视线之下，在私密场所接听工作电话，这些都是保障安全的好做法。”CMS香港办公室合伙人Mariel Dimsey说。

“员工可能觉得自己处理的数据对于网络罪犯来说没太大价值，但很有可能他们的电脑上保存着敏感信息，关涉到知识产权、客户信息或保密数据。”FTI咨询公司的Kim说。

他强调，远程办公时，员工需注意尽量不要下载或查看此类敏感信息，除非不得已而为之，且要保障在安全环境中操作。

“此外，绝不要用未加密邮件传送这些数据。”Kim说。

谈到自身情况时，许多律所表示，它们已经配置了安全系统。

“通过律所内部邮件系统传送的文件都会经过垃圾邮件过滤和IT团队审查。信息会先经过过滤，任何可疑信息或附件都会被及时发现，不会到达个人邮箱。我们已通知到员工，假使要查收被视为可疑的信息，需经过特殊认证步骤。”Dimsey说。

提醒远程办公的员工提高警惕可能听起来老生常谈，但仍是必须。

“从业务角度看，交流非常关键。企业应该花时间不断提醒员工，在远程办公时留意遵守内部安全条例。”Hurcombe说。

“机构应该花时间告知员工可行的工作方法，定期发提醒邮件和小窍门，告知大家如何更好保障安全、处理数据。机构还应提供恰当的IT支持，以限制可能的冲击。”

Hurcombe建议，此类沟通应通过公司邮件定期发送，以及/或者安排网络小课程。

非资深网民无法轻易识别出网络威胁，从而上了钓鱼诈骗的当。事实上，据世界经济论坛估

计，98%的网络攻击都利用了某种社交工程骗术。

“最重要的是，确保员工接受了足够培训，拥有实践技巧，能保护自己不受网络威胁伤害，也能识别出潜在威胁（如钓鱼邮件）。员工们请记住：提高警惕，遵守规则。遇到任何可疑或不安全的信息，先和公司核实，再进行下一步操作。”Bennett说。

“在目前的环境下，确保网络安全的关键，就是保障员工和雇主间的顺畅交流。”Hurcombe说。

做好准备

当下也是确保所有系统就位并得到更新的最好时机。

“机构也应利用这段时间，确保它们的IT安全系统、后援和防毒软件得到更新，以及IT服务系统人员充足，以帮助快速应对问题。”Hurcombe说。


机构可以考虑为IT部门提供资源，升级网络安全及处理威胁的能力。

“员工在家中登录公司网络的情况激增，负责IT安全的人员也该获得资源处理此种情况。机构也该通知到所有员工，近期钓鱼及恶意攻击情况加剧，他们应学习察觉此类攻击。”Kim说。

他就此提出了几点建议。“所有远程办公员工应使用虚拟专用网络（VPN）登录公司网络；应在全部设备上使用多重认证；运行平台应定期升级，修补可能的漏洞。”Kim说。

值得欣喜的是，一些企业对于自身系统很有自信，也做好了准备应对危机。

“每家企业都有不同的系统和方法。即便在疫情爆发之前，我们已经就位了有力措施，因为许多律师出差时都需要远程办公，这是工作中的刚需。”Dimsey说。

Tan律师对此表示赞同。他说，律所普遍拥有强有力的信息安全政策，也就位了应变计划。“比较难的是确保不同办公室员工普遍知晓相关措施，以及如何在家执行良好的网络安全举措。根据我们的经验，我们为律师和员工提供了公司设备（例如工作笔记本电脑），要求大家只通过VPN连接公司网络（同时不断对网络进行压力测试，确保其在此种情况下也能有效运转）。”他说。 

DONE DEAL

With Brexit now out of the way, Asian companies may have to review their investment and trade strategies to adapt.

BY ASIAN LEGAL BUSINESS

■ With the United Kingdom officially leaving the European Union in late January, Brexit is now done and dusted, and Asian businesses with interests in one or both areas need to start making adjustments. While the impact on areas such as data flows and regulations is likely to be limited early on, other areas such as immigration and trade may begin experiencing changes much faster, and the differences between the United Kingdom and European Union likely to get larger over time.

Barring any disruptions or changes spurred by the novel coronavirus disease (COVID-19) pandemic, Brexit will be implemented through to the end of the year to Dec. 31, 2020.

MATTERS OF TRADE

Brexit uncouples the UK from the EU economic system and without any replacement arrangement will cause severe disruption, says Ross Denton, senior counsel at Baker McKenzie's EU, Competition and Trade Department in London.

The disruption may not be felt right away. UK and EU investment and trade law are likely to be highly aligned in the short term, but differences are likely to emerge over time.

Asian companies that trade with Europe via the UK may have to adjust, as there is a big difference between the Single Market treatment of trade and investment that was in place between the UK and the rest of Europe before Brexit and trade terms under World Trade Organization (WTO) rules.

"Companies that have used the UK to trade with the EU, or vice versa, will now have to investigate the economics of that model," Denton says. Companies that depend heavily on just-in-time supply chains, such as automakers, may be among the most affected.

If the UK and EU do not agree on a

free trade agreement (FTA), then goods coming into the UK for export to the EU may be subject to customs controls and duties and may face additional customs controls and duties on the way into the EU. The UK has "ambitions to do new FTAs with a number of Asian markets" including China and India, so a significant amount of activity is likely.

"Mitigation measures, such as customs warehousing may be available but will be an additional cost," Denton says. Even if the UK and EU do agree on an FTA "those Chinese goods may not be able to avoid the additional checks and duties on movement in the EU, because those Chinese goods may not pass the

says Denton. Ironically, there are fewer of these practices in the UK because, after the country joined, most of these issues were dealt with in Brussels.

SLOWER IMPACT

Employment and human resources issues are also some of the key considerations, but the impact may be felt slowly.

"We do not foresee any immediate or mid-term impact on Asian companies from an employment law perspective arising out of Brexit, and any such changes would be gradual," says Catherine Leung, legal director at Lewis Silkin in Hong Kong. However, she notes, there remains an element of uncertainty

"There will be more uncertainty in Asian businesses who are not living and breathing Brexit but just seeking to maintain links into the EU and UK."

— Ross Denton, Baker McKenzie

rules of origin necessary for duty-free import into the EU."


"Companies dealing in finished goods are the most vulnerable, with those in the agricultural or foods sector the most at risk, and those in IT and pharma products less likely to be affected," says Denton. "There will be more uncertainty in Asian businesses who are not living and breathing Brexit but just seeking to maintain links into the UK and EU."

Ultimately, these changes are likely to boost demand for legal advice.

"Firms with strong trade and regulatory practices will be in demand as clients seek to navigate these issues,"

for companies going forward who have traditionally built supply chains with Europe, particularly companies who have been trading via the UK to the larger EU market.

"It remains to be seen what the impact would be for trade of products and services to and from the UK and EU after the implementation period for Brexit ends," says Leung.

The UK has agreed to implement any new EU employment directives and to comply with rulings from the European Court of Justice, domestic courts and tribunals between now and Brexit and this arrangement can be extended for another two years. 

尘埃落定

伴随着英国正式脱离欧盟，亚洲企业也应进一步审视自己在该地区的投资及贸易策略。

作者：《亚洲法律杂志》

1月31日，英国正式脱离欧盟，至此英国脱欧已尘埃落定。在英国或欧盟开展业务的亚洲企业也应做出调整。早期，数据流动和监管等领域的变化可能还比较有限，移民及贸易领域的变动则会较快显现。可以预期，未来英国和欧盟间的差异将会随时间发展逐渐增大。

排除新冠疫情爆发所带来的阻碍与变化，英国将在未来一年中进入脱欧过渡期，直到2020年12月31日。

贸易问题

脱欧将使英国从欧盟经济体系出剥离出来，然而在没有任何替代性安排的情况下，此举可能产生严重的伤害作用，贝克·麦坚时国际律师事务所伦敦办公室欧盟、竞争法及贸易部门高级顾问Ross Denton如此说。

此种伤害可能不会被立刻感知。短期内，英国和欧盟关于投资和贸易的法律可能会保持高度一致，但差异会随时间发展而出现。

“如果英国和欧盟能达成某种自由贸易协定，那么伤害和经济成本还会相对较低。”

通过英国和欧盟进行贸易的亚洲企业可能不得不做出调整，因为脱欧前，英国和欧洲其他国家在贸易和投资领域享受单一市场待遇，脱欧后，双方间就受世界贸易组织的相关贸易条款约束，而这二者间存在很大区别。

“过去通过英国和欧盟做生意——或者情况相反——的企业现在得重新计算一下此种模式是否经济。”Denton说。尤其是那些严重依靠即时化（just-in-time）供应链的企业，例如汽车生产商，可能会最早感受到冲击。

如果英国和欧盟无法达成自由贸易协定，那么进入英国后再出口到欧盟的商品就要受到海关和关税控制，在进入欧盟时遭受加增关税。英国目前有“野心和一系列亚洲市场达成自由贸易协定”，其中包括中国和印度，因此市场将期待一系列大变化的发生。

“缓和性措施，例如保税仓库，有可能就位，但这也增加成本。”Denton说。即便英国和欧盟达成自由贸易协定，“来自中国的商品在进入欧盟时，可能也无法避免额外的检查环节和加增关税，因为这些中国商品无法依据原产地规则享受进口到欧盟时的免税政策。”

“制成品类贸易公司是最脆弱的，尤其农产品和食品行业风险最大，IT和医药产品类企业受到的影响则相对较小。”Denton说，“假使亚洲企业不去真正理解并适应脱欧，只想简单维持和英国及欧盟间的贸易联系，它们就要面临很大的不确定性。”

香港办公室法律总监梁家茵说。不过她指出，对于那些在欧洲建立了长期供应链，尤其是惯于通过英国进入更大欧盟市场的企业来说，此方面未来仍存不确定性。

“过渡期结束后，英国和欧盟间产品贸易及服务流通将发生何种变化，还有待观察。”梁律师说。

英国已同意在过渡期内继续执行欧盟新颁布的劳动指令，以及来自欧洲法院、国家性法院或法庭的判决。这一协议未来可能延长两年时间。

“在劳动法层面，亚洲企业将继续关注并熟悉英国和欧盟间的监管调和。”世勤律师事务所合伙人Colin Leckey告诉ALB。“过渡期一旦结

“假使亚洲企业不去真正理解并适应脱欧，只想简单维持和英国及欧盟间的贸易联系，它们就要面临很大的不确定性。”

— Ross Denton, 贝克·麦坚时国际律师事务所

最终，这些变化有可能导致相关法律服务需求的激增。

“贸易及监管业务强所将最受欢迎，因为客户需要律所协助解决这类问题。”Denton说。讽刺的是，这两项都并非英国律所强项：加入欧盟后，此类法律业务大多是在布鲁塞尔处理的。

长期冲击

雇佣和人力资源问题也很关键，只不过企业将更晚感知到此类问题。

“关于英国脱欧，我们并未预见到了其将在中短期给亚洲企业带来劳动法相关问题，而且此类变化通常发生得比较缓慢。”世勤律师事务所

束，事情将如何发展，极大程度取决于欧盟和英国达成的自由贸易协定的性质。在此之前，什么都不确定。”

“回顾过往，英国脱欧支持者的主要诉求之一，就是使得英国可以不再受限于欧盟的部分劳动法律法规，例如工时指令和派遣人员规则，以此创造出对雇主更为友好的环境。不过最近的讨论中并未着重提及这些话题。”他说，“未来是否会重提，还有待观察。”

另外一个需要考虑的是移民问题。对于亚洲企业来说，此点照样不会变化太快，因为这些企业原本就需按照英国移民法规引入外籍雇员。



2020 ALB CHINA EMPLOYER OF CHOICE

2020年ALB China年度雇主

As it set out to select the best employers in China's legal industry, ALB received nearly 3,500 responses from employees of different law firms. Law firms have been ranked based on responses to aspects like job satisfaction, remuneration, training and career development opportunities, knowledge management and IT technical support, work-life balance and more.

经过一个月时间调研，ALB评选出了2020年度中国大陆地区法律界最佳雇主。今年共有3500余名律师事务所律师参与调研，从工作满意度、薪酬水平、工资结构和透明度、培训机会和职业发展机会、接受专门指导的机会、晋升透明度、团队合作程度、IT技术支持水平、工作生活平衡、职业发展前景及推荐度等方面，对所在律所做出了中肯评价。

BY HU YANGXIAOXIAO 作者：胡阳潇潇

Like other industries in China, law firms are also seeing more young employees. While there has already been media discussion on the post-80s and post-90s generations, what changes do the firm leaders see in the young employees' needs? And how do they respond to these changes?

East & Concord Partners currently has 493 employees. Li Dajin, director of the firm, tells ALB that 75 percent of the law firm's employees were born after 1970 and he says it is difficult to generalize the younger generation. "There's no fixed model for young people. Everyone's educational background, family background, life situation, and career path determine his/her special needs at different stages," he says. Even for an individual, his/her needs are constantly changing. He says the important thing is "to be very clear whether your position and the company's system can best meet your needs at this stage."

Yang Guang, managing partner at Lantai Partners, sees the needs of the young employees changing in several aspects. "First is how they see remuneration. Everyone wants a high salary when they first join the firm, but now young people look at remuneration more comprehensively. They pay more attention to career progression in two to three years and the professional development, business scope and clients of the law firm. Second is they are driven by their interests and the growth potentials when making choices. Last but not least, they look at the reputation of the law firm and its relationship with the staff," he says.

As a foreign law firm, Clifford Chance opened its Hong Kong office in 1980 and was the first international law firm to open an office in Beijing in 1985 then another in Shanghai in 1993, witnessing the growth of several generations of PRC lawyers. Terrence Foo, co-managing partner for China, tells ALB: "We recognize that the post-80s and post-90s generations in China are unique, having grown up in very different environments compared to their parents' generation."

For Foo, the law firm and the younger generation must think alike. "For Clifford Chance, our ability to attract

talent and build the best teams comes down to three key areas: offering exposure and experience advising on market-leading and complex deals for the best clients, working with a diverse and inclusive team with a collaborative culture, and working for a firm that focuses on their professional and personal development and wellbeing, and that provides an enriching and positive working environment. These are also consistent with the aspirations of the younger generations of talent.”

The law firm also adopts approaches best suited for the younger generation. Foo names two examples: “Technology is not just a part of life, it is a way of life for this young generation – we have invested heavily in technology to allow our people the flexibility to work remotely and across a variety of mobile devices and platforms. Moreover, we encourage the younger generation to foster both an individual identity and a strong sense of community - we work in collaborative teams and encourage each team member to express their views regardless of seniority; we have an ‘open door’ policy which encourages our employees to reach out to the relevant partner, senior lawyer, or human resources team at any time to seek advice or make suggestions.”

A vast majority of the 312 employees at Chang Tsi & Partners were also born after the 1980s and 1990s. The firm’s managing partner Simon Tsi has noticed that these people mostly have studied abroad and at elite institutions. Tsi points to three areas for unleashing the young people’s potential: “First, adopt diversified incentives and avoid using KPI tools in a narrow sense; Second, create an inclusive atmosphere to cater to the strong sense of individuality of the post-90s employees to create as many opportunities as possible so that they feel like a team leader rather than an employee; Third, give employees full guidance by establishing and implementing a mentorship program.”

SYSTEMS AND INDIVIDUALS

A robust appraisal system is the foundation of a law firm as a profit-making organization. As Li puts it: “A law firm’s

DOMESTIC LAW FIRM

中国律所

AnJie Law Firm

安杰律师事务所

Chang Tsi & Partners

铸成律师事务所

East & Concord Partners

天达共和律师事务所

Jingtian & Gongcheng

竞天公诚律师事务所

JunHe LLP

君合律师事务所

Lantai Partners

兰台律师事务所

Merits & Tree Law Offices

植德律师事务所

Solton & Partners

索通律师事务所

Tahota Law Firm

泰和泰律师事务所

Zhong Lun Law Firm

中伦律师事务所

INTERNATIONAL LAW FIRM

国际律所

Clifford Chance LLP

高伟绅律师事务所

CMS, China

CMS, 中国

Paul Hastings LLP

美国普衡律师事务所

Ropes & Gray LLP

美国瑞格律师事务所

Stephenson Harwood LLP

罗夏信律师事务所

system should let employees understand clearly what constraints and motivates them.”

The three law firms have adopted an appraisal model that considers objective and subjective indicators, but their systems and indicators vary due to the differences in their work culture.

East & Concord Partners implements a grading system that consists of nine grades. Whether a lawyer can earn a promotion or not depends on the work

hours completed that year. Work hours are categorized into billable hours, effective hours and work hours. For example, senior lawyers are required to complete more billable hours. The law firm also evaluates its lawyers in terms of their comprehensive capability, performance and charity work.

Chang Tsi & Partners carries out its appraisal in two aspects. “We take billable hours as the key performance indicator (KPI) for appraisal. The evaluation results are correlated to next year’s salary, commission percentage and the bonus of the year, and are used as the basis for adjusting an employee’s position and providing training. Meanwhile, as a law firm with a corporate-like management structure, we introduced KPI evaluation to set the KPIs and standards for each position,” Tsi explains. This system intends to make appraisal fair and reasonable and the evaluation process complete to earn the employees’ trust and motivate them.

“Clifford Chance’s culture of collegiality and collaboration informs how we evaluate performance at the firm. Unlike the traditional supervisory appraisal system, which is often top-down and one way, we adopt a 360-degree performance appraisal system where feedback is collected from a diverse group of colleagues, both from junior and senior lawyers, as well as business professionals,” says Foo. “Setting objectives is also an indispensable part of our appraisal system, by which, each employee will, after annual appraisal, agree on practicable objectives for next year with the relevant partner or line manager.” The law firm hopes through this system, it can support its lawyers to design a tailored career path that works best for them.

Lantai Partners has designed an appraisal system based on its unique management structure. Yang says the law firm broke with the typical partnership system to set up 13 professional teams. Each team consists of a leading partner, several equity partners, a chief lawyer, and numerous associates. The associates get assignments according to the projects and do not work under a fixed partner. They are divided into

EMPLOYER OF CHOICE

seven levels according to the internal salary structure with corresponding pay for each level. Meanwhile, professional requirements are set clear through the standards for practicing lawyers at different levels.

Besides the grading system, each lawyer must undergo a 360-degree appraisal that evaluates them in 25 areas concerning their professionalism and dedication to work. The law firm also released six internal manuals about the company to help its employees understand what is regarded as “good” by the law firm.

When it comes to the relationship between the systems and individuals, the leaders all say the systems do not exist to punish, but to recognize and encourage. A clear system can help employees define what is regarded as “good” by the law firm to foster their growth on a path recognized by both sides.

Li believes that in corporate-like law firms, personal expectations and the law firm’s system can go hand in hand, as the changing needs of the employees can prompt the law firm to continuously adjust its system. But employees and leaders should also acknowledge that personal needs and the law firm’s systems might not always be completely aligned. Yang tells *ALB*: “I often tell employees that the salary structure is like a legal provision. It is a major premise while every lawyer is a minor premise. Management is essentially a process of bringing the structure and every individual closer together. This structure should be able to inspire individuals and not leave anyone behind feeling unfair and confused.”

REMUNERATION AND PROMOTION

In a law firm, the remuneration system is linked to the appraisal system mentioned above. For example, in East & Concord Partners, different grades correspond to different salary bands. The law firm also considers other factors when determining one’s salary, such as his/her academic qualifications, years of law practice, project experience and so forth. In Clifford Chance, the remuneration system for lawyers comes with

a base component that is based on the experience and a discretionary component. The latter is assessed based on an individual’s wider contribution.

Tsi tells *ALB*: “When managing our budget, our principle has always been ensuring our labour cost grows faster than our overall income and the market rate. Besides salary transparency, we also raise capital inputs to improve employee remuneration. In 2019, the law firm paid 2.52 million yuan in employee remuneration.”

Yang believes that remuneration does not only mean getting paid. He says: “After working in Lantai for six or seven years, you may be promoted to a remuneration partner, and then to an equity partner three years later. The career path is very transparent and clear. I often say that Lantai provides a remuneration package composed of a salary, a career path, role models and the law firm’s supportive culture.”

The leaders believe that convincing numbers, transparent standards, rewarding benefits, and diversified feedbacks determine how satisfied the employees are with their remuneration.

The survey results show that whether a clear career path is in place also affects employee satisfaction. The three law firms all set clear requirements and indicators for promotion. For example, East & Concord Partners allows lawyers above the seventh grade to apply to become partners. Partners are required to have their expertise and complete their annual tasks. Law firms also allow exceptions, with East & Concord Partners and Chang Tsi & Partners promoting mid-level or even entry-level lawyers to be partners.

“The core of the firm’s talent development strategy for China is ‘local excellence and global standards’. Over the last decade, we have made great efforts in training and developing our PRC background lawyers, helping them gain international experience and to become world-class lawyers,” Clifford Chance’s Foo shares with *ALB*. “This is demonstrated by our consistent track record in promoting new partners over the years. Amongst our partners who were promoted in our Beijing and Shanghai

offices, around two-thirds are PRC background. Over the last two years, we promoted four partners in mainland China, which reflects the strong growth of our China practices and the success of our training system.”

MENTORSHIP AND TEAMWORK

As a lawyer is a highly professional and collaborative profession, training opportunities and teambuilding provided by the law firms also greatly affect employee satisfaction.

In terms of training, the three law firms have mentioned measures as morning meetings, regular meetings, newcomer training, special legal training, and online courses. There are also other forms of training to impart knowledge: Chang Tsi & Partners provides highly practical marketing training and on-the-job training that targets Fortune 500 clients; Lantai Partners offers occupational training for chief lawyers and partners on team management.

Meanwhile, Clifford Chance has a well-established talent training system, including rotation program for trainees, LLM sponsorship and overseas training and secondment arrangement for mid-level associates and the Academy Development Centre for senior associates, plus the overarching Clifford Chance Academy. For newly hired graduates, the law firm offers a two-year trainee rotation program with the opportunity to do six-month rotations to four different practice areas, which allows the trainees to gain a breadth of experience across various practice areas in the early part of their career. On the other hand, the Clifford Chance Academy provides classroom and online training for everyone in the law firm, which is aimed at developing non-legal business skills and soft skills. For example, all lawyers will have access to training in finance and accounting, negotiations and presentations. The courses are tailored based on the level of experience, with different courses offered for junior and senior lawyers, and even “master classes” for partners.

A positive team atmosphere between partners and lawyers and among the colleagues is equally

important. For example, Lantai Partners set forth seven criteria for partners on how to become a popular leader. Since lawyers do not work under a specific partner but with different mentors for the projects, all partners are responsible for mentoring the young associates. "I often tell people that in other law firms, a partner may be the highest level lawyers can get to, but in Lantai Partners, the highest level you can get to is partners with the best experience and expertise," Yang says.

Lantai also has an unchangeable rule: Do not say "no" to colleagues. "We hope that all lawyers will become collaborators. This requirement will be an indicator of appraisal in the future. If there is a record of complaints by colleagues at the end of the year, it may have a great impact on the annual appraisal."

As an international law firm, Clifford Chance believes collaboration and cooperation across teams, practice areas, and offices is key to its success as


it regularly advises clients on complex cross-border transactions that give rise to issues that span across practice areas, Foo says. "Our global partnership is based on a lockstep remuneration model to foster a collegiate and collaborative partnership culture across the firm. We also have several mentorship schemes in place, from formal on-the-job 'partner-associate' mentorship to our reverse mentorship programs. These mentorships encourage colleagues to build relationships that span gender, practice areas, jurisdictions, and seniority levels, providing valuable career advice and life tips."

WORK-LIFE BALANCE

Lawyers inevitably face enormous stress at work. The three law firms tell *ALB* that they all implement various measures to safeguard the physical and mental health of their employees. These measures include optimizing the office environment, upgrading infrastructure and

improving the IT systems, allocating budgets to organize company activities regularly, reimbursing gym membership fees for employees, and providing professional mental health counselling for employees.

The design of the firm's system is also a key to ensuring these good intentions are realized. At Lantai Partners, the leading partners, equity partners, and chief lawyers all bear the responsibility of soothing the lawyers' emotions and caring about their growth. The law firm has also opened up a job position for employee relationship management specialist to be responsible for mediation and communication and reporting to the law firm to solve the issues.

On the other hand, Clifford Chance monitors very closely the work levels of its colleagues. It also has a number of partners and senior business services people who act as mental health advocates to provide advice and sources of support for its staff. 



天達共和律師事務所
East & Concord Partners



信任至上
Trust Comes first



一体化管理
Integrated Management



国际化视野
Global Vision

成功始于助人成功
SUCCESS IS ROOTED IN ENABLING OTHERS TO ACHIEVE

天达共和律师事务所总部位于北京，并在上海、深圳、武汉、杭州、成都设有办公室。天达共和现有法律专业人员逾400名。工作语言包括中文、英语、日语等。天达共和致力于为客户提供专业化法律服务，经过20多年的不断积累及锐意进取，已经在以下业务领域取得行业领先地位，赢得了客户的高度信任与赞誉，并连续多年被业界知名媒体如《钱伯斯》《亚太法律500强》《国际金融法律评论》等推荐或报道：公司业务、资本市场与证券、争议解决、刑事法律事务、银行与金融、融资租赁与商业保理、反倾销反补贴、反垄断、知识产权、直接投资、私募基金与产业基金、文化体育传媒、基础设施及项目融资、房地产与建设工程、能源与自然资源、商业与物流、互联网科技、劳动法、医药及医疗健康、破产与重组、政府法律事务。

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■ 与中国其他行业一样，律所管理者也面对着员工日益年轻化的现状。媒体对于中国“八零后”“九零后”已经有过诸多讨论，在律所管理者看来，年轻员工的需求和过去相比，产生了哪些变化？律所又是如何应对的？

天达共和律师事务所目前有493名员工，李大进主任告诉ALB，律所70年以后出生的员工数量占总人数的75%以上。在他看来，年轻一代的特性很难一概而论，“年轻人没有一个固定模式。每个人的教育背景、家庭背景、生活境遇、求职道路等，都决定了他在不同阶段的特殊需求。”即便是个体，需求也在不断变化，重要的是“要非常清晰自己所对位的职位和机构的制度，是否能够最大程度满足你这个阶段的需求”。

在兰台律师事务所杨光主任看来，年轻一代员工的需求变化体现在几方面：“一是对薪酬的认知。每个人刚入职时都希望拿到一份高薪，但现在年轻人对薪酬的理解更丰富、多维，更看重加入律所两年后的晋级幅度、专业成长速度、从事业务范围，甚至服务什么样的客户。第二，年轻人在做选择上更以兴趣和专业发展为导向；最后，他会看重律所是否有好口碑，以及律所与员工、员工与员工间的关系。”

作为一家外资律所，高伟绅律师事务所1980年开设香港办公室，1985年成为第一批在北京营业的国际律所，1993年设立上海办公室，可以说见证了中国几代律师的成长。律所中国区联席管理合伙人符国成告诉ALB，中国八零及九零后年轻人确实很独特，而且他们与父辈成长在非常不同的环境之中。

在符律师看来，律所在整体理念上首先要与年轻一代“对接”。“高伟绅能够吸引人才、组建最优团队的主要原因有三个：第一，提供为市场上的重量级客户、就最富代表性和复杂性的交易服务的机会；第二，在提倡高度合作性的文化中，与多元又包容的团队共同工作；第三，律所关注员工的专业和个人发展以及身心健康，并营造丰富而积极的工作环境。我认为这三点和年轻一代的需求不谋而合。”

除此之外，律所也采用了一些

具体手段，满足年轻一代需求。符律师举了两个例子：“对年轻人来说，科技就是生活方式本身。为此我们在科技方面投入了大量资金，让员工能够灵活远程办公，还能通过不同的移动设备或平台工作。此外，我们鼓励年轻人既要强化个性，也要提高社群意识。律师们通常需要团队合作，我们鼓励每位成员表达自己的看法，无需顾及资历深浅；我们还有个‘开门办公’的政策，鼓励员工随时向合伙人、资深律师或者人力资源团队寻求帮助或提出建议。”

在铸成律师事务所如今的312名员工中，八零、九零后也占据了绝大多数，管理合伙人司义夏留意到，这些年轻人基本都有留学经历和精英教育背景。如何最大程度激发年轻人的才干，司律师分享了三点：“首先，采取多样化激励手段，避免狭义使用KPI工具；其次，营造参与的文化氛围，针对90后员工个性强、主人翁意识强等特点，尽可能多创造条件，让他们觉得自己是事务所的主人而不是打工者；再次，通过建立和实施导师制度，给予员工全方位指导。”

制度与个体

健康健全的考评制度是律所作为盈利机构的立身之本，正如李大进律师所言：“律所制度要让员工清晰知道被什么所约束，也知道被什么所激励。”

此次受访律所基本采用了“客观指标+主观指标”的考评模式，然而根据律所文化的差异，在具体制度和指标设计方面也有所不同。

天达共和的考评制度实行年级制，内部共设置9个年级，律师的晋级、降级或原地踏步都取决于一年所完成的工作小时。工作小时又分为收费小时、有效小时和工作小时，例如高年级律师，就要求他所发生的更多是收费小时。此外，律所还会从综合能力、业绩及公益三个角度对律师进行考评。

铸成的考评也从两个角度展开。司律师说：“作为一家律所，铸成以账单小时为绩效考核的核心指标，评价结果与次年薪酬、提成比例及当年奖金挂钩，并作为员工职务、职位调整及教育培训的依据；与此同时，作为一家公司制管理律所，铸成又引入了KPI绩效考

核办法，针对各项岗位职责要求，设定考核指标及标准。”这样的设计初衷，是让评估标准足够科学合理，评估过程足够完整，以此提高员工对考评的信服度，充分发挥激励作用。

在符律师看来，“高伟绅的考评制度和我们促进分享及合作的文化是一致的。传统的管理评估体系通常是自上而下的。但高伟绅采用的是360度绩效考核体系，从不同组别，包括低年级和高年级律师，以及业务支持团队的同事等收集反馈。设定目标也是绩效考核体系中不可或缺的部分，每年评估过后，每位员工会和自己的合伙人或业务主管商议确定下一年度的可执行目标。”高伟绅希望以这种制度，支持每位律师制定最适合自己的职业道路。

而在兰台，律所根据独特的管理体制设计了考评制度。杨光主任介绍道，兰台打破了传统的合伙人团队制度，所内设立13个专业团队，每个团队由1名牵头合伙人、若干名权益合伙人、1名主管律师以及若干作业律师组成，律师按项目分配作业，不跟随固定合伙人。作业律师按《律师岗位薪酬制度》分成7级，每一级对应不同工资级别，同时通过《执业律师作业标准》对每一级律师的专业素养设定清晰明确的指标。

年级制外，每位律师也要接受360度评价考核，从“五业”——专业水准、敬业精神、职业修养、乐业精神、展业愿力共25个维度展开考核。此外律所还出台了《职级律师作业标准》《兰台常识》《作业质量：不出错10条和出彩5条》《关于以勤勉敬业者为本的职业化作业发展意见》《360度评价引导》《作业律师行动纲领》等六份文件，帮助大家理解什么是律所认可的“好的标准”。

谈到制度与个体的关系，受访管理者都表示，制度的存在不是为了惩戒，而是为了认可和激励。清晰的制度能帮员工界定什么是律所认可的“好”，从而沿着双方共识的道路成长。

在李大进律师看来，在公司制律所中，个人期许和律所制度规范能够相互促进，员工不断变化的需求会促使律所不断调整制度。但员工和管理者也应该直面这种现



以拳拳之心呵护成长，以殷殷之情展望未来

北京市铸成律师事务所成立于2002年，所是一家以知识产权为核心业务的综合性律师事务所，总部设于北京，在上海、广州、深圳、南宁设有分所，在美国、香港、台湾设有分支机构。铸成拥有律师、专利代理人、商标代理人及各类支持人员三百二十余人，业务领域包括知识产权、诉讼和争议解决、商事法务、劳动法以及其他相关法律服务，旨在为客户提供个性化、多层次、全方位的一站式的法律服务。

2020年，已经是铸成连续第三年获得“最佳雇主”这一殊荣，这充分展现了铸成以人为本、构建和谐劳动关系的理念和情怀。这样的理念和情怀，既体现在对外部的客户关系上，更体现在对内的员工关系中。

对外铸成坚定奉行“以客户为本、以社会为本”。我们自始至终致力于为客户提供最好的服务，一切以客户利益为重，我们聆听每位客户的需求，提供具有针对性的法律服务，实现客户利益的最大化；在回馈社会方面，铸成参加各类社区活动，长期进行公益捐赠，推动环境公益，并且提供免费的法律咨询服务。我们不是单纯追逐利润的冰冷的商业机构，而是有温度、有情怀、有责任的优秀社会法人。

对内铸成坚持“以人为本，构建和谐劳动关系”。“以人为本”就是要以员工为本，重视人、关心人、理解人、成就人。在铸成，事务所把每一名员工都看作是我们有机整体不可或缺的一份子，为大家创造最好的工作环境和生活环境，让全体员工都能够在事务所为员工搭建的优秀平台上，充分发挥各自的聪明才智，让每个人的潜能都得到充分的挖掘。我们把员工的个人成长和事务所的成长有机地结合起来，让二者相辅相成、相得益彰、互利共赢。

一、薪酬及福利

铸成在发展壮大的同时，大幅提高员工的薪酬福利，让所有员工都能够与事务所共同分享事业发展所带来的福祉。在预算管理过程中，我们的编制原则一直都是让人力成本增速高于整体收入增幅及同行业水平。铸成设置了明确而透明的薪酬体系，制定了能者多劳、多劳多得的有效机制。连年投入巨资不断提高员工福利待遇，同时提供餐补、通讯补助、体检、员工及家属医疗保险等福利。在此基础上，铸成还对女性员工给予了格外的关爱，增设哺乳室，方便哺乳期女性员工；为女性员工特别增设专属体检项目；邀请专业讲师，为女性员工开展礼仪、心理健康、养生保健等女性专属讲座等。2019年，事务所员工福利支出252万元，事务所继续加大普惠员工的福利投入，以增强员工的幸福感。

二、铸成规模、办公环境

1. 释放北京总部办公资源，缓解流程类非业务工作压力

2019年4月，铸成广西办公室在南宁挂牌投入运营，在承担事务所部分流程性、基础性申请工作，释放总部办公资源，在分担事务所流程类非业务性工作压力的同时，进一步成为铸成的人才储备基地，为事务所的快速发展与扩张提供必要的人力支持。作为事务所整体战略布局和办公资源、人员架构优化组合的重要环节，广西分支机构的成立将为事务所带来更大的调整空间和发展空间。

2. 所内基础设施建设，为员工创造一流的办公环境

2019年9月，铸成北京总部华远企业中心的602区域正式纳入我们的办公区，至此，北京总部拥有了三层办公楼、办公面积达到了3800平方米。为了给事务所的同事们创造更加舒适、优美的办公环境，事务所投入大量人力、物力和财力，耗时近三月对602办公区及六层、七层logo墙进行了全面装修与改造。装修后的办公区实现了双电梯同时上下楼、符合人体工学设计的全新办公家具与设备配置、无停留面部识别打卡等便捷功能，大大提升了办公效率和事务所员工的舒适度。通过高端面部识别系统与门禁设施等的配合，事务所办公区域达到了最高级别的安保水平，有效保护了事务所和客户的信息安全和人身财产安全，体现了铸成作为一家专业的涉外知识产权律所应有的实力以及服务客户的水平与能力。由于采用高品质高标准的建材，所有检测均一次验收合格，最大程度的保障了员工的身心健康。

3. 全新OA系统、outlook邮件审核系统、时限管理系统，优化工作流程，提高办公效率

2019年9月，铸成耗时两年、聘请业界顶尖软件开发企业-长城软件公司定制的办公管理综合OA系统正式上线运行。新OA系统实现了全员多地线上协同办公、全所数据共享以及电子流程管控，也实现了信息录入、处理、流转及加密的一体化应用。以此同时，我们聘请专业机构对outlook邮件审核系统进行了自主改造，实现了邮件分级审核、回邮件时限控制、格式函自动发送等功能。至此，铸成成为中国法律行业绝无仅有，同时拥有私有云和一体化定制OA系统的律师事务所。

应用数字化时代全新技术、体系构造理念和功能模块设计，辅之以灾备方案实施和加密保护措施，拥有私有云和一体化定制OA系统的铸成，其管理和服务将更加规范、科学、高效；将更好地在新科技革命时代为客户提供更安全、更高效的服务。

三、员工发展

铸成的公司制管理体制能够为年轻律师提供高起点的工作平台和明晰的晋升途径，项目组工作体制使员工能够有机会接触到各种各样的业务，得到全面的锻炼；同时，还建立了完善的考核奖励机制，使优秀员工能够脱颖而出，实现跳跃式发展。此外，专业化、国际化的平台，客户的整体水平极高，能够给铸成青年律师提供很大的发展空间、丰富的实践机会和更加广阔的视野，使其迅速成长为成熟律师。

铸成注重“人和”，坚持任人唯贤、人人机会平等的原则，不仅提供给员工优质的成长平台，让员工有实现个人价值的舞台；更注重培育员工的归属感和荣誉感，让员工成就事业、成就自我。铸成拥有最优秀的客户，即使是实习律师，也有充分的机会与世界顶级的律师及法务一起工作，提高学习与思辨能力，迅速成长为独当一面的优秀律师。

四、企业文化建设

铸成不断加大人力、财力和物力的投入，组织多种多样、丰富多彩又实实在在的企业文化活动，如：境内外旅游；圣诞、元旦、妇女节、秘书节等节日庆典活动；铸成家庭日、迎新及生日活动；各种团建、联谊活动；开展摄影比赛、植树活动，并倡导引领员工热衷于公益事业等。在员工的家庭遇到重大意外时，铸成人纷纷伸出援手，帮助同时顺利渡过难关。铸成的企业文化是联系着各个部门、各个层级员工的纽带和桥梁，建立起铸成人的荣誉感和归属感，而这正是我们提高业内竞争力不可或缺的因素。

五、疫情期间各种举措

面对突如其来的新型冠状病毒肺炎疫情，全国上下都面临着严峻的形势。在这个极其特殊的时期，铸成律师事务所严格遵守国家、地方政府和律协等国家机关和主管部门的政策和规定，第一时间成立了事务所疫情防控领导小组，切实做好防疫期间的各项工作。

铸成应对疫情的指导思想是在保护员工身心健康的前提下，最大程度的保证客户委托的各项任务得到圆满的完成。由于年前的提前预见，铸成及早下手采购了大批的防护物资，并通过遍布全球的分支机构，从美国、欧洲、日本等地运回了大批量的N95口罩，在满足员工防护需求的同时，还为客户和合作伙伴大量寄送，解决了客户的燃眉之急。

由管理合伙人铸成核心管理团队组成的疫情小组通过全面、实时地关注各方信息，根据疫情发展随时调整战略，于2月2日通过官网、公众号、领英、推特等同时向全球客户通报铸成防疫情况和安排，并宣布2月3日全面复工。

自2月3日起，铸成通过全员在家办公、仅有10名员工到所完成全部支撑工作的方式，实现了P类申请业务日均200+件、E类维权与诉讼业务在法院恢复立案第一时间全部完成立案，全部业务稳步进行甚至业务量和服务质量较往年同期有所提升，受到客户的大力称赞与好评。

可以说，铸成能在危机中独善其身，离不开合伙人的高瞻远瞩、提前布局。铸成依靠科学的公司制项目负责制管理架构和业务流程的全面梳理和调配，通过私有云、强大的OA办公系统和各种高端前沿的通讯系统协同办公，一切工作的有条不紊皆因一直以来的居安思危。

疫情期间，铸成公众号先后推出了《铸成关于新型冠状病毒防疫期间工作安排敬告函》、《浅谈“不以使用为目的的恶意商标注册申请”》、《英国脱欧与知识产权：延续与改变》、《面对疫情，回顾历史》、《疫情背景下国家知识产权局关于商标期限延误、权力丧失的规定以及救济手段的规定解读》等多篇专业文章，从多方面向客户传递铸成的声音和观点。在此期间，铸成还摘获了IAM及WTR“2020中国商标最佳律师事务所”大奖，成为唯一一家获奖律所；在“WTR1000全球商标领域领先律所”的“维权与诉讼”和“申请与策略”两大榜单均为Tier 1；2月21日至2月27日还召开了铸成年度管理层会议，全面总结2019年工作的同时，对2020年的经营与业务开展进行了全面规划与安排。

致天下之治者在人才，兴家国之智者品牌。从员工到企业，从企业到国家，良好的品牌形象不仅将为企业带来更多的经济效益，也将树立美好的国家形象。真正将人看作主体，关注雇员的意识、诉求、组织、行为，以诚待人，以德服人，以信立业，将是中国雇主义树立卓越的雇主品牌的必经之路。

铸成愿以赤诚之心，诚待天下英才，共图事业发展，共创美好未来！

状：即个人需求和机构制度不一定总能百分百匹配。杨光律师则告诉ALB：“我经常和员工讲，薪酬制度就像法律条文，它是个大前提，每位律师都是小前提。管理实质上是让制度和每个丰富个体无限靠近的过程。制度应该能够多维地激发个体，不让一个人落伍、感受到不公平、混沌。”

薪酬与晋升

在律所，薪酬制度基本和上述考评制度挂钩。例如在天达共和，不同年级对应着不同薪酬标准，此外律所在确定具体薪酬时还会参考其他因素，比如学历、执业时间、项目经验等。而在高伟绅，律师薪酬体系由两部分组成，基础薪酬根据律师工作经验年限确定，此外还有奖金，根据个体更为宽泛的贡献评估确定。

铸成的司律师告诉ALB：“在预算管理过程中，我们的编制原则一直都是让人力成本增速高于整体收入增幅及同行业水平。”除了有明确透明的薪酬体系，铸成还连年投入资金不断提高员工福利待遇，2019年律所员工福利支出高达252万元。

在杨光律师看来，薪酬不仅仅意味着拿到手的工资。他说：“在兰台工作了六、七年后，就可能晋升为薪酬合伙人，再三年后晋升为权益合伙人，路径非常透明、清晰。我常说，兰台提供的是一个工资包，它是由薪水、晋级路径、周边的示范榜样、律所配套文化共同构成的。”

在几位管理者看来，有力的数字、透明的标准、良好的福利、多元的回馈，共同决定了员工对于薪酬的满意度。

本次调研结果表明，是否有明晰的晋升通道也决定着员工的满意度。受访律所都规定了晋升合伙人的年级要求及硬性指标，比如天达共和允许七年以上律师申请成为合伙人，合伙人需要有清晰的专业，并能完成年度任务。律所也普遍许可“特例”，比如天达共和和铸成，出现过中年级甚至低年级律师破格成为合伙人的情况。

高伟绅的符律师和ALB分享道：“高伟绅中国区人才发展策略的核心是‘本土人才，全球标准’。在过去十年里，我们在培训及发展

中国背景律师方面付出了很大努力，帮助他们获得国际经验，最终成为世界水平的律师。这些努力从近年来我们不断晋升的新合伙人数量也可见一斑：在高伟绅北京和上海办公室晋升的合伙人中，大约三分之二是中国大陆背景律师。过去两年，我们在中国大陆晋升了4位合伙人，这也体现了高伟绅中国业务的强劲增长以及培训体系的成功。”

培训与协作

作为高度专业性和协作性的职业，律师在律所能获得的培训机会、体会到的团队氛围，也很大程度决定着他们的满意度。

在培训方面，受访律所普遍提到了晨会、例会、新人培训、法律专题培训、网络课程等手段。此外还有其他形式的知识“给养”，比如铸成成为员工提供极具实用性的营销培训、服务世界500强客户的入职培训；兰台则提到了针对主管律师和牵头合伙人的主管人员职能培训，教授管理团队的方法。

高伟绅介绍了其“招牌式”人才培养体系，由新人轮岗培训项目、海外留学奖学金计划、海外培训课程、中年级律师海外办公室借调、高年级律师职业发展辅导和高伟绅学院等共同构成。以新人轮岗培训项目和高伟绅学院为例，前者为期两年，新人有机会在四个不同业务领域进行各六个月的轮岗，在职业生涯开端积累广博经验；高伟绅学院则通过线下和网络培训发展律师的非法律业务技能及其他软实力，例如金融会计、谈判及公众演讲。学院针对低年级和高年级律师有不同课程，甚至有针对合伙人的“大师课”。

良好的协作氛围同样重要，这既包括合伙人与律师之间的“传帮带”，也包括同事间的互助。例如在兰台，律所首先对合伙人有七项客观指标要求，告诉他们怎样成为受欢迎的领导者，其中就包括对作业律师的指导。由于律师不受限于特定合伙人团队，能够通过参与项目受教于不同老师，所有合伙人都对年轻律师的成长担负责任。“我常告诉大家，在其他律所，合伙人也许就是作业律师的天花板，但在兰台，水平最高的合伙人就是你的天花板。”杨律师说。

此外，兰台还有条铁律：不要对同事说“不”。“我们希望让所有律师成为协作者，这项要求今后会列为硬性考核指标。如果年终有被同事投诉的纪录，可能对年度考核产生很大影响。”

作为一家国际律所，高伟绅更认为“不同团队、业务领域和办公室间的良好合作是我们成功的关键，因为我们经常就复杂跨境交易服务客户，往往会涉及跨领域法律问题”。符律师说，一方面，为强化律所整体的共享及合作气氛，高伟绅全球合伙人采用了统一薪酬制度；此外，律所还有若干导师制度安排，包括工作中的“合伙人-律师”导师制度，以及交换角色的导师项目。这些计划鼓励同事间建立跨越性别、执业领域、法域和级别的关系，从而给出宝贵的职业意见及人生建议。

未来筹划

谈到未来将如何继续提升员工满意度，高伟绅的符律师指出了两个非常具体的方面：一是继续强化法律科技工具的利用，例如使用人工智能检索法律或案件、翻译法律文件、支持尽职调查，协助基本的合同起草，或用区块链技术签署文件。“技术能够解放律师，让他们专注为客户的疑难和复杂跨境事务提供服务。”符律师说。

另一点，则是鼓励员工参与“有社会责任的企业”项目。“高伟绅在北京、上海、香港办公室都有法律援助和社区服务委员会，寻找机会让大家回馈社区，帮助弱势群体。”

铸成的司律师则提到律所会创造更为公平的竞争环境，以及更畅通的沟通机制。此外还有将尊重员工、帮助员工成长和关爱员工的理念进一步落到实处。

兰台的杨光律师也指出：“目前律所的制度规划已经到位，需要提高的是落地和执行能力，在实践中不断调试、优化。管理能力永远只有更好，没有最好。”

天达共和的李大进律师则告诉ALB：“我们事务所的所训是‘成功始于助人成功’，这是我们全部的立足点和出发点。未来从制度层面，我们要为年轻人夯实前行路上的台阶、提供成长机会，让他们去最大可能接近自己所要的成功。”

整所一体 致力于个人幸福和社会责任

——专访兰台律师事务所主任杨光律师



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“同心之言，其嗅如兰”，秉持着行君子之道，播芬芳之志，成立于2002年的兰台律师事务所，十八年来于传承与突破中成长，已成为中国律师行业中较大规模的综合性律师事务所，并潜心耕耘于诸多专业领域和行业实践。目前，兰台有包括金融、争议解决、国际商事、劳动事务、房地产、知识产权、资本及负债等在内的十三个专业团队。

专注于提供优质、精细化的法律服务，拥有深度实务经验及领先项目业绩，是每一家优秀商事律所的特质，兰台亦是如此，却不止于斯。在律所管理上，兰台致力于个人的幸福和社会责任，已经发展成熟的一体化运营模式，正为律师提供着长远的发展机遇、宽广的成长空间。今年，兰台律师事务所荣登2020年ALB China年度雇主榜单。

• 独树一帜的一体化模式

“统一收入、统一支出、统一收益率、统一配置作业资源”这四个统一，可以概括兰台律师事务所深度践行的一体化运营机制。尤其当客户面临疑难、复杂的实务问题，需求横跨多个领域时，兰台的一体化便展现优势所在。对于服务要素的统一调配，可迅速为客户配置相应领域专家，以提供切实有效的法律建议和解决方案，满足客户多重需求的同时，也建立了长远稳定的合作关系。

在兰台，作业律师并不专属于某个合伙人的团队，而以十三个专业团队为划分依据，作为某个专业团队的成员。在入职前，律师们可以选定感兴趣或是擅长的业务领域，进入相应的专业团队历练成长。于专业化、精细化的业务方向深耕细作中，他们完成蜕变和升级，成为各领域精英。

对律师行业而言，专业分工愈加精细、协同作业愈被强调，必然是大势所趋。一体化运营模式着眼于行业的未来而设计，兰台希望走得更远、站位更高。以服务客户的各项需求为中心，以培养律师成为行业专家并使其更有成就感为依归，对于运营模式，兰台不断探索着。正如创始合伙人、事务所主任杨光在采访中所分享：以未来为导向、以客户为中心、以勤勉敬业者为本，是兰台的管理和运营的三个标准。

• 以人为本的律所文化

一体化的运营模式，自然孕育出的是兰台以勤勉敬业者为本的律所文化。杨光主任说到：“如果用几个关键词来概括兰台文化，那就是‘尊重’‘分享’‘喜悦’和‘环保’。”

尊重，贯穿于兰台团队整体的协作过程：在共同进行项目作业时，从合伙人到律师，都十分注重对彼此意见的

尊重、业务的帮助，他们合作完成一次次缜密的法律分析、一个个务实的解决方案。分享，体现在每周一次的晨会、集中组织的业务培训及法律服务的细节中，合伙人和律师们乐于分享自己的知识、经验和见解，在分享中见证共同的成长，收获更多的客户信赖。喜悦，体现在实际工作中真切感悟到职业之美、专业之美、协作之美、进步之美，兰台鼓励每一位律师跟进项目或案件全程，倡导沉潜实务研究，希望专业带来的成就感，使他们发自内心地因成为律师而喜悦。环保，不仅体现在绿色办公、节约公共资源等日常环保措施上，其内涵最重要的是一体化项下最应该坚守的职业素养以及作业习惯，即纯诚、协作，并强调律师公共性和公共责任的担当。

无论律所怎样发展变化，大道至简，一直为兰台人所崇尚。正是如此，律师团队在提供法律服务时，通常能做到从一而终、事半功倍。

• 青年律师走向成功的阶梯

初入律师行业的年轻人都梦想成为执业领域中的佼佼者，兰台正致力于为他们提供“清晰、确定、可见”的成长空间和晋升路径。每一位进入兰台的青年律师，在其选择的领域中不断磨练技巧、深耕钻研，并会收到律所定制的“职业发展包”，即完善的培养制度夯实理论基础，完整的专业路径积累业务经验，完备的协作环境提升服务水平。

以“律师岗位薪酬制度”为基础，匹配律师职级晋升标准和职业素养养成的六个制度，每一年度，绩效考评委员会对律师进行多维、立体评价，在兰台称为“360度考评”，以客观、具体、多元的标准，使青年律师在职业发展中明晰航向、纠偏补正，使其业务能力更符合市场需要。兰台保证让刚步入社会的年轻人有尊严、有质量地生活，同时，根据评价，每位律师每年均会有与之能力相匹配的涨薪幅度。除专业水准外，兰台最为看重的品质是诚信与协作，以期将人才培养融入律师人格的塑造。

• 面向更加辉煌的未来

在优化发展中面向未来，兰台将持续完善一体化管理机制，向规模化、平台化、国际化的方向成长。五月，兰台将迎来成人礼，“挫其锐，解其纷，和其光，同其尘”，面对这个不确定的时代、这个并不明朗的环境，兰台仍坚守“成为一家受人尊重的律所”之初心，为客户提供更精准的服务，让员工看到更宽广的未来。

China's arbitration industry has grown from nothing into a strong global presence today in merely a few decades. According to Wang Chengjie, Vice Chairman and Secretary-General of China International Economic and Trade Arbitration Commission (CIETAC), the Chinese government decided in 1954 to establish a foreign trade arbitration commission, the predecessor of CIETAC, to boost foreign trade at that time. Two years later, the committee became China's first foreign-related arbitration institution, marking the beginning of arbitration in the country.

During the era of reform and opening up, China further participated in international arbitration and improved its arbitration system. As a pioneer in the development of China's international commercial arbitration, Wang says the CIETAC has handled a total of about 40,000 international and domestic arbitration cases to date, involving parties from more than 100 countries and regions. The CIETAC has also forged strategic partnerships with more than 70 international arbitration institutions.

Shanghai, as a prosperous financial center, is equally important in the history of arbitration in China. According to Dr. Ma Yi, deputy director and secretary-general of Shanghai International Arbitration Center (SHIAC), the Council for the Promotion of International Trade Shanghai established the China International Economic and Trade Arbitration Commission Shanghai Commission in 1988 and renamed as the Shanghai International Economic and Trade Arbitration Commission (Shanghai International Arbitration Center) in April 2013, in order to improve Shanghai's investment environment and to boost Shanghai's role in the country's opening up.

As a pioneer, the SHIAC resolved foreign related disputes arising from investment contracts between domestic and foreign parties in accordance with international arbitration rules when the China Arbitration Law was yet to be in place. In recent years, the SHIAC has promulgated the China (Shanghai) Pilot Free Trade Zone Arbitration Rules and advanced the establishment of the

ARBITRATION RISING

仲裁“崛起”



As China continues to advance its Belt and Road Initiative, disputes are also growing, and arbitration is the preferred form of dispute resolution for companies.

BY ASIAN LEGAL BUSINESS

随着中国“一带一路”倡议不断推进，随之而来的争议纠纷也日渐增长。仲裁作为企业偏好的争议解决方式，为国际仲裁业带来发展机遇。

作者：《亚洲法律杂志》

中国仲裁从无到有，到今天在国际上展示影响力，不过短短数十载。据中国国际经济贸易仲裁委员会（CIETAC）副主任兼秘书长王承杰律师介绍，为适应当时对外贸易事业发展的需要，中国政府在1954年正式决定设立对外贸易仲裁委员会，即CIETAC的前身。两年后，委员会成为中国首家涉外仲裁机构，中国仲裁事业自此而始。

随后在改革开放时期，中国进一步参与国际仲裁事务，并积极完善国内仲裁制度。作为中国国际商事仲裁发展的先行军，王秘书长说CIETAC时至今日裁决共约4万件国际国内仲裁案件，案件当事人来自世界100多个国家和地区，并与70多家国际仲裁机构实现战略合作。

上海作为繁荣金融中心，在中国仲裁发展史上也同样重要。据上海国际仲裁中心副主任、秘书长马屹博士介绍，为改善上海的投资环境及发挥上海在对外开放中的作用，上海市国际贸易促进委员会在1988年设立中国国际经济贸易仲裁委员会上海分会，并在2013年4月更名为上海国际经济贸易仲裁委员会（上海国际仲裁中心）。

作为先行军，上海国际仲裁中心在中国仲裁法尚未颁布时，便按照当时国际仲裁的规则处理境内外投资者之间的纠纷。近年，仲裁中心更颁布《中国（上海）自由贸易试验区仲裁规则》，并推动设立上海国际航空仲裁院、金砖国家争议解决上海中心、中非联合仲裁上海中心。

综观全国，各类仲裁中心近年大量涌现，包括国际商事仲裁院、国际航空仲裁院、国际航运仲裁院、国际金融仲裁院等。国际商会上海代表处法律专家、原上海仲裁委员会国际航运仲裁院秘书长李昱表示，截止2018年，中国已设立了255家仲裁机构，年受理仲裁案件共计54,4536件，案件标的总额达6,850亿元。

而在“一带一路”倡议的推动下，跨境纠纷倍增。从2013年1月到2019年6月，CIETAC共受理了557件涉“一带一路”国家和地区的仲裁案件，争议金额共计243.57亿元。过去3年，上海国际仲裁中心也处理了近60件涉及“一带一路”国家的国际商事纠纷。

Shanghai International Aviation Court of Arbitration, BRICS Dispute Resolution Centre Shanghai and China-Africa Joint Arbitration Centre Shanghai.

Various arbitration centres have emerged throughout the country in recent years, including international courts of arbitration in different areas such as commerce, aviation, shipping and finance. Li Yu, Legal Expert of International Chamber of Commerce (ICC) Shanghai Representative Office and former Secretary General of Shanghai Arbitration Court of International Shipping, says that as of 2018, China has established 255 arbitration institutions and accepted a total of 54,4536 arbitration cases annually involving a total of 685 billion yuan (\$97 billion).

As Belt and Road strategy advances, cross-border disputes have soared. From January 2013 to June 2019, the CIETAC accepted a total of 557 arbitration cases involving the Belt and Road countries and regions, involving a total of 24.357 billion yuan. In the past three years, the SHIAC also handled nearly 60 cases in international commercial disputes involving these countries.

ARBITRATION IN THE LIMELIGHT

As China is actively carrying out infrastructure projects in the Belt and Road countries, Chinese lawyers are busy resolving cross-border disputes between China and foreign countries. The complexity of these disputes makes arbitration an increasingly important method to settle disputes.

Among the cases handled by the CIETAC and SHIAC, most of them involved disputes over contracts for international sale of goods. Wang adds that the CIETAC also handles many disputes over service contracts and construction project contracts regarding service settlement, tourism and hospitality, system development and installation, survey and design, engineering contracting and housing construction. Similarly, Ma says the common legal disputes resolved by the SHIAC involve contracts for international sale of goods, carriage of goods by sea, guarantees and letters of credit. Meanwhile, there are also disputes over construction projects for railway, highway,



“The CIETAC has handled a total of about 40,000 international and domestic arbitration cases to date, involving parties from more than 100 countries and regions. The CIETAC has also forged strategic partnerships with more than 70 international arbitration institutions.”

“CIETAC时至今日裁决共约4万件国际国内仲裁案件，案件当事人来自世界100多个国家和地区，并与70多家国际仲裁机构实现战略合作。”

— Wang Chengjie, CIETAC 王承杰, CIETAC

bridges, ports, telecommunication, oil and gas pipelines and electricity as well as energy projects, in addition to disputes over the sale of equipment, service trade, intellectual property rights, and company equity related to the implementation of these overseas construction projects.

When dealing with these cases, Li has observed that disputes stem from poor management of overseas projects. She says neglecting due diligence in the early stage of the project is an important reason why these overseas investment and financing projects failed. Legal risks regarding the project, registration, transaction structure and legal application had not been properly managed.

“一带一路”突显仲裁重要性

中国积极投资“一带一路”沿线国家的大型建设项目，国内律师也忙于担当中外之间的桥梁、处理跨国纠纷，争议日益增长的复杂性使得仲裁成为了越来越重要的纠纷解决手段。

在CIETAC和上海国际仲裁中心接触的病例中，多数涉及国际货物买卖合同纠纷。王秘书长续指CIETAC也受理不少服务合同及建设工程合同纠纷，涉及服务结算、旅游接待、系统开发安装、勘测设计、工程承包及房建等。同样地，马博士说上海国际仲裁中心处理的常见纠纷涉及国际货物买卖合同、海上货物运输合同、银行保函和信用证等，同时也有因铁路、公路、桥梁、港口、电信、油气管道及电力设备等基础设施和能源项目引起的建设工程纠纷，以及因与实施这些海外工程项目相关的设备买卖、服务贸易、知识产权、公司股权类纠纷。

李昱在处理这些案件时，观察到争议源于境外项目管理不善。总结境外投融资项目的失败教训，她说，忽视项目前期的法律尽职调查是重要原因，项目主体、审批、交易结构和法律适用等重大法律风险敞口并没有事先管控到位。

“此外，中国的投融资主体经常以国内经验看国际项目，对合同不够重视，项目开发评审与合同条款不能够充分衔接，合同内容很少借鉴国际惯例和市场规则，在项目经营管理中缺乏以合同为中心、强化风险管理的法治意识。”她解释道。

到律师着手处理这些争议时，往往发现一个交易框架内涉及多个法律和商事交易规则的适用。“一带一路”沿线涉及亚洲、欧洲、非洲等地区60多个国家，不同法系交汇融合，如李昱所言，既有现代法律体系，也有宗教法与世俗法并存的双轨法律体系；既有英美法系，也有大陆法系。这会造成冲突，并让争议更复杂。

马博士举出实例，说：“我们曾处理过一宗涉及迪拜地标性建筑的施工合同纠纷，涉及中国法、阿联酋法项下关于pay when paid（背靠背）条款的理解和适用。我们也处理过当事人在合同中同时约定《联合国国际货物销售合同公约》和《国际贸易术语解释通则》作为准据法的国际贸易案件。”

When handling these disputes, the lawyers often find that one transaction involves multiple laws and commercial laws. The Belt and Road involves more than 60 countries in Asia, Europe and Africa that adopt different legal systems. As Li says, there are both a modern legal system and a dual-track legal system in which religious law and secular law co-exist; there are also both common law and continental law systems. This creates conflicts and complicates disputes.

Ma names an example and says: "We have handled a dispute over a construction contract for a landmark building in Dubai, which involved the understanding and application of the pay when paid clauses under Chinese law and UAE law. We have also handled cases in which the United Nations Convention on Contracts for the International Sale of Goods and International Rules for the Interpretation of Trade Terms prevail."

Wang also notes that although these two sets of international laws prevail in more and more cases of disputes over international sale of goods, there are still cases in which foreign laws are applied, such as the Tunisian law, Singaporean law, and Kazakh law.

Legal systems vary in different countries. Even within the same legal system, the legal procedures for civil litigation can vary from country to country. Ma says for commercial entities, this is a big legal obstacle and risk for dispute resolution. "Their demand for an efficient, convenient, professional and enforceable mechanism to resolve disputes is increasing, and this highlights the features and advantages of the arbitration system," he says.

As a result, he has observed that commercial entities pay more attention to dispute resolution. "Commercial entities that trade with the Belt and Road countries pay more attention to professional legal services that can help them prevent risks and resolve disputes in cross-border transactions. We see that the parties will make very detailed clauses in the contract to agree on the institution, rules, language and location for arbitration and the composition of the arbitral tribunal according to their actual needs." 40

王秘书长也表示，虽然越来越多国际货物买卖争议的案件都选用了上述两套国际贸易法律，但一些案件也选择适用外国法，例如适用突尼斯法、新加坡法、哈萨克斯坦法等。

不同国家存在差异较大的法律制度，而即使在同一法系内，各国的民事诉讼法律程序也各不相同。对于商事主体而言，马博士说这是很大的法律障碍和争议解决风险。“他们对于一个高效、便捷、专业、可执行的争议解决机制的需求日益提升，而这正彰显了仲裁制度的特点和优势。”

因此，他观察到商事主体更重视争议解决。“从事‘一带一路’交易的商事主体更重视专业的争议解决法律服务在跨境交易中所能发挥的防范风险、化解纠纷作用。我们看到当事人会根据争议解决的实际需要，在合同仲裁条款中对仲裁机构、仲裁规则、仲裁语言、仲裁地点、仲裁庭组成方式等进行非常细致的约定。”

中国仲裁，异军突起

在仲裁制度优势明显、企业对仲裁需求庞大的背景下，迅速壮大的中国仲裁机构逐渐获得了“一带一路”沿线国家认可。

2019年，CIETAC组织发起并与40余家国内外仲裁机构共同达成了《“一带一路”仲裁机构北京联合宣言》，携手建立国际仲裁服务“一带一路”的立体机制。王秘书长指这必将进一步增强“一带一路”国家当事人对中国仲裁的认知和信任。

“中国仲裁机构的规则设置、审理方式、仲裁员和秘书队伍建设、仲裁服务理念、理论研究水平等要素能够对标国际通行理念做法，提供与境外当事人需求相匹配的多元化争议解决服务，是中国仲裁机构得到‘一带一路’国家认可的必要因素和根本原因。”他解释道。“另外，中国仲裁得到国家层面的司法和政策支持，为中国仲裁获得‘一带一路’国家的认可营造了沃土。”

上海国际仲裁中心目前已与11个来自“一带一路”国家的仲裁机构签订了战略合作协议，包括来自韩国、新加坡、马来西亚、日本、瑞士及荷兰的机构等，并正与来自塔什干和阿布扎比的机构商谈合作，赢得“一带一路”国家仲裁专业人士的认可。

马博士说：“他们会对中国仲

裁机构产生信任，除了中国商事主体在国际上的缔约地位不断提高之外，归根结底还是基于对中国仲裁机构近年来在提供公正、专业、高效、便捷的国际仲裁服务方面所取得成绩的认可。”

他指出，一些国际知名仲裁机构已经开始借鉴中国仲裁机构的做法，开始推荐使用案件管理秘书、开始接受仲裁与调解相结合、开始尝试使用“简易/快速”程序。

李昱也提到仲裁中的“中国经验”。“最典型的是在中国被称之为‘简易程序’的快速仲裁程序。相比国际领先的外国仲裁机构，中国仲裁机构确实远早已实践这种做法。简易程序在处理国内仲裁众多小额争议案件中已被证实具有积极意义。”

展望未来

在马博士看来，“一带一路”沿线国家的法律服务市场会更受重视。在这背景下，出现多元争议解决机制融合的现象，比如国际商事调解正在快速兴起，国际商事法庭也正在快速发展。同时，中国在航空、信息技术、电子商务等领域可运用科技拓展争议解决实践。

他继续说道：“很多国家都认识到其最优的争议解决方案是以仲裁为中心，以调解为优先，以司法为保障的三位一体、优势互补模式，这也是“一带一路”跨境争议解决的发展趋势。”

李昱认为未来中国仲裁机构需要努力秉持专业和中立，特别是一方当事人来自中方时，令人信服的数据及系统化的措施有助于争取外方当事人的信任。

她特别指出，总结案件会有助于开展针对性研究，有效地统计数据以展现处理规模和效率，也可做进一步的量化分析，比如结案周期、超审限案件、仲裁庭人员组成、裁决文书起草、仲裁庭秘书职责和仲裁机构管理人员职责等。

另外，仲裁的便利性也值得关注。李昱说，不论国企或中小企业都需要争议解决服务，便利的仲裁将有庞大需求。“作为快速仲裁程序的‘鼻祖’，中国仲裁机构有着为这些中小规模企业参与‘一带一路’建设提供争议解决服务的专业和经验优势，因此不妨尝试开发更为便利和专业的仲裁服务产品，从而满足潜在的、更大的市场需求。” 41

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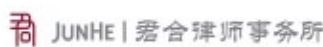
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