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亚洲法律杂志 - 中国版 **CHINA**

ALB | FEBRUARY 2020  
CHINA EDITION

# 2020 ALB CHINA TOP 15 LITIGATORS

## 2020 ALB CHINA 十五佳诉讼律师

**How to take a balanced  
approach towards insolvency**  
面对债务危机，寻找平衡之道

**Tackling disputes along  
the Belt and Road**  
“一带一路”沿线的争议解决问题

**Offshore jurisdictions provide  
shelter from the storm**  
离岸司法管辖区：暴风雨中的避风港



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# ALB

# Shanghai

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## 2020 上海 企业法律 顾问峰会

18 June 6月18日 - Shanghai 上海



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### ALB China 2020 Top 15 Litigators ALB China 2020 十佳诉讼律师

China's commercial litigation business has experienced vigorous growth in recent years; and meanwhile Chinese commercial litigation lawyers have enhanced their overall professional competence and global competitiveness through profound accumulation of knowledge and solid experiences.

近些年，中国商事诉讼业务蓬勃增长，中国商事诉讼律师们在整体专业水准与全球竞争力上也开始厚积薄发。

Ranking by ALB;  
text by Kristen Liu

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### Fighting zombies 大战“僵尸”

As of 2019, Chinese companies had defaulted on nearly \$20 billion in loans, and the country's default rate is expected to grow further, with the government also less willing to provide support for such defaults. Lawyers say that China needs to take a balanced approach towards its insolvency and restructuring landscape.

2019年，中国公司债务违约额度接近200亿美元，违约率在2020年将继续维持高点。与此同时，中国政府对于此类违约的救助意愿也愈发降低。律师们说，中国应该在此种破产重

整图景中寻找一条平衡之路。

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### A smoother road 更顺畅的道路

As the mammoth Belt and Road initiative touches some 70 countries, complex commercial disputes cannot be avoided. But while the opportunities may come with risks, lawyers in Asia say there are a variety of measures companies can employ to help protect themselves and their business interests.

到目前为止，已经有近70个国家加入了“一带一路”倡议这一庞大工程，复杂的商业纠纷因此不可避免。虽然机遇可能伴随着风险，但亚洲的律师们表示，企业可

以采取多种措施来保护自己以及自己的商业利益。

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### Safer havens 更安全的避风港

With 2020 looking shaky, offshore jurisdictions can provide much-needed shelter and support for international deals, listings, incorporations and restructurings. 2020年伊始即呈现动荡局面，离岸司法管辖区或将为国际交易、上市、公司注册以及重组提供必需的庇护和支持。

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# FROM THE EDITOR



**It's time to put the spotlight on China's litigators.** As we have covered in these pages over the past year and more, China's commercial litigation business is booming. Companies today feel more comfortable of getting fairer judgments, and are seemingly happy with its faster judicial process. The recent economic slowdown and the growing importance of the Chinese consumer market have provided an immediate spur to the trend. As a result, we are seeing an increasing number of high-profile, high-value lawsuits.

It is thus no surprise that litigators are much sought after by China's law firms today. Firms in particular value those who understand the ins-and-outs of China's courts system, but emphasis is also placed on the masters of strategy and execution, who can turn a seemingly difficult cause into a winning one. ALB's Top 15 Litigators list thus honours the best litigation lawyers in the country, across civil, criminal and commercial areas. Congratulations to the winners!

**是时候聚焦诉讼律师了。** 如我们每年报道的，中国律所的商事诉讼业务正在蓬勃增长。在面对争议解决时，中国的公司越来越倾向于选择诉讼和仲裁，相信会等到一个公平和高效的裁决。中国的经济下行以及越发凸显重要性的消费市场也在促进这个趋势。结果就是，我们看到了越来越多卓越的诉讼律师。

中国律所也对卓越的诉讼律师求才若渴。律所看重那些透彻了解中国司法系统里的律师，同时策略的实施、赢得艰难的诉讼均是招聘方极度看中的品质。ALB 2020年15佳诉讼律师榜单涵盖了民法、刑法、商法的最优秀的诉讼律师。让我们祝贺他们！

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

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## 2020 SCHEDULE OF RANKINGS 2020年榜单安排

NAME OF RANKING 榜单	MONTH OF PUBLICATION 发布月	NOMINATIONS OPEN* 提名开始日*
2020 ALB CHINA FIRMS TO WATCH 2020 ALB CHINA 精品律所	JANUARY	28 NOVEMBER 2019
2020 ALB CHINA TOP 15 LITIGATORS 2020 ALB CHINA 十五佳诉讼律师	FEBRUARY	29 NOVEMBER 2019
2020 ALB CHINA TOP 15 M&A LAWYERS 2020 ALB CHINA 十五佳并购律师	MARCH	10 DECEMBER 2019
2020 ALB CHINA TOP 15 IP IN-HOUSE COUNSEL 2020 ALB CHINA 十五佳知识产权法务		22 OCTOBER 2019
2020 ALB CHINA EMPLOYER OF CHOICE 2020 ALB CHINA 年度雇主	APRIL	3 FEBRUARY 2020
2020 ALB CHINA TOP 15 TMT LAWYERS 2020 ALB CHINA 十五佳TMT律师		26 DECEMBER 2019
2020 ALB CHINA IP RANKINGS 2020 ALB CHINA 知识产权排名	MAY	11 FEBRUARY 2020
2020 ALB CHINA TOP 15 GCS 2020 ALB CHINA 十五佳总法律顾问	JUNE	4 MARCH 2020
2020 ALB CHINA RISING LAWYERS 2020 ALB CHINA 律师新星	JULY	15 APRIL 2020
2020 ALB CHINA CLIENT CHOICE 2020 ALB CHINA 客户首选律师	AUGUST	20 MAY 2020
2020 ALB CHINA M&A RANKINGS 2020 ALB CHINA 并购排名		29 MAY 2020
2020 ALB CHINA FASTEST GROWING FIRMS 2020 ALB CHINA 十佳成长律所	SEPTEMBER	16 JUNE 2020
2020 ALB CHINA TOP 15 NEW ECONOMY IN-HOUSE TEAMS 2020 ALB CHINA 十五佳新经济法务团队		7 MAY 2020
2020 ALB CHINA TOP 15 FEMALE LAWYERS 2020 ALB CHINA 十五佳女律师	OCTOBER	16 JULY 2020
2020 ALB TOP 50 LARGEST LAW FIRMS 2020 ALB CHINA 年亚洲最大50家律师事务所	NOVEMBER	6 AUGUST 2020
2020 ALB CHINA TOP 15 IN HOUSE TEAMS 2020 ALB CHINA 十五佳公司法务团队	DECEMBER	26 AUGUST 2020
2020 ALB CHINA TOP 15 IP LAWYERS 2020 ALB CHINA 十五佳知识产权律师		20 AUGUST 2020

\* These dates are subject to change. Please contact ALB for the most up-to-date schedule. \*上述日期可能会有调整，请联系ALB获取最新的报名时间和截止日期。

欲了解更多提名信息，请联系：

E: TRALB.Ranking@thomsonreuters.com

# VIRUS CRISIS

## 疫情危机

The coronavirus outbreak that has gripped China over the past few weeks has quickly become the largest public health crisis in the country since the outbreak of SARS in 2003. As we went to print, there had been more than 70,000 confirmed cases nationwide, with the death toll hitting over 1,500. Like all other businesses, law firms have been negatively impacted as well, but they are responding by doing their part to battle the virus and get the country back on track.

2020年中国农历春节前，一场新型冠状病毒肺炎疫情冲击中国，这是自2003年“非典”后，中国遭遇的最大规模公共卫生危机。疫情以湖北武汉为中心蔓延全国，甚至波及海外。原本计划于1月30日结束的春节假期被一再延后，大量企业遭受经济重创，截至本文截稿时，中国共确诊肺炎患者逾7万人，死亡超过1500人。

BY HU YANGXIAOXIAO 作者：胡阳潇潇

China had an unusually long Lunar New Year holiday this year, but it wasn't surprising, given that circumstances have been extremely unusual. Since the start of the Lunar New Year period, the country has been in the throes of an outbreak of the hugely contagious coronavirus.

With health and safety authorities urging people to isolate themselves, the State Council on Jan. 27 announced that the holiday would be extended for three more days, until Feb. 2. Local governments were then authorized to decide on whether to extend the holiday beyond that, according to the local situations.

Large Chinese law firms that have offices in different provinces required

their local offices to follow the local governments' announcements when it came to when to reopen. As a result of that law firms came slowly back to work – as did the rest of the country – starting from Feb. 3, with most asking employees to work from home for the following weeks.

Law firms have also been monitoring their staff's health as well as enforcing safety requirements. For example, Tahota Law Firm required all 2000 of their employees to report their status everyday – luckily, no one has been tested positive for the virus. Meanwhile, Hylands Law Firm has been tracking its staff's whereabouts during the holiday soon, and has placed on any

在危机之下，中国律所如何安排员工和客户？它们原本计划于春节后展开的业务遭受了怎样的影响？ALB就此采访了几位律所合伙人，他们纷纷表示：律所是此场危机的被波及者，同时也是危机中的援助者和支持者。

### 员工安排

1月27日，国务院首先通知将全国春节假期延长至2月2日，随后，各级政府也根据本地抗疫需求，对是否继续延长假期进行了安排。ALB此次采访的国浩律师事务所、浩天信和律师事务所、泰和泰律师事务所和德恒律师事务所都是全国性综合律所，它们要求各地办公室遵守当地复工通知，并进行了一定程度的整体安排。基本上，各所在2月3日一周安排了继续休

travel for the time being. "If someone has to go on a business trip, he or she has to do self-quarantine for 14 days after the trip," says Xu Yu, member of the managing committee of Hylands.

The city of Wuhan, capital of Hubei Province, is thought to be the epicenter of the epidemic, where the virus is believed to have originated at a local seafood and meat market. The majority of the infected and deaths have been recorded within the city, which has been under lockdown since Jan. 23.

Wuhan-based employees of Grandall Law Firm have been staying at home as per the local government's instructions. Liu Wei, managing partner of Grandall tells ALB: "We appointed a local partner to be in charge of coordinating between the headquarters and the local staff on emergencies and donations." It's worth mentioning that "due to the increase of urgent legal assistances needed by our clients, our Wuhan office has continued to provide services ever since the outbreak," Liu adds.

Meanwhile, Tahota was planning to open a new office in Wuhan soon after the holiday, but it has shelved those plans for the time being.

## HELPING CLIENTS

Even though lawyers have been staying at home, since the Lunar New Year holiday they are far from idle, having to attend to the urgent needs of clients.

Hylands' Xu tells ALB that clients have been desperately seeking on issues such as employment law and contract fulfilment issues. According to ALB's observation, many law firms have been posting legal articles since the end of January and many of those articles also focus on the two issues brought up by Xu. "Should we pay employees during the extended holiday, and if so, how? Can the defense of force majeure be used during the coronavirus outbreak? These are the questions asked most by clients," Xu says.

Meanwhile, Xu Jianjun, vice director of DeHeng Law Offices, has witnessed requests for other kinds of work, which "includes financing, business leases, insurance and insolvency problems, all caused because of the outbreak. Our

**"There will be an explosion of legal issues caused by the outbreak over the following months, with the overall impact expected to last for years. Even large law firms would do well to serve more mid-sized and even small companies."**

**"疫情带来的法律问题会在上半年集中爆发，但影响还将持续至少1到2年。针对疫情受到重大影响的大量中小企业，会让更多大型律所下沉服务。"**

— Xu Jianjun, DeHeng Law Offices  
徐建军，德恒律师事务所

lawyers have also written up more than one hundred articles concerning areas such as tourism, internet, medicine intellectual property, international trade, outbound investment, and have delivered those articles to related government and commercial institutions," he says.

Grandall's Liu has observed an urgent need for assistance concerning capital markets. "We have many local Hubei clients that are already listed publicly or are planning to file for IPOs," says Liu. "Some had completed the financing process before the holiday, some had delivered materials to the China Securities Regulatory Commission, and some were planning to organize board meetings or shareholders' meetings, which obviously have been put on hold."

Xu Zhengping, a member of the managing committee of Tahota, shares his insights on other aspects. "Firstly, we encountered the need for legal support from government clients concerning public issues. Local governments have to issue strict regulations under the crisis, and they need to abide to the existing laws because some of those would interfere with personal rights," he said. Tahota has also compiled two guides concerning legal issues with government actions and regulations during the coronavirus outbreak and has provided

假或在家复工，2月10日后则继续采取弹性复工，不强制员工到岗，并建议以远程方式服务客户。

第一时间对延迟复工进行安排外，律所也在疫情期间对员工健康进行了统一监测，并提出了安全要求：泰和泰要求全所约2000名员工每天反馈身体状况，目前尚未出现一人感染；浩天信和则对春节期间返乡员工进行了详细登记，并鼓励员工不再出差，“如果出差，回来后也要自行隔离14天，为大家和客户创造一个安全健康的工作环境”，浩天信和管委会成员徐羽律师说。

此外，为了便利员工在家办公，律所也都纷纷提供了技术支持：国浩于2月3日就启动了包括风控中心和利益冲突检索中心在内的后台服务系统，德恒则制定了临时远程办公管理制度，并加大了对视频会议、DM和OA等远程办公支持系统的升级与维护投入。

受访律所中，国浩和德恒已经开设了武汉办公室。国浩集团执行合伙人刘维律师告诉ALB，“当地员工一直按照政府指令待在家中。我们在武汉安排了一位合伙人，负责和集团对接事务处理和物资援助。”值得一提的是，“由于疫情期间有客户产生了特殊和紧急的业务需求，武汉办公室的同事还是在继续提供服务。”

受访律所中，受到影响的还有泰和泰。泰和泰管委会委员许正平律师告诉ALB，律所于春节前刚刚通过了设立武汉办公室的决议，但受疫情影响，目前正式开业时间待定。

## 紧急求助

受访律师都表示，虽然律所按政府要求延迟复工，但受疫情影响，许多客户出现了紧急法律需求，很多律师甚至在春节假期中就提前展开了服务。

在浩天信和的徐羽律师看来，客户紧急需求主要集中在劳动用工和合同履行方面。实际上，根据ALB的观察，自1月26日以来，各家律所已经开始通过微信公众号推送和疫情相关的法律文章，徐律师提到的两个领域正是被探讨最多的。“延迟复工期间是否且如何支付工资？疫情是否可以且一刀切地认定为不可抗力？这是客户集中咨询的问题。”徐律师说。浩天信和于是从点到面，将相关问题总结成文章发布，并且发布了涵盖各地法规及各专业领域的综合性文章，推送给了客户、同行及潜在客户。

them to different layers of government institutions.

“Secondly, many of our state-owned enterprise clients are taking up the responsibility of purchasing large amounts of much-needed medical and daily supplies both from China and overseas, which require our lawyers to provide services like contract reviews. Lastly, there is also criminal law issues related to maintaining public order and rules, which are becoming more prevalent recently. We also need to provide guidelines on this,” Xu adds.

#### DROP IN WORK

Much like other businesses, law firms have also been negatively impact by the crisis.

Grandall’s Liu tells *ALB*: “The amount of work we are doing has decreased sharply. There has been almost zero new business after the holiday, and the total business volume has decreased 70-80 percent compared to the same time last year.”

Liu says that while parts of the transactional work involve documentation that can be done at home, deals can only be hammered out face to face, and thus they have been stalled until after the outbreak eases. On the disputes side, nearly all courts and arbitration centers have postponed their reopening, and lawyers can’t even meet their clients now.

Hylands’ Xu Yu has similar observations. “Nearly all work that was slated to be carried out after the holiday has now been suspended, with only some remote meetings being arranged with clients. Disputes, M&A deals and investments – all practice areas have been impacted,” he says.

Tahota’s Xu Zhengping concurs, telling *ALB*: “The flow of legal work has not reached half of what we would call a ‘normal standard.’”

Some law firms are already anticipating further financial stress. Grandall’s Liu anticipates that the outbreak will have great impact on the firm’s revenue in February and March. “Several offices were planning to move into new premises after the holiday, and some were thinking about recruiting more people;

**“The government will definitely invest more to revitalize the economy after such a crisis, especially the finance, infrastructure, technology and healthcare industries. And it could be anticipated that it will also loosen restrictions on the real estate industry.”**

**“遭遇重大经济影响后，政府必然会有所作为、加大投入，尤其加大对金融、基建、科技、医疗、环保等领域的扶持。此外政府有可能适度放宽目前相对严格的房地产管控。”**

— Xu Zhengping, Tahota Law Firm  
许正平，泰和泰律师事务所

those plans obviously will be suspended now.”

But he also says that the firm will not fire anyone because of the crisis and will not even cut staff’s salaries. “If things got worse and we were faced with real financial problems, then we would use the profits planned to be distributed among partners to help the firm operate.”

#### A SILVER LINING

But lawyers remain optimistic that they will see an increase in work when the outbreak eases. A dispute resolution expert, Xu Yu anticipates the economic fluctuations brought by the epidemic will cause the dispute resolution business to grow, and lawyers should be prepared for this.

Xu Zhengping agrees, and he points out the whole legal market will face a negative impact in the short term. But in the long term, the crisis will throw up more opportunities. “The government will definitely invest more to revitalize the economy after such a crisis, especially the finance, infrastructure, technology and healthcare industries,” he explains, “And it could be anticipated that it will also loosen restrictions on the real estate industry, which is one of the quickest ways to revive the economy.”

德恒律师事务所副主任徐建军律师例举了客户产生紧急法律需求的其他领域。“包括企业因疫情引发的金融相关法律问题，疫情期间的商业物业租赁租金减免问题，保险的法律问题和疫情之下的破产问题等。”他说，“我们还针对应对疫情行政、刑事、民事、合同、劳动用工、文化旅游、互联网、不可抗力、药品知识产权、国际贸易、对‘一带一路’影响以及行业与中小企业影响等问题开展研究，形成专业研究文章100余篇，并通过各种渠道向国家有关部门、机构和商会和企业提交研究成果，帮助他们有序应对以上问题。”

国浩的刘维律师则观察到了客户在资本市场领域的紧急需求。“湖北当地有很多上市公司，包括拟上市公司。”他说，“有的客户之前已经准备融资，或向证监会递交了材料，或准备召开董事会或股东大会表决这些事项。疫情一来，有的按照法定时间来不及反馈回复材料，或者股东大会不能按时召开，都需要我们提供紧急服务。”

泰和泰的许正平律师也补充了其他几点服务需求。“首先是政府公共管理的法律需求：面对疫情，政府出台的政策是否必要且符合现行法律规定？政府加大管控力度或多或少会涉及对私人权利的限制，哪些限制是合理且必要的？”就此，泰和泰还编纂了《依法防控疫情：突发公共卫生事件政府公共管理法律适用手册》和《突发事件应急征用法律实务指南》，提供给需要的政府机构，已有出版社主动进行公益出版，正在付印中。

“第二是大型国有企业客户在疫情期间存在很多为了疫情防控，需要进行大量海内外物资采购的情况，比如防疫物资的海外采购，支援一线战役，再比如民生物资的境内采购及供应保障，防止抢购引起的社会动荡。基于客户紧急需求，我们的律师从年初一就开始上班审批大量合同；第三是公共管理下的刑事合规，在疫情后期愈发凸显，包括如何处罚隐瞒造成严重影响的人，也需要我们做指引。”许律师接着说。

#### 业务降缓

与此同时，律所作为经济参与者，也感受到了疫情对于当下业务的冲击。国浩的刘维律师告诉ALB：“客户需求减少得非常厉害。我们现在服务的客户基本是2019年或春节前接下的，至



# 融力天闻律师事务所知识产权案例分享



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## 团队介绍

融力天闻是一家专注于知识产权、商事争议等领域的规模化律师事务所，系由中国最早一批专注文化娱乐等知识产权法律业务的精品律所之一（天闻世代律师事务所）以及在东部沿海地区商事争议领域具有深厚底蕴的精品律所之一（融力律师事务所）等组成。在近二十年中，该所致力于打造一支具有国内高尖端业务水准的知识产权法律业务团队，在商事争议、刑事打击等专业领域不断深耕细作、成绩斐然。

该所的知识产权团队在版权、商标、专利及不正当竞争领域中办理了一批高水准的典型案件以及多起经由最高人民法院再审改判的疑难复杂知识产权案件，此外该团队在刑事打击、反垄断争议案件中还为多家世界知名互联网公司、世界五百强企业等客户提供了卓有成效的法律服务，其代理的众多知识产权案件被评为法院年度经典案例或中国首例新型知识产权案件。

## 案例分享

### 案例一、激光测距某发明专利无效再审改判与反不正当竞争案

**承办律师：**孙黎卿律师、朱宁律师

#### 案件综述

2016年起至2018年间，深圳某公司依据其多件专利权针对我方客户公司在内的激光测距行业十余家企业分别在北京、广州、深圳等地发起了18起专利侵权索赔诉讼，其中单起案件的侵权索赔金额高达千万元人民币。涉案的2项发明专利、实用新型专利先后被原专利复审委无效，其中涉案发明专利第一次被原专利复审委做出全部无效后，该专利无效决定又被北京知识产权法院、北京市高级人民法院予以撤销；同时涉案发明专利第二次被专利复审委员会做出全部无效的决定，后深圳公司不服再次向北京知识产权法院提起行政诉讼，在此案争议中激光测距行业企业或相关公众对此案给予了高度敏感与密切

关注，部分经销商已与我方客户全面或部分中止了订单业务或直接终止采购合同。

#### 办案思路

锁定双方多起争议案中的核心争点及核心专利，确定专利无效再审的方向及策略制定多套应对策略，进一步加强我方在法律与技术层面的薄弱点；最终我方客户公司决定针对涉案发明专利权的行政确权争议案件进行向最高人民法院申请再审；与此同时，本所律师全面接手与我方客户公司针对涉案其他专利的无效争议案件，并及时在2018年底针对专利权人公司就此争议事件不断通过媒体散播一些不利于我方客户商誉等权益的行为向法院提起了不正当竞争行为之诉。

#### 代理成效

2019年，深圳地区一审法院支持了我方要求专利权人停止不正当竞争行为、公开消除影响以及损害赔偿的部分诉讼请求，后该专利权人不服一审判决，该案现处于二审审理阶段；2020年，最高院撤销涉案发明专利权的一审、二审判决，维持原复审委做出的涉案发明专利权全部无效的决定。

截至目前，深圳某公司针对本行业相关企业发起的18起专利索赔诉讼多已撤诉或被法院驳回。

### 案例二、被许可人侵害许可商标，两公司及股东连带承担惩罚性赔偿140余万

**承办律师：**朱宁律师、戴奥杰律师

#### 案件综述

在2014年至2018年间，客户公司与被告丹阳某公司之间的围绕涉案商标产生了一些的争议案件，包括商标使用合同纠纷、联营合作期间的利益分配纠纷等案件一直处于被动地位，客户公司在与被告单一某公司的商标争议相关案件中多以败诉告终，且通过行政投诉查处的几起案件也未见良好成效，期间有个别案件还被法院判令向被告丹阳某公司赔偿30余万元的货款及利息，因双方之间的合作协议条款未

有明确约定，导致客户公司主张在合作期间的商标许可使用费等利益诉求并未得到法院的支持。此外，被告丹阳公司等还大肆在相同商品上使用与客户公司享有的近似商标，对客户公司的商标合法权益及市场份额构成损害，并持续申请了多件与客户公司相同、近似的商标等行为。

#### 代理成效

2018年1月，本所正式接受客户公司委托全面开展代理工作，考虑到前案多起前案判决对本案维诉讼的不利影响因素，本所律师重新确定了以“侵权恶意”、“惩罚性赔偿”、“共同侵权”为诉讼要点的系统维权方案，分别在江苏、浙江、北京、上海地区集中展开证据搜集与事实调查，获得了大量的证据材料数据信息。

2018年4月，本所接受客户公司委托，针对丹阳、常州地区两公司及其法定代表人以及浙江地区经营者共计五位被告在南京市中级人民法院发起了商标侵权案，2018年10月一审法院判决上述被告两公司及其法定代表人（两公司的股东）连带赔偿144万元人民币，即按照被告的侵权所得部分的2倍来计算惩罚性赔偿数额，并认定被告两公司及其法定代表人、股东构成共同侵权，2019年江苏省高级人民法院依法维持一审法院的判决。

#### 典型意义

本案涉及了当下惩罚性赔偿、共同侵权行为等的热点问题，具有典型意义：

1. 被告公司与法定代表人共同侵权的判例，十分少见；
2. 被告公司与法定代表人连带承担140余万元惩罚性赔偿，实属罕见；
3. 厘清了商标法57条、侵权责任法第8条、公司法63条的法律适用问题；
4. 开辟了知识产权案中的举证责任、证明度及科学认定赔偿数额的新思路；
5. 体现了中国法院对知识产权案件高标准、严保护的司法实力与审判效率。

Xu Jianjun also thinks law firms should look at the impact from different angles. He reckons there will be an explosion in legal issues caused by the outbreak over the following months, with the long-term impact lasting for years. "We are already seeing an increase in litigation," he says, "along with insolvency and restructuring cases. And the government will require more legal advice on public health and healthcare." However, this doesn't mean law firms can expect an explosion in revenue, too. "Large law firms would do well to serve more mid-sized or even small companies," he adds.

### DOING THEIR PART

Law firms are also doing their bit to help society during this time of crisis. According to ALB's observation, ever since the end of January, nearly all Chinese law firms has been helping to combat the epidemic by organizing donations, advising the government, providing volunteer legal consulting or posting professional articles on their WeChat accounts. Grandall, Tahota and Hylands have all donated large amounts of money and medical supplies to Wuhan, and have posted several dozen articles concerning different legal issues.

Lv Hongbing, a director at Grandall, has advised Chinese People's Political Consultative Conference (CPPCC) on arranging to bring back Chinese travelers who had been stranded overseas after their flights were cancelled. The firm's managing partner, Shen Tianfeng, has advised China Securities Regulatory Commission (CSRC) on other epidemic-related issues.

Xu Yu tells ALB that the crisis has made him realize that being part of society, lawyers are not immune from these disasters, so they should also do their part to help and support. Xu Zhengping concurs. "Firstly, we need to help the government to conquer all the challenges. Secondly, we need to help impacted companies to properly handle their relationships with employees and business partners."

In addition, "a law firm is also a kind of business, and such crisis will also test its management capability as well as professionalism," he adds. 403

少到目前为止，新业务是几乎停滞的状态。和去年同期相比，业务量只有30%。”

就受影响的业务类型来说，刘律师说，非诉业务的案头工作可以远程进行，但最终落地还要等疫情缓解后当面完成。诉讼业务方面，法院和仲裁庭都宣布延期开庭，一些比较紧急的刑事辩护案件，因为按防疫要求要提前预约，处理时间也遭延缓。

浩天信和的徐羽律师也做出了类似观察。“原本计划在春节假期后开始的工作现在基本处于停滞状态，只是零碎在安排些会议。”他说，“诉讼方面，各地法院暂缓开庭；非诉方面，包括兼并收购和投资等，也暂时处于相对停滞状态。”

泰和泰的许正平律师则告诉ALB：“目前法律服务需求量还没有恢复到正常水平，可能连正常水平的一半都没有。”

面对业务下降带来的经济压力，部分律所已经提前做出预案。以国浩为例，刘维律师告诉ALB，疫情对2、3月的业绩影响会非常大。“我们有多个办公室预计一季度搬迁，好几个办公室还预计扩大规模，目前首先搬迁时间可能会延后，预计的人员扩张现在实现起来也有压力。”

但他也说，律所不会因为疫情缘故辞退员工，也不会降低薪酬。“如果遇到资金困难，根据国浩的分配制度，2019年度的部分收入原本准备在2020年分配，现在会优先用来保障事务所运行。”

浩天信和的徐羽律师也预计业绩影响将显现在2、3月份，但“我们还是会等到疫情过去后总结收入情况，再调整利润预期”。

### 雨后彩虹

但是律师们对于疫情结束后的业务变化保持着乐观态度。徐羽律师专长于争议解决，他认为2020年初的这场社会及经济波动可能会引发疫情稳定后争议解决类业务的增长，对此律师们要做好应对。

许正平律师同意这一看法，他指出，由于客户交易量减少和中小客户遭遇的生存危机，律师行业短期内都会遭遇负面影响。但他认为，除未来争议解决的小幅增加外，从中长期看，法律服务行业也可能面临机遇。“遭遇重大经济影响后，政府必然会有所作为、加大投入，尤其加大对金融、基建、科技、医疗、环保等领

域的扶持。”他解释说，“此外政府有可能适度放宽目前相对严格的房地产管控，因为促进房地产业发展是快速提升经济活力的方法之一。”

德恒的徐建军律师同样认为应该从两个角度看待疫情对律所业务的影响，他认为，疫情带来的法律问题会在上半年集中爆发，但影响还将持续至少1到2年。“由于劳动问题、合同履行引发的诉讼案件增长已经在发生，破产清算案件增长，金融风险上升、投融资项目延期或暂缓等可以预见，同时政府部门在疫情之后也会对公共卫生相关法律问题，医疗和药物相关法律问题做出新的考虑，接下来各大律所将投入大量人力与物力去应对来自客户和政府相关服务需求。”

但他也指出，律所未来的收入预期却并不一定会因此增长，“由于延迟复工对经济带来巨大影响，各行业忙于自救，在非诉层面对法律服务的需求、付费能力与意愿也会下调。此外，针对疫情受到重大影响的大量中小企业，会让更多大型律所下沉服务。”

### 社会角色

此次疫情也考验了律所的社会角色。根据ALB的观察，自春节假期以来，各家律所就在以捐款捐物、献计献策、提供法律志愿服务、发布法律专业文章等方式参与抗疫。

以受访的三家律所为例，他们对灾区的捐款捐物额度都达到了百万甚至数百万元人民币，并陆续在微信公众号上发布了数十篇法律专业文章。

刘维律师告诉ALB，国浩的首席合伙人吕红兵律师向全国政协建议以包机方式接回滞留海外的湖北游客并得到采纳实施，集团执行合伙人沈田丰律师也主导全国律协金融证券委向证监会提出了针对性意见。

徐羽律师说，这次疫情让他看到律师既是危机共同体中的参与者，也是帮助者。许正平律师则对“帮助者”的身份有很大感触。“首先是支持政府，政府在这次疫情中遭遇了公共管理的巨大挑战，在解决危机的同时要符合法律规定，通过支持他们，也体现了律所的社会责任；疫情对企业管理也带来极大的负面影响，律师要协助他们处理好和员工、交易对手的关系。”

此外，“律所本身也是企业，疫情当头，对我们的运营管理能力和专业服务能力也是考验。”他补充说。 404





# 破产重组领域里的国曜品牌：专业、高效、优质

——专访山东国曜律师事务所管理合伙人程谟伟律师



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**ALB:**近年来山东国曜律师事务所破产重组业务发展迅速，受到业内瞩目，请您简要介绍一下国曜破产重组业务的律师团队。

**程谟伟律师：**目前中央推行产业升级、去产能等经济政策，要求处置“僵尸企业”让渡闲置资源，以此吸引新的投资，寻找经济增长点，必将导致有很大一批企业退出市场，正是在此大环境背景下，国曜所组建了专门负责破产重组业务的团队。团队由三名资深高级合伙人牵头，主办律师由二十几名不同资历的合伙人、律师组成，外加十几名实习律师、法律秘书等。破产重组业务市场的扩大也必然引来激烈的竞争，这对管理人团队建设提出了更高的要求，只有高效的团队，才能够做到同时协作办理多起案件，缩短案件的办理周期，在单位时间内办理更多的案件，服务更多的客户，从而在竞争中立于不败之地。

**ALB:**在该执业领域你们是如何树立和打造“国曜品牌”的？

**程谟伟律师：**国曜致力于打造一支可提供专业、高效、优质服务的破产重组业务团队，因此对破产管理人团队来说，“管理”比“破产”重要，认识到管理的重要价值和作用是做好管理人团队建设的关键。国曜破产团队的管理主要体现在三个方面：

**首先是客户管理。**破产管理人的客户是谁？是债务人企业？是债权人？我认为都不是。破产管理人真正的客户是法院，准确的说是破产案件主办法官和相关分管领导，因此管理人的工作习惯及服务意识要与人民法院的工作风格和模式相吻合，基本的要求是工作内容要书面化和程序化，有及时的工作简报

及书面报告，个别情况下要制作专门的谈话笔录，做到工作过程中的判断有事实和法律依据并形成书面的工作底稿。这对管理人团队的自我保护和满足客户需求都是十分必要的。

**其次是项目管理。**项目管理是办理破产案件的主体工作，也是实现良好客户体验的基础。其中最为重要的就是流程管理，流程管理主要包括工作流程及制度的制定和安排，人员的配备分工、工作执行的监督反馈等。流程管理就是日常工作的开展，工作流程的建立要确定一定的工作制度，比如档案材料的管理、日常开支的资金管理、内部会议和报告制度等，专人负责，由项目负责人监督实施。同时要注意工作流程的合理设计，避免重复工作，科学地将工作进行分解打包，合理分工，提高项目人员的工作热情。

**第三是人才管理。**人才管理是客户管理、项目管理实现优化的基础。我们致力于加快现有成员的内部培养，尤其是项目负责人在管理方面的培养，让他们作为团队的种子，配备一定人员后就可以主要负责案件项目。

同时，我们还在团队里积极营造持续学习的氛围，鼓励团队成员尽可能多地取得与破产项目工作有关的资质和证书，必要时招聘高学历或具有相关资质证书的专业人员，提高团队的硬性评级标准。

除此之外，我们还会建立更完善的分项目负责人制度，充分授权，建立项目奖金，进行业绩考核和激励。

**ALB:**疫情防控期间，破产、重整案件有哪些特别的注意事项？

**程谟伟律师：**当前的疫情不仅对人民群

众的生命健康造成严重威胁，诸多民营企业也遭受了重创。在宏观经济本身下行压力增大及供给侧改革的大背景下，许多民营企业陷入了困境。困境中的民营企业选择何种路径实现“突围”意义重大。破产重整及预重整制度为困境中的民营企业提供了有利其发展、再生、退出的公平合理的环境，具有促进困境企业再生的价值。启动并运用破产重整制度需明确启动主体、掌握如何实操运作，以使困境企业成功“突围”。我认为律师在具体办案过程中应注意以下事项：

1.疫情防控期间，重整投资人招募、重整企业尽职调查等活动客观上受到一些限制，加剧了重整的不确定性。管理人应秉持债务人资产价值最大化原则，加强与债权人、债务人、潜在投资人的联系沟通，在法律允许的范围内，报请法院同意后适当放宽投资人招募和重整计划草案制定的期限，最大程度维护债权人和债务人的合法权益。

2.对已进入破产程序的生产经营防疫物资的债务人企业，无论是清算还是重整程序，应积极开展协调对接工作，第一时间恢复和维持企业的生产经营能力，经营期间支付的职工工资、为维持正常经营发生的借款等，可依法认定为共益债务随时清偿，最大限度保障防疫物资的生产、供应。

3.在制定重整计划过程中，应结合国家和地方政府已经出台的涉及缓交社会保险和部分税款、职工工资支付、贷款适当展期、税收减免、房租减免等系列企业减负措施，最大限度降低破产成本，提升债务人企业的重整价值。

APPOINTMENTS 律师转所信息



**ANGELA CUI 崔磊**

LEAVING 原就任职律所

King & Wood Mallesons 金杜律师事务所

JOINING 现就任职律所

Miao & Co

缪氏律师事务所 (汉坤香港联营律师行)

PRACTICE 业务领域

Private Equity, Cross-border M&A,  
Complex Commercial Transactions  
私募股权投资、跨境并购、复杂商事交易

LOCATION 地点

Hong Kong SAR 中国香港特别行政区



**FENG AI 冯艾**

LEAVING 原就任职律所

King & Wood Mallesons 金杜律师事务所

JOINING 现就任职律所

JunHe 君合律师事务所

PRACTICE 业务领域

Capital Markets, M&A, Private Equity/  
Securities Investment Funds  
资本市场、公司与并购、私募股权/创业投资

LOCATION 地点

Hangzhou 杭州



**DENNING JIN 金立宇**

LEAVING 原就任职律所

Haiwen & Partners 海问律师事务所

JOINING 现就任职律所

Han Kun Law Offices 汉坤律师事务所

PRACTICE 业务领域

Dispute Resolution, Intellectual Property  
争议解决、知识产权

LOCATION 地点

Shanghai 上海



**SHAUN WU 吴壮辉**

LEAVING 原就任职律所

Kobre & Kim 美国高博金律师事务所

JOINING 现就任职律所

Paul Hastings 普衡律师事务所

PRACTICE 业务领域

Corporate Investigation, Anti-corruption  
Compliance, White-collar Defense  
企业调查、反腐败合规、白领辩护

LOCATION 地点

Shanghai/Hong Kong SAR  
上海/中国香港特别行政区



**ZHANG JIAN 张健**

LEAVING 原就任职律所

Commerce & Finance Law Offices

通商律师事务所

JOINING 现就任职律所

Shihui Partners 世辉律师事务所

PRACTICE 业务领域

Securities Issuance, IPO, Restructuring,  
Cross-border M&A, Private Equity

境内外证券发行与上市、  
重组、跨境并购、私募融资

LOCATION 地点

Beijing 北京



**ZHANG XINGZHONG  
张兴中**

LEAVING 原就任职律所

King & Wood Mallesons 金杜律师事务所

JOINING 现就任职律所

JunHe 君合律师事务所

PRACTICE 业务领域

Capital Markets, Real Estate and  
Construction, Dispute Resolution  
资本市场、房地产和建筑工程、争议解决

LOCATION 地点

Hangzhou 杭州



# 企业商标布局要点解析

北京棉田仿制品有限公司（北京棉田公司）诉日本株式会社良品计画（日本良品计画）侵害其在第24类商品上享有的商标权一案，法院于近期作出生效判决，认定日本良品计画构成商标侵权，并支付损害赔偿50万元及合理支出12万余元，结束了双方十几年的“无印良品”商标之争。该判决一经作出，就引起社会广泛关注和强烈反响，不少人甚至认为法院有“保护假冒品，打压正品”之嫌。然而，该案正是日本良品计画未做好商标布局而遭受损害的典型案例，其经验值得所有企业借鉴。

## 一、日本良品计画商标侵权纠纷案情分析

日本良品计画早于1999年就向我国商标局申请注册“無印良品”商标，核定使用的服务类别为第20、21、27类商品或服务，但其并未在第24类“棉织品、毛巾、浴巾、枕套……”商品上申请注册。2000年，海南南华实业贸易公司（南华公司）在第24类商品上申请注册了“无印良品”商标。

在南华公司的“无印良品”商标获得初步审定并公告后，日本良品计画立即向商标局提出异议。在长达12年的时间里，该商标经过异议、异议复审、行政诉讼一审、二审和再审，最终该商标仍被维持注册。2004年，南华公司将该商标转让给北京棉田公司。生效判决认定，在南华公司申请注册“无印良品”商标时，日本良品计画并未在中国境内宣传和宣传使用“無印良品”商标，该商标不具备一定影响，南华公司申请注册该商标的行为正当，其依法享有在第24类商品上使用“无印良品”商标的专用权。

日本良品计画明知北京棉田公司在第24类商品上合法享有“无印良品”商标，仍然在该类别对应的浴巾、面巾、地巾等商品上使用“無印良品”“MUJI無印良品”“无印良品MUJI”标识，故被北京棉田公司诉至法院。

法院判决认定，日本良品计画在以上商品的商标使用行为容易导致相关公众混淆，构成侵权。法院特别强调，在两个商标分别由北京棉田公司和日本良品计画注册的情况下，双方更应严格按照《类似商品和服务区分表》中的商品分类进行使用，避免落入他人注册商标专用权的范围。此外，在他人合法享有相关注册商标专用权的情况下，日本良品计画品牌



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的知名度，不能成为其在同一种或类似商品上使用与他人注册商标相同或近似商标的理由。

## 二、该案对企业进行商标布局的启示

日本良品计画作为知名跨国公司，因早期商标布局失策，不得不接受与他人共用“无印良品”品牌的局面，应当为所有企业敲响警钟。企业若想拓展市场，健康发展，应当尽量做好商标布局与保护。

首先，商标布局要趁早。企业应当尽早进行商标注册，我国法律规定商标注册人享有商标专用权，权利人想要保护商标，须向商标局申请注册。未注册商标可获得的保护十分微弱。因此，企业应当尽早了解拟注册商标的申请情况，如果未被注册则尽快申请注册；如果不幸被注册，也要尽可能了解申请人的实际使用情况，分析是否存在撤销或者无效宣告的可能，为自己的商品或服务进入市场扫清障碍。

其次，注册类别要齐全。日本良品计画已经在第20、21、27类商品上成功注册了商标，却并未在第24类商品上申请注册。然而，第24类中的“枕套、坐垫、盖垫”等商品与第20类中的“枕头、软垫、垫枕、睡垫”等商品可能构成类似商品。日本良品计画没有在第24类商品上申请注册，尤其是其尚未在我国实际宣传销售，导致南华公司抢先注册。因此，企业在申请注册商标时，应当尽量综合考虑商标的使用范围，包括在类似商品上的注册，争取注册类别齐全，以防他人趁虚而入。

最后，使用商标要规范。“无印良品”系列案件最早由日本良品计画提起，其对北京棉田公司不规范使用注册商标的行为提起侵害商标权诉讼，并获得法院支持。然而，由于日本良品计画在实际使用商标时也不规范，其销售的商品类别落入了北京棉田公司第24类注册商标的保护范围，因此北京棉田公司才有机会进行反制。企业在使用注册商标时，应当关注自身注册商标的核定使用范围，以及市场上其他企业相同或近似商标的核定使用范围，避免发生争议。

因此，为保障企业长期健康的发展，企业应趁早做好商标布局，全面注册商标类别，规范使用注册商标，避免他人有机可乘。

## DEALS 交易

**\$4.5 BLN****Beijing-Shanghai High-Speed Rail's Shanghai IPO**

Deal Type: IPO

Firms: King &amp; Wood Mallesons

Jurisdictions: China

**京沪高铁上交所上市**

交易类型：上市

参与律所：金杜律师事务所

管辖地：中国

**\$2.2 BLN****Gaw Capital Partners' Gateway Real Estate Fund VI**

Deal Type: Private Equity

Firms: Baker McKenzie

Jurisdictions: Hong Kong SAR, Luxembourg, Singapore

**基汇资本完成基汇房地产基金VI最后轮融资**

交易类型：私募基金

参与律所：贝克·麦坚时国际律师事务所

管辖地：中国香港特别行政区，

卢森堡，新加坡

**\$1 BLN****JD.com's SEC-Registered notes offering**

Deal Type: DCM

Firms: Skadden, Arps, Slate, Meagher & Flom, Maples and Calder, Zhong Lun Law Firm, Davis Polk & Wardwell, JunHe  
Jurisdictions: China, U.S.**京东发行10亿美元债券**

交易类型：债券

参与律所：世达律师事务所，迈普达律师事务所，中伦律师事务所，达维律师事务所，君合律师事务所  
管辖地：中国，美国**\$565 MLN****Financing of Well Harvest Winning Refinery**

Deal Type: Financing

Firms: Global Law Office, Norton Rose Fulbright, Oentoeng Suria &amp; Partners, Walkers

Jurisdictions: China, Indonesia

**中国宏桥集团印尼宏发韦立氧化铝公司项目贷款融资**

交易类型：融资

参与律所：环球律师事务所，诺顿罗氏律师事务所，印度尼西亚Oentoeng Suria & Partners律师事务所，汇嘉律师事务所  
管辖地：中国，印度尼西亚**\$550 MLN****AKMMeadvile Electronics' acquisition of TTM Technologies' mobility business unit**

Deal Type: M&amp;A

Firms: Tian Yuan Law Firm, O'Melveny & Myers  
Jurisdictions: China, U.S.**安捷利美维电子收购美国迅达科技公司移动事业部**

交易类型：并购

参与律所：天元律师事务所，美迈斯律师事务所  
管辖地：中国，美国**\$510 MLN****Gongniu Group's Shanghai IPO**

Deal Type: IPO

Firms: Shanghai United Law Firm  
Jurisdictions: China**公牛集团上交所上市**

交易类型：上市

参与律所：上海联合律师事务所  
管辖地：中国**\$329 MLN****China Merchants Commercial Real Estate Investment's Hong Kong IPO**

Deal Type: IPO

Firms: Baker McKenzie, Freshfields Bruckhaus Deringer, JunHe, Maples Group, Zhong Lun Law Firm  
Jurisdictions: China, Hong Kong SAR**招商局商业地产投资信托基金香港上市**

交易类型：上市

参与律所：贝克·麦坚时国际律师事务所，富而德律师事务所，君合律师事务所，中伦律师事务所，迈普达律师事务所  
管辖地：中国，中国香港特别行政区**\$283 MLN****UCloud's Shanghai STAR Market IPO**

Deal Type: IPO

Firms: JunHe, Llinks Law Offices  
Jurisdictions: China**优刻得科创板上市**

交易类型：上市

参与律所：君合律师事务所，通力律师事务所  
管辖地：中国**\$283 MLN****Jiumaojiu's Hong Kong IPO**

Deal Type: IPO

Firms: Miao & Co., Zhong Lun Law Firm, Mayer Brown, JunHe  
Jurisdictions: China, Hong Kong SAR**九毛九香港上市**

交易类型：上市

参与律所：缪氏律师事务所（汉坤香港联营律师行），中伦律师事务所，孖士打律师事务所，君合律师事务所  
管辖地：中国，中国香港特别行政区

# 新冠疫情能否构成不可抗力或情势变更？



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自新型冠状病毒肺炎疫情(“新冠疫情”)爆发以来，政府采取的系列控制措施影响了诸多合同的顺利履行。本文将以前述购物商场租赁合同为切入点，分析新冠疫情能否构成商事合同履行中的不可抗力或情势变更。

## 一、 新冠疫情与不可抗力

### (一) 新冠疫情是否属于商业租赁合同中的不可抗力

#### 1. 政府明令暂停营业致使租赁合同不能履行的，新冠疫情构成不可抗力

根据我国《民法总则》第180条、《合同法》第117条的规定，不可抗力的适用条件为：发生了不能预见、不能避免、不能克服的客观情况导致合同不能履行。

新冠疫情作为一种突发的传染性疾病，具有不能预见、不能避免、不能克服的客观性，但援引不可抗力作为免责事由的另一重要前提是：不可抗力与合同不能履行间需具有因果关系。

新冠疫情期间，部分地方政府要求暂停开放本行政区域内的网吧、影(剧)院及KTV等娱乐场所。对于经营上述娱乐场所的商户来说，由于政府采取的控制措施，致使租赁合同在一定期间内不能履行，此时新冠疫情应当构成不可抗力。

#### 2. 未导致租赁合同不能履行的，新冠疫情不构成不可抗力

对于政府并未要求暂停营业的商户，虽然其营业额很可能会因客流减少而大幅下降，但新冠疫情并未导致租赁合同不能履行，不应当构成不可抗力。

### (二) 新冠疫情构成不可抗力的法律后果

作为一种法定的免责事由，触发不可抗力将产生两种法律后果：一、解除合同；二、部分或全部免除责任。

对于政府明令暂停营业的商户，若政府及时取消了禁令，那么新冠疫情尚不足以致使合同目的无法实现，租户只能要求减免暂停营业期间的租金，而不能要求解除租赁合同；若政府未及时取消禁令，合同不能如期履行致使合同目的无法实现，那么商户有权依据不可抗力要求解除合同。

## 二、 新冠疫情与情势变更

### (一) 新冠疫情是否构成商业租赁合同中的情势变更

#### 1. 对于擅自停业的商户，新冠疫情不构成情势变更

适用情势变更原则的前提之一是，合同赖以生存的基础发生了变更。对于擅自停业的商户，若新冠疫情并未使其承租房屋的目的落空，继续履行租赁合同并不会对商户不公平的，新冠疫情不构成情势变更。

#### 2. 对于受疫情影响较大的商户，新冠疫情构成情势变更

对于餐饮、服饰等领域的商户来说，疫情期间客流的减少可能会导致其营业额锐减甚至被迫停业，此时再要求商户按照租赁合同约定支付租金会对其明显不公平。司法实践中也有判例认为，当疫情的发生给商户造成了超出市场风险的经济损失时，商户可依据情势变更原则要求业主减免租金。

### 3. 对于受疫情影响较小的商户，应正确区分情势变更和商业风险

对于受疫情影响较小的租户，需区分导致营业额下降的客观情况，正确识别商业风险和情势变更。

例如，由于疫情期间出行限制及物资的短缺，超市的营业额很可能不降反升，此时继续履行租赁合同并不会产生明显不公平的结果，疫情的发生也不应当构成情势变更。但并不排除公众为减少出行选择通过电商平台购买日用物品，从而影响超市正常经营的可能性，在这种情形下，租金调整的比例也应当与超市营业额受疫情影响降低的幅度成正相关。

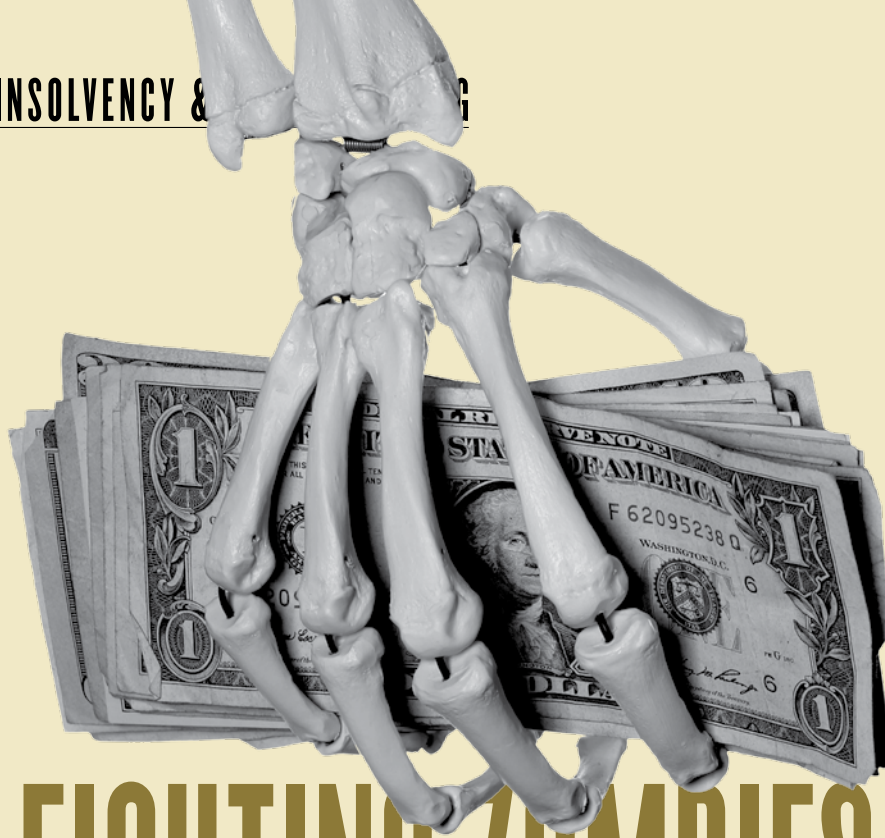
### (二) 新冠疫情构成情势变更的法律后果

适用情势变更原则也会产生变更或解除合同的法律后果。但基于契约严守原则，首先应当维护已生效的民事法律关系，只有在变更合同仍会对一方当事人不公平或仍不能实现合同目的时，才应当考虑解除合同。因此，即使新冠疫情构成商业租赁合同中的情势变更，通常情况下商户只能要求业主减免租金，但仍需继续履行租赁合同。

## 三、 结论

综上所述认为，因各商事主体受影响程度不同，不能概括地说新冠疫情构成不可抗力、情势变更，或仅属于商业风险。在疫情期间，被政府明令暂停营业的商户可以主张不可抗力；未被政府明令暂停营业但经营严重受疫情影响的商户可主张情势变更；既未被政府明令暂停营业、经营也未明显受疫情影响的商户，应自行承担商业风险。





# FIGHTING ZOMBIES

## 大战“僵尸”

As of 2019, Chinese companies had defaulted on nearly \$20 billion in loans, and the country's default rate is expected to grow further. In the next two years, companies will owe hundreds of billions of dollars in debt that is coming due, with the government also less willing to provide support for such defaults. Lawyers say that China needs to take a balanced approach towards its insolvency and restructuring landscape.

2020年中国债务违约率预计出现上升。2019年底，天物集团12.5亿美元境外债违约，创下20年来国企首例，于此同时，包括中国华信能源、海航集团在内的一系列中国企业也频现违约。截至2019年底，中国企业出现了近200亿美元的债务违约，违约率在2020年将继续维持高点。未来两年，中国企业将有数千亿美元债务到期，而中国政府对于这类违约的救助意愿也在逐渐降低。

BY HU YANGXIAOXIAO 作者：胡阳潇潇

■ The rapid growth of Chinese companies has led to a surge in borrowing, and companies are under unprecedented financial pressure as the debt is coming due. For example, in late 2019, Tewoo Group Corp failed to repay its \$1.25 billion offshore bond, marking the first offshore default by a state-owned enterprise (SOE) in 20 years. The country also saw more defaults by Chinese companies such as CEFC China Energy and HNA Group.

The Chinese government has also changed its practice of “providing support to secure employment” and strengthened market-based measures to regulate the exit mechanism for the companies. “At the national policy level, it is a general trend that the exit mechanism for market entities will follow marketization and rule of law. The ‘Reform Plan on Improving the Exit Mechanism for Market Entities’ issued by 13 agencies including the National Development and Reform Commission and the Supreme People’s Court in July 2019 also reflected this core idea. The fifth portion of the plan mentioned the improvement of the exit mechanism for SOEs,” says Chi Weihong, managing partner at Tiantong & Partners.

“From a legal perspective, the government is never obliged to subsidize SOEs that are facing huge debt or bankruptcy. The government is less willing to help these SOEs for their defaults and is pushing them to the market to let it determine their survival, development or withdrawal,” says Zhu Linhai, senior partner at Allbright Law Offices. “This points to the improvement of the government’s ability to rule the country in accordance with the law. It is also an example of optimizing the business environment and adhering to the principles of marketization and rule of law.”

On the other hand, the government intends to make other market entities take more responsibilities. “The government is encouraging and, in some cases, effectively forcing banks and creditors to take more proactive actions, such as to deal with zombie companies. What it means is that banks can no longer extend the maturity date and then continue as if nothing has happened. The rationale



behind this is to recycle capital back into a positive economy, and to move towards building a functioning system with more market discipline," Viola Jing, of counsel in Allen & Overy's Asian Restructuring & Recovery Group shares with ALB.

### THE FIRST TO BE HIT

The dual pressures of debt maturity and changes in government attitudes will inevitably hit the SOEs first. "The SOEs with poor compliance and risk management usually have an ill-founded internal management system, a backward business model, and poor awareness of risk control. They always rely on the support from government policies and subsidies. Once the market takes over, these enterprises will exit the market as they cannot cope well," Zhu says.

Meanwhile, data shows that listed companies are also struggling. "In 2019, seven listed companies underwent restructuring, hitting another record after 2008," Chi says. "In addition, nearly 50 listed companies filed for restructuring. Among the Chinese companies, financial institutions and listed companies have the best capability to pay their debts. If many of the listed companies are seeing defaults, entering bankruptcy, and restructuring, it shows that even the most capable companies have exceeded their limits."

He also noted that this trend is likely to continue in 2020. "More listed companies will undergo restructuring compared to 2019. The new Securities Law, which will come into effect on March 1, stipulates that when a listed company meets the delisting conditions, there will be no longer be a suspension of listing and the company will delist directly. Therefore, listed companies with a debt crisis will have a more urgent need to initiate restructuring," he adds.

### RIPPLE EFFECTS

This round of default crisis of the Chinese companies is also poised to create ripple effects for other market entities and even overseas markets.

If the Chinese government intends to increase the sense of responsibility of other market players while fighting the zombie companies, these efforts are

中国企业的飞速发展导致了大量债务的产生,随着这些债务的相应到期,企业感受到了前所未有的资金压力。加之中国政府一改以往“以救助保就业”的做法,强化以市场化手段规制企业退出制度,反映到法律市场上,则表现为债务重组和破产重整业务的日益增长。

天同律师事务所管理合伙人池伟宏告诉ALB:“在国家政策层面,市场主体退出机制建设遵循市场化、法治化是大趋势。2019年6月发改委、最高法院等13个部委印发的《关于加快完善市场主体退出制度改革方案》也表达了这个核心思想,其中第五部分专门提出了完善国有企业退出机制。”

“从法律层面讲,政府对于陷入债务危机、濒临破产的国企原本就没有法定救助义务。政府对国企的债务违约救助意愿逐渐降低,将其彻底推向市场,其生存、发展、退出完全由市场来决定。”锦天城律师事务所高级合伙人朱林海说,“这正是政府依法治国工作能力的提升,也是优化营商环境,坚持市场化、法治化原则的具体体现。”

同时,其他各参与方也在承担越来越大的责任。“政府希望鼓励,在某些情况下甚至会强迫银行和债权人采取更为积极的行动,包括主动对僵尸企业展开行动。也就是说,银行不能总是延长到期日,继续假装一切都好。政府希望资本能够借此重新流入更为健康的经济市场之中,打造更有效且更受市场规则约束的经济体系。”以上是安理国际律师事务所(Allen & Overy,或简称为A&O)“债务重组和追收业务组”顾问律师郑翠苗(Viola Jing)接受ALB采访时表达的看法。

### 首当其冲

此轮债务到期和政府态度变化双重压力下首先受到冲击的必然是国有企业。“那些合规管理和风控管理能力比较差的国企,它们一般内部经营管理体制不健全,经营模式落后,风控意识较差,总是依赖政府在政策、经济方面给予扶持。一旦全面市场化,这类企业将因适应市场能力差,最终退出市场。”朱林海律师说。

与此同时,数据表明上市公司的日子也不好过。“2019年有7家上市公司重整,创下了2008年后的历史又一新高。”池伟宏律师说,“此外

2019年被申请重整的上市公司达到了14个。在中国企业中,最有偿债能力的就是金融机构和上市公司,如果后者都已经出现大量债券违约、进入破产重整的情况,说明最有偿债能力的板块也承受了较大的债务压力。”

池律师同时指出,这一势头在2020年将延续,“(上市公司重整案例)甚至会比2019年多。因为新《证券法》将在3月1日实施,其中规定在上市公司符合退市条件时,将不再有暂停上市制度而可能直接终止上市。因此存在债务危机的上市公司会产生更迫切的需求去启动重整。”

### 连锁效应

这一轮中国企业的债务违约危机也必然引发其他市场主体甚至境外市场的连锁反应。

如果说中国政府在打“僵尸”的同时意图提升其他市场参与者的责任感,这样的努力显然已初现成效。卓文(Ian Chapman)是A&O亚太地区重组业务联席负责人,他告诉ALB:“本所多年以来致力于为大中型中资银行客户提供法律服务,助其应对境内外风险敞口。我们注意到这些银行已开始组建自己的重组团队,增强处理特殊资产的能力,以应对日益严重的违约危机。如何妥善应对违约如同挑战一场日益复杂且艰难的棋局。”

“银行也逐渐通过建立项目监控名单和贷款追踪系统,以尽可能避免被动局面并增强监控。一旦债务人出现信用恶化势头,就可以在其仍存留部分现金、可行业务及若干重组方案的情况下提前介入采取行动。我们现在认为,大多数中资银行客户具备了引导公司走出困境的经验和专门知识。”A&O亚太地区重组业务联席负责人韦国俊(Richard Woodworth)补充说。

随着亚太市场的联系日益紧密,中国企业此波债务重组风潮的影响也绝不仅限于国内。“现在,许多中国大中型企业进入全球市场,选择在新加坡或香港上市。越来越多的中国公司的重组都带有大量境外因素。”韦国俊补充道。郑翠苗则补充说:“随着中国法律和监管环境的发展,境外债权人将有更多机会针对中国境内实体和资产采取直接行动。因此,债权人,无论是国际银行或中资银行,或其境内外分支

“There are four criteria to test if a restructuring case is successful. The first is the outcome, as the court has to approve the restructuring plan. Second is the complexity and the scale of the case. The larger the debt amount or asset size is, the more complex the case is. Third is the influence of the case. Lastly, speed and efficiency are also important considerations.” – Chi Weihong, Tiantong & Partners

paying off. Ian Chapman, co-head of Allen & Overy’s Asian restructuring practice tells *ALB*: “We have been very focused on the major PRC banks for a number of years, in respect of their onshore as well as offshore exposures, and we have noted that they are responding to the increasing levels of default by building up their workout teams, building up a special asset expertise. It’s an increasingly sophisticated game being played on how these things should be run.”

“Banks are also increasingly seeing the need to be less reactive and to monitor situations as they develop databases with watchlists and trackers. This allows them to follow their credit portfolios and track when credits start to deteriorate with the goal of stepping in and taking action when there is still some cash and a viable business and still a few more options available to restructure. We’d now say that well over a majority of our Chinese banking clients have experience and know how to guide companies through the situations,” adds Richard Woodworth, fellow practice co-head.

As the Asia-Pacific markets become increasingly interlinked, the impact of this wave of debt restructuring by Chinese companies is not only an issue for domestic market. “We’ve seen the emergence into the global markets of a large number of major Chinese corporates. They’ve got Singapore listings, they got Hong Kong listings. More and more Chinese restructurings now have a very significant offshore element,” Woodworth says. “The development

of the legal and regulatory environment in China now gives offshore creditors more opportunities to take direct action against PRC entities and assets. Creditors, whether international banks or PRC banks, onshore or offshore branches, are now more willing and prepared to take direct enforcement action within the PRC,” Jing adds.

#### LEGAL WORK GROWING

For law firms, this scenario means more restructuring work; it also meant that they are playing a wider role. Zhu cites a case handled by Allbright on behalf of an East China SOE as an example. “The company’s debt ran high as the original legal representative was derelict in his duty and the management was disorganized, which led to a large number of lawsuits. Due to protectionism for SOEs, the shareholders provided guarantees for the company’s debt and fell into heavy debt themselves. Before the East China company filed for bankruptcy, we took a comprehensive look at its assets, liabilities, and litigation,” he says.

“We sought reverse piercing of the corporate veil through judicial auditing, and we tried to recover as many assets as possible through criminal recovery of stolen property,” Zhu adds. “These efforts helped all creditors credit bid their claims after the company moved into bankruptcy proceedings, and the company was able to exit the market legally and efficiently. This demonstrates that legal service providers can play a bigger role,” he says.

In terms of legal work, Zhu says the number of bankruptcy restructuring and liquidation cases has been on a rise since the second half of 2018.

Allen & Overy’s restructuring practice team draw the same conclusion. “And now that there has been this policy shift towards market discipline and allowing defaults, the number of defaults is only going to keep increasing,” Woodworth comments.

Law firms have adopted different strategies to improve their services against this backdrop. “In Asia, it’s still quite often seen as more of a litigation practice. Whereas what we think is it’s a far more holistic practice. The philosophy of our team is that our clients expect Asian based specialist restructuring lawyers like ours who not only understand banking and finance, but also know their way around M&A. Even so, litigation capabilities are essential which is why our team uniquely is an integrated team, and one with a real depth of Chinese language skills – I think you need all these combined skills if you are looking to find the best solution for all stakeholders,” Woodworth continues.

Jing of Allen & Overy notes: “Building on Richard’s comments, in this region, most of our clients accept that it is not easy to engage in a restructuring discussion before a crisis occurs and so they expect advice on enforcement and litigation strategies in order to push the company to engage in restructuring discussions with them. The client’s expectation is no longer just insolvency litigation expertise or transactional rescheduling or re-papering expertise, but for a team like ours which offers a combined skillset to deal with all of the challenges in a cross-border scenario.”

Chi suggests four criteria to test if a restructuring case is successful. “The first is the outcome, as the court has to approve the restructuring plan. Second is the complexity and the scale of the case. The larger the debt amount or asset size is, the more complex the case is. Third is the influence of the case. Lastly, speed and efficiency are also important considerations,” he says.

He cites the restructuring that Tiantong handled on behalf of listed

company Pangda Automobile Trading Co. Ltd. as an example. It generally takes 11 months to complete restructuring in China, but it took only 95 days for the case to be established and approved by the court. In terms of complexity, Pangda's debt amounted to 24.7 billion yuan, involving negotiations with 164 financial institutions. The group also had around a thousand subsidiaries and 300,000 shareholders. "To be able to close a case under such enormous pressure in a short time is a good outcome," he says.

### ADDING VALUE

As more Chinese companies default, law firms hope to provide value-added services in other ways. The most typical is to initiate a dialogue between creditors and the company as early as possible to avoid catastrophic consequences.

Woodworth tells ALB that they have a number of deals where the creditors have been very active in pushing the company for engagement. He shares one example: "There was a fairly high profile Chinese conglomerate and the creditors spotted that the group was likely heading towards difficulties and quickly got organized with a creditors' committee. They took leadership, put pressure on the debtor group to engage and to work with the committee to find a solution. As a result, they were able to get to a position where the debtor was able to successfully refinance their liabilities with a number of the lenders being comfortable to continue with the relationship."

But he also points out: "But one of the key challenges in Mainland China like in Hong Kong is that it can be pretty hard for a creditor to work collaboratively to find solutions, unless the company is willing to engage and recognize it has a problem. In other jurisdictions around the world, there is greater ease to get the problem addressed earlier if there are potential personal liabilities for directors who fail to seek help. At the moment, both Mainland China and Hong Kong are very lenient in this area, which means directors more often than not carry on too far and too long and the banks can only get involved when they're already at crisis point."

**“首先是重整效果，法院要批准重整计划；其次是看案件本身的难度和规模——负债规模或资产规模越大的案件，它的难度可能也会相应增加；第三是案件的影响力；最后，速度和效率也是非常重要的评判标准。”** — 池伟宏，天同律师事务所

机构，更有意愿也更便于直接在中国境内采取债务执行行动。”

### 业务增长

在这样的情况下，律师事务所扮演着怎样的角色？朱林海律师告诉ALB：“在这样的大环境下，包括律师事务所在内的社会中介机构将会发挥更大的作用。”

他以锦天城近期代理的某央企华东公司申请破产一案为例，“该公司因原法定代表人的职务犯罪，以及公司经营管理混乱等原因，导致债台高筑，产生大量诉讼案件。由于受央企国企的保护主义影响，公司股东对公司债务提供担保，也陷入债务泥潭中。我们在华东公司申请破产前，对其资产负债、涉诉情况进行了全面梳理；通过司法审计否定了公司股东和法人人格混同，通过刑事追赃尽可能多地追回资产。为了在华东公司进入破产程序后，所有债权人可以实现更多的债权，也为了华东公司可以合法高效地退出市场。这证明了法律服务机构可以发挥更大作用。”

而在业务数量上，朱律师指出：“自2018年下半年至今，破产重整及清算业务量经历了不断上涨。”

A&O债务重组团队也认可这样的结论。韦国俊认为：“由于现在的政策偏向更有利于市场规则发挥作用并允许企业债务违约，违约现象只会越来越多。”

在这种背景下，如何把法律服务做好，不同律所也采取了不同策略。“在亚洲，我们仍然经常看到债务重组业务被视为诉讼业务，A&O则将这项业务定位于提供全方位法律服务。我们的团队理念是：呈现给客户常驻亚洲的专业重组律师团队，以诉讼实力为核心，精通银行与金融业务，更了解客户并购交易的方方面面。因此A&O团队是

一支独一无二的、拥有扎实中文能力和综合业务实力的一体化专业团队。A&O这种具备综合服务技能的律师团队正是该行业内各参与方的不二之选。”韦国俊继续表示。

郑翠苗补充道：“如韦律师所言，在亚太地区，多数客户认为在危机发生前很难就重组话题展开对话，所以客户希望律师提供执行和诉讼方面的建议，以便促使企业与其开展重组对话。客户希望的不仅仅是破产诉讼或交易重组的专业能力，而是希望像我们这样具备综合法律技能，能够在跨境环境下从容应对各种挑战的法律团队。”

池伟宏律师将破产重整案例是否成功的判断因素分为四点：“首先是重整效果，法院要批准重整计划；其次是看案件本身的难度和规模——负债规模或资产规模越大的案件，它的难度可能也会相应增加；第三是案件的影响力；最后，速度和效率也是非常重要的评判标准。”

他以天同近期作为管理人办理的上市公司庞大集团重整案为例：实践中一个企业重整案在中国通常需要11个月左右完成，但庞大集团重整案从立案受理到法院批准重整计划，仅用了95天。在复杂性上，庞大集团负债规模达247亿，涉及164家金融机构的谈判，涉及子公司资产上千个，涉及股民33万人，同时由于庞大集团是“汽贸上市第一股”，连续11年跻身“中国企业500强”，可见庞大集团是具有全国影响力的行业龙头企业，在这么有压力的案例里做到短时间内结案，也是效果好的表现”。

### 增值服务

在中国企业债务违约频现的情况下，律所也希望以其他方式提供增值服务，最典型的方法就是通过协



While agreeing with Woodworth's observation, Ian Chapman also has a different take on this: "I agree a much higher level of accountability of directors is needed, but I think we also have to be very careful not to get to an over regulated situation which then stifles the entrepreneurial spirit, which is the engine of growth and innovation in Asia. And it's a fine balance."

On the other hand, cross-border factors are driving the development of the legal system. "The ultimate objective of cross-border insolvency is to have a global system. Specifically in Hong Kong and the Mainland we are seeing increasing judicial collaboration in terms of our systems meshing with cross recognition. You're seeing Hong Kong arbitration recognition and how this assists on the Mainland in terms of asset preservation orders and the like. And we are seeing very encouraging developments in terms of how the Mainland is in a way driving it. Economics will drive the system," says Chapman.

With a focus on getting positive results, Allen & Overy calls this practice its Restructuring and Recovery Group, "because that's what our goal is. It's a double play on words, but our primary goal is to rehabilitate, to save jobs, and to get the best result for all stakeholders, without destroying businesses. Ironically, the best recoveries are the ones that the market never hears about," says Chapman.

## LOOKING AHEAD


Tiantong, Allbright and Allen & Overy all say that they are ready to expand their teams in expectations of a steady increase in restructuring business over the next one to two years.

Tiantong plans to expand its restructuring team to 40 members. "As the Bankruptcy Law is applied, the professional requirements for bankruptcy lawyers will increase, especially for administrators. We are also seeing more cases in which the administrators are sued for default in the performance. In addition, bankruptcy lawyers are required to integrate resources and coordinate better. They need to fully understand what the creditors need in order to provide a solution," Chi says.

Allbright is also enhancing its competitiveness. Zhu tells *ALB* that the law firm's headquarters in Shanghai are one of the first-tier administrators designated by Shanghai High People's Court to handle corporate bankruptcy cases. Fifteen offices of the law firm are qualified as bankruptcy administrators. Allbright has also established a bankruptcy restructuring and liquidation committee convened by Zhu that manages over 300 bankruptcy legal professionals, and it plans to expand its team in the next two years.

Allen & Overy continues to build its restructuring strengths in Asia. "We have the hub in Hong Kong. We have dedicated resources in Singapore and Jakarta, and at the beginning of this year we have announced our joint operation

with Shanghai Lang Yue Law Firm, as approved by the Shanghai Bureau of Justice. Through this Joint Operation, we are able to offer our clients service in relation to PRC law. Over the past 12 months our regional restructuring team has doubled in size," says Chapman.

"Jane Jiang, a partner in our Shanghai office is actually a founder member of the INSOL Asia committee driving regional development and cross border cooperation in the insolvency space. But there were limitations on the client service that we could offer. In particular, Allen & Overy cannot litigate for clients. In contrast, Allen & Overy working together with Lang Yue will give the clients the full service that they need across all aspects of restructuring and recovery matters," Woodworth adds. 

## State-owned borrower infuriates investors with sharp haircuts

**(Reuters)** - An attempt to restructure three dollar bonds by China's Qinghai Provincial Investment Group that will pay bond holders only 40 cents on the dollar is "wickedly designed," investors have said.

Recently, a subsidiary of Qinghai Provincial Investment and Development Co - which, like QPIG, is controlled by Qinghai's local government - proposed buying the \$850 million worth of bonds at a sharp discount.

Guozhen International Trade Consulting, a unit of QPID, offered to buy \$300 million of QPIG bonds due 2020 at 41.19 percent of face value. In addition, Guozhen offered to buy two batches of bonds due 2021 worth a total of \$550 million at 36.75 percent of face value.


Du Ying, director of QPID, said on a conference call that if bond investors chose not to accept the offer, their chances of getting money back were slim, because the issuer "is in a difficult operational situation" and the bonds are unsecured.

"This is cheating. This is arbitrage. This practice is extremely wicked, and shameless," an enraged investor said during the conference call. His call was cut off by the operator.

Another investor raised the same issue, saying the offer involves conflicts of interest, and is "wickedly structured."

"The whole structure is an act of arbitrage. You're definitely not a white knight. You're a black knight," the investor told the QPID managers. "You're using financial tricks to harm bond investors. This is damaging capital markets order."

Du declined to answer the questions directly. He said only that the two companies were unrelated and that QPIG, the bond issuer, is struggling and suffering from liquidity shortage. The conference call was cut short.

The tender offer for QPIG bonds follows the pattern of debt restructuring of another state-owned company, Tewoo Group, in late November. 



调债权人和企业尽早展开对话，避免灾难性后果的发生。

韦国俊告诉ALB，他们确实代表过不少提前介入的案例，在这些案例中债权人主动敦促债务企业采取行动。他详述了A&O曾代表的一宗案例，“该案例涉及一家知名中国企业集团，债权人发现该集团有可能会陷入财务困境，因此迅速组织成立债权人委员会，以负责安排相关事宜，对债务企业施压并敦促债务企业与债权人委员会合作寻求解决方案。最终成功使债务人从多个贷款人处获得再融资，贷款人也同意不终止借贷关系。”

但他也同时指出：“中国内地和香港存在一个重要难点，当债务企业拒绝配合承认和解决现有问题时，债权人要协调规划出解决方案就会极其困难。在其他国家和地区，未及时寻求协助的董事会成员将可能面临潜在的法律义务，因而更容易尽早发现公司问题，但中国内地和香港目前这方面的立法较弱。这意味着，董事们能够一直将公司问题拖延下去，而银行只有在爆点后才能真正参与进来。”

卓文同意韦国俊的上述观点，他表示“董事需要承担更多的责任”，但他同时也提出：“我们也应采取更为谨慎的态度，法律环境不能过度严苛，否则会遏制企业家精神，亚洲国家不断发展和创新的动力正是源自于这种精神。因此需要在这两者之间把握好平衡。”

与此同时，跨境因素也正推动着法律制度进一步发展。卓文表示：“跨境破产案件最终将把全球各体系引向一体化。例如，我们看到，尤其在中国内地和香港之间，不同法律制度下司法协助日趋密切。中国内地承认香港仲裁裁决，还可以协助在内地执行财产保全措施和其他类似措施。中国政府正在大力促进司法体系之间的融合，这是令人鼓舞的发展。经济的发展必将驱动法律体系的变化。”

着眼于取得建设性成果，A&O将该业务组命名为“债务重组和追收业务组”。“债务重组和追收是我们期望的目标，因此我们在业务名称上采用同义词叠用的方式，但我们的首要目标是恢复企业运营、保护就业、在保留企业的前提下为所有相关利益者争取最好的结果。”卓文说，“说来讽刺，最好的重组应该是

你在市场上从来没听说过的那类重组。”

### 预期未来

三家受访律所都表示：预期在未来的两到两年中，债务重组业务会稳步增加，他们也都准备好了扩充队伍。

天同计划在两年内将破产重组团队扩大到40人以上，池伟宏律师同时指出：“随着《破产法》的普及，客户对于破产律师的专业要求越来越高，特别是对管理人的要求会更高，现在市场上也频频起诉管理人违法履行责任的案例；此外，对破产律师的资源整合及协调能力也提出了更高要求，破产律师需要充分了解债权人诉求，提供可行的解决方案。”

锦天城也在不断增强这方面的实力。朱林海律师告诉ALB，锦天城上海总部是上海高院指定的10家企业破产案件一级管理人之一，此外，律所在全国还有十五家分所具有破产管理人资格。他们还在所内成立了破产重整与清算专业委员

会，由朱律师担任总召集人，统筹全国三百多位从事破产业务的执业律师等人员，并计划在未来两年内继续扩大团队。

A&O正不断在亚洲大力发展重组业务能力。“我们以香港办公室为中心，在新加坡和雅加达也配备专业团队。我们在今年年初获得了上海市司法局的批准，在上海自贸区内与上海朗悦律师事务所展开联营。通过联营，我们可以向客户提供中国法律服务。过去12个月，我们亚洲地区的团队规模扩展了一倍。”卓文说道。

“本所上海办公室合伙人姜颖律师是国际破产协会亚洲区总部创始会员，国际破产协会亚洲区总部致力于促进亚洲地区的发展和破产领域的跨境协作。但是此前我们因为无法在中国法下从事诉讼业务，也感受到了限制，和朗悦的联营恰好补齐了这一缺口。现在我们能够提供全方位的服务，可以为客户处理债务重组和追收项目涉及的所有事务。”韦国俊补充道。

## 国有债务人激怒投资者

【路透社】青海省投资集团有限公司的三支美元债面临重整，而其重整计划激怒了债券持有者。

最近，由青海省政府控制的青海省投资集团下属子公司提出以极大折扣购买其价值8.5亿美元的债券。

青海省投下属的这家离岸子公司国臻国际贸易有限公司提出以3亿美元价格购买青海省投将于2020年到期的债券——此价格仅为发行价的41.19%。此外，国臻国际还提议以5.5亿美元购买另外两支将于2021年到期的债券，此价格为发行价的36.75%。

青海省投表示，如果投资者不接受此邀约，他们拿回投资的机会就很渺茫，因为发行人“正陷于困难的运转境地之中”，对于偿还债券没有信心。

“这就是诈骗。是套利。这么做太邪恶，也太不知羞耻了。”一位愤怒的投资人在持有人电话会议上大发脾气。后来他的通话被强行切断了。

另一位投资人也提出了同样质疑，认为这项邀约存在利益冲突，“充满恶意”。

“重整的整个设计都是为了套利。”该投资人告诉青海省投的经理，“你们在用金融手段欺骗投资人。这是在破坏资本市场交易秩序。”

持有人会议组织者拒绝直接回答问题。他仅仅指出两家公司不存在关联，青海省投作为发行人已经面临资金短缺。会议随后匆匆结束。

2019年11月，天物集团也曾提出以类似方式重整其无力偿还的债券。

# A SMOOTHER ROAD

# 更顺畅的道路



As the mammoth Belt and Road initiative touches some 70 countries, complex commercial disputes cannot be avoided. But while the opportunities may come with risks, lawyers in Asia say there are a variety of measures companies can employ to help protect themselves and their business interests. BY ELIZABETH BEATTIE

It's been more than six years since the PRC's ambitious Belt and Road Initiative (BRI) kicked off, but it seems that interest has yet to fade. In January this year, the New York Times reported that Chinese companies had signed Belt and Road contracts worth close to \$128 billion last year – an increase of more than 40 percent compared to 2018.

But not everything has gone smoothly. In more recent years, political tensions and concerns around debt imbalance have complicated matters. For businesses too, there is a rising risk of disputes as complex projects stretch across multiple jurisdictions. And lawyers say that unless you're properly protected, you're playing with fire.

## PREPARATION IS KEY

Nils Eliasson, an international arbitration partner at Shearman & Sterling, outlines that many of the Belt and Road projects are ambitious "high-value and technically challenging projects involving complex financial, political and legal considerations, particularly since many of the Belt and Road countries lack political and financial stability."

By way of example, only two out of the top 12 recipients of Belt and Road investments are classified as Tier-1 jurisdictions for "safe" investment, Eliasson says, citing a study commissioned by the Shanghai Municipal Commission of Commerce.

Given such a risky backdrop, he advises that companies seek to protect

themselves from the outset of the project "during the contract negotiation stage," negotiating contractual safeguards, "such as express limits on financial liability and an appropriate mechanism for resolving disputes," he advises, noting that "Companies should also consider structuring their involvement in Belt and Road projects to benefit from any available bilateral and multi-lateral investment treaty protections."

But the preparation doesn't end there, he warns. "Companies should also exercise effective contract management throughout the lifetime of the project, including by adhering closely to contractual requirements and maintaining comprehensive documentary records. Effective contract management is key

to reducing the risk of disputes and to increase the likelihood of success where disputes cannot be avoided.”

Mahesh Rai, a director at Drew & Napier, agrees that there are precautions that companies can take to protect themselves over the course of the project. “Companies should carefully provide for contractual mechanisms to monitor and manage any changes which have time and cost impact on the infrastructure project. They should also have provisions to address disputes in the course of the project early on. Employers, in particular, should include provisions requiring timely notice of claims for extra payment and extensions of time to be made to the contract administrator to ensure that they are not taken by surprise by such claims later on,” says Rai.

#### PRIORITISE THE PAPERWORK

When it comes to the preparation side of disputes, John Choong, partner at Freshfields Bruckhaus Deringer puts it simply: It’s always better to avoid a dispute than to prepare for one. And, given the complexity of agreements that may arise along the way, Choong advises taking a bird’s eye view, and scrutinising the entire process carefully.

“At the contract drafting stage, it is important to pay close attention to the language used in the contract. The golden rule is that words will be given their natural and ordinary meaning and you do not wish to have a dispute over interpretation. Companies should also think through the life of the contract under various fact patterns to ensure that the contract is sufficiently detailed to provide certainty in different scenarios – such as if a dispute were to arise,” he advises.

Meticulous record-keeping is also necessary Choong says. Additionally, keeping “contemporaneous evidence – that is, evidence recorded at the time of or in the immediate aftermath of an event,” is key.

“In the eyes of the courts and tribunals, evidence created long after the event (especially after a dispute has arisen) will be given less weight than contemporaneous evidence, due to a perception that parties may be engaging

到目前为止，已经有近70个国家加入了“一带一路”倡议这一庞大工程，复杂的商业纠纷因此不可避免。虽然机遇可能伴随着风险，但亚洲的律师们表示，企业可以采取多种措施来保护自己以及自己的商业利益。

BY ELIZABETH BEATTIE

规模宏大的“一带一路”倡议启动至今已有六年多，但人们对此的兴趣似乎并未消退。2020年一月，《纽约时报》报道称，中国企业2019年签署了价值近1280亿美元的“一带一路”合同，与2018年相比增长了40%以上。

但并非一切都进展顺利。最近几年，政治紧张局势以及对债务失衡的担忧使情况变得相当复杂。对于企业而言，随着跨多个司法管辖区的复杂项目逐渐增多，纠纷风险也不断增加。律师们表示，除非得到适当的保护，否则就是在玩火。

#### 做好准备很关键

谢尔曼·思特灵律师事务所的国际仲裁业务合伙人Niels Eliasson总结道，“一带一路”的许多项目都是雄心勃勃的“高价值且具有技术挑战性的项目，涉及复杂的金融、政治和法律因素，尤其是许多‘一带一路’沿线国家的政治和金融体系缺乏稳定性”。

Eliasson援引了上海市商务委员会委托进行的一项研究，研究称，在位列前12名的接受“一带一路”投资国家中，仅有两个国家被列为投资“安全”的一级司法管辖区。

鉴于这样的风险背景，他建议企业从项目一开始就寻求自我保护，“在合同谈判阶段”谈判好合同保障措施，“例如明确的财务责任限制和解决纠纷的适当机制”；他指出“企业还应考虑安排其参与‘一带一路’项目的结构，以便从任何现有的双边和多边投资条约保护中获益。”

但准备工作并非仅此而已。他提醒，“企业还应在项目的整个生命周期内实行有效的合同管理，包括严格遵守合同要求并保存全面的文件记录。有效的合同管理是减少纠纷风险以及在无法避免纠纷的情况下增加胜算的关键。”

德尊（新加坡）律师事务所的一位负责人Mahesh Rai同意Eliasson的看法，他表示，在项目过

程中，企业可以采取一些预防措施来保护自己。“企业应认真规定合同机制，监测和管理对基础设施项目造成时间和成本影响的任何变化；他们还应该就如何尽早解决项目过程中的纠纷作出规定；尤其是雇主，应该在合同中包含要求及时向合同管理人发出额外付款和延期索赔通知的条款，以确保以后不会因为此类索赔而感到意外。”

#### 优先处理案头工作

关于争议的准备，富而德律师事务所的合伙人钟津翰表示，简而言之就是，与其为争议做好准备，不如避免发生争议。鉴于协议过程中可能会出现复杂状况，钟律师建议全方位仔细审视整个过程。

“在合同起草阶段，必须特别注意合同中语言的使用。黄金法则是使用词语本身自然、普通的含义，因为你不希望在词语解释上产生争议。企业还应该考虑各种实景模式下的合同有效期，以确保合同条款规定足够详尽，可以在不同情况下（例如是否会产生纠纷）提供确定性。”他建议道。

钟律师说，认真记录也很有必要。此外，保存“同时期证据——即在事件发生时或事件发生后立即记录的证据”，这点十分关键。

“在法院和法庭看来，基于认为当事各方可能会故作姿态，因此认为同时期证据比在事件发生很久之后（尤其是在发生争议之后）提出的证据有更大的证据力；所以如果可能的话，企业应该定期保存同时期记录。”他建议说。

钟律师还说，争议解决条款是非常重要的但“有时会被忽略”的条款。“我们建议客户慎重起草争议解决条款，以便保护自己。合同能否成为有效保护当事人权益的工具取决于其争议解决条款。”

印度尼西亚律师事务所Parulian Situmorang & Partners的合伙人



in posturing. If possible, companies should maintain contemporaneous records as a regular practice," he advises.

The dispute resolution clause is also a highly significant "sometimes overlooked" provision, says Choong. "We advise our clients to draft the dispute resolution clause thoughtfully, to protect themselves. A contract is only as strong as its dispute resolution clause – it provides the tools to protect the parties' rights and interests, should a dispute arise."

Disputes aren't only challenging for companies, they can also serve as something of a death-blow for projects, says Ellrico Situmorang, partner at Indonesian law firm Parulian Situmorang & Partners.

"Disputes is something that infrastructure businesses really want to avoid, especially during the construction process. In many cases we have seen projects being abandoned or not being taken care of, because there is a running dispute between the stakeholders or between the parties involved in the process of the project," he says.

Preparation is highly important, notes Situmorang, but there are also other strategies to consider. "There are many ways that parties can avoid disputes. In my experience, they need to be open from the very beginning of the process – that's important. If necessary, the parties can create an ad hoc mechanism to settle the differences among them, regardless of the size, before they can put their dispute to an open litigation," he says, noting that a collaborative mindset and good communication can help smooth the way.

## CONSIDER CLIENTS' NEEDS

Given the likelihood of increasingly complex disputes on the horizon, lawyers advise developing close client relationships in order to ensure adequate risk assessments are carried out. "From the outset of an infrastructure project, we will work closely with our clients to ensure that the specific legal, financial and political risks associated with the project are comprehensively addressed in the contract," says Eliasson.

In cases where the client is a

contractor, the team will also consider how projects can be structured to benefit from investment treaty protections. "The combination of contractual and investment treaty safeguards offers powerful protections for resolving disputes," Eliasson adds.

But there are other factors to consider too. Eliasson warns that companies must always ensure that contracts contain effective dispute resolution clauses "such as arbitration under a recognized set of arbitral rules in an arbitration-friendly jurisdiction (e.g. arbitration under the HKIAC Rules in Hong Kong), as this is the mechanism through which the terms of the contract are enforced. The contract should also comprehensively allocate risk between the parties, including through express limitations and caps on liability, the availability of hardship and force majeure, and termination and suspension provisions."

Rai tells *Asian Legal Business* that sometimes it's not just about preparing clients for conflicts, sometimes his team join the process once a dispute has already begun. "If clients come to us early enough, we prepare clients for potential disputes by making sure that the necessary documentation of the issues in dispute is in place. The clients are in a better position after consulting us as we assist with giving an assessment of the merits of their claims and defences, as well as advising them on how best to address areas which may give rise to disputes. This not only helps the client to best prepare its case for eventual dispute resolution proceedings, but there is often an element of dispute avoidance in our advice relating to how to sidestep potential pitfalls and avoid a dispute arising," he says.

Additionally, for projects worth more than S\$500 million (\$370 million) in value, Rai notes that parties can consider incorporating the Singapore Infrastructure Dispute-Management Protocol (SIDP) in their contract.

"This would provide for a 'standing' Dispute Board (i.e. to be engaged at the start of a project and which will remain in place for its duration). Dispute Boards have been used as a method of avoiding and resolving disputes in the

infrastructure sector for over forty years. Such Dispute Boards are made up of neutral individuals whose role is to assist with the swift and cost-effective avoidance and resolution of disputes without the need to resort to more expensive and time-consuming arbitration or litigation," he says.

Prawidha Murti, a partner in the dispute resolution practice of Indonesia's Oentoeng Suria & Partners, which operates in association with Ashurst, tells *Asian Legal Business* that "whilst you can never insulate yourself against every risk of disputes, setting out the most comprehensive clauses on every foreseeable risk is the best way to protect businesses should a dispute arise. Hopefully, this will mean all parties will be prepared with sufficient certainty to determine the right actions to take moving forward, minimizing the need for formal dispute settlement processes," she says. But while protections are highly important, designing negotiation and/or mediation within the dispute settlement clause, helps to ensure that disputes can be settled "quickly and amicably in line with the business interests of the parties."

## SEND IN THE LAWYERS

While preparation certainly helps smooth the way, there's no substitute for having the law on your side from the very beginning. Seeking legal advice from the get-go helps outline challenges sooner and proceed in the right way, say lawyers.

"It is extremely important to involve lawyers – internal or external – at an earlier stage of a dispute," says Choong. "This may include engaging a team of international disputes lawyers who can provide legal and strategic advice, including utilising procedural tools in multiple jurisdictions where necessary. They can also provide advice on selecting suitable arbitrators and experts."

His team also work to prepare their clients by training their in-house lawyers on managing disputes, Choong notes, adding that "In-house lawyers play a critical role in facilitating communication between the external lawyers and the business team, and in helping our clients put their best foot forward."



Legal guidance for the business team is also highly important according to Choong, but something that is “often overlooked.” “The business team has first-hand involvement in the day-to-day operations of a company, and it is extremely useful to ensure that they can identify early signs of a dispute and know how to deal with them properly. As mentioned earlier, it is important to develop a practice of keeping contemporaneous records throughout the life cycle of the project. The business team plays a key role in providing factual input in that context,” he says.

### ARBITRATION RISING

When it comes to resolving disputes, the epic rise of arbitration cannot be underplayed. Recent developments have also reinforced the strength of the Asia market as a hub for this – the signing of the Singapore Convention on Mediation in 2019, while a recent agreement between authorities in Mainland China and Hong Kong that enables Chinese courts to grant interim measures in support of arbitrations seated in Hong Kong, has also been praised.

Indonesian firm Kudri & Djamaris say that arbitration has been acknowledged as “a more favourable approach than litigation especially in area of international commerce contract’s dispute, partly because its perceived advantages felt by the disputing parties.”

“Its wide array of advantages such as, but are not limited to, its nature of confidentiality, procedural flexibility, time efficiency and arbiter’s area of expertise conclude its benefit that litigation cannot offer. We believe that arbitration is and has been the best suitable option and we feel that it will stay as the most favourable option as the main approach of dispute resolution,” they say.

They also add that mediation is likely to rise in popularity in the future “especially in relation with dispute in the BRI’s related infrastructure project.” “This prediction comes from the understanding that mediation could provide a friendlier approach for dispute resolution for the contracting party without a potential of damaging the business relationship,” they say.

Ellrico Situmorang说，争议不仅对企业具有挑战性，还可能对项目构成致命打击。

“基础设施企业非常希望能够避免争议的发生，尤其是在施工过程中。很多时候，我们看到项目被弃置或者搁浅，就是因为在项目过程中利益相关方之间或项目参与各方之间存在着不断的争议。”他说。

Situmorang指出，做好准备非常重要，但还需要考虑其他策略。他说：“当事人可以通过多种方式避免纠纷。以我的经验，他们需要从一开始就持开放的态度，这很重要。必要时，合同各方可以建立一个临时机制，以解决各方之间的分歧——不论规模大小，然后再考虑将争议提交公开诉讼。”他随后又补充道，合作的心态和良好的沟通也可以帮助解决争议。

### 考虑客户需求

鉴于潜在的纠纷可能会越来越复杂，律师们建议与客户建立紧密的关系，以确保进行充分的风险评估。Eliasson说：“从基础设施项目一开始，我们就与客户密切合作，确保在合同中全方位解决与项目相关的具体法律、财务和政治风险。”

如果客户是承包商，团队还会考虑如何构建项目以便从投资条约保障措施中受益。Eliasson补充说：“结合利用合同与投资条约保障措施能够为解决争议提供强有力的保障。”

但还有其他一些因素需要考虑。Eliasson提醒企业必须始终确保合同中包含有效的争议解决条款，例如“在对仲裁友好的司法管辖区根据公认的一套仲裁规则进行仲裁，例如，根据香港国际仲裁中心（HKIAC）规则进行仲裁，因为可以通过这种机制履行合同条款。合同还应在各方之间全面分配风险，包括：明确责任限制和上限，困难和不可抗力条款的可用性，以及合同终止和中止条款。”

Rai告诉ALB，有时不仅要帮助客户做好准备以应对冲突，他的团队在争议开始后也会加入进来。“如果客户能够尽早找到我们，我们就能够帮助他们做好准备应对争议，包括确保已经准备好与争议问题相关的必要文件。咨询我们之后，客户将处于更好的位置，因为我们协助评估他们的主张和辩护的优势和劣势，并就如何以最佳的方式处理可能引起争议的领

域提供建议。这不仅可以帮助客户为最终的争议解决程序做好充分准备，我们的建议中还通常包含避免纠纷的内容，即：如何避开潜在的陷阱并避免发生纠纷。”

Rai还指出，对于价值超过5亿新元（3.7亿美元）的项目，各方可以考虑在其合同中纳入《新加坡基础设施争议管理议定书》（SIDP）。

“根据该《议定书》，设立一个‘常设’争议委员会（即在项目开始时就参与，并将在整个项目期间保持不变）。四十多年来，争议委员会一直被用作避免和解决基础设施领域争议的方法。此类争议委员会由中立人士组成，他们的职责是协助迅速、经济有效地避免和解决争议，而无需将争议诉诸更昂贵、耗时的仲裁或诉讼。”Rai说。

Oentoeng Suria & Partners是与亚司特律师事务所联营的印度尼西亚律所，该所律师Prawidha Murti告诉ALB：“虽然不可能永远避免各种纠纷风险，针对每种可预见的风险制定最全面的条款是发生纠纷时保护企业的最佳方式。我们希望所有各方都有足够的把握来决定采取正确的行动推进项目，从而最大程度地减少正式争议解决程序的需求。”

保护措施非常重要的同时，在争议解决条款中规定恰当的谈判、调解方式也将有助于确保能够“根据各方的商业利益，迅速而友好地解决争议”。

### 让律师参与其中

虽然良好的准备工作有助于推动项目顺利进展，但更需要从一开始就寻求法律的支持，这一点是无可替代的。律师们表示，在项目起步阶段寻求法律建议有助于更快地发现挑战，同时以正确的方式应对。

“在争议的早期阶段就让内部或外部的律师参与进来是非常重要的。”钟律师说，“这可能包括聘请国际争议律师团队，他们可以提供法律和战略建议，包括在必要时在多个司法管辖区使用程序工具。他们还可以就选择合适的仲裁员和专家提供咨询建议。”

钟律师表示，他的团队通过培训内部律师处理纠纷来帮助客户做好准备工作，并补充说：“内部律师的作用至关重要，他们能够促进外部律师与业务团队之间的沟通，并帮助客户的项目获得良好开局。”

Murti informs *Asian Legal Business* that most cross-border businesses and transactions in Southeast Asia are typically carried out with arbitration as their dispute resolution mechanism, in part due to its international enforcement capability.

"The most famous arbitration-friendly countries being Singapore and the Hong Kong SAR due to its proximity to Southeast Asian region. Both countries are frequently the venue of choice for arbitration given their geographic convenience and the fact that each of them hosts one of the most prominent arbitration institutions in the world (SIAC and HKIAC), along with their respective world-class lists of arbitrators," she says.

But looking forward, she also predicts there may be further developments in the arbitration scene in the future. "We believe the demand for arbitration will remain high in Southeast Asian countries, including because of the Belt and Road Initiatives enhancing the number, size, and variety of new cross-border projects and transactions. With more demand for arbitration in the market, certainly arbitration institutions will consistently update their arbitration rules, and enhance the quality of service, facility, and the standard of their arbitrators."

Eliasson agrees that well-drafted contracts in Asia "frequently identify arbitration as the preferred method of resolving infrastructure disputes." "This is a sensible choice given the neutral forum that arbitration offers for resolving disputes as well as the comprehensive international framework that exists under the New York Convention for enforcing arbitral awards in 161 states, including most Belt and Road countries. It is also common to see parties agreeing to a "tiered approach" to dispute resolution, with negotiation, expert-determination or mediation as the initial form of dispute resolution followed by arbitration if the dispute has not been resolved. In a cross-border context, including in infrastructure projects, arbitration is preferable to relying on local courts, which can be unreliable and slow depending upon the particular jurisdiction."

"Where a company's involvement in

an infrastructure project has been negatively impacted by a state or state-owned entity in the country where the infrastructure project is located, the Company may also be able to rely upon an investment treaty to initiate arbitration proceedings directly against the host state. Investment treaty arbitration can offer a powerful mechanism for obtaining redress in infrastructure projects."

Situmorang at Parulian Situmorang & Partners weighs in, commenting that while arbitration regulation is relatively new in Southeast Asia, it has become quite a trend in dispute resolution in the market. "The parties they need to deeply discuss matters until they come to a dispute agreement," he says, noting that the court process can be somewhat more restrictive.

"In a court setting in Indonesia, judges here usually have more than enough cases at hand and may quite a lot to handle and so many regulations to comprehend. For example, maybe in the morning a judge will be settling a case on family law, in the afternoon they'll be handling civil or commercial litigation, then in the late afternoon, or sometimes evening, they'll discuss and review the case on criminal proceedings," Situmorang says.

He adds: "Therefore I am of the view that [arbitration is a preferable method] especially for commercial or infrastructure disputes, because you need someone that really knows the specific regulations, who has first-hand experience and deep understanding about the area being discussed."

"For arbitrators, you don't have to have a legal degree. You can have a shipping background, a tax background. When we have a dispute regarding a shipping issue, an arbitrator who has a deep knowledge of shipping can be chosen by the parties. Especially for high complexity kind of cases, I think arbitration is a good choice," he says.

#### MORE IN THE OFFING

While there is much talk of preparing for the dangers of disputes, the reality is that given the long-term nature of many of the BRI projects, these aren't always forthcoming. Sometimes challenges are


buried further down the road, only to emerge years later.

"Infrastructure disputes typically emerge as projects near completion so, as increasing numbers of Belt and Road Initiative infrastructure projects move towards this stage over the coming years, we are likely to see more infrastructure disputes relating to Belt and Road projects," predicts Eliasson, noting that because of the nature of some disputes, these may be resolved at a state-to-state level, as opposed to dispute resolution mechanisms in the underlying contracts.

Choong echoes the belief that disputes are likely to increase over the next few years "as earlier projects are beginning to mature into disagreements and conflicts." Additionally, such conflicts may grow as projects swell in scope. "As the scope of the BRI continues to expand, more parties from different cultures and legal systems with differing expectations are becoming more involved, and this is likely to lead to more disputes in the future," Choong says.

But Murti takes a different stance, telling *Asian Legal Business*: "We believe the extent of disputes per infrastructure business will remain the same in the future, if not decrease."

"Although there will be high demand for infrastructure projects in Southeast Asia because of the Belt and Road Initiative, it also means that there will inevitably be a higher number and value of tenders available in the market. In consequence, both companies and legal counsel will be exposed to dealing with infrastructure projects more often, increasing their experience in this area," she says.

"From there, the trend of using formal dispute process will likely to decrease, as companies and legal counsel grow more familiar with infrastructure businesses and avoid dispute settlement processes by developing strong contracts and settling conflicts amicably. Nevertheless, our belief regarding the stagnant, if not decreasing, number of disputes per infrastructure business will most likely prevail only if companies hire experienced legal counsel expert in the infrastructure and construction field," she warns. 



在他看来，为业务团队提供法律指导非常重要，但却“经常被忽略”。“业务团队直接参与公司的日常运营，确保他们能够识别出纠纷的早期迹象，并知道如何妥善处理纠纷，这是极为有用的。正如前面所提到的，在项目的整个生命周期中，保存同时期记录的做法是很重要的。在这种情况下，业务团队在提供事实信息方面发挥着关键作用。”

### 仲裁需求增加

在争议解决方面，仲裁的迅猛发展不可低估。最近的发展提升了亚洲市场作为仲裁中心的实力——《新加坡调解公约》于2019年签署；同时，《中国内地与香港特别行政区法院就仲裁程序相互协助保全的安排》亦于2019年公布，根据《安排》，“在香港进行的仲裁程序”中的任何一方当事人都可以向中国内地有关法院申请与仲裁程序相关的临时措施。该《安排》受到了广泛好评。

印度尼西亚律师事务所Kudri & Djamaris表示，仲裁被公认为是“比诉讼更为有利的方法，尤其是在国际商务合同争议方面，而这其中有一部分原因就是争议双方感受到了仲裁的优势”。

“其广泛的优点包括但不限于其保密性，程序灵活性，时间效率以及仲裁员的专业领域，这些优点总结了诉讼无法提供的好处。我们认为，仲裁一直是最合适的选择；仲裁将继续作为解决争议最有利的选择和主要途径。”他们说。

他们还补充道，调解可能也会越来越受欢迎，“特别是在解决与‘一带一路’相关基础设施项目中的争议方面。这一预测是基于这样一种理解，即：调解可以为缔约方提供更友好的解决争议方式，不会损害他们之间的业务关系。”他们说。

Murti告诉ALB，东南亚大多数跨境业务和交易通常以仲裁作为其争议解决机制，部分原因是其具有国际执行效力。

“最著名的对仲裁友好的司法管辖区是新加坡和中国香港特别行政区。由于这两个司法管辖区靠近东南亚地区，在地理位置上具有优势；而新加坡国际仲裁中心(SIAC)和香港国际仲裁中心(HKIAC)都是世界上最著名的仲裁机构，且各自拥有世界一流的仲裁员，因此这个两个司法管辖区经常作为仲裁的首选地点。”她说。

展望未来，她预测仲裁领域可能会进一步发展。“我们认为，在东南亚国家，仲裁的需求仍然很高，这是因为‘一带一路’倡议带来了更多新的跨境项目，也提升扩展了交易的数量、规模和种类。随着市场对仲裁的需求增加，仲裁机构无疑将不断更新其仲裁规则，提高服务质量、设施和仲裁标准。”

Eliasson也认为，在亚洲，好的合同“通常将仲裁确定为解决基础设施纠纷的首选方法”。“这是一个明智的选择，因为仲裁为解决争议提供了中立的论坛，同时《纽约公约》综合性国际框架下承认与执行外国仲裁裁决，公约缔约国总数达161个，其中包括大多数‘一带一路’沿线国家。常见的情况是，当事各方都同意采用‘分级方法’解决争议；首先以谈判、专家裁决或调解为最初的争议解决形式，如果争议未能得到解决，则进行仲裁。在跨境的情况下，包括在基础设施项目中，仲裁比依赖当地法院更为可取，因为当地法院可能不可靠而且处理事务的速度相当缓慢，具体情况取决于不同的司法管辖区。”

“如果企业参与的基础设施项目受到了基础设施项目所在国家或地区的国有实体的不利影响，那么企业也可以依靠投资条约直接对东道国提起仲裁程序。投资条约仲裁可以为基础设施项目获得补救提供强有力的保障机制。”他说。

Parulian Situmorang & Partners的合伙人Situmorang表示，虽然仲裁监管在东南亚相对较新，但已经成为市场上解决争议的一种趋势。他说：“各方在达成争端解决协议之前需要进行深入讨论。”同时指出，法院程序可能更具限制性。

“在印度尼西亚的法院环境中，这里的法官通常手头有足够多的案件，可能还有很多的事情要处理，还需要理解非常多的法规。例如，一位法官可能早上要处理有关家庭法的案件，下午则要处理民事或商业诉讼，然后在下午晚些时候或者有时甚至是晚上，他们还要讨论和审查刑事訴訟案件。”Situmorang说。

“因此我认为，（仲裁是一种首选方法），特别是对于商业或基础设施纠纷，因为你需要一位真正了解具体法规条例的人员，他对所讨论的领域有第一手经验并且有深入的了解。”他补充说。

“对于仲裁员来说，他们不必拥有法律背景。他们可以有运输背景或税务背景等，当我们就运输问题发生争议的时候，当事人可以选择一位对运输有深入了解的仲裁员。特别是对于高度复杂的案件，我认为仲裁是一个很好的选择。”他说。

### 或将出现更多挑战

尽管有很多关于为争议危险做准备的讨论，但事实是，鉴于许多“一带一路”项目的长期性，这些问题并不会马上出现。有的时候，随着项目的进行，直到几年后挑战才会出现。

Eliasson指出：“基础设施相关的争议通常会随着项目接近完成而出现，因此，随着越来越多的‘一带一路’基础设施项目在未来几年进入这一阶段，我们很可能会看到更多与‘一带一路’项目有关的基础设施领域的纠纷。”而且由于某些争议的性质，这些争议可能需要在国家与国家层面上解决，而不是依靠基础合同中的争议解决机制。

钟律师对这一观点表示赞同，“随着早期项目开始逐渐演变成分歧和冲突”，在未来几年内纠纷可能会增加。此外，随着项目范围的扩大，此类矛盾可能会加剧。他说：“随着‘一带一路’的范围不断扩大，越来越多来自不同文化背景和法律体系、抱有不同期望的各方参与其中，这有可能在未来导致更多的纠纷。”

但Murti对此持不同的看法。她对ALB说：“我们认为，就每项基础设施业务的争议程度而言，即便不会减少，也会保持不变。”

“由于‘一带一路’倡议，东南亚对基础设施项目的需求会很高；但这也意味着，市场上的招投标数量和价值将不可避免地增加。因此，企业和法律顾问将有机会更多地接触基础设施项目，从而增加在这一领域的经验。”她说。

“鉴于此，随着企业和法律顾问对基础设施业务越来越熟悉，通过制定强有力的合同和以友好的方式解决冲突以避免采用争端解决程序，使用正式争端解决程序的趋势可能会降低。不过，我们认为，只有在企业聘请了基础设施和建筑领域经验丰富的法律顾问专家的情况下，我们对于每项基础设施业务的争议程度保持不变（即便不会减少）的预期才有可能普遍发生。”她提醒道。



# ALB CHINA 2020 TOP 15 LITIGATORS

## ALB CHINA 2020 十五佳诉讼律师

China's commercial litigation business has experienced vigorous growth in recent years; and meanwhile Chinese commercial litigation lawyers have enhanced their overall professional competence and global competitiveness through profound accumulation of knowledge and solid experiences.

近些年，中国商事诉讼业务蓬勃增长，中国商事诉讼律师们在整体专业水准与全球竞争力上也开始厚积薄发。

BY KRISTEN LIU 作者：刘诗宇

### LAWYER 律师

#### Law Firm 所属律所

Winners are listed in alphabetical order.

获奖名单按律所名称首字母排序

#### CAO FANG 曹放

AllBright Law Offices 锦天城律师事务所

#### CHEN FU 陈浮

Commerce & Finance Law Offices 通商律师事务所

#### CHEN XIANGYONG 陈向勇

Wang Jing & Co 敬海律师事务所

#### GUAN BING 管冰

East & Concord Partners 天达共和律师事务所

#### LIU HAIPING 刘海屏

Beijing Dentons Law Offices, LLP 北京大成律师事务所

#### LIU HONGHUAN 刘虹环

FenXun Partners 奋迅律师事务所

#### LLOYD LYU 吕毅

Guantao Law Firm 观韬中茂律师事务所

#### SHI WEIGANG 施伟钢

JunZeJun Law Offices 君泽君律师事务所

#### SUN WEI 孙巍

Zhong Lun Law Firm 中伦律师事务所

#### WANG JUNQI 王军旗

DeHeng Law Offices 德恒律师事务所

#### WANG ZHAO 王钊

JunHe LLP 君合律师事务所

#### XIE PENG 谢鹏

Jingtian & Gongcheng 竞天公诚律师事务所

#### XU YU 徐羽

Hylands Law Firm 浩天信和律师事务所

#### YUN ZHI 云治

King & Wood Mallesons 金杜律师事务所

#### ZHOU JINQUAN 周金全

Jincheng Tongda & Neal Law Firm 金诚同达律师事务所

For outstanding litigators, making compelling arguments based on clear facts is their job. The People's Court Daily selected the top ten commercial cases in 2019, which, in comparison with the previous year, involved more industries, larger amounts and more complicated situations, indicating that China's commercial disputes sector poses higher requirements and more severe challenges to litigators.

But we are excited to see that many applicants for ALB China 2020 Top 15 Litigators won favorable results for their clients by virtue of their solid legal skills, proficient industry knowledge, excellent logical reasoning skills, accurate interpretation of cases and highly professional attitude. These qualities enable them to stand out and win cases for clients even in unfavorable conditions. These lawyers are both legal experts and industry experts with the craftsmanship spirit. They have comprehensive understanding of the laws and regulations and their legislative intents, pay close attention to the industry's cutting-edge trends, and constantly update and expand their "knowledge base". We have now selected the winners of ALB China Top 15 Litigators this year.

## OVERVIEW

Most of the winners on the list this year have about 20 years of working experience in the field of dispute resolution, practicing in the areas of maritime, foreign dispute resolution, international trade, energy and offshore engineering, insurance finance, intellectual property, private funds, and venture capital. They not only provide clients with high-quality legal services, but also play an important role in promoting the development of China's commercial dispute resolution industry and accelerating the process of rule of law in China.

In addition to serving as lawyers, many of them have experiences of working at procuratorates, courts, or arbitration organizations, or serving as general counsels, which enable them to think from multiple perspectives when handling cases, have more accurate and comprehensive

## METHODOLOGY

For this year's list of ALB China Top 15 Litigators, the selection committee conducted detailed analysis and evaluation of the candidates' litigation work in 2019 primarily by assessing the following two aspects and relying on third-party recognition:

1. Typical cases provided by lawyers that showcase their achievements in 2019; and
2. Cases which lawyers participated in and for which judgments were pronounced in 2018, the information of which is available through public channels. The criteria for assessing objective information in these two aspects include, among others:
  - a. Difficulty of cases
  - b. Litigation strategies employed by lawyers
  - c. Influence of cases
  - d. Innovative nature of cases

## 评选方法:

在本次的ALB China十五佳诉讼律师的评选中, 评委会主要参考以下两个方面的内容, 并引入第三方的认可情况, 对报名者在2019的诉讼成就进行了详细的解析、评价:

1. 律师提供的可代表其2019年工作成就的典型案件;
2. 公开渠道可获取的该律师参与的裁判案例。该两方面客观信息内容的评选标准包含但不限于以下几个方面:
  - a. 案件难易程度
  - b. 律师诉讼策略
  - c. 案件影响力
  - d. 创新性

understanding of the cases and serve clients better in dispute resolution. They are also actively engaged in academia: Chen Fu, a partner at Commerce & Finance Law Offices, serves as a tutor of the Law School of Beijing Jiaotong University and an off-campus tutor

站在事实的肩膀上雄辩是诉讼律师们的战斗日常, 而“事实的肩膀”能有多高, 则考验着诉讼律师们对案件诸多细节精准的把握能力。在过去的一年中, 《人民法院报》编辑部评选出了2019年度人民法院十大商事案件, 与往年相比, 涉及行业更广、金额更大, 且案情更加复杂, 预示着中国商事争议解决行业对诉讼律师的要求越来越高、挑战愈加严峻。但令人欣喜的是, 在ALB收到的2020年ALB China十五佳诉讼律师申报表格中, 我们看到一位又一位诉讼律师凭借扎实的法律基本功、丰富的行业知识、严密的逻辑思考、细节化的案情解读和高度专业的态度赢得了有利于客户的诉讼结果, 多次在原本不利的情况下力挽狂澜, 反败为胜。这些律师既是法律专家, 又是行业能手, 充分理解法律法规及其立法意图的同时紧密关注着行业前沿动态, 秉承着深耕细作、精益求精的匠人精神, 不断更新和扩充自身的“知识库”, 走在行业最前端。我们在这些杰出的诉讼律师中评选出了2020年ALB China十五佳诉讼律师。

## 概况

今年上榜的15位诉讼律师们大多具有20年左右的从业经历, 其争议解决领域包括海事海商、涉外争议解决、国际贸易、能源及离岸工程、保险金融、知识产权、私募基金、风险投资等。他们丰富的经验不仅使他们在多元化的争议解决领域中游刃有余, 为客户提供优质法律服务, 还让他们成为中国商事争议解决行业发展的推动者, 加快了中国的法治建设进程。除了担任律师, 他们中还有很多人具有检察院/法院、仲裁组织和法务的工作经验, 这使得他们在参与案件的过程中能够站在多角度进行思考, 对案情矛盾点的把握更加准确和全面, 有效抓住并利用更多细节, 为客户更好地解决争议和纠纷。同时, 这些杰出的诉讼律师们还积极地投身学术, 例如, 北京市通商律师事务所的陈浮律师担任北京交通大学法学院联合导师和对外经济贸易大学硕士生校外导师; 观韬中茂律师事务所的吕毅律师曾担任华东政法大学硕士生指导教师和同济大学公共管理硕士(专业学位)校外导师; 德恒上海律师事务所的王军旗律师担

“We usually work in teams according to division of responsibilities and give full play to the capabilities of different lawyers, thereby accomplishing the task at an expedited pace.”

“我们通常是团队作战，按照已经比较成熟的工作机制分工合作，充分发挥多位律师的聪明才智、能力与经验，一鼓作气完成任务。”

— Chen Fu, Commerce & Finance Law Offices 陈浮, 通商律师事务所

for master's degree students of the University of International Business and Economics; Lloyd Lyu, a partner at Guantao Law Firm, once served as a master's degree tutor of East China University of Political Science and Law and an off-campus tutor of master's degree program of public administration of Tongji University; and Wang Junqi, a partner at DeHeng Law Offices, serves as a master's degree tutor at Fudan University. By doing so, they train the new-generation litigators by virtue of their rich practice experience and academic accomplishments. Additionally, the winners also actively participate in charitable activities. These outstanding lawyers not only demonstrate excellence in their work but also show great commitments to the social development. We want to congratulate them for their great achievements over the last year and praise them for their strong sense of social responsibilities.

We interviewed some of the lawyers on the list this year to find out the key to their success, and to hear their understanding of the legal profession, their advice to enterprises and their outlook on the industry.

#### PROFESSIONAL PHILOSOPHY

Wang Zhao, a partner at JunHe, believes that the most important quality for litigators is “remaining calm in all circumstances and not always being competitive and feisty.” Litigation involves many confrontations, but its ultimate goal is to resolve disputes and meanwhile to maximize the legitimate benefits for clients. The core of litigation is

protecting and maximizing the interests of clients rather than competing with the opponents. Wang Zhao's professional philosophy is “to be a professional and speak professionally.” Legal professionals must respect the laws and rules when practicing law, and should always stay in control of the case, make arguments based on logic and give advice based on facts, Wang Zhao says.

Xu Yu, a partner at Hylands Law Firm, says that litigators must have a clear position and viewpoint, be proficient in a certain field, have excellent social skills and be eloquent, and have very good common sense. Xu's professional philosophy is “the ultimate goal of litigation is to convince the judge.”

“In legal proceedings, it's essential for lawyers to convince the judge to support their claims to the greatest extent,” he says. “Plaintiffs bring charges against defendants and try to demonstrate the legality of their charges, and defendants try to deny the charges or the legality of the charge. Our job is to help our clients go through the numerous facts to find grounds supporting their claims, and then convince the judge.”

#### WISER WAYS

When it comes to “big challenges facing litigators,” Xie Peng, a partner at Jingtian & Gongcheng, says that since the clients are from various industries and backgrounds, litigators are exposed to all aspects of society and industries, the development and evolution of which keep bringing new types of legal disputes, but some of those disputes are

任复旦大学法律硕士实务导师。他们凭借自身的丰富执业经验和学术造诣，悉心培养着新一代的诉讼律师。在法律援助等慈善活动方面，今年获奖的诉讼律师们也成果斐然，充分体现了杰出优秀的诉讼律师们专业素养与人文关怀兼具，在职业的舞台上发光，在社会的角落里发热。旁人眼中是针尖之舞般的难题，在这些杰出的诉讼律师应对起来却游刃有余。我们惊叹于他们在法庭上逆转不利局势的凯旋之姿，也好奇他们成功背后的制胜关键。我们采访了部分上榜律师，聆听他们分享对职业的理解、对企业的建议和对行业的展望。

#### 职业哲学

君合律师事务所王钊律师认为，对诉讼律师来说，最重要的品质和精神是“心态平和、不争强好胜”。诉讼尽管是一个对抗性很强的业务，但诉讼最终的目的是要解决争议，为客户争取最大程度的合法利益，所以，诉讼律师的工作核心也应当围绕着这样的目的，维护和争取客户的利益，而不是非要和对手一争胜负、分出高低上下。王钊律师的职业哲学是“作专业的人，说专业的话”。他认为作为法律人，在执业中要敬畏法律和规则，要言之有理、言之有据；针对非自己专业领域问题，要么去请教专业的人，要么去学习和研究该专业问题，而不是凭感觉或者直觉去提供专业意见。

浩天信和律师事务所徐羽律师表示，作为诉讼律师，首先要具有鲜明的立场和观点；其次要具有在某个领域非常专业的知识水平；第三要具有非凡的社交与表达能力；最后要具有一定广度和深度的常识



通商律師事務所  
COMMERCE & FINANCE LAW OFFICES

# 实践的巨人、 学术的匠心

——专访十五佳诉讼律师上榜律师陈浮



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北京市通商律师事务所管理合伙人陈浮律师是一名实战经验与学术成果并济的资深争议解决律师，擅长商事诉讼与仲裁、公司、合同、金融、私募投资、企业清算与不良资产处置、知识产权保护、刑事辩护（经济犯罪领域）等方面的法律业务。从业17年来，陈律师已处理诉讼、仲裁案件及非诉项目超过七百件，其中包含多个争议金额大、法律关系复杂、社会影响大的案件。陈律师还担任北京交通大学法学院联合导师和对外经济贸易大学硕士生校外导师等职务，并已出版两本学术著作。

## 职业愿景与价值观

在陈律师看来，无论是个体还是组织，都应该有明确的愿景和价值观，指引其前进的方向。对于陈律师及其团队来说，其职业愿景就是要成为国内超一流的商事争议解决律师团队，不仅精通法律，还真正理解商业，能为客户解决实际问题；通过自己的勤奋、努力赢得体面的生活；在个案中全力维护委托人的合法权益，推动和追求整个社会的公平正义。为了实现这一愿景，陈律师和他的团队树立了“专业、进取、包容、分享、担当”的价值观，对此他解释道：第一，专业是律师执业的基石与根本；第二，律师是一个活到老学到老的职业，只有保持进取精神不断学习才能立于不败；第三，由于经常处于矛盾和纠纷之中，因此面对多元化的利益诉求、文化和价值观，律师为人处世必须包容豁达；第四，律师不可以自私自利，应该懂得分享和谦让；第五，律师除了责任心之外，还要有担当，为维护当事人的合法权益、法律的正确实施和社会公平正义，敢说真话不退缩。

## 法律服务的三个关键词

陈律师认为给客户全面高质量的法律服务，不仅体现在给客户理想的案件结果，同时也要注意客户的感受。“专业”、“效率”和“客户体验”是确保法律服务质量的三个关键词。陈律师解读道：“首先，我们从律师理念、思维、知识、技能、经验、服务方式、办案工具等多方面不断提高专业化水平，最大限度满足乃至超越客户的法律服务需求，在法律框架内争取客户利益的最大化。其次，我们特别注重办理案件的效率：我们有一整套成熟的工作机制、工作流程，一旦接受客户委托代理案件，相当于这根‘发条’就上紧了，不断推动案件往前走。第三就是注重客户体验。我们对每个案件都追求不仅结果要美，办案过程也要让客户舒服。我相信，上面这三点律师如果全做到了，给客户提供的法律服务必然是全面和高质量的。”

## 案例与心得

近十年来，陈律师已经办理了多个重大复杂的股权投资纠纷案件，也作为仲裁员审理了多个这种类型的案件，其中一些案件引起了社会的广泛关注，案件所创设的裁判规则可以说是开创性的。这类案件往往标的额大，交易结构复杂，法律适用标准不一。处理这类案件，不仅要具备过硬的法律技能和经验，还要有丰富的投融资方面的经验和知识。以陈律师及其团队去年所参与的终审胜诉的建银文化与金某案为例，这是一个基于股权回购债务衍生的夫妻共债案，作为案件基础事实的投资交易结构很复杂，涉及拆除VIE架构、清退境外美元基金、拆除红筹架构回归A股等，给判断原始股东回购责任、是否夫妻

共同经营等增加了很大难度，要求律师必须掌握境内外融资及上市领域的专业知识。此外，该案审理期间最高人民法院颁布了一个新司法解释，改变了举证责任归属，陈律师及其团队迅速反应，准确把握司法解释的立法目的和内在逻辑，完善诉讼主张和证据，扭转了不利局面。

## 学术成就

除了拥有多年的实务经验，陈律师还担任多个高校的导师职务，并且取得了丰富的学术成果。对此，陈律师说道：“律师工作注重务实，但不能总是低头走路，也要总结实践中的经验教训、心得体会，升华为实践智慧和理论用于指导实践。基于这种认识，我习惯了在办案之余勤总结，多思考，笔耕不辍。”陈律师目前已经出版两本书籍：《律师办理民商事诉讼案件操作指引》和《律师执业基本技能-民事诉讼业务篇》，后者已作为全国律协培训实习律师统一教材使用。

## 未来展望

陈律师认为，科学技术的发展在不断改变人类的生产方式，争议解决业务也同样在发生变化，例如，计算机技术和大数据的发展使裁判规则越来越透明，电子数据证据逐渐成为诉讼或仲裁中主要的证据类型，这就要求律师在熟练掌握法律技能的同时还要学会利用科技手段。此外，随着全球一体化的发展和我国“一带一路”战略的实施，不论是经济活动还是人与人之间的关系都会更多地受到多个法域法律制度的调整，进而使争议解决业务中的涉外因素越来越多，未来会有更多的涉外、跨境争议解决业务产生，对律师而言既是机遇也是挑战。

not clearly defined or stipulated due to “law lag.” It poses a big challenge to litigators when faced with disputes of new types, for which the existing laws only have rather vague provisions, Xie says.

When dealing with problems like this, Xie says that on one hand, they analyze the background and causes of the dispute in order to grasp the substantial legal issues involved, find out the judicial spirit of the precedent, and then explain the views in combination with academic interpretations; on the other hand, they keep expanding their knowledge of different industries and fields, and keep abreast of hotspots in the society, thus improving the capability to resolve new types of disputes.

Xie shares with us a case he and his team worked regarding a dispute between a famous state-owned central enterprise auto parts company and a national federation of industry and commerce about the name of auto parts exhibition. The core of the dispute was the ownership of the right to use the name of the exhibition, which had been held for more than ten years, and the resulting infringement loss compensation. Since the subjects involved in the case have great influence in the industry, and the exhibition could generate tens of millions of yuan in revenue every year, the court was very cautious about the trial. However, the name of the exhibition was not a trademark or a shop name, nor was it a patent or copyright. It did not belong to the object of the trademark law or patent law. Therefore, whether such a name was exclusive or not, and if so, what law should be applied, were the core issues that troubled the court, causing the difficulty in advancing the case. Xie and his team, after a lot of research on law, judicial interpretation and similar cases, proposed to the court that based on the evidence, it could be seen that this exhibition had gained popularity because its long history and great economic value. As an exclusive right similar to a trademark, it should be protected. In terms of the application of law, since the case could be understood as an improper competition and infringement in essence, the anti-unfair

competition law could be applied to the trial. These views were adopted by the court, and the case proceeded smoothly.

Chen of Commerce & Finance Law Offices pointed out another big challenge: to have thorough understanding of the case and develop a practical litigation strategy within the shortest time frame. “We usually work in teams according to division of responsibilities and give full play to the capabilities of different lawyers, thereby accomplishing the task at an expedited pace,” Chen says.

Chen and his team represented a CCB cultural company in a joint debt case which was based on equity buyback debt. The structure of the investment transaction in the case was very complicated, involving VIE structure, overseas USD funds, and removal of the red-chip structure to return to A shares; and the legal relationships in the case were also complex, which included the expansion of arbitration clauses and the determination of shareholder repurchase responsibility, debt inheritance, identification of joint debt, and distribution of burden of proof between the creditor and debtor.

After accepting the entrustment, a team composed of partners and attorneys was quickly established within a short time, gathering elites in various fields including domestic and foreign financing and listing, and marriage and family affairs. The team responded quickly, straightened out the facts, found evidence, looked up the laws, prepared plans, made demonstrations, and worked out litigation strategies. Their claim was finally upheld by the court.

In Wang Zhao’s opinion, the professional challenge is how to turn the situation around in an unfavorable condition, so as to protect the legitimate rights and interests of the client. “Under these circumstances, we should not give up easily, instead, we should seek opportunities to protect our clients through in-depth study of laws and further exploration of the details of the facts,” Wang Zhao says. He then shared with us the first vertical monopoly civil

储备。执业以来，徐羽律师一直奉行“诉讼的最终目的就是说服法官”的职业哲学。他解释道：“律师代理一个案件，其实最终的目的就是说服法官在最大程度上支持己方主张。因此，说服法官的能力可以说是律师的核心能力。说服法官的基本条件就是要理解一场诉讼，我认为诉讼的本质就是：原告从万千的已经发生过的事情中，讲出一个法律故事，提出他的要求，再论证这个故事是否真实存在，要求是否符合法律的规定，而被告则是极力否认这个故事或者否认其要求的合法性。而作为律师，就是要协助当事人从无数的事实中，找到相应的依据，争取让法官信服自己的观点。”

### 挑战虽多且艰，智慧更胜一筹

聊起“对于诉讼律师来说通常会遇到的挑战”这一话题时，竞天公诚律师事务所谢鹏律师说到，诉讼律师因为业务的特点，会接触到社会不同领域、不同行业的方方面面。随着社会的不断发展和进步，会不断出现新型的法律争议，而法律法规由于其滞后性，有时无法及时地加以明确规定。因此，出现较为超前且对律师来说比较陌生的争议问题，而现行法律法规又对此存在模糊点，是诉讼律师可能遇到的一大挑战。但即使是这样的难题，谢鹏律师也把握了相应的对策：一方面，围绕案情背后的争议焦点，分析争议产生的背景和原因，把握案件所涉法律问题的实质，寻找和挖掘判例所体现出的司法精神，结合学理解释对观点进行阐释；另一方面，在平时的工作中积累并学习各行业、各领域的专业知识，及时把握社会的热点、难点、痛点，着重提升解决区别于传统纠纷的新型争议的能力。拿谢鹏律师及其团队处理过的一个某知名国有央企下属汽配公司与某行业全国性工商联委会关于汽车配件展会名称的争议案件，当时争议的核心是一个已举办十余年的汽配展会名称使用权归属及由此产生的侵权损失赔偿问题，由于案涉主体都在业内具有较大影响力，且该展会每年可产生数千万元的收益，故法院对于本案的审理十分慎重，但展会的名称并不是商标、字号，亦不是某种专利、版权，不属于《商标法》、《专利法》这些法规规范的对象，因此这





观韬中茂律师事务所  
Guantao Law Firm

## 具有战略眼光的“攻城略地”诉讼律师 ——专访观韬中茂律师事务所合伙人吕毅律师

### A litigation lawyer with strategic vision — a conversation with Lloyd Lyu, partner of Guantao Law Firm



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#### ALB: 诉讼律师和非诉讼律师有何区别? 诉讼律师要具备哪些品质和技能?

吕毅: 非诉讼律师是尽可能预防风险发生, 就像是守城的军队。但诉讼律师要攻城略地, 像将军打仗般制定正确的战略战术。两者有巨大区别。

很多五百强公司法总具备非诉和合规领域经验, 但管理重大仲裁和诉讼案件往往是他们的痛点。我们处理过的许多案例, 标的额都在数亿元, 相当于上市公司几年的净利润。接手案件后, 诉讼律师应首先了解案件所涉及的公司核心商业利益点, 这是最关键的能力。举例来说, 2019年我们曾代理上药控股公司处理和某杭州医药公司间1.23亿元合同纠纷, 该注册资金为5000万元的公司后来估值已达15亿, 因此不可能将价值30元的股份以每股1元的价格出售给上药控股, 正是通过解释背后的商业逻辑, 我们说服法官判定两家公司不存在关联关系。

我本人同时担任民营企业组织正和岛的上海执行秘书长, 并多年担任各类企业法律顾问, 正是基于此, 对各类企业的商业逻辑、盈利模式等具备着深刻理解。

#### ALB: 法总该如何挑选诉讼律师?

吕毅: 除上面所提到的对商业利益点的把握外, 法总应首先考察诉讼律师的法律能力。诉讼律师应能基于现有证据情况, 制定正确战略战术。第一, 应根据证据重量, 在民事、刑事、行政途径中进行恰当选择; 第二, 应能够使用证据支撑选定的法律关系, 同时提供一套清晰的书面文件。我们曾代理一起商业秘密侵权案, 原告多位高管在离职后另设公司生产同样的汽车零部件, 并以1/2价格出售给公司原有客户, 如果不起诉, 未来可能出现高管继续窃取公司商业秘密的行为, 公司将面临倒闭。但由于部件上没有标识, 几乎无法取证。于是我们选择了行政途径, 通过向市场管理局举报, 由市场管理局检查大队取证保全了对方财务账册和技术图纸, 并通过这些证据完成了行政处罚, 使得客户不能再购买侵权公司的产品, 保护了原公司的合法利益。

上述法律能力应占挑选考量的70%, 剩下的30%, 在于诉讼律师有能力向公检法清晰阐述法律关系, 并与案件涉及的其他政府社会机构进行必要沟通。这就需要律师具备一定的社会网络, 比如我本人同时担任政协常委、副秘书长、同济大学公共管理硕士教授、国际仲裁员等。

法总应该根据这两点能力, 用加权平均的方式进行选择。

#### ALB: 请进一步分享您近年来在争议解决领域取得的成就。

吕毅: 我在多年执业经验中为多家世界五百强公司代理过重大疑难案件, 包括国家电网集团、德国采埃孚集团、上海医药集团、雅高集团、金光纸业集团、中石油集团、东方航空集团、中粮集团、上海烟草集团等。近期另一件代表性案件, 是2019年代理东航集团诉华信证券支付2.78亿元的资产管理纠纷案, 作为标杆性案例, 其结果会影响其他类似案例的判决。我们通过第一时间对网站上成功赎回的证明进行了证据公证、通过对我和我方证据证明资产管理人在投资和分配过程中存在重大过失, 最终取得了全面胜诉。

#### ALB: What is the difference between a litigation lawyer and a transaction lawyer? What are the qualities and skills of a litigation lawyer?

Lyu: Transaction lawyers try the best to prevent risks, just like an army guarding the city, but a litigation lawyer has to make right strategies and tactics to “take field” like a general at war. There is a huge difference between the two.

Many legal counsels from Fortune 500 companies have rich experience in areas of transaction and compliance but lack skills in managing major arbitration and litigation cases. We have handled many cases with disputed amount of hundred of millions of yuan, which may amount to several years' profit of a listed company. After taking over a case, a litigation lawyer should first understand the core commercial interests of the client, which is the most critical ability. For instance, in 2019, we represented Shanghai Pharmaceutical Co., Ltd. in a contract dispute of 123 million yuan with a Hangzhou pharmaceutical company, which had 50 million yuan a registered capital and was later valued at 1.5 billion yuan, it was therefore impossible to sell a 30 yuan stake to Shanghai pharmaceutical at 1 yuan per share, and it was by explaining the business logic behind it that we persuaded the judge to rule that the two companies were not related.

I also serve as the executive secretary-general of the Shanghai branch of Z.H.ISLAND, an association of private enterprises, and have been the legal advisor to various companies over many years. That is why I have a profound understanding of the business goals and profit models of various enterprises.

#### ALB: How should a general counsel select litigation lawyers?

Lyu: In addition to a grasp of the commercial interests as mentioned above, the general counsel should first assess the professional capabilities of litigation lawyers. Litigation lawyers should be able to develop proper strategies and tactics based on the available evidence: first, they should be able to choose from the civil, criminal and administrative approaches depending on the weight of evidence; second, they should be able to use evidence to support the selected legal approach and provide a clear set of written documents. In a commercial secret infringement case where we represented the infringing company, a number of senior management established a new company to manufacture similar auto parts after they left the infringing company and sold these auto parts to the customers of the infringing company at half of the price. If the infringing company does not take actions, the former senior management may continue to steal its commercial secrets in the future, which may lead to the bankruptcy of the infringing company.

The problem is there are no markings on the auto parts, therefore it is hard to collect evidence. Thus, we chose the administrative approach. After reporting to the Market Administration Bureau, the inspection team of the Market Administration Bureau took actions to preserve financial books and technical drawings of the infringing company, and imposed administrative punishment based on such evidence, including banning customers from purchasing products from the infringing company, which have protected the legal interest of the infringing company.

The skills mentioned above account for 70 percent of the consideration when it comes to selecting litigation lawyers, and the remaining 30 percent lies in the lawyer's ability of clearly explaining the legal nexus to authorities such as public security bureaus, courts, procuratorates, arbitration centers and carrying out necessary communication with other social institutions. This requires lawyers to have certain social networks. For example, I am also the deputy secretary-general of the Chinese People's Political Consultative Conference (CPPCC) and a member of the Standing Committee of CPPCC, a professor of MPA of Tongji University, an international arbitrator and so on.

General counsel should, on pro rata basis, take these capabilities into consideration when selecting litigation lawyers.

#### ALB: Could you share more about your achievements in dispute resolution in recent years?

Lyu: I have dealt with many major and difficult cases for Fortune 500 companies, including State Grid Group, ZF Group, Shanghai Pharmaceutical Group, Accor Group, Sinar Paper Group, CNPC, China Eastern Airlines Group, COFCO Group and Shanghai Tobacco Group. One of the representative cases in recent time is the asset management dispute in 2019, in which we, on behalf of China Eastern Airlines Group, filed a case against CEFC Shanghai Securities Limited for 278 million yuan. As a benchmark case, the result will affect the judgment of other similar cases. We notarized the evidence of successful redemption on the website at the first time, proved the gross negligence of the asset manager in investment and distribution based on both parties' evidence, and finally won the case.



“In legal proceedings, it’s essential for lawyers to convince the judge to support their claims to the greatest extent. Our job is to help our clients go through the numerous facts to find grounds supporting their claims, and then convince the judge.”

“律师代理一个案件，其实最终的目的就是说服法官在最大程度上支持己方主张。因此，说服法官的能力可以说是律师的核心能力。而作为律师，就是要协助当事人从无数的事实中，找到相应的依据，争取让法官信服自己的观点。”

— Xu Yu, Hylands Law Firm 徐羽, 浩天信和律师事务所

litigation case in China, in which he and his team represented the defendant.

The plaintiff accused the defendant of setting a minimum resale price in the distribution agreement, which constituted a vertical monopoly agreement. It is provided for in Article 14 of the Anti-Monopoly Law of China that it prohibits the operator and the counterparty from entering into a vertical monopoly agreement that sets the minimum price at which a reseller can sell the product. Therefore, it seems that there was no reason to refute the plaintiff’s claim. But Wang Zhao and his team did not easily give up. They argued that the definition of a monopoly agreement is an agreement that excludes or restricts competition; furthermore, in a recent case, the U.S. Supreme Court decided to demote resale-price-maintenance antitrust cases to the rule-of-reason standard, thus an agreement that stipulates the minimum resale price does not constitute the violation of Article 14 of the Anti-monopoly Law; and it constitutes a monopoly agreement only if it “excludes or restricts competition.” In a civil lawsuit, the plaintiff bringing such a claim must prove there exists the “exclusion or restriction of competition.” Their views were accepted by the court. What’s more exciting is that their views are line with the provisions of the judicial interpretation issued by the Supreme People’s Court later

concerning the elements of vertical monopoly agreements.

#### ADVICE TO COMPANIES

Regarding how companies can effectively avoid disputes, Xie points out: “Enterprises should always pay attention to stay control of legal risks in the operation and transaction process, especially when signing documents such as relevant agreements. It is important to pay close attention to the language used in the contract. In my experience, disputes often arise because a word or expression used in a clause is ambiguous, and sometimes disputes arise from the expression of the general clauses of the contract which are often neglected. It is recommended that an enterprise should consult relevant legal professionals before determining its business model or conducting transactions, so as to control risks from the beginning.”

If a dispute is already raised, an enterprise should be very careful of words it uses or the statements it makes when communicating with the opposite party in the dispute, since certain words or expressions might be used as evidence against them, which might increase the chance of causing the enterprise to lose a case, Xie warns. The enterprise should start gathering and keeping evidence in favor of itself as early as possible, especially if the enterprise is the defendant; and the

种名称到底具不具备专属性、如果具备应该适用什么法律，这是当时困扰法院的核心问题，并一度导致案件难以推进。当时谢鹏律师及其团队在对法律、司法解释及类似案例做了大量研究后向法院提出：基于证据可以看到该展会因为多年的举办，已具备知名度，其名称具有巨大的经济价值，其作为一个类似于商标的专属权利应该得到保护，而在法律适用方面，由于本案本质上可理解一种不当的竞争及侵权行为，因此可适用《反不正当竞争法》进行审理。最终这些观点均被法院予以采纳，从而使本案得以顺利推进。

通商律师事务所陈浮律师分享了作为诉讼律师所面临的另一大挑战：在最短的时间内对案情进行透彻把握并制定出切实可行的诉讼策略。“对此，我们通常是团队作战，按照已经比较成熟的工作机制分工合作，充分发挥多位律师的聪明才智、能力与经验，一鼓作气完成任务。”陈浮律师说道。他和他的团队曾代理建银文化公司处理一个基于股权回购债务衍生的夫妻共债案。作为案件基础事实的投资交易结构很复杂，涉及拆除VIE架构、清退境外美元基金、拆除红筹架构回归A股等；案件的法律关系也比较复杂，涉及仲裁条款的扩张、股东回购责任认定、债务继承、夫妻共同债务的认定、债权人与债务人的举证责任分配等。接受委托后，由多位合伙人和律师组成的工作团队在短时间内迅速建立起来，集结了在包

## 专访北京市浩天信和律师事务所高级合伙人徐羽律师

### Interview with Mr. Xu Yu, Senior Partner of Beijing Hylands Law Firm



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浩天信和管委会主任 高级合伙人  
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据我们所知，徐律师不仅是浩天信和资深诉讼律师，同时也是律所“争议解决专业委员会”的牵头人，请问在您看来，贵所争议解决部门的核心竞争力是什么？

在我看来，浩天信和争议解决部门的核心竞争力，是“帮助客户整体解决问题”的能力。争议的形成有很多原因，因此诉讼中双方的关系也未必一定是“势不两立”，我们要求自己从一个更高的角度，对每一个客户的诉求进行全面分析，从而提出整体解决的方案。

举个例子，我们处理过一个股权纠纷，客户是小股东，对于退出条款和大股东产生了巨大争议，导致对公司完全失控。在最初，客户希望通过知情权纠纷，了解公司的财务信息和其他相关信息，再从中找寻大股东的违约行为。但我们综合分析后发现，标的公司是一个房地产公司，唯一的资产是土地使用权，但由于公司大小股东长期不和，导致开发进程停滞，土地甚至面临被收回的风险。针对这一点，我们和客户讨论后，决定直接提起“公司清算之诉”，同时，通过公司清算之诉，再把大股东拉回谈判桌。最终，这个案子以庭外调解结案，大小股东均对结果表示满意。

作为一个优秀的诉讼律师，请问您对于一名诉讼律师在办案中需要注意的事项，有何建议？

作为一名诉讼律师，具有“扎实的法律功底”以及“专业、努力的工作态度”等，应该是基本要求，我就不多说了。在我看来，诉讼的核心是“说服法官”，我从这个方面讲讲我的心得。

首先，你应当简洁而高效的表达自己的观点。你整理的证据、发表的言辞，以及提交的文件，都应当紧紧围绕诉讼目的来进行，使得法官能够用最短的时间来理解你的意图和观点，让法官切实感受到你的专业、逻辑分明、以及积极推动案件进程的善意。

其次，你应当站在法官的角度思考问题。法官与律师不同，会站在一个更高的角度去思考问题，以及判决可能带来的影响。因此，作为律师，如果能够以法官的高度和角度去思考问题，那么你的观点就更容易被法官接受，自然也更容易取得满意的结果。

徐律师在诉讼之外，是否还深耕其他领域，您能不能说一说诉讼和这些领域的关系？

最近几年，我还从事了相当一部分“破产与重整”案件的处理，其实从本质上来说，“破产与重整”和“诉讼”一样，都是为客户“纾困”，只不过在“破产与重整”领域，“纾困”的范畴更加宽广一些。因此，从传统的诉讼业务，向“破产与重整”作进一步的延伸，其实本来就是一个顺理成章和水到渠成的事情。

从另一个方面讲，其实这也是我刚才提到的“帮助客户整体解决问题”的需要。“诉讼”是“破产与重整”之前，甚至是过程中都无法回避的程序，而反过来，“破产与重整”也可以帮助企业摆脱众多诉讼，从而得到新生。因此，我本人也希望这两个领域的工作能够相辅相成，互相起到一个积极的促进作用。

**Mr. Xu, We understand that you are not only an experienced litigation lawyer in the firm, but also the leading partner responsible for the Dispute Resolution Committee in the firm. Could you share with us what is the core competitive edge of your firm's dispute resolution department?**

In my view, our dispute resolution department's core competitive edge is our ability to advise and support our clients in a comprehensive and integrated way. There are many causes why disputes arise, in this process, parties in a litigation may not be totally irreconcilable. We endeavor to understand each individual client's claims thoroughly so that we are able to provide a comprehensive and viable solution to each client.

For example, we once worked on an equity dispute in which our client is the minority shareholder. Our client and the majority shareholder disputed over many material issues including the exit clause in shareholders' agreements. Consequently, our client significantly lost its voice over the company's management. Initially, our client resorted to its right of information, through which it hoped to obtain the company's financial information and other material information, and to identify the majority shareholders' default events. However, we studied the case and noted that the subject company is a real estate company whose one and only asset is its land use right. Because the long-lasting disputes between its majority and minority shareholder, the real estate development severely stagnated and as a consequence, potential risks arose that the land use right may be taken back by the government. Based on our work and communications with client, we eventually advised our client to file for dissolution of the company, through which majority shareholder was dragged back to negotiations. In the end, the case was successfully settled out of court and both majority and minority shareholders were satisfied with the outcome.

**As a prominent litigation lawyer, what is your suggestion to young litigation lawyers?**

A litigation lawyer is expected to be well equipped with legal knowledge and act in a professional and diligent way. These are basic requirements which I would not spend too much time to elaborate. I would like to share my thoughts on how to convince the judge in litigation cases.

First, a litigation lawyer should be able to express his opinions in a concise and efficient way. All the evidence, oral or written arguments and documents provided should be pertinent to the claims so that judges can quickly understand your claims and opinions. A good litigation lawyer should be able to display his capabilities of logic reasoning, professional skills and positive intentions to solve the disputes.

Second, a litigation lawyer should be able to think from judges' point of view. Judges, different from lawyers, consider issues from a broader aspect. They always weigh over various potential influences that may arise from the judgment. If a lawyer can understand and address judge's concerns, his argument may be more accepted by the judge, correspondingly, the disputes may be solved in a more smooth and productive way.

**Mr. Xu, do you also specialize in other areas besides litigation? What is your view of relationship between these areas and litigation?**


In past several years, I have also been working on legal entities' dissolution and reorganization. In essence, dissolution and reorganization and litigation are in common. While it is more direct to understand that in dissolution and reorganization cases, we are assisting our clients to "walk out of deadlock and plight," actually so does this in litigation cases. Therefore, it is quite a matter of course to extend our specialized legal service from traditional litigation areas to dissolution and reorganization areas.

From another aspect, this is also the need to "support our clients to solve disputes in a comprehensive way", as I just mentioned. Litigation is an unavoidable process before and during the dissolution and reorganization proceeding. On the other hand, dissolution and reorganization can help many enterprises to get out of disputes and revive. Therefore, I hope that my work in these two areas could interact positively to better serve our clients.

enterprise should consult lawyers the earliest possible, and start preparing litigation materials under the guidance of professionals, so as to protect its legal rights and interests to the maximum extent, he advises.

According to Xu, an enterprise, especially a large enterprise, should “avoid disputes by thinking like there will be.” In other words, when a company conducts a specific activity or transaction, it should first assume that disputes may arise in the future, and all terms or conditions set forth in the contract or agreement should be based on how to avoid disputes, or turn the dispute to its advantage. On this basis, the enterprise should establish a complete set of risk control mechanism in advance to protect its legitimate rights and interests to the greatest extent if a dispute arises. Enterprises should also involve legal professionals in their day-to-day operation activities, who can help them discover and resolve disputes at the earliest stage. Taking an active attitude towards disputes and adopting effective measures will help gain advantage in the future dispute settlement if disputes arise.

### LOOKING FORWARD

In general, there will be a higher demand for dispute resolution services, and the dispute resolution business will become more and more internationalized, diversified and specialized, Wang Zhao predicts. As the overall economic growth slows down or declines, there will be more disputes of different types. However, many of these disputes will be resolved through litigation or arbitration, which will lead to further growth of dispute resolution business. With the introduction of new laws and regulations, new types of disputes will continue to emerge. And as China sees rapid development in foreign trade, investment, and the Belt and Road Initiative related sectors, more and more overseas arbitration institutions set up their representative offices in China, and cases could possibly be heard in free trade zones, there will be more demands for solving cross-border disputes, Wang Zhao says. 

括境内外融资及上市和婚姻家庭等多个领域执业的精英。团队迅速反应，捋事实，找证据，查法律，找案例，拟方案，做论证，第一时间吃透案情并拟定了诉讼策略，并最终得到了法院的支持。

在处于明显不利的状态下扭转局势，为客户争取利益则是王钊律师所分享的职业挑战。对此他表示：“在这种情形下，不能轻易放弃，而是通过进一步对事实细节的了解和对法律（包括法理和域外法律实践）深入研究，去寻找机会。”王钊律师分享了他和团队代理被告参与的中国第一起纵向垄断民事诉讼案件。

原告指控被告在经销协议中约定的限定最低转售价格之条款是纵向垄断协议，而中国的《反垄断法》第14条确实禁止经营者与交易相对方达成限定最低转售价格的纵向垄断协议。在此情形下，似乎找不到可以反驳原告前述垄断协议主张的理由。但是，王钊律师及其团队并没有轻易放弃对该垄断协议主张的抗辩机会，从垄断协议的定义（即“排除、限制竞争的协议”），以及美国联邦最高法院最新案例对限定最低转售价格协议的认定从“本身违法原则”向“合理原则”转变的分析，提出了限定最低转售价格的协议本身并不构成违反《反垄断法》第14条的垄断协议，只有该协议“排除或限制了竞争”，才构成垄断协议。而在民事诉讼中，证明限定最低转售价格协议“排除或限制竞争”的举证责任在原告。当时最高人民法院有关审理垄断民事纠纷案件的司法解释还没有发布，也没有以往案例可以参考，但前述观点最终被法院所认可，而且也 and 后来最高院颁布的司法解释对于纵向垄断性协议构成要件规定相吻合。


### 对企业的建议

关于企业如何有效避免纠纷这一点，谢鹏律师指出：“企业在经营及交易过程中要时刻注意法律风险的把控，尤其是在签署相关协议等文件时，需特别关注该等文件的用词及条款表述。根据我的工作经历，常常会因为某个条款中的某个字词具有歧义或者约定不明而发生争议，甚至会因经常被忽略的合同通用条款的表述而产生纠纷。因此，建议企业在确定经营模式及进行民

商事交易时，提前咨询相关的法律专业人员，从源头上控制风险。”而如果已经发生纠纷，谢鹏律师建议：第一，企业在与争议相对方进行沟通及应答时要十分审慎，某些表述或字眼都可能被对方作为日后诉讼的证据，从而增加自身的败诉风险；其次，要尽早开始并随时注重留存和收集有利于自身的证据，为后续诉讼做好准备，特别是在企业自身作为被告的情况下；最后，要尽早咨询律师，在专业律师的指导下积极准备诉讼材料，搜集各种形式的诉讼证据，建议企业尽早咨询和引入专业人士，最大限度地保护自身的合法权益。

徐羽律师认为，一个企业，特别是大型企业应当以“发生纠纷的思维来避免纠纷”。也就是说，企业在进行一个特定活动或者交易时，首先应当假设将来是有可能发生纠纷的，然后所有的条款或者条件，都应当围绕如何避免纠纷，或者在纠纷中取得优势来进行。在这个基础上，企业还应当提前建立一套完备的风控机制，即在日常生产经营活动中，就伴随着专业法律工作者全程参与，通过建立一套有效的风控预警机制，可以使得大部分纠纷在形成的过程中被发现并被协调解决。在纠纷发生后，为最大限度的保护自己的合法利益，应当积极应对。当前在国内，一些企业的管理者由于对法律的不熟悉对诉讼处于恐惧心理，往往对纠纷采取一种消极回避的态度。这种态度不仅会使得纠纷因得不到解决而不断扩大，还会在日后争议解决的过程中处于被动地位。

### 未来展望

王钊律师指出，总体而言，争议解决业务会出现增长化、国际化、多样化和专业化的趋势。随着整体经济形势发展放缓或者下滑，各类纠纷会出现上升趋势，随着大家法律意识的提高，这些纠纷很多会通过诉讼或者仲裁的方式解决，从而引发争议解决业务的进一步增长。此外，随着新的法律、法规的颁布和实施，新类型和专业型的争议解决业务会不断出现；随着中国对外贸易、投资以及一带一路的发展，以及境外仲裁机构在中国设立代表处以及可能在自贸区等特定区域审理案件，跨境的纠纷也会不断出现。 



競天公誠律師事務所  
JINGTIAN & GONGCHENG

# 把握细节铸造成功

——专访十五佳诉讼律师上榜律师谢鹏



谢鹏  
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**ALB：作为一名杰出的诉讼律师，您的执业哲学是？**

**谢鹏律师：**在职业生涯中，我从始至终一直秉承的是以解决争议为初心，以服务客户为核心，以细致负责为本心的思维方向和行为指南。首先，作为一名诉讼律师，不应过分地追求案件的胜诉率，我认为最终的目的是在存在风险时通过专业化的方式防患于未然，避免纠纷；而在发生争议后，高效率、高质量地解决问题和争议。我们工作的初衷是帮助客户降低风险、解决问题，而并非争论出谁是谁非。其次，客户的需求是我们关注的核心。在处理诉讼案件时，我们要了解客户的具体需要以及真正希望达到的效果，以客户利益的最大化为出发点，通过专业的方式，维护客户的合法权益。再者，我认为作为一名律师，执业过程中严谨、细致、负责的态度是不可或缺的。只有本着负责任、认真细心的态度，才能在职业生涯中走得更远、更好。

**ALB：您参与过的争议解决案件涵盖了多个领域和行业，且多次在不利情况下反败为胜，对此您有何成功经验？请列举一个可公开的案例。**

**谢律师：**诉讼律师要在案件原本不利的情况下反败为胜，首先要多角度地去挖掘案件新的突破口，而不拘泥于先前的思维模式和诉讼方法；第二，必要时需要跳出争议相对方的逻辑框架，通过梳理案情及证据创建一个更有利于客户的逻辑和方案，从而将争议的核心控制在我们新划定的范围和战场中。第三，要密切关注案件的细节之处，据我的经验，很多案件是在某处字句中发现契机，从而抓住核心要害。诉讼如战斗，法庭如战场。跳出原有模

式和逻辑，从细节处寻找新的角度和出发点，理顺新的逻辑，如开辟一片新的战场，能将相对方拉入有利于客户方的局面中。例如我近期处理过的一个案件，是某国有通信设备公司与某通讯科技公司因电子商务平台上的买卖合同而产生的纠纷。事件的起因是某通讯科技公司通过我方客户的电子商务平台下单购买商品，该通讯科技公司后续将线上平台的账户密码交给第三方使用且由第三方提货从而造成了货物的损失，进而引发了争议。该案的核心是在没有明确书面授权的情况下，掌握密码的第三方通过QQ变更提货方式并提货能否视为该通讯科技公司（案件相对方）已收到货物。在一审中，争议相对方一直引导法院关注案件中已有类授权文件的形式及内容，通过放大相关文件的瑕疵，从而使法院认为该等类授权文件不足以构成对第三方的有效授权，进而判决客户败诉并向对方支付2亿余元的货款。在此不利的情况下，我们接受委托协助客户参与了案件的二审程序，对诉讼策略进行了调整。一方面，我们没有从传统的买卖合同纠纷入手，而是以电子商务交易的特点为出发点，挖掘了电子商务本人行为原则这一电子商务交易中特有的原则，并以此为突破口，绕过已有类授权文件的形式及内容之争，直接从交易的本质特点进行切入，通过从相关判例中提炼立法及司法精神，向法院强调了电子商务交易中的本人行为原则，对电子商务交易中控制账号密码的一方当然地被视为代账户持有人进行行动，而无需书面授权这一观点进行深入阐释；另一方面，我们也重新梳理了案件的证据，并从中挖掘出不少细节，证明了第三方对于电子商务

平台上账号的控制，是经过争议相对方许可和确认的，且第三方几次通过QQ对订单的修改均得到了相对方的认可，由此推翻了相对方的整体逻辑，使二审法院直接改判客户不承担任何责任。

**ALB：在管理团队的过程中，您在青年律师身上最看重的特质有哪些？他们应该着重培养哪些技能和品质？**

**谢律师：**首先，青年律师要有责任心。只有负责任的律师，才能从客户的角度去思考问题，尽最大可能为其解决问题，获得认可；第二，要有细致严谨的工作态度。这不仅体现在对文件处理上的细致，我更看重的是在案件中对细致点的关注度和挖掘能力。因此，我认为青年律师应该着重培养严谨负责的工作态度，并培养自身对细节的敏感度和把握度。青年律师还要在平时的工作中注意积累经验，反思工作方法，培养发现问题和细致点的思维能力，从而提升自身的职业素养和专业能力。

**ALB：您对争议解决业务的未来有何怎样的展望？您自身未来有何职业愿景和目标？**

**谢律师：**争议解决业务未来将会向专业化、行业化进行发展，专业分工越来越强，这对诉讼律师的专业化要求也会越来越高。对于自身未来的职业愿景和发展目标，首先当然是做好自己的本职工作，尽心负责地服务好每个客户；同时我国法律法规在不断地更新，我会在处理好每个案件的同时，不断地学习，带领团队对新法新规进行研读，紧跟时代的步伐，提升专业化的高度、精度，从而增强自身以及团队的行业竞争力。

# SAFER HAVENS

## 更安全的避风港

With 2020 looking shaky, offshore jurisdictions can provide much-needed shelter and support for international deals, listings, incorporations and restructurings.

2020年伊始即呈现动荡局面，离岸司法管辖区或将为国际交易、上市、公司注册以及重组提供必需的庇护和支持。

BY ASIAN LEGAL BUSINESS 作者：亚洲法律杂志

■ The year 2019 was an eventful one: the Hong Kong protests, Brexit, the trade wars between the U.S. and China, and Japan-South Korea, and Trump's impeachment were just a few of the events that left their mark on those 12 months.

And if the start of 2020 is anything to go by, we are in for a wild ride over the new decade as well. The year kicked off with unrest in the Middle East between Iran and the U.S., rising oil prices, U.S.-China trade deal developments, a new respiratory disease virus emerging in China, the Jakarta floods, and the Australian bushfires. And of these happened in just the first month.

James Noble, partner and head of litigation, insolvency and restructuring practice of Asia in Carey Olsen's Singapore office, believes many variables could create uncertainty and challenges in the second roaring 20s.

"There is a fairly long list of candidates but in my view, the most important ones are the tensions caused by the U.S.-China trade war, China's economic slowdown, the civil unrest in Hong Kong and the impending U.S. election. The first three of these, in

particular, are contributing towards increased levels of distressed debt and the need for companies to take measures to deal with aggressive creditors," he says.

Noble thinks a significant proportion of those measures will occur in the Cayman Islands and the British Virgin Islands, given the high levels of inbound and outbound investment that both jurisdictions have with Mainland China and the U.S.

Raymond Ng, Hong Kong-based corporate partner at Harneys, sees clients already cautious about what lies ahead.

"We have seen some clients taking a more conservative approach at the beginning of 2020 in light of the continuing uncertainties in the world from the U.S.-China trade war to the recent escalating tension between Iran and the U.S.," says Ng.

"Some also fear the political crisis in Hong Kong may continue," he adds.

Given that the Hong Kong protestors have been asking for "five demands, not one less," it would seem likely that Ng's assessment of a political impasse may be correct.

■ 2019年堪称多少之秋——香港抗议，英国脱欧，中美贸易战，日韩冲突，特朗普被弹劾——这些仅仅是这12个月里发生的众多事件中几个令人印象特别深刻的事件。

2020年——新十年的开始——其开局或许预示着这将是一段“疯狂”的旅程。新年伊始，美国和伊朗关系恶化，中东局势动荡，油价上涨，中美贸易协定发展，中国“新冠肺炎”疫情，雅加达洪水，澳大利亚丛林大火；而这些全部都发生在2020年的第一个月份。

凯瑞奥信律师事务所新加坡办事处合伙人及亚洲诉讼、破产和重组业务负责人James Noble认为，飞速发展的21世纪的第二个十年里存在许多变数，将带来更多不确定和挑战。

“所涉因素相当多，但在在我看来，其中造成影响最大的是中美贸易战，中国经济放缓，香港乱局，以及即将举行的美国大选；尤其是前三个，促使不良债务水平升高，使企业必须采取措施应对反应激进的债权人，”他说。

Noble认为，鉴于开曼群岛和英属维尔京群岛与中国大陆和美国都存在大量的出入境投资，这些措施中很大一部分都将在这两个司法管辖区实施。



Besides Hong Kong, it seems the global situation remains uncertain on multiple fronts as we head into this new decade.

The Economist Intelligence Unit (The EIU) recently published its predictions for the year ahead. In the report, the advisory firm says it believes that the coming year is likely to be more manageable for China but warns that the broader U.S.-China relationship remains on a course of increasing competition.

“In 2019, the U.S.-China trade war undoubtedly had an impact on the cross-border M&A deal flow. If the U.S. and China do find a workable compromise, we would expect that activity levels will improve,” says Nathan Powell, partner and global head of corporate legal services in Ogier’s Hong Kong office.

In the business world, the EIU says consumer-facing sectors remain the main bright spots even as growth opportunities are becoming more niche.

衡力斯律师事务所香港办事处公司事务合伙人Raymond Ng表示，客户已经对未来前景持谨慎态度。

Ng说：“由于全球呈现持续的不确定性——从美中贸易战到最近的美国和伊朗之间的紧张局势升级，我们看到，2020年伊始，一些客户已经开始采取更为保守的做法。”

“还有一些人担心香港的政治危机可能还会继续，”他补充道。

香港示威者提出五大诉求，并强调“五大诉求，缺一不可”；由此看



However, the outlook for China's technology industry is less optimistic by contrast. The EIU believes the cooling that was shown in the segment last year will extend into 2020.

They also named other black swans in the year ahead. This includes unrest in the Middle East; an unsteady oil market; financial strains that will continue to plague markets; and the failures of small companies and banks in 2019 possibly resulting in a major entity defaulting in 2020.

"Notwithstanding the challenges in 2019, capital markets activity was strong, and we anticipate that trend to continue into 2020. Our dispute resolution and insolvency teams in Hong Kong will continue to expand to meet client demand for complex British Virgin Islands (BVI) and Cayman work," says Powell.

## SHELTER FROM THE STORM

The volatility of world events has definite ripple effects in different countries and markets.

But through it all, many believe offshore jurisdictions provide a safe harbour for international deals, listings, incorporations, and restructurings against market uncertainty.

"The BVI and Cayman Islands provide political stability and neutrality, with independent, transparent and business-minded governments and a legal system derived from English common law. They have secure economies without any exchange or investment repatriation controls," says Ng.

Furthermore, Ng believes these jurisdictions offer light but effective regulation from a business regulatory perspective.

"Except for certain businesses such as banking, hedge funds and insurance, the BVI and Cayman Islands do not seek to materially regulate the conduct of business of offshore companies, provided that they are not conducting substantial domestic business within the territories," says Ng.

That's always a plus for companies looking to seal deals without the burden of unnecessary red tape but in an environment with systemic protection

in place. This situation is due to offshore jurisdictions having a keen understanding of what is needed to expedite and ease major trans-national business affairs.

"Offshore jurisdictions are seasoned veterans of high-profile, cross-border transactions and restructurings. Part of their appeal as financial services hubs is that they have stable economies, political certainty and the availability of laws and products which provide flexibility for achieving the desired commercial objectives," Noble says.

In addition, Noble says there are sophisticated and effective court systems in place for obtaining the necessary relief, when required.

"Those courts can be used to resolve disputes at the Topco level of the structure, which minimises the impact on the underlying business being conducted by the subsidiaries. For example, provisional liquidators, receivers or inspectors are frequently appointed over offshore entities to safeguard company assets and to investigate the company's affairs," he says.

"This can be especially helpful in places like the Cayman Islands where provisional liquidation provides a moratorium on claims against the company and will give it interim protection against disgruntled creditors and shareholders."

Essentially, Powell says the BVI and Cayman are "tried and tested jurisdictions that are familiar to market practitioners in the region, and they provide a robust, flexible and clear legal framework to structure transactions."

"Despite the prevailing global uncertainty, we have continued to see growth in our Asia revenue and strong demand across our practice areas," says Powell.

## BENEFITS AND CONSIDERATIONS

There is demand for a reason. In fact, some might say there are a number of reasons; many lawyers from offshore law firms can attest to how working in these jurisdictions has benefitted their clients.

"Most of the disputes that I am involved with arise out of some form of economic pressure on either the business or on the shareholders that own it. For

来, Ng对香港政治僵局的评估可能是正确的。

除香港外,在进入21世纪的新十年之际,全球形势似乎在多个方面呈现不确定局面。

经济学人智库(Economist Intelligence Unit, EIU)最近公布了对未来一年的预测。该咨询公司在报告中称,未来的一年,中国的局面可能会更加可控,但同时警告说,中美关系将在更广泛的方面竞争加剧。

"2019年,中美贸易战无疑对跨境并购交易流产生了影响。如果中美两国确实找到了可行的折衷方案,我们预计活动水平将会有所提高,"奥杰律师事务所香港办事处合伙人兼企业法律服务全球负责人Nathan Powell说。

EIU表示,在商业领域中,尽管增长机会的范围越来越小,面向消费者的行业仍然是主要亮点。相比之下,中国科技产业的前景并不乐观。EIU认为,去年该领域的降温将延续至2020年。

他们还提到了未来一年中其他几个“黑天鹅”事件,其中包括:中东动荡局势,不稳定的石油市场,金融压力将继续困扰市场,2019年小型企业和银行的倒闭可能导致大型实体在2020年违约。

"尽管2019年面临挑战,但资本市场活动依然强劲,我们预计这一趋势将持续到2020年。我们在香港的争议解决和破产团队将继续扩大,以满足客户对复杂的英属维尔京群岛和开曼群岛工作的需求,"Powell说。

## 避难所

全球局势动荡在不同的国家和市场都造成明确的涟漪反应。

但许多人自始至终都认为离岸司法管辖区为国际交易、上市、公司注册和重组提供了安全港,以应对市场的不确定性。

"英属维尔京群岛和开曼群岛具有独立、透明和拥有商业头脑的政府以及源自英国普通法的法律体系,因而提供了政治稳定和中立。这些地区经济稳定,没有任何外汇或投资汇回方面的管制,"Ng说道。

此外,Ng认为,就商业监管而言,这些司法管辖区实施灵活而有效的监管。

example, I recently helped a company block actions taken by an unhappy shareholder to try and force a buy-out of their shares," says Noble of his experiences.

"In another case, I successfully challenged an injunction that had been brought to prevent a company from undertaking certain activities, the effect of which would have been crippling to the business."

Other fringe benefits make offshore jurisdictions a worthwhile consideration.

For starters, working in offshore jurisdictions can simplify some potentially complicated restructuring.

"We have been advising on some significant group reorganisations involving the migration and consolidation of various subsidiary holding companies to streamline the number of offshore jurisdictions used," says Powell.

"For large international groups with complex structures, rationalising the group structure into fewer jurisdictions has reduced compliance costs and management time. We have seen the continued use of offshore structures in these types of reorganisation as they still offer a robust and familiar legal framework."

And, of course, there are the tax benefits offshore locations are known for.

"As they are tax neutral jurisdictions, no taxes would be imposed in the BVI or Cayman Islands on transactions involving BVI or Cayman Islands companies," says Ng.

Nonetheless, he recommends that prospective clients seek tax advice on their tax position, as any income received from BVI or Cayman Islands companies in the form of dividends may be subject to tax in the jurisdiction in which the shareholder is a tax resident.

#### GREATER FLEXIBILITY

That's not the only thing that prospective clients need to be aware of regarding operating offshore.

"Operating offshore provides clients with a much greater degree of flexibility in how they set up their business. However, clients should also be aware that by using offshore entities in their structures, they need to be prepared to resolve any issues which

arise in the offshore courts," says Carey Olsen's Noble.

The offshore regulations also continue to evolve with the times to better serve and protect those that operate within them.

"Both the BVI and Cayman continue to adopt and update legislation to ensure that they adhere to the very best international regulatory practice and standards. Last year saw the intro-

**"Both the BVI and Cayman continue to adopt and update legislation to ensure that they adhere to the very best international regulatory practice and standards."**

— Nathan Powell, Ogier

**"英属维尔京群岛和开曼群岛都在不断进行新的立法并对现有法律进行更新，以确保符合最佳国际监管惯例和标准。"**

— Nathan Powell, 奥杰律师事务所

duction of economic substance legislation in the BVI and Cayman and data protection rules in Cayman with legislation to follow this year in the BVI," says Powell.

He claims his team has kept in step with the developments and spent time ensuring that clients are up to speed on these developments and prepared for any changes that are required.

"As a result, clients have generally

"除了银行、对冲基金和保险等业务外，英属维尔京群岛和开曼群岛没有采取任何措施对离岸公司的业务行为进行实质性的监管，但前提是这些企业不能在离岸司法管辖区内开展实质性的国内业务，"Ng说。

没有不必要的繁文缛节，却拥有规范的保护系统，这为希望顺利达成交易的企业提供了理想的环境；之所以能够形成这样的条件，是由于离岸司法管辖区对于如何加快和简化重大跨国业务相关的事务有着深刻的了解。

"离岸司法管辖区在重大的跨境交易和重组方面拥有丰富的经验；之所以能够成为金融服务中心，部分原因在于其具有稳定的经济、政治确定性以及行之有效的法律和可行的产品，这些为实现预定的商业目标提供了灵活性，"Noble说。

此外，离岸司法管辖区还拥有成熟而有效的法院系统，可以在需要时获得必要的救济，Noble补充道。

"这些法院可用于解决结构顶层的争议，从而将对于子公司所开展的基础业务的影响降至最低。例如，临时清算人、接管人或检查人员经常被任命到离岸实体，以保护公司资产并调查公司事务，"他说。

"这在开曼群岛这样的地方特别实用，因为临时清算可以暂停对公司的债权，并将为公司提供临时保护，使其免于受到心怀不满的债权人和股东的侵害。"

基本上来说，英属维尔京群岛和开曼群岛是"经过考验的司法管辖区，为该地区市场从业人员所熟悉，而且为构建交易提供了稳健、灵活而又明确的法律框架，"Powell说道。

"虽然全球普遍存在不确定性，但我们看到，我们的亚洲收入持续增长，并且在所有的业务领域都存在强劲的需求，"Powell表示。

#### 好处和注意事项

有需求是有原因的。有些人可能会说原因是多方面的。离岸律师事务所的许多律师们可以证实，他们在离岸司法管辖区的工作令他们的客户受益。

"我所接触的大多数纠纷都是由企业或者拥有企业的股东受到某

been able to adapt quickly and without undue impact on their operations," says Powell. "Clients need to understand these developments and how to deal with any changes with minimal impact."

Powell believes lawyers need to work closely with clients to help them understand and navigate the impact of the economic substance legislation and the new data protection rules.

Of course, offshore law firms are the main source of advice for companies that have any offshore dealings.


"Offshore firms are well placed to advise companies on better ways to arrange their affairs as well as to address complex and contentious issues which occur in their cross-border operations," says Noble.

"Alternatively, companies may have claims against offshore entities that can't progress because of a lack of available information about those entities, such as the identity of their directors, shareholders or assets. In those situations, offshore litigators have an array of tools at their disposal for obtaining that information, which can be particularly useful for breach of fiduciary duty claims, conspiracy claims, and asset tracing," he adds.

For Ng, there are other reasons why companies should consider the services of offshore law firms.

"Offshore jurisdictions remain popular destinations for those seeking flexibility and certainty when it comes to establishing a company, fund or trust and, as a result, we are continuing to see a surge in demand for offshore legal services," he says.

Offshore law firms are quickly growing alongside their clientele to meet all their needs.

"Clients are becoming increasingly sophisticated and offshore firms have responded by offering a full spectrum of services to meet all of their legal needs, including banking and finance, corporate, investment funds, litigation, insolvency and restructuring, private wealth, and regulatory affairs and tax," says Harneys' Ng, who adds that his firm prides itself on being able to provide a true "one-stop" service to all of their clients. 

种形式的经济压力。例如，我最近帮助一家公司阻止了一位不满的股东采取行动——这位股东试图强行收购他们的股票，"Noble以他的亲身经历告诉记者。

"在另一个案例中，我成功地挑战了一项阻止一家公司开展某些活动的禁令，该禁令的后果将会对该公司的业务造成损害。"

此外，离岸司法管辖区还拥有其他的附带福利。

首先，在离岸司法管辖区可以简化一些潜在的复杂重组。

"我们一直在为一些大的集团重组业务提供法律咨询服务，这些重组活动涉及到各子公司的迁移和合并，从而精简所使用的离岸司法管辖区的数量，"Powell说。

"对于结构复杂的大型跨国集团，简化集团结构，减少所涉及的司法管辖区，能够降低合规成本和减少管理时间。根据我们以往的经验，这些类型的重组中往往使用离岸结构，因为这样的结构能够提供稳健、常见的法律框架。"

当然，离岸地区的税收优惠也是众所周知的。

"由于是税务中立的司法管辖区，因此在英属维尔京群岛或开曼群岛，不会对涉及英属维尔京群岛或开曼群岛注册的公司的交易进行征税，"Ng说。

虽然如此，他还是建议潜在客户就其税务状况寻求税务方面的建议，因为以股息形式从英属维尔京群岛或开曼群岛公司获得的任何收入都有可能需要在股东作为税收居民的司法管辖区纳税。

## 更大的灵活性

但税务方面的问题并不是潜在客户在进行离岸经营时需要注意的唯一问题。

"离岸经营为客户在其业务方面提供了更大程度的灵活性。然而客户还应该注意，在其结构中使用离岸实体，他们就需要做好准备应对任何与离岸法院相关的问题，"凯瑞奥信的Noble说。

离岸地区的监管政策也随着时代的发展而不断发展，旨在为该地区的经营者提供更好地服务和保障。

"英属维尔京群岛和开曼群岛都在不断进行新的立法并对现有法律进行更新，以确保符合最佳国际监

管惯例和标准。去年，英属维尔京群岛和开曼群岛均引入了经济实质法，开曼群岛还引入了数据保护规则，今年在英属维尔京群岛也将实施相关立法，"Powell说。

他表示其团队与离岸地区的发展保持同步，并且花时间确保其客户能够跟上这些发展的速度，准备好按照要求作出改变。

"因此，我们的客户通常能够迅速适应变化，而不会对其运营造成不利影响。客户们需要了解这些发展，以及如何应对由此带来的变化，从而把影响降到最低，"Powell说。

Powell认为，律师需要与客户密切合作，帮助他们了解和掌握经济实质法和新数据保护规则所带来的影响。

对于进行离岸交易的公司来说，离岸律师事务所当然是他们主要的咨询服务提供者。


"离岸律所有全备的能力为企业提供建议，帮助他们更好地安排事务，解决其跨境业务中出现的复杂、有争议的问题，"Noble说。

"又或者企业可能需要对离岸实体提出索赔，但由于缺乏这些实体的可用信息，例如其董事、股东或资产的身份，因而无法取得进展。在这种情况下，离岸诉讼律师可以利用一系列工具来获取这些信息，这在违反信托义务索赔，共谋指控和追查资产方面尤为有用，"他补充说。

Ng表示，企业还可以在其他方面寻求离岸律师事务所的服务和帮助。

他说："谈到设立公司、基金或信托机构，对于那些寻求灵活性和确定性的人来说，离岸司法管辖区仍然是热门的目的地；因此，我们看到对离岸法律服务的需求持续大幅增加。"

离岸律师事务所与其客户一起迅速成长，旨在满足他们的所有需求。

衡力斯的Ng说："面对越来越老练的客户，离岸律所做出了回应——通过提供全方位的服务来满足其所有的法律需求，包括银行和金融，公司，投资基金，诉讼，破产和重组，私人财富以及监管和税务方面的事务。"随后他又补充道，衡力斯以能够为其所有的客户提供真正的"一站式"服务而感到自豪。 



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# LAW AWARDS 2020

Nomination for SSQ ALB China Law Awards 2020 is underway. Nominate your firm/team to win the awards which symbolizes the leading position of Chinese legal profession!

SSQ 二零二零年 ALB 中国法律大奖提名正在进行中。立即提名您的律所或法务团队，去赢得象征着中国法律界领先地位的奖项！

Recognizing your organization's accomplishments over the past year, ALB would like to invite you to join the SSQ ALB China Law Awards 2020 and nominate your own legal team or that of another organization that you have worked with in the past, for one or more of the 46 categories we will be presenting on the awards night. Joining the nomination process and attending 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.

此次 SSQ ALB 中国法律大家涵盖 46 个奖项，将由数十名专业评审评选出获奖者。您可以提名自己的团队、或者提名在过去一年中与您有工作交集的其它组织或团队，去赢得 46 个奖项中的一个或多个奖项。对于律师事务所和公司法务组来说，参与提名并出席颁奖盛典不仅仅可以帮助您建立起极具竞争力的人脉资源，同时也可以向整个法律界展示您及您团队的专业程度与领先地位。

For more information, kindly visit 更多活动信息欢迎访问本次活动页面  
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