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亚洲法律杂志 - 中国版 CHINA

ALB

MARCH 2019
CHINA EDITION

ALB CHINA 2019



TOP 15 M&A LAWYERS

中国十五佳并购律师

GENERAL COUNSEL DISCUSS THEIR
CYBERSECURITY CHALLENGES

总法谈网络安全挑战

ARBITRATION:
THE ENFORCEMENT CONUNDRUM

仲裁：执行难题

CHINA SETS UP
BANKRUPTCY COURTS

中国设立破产法庭

Shanghai

In-House Legal Summit 2019

上海企业法律顾问峰会

20 June 6月20日 - Shanghai 上海

HOT TOPICS 热点话题

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Wanhuida Peksung IP Group
商标保护与专利诉讼的实务分享 - 万慧达北翔
- Non-Competition & Trade Secrets Protection - Wintell & Co.
竞业禁止与商业秘密保护 - 瀛泰律师事务所
- Reviewing the important clauses of business contract from the
litigation practice in China - East & Concord Partners
从中国的诉讼实践审视企业商务合同的某些重要条款 -
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18 2019 ALB China Top 15 M&A Lawyers 2019 ALB China 十五佳并购律师

China is one of the most active countries for M&A deals globally. As a result, M&A lawyers are in high demand, with companies requiring their services throughout the lifecycle of a deal. In this annual list, ALB picks 15 of the finest M&A lawyers in the country.

中国是全球并购交易最活跃的国家之一，对并购律师的需求量很大，企业也希望并购律师能参与其交易的整个周期。在这份年度榜单中，ALB评选出中国十五位最佳并购律师。

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Compared to other industries, financial institutions have always assumed higher responsibilities and obligations in terms of cybersecurity and data protection. With the digital economy booming, the risk control and compliance management awareness of financial institutions has been pushed to unprecedented heights.

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络安全与数据保护方面历来承担更高责任与义务。伴随数字化经济的迅猛发展，他们的风控意识与合规管理更被推到一个前所未有高度。

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RANAJIT DAM
Managing Editor,
Asian Legal Business
Thomson Reuters

Outbound investments from Chinese companies are expected to pick up this year. Most of the deal-making is happening in sectors aligned with the Belt and Road Initiative — China's massive plan to connect Asia, Europe, the Middle East and Africa with a vast logistics and transport network. A number of other factors are in place – the sound fundamentals of the economy, China's push to take a more central role in global affairs, financially well-resourced private sector and state-owned companies and a set of newly implemented rules and guidelines for vetting outbound deals.

As a result, China's M&A lawyers are much in demand, and ALB has once again decided to honour them by releasing a list of the country's best practitioners in the space. As our cover story highlights, these lawyers have not only demonstrated a solid foundation of knowledge and rich practical experience, but also clear ideas and creative solutions. In the champagne hour of Chinese M&A, we raise a toast to these industry champions.

中国公司的境外投资预期今年升温。大多数交易可能会发生在“一带一路”倡议（一项中国提出的通过强大的物流和交通网络连接亚洲、欧洲、中东和非洲的倡议）下的行业内。当然还有其他一些有利的因素，例如经济的良好运转、实力雄厚的私有经济和国有经济，以及新近颁布的境外投资管理方法和指南。

中国对并购律师的需求是不言而喻的，为再次表彰优秀的并购行业执业者，ALB今年公布了中国最佳并购律师榜单。正如我们的封面文章所言，这些律师不仅展现了坚实的知识基础和丰富的执业经验，还奉献出清晰的思路和有创意的解决方案。在中国并购业的辉煌时刻，我们也祝贺这些获奖者。



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ASIA CROSS-BORDER FORUM

亚洲跨境论坛

21 March 2019 - Shanghai

2019 ALB Asia Cross-Border Forum will bring together thought leaders from all across Asia to discuss trends and developments in cross-border transactions. Connecting China companies with the professional services in Asia, peers will share their experiences and best practices that will provide thoughtful insights and actionable advice to In-House legal teams in China learn how to navigate key risks inherent in cross-border transactions and deliver better outcomes for their businesses.

Conference highlights include:

- Opportunities and Challenges Perspective from Chinese Cross-border M&A
- Trend and Risk Mitigation of Outbound Investment
- Opportunities and Challenges for Outbound Investments in Asia
- Cross Border Data Privacy Protection
- Build Effective Cross Border Compliance System
- Investment protection and dispute resolution
- Panel: " Belt and Road" Investment Cases Sharing

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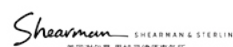
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TACKLING BLOCKCHAIN

区块链监管

In the past few years, the nascent blockchain technology has evolved to become widely implemented in dozens of different areas and its popularity is only increasing. Governments across the world are looking for ways to regulate it, and China is no different.

在过去几年里，区块链这一新兴技术已在数十个领域得到广泛应用，且受欢迎度越来越高。许多国家的监管机构都在尝试规范这一新技术，中国也不例外。

BY INES YANG



China is getting serious about blockchain. In January, the country's Cyberspace Administration announced new regulations related to distributed-ledger technology; this came some months after it issued public alerts related to risks associated with virtual currency and blockchain on 24th August 2018. It even banned ICOs in early September.

It hardly has a choice. In the past few years, blockchain technology has proliferated rapidly across the world, and now being used in a variety of industries. This means that governments cannot ban it, but at the same time, taking a hands-off approach will be far too risky.

"As expected, the common ground will be regulation. Blockchain and cryptocurrencies are too big for governments to ignore or treat in a laissez-faire manner. Equally blockchain and cryptocurrencies are too big to just prohibit. Governments will not wish to impede the development of these new technologies," said Mark Schaub and Stanley Zhou, partners, and senior foreign legal consultant David Hong of King & Wood Mallesons (KWM) in a recent client alert.

Many jurisdictions in the world have already been making meaningful progress in the regulation of blockchain technology, or included it under current regulation. For example, in September 2017, the SFC created a regulatory sandbox for security token exchanges in Hong Kong market.

"Blockchain technology is not itself regulated in Hong Kong. This makes Hong Kong a vibrant development market. However, there are three caveats to this: it has components that are regulated – for example, data that is recorded on a distributed ledger can engage privacy laws; it also has use cases that are regulated, such as tokenised securities and third party custody solutions; and certain users are regulated – such as banks deploying blockchain as part of their front or

back office functions," said Urszula McCormack, partner and Regulatory / Emerging Technology specialist at KWM.

"Clearly, while blockchain is not just of application and relevance to the financial services industry, we are seeing a lot of interest from financial regulators in the technology. Currently, there's a framework of laws developing across territories and regions on how financial services businesses should look at blockchain, how shadow infrastructure relies on external providers, cloud providers and other technology providers, and the types of guarantees and protections that need to be in place before they share client information with these third parties and build technologies with them. Concern around systemic risk and financial services is a big theme globally," noted Jonathan Kewley, partner and co-head of Clifford Chance's technology group.

According to Kewley, the other global trend is artificial intelligence and the fact that blockchain solutions are often incorporating AI into their platforms makes things complicated. "We know that blockchain is this kind of chain of data that you can't break and split. Then you add AI which may be working in the background, for example, by making decisions based on that data, which may exclude certain individuals or exclude certain groups of people based on the data. That raises concerning questions in relation to prejudice and bias, about how the algorithms actually work, about transparency, and what's happening with their information. Today there are many different areas of law which are starting to be triggered with data at the core of these issues. Data is the universal theme here, but it can be data and financial services, data and AI, and data and anti-trust," he said.

EMBRACE THE UNCERTAINTY

Cybersecurity from a blockchain perspective is a systematic risk which never really goes away. And these ongoing risks evolve constantly. Lawyers

working in areas related to blockchain thus need to keep learning and adapting.

“Blockchain is a truly global product because the solutions that form part of that platform, will in all likelihood will be across countries, across regions, multiple datasets, multiple parties – basically a global ecosystem,” said Kewley, “Again, your outlook cannot just be one country: Hong Kong, London or New York. You have to have a global risk perspective.”

Kewley sees the importance of combining legal teams with technologists early on, but points out that making the combination work in the right way can be very challenging for some clients and some law firms too, because an innovation team is naturally very fast moving and urgent, and wanting to come to a result. And often the lawyer’s instinct can be to slow down, and to create frameworks and structures and manage risk.

“These two competing mindsets need to come together and provide solutions. Culturally, we are helping a lot of clients get over that hurdle,” said Kewley.

McCormack added that, even though certain grey areas remain, it’s important for lawyers to take a position and then outline the areas of risk, to let clients make informed decisions. Good advice means investing the time to understand the technology and be willing to ask a lot of questions. Engaging with software developers and innovators at a very granular and practical level is the only way to give relevant advice and help clients create sustainable business models.

“Whilst the technology is relatively new, there is a lot of great existing law that we can draw upon to give practical advice. For example, if someone wishes to make a market in unregulated digital assets, it’s useful to look at consumer protection laws and the statutory market misconduct regime for securities to help them build a credible framework,” she said. ALB

■ 中国政府开始加强对区块链的监管。2019年1月10日，中国国家互联网信息办公室公布了新的区块链信息服务管理规定，并于2月15日起正式施行。这是继2018年8月24日银保监会、中央网信办、公安部、人民银行和市场监管总局联合发布《关于防范以“虚拟货币”“区块链”名义进行风险集资的风险提示》的另一重磅监管文件。在此之前，2017年9月中国政府出台了严厉禁令，取缔通证发行引发的一切非法集资和诈骗活动。

对于中国监管机构来说，加强区块链的监管势在必行。区块链这项革命性技术在过去几年里发展迅猛、在很多行业领域得到广泛应用，并对全球经济产生了重大影响。政府再想一味取缔或禁止是不可能的了，但如果采取放任不管的态度，更意味着巨大风险。

“一般而言监管会是通常做法，区块链和加密货币对政府来说很重要，不可能采取放任不管的态度。同样，区块链和加密货币也已经足够大到无法被完全禁止，政府不希望阻碍这些新技术的发展。”金杜律师事务所合伙人肖马克律师、周昕律师、资深外国法律顾问David Hong在近期一份法律简讯中谈到。

从全球层面来看，越来越多的法域开始对区块链做出监管指引或将区块链纳入已有监管体系之下。2017年9月29日，香港证监会和保监会效仿英式监管模式就推出了“监管沙盒”。

“香港对区块链技术本身没有严格监管的机制，因此极大释放了区块链技术在香港的发展潜力。但有三点值得注意：第一，监管边界。比如，记录在分布式分类账上的数据可能涉及隐私法保护范畴；第二，特定监管情形。也有使用曾受监管的案例，比如代币型证券和第三方托管解决方案；第三，特定用户受到监管。比如在前端或后端利用区块链技术的银行将受到监管。”金杜律师事务所合伙人、监管与新兴技术专家邬素兰律师表示。

“显然，尽管区块链并非仅应用于金融服务业，也并非仅与金融服务业相关，但我们正看到越来越多的金融监管机构对这项技术表现出浓厚兴趣。目前正在发展一个跨法域和地区法律框架，以应对诸如如何在金融服务业务中利用区块链技术，影子基础设施如何依托外部提供商、云服务提供商等其他技术提供商，以及在将客户信息共享给第三方和与第三方建立技术合作之前，应确保哪些担保和保护措施到位等问题。金融服务和系统性风险是全球性问题。”高伟绅律师事务所科技业务团队联席负责人和伙

人Jonathan Kewley指出。

在Jonathan看来，另一个全球趋势是人工智能在全球层面的应用，而实践中的通常做法是将人工智能嵌入区块链方案中，这将使得问题更加复杂。“我们知道区块链是一种将数据进行链接从而使数据链无法被破坏或分离的技术。如果，举例来说，将人工智能技术嵌入区块链后台，通过对相关数据进行决策，就能根据那些数据将部分个人或团体排除在外。这将产生偏见和歧视的问题，以及算法的可靠性、透明度、以及数据本身可信度的问题。如今，很多领域的立法都受到了影响，而数据是所有这些问题的核心。数据是一个共同的主题，具体来说可能是数据和金融服务、数据和人工智能、数据和反垄断等。”

拥抱不确定性

从区块链角度看，网络安全的系统性风险无法做到根除，且这个风险持续在发生变化。对于区块链律师来说，除了紧跟技术最新态势、不断学习，别无他选。

Jonathan告诉ALB，“区块链是真正的全球化产物，构成该平台的解决方案很可能是跨国家、跨地区、包含多个数据集及多个参与方的，几乎构成一个全球生态系统。因此，看待区块链问题，不能局限在某一国家或地区，比如香港、伦敦或纽约，而必须具有全球风险视角。”

在合作模式上，Jonathan强调律师团队与技术人员应尽早结合，但同时指出，对于一些客户和律所而言，二者实现无缝合作将极具挑战：技术创新业务团队天然的习惯快速行动，有很强的紧迫性，渴望看到成果；而律师会本能性的放缓进程，以创建框架和结构并进行风险控制。

“这两种看似矛盾的思维路径如何扬长避短、各取所长，在高伟绅律师事务所是有着成熟且行之有效的解决方案的，”Jonathan指出。

邬素兰律师也补充道，尽管立法相对滞后产生的“灰色地带”客观存在，但作为区块链领域的律师需要给客户清晰且阐明各种潜在风险的法律意见，协助客户做出合适的商业决定。这就要求律师投入大量时间去研习技术、追问技术背后的每一个问题，并与技术开发商和业务创新人员保持全面及深入的沟通。

“虽然区块链技术相对较新，现行法律中仍能找到合适的规定来解决客户当下面对的问题，比如要开辟不受监管的数字资产市场，研究消费者保护法和证券市场不当行为法定制度能起到一定助益。”邬律谈到。 ALB

DEALS 交易

\$2.74 BLN

New World Development's acquisition of FTLife Insurance
新世界发展收购富通保险

Deal Type: M&A

Firms: Dentons; Sullivan & Cromwell
Jurisdictions: China, Hong Kong, Taiwan

交易类型：并购
参与律所：大成律师事务所；美国苏利文·克伦威尔律师事务所
管辖地：中国大陆、中国香港、台湾地区

\$2 BLN

Softbank Group's investment in WeWork Cos.
软银向WeWork再投资20亿美元

Deal Type: PE, M&A

Firms: Morrison & Foerster; Zhong Lun Law Firm; Skadden Arps Slate Meagher & Flom
Jurisdictions: China, Hong Kong, Japan, U.S.

交易类型：私募、并购
参与律所：美国美富律师事务所；中伦律师事务所；世达国际律师事务所
管辖地：中国大陆、中国香港、日本、美国

\$876 MLN

EQT's minority investment in Vbill
殷拓集团投资随行付

Deal Type: Investment

Firms: Clifford Chance
Jurisdictions: Hong Kong

交易类型：投资
参与律所：高伟绅律师事务所
管辖地：中国香港

\$650 MLN

NIO's issuance of convertible bond
蔚来汽车拟发行6.5亿美元可转债

Deal Type: Securities

Firms: Maples and Calder
Jurisdictions: Hong Kong

交易类型：证券
参与律所：迈普达律师事务所
管辖地：中国香港

\$500 MLN

Sino-Ocean Land Treasure IV's issuance of guaranteed notes
远洋地产宝财V有限公司发行5亿美元担保票据

Deal Type: Securities

Firms: Maples and Calder
Jurisdictions: Hong Kong

交易类型：证券
参与律所：迈普达律师事务所
管辖地：中国香港

\$480 MLN

Taubman Centers' sale of interests in three shopping centres in Asia to Blackstone
塔博曼出售购物中心股权给黑石

Deal type: M&A

Firms: Baker McKenzie
Jurisdictions: Hong Kong, China, India, South Korea, U.S.

交易类型：并购
参与律所：贝克·麦坚时国际律师事务所
管辖地：中国香港、中国大陆、印度、韩国、美国

\$394 MLN

Shanghai Junshi Biosciences' IPO
上海君实生物医药赴港上市

Deal Type: IPO

Firms: Herbert Smith Freehills; Jia Yuan Law Offices; Jones Day; Tian Yuan Law Firm
Jurisdictions: China, Hong Kong

交易类型：上市
参与律所：史密夫斐尔律师事务所；嘉源律师事务所；众达律师事务所；天元律师事务所
管辖地：中国大陆、中国香港

\$250 MLN

Maoyan Entertainment's IPO
猫眼娱乐赴港上市

Deal Type: IPO

Firms: Clifford Chance; Commerce & Finance Law Offices; Jingtian & Gocheng; Kirkland & Ellis
Jurisdictions: China, Hong Kong

交易类型：上市
参与律所：高伟绅律师事务所；通商律师事务所；竞天公诚律师事务所；凯易国际律师事务所
管辖地：中国大陆、中国香港

CHINA SETS UP 11TH MARITIME COURT IN NANJING

南京海事法院获批 将成为中国第11家海事法院

China has approved the establishment of the country's 11th maritime court in the city of Nanjing in eastern Jiangsu Province.

Maritime courts are special courts set up to try first-hearing maritime or sea-shipment cases for the purpose of exercising judicial jurisdiction over maritime affairs. The other ten maritime courts are in Guangzhou, Shanghai, Qingdao, Tianjin, Dalian, Wuhan, Haikou, Xiamen, Ningbo and Beijing.

Like in the previous ten courts, the scope of cases tried by the new court includes maritime infringement disputes, maritime contract disputes,

maritime and navigable waters development and utilization and environmental protection related dispute cases, and other maritime disputes.

Since the first maritime court was established in 1992, the ten courts so far have set up 39 tribunals in major port cities within their jurisdictions to conduct on-site hearings. According to Chan Yang, presiding judge of the Shanghai Maritime Court, "this has formed specialized maritime adjudication infrastructure covering every port and the entire territorial waters of China, from Heilongjiang River in the north to the islands of Xisha, Zhongsha, Nansha and Huangyan Isle in the south."

近日，中国第11家海事法院：南京海事法院正式获批。

海事法院是为行使海事司法管辖权而设立的专门审判一审海事、海商案件的专门人民法院。我国目前分别在广州、上海、青岛、天津、大连、武汉、海口、厦门、宁波、北京设立了10个海事法院。

海事法院的受理案件范围包括海事侵权纠纷案件、海事合同纠纷案件、海洋及通海可航水域开发利用与环境保护相关纠纷案件、其他海事海商纠纷案件等。

自1992年首个海事法院设立以来，最高院先后在10个沿海港口城市设立了海事法院、39个派出法庭。上海海事法院法官杨婵出席了2018年12月在韩国首尔召开的2018年国际司法会议并在演讲中提到，“从北部的黑龙江省到南部海南省的西沙群岛、中沙群岛、南沙群岛以及黄岩岛，这些海事法院覆盖了中华人民共和国管辖的全部港口和海域，形成专业化的海事审判机构体系。”

HUI YE FORMS STRATEGIC PARTNERSHIP WITH BROAD & BRIGHT, OPENS NEW OFFICE

汇业与世泽签署战略合作， 汇业新设立苏州办公室

Shanghai-headquartered Hui Ye Law Firm has entered into strategic partnership with Broad & Bright in a combined effort to reinforce their cross-border capabilities and to drive significant progress towards both firms' global strategies.

Hui Ye has been a one-stop shop for its cross-border clients in Europe and the U.S., and its Chinese clients going global while also exploring cooperation in regions like Japan and South Korea. The firm has assisted China Eastern Airlines to raise 50 billion Yen in bonds in Japan, and 170 billion won in bonds in South Korea.

Broad & Bright is a full-service firm with particular expertise and years of experience in investing in Japan. Its presence in Tokyo will help Hui Ye serve its clients in Japan and South Korea. Hui

Ye's global network will, in turn, boost Broad & Bright's cross-border reach, with its established strategic partnerships with the law firms in Canada, France, Swiss, Switzerland, Australia, etc.

Broad & Bright has offices in Beijing, Guangzhou, Shanghai and Hong Kong. It also built strategic partnerships with South Korea's Orne Haneul Attorneys at Law and Taiwan's Stellex Law Firm.

Most recently, Hui Ye has opened its 18th office in the city of Suzhou in Jiangsu Province. The new office will focus on compliance management, intellectual property, labour and human resources, investment and financing M&A, capital markets, etc., and is led by partner Houyuan Shi. The Suzhou office has ten associates including three partners.

Hui Ye told ALB that its next two new offices in the city of Zhoushan in Zhejiang FTZ and in the city of Wuxi will be ready soon.

总部位于上海的汇业律师事务所与世泽律师事务所近日签署了战略合作协议，标志着两所在跨境投资等诸多方面达成了合作共赢的战略伙伴关系，是两所全球化战略发展的重要一步。

汇业一直致力于为全球客户提供一揽子跨境法律服务解决方案，在长期服务欧美客户、助力中国客户在欧美地区发展的同时，也在维护和加强日本、韩国等地区的国际合作方面不断开拓。曾助力东航在日本发行了500亿日元债，在韩国发行了1700亿韩元债。

世泽律师事务所是一家综合性律师事务所，尤其擅长对日投资业务并在日本深耕多年，并在东京设有办公室，这将进一步提升汇业中国客户在日本、韩国等地区的法律服务质量及服务日韩客户。汇业的全球服务网络同时也将助力世泽跨境业务的更好发展，汇业在加拿大、法国、瑞士、瑞典、澳大利亚等地均拥有战略合作伙伴。

除东京办公室外，世泽在北京、广州、上海、香港均设有办公室，并与韩国奥伦律师事务所、台湾有泽律师事务所建立了战略合作关系。

最近，汇业新设了苏州办公室，将在与企业运营有关的合规管理、知识产权、劳动与人力资源、投融资并购、资本市场等专业领域为客户提供高价值、全方位的专业法律服务。苏州办公室负责合伙人为史厚元律师，目前共计十位律师，其中包括三位合伙人。

汇业告诉ALB，浙江自贸区（舟山）办公室、无锡办公室也正在筹建中。ALB

DENTONS ADVISES ON BEIJING'S SPECIAL BANKRUPTCY COURT'S FIRST CASE

大成代理北京破产法庭受理的首个破产案

China's second bankruptcy court, launched in Beijing on Jan. 30 in a bid to improve liquidation and cross-border bankruptcy case and reduce the number of 'zombie' firms in China, has accepted its first compulsory liquidation case involving State-owned enterprise Beijing Keeven Aviation Instrument. Dentons Beijing represented Beijing Keeven on its application for liquidation of its machinery manufacturing enterprise.

The state-owned enterprise ceased business in 2010 due to the captain chain

rupture. Currently, it has no products with core technology and its business model lags far behind the marketing demands with RMB61.78 million (\$9.1 million) debts.

According to Lina Ma, the chief judge for the case, the deepening of supply-side structural reform means more and more 'zombie' state-owned companies are allowed to exit the market through bankruptcy.

The Dentons team was led by partners Xiuchao Yin, Zhiping Hu and Tiantian Ma. ALB



为加大破产保护法治力度与对跨境破产案件的审理，解决“僵尸企业”淘汰出清问题，1月30日北京破产法庭挂牌成立，这是全国第二家破产法庭。近期，北京破产法庭受理了首件破产案件——北京青云航空仪表有限公司申请中国航空机载设备总公司破产清算一案。大成律师事务所作为申请人的代理人参与该案。

因资金链断裂进入亏损运营状态，机载设备公司自2010年前后停止经营。经初步统计，该公司对外负债达6178万元（约合910万美元）。

北京一中院副院长马立娜亲自担任审判长，指出随着供给侧结构性改革的深入推进，越来越多的“僵尸企业”通过市场化、法治化的破产程序实现有序退出。

大成律师事务所合伙人尹秀超、胡治萍、马恬恬等律师为该处僵治困破产项目提供了整体策划和方案实施法律服务。ALB



短视频侵权 问题研究

伴随着移动互联网的发展，催生了一大批移动短视频平台的出现。从2013年诞生的腾讯微视起，到以抖音、快手为代表的社交平台类和以西瓜视频、秒拍为代表的资讯媒体类平台，引入了个性化推荐算法的短视频终于在2017年迎来了全面的爆发。截至2018年Q3短视频行业月独立设备数已达到了6.9亿台¹。

在短视频产业的高速发展过程中，也不断暴露出内容的低俗、色情、暴力，甚至违法、侵权等问题。在以流量为导向的短视频市场中，平台为追求流量利益，不断采取各种激励措施，鼓励并帮助UGC模式内容的生成。这些被催生的UGC内容中很大一部分是未经授权的侵权内容。许多视频上传用户通过拆分影视、综艺作品等方法，将完整的影视、综艺碎片化，并将精华片段挑选出来，拼接、浓缩成三到五分钟的短视频上传至短视频平台，向公众传播，从而获得点击量。大量的侵权短视频被上传组成合集或片单，再加以平台的算法推荐，使得用户可以通过该短视频平台直接获得几乎是完整的他人的版权作品，其中甚至不乏本该付费才能观看的内容，给权利人带来了巨大的流量和经济损失。

相对于视频付费市场发展成熟的发达国家而言，我国网络视频用户付费率仍然较低，《2017中国网络视听研究发展报告》指出，对于用户不愿意付费观看视频的原因中，有45.4%的用户选择了“可以找到免费视频资源”。目前，短视频平台成为了盗版资源不可忽视的重要来源。为了攫取流量利益，短视频平台以UGC内容为借口，凭借着避风港原则以没有事前审查义务为由任凭盗版视频在其平台上疯狂传播，只等待版权人通知才进行删除。

短视频行业的侵权盗版问题从2018年开始引发普遍的关注。从2018年初开始，监管部门就对多家短视频平台进行了约谈和罚款，甚至直接关停、下架整改。据国家版权局网站2018年11月的报道，短视频平台版权经过一个月的整改取得阶段性成效，15家短视频平台共下架删除各类涉嫌侵权盗版短视频作品57万部。

针对日益泛滥的短视频侵权行为，为保护权利人的合法权益，同时维护行业的良序发展，避风港规则不能作为短视频侵权中平台方卸责的万能挡箭牌应当成为共识。红旗原则作为避风港规则的例外，应当优先于避风港规则判断并适用。即如果侵权行为是显而易见的，即使平台方没有接到权利人的下线通知也应当主动删除侵权内容。尤其对于热播的

作者



胡荟集，爱奇艺法律部法务总监，具有丰富的法律经验及管理经验。全面负责爱奇艺全球诉讼事务及相关法律研究工作。任职期间，主导多起爱奇艺在互联网领域的典型案件，其中爱奇艺诉极路由案件、爱奇艺诉VST案件，入选十大创新案例及最具学术研究价值知识产权裁判案例。2018年，其督办的视频刷量案件，成为全国首例视频网站刷量案并获胜诉。荣获“中国十佳法务总监”、“中国杰出知识产权经理人”等多项奖项。



王穹，毕业于吉林大学，法律硕士，现任职于爱奇艺法律部，负责爱奇艺独家影视剧版权审查及维权诉讼工作，擅长处理著作权领域内的法律实务工作，其文章《自媒体环境下的避风港规则》，荣获“新时代版权强国青年征文大赛”优秀奖。

影视剧及综艺等作品，明显不可能出现由个人用户以UGC内容的形式发布短视频的情况，平台方作为互联网视频行业中的运营方，应当在视频上传及审核过程中，判断出其侵权性质，并予以阻止上传或及时删除，而非非要等到权利人的通知，侵权损害已经成就时再进行处理。尤其在算法分发的模式逐渐被各大平台采用之后，内容已经逐渐脱离社交传播的轨道。为了增强平台内用户黏性，平台将内容通过算法筛选后精准推荐给用户，这不仅使用户可以更方便地获取侵权内容，同时侵权内容的点击量也会获得显著提升。在平台靠着算法推荐带来的点击量获得了巨大流量利益的同时，应当对于其平台上的内容负有更高的注意义务。同时，算法的精准识别也正说明了平台方有能力审核上传的内容是否侵权，对于影视剧片段短视频的传播应当认定为明知、应知。

短视频平台方的另一个抗辩理由是短视频因为时长短而构成合理使用。然而，短视频虽短，侵权严重性却不一定小。虽然短视频所截取、引用的视频片段、画面截图在原作品中所占的比例很小，但是大量的片段整合起来足以引起质变。另外，判断短视频是否侵权除了要考量合理使用部分的比例之外，还需要考虑到其引用的内容本身是否具有单独的价值。尤其当下人们已逐渐适应并倾向于接收碎片化的信息，即使是部分的精彩片段剪辑也完全可以满足观众的好奇心，起到对于原作品的替代作用。如果未经权利人许可，上传影视作品中的视频片段或者剪辑，应当承担相应的版权侵权责任。

原国家新闻出版广电总局下发的《关于进一步规范网络视听节目传播秩序的通知》，明确了“坚决禁止非法抓取、剪接改编视听节目的行为，并严格管理包括网民上传的类似重编节目，不给存在导向问题、版权问题、内容问题的剪辑改编视听节目提供传播渠道”。今年1月9日，中国网络视听节目服务协会发布的《网络短视频平台管理规范》也明确了这一点，要求网络短视频平台应建立总编辑内容管理负责制度，并实行节目内容先审后播制度。将来，对于短视频内容的监管将会成为常态。虽然这些新规在短期内会对短视频行业发展造成一定影响，但从长远的角度看，却能够避免行业过度竞争走向违法、违规的泥潭，促进短视频平台内容质量的提高，引导行业规范发展。最严新规的发布只是一个开始，在新规的指引下，短视频侵权乱象的治理还需各方的共同努力。

¹ 数据来源：艾瑞咨询《2018年Q3 中国互联网流量季度监测报告》

CHINA TO LURE FOREIGN INVESTMENT IN STATE GIANTS: REGULATOR

中国吸引国外巨头的外国投资：监管

China will seek to attract foreign investment in its larger state-owned enterprises (SOEs), which are undergoing reforms to make them more competitive, the head of the country's state asset regulator said.

China began a new round of reforms in 2016 aimed at streamlining its lumbering SOEs by introducing private capital, curbing overcapacity, shutting down "zombie" subsidiaries and restructuring assets.

Private and foreign firms should "actively participate in reform and

development of central enterprises, and jointly explore ways of deep cooperation including mixed-ownership", Xiao Yaqing, chairman of the State-Owned Assets Supervision and Administration Commission (SASAC), said on the regulator's website.

China has been promoting "mixed-ownership" reforms aimed at introducing private capital and management methods into giant central government SOEs.

The SASAC will also support investment by state giants in private and foreign firms, Xiao said, without giving details. ALB

中国国有资产监管机构负责人表示，中国将寻求吸引外资进入大型国有企业，这些国有企业正在进行改革，以提高竞争力。

中国于2016年开始新一轮改革，旨在通过引入私人资本，抑制产能过剩，关闭“僵尸”公司和重组资产来精简其笨重的国有企业。

国有资产监督管理委员会主席肖亚庆在其官网上表示，民营企业 and 外国企业应“积极参与中央企业的改革与发展，共同探索包括混合所有制在内的深层次合作方式”。

中国一直在推动“混合所有制”改革，旨在将私人资本和管理方法引入大型中央政府国有企业。

肖亚庆说，国资委还将支持国有巨头在私营和外国公司的投资，但没有提供细节。 ALB

XINJIANG SEES FIRST 100-LAWYER FIRM

新疆本土首家百人律师事务所成立

Xinjiang Uighur Autonomous Region, located in China's far west, has seen the establishment of its first 100-lawyer firm after Xinjiang Baifeng Hengrui Law Firm was set up.

The 116-lawyer Baifeng Hengrui was created following the merger of two local firms in October last year: Xinjiang Baifeng Tianyuan Law Firm and Xinjing Hengrui Law Firm.

The newly merged firm will focus on venture capital investment, intellectual

property protection, and other general legal advice, in industries like energy and chemicals, machinery and manufacturing, and technology.

The firm has 12 specialized committees in the areas such as criminal, civil and commercial, administrative, non-litigation, cross-border, and legal aid. All teams report directly to the firm's director, Yun Sang, a dispute resolution lawyer who has handled more than 1300 litigation cases in a career spanning almost three decades. ALB

近日，新疆维吾尔自治区迎来其本土首家百人律师事务所——新疆百丰恒瑞律师事务所的正式成立。

据悉，新疆百丰恒瑞律师事务所现有律师116人。该律师事务所的前身为成立于1990年的新疆百丰天圆律师事务所和成立于2000年的新疆恒瑞律师事务所。2018年10月，经新疆维吾尔自治区司法厅批准，两家律师事务所合并成立新疆百丰恒瑞律师事务所。

新疆百丰恒瑞律师事务所法律服务内容涵盖能源化工业、机械制造业、网络等领域，业务涉及风险投资、知识产权保护、法律服务等诸多方面。

该律师事务所实行主任负责制的团队合作模式，下设刑事专业委员会、民商专业委员会、行政专业委员会、非诉讼专业委员会、涉外专业委员会、法律援助专业委员会等12个专业机构。事务所主任桑云律师在近30年的执业生涯中先后代理各种诉讼案件1300余起。

注：新疆百丰恒瑞律师事务所、新疆百丰天圆律师事务所、新疆恒瑞律师事务所的英文名称均为音译。 ALB

通商律师事务所
Commerce & Finance Law Offices

证券服务机构违法 违规的法律风险及 其应对



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近年来，证券服务机构因违法违规行为受到证券监督管理部门调查和处罚的案件数量大幅增加，因此被股民索赔和刑事追责的风险也在不断加大，在当前证券市场监管背景下，证券服务机构面临较大法律风险。为此，本文将简要介绍证券服务机构信披违法违规的相关法律责任及应对策略。

一. 证监会近年来对证券服务机构的调查和处罚情况

2019年1月，证监会在年度行政处罚情况通报中特别强调，其将以强有力的监管执法督促证券服务机构坚守市场“看门人”初心，对违法机构及从业人员予以严惩。实际上，从2015年起，证监会就加大了对证券服务机构违法违规行为的打击力度，当年证监会对证券服务机构立案调查15起，同比增长了53%。2016年，新增证券服务机构立案调查25起，同比增长67%；2017年证监会新增证券服务机构立案调查15起，2018年新增证券服务机构行政处罚13起。

目前，证券服务机构之所以面临越来越大的法律风险，一方面是由于证监会强监管的执法态势，另一方面则是由于证券服务机构在以往执业过程中不够审慎，例如，个别证券服务机构未保持应有的职业审慎，背离执业基本准则，核验程序流于形式，工作底稿存在缺漏和造假。

二. 证券服务机构因违法违规面临的法律责任

证券服务机构未勤勉尽责，实施信息披露违法违规行为，可能面临行政处罚、民事索赔甚至刑事追责：

首先，在行政责任方面，根据《证券法》第二百二十三条，证券服务机构未勤勉尽责，出具不实报告，将被处以罚款、没收业务收入，甚至暂停或者撤销证券服务业务许可，相关责任人员亦将受到处罚。例如，2018年国信证券、中原证券等证券公司，大华、中天运等会计师事务所以及万隆评估等评估机构，均因信披违法而受到行政处罚。

其次，在民事责任方面，根据《证券法》第一百七十三条，证券服务机构未勤勉尽责，出具不实报告，给他人

造成损失的，应承担连带赔偿责任。目前已有法院据此判决受到证监会行政处罚的证券服务机构，对投资者承担连带损害赔偿责任。

再次，在刑事责任方面，按照我国《证券法》和《刑法》的相关规定，证券服务机构或其从业人员出具虚假意见，符合刑事案件立案追诉标准的，将被依法追究刑事责任。例如，2018年“中恒通”欺诈发行债券案中，利安达会计师事务所的相关人员因出具证明文件重大失实罪而受到刑事处罚。

最后，在暂停业务的风险方面，根据2018年4月施行的《中国证券监督管理委员会行政许可实施程序规定》，证券服务机构及有关人员受到证监会立案调查或司法侦查，将被暂停申请同类业务。同年6月，市场占有率约为40%的六家会计师事务所几乎同时因受到立案调查而被暂停相关业务。

三. 证券服务机构如何正确应对证券违法违规的法律风险

在应对监管部门的调查和处罚方面，证券服务机构首先应积极应对，迅速组织经验丰富的团队和外聘律师，搜集证据材料，全面梳理案件事实，争取免于立案或者处罚告知；其次，如收到处罚告知书，则应结合法律规定和执法实践，提出切实有效、合理合法的申辩意见，积极行使听证权利，争取减轻或免除行政处罚；最后，如受到行政处罚，应积极整改，争取监管机构的充分理解和支持。

在应对虚假陈述民事诉讼方面，程序上，可以考虑在诉讼过程中申请行政复议和/或行政诉讼，争取中止民事程序；实体上，可以通过重大性的分析、诱多、诱空的分析、实施日、揭露日和更正日的认定、损失计算方法、系统风险影响等多种抗辩手段，争取不承担或者少承担民事赔偿责任；如证券服务机构最终承担了民事赔偿责任，则应积极向实施虚假陈述的上市公司进行索赔。

在日常风险控制方面，证券服务机构应提高自身专业能力，坚持职业操守，完善内部风险控制制度，增强风险意识，依法执行详尽、审慎的调查和分析程序，及时发现和纠正相关问题，从根本上防范和化解法律风险，切实担负起资本市场“看门人”的职责。



“功到自然成”—— 专访北京海勤律师事务所主任 张庆华律师



张庆华
海勤律师事务所主任、高级合伙人
Qinghua Zhang
Principle, Senior Partner of Highking Law Firm

在张庆华律师的办公室雅致的茶室，挂着一副范曾先生的字“功到自然成”，这句话既是对张庆华律师从事律师行业25年来的总结，也是她为自己作为律师设定的工作标准和要求。

张庆华律师是金融领域的知名律师，她曾先后担任过几十家金融机构的法律顾问、北京市国资委和很多大型国有企业的法律顾问，也代理了数百亿元的疑难复杂重大诉讼仲裁案件。

在接受ALB采访时，张庆华律师刚刚荣获美国纽约州外国法律顾问资格，并于2018年12月6日在纽约州最高法院宣誓就职。根据美国纽约州《司法机构管理法》及纽约州关于外国法律顾问资格认证的规定，向纽约州最高法院申请外国法律顾问资格认证，不仅要求申请人具有非常丰富的执业经历、取得卓越的专业成就，亦需获得国内地区最高法院法官的推荐或主管司法部门的严格审核和推荐，此外还需经三位纽约州知名人士包括知名律师经过公证的正式引荐，最终再经美国纽约州最高法院上诉部的审核和严格的面试考核后，方能取得。

张庆华律师1993年从西南政法大学经济法系毕业后考取律师资格，随后加盟了国内最早专注金融行业的律师事务所之一原张涌涛律师事务所（现国浩律师集团）。2004年张庆华律师与另外两名国浩所的同事创办了现在的海勤律师事务所。她认为，当一家律所规模逐渐变大后，在拥有竞争优势的同时，也面临着一些明显的弊端和潜在的风险。

“精品律师事务所的专业更加突出、团队凝聚力更强、客户满意度更高”，张庆华律师说，“创建海勤时，我们的定位就是精品高端民商事律师事务所。”

所以，海勤多年来的发展也遵循了这一原则：集中高端客户、潜心钻研专业、构建海勤文化。在海勤团队精心努力下，海勤所在代理疑难复杂案件包括最高人民法院诉讼案件，及大型项目并购重组方面，都取得行业内令人瞩目的优异业绩，海勤所的总收入和人均收入方面，也在北京市两千多家律师事务所里名列前茅。

2017年底，海勤在纽约设立了分所，并已正式获得北京市发展和改革委员会项目备案许可，海勤所向国际化也迈出了新的步伐。

海勤律师事务所与美国商事领域的顶尖律师事务所、特朗普总统长期御用律师Marc Kasowitz先生创办的Kasowitz Benson Torres 律师事务所签署了《合作协议》，共同开拓国内外高端商事法律业务。应海勤律师事务所的邀请，2018年1月，Mr.Kasowitz和KBT高级顾问、前美国参议员Joseph Lieberman、反垄断大律师Hector Torres、前联邦检察官、白宫第一任安全反恐总顾问Edward McNally 共同拜访了海勤的部分客户，如中国中铁、中国中车、中国中投公司、百度、中信银行等知名企业。期间，海勤律师事务所和KBT律师事务所还共同在香港马会主办了“一带一路和美国机遇分享会”，并与美国商会组织的美国在华知名企业进行了专题交流。

作为KBT中国之行的初步成果，2018年底中兴通讯聘请了KBT 的高级顾问前参议员Joseph Lieberman先生作为安全顾问，对其产品进行独立的国家安全威胁评估。

“海勤纽约分所的招聘正在进行中，我们不会放弃精品所的定位”，张庆华律师告诉ALB。“我们主要为美国客户对接美国最顶尖的律师，代理中国客户处理美国的投资，并为美国客户提供中国政策咨询和法律服务。”

由于长期担任金融机构律师积累的丰富经验和资源，张庆华律师在不良资产处置领域中，也取得了很大的成就，出版了个人专著《财务困境企业重生-庭外非破产债务重组实务》。对于债务重组，张庆华律师有颇多感慨，“律师不应该只把自己当做一个辅助角色，在债务重组中，涉及的主体有多家金融机构、地方政府、证监会、司法部门等，律师需要具有非常强的总的协调指挥能力，需要站在一个更高的层面去分析、协调、解决不同的问题。”

张庆华律师还透露，为了总结她多年为金融机构清收不良债权的经验，她的另一本关于不良债权清收务实性操作指南《专业追债指南---不良债权清收法律实务》也即将面世。

作为西南政法大学的研究生导师，张庆华律师在她的母校设立了“巾帼奖学金”，在与获奖学生多次交流中，张庆华律师总是强调匠人精神的重要性，“律师提供的法律服务应当是360度无死角的，客户想到和没想到的，好律师都应当为客户考虑到”。

“海阔凭鱼跃、天高任鸟飞”，我们期待张庆华律师在她的律师生涯里取得更高的成就！

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Success is born out of hard work – A conversation with Qinghua Zhang, founder of Highking Law Firm

In the elegant tea room of Rachel Qinghua Ms. Zhang's office, there is a Chinese calligraphy by Mr. Fan Zeng that reads "Success is born out of hard work", which is also a summary of Ms. Zhang's 25 years of experience in the legal profession and her work standard as a lawyer.

As a well-known lawyer in the financial field, Ms. Zhang has served as the legal counsel for dozens of financial institutions, the Beijing State-owned Assets Supervision and Administration Commission and many large state-owned enterprises. She has also represented clients in complex litigation and arbitration cases where tens of billions of yuan were involved.

At the time of this interview with ALB, Ms. Zhang has just been qualified as Foreign Legal Consultant (China) in New York, USA, and was sworn in at the Supreme Court of the State of New York on December 6, 2018.

Applying for a foreign legal consultant qualification under the Judiciary Law of the New York State and the Rules of the Court of Appeals for the Licensing of Legal Consultant not only requires applicants to have a very rich professional experience and outstanding professional achievements, it is also subject to the recommendation of a highest Court judge in the home country of the applicant or the strict review and recommendation of the supervising judicial department for the applicant. In addition, the applicant must be attested by three prominent New York State residents, including a well-known lawyer, and finally go through strict interviews with the Supreme Court of the State of New York.

Ms. Zhang was admitted to the bar after she graduated from the Economic Law Department of Southwest University of Political Science and Law in 1993. She then joined one of China's earliest law firms specialising in the financial law - Zhang Yongtao Law Firm (now Grandall Law Group). In 2004, Ms. Zhang and two other colleagues from Grandall founded the current Highking Law Firm. She believes that with competitive edges come certain risks as a law firm grows larger.

"Boutique law firms are more specialised, have better teamwork spirit, and the customers are often more satisfied with the services," said Ms. Zhang. "When we established Highking, we positioned it as a high-end boutique civil and commercial law firm."

Therefore, Highking has always followed this principle over the years: focusing on high-end customers, concentrating on professional skills, and building the firm's special culture. With great efforts, Highking Law Firm has achieved outstanding accomplishments in large-scale acquisition and restructuring project and challenging cases, including those argued before the Supreme Court. Highking law firm also ranks as one of the leading law firms among more than 2,400 law firms in Beijing in total revenue and revenue per lawyer.

At the end of 2017, Highking established a branch office in New York after obtaining the permit from the Beijing Development and Reform Commission. It is a grand new step for Highking law firm's internationalization.

Highking is collaborating closely with Kasowitz Benson Torres

(KBT), a leading law firm in the US co-founded by President Donald Trump's long-time personal attorney Mr. Marc Kasowitz, to jointly develop the high-end commercial legal business at home and abroad.

In January 2018, at the invitation of Highking, Mr. Kasowitz, former US senator and senior counsel of KBT Mr. Joseph Lieberman, antitrust attorney and co-founding partner of KBT Mr. Hector Torres, and former federal prosecutor and White House's first Anti-Terrorism General Counsel for national security Mr. Edward McNally visited some of Highking's clients including China Railway Group, CRRC Corporation, China Investment Corporation, Baidu, China CITIC Bank and other well-known enterprises.

Highking and KBT also jointly hosted the "Belt and Road Initiative Roundtable: Exploring Potential Sino-American Investment Opportunities" at the Hong Kong Jockey Club. They also held talks with renowned American companies in China affiliated to the American Chamber of Commerce.

As the first outcome of KBT's China visit, at the end of 2018, Mr. Lieberman was appointed as security consultant for ZTE to lead a separate national security assessment of ZTE's product.

"Recruitment is underway at Highking's New York office but we will remain a boutique law firm," Ms. Zhang told ALB. "We mainly introduce top U.S. attorneys to Chinese clients, represent Chinese clients in the allocation and disposal of U.S. assets, and provide U.S. clients with legal services related to China."

As a seasoned legal professional in the finance industry, Ms. Zhang has also had great achievements in the field of disposal of non-performing assets and written a book "Revival of Companies With Financial Crisis".

"Lawyers should not see themselves as supporting roles. In debt restructuring, a number of parties will be involved including financial institutions, local governments, the CSRC, the judicial department, etc. Lawyers need to have a strong control of the overall situation and analyse, coordinate and solve problems from a higher point of view," Ms. Zhang said.

Ms. Zhang also revealed that in order to summarize her years of experience in collecting non-performing debts for financial institutions, another practical guide written by her on the collection of bad debts, the "Guide to Professional Debt Collection: a Legal Practice Handbook for the Collection of Bad Debts" will soon be published.

As a research supervisor at the Southwest University of Political Science and Law, Ms. Zhang has established a scholarship for Excellent Female Students. During conversation with these students, Ms. Zhang emphasises on the importance of craftsmanship spirit for the legal profession. "Lawyers should always provide legal services to their clients which covers every aspect of the matter, good lawyers always think ahead of their clients"

"Boundless is the sea for fish to dive at will, unlimited is the sky for birds to fly at ease." We look forward to witnessing greater achievements of Ms. Zhang in the future!


DEHENG OPENS NEW OFFICE IN SHIJIAZHUANG

德恒石家庄办公室正式设立


Beijing-headquartered DeHeng Law Offices has opened a new office in the city of Shijiazhuang in Hebei Province. The firm now has 30 branches nationwide and more than 160 overseas branches and partnership firms, with the headcounts of more than 2800 people in total.

The Shijiazhuang office will focus on general corporate matters, capital

markets, intellectual property, dispute resolution, resources & energy, criminal defense, etc., and will better promote the coordinated development of the Beijing-Tianjin-Hebei region and the construction of Xiongan New Area.

The office has 50 associates including 22 partners, and is led by Mingliang Qi, member of NPCSC and deputy-director of Hebei Lawyers Association. 

德恒律师事务所近期正式设立了石家庄办公室。德恒是一家总部位于北京，在国内设有30家分支机构，在境外建立了160多个分支与合作机构的综合律师事务所。全球员工达至2800余人。石家庄办公室的主要业务领域集中在公司业务、资本市场、知识产权、争议解决、矿产能源、刑事辩护等等，将为京津冀协同发展和雄安新区规划建设战略实施贡献力量。

石家庄办公室目前共有专职律师50人，其中包括合伙人22人，主管负责人是河北省人大常委、河北省律协副会长齐明亮律师。 

CHINA PUBLISHES FINAL RULES FOR NEW TECH BOARD

中国科创板规则正式发布

China has finalised regulations for a Nasdaq-style innovation board that promises to smooth the way for Chinese technology IPOs and, if successful, could raise Shanghai's profile as a capital-raising competitor to Hong Kong and New York.


The stock market regulator recently published the rules for the tech board after considering opinions from the public on draft regulations that were introduced on Jan. 30. They took effect immediately.

Listings on the new board will be done according to a registration system that limits official powers to control the timing of IPOs. In addition, some companies that are not yet profitable will be allowed to go public.

Those provisions alleviate two major impediments to companies seeking to tap existing equity capital markets in China.

China has long wanted its tech champions to list closer to home, but many of the best-known Chinese technology firms, including Alibaba Group Co Ltd and Tencent Holdings, chose to raise funds in international markets.

New York and Hong Kong accounted for nearly 70 percent of the money raised through Chinese IPOs last year.

In another sign plans for the new board are progressing, the financial news website Caixin reported that the Shanghai Stock Exchange had completed recruiting employees for the board and they were slated to start work soon. 

中国正式发布了科创板规则，承诺为中国科技企业IPO铺平道路，如果成功，可能提升上海发展融资的优势，与香港和纽约在此领域的竞争地位抗衡。


自2019年1月30日向社会公开征求意见后，证监会近日发布了科创板规则，自公布之日起实施。

新版上市将适用注册制，该制度限制了官方控制IPO时间的权力。此外，一些尚未盈利的公司将被获准上市。

对于寻求利用中国现有股权资本市场的企业来说，这些规定缓解了这些企业面对的两大主要障碍。

中国一直希望本国科技巨头能选择离自己近的地方上市，但是很多中国知名企业，包括阿里巴巴集团控股有限公司、腾讯控股等，都选择了在国际市场筹集资金。

去年，纽约和香港占到中国企业IPO融资总额的近70%。

据原创财经新媒体财新网报道称，上海证交所已完成了董事会的招聘工作，并计划很快将开展工作，这标志着新董事会正在推进。 

BROUGHT TO YOU BY GUANTAO LAW FIRM



观韬中茂律师事务所
Guantao Law Firm

An interview with Beijing Guantao Law Firm's Managing Partner Cui Ligu

ALB: This year is the 25th anniversary of Guantao Law Firm. What is the background of the founding of the firm? What are some of the most important milestones?

Cui: In the early 1990s, the full implementation of reform and opening up, the development of the economic system, as well as the introduction of related regulations on the management of lawyers by the PRC Ministry of Justice, brought the golden age for the legal profession. And Guantao was born in the early spring of 1994 in the context of such an era.

Throughout the 25 years of the firm's history, Guantao has established a clear development goal at the beginning of its establishment: to be an excellent full-service law firm, and thus consciously expanded from the civil and commercial litigation field to the non-litigation field. In 1996, Guantao obtained the "Qualification Certificate to Practise the Securities Law". In 2000, the firm won the honor of "National Law Firm of Professional Excellence" by the Ministry of Justice". After receiving industry recognition, Guantao established offices in Shanghai, Chengdu, Xi'an, Dalian and Shenzhen consecutively.

In 2004, the first management committee was officially set up and began to implement an integrated development strategy that included domestic branches in Ji'nan, Xiamen and Tianjin. Guantao opened its Hong Kong office in 2008 and formed an alliance with Ashurst LLP in the same year, thus picking up the pace of internationalization. In 2010, Guantao formed a domestic alliance with Shanghai Zhongmao Law Firm that later after five years turned into a merger. In 2012, Guantao Hong Kong started an association with Peter C. Wong, Chow & Chow, and were officially localized in Hong Kong three years later.

During the critical period of scaling up, Guantao's offices extended to Guangzhou, Hangzhou, Suzhou, Wuhan, Nanjing and international cities such as Sydney, Toronto and New York. Guantao now has more than 200 partners in 18 major cities at home and abroad, more than 1,000 lawyers and supporting staff in total, and covering 22 professional practice areas.

The firm has always adhered to a steady and sustainable development strategy - it does not blindly pursue expansion, nor does it limit itself. Guantao's services are customer-centric and quality-assured. Each choice is made based on the clear understanding and judgment of the firm's resources and capabilities.

ALB: What have your planned for the training of outstanding young talents?

Cui: Talent is at the core of the sustainable development of the firm. Guantao is very focused on the cultivation of talents. Through a comprehensive business management system and personnel management system, we ensure the effective implementation of each lawyer's specialisation in each area. We have nine business lines including domestic corporate & securities, real estate, finance and administrative law, litigation and arbitration, insolvency and liquidation, international corporate & securities, international investment and trade, Hong Kong law, as well as eight research groups each focusing on tourism, labor law, financial



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观韬中茂律师事务所
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创始合伙人
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innovation, regulatory compliance, environmental law, antitrust, international tax law, and admiralty & maritime.

After joining Guantao, young lawyers will enter a certain business line/group and participate in a series of comprehensive training on basic skills. During the practice, the project teams composed of lawyers at different levels will be directly trained by partners during the practice of specific projects, cultivating the professional expertise of each lawyer. On this basis, the lawyers will receive non-scheduled training and are exposed to various forms of communication to cover different industries and practice areas to enrich themselves, with a focus on their expertise. At the same time, we encourage teamwork and will arrange for lawyers to accumulate experience in one or several other sectors to grow as versatile talents. For particularly good young lawyers, we would recommend them to go for a secondment at the international offices of our alliance firm Ashurst.

The promotion system is also a crucial factor in talent development. Guantao's lawyers are divided into seven grades. Among them, the seventh-grade lawyers have passed the bar for five years and can apply for becoming a partner; for a particularly good young lawyer, after examination and approval, cross-level promotion is also possible. A large proportion of our partners now are trained and promoted organically within the firm during the past 25 years. We continue to optimize the channels for promotions and innovate the partner profit distribution mechanisms to encourage lawyers to achieve long-term career development on the platform Guantao provides.

ALB: What are Guantao's detailed development plans in terms of business, personnel, and expansion?

Cui: In terms of business, we must continue to strengthen our business advantages, such as capital markets, corporate and M&A, insolvency and reorganisation, projects and energy, banking and finance, real estate, administrative law, and dispute resolution. We must continue to bring in talents, expand the market, and enhance our specialisation. At the same time, we will also make breakthroughs in other business areas, such as intellectual property (IP) rights: Guantao is now a qualified patent agent and will further consolidate the IP business through innovative business models such as the IP base.

In the next three to five years, the optimization of the service network layout is also one of the key tasks of the firm. On the one hand, we will strengthen the integration of resources between existing offices at home and abroad, adding to the synergies among them; on the other hand, we plan to seek new layouts in key cities in China, and consider branch placements in accordance with the team allocation, customer needs, market prospects, and so on.

Standing at a new starting line after 25 years and facing new opportunities in the new era, we must embrace technology and meet challenges with a more confident and peaceful attitude, and continue to build the global service platform that keeps creating value for our clients and the society, and constantly to optimize the career platform that provides employees with support and is widely recognized.

APPOINTMENTS 律师转所信息

LATERAL HIRES 横向招聘



Lingxiang Wang
 Leaving
 Hightac PRC Lawyers
 Joining
 MHP Law Firm
 Practice
 Dispute Resolution, Corporate,
 Debt Restructuring,
 Location
 Shanghai

王凌翔
 原就职律所
 浙江海泰律师事务所
 现就职律所
 君悦律师事务所
 业务领域
 争议解决、公司、债务重组
 地点
 上海



Danhui Fu
 Leaving
 Hightac PRC Lawyers
 Joining
 MHP Law Firm
 Practice
 Dispute Resolution, Real Estate,
 Corporate,
 Location
 Shanghai

傅丹辉
 原就职律所
 浙江海泰律师事务所
 现就职律所
 君悦律师事务所
 业务领域
 争议解决、房地产、公司、
 地点
 上海



Liwei Jiang
 Leaving
 Beijing Sheng Mei Law Firm
 Joining
 Lexfield Law Offices
 Practice
 Intellectual Property, Compliance,
 Dispute Resolution
 Location
 Beijing

蒋利玮
 原就职机构
 北京盛美律师事务所
 现就职律所
 联德律师事务所
 业务领域
 知识产权、合规、争议解决
 地点
 北京



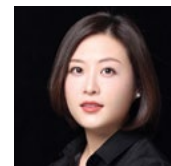
Qishan Zhao
 Leaving
 ZTE Corporation
 Joining
 Lexfield Law Offices
 Practice
 Intellectual Property, SEPs
 Location
 Beijing

赵启杉
 原就职机构
 中兴公司
 现就职律所
 联德律师事务所
 业务领域
 知识产权、标准必要专利
 地点
 北京



Peter Zhang
 Leaving
 Llinks Law Offices
 Joining
 Hui Ye Law Firm
 Practice
 Dispute Resolution, Corporate
 and M&A, Asset Management
 Location
 Shanghai

章祺辉
 原就职律所
 通力律师事务所
 现就职律所
 汇业律师事务所
 业务领域
 争议解决、公司与并购、资产管理
 地点
 上海



Ying Wu
 Leaving
 Cathay Law Firm
 Joining
 Hui Ye Law Firm
 Practice
 Corporate Governance,
 Dispute Resolution
 Location
 Shanghai

吴瑛
 原就职律所
 国泰律师事务所
 现就职律所
 汇业律师事务所
 业务领域
 公司治理、争议解决
 地点
 上海



探析律所一体化运营的真谛

——专访广东卓建律师事务所首席合伙人张斌主任



张斌

广东卓建律师事务所主任、首席合伙人

ZHANG BIN

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传统提成制律师事务所虽有运营成本低、成本分摊到个人等优势，但在调动资金、人力、物力资源的能力上较为欠缺，对律所的统一管理能力较弱。而一体化运营的律所中，各个独立运作的个体组成一个紧密衔接、相互配合的整体，本质上所体现的是组织调动资源的能力。提升一体化运营的能力，可以使传统律所整体变得更加强大。

对于广东卓建律师事务所来说，在品牌打造、宣传营销、对外服务、内部管理、学习培训、知识管理、分所建设等方面，都体现着这家成立十余载的律所对于一体化运营的不断追求。

“律所的一体化运营能力是律所调动资金资源、人力资源、物力资源的能力”，卓建律师事务所的张斌主任总结道。“只有具备了调动上述资源的能力，才能在律所运营上拥有话语权和有效的支配权。”

为了增强调动资金的能力，卓建设立了公共基金制度。这项公共基金制度解决了传统提成制律师事务所在公共建设上很难再有新投入的问题，以制度的形式，稳定、持续地为律师事务所的公共建设积累资金池，为建设活动的顺利开展提供资金保障。

而在这三方面资源中，张主任指出，最重要的还是人力资源。“只要有律师在，硬件设施再差，律师都可以工作，因此律所进行一体化运营要围绕着人力资源展开”，他说道。

卓建通过建立委员会制度，形成了公共事务有人共担的人力资源体系。卓建的委员会制度采取专门委员会和专业委员会并行的方式，专门委员会负责公共管理事宜，各委员会的负责委员由高级合伙人竞选产生，成员由各负责委员自行招募，所内成员自愿报名参加。

律所文化是调动律师积极性的重要元素，共建、共享的文化心态造就内化于心的文化自觉，拥有这种心态后，人人也就会自觉地把律所建设当成自己的事情，并以此为乐，共享文化建设成果。卓建的文化体系包括家文化、团队文化和学习文化三大板块：家文化为基础，团队文化为核心，学习文化为支撑。

“律师事务所进行一体化运营的目的和核心是激活人的主动

精神，以人为本是律所运营始终不变的理念”，张主任说道。“没有积极向上的文化支撑，律所不可能拥有长久而旺盛的生命力”。

他进一步指出，文化是律所一体化运营的内在驱动力，且“文化不是偶然，不是意外收获，必须精心培育”。但重视文化建设并不代表忽视专业建设，张主任坚信文化上的进步必然带来专业上的提升，专业上的提升也可增进文化自信，两者相辅相成。

除此之外，卓建的公共积分制度也有效地形成了激励机制，将参与公共事务、律师讲课、分享经验、及办活动等累计的积分与管理费挂钩，有效地激励合伙人、律师、律师助理参与到律所公共事务建设中，同时也促进了律师间的相互学习、协作。

在制度基础方面，卓建也根据律师对律师事务所的贡献程度、专业水平和综合影响力对合伙人进行划分，并通过传统提成制律所“一人一票”的表决制度进行创新，有效地破解了提成制律所存在的潜在决策僵局，减少了不必要的纷争，提高了决策效率。

卓建在2015年引入卓越绩效管理，这是对以往全面质量管理实施活动的标准化、条理化和具体化。这种管理模式可以勾勒出律所必须重视的各个方面；帮助律所认清现状、发现优势、找出不足并知己知彼；帮助管理者驾驭复杂的管理系统；也是帮助组织协调使用资源和各种管理工具的总体框架。

卓建的律师培训体系是其学习文化的一大体现。在全所范围内，每周定期举办的“卓建论道”鼓励资深律师分享经验；“青年律师成长之路”系列邀请所外的资深律师为青年律师授课培训。卓建帮扶青年律师发展的方式还包括将组织业务收入不足的青年律师与资深律师团队“1+1”结对子帮扶、资深律师团队为业务不足的青年律师发展提供指导、建立青年律师导师制度、组织办好小额诉讼服务中心，为青年律师提供案源支持等。

展望未来，卓建律师事务所力争在2022年7月之前，通过“机制创新、体制创新、管理创新”，将律所打造成“治理结构优化、风险管控有效、管理制度完善、管理手段现代化”的一体化运营的律师事务所。

ALB CHINA 2019

TOP 15 M&A LAWYERS

中国十五佳并购律师

BY INES YANG

METHODOLOGY 评选方法

Candidates are reviewed comprehensively based on the following criteria:

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

Winners are listed below by their surnames in the alphabetical order.

ALB综合分析了各位申报律师在以下方面的成绩：

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

以下获奖名单按照按姓氏字母顺序排列。

China is one of the most active areas for M&A deals in Asia Pacific and even around the world: it is in evidence that large M&A transactions taking place there well helped the economic development of China and the strategic development of enterprises, and meanwhile had a significant impact on shaping the global economic landscape, to which M&A lawyers made a crucial contribution.

中国是亚太乃至全球并购交易最活跃的地区之一：这里发生的各类型重大并购交易，对企业的战略发展、对中国经济的助益、对全球经济版图的影响均不言而喻，其间中国并购律师的作用功不可没。

Top 15 M&A Lawyers 十五佳并购律师	Law Firms 所在律所
Ark Bao 鲍方舟	AllBright Law Offices 锦天城律师事务所
Guo Kejun 郭克军	Zhong Lun Law Firm 中伦律师事务所
Martin Hu 胡光	MHP Law Firm 君悦律师事务所
Yan Jia 严嘉	Paul Hastings 普衡律师事务所
Lin Huawei 林华伟	Global Law Office 环球律师事务所
Nanda Lau 刘依兰	Herbert Smith Freehills 史密夫斐尔律师事务所
Miao Qinghui (Catherine) 缪晴辉	JunHe LLP 君合律师事务所
Alan Wang 王庆	Freshfields Bruckhaus Deringer LLP 富而德律师事务所
Wang Yang 王漾	Simpson Thacher & Bartlett 美国盛信律师事务所
Don Williams 魏廉	Sheppard, Mullin 美国盛智律师事务所
Wu Gang 吴刚	Commerce & Finance Law Offices 通商律师事务所
Wu Guohua (Annie) 邬国华	Jincheng Tongda & Neal Law Firm 金诚同达律师事务所
Xiao Aihua 肖爱华	Tian Yuan Law Firm 天元律师事务所
Xiong Jin 熊进	King & Wood Mallesons 金杜律师事务所
Yu Chengzhi (Paula) 余承志	Grandall Law Firm 国浩律师事务所

■ In 2018, the total value of M&A deals in the Asia Pacific (excluding Japan) amounted to US\$717.4 billion with China contributing to US\$678 billion, accounting for 95% of the total; and the total M&A transactions increased by 11% year-on-year. In terms of China, the amount of private equity fund transactions reached a new high; but the total amount of overseas M&A transactions was only US\$94.1 billion, down 23% year-on-year largely because the amount of M&A transactions by Chinese companies in the United States dropped tremendously, from a peak of US\$55.3 billion in 2016 to the present US\$3 billion. And in the meanwhile, the European

market has replaced Asia as the most popular overseas market for Chinese companies, the transaction value of M&As there increased by 81.7% year-on-year, from US\$33.2 billion to US\$60.4 billion. Furthermore, the volume of M&A transactions involving the Belt and Road initiative saw continuous growth.

China has been known as one of the most active areas for M&A deals in Asia Pacific and even around the world. It is in evidence that large M&A transactions taking place there well helped the economic development of China and the strategic development of enterprises, and meanwhile had a significant impact on shaping the global economic

■ 2018年，亚太地区（日本除外）的并购交易总额为7174亿美元，中国占到95%，并购交易总额为6780亿美元，并购交易总量同比增长11%。其中，私募股权基金交易金额创下新高，但海外并购交易总额仅为941亿美元，同比下降23%，原因主要是中国企业赴美并购交易额呈大幅下降，从2016年的峰值553亿美元降至30亿美元。但与此同时，欧洲市场取代亚洲成为中国企业最热衷的海外市场，并购交易额同比增长81.7%，从332亿美元增至604亿美元，“一带一路”方面的并购交易量也在持续增长。

不难看出，中国是亚太乃至全球并购交易最活跃的地区之一：这里发生的各类型重大并购交易，对企业的战略发展、对中国经济的助益、对全球经济版图的

landscape, to which M&A lawyers made a crucial contribution – they help their clients control risks throughout the whole M&A processes and achieve their business and strategic objectives to the greatest extent.

Chinese M&A lawyers are becoming increasingly important and playing a leading role in large and complex cross-border M&A transactions; therefore, their roles in the whole transaction process, their greatest value to the clients, and the core skills and implicit competitiveness that top M&A lawyers should possess are all to be redefined.

This report first lists out the major transactions in which the Top 15 M&A Lawyers participated over the past 12 months (not including those requiring confidentiality), and then reviews those transactions from three aspects. Each large and complex cross-border M&A transaction is certainly not just about those three aspects in reality, it involves much more – each successful deal does not come in a simple way and the completion of each deal does not mean the end. In all practice areas of law firms, M&A lawyers are probably the ones that need to be involved in the entire process of a deal, and thus they are also the ones who know the most about the art of trading: to facilitate transactions requires much beyond expertise and skills. We want to extend our warmest congratulations to the winners of 2019 ALB China Top 15 M&A Lawyers.

In Value Terms

According to a PricewaterhouseCoopers report, in 2018, there was no significant change in terms of the number of mega transactions with the trading amount over US\$1 billion; the difference was that the proportion of overseas strategic investment decreased remarkably (by 60% and 29% respectively compared with that in 2016 and 2017), while the numbers of private equity fund transactions and domestic strategic investment transactions both increased.

It is reported that in 2018, the amount



of private equity fund M&A transactions reached US\$222 billion, of which Ant Financial's Series C equity financing totaling US\$14 billion was reported to be the largest single fund raising round by any FinTech company in history. Mr. Wang Yang, a partner at Simpson Thacher & Bartlett LLP's Beijing office, was among the core members of the legal teams that assisted Ant Financial in this transaction.

China Unicom was the first centrally-administered State-owned enterprise to conduct the mixed ownership reform, and that transaction, which in total raised more than 11 billion dollars also marks the first case worldwide of the strategic alliance between a telecommunication operator and a tech giant. Wu Gang represented China Unicom in this deal.

Mr. Lin Huawei, a partner at Global Law Office, represented Primavera Capital Group in investing Lufax (Shanghai Lujiazui International Financial Asset Exchange Co., Ltd). Under the circumstance where the authorities were tightening the regulation of P2P and other online financial services, Lin advised Primavera on the formulation of the company's rectification plan and scheme, enabling Lufax

影响均不言而喻，其间中国并购律师的作用功不可没：他们全程把控风险、帮助客户最大程度实现商业和战略目的，且后顾之忧。

与此同时，中国并购律师在大型复杂跨境并购交易中也日益担当主导者角色，由此他们在整个交易所起的作用、他们带给客户的最大价值、成为顶尖并购律师需具备的核心技能和隐性竞争力，均将被重新定义。

本文首先回顾了今年十五佳并购律师在过去12个月参与的重大交易（要求项目保密的除外），并大致从以下三个视角回顾这些重大交易。当然在真实场景下，每个大型复杂的跨境并购交易都同时涉及这三点或者更多，也正因此：我们向这些奋战在交易第一线的并购律师致以诚挚祝贺：每一单的成功都不简单，每一单的完成也不意味着终点，并购律师或许是所有领域律师中最“全程跑”的那位，同时又最懂交易是门艺术：在于技艺，更在于心。

用交易金额说话

据普华永道报告显示，2018年10亿美元以上的超大型交易数量无明显起落，不同的是：境外战略投资占比下降（相较2016年下降60%，相较2017年下降29%），但私募股权基金交易以及境内战略投资交易数量均有提升。

据悉，2018年私募股权基金并购交易金额达至2220亿美元，其中蚂蚁金服的140亿美元融资是全球有史以来最高的金融科技企业私募股权融资。美国盛信



实现客户的核心利益—— 通商律师事务所管理合伙人吴刚律师 Keeping the client's core interests at heart- An interview with Wu Gang, Managing Partner at Commerce & Finance Law Offices

2019年是通商律师事务所管理合伙人吴刚律师加入通商的第20个年头，回顾这段经历，他告诉ALB让他印象最为深刻的案例之一一是作为中国联通的律师参与了中国联通混合所有制改革项目。中国联通混合所有制改革试点通过整体设计，引入包括中国人寿、腾讯、百度、京东、阿里巴巴、苏宁等处于行业领先地位以及具有协同效应的战略投资者，合理的降低了国有股权比例，以市场化为导向健全公司治理机制，进行了诸多的制度创新，是中国国企改革的标杆性项目。

除了中国联通混改，吴刚律师也深度的参与了2008年中国联通将CDMA业务、资产出售给中国电信及同时进行的中国联通与中国网通的合并项目。“当时是中国联通整个CDMA网络和业务出售给中国电信，以及联通、网通合并这两个项目同时操作，既涉及国内A股上市公司的重大资产重组，又涉及两个香港上市公司的合并”，吴刚律师回忆道。“这是改革开放以来国内最复杂资产交易，因为它涉及到整个电信网络的分割、移交和持续的运营、维护，这些都是通过交易来实现的，整个过程中涉及的技术细节和跨法律、跨监管规则的复杂程度都非同寻常。”

此后，吴刚律师还参与了挑战重重的新华人寿保险公司A+H股上市项目。“2011年的时候，新华人寿保险公司的偿付能力出现非常大的问题，需要在年底之前完成增资。但是由于其前董事长案件等历史遗留问题加上个别股东之间又有摩擦，导致公司存在无法满足监管要求而被限制业务开展的巨大风险”，吴刚律师介绍道，“这令它的复杂程度和时间上的紧迫度远远超过了通常的融资交易”。

经过市场多年的打磨，吴刚律师对整个并购重组交易市场的发展有着独到的见解。

“第一，客户的法律服务需求跟国家大的经济走势有特别密切的关系”，吴刚律师说道。“第二，并购的交易和资本市场，包括一级市场的发行，是相辅相成的，有的时候甚至是互补的：比如股票市场的低迷可能会催生大型并购类交易。”

“第三，法律服务越来越精细化，分工越来越细”，吴刚律师继续说道，虽然工作手段丰富了，但并购交易对律师的核心技能要求并没有发生本质性的变化。“在充分了解和尊重客户核心商业诉求的前提下，在此基础上寻找替代性方案和接受妥协其实是一种能力”。

2月21日，通商律师事务所与其联营的香港分所举办了开业庆典。自1992年成立以来的27年里，通商一贯秉承“一切为了客户”的服务原则，紧紧跟随客户的商业需求和发展，先后在上海、深圳开设了分所。本次通商在香港开设分所同样秉承上述服务原则。通商力争将香港分所打造成为客户和伙伴提供跨境综合法律服务的重要平台。



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This year marks the 20th work anniversary of Wu Gang at Commerce & Finance Law Offices (C&F). He told ALB that one of the most unforgettable projects he was involved in was representing China Unicom in its mixed ownership reform.

China Unicom's mixed ownership pilot reform introduced strategic investors including China Life, Tencent, Baidu, JD.com, Alibaba, Suning, which are all industry leaders and have synergies among each other.

The reform reduced the percentage of state-owned shares to a reasonable level, improved China Unicom's corporate governance by market standards and adopted numerous institutional innovations, all of which makes the case a benchmark for China's state-owned enterprise reform.

In addition to China Unicom's reform, Wu also participated in the selling of China Unicom's CDMA business and assets to China Telecom, which happened in concurrent with China Unicom and China Netcom's merger in 2008.

"Back then, China Unicom's entire CDMA network and business were sold to China Telecom, and it happened simultaneously with the merger of China Unicom and China Netcom. The deal involved both the major assets restructuring of a A-share listed company as well as the merger of two Hong Kong-listed companies," Wu recalled.

"This is the most complicated asset transaction in China since its reform and opening up, because it involves the division, handover and continuous operation and maintenance of the entire telecommunications network. The complexity of the technical details and the legal issues across different fields and jurisdictions were quite extraordinary."

After that, Wu also participated in the challenging A+H share listing of New China Life Insurance Co. Ltd.

"Back in 2011, New China Life Insurance had a big insolvency problem, and it needs to complete the capital increase before the end of that year. However, due to issues such as the misconduct of its former chairman and frictions among some shareholders, the company faced huge risks of failing to satisfy the regulatory requirements which in turn would cause some of its business operations be suspended," said Wu. "These all made it more complex and pressing than a normal financing transaction."

After years of experience in the field, Wu has developed unique insights into the development of the entire M&A and restructuring market.

"First, legal service needs are hugely correlated with the country's overall economic trends," said Wu. "Second, M&A transactions and capital markets, including stock issuance in the primary market, go hand in hand and are sometimes complementary. For example, a downturn in the stock market may lead to large M&A transactions."

"Third, legal services are becoming more and more refined, and the division of legal skills is becoming more and more detailed," Wu added. "The core skills required in M&A transactions however have not been changed substantially despite various new tools and methods. Understanding and respecting the core demands of clients, finding the alternative solutions and compromising on the above bases, is an important skill."

On February 21, 2019, C&F officially launch its new Hong Kong office in association with a local firm Eric Chow & Co. During the 27 years since its establishment in 1992, C&F has always been adhering to the principle of "all for the customer" and is closely following the needs and developments of its clients' businesses by opening branches in Shanghai and Shenzhen. The opening of the Hong Kong office is also based on the above service principles. The firm strives to build the Hong Kong branch into an important platform for clients and partners to provide comprehensive cross-border legal services.

to maintain its leading position in the industry. The transaction value of this deal reached US\$1.3 billion. Lin also advised Primavera Capital Group in its investment in ByteDance, with the transaction value over US\$1 billion.

China Tianying Inc. conducted a major asset restructuring in relation to its acquisition of the Spanish waste treatment firm Urbaser for RMB8.8 billion (approximately US\$1.3 billion). Chinese private equity firm Orient Hontai Capital acquired a controlling stake in Imagina Media Audiovisual, S.L., a leader in Europe's audiovisual production and distribution sector, for US\$1 billion. Mr. Alan Wang, a partner at Freshfields Bruckhaus Deringer LLP, advised on the aforesaid two deals as the international deal counsel.

Cinda Real Estate Co., Ltd., a Chinese A-share listed company, issued new shares to acquire shares of Huainan Mining Real Estate Co., Ltd held by China Cinda Asset Management Co., Ltd. and Huainan Mining (group) Co., Ltd. The foregoing project was led by Mr. Guo Kejun, a partner of Zhong Lun Law Firm. The transaction price of this project was approximately USD\$1.14 billion, exceeding the current market value of Cinda Real Estate Co., Ltd., which made it a big bite for Cinda Real Estate Co., Ltd.

Mr. Guo Kejun also has outstanding performance in overseas M&A transactions related to the Belt and Road. Guo Lvshi and his team provided legal service for Qingdao Tianhua Institute Chemistry Engineering Company Limited (600579), a Chinese A-share listed company, to acquire KraussMaffei Group and the major assets of two rubber machinery companies controlled by ChemChina. The transaction price of this acquisition exceeded USD\$1 billion.

Mr. Don Williams, a partner at Sheppard Mullin Richter & Hampton LLP, successfully represented FunPlus as its principal legal counsel in completing the deal of selling its game subsidiary's 100% stake to Century Huatong Group

for US\$1 billion, under the circumstance where the China Securities Regulatory Commission was strengthening the regulation of cross-industry M&A and reorganization by listed companies (especially regulation of games, films and television, as well as restriction on the return of Chinese concept stocks).

Against All Odds

Nanjing Xinjiekou Department Store Co. Ltd. ("Nanjing Xinbai"), a listed subsidiary of Sanpower Group, acquired a U.S. biopharmaceutical company named Dendreon with a deal size of US\$900 million, which is the largest pharmacy related acquisition by Chinese enterprises so far. Dendreon is known as the "Google" in the pharmaceutical industry for its innovation capabilities. The transaction took place at a time when Sino-U.S. relationship was in a sensitive period of intense trade frictions. Furthermore, it was a major challenge to deal with the U.S. compliance procedures and comply with China's securities rules and regulations. Ms. Yu Chengzhi (Paula), a partner at Grandall Law Firm, represented Nanjing Xinbai in this deal.

Mr. Yan Jia, a partner of the Corporate Department and the Co-Chair of Shanghai and Beijing offices of Paul Hastings LLP, provided legal advice to Fosun Group in the acquisition of a majority stake in Guide Investimentos, a Brazilian brokerage and wealth management company. Fosun Group is a leading comprehensive investment group in China. This deal is the third major acquisition of Fosun Group in Brazil. It reflects the strategy of Fosun Group to invest in and develop emerging markets, especially in Latin America. Furthermore, Jia also represented Fosun Group in the acquisition of a majority stake in Vienna-listed luxury textiles maker and lingerie brand Wolford and its mandatory tender offer. These projects demonstrate Paul Hastings has a highly professional and top-notch team in complex cross-border acquisitions.

There are almost no successful case

lawyer事務所合伙人王漾律师是协助蚂蚁金服完成该交易的律师团队核心成员之一。

中国联通混改是中国第一家央企整体混改也是全球首例“电信运营商+互联网巨头”战略融合的先行试水者。本次交易募集了约112亿美元的资金，通商律师事务所合伙人吴刚律师负责该项目。

环球律师事务所合伙人林华伟律师代表春华投资陆金所，在P2P等其他在线金融业务最近国家监管趋严的情况下，林律师代表春华制定公司改革方案和计划，保持了陆金所业内龙头企业位置，此次交易金额达13亿美元。林律师负责的春华投资字节跳动，交易金额也在10亿美元以上。

中国天楹以88亿人民币（约13亿美元）收购西班牙废物管理商Urbaser以及相关的重大资产重组；中国私募股权投资基金公司东方弘泰以10亿美元收购欧洲影音转播制造行业领军企业Imagina Media Audiovisual, S.L.的控股权。英国富而德律师事务所合伙人王庆律师均作为项目总负责人牵头这两个项目。

中国A股上市公司信达地产发行股份收购信达集团及淮矿集团持有的淮矿地产项目，由中伦律师事务所合伙人郭克军律师主导，本次交易价格约合11.4亿美元，超过信达地产当前市值，为又一近百亿规模的“蛇吞象”式并购交易。

郭律师还在“一带一路”相关的海外并购项目有突出表现。上市公司天华院（600579）收购整合中国化工下属境外克劳斯玛菲集团和境内两家橡胶机械公司核心资产的超过10亿美元的项目就由他的律师团队提供了全程法律服务。

美国盛智律师事务所合伙人魏廉律师作为FunPlus的主要法律顾问，在证监会加强对上市公司跨界并购重组（特别是游戏、影视及限制中概股回归的监管）的情况下，成功代表FunPlus完成了世纪华通以10亿美元高价收购其旗下游戏点点互动100%的股权。

克服重重挑战

三胞集团旗下上市公司南京新百9亿美元收购创新能力堪称医药行业“谷歌”之称的美国生物制药公司Dendreon，这是中国企业在海外医药领域收购的最大一笔交易。交易发生时正值中美处于激烈贸易摩擦的关系敏感期，同时处理美国的合规程序和遵守中国的证券规则是一重大挑战。国浩律师事务所合伙人余承志律师代理该项目。

进军大型并购项目 升级精良团队形象

——专访锦天城律师事务所 高级合伙人鲍方舟律师



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ALB：可否先请您介绍一下锦天城并购业务的概况、服务特点和优势？

鲍律师：自锦天城成立以来，并购一直是我们的重点业务领域之一，我们在并购法律服务市场也是比较活跃的一个律师事务所。近几年，我们每年完成并购项目的件数都有数百件。

锦天城的客户类型比较全面——包括央企、地方国企、民营企业、外资企业等，其中很多是中小型企业，这类企业所发生的并购项目大多数是基于市场因素而非行政力量的推动，中介机构对于交易的推动作用很大。

锦天城已经在全国布局，并且逐步走向国际化，其人员规模、工作能力和地域布局，都使得我们能够胜任高密度、高强度的并购法律服务需求。此外，因为我们也是一个综合性律师事务所，除并购之外，还有众多其他业务领域，可以为客户提供全方位服务。并购项目经常涉及到的经营者集中申报、争议解决、税务筹划、知识产权等领域，我们都不需要借助其他的辅助机构完成，可以提供一站式服务。

ALB：近年来律所境内外并购业务的发展方向是什么？并购领域出现了哪些趋势？锦天城并购服务的发展是如何呼应这些市场趋势的？

鲍律师：跨境并购业务方面，近几年整个市场的并购数量依然较多。即便有经济增长放缓、跨境并购业务监管要求增高等各种因素的存在，中国企业“走出去”的需求依然旺盛。

国内并购业务方面，越来越多的企业将并购视为可行的发展之道。某些领域的行业巨头很大程度上都是通过并购的方式实现快速扩张的。虽然整个经济环境现在看起来比较严峻，但是并购交易还是非常活跃的。

从行业来讲，近期外资对于证券公司的新设与收购反应出金融领域扩大开放的趋势；由于中小型民营企业融资困难，导致一些环保行业的民营企业遇到资金流不足的困难，因而寻求出售给融资更便利的企业，尤其是国企；一线城市高端商业地产在开发商、地产基金之间的转手也非常活跃，并将在近期保持这种上升状态；很多传统制造企业也在积极通过海外并购的方式提升自己的技术能力和竞争力，所以这一领域的并购市场也是活跃的。

针对这样的市场形态，锦天城在并购业务领域也有自己的考量。以往，虽然我们实际上完全有能力处理有规模的、复杂的、高技术含量的并购交易，但因客户以中小型企业居多，给市场的印象是主要做中小型项目。我们做的项目数量很多，但规模偏小，与锦天城自身规模和能力不成正比。所以我们正在

积极拓展并购业务的影响力，争取大型交易的服务机会，以便充分发挥我们的能力。

为了这样一个目标，我们在几个方面都会有所准备：第一，加强行业研究，针对不同行业推出有针对性的并购法律服务产品；第二，在跨境并购中积极寻求担当牵头律师事务所的机会，负责聘请、协调、指挥国际律师团队为中国客户提供国际化服务；第三，加强跨办公室和团队、跨业务领域的合作，形成全所合力，匹配大型高端并购业务的需要。

ALB：近几年，您在执业过程中遇到了哪些新的法律问题与工作上的挑战？面对新的难题，您是如何成功解决的？

鲍律师：第一，在很多跨境并购交易当中，客户会把与国内律师的合作习惯沿用到国际法律服务上，造成导致客户与国际律师之间沟通不畅，信息不对称，有时候资源错配，形成了高昂的沟通成本。中国律师不仅要提供中国法律服务，还要承担起大量的协调、沟通乃至中介机构团队组织和文本翻译工作。

针对这个问题，根据以往的经验，我们会建议：跟客户的沟通要有前瞻性。面对跨境并购项目，要让客户改变思路，首先中国律师要改变思路，不能按照境内交易的惯常思维和方式去承办跨境项目。在项目启动前和推进过程中，律师需要有前瞻性提示客户关注跨境交易中会碰到的法律问题，并提示解决方案。

第二，针对有市场影响力、大规模、高金额的并购项目，律所一定要有一个高效率、战斗力强的工作团队，同时，不同业务领域的律师也要相互协作。

去年底的一个上市公司控制权收购的项目中，我们在接到客户服务需求后的48小时之内组建起一个拥有十多名律师的跨办公室和跨业务领域的工作团队。在五十多天内完成了项目的整体服务，包括法律尽职调查、交易谈判、文本制定、国资审批、信息披露、监管机构审核以及最终的交割等。这个项目涉及多个省市的现场工作，尽调、谈判、内部决策同步推进，并且需要不同专业领域的律师共同协作。事实证明，锦天城完全可以胜任这样的复杂交易，也是我们发展的方向。

ALB：您未来几年工作的重点是什么？

鲍律师：我和我的团队依然会在未来几年专注并购业务，无论是境内交易还是跨境交易。在为现有客户提供更高质量服务的同时，我们希望能有更多机会为更大规模、更有市场影响力的并购项目提供服务。我们要突破自我，追求卓越，以我们的专业素养树立全新的市场形象。

in which Chinese enterprises acquire the controlling shares of companies listed on the New York Stock Exchange. In the face of many obstacles, how to integrate the management and governance structure of American listed companies with Chinese investors is a prominent challenge. Mr. Martin Hu, a senior partner at MHP Law Firm, led the M&A deal in which STR Holdings, Inc., a company listed on the New York Stock Exchange, sold 51% of its common shares to Zhenfa New Energy group. It was a successful attempt of a Chinese enterprise in acquiring the control of an NYSE-listed American company.

Double Star Group Co., Ltd. acquired 45% stake in Kumho Tire Co., Ltd., the second largest tire manufacturer in Korea and the 13th largest in the world, through the establishment of a PE fund. The project involves not only a variety of jurisdictions, but also a wide range of complex work, and the transaction process was full of twists and turns. Mr. Ark Bao, a senior partner at AllBright Law Offices, advised Double Star Group Co., Ltd. on the transaction with his team.

Wu Gang and his team also represented Qihoo 360, a once U.S. listed Chinese company in its back-door listing in China by acquiring a Shanghai-listed elevator-maker SJEC Corp. after Qihoo 360's privatization from the New York Stock Exchange in 2016. Qihoo 360's relisting is by far the biggest and the most complicated A-share listing in terms of both deal size and deal structure. The whole transaction took over three years to close and has experienced numerous changes of the regulatory environment as well as extreme volatilities both in the domestic and global capital markets.

SF Holding acquired DHL's supply chain operations in China for US\$792 million. Ms. Nanda Lau, a partner at Herbert Smith Freehills LLP, represented SF Holding in the deal. The transaction involved the complex management equity incentive mechanisms, tag-along rights, drag-along rights, and call/put options.

Assuming the Leadership Role

In ORG Technology's US\$205 million acquisition of shares in four Chinese beverage can-makers owned by Ball Asia Pacific, Mr. Xiong Jin, an international partner at King & Wood Mallesons, assumed the leadership role in the project management of the entire transaction, including coordinating comprehensively the work involving other teams of King & Wood Mallesons (such as securities team and antitrust team), financial and tax advisors, and (external) legal due diligence team, in particular, serving as the buyer's lead advisor in the transaction, leading the design of the transaction structure and strategy, project coordination management, and negotiation and revision of transaction documents, which fully demonstrated his comprehensive coordination capability as a lead counsel in complex cross-border transactions, and his expertise as a top M&A lawyer which enables him to formulate the most suitable transaction solution based on the full consideration of transaction practices in the markets of China and the U.S.

Ms. Miao Qinghui (Catherine), a partner at JunHe LLP, represented Shell China in the deal of transferring its 75% stake in Tongyi Lubricants in China to Huo's Group and the Carlyle Group. Prior to this transaction, all of Shell's M&A transactions in China were completed through international law firms, either independently or with the help of Chinese law firms hired by international law firms. It was the first time that Shell directly hired a Chinese law firm to represent Shell independently in its M&A transaction in China.

Ms. Wu Guohua (Annie), a senior partner at Jincheng Tongda & Neal, represented Consolidated Nickel Mines (CNM), a multinational company headquartered in London, in accepting investments from two Chinese listed companies. CNM's main assets are rare metal mineral resources in Africa. The fact that CNM chose Ms. Wu to lead the two overseas investment projects

普衡律师事务所公司业务部合伙人及上海和北京代表处的联合管理合伙人严嘉律师为复星集团提供法律咨询，收购巴西经纪及财富管理公司Guide Investimentos的多数股权。复星集团是中国领先的综合性投资集团。此项交易系复星集团在巴西第三次的重大收购。这项收购体现了复星集团投资和发展新兴市场，尤其是拉美市场的策略。同时，严嘉律师也代表复星集团收购奥地利维也纳上市公司、世界高端针织品制造商Wolford的多数股权，以及对其强制性全面要约收购。这些项目展现了普衡在复杂的跨境收购上拥有高度专业水平和顶尖团队。

中国企业并购美国纽交所主板上市公司几乎没有成功案例，在面临的诸多障碍中，美国上市公司的管理层与治理结构如何与中国投资人整合是突出的挑战。MHP君悦律师事务所胡光律师主导了纽交所上市公司STR Holdings, Inc.向振发能源集团出售其51%普通股的并购交易，是此类收购整合的成功尝试。

双星集团有限责任公司通过设立产业并购基金收购了韩国第二大和全球第十三大轮胎生产商锦湖轮胎株式会社45%的股权。该项目不仅涉及法域广、工作范围广泛复杂，交易过程更是一波三折。锦天城律师事务所高级合伙人鲍方舟律师带领的律师团队在该项目中代理双星集团有限责任公司。

原美股上市公司奇虎360借壳江南嘉捷回归A股，是迄今为止交易规模最大、交易结构最复杂的中概股A股上市项目（通过并购方式）。交易历时三年，经历了境内外资本市场巨幅波动、监管政策调整等极其复杂的局面。通商律师事务所吴刚律师带领通商团队主导了本次交易。

史密夫斐尔律师事务所合伙人刘依兰代理顺丰以7.92亿美元收购了DHL在华供应链业务，该交易涉及复杂的管理层股权激励机制、联售权、拖购权和看涨看跌期权。

担当牵头管理人

在奥瑞金以2.05亿美元收购波尔公司出售的中国4家金属制罐企业股权的交易中，金杜律师事务所国际合伙人熊进律师作为牵头合伙人主导了整个交易的项目管理，包括总体协调金杜其他团队（如证券、反垄断）、财务与税务顾问以及（外部）法律尽调团队，尤其是作为买方牵头交易顾问主导交易结构与策略的设计、项目协调管理以及交易文件

“As M&A lawyers, what makes our services valuable to our clients is not only to facilitate the transactions at the moment, but, more importantly, to ensure that our clients will not regret having made the deals several years later when they look back and re-study the transactions.”

—Xiao Aihua, Partner at Tian Yuan Law Firm

“并购律师的价值并不在于促成眼前交易，更在于避免客户数年后回顾或被巡视项目时懊悔匆忙做成了交易。”

—天元律师事务所合伙人肖爱华律师

shows her team's high quality services and international level standards. The services included designing transaction structures, coordinating and organizing the work of local legal counsel, conducting business negotiations, drafting and negotiating bilingual transaction documents, among others.

Core Value and Implicit Competitiveness

M&A lawyers are playing an increasingly important role in transactions; meanwhile they need to constantly upgrade their core skills along with the increasing complexity of M&A transactions. Due to space limitations, we only had in-depth conversations with four of the winners of the Top 15 M&A Lawyers. They shared with us their ideas about what makes their legal services the most valuable to their clients, and what implicit competitiveness the top M&A lawyers should possess.

Ms. Xiao Aihua is one of the leaders of the Investment and M&A Department and State-owned Enterprise Service Team of Tian Yuan Law Firm. Xiao has 17 years' experience in legal practice,

during which Xiao has participated in and led a number of major and complex projects which received much attention in the industry. Xiao said that in M&A deals, State-owned enterprises not only need to think of the economic benefits of the deals, but also need to take into account social responsibility and macro-policy orientation. As M&A lawyers, we need not only to ensure the compliance of the transaction plans and process, but also ensure that the transactions are reasonable as a whole. We need to make sure that the transactions are well-founded and well-demonstrated; meanwhile, we should be prepared for the follow-up auditing inspections and discipline inspections that may be faced in the future. To provide State-owned enterprises with efficient legal services in their M&A transactions, we need to have comprehensive legal service capabilities and insights on the work focuses of the government departments at different levels, fully understand the difficulties and challenges facing them, and navigate the key risks in transactions.

Xiao told ALB, “As M&A lawyers, what makes our services valuable to our clients is not only to facilitate the transactions at the moment, but, more importantly, to ensure that our clients will not regret having made the deals several years later when they look back and re-study the transactions. Therefore, it is particularly important to simulate and demonstrate in advance the potential difficulties and challenges arising after the completion of the transactions as well as the possible auditing and discipline inspection related issues.” Xiao believes that the implicit competitiveness of an excellent M&A lawyer is having strong empathic skills: fully communicating with project front-line workers, project leaders and project decision makers, or even the rivals and their lawyers to understand their motivations and needs, and try to achieve mutual benefits and win-win results. This would be the truly successful transactions.

Chinese enterprises' going global poses

谈判和修改，充分展示了作为牵头交易顾问在复杂跨境交易中细致全面的统筹协调能力，以及顶级交易律师结合交易特点在充分考量中美市场交易惯例的基础上形成最合适的交易解决方案的专业技能。

君合律师事务所合伙人缪晴辉律师作为牵头合伙人协助壳牌中国完成壳牌向霍氏集团和凯雷投资集团转让其持有的统一润滑油75%的股权。在此交易前，壳牌在中国所有的并购交易均通过国际律师事务所独立完成，或者由国际律师事务所再聘请中国律师事务所协助完成，而这单是壳牌在中国的并购交易中首次启用一家中国律师事务所独立代表壳牌完成交易。

金诚同达律师事务所合伙人邬国华律师代表总部位于伦敦的联合镍业有限公司（CNM）接受两家中国上市公司的投资。CNM的主要资产是位于非洲的稀有金属矿产资源。一家跨国公司聘请邬律师团队在海外投资项目中作为首席法律顾问，这体现了邬律师团队国际化的业务水准和高质量的服务水平。邬律师团队的服务包括设计交易架构、协调和组织当地法律顾问的工作、进行商业谈判、起草修改双语交易文件。

核心价值与隐性竞争力

以上不难看出：并购律师正在发挥越来越重要的作用，并购律师的核心技能也随着并购交易的复杂度而不断升级。因篇幅受限，我们深度对话了五位十五佳并购律师，请他们结合各自从业背景和体悟来谈并购律师带给客户的最大价值，以及他们理解的顶尖并购律师需具备的隐性竞争力。

肖爱华律师是天元投资并购部和国企服务团队的带头人之一。从业18年来，肖律师参与并主导了多个重大、疑难且在行业内广受关注的项目。在肖律师看来，国企并购不仅需要考虑项目经济效益，更需兼顾社会责任与宏观政策导向；不仅要确保交易方案与过程的合法合规，还要确保整体交易合情合理；不仅要确保交易立项有足够依据与充分论证，亦要提前预设后续可能面临的审计巡视、纪检监察的提问。做好国企并购法律服务，需具备综合的法律服务能力与对各部门、各层级关注点的领悟力，充分了解并切实理解国企的并购难点与痛点，与国企客户共进退。

肖律师告诉ALB，“并购律师的价值并不在于促成眼前交易，更在于避免客户数年后回顾或被巡视项目时懊悔匆

new opportunities for the growth of M&A business. Chinese law firms are becoming globalized while helping and facilitating the internationalization of Chinese enterprises. As M&A lawyers, we need not only to have legal expertise and rich experience in legal practice, but also collaborate with all related parties to develop and maintain efficient information gathering and sharing channels. In the era that requires increasingly specialized and full-process legal services, M&A lawyers need to continuously enhance their competencies while law firms need improve their comprehensive service capabilities in order to meet the difficulties and challenges which are far greater than before.

Don Williams is the Managing Partner and Chief Representative of Sheppard Mullin Shanghai Office. He has been in the M&A trade for more than 25 years including the recent 13 years in China. In every major M&A deal, Don Williams played the lead role in all aspects of the transaction.

Don Williams told ALB that, "When I started to practice in China 13 years ago, most of the M&A in the technology space (which was my focus then and remains so today) was inbound into China by US and other western, or occasionally Japanese, companies. Outside of a handful of SOEs, most Chinese enterprises didn't have much experience with M&A. Today, the landscape is very different. Chinese companies such as my client Alibaba are very sophisticated about M&A and do large numbers of outbound deals. Chinese buyers have become a key component of the M&A market in many leading technology centers around the world, from Silicon Valley to Israel, Germany and the UK."

"In fact Chinese enterprises are such significant buyers in the tech space that we've seen a backlash in some jurisdictions as countries worry that their technology "crown jewels" are too easily falling under Chinese control. Despite all the furor currently, I'm optimistic that over the medium to long term the M&A markets in most technology centers

"A good cross-border M&A lawyer needs to be creative, flexible, able to quickly assimilate new concepts and issues, hard-working and tenacious."

— Don Williams, Managing Partner and Chief Representative of Sheppard Mullin Shanghai Office

“成为一名优秀的跨境并购律师需具备五点：创造性、灵活性、快速学习与消化的能力、勤勉、坚韧。”

—美国盛智律师事务所上海办公室主管
合伙人和首席代表魏廉律师

will remain relatively open to overseas buyers, including Chinese enterprises, particularly if China can lead by example in opening its own technology sectors to foreign buyers to the extent appropriate and consistent with China's national interest," Don Williams adds.

According to Don Williams, a good cross-border M&A lawyer needs to be creative, flexible, able to quickly assimilate new concepts and issues, hard-working and tenacious. "Creativity is key because coming up with structures that satisfy the various competing interests of the parties to the transaction as well as complicated laws, rules and regulations across multiple jurisdictions often requires 'thinking outside the box.' Flexibility is important as even after coming up with a creative structure that works, it is often necessary to change tack and implement a new structure as diligence issues are identified, the parties' priorities change, or different constituencies (e.g., shareholders) make their voices heard. The ability to quickly assimilate new concepts and issues is crucial since doing a cross border M&A deal often involves working with the laws, rules and regulations of one or more jurisdictions with which one is not especially familiar at the outset. Being

忙做成了交易。因此，提前模拟并论证交易做成后的难点、痛点、被审计、巡查、检查时的问题点，尤为关键。”肖律师认为，优秀并购律师的隐性竞争力在于“共情”：与项目前线、项目负责人、项目决策者、甚或项目对手、对方律师充分沟通，理解各方诉求，做到点面兼顾、各方共赢才是持久有益、真正成功的好交易。

中国企业“走出去”是一个新的业务增长点，对于并购律师来说，如何服务好中国企业的国际化之路实质也是中国律师的国际化之路。并购交易律师不仅自身需具备法律专业素养与资深服务经验，也需横向、纵向充分地与各合作机构保持通畅高效的信息收集与共享渠道。在法律服务日益专业化、全程化的大时代，对并购律师个人能力以及律所综合服务能力要求更高，执业难度与挑战远胜从前。

魏廉律师担任美国盛智律师事务所上海办公室的主管合伙人和首席代表，不仅在中国执业已有13年，从事与中国相关的跨境并购业务更是长达25年之久。魏廉律师在其接手的每个重大跨境并购交易都担任项目总负责人，深度参与并主导交易全过程的每个环节。魏廉律师告诉ALB，“13年前，我开始在中国执业，那时发生在中国市场技术领域的并购交易大部分是欧美企业主导的，偶尔有些日企，中国企业相对很少。那时除少部分国企外，大多数的中国企业无太多并购经验，但今非昔比。现在，很多我的客户都是并购领域专家，比如阿里巴巴，就有着相当丰富的跨境并购交易经验。而且，中国的买家，如今已成为全球技术领域的重要购买力量，无论是发生在硅谷、以色列、德国还是英国的以主要技术中心的并购交易，都能见到中国企业的身影。”

“但与此同时，中国企业在科技领域的并购力度也让西方不免后怕，担忧核心技术会被中方企业轻易取得控制权。尽管甚嚣尘上，我对此仍持乐观积极态度：从中长期来看，世界大多数技术中心的并购交易市场是会抱持开放竞争姿态的，包括对中国买家的开放，同时也期待中国的技术领域并购市场在不损害国家利益的基础上也率先对全球买家同等开放。”魏廉律师补充道。

作为一名在跨境交易中牵头管理各当事方的资深并购律师，魏廉律师强调成为一名优秀的跨境并购律师需具备五点：创造性、灵活性、快速学习与消化

hardworking is critical because meeting the parties' often aggressive timetables, dealing with negotiations and other calls that accommodate multiple time zones and handling all the matters required to conclude a deal successfully is almost always a huge effort.

Finally we cross border M&A lawyers must be extremely tenacious, as every such deal has its ups and downs, and we have to carry the same burning desire to get the deal done successfully from the start of the transaction to the end, whatever the difficulties and headwinds that we face. We can never give up," Don Williams continues, "I believe most clients strongly value all of the characteristics I described above in their cross border M&A lawyers. They also want us to be practical and commercial, focused on finding a way to get the deal done in the most efficient manner that is possible and legally appropriate,

"Compliance is the lifeblood of a successful M&A transaction. If a lawyer finds that an M&A subject matter involves a major and irreparable legal flaw during the due diligence process, he should be courageous and disclose it truthfully and completely to the client."

— Miao Qinghui (Catherine),
Partner at JunHe

"合法合规是一单成功并购交易的生命线，如果律师在法律尽调过程中发现一个并购标的存在不可弥补且影响重大的法律瑕疵，应勇敢地向客户作如实全面的披露。"

-君合律师事务所合伙人缪晴辉律师

的能力、勤勉、坚韧。“创造性是关键，因为要设计出满足交易各方利益的交易结构、同时符合多个司法辖区下复杂的法律法规和监管要求，就一定要‘跳出盒子思考’。灵活性也同等重要，创造性解决方案一旦做出并非一劳永逸，变数可能来自尽调的新发现、交易方战略上有调整、其他利益相关方提出的意见等，这时灵活调整、乃至重新设计交易结构都是必要的。跨境并购交易因涉及多个司法辖区下的法律法规和监管政策，需要并购律师从一开始的不熟悉迅速进入状态、成为专家，这就要求快速吸纳、理解、消化的学习能力。勤勉无须多言，确保交易紧凑的时间表、顾及多个司法辖区时差的及时沟通与协调、为成功促成交易需处理的大小事项，需要并购律师非常尽职尽责。坚韧对并购律师来说尤为重要，特别是复杂的大型跨境交易，过程此起彼伏、各自挑战与问题层出不穷，并购律师却要一如既往地持续推动交易的顺利进展、不能松气，任何时刻不轻言弃。”魏廉律师告诉ALB。



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while never losing sight of client's core interests."

Ms. Miao Qinghui has the qualifications to practice law in the Mainland China and Hong Kong. She has extensive experience in foreign investment, real estate and alternative investment. Miao told ALB, "In many transactions I handled before, clients often chose the U.S. law, British law, or Hong Kong law as the governing law. So I realized that if I do not have a comprehensive knowledge of the common law, it would be very difficult for me to understand the meaning and possible legal consequences of each clause (of contracts or agreements that are made according to the common law), and it would be also difficult to give clients the proper and accurate legal advice. Having the qualifications to practice law in the mainland China and Hong Kong is very helpful for handling cross-border transactions – my knowledge of the common law enables me to take into account the positive and negative effects of the both jurisdictions on the cross-border transactions when drafting and preparing the transaction plans for the clients, and find the most appropriate solutions for the clients. And after becoming a Hong Kong lawyer, I could communicate better with overseas clients and peers of international law firms – I could better understand the legal logic behind each request and question they pose, and at the same time can easily explain to them some requirements that seem very normal under the common law system are completely impractical under the Chinese legal system, while some others may be achieved through workarounds."

Miao said that as M&A lawyers, our services would be of great value to the clients if we could, on the premise of compliance, help them achieve their business goals in a fast and efficient manner and maximize their profits. It is essential for an excellent M&A lawyer to have solid legal skills and a wide range of legal knowledge; having rich hands-on experience in handling transactions is

important as well. And Miao stressed, "Compliance is the lifeblood of a successful M&A transaction. If a lawyer finds that an M&A subject matter involves a major and irreparable legal flaw during the due diligence process, he should be courageous and disclose it truthfully and completely to the client. By doing so, it might lead to the termination of the transaction, but certainly would cause less damage to the client than a 'wrong' transaction would do. However, if there are legal obstacles or legal risks in the client's initial transaction structure, an M&A lawyer should do his best to optimize the transaction structure or even create a new transaction structure. Furthermore, we should keep in mind that in China, there are often certain differences between how laws stipulate and how laws are implemented, which requires us to have an in-deep understanding of judicial practices and market operation practices in order to provide our clients with practical and unbiased guidance. And last, high EQ as well as good communication and negotiation skills are also essential – a truly excellent M&A lawyer does not win an argument by attacking or embarrassing the other side, rather he knows when to press on and when to back off in order to persuade the other side to accept his proposal."

Mr. Bao Fangzhou, a senior partner at AllBright Law Offices, has been practicing in the M&A area for 17 years, covering major asset restructuring of listed companies, cross-border M&As by Chinese companies, horizontal and vertical M&As of various companies for strategic or financial purposes, and the establishment and operation of M&A funds. Bao said that our services are valuable to our clients when we could help them "discover value": no matter which party we represent, the parties to the transaction can clarify the legal problems existing in the transaction relying on the professional services we provide, and know more clearly about the value of the subject matter of the transaction. M&A lawyers can also help the parties to transactions to clarify the feasibility of the

"For an excellent M&A lawyer, knowing the 'art of compromise' is a very important competitiveness. M&As involve confrontations between two parties or among a number of parties. An excellent M&A lawyer should not 'obsessively' pursue the maximization of the interests of his clients, and thus become ignorant about the position of his clients in transactions and forget about the ultimate goal of facilitating the transactions."

—Ark Bao, Senior Partner at AllBright Law Offices

"作为优秀的并购律师，一个很重要的竞争力是‘妥协的艺术’——并购涉及双方乃至多方间的对抗，优秀的并购律师不应一味的、片面地追求己方客户利益最大化、而忽略客户在交易中所处的地位以及促成交易这个最终目的。"

—锦天城律师事务所合伙人鲍方舟律师

缪晴辉律师同时具有中国和香港律师执业资格，在外商投资、房地产及另类投资领域均积累了丰富经验。缪律师告诉ALB，“此前经办的大量交易中，客户往往选择美国法、英国法、香港法作为管辖法律，这让我感到：不全面了解普通法很难真正明白每个条款背后的涵义及可能的法律后果，也就很难为客户提供准确到位的中国法律意见。拥有两个执业资格对跨境交易非常有帮助——尽管我在执业过程中仍偏重中国法律，我的香港法律执业水平尚比不上常年专注于香港法律的合伙人，但我对普通法的了解已足以帮我在为客户的跨境交易设计交易方案时兼顾两个法域的正负影响，从而找到两边都能落地的好方案。另一方面，成为香港律师后，我

国有企业并购上市公司控股权若干实践观察

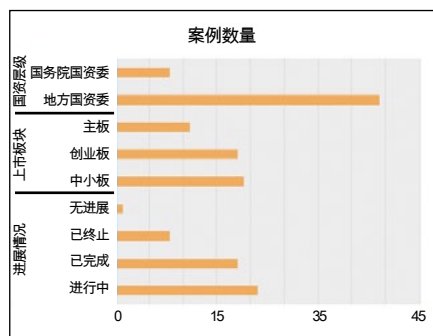


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在落实《关于深化国有企业改革的指导意见》、深化国有企业改革的大政方针下，国有企业并购上市公司控股权案例近年在市场上呈爆发增长之势。结合近期参与的国企并购上市公司案例，我们对2018年证券市场公开的国企并购上市公司控股权案例梳理并分享如下实践观察。

一、2018年度国企并购上市公司控制权案例概览

根据市场公开信息，我们对2018年市场上的48例国企并购上市公司控制权案例统计如下：



上述案例中，地方国企参与39例，共涉及17省市，其中广东、江苏、山东三省表现活跃。本轮国企并购热潮中，并购行业多涉及战略新兴和产业升级大方向一致的产业，标的公司多为中小市值，市值在40亿元以下的占比56%，标的公司普遍质地良好。从收购方类型看，主要包括国有投资类公司、实业公司、私募股权基金，其中，投资类公司占比超50%。

二、出现国企并购上市公司热潮的原因

1、控股股东为缓解流动性风险被动转让控制权。

2017年以来，受去杠杆、资管新规等影响，A股市场情况严峻，控股股东资金链断裂，身负股权质押的重压，流动性风险问题突显。从上述案例看，上市公司多数存在股权质押情况，多数控股股东质押股权比例在90%以上。大股东不得不转让公司控股权以缓解债务危机。

2、国资谋求战略布局主动寻求并购。

首先，国有资本通过收购上市公司控股权，推动国企混改，为旗下优质资产证券化储备融资平台，利用资本市场实现优质资产保值增值。其次，一些出现控股权转让的上市公司其自身业绩不差，股价在股市下跌大势下处于历史低位，国企有动力

选择低价并购。再者，在目前经济下行压力背景下，为避免地区经济波动、地区纳税大户外迁，地方国资在体制上需承担维稳责任。

三、国企并购上市公司的主要类型

从2018年上述案例看，国企并购上市公司控股权方式呈现组合化、灵活性趋势，如下所示：

序号	控制权取得方式	案例数量
1	协议转让	8
2	协议转让+投票权委托	17
3	协议转让+放弃部分表决权	1
4	协议转让+信托受益权转让	1
5	协议转让+定向增发新股	1
6	协议转让+承接控股股东可交换债券并转股	1
7	投票权委托	3
8	间接收购(对股东增资)、投票权委托	4
9	股权转让+资产重组+资产注入	2
10	投票权委托+公开竞拍	1
11	部分要约收购	1
12	新设合资公司+上市公司股权注入	1
13	原实控人放弃部分投票权	1
合计		42

注：另6个案例尚未公告控制权取得方式。

从收购方式看，协议转让是主流，采用协议转让再配合投票权委托、投票权放弃方式占比60%以上，主要原因在于：(1) 协议转让方式直接、确定，能直观体现交易方诉求；(2) 针对表决权可做的安排(如表决权委托、表决权放弃)灵活且有效，在协议收购比例一定的情况下，能有效增强控制权比例、尽量避免触发要约收购。

四、国企并购上市公司的主要问题

1、尽调要求

根据《中央企业违规经营投资责任追究实施办法(试行)》及/或地方国资委出台的相关规定，国企在投资并购方面应按规定开展尽职调查。鉴于上市公司收购时间表通常非常紧张，如何在尽职调查阶段发现并全面评估标的公司潜在问题或风险，确保满足风控要求尤为重要。

2、合规要求

国企合规监管要求高，上市公司被收购后需满足国有控股公司的各类合规要求。在民营上市公司中普遍存在的社保、公积金、环保、税务、互保、权属瑕疵、劳动

纠纷等问题，国企在并购环节会作为关注重点并需提前论证整改规范措施及成本。该等合规要求会直接与国企的收购成本、上市公司估值挂钩。

3、国资审批

国企决策需按国企投资监管规则履行必要程序，所需时间较长，过程中可能遇到高管变更、国资监管政策调整的风险，交易成败具有更大不确定性。如在昆山阳澄湖文旅集团有限责任公司拟向控股股东收购东方网络(002175.SZ)股权案例中，东方网络于2018年8月29日发布公告称，因市场环境变化等原因没有取得昆山市政府国有资产监督管理办公室审批，双方终止协议。

4、核心商务条件及交易锁定

在国资收购民企上市公司控股权过程中，有关收购价格、比例、时点、价款支付等核心商务条件，通常会嵌套实际控制人的债务清偿、股份质押限制、股份限售、高管团队去留等问题，双方博弈激烈，往往还需考虑债权人等第三方的意愿。由于证券市场瞬息万变及交易规则所限，收购方还面临能否以既定商务条件锁定远期交易，如何在合规前提下运用商业智慧及法律技术兼顾并匹配各方诉求的问题。

5、民营上市公司对能否符合国资监管要求的顾虑

国企控股民营上市公司后，公司治理结构、日常经营管理、用人体系及薪酬制度等均需满足国有控股公司监管要求。在原民营股东还持有上市公司部分股份的情况下，会重点关注过往历史不规范问题会否被秋后算账，公司管理层变动和调整格局、党委、纪检组织安排，公司原有业务拓展模式、高管任命制度、员工薪酬体系、股权激励安排后续能否保留或推进。

五、国企收购上市公司后的后续整合

国企并购民营上市公司控股权项目通常耗时大半年之久，后续整合任重道远，控制权变更对上市公司影响深远。国企在获得上市公司控制权过程中，需综合考虑与原有人力薪酬激励体系、企业文化的有机衔接与匹配，避免在控制权变更过程中动摇企业活力根基。国企尚需考虑从发展战略上对上市公司进行全新引导和规划，通过适当而有度的管理层更迭、管控政策调整实现对上市公司组织管控、人力资源的整合，调和企业文化，保持并激发上市公司市场活力，实现国有资本保值增值。

transactions by drafting transaction schemes and developing trading terms and conditions agreed by the parties through a series of intense negotiations.

For an excellent M&A lawyer, knowing the “art of compromise” is a very important competitiveness. M&As involve confrontations between two parties or among a number of parties. An excellent M&A lawyer should not ‘obsessively’ pursue maximization of the interests of his clients, and thus become ignorant about the position of his clients in transactions and forget about the ultimate goal of facilitating the transactions. It is very important to have good judgment of when and how the counterparty to the transaction would prepare a compromise, and then propose appropriate trading terms in order to advance the transaction.

Along with more and more M&A transactions by Chinese enterprises that are going global, Chinese M&A lawyers are faced with both new challenges and new opportunities. New challenges and requirements include, among others: (1) being familiar with international business practices and having good understanding of international M&A transaction processes; (2) language skills; (3) quickly locating the most suitable overseas lawyers, overseas accountants and other partners, and assisting customers in communication and coordination; (4) adapting to cultural differences in different countries and regions, and assisting customers to adapt to such cultural differences; and (5) having a certain knowledge of the laws and regulations of the popular target countries or regions involved in cross-border M&A transactions.

New opportunities include, among others: (1) in a cross-border M&A transaction, Chinese lawyers have the opportunity to be the lead legal counsel of one of parties to the transaction, leading and coordinating lawyers from different countries and regions to jointly provide cross-border transaction related legal services to clients, thus expanding the service dimensions of Chinese lawyers and enhancing the value of their services; and (2) it also helps Chinese lawyers to “go global” by handling more and more

“Helping clients to successfully complete transactions is always our top priority, on the premise of ensuring the quality. This requires lawyers to not only be able to draft legal documents, but also have business thinking to assist clients in negotiations or even lead negotiations. In this way, lawyers become reliable partners of clients in advancing the progress of deals.”

—Lin Huawei, Partner at
Global Law Office

“协助客户成功完成交易是硬道理，但前提是保证质量。这就要求律师不单有法律上的文件起草技术，对于行业和交易要有商业思维，可以协助客户谈判、甚至主导谈判，反过来客户依赖律师来推进一个交易。”

—环球律师事务所合伙人林华伟律师

cross-border M&A transactions. They could take this opportunity to expand their business to other parts of the world. I believe we will see more and more multinational law firms headquartered in China in the future.

Mr. Lin Huawei has been practicing in areas of corporate M&A and PE investment for 25 years. He is one of the few Chinese lawyers who are trusted by top Wall Street funds and investment banks. Lin provided legal services for Blackstone for over ten years, covering almost all the Blackstone Real Estate’s projects in China. The due diligence reports prepared by Lin are of great quality that even Goldman Sachs and CICC refer to his reports for investment.

Looking back at the development of M&A business in China over the past 25 years, Lin said that M&A business in China has undergone qualitative changes: from basic to sophisticated

与境外客户和国际律所同行的沟通更为顺畅，明白他们提出每个要求和问题后面的法律逻辑，也能轻松向他们解释哪些在普通法系下看来非常正常的要求在中国法律体系下是完全不可行的，哪些则可通过变通来实现。”

缪律师认为，并购交易律师带给客户的最大价值在于帮助客户在合法合规的前提下以快捷高效且利益最大化的方式实现其商业目的。成为优秀的并购律师，扎实的法律功底和一定广度的法律知识必不可少，同时需要大量交易经验的历练。缪律师强调，“合法合规是一单成功并购交易的生命线，如果律师在法律尽调过程中发现一个并购标的存在不可弥补且影响重大的法律瑕疵，应勇敢地向客户作如实全面的披露，尽管有可能导致交易就此终结，但客户不做交易所遭受的损失将远远小于做错交易所遭受的损失；如果客户初步设想的交易架构存在问题，交易律师则应竭尽所能优化甚至创新交易架构以减少或避免法律风险。其次，要考虑到中国的法律规定及落实往往存在一定差异，只有对司法实践和市场操作惯例具备深度了解，才能给客户提供具有实操性、无偏差的指导意见。再次，高情商及沟通谈判技巧不可或缺——真正优秀的并购律师在谈判中并不会通过强硬压制令对方尴尬来显示高明，而是懂得合理进退、巧妙说服对方接受我方建议。

“锦天城律师事务所合伙人鲍方舟律师17年来深耕并购业务，领域涉及上市公司重大资产重组、中国企业跨境并购、各类企业战略或财务性的横向和纵向并购、并购基金的组建和运营等。鲍律师谈到，并购律师带给客户最大的价值是协助客户“发现价值”：无论代表哪一方，当事方均可通过律师的专业工作厘清交易存在的法律问题、更清晰地认识到交易标的的价值。同时，律师交易方案的设计、交易条件的制订以及在交易谈判中的“寸土必争”，能协助交易双方更明确交易的可行性，从而发现这个对手在本次交易中的真正价值。

作为优秀的并购律师，一个很重要的竞争力是“妥协的艺术”——并购涉及双方乃至多方面的对抗，优秀的并购律师不应一味的、片面地追求己方客户利益最大化、而忽略客户在交易中所处的地位以及促成交易这个最终目的。准确判断交易各方可以妥协的空间，并在每一轮争夺中提出合适的交易条款、有步骤有层次地进退，十分重要。

面对越来越多的“走出去”并购交

and from simple to complex, and these changes will continue. “As China is growing much stronger, more and more Chinese enterprises are going global, with the project scale getting bigger and the project structure more complicated. M&A lawyers must be able to provide leadership in terms of controlling risks and navigating large and complicated projects, such as establishing good working relationships with law firms in many countries or regions. As Chinese M&A lawyers, we are experiencing a gradual transition from the role of ‘supporter’ to the role of ‘leader’ who navigates the whole project. It poses a huge opportunity for us: on the one hand, it enables us to gain greater exposure to larger and more complicated M&A cases; on the other hand, we could constantly increase our value by learning from peers in different jurisdictions.”

According to Lin, as M&A lawyers, helping clients to successfully complete transactions is always our top priority, on the premise of ensuring the quality. This requires lawyers to not only be able to draft legal documents, but also have business thinking to assist clients in negotiations or even lead negotiations. In this way, lawyers become reliable partners of clients in advancing the progress of deals. And that is the most important core competitiveness of M&A lawyers.

Talking about the secret of building deep trust with Wall Street’s top funds and investment banks, Lin told ALB, “We do not intentionally establish a relationship or build trust. What we do is simple – having a good attitude, working hard, getting the job done, and growing with our clients – this is our greatest strength and advantage. We have some clients with whom we have been working for 10 years, 15 years or even longer. Some of them have been promoted to partners in investment banks or funds, some of them are now working with large companies as legal counsels or managers of business departments and some are working at other large institutions; but when they need legal services, they will still come to us. This is how trust has been built.”



易，作为中国并购交易律师来说，既有新的挑战也同时伴随新的机遇。新的挑战和要求包括但不限于：第一要熟悉国际商业惯例，了解国际并购交易流程；第二是语言的使用能力；第三是快速落实最适合客户的境外律师、境外会计师等合作伙伴，并协助客户进行沟通和协调；第四是适应不同国家、地区的文化差异，并协助客户适应这样的文化差异；第五是要对跨境并购涉及的热点国家地区的法律法规有一定程度的了解。

新的机遇包括但不限于：首先，在跨境并购总体牵头法律服务中，中国律师有机会成为交易一方的总牵头律师，带领及协调来自多个国家和地区的律师一起为客户提供跨境法律服务，从而拓展了中国律师的服务空间，提升了中国律师对于客户的价值；其次，越来越多的跨境并购业务也有助于中国律师“走出去”，将业务触角伸到世界各地，相信将来也会有更多的总部位于中国、从中国走向世界的跨国律所。

林华伟律师从事公司并购、PE投资25年，是被华尔街顶级基金和投行信任的为数不多的中国律师之一。林律师为黑石提供法律服务10多年，包揽了黑石不动产团队在中国的几乎全部项目。林律师的尽调报告因质量优异，高盛、中金等机构也参阅该报告进行投资。

回顾过去25年中国企业并购业务的发展，林律师感慨并购业务经历了质的变化：从粗糙到精细、从简单到复

杂，且这种变化还会持续下去。“中国国力增强，越来越多的企业‘走出去’，而且项目规模越来越大、项目结构越来越复杂，要求并购律师必须掌握操盘和指挥大项目和复杂项目的的能力，例如和多个国家或地区的律所建立良好的工作关系。对于中国律师而言，从过去的配角逐渐过渡到操盘整个项目的主角，这是巨大的机遇，因为正面锻炼了中国并购律师完成交易的能力，另一方面又可以向合作的各法域律师学习，不断提升自己。”

林律师理解并购业务的精髓是：协助客户成功完成交易是硬道理，但前提是保证质量。这就要求律师不单有法律上的文件起草技术，对于行业和交易要有商业思维，可以协助客户谈判、甚至主导谈判，反过来客户依赖律师来推进一个交易，这是并购律师最大的核心竞争力。

而对于与华尔街顶级基金与投行建立的深厚信任的秘诀？林律师告诉ALB，“我们并未刻意建立某种关系或者信任。我们最大的特点和优势就是摆正心态、好好干活，和客户一起成长，慢慢就会发现已经和这位客户一起工作10年了、和那位客户一起工作15年了。当年入职的同龄人在投行和基金都已升为合伙人了，在大公司的也做到法务或者业务主管。即使他们转到其他大机构工作，也继续聘用我们的法律服务，信任就是这样自然而然建立起来的。”

THE ENFORCEMENT CONUNDRUM 执法难题

Chinese arbitration is on the rise, but given that arbitral awards can be of varying quality, enforcement can be a challenge.

中国的仲裁领域呈现出向上发展趋势，但由于仲裁裁决的质量存在差异，如何使仲裁裁决获得执行可能成为难题。

BY ASIAN LEGAL BUSINESS



"The reasons for those rejections are specific to each case since different jurisdictions might have different understanding for the issues such as due process, public policy and so on, under the New York Convention. The language and procedure of the arbitration are great challenges for Chinese clients and Chinese arbitration practitioners and also great challenges for the award to be enforced."

—Zhang Zhi, V&T Law Firm

“由于不同的司法管辖区可能对《纽约公约》关于正当程序、公共政策等问题的规定有不同的理解，因此驳回仲裁裁决的原因是针对每一个案件的。仲裁的语言和程序对中国客户和中国仲裁从业人员来说是一个巨大挑战，也是仲裁裁决能否得到执行所面临的巨大挑战。”

—张志，万商天勤律师事务所

Arbitral awards issued by Chinese arbitration organizations are being recognised and enforced in other jurisdictions around the world. However, lawyers say China still has a long way to go to improve the quality of these awards, especially when the country is banking on the advantages of Shanghai as a financial hub to position the city as a venue for international arbitration.

"Local arbitration centres seldom deal with large-scale international cases," says Paul Zhou, managing partner at Wintell & Co. "It's mainly the bigger ones that usually handle arbitration cases involving foreign parties."

Zhou is referring to arbitration organizations such as China International

Economic and Trade Arbitration Commission (CIETAC), Shanghai International Arbitration Centre (SHIAC), Beijing International Arbitration Centre (BIAC) and Shenzhen Court of International Arbitration (SCIA).

To date, nearly 160 countries and territories, including China, the US, Europe and part of "One Belt One Road" countries, have acceded and ratified the New York Arbitration Convention on the Recognition and Enforcement of Foreign Arbitral Awards adopted by the United Nations Conference on International Commercial Arbitration in 1958. The Chinese mainland and Hong Kong also entered into an Arrangement on the Reciprocal Enforcement of Arbitral Awards Between Mainland China and the Hong Kong Special Administrative Region.

According to Thomson Reuters' Westlaw, there are at least 22 arbitral awards made by CIETAC, seeking recognition and enforcement in the US from 2000 to 2018, and 68 percent of the awards are granted. In past 20 years, in accordance with the mainland-Hong Kong arrangement, almost 12 arbitral awards made in the mainland were applied for recognition and enforcement in Hong Kong, and 75 percent cases were enforced.

"There are no concrete data on the rate of enforceability of Chinese arbitral awards. Since most cases in Chinese arbitration institutions are between domestic parties, the need to enforce the awards in a foreign jurisdiction is far less than those to be enforced domestically," says Zhang Zhi, partner at V&T Law Firm.

"However, in recent years, we find that the number and ratio of foreign related arbitration cases in Chinese arbitration regime has increased," he adds. Zhang believes that more awards will be enforced in other jurisdictions, especially in those along the Belt and Road Initiative.

In 2018, U.S. law firm Alston & Bird also conducted a survey on the enforcement of arbitral awards from CIETAC in the United States in recent years. The survey results showed that as of June 2018, a

中国仲裁机构作出的仲裁裁决在世界各地的其他司法管辖区逐步得到承认和执行。然而，律师们表示，中国为提高仲裁裁决的质量方面还需要作出很多努力，特别是如果中国希望利用上海作为金融中心的优势，将这座城市打造成为国际仲裁地。

“地方仲裁中心很少处理大型的国际案件，”瀛泰律师事务所执行合伙人周波表示。“通常情况下，涉外仲裁案件主要由大型的仲裁机构处理。”

周律师所说的大型仲裁机构是指中国国际经济贸易仲裁委员会（“贸仲委”）、上海国际仲裁中心（“上海贸仲”）、北京国际仲裁中心（“北仲”）和深圳国际仲裁院（“华南国仲”）等。

到目前为止，包括中国、美国、欧洲和“一带一路”倡议沿线部分国家在内的近160个国家和地区已经加入并批准了1958年联合国国际商事仲裁会议上通过的《承认及执行外国仲裁裁决公约》（简称“《纽约公约》”）。中国内地与香港特别行政区也签署了《内地与香港特别行政区相互执行仲裁裁决的安排》（简称“《内地与香港仲裁安排》”）。

根据汤森路透Westlaw数据，在2000年至2018年期间，贸仲委作出的至少22项仲裁裁决在美国寻求承认和执行，其中68%的裁决获得批准。在过去的20年里，根据《内地与香港仲裁安排》，内地共有近12项仲裁裁决在香港申请承认和执行，其中的75%得到了执行。

“目前还没有关于中国仲裁裁决可执行性的具体数据。由于中国仲裁机构处理的大多数案件都是在国内当事人之间进行的，因此在境外管辖区执行裁决的需求远远低于在境内执行裁决的需求，”万商天勤律师事务所合伙人张志说。

“但是近年来，我们注意到中国仲裁体系中涉外仲裁案件的数量和比例都有所增加，”他补充道。张律师认为，将会有更多的由中国仲裁机构作出的裁决在其他司法管辖区获得执行，

尤其是在“一带一路”倡议沿线的国家和地区。

2018年，美国Alston & Bird律师事务所也针对近年来贸仲委作出的仲裁裁决在美国的执行情况进行了调查。调查结果显示，截至2018年

total of 58 CIETAC arbitral awards were recognized and enforced in US courts, with a successful enforcement rate of 100 percent.

CIETAC's Vice Chairman and Secretary General, Wang Chengjie says that due to the lack of channels for collecting related data and information, and the fact that the involved parties do not usually report to CIETAC on the recognition and enforcement of the arbitral awards, the centre has not been able to consolidate the complete data on the overall enforceability of these awards.

"But based on recent media reports and feedback from the parties, recent CIETAC awards have all been recognised and enforced in other jurisdictions," says Wang.

Wang also notes that the awards being enforced cover a wide range of sectors, including general sales of goods, industrial raw materials and electromechanical equipment.

PROCEDURE IS KEY

To simplify and harmonize the enforcement proceeding, there are seven grounds specified in the Convention to limit the recognition and enforcement for convention awards, on which the losing parties of awards could bring motion against the enforcement of the award. They are procedure defence; incapacity of the parties and invalidity of the arbitration agreement; lack of due process; excess by arbitrator of his authority; composition of arbitral tribunal and arbitral proceeding; award not binding or setting aside; subject matter may not be settled by arbitration; and violation of public policy.

In recent years, some successful enforcement cases of Chinese arbitral awards include awards made by CIETAC in Sinocore international Co Ltd v RBRG Trading (UK) Ltd., enforced by the Business and Property Courts of England & Wales; and Tianjin Port Free Trade Zone International Trade Service Co., Ltd. v. Tiancheng Chempharm, Inc., enforced by the Eastern District of New York; as well as a SHIAC award in Liu Luwei v. Phyto

"The writing skills of Chinese arbitrators vary from one another, especially for composing the reasoning part which is very important to convince the courts. Because a lot of our arbitrators previously worked in courts and have a very straightforward style, so they may not elaborate much on the reasoning part and would rather focus more on the conclusion."

—Paul Zhou, Wintell & Co.

"中国仲裁员的写作水平参差不齐，尤其是在撰写推理部分方面，而这部分内容在说服法院时是非常重要的。由于我们很多仲裁员以前都曾在法院任职，他们的工作风格相当简单直接，所以他们可能不太注重详细阐述推理部分，而是更多地关注结论。"

—周波，瀛泰律师事务所

Tech Corp. that was enforced by the District Court of California.

It is a common view that procedural issues of arbitration are usually the deal-breaker for an arbitral award to be enforced.

In Tianjin Port Free Trade Zone International Trade Service Co., Ltd. v. Tiancheng Chempharm, Inc., U.S. company Tiancheng said the CIETAC did not follow the procedure and give out appropriate notices. But it was then discovered that the arbitral tribunal composition notice and the notice of court hearing were delivered to a wrong address first and rejected by Tiancheng. In the end, The US court held that the arbitral tribunal had properly notified the respondent and the CIETAC award was successfully enforced.

"We believe that the delivery of

6月，共有58项贸仲委作出的仲裁裁决在美国法院得到承认和执行，成功执行率达100%。

贸仲委副主任兼秘书长王承杰表示，由于缺乏收集相关数据和信息的渠道，而且有关各方通常不会向贸仲委报告仲裁裁决的承认和执行情况，因此贸仲委无法将对完整的数据进行整合，从而得出仲裁裁决的整体可执行性。

"但根据最近的媒体报道和各方的反馈，贸仲委最近作出的裁决在其他司法管辖区都得到了承认和执行，"王承杰说。

王先生还指出，获得执行的仲裁裁决涉及广泛的领域，包括一般商品销售、工业原材料和机电设备等。

程序是关键

为简化和协调执行程序，《纽约公约》规定了七项理由以限制对公约裁决的承认和执行；据此，裁决的败诉方可以对裁决的执行提出动议。这七项理由分别是：程序辩护，当事人无行为能力和仲裁协议无效；缺乏正当程序；仲裁员越权；仲裁庭组成和仲裁程序；裁决不具约束力或被撤销；标的物不能通过仲裁解决；违反公共政策。

近年来，中国仲裁裁决的一些成功执行案例包括：贸仲委在 Sinocore international Co Ltd v RBRG Trading (UK) Ltd.一案中的裁决得到了英国法院的支持，由英格兰及威尔士商事与财产法院执行；贸仲委在 Tianjin Port Free Trade Zone International Trade Service Co., Ltd. v. Tiancheng Chempharm, Inc.一案中作出的裁决由美国纽约东区法院执行；上海贸仲在 Liu Luwei v. Phyto Tech Corp.一案中作出的裁决由美国加州地方法院执行。

仲裁程序问题往往是造成仲裁裁决无法执行的主要原因，这是仲裁领域的普遍共识。

在 Tianjin Port Free Trade Zone International Trade Service Co., Ltd. v. Tiancheng Chempharm, Inc.一案中，美国公司 Tiancheng 提出，贸仲委没有遵循程序，未能发出适当的通知。但后来发现，仲裁庭组成通知书和庭审通知书先被寄送到了错误的地址，被 Tiancheng 拒收了。但最终，美国法院认为仲裁庭已经适当通知了被执行人，贸仲委的裁决被



arbitration documents is a very important part of the foreign-related arbitration procedure, and it is also an important factor to the recognition and enforcement of arbitral awards abroad," says Wang.

"At the end of the day, arbitration is a kind of quasi-judicial means of dispute resolution which means that the procedures may be the most important factor," says Zhou from Wintell.

Zhang from V&T says another one of the reasons for dismissing and rejecting to enforce a Chinese arbitral award could be that the language for the service of notice of arbitration is Chinese rather than English "which did not construe a proper notice under Article V (b) of New

York Convention.

"The reasons for those rejections are specific to each case since different jurisdictions might have different understanding for the issues such as due process, public policy and so on, under New York Conventions," says Zhang. "The language and procedure of the arbitration are great challenges for Chinese clients and Chinese arbitration practitioners and also great challenges for the award to be enforced."

To overcome these barriers, Zhang suggests Chinese arbitration institutions to constantly update themselves with international rules and proceedings of arbitration. The arbitral tribunal should have a

成功执行。

"我们认为，提交仲裁文件是涉外仲裁程序中的一个非常重要的环节，也是仲裁裁决能够在境外获得承认和执行的一个重要因素，"王先生说。

"仲裁终究是一种准司法的争议解决手段，这意味着程序可能是最重要的因素，"瀛泰的周律师说。

万商天勤的张律师表示，中国的仲裁裁决被驳回或拒绝执行的另一个原因可能是，送达的仲裁通知书的语言是中文而不是英文，那么"按照《纽约公约》第五条(乙)款的规定，这样的通知书不能解释为适当的通知。"

"由于不同的司法管辖区可能对《纽约公约》关于正当程序、公共政策等问题的规定有不同的理解，因此驳回仲裁裁决的原因是针对每一个案件的。仲裁的语言和程序对中国客户和中国仲裁从业人员来说是一个巨大挑战，也是仲裁裁决能否得到执行所面临的巨大挑战，"张律师说。

为了克服这些障碍，张律师建议中国仲裁机构学习掌握国际规则和仲裁程序的新动态，更新

自己在这些领域的知识。仲裁庭应该更好地管理仲裁程序，从而避免违反《纽约公约》关于仲裁程序的任何规定。

当事人和法律顾问也应该更加关注合同中的仲裁条款，并找到更好的方法来降低执行风险。例如，当发生争议时，选择一个在该司法管辖区内具有良好声誉以及良好执行记录的中国仲裁机构。

不同的规则

尽管《纽约公约》规定了在成员国执行仲裁裁决的原则性规定，但每个司法管辖区在具体规定上是存在差异的。

"这可能对中国仲裁裁决在其他司法管辖区的执行提出了挑战，"贸仲委王先生说。"例如，印度尼西亚法律要求仲裁员或其法定代表人在申请执行国内外仲裁裁决时需要向法院登记，还需要完成一系列的公证和认证程序。这些繁琐的法规为在印度尼西亚执行外国仲裁裁决造成了程序障碍。"

关于违反公共政策的行为，由于其多样性和不确定性，因此存在着许多争议，仲裁裁决是否被驳回或撤销的决定只能取决于缔约国法院的

better management of the proceeding to avoid any procedure to violate provisions under the New York Convention.

The party and legal counsel should also pay more attention to the arbitration clause in the contract and find a better way to reduce the risk of enforcement, for example, choosing a reputable Chinese arbitration institution that has a good track record for enforcement in that jurisdiction, when a dispute arises.

DIFFERENT RULES

Although the New York Convention provides a principled provision for the enforcement of arbitral awards in member states, there are differences in the specific provisions of each jurisdiction.

"This could pose challenges for Chinese arbitral awards to be enforced in other jurisdictions," says Wang. "For example, Indonesian law requires that an arbitrator or his legal representative to register with the court when applying for enforcement of domestic and foreign arbitral awards, as well as a series of notarization and certification procedures. Such cumbersome regulations create procedural barriers to the enforcement of foreign arbitral awards in Indonesia."

For the violation of public policies, there are many disputes and controversies since it is diversity and uncertainty, and the judgement whether arbitral awards are violated may only depend on the discretion of the court in contracting states.

Last year, the Court of First Instance of the High Court of Hong Kong rejected an arbitral award of Guangzhou Arbitration Commission due to improper and insufficient reasoning of the award, which violates the public policy of Hong Kong.

"To decrease or mitigate the influence for the enforcement of convention awards, including Chinese arbitral award, the convention shall clarify or identify the standards and scope for public policy, and judicial practice and precedent could be the reference," says Philip Qiao, partner at East & Concord Partners.

LONG WAY TO GO

"Within the last few years there has

definitely been a positive shift towards enforcement of PRC arbitral awards either in contracting states or Hong Kong," says Qiao.

But China is still exploring the field of international arbitration and is still in the process of perfecting the system.


"There are very few full-time arbitrators in China, most of the current ones are industry experts from all walks of life serving as arbitrators part-time," says Zhou. "They have limited energy, plus the pay is not very good, which all lead to hasty arbitral award-making."

Zhou points out that the quality of arbitration documents prepared by arbitration practitioners is very uneven.

"The writing skills of Chinese arbitrators vary from one another, especially for composing the reasoning part which is very important to convince the courts," he says. "Because a lot of our arbitrators previously worked in courts and have a very straightforward style, so they may not elaborate much on the reasoning part and would rather focus more on the conclusion."

There are also other logistic issues China needs to resolve on the way of forging the next APAC arbitration hub which would involve recruiting more foreign arbitrators and sorting out work visas for them.

"Diversity in arbitrators is necessary if we want to build an international arbitration centre, and work visas for foreign arbitrators is currently an issue to be further addressed," says Zhou.

"These are some of the obvious obstacles in building an international arbitration centre, but we also have confidence, plus the Supreme Court has also issued a number of supporting measures to safeguard and support international commercial arbitration in China," he adds. "If your overall legal environment is friendly, your regulations are sound, your services are of good quality, and your fees are fair, everyone will be delighted come to you for dispute resolution." 

自由裁量权。

去年，香港高等法院原讼法庭驳回了广州仲裁委员会的仲裁裁决，原因是：裁决不当且理由不充分，因而违反了香港的公共政策。

"为了减少或减轻对包括中国仲裁裁决在内的公约裁决执行的影响，公约应澄清或确定公共政策的标准和范围，司法实践和先例可以作为参考，"天达共和律师事务所合伙人乔焕然表示。

任重道远

"在过去的几年里，无论是在缔约国还是在香港，中国仲裁裁决在执行方面都取得了积极的转变，"乔律师说。

中国目前仍在探索国际仲裁领域，并在不断地完善自己的体制。

"在中国，专职仲裁员很少，目前大多数都是来自各行各业的专家兼职仲裁员。他们的精力有限，加之工资不高，这些都会导致他们作出仓促的仲裁裁决，"周律师说。


周律师指出，仲裁从业人员撰写仲裁文书的质量参差不齐。

"中国仲裁员的写作水平参差不齐，尤其是在撰写推理部分方面，而这部分内容在说服法院时是非常重要的。由于我们很多仲裁员以前都曾在法院任职，他们的工作风格相当简单直接，所以他们可能不太注重详细阐述推理部分，而是更多地关注结论，"他说。

在打造亚太地区下一个仲裁中心的过程中，中国还需要解决其他后勤问题，包括招聘更多的外国仲裁员并为他们办理工作签证。

"如果我们想要打造一个国际仲裁中心，仲裁员的多样性是必要的，而外国仲裁员的工作签证目前是一个有待进一步解决的问题，"周律师表示。

他又补充道："以上这些是建立国际仲裁中心过程中存在的一些明显障碍，但我们有信心（能解决这些问题）；此外，最高法院还制定和颁布了一系列支持措施，以保障和支持中国的国

际商事仲裁。只要整体法律环境友好，规章制度健全，服务质量优良，费用合理，大家就都会乐意来（这里）解决争议。" 

FIGHTING ZOMBIES

大战“僵尸”企业

In a bid to streamline its bankruptcy resolution process, China establishes a trio of courts in Shenzhen, Beijing and Shanghai.

今年年初，中国在深圳、北京和上海设立了三个破产法庭，突显出中国决心通过集中管辖和更专业的审判来简化处理破产案件程序。

BY ASIAN LEGAL BUSINESS

— The establishment of three bankruptcy courts in Shenzhen, Beijing and Shanghai at the beginning of this year underscores China's efforts to streamline how it handles bankruptcy cases using centralized jurisdictions and more professional trials.

The new courts are timely, given the skyrocketing number of bankruptcy cases, which is creating a need to speed up court proceedings. In 2017, Chinese courts received 9,542 new corporate bankruptcy cases, up 68.4 percent from the previous year. The courts settled 6,257 of these cases that year, up 73.7 percent year on year.

The establishment of the Shenzhen Bankruptcy Court, the Beijing Bankruptcy Court and the Shanghai Bankruptcy Court will make it possible to replace the special bodies within the Intermediate People's Courts that managed bankruptcy cases in those three cities. The new courts will handle corporate



bankruptcies, compulsory liquidation, derivative lawsuits and cross-border bankruptcies.

Insolvency professionals say the establishment of these specialized courts is of utmost significance given that bankruptcy procedures in China have not traditionally been the most efficient.

Still, even with these new institutions in place, hurdles remain to streamline the system, particularly regarding cross-border bankruptcies.

CENTRALIZED PROCESS

Bankruptcy lawyers believe the new courts will act as an independent branch within China's legal system to centralize bankruptcy cases, putting an end to the current inefficient – and often unfair – approach.

“The Enterprise Bankruptcy Law is a mix of special litigation law, debt law, business organization law and social law,” says Feng Gao, a senior partner at Jincheng Tongda & Neal (JT&N). “But bankruptcy cases are heard before the civil and commercial courts, as there are no specialized courts to handle them in most places in China. Case-filing is not easy, hearings are not professional, and the functions of the courts are not clear.”

When bankruptcy cases are handled just like commercial cases, a ruling may end up being unfair.

Gao's views are supported by Ting Zhang, a senior partner at Dentons.

“When derivative lawsuits are processed separately from bankruptcy cases, it not only wastes judicial resources but also makes it difficult to coordinate the cases,” Zhang says.

In any case, lawyers believe that the use of centralized jurisdictions will translate into settling cases more efficiently. They also predict that a top-level bankruptcy court will come along.

These bankruptcy courts in Beijing, Shanghai and Shenzhen could show the country how cases should be handled and provide experience for China to proceed to the next step: establishing

a top-level bankruptcy court.

“More resources are expected to be allocated to improve China's insolvency framework,” says Jianghua Xu, a partner at China Commercial Law Firm. “There could be a top-level bankruptcy court after the establishment of these three courts in Shenzhen, Beijing and Shanghai.”

BETTER BUSINESS ENVIRONMENT

Lawyers also point out that better bankruptcy procedures could improve China's business environment and draw the country closer to its foreign peers in terms of resolving corporate insolvency.

“The bankruptcy courts are set up to facilitate the market withdrawal mechanism, which improves the legal environment for doing business,” says Yucheng Jin, a partner at Guantao Law Firm.

“The courts will help kill off the ‘zombie firms’ in the market. These firms take up resources and hurt the creditors’ interests,” Jin adds.

These “zombie firms” are mostly subsidiaries of state-owned enterprises. They are financially distressed but not subject to insolvency because of the support from the government and state banks. Pushing them out of the market will improve corporate efficiency and tackle overcapacity.

Still, the number of bankruptcy cases before Chinese courts is a fraction of the cases that courts in developed economies elsewhere. Between 2015 and 2016, China had only a couple of thousand cases, while France, Hong Kong and the U.S. saw between 20,000 and 60,000 cases each.

However, according to the World Bank's Doing Business 2018 report, China only scored 55.82 in resolving insolvency, ranking 56 out of 190 economies.

“The newly-established bankruptcy courts could help bridge the gap between China and the world. The U.S. and the U.K., for example, have set up bankruptcy courts to specialize in these

深圳破产法庭、北京破产法庭和上海破产法庭的成立，将有望取代设在这三个城市的中级人民法院内部所设的专门处理破产案件的机构。新法庭将处理企业破产、强制清算、派生诉讼和跨境破产等案件。

破产清算问题方面的专业人士表示，由于中国的破产程序历来都不是最有效的，因此成立这些专门法庭具有极其重要的意义。

虽然已经成立了新的机构，在简化体系方面仍然存在障碍，特别是在处理跨境破产案件方面。

集中处理

破产律师们认为，新法庭将作为中国法律体系中一个独立的分支机构，集中处理破产案件，从而结束目前效率低下、同时往往又是不公平的办案方式。

“中国的《企业破产法》是特殊诉讼法，债务法，企业组织法和社会法的混合物。但破产案件在民事和商事法庭进行审理，因为在中国的大多数地方并未设立专门的法庭来处理这类案件。立案不容易，审理不专业，而且法庭的职能也不明确，”北京金诚同达律师事务所高级合伙人高峰说。

如果像处理商业案件一样处理破产案件，裁决最终可能是不公平的。

高律师的观点得到了大成律师事务所高级合伙人张婷的支持。

“如果把派生诉讼与破产案件分开处理，不仅浪费了司法资源，而且使案件难以协调，”张律师表示。

总之，律师们都认为通过集中管辖，案件将得到更有效的处理。

北京、上海和深圳的破产法庭可以起到示范作用——向全国（的法院）示范应如何处理破产案件，并为进入下一阶段提供经验：建立一个最高级别的破产法庭。

广东华商律师事务所合伙人徐江华表示：“预计将有更多的资源用于改善中国的破产框架。在深圳、北京和上海这三个破产法庭成立之后，可能会成立一个最高级别的破产法庭。”

更好的商业环境

律师们还指出，完善破产程序可以改善中国的商业环境，使中国在解决企业破产方面更接近国际水平。

观韬中茂律师事务所合伙人金玉成说：“设立破产法庭是为了促进市场退出机制，进而改善商业经营的法律环境。”

“这些法庭帮助除去市场上的‘僵尸企



cases,” Jin explains. “Their hearing of these cases through the division of labor has facilitated a set of effective rules and systems for resolving bankruptcies.”

Dentons’ Zhang and senior partner Meili Gao both agree. They say a bankruptcy branch independent of the legal system is similar to the model in other jurisdictions, and it provides a kind of protection to the market.

CROSS-BORDER HURDLES

These new courts will also be handling cross-border cases - a response to today’s global market economy of which cross-border bankruptcy becomes an integral part, says JT&N’s Feng Gao.

“With a lot of capital flowing in and out as well as companies with businesses at home and abroad, the numbers of multinational corporations and cross-border bankruptcies also grow,” he adds.

In 2018, 60,533 wholly foreign-owned enterprises were established in China, up nearly 70 percent from a year before. The foreign capital utilized in China was \$134.9 billion, while Chinese investments overseas stood at \$129.8 billion.

In particular, the Shenzhen Bankruptcy Court is given a special task - to provide enhanced judicial support for China’s Greater Bay Area initiative. The plan promotes the integration of nine mainland Chinese cities with two

special administrative regions, Hong Kong and Macau, to form an economic powerhouse.

But the plan is likely to meet with inherited challenges, as there are three legal systems in the area, among other differences. Hong Kong and Macau, former European colonies, will remain separate jurisdictions until 2047 and 2049 respectively.

In reality, given the close ties between mainland China and Hong Kong, mainland businesspeople could transfer assets to the subsidiaries in Hong Kong before seeking insolvency in China. And in many cases, bankrupt mainland companies have assets in Hong Kong and elsewhere. It has been difficult for bankruptcy officers to track down these assets.

Therefore, handling cross-border cases that involve companies and assets in Hong Kong, Macau and mainland China would not be an easy task for the Shenzhen court. Dentons’ Meili Gao points out three challenges posed by having three different legal jurisdictions.

“First is the conflict of jurisdiction, as courts from the three places will decide if they have jurisdiction over a cross-border bankruptcy case based on their own law,” Meili Gao explains.

“Second is the difficulty in determining the applicability of the law.

业’。这些企业占用资源，同时损害了债权人的利益，”金律师补充道。

这些“僵尸企业”大多是国有企业的子公司。由于政府和国家银行的支持，他们虽然在经济上处于困境，但轻易不会破产。将这些企业清除出市场将有助于提高企业效率并解决产能过剩的问题。

但到目前为止，相比其他发达经济体的法院所审理的破产案件，中国法院所审理的破产案件的数量较低。2015年至2016年期间，中国仅有了数千个破产案件，而法国、香港和美国各有2万到6万件破产案。

根据世界银行发布的《2018年全球营商环境报告》，中国在解决破产问题方面的评分仅为55.82，在190个经济体中排名第56位。

“新成立的破产法庭有助于缩小中国与世界之间的差距。例如，美国和英国设立了破产法庭专门处理这类案件，”金律师解释道。“他们在审理这些案件过程中的分工明确，为解决破产问题提供了一套有效的规章制度。”

大成律师事务所的高级合伙人张婷和高美丽均对金律师的观点表示赞同。她们表示，（中国）在法律体系中设立独立的破产分支机构与其他司法管辖区的模式相类似，这种模式为市场提供了一种保护。

跨境破产中的障碍

金诚同达的高峰律师表示，这三个新设立的法庭还将处理跨境案件——这是对当今全球化市场经济的回应——跨境破产案件已经成为其中不可或缺的一部分。

“随着大量资本流入和流出，在国内同时开展业务的公司、跨国企业和跨境破产案件的数量也在增加，”他补充道。

2018年，在中国新成立了60533家外商独资企业，比上年增长近70%。中国利用外资规模达1349亿美元，而中国在海外的投资亦达1298亿美元。

特别是，深圳破产法庭承担了一项特殊任务——为粤港澳大湾区发展战略提供更多的司法支持。大湾区发展战略旨在促进九座大陆城市与香港和澳门两个特别行政区的整合，形成中国经济发展新引擎。

但该项战略可能会面临遗留问题，因为大湾区涉及三个法律体系以及其他差异。香港和澳门曾经是欧洲殖民地，将分别保留其独立的司法管辖权至2047年和2049年。

在实际操作中，由于中国内地与香港

Currently, Hong Kong, Macau and mainland China have yet to come up with rules to specify which law would be applicable to solve procedural and actual issues in cross-border bankruptcies," she adds.

The third problem, according to her, is that reciprocal recognition and enforcement of judgment would be difficult at the moment.

Currently, there is no framework among these jurisdictions to mutually recognize insolvency orders despite five agreements on mutual help signed between Hong Kong and mainland China since 2006, two of which concerned with civil and commercial cases.

Dentons' Zhang also acknowledges the current hurdle and illustrates examples.

"If a Hong Kong company and a mainland company that are affiliated seek insolvency one by one, there needs to be coordination in the bankruptcy procedures of the two jurisdictions as there might be financial, asset and human resources control between these two companies," Zhang explains.

"There is a lack of procedural coordination and actual understanding of each other's bankruptcy law between Hong Kong and mainland China to resolve cross-border bankruptcies," she adds.

Zhang says in practice, there are many red chip companies listed in Hong Kong using the variable interest entity (VIE) structures. They are shell companies formed by transferring mainland assets and they are incorporated internationally and listed in Hong Kong. Zhang says they pose significant challenges to the legal professionals once they go bankrupt.

"It is very difficult to coordinate the handling of these companies' insolvency. Usually, the cases are handled separately by Hong Kong and mainland Chinese courts. The mainland court hears the bankruptcy case concerning the operating entity in China, while the Hong Kong court handles the liquidation of the listed entity," she explains.

"It would be of significance if we

could look at the company as a whole to handle together both cases concerning the mainland operating entity and the Hong Kong-listed entity. It would be a win-win. Lawyers from the two jurisdictions can collaborate so a company can be seen as a whole in bankruptcy cases," she adds.

UNTYING THE KNOT

Cross-border bankruptcy cases are complicated, and little is known how the alignment among different jurisdictions would work so far. Lawyers put forward suggestions on what these newly-established specialized courts and legal professionals from the three jurisdictions might do.

Dentons' Gao says the Shenzhen Bankruptcy Court has a geographically strategic position given its proximity to Hong Kong and Macau, so the court should be a pivotal force to seek solutions.

"With its position, the Shenzhen court can focus on how to coordinate and settle these cross-border cases, such as setting up a cross-border bankruptcy mechanism, formulating rules and judicial procedures mutually acceptable by the three jurisdictions, establishing cross-border coordination rules, and so forth," she suggests.

Meanwhile, JT&N's Feng Gao calls for flexible application and an information-sharing mechanism.

"Legal professionals from the three jurisdictions could determine which jurisdiction to handle the main and ancillary proceedings, or they can opt for consent jurisdiction," he says.

"There should also be an information-sharing mechanism to enhance communication and coordination for handling cross-border bankruptcies. Such a mechanism should help get information about the companies' claims and debts in the three places," Feng Gao adds.

He also notes that mutual recognition of the bankruptcy systems in the three jurisdictions is necessary, along

之间的紧密联系，内地商人可以在寻求破产之前将资产转移到其香港的子公司。在许多情况下，破产的内地企业在香港和其他地方都有资产，但破产管理人很难追查到这些资产。

因此对于深圳破产法庭来说，处理涉及香港、澳门和中国内地的企业和资产的跨境案件并非易事。大成的高美丽律师指出了三个不同的司法管辖区所带来的三个挑战。

"首先是管辖权冲突，因为来自三地的法院将根据自己的法律决定他们是否对跨境破产案件拥有管辖权，"高律师解释说。

"其次是难以确定法律的适用性。目前，香港、澳门和中国内地尚未制定相关规则，明确哪些法律适用于解决跨境破产案中的程序及实际问题，"她补充道。

第三个问题是，目前还难以相互承认并执行判决，她说。

尽管自2006年以来，香港和内地之间已经签署了五项互助协议，其中两个涉及民商事案件，但这些司法管辖区之间尚没有相互承认破大成的张律师对目前的这些障碍表示认同，并举例加以说明。

"例如一家香港公司和一家内地公司是关联企业，如果两个企业逐一寻求破产，则需要在两个司法管辖区的破产程序中进行协调，因为这两家公司之间可能存在财务、资产和人力资源控制，"张律师解释道。

"香港和中国内地的破产法之间缺乏实际理解和程序协调，难以解决跨境破产问题，"她补充说。

张律师表示，在实践中，有许多红筹股公司使用可变利益实体(VIE)结构在香港上市，它们是通过转让内地资产而成立的空壳公司，它们在国际上注册并在香港上市。一旦这些公司破产，他们将对法律专业人士提出重大挑战。

"协调处理这些公司的破产事宜是非常困难的。通常情况下，这些案件由香港和中国内地法院分别单独处理。内地法院审理涉及中国经营实体的破产案，而香港法院处理上市实体的清算，"她解释道。

"如果我们能把该公司视为一个整体，在此基础上处理其内地经营实体和香港上市实体的两个案件，这将具有重要的意义，将带来双赢的局面。这两个司法管辖区的律师可以宅开合作，使这类型公司在破产案件中可以被视为一个整体，"她补充道。

with reciprocal recognition of qualifications of bankruptcy administrators or liquidators.

Feng Gao's suggestions are largely in line with those of Jin from Guantao, who also suggests a cooperation mechanism or framework among the three jurisdictions to address cross-border bankruptcy disputes.

"Legal professionals from the three jurisdictions could determine which law to apply for different issues based on the actual situation," he says.

"They should judge whether the laws of the three jurisdictions would need to be applied to address a particular issue. Without affecting their courts' independence and fairness, officials from the three jurisdictions should establish a legal framework to enable so," Jin explains.


He adds that after all, reciprocal recognition and enforcement of a judgment is a more effective solution.

China Commercial Law Firm's Xu points out that the U.S. has a more comprehensive bankruptcy system to resolve cross-border bankruptcy, as reflected by chapter 15 of its bankruptcy code. It provides for the commencement of a bankruptcy case in the U.S. that is ancillary to an insolvency proceeding pending in a foreign country.

"But such a system is yet to be in place in China," says Xu.

"Given that the cross-border bankruptcy regime is yet to be mature in China, it is important for lawyers to enhance communication and be more agile when handling these cases," he notes.

He says the Market-oriented Bankruptcy Forum held in Shenzhen every year is a good exchange platform, for example.

"Lawyers should be agile to realize their goals. In cases where the debtor has assets outside China and the bankruptcy administrator may face the problem of Chinese courts' rulings not being recognized in other jurisdictions when collecting these assets, the bankruptcy administrator could collect and dispose of assets in other jurisdictions as the debtor," Xu cites as an example. 

理顺程序，健全机制

跨境破产案件相当复杂，人们到目前为止对如何协调不同司法管辖区之间的工作仍然知之甚少。关于这几个新成立的专门法庭和来自三个司法管辖区的法律专业人员将如何作为，律师们提出了一些建议。

大成的高律师表示，深圳破产法庭与香港和澳门毗邻，在地理位置上具有战略地位，因此深圳法庭应该成为寻求（破产）解决方案的关键力量。

她建议说：“凭借其地理位置，深圳破产法庭可以专注于如何协调和解决这些跨境案件，例如：建立跨境破产机制，制定三个司法管辖区共同接受的规则和司法程序，制定跨境协调规则等等。”

金诚同达的高峰律师则呼吁建立灵活申请和信息共享机制。

“来自这三个司法管辖区的法律专业人员可以决定由哪个管辖区处理主要程序，由哪个管辖区处理辅助程序，或者他们可以选择协议管辖，”他说。

“还应该建立一个信息共享机制，加强沟通，协调处理跨境破产案件。这种机制应该能够帮助获得相关公司在三地的债权和债务的相关信息，”高峰补充道。

他还指出，必须在三个司法管辖区内相互承认破产制度，同时相互承认破产管理人或清算人的资格。

观韬的金律师与高峰律师的建议基本一致，他还建议在三个司法管辖区之间建立合作机制或框架，以解决跨境破产纠纷。

“三个司法管辖区的法律专业人员可以根据实际情况决定适用不同的法律来解决不同的问题，”他说。

“他们应该判断是否需要适用三个司法管辖区的法律来解决某个特定的问题。在不影响法院的独立性和公正性的情况下，三个司法管辖区的官员应建立一个法律框架，以实现这一目标，”金律师解释道。


毕竟，相互承认和执行判决是一种更为有效的解决办法，他补充说。

广东华商律师事务所的徐律师指出，美国有一套更为全面的破产制度用以解决跨境破产问题，正如其《破产法》第15章所反映的那样——根据第15章的规定，为配合境外破产案件审理，可以在美国提起破产程序作为辅助程序。

“但是中国尚未建立起这样的制度，”徐律师说。

他指出：“由于中国的跨境破产制度尚未成熟，律师们在处理这类案件时应加强沟通，并且更加灵活，这一点很重要。”

每年在深圳举办的“市场化破产高峰论坛”就是一个很好的交流平台，他说。

“律师们应该以灵活的方式实现他们的目标。假如债务人在中国境外拥有资产，破产管理人可能面临这样一个问题：收集这些资产时，中国法院所作出的裁决未在其他司法管辖区获得承认；那么在这种情况下，破产管理人就可以作为债务人在其他司法管辖区收集和处置资产，”徐律师举例说道。 





GC ROUNDTABLE: CYBERSECURITY

总法圆桌对话：网络安全

Compared to other industries, financial institutions have always assumed higher responsibilities and obligations in terms of cybersecurity and data protection. With the digital economy booming, the risk control and compliance management awareness of financial institutions has been pushed to an unprecedented height. The rapid roll-outs of new information technology (IT) tools are not only reshaping the traditional format of the financial industry, but are also penetrating all aspects of financial business innovation. For financial institutions with “thick walls” that rely on data as their core assets, their cybersecurity and data compliance work has many special traits and is of particular importance.

相较其他行业，金融机构在网络安全与数据保护方面历来承担更高责任与义务。伴随数字化经济的迅猛发展，他们的风控意识与合规管理更被推到一个前所未有高度。信息化技术与科技的更新迭代，不仅在重塑这个行业的传统业态，也渗透其金融业务创新的各个层面。对于“深墙厚壁”、以数据为核心资产的金融机构来说，他们的网络安全与数据合规工作有着诸多特殊性和重要意义。

BY INES YANG

■ We have invited three general counsels who, speaking from their respective industries, evaluated the responsibilities and obligations that financial institutions should shoulder, discussed the approaches to lead in-house teams to deal with new risk scenarios, explored the true implications of compliance creating value, pondered how to optimize domestic and international legal frameworks to address existing conflicts and issues, and shared insights into how financial institutions can better serve companies with global footprints under increasingly stringent cybersecurity and data compliance regulations around the world.

ALB: What are some of the greater cybersecurity and data protection obligations that the financial industry should perform in comparison to other industries?

Liu: Be it for a country's economic prosperity and stability, or for the financial assets security of an individual or a single enterprise, financial institutions have their unique status in the society and should naturally assume greater legal responsibilities than other industries in terms of cybersecurity and data protection. In terms of banking practice, the financial industry has accumulated and is storing a huge volume of corporate and personal identity information and financial data. At the same time, with more and more reliance on online banking, paperless instructions and online trading, static customer data storage and dynamic transaction data transmission have both shown completely different formats from the traditional ways.

Therefore, compared to other industries, the systems of banks have higher requirements in many aspects of cybersecurity and data protection, mainly in: (1) preventing computer viruses and network intrusion; (2) preventing, identifying and intercepting information leakage; (3) user authentication and identification; and, (4) transaction

“How to address the conflict between the different legal frameworks of cybersecurity and data protection and global banking business and centralized credit information and data protection is something that legislators and practitioners need to think about.”

—Daniel Liu, Legal Head, Standard Chartered Bank (China) Limited

“如何解决不同的网络安全和数据保护的法律法规和全球性银行业务和集中性信用信息数据保护的矛盾，是需要立法者和从业者需要思考的问题。”

—渣打银行（中国）有限公司 法务总监



data storage, encryption and backup. For example, the financial industry adopts higher standards on digital signature than those applicable to other industries, and third-party certification and third-party depository have gradually become the universal practice in the industry.

King: The following three factors lead financial institutions to assume more stringent cybersecurity and data protection obligations: (1) Financial institutions are quasi-public companies. They are very similar to listed companies as both are of a strong public nature. This is true even for a financial company that is non-listed. Listed companies are public by virtue of their shareholders and investors, while financial institutions are public by virtue of their clients. Public companies involve a wide range

of stakeholders, and therefore need to shoulder more stringent cybersecurity and data protection obligations; (2) Financial institutions are also data institutions. Financial institutions provide services related to capital and finance, and the products they offer are virtualized numbers, data, information, etc., such as passbooks, credit cards, stock accounts, insurance contracts, trust deeds, etc., all of which are carriers of data; and, (3) Financial institutions are the most likely to become “systemically important institutions”. Financial institutions make profits by taking in and operating risks. Once risks go out of control, major problems will occur that will affect thousands of households and the national economy. Therefore, financial institutions should take risk prevention and data protection as their top priority when processing data. The focus of cybersecurity and data protection in the financial industry should be on citizen information protection, transaction information protection, data system stability and data mining regulation.

Wen: In view of the special nature of the types of business transacted on the financial industry, there will be a large volume of important client information and client funds stored in terms of network data. Therefore, the financial industry should be subject to higher confidentiality requirements for network data and should also bear greater security protection obligations towards client funds. Judging by the existing legal provisions in China, data and information possessed by the financial industry are adequately protected and cannot be provided without first undergoing judicial procedures.

At the same time, relevant regulatory authorities have imposed stringent requirements on the protection of personal financial data by banking financial institutions. For example, when using personal financial data, banking financial institutions shall ensure that such use meets the purposes for collecting the data in the first place.

■我们在此邀请三位总法，他们从各自行业出发，评估了金融主体应承担的责任与义务；如何带领法务团队应对当下的新型风险场景；合规创造价值对金融机构真正意味着什么；如何优化国内和国际法律框架解决现有冲突和问题；以及在全球日趋严苛的网络安全与数据合规监管下，作为金融机构如何能更好地服务在全球布局的企业。

ALB: 相较于其他行业，金融行业应履行哪些更高的网络安全与数据保护义务？

刘东: 无论从国家经济繁荣稳定，还是单个企业或个人的金融资产安全角度，金融机构具有其独特的地位，在网络安全与数据保护方面理应承担显著高于其他行业的法律责任。从银行实务角度看，金融行业积累和存储了海量的企业和个人的身份信息 and 财务信息，同时越来越依赖网银、无纸化指令和在线交易方式，静态客户数据保存与动态交易数据传输都呈现出与传统方式完全不一样的业态。

因此相较于其他行业，银行的系统在网络安全与数据保护的许多方面的要求更高，集中体现在：（1）防范计算机病毒和网络侵入；（2）防范、识别和拦截信息泄露；（3）用户身份验证和识别；（4）交易数据的存储、加密、备份。举例来说，金融业的数字签名采用有别于其他行业的更高标准，第三方认证、三方存证等逐渐成为行业的普遍标准。

靳毅: 以下三方面因素导致金融机构将承担更为严格的网络安全和数据保护义务：（1）金融机构都是准公众公司。金融机构和上市公司非常相似，有比较强的公众性，即使一家金融公司是非上市公司。上市公司的特点在于股东和投资方的公众性，而金融机构在于客户的公众性。公众公司涉及的利益主体多涉及面广，因此需要有更强的网络安全和数据保护义务；（2）金融机构也是数据机构。金融机构提供与资金融通的相关服务，所提供的产品是虚拟化的数字、数据、信息等，例如存折、信用卡、股票账户、保险契约、信托契约等都是数据的载体；（3）金融机构最容易成为“系统重要性机构”。金融机构承担风险，并经营风险从而获得盈利。一旦风险失控，将发生千家万户、国民经济的重大问题。因此金融机构在处理数据的时候，应当将风险防范、数据保护列为重中之重。金融行业网络安全和数据保护的重点应当在于公民的信息保护、交易

Where client information needs to be provided for business partners due to business development needs, banking financial institutions should also comply with regulatory provisions, which can mainly be summarized as follows: (1) The clients have consented to and authorized the use of their financial data by the relevant business partners; (2) The financial institutions have obtained written authorization documents from clients whereby the clients agree that the financial institutions may provide their financial data for the relevant business partners. It should be noted that such authorization documents must specify the scope and purposes of financial data use and should not be in the form of a general authorization; and, (3) The financial institutions should inform clients, in an eye-catching manner, of the possible consequences of granting authorization.

ALB: What are some of the new, hidden or potentially disastrous risk scenarios that have emerged recently or will emerge in the future in your industry that need to be identified and prevented? How is your in-house team planning for such scenarios?

Liu: On the one hand, the rapid development of science and technology will expose potential loopholes in traditional financial technology, and such loopholes may be seized upon by criminals, resulting in crimes such as fake bank cards, bank cards being fraudulently swiped or used and fake company stamps. This has posed challenges to traditional financial IT and internal control, requiring banks to continuously improve system security and internal control standards. On the other hand, during the process of financial innovation, new financial products may also have security flaws, hidden dangers and vulnerabilities. In response to those risks, the technology departments of banks first need to be able to identify and guard against security flaws, hidden dangers and vulnerabilities, and to take

“Law is an old profession that has long relied on experience rather than data for growth and value creation. Big data and technology-driven development will result in the loss of some legal jobs, functions and value, but will also create new core values.”

—Jeffrey King, Compliance Director,
General Manager of Legal and Compliance
Department, Taikang Insurance Group Inc.

“法律是一个古老的职业，长期以来基于经验而非数据进行增长和增值。但在大数据和技术驱动的背景下，将导致部分法律职业和功能、价值丧失，同时也创造了新的核心价值。”

—泰康保险集团股份有限公司
合规负责人、法律合规部总经理 靳毅



信息保护、数据系统的稳定性，以及数据挖掘的规范。

文建秀：鉴于金融行业业务类型的特殊性，在网络数据方面，会有大量的客户重要信息和客户资金留存，因此，金融行业对网络数据的保密性要求应该更高一些，对客户资金的安全保护也负有较大的义务。从目前我国法律规定来看，对金融业所拥有的数据信息是有充分保护的，非经司法程序不得要求提供。

同时，相关监管机构对银行业金融机构个人金融信息保护提出了严格的要求，使用个人金融信息时，应当符合收集该信息的目的；因业务开展需要，向合作方提供客户信息的，应注意遵守相关监管规定，归纳起来，主要有以下几点：

(1) 客户已同意并授权相关合作方使用客户金融信息；(2) 金融机构获得客户的书面授权文件，同意金融机构向相关合作方提供客户的金融信息，注意须明确提供金融信息的范围及用途，不得采

取概括授权的形式；(3) 金融机构应以醒目的方式告知客户授权后可能产生的后果。

ALB：结合本行业来谈，近来或今后会出现哪些新型、隐蔽或后患无穷的风险场景需辨识和防范？您带领的法务团队的应对方案是？

刘东：一方面，随着科学技术的日新月异，传统的金融技术可能存在漏洞，被犯罪分子利用，例如伪卡案件、盗刷案件、萝卜章案件，对传统的金融信息科技和内部控制提出了挑战，需要银行自身不断提高系统安全和内控标准；另一方面，金融创新的过程中，新的金融产品也可能存在安全缺陷、隐患和漏洞。针对这些风险，银行的科技部门首先需要有能力识别、预防安全缺陷、隐患和漏洞，并在发生风险事件时有能力立即采取补救措施。

从法务团队角度讲，一是对银行技术部门进行风险提示，协同合规、风控等部门，在全行以行业风险事件进行案例警示；二是在新产品和服务的设计过程中尽早介入，对产品条款、风险披露条款、电子签名形式是否符合可靠性原则进行把关；三是将数据保护落实到银行的法律文本政策中，包括在银行与外包服务商的服务合同、银行自身的产品和服务条款中落实相关法律风险分担原则；四是在全行普及网络安全、尊重客户隐私和个人金融信息保护的理念并加强金融信息保护的意识。

另外，近几年互联网金融企业高速发展，传统银行与互联网金融企业之间出现了有趣的相互竞争而又相互合作的场景。在这种相生相克的新环境下，金融机构既要懂得借鉴互联网金融的灵活便捷、善于解决长尾客户的服务方式，又要恪守传统银行的安全标准和有效风险模型。对于金融机构法务人员来说，既要以开放的态度学习新的商业模式，也要以严谨的态度守好法律的底线。

举例来说，人们批评传统银行过于看重抵押品、没抵押不贷款的运营方式，市场呼吁更多采用大数据管理风险的方式，银行法务工作者应当保持冷静的头脑，准确评估交易风险，比如，电子签名或系统数据是否在诉讼中能得到法院认可？违约后追偿方式有哪些？证据是否在交易中得以保存等。在科学评估的基础上，法务部可以客观公正的给业务部门提供专业意见，在风险可控的前提下促成交易。

靳毅：以下两方面风险值得我们重视：第一，商业秘密、客户信息和KNOW-

immediate remedial action when a risk event occurs.

From the perspective of a bank's in-house team, its first task is to issue risk warnings to the technology department, and coordinate compliance, risk control and other departments to issue alerts in the form of industry risk events across the bank. Second, the in-house team should intervene as early as possible during the design process of new products and services, and verify whether product terms, risk disclosure clauses and electronic signature forms are in compliance with the reliability principle. Third, the in-house team should ensure data protection is embedded in the bank's written legal policies, including implementing the principle of legal risk sharing in the service contracts signed between the bank and outsourced service providers, and the terms of the bank's own products and services. The fourth task of the in-house team is to promote the awareness of cybersecurity, respect for customer privacy and personal financial information protection across the bank and strengthen the culture of financial information protection.

In addition, Internet financial enterprises have been developing rapidly in recent years, and there has been this interesting phenomenon of traditional banks and Internet finance companies competing against while cooperating with each other. Against this backdrop, financial institutions must not only learn from the service model of Internet finance that is flexible, convenient and apt at addressing the needs of long-tail clients, but also uphold the security standards and effective risk models of traditional banks. Legal professionals working in financial institutions should both learn new business models with an open mind and maintain strict compliance with the law.

For example, traditional banks have been criticized for paying too much attention to collaterals and for refusing to disburse uncollateralized loans,

and the market has been calling for the approach of managing risks with big data. Legal professionals in banks should keep a cool head and accurately assess transaction risks. Some questions that they need to ask include: will electronic signature or system data be recognized by the court in litigation? What are the recovery methods available after default? Is evidence preserved in transactions? On the basis of scientific assessment, a bank's in-house team can provide professional advice for business departments in an objective and fair manner, and facilitate transactions under the premise of controllable risks.

King: We should pay attention to risks in the following two areas. First, an integrated protection system for trade secrets, customer information and know-how. Rights in these aspects are extremely complex and have strong overlap in the financial industry. Although they may be dealt with in different dimensions based on the risk management techniques of legal compliance, when combined together, they will pose greater challenges to the financial industry. Second, information leakage caused by mobile office. With mobile work becoming the norm, it is difficult for employees to completely separate personal information, social information and work information. For example, can an employee discuss work-related issues on WeChat? Is it possible to clearly distinguish between personal information and work information? Which types of work information can be discussed and disseminated on WeChat, and which ones are strictly prohibited? These are all new challenges we are facing today. In this context, an in-house team needs to work closely with the technical team. Alternatively, the in-house team itself needs to undergo technical transformation by either recruiting interdisciplinary talents or directly recruiting talents with background in IT and information security. At the same time, this also creates new challenges for team management, including job

HOW的综合保护体系。这几方面的权利客体在金融行业有很强的重叠性和复杂性。虽然在法律合规的风险管理技术上，可以分成不同的维度分别处理，但当它们综合在一起的时候，对金融行业提出的挑战将更高；第二，移动办公所带来的信息外泄。移动办公成为大趋势，员工很难将个人信息、社交信息和工作信息完全剥离。比如在微信中是否能够讨论与工作相关的内容？是否能够清晰的分别出哪些是个人信息，哪些是工作信息？哪些工作信息是可以进行微信中的讨论和传播，哪些又是严格禁止？这都是面临的新挑战。

在这种大背景下，法务团队需要和技术团队进行密切结合，或者团队本身进行技术方面的转型，招募具有复合型的人才，或者直接招募具有信息技术、信息安全方面的人才。同时这也对团队管理产生新的挑战，包括岗位职责、晋升路径、职业文化、团队归属等等。

文建秀：首先，由于支付方式多样化的出现，银行与经监管部门批准的支付机构之间会有大量合作，势必涉及客户信息传递，虽然在开启支付渠道过程中会要求客户关注信息保密，但会出现信息在支付机构之间大量流转、在网络商业机构之间大量流转，对信息安全构成风险。其次，部分银行正在尝试与互联网平台开展金融产品销售与配套电子账户/在线借记卡的业务合作，客户登录互联网平台后可申请办理相关银行业务，银行根据互联网平台传送的客户交易指令，在线上完成账户开立、产品销售等相关操作。在此过程中，互联网平台承担客户信息和交易指令传递职责，如发生系统传送差错、客户身份冒用等情形，将对客户和银行合法权益造成直接影响，导致银行承担法律风险。

目前我们在法律风险防范方面，对互联网金融等创新业务实行专人负责，法律人员参与相关产品业务模式的法律论证和文本制订，做好法律专业支持工作，将全流程法律风险管理贯穿于业务开展的始终。主要采取以下措施：一是在商户准入环节尽量控制安全性，在授权支付环节尽量给予客户较充分的提示，与信息安全部门一起建立信息防控网，动态监控信息数据是否正常，对异常波动及时提示；二是在客户方面，会通过设置签约提示、交易提示、线上线下交易场所宣传提示来帮助客户防范；三是在合作机构方面，与合作机构约定其在客户身份真实性核验中承担的义务和责任，同时，银行与相关合作机构就客户

responsibilities, promotion paths, professional culture, team ownership and many others.

Wen: First, with the diversification of payment methods, there will be a lot of cooperation between banks and payment agencies approved by regulatory authorities, which will inevitably involve the transmission of customer information. Although customers will be reminded to pay attention to information confidentiality when opening payment channels, there will still be a large flow of information between payment agencies and between online business organizations, posing risks to information security.

Second, some banks are exploring partnership with online platforms for business such as financial product sales and supporting electronic accounts/online debit cards where after logging into those online platforms, customers can apply for relevant banking services, and the banks will, based on customer instructions transmitted by the online platforms, complete operations such as account opening and product sales. In this process, the online platforms assume the responsibility of transmitting customer information and transaction instructions. A single event of system transmission errors or customer identity fraud will directly affect the legitimate rights and interests of both the customers and the banks, causing the banks to bear legal risks.

In terms of legal risk prevention, at present, dedicated staff are assigned for innovative business such as Internet finance, while legal professionals are involved in studying the legal aspects of and drafting documentation for relevant product business models. The role of legal professionals is to provide effective and professional legal support, and implement full-process legal risk management throughout business development.

Some of the key measures taken are: first, controlling security as tightly as possible in the stage of granting market

access to merchants, giving customers sufficient reminders in the stage of authorizing payment, and establishing an information prevention and control network together with information security departments to dynamically monitor information and data and issue alerts of abnormal fluctuations; second, on the customer side, issuing reminders to customers when they sign contracts and execute transactions, and having publicity campaigns in both online and offline trading venues; third, as to partner institutions, agreeing with partner institutions on their obligations and responsibilities for verifying the authenticity of customer identity. At the same time, banks and partner institutions should always obtain clear authorization from customers for matters such as customer information collection and transaction instruction execution, and ensure compliance during the use and transmission of customer-related information.

ALB: From the perspective of compliance creating value, what development opportunities will be brought to an organization and what value will be created by rigorous cybersecurity and data protection?

Liu: The secure image of having a “thick wall” and stringent data protection standards are the foundation that enables traditional banks to survive in the Internet era. This is the base from which more customer value can be created. A bank known for customer information security can often reap the benefits of brand effects and win the trust of customers. As a foreign-invested bank, under the guidance of the “Belt and Road Initiative”, Standard Chartered has helped many Chinese companies invest in different countries, especially in Africa and the Middle East.

We have noticed that when choosing which bank to work with, an enterprise will usually treat a bank’s compliance and legal risk management and data protection as important considerations. The reason is very simple.

“There is tension between the complexity of payment channels and information security. How to balance such tension through legislation and how to establish consistent rules for information protection and information security in the entire social business chain is something worth studying.”

—Wen Jianxiu, General Counsel,
China CITIC Bank

“支付渠道的复杂化与信息安全之间是存在矛盾的，如何通过法律规定来平衡，如何在整个社会商业链条中建立起信息保护、信息安全的一致性规则，非常值得研究。”

—中信银行总法律顾问 文建秀



信息收集和交易指令执行等事项均应取得客户的明确授权，确保客户相关信息使用和传递过程中的依法合规。

ALB: 从合规创造价值角度看，网络安全与数据保护严格做到位，会给本机构带来哪些发展机遇、创造哪些价值？

刘东: 深墙厚壁的安全形象以及严格的数据保护标准，是传统银行立足于互联网时代的根基所在。立足于此，才能创造更多的客户价值。一家以客户信息安全著称的银行，往往能够带来品牌效应，赢得客户的信赖。作为外资银行，在国家“一带一路”政策的引领下，渣打帮助许多中资企业投资于不同的国家，尤其在非洲、中东等地区。

我们注意到，企业选择哪一家银行会把银行的合规法律风险管理、数据保护作为其重要考虑因素。道理很简单，企业



When investing abroad, companies face uncertain legal risks and country-specific risks. Anti-money laundering, anti-terrorist financing and data protection are also high-risk areas. A global bank that upholds international standards and is familiar with the laws of different countries will often become the preferred partner of businesses.

Take data protection laws as an example. The General Data Protection Regulation (GDPR) of the European Union (EU) came into effect in May 2018. As such, EU-headquartered global banks must update their data protection standards in time to meet the requirements of EU regulations. At the same time, these global banks will take into consideration the differences in the domestic laws of different countries and implement the new data protection standards in light of local realities. In other words, when companies choose these global banks, they will be certain that these banks are following the latest international data protection standards, which gives the companies additional confidence. This kind of bank-business relationship founded on a high trust level can often achieve long-term win-win results.

King: I would like to mention two points. First, the impact of data leakage on a company's operations and business is both direct and catastrophic. Therefore, if the legal

compliance team of a company can properly solve this pain point, the management value of the in-house team will, without a doubt, be highly visible. For example, the in-house team can strike directly against illegal external P2P organizations that take advantage of data leakage to maliciously cancel contracts. Second, trade secret protection, intellectual property (IP) protection and technical know-how protection, all undertaken for the purpose of information protection, will provide a new career development path for the legal compliance team and a new management value growth point. For example, IP protection will directly bring benefits to a financial institution.

Wen: Market credibility is the most important point. Against the backdrop of an overflow of online data, it is important to note that data, while creating business opportunities for merchants, are also the privacy of customers. Making lawful and reasonable use of information and ensuring information security are important factors for building a favorable financial image. Market reputation is invaluable. Only a bank that has won customer trust, achieved market recognition and forged a first-class brand can effectively acquire and run business for clients. Such a bank can then continuously deepen its capability of big data analysis and mining to gain insight into customer needs and creatively serve customers. It can be said that the protection of customer financial information is the basis and premise for promoting the development of the bank's Internet financial business and enhancing the bank's comprehensive customer service capabilities.

ALB: On the topic of cybersecurity and data protection, what are some of the other matters that you are thinking about or exploring?

Liu: Foreign-invested banks are bound by the laws and regulations of cybersecurity and data protection in different

在境外投资时会面对不确定的法律风险和国别风险，反洗钱、反恐、数据保护等又是高风险领域，这时候，一家恪守国际准则、熟悉各国法律的国际银行往往成为企业的首选合作伙伴。

举数据保护的法律法规为例，欧盟的《一般数据保护条例（GDPR）》2018年5月正式实施，此时，总部位于欧盟的国际银行必须将其数据保护标准及时更新，以满足欧盟的法令要求，同时这些全球性银行也将根据各国法律的不同，将新的数据保护标准与当地实际情况结合起来贯彻执行。换言之，企业在选择这些全球性银行时，企业清楚这些全球性银行遵循的是最新的国际数据保护标准，这给了企业额外的信心。这种在高标准基础建立的银企关系，往往能达到长期共赢的效果。

靳毅：我们认为有两点：第一，数据外泄对公司经营和业务的影响是直接的和灾难性的，因此法律合规团队如果能够将这个痛点解决好，毫无疑问能够非常清晰、可见度极高的看出团队的管理价值。比如直接打击外部的非法P2P机构利用数据泄漏进行恶意解约；第二，为了保护信息而进行商业秘密保护、知识产权保护、技术诀窍保护，将对法律合规团队提供了新的职业发展方向，以及新的管理价值增长点。例如通过知识产权维权，直接为金融机构本身带来收益。

文建秀：市场信誉度是最为重要的一点。在网络数据大量泛滥的情况下，数据信息是商家的商机、也是客户的隐私，合法合理使用信息、保护信息安全是树立良好金融形象的重要因素，市场口碑是无价之宝。一家银行只有取得客户信赖，赢得市场认同，创造一流银行品牌，才能有效获取客户和经营客户，进而通过不断强化大数据分析挖掘能力，洞察客户需求，创造性服务客户。可以说，客户金融信息保护是促进银行互联网金融业务发展、提升客户综合服务能力的条件和前提。

ALB：关于网安与数据保护这个话题，还有哪些事项是您正在思考的、或在摸索中前行的？

刘东：外资银行受限于不同国家和地区的网络安全和数据保护的法律法规，但同时全球性银行业务需要对客户、客户集团的授信和信用信息进行统一管理。如何解决不同的网络安全和数据保护的法律法规和全球性银行业务和集中性信用信息数据保护的矛盾，是需要立法者和从业者需要思考的问题。

countries and regions. At the same time, global banks need to manage the credit extension and credit information of clients and client groups on a centralized basis. How to address the conflict between the different legal frameworks of cybersecurity and data protection and global banking business and centralized credit information and data protection is something that legislators and practitioners need to think about.

I would like to mention two concrete issues.


First, is it possible to have international standards on cybersecurity and data protection? If so, what is the baseline for such standards? EU's GDPR, while providing a good starting point, still has a long way to go to reach the status of being global standards. We believe that globalization and delayering are the trends of the future. Having international data protection standards will be positive for both global banks and multinational enterprises, and will also bring positive effects to global cybersecurity and data protection efforts.

Second, where can data centers be built? From a cybersecurity perspective, national legislators tend to want data centers in their home countries. However, for global banks or multinationals, it seems that the most cost-effective model is to set up their own global data centers in one or a few locations rather than having a separate data center in each country or region. How to enhance cooperation in different countries and regions, reduce the operating costs of enterprises while ensuring the security of networks and data, requires more top-level legislative design. For example, is it possible to have a wider range of cross-regional cooperation under CEPA? For data centers used by certain industries, can data centers in Hong Kong be regarded as Mainland data centers? We look forward to more communication and cooperation among regulators in different countries and regions in relation to these issues.

King: The application of technology is


both an opportunity and a challenge for legal professionals. Law is an old profession that has long relied on experience rather than data for growth and value creation. Big data and technology-driven development will result in the loss of some legal jobs, functions and value, but will also create new core values - the former such as legal search and junior lawyers while the latter such as in-house functions for trade secrets, IP and information security. However, combining law and IT is a huge challenge for both individuals and teams. After all, these two disciplines are both strong in their own right and distinctly different from each other.

An in-house team may build a differentiated combination of people internally. In terms of personal development, a person coming from the legal background does not necessarily need to learn coding but should accumulate experience in areas such as computer logic understanding, systematic thinking, demand development and project management.

Wen: We are also looking at the following four aspects. First, how the right to retrieve financial information under the National Security Law can be established in a more scientific manner that not only protects customer information security but also maintains social security? Second, there is tension between the complexity of payment channels and information security. How to balance such tension through legislation and how to establish consistent rules for information protection and information security in the entire social business chain is something worth studying. Third, greater efforts of publicity and guidance need to be made to improve the information security awareness of private customers. The large number of cases where funds are lost or information is leaked due to individuals recklessly providing important information for third parties has shown the urgent need for consumers to be provided with guidance and education. Fourth, the measures that punish information abuse need to be further improved. 

两个具体问题愿意跟大家探讨：第一，网络安全和数据保护是否可以建立国际通行标准？如果可以，这个标准的基准线在哪里？欧盟的《一般数据保护条例》给我们做了一个良好的示范，但离全球标准还有不小的距离。我们认为，全球化扁平化是今后的大势所趋，通行的数据保护标准对于全球性银行和跨国企业来说有积极的意义，也会给全球网络安全和数据保护带来正面效应；第二，数据中心可以设在哪里？从网络安全角度来看，各国立法者均倾向于把数据中心设在本国，但是，对全球性银行或跨国企业来说，似乎最经济有效的运营模式是在一个或有限几个地区设立自己的全球数据中心，而不是在每一个国家或地区都设立单独的数据中心。如何加强不同国家地区的合作，减少企业运营成本的同时保证网络和数据的安全，需要有更多高屋建瓴的立法设计。例如，是否在CEPA下可以建立更广泛范围的跨地区合作？对某些行业的数据中心来说，香港的数据中心是否可以视同为大陆的数据中心？这些具体问题，我们期待不同国家和地区的监管机构有更多的沟通和合作。

靳毅：技术的应用，对法律行业从业人员来说既是机遇也是挑战。法律是一个古老的职业，长期以来基于经验而非数据进行增长和增值。但在大数据和技术驱动的背景下，将导致部分法律职业和功能、价值丧失，同时也创造了新的核心价值——前者比如像法律检索、初级律师；后者像从事商业秘密、知识产权、信息安全法务等方面大有作为。但将法律背景和信息技术背景结合在一起，对个人和团队都是巨大的挑战，毕竟两个专业性都很强且差异性较大。作为法务团队，可以在团队内部构建差异化的人员组合；对于个人的发展，法律背景的人员不一定去学编程，而在于对计算机逻辑的理解、系统性思维、需求开发、项目管理的经验积累。

文建秀：我们还关注以下四个方面问题：其一，国家安全法项下对金融信息的调取权利如何设置可以更科学，既能保护客户信息安全，又能维护社会安全；其二，支付渠道的复杂化与信息安全之间是存在矛盾的，如何通过法律规定来平衡，如何在整个社会商业链条中建立起信息保护、信息安全的一致性规则，非常值得研究。其三，社会客户对自身信息的安全意识需要充分的宣传和引导，大量因个人擅自把重要信息提供给第三方导致的资金丢失、信息泄露的案例说明，消费者也非常需要引导和教育；其四，信息滥用的惩罚措施需要进一步完善。 

SCHEDULE OF RANKINGS 榜单安排

2019

Name of Ranking 榜单	Month of Publication 发布月	Nominations Open* 提名开始日*
2019 ALB China Firms to Watch 2019 ALB China 精品律所	January	7 November 2018
2019 ALB China Top 15 Litigators 2019 ALB China 十五佳诉讼律师	February	14 November 2018
2019 ALB China Top 15 M&A Lawyers 2019 ALB China 十五佳并购律师	March	27 November 2018
2019 ALB China Employer of Choice 2019 ALB China 年度雇主	April	14 January 2018
2019 ALB China Top 15 TMT Lawyers 2019 ALB China 十五佳TMT律师		13 December 2018
2019 ALB China IP Rankings 2019 ALB China 知识产权排名	May	24 January 2019
2019 ALB China Top 15 GCs 2019 ALB China 十五佳总法律顾问	June	4 March 2019
2019 ALB China Rising Lawyers 2019 ALB China 律师新星	July	9 April 2019
2019 ALB China Client Choice 2019 ALB China 客户首选律师	August	8 May 2019
2019 ALB China M&A Rankings 2019 ALB China 并购排名	September	11 June 2019
2019 ALB China Fastest Growing Firms 2019 ALB China 十佳成长律所		19 June 2019
2019 ALB China Top 15 Female Lawyers 2019 ALB China 十五佳女律师	October	4 July 2019
2019 ALB Top 50 Largest Law Firms ALB 2019年亚洲最大50家律师事务所	November	1 August 2019
2019 ALB China Top 15 In House Teams 2019 ALB China 十五佳公司法务团队	December	9 September 2019
2019 ALB China Top 15 IP Lawyers 2019 ALB China 十五佳知识产权律师		28 August 2019

* These dates are subject to change. Please contact ALB for the most up-to-date schedule.
截止日期可能会有调整, 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

CHINA LAW AWARDS 2019

《亚洲法律杂志》近日宣布了二零一九年ALB中国法律大奖的入围名单。今年的大奖，吸引了来自近200家律师事务所以及企业法务团队的提名，涉及众多法律业务领域。

此番颁奖典礼必将是大咖云集新星璀璨。我们亦期待与您同享盛典的荣耀时刻！

*本次盛典报名通道只为入围者开启。

**所有参会登记需经许可方可生效。受有关条款及细则约束。

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