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# EMPLOYER

**HONG KONG'S  
ARBITRATION SCENE  
IS BOUNCING BACK**

**CLIENTS PICK  
THE REGION'S TOP  
TMT PRACTITIONERS**

**JAPANESE FIRMS  
HAVE EXPANSION ON  
THEIR MINDS**

# OF CHOICE

**THE REGION'S BEST LAW FIRMS TO WORK FOR**

# ALB SE ASIA IN-HOUSE LEGAL SUMMIT 2023

25 MAY - SINGAPORE



## OVERVIEW

The **ALB SE Asia In-House Legal Summit 2023** will be happening **LIVE in-person** in Singapore! Returning **bigger and better**, the summit will feature the following **six** key streams:

- Anti-corruption & Compliance
- Data Protection & Supply Chain Disruption
- Litigation and Disputes Resolutions
- Mergers & Acquisition (M&A)
- Risk, Regulations & Compliance
- Technology Disruptions – Legal Operations

Regional country legal updates are also planned for India, China, Singapore, Malaysia, Thailand, Hong Kong and more. The summit examines the evolution of the GC's role and provides the opportunity to rethink your operations to align with everchanging business environment. This 1-day event will equip you with the necessary knowledge and strategies to prepare for the exciting year ahead.



Photos from live event that took place in Singapore on 11 May, 2022

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Law Firms / Service Providers/ Consultants	USD2000

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# CONTENTS

# 16

## Cyber guardians

### COVER STORY

24

#### ALB Employer of Choice 2023

With the COVID pandemic reshaping the workplace rulebook, retaining, and recruiting talent remains one of the biggest challenges for law firms. Compensation alone is no longer the crown jewel as younger professionals increasingly value work-life balance, autonomy, and a visible career development trajectory. In this annual ranking of Asia's best law firms to work for, ALB spotlights how they are being seen by their employees as not only places where they work, but thrive.

By Sarah Wong

### FEATURES

14

#### One man's meat

Herbert Smith Freehills recently announced its departure from the South Korean legal market, continuing a steady stream of international law firm exits in the past few years. At the same time, Watson Farley & Williams established a Seoul office, while Ashurst recently became a part of the country's first-ever joint law venture. Lawyers say that with hurdles like language barriers, growing competition and tight regulations, the key to longevity might involve closely hewing growth strategies to Korea's market potential.

16

#### Cyber guardians

As digitisation

and cyber threats rise, countries in Southeast Asia have enacted laws to protect personal data and prevent cyber-attacks. But with varying requirements across jurisdictions, the compliance burden for companies has only increased, and in-house counsel play a critical role in ensuring compliance with these laws by providing guidance on legal requirements and best practices.

20

#### Rising from the east

A number of major Japanese firms recently announced overseas expansion plans. While some were bolstering their existing presence in the ASEAN region, others were looking further afield - in Europe and the United States, for

example - with the aim of becoming global players. ALB speaks to some of the firms about the strategic considerations underpinning their decisions, and their gameplans going forward.

32

#### Asia Super 50 TMT Lawyers 2023

In its third annual Asia Super 50 TMT Lawyers list, Asian Legal Business showcases the leading lawyers in the region's technology, media, and telecommunications practices who have won wide acclaim from clients.

36

#### Bouncing back

The HKIAC's arbitration caseload reached its highest level for more than a decade last year,

underlining Hong Kong's continuing international appeal as well as its unique strengths as a seat for China-related. Lawyers say that additional measures like third-party funding and success-based fee arrangements are set to further cement the city's reputation.

### BRIEFS

3

#### The Briefing

4

#### Forum

6

#### Explainer

7

#### Deals

8

#### Appointments

Plus:

- Helmsman LLC


## Securing talent for the future

As the legal industry emerges from the challenges posed by the pandemic, law firms of all sizes are grappling with the issue of talent acquisition and retention. In particular, attracting and retaining junior lawyers has become a critical concern for law firms as they navigate towards a new normal.

Junior lawyers are the lifeblood of law firms. They bring fresh perspectives, energy, and drive to the practice of law. However, in today's competitive legal environment, attracting and retaining top junior talent requires law firms to go above and beyond.

First and foremost, law firms need to create a positive work culture that fosters growth and development. Junior lawyers thrive in an environment that encourages mentorship, provides opportunities for skill-building, and recognizes their contributions. This includes providing regular feedback, setting clear expectations, and offering professional development opportunities to help them advance their careers.

Law firms also need to prioritize work-life balance. The legal profession can be demanding, with long hours and high levels of stress. Firms that prioritize the well-being of their junior lawyers, such as offering flexible work arrangements and promoting a healthy work-life balance, are more likely to attract and retain top talent. Finally, law firms should foster a diverse and inclusive workplace. Junior lawyers seek opportunities where they feel respected, included, and can bring their authentic selves to work. Law firms that prioritize diversity, equity, and inclusion create a more positive and supportive work environment that attracts and retains top talent.

As our annual Employer of Choice ranking and feature highlights, law firms must take proactive steps to attract and retain junior lawyers by prioritizing their professional growth, well-being, and diversity and inclusion. The future success of law firms depends on investing in the next generation of legal talent. 



**RANAJIT DAM**

Managing Editor, Asian Legal Business, Thomson Reuters

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# BRIEFS



## THE BRIEFING: YOUR MONTHLY NEED-TO-KNOW

### IN THE NEWS



Female lawyers in Thailand can now wear trousers to court, marking a departure from the previous dress code restrictions that prohibited them from doing so. However, women are still expected to adhere to neutral-coloured skirts or trousers and a white collared shirt.

### U.S. LAW FIRM LAYOFFS SPREAD AS COOLING ECONOMY KEEPS CLIENTS WARY

**(Reuters)** Lawyers and staff at big U.S. law firms continue to face layoffs as global deals take a dive and client demand falters. Many law firms raced to hire lawyers in 2021 and early 2022 to keep up with booming global dealmaking demand. But the market has shifted amid rising interest rates, high inflation, and recession fears. Large law firms are advising on fewer deals, with a smaller combined value, as mergers and acquisitions activity fell to its lowest level in more than a decade in the first quarter of 2023, according to data released Tuesday by Refinitiv. The total value of global announced M&A deals in the first quarter was \$580 billion, representing a 44 percent dip compared to the same period last year and a 23 percent decline compared to the previous quarter. Gunderson Dettmer, Cooley, Goodwin Procter, Stroock & Stroock & Lavan and Shearman & Sterling have laid off lawyers and staff since late last year, citing a slowdown in work. Firms, including Davis Wright Tremaine and Perkins Coie, have also let go of business professionals.

### QUOTE UNQUOTE

**“SOMEONE IS PAYING \$850+ FOR ONE HOUR OF YOUR TIME. THINK ABOUT THAT IN EVERYTHING YOU DO.”**

Excerpt from a leaked list of “non-negotiable expectations” at Paul Hastings, issued by an associate to junior colleagues, that is sparking debate.

# 62

**62% - Percentage of organisations that either feel dissatisfied or neutral with their legal entity management technology, according to a survey by the Association of Corporate Counsel (ACC) and Deloitte.**

### CORPORATE LAW DEPARTMENTS FEEL THE STRAIN UNDER NEW COMPLIANCE CHALLENGES

Complying with growing global regulatory complexity represents the biggest legal threat to businesses, with more than a quarter (28 percent) of global law departments citing frequency and complexity of regulatory changes as their biggest anticipated risk to the business, concludes the Thomson Reuters 2023 State of the Corporate Law Department report. New research conducted by Thomson Reuters Institute captures the top global compliance concerns and delves into issues across changing securities regulations, geopolitical tensions, anti-money laundering efforts, anti-proliferation regulations, digital economies, data governance and ESG regulation. The research revealed that globally, compliance is now the top priority for corporate law departments.

### IN THE NEWS



U.S. company DoNotPay Inc, which says it uses AI to generate documents and calls itself a “robot lawyer”, is facing a new lawsuit that says the company is practicing law without a license. Law firm Edelson argues it “is not actually a robot, a lawyer, nor a law firm.”

# \$450,000

**Total compensation earned by the highest-compensated legal operations professionals globally, according to research by AI-powered legal operations platform Brightflag.**

# MIDAS TOUCH

As companies across Asia navigate global macroeconomic complexities fuelled by high inflation and slowing growth, they are growing more prudent over budgets control while still aiming to hit business goals. As such, corporate legal departments are tasked with maximising value to companies with fewer resources at their disposal. General counsel share with ALB how they harness the power of innovation to achieve this Herculean task.

WITH IN-HOUSE LEGAL TEAMS FACING INCREASING CALLS OF “DOING MORE WITH LESS,” HOW ARE YOU AS A GENERAL COUNSEL GETTING YOUR DEPARTMENT TO WORK BOTH EFFECTIVELY AND INNOVATIVELY WHILE MAXIMISING VALUE TO THE ORGANISATION?



DAMINI BHALLA

**DAMINI BHALLA, general counsel, Zomato**

With passing years, “doing more with less” has become more pronounced given the accelerated pace and increasing demands of a company’s business. There are myriad steps in-house counsels can take to tackle this challenge, work effectively, embrace innovation, and maximise value for their organisations. Some key measures are:

**Streamlining operations:** Focus on optimising internal processes and using technology to streamline work. This includes implementing document management systems, templatising contracts and workflow automation tools to improve efficiency.

It is also critical to embrace new technologies and approaches to legal work, such as artificial intelligence and machine learning.


**Ensure there are no leakages in efficiencies:** Work to maximise the value in-house counsel deliver to the organisation. This might involve using metrics and analytics to measure legal department performance, automate repetitive tasks, improve risk assessment, and gain insights into data to correlate performance.

**Talent development:** Invest in upskilling to ensure the team has the necessary knowledge and resources to meet the company’s demands. This might include

Image: Blue Planet Studio/Shutterstock.com



training programs, mentoring, and hiring specialists with expertise in evolving areas like data privacy and fintech.


**Judicious use of legal budget:** Engage external counsel for specialised work that is not repetitive in nature and requires nuanced legal expertise along with a thorough understanding of the prevailing market practice. Examples of such work include M&A transactions and large-scale litigations. 

#### YI WONG, general counsel, Yeo Hiap Seng (Yeo's)

At first reading, it appears inherently paradoxical as “embracing innovation” suggests incurring inevitable costs, whilst “maximising value” suggests being as lean a cost centre as possible.

This paradigm, however, has shifted if we adopt the perspective that legal departments have moved beyond the cost centre model. What this means is that legal departments, through being both a gatekeeper of the company’s interests and a business enabler, play a role greater than a mere “contract reviewing” cost centre in the traditional gatekeeping sense. The business enabler role can be augmented via greater efficiency and accuracy of advice, to maximise, communicate, and deliver value to the organisation.

Greater efficiency in dispensing professional advice can be achieved through the curated use of technology to tackle “low-hanging fruits” (such as autogenerating simple agreements with pre-approved legal perimeters, due diligence etc.) and freeing up lawyers to focus on more high-value work that requires human inputs, such as risk analysis, legal strategies etc. Greater accuracy of advice may come from adopting strategic staffing (use of external subject matter experts), and data-driven metrics in terms of research of applicable laws (which can be done in-house).

Next, in practical terms, general counsel must prioritise their department’s needs, reassess the available technology and investments to be made in that regard, as part of a bigger budget allocation and spend analysis exercise. Once these are set in motion with the right legal tech investments made based on the specific needs of the business units the legal department serves, the general counsel can plug into wider corporate initiatives and proffer recommendations to the executive level armed with data-driven key metrics. This will result in maximising value contribution to the organisation. 

#### MEL NIRMALA, ASEAN legal operations excellence lead, Bayer Southeast Asia

Back in 2019, Bayer envisioned a three-year transformation of its in-house legal team globally under the following mission statement: “As an integral part of


Bayer’s business operation, we provide protection as well as direction, leveraging functional expertise and technology in a dynamic environment that fosters great talent.”

Following the same, an internal survey with the participation of all in-house country Law Patent and Compliance Teams (LPC) considering a thorough risk assessment was conducted, and the outcome presented a clear picture to our internal business stakeholders on the possibility that 71 percent of the work done by the LPC country teams could be further streamlined or transferring ownership back to the business, delivering sustainable cost savings. Despite the challenging cost savings target for LPC, we did not limit our approach to the Bayer 2022 Platform project to a mere cost-saving exercise. Rather we viewed it as an opportunity to improve, streamline and harmonise our processes, including our commitment to exploring digital ways of working for LPC more proactively going forward.

Upon close consultation with all Bayer business divisions, we believed that our new LPC Target Operating Model will still provide the required services. Fuelled by the business division’s buy-in, Bayer LPC started to escalate and develop its own internal digital transformation for day-to-day matters such as: events risk management, compliance matter within health care professionals, conflict of interest, data privacy risk mitigation/impact assessment and low-risk compliance advice (gift/hospitality). The pandemic, if only, helped to accelerate the digital transformation of the project, which consisted of several stacks including chatbot, SAQs (self-assessment questionnaires), web-based tailored compliance training, self-service contract management tool and other matter management kits; giving Bayer’s in-house team a head-start with being innovative in the way we were approaching legal work.

No, it wasn’t all pretty and accepting initially. Hence, a new work culture, and an agile mindset across all levels, disciplines, and legal functions were introduced as part of the change management training. A “safe-to-try” structured framework providing the right methods, processes, and toolkits was introduced for further amalgamation between businesses and the in-house legal team.

The idea was to transform our LPC business partners’ matters into valuable business-facing & strategic partners, delivering pragmatic, fast, and innovative solutions with a can-do attitude.

This has created an in-house LPC community with a credible voice, fit for purpose, open to new ways of working and self-leadership as the main foundation of a country’s trusted high-performing team. 



YI WONG



MEL NIRMALA

## EXPLAINER

# CAN CHINA'S NEW OFFSHORE LISTING RULES REVIVE HONG KONG'S IPO SCENE?



REUTERS/Tingshu Wang

After a prolonged period of draconian anti-pandemic curbs and regulatory crackdowns whipsawed China's capital markets, the world's second-largest economy is pulling out all the stops to calm market jitters and restore investor confidence.

As part of this, the China Securities Regulatory Commission (CSRC) officially issued a set of regulations on offshore listings of Chinese enterprises, providing PRC companies aspiring to go public outside the mainland, especially Hong Kong and the United States, with some much-needed clarity.

Lawyers advising in this space applaud the new listing rules but admit now it's perhaps too early to predict the impact of such move on IPO work in Hong Kong as the Chinese economy slowly claws back its strength. They are also keeping a close eye on China's regulatory direction, on which the fortune of Hong Kong's capital markets hugely hinges.

## ▶ WHAT ARE THE NOTABLE PROVISIONS?

The Trial Administrative Measures of Overseas Securities Offering and Listing by Domestic Companies, along with five supporting guidelines, have entered into effect on March 31.

The commission has underscored offshore listing as a "key component" of China's capital markets opening as the reshuffled central government put renewed emphasis on economic stability and foreign investment.

Notably, the new rules stipulated that PRC companies must file for registration with the CSRC within three months after submitting their IPO listing application in Hong Kong. But the Commission can block listings that are prohibited by law or regulation or endanger national security, among other criteria.

In addition, the CSRC spelt out the guidelines regarding the listing of red-chip companies. Previously complicated waters, indirect listing of these firms incorporated outside the mainland but with most of their businesses in the PRC has fallen under the "substance over form" approach of the new rules, according to Denise Jong, a corporate partner at Reed Smith.

Some analysts hail the updated regulatory requirements as providing visibility into the historically challenging task of listing PRC businesses in Hong Kong. However, Jong believes the new rules will likely result in more costs and delays.

"This is not new. In the early 2000s, we also had such requirements for red chips to get a 'no objection' letter from CSRC, and it was only later that it was abolished and, instead, the (Hong Kong Exchanges and Clearings) requires a PRC legal opinion as to whether the IPO complies with Chinese legal requirements," she says.

## ▶ HOW WILL THE NEW RULES IMPACT HK IPO WORK?

Some observers believe that promulgating the offshore listing rules has created a sense of certainty that would prompt more mainland companies to float their shares in Hong Kong. In the meantime, the easing of tensions between China and the United States over auditing issues has boosted confidence in more listings of PRC companies on Wall Street.

Jong believes Hong Kong will likely prevail as a more ideal listing destination for Chinese enterprises.

"What makes Hong Kong more attractive than Wall Street (is) a diverse investor base which is international and Asian. The international financial institutions have been investing in Hong Kong-listed companies for a long time and therefore make for better than a bell-weather investor," says Jong.

But she says it remains unclear whether the new rules will stimulate



Hong Kong's IPO landscape once subdued by strict pandemic restrictions and weak investment appetite.

"(The new rules) will bring certainty to Chinese regulatory requirements for companies listing overseas (DiDi is an example of what happens when such regulatory requirements are not expressly enshrined in the IPO process)," says Jong, referring to the forced delisting of the mainland ride-hailing giant after it ramped through a New York listing against regulators' flagging on data security.

"This added layer of requirements are likely, at least in the beginning, to increase costs and delays in the IPO process," Jong adds. "But IPOs should increase over last year just because capital markets are expected to recover."

► **HOW WILL IT UNFOLD IN THE LONG RUN?**

Overall, Jong believes the benefits of issuing the new measures outweighs some of the concerns for capital markets lawyers in Hong

Kong. "It will bring more certainty to the process, and that is good for IPO applicants," says Jong.

As for whether the development signals a deviation from China's erratic regulatory decision-making in recent years, Jong believes this is the same story that has played out before.

"We have gone full circle to adopt what has been implemented before in similar fashion, and this is normal for every developing regulatory landscape," she adds. <sup>ALB</sup>

## DEALS

**\$15.2 BLN**

**Japan Industrial Partners-led consortium's buyout of Toshiba**

**Deal Type:** M&A

**Firms:** Davis Polk & Wardwell; Morrison Foerster; Nagashima Ohno & Tsunematsu; Nishimura & Asahi; Slaughter and May; TMI Associates

**Jurisdiction:** Japan

**\$9 BLN**

**Japan Post's sale of shares in Japan Post Bank**

**Deal Type:** M&A

**Firms:** Anderson Mori & Tomotsune; Mori Hamada & Matsumoto; Simpson Thacher & Bartlett; Sullivan & Cromwell

**Jurisdiction:** Japan

**\$3.6 BLN**

**Saudi Aramco's acquisition of stake in Rongsheng Petrochemical**

**Deal Type:** M&A

**Firms:** Fangda Partners; Grandall Law Firm; T&C Law Firm; White & Case

**Jurisdictions:** China, Saudi Arabia

**\$1.7 BLN**

**JERA's acquisition of Parkwind**

**Deal Type:** M&A

**Firms:** Allen & Overy; Linklaters

**Jurisdictions:** Belgium, Japan

**\$1.5 BLN**

**SMBC's acquisition of stake in VPBank**

**Deal Type:** M&A

**Firms:** Freshfields Bruckhaus Deringer; YKVN

**Jurisdictions:** Japan, Vietnam

**\$950 MLN**

**JX Nippon Mining & Metals' sale of stake in Caserones mine**

**Deal Type:** M&A

**Firms:** Paul, Weiss, Rifkind, Wharton & Garrison; Skadden, Arps, Slate, Meagher & Flom

**Jurisdictions:** Canada, Chile, Japan

**\$807 MLN**

**Rakuten Bank's planned Tokyo IPO**

**Deal Type:** IPO

**Firms:** Anderson Mori & Tomostune; Nishimura & Asahi; Simpson Thacher & Bartlett; Sullivan & Cromwell

**Jurisdiction:** Japan

**\$578 MLN**

**Motherson Group's acquisition of Faurecia's cockpit modules arm**

**Deal Type:** M&A

**Firm:** Hogan Lovells

**Jurisdictions:** France, India



## THAILAND: FORMER WEERAWONG PARTNERS ESTABLISH NEW FIRM

■ Veeranuch Thammavaranucept and Pathorn Towongchuen, former practice area heads at Thailand's Weerawong C&P, have left to establish a new firm in Bangkok called TTT & Partners.

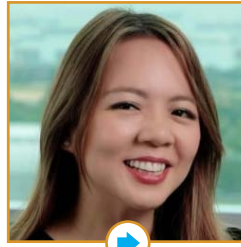
Veeranuch, who has led Weerawong's capital markets and corporate governance practice groups since 2016, has a track record in both domestic and cross-border transactions. These include Asset World's \$1.6 billion IPO, Jasmine International Internet Infrastructure Fund's \$1.7 billion IPO, and the \$771 million restructuring of PTT's petrochemical, propane, and bioplastic businesses.

Veeranuch joined Weerawong in 2015 from Thai telecom major DTAC, where she was general counsel. Prior to that, she was a partner at Linklaters, a member of the Takeover Panel of the Securities and Exchange Commission of Thailand, and also practiced at Freshfields Bruckhaus Deringer.

Pathorn spent 17 years at Weerawong, and has led its dispute resolution practice group since 2017. In 2021, he was named as one of the ALB Asia 40 Under 40.

Joining Veeranuch and Pathorn at their new firm are corporate partner Chanvit Prachayapipat, senior counsel James Lawden (a former partner of Freshfields), counsel Sappawit Jan-suparerg and Parithat Chamnongsilp - all from Weerawong C&P - and ten senior and mid-level associates. <sup>ALB</sup>

### APPOINTMENTS



#### CHARMIAN AW

**LEAVING**  
Reed Smith

**JOINING**  
Squire Patton Boggs

**PRACTICE**  
Data Security & Technology

**LOCATION**  
Singapore



#### YEONG WAI CHEONG

**LEAVING**  
Drew & Napier

**JOINING**  
RHTLaw Asia

**PRACTICE**  
Real Estate

**LOCATION**  
Singapore



#### DANIEL CHIA

**LEAVING**  
Morgan, Lewis & Bockius

**JOINING**  
Prolegis

**PRACTICE**  
Disputes

**LOCATION**  
Singapore



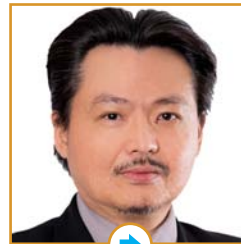
#### NICHOLAS DUNSTONE

**LEAVING**  
ARCM

**JOINING**  
Milbank

**PRACTICE**  
Restructuring

**LOCATION**  
Singapore



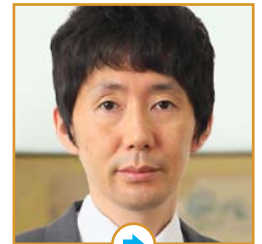
#### KIM POH NG

**LEAVING**  
Christopher & Lee Ong

**JOINING**  
Tay & Partners

**PRACTICE**  
Intellectual Property

**LOCATION**  
Kuala Lumpur



#### TAKU SONOURA

**LEAVING**  
Nishimura & Asahi

**JOINING**  
Atsumi & Sakai

**PRACTICE**  
Banking & Finance

**LOCATION**  
Tokyo



#### VANINA SUCHARITKUL

**LEAVING**  
N/A

**JOINING**  
Rajah & Tann

**PRACTICE**  
Arbitration

**LOCATION**  
Bangkok



#### TING CHI YEN

**LEAVING**  
Oon & Bazul

**JOINING**  
JTJB

**PRACTICE**  
Corporate

**LOCATION**  
Singapore



#### ISABELLA WONG

**LEAVING**  
Nishith Desai Associates

**JOINING**  
Deacons

**PRACTICE**  
Regulatory

**LOCATION**  
Hong Kong

# A conversation with Una Khng

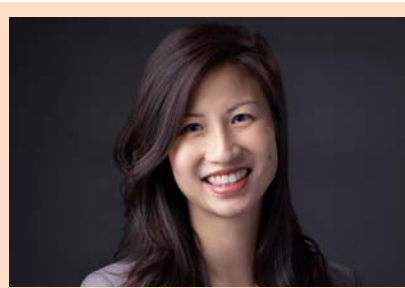
## As Helmsman transforms itself into a multi-disciplinary firm, what role is the commercial disputes practice expected to play, and what kind of synergies do you see with other practice areas?

Helmsman was founded in 2019 as a specialist firm focussed on shipping and commodities. But as its client base expanded and its relationships with existing clients deepened, the instructions that the firm received often went beyond shipping and commodities work. The time was ripe for the firm to transition to provide multi-disciplinary legal services to meet the growing demands. Helmsman celebrated its strategic transformation at the end of October 2022 and formally announced the formation of new practice groups – commercial disputes, employment and corporate, banking and finance, in addition to the existing shipping and commodities practice groups.

The commercial disputes practice group is intended to cover all contentious matters that do not fall within the specialised categories of shipping, commodities or employment disputes. But legal matters, in practice, are often multi-dimensional and may not fit neatly into the scope of a single practice group. Different aspects of a legal matter may require different expertise. For example, a charter-party dispute resolved by way of arbitration may transform into a dispute centred on principles of arbitration law when a setting aside application is brought before the court of the seat. In addition, many clients see the firm as a trusted partner and seek support on various aspects of their business. For example, fintech start ups may require assistance in drawing up financing agreements, advice on their employment processes, and legal steps to be taken to recover bad debts. While the firm has five distinct practice groups, these groups do not operate as silos. On the contrary, the work is often fluid and collaborative.

## One of your goals is to expand the firm's practice within Asia-Pacific and beyond. Can you talk a bit about your experience in the cross-border disputes space, and how you plan to grow this offering?

Prior to joining Helmsman, I was involved in the establishment of the Singapore International Commercial Court ("SICC") and, subsequently, the continual development of the SICC's practice and procedure. As Deputy Divisional Registrar of the SICC, my work required a keen understanding of the respective features, advantages and disadvantages of different competing and complementary fora for the



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resolution of cross-border commercial disputes and the concerns that litigants may have. This gives me a more nuanced perspective when advising clients on their cross-border dispute resolution options.

The vast majority of the commercial disputes matters that the firm currently handles is cross-border in nature. The firm has a Hong Kong office and we have lawyers who are qualified to practise Singapore law, English law and Hong Kong law. With lawyers who are fluent not only in English, but also Mandarin, Cantonese, Malay and French, the firm is uniquely placed to assist with a broad range of cross-border legal matters. Since its establishment, the firm has forged valuable connections with clients and counterparts from all over the world. This allows us to tap on the deep experience of our network in appropriate cases and to lend our expertise when legal services are required in our part of the world. By continuing to build and nurture relationships and remaining abreast of legal, commercial and political developments, the firm will continue to provide plain, practical advice through its different practice groups in the region and beyond.

## What kind of work is keeping you most busy right now and what factors are driving that?

Commercial disputes are varied in nature, and there is no single type of matter that dominates my practice. Earlier this year, we successfully defended an application in the Singapore court to set aside an arbitral award. More recently, we obtained a winding up order against a subsidiary of a listed company in contested winding up proceedings. At the moment, we

are also involved in a number of ongoing court proceedings and arbitrations relating to allegations of fraud, competing title to property and commodities trading among other things. We are concurrently working on several advisory matters where disputes have arisen or are imminent. The subject matters are wide-ranging, and include disputes arising from share sale and purchase agreements, breaches of directors' duties, cryptocurrency disputes between issuers and exchanges, trade credit insurance claims.

## What kind of trends and developments can we expect to see in Singapore's disputes landscape in the next few years, and how would you like Helmsman to adapt to those?

Recent technological advances have caused seismic shifts in the way that the legal profession functions. Big data techniques are being used in technology assisted review tools which offer lawyers in the common law world a more efficient way of conducting electronic discovery. It has also become common to utilise legal technology service providers to aid in electronic presentation of evidence and document management to facilitate the efficient conduct of hearings. The pandemic has hastened the shift to a modernised and robust procedural framework, incorporating virtual hearings and the acceptance of electronic signatures and attestations as part and parcel of the ordinary processes for dispute resolution. More recently, the spotlight has been turned to the use of artificial intelligence in legal practice. Helmsman has been actively looking into how best to utilise the different technology-driven solutions so that our lawyers can practise more effectively, efficiently and sustainably.

Technology has also played a big part in the type of work that the firm has been engaged in. For the commercial disputes practice group, technology disputes have been emerging with increasing frequency and variety. These include disputes involving digital assets, the platforms and exchanges for transacting and dealing with such assets, and the new digital economy. Questions relating to the nature of digital assets, tracing these assets, identifying ownership and control, restraining dealings of these assets and valuing these assets have arisen and will continue to arise. Legal principles continue to evolve as the courts and tribunals refine their analyses in the context of different factual matrices arising in every subsequent case. It is important for the firm to keep up to date with the developments in this fast moving area of law, both in and outside Singapore.



## FOREIGN FIRMS URGED TO TREAD CAUTIOUSLY AS INDIA LIBERALISES

■ The Bar Council of India dropped a bombshell in March, announcing that the behemoth Indian legal market is throwing its arms open to foreign law firms and practitioners – albeit with some strings attached.

As the news broke, international law firms – some of which spent years building their marquee India offerings – look on with cautious optimism. Baker McKenzie and Herbert Smith Freehills quickly put out written statements, both exuding excitement, touting their dedication to and knowledge of the jurisdiction, and pledging to serve Indian multinationals better as well as international companies doing business in one of Asia’s fastest-growing economies. Most of the other firms with India engagements chose to wait and see, perhaps refusing to jump the gun by commenting too much, too soon.

Meanwhile, big domestic Indian firms are wary of intensifying overseas

competitions, while small Indian firms are bracing for upended market dynamics.

Long denied an on-the-ground presence, foreign law firms and lawyers are set to be allowed to practice transactional law and international arbitration on Indian soil based on reciprocity. Although akin to Singapore, foreign lawyers still can’t appear before the Indian courts, tribunals or other statutory or regulatory bodies, the BCI’s decision has been widely hailed as a giant leap forward when it comes to the liberalisation of India’s staid legal market.

“(The news) has had a huge impact. The phones are off the hook,” says Reena SenGupta, executive director at the London-based think tank RSGI.

“Both Indian and foreign law firms are rapidly reviewing their strategic plans in Asia. There is huge pressure to move quickly, conclude alliances, set up

shop and for many talented partners, there is a real opening to negotiate better deals with both current and potential employers,” she adds.

With major legal players exhilarated by India’s long-awaited U-turn busy mulling their next moves, SenGupta views the liberalisation as a strategic step taken by New Delhi, increasingly squeezed by the rise of China, to gain geopolitical and economic capital as Beijing wrestles the West.

She believes the reason driving India’s decision is “the emergence of what many commentators are calling a new cold war, with the U.S. on one side and China on the other.”

“India has the opportunity to lead the non-aligned nations as it did once before and take advantage of the ‘friend-shoring’ multinationals will do as they disentangle their operations from China. This, combined with an expanding Indian

economy, means there is an opportunity here for India and the government no doubt sees a freer legal system as the grease on the wheels of growth," notes SenGupta.

Indeed, the UK Law Society has branded India's legal liberalisation as the culmination of the British government's painstaking efforts to lower the walls of India's sizable legal market. That comes on top of the \$1.3 billion bilateral trade deal between London and New Delhi, which created plenty of legal advisory roles that foreign businesses prefer to be filled by friendly faces.

"For many foreign law firms, India is the missing piece of the global jigsaw puzzle. The pros will be that they will benefit from India as a huge market," says SenGupta.

But no gold rush comes without pitfalls. "There will be a scramble and mistakes will be made, potentially costly ones," she warns while adding that the pros in this case, however, outweigh the cons by a significant margin.

To avoid excessive trial and error, SenGupta urges law firms to be clear-minded when making deeper inroads across India with eyes on the prize – their strategic objectives.

"Front of mind should be the following questions: who are the clients they act for now? Who do they want to act for? What do they need?" asks SenGupta. "For bigger firms, an alliance that has the potential to be a merger is the overall prize, but there are many ways to build an Indian presence. Cherry-picking teams and a certain opportunism should not be discounted."

She is confident that the decision will unlock the tremendous potential underpinning India's legal industry and economy in the long run, which could one day rival top legal hubs such as London and New York while dwarfing its Asian counterparts.

"Singapore has benefitted from India being closed; and Hong Kong may suffer in this new cold war. They will both be important Asian legal markets, but this opening up will put India up where it should be in the region and most importantly, liberalisation will help business and investment," says SenGupta. ALB

## INDIA FIRMS FRET ABOUT POACHING, PLAN FEE HIKES AS INTERNATIONAL FIRMS GAIN A FOOTHOLD

**(Reuters)** India's decision to allow foreign law firms to establish offices in the country is set to shake up its legal services industry, with local firms fretting that star performers could soon be poached and predicting that fees will shoot higher to retain them.

As of March 10, foreign law firms can now set up shops in India to offer M&A and corporate advisory services as well as to handle arbitration disputes for foreign clients.

India had some \$50 billion in cross-border deals last year while corporate arbitration cases and other legal disputes have continued to grow, making the South Asian market a lucrative one for global lawyers who until now have had to operate on a fly-in, fly-out basis.

Under the new rules, the remit of foreign law firms will still be somewhat limited as they won't be able to appear before courts or advise on Indian laws, though they will be able to seek the expertise of local lawyers "on any subject relating to Indian laws".

That caveat, however, also has local lawyers worried the move could represent the thin end of the wedge in opening up the wider legal market - one that Asian Legal Business estimates is worth up to \$4 billion.

Local firms providing services to global companies such as Facebook-owner Meta Platforms, Apple Inc and Walmart Inc are already gearing up for the challenge.

"Pricing for legal services will go up very significantly," said Cyril Shroff, founder of Cyril Amarchand, one of India's biggest law firms, noting that local firms will in general need deeper pockets to go up against their foreign rivals.

"Indian firms that do not increase their prices and (don't) focus hard on profitability do so at their own peril. They will lose their best talent and eventually perish."

A senior partner at an Indian law firm typically charges around \$400-600 per hour for M&A advisory services, but a New York firm's partner can bill \$1,800.

The Bar Council of India says its new rules will help establish the country as a hub for international commercial arbitration and boost the industry overall. Prime Minister Narendra Modi has also said India needs broad reforms to fix a legal system which is overburdened with millions of cases.

The move, while long sought by overseas law firms, appears to have been somewhat unexpected in its timing.

Foreign law firms have yet to announce plans for new offices in India but international firms like Allen & Overy and Herbert Smith Freehills told Reuters they are examining the new rules.

DLA Piper said in a statement it will work with its clients to devise a strategy for the Indian market while Clyde & Co said there were "opportunities for growth" in India.

One concern is the potential loss of business as a global company setting up a base in India could prefer to stick with its existing international team of lawyers.

"Newer companies who want to come to India may want to work with the same lawyers," said Gaurav Dani, founding partner of India's IndusLaw. "That would to some extent change the climate." ALB

# SVB COLLAPSE GIVES WAKE-UP CALL TO START-UPS ON RISK CONTROL

■ The March 10 collapse of California-headquartered Silicon Valley Bank (SVB), the preferred bank of a significant number of U.S. venture-backed tech startups has created upheaval in the banking sector beyond American soil.

As wavering confidence in liquidity and stability of the financial system prompted the demise of Credit Suisse, investors in Asia, particularly in the tech sector, have also been on edge, fearing being embroiled in the banking turmoil.

The impact on tech start-ups in Asia, however, is not clear just yet. For one, Azmul Haque, managing director at Collyer Law in Singapore, believes they are likely to be insulated from the fallout.

"Most of the start-ups we advise have banking relationships in Singapore and have raised money from marque global venture capital investors or Asian venture funds. While venture debt financing is also popular, most start-ups that we represent did not raise money from SVB in the form of term loans, lines of credit or equipment financing. As such, these startups were principally banked in Singapore, with funds transferred to various operating subsidiaries (including in the U.S.) when needed," says Haque.

For start-ups that did have U.S. operations, "the amount of funds banked in the U.S. were smaller (between five to 10 percent) for meeting operational expenses such as payroll and infrastructure for U.S.-based staff. Fortunately, most of these were able to transfer these funds to other bank accounts just before SVB's collapse," adds Haque.

But Jonathan Pentzien, Singapore managing partner at Gunderson Dettmer, admits that the development immediately sent his clients scrambling for advice.

"The concern was very high during the weekend after SVB's collapse," says Pentzien. "There are a number of Asian start-ups – probably more in India than in Southeast Asia – and venture capital (VC) funds that do have banking relationships with SVB, and there will be an impact."



REUTERS/Dado Ruvic/Illustration/File Photo

The challenges facing these start-ups and VC firms, Pentzien believes, are not lying with the deposits – which have been guaranteed by federal regulators in a swift intervention earlier this month.

Instead, "companies that have loan facilities with SVB – whether or not they can access some of the credit lines, whether those are going to be available, how are they going to get access to those credit lines from elsewhere to the extent that the SVB loans go away – that's probably the biggest immediate concern," he adds.

In the short to medium term, though, start-ups and venture funds are confronted with difficulty finding a proper alternative to bank their capital.

"SVB was a one-of-one bank in terms of its scale and having the number of product offerings that were almost exclusively tailored to the venture and tech ecosystem. Finding banks that understand start-ups and the manner in which they operate, as well as venture funds and the types of investments they make, is going to present issues," notes Pentzien, citing an already tightened funding environment under rising interest rates.

As a result, "A lot of the venture funds inevitably will have to resort to the big banks globally – whether that's JP Morgan, Goldman Sachs, or Morgan Stanley – in order to limit the risk and that's potentially going to have some knockoff effects for smaller funds or start-ups that just aren't necessarily going to be great candidates to bank with banks of that size," he adds.

Although a seismic financial crisis was narrowly avoided after regulators swooped in to protect depositors and launched a separate lending facility, Haque believes SVB's downfall has shed light on how lawyers could step up in re-examining compliance and risk controls for their start-up clients in Asia.

"The most critical aspect of risk control would be to assess the impact of over-dependence on any one bank or financial institution, or finance provider, starting by assessing the impact of a potential bank run on (each of the) banks or finance providers on the start-up's business and its operations," says Haque. "Cash can often be the lifeblood of a start-up, so the impact of failing to manage this risk may be significant."


Adds Pentzien: "With the SVB collapse, venture funds are probably going to continue to be careful about the investments they make and looking a lot more carefully at how start-ups intend to be capitalised over the short to long term."

The priority for Pentzien now is to identify the safest alternatives for his Asia-based clients looking to move their cash elsewhere in the region.

"There are a number of very solid local Singapore banks – DBS, UOB – that to any client I'm advising I'd say, 'look, you should really start there', at least for the short term," says Pentzien.

For VC funds, the focus will be on the types of terms that they seek to protect their investments in start-up companies.

"Prior to the SVB collapse, a lot of companies were in a position of sufficient capitalisation where they could hold out until things turned and avoid going back to the market and have a down round. I'm not sure whether that's going to hold and for how much longer," says Pentzien.

As a result, "for us, a lot of the advice is going to be structuring these types of down rounds, potentially looking for those companies looking at recapitalising, and some of the terms, protective and exit provisions that we see in venture financings," he adds. 

# The point of change. 改变的重点

We know there is no one-size-fits-all. This is why our legal, regulatory and consulting experts provide clients with a bespoke approach to identifying and achieving sustainability goals across the investment spectrum.

我们知道没有什么一成不变。这就是为什么我们的法律、法规和顾问专家会为客户提供定制方法来识别和实现整个投资领域的可持续发展目标。

Legal,  
Corporate and Fiduciary,  
Consulting.

Beijing  
British Virgin Islands  
Cayman Islands  
Guernsey  
Hong Kong  
Ireland  
Jersey  
London  
Luxembourg  
Shanghai  
Singapore  
Tokyo

# ONE MAN'S MEAT

Herbert Smith Freehills recently announced its departure from the South Korean legal market, continuing a steady stream of international law firm exits in the past few years. At the same time, Watson Farley & Williams established a Seoul office, while Ashurst recently became a part of the country's first-ever joint law venture. Lawyers say that with hurdles like language barriers, growing competition and tight regulations, the key to longevity might involve closely hewing growth strategies to Korea's market potential. **BY SARAH WONG**

■ The South Korean legal market was recently hit by a sudden exit, with Herbert Smith Freehills ending its 10-year presence in the East Asian country. The firm said it will "wind down" its physical presence in Korea this year as it determined to serve their clients' interests with "a new approach." Some of the office's 14 staff members will leave the firm as a result.

HSF was not the first international law firm to take the decision to whittle down its on-the-ground offerings in South Korea. Clifford Chance quit the market less than two years ago, with McDermott Will & Emery and Simpson Thacher & Bartlett shuttering their Seoul offices in 2019 and 2018, respectively.

But there have been firms bucking this outflux of foreign outfits. One of the latest is Watson Farley & Williams (WFW), which opened its Seoul office just weeks before HSF shut its own. International arbitration specialist Philip Kim ended a seven-year stint at HSF to join the energy-focused firm, which aims to focus on M&A, energy, and public international disputes. And in November last year, London-headquartered Ashurst launched a first-of-its-kind legal joint venture in the North Asian country with midsized law firm HwaHyun.

Kim notes that although some international law firms have exited the Korean market, there are more new entrants. "With the right people and strategy,

international law firms can succeed in the Korean market," he says. "South Korea is one of the largest economies in Asia. It is export-driven, and its economy was resilient during the COVID years with active overseas investments. Over the years, we have observed a consistent and high demand for international legal services from our Korean clients."

The Korea legal market also remains attractive to one of its long-time occupants, Cleary Gottlieb Steen & Hamilton, which first set foot in Seoul in 2012. Jinduk Han, a partner at the firm's Seoul office, says the string of high-profile exits has not swayed Cleary's Korea strategy.

"We have been doing Korea work since the early 1990s, and our focus and strategy have stayed fairly consistent throughout – serving our clients' needs by focusing on practice areas where we have expertise – capital markets and M&A – and by doing excellent work in executing those deals on the ground," says Han.

Adds Sang Jin Han, also a partner at Cleary, "Korean clients are sophisticated, and they are doing interesting and dynamic transactions in Korea and around the world even though the market is relatively small, especially for international firms, and competitive."

## GROWTH TRACK

According to the Bank of Korea, outbound legal spending by Korean

companies have grown each year since data was first compiled in 2006, except for the period hit by the Global Financial Crisis of 2008. Kim of WFW expects this trend to continue, which he believes can sustain his firm's marquee offerings in the energy sector.

"Korean companies are actively investing outside of South Korea, in particular areas relating to the energy transition, electric car batteries, semiconductors, shipbuilding and healthcare, which are traditionally strong or high growth areas for South Korea," says Kim.

Eugene Chang, who left K&L Gates to blaze the trail for WFW in Seoul, says the firm is well-equipped in Korea with tailor-made strategies to capitalise on the increasing demands in energy-related transactions.

"Korean companies are at the forefront of the energy transition - in particular renewables and electric car batteries - and is traditionally strong in the shipbuilding and construction industries, which means that there is strong demand for our specialist sector expertise," explains Chang, who specialises in cross-border energy and infrastructure projects and corporate work.

"Our strategy in Korea will be sector-focused, in line with our global strategy to be the leading law firm in our specialist sectors of energy and transport. We measure success using several metrics, including financials, cross office collaboration, client satisfaction, team building and contribution to the local community," he adds.

Adds Kim, "we will always focus on assisting Korean clients with their international legal needs. For inbound work, we will work closely with our local law firm colleagues, as we have done over the years with great success for the firm's institutional clients. We will concentrate our resources on the energy and transport sectors, in particular project and asset finance on the transactional side, and international arbitration on the contentious side."

To gain a long-standing foothold in Korea like Cleary did, Jinduk Han and Sang Jin Han believe their work's "consistent excellence" is the key to success.





“All of our senior lawyers - two partners and one counsel - and most of our associates have been with Cleary for their entire career, and our clients know the Cleary brand and the quality of work that we bring to the table. They also appreciate the consistency we provide in staffing their matters,” says Jinduk Han.

Both Cleary and WFW are convinced that by establishing the Korean outpost, the overall competitiveness of the firms will get a boost in other international markets as well.

“As an outbound practice, we do not have all the expertise on the ground and cross-office working is the norm. This cross-office working will enhance the overall competitive of the firm in that it will help offices in key markets grow and be involved in the largest international mandates,” says Chang of WFW.

For example, “Singapore is an important hub for our international arbitration practice, and this is where Korean clients are increasingly arbitrating. By assisting Korean clients with their international arbitration mandates from Korea, this helps us grow our practice in Singapore,” he adds.

However, to break into a market such as Korea, which has traditionally

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— Philip Kim, Watson Farley & Williams

tended to be more inward-looking and self-contained, is not without challenges for a UK firm as WFW. Recruitment, for example, used to stand as one of the major hurdles. Kim explains that is due to the limited number of bilingual UK-qualified Korean lawyers compared to

other Western jurisdictions including the United States.

“As our practice matured, we have observed that work for Korean clients is truly international, and it is by no means confined to English law matters. This has naturally led to diversification of hiring from other common law jurisdictions like Australia for UK-based international law firms operating in South Korea,” adds Kim.

For an established player as Cleary, talent attraction is also top of mind. “We are in a talent business, and being able to continue to attract and retain top quality lawyers who are bilingual has always been one of the keys to our success, which we continue to be mindful of,” says Jinduk Han.

Sang Jin Han concurs: “Fortunately, we have had a steady flow of associates relocating from our U.S. offices, and we have had many lateral associate candidates who are interested in joining us given the strength of our firm and reputation in the Korean market.”

“Going forward, we expect technology and innovation will play a greater part in our work and our clients’ expectations, on which we are focused as a firm. This is not particular to Korea but globally,” he adds. <sup>ASB</sup>

# CYBER GUARDIANS

As digitisation and cyber threats rise, countries in Southeast Asia have enacted laws to protect personal data and prevent cyber-attacks. But with varying requirements across jurisdictions, the compliance burden for companies has only increased, and in-house counsel play a critical role in ensuring compliance with these laws by providing guidance on legal requirements and best practices. **BY SACHIN DAVE**

Over the past decade, Southeast Asia has seen a rapid evolution of data privacy and cyber security laws, largely due to the rise of digitalisation and the increasing prevalence of cyber threats.

Several countries in the ASEAN region have enacted laws and regulations to protect personal data and prevent cyber-attacks. One notable example is Indonesia, which passed its first-ever Personal Data Protection Law in September last year after years of discussion and postponements. Based closely on the European Union's GDPR, Indonesia's new law clearly states the legal basis for

obtaining and processing personal data and sets out strict criminal and administrative sanctions for those that break the provisions under the law. These include corporate fines of up to two percent of a company's annual revenue.

Also, in 2022, Thailand's first consolidated law on personal data protection, or the Personal Data Protection Act (PDPA), came into force, even though it had been initially signed in 2019. The PDPA outlines the obligations of data controllers and processors to inform and request data owners of any collection, use, or disclosure of their personal infor-

mation, and those found violating the law could be liable for civil and criminal fines.

And there's more to come. "Apart from recent changes to data protection laws in countries like Indonesia and Thailand, there are also upcoming changes to Vietnam and Malaysia's personal data protection laws," says Wilson Ang, partner and head of Asia regulatory compliance and investigations at Norton Rose Fulbright (NRF). "For Vietnam, it is anticipated that the Vietnamese government will introduce, for the first time, specific personal data protection legislation to

Image: Treecha/Shutterstock.com



govern the processing of personal data sometime in 2023.”

“In Malaysia, proposed revisions to the Malaysian Personal Data Protection Act were put on hold in 2022 because of the change in government. However, the new government under PM Anwar Ibrahim has indicated that it intends to table changes to the legislation by the end of 2023,” adds Ang.

Additionally, the under the Personal Data Protection Act that came into effect on Oct. 1 last year, Singapore increased the administrative fine to up to 10 percent of an organisation’s annual turnover, if annual turnover exceeds S\$10 million (\$7.6 million). Meanwhile, in the Philippines, novel approaches are used to determine fines under data privacy laws.

As data privacy and cybersecurity laws evolve, companies operating in these jurisdictions have seen a spurt in their compliance burden and varying requirements. However, Desmond Chew, a partner in Dentons Rodyk & Davidson’s intellectual property and technology practice, says there may be specific nuances concerning each jurisdiction’s data protection and cybersecurity laws in Southeast Asia, “companies can take comfort that there are still common themes in these laws. For example, a consent-based regime, and the need for appropriate security arrangements in how these companies protect personal data.

“What is important is for companies to identify what are the types of data that they handle on a regular basis, who and where these data are being transferred to, and thereafter implement an appropriate baseline data protection and cybersecurity program which can be responsive to the specific nuances of the local jurisdiction,” Chew notes.

## NAVIGATING COMPLIANCE

With more Asian countries waking up to protecting their domestic data and articulating laws, implementing comprehensive data compliance programs for global companies has only become more complex. Companies operating in these countries have had to adjust to these new regulations by implementing comprehensive data privacy and cybersecurity policies and procedures.

As technology continues to advance and new cyber threats emerge, it is crucial for companies to stay vigilant and adapt to changing legal and regulatory landscapes in order to protect their data and assets effectively.

“Asia is more complex than the European Union (EU) given that EU member states follow GDPR (General Data Protection Regulation), whereas in Asia, each jurisdiction has its own form of data privacy laws which may have been inspired by GDPR but with notable deviations and differences,” says Peggy Chow, an of counsel at Herbert Smith

other jurisdiction-specific obligations (e.g. cross-border transmission, data localisation, handling with data breach, data protection officer etc.,” says Chow.

With these laws’ increasing complexity and breadth, developing, and implementing a comprehensive data compliance program is essential to protect a company’s sensitive information and prevent data breaches.

And with rising complexities, the role of in-house counsel in companies operating in Southeast Asia has increased too. From predicting future pitfalls to playing the first line of defence for any legal action, the in-house counsel

**“The starting point of an effective data compliance program is an appropriate governance structure, with support from senior management to invest in sufficient resources to establish and maintain a comprehensive and tailored data compliance program. Once in place, the company will need to conduct risk assessments and a data mapping exercise. Thereafter, policies and procedures can be developed to cater to, and manage, these risks. Effective maintenance and monitoring in the form of periodic reviews and audits are required to test the effectiveness and robustness of the data compliance program, as well as identify key changes that may affect the risk profile (e.g., changes brought about by new technology) of the company and necessitate changes to existing policies and procedures.”**

— Wilson Ang, Norton Rose Fulbright

Freehills (HSF) specialising in data and cybersecurity laws.

“In Southeast Asia, the APEC Privacy Framework is mostly based on the OECD’s 1980 Guidelines on the Protection of Privacy and Trans-Border Flows of Personal Data (OECD Guidelines). However, there are notable differences across different jurisdictions. Although the privacy compliance programme would be similar, it is necessary to conduct jurisdiction-specific review of the privacy notice and privacy policies (e.g. breach notification response, data subject rights response, etc.) as well as

is now required to ensure compliance with these laws that have varied and often complex requirements.

“In-house counsel will need to have conversations with their business stakeholders and understand the lay of the land when it comes to the type and volume of data and technologies handled by the organisation. Thereafter, such in-house counsels can establish basic rules and parameters as the baseline standards for its data compliance program that allow for specific adaptation to local laws within each Southeast Asian jurisdiction. The most success-

ful data compliance program we have seen are those in which organisations have addressed the requirements in the context of the business operations and needs,” says Chew.

Navigating laws can be challenging for in-house counsel who must also understand their company’s internal data handling practices to develop effective compliance programmes.

“Apart from navigating the complex, broad and changing data privacy and cybersecurity laws across Southeast Asia, which may have inconsistent requirements, in-house counsel needs to develop a sufficient understanding

comprehensive data compliance program. In-house counsel can also be supported by competent external counsel who are not only able to advise on legal requirements across the relevant jurisdictions, but also project manage an undertaking of this scale and provide recommendations that are fit-for-purpose and appropriate for the business,” says Ang.

## COMPREHENSIVE PROGRAMME

As digitalisation continues to transform industries across Southeast Asia, companies must prioritise data privacy and cybersecurity to protect their sensitive information and prevent data breaches.

**“In Southeast Asia, the APEC Privacy Framework is mostly based on the OECD’s 1980 Guidelines on the Protection of Privacy and Trans-Border Flows of Personal Data (OECD Guidelines). However, there are notable differences across different jurisdictions. Although the privacy compliance programme would be similar, it is necessary to conduct jurisdiction-specific review of the privacy notice and privacy policies (for example, breach notification response, data subject rights response, etc.) as well as other jurisdiction-specific obligations (for example, cross-border transmission, data localisation, handling with data breach, data protection officer etc.)”**

– Peggy Chow, Herbert Smith Freehills

of the internal data handling practices. From there, in-house counsel can identify the relevant risks arising out of such practices and develop an appropriate data compliance program to manage and govern such risks,” says Ang.

Developing and implementing a comprehensive data compliance program requires significant investment from companies, including allocating sufficient resources.

“Therefore, in-house counsel will need top-level commitment from their company to invest in the resources required to develop and implement a

Developing and implementing a comprehensive data compliance program is essential for businesses operating in this region, but the complexity and breadth of data privacy and cybersecurity laws can make this a daunting task.

“The starting point of an effective data compliance program is an appropriate governance structure, with support from senior management to invest in sufficient resources to establish and maintain a comprehensive and tailored data compliance program. Once in place, the company will need to conduct risk

assessments and a data mapping exercise. Thereafter, policies and procedures can be developed to cater to, and manage, these risks. Effective maintenance and monitoring in the form of periodic reviews and audits are required to test the effectiveness and robustness of the data compliance program, as well as identify key changes that may affect the risk profile (e.g., changes brought about by new technology, such as generative AI) of the company and necessitate changes to existing policies and procedures,” says Ang.

“Data privacy is an organisational issue (not just a legal or IT issue), so we need support from the top down, i.e., involvement of leadership or C-Suite executives - show leadership the true value of new privacy policies and procedures, especially when compared to the financial and reputational risks at stake. A designated data protection officer and data laws compliance committee with the requisite skillsets and experience,” says Chow.

However, could be some key elements to this.

“There are many key components in an effective data compliance program. Most in-house counsels often focus on policies, including privacy policies, data breach management plans, and data retention policies. These policies are no doubt important – but what is more often overlooked is the effective implementation and operationalisation of these policies,” says Chew.

“For example, what are the appropriate SOPs that a business unit can adopt in order for them to operationalise the data privacy practices? How would a staff effectively notify the chain-of-command if he or she were to discover suspicious activities?” asks Chew.

In-house counsel plays a crucial role in this process, providing guidance on legal requirements and ensuring that employees are educated on data privacy and cybersecurity best practices.

“In-house counsel should understand that there is no one-size-fits-all solution when it comes to an effective data compliance program. Every data compliance program must be carefully tailored to suit the needs of the organi-

sation, especially its business activities,” adds Chew.

But even as they rush to comply with the regulations, there is one more crucial element. Staying up to date with the latest regulatory developments.

“In-house counsel may stay up to date on the latest legal and regulatory developments by, for example, subscribing to newsletters. There is a wide range of useful resources available, and the key lies in taking the initiative to gain access to these resources,” says Chew.

“It is a constant challenge for in-house counsel to stay up to date on the latest legal and regulatory developments. Apart from subscribing to commercial databases and getting onto mailing lists of service providers, in-house counsel should consider solutions that are available on the market to help them stay abreast of key developments and how such developments may impact their business,” says Ang.

## CHALLENGES AHEAD

For many companies, the balancing act could pose a challenge.

Not only are the frameworks across countries different, but they could often create complexities in coordination and legal challenges for the in-house counsel.

“Unlike the EU, Southeast Asia does not have a harmonised data protection law framework. This creates certain challenges for companies in implementing data compliance programs in the region, as it also means considering if there are specific nuances associated with each Southeast Asian country’s data protection laws that need to be addressed. For example, data localisation and transfer requirements are often an issue for organisations with regional presence,” says Chew of Dentons Rodyk.

The inconsistency in laws across countries and the rapid pace at which technological advancements are being made only adds to the complexity.

“The second challenge is cultural attitude towards data protection and cybersecurity. In Singapore, the Personal Data Protection Act has been in place for some time now, and there is a general awareness of the importance of data protection and cybersecurity. This

also means that stakeholders would be aware of the risks associated with privacy in implementing any new business processes,” says Chew.

“But other Southeast Asian jurisdictions, including Indonesia and Thailand, are still relatively nascent in their data protection journey. Some Southeast Asian jurisdictions, such as Vietnam, do not even have an omnibus data protection law in effect yet. This also means for in-house counsels, they will need to educate their stakeholders on the importance of data protection and cybersecurity in their business operations,” says Chew.

risks as a key priority. Boards should also see having a robust data protection compliance program as a mark of distinction to distinguish their companies from their competitors. Customers, both consumers and business customers, are increasingly aware of data privacy and cybersecurity risks and will not hesitate to reflect their preference for companies with robust data protection compliance programs,” adds Ang.

The question is, how could in-house counsel address these challenges?

“The most practical way for in-house counsels to do so is to establish relationships with their business users and imbue

**“The most practical way for in-house counsels to do so is to establish relationships with their business users and imbue an awareness of the importance of data protection and cybersecurity in them. Where possible, in-house counsels should be roped in very early to understand the data flows and designs that the business users intend to embark on, so that any privacy and cybersecurity risks can be dealt with immediately. Most importantly, in-house counsels should raise awareness that privacy and cybersecurity issues are continuously evolving, and there is always a need to review the data designs and flows in order to ensure that the organisation remains compliant with privacy and cybersecurity laws.”**

– Desmond Chew, Dentons Rodyk

Another challenge comes along with the growing volume of data and the way in-house counsels manage this.

“The lack of sufficient resources is one common challenge companies face in implementing data compliance programs across Southeast Asia. In this regard, the issue of resourcing fundamentally boils down to a question of priority for companies,” says Ang of NRF.

“Therefore, it is critical that boards recognise the risks arising out of non-compliance with data privacy and cybersecurity laws and identify the management of data privacy and cybersecurity

an awareness of the importance of data protection and cybersecurity in them. Where possible, in-house counsels should be roped in very early to understand the data flows and designs that the business users intend to embark on, so that any privacy and cybersecurity risks can be dealt with at the outset. Most importantly, in-house counsels should raise awareness that privacy and cybersecurity issues are continuously evolving, and there is always a need to review the data designs and flows in order to ensure that the organisation remains compliant with privacy and cybersecurity laws,” says Chew. <sup>ALB</sup>



# RISING FROM THE EAST

A number of major Japanese firms recently announced overseas expansion plans. While some were bolstering their existing presence in the ASEAN region, others were looking further afield - in Europe and the United States, for example – with the aim of becoming global players. ALB speaks to some of the firms about the strategic considerations underpinning their decisions, and their gameplans going forward. **BY SARAH WONG**

**ALB:** What factors does your law firm consider when selecting locations for your new international offices? How do you think the expansion will benefit your clients?

**FUMIHIDE SUGIMOTO, managing partner, Nagashima Ohno & Tsunematsu:** As a provider of legal services to many Japanese companies, we recognise the importance of supporting our clients’ businesses in various countries and regions where many of them operate. This involves taking into account unique national and regional conditions as well as understanding the client’s culture. In light of this, we have been targeting such countries and regions where many Japanese clients are operating in establishing our overseas offices.

At the same time, we have taken into account the need for these countries and regions to invest in Japan.

Having a local office in these countries or regions allows us to strengthen our commitment to our clients operating in these countries or regions.



**MASAYUKI ATSUMI & YUHEI SAKAO, partners, Miura & Partners:** Miura & Partners strives to be a global legal partner for our clients and opening international offices recently in Jakarta, London, and San Francisco is a great way to improve our client service globally. While we considered various factors to determine the locations of our new offices, the most important factor was whether there would likely be enough need from our clients (both existing and prospective.)

Having international offices greatly benefits both our clients and our firm in a number of ways. Having offices in the vicinity of our clients enables us to communicate regularly with them and understand their needs better. This is key for enabling us to provide problem-solving advice rapidly without any communication gap (and without any time zone difference, which can prevent us from providing timely advice). This applies to both Japanese clients with subsidiaries abroad (i.e. outbound needs) and inter-

national clients with Japanese law needs (i.e. inbound needs).

Moreover, by having an office in a given location, the firm demonstrates its dedication and focus on that jurisdiction and the clients based there. Also, the symbolic effect of having such an office gives us an advantage in expanding our client base in that location. **RYUTARO NAKAYAMA, managing partner, Nishimura & Asahi:** The basic idea is to provide the legal services that are in high demand at a given location. As clients engage in more cross-border activities, we believe it is especially crucial for them to access the highest quality of full-service, borderless legal assistance.

**KEN SHIMONO, partner, TMI Associates:** In choosing the location of our new international offices the most critical factor we considered is the “needs” of our clients. In this case, “needs” refers to not only their existing needs but also the potential needs that our clients may have in the future. To fulfil this purpose, we have set up branch offices/local desks in the countries where our clients have expanded their business to provide legal support from the perspective of the local laws.

We also look to the countries where our clients have yet to expand their business but may have interest in expanding to in the future. We believe it is beneficial for our clients for us to develop our own presence in these countries prior to our clients so that we may offer them guidance based on our first-hand knowledge and network.

Our firm’s desire to expand into new countries also comes from our lawyers’ passion to challenge themselves as they create a legal network in new locations. Launching a new international office is challenging and we could not achieve success with-

out their passion and commitment. If any of our lawyers is keen to accept the challenge of adapting to a new international location, we support them however possible to achieve their ambition to the greatest extent.

We believe that the expansion of our offices internationally enables us to better serve our clients who conduct and will continue to conduct business in the global market while offering them seamless services.

**ALB: How is a new office integrated into the firm’s existing operations and culture, and what steps are taken to ensure a smooth transition?**

**SUGIMOTO:** Our lawyers are dispatched from our Tokyo office to our overseas offices, where they work full-time. In hiring local lawyers, we also explain the firm’s philosophy and policies. After joining the firm, we share the firm’s basic philosophy and team approach through training in Tokyo, participation in various firm events, and, most importantly, working together as a team.

**ATSUMI & SAKAO:** With the exception of our San Francisco office, M&P started its international offices on its own, so that the operation and culture of the international offices would be seamless. For San Francisco, M&P has a strategic alliance with Yorozu Law Group, who will establish our San Francisco Office starting April 6, which will offer a new challenge of integrating with an existing law firm abroad.

However, we believe the integration will be very smooth as both firms share the principles of “diversity and inclusion” and “full coverage with top quality.” For a smooth transition, attorneys from both law firms have held a number of meetings (both online and in-person) to understand



Fumihide Sugimoto



Masayuki Atsumi



Yuhei Sakao



Ryutaro Nakayama



Ken Shimono

## ROUNDTABLE

each other and visited each other's offices many times before the integration. After the integration, both firms will continue to communicate regularly.

**NAKAYAMA:** In most cases, each office consists of a core team of locally qualified lawyers who have a long history with Nishimura & Asahi of legal practice and client collaboration. In this sense, the new offices have evolved from shared operations and office culture from the beginning. The Messaging Guide reflects and puts into concrete words the fundamental values, aspirations, and strengths that we all share as a firm.

**SHIMONO:** When we set up a new office, we send experienced lawyers from our Tokyo headquarters. These lawyers are familiar with our operations and culture, so through training and the course of daily practices they can instil these values into the new offices, the local lawyers, and staff that become a part of our global network.

If necessary, the local lawyers or staff can also undergo training at the Tokyo headquarter office for several weeks.

Also, the local lawyers and staff are invited to a retreat overnight trip in Japan every year where they can socialise with many of their colleagues and get to know each other personally.

By taking these steps, the local lawyers and staff are better able to understand the firm's operation, and culture, and become fully integrated into the firm. We deeply value all these steps as they allow us to maintain the integrity of our firm, which is essential for us to better serve our clients.

**ALB: What are your long-term plans for your offices, and what role do you hope they will play in the process?**

**SUGIMOTO:** In the long term, we aim to strengthen our relationships with Japanese companies expanding overseas. We also aim to position ourselves in many of these overseas locations as a firm capable of providing more comprehensive legal services, similar to in-house general counsel in such locations.

In addition, with the continued expansion of our offices in Southeast Asia, we plan to expand our services to

cover matters related to foreign investment in Japan from overseas companies.

**ATSUMI & SAKAO:** It depends on each office and its surrounding market, but we expect each office to grow organically to respond to the clients' needs. As clients' operations become more international, it is necessary for a law firm like ours to be able to handle multi-jurisdictional issues. By having offices around the world, M&P will become one of the rare Japanese law firms able to provide one-stop international legal services.

**NAKAYAMA:** We are always looking for opportunities to provide better service. We intend to first steadily strengthen our capacity in Asia. We believe this will then carry over to the high-quality services we provide to our clients outside Asia.

**SHIMONO:** The long-term plan for an office varies according to the location, but what we can say definitively is that we are keen to expand our capacity in every location. More specifically, we will engage more local lawyers, paralegals, and staff. By maintaining this goal, we can handle larger projects and a wider range of matters.

As mentioned before, we send lawyers from the Tokyo headquarters to our international offices during the early stages, but in the long term, we plan to localise the offices as a way to serve more local clients and participate in the market like local law firms.

The role we intend to play in the process also differs according to location. For example, in locations where we, a foreign law firm, are allowed to advise on local laws, the office would be expected to adapt and expand our capacity to advise on local laws and regulations. Or in locations like Singapore that function as a hub for the region, we hope the office will work closely with regional offices to manage projects so that we can provide efficient and seamless services.

**ALB: Law firms from the U.S. and UK have a long track record of establishing offices internationally. What are some of the best practices you can utilise, and what unique approaches are you adopting?**

**SUGIMOTO:** The models used by U.S. and U.K. law firms, which focus on their languages and laws, are not necessarily helpful or applicable because they differ from those used by Japanese law firms in their overseas expansion. As mentioned above, we believe that culturally sensitive advice for Japanese companies and an in-depth knowledge of the local legal system are crucial for the growth and development of our overseas offices.

**ATSUMI & SAKAO:** We believe one key to the successful establishment of foreign offices is to assign enough resources and to appoint an appropriate attorney in charge. Also, M&P has a strong culture of







overseas offices, we have an extensive network of leading law firms in many countries and regions, which we leverage organically to meet our clients' needs. The establishment of overseas offices is always an option under our strategy, and we plan to adopt the most suitable approach depending on the prevailing circumstances.

**ATSUMI & SAKAO:** M&P's long-term goal is to become a truly international law firm, and we do not exclude any possibility to achieve this, including opening new offices, strategic alliances with, or acquisition of, existing law firms in each jurisdiction with growing legal needs.

**NAKAYAMA:** Our presence in Southeast Asia is well established, but there are some areas where we can better appeal to non-Japanese clients. We aspire to improve our recognition in Asia as a top-quality firm through various rankings, peer reviews, and other accolades in addition to accumulating a track record of ground-breaking projects in Asia.

In 2020, N&A created a messaging guide to articulate our firm's common goals and principles, with the pledge of "Leading You Forward" to our clients and society, and establishing strength, commitment, and spirit as the three principles that support this pledge. We always provide legal services to our clients with this in mind.

**SHIMONO:** The long-term goal for our firm's global expansion is to grow - in size and capacity - enough to compete with the established U.S. and UK firms. We believe that globalisation is the key to our firm's growth and success in the future. To achieve this goal, we will engage with many more foreign lawyers, including top lawyers acting on the front lines, which we believe will revitalise our firm and further enhance our skill level.

Furthermore, we aim to be the "best" law firm, which does not necessarily mean the largest in number of lawyers or revenue, but a firm that can quickly respond to our clients' needs in this ever-changing world and provide the best solution in accordance with the situation. We also strive to offer a work environment for our lawyers and staff where they can fulfil their potential while working positively and healthily. ALB

encouraging its lawyers to embrace challenges, and the heads of each new office have a strong passion to enter a foreign country market with a pioneer spirit.

For example, for our Asian operation, Mr Inoue is in charge of the operation and has demonstrated a deeply curious investment in various Asian countries, including learning multiple Asian languages, which will also thoroughly improve the services provided; our U.S. operation will be headed by Ms Koshi, a Harvard graduate who pioneered new political territory by serving as the Mayor of Otsu for eight years, the youngest female mayor in Japan up until that point, and also assisted many start-up companies with their US operations; and for Europe, Ms Murata, who already handles a number of European M&A transactions, and Mr Atsumi, who is registered as a solicitor in England & Wales, will co-lead our UK office.

**NAKAYAMA:** We are proud to have built one of the largest networks in Asia to reflect our global reach. M&A, finance, crisis management, business restructuring, and international arbitration have traditionally been strong practice areas and continue to be in high demand from our clients.

In addition, the firm has been strategically focusing on sustainability, trade/sanctions, and digital transformation, which has increased in relevancy and

significance given the current trends in global affairs.

**SHIMONO:** One of the most impressive aspects of these practices is their branding to show that they can provide seamless services worldwide. The pitches, brochures, and other deliverables are integrated under the same image and format as if all the offices are acting as a single team. Such uniformity is essential in soliciting cross-border projects which require legal advice across multiple jurisdictions. We aspire to utilise these practices in expanding our services globally.

In addition, we can make use of our network with international firms, including a major U.S. firm and UK firm which have been affiliated with our firm for more than two decades. If we think it best for the clients, we will not hesitate to align with them even if we have own offices in the jurisdiction. Such flexibility may be unique and ensures that we offer the best solution to the clients.

**ALB: What are the long-term goals for your law firm's global expansion, and how do you plan to achieve them?**

**SUGIMOTO:** We generally aim to establish and expand offices in countries and regions where our clients (primarily Japanese companies) need our local support and where we can provide extensive legal services. In addition to our seven

ASIAN LEGAL BUSINESS

# EMPLOYER OF CHOICE

With the COVID pandemic rewriting the workplace rulebook, retaining and recruiting talent remains one of the biggest challenges for law firms. Compensation alone is no longer the crown jewel as younger professionals are increasingly valuing work-life balance, autonomy, and a visible career development trajectory. ALB spotlights law firms that are regarded by their employees as not only places where they work, but where they also find engagement and fulfilment.

BY SARAH WONG

## HONG KONG

CMS CMNO / Lau Horton & Wise  
Dorsey & Whitney  
Mayer Brown  
Oldham, Li & Nie  
Taylor Wessing

## INDIA

Fox Mandal  
Nitya Tax Associates  
Pioneer Legal  
Saraf & Partners  
Sarthak Advocates and Solicitors

## INDONESIA

ABNR Counsellors at Law  
AKSET  
Hanafiah Ponggawa & Partners  
(Dentons HPRP)  
Makes & Partners  
UMBRA

## MALAYSIA

Adnan Sundra & Low  
Jazzmine Khoo & Associates  
MahWengKwai & Associates

## PHILIPPINES

ACCRALAW  
DivinaLaw  
Villaraza & Angangco (V&A Law)

## SINGAPORE

Allen & Gledhill  
Drew & Napier  
Helmsman  
Providence Law Asia  
RPC

## SOUTH KOREA

Bae, Kim & Lee  
Kim & Chang  
Yulchon

## THAILAND

Chandler MHM  
Kudun & Partners  
Tilleke & Gibbins  
Weerawong, Chinnavat and Partners

## VIETNAM

LNT & Partners  
Tilleke & Gibbins  
VILAF

The legal industry has been traditionally seen as a cutthroat world, with gruelling working schedules and stringent client demands often inevitably encroaching on lawyers' work-life balance and mental wellness.

The stereotype was embodied by a recent online circulation of an internal document from Paul Hastings, where junior associates were told to buckle up to meet "non-negotiable expectations" ranging from staying responsive 24/7 to crossing out "I don't know" from their vocabulary.

The reactions were mixed – a combination of fury, amusement, and justification was observed from Big Law partners, in-house counsel, and human resource specialists alike, sparking an industry-wide reflection on law firm culture. The incident has also signalled a dissonance between upholding parochial law firm hierarchy and championing talent investment underpinned by progressive values including diversity and equity.



DREW &amp; NAPIER

With Cooley and Sherman & Sterling amongst the latest international law firms making deeper talent cuts in a bid to correct overcapacity responding to lower demand levels, on top of the already dismal rates of attrition among associates

observed in markets such as the United States, firms in Asia are offering a rare sight. Many of them are doubling down on their commitments to increase human capital, and in some cases, their investment has no doubt paid off.

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## TILLEKE & GIBBINS

Tilleke & Gibbins, one of Thailand's largest law firms with offices spanning Southeast Asia, has been swarmed by a sea of praise from employees across its network. It was described as a "wonderful working environment" with "good leaders with serious working attitude" as well as "friendly and supportive peers," according to one associate.

A partner at Tilleke also commends the firm for showing compassion to its employees. "We had one young lawyer untimely pass away 12 years ago, and since then, every quarter, our firm's staff contribute to a fund for his wife and special needs daughter, and also all employees and the firm helped contribute when a staff member got cancer

and needed expensive treatments," the partner tells ALB.

Apart from workplace atmosphere and solidarity, the availability of hands-on opportunities is also highly prized by younger lawyers. For example, Indonesia-based UMBRA – Strategic Legal Solutions is hailed as a firm where associates "will be directly involved in





UMBRA

the transactions regardless of their positions," allowing them to expand their skills and experience in the legal field.

Employees at Drew & Napier have the same thing to say about the Singapore Big Four firm. In contrast to a Hunger-Games-like scenario, "the senior lawyers are excellent and willing to train. The environment is not toxic but

friendly although the expectations are still high," says an associate, calling the firm "a good place to learn."

Flexibility is another much-prized trait that wins hearts and minds across law firms. UMBRA is said to have "adapted to the situation of today's legal industry, in a way they provide a work-from-anywhere policy, and easy access

technology to support the WFA policy," according to an associate.

Bangkok-based Weerawong, Chinnavat & Partners is also applauded for embracing workplace flexibility. "They give us certain degree of freedom to work from home and to manage our work schedule," say associates, who are also happy that they get to work

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CHANDLER MHM

closely with supervisors to chart their career paths.

Chandler MHM, also a market-leading firm in Thailand, stands out by championing diversity and inclusion within the organisation. "The firm has a long unique history and diversity environment which drive their crew to be more energetic," says one associate. Others complement Chandler MHM for embodying an "integration of Thai and Western values" as the firm bolsters its international presence.

As a result, these firms have emerged victoriously as the "employers of choice" for not only lawyers but also office support staff. They thrive by keeping their talent happy, who in turn are driven by a sense of meaning and purpose, rather than a Monday-through-Friday kind of torpor.

### MORE THAN MONEY

It's no doubt a delicate act for organisations to ruthlessly pursue a constant boost of competitiveness while staying compassionate to the troops at the same time. But as the COVID-19 pandemic prompted many people to reshuffle priorities in life, incentivisation has been given a new layer of meaning.

As a result, compensation alone - with its significance undisputed - is no longer the most effective weapon to reel in and keep top talent. Firms which understand that would more likely gain a headstart navigating the tight labour market.

Jessada Sawatdipong, co-managing partner at Chandler MHM, acknowledges that competitive and fair compensation still plays a crucial role in his firm's talent strategy, which recently has finessed its compensation structure.

However, "fulfilling work and opportunities for career advancement are also very important. We focus on nurturing our talent to provide opportunities for promotion within the firm (we recently made a number of promotions). This includes providing strong support for lawyers developing new areas of practice in which they have a particular passion, and which fulfils the needs of our clients," says Jessada.

Pramudya Oktavinanda, managing partner at UMBRA, concurs. "Given the hyper-challenging nature of our legal industry and the accompanying pressures, lawyers that work only for the money would quickly succumb to burning out," he says.

Purpose, instead, has become increasingly indispensable for lawyers weighing whether a firm is worth giving their all for.

"Deeply involving our lawyers in exciting and state-of-the-art transactions helps in motivating them to be a better professional. No amount of procedural plans, tight supervision, or incentive schemes could ever substitute for the inner motivation derived from the personal satisfaction of learning new things and doing a job well done," says Pramudya, adding that staff also receive free counselling and sports programs for them to stay physically and mentally fit.

"After all, nothing kills the excitement faster than doing mundane meaningless job every day," he notes. "Being a lawyer is not a mere job, it is your identity and way of life."

### COLLEGIALITY VS FLEXIBILITY

Apart from purpose and motivation, the factor that comes up most often in defining a desirable workplace is camaraderie. To Drew & Napier, that's the concrete holding the firm together.

"There is what it means to be part of the Drew family: being shoulder-to-shoulder through thick and thin, shar-

# CHANDLER MHM

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ing loyalty and camaraderie, celebrating one another's successes and willing one another to do well, for ourselves and our loved ones," says the Singapore Big Four firm.

But with the pandemic subsiding, there have been growing calls for a full return to office among professional service industries. Law firms, pressed with needs to shore up face-to-face contacts with clients, are walking the tight rope of maintaining workplace flexibility without losing sight of the importance of collegiality nurtured through in-person interactions.

"We find that having the flexibility of choosing your own working place is very effective in keeping our talent happy and productive. We were the first major law firm in Indonesia to implement a permanent work-from-home policy and our productivity has simply skyrocketed compared to pre-pandemic times," says Pramudya of UMBRA.

But nodding to the power of physical presence, Pramudya says lawyers are not allowed to work from locations outside Jakarta to stand by for face-to-face meetings. Each practice group is also encouraged to organise regular bonding sessions.

"As we grow bigger, we will eventually have to find the right mix of physical and online presence for our talents. Working flexibility is important, but at the same time, instilling culture and camaraderie among the lawyers and staff are also equally important, and it is not always easy to build these relationships in a pure online experience," adds Pramudya.

Thomas Treutler, managing director of Tilleke & Gibbins' Vietnam office, says his firm has been adapting to the reversion to pre-pandemic behaviour while internalising remote working as a necessary option.

"It's clear that remote working is here to stay, and we've tried to embrace the positives of the ability to 'work from anywhere' while minimising the negatives. We offer a flexible system where our lawyers have the opportunity to work remotely but are encouraged to make the office their primary place of work, so that they can take advantage



of our world-class facilities as well as the opportunities to work collaboratively with other excellent lawyers," says Treutler.

### WIN-WIN SITUATION

To not only attract but also keep the best people, leaders believe the key ultimately boils down to the prestige and market strength of the law firm itself.

"These days, job seekers always do their research - they know who the leaders in the market are, who's getting the interesting work, and which of their law school friends are thriving, professionally and personally, in their work environment," says Tiziana Sucharitkul, co-managing partner of Tilleke & Gibbins in Thailand.

"We need to build and maintain our firm's prestige, which is demonstrated by the quality of our client base, our reputation in the market, and our unrivalled opportunities for career development," explains Tiziana. Darani Vachanavuttivong, her co-managing partner adds that a strong performance management system is vital to the firm's development.

Lawyers who choose the winning team will benefit professionally as the firm grows. On the other hand, "as our lawyers raise their profiles in the market and build and develop their practice areas, this would ensure their professional success as well as that of the firm.

We recognise that individual professional achievement, fulfilment at work and the success of our firm go hand in hand," says Jessada of Chandler MHM.

Jessada highlights training and mentoring as quintessential in ensuring that the firm marches forward together with its people. "There are changing expectations in terms of how that support is provided in terms of delivery and communication style. We are investing heavily in training, new technologies and infrastructure to meet changing expectations," notes Jessada, who adds that the firm encourages continuous feedback and open discussion to understand the expectations of its lawyers.

Adds Vietnam-based Treutler at Tilleke, "our lawyers want to learn, want to grow, want to improve. We offer regular informational sessions featuring outside speakers as well as our own team members to expand knowledge and promote best practices, and we also offer promising young lawyers abundant chances to travel abroad for conferences and training."

With all the right tools, attitude, and approach, at the end of the day, it is the teamwork that's making the dream work. "We want our lawyers to understand that we always work together as a team and we can only be successful when everyone is driven and shares the same passion," says UMBRA's Pramudya. <sup>ALB</sup>





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**SETH M. GRAHAM**

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ASIAN LEGAL BUSINESS

# ASIA SUPER 50 TMT LAWYERS 2023

In its third annual Asia Super 50 TMT Lawyers list, Asian Legal Business showcases the leading lawyers in the region's technology, media, and telecommunications practices who have won wide acclaim from clients. The list is in alphabetical order, and certain lawyers have been profiled.

LIST BY ASIAN LEGAL BUSINESS, TEXT BY BINGQING WANG



**RAKESH KIRPALANI**

*director, dispute resolution and information technology, Drew & Napier, Singapore*

Rakesh Kirpalani is the director of dispute resolution and information technology at Drew & Napier, where he specialises in resolving complex commercial and technological disputes through litigation and arbitration.

At 37, he was appointed Chief Technology Officer at Drew & Napier, thanks to his unique combination of legal,

commercial, and technological talent. He has led the firm's digital transformation and paved the way for the adoption of legal technology practice in the firm. He leads the DrewTech team, which manages disputes and risks for clients in areas where technology and the law intersect.

Kirpalani is an experienced trial advocate and appellate lawyer who practices at all levels of the Singapore courts. He also advises on risk management and disputes relating to technology, electronic evidence, employment,

compliance with technology-related regulatory requirements and cybersecurity.

With extensive skills and knowledge in the information technology field, he manages both the legal and technological aspects of cases for clients, regulators, judges, and arbitrators. His diverse client base spans multinational corporations, private equity funds and listed companies across Singapore and other jurisdictions.

Kirpalani has worked on various noteworthy cases, including acting as international counsel to a multinational regulated institution in response to a ransomware attack, representing investment companies in arbitration over failed deployment of IT systems, advising an Indian data analytics company on data exposure due to server misconfiguration, and advising a company listed on the Singapore Exchange on migration issues to a new platform. He also advised an insurance major on using secured and unsecured electronic signatures in insurance transactions involving legal matters requiring technical knowledge of public and private key encryption and document hashing.

During his legal career of over 16 years, Kirpalani has been widely acclaimed in the industry for his exceptional work in commercial dispute resolution, technology regulations and cybersecurity. He has been recognised as being amongst the top 50 disputes lawyers in the region in 2022. He is also listed as one of the standout lawyers in the TMT field for three consecutive years since 2021 by Asian Legal Business.

One of his clients praises him for his ability to provide creative and effective legal solutions and commends, "No other Singapore lawyer is as approachable as Rakesh. It is so easy to communicate with him because he instinctively knows what in-house counsel is looking for."

"Rakesh demonstrates a unique ability to straddle the tech and legal space. He is very sharp and can identify potential risks and liabilities in novel issues caused by emerging technology. He can ensure that our leaders fully comprehend and appreciate the issue while remaining professional and ethical.

Rakesh's grasp and understanding of the local TMT landscape never fail to assure us that we are guided by one of the best in the market," adds another. <sup>ALB</sup>



**GILBERT LEONG**

senior partner,  
Dentons Rodyk, Singapore

Gilbert Leong is a senior partner and head of intellectual property and technology practice group of Dentons Rodyk. He also co-heads the patents, TMT, licensing, data privacy and protection and cyber securities practices.

With a wealth of experience as a seasoned commercial and IP counsel, Leong is well-versed in negotiating and drafting commercial agreements pertaining to the distribution of goods/services, procurement and tenders, manufacturing agreements, licensing, maintenance, acquisition of intellectual property (trademarks and patents), consultancy services and IP structuring.

As the head of technology practice, Leong has offered guidance to clients on various aspects of IT hardware/systems acquisition, software development and marketing, large-scale IT/outsourcing projects, as well as telecommunication market access and infrastructural issues. He has recently been actively engaged in the fintech, insurtech and medtech industries.

Additionally, he is a well-established expert in data privacy and protection, having been involved in this field since the days when data protection was only talked about as a Model Data Protection Code for the Private Sector years before Singapore enacted legislation to protect personal data.

Leong has also advised significant organisations in the insurance, higher education, social media, e-commerce, hotels, financial services, transportation/logistics, IT, and telecommunication sectors on significant cyber breach incidents.

His recent work highlights include advising a Web 3.0 investment company on a target company possessing significant intellectual property and technology that would augment his client's

**GERARD A. HEKKER**

Duane Morris & Selvam

**WILLIAM Z. HO**

K&L Gates

**YOSHIKAZU IWASE**

Anderson Mori & Tomotsune

**SHEENA JACOB**

CMS

**SAPPAWIT JANSUPARERG**

Weerawong, Chinnavat & Partners

**SINOOK KANG**

Shin & Kim

**GABRIELA KENNEDY**

Mayer Brown

**SUN HEE KIM**

Yulchon

**RAKESH KIRPALANI**

Drew & Napier

**MIKA ISAC KRIYASA**

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**GILBERT LEONG**

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**CHONG KIN LIM**

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Trilegal

**WILFRED NG**

Bird & Bird

**ATSUSHI OKADA**

Mori Hamada & Matsumoto

**WILAILUK OKANURAK**

Linklaters

**PRAMUDYA OKTAVINANDA**

UMBRA - Strategic  
Legal Solutions

**CONNELL O'NEILL**

Gibson Dunn

**DAN OUYANG**

Wilson Sonsini Goodrich & Rosati

**JI YEON PARK**

Bae, Kim & Lee

**KWANG BAE PARK**

Lee & Ko

**DEEPAK PILLAI**

Christopher & Lee Ong

**TOM PLATTS**

Stephenson Harwood

**ALEX SHEPHERD**

Pinsent Masons

**VIKRAM JEET SINGH**

BTG Legal

**ARJUN SINHA**

AP & Partners

**ABADI TISNADISAESTRA**

ATD Law


**STEVE TAN**

Rajah & Tann

capabilities in the FinTech network. His expertise proved vital in conducting the sales and purchase transaction, dealing with complex issues such as whether the target had duly obtained consent from individuals, and the extent of open source used that may be enmeshed with any IP deployed.

Another significant case that Leong worked on involved advising on the integration and deployment of a new IT system for healthcare institutions and service providers across Singapore. The matter was particularly challenging due to the involvement of several parties from different sectors and the complex multilateral negotiation process. The project is of great significance to the healthcare sector in Singapore as it utilises technology to enable healthcare institutions to provide personalised medical treatment to patients.

One client speaks highly of him and considers his services "seamless, as he understands our business, technology and risk appetite" and adds that he is always able to "integrate legal, commercial and technology know-how into advice."

Another client adds: "Gilbert has deep knowledge, experience, and insight in technology elements not just as counsel having dealt with legal matters but having overseen and having that deep understanding of how things work for his own firm. Means he can apply the law appropriately." 



**CHONG KIN LIM**

*managing director,  
corporate and finance,  
Drew & Napier, Singapore*

Chong Kin Lim is the managing director of corporate and finance department of Drew & Napier, where he co-heads the competition law & regulatory practice and data protection, privacy and cybersecurity practice. He also heads the firm's telecommunications, media, and technology practice.

Lim has played a pivotal role in developing sectoral competition regulation in Singapore, particularly in the telecommunications, media, and postal

industries. He has advised sectoral competition regulators on liberalisation, market access, licensing, competition regulation, merger reviews and enforcement issues since 1999, and successfully defended the regulators in various ministerial appeals.

Lim's leadership has enabled Drew & Napier's TMT practice to gain unparalleled experience in transactional, licensing, and regulatory matters related to Singapore's telecommunications, technology, media and postal sectors. The TMT practice has worked on all significant developments in the market and serves a broad range of clients, including multinational corporations, local companies, telecommunication carriers, service providers, network operators and hardware manufacturers.

Additionally, he established the Drew Data Protection and Cybersecurity Academy, a first-of-its-kind offering value-added services like training and external DPO services. He brought on board experts from Singapore's Personal Data Protection Commission.

One of Lim's most notable works is the implementation and drafting of the converged competition code for telecommunications and media markets, an ongoing project that aims to harmonise the competition code for Singapore's telecommunications and media industries. The new converged Telecom and Media Competition Code (TMCC), which Lim and his team drafted, came into effect on May 2, 2022, establishing the regulatory framework for the telecommunications and media industries in the coming years as the primary guidebook governing various market-related issues.

His expertise also extends beyond Singapore. He is currently assisting the Authority for Info-communications Technology Industry (AITI) of Brunei in developing the personal data protection and licensing regulatory framework for the postal sector. The projects involve the development of legislation and regulatory instruments that would facilitate cross-border flows of personal data and secure effective oversight of the regulator concerning the postal market.

One of Lim's clients says, "Chong Kin is a very technically proficient and

commercially savvy lawyer. He has an in-depth understanding of the regulator and is a competent, professional, and experienced legal adviser. Their TMT team under his lead is superb and knowledgeable.”

“His approach to the query is creative and transformational without compromising on compliance and regulatory requirements. Information is cascaded to us in a proactive manner to ensure compliance and, at times, intuitive. He allows us to have free access to very relevant learning sessions to keep us abreast of the latest trends and upcoming laws and regulations, and he partnered with subject matter experts on relevant topics on telco, cyber security, and other technology processes,” adds another. <sup>ALB</sup>



**PRAMUDYA OKTAVINANDA**  
managing partner,  
*UMBRA – Strategic Legal Solutions, Indonesia*

Pramudya A. Oktavinanda (Pram) is the managing partner of UMBRA – Strategic Legal Solutions. With expertise in mergers and acquisitions, spin-offs of public and private corporations, debt and pre-IPO restructuring, corporate compliance, project financing, public policy, and telecommunication, media, and technology, he has been highly sought after for handling transactions that require a combination of exceptional legal skills, deep understanding of business strategies, and the abilities to devise ingenious and practical solutions.

Throughout his legal career spanning nearly 20 years, Pram has served as the lead counsel to support several local and international governmental and commercial entities in various high-stakes legal matters both domestically and abroad. His wealth of experience covers over 300 deals at a minimum of \$65 billion.

One significant matter that Pram has handled in the recent year was the spin-off of Sigma Cipta Caraka’s (SCC) Data Centre Business to Telkom Data Ekosistem (TDE) and new investment by

Telkom Indonesia in TDE and SCC for the establishment of the largest data centre and IT services companies in Indonesia.

This complex deal involved multiple transactions in restructuring Telkom Group’s data centre and IT services via acquisition through a significant investment in SCC and TDE, followed by a spin-off entailing the creation of novel structures designed to ensure its swift completion within the tight timeline. The deal has attracted considerable attention for setting a new precedent considering that no regulatory guidance is yet in place for spin-off in the country.

Another important deal that Pram has advised on, which also won ALB’s Indonesia M&A Deal of the Year in 2022, was the sale and leaseback transaction of 10,050 telco towers of Telkomsel to Mitratel. The deal was valued at 16.48 trillion rupiah (\$1.094 billion), making it the largest telco assets M&A transaction in Southeast Asia and the second largest in the Asia Pacific to date.

Pram has led the team to effectively facilitate the smooth closing of the deal through an innovative formula embedded in the relevant transaction documents to simplify the closing procedures and ensure the transitional regulatory waiver is granted for affiliated party transactions between subsidiaries of the listed company during the process.

Meanwhile, the unique bifurcation strategy and deemed consent notification have been developed to streamline and expedite the process to allow a seamless and efficient closing for the asset M&A that required the participation of multiple stakeholders with large numbers to transfer assets and contracts.

“I feel confident and at ease with him by my side, because Pak Pram would always find a solution even in those seemingly impossible moments and will ensure that our interest is well and reasonably defended during negotiation or discussion with counterparts,” says one client.

“Most importantly, he gets things done. His commercial understanding and commitment to close a deal by finding innovative yet compliant means are simply unparalleled,” adds another. <sup>ALB</sup>

## VEERANUCH THAMMAVARANUCPT

Weerawong, Chinnavat & Partners

## TONG LAI LING

Raja, Darryl & Loh

## PHONG TRAN

VILAF

## GREG TIONGCO

Tiongco Siao Bello Law

## PANUPAN UDOMSUVANNAKUL

Chandler MHM

## ROHINI VERMA

Wadia Ghandy & Co.

## DOMINIC WAI

ONC Lawyers

## LUKY WALALANGI

Walalangi & Partners

## METHODOLOGY

- Lawyers were selected based on client feedback sent directly to Asian Legal Business between January and February 2023.
- The work of the lawyers nominated as well as the commercial standing of the clients’ making recommendations were taken into account during the evaluation.
- Over 400 in-house counsels across 11 jurisdictions in Asia and overseas sent in recommendations for this list.

# BOUNCING BACK

The HKIAC's arbitration caseload reached its highest level for more than a decade last year, underlining Hong Kong's continuing international appeal as well as its unique strengths as a seat for China-related. Lawyers say that additional measures like third-party funding and success-based fee arrangements are set to further cement the city's reputation. **BY ASIAN LEGAL BUSINESS**

■ Hong Kong's status as a gateway to mainland China has long been propped up by a deep pool of legal and financial expertise driven by professionals who can handle commercial matters and disputes in an increasingly complex global regulatory landscape.

Arbitration options in the Special Administrative Region (SAR) are central to keep Hong Kong as a centre of commerce in Asia and globally and to attract the kind of risk-taking and investment that powers business.

At the same time, the increasing attractiveness of arbitration for business parties worldwide and from a growing number of sectors and industries is an important factor in the growth of arbitration in Hong Kong.

The growing role of Hong Kong as a centre for dispute resolution has become increasingly visible. The Hong Kong International Arbitration Center (HKIAC) posted the highest number of new cases in just over a decade in 2022. The total number of cases rose a touch above 24 percent from 2021. The rising number of arbitrations highlighted the increasing complexity of global commerce, with most fresh cases involving multiple parties and contacts.

This is putting more demands on alternative dispute resolution

approaches and powering the growth of arbitration as the preferred method. A Hong Kong-mainland China arrangement on arbitration has gathered steam, highlighting the growing complexity of commerce and the need for dispute resolution. At the same time, the Outcome Related Fee Structures for Arbitration (ORFSA) structure has put new incentives in place for legal firms.

There is still a lot to learn about how the arbitration process works separately from mainland China for companies and businesses from abroad seeking legal surety in Hong Kong.

"Overseas parties are starting to realise that all the 'hype' about Hong Kong being in the pocket of 'China' is just that – hype. The fact is that the mainland does not interfere with commercial arbitration, while, of course Hong Kong maintains a fiercely independent bar and judiciary," says Paul Starr, head of Hong Kong dispute resolution and co-head of global arbitration at King & Wood Mallesons.

"The growth to me can be explained by the fact that overseas parties are hearing more and more about the absolutely unique benefits which selection of Hong Kong arbitration can bring – benefits simply not available to parties if they

select Singapore arbitration, London or anywhere else," Starr adds.

## HONG KONG VS SINGAPORE

Arbitration is growing as a preferred method of dispute resolution around the world, not just in Hong Kong. To be sure, Singapore is the regional rival to Hong Kong when it comes to arbitration.

The city-state houses the Singapore International Arbitration Centre (SIAC),



Image: anek.soowanaphoom/Shutterstock.com



the International Court of Arbitration of the International Chamber of Commerce (ICC) and the International Centre for Dispute Resolution (ICDR), the international division of the American Arbitration Association (AAA).

In addition to the HKIAC, Hong Kong houses the International Chamber of Commerce (ICC), and the China International Economic and Trade Arbitration Commission (CIETAC).

Other options are further afield, perhaps most notably the London Court of International Arbitration (LCIA).

But as Starr points out, there is a high level of comfort for all parties with doing arbitrations in Hong Kong.

"Mainland Chinese parties also seem to prefer Hong Kong seated arbitration. Over 50 percent of new cases of an international nature administered by the HKIAC in 2022 involved

Mainland Chinese parties," Starr says. "All users no doubt appreciate Hong Kong's robust legal framework permitting both third-party funding and now success fees for arbitration and related proceedings. Further, the Hong Kong Court administers its curial responsibilities with a light touch, integrity, and independence."

Arbitration is increasingly popular in many areas, including banking and

financial services, construction, corporate, maritime, technology, crypto, international trade, and more. They all lend themselves to flexible arbitration paths to resolving disputes with different procedures dependent on the type of matter involved, from documents only or expedited procedures for smaller matters to full hearings for large-scale commercial disputes, Starr adds.

## ARBITRATION IN THE GBA

This increasing penchant for arbitration to resolve disputes is also visible throughout the Greater Bay Area (GBA) and through the plans to integrate Hong Kong, Macau and nine cities along the Pearl River Delta of Guangdong economically and socially.

"Hong Kong will continue to be the legal backbone for the GBA. Hong Kong is the only common law jurisdiction within China, rules, and principles of which are familiar, if not equivalent, to other major business hubs in the world," says Dantes Leung, a partner at Oldham, Li & Nie.

"With the constitutional protection under 'One Country, Two Systems,' the one-stop financial and dispute resolution services provided by Hong Kong keeps inspiring international investors' confidence in the GBA and the Belt and Road Initiative, and therefore springboard investors into business opportunities in mainland China."

Leung also notes that shareholder disputes with family companies and an upsurge of arbitration involving cryptocurrencies were apparent in the past year.

These issues are global, however. Leung says that almost half of the arbitrations submitted to HKIAC in 2022 involved no Chinese parties directly, showcasing the global nature of arbitration in Hong Kong and the new rules in place, such as the HK-Mainland Arrangement and ORFSA.

"Our experience is that clients from Asia and continental Europe typically expect external funding in resolving disputes," Leung says. "These new rules align their expectations with the arbitration rules in Hong Kong and strengthen

Hong Kong's status as an international arbitration hub."

## AVOIDING PITFALLS AND COSTS

Agreed and deep experience in resolving disputes remains of paramount importance. The ability to avoid escalations in tone, and just as importantly costs, can also help salvage a business relationship during rocky times. Unlike litigation, arbitration has established paths to arrive at flexible outcomes.

Arbitration is generally an out-of-court approach to resolve disagreements between commercial parties. The approach benefits from an impartial third party that can provide speed, especially when the process is written into commercial contracts and outlines the use of arbitration as a resolution tool.

Costs is, as always, a factor, but often more relevant is the flexibility of ORSA, along with the limited discovery and legal procedure steps that can add time, and the need to draw on qualified experts can bring a sharper focus to the issues at hand. More importantly, the privacy of the process can bring a cool down for parties that are often business associates.

One area of note is that banks increasingly use arbitration in Hong Kong as part of global operating models, says Joseph Cheung, a litigation and dispute resolution partner for Deacons, Hong Kong's largest local firm.

"Worth mentioning is that in 2022, the banking and financial services sector topped the HKIAC statistics," Cheung says. "This is perhaps part of the global trend of banks and financial institutions being more prepared to use arbitration to resolve their disputes. With increased investments in the technology space, it is envisaged that there will be an increase in arbitrating crypto disputes."

"Hong Kong also supports online dispute resolution, which is a growing trend in international arbitration," adds Cheung.

Indeed, the diverse nationalities of parties involved in arbitration in Hong Kong point to a level of comfort and understanding that business and disputes often go together. "This reality was especially noticeable during the COVID-

19 pandemic, a period during which there were many instances of loan defaults and contractual disputes," says Edward Liu, a partner at Haiwen & Partners.

"The success of Hong Kong in becoming an international arbitration centre can be attributed to many factors, including the immense support by the Central Government, the unrelenting promotional efforts by the Hong Kong SAR Government, especially the Department of Justice, and continuous economic growth on the international scale, as seen from the unprecedentedly active economic activities, including trading, IPOs, and investments," Liu says.

"In order to save costs and avoid publicity, many parties would opt for arbitration instead of court litigation. Accordingly, the comprehensive set of arbitration rules and guidelines in Hong Kong have been alluring to international entities and corporations, who are more than willing to choose Hong Kong as the seat of arbitration."

Hong Kong is also the only jurisdiction in China that practices common law. This practical reality provides a strong incentive for international commercial parties to use Hong Kong as the seat of arbitration, Liu says.

"Overall, the implementation of these new measures can enhance and consolidate Hong Kong's competitive edge and attractiveness in international arbitration. Hong Kong should capitalise on its inherent advantages, including its deep connection with mainland China and its unique common law system, to integrate into the national development and to provide quality and convenient legal services to the world," says Liu.

## HARD SKILLS, SOFT TOUCH

One side effect of Hong Kong's long-standing reliance on the common law system is that arbitrations can draw on a large pool of in-depth legal skills, but also a lot of talent with a softer touch if needed.

"As arbitration is increasingly recognised as a viable, convenient, and cost-effective mechanism to resolve disputes, different areas of businesses have been specifying arbitration in the dispute resolution clauses in their con-



tracts, which in turn leads to a more diversified spectrum of cases going to arbitration," Liu says.

"Contractual, banking and financial, corporate and shareholder, energy, shipping and commodity disputes, which are amongst the most popular types of disputes involved in arbitration in Hong Kong. The other common type of disputes involve construction," he notes.

Other types of cases are also increasingly part of the mix, including a visible uptick in technology and cryptocurrency disputes. The relatively efficient and private nature of arbitral proceedings and the cross-border flexibility of enforcing an arbitral award makes arbitration the preferred dispute resolution forum for resolving these types of disputes, says Yvonne Shek, a consultant specialising in commercial litigation and arbitration at Clifford Chance in Hong Kong.

Shek says that Hong Kong is the centre for leading arbitral institutions such as the HKIAC, ICC, and CIETAC, giving it robust and pro-arbitration infrastructure through the judiciary and arbitration legislation, including outcome-related fee structures for arbitration.

"It offers a deep pool of international arbitrators and a wide spectrum of legal expertise; and it has unique features which no other jurisdiction can offer, such as the arrangements between Hong Kong and mainland China concerning the enforcement of arbitral awards and concerning interim measures in aid of arbitral proceedings," Shek says.

Of the changes to fee structures and the integration of the GBA among other areas of reform, Hong Kong has set the bar high for arbitration, Shek says.

"These changes have high impact on the use and practice of international arbitration in Hong Kong – they reflect that Hong Kong remains at the forefront of development in arbitral rules, legislation, and its arbitration framework. The changes allow greater flexibility and have expanded the toolkit available to parties to any Hong Kong arbitration; and they highlight the unique advan-

tages of Hong Kong as an arbitration seat," says Shek.

Shek also points to changes over the last few years, including stronger links to People's Republic of China (PRC) and why they matter for Hong Kong arbitration.

"In the last few years, we have seen the implementation of the Hong Kong and Mainland Arrangement Concerning Mutual Assistance in Court-ordered Interim Measures in Aid of Arbitral Proceedings. This was a significant development as it has enabled parties to arbitrations seated in Hong Kong to apply to the PRC courts for asset freezing injunctions and other forms of interim relief in support of the Hong Kong arbitration," Shek says.

"These can be strategically powerful measures in a dispute resolution process, and the arrangement provides access to the PRC courts, which is unique to Hong Kong arbitration and not available in support of proceedings in any other jurisdiction outside of the PRC."

A series of recent changes on fee arrangements have also provided a boost to arbitration.

"More recently, Hong Kong has fully rolled out its legislation on... ORFSA, enabling parties to arbitrations seated in Hong Kong to enter conditional and damages-based legal fee arrangements. As a result, Hong Kong now has one of the broadest legal success fee regimes for arbitration globally," says Shek.

**BENEFITS TO PARTIES**

One other aspect that cannot be overlooked is Hong Kong's robust and "party-friendly arbitration framework" and the pro-arbitration attitude of the Hong Kong courts, says Joanne Lau, a partner at Allen & Overy.

"Importantly, Hong Kong is also a leading international financial and commercial hub with strong links to Mainland China. The Covid-19 pandemic had a cooling impact on business and trade in and around Hong Kong, as indeed was the case virtually everywhere else," Lau says.

"Against the backdrop of the pandemic, many commercial parties faced

with a potential breach or default by their counterparties preferred to adopt a 'wait and see' attitude. As countries around the world began to lift pandemic-related restrictions, we have also seen commercial parties becoming more prepared in taking legal measures and, consequently, an uptick in new arbitrations."

Lau also points to the numbers.

"According to HKIAC's statistics, approximately US\$3.3 billion of assets have been preserved under the arrangement as of the end of 2022," Lau says.


"More recently, the inclusion of the HKIAC in the "one-stop platform" of the China International Commercial Court is another significant development, as it streamlines the process for seeking interim measures and enforcement of awards in appropriate HKIAC cases. As the GBA continues to develop, we expect the need for arbitration in Hong Kong will also increase."

Lau also highlights the tenor of current disputes in finance and banking and with shareholders and says that, going forward, energy will be an area to watch as geopolitical tensions cause disruptions to business models and plans.

"In the wake of the Covid-19 pandemic, a relatively large number of banking and finance-related disputes were referred to arbitration. According to HKIAC statistics, 36.9 percent of HKIAC cases registered in 2022 related to 'banking and financial services', up from 16.2 percent in 2021," Lau says.

"On general corporate and commercial cases, we continue to see many shareholder disputes, joint venture disputes and post-M&A disputes being resolved through arbitration, many of which involve private equity investors. The sectors are wide-ranging but in the past couple of years, we have seen a marked increase in cases in the telecommunications, media and technology sector and real estate sector," she adds.

But, as noted, energy disputes are already drawing more attention.

"In light of the political and economic developments of the recent year, we are also likely to see a rise in energy-related arbitrations and increased interest in investment treaty arbitrations," Lau notes. 

## THE POWER OF JUST ASKING A COUPLE MORE QUESTIONS

BY BILL JOSTEN

For many lawyers, the power of asking clients a few extra questions can establish a deeper level of concern and point to potentially better solutions to their concerns.

We all want to do what's best for those we serve. Very rarely does anyone in any type of service business, especially professional services, set about to provide anything less than top-level service. Our reputations, and indeed our livelihoods, depend on the quality of the service we offer and the reputation we craft based upon it.

However, doing what's best for our clients, customers, or stakeholders can have many shades. Any of us who once sat for the bar exam knows there is a difference between the *right* and *most right* answer. It's possible to do the right thing, and yet missed an option that could have been even more suitable for the client.

I recently experienced this firsthand with a physician, and the experience struck me so much that I felt compelled to write about it.

### Finding the *more right* answer

To perhaps overshare a personal story, I was slated to have surgery this past January — a joint replacement in my neck. It's not the most significant operation, yet any surgery is substantial in its own way. I would have been dealing with several months of rehabilitation and restrictions in my daily life. Most definitely worth it in the right circumstances, but not something a person would undergo casually.

To make a long story short, a couple of years of efforts to mitigate the problem had led me to a surgeon. Between my evaluation and the surgery date, my pain had naturally resolved, and I'd even been able to stop taking my prescribed pain medication. However, it didn't really occur to me to ask whether I still needed

the surgery. Of course, I did. That's what the surgeon and I had discussed. That was the plan.

The day of surgery arrived, and I found myself in the pre-operative preparation area. I was less than an hour from proverbially going under the knife when my surgeon stopped in to check on me. "Hi Bill, how are you feeling today?" I fully expected the next statement to be: "So here's what's happening today," before he excused himself from the room to prepare for surgery. No one would have blamed him had he done that. It would have been the right thing for him to have done in that situation.



But that's not what happened. "I'm feeling good," I said in response to his question. Then he did the unexpected — he asked just a couple more questions. "How is your pain?"

"I'm not really having any pain," I replied.

"So, the medication is helping?" he asked.

"I haven't needed to take the medication," I answered. And suddenly he realised, well before I did, that there was a *more right* solution to my problem.

With me ready for surgery, my surgeon talked me out of getting the operation. A few more questions led him to


the conclusion that there was a better way for him to care for me. And he was absolutely right.

### The value of asking

As I've reflected on this over the past several weeks, I've been tremendously impacted by the power of just those few extra questions he asked on the situation. He showed a deeper level of concern, got to know me better, and in doing that, was able to do his job better.

How often do we take the time to ask just a couple more questions? Whether we're in a law firm serving individual consumers or large businesses, or in-house lawyers serving clients within our company, do we appreciate the power that asking even a few more questions can have in how we help our clients?

As lawyers, it can be easy to assume that our experience provides us with a certain level of insight into our clients' problems. Indeed, our experience necessarily informs how we serve our clients. But our experience with the legal issues they face does not necessarily provide us insight into how those issues affect them. We only gain that insight by listening to our clients, and the power that asking just a few more questions of our clients can have is easily underappreciated.

Taking just a few extra minutes with your clients to ask one or two seemingly innocuous questions can make all the difference between doing what's right for your clients and doing what's *most right* for them. 

*Bill Josten is the manager of Strategic Enterprise in Thought Leadership for the Thomson Reuters Institute.*

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## SAVE THE DATE

**CHINA**

18<sup>TH</sup> MAY  
BEIJING

**SE ASIA**

18<sup>TH</sup> MAY  
SINGAPORE

**JAPAN**

8<sup>TH</sup> JUNE  
TOKYO

**EAST CHINA**

18<sup>TH</sup> AUGUST  
SHANGHAI

**HONG KONG**

15<sup>TH</sup> SEPTEMBER  
HONG KONG

**MIDDLE EAST**

5<sup>TH</sup> OCTOBER  
DUBAI

**INDONESIA**

26<sup>TH</sup> OCTOBER  
JAKARTA

**KOREA**

9<sup>TH</sup> NOVEMBER  
SEOUL

**PHILIPPINES**

23<sup>RD</sup> NOVEMBER  
MANILA

**SOUTH AND  
CENTRAL CHINA**

8<sup>TH</sup> DECEMBER  
SHENZHEN

\*Dates are accurate as of 11 April 2023 but subject to changes.  
Please contact ALB for the latest updates.

Contact the team

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