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INDONESIA SPECIAL



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PART II

WHAT WILL JOKOWI'S SECOND TERM BRING?

PART III

CHINESE INVESTMENT RAMPS UP



Singapore's firms to watch for 2019
Offshore law firms see work within the gloom
Japan Law Awards: Winners and photos





培育商事仲裁法律后备人才
托起未来商事仲裁法律之星

INVITATION

The 17th CIETAC CUP International Commercial Arbitration Moot

The 17th CIETAC CUP International Commercial Arbitration Moot (“CIETAC CUP”) will be held on November 17-22, 2019 in Beijing.

CIETAC CUP, organized by China International Economic and Trade Arbitration Commission (“CIETAC”), is an annual professional competition of arbitration. Since 2000, CIETAC CUP has been successfully held 16 times, which attracted over 3,500 students from more than 200 renowned law faculties and universities in mainland China. This year, CIETAC CUP would like to invite teams at home and abroad, including Hong Kong, Macao and Taiwan Regions (“Invited Teams”).

With the goal of cultivating the young generation of international arbitration professionals, CIETAC Cup adopts the same case Problem as the Willem C. Vis International Commercial Arbitration Moot (“Vis Moot”), and will be conducted in English. CIETAC Cup is the qualification trials of Vis Moot in Mainland China, and also the first registered pre-moot of its kind for the Vis Moot worldwide. The champion and the runner-up will be sponsored by CIETAC to participate in Vis Moot held in Vienna, and Vis East Moot held in Hong Kong respectively.

The 17th CIETAC CUP is free of charge and Invited Teams need to bear their own travel and accommodation expenses incurred in the period of competition. If any legal institution or law firm would like to sponsor the Invited Team, it is welcome to be the supporting organization of 17th CIETAC CUP for free.

For more information about registration and sponsorship, please visit <http://moot.cietac.org>



Email: moot@cietac.org

China International Economic and
Trade Arbitration Commission

www.cietac.org

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Indonesia's incumbent president Joko Widodo, who was re-elected on April's election greets his supporters after delivering a speech to highlight his vision for the next five years in Bogor, West Java province, Indonesia, July 14, 2019. REUTERS/Willy Kurniawan

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Elizabeth Beattie

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The 15th ALB Japan Law Awards, held at the Grand Hyatt Tokyo on June 13, was a resounding success, with the who's who of the Japanese legal industry, including lawyers and corporate executives, gracing the star-studded event.

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Can Jokowi make the next five years count?

When “Indonesia’s Obama” came to power in 2014, he brought with him the air of hope and change, but if we look back on the past five years, Indonesian President Joko Widodo’s record is decidedly mixed. He had targeted 7 percent economic growth; the country today is growing at just over 5 percent. Under his watch, U.S. miner Freeport was compelled to give up control of the giant Grasberg copper mine in an episode that shocked foreign investors. Indonesia, once a serious producer of oil and gas, is now a net importer. And infrastructure, being a key feature of his plans, still has a long way to go.

These shortcomings cloud some otherwise notable achievements. Indonesia is now home to an enviable number of unicorns, thanks to the government’s hands-off approach to their growth and development. And the stock market and currency have both remained reasonably stable, despite a variety of external threats. Now, having won another five-year term, Jokowi has a second chance at sealing his legacy. As our Indonesia feature package in this issue finds, while Indonesia needs to keep cutting foreign ownership restrictions and bureaucratic red tape, the critical part is introducing stable, consistent legislation that will reduce obstacles for investors. Take, for example, Indonesia’s

regulatory framework governing land, considered by many to be flawed and requiring a comprehensive overhaul. A draft bill, which has been included in the list of priorities under the National Legislative Programme since 2009, needs to be passed into law. Likewise, government policies need to be introduced to improve foreign perceptions of Indonesia’s mining sector. But should he be able to pull these – and more – off, Indonesia will be in a far better state, and the promise of Jokowi will be fulfilled.



RANAJIT DAM
Managing Editor,
Asian Legal Business
Thomson Reuters

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THE BRIEFING: YOUR MONTHLY NEED-TO-KNOW

QUOTE UNQUOTE

"If you want justice, you have to invest – decades of cuts to this fundamental part of our country's infrastructure mean the whole system is crumbling."

Simon Davis, president of the Law Society of England and Wales, tells new British PM Boris Johnson that the administration needs to focus on the criminal justice system, as well as the shortage of duty solicitors and cuts to legal aid.

LARGE LAW FIRM MERGERS HAVE SLOWED DOWN

Merger activity among large law firms headquartered in the U.S. slowed in the second quarter of 2019, according to figures from Altman Weil MergerLine. The study showed 20 law firm mergers and acquisitions in the three-month period bringing the half-year total to 47, a 10 percent reduction compared to the first half of 2018. Compared to all of the quarters of 2017 and 2018, which averaged five deals involving firms of more than 20 lawyers, the first half of 2019 has only seen three mid-sized and large firm mergers.

FOR LAW FIRMS, HIRING RIGHT IS CRUCIAL

While many law firms go to great lengths to on-board and train their new hires, they often don't seem to have a solid strategy around who they hire, other than seeking the highest-achieving students from top law schools or high-performers that they can lure from another firm. A new white paper, titled "Law Firms and Law Schools: How Much Are Law Firms Losing When They Hire 'Top Talent?'" published by Thomson Reuters and competitive intelligence provider Leopard Solutions, suggests a need for law firms to devote some time and resources to conduct a certain amount of deep strategic planning concerning who will represent the firm across the table from clients in the future. The biggest problem law firms face is retention, the paper points out, showing how top hires from prominent law schools may not stick around the firm that first hired them for longer than a couple of years.

\$ 2 9 6 , 0 3 3

Average salary of managing compliance officers in the U.S. who hold a law degree. That number drops to \$231,000 for those with an undergraduate degree, and \$182,000 for those with a high school diploma.

IN THE NEWS

1

Simmons & Simmons has acquired what is believed to be the world's first regulated legal engineering firm. Wavelength will introduce new ways of delivering smarter solutions for clients that draw on a blend of legal, data, design and engineering skills from within and outside the legal profession.

\$\$\$33 MILLION

Amount of money missing from Singapore engineering firm Allied Technologies' escrow account. The escrow account was held by local law firm JLC Advisors.

IN THE NEWS

2

Following in the footsteps of the likes of Gateley, Ince Gordon Dadds, and most recently DWF, UK law firm Mishcon de Reya is considering listing on the London Stock Exchange, according to a report on Sky News. It says that an alternative to a public listing could be a private investor taking a stake in the firm.

FORUM

CULTURAL FAMILIARITY

In recent years, a key disruptive force in the Hong Kong legal market has been PRC firms. With their specialised knowledge of Chinese businesses, and immense resources at their fingertips, they are a serious threat to more established international firms. In response, the latter are growing increasingly savvy when it comes to hiring as they look to diversify their talent.

PRC firms in Hong Kong trade on having a better cultural understanding of Chinese clients and in-house language skills and knowledge. How are international and Hong Kong firms responding when it comes to hiring trends?

Hayden Flinn, co-chief executive (Hong Kong), King & Wood Mallesons

I think it's common, in my experience, that all nationalities around the world tend to feel more comfortable talking or working with someone with a similar language or cultural background as themselves.

“It’s all about making that international connection, having people with a global perspective and then expanding it.”

- Hayden Flinn

That’s quite natural and we are seeing this in the legal sector and other businesses. There are more PRC-facing law firms in Hong Kong and then, more generally, a greater number of lawyers in Hong Kong with a PRC background.

Language skills are definitely a consideration in hiring. Consistent with the market here, a significant number of our lawyers

have native-level Mandarin. Somebody that speaks conversational Mandarin is good, but the reality is that if our lawyers and clients are going to operate in Mandarin, having native-level speakers with both the cultural understanding and language capabilities would be better.

From a Hong Kong perspective, our ideal person for this client base is someone who has native-level Mandarin and native-level English, who understands Chinese and Western culture. That’s a very small pool of people globally. We launched a recruitment programme recently, Propel, that we use to recruit students from key universities in China and around the world, that have completed their degrees in China and have overseas legal postgraduate education at an elite university to target opportunities from the Greater Bay Area and the upcoming cross-border work. We put them through a training programme, starting at the Hong Kong office, where they can gain international exposure and a final qualifying seat in either KWM Guangzhou or Shenzhen. It’s all about making



FLINN



CHAN



BOTT

that international connection, having people with a global perspective at the outset and then expanding this through the programme.

Elsie Chan, partner, Deacons

While PRC firms may have a better mainland Chinese background and native Putonghua language skills, the comparative advantage that international and Hong Kong firms have is a worldwide legal network. Substantial and complex commercial transactions usually require a multi-jurisdictional legal team that is proficient in the Chinese language and has a cultural affinity that can bridge between clients and their counterparties. Legal interconnectedness, sophistication, diversity and versatility, have always been key distinctive features of international and Hong Kong firms, helping them to stay competitive and boundless. Also, the majority of lawyers in international and Hong Kong world-class firms are well versed in Putonghua and English, and possess both Chinese cultural awareness as well as international perspectives. At the same time, there is also an increasing awareness among PRC clients that international and Hong Kong firms can bring out the best strategic and financial value in commercial deals.

Accordingly, with cross-border and China-outbound investment work becoming an increasingly essential source of revenue, many firms are adjusting their strategies and shifting their focus. Chinese enterprises are increasingly looking overseas to sustain their economic growth. Consequently, international and Hong Kong law firms are rapidly re-positioning themselves as facilitators. In terms of recruitment, therefore, they are looking to hire lawyers with trilingual skills); industry-specific

“With cross-border work becoming an increasingly essential source of revenue, firms are adjusting strategies.”

- Elsie Chan

legal experience; with Chinese cultural awareness and overseas experience to ensure that their pool of talent can fully understand and better serve their Chinese clients.

Adrian Bott, foreign legal consultant, (registered foreign lawyer), Osborne Clarke

The answer is “It depends...” – on several factors. Primary among these is the target market at which any given international or Hong Kong firm is aiming. Each firm will no doubt recruit to suit the clients and markets it is facing. As mainland China is such a huge and significant market, growing particularly in its technology innovation and adoption, it is of course, increasing likely (if not inevitable) that almost all law firms based in Hong Kong (international or otherwise) will appreciate the need for a strategy to best address it.

The next most relevant factor on which the answer depends is whether the international (or indeed Hong Kong) firm also has a presence in mainland China – be that a local PRC firm or a representative office. In either case (but particularly in the former), it will be highly likely that any such office will comprise

“Each of our international offices consists exclusively of local lawyers qualified and experienced in the jurisdiction.”

- Adrian Bott

talented and experienced PRC qualified lawyers capable of delivering the same cultural understanding, language skills and market knowledge as their competitor PRC firms. While not unique among international firms, in terms of Osborne Clarke’s approach to this issue, and bringing these two factors together, our strategy in relation to Hong Kong and mainland China is very much the same as for our other international offices within ourverein structure – each consists (almost without exception) exclusively of local lawyers qualified and experienced in the relevant jurisdiction, thus ensuring the cultural sensitivity and alignment as well as the requisite language skills and detailed market knowledge. The combination of, and close collaboration between, Osborne Clarke Hong Kong and our Shanghai office (a full PRC firm) enables us to offer international clients looking to do business in China both the empathy with their own cultural approach and guidance as to the particularities of the PRC market – and to offer mainland Chinese clients looking outwards in to other markets the flip side of that, that is the guidance as to the cultural sensitivities and market norms relating to the destination jurisdiction(s) but from a locally attuned base in which they can trust. 



V.G. Siddhartha, chairman of Coffee Day Enterprises Ltd, speaks during a news conference in Mumbai, India, October 7, 2015. REUTERS/Shailesh Andrade

COFFEE BARON’S DEATH FUELS INDIA INC ANGER

(Reuters) The apparent suicide of India’s coffee baron V.G. Siddhartha, under investigation by tax authorities, has inflamed anger toward the government among business leaders who feel it is going too far in its crackdown on fraud and tax evasion.

Drastic measures taken by Prime Minister Narendra Modi’s administration include stringent action to enforce tax compliance, probes into bank lending practices and threatening auditors with five-year bans for alleged lapses in their work.

In particular the push by tax collectors has been labeled ‘tax terrorism’ by T.V. Mohandas Pai, a former director of Indian IT giant Infosys Ltd, even before the Coffee Day Enterprises Ltd founder disappeared and his body was later found floating in a river in southern India.

In a letter circulating on social media and purportedly written by Siddhartha to the firm’s board and employees, he said he “gave up,” blaming tax authorities for “harassment” and decisions that caused a liquidity crunch as well as an unnamed private equity partner for pressuring him into a share buyback.

India’s income tax department, part of the finance ministry, has said it acted as per the law in its investigation of Siddhartha and the coffee chain, and its probe was based on credible evidence of transactions done in a concealed manner.

Former government officials, industry executives and their advisors, including lawyers, told Reuters that investigations conducted by Indian agencies and tax inspectors had often resulted in harassment for business leaders.

Kiran Mazumdar-Shaw, managing director of biotech firm Biocon Ltd, said she knew many industrialists who have been called in by Indian enforcement agencies but were made to wait for long periods before questioning began and subjected to “insulting kind of treatment.”

Since Modi came to power in 2014, he has made fighting fraud and tax evasion a top goal. His administration has targeted banks and heavily indebted businesses and tracked down rich fugitives hiding out in other countries – popular policies that helped him win a second-term in May. 

UNDER THREAT FROM THE BIG FOUR, LAW FIRMS FIGHT BACK WITH ADJACENT OFFERINGS



As the Big Four accountancy firms continue to muscle into the legal market, they are not the only ones expanding their remit. Driven by growing client demand, traditional law firms are also widening their expertise and branching out – trading on their well-earned reputation and leveraging this to offer a broader range of offerings.

A recent entrant is Eversheds Sutherland's Konexo, a new consulting firm offering corporate secretarial, HR, financial consulting and remediation services to complement the firm's legal offerings. Announced in June, Konexo is led by partner Graham Richardson, who tells *ALB* the offering is a conscious response to market trends and client demand for an alternative legal service provision.

"We are able to offer a broader range of services than the traditional law firm e.g. consulting, compliance, technology consulting, so this opens up new revenue streams and new clients – it's about growing the business," Richardson says, adding bluntly that Konexo is also a "defensive measure to fight back against the encroachment of the Big Four into the sector".

Since they rounded out their legal offerings, the Big Four accounting firms have pushed the benefits of suite of services, billing themselves as tech-savvy operations that work "smarter" to ensure client interests remain at the heart of all their offerings. Law firms that have adopted a similar rallying cry saying they have their unique advantages.

"We have the law firm heritage to call on as we know the legal world – it's

core to us, not a sideline business. Plus, we can reach into the law firm for their in-depth knowledge of law and compliance when needed to provide a comprehensive service to clients – end to end – which the Big Four can't," Richardson says.

"We also have the in-depth market knowledge to call upon – we have also been working in the legal tech field in a specialised way for years so have developed many bespoke solutions already," he adds.

One Asian law firm that is no stranger to adjacent services is Malaysia-headquartered ZICO Law. The firm's regional managing partner, Hanim Hamzah, says that law firms that provide adjacent solutions are offered a window into clients' needs. This also allows them a comprehensive understanding of the client's business and positioning and with this, no doubt, a competitive advantage. "We believe in the power of diverse teams delivering dynamic solutions through effective collaborations," Hamzah says.

Although she dodges making any direct comparisons to the Big Four, Hamzah notes agility is an important characteristic for adjacent services. "Regardless of business structures,

success will lie on the effectiveness of the team that employs multidisciplinary strategies and solutions for any particular client. The deployment of successful teams is the product of good leadership and teamwork at each process level: from clear strategy, effective training to succinct execution," she explains.

However, whether this will become a mainstream response for traditional law firms remains to be seen. A number of traditional law firms have in recent years toyed with offering ALSP services, but adjacent offerings are far from the norm and, arguably, are a riskier foray. Richardson is aware that this is something of a new remit for firms to break into.

As a result, he says that firms mulling over expanding their offerings should consider market perception carefully, and show strong commitment to the market right from the get-go. Importantly, the link with the law firm must be maintained. "You don't want the law firm anything other than fully aligned, so never stop communicating about what you are doing to the partners and lawyers. You need to show them how you can develop new revenue for them as well, and benefit their clients. This will help the law firm in the long run." ALB

INDIA: EXPANDING ARGUS ACQUIRES BOUTIQUE FIRM IN BENGALURU

India's Argus Partners has acquired Bengaluru boutique law firm Chambers of Maneesha Kongovi. Following the acquisition, four lawyers will join Argus, with Kongovi herself come on board as a partner.

Kongovi and her team, which includes Shivabhushan S. Hatti, Anusha Chatra and Yamini Harish, are the latest additions to Argus Partners after the firm recently hired corporate specialist Vinod Joseph as a partner in Mumbai. Earlier this year, the firm appointed disputes trio Abeezar E. Faizullahoy, Shahen Pradhan and Murtaza Kachwala as partners in the Mumbai office from HSA Advocates.

Kongovi is a litigation and dispute resolution expert. She began her career in the legacy Amarchand Mangaldas' litigation team. She went on to work with other firms before starting her own practice in 2014. Kongovi has appeared before the Supreme Court, High Court, Civil Court, NCLT and arbitration tribunals. ^{ALB}

APPOINTMENTS



JEANETTE CHAN

LEAVING
Paul, Weiss

JOINING
Airwallex

ROLE
Chief Legal and Compliance Officer

LOCATION
Hong Kong



CAMERON FORD

LEAVING
Rio Tinto

JOINING
Squire Patton Boggs

PRACTICE
Dispute Resolution

LOCATION
Singapore



MAX HUA

LEAVING
Haiwen & Partners

JOINING
Shearman & Sterling

PRACTICE
Capital Markets

LOCATION
Hong Kong



PRAVESH KHANDELWAL

LEAVING
PwC

JOINING
Hammurabi & Solomon Partners

PRACTICE
Taxation

LOCATION
Delhi



MOSES LIN

LEAVING
Incisive Law

JOINING
Shook Lin & Bok

PRACTICE
Maritime, Litigation

LOCATION
Singapore



JEVON LOUIS

LEAVING
Ravindran Associates

JOINING
Shook Lin & Bok

PRACTICE
Intellectual Property

LOCATION
Singapore



HARSH MAGGON

LEAVING
AZB & Partners

JOINING
Trilegal

PRACTICE
Corporate

LOCATION
Mumbai



MICHAEL PADARIN

LEAVING
Walkers

JOINING
Carey Olsen

PRACTICE
Corporate

LOCATION
Hong Kong



MICHAEL YU

LEAVING
Sidley Austin

JOINING
Cooley

PRACTICE
Capital Markets

LOCATION
Hong Kong



WONGP, A&G AMONG FIRMS INVOLVED AS ICC SINGAPORE ARBITRATION GROUP LAUNCHED

In a bid to further raise the city-state's Singapore's profile in international arbitration and dispute resolution, the Singapore Business Federation (SBF) has established the ICC Singapore Arbitration Group.

The group will be chaired by Smitha Rajan Menon, a partner at WongPartnership and the Singapore representative to the ICC International Court of Arbitration. Andrew Yeo, a

partner at Allen & Gledhill, will be the vice-chair. Other members include locally based Singaporean and foreign arbitration practitioners, Singaporean arbitration practitioners based overseas, academics and corporate counsels.

A release from the SBF said that group will work to represent the Singapore business community in support of the work of the ICC Policy

Commission on Arbitration and ADR; promote ICC arbitration and other dispute resolution services in the region; and further develop the expertise of the regional dispute resolution community through capacity building activities.

Last year, the ICC ranked Singapore 11th in the list of number of arbitrators by nationality, with 35 Singaporean arbitrators having been confirmed or appointed to ICC arbitral tribunals. The ICC Arbitration Case Management Office in Singapore, set up in April 2018, has already administered its first 100 cases. 

DEALS

\$11.3 BLN

Asahi Group's acquisition of Australia business of AB InBev

Deal Type: M&A

Firms: Allen & Overy; Freshfields Bruckhaus Deringer; Gilbert + Tobin

Jurisdictions: Australia, Belgium, Japan

\$3.8 BLN

FWD Group Financial Services' acquisition of SCB Life Assurance

Deal Type: M&A

Firms: Linklaters; Slaughter and May

Jurisdictions: Hong Kong, Thailand

\$2.2 BLN

KKR's sale of Kokusai Electric Corporation to Applied Materials

Deal Type: M&A

Firms: Cleary Gottlieb Steen & Hamilton; Hogan Lovells; Nishimura & Asahi; Simpson Thacher & Bartlett; Sullivan & Cromwell

Jurisdictions: Japan, U.S.

\$1.58 BLN

Carrefour's sale of controlling stake in China business to Suning

Deal Type: M&A

Firm: Clifford Chance; Linklaters

Jurisdictions: China, France, Hong Kong

\$775 MLN

DouYu International Holdings' NYSE IPO

Deal Type: IPO

Firms: Davis Polk & Wardwell; Latham & Watkins; CM Law Firm

Jurisdictions: China, U.S.

\$490 MLN

CNOOC Energy Technology & Services' IPO

Deal Type: IPO

Firms: Commerce & Finance Law Offices; Haiwen & Partners

Jurisdiction: China

\$422 MLN

Jinshang Bank's Hong Kong IPO

Deal Type: IPO

Firms: Freshfields Bruckhaus Deringer; Haiwen & Partners; King & Wood Mallesons; Paul Hastings

Jurisdictions: China, Hong Kong

\$390 MLN

Jinxin Fertility Group's Hong Kong IPO

Deal Type: IPO

Firms: Commerce and Finance Law Offices; Conyers Dill & Pearman; Fangda & Partners; Paul Hastings; Shearman & Sterling; Sheppard, Mullin, Richter & Hampton; Tian Yuan Law Firm; William Ji & Co

Jurisdictions: China, Hong Kong

AS THE U.S.-CHINA TRADE WAR DRAGS ON, VIETNAM EMERGES AS A KEY BENEFICIARY

■ In June, the Italian Chamber of Commerce in Hong Kong and Macao collaborated with the Belgium-Luxembourg Chamber of Commerce in Hong Kong to host an after-work seminar that offered the question: “Doing Business in Vietnam – Is Vietnam the New China?”

The question isn’t new – this discussion has long been humming away as China pivots away from mass manufacturing to focus on honing its specialist high-tech skills – but it has become more pronounced of late.

China’s attractiveness as a manufacturing destination has been on the wane for a few years now, with increasing wages contributing to rising manufacturing costs. However, the ongoing trade dispute with the U.S. has exacerbated things. Last month, Nikkei research found that more than 50 global companies have announced plans to, or were mulling over, moving production out of China as a result of the country’s declining trade relationship with the U.S.

But the Southeast Asian country is hardly an unwitting beneficiary. Vietnam has taken a proactive approach towards encouraging interest in the market, recently signing a free-trade agreement with the European Union that will eliminate export taxes.

Chris Milliken, senior associate at Freshfields Bruckhaus Deringer, says that it is difficult to tell the impact the trade war between the U.S. and China has had on Vietnam at this stage, but “anecdotally we have heard that a lot of companies are looking to move their operations to Vietnam.”

While Milliken isn’t convinced that

the trade war between the U.S. and China is the sole reason why interest has spiked, he says it is “likely a part of the rationale.”

“Another, more prosaic, reason is that companies are simply becoming more aware of the opportunities in Vietnam – as one of the few sizeable and dynamic populations having high development growth – than they were in the past,” he adds.

This sudden flow of work toward Vietnam has not escaped political attention. During the G20 summit, held in Japan last June, Trump told broadcaster Fox News that Vietnam may be next in the firing line for tariffs. “A lot of companies are moving to Vietnam, but Vietnam takes advantage of us even worse than China. So, there’s a very interesting situation going on there,” Trump reportedly said.

At this stage, whether this will result in concrete policy or regulatory retaliation remains unknown, but what is undeniable is hand in hand with interest in the market, has come a greater influx of opportunities across the board for law firms.

“There are more marketing and business development opportunities,

such as conferences and speaking events, now than in the past. There have also been events organised outside in Vietnam, such as in the UK, to drum up interest, though these are not organised by individual firms but rather mainly by business groups and trade publications,” Milliken says.

While Milliken notes labour and other costs in Vietnam are cheaper, the country also benefits from its various trade treaties “including ASEAN FTA, CPTPP and more recently EU FTA,” he says.

“Compared to countries with similar per capita income, Vietnamese people are better educated. The government is also very keen to establish Vietnam as a key manufacturing hub. Factories and local companies here have longstanding connections with Asian conglomerates from Taiwan, South Korea and Japan,” Milliken adds.

But how Vietnam copes with this interest, and whether it can overcome the hurdles it is beset with, remains to be seen. The country is grappling with a number of challenges including a smaller population, fewer skilled workers, and less developed infrastructure – and add to this rising land prices, which Milliken considers are “serious disadvantages.”

And the country will have to keep working to overcome these disadvantages. As businesses operating in the market continue to monitor geopolitical developments carefully, they are increasingly hedging their bets by exploring other markets at the same time.

Eclat Textile, supplier to Nike and Lululemon, which moved its manufacturing from China to Vietnam in 2016, recently told Bloomberg that it was looking to diversify as a mechanism to avoid future trade disruptions. And tech powerhouse Apple recently revealed it will begin manufacturing its AirPods in Vietnam, as it reportedly mulls over moving more of its production out of China. But where to remains to be seen.

For lawyers, and firms, the biggest takeaway appears to be that the era of one massive manufacturing hub is over, and the dawn of plotting diverse supply chains has begun. 





Police officers line up during a protest against what the activists see as excessive police force against protesters during previous demonstrations, near China's Liaison Office, Hong Kong, China July 28, 2019. REUTERS/Edgar Su

PROTESTS CONTINUE IN HONG KONG, LEAVING BUSINESSES AT A CROSSROADS

■ A “dead” extradition bill, viewed as a symptom of the city’s erosion of rights, is haunting Hong Kong, as protesters continue to take to the street every week in the thousands, and teargas and riot police become the norm. But as the city grows accustomed to instability, businesses are growing increasingly nervous about what Hong Kong’s future may look like.

Davyd Wong, general secretary of the Association of Corporate Counsel Hong Kong (ACC), says the extradition law has been “divisive” within the legal community. “It’s probably fair to say that a lot of people feel this is another body blow for the rule of law and judicial independence in Hong Kong — and there have been quite a few since 1997,” he tells *ALB*.

“For lawyers, our duty is to protect the rule of law, therefore many in our profession have spoken up for it, which is great. But what is even greater is that a large portion of the Hong Kong community has also spoken up for it too.”

The belief that these latest events, exacerbated by a lack of communication from the Hong Kong government, are part of a broader trend is exactly why protesters and official bodies have taken such a staunch position — even more surprising in a city where political sentiments are often contentious.

In early June, thousands of lawyers held a rare silent march against bill. In July, the Hong Kong General Chamber of Commerce called for the formal withdrawal of the extradition bill, and the Australian Chamber of Commerce Hong Kong echoed similar concerns saying: “Much of Hong Kong’s success as a major international financial city stems from its autonomy, rule of law and independent judiciary, as well as in the freedoms enjoyed by Hong Kong people”.

But while official bodies are speaking out, Hong Kong tycoons are not taking any risks, with many reportedly in the process of moving their personal wealth offshore in reaction to the chaos, according to

Reuters — and there are concerns that businesses may soon follow.

While Wong isn’t surprised to see businesses and investment being courted by competing markets, he believes Hong Kong still has value for companies — although this may be on borrowed time. “Hong Kong competes with a lot of other places for business and investment, and it’s no surprise that those in other places have taken advantage of these recent events for their benefit, so we also need to be conscious of that as well,” he says.

“The reasons why people like to do business in Hong Kong hasn’t changed — it still has a highly skilled workforce, very good infrastructure, good rule of law, very corruption-free institutions, a geographical advantage, all those reasons still exist. But, those things only work in Hong Kong’s favour up to a certain point. If people don’t believe the trend of things will improve — and one of those things is stability — those advantages are negated, so it’s incumbent on everyone to ensure action is taken to sure things up,” Wong adds.

With the extradition bill no longer going ahead, protesters have changed their message, with many now calling for universal suffrage, concerned that this erosion of the city’s liberties will only continue without this. For many Hong Kongers, the protests are no longer simply about extradition law, Chief Executive Carrie Lam’s “mishandling” of the political situation, or police brutality. They are also a fight for identity.

“My personal opinion is there’s no avoiding the deeper underlying issues that have been raised. There’s a trend of chipping away at the rule of law and at ‘one country, two systems’ and that must be stopped,” says Wong.

“More broadly, the view is there must be some restarting of the discussion of political change in Hong Kong. I think that’s a big can of worms for anyone to open, but at the end of the day, that’s a root cause of why everyone is on the streets. The extradition bill and the way it was handled is just the lightning rod that brought people together. It’s no good to just say the bill is dead and we can move on, because that doesn’t solve the underlying issues,” he says. ALB

Q & A

'OUR APPROACH IS ALWAYS TO FOCUS ON OUR STRENGTHS'

"Our strategy has always been to take an organic approach to expansion based on our clients' needs. Our approach to the Shenzhen office will be the same as we take to all our offices."

Simmons & Simmons recently opened an office in Shenzhen. The firm has revealed few details about the office – how many lawyers it will have, or whether it will be more than just a representative branch. The office will be led by Jingyuan Shi, who has offered some comments to *ALB*.

Asian Legal Business: What was the motivation behind opening the Shenzhen office? What specific function will it perform that the Beijing, Shanghai and Hong Kong offices are unable to?

Jingyuan Shi: Our Shenzhen office has a TMT focus. China is currently the world's second most important TMT market after the U.S. Following the Greater Bay Area plan announced by the Chinese government, Shenzhen, as a rapidly growing force in the technology industry, plays a pivotal role in the continued growth of that market.

The decision to open an office in Shenzhen is a response to our clients' needs. Whilst those needs have been serviced from our other offices, the demand is such that we believe a dedicated office is the best way for us to deliver the service our clients expect.

ALB: What is the broader strategy for the Shenzhen office? Do you expect it to be more like a representative office, or are you planning to have a significant team of lawyers on the ground?

JS: Our strategy has always been to take an organic approach to expansion based on our clients' needs. Our approach to the Shenzhen office will be the same as we take to all our offices. We will constantly monitor opportunities

for expansion or otherwise, based on our strength in sectors and our clients' demand for the services we can provide in those sectors.

ALB: Simmons is probably the only UK firm with a presence in Shenzhen at this moment. Why do you think it has not been as alluring till date for your competitors, and in what way is your approach different?

JS: Of Shenzhen's four pillar industries, advanced technology is probably seen as the most important. Our focus as a firm on the TMT sector enables us to act for some of the most exciting companies in the TMT market and on their most challenging and complex issues and transactions. For each area of law, we can offer lawyers experienced in the legal and commercial

issues facing clients in that area. Our approach is always to focus on our strengths and not on the approach of our competitors.

ALB: Have you seen any impact on legal work in China from the ongoing trade war and China's earlier restrictions on outbound deal flow? Do you expect it to affect your new office in Shenzhen?

JS: The trade war and the additional regulation concerning outbound are factors affecting our clients' business. So far, that has not had an impact on their demand for our advice. ●



JINGYUAN SHI

ARB CENTRE FOCUSED ON CHINA, ASEAN OPENS IN SG

■ A new international arbitration centre focused on disputes between parties in China and the ASEAN region has been launched in Singapore.

The Beihai Asia International Arbitration Centre (BAIAC) was established by China's Beihai Arbitration Commission and said it was the first centre in Singapore

providing arbitration and ADR services to Chinese and ASEAN parties for disputes arising from cross-border trade

It will also handle potential disputes arising from the Belt and Road Initiative (BRI) and the ASEAN Economic Community (AEC).

The Beihai Arbitration Commission was established by the Judicial Department of China's southwestern Guangxi Zhuang Autonomous Region in 2003. ●

NORTH ASIA AND SOUTHEAST ASIA/SOUTH ASIA LEAGUE TABLES

North Asia Announced M&A Legal Rankings

No. 1 - Nishimura & Asahi

20,835.7 Value (\$MLN)

Deals: 70 / Market Share: 5.3

Rank	Legal Advisor	Value (\$MLN)	Deals	Market Share
2	King & Wood Mallesons	19,855.3	29	5.1
3	Gilbert + Tobin	14,921.3	5	3.8
4	Mori Hamada & Matsumoto	14,320.9	46	3.7
5	Kim & Chang	12,198.3	75	3.1
6	Baker Mckenzie	11,874.5	16	3.0
7	Lee & Ko	10,502.1	48	2.7
8	Morrison & Foerster	10,403.9	10	2.7
9	Zhong Lun Law Firm	10,315.7	21	2.6
10	Bae Kim & Lee	10,221.1	33	2.6

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

North Asia Announced M&A Financial Rankings

No. 1 - Morgan Stanley

35,156.7 Value (\$MLN)

Deals: 54 / Market Share: 9.0

Rank	Legal Advisor	Value (\$MLN)	Deals	Market Share
2	Nomura	28,398.9	60	7.3
3	Goldman Sachs & Co	25,300.9	27	6.5
4	CITIC	24,390.8	49	6.2
5	Lazard	16,174.7	12	4.1
6	Credit Suisse	16,030.0	21	4.1
7	China Securities Co Ltd	15,685.9	13	4.0
8	JP Morgan	14,870.4	23	3.8
9	Huatai Securities Co Ltd	13,446.1	27	3.4
10	Rothschild & Co	13,143.8	13	3.4

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

Southeast Asia / South Asia Announced M&A Legal Rankings

No. 1 - Kirkland & Ellis

19,326.0 Value (\$MLN)

Deals: 8 / Market Share: 13.7

Rank	Legal Advisor	Value (\$MLN)	Deals	Market Share
2	Simpson Thacher & Bartlett	19,287.4	5	13.7
3	Davis Polk & Wardwell	19,113.7	6	13.5
4	AZB & Partners	17,691.6	74	12.5
5	Allen & Gledhill	14,395.9	15	10.2
6	Cyril Amarchand Mangaldas	11,500.4	37	8.1
7	WongPartnership LLP	10,805.9	15	7.7
8	Shardul Amarchand Mangaldas & Co	8,915.3	38	6.3
9	Minter Ellison	8,461.3	4	6.0
10	Drew & Napier	8,073.4	3	5.7

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

Southeast Asia / South Asia Announced M&A Financial Rankings

No. 1 - Morgan Stanley

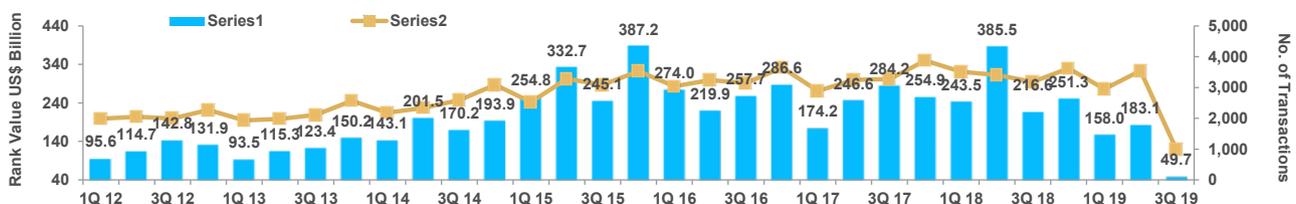
36,433.2 Value (\$MLN)

Deals: 24 / Market Share: 25.8

Rank	Legal Advisor	Value (\$MLN)	Deals	Market Share
2	JP Morgan	33,019.0	8	23.4
3	Bank of America Merrill Lynch	27,018.7	11	19.1
4	Citi	25,294.2	20	17.9
5	Goldman Sachs & Co	24,586.5	9	17.4
6	Barclays	21,131.1	9	15.0
7*	Wells Fargo & Co	18,700.0	1	13.2
7*	Deutsche Bank	18,700.0	1	13.2
9	Credit Suisse	11,684.2	13	8.3
10	Rothschild & Co	9,442.5	14	6.7

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

Any North Asia Involvement Announced M&A Activity - Quarterly Trend



League tables, quarterly trend, and deal list are based on the nation of either the target, acquirer, target ultimate parent, or acquirer ultimate parent at the time of the transaction. Announced M&A transactions excludes withdrawn deals. Deals with undisclosed dollar values are rank eligible but with no corresponding Rank Value. Non-US dollar denominated transactions are converted to the US dollar equivalent at the time of announcement of terms. North Asia includes China, Hong Kong, Japan, South Korea, Taiwan. Data accurate as of 31 July 2019.

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8.30am Registration

- 9.00am**
- The state of contract drafting
 - Costs and causes of deficient drafting
 - Goals for the program

9.20am
The Front and Back of the Contract

- Title and introductory clause
- Function and layout of recitals
- Traditional recital of consideration
- Concluding clause
- Role of exhibits and schedules

- 10.10am**
Categories of Contract Language
- Different categories of contract

- language and their function
- How to distinguish between categories
 - Why does it matter?

10.30am
Refreshment Break

10.45am
Categories of Contract Language, cont.

- 11.45am**
Layout
- How to present sections, subsections, and enumerated clauses
 - Using Adams's enumeration scheme
 - Issues of typography

- 12.05am**
Using Defined Terms
- Two kinds of definitions
 - Role of the definition section
 - Using an index of defined terms

12.30pm
Networking Luncheon

- 1.30pm**
Ambiguity and Vagueness
- Different kinds of ambiguity
 - How to avoid them
 - How to use vagueness

- 2.10pm**
Select Usages
- Problematic words and phrases
 - Clearer alternatives

3.00pm
Refreshment Break

- 3.15pm**
Drafting as Writing
- Some general principles of good writing that apply to contract drafting

- 3.30pm**
Bringing It All Together
- Redrafting sample provisions

- 3.40pm**
Effecting Change
- The individual
 - The organization

5.00pm
End of event



Ken Adams, Author

As the leading authority on contract language, Ken Adams has successfully coached people around the world in drafting clearer contracts. His groundbreaking book *A Manual of Style for Contract Drafting* has sold tens of thousands of copies internationally since it was first published by the American Bar Association in 2004. The Legal Writing Institute has announced that Ken is to receive the Golden Pen Award for 2014, "to recognize his exemplary work in contract drafting." As part of its "Legal Rebels" project, in 2009 the ABA Journal named Ken one of its initial group of fifty leading innovators in the legal profession. And the ABA Journal included Ken's blog in its 2013, 2012, 2010, and 2009 "Blawg 100"—its list of the hundred best law blogs. Ken is an adjunct professor at Notre Dame Law School. For more information about Ken and his activities, go to www.adamsdrafting.com.

FIRMS TO WATCH



AEI LEGAL

Established: 2018
Directors: 2

The four-lawyer corporate law firm AEI specialises in investments, M&A, joint ventures and IPOs. Established in 2018, it is led by director Andrea Chee, who previously worked with Freshfields Bruckhaus Deringer and Shook Lin & Bok. The firm has been looking to provide clients with a one-stop-shop. "We have built strong links with: Other legal service providers (in disputes and intellectual property) in Singapore; legal service providers in Southeast Asia, North Asia, and Australasia; and service providers in other professional fields such as tax, trusts and accounting," the firm says. It adds that clients realise that "an artisan atelier" is much more likely to have better products and services than a big box store. "Clients are becoming savvier and understand that the brand name is not as important as the lawyer who is actually doing the work," says AEI Legal. "We intend to continue growing our headcount in Singapore and will explore opportunities to collaborate more closely with our partner firms."

AQUINAS LAW ALLIANCE

Established: 2016
Partners: 5

For a boutique firm, Aquinas is quite regionally focused. "Aquinas looks beyond Singapore for opportunities of growth, tapping into its extensive network in ASEAN, and the economies of China and India," says the firm, which helped found the ASEAN Legal Alliance network. "The current U.S.-China trade war has affected both Chinese and non-Chinese companies. This has created opportunities for us as there is a resurgence of interest back to ASEAN countries, and we have managed to ride on these new opportunities that have arisen." The firm currently boasts a headcount of 21 fee-earners, including five partners, and has seen steady revenue growth of 20 percent since 2017. That year, Aquinas acquired a professional services firm called ACE Corpsec, which provides corporate secretarial services for public listed companies, private limited companies, and charities and foundations. Aquinas says it is in the process of looking out for similar acquisitions.

CAMPBELL JOHNSTON CLARK

Established in Singapore: 2014
Partners: 2

The only international firm on this year's list, the Singapore office of shipping-focused law firm CJC is headed by two marine litigators and former Holman Fenwick Wilan partners - Paul Apostolis and Gareth Williams - who have more than six decades of experience between them. Both joined the office in 2018, and have advised on newsworthy cases such as the loss of the container ship MOL Comfort; the loss of the very large ore carrier Stellar Daisy in the South Atlantic; and the grounding of the cruise ship Caledonian Sky in Indonesia, which attracted record reef damage fines. "The ethos of our firm is to maintain the practice of law as a profession rather than as a vehicle to sell legal services to our clients with slavish reliance on hours billed and key performance indicators for our staff," says the firm. "We are also unique in that we practice from a shophouse Amoy Street next to the heart of the city. Apart from providing a historic and tranquil environment within which to work, we can pass on costs savings to the clients."

COLLYER LAW

Established: 2015
Partners: 3

The 10-lawyer Collyer Law is growing fast, with revenue increasing 30 to 50 percent year-on-year, and team size also expanding at a steady clip. "A primary driver for growth has been Collyer Law's focus on the early-stage economy. Collyer Law undertakes 50 percent of its engagements on a fixed-fee basis, at a price-point that is affordable for emerging technology companies," the firm shares. "Another driver is that Collyer Law's hiring policy actively allows the firm to engage with talented candidates who wish to work on a part-time basis, especially working moms and millennials seeking work-life balance while remaining in legal practice. This allows Collyer Law to attract and retain talent that would not otherwise have chosen to stay on in Big Law. This has the effect of also reducing attrition and costs associated with it - all savings are passed back to clients." The firm claims to have advised more than 150 clients in the last 24 months on multiple rounds of financing.



As with similar lists in Malaysia and India, ALB is picking its list of Firms to Watch for Singapore. These are firms with less than 10 partners that are punching well above their weight in terms of work handled and services delivered. BY ASIAN LEGAL BUSINESS

EUGENE THURAISSINGAM

Established: 2012
Partners: 2

The disputes-focused ET has been involved in a number of cases in the past year. It acted for an oil exploration company in an UNCITRAL arbitration against a Middle Eastern state-owned company in a dispute involving claims of more than \$126 million and concerning petroleum operations in Southeast Asia; acted for a subsidiary of a publicly listed shipping corporation in a SIAC arbitration against a U.S. company concerning a charter-party dispute, and succeeded in obtaining an award of over \$10 million for the firm's clients; and acted for the CEO of a publicly listed shipping company in a High Court suit. "SIAC's 2018 statistics show that it has received 402 cases from parties in 65 jurisdictions and a total sum in dispute for all new case filings of S\$9.65 billion. This is the second year consecutively that SIAC has received more than 400 cases," says the firm. "In light of SIAC's robust growth, ET LLP aims to take advantage of this evolving dispute resolution scene not only domestically but regionally."

NICHOLAS & TAN PARTNERSHIP

Established: 2010
Partners: 1

The disputes boutique Nicholas & Tan is led by Nicholas Narayanan. In the past year, the firm acted in a number of cases that grabbed newspaper headlines, including representing Lam Leng Hung in the high-profile City Harvest prosecution, in which the Court of Appeal upheld the majority of the High Court's decision to convict the defendants on reduced charges of criminal breach of trust and consequently reduced sentences; and acting for several minority shareholders in a derivative action to commence action on behalf of a company against its director for secret profits, emoluments, payments, salaries and benefits received by the director and her affiliated companies. "As a boutique disputes resolution law firm, we focus on representing the small to medium business enterprises and individuals. Despite our relatively lean size, we thrive on acting for the underdogs and have consistently been involved in high profile cases against larger institutions or law firms," says Nicholas & Tan.

PROVIDENCE LAW ASIA

Established: 2012
Partners: 3

Providence Law, which counts disputes among its strongest suits, is gradually expanding into adjacent areas through key lateral appointments: Last year, it hired Zhou Jiaying from Drew & Napier as head of its construction, infrastructure and projects practice group; and brought on board Eugene Lim from Baker McKenzie Wong & Leow, where he led the tax and wealth management practice. It also promoted Nawaz Kamil to partner and the head of its insolvency and restructuring practice. "We are being increasingly recognised as a go-to firm by international firms and Singapore Big Four law firms when looking for an independent counsel practice," says the firm, which is led by Abraham Vergis. "In line with the firm's forward-thinking culture and emphasis on the professional development of our lawyers, each of our counsel is encouraged to identify an area of practice as a potential area of specialisation while at the same time ensuring that their skills as dispute resolution specialists are being honed."

WMH LAW CORPORATION

Established: 2016
Partners: 3

Launched in December 2016 with three lawyers, WMH has tripled in size to nine full-time staff at present. The firm also claims a 266 percent increase in revenue in 2018 as compared to year. The disputes-focused firm, led by Wilbur Lim says it has also become the first in Singapore to establish and art and cultural property law practice; WMH has also set up a dedicated non-contentious corporate law practice. "As a young firm, reputation in the industry is our foremost consideration," says the firm. "We could only achieve substantial growth with quality lawyers. As such, it is our predominant aim to recruit only the best in the industry. Notably, all our head of departments are either from the Big Four law firms in Singapore or are PhD candidates in their respective fields. In relation to our associates, 50 percent of our associates hold at least first-class honours in Law." Additionally, WMH says it has adopted "cutting -edge" legal technology to increase productivity and reduce costs.

READY FOR A RESTART

With a contentious presidential election season finally coming to a close, law firms in Indonesia have a lot more certainty about how the next few years will look like from a policy and regulatory perspective. Four managing partners talk about how the year has gone so far, and the strategies they are putting in place for the future.

BY RANAJIT DAM

What are some of the notable trends that you have witnessed so far this year in terms of the quality and quantity of work your work has been doing?

Ary Zulfikar, AZP Legal Consultants: In the last four years, the government has focused on infrastructure projects like toll roads, mass rapid transit, light rail transit, airports, harbours, housing and more. The challenge is for the government, as well as private companies, to find funding for these projects. Our firm has participated in some financing deals for infrastructure projects, such as assisting the government in the issuance of bonds and/or sukuk. We have also participated in toll-road construction projects operated by state-owned enterprises by assisting in structuring the financial scheme.

We believe infrastructure has a significant role in maintaining the sustainability of the Indonesian economy, but on the other hand, it requires huge investments. Accordingly, as capital markets lawyers, we have been advising clients in obtaining such funds, either through equity or debt financing.

Luky Walalangi, Walalangi & Partners: We have seen an increasing number of urban development projects in 2019, where we mostly represented investor in mid- or high-level residential condominium projects. Fintech transactions seem less active compared to 2018.

Arie Armand, AYMP Atelier of Law: There has been a gradual increase in the number of clients in areas like fintech, infrastructure projects and fundraising both through capital market transactions as well as private placement (including

fundraising for fintech and start-up companies conducted by prominent venture capital funds and family offices). There has been a drop-in mining-related work; we still see some mining work, but not of the size and sophistication seen five years ago.

Veronica Situmorang, Situmorang & Partners Lawyers: In this digital age, the trend is towards digital business – either in traditional businesses adding more robust digital platforms, or fully online businesses. We have helped to establish several fintech businesses in both the peer-to-peer lending and e-wallet sectors. We have been seeing relatively less infrastructure-related work as a number of projects were slowed or put on hold pending the results of the election. However, now that Jokowi has been confirmed as the president of Indonesia for another five-year term, we should see some of those projects restarting and new ones being launched.

What developments in the market have had the most impact on your work?

Zulfikar: The current global economic slowdown is for sure having an impact on the Indonesian economy. Some industries have been facing difficulties in having sufficient funds to run their business, or enough liquidity to support their business. We saw in the news recently that one of the largest textile manufacturers in Indonesia defaulted on its debt repayment, even after another company in the same group issued bonds worth \$300 million. In fact, the company's bonds had a demand of more \$1 billion. How could that happen? Were there any issues found during the due diligence process that were ignored by all parties involved in the issuance process? Or did the company itself keep material information from the public? As a result, Indonesia's corporate bond market is facing new challenges; S&P, the debt rating agency, recently cut the credit rating of bond issued by the company and its subsidiary.

This will make capital market transactions more challenging, specifically, especially in terms of reduced investor confidence in the due diligence carried out by the advisor for the benefit of the issuer.



“We believe infrastructure has a significant role in maintaining the sustainability of the Indonesian economy, but on the other hand, it requires huge investments. Accordingly, as capital markets lawyers, we have been advising clients in obtaining such funds, either through equity or debt financing.” — Ary Zulfikar, AZP Legal Consultants

Walalangi: There were not many regulatory changes impacting our work up to the second quarter of 2019. However, we expect to see more positive developments and progress in infrastructure projects and consumer goods after the inauguration of Jokowi as the president of Indonesia for a second term starting in October.

Armand: Some of our banking and financial institution clients are collaborating with fintech companies – they want to create synergy with

those fintech companies instead of competing with them. Due to the tech boom, some of our private equity clients are also creating additional investment arms to invest in tech and start-up companies - they need to do so as most investment agreements between LPs and GPs only allow investment only in “real” sectors.

Situmorang: The simplification of company establishment and licensing through the One Single Submission (OSS) system was implemented in June

2018. The foreign investment company establishment process used to be very complicated, requiring interaction with several ministries, each with long processing times and uneven service standards. As a result, the process was expensive and time-consuming. Now almost all ministries have handed over this authority to the OSS, which has streamlined the process significantly. Even though the system is still a work in progress and occasionally has trouble, it is much easier, faster and simpler.

deeper
understanding
better
solution

azp | legal consultants

Established in 2004, Ary Zulfikar & Partners, known as AZP Legal Consultants (AZP), specialized in M&A, banking & finance, shariah transactions, capital market, commercial legal dispute and also provides advisory services and assistances to its clients consisting of various groups and organizations, foreign and local investors, as well as individual in solving their legal issues effectively and efficiently

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This puppet represents the character Kresna (Krishna) from the Hindu epic, the Mahabharata performed in the Javanese 'wayang kulit' or leather shadow puppet theatre tradition. He is part god being the incarnation of Wisnu (Visnu). His black face indicates his noble line and the slim, pointed nose and narrow stance reflect his refined character. His forward-looking gaze indicates assertiveness.



“Lawyers have to understand the business context in which their clients operate – not just to understand the law but to understand the ‘how’ and ‘why’ a particular client may take one decision over another. It is not good enough to just take orders and generate documents.” – Veronica Situmorang, Situmorang & Partners

What have been the biggest challenges that Indonesian firms like yours have faced in the past 12 months?

Zulfikar: In the last 12 months, we saw a lot of work-related to debt restructuring, equity financing and asset resolution. As a result, we needed to have a good team working with the financial advisor, appraiser, accountant and lawyer to structure a proper integrated solution for the client to help them achieve their goals. We are also required to provide advice related not only to legal risks,

but also the advice on which transaction would cost less using a different approach.

Walalangi: The instability of the political situation in the second quarter of 2019 resulted in many foreign investors taking a “wait and see” approach. However, at the same time, that period allowed us to visit our clients and focus on various legal articles in international publications.

Armand: The new and continuously improved Online Single Submission (OSS) system is making the licensing

process progressively centralised under one system, but it remains technically vague due to the constant improvements to the OSS system. One of the problems encountered (but this may have already been improved or fixed) was that by law, a license is required for the client’s business activity and such license is issued solely by OSS. However, the OSS system does not have the ability yet to issue such license via the OSS. The only way to overcome this issue is to regularly consult with the OSS institution, which

SITUMORANG & PARTNERS

Lawyers

Situmorang & Partners specializes in M&A, Banking Finance, Capital Markets, Commercial Litigation and Family Law, as well as providing wide range of legal advisory services for your business needs

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“Clients expect a much quicker turnaround compared to a few years. To meet this demand, our firm is very seriously investing in internal IT infrastructure, so that we can provide the best services to our client in terms of both quality and speed.” — Luky Walalangi, Walalangi & Partners

welcomes a limited number of visitors per day – 300 visitors per day until June 2019, and 200 visitors starting July 2019.

The first quarter of 2019 saw many clients holding back on investment projects, capital markets transactions (IPOs and rights issues) and M&A deals due to the 2019 presidential election. Most of the investors were in “wait and see” mode waiting for the outcome. The situation improved after it there was certainty on who the next president would be. Our firm saw a significant increase in

new assignments and projects, as shown by an increase of around 45 percent in the second quarter in our firm revenue compared to the first quarter.

Situmorang: Our firm, being a boutique business law firm, has faced challenges at both ends of the market. In terms of larger corporate work, as more and more international partnerships are set up between foreign and Indonesian law firms, there is a lot more competition when it comes to bidding for larger engagements. At the other end

of the market, in terms of work related to startups and small firms, there is an increasing number of online-only legal services companies offering services.

As a conventional legal firm, we are keen to give the best quality of services to our client, which cannot be compared with the digital services on offer. However, we cannot and should not ignore the use of technologies that will allow us to provide more efficient services to our clients. These same technologies can also help level the playing

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Devising creative solutions that nonetheless adhere firmly to the framework of the law.

Walalangi & Partners (W&P) offers in-the-know guidance, reliable counsel, and a trustworthy representation for its international and domestic clients. Led by Luky I. Walalangi and Miriam Andreta, W&P consists of experienced and talented 25 lawyers, each with specializing in a particular skill set to ensure that clients are supported by the right expertise for their legal needs in Indonesia. The firm is associated with Nishimura & Asahi, the largest law firm in Japan, in reflection of W&P's high-quality standards.

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“There will be continuous growth in the fintech sector due to the ongoing developments and the market’s welcoming attitude towards it, as well as the infrastructure sector due to the re-election of President Joko Widodo.” — Arie Armand, AYMP Atelier of Law

field with our larger competitors, as with the assistance of these technologies, fewer lawyers can do more work more efficiently.

We have planned to face the challenges at both ends of the market. Our firm is a co-founder of a start-up online legal service provider for simpler, routine processes. We are also investing heavily in other legal technology that can help streamline our project-based work for our larger clients.

What are some of the key trends you’ve witnessed in how your relationships with clients have evolved in the past few years?

Zulfikar: We shouldn’t just wait for clients to ask us for advice. What the clients need is for us to be proactive in rendering our services, especially in monitoring the market and updating them on any issues related to laws and regulations which may affect the client’s interest. Through this, we assist the client in compliance aspects. For example, we are seeing the rise of fintech and digital transactions. We need to be aware of the legal consequences for clients who wish to enter the fintech space. Providing legal information in advance will provide a clear understanding for the client, so that they can comply with prevailing rules and regulations.

Walalangi: Clients expect a much quicker turnaround compared to a few years. To meet this demand, our firm is very seriously investing in internal IT infrastructure, so that we can provide the best services to our client in terms of both quality and speed.

Armand: More clients are expecting lawyers to understand the transaction from a business or industry perspective,

and thus provide a compatible legal solution, even in including in new fields such as fintech. Even in this sector, the developments and changes are way faster than the regulations being promulgated, therefore, lawyers are expected to be able to provide flexible and adaptive legal solutions and advices.

Quicker responses are both demanded and appreciated by clients, and we are looking into how the advances in technology can help us in this regard.

Situmorang: With greater use of legal technology, the traditional role of lawyers as interpreters of laws and precedents has changed and should change. The real value that lawyers can bring, both now and in the future, lies in the areas of strategic advice and risk assessment. To do this, lawyers have to understand the business context in which their clients operate – not just to understand the law but to understand the “how” and “why” a particular client may take one decision over another. It is not good enough to just take orders and generate documents. We, therefore, spend a lot more time communicating with our clients regularly to help them assess issues, avoid problems and capitalise on opportunities rather than just waiting for their instructions.

All our clients can easily access the laws and regulations online, as well as commentary on those laws and regulations from various sources of widely varying credibility. While great strides are being made in Indonesia to rationalise the regulatory environment, there are still many complexities. Some laws and regulations are very modern, whereas others are outdated and in some cases contradictory. Our clients need us to help interpret what they understand the regulations to be, rather than the old style of

telling them what the regulations are. On many occasions, this can involve risk assessments on what the written laws say and how they have been interpreted in practice.

What are some of the strategies you’ve put in place for business growth in the near term?

Zulfikar: The key to success for our business is knowing the needs of our clients and helping them fulfil their goals. If our client wants to enter the financial business, we must know the direction the financial industry policy is taking, and the current regulations within such industry. We can thus provide advice that is appropriate for the interests of the client. Identifying the risks under the prevailing rules and regulations will help the client in mitigating them.

In some cases, companies do not know whether their business activities carried out so far have complied with the applicable laws and regulations. Therefore, our strategy is to provide in-house legal training on the current regulations as they related to the clients’ business activities.

Walalangi: Our strategy is to always focus on the client’s commercial needs, and to attract and retain top talent within the firm. For the latter, our firm tries to be among the best in the market when it comes to providing support to its lawyers.

Armand: We are proud of our professional but friendly approach to clients, speedy response times, and expertise in new legal fields. Over the next few years, we hope to continue to provide excellent services and maintain good relationship with existing clients; increase marketing of the firm; continue to excel in the expertise that we are known for, such as

Suspension of Payment Termination

Under Indonesian Law no. 37 Year 2004, suspension of payment (PKPU) as court procedure allow and can be used as a way for debtor to avoid and protect itself from bankruptcy and force to have the debt restructured in order for the debtor can still carry on doing its business.

PKPU is divided into 2 stages Temporary PKPU and Permanent PKPU. Temporary PKPU last for 45 days from the date of the PKPU judgment recited. During the period, debtor can proposed for restructuring scheme in the form of composition plan, which may not happen due to the involvement of many creditors which have to be verified in short period of time. In order to give more time for the debtor to provide or revise the composition plan, the debtor can propose for time extension in the form of Permanent PKPU, which can last for maximum 270 days. During the whole PKPU period, debtor cannot be forced to pay its debt and stay period will apply.

For the composition plan or Permanent PKPU to be granted, it has to be approved by the secured and unsecured creditors through voting mechanism with approval vote of more than half of each type of creditors who are present at



Robie Aryawan Haris

Partner

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the meeting as long as the creditors represent at least two-thirds of the total outstanding receivables payable to respective secured and unsecured creditors who are present at the meeting.

One or more creditors can request for termination of PKPU as stipulated in Article 255 paragraph 1, if the debtor:

- acts in bad faith in the management of the assets;
- attempts to prejudice its creditor;
- taking management or ownership of the assets without authorization;

- fails to carry out the obligations required by the court or actions requested by the administrator in the interest of the debtor's assets';
- condition makes the continuation of the PKPU infeasible; or
- cannot be expected to fulfill its obligations to creditors on time.

Petition for termination of PKPU must be examined within 10 days after the filing and the decision must be issued within 10 days as from the examination is completed. If the court decides to terminate PKPU then the debtor will be declared bankrupt. In bankruptcy stage, secured creditors can execute the security object and will be given only 2 months after the insolvency condition commenced to sell the object.

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banking and finance, M&A, infrastructure and capital markets. We will also adapt to the recent demand for legal services in newly developed practice areas like technology, fintech, green energy as well as crowdfunding which has a social impact (like microfinancing).

Situmorang: We need to remain flexible and agile and seek to provide additional value to our clients. We cannot afford to just be reactive and continue to do things in the same way even as the world rapidly changes. For our firm, this will mean investing more in technology infrastructure, and most importantly people.

What are your predictions for the next few years for the Indonesia legal market?

Zulfikar: First, there are still opportunities for legal consultants to participate in infrastructure projects which involve the role of the private sector. Second, the development of inclusive financial services, especially the development of fintech will dominate the financial

industry. Legal consultants will have an important role in preparing legal documentation related to financial technology as one of the instruments for the utilisation of public funds for financing any business entity. Third, in relation to the implications of the law on data privacy, legal consultants will also have an opportunity to assist companies in data protection compliance.

Walalangi: With the completion of the presidential election, which sees Joko Widodo as the president for the next five years, we believe the Indonesia legal market will steadily grow and we expect more consistency, particularly concerning real estate, infrastructure and consumers' goods.

Armand: There will be continuous growth in the fintech sector due to the ongoing developments and the market's welcoming attitude towards it, as well as the infrastructure sector due to the re-election of Jokowi. He has a track record of focusing on the development of infrastructure in Indonesia like toll

roads, airport, mass public transportation, and ports.

Situmorang: As in Western countries, there will be greater pressure on larger firms from smaller, more agile firms using technology and new service offerings.

There will be a continuing increase in the legal skills of Indonesian lawyers as many younger Indonesian lawyers undertake at least some of their education and training internationally. With this greater level of skills, these lawyers can not only service international clients who come to do business in Indonesia but also to help Indonesia develop itself as a major centre for businesses to set up and service the ASEAN market as it becomes more integrated.

Now that President Jokowi has been confirmed, Indonesia will continue to be a very good target market for both international and domestic businesses. For lawyers with the right skill set, there will be a lot of work for them to do to help realise the ambitions of the current government. 

SECOND COMING



Indonesia's incumbent president Joko Widodo, who was re-elected on April's election gestures as he delivers a speech to highlight his vision for the next five years in Bogor, West Java province, Indonesia, July 14, 2019. REUTERS/Willy Kurniawan

Expectations are high for Indonesian President Joko Widodo's second term, who has a long laundry list of policy changes planned. However, lawyers say that easing of bottlenecks and infrastructure gaps across the board are essential to ensure that these political ambitions are truly achievable. BY ELIZABETH BEATTIE

■ With the ambition to speed up infrastructure spending across urban and digital projects, and an aim to boost economic growth, Indonesian President Joko "Jokowi" Widodo has an ambitious future in mind for Indonesia, and a variety of plans about how he wishes to achieve all he has set out to tackle.

If there's one thing that can be anticipated of Jokowi's second term, it is that it will be busy. Among his campaign promises are a pledge to reduce poverty, while also keeping prices low, and a commitment to improving tax revenue. His government has also already kicked off a staggering \$350-billion infrastructure drive — the biggest in the nation's history.

In July, fresh on the heels of his election win, Jokowi held a rally at the Sentul International Convention Center in West Java, where he outlined his 2019-24 policy vision. During the speech, he pledged greater "interconnectivity" and, at the same time, reinforced his development plans.

Jokowi said his government would be accelerating its development work and connecting infrastructure projects "such as toll roads, railways, seaports

and airports." A key part of this message was that such infrastructure projects across Indonesia would serve to open access to small and medium enterprises. "Our focus is to improve connectivity," Jokowi said, adding that transportation infrastructure would also help to boost tourism attractiveness. Another emphasis was enhancing Indonesia as a more "productive and competitive" nation, with a greater priority on "human resources development," which he billed as "key to Indonesia's future."

Indonesian law firm Kudri & Djamaris has been closely watching Jokowi's leadership, and believe that his recent public comments offer a great insight into his strategy going forward. "After being rightfully elected as the President and Vice President of the Republic of Indonesia for the second time, Joko Widodo with KH Ma'ruf Amin as his new partner, have shared their objectives and goals on how they bring improvements to Indonesia for the next five years," founding partner Defrizal Djamaris tells *Asian Legal Business*.

"In his speech, Jokowi declared the objectives and plans he will carry out during his reign, which are tax regulation

improvement; simplification of permit and license bureaucracy; development on investment sector in Indonesia; advancement of infrastructure development; changes in Indonesian bureaucracy; and development of Indonesian natural and human resources," Djamaris outlines.

Djamaris notes that these regulatory updates, sweeping policy changes and plans to bolster the economy, are all consistent with official comments and announcements as are Jokowi's plans to "raise, develop, and maintain Indonesian investment sector through simplification of permit, reparation of bureaucracy system, tax regulation improvement."

But while such consistency is doubtless comforting for the market, there is one area where there needs to be greater changes to stimulate growth and attractiveness Djamaris says. "Jokowi and his cabinet need to support political stability through democratic values and by strengthening law supremacy to effectively implement the vision and mission that have been set by Jokowi in this second term in government," he adds.

While these comments offer a pathway forward, there are more expected policy changes and focuses

that are expected as a result of these comments – key among them is ensuring Indonesia is a more investment-friendly market.

OPEN FOR INVESTMENT

While infrastructure development, and general regulatory overhauls have been among the most keenly anticipated changes by those with business interests in the region, there are other developments to be expected, and with these, greater opportunities and challenges.

Along with its contemporaries in the region, Ivan Almada Baely & Firmansyah Law Firm (IABF) has also been closely watching Jokowi's legislative progress. In addition to these big-picture developments, there are also smaller, more focused developments expected on the horizon that will boost the Southeast Asian nation's attractiveness as a business hub— key among them, a new, hotly anticipated Negative Investment List.

The list, which outlines investment requirements and currently restricts foreign investment within certain areas, is expected to be readjusted soon to help stimulate further interest in the market.

"The Negative Investment List determines whether such business activity in a certain Standard Classification of Indonesian Business Fields code is open, or open with conditions, or closed for foreign investment," IABF explains as background.

"We have been anticipating the new Negative Investment List, which is currently regulated based on the Presidential Regulation No. 44 of 2016 regarding List of Business Fields that are Closed and Business Fields that are Open with Conditions in the Investment Field," the firm adds.

While in November last year, there was an initial investment that the Negative Investment List would be revised and relaxed around some business activities that are currently restricted, "the revised

list was never enacted, and we expect that the new Negative List Investment will be issued and effective during Jokowi's second term in government," IABF says.

These key guidelines are expected to have a significant impact on Indonesia's ability to court foreign investment soon – and as a by-product, could also help to expand working opportunities for lawyers in the market going forward.

"If the New Negative Investment List is to be issued with these relaxations in place on some previously restricted areas of business, this shall bring more investors into Indonesia. Law firms in Indonesia can expect to get more work in the corporate sector, in particular, increased work related to foreign investment," IABF says, adding that this increase in work could then be further extended across the infrastructure sector, where foreign investors are typically interested in placing their investment.

This will complement the new expected infrastructure projects, which

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will subsequently “give room from the lawyers to provide their services,” says IABF.

The firm also adds that the Belt and Road Initiative may also have a greater impact in Indonesia across the coming months following the election process, noting that this will inspire greater confidence in foreign investors. “The Jakarta-Bandung high-speed railway that is being built by a Chinese consortium and some Indonesian partners has been the major impact of the Belt and Road Initiative to date,” the firm notes.

TOURISM GROWING

Tourism is another key area that is expected to balloon as a result of the planned developments across Indonesia. This year Indonesia’s Tourism Ministry has a foreign tourist arrival target to 18 million in 2019, up from 15.8 million last year, and has already began ramping up its offerings for targeted tourist with tailored city tours and expos.

In order to ensure these numbers continue to grow steadily in the near future, the government has also reportedly started planning a secondary airport in Bali.

“Jokowi also sees that Indonesia has a great potential for the tourism sector,” Djamaris says, noting that greater infrastructure development is expected to have a direct impact on its success.

Another positive development that this will trigger, Djamaris says, is a boost to Indonesia’s economy and stimulation of further job growth to support this.

IABF agrees that before tourism can provide a viable boost for the economy and job market is somewhat dependent on infrastructure developments helping to iron out the current challenges.

“The infrastructure projects can help develop tourism in Indonesia. Many tourist locations in Indonesia have beautiful scenery but are not supported by sufficient infrastructure for tourists,” IABF says. They add that new infrastructure developments will help make travelling across the country easier for sightseers, and subsequently, attract more tourist interest. With the construction of toll roads and a high-speed railway, for example, this will yield easier access

for tourists, while also providing a boost to the tourism sector in Indonesia, the firm adds.

EASING BOTTLENECKS

While both firms feel there are many bright spots to look forward to in Jokowi’s second term, they also note that easing bottlenecks is essential for these to be truly successful.

“From a legal perspective, licensing and/or approvals from authorised government institutions have been

“If the New Negative Investment List is to be issued with these relaxations in place on some previously restricted areas of business, this shall bring more investors into Indonesia. Law firms in Indonesia can expect to get more work in corporate sector, in particular, increased work related to foreign investment.”

— Ivan Almaida Baely & Firmansyah Law Firm (IABF)

the bottlenecks that need to be eased in some business fields in Indonesia – including within large-scale infrastructure,” IABF says.

The firm adds that the in addition to these challenges the government is also focusing on other areas that affect businesses. “We understand that the government has been trying to ease challenges are licensing by issuing Government Regulation No. 24 of 2018 regarding Electronically Integrated Business Licensing Service (“GR No. 24/2018”). GR No. 24/2018 regulates

faster procedures in the issuance of business licenses/ approvals in certain business fields through the Online Single Submission (“OSS”) system, which gives more benefits and certainty to investors,” the firm adds.

Djamaris adds that “the biggest problems that President Jokowi has to overcome is located in the land acquisition and environmental issues.” He notes that this can help be improved from a legal perspective when it comes to granting permits – ensuring these are more efficient and effective and “do not harm the people in the process of infrastructure development.”

MORE OPPORTUNITIES

For lawyers in the market, these changes point to an increase in work opportunities. But they believe that there is also more to come across different sectors.

“We believe and anticipate that we will see further regulations in the field of financial technologies, information technology, renewable energy and foreign direct investment,” Djamaris says. “From these regulatory and policy changes, the most affected areas are the implemented bureaucracy system in Indonesia.”

He notes that, as a result of this, Jokowi will be spending his second term focusing on the improvement of his bureaucracy system, and those in the market can expect this to be overhauled and as a result, “simplified, shortened, and changed to add value to the efficiency and effectiveness of services, supervision, and law enforcement and licensing in Indonesia, especially in the economic sector.”

In addition to there being further development across infrastructure generally, further work-generating developments are expected within developing economy and tourism sectors, “in order to guarantee decent living for Indonesian people,” Djamaris says.

“Jokowi sees that by continuing to develop infrastructure in the region, Indonesia’s economy whether it is on macro or micro level will automatically grow. Not only relying upon the development of infrastructure, Jokowi also will encourage people, both domestic and foreign, to invest in Indonesia,” he adds. 



Viability Gap Funding: Increasing Attractiveness of PPP Infrastructure Projects in Indonesia

1. At A Glance

The Government of Indonesia has been focusing to boost public-private partnership infrastructure projects (“**PPP Project(s)**”) investment in Indonesia since the enactment of Presidential Regulation No. 38 of 2015 on Cooperation between Government and Business Entity in Infrastructure Provision (“**PR 38/2015**”). Referring to the Public-Private Partnerships: Infrastructure Projects Plan in Indonesia issued by Ministry Of National Development Planning / National Development Planning Agency in 2018, the Government of Indonesia is preparing about fourteen projects in eight sectors.

The Government of Indonesia has taken major steps to increase the attractiveness of the PPP Projects and to support the private partner of PPP Projects, among others, by providing Viability Gap Funding (“**VGF**”) for PPP Projects. The latest regulation on this support is the Ministry of Finance Regulation No. 170/PMK.08/2018 (“**PMK 170/2018**”) which came into effect on 21 December 2018 to amend Ministry of Finance Regulation No. 223/PMK.011/2012 (“**PMK 223/2012**”).

2. Understanding the Viability Gap Funding

VGF is support given by the Government of Indonesia, being the Ministry of Finance, in the form of financial, fiscal contribution given to a PPP Projects which use the ‘user-pays principle’ to improve its financial viability and effectivity. Part of state budget shall be given to PPP Projects in the form of cash to partially fund the construction costs of PPP Projects, provided that such funding shall not dominate the construction cost of the PPP Projects.

Further, PMK 170/2018 stipulates that VGF is given if there is no other alternative to make the PPP Projects is financially viable and is subject to a complete and comprehensive assessment by the Minister / Head of Institution / Regional Governor that the PPP Projects has the social interests and benefits.

3. Criteria

In order to receive VGF, a PPP Project shall meet the following criteria:

- (a) the PPP Project is economically viable but is not yet financially viable;



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- (b) the PPP Project uses the ‘user pays principle’;
- (c) the total investment cost of the PPP Project’s shall at least Rp100,000,000,000;
- (d) the PPP Project is operated by a business entity established by the tender awarded by the government institution which is responsible for the PPP Project (*Penanggung Jawab Proyek Kerja Sama / “PJKP”*) by way of a publicly-open and competitive auction;
- (e) the PPP Project is executed based on a public-private partnership contract which regulates the transfer of the assets and/or its operation from the private partner to the PJKP at the end of the PPP Project; and
- (f) the PPP Project’s viability study result states that: (1) optimal risk-sharing between the Government/ PJKP and the private partner / tender winner; and (2) concludes that the PPP Project is economically viable; and (3) the project become

financially viable after the provision of VGF.

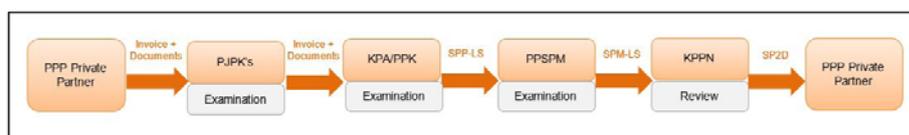
4. Availability

The VGF may be given: (i) during the construction period of the PPP Project in accordance with the completion date agreed in the public-private partnership contract; and/or (ii) after the completion of the Commercial Operation Date of the PPP Project as agreed in the public-private partnership contract.

5. Key Points of PMK 170/2018

PMK 170/2018 has the following key points:

- (a) the invoice for VGF is submitted by the private partner to PJKP while previously it was submitted to Proxy of Budget User (*Kuasa Pengguna Anggaran / “KPA”*), subject always to the agreed stages and terms under the Approval Document of Viability Support Granting (*Dokumen Persetujuan Pemberian Dukungan Kelayakan*);
- (b) the documents enclosed with the invoice is simplified but the financial statement of the private partner is currently required;
- (c) examination of the completeness and correctness of the invoice document by the different authorities in multiple-stages, starting from the PJKP, Proxy of Budget User (*Kuasa Pengguna Anggaran*), Commitment Making Officer (*Pejabat Pembuat Komitmen*), Payment Instruction Signatory Officer (*Pejabat Penandatanganan Surat Perintah Membayar*) and State Treasury Office (*Kantor Pelayanan Perbendaharaan Negara*), with the following stages:



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DEEPENING TIES

China is already one of Indonesia's top sources of foreign investment, and with Asia's largest economy expanding its Belt and Road programme and other initiatives, the flow of capital is all set to continue.

But while plenty of opportunities lie ahead for investors in Indonesia, what challenges would they need to overcome?

BY ASIAN LEGAL BUSINESS

— With a population of 268 million and a nominal GDP of more than \$1 trillion, Indonesia is, without a doubt, a heavyweight in Southeast Asia. And the country is also getting increasingly intertwined with the second-biggest economy in the world – China.

"Bilateral relationship between China and Indonesia is growing at a steady pace with lots of mutual respect and trust, especially so under the helm of President Xi Jinping and President Joko Widodo, as President Jokowi had reiterated in many international summits, expressing his desire that Indonesia wishes to seize on the momentum of the Belt & Road Initiative," says Will Fung, senior foreign counsel at Grandall Law Firm.

Fung believes that Indonesia will focus on infrastructure development and connectivity in the next decade or two, citing examples such as the Jakarta-Bandung high-speed railway (HSR) project, and that such cooperation will certainly boost the economic ties between the two countries.

"We believe that the relationship between China and Indonesia is getting even better in the past years. From our perspective as corporate lawyers, we

have seen a lot of investment made from China to Indonesia, either entirely owned by Chinese investors or jointly owned by Indonesian investors," says Robert Hasan, an associate at Ivan Almuida Baely & Firmansyah Law Firm (IABF).

Hasan notes that the chief of the Indonesia Investment Coordinating Board (BKPM) recently mentioned that "over the last five years, China has gone from being the 13th largest international investor in Indonesia to arguably number one today."

Patrick Wang, managing partner at T&C Law Firm, observes that there are a lot of Chinese domestic companies going to Indonesia to invest in, or enter into joint ventures in, different industries like mining, manufacturing and infrastructure.

"In terms of investment, in just over five years, China has risen from being the 12th largest source of foreign investment in Indonesia to now being the third-largest, after the United States and Japan. In the past five years, the amount of newly signed contracts and turnover of completed projects in Indonesia by Chinese players have increased by 2.16 times and 1.92 times respectively," says Fung.

BOOM FROM THE BELT

One major factor driving this growth in investment is China's ambitious Belt and Road Initiative (BRI) to build connective infrastructure around the region.

"Since the promotion of BRI began in 2013, China has been the largest trading partner of Indonesia for many years, and its advantage is becoming increasingly obvious. In 2016 alone, China was not just the largest import market but also the largest export market for Indonesia. In the first half of 2018, bilateral trade between China and Indonesia increased by 28 percent year-on-year reaching \$37.4 billion," says Fung.

"There are solid reasons to believe that China will soon become the largest foreign investor in Indonesia in the next 10 years, as BRI and 'maritime power' have given the opportunity for the two nations to align their respective strategies," Fung adds.

According to statistics from China's Ministry of Commerce, China's direct investment in Indonesia totalled \$1.682 billion in 2017. By the end of 2017, China's stock of direct investment in Indonesia was \$10.539 billion.

Observers say the number of Chinese enterprises seeking investment cooperation in Indonesia is increasing, covering an increasingly wide range of fields, and large-scale investment projects keep emerging. The main areas of Chinese investment in Indonesia include mining and metallurgy, agriculture, power, real estate, home appliances and electronics, and digital economy.

Legal professionals are seeing evidence of this through their portfolio of clients.

"In terms of the sectors--natural resources, mineral and industrial. Raw materials like cement manufacturing," says Wang.

Indonesia's volatile political scene its elections might have put off some investors previously, but now that the elections are over, things are improving.

"Indonesia is a multi-ethnic and multi-religious country. Political stability and multi-racial relations would be one of the issues of concerns to Chinese investors," says Fung.

"We believe that the Belt and Road Initiative may bring more impact to Indonesia in the upcoming years as the presidential election process in Indonesia has been completed, which certainly gives more confidence to the foreign investors (including from China)," says Hasan.

He cites the Jakarta-Bandung high-speed railway being built by a Chinese consortium and some Indonesian partners as an example of closer cooperation via the BRI.

But Chinese investors must be careful to not rock the boat unnecessarily.

"Chinese enterprises and their seconded senior management personnel should fully respect the religious beliefs (being the largest Muslim nation in the world) and customs of local residents, do as the Romans do and carry out social activities in accordance with local etiquette standards, and not be seen as a threat to seize the economy pie with the locals," Fung cautions.

OPPORTUNITIES AHEAD

Going forward, there will be room to expand for Chinese companies, and explore new fields of opportunities.

"China and Indonesia can promote more complementary industrial cooperation in resources, minerals, fisheries, manufacturing and agriculture. Indonesia is rich in palm oil, coal, nickel, natural gas, oil and other mineral resources, as the domestic growth within China increases, China would certainly need and will indefinitely increase its imports on such commodities from Indonesia," says Fung.

"On the other hand, Indonesia may require capital and technology inflow to assist in the development of its very own enormous potential for growth. In this regard, China can offer real and substantial assistance and cooperation for the processing and utilisation of resources and energy in Indonesia."

Fung feels China is both able and willing to provide better technologies for Indonesia's agriculture and fisheries sectors.

Others say China is eager to export some of its innovative tech business

models to an untapped market like Indonesia.

Hasan believes the Chinese investments in Indonesia is heading to the field of information technology, especially in the field of P2P and equity crowdfunding. This is about the issuance of Chairman of Financial Service Authority (OJK) Regulation No. 37/POJK.04/2018 of 2018 regarding Equity Crowdfunding based on Information Technology at the end of 2018 (i.e. 31 December 2018).

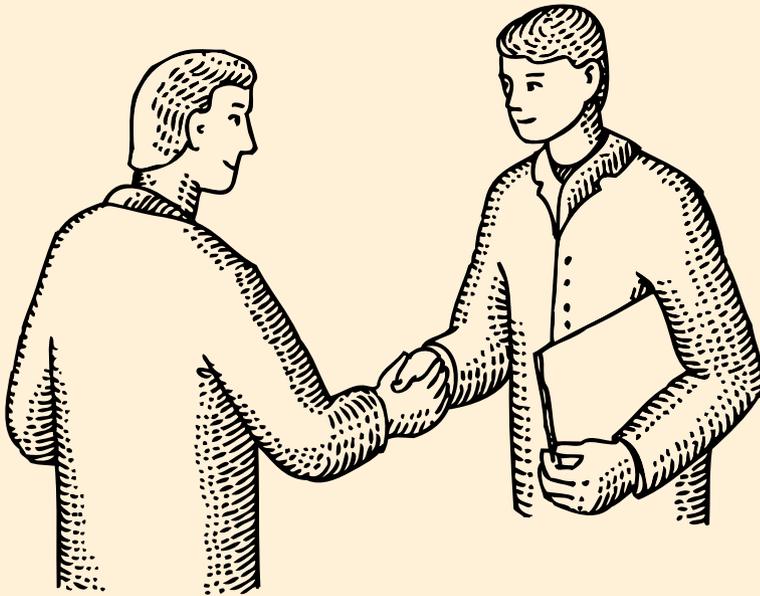
"We have seen in the past that some Chinese investors requesting legal advice mainly on: (i) construction (EPC) for power plant; (ii) the business activities of lending and borrowing money services based on information technology (commonly known as peer-to-peer lending or P2P); and (iii) application services and/or content through internet services (OTT Services)," says Hasan.

But he says that OTT services have not been regulated in Indonesia. "There is only a Circular Letter No. 3 of 2016 regarding the Provision of Application Services and/or Content through Internet (Over The Top) (the MOCI Circular), which was issued with the purpose to give understanding to the OTT services providers and telecommunication providers to prepare themselves to comply with the regulation of the OTT services which currently is being prepared by the Ministry of Communication and Informatics," Hasan adds.

"Under the MOCI Circular, the OTT services may be provided by foreign individuals or business entities under the condition that they must establish permanent establishment in Indonesia based on the prevailing regulations in the area of tax," says Hasan.

Once the world's factory, China's shift away from that role may soon fall to Indonesia.

"With China's manufacturing industry aiming to relocate and shift their production lines in the ASEAN region in large numbers, Indonesia may wish to accommodate, formulate and promulgate on more favourable policy for their foreign direct investments, this would certainly result in helping the creation of more jobs for Indonesians at large," says Fung. 



UNCHARTED TERRITORY

The era of the gig worker is well and truly upon us. As outsourced talent and temporary workforces grow increasingly common, businesses to have greater flexibility than ever before when it comes to staffing arrangements. However, questions remain as to whether Asian jurisdictions have the legal frameworks in place to keep up with this brave new world. BY ELIZABETH BEATTIE

■ A 9-to-5 deskbound office job that ends when staff leave the physical confines of an office is quickly becoming a hazy relic of the past, as is staying in full-time roles for the entirety of one's career. Gig workers, or temporary employees who contract with organisations for short-term engagements, are part of a global trend, and one that is rapidly growing.

As the nature of work radically changes, companies and workers are entering uncharted territory as they negotiate new relationships and arrangements. But while the face of employment has shifted in recent years, the letter of the law remains intrinsically tied with traditional employment arrangements, often leaving gig workers with scant protection, health benefits or retirement funds.

While in Asia, a few markets have begun to address this and are slowly making progress – in Korea, the Supreme Court in 2006 adjusted its criteria around employment relationships to be more reflective of the increasingly flexible means of employment born from the gig economy, for example – this is far from the norm.

Nevertheless, despite the general lack of preparedness from a policy perspective, when it comes to the gig economy, workers continue to pursue these forms of employment. After all, they also come with greater flexibility and place employees in the driver's seat when it comes to deciding how and when they want to work.

"The general trend towards flexibility is really growing," says Jennifer Van Dale, Eversheds Sutherland's Hong Kong and Asia-Pacific employment head. "It's not

just for working parents. We saw it with millennials, we see it with Gen Z. There are certain generational differences in what people expect and what they're looking for in work, and this has contributed to the overall trend."

But while there is little doubt the ubiquity of such roles is on the up, Van Dale says in Hong Kong, Singapore and across other Asian markets, "in terms of legislative change, there hasn't been that much of an impact yet."

"In most places in Asia, there are two legal categories for people who provide services. They are either employees or independent contractors. In some other places, particularly in Europe, there's an intermediate category which is sometimes called 'a worker', or 'a dependent contractor', or similar. This is a hybrid where the law recognizes that the individual depends on the company (the "employer") for most of the individual's income or livelihood. They don't have employment status but they will have additional rights to a "mere" independent contractor."

"For example, they might receive some entitlements that employees get, but they wouldn't necessarily have all the protections that employee have, such as for unfair dismissal," she adds.

While there are a few exceptions, typically in Asia this intermediate category has yet to make an appearance in legislation resulting in people having to fall into one of two categories "either they're an employee, or they're an independent contractor," Van Dale explains.

This parochial form of categorization doesn't appear to be set to change in the immediate future. "I haven't actually seen much in terms of policy that is really making a difference in any meaningful way. I've spoken to some very senior secretarial-level individuals in Asia and it's fair to say that most are in a 'wait and see' mode," says Van Dale.

MINDSET SHIFT

Duncan Abate, head of Asian Employment and Benefits Group at Mayer Brown, tells *Asian Legal Business* that while contracts may have not undergone radical changes, the gig economy has been responsible for something of a shift in mindset.

“The gig economy has more impacted the way employers think, and how they operate, rather than just contracts. Employers look at their business model and they look at ways in which they can be innovative, concerning using employees or individuals, and then only then do they try to put that down in the form of employment contracts.” — Duncan Abate, Mayer Brown

“The gig economy has more impacted the way employers think, and how they operate, rather than just contracts,” Abate says. “Employers look at their business model and they look at ways in which they can be innovative, concerning using employees or individuals, and then only then do they try to put that down in the form of employment contracts.”

While this affords businesses and their staff greater agility and flexibility, it also protects businesses legally. “In the gig economy, in a true gig situation, they’re not employees. They’re independent contractors. Largely because you don’t have mutuality of obligation. They don’t need to turn up for work at any given time,” Abate explains.

“A lot of that legislation was created at a time when work was very easily defined. Nobody envisioned Uber drivers or Deliveroo workers, or things like that. If you were an employee, it was very clear; you got up in the morning and you threw your satchel over the back of your shoulder and wandered off to work in a factory, or into an office.”

A TIME FOR REEVALUATION

While much employment legislation in Asia was clearly authored in a different era, the lack of clear updated policy is placing the pressure on workers and businesses to figure out the blind spots. The burning questions remain – what will new legislation look like, and is it actually necessary?

Abate says there are two common arguments around potential policy change. He expands on these: “One, no you

don’t because individuals necessarily have massive freedom because they’re not employees, they’re not beholden to an employer. There is no mutuality of obligation by definition, and therefore you don’t need to prescribe time off for them because they are their bosses.” he says.

“There is a state argument, however, that you need to protect individuals against themselves. People shouldn’t be allowed to work as an Uber driver for twenty hours a day, 365 days a year. Also, you should mandate that people have put money into pensions to ensure they’re not going to be a burden on the state,” he adds. While there are no concrete changes as of yet, Abate notes this poses “a really interesting question.”

But this also sparks deeper considerations around benefit expectations more generally, given the changing dynamics of work. Who should be responsible for providing benefits, such as pension and healthcare, for workers – businesses, as they traditionally have been, or should this be a matter for politicians to tackle?

“That’s the million-dollar question,” Van Dale says. “I don’t think that the

starting point should be the legal analysis where we figuring out which category people go into. The legal category is just a tool to achieve a policy objective. A government or a society decides what it wants people to have and what is considered a basic entitlement. For example, we recognized that people can’t work their whole lives and will need some money when they’re old, so we set up occupational pensions. They generally work in the same way all over the world: during your employment you and your employer put money away, and then you have that money when you’re old. Setting aside state pensions, the fact that that is connected to employment is simply a result of history.”

But while this arrangement was established in the past, Van Dale says the shift in employment status provides an opportunity to re-evaluate the rights of workers more generally.

“Today, we have the opportunity to pick this apart and ask, what do we want people in our society to have? When do they get it? For example, do we want to have universal healthcare? Do we want everyone to have some kind of retirement benefit? Do we want everyone to have at least two weeks off every year so we can rest? Do we want people who have caring responsibilities to be able to continue to work and still meet family needs? Whatever that benefit is, it is a policy decision,” she adds. “The next question is how we implement it and who pays for it. We don’t have to implement it through employment. I think we’re getting it backwards if we start the analysis by deciding whether an

individual is an employee or independent contractor. Rather than having the courts figure out which legal bucket people should go into, I think governments and policy makers should be thinking about new ways to ensure that people get the benefits that a society is offering, because it doesn’t necessarily need to be through a job. Once we are at that point, whether a gig worker is an employee or an independent contractor will not be an important question.” 



The Manpower Law in Indonesia is principally governed under Law Number 13 of 2003 on Manpower (“Manpower Law”)

1. What are the different categories of workers in Indonesia?

The Manpower Law generally recognized 2 (two) types of workers in Indonesia:

A. Permanent Worker

- (i) is employed for an indefinite period, continuous work and permanent in nature; and
- (ii) is entitled to termination packages which primarily consists of severance pay, service reward pay and replacement rights.

B. Contracted Worker

- (i) Is employed for a definite period, for the works completed at once, or is temporary in nature, completion of the work is less than three years, seasonal work or work related to a new activity or product or an additional product that is experimental phase; and
- (ii) is entitled for termination compensation in the form of the remainder of his monthly salaries for the rest of his employment period, if there is still any left, provided that the employer terminates the contract.

The Manpower Law recognizes the permanent worker as the default position. If there is any contravention in any of the requirements of a contracted worker, the law would gravitate towards causing such worker to be a permanent worker.

2. What formalities are required for an employment agreement to be valid?

An employment agreement in Indonesia can be made verbally or in writing, however, we normally suggest the employment agreement to be made in writing. Any employment agreement must be made based on a) the agreement of both sides; b) the capability or competence to take legally-sanctioned actions; c) the availability/existence of the job which both sides have agreed about; and d) the notion that the job which both sides have agreed about does not run



Ilya Sumono

Founder and Partner

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against public order, morality and what is prescribed in the valid legislation.

A definite employment agreement must be executed in Indonesian language and in writing. If the worker is foreigner, the employment agreement must be executed in bilingual, where the Indonesian language shall prevail. Further, foreign workers normally be deemed as an employment for definite period. An employment with definite employment agreement shall be registered at the Ministry of Manpower Office (“MoM”).

The employment agreement must contain at least: a) name, address and line of business of the employer; b) name, sex, age and address of the worker; c) the occupation or the type of job; d) the place, where the job is to be carried out; e) the amount of wages and how the wages shall be paid; f) job requirements stating the rights and obligations of both the employer and the employee; g) the date when the agreement starts to take effect and the period during which it is effective; h) the place and the date where the employment agreement is made; and i) the signatures of the parties involved in the employment agreement.

3. What are the requirements and restrictions on hiring foreign workers?

There are several restrictions on hiring foreign workers as expatriates in Indonesia.

Only for a Specified Period, Certain Position and Employer Restriction

An expatriate can only be hired as a contracted worker for certain positions as permitted under the Manpower Law and regulations. The expatriate is prohibited to hold any position, which is related to human resources matters.

In general, foreign investment companies could hire the expatriates subject to certain restrictions. The employer must appoint a local Indonesian worker to accompany such expatriate for the purpose of knowledge transfer (not applicable if the expatriate occupies certain positions, such as director or commissioner).

The employer must pay an expatriate fee of currently USD 1,200.

Governing Authorities

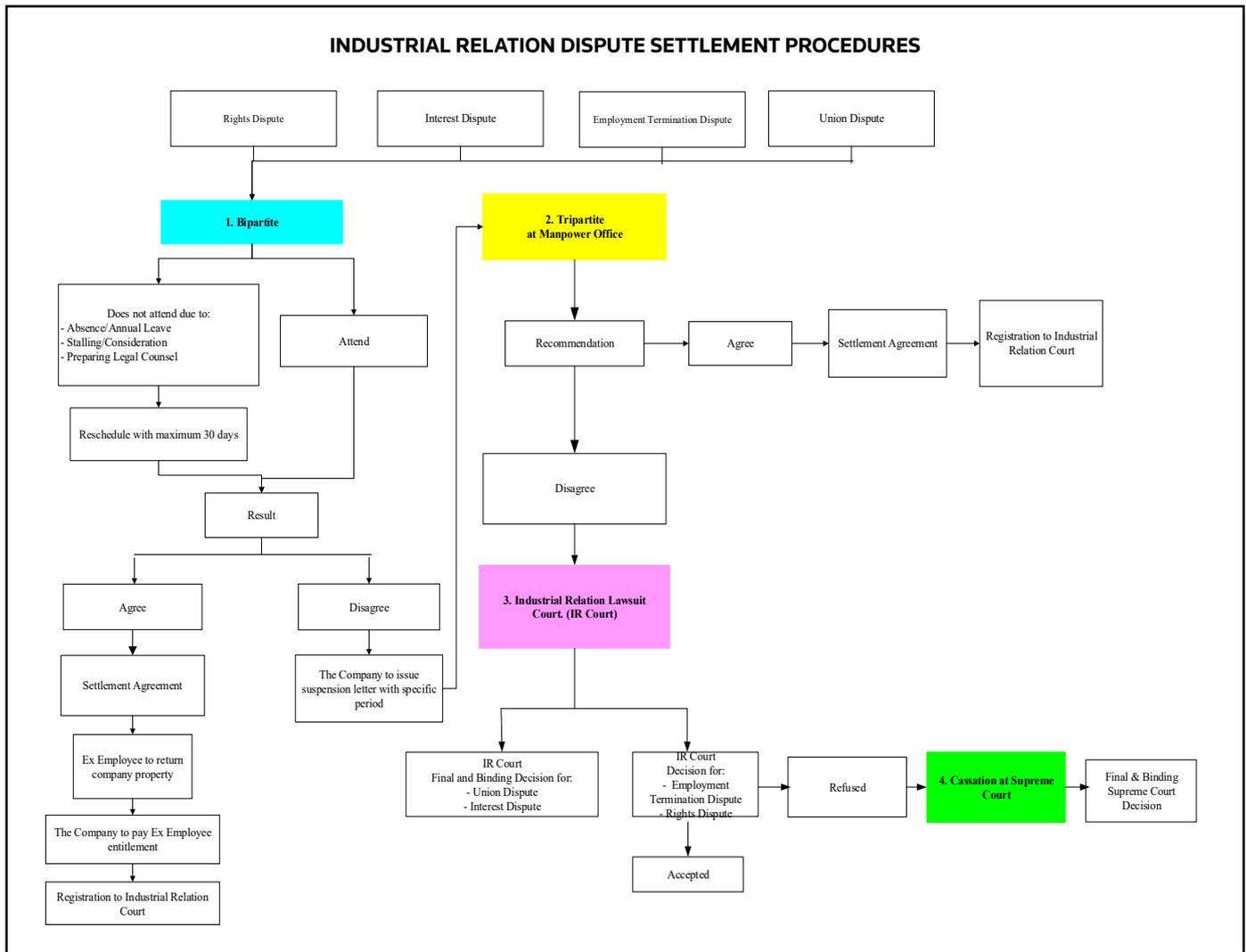
Hiring the expatriate must be liaised with three governing authorities, which are:

- (i) Ministry of Manpower (“MoM”) related to the process of Manpower Plan;
- (ii) Ministry of Law and Human Rights (“MoLHR”) to proceed the expatriate’s immigration documents as required to enter and stay in Indonesia;
- (iii) Ministry which governs the employer’s activity of which the expatriate is employed (“Technical Ministry”). Certain employers which engage in line of businesses which are highly regulated usually require specific approvals from the Technical Ministry, such as in the extractive industries or financial institutions.

Permit Documents

The employer shall be responsible in obtaining the approval to the Manpower Plan from the MoM. The Manpower Plan legitimizes the employer to employ the expatriate. Once the Manpower Plan is secured, the employer will request a Notification (Notifikasi) from the MoM

INDUSTRIAL RELATION DISPUTE SETTLEMENT PROCEDURES



to proceed the immigration documentations from the MoLHR, such as Visa for a Limited Stay Permit (VITAS). For foreign investment companies, their foreign shareholders can occupy the positions of a director or a commissioner without a Manpower Plan.

Online Processing

All the permit documents are processed online in the MoM, MoLHR and the Online Single Submission (OSS) systems.

4. How is the outsourcing regulated in Indonesia?

There are 2 (two) outsourcing concept in Indonesia:

- (i) Contract of Work, is an agreement made by and between assignor company and assignee company;
- (ii) Labor Service Provider, the agreement is made by and between the assignor company and the labor service provider company.

The main difference between those two is the type of work which is going

to be assigned. Type of work which can be outsourced through Contract of Work must fulfill the following requirements: (i) conducted separately from the primary activity; (ii) conducted with direct order or without direct order from the assignor; (iii) it must be categorized as a supporting activity in general under business flowchart set out by business association; (iv) does not directly hinder the production process. To put it simply, the only activities that permitted to be outsourced are activities which are published as supporting activities under the business flowchart set out by association.

Type of work which can be outsourced through labor service provider is not set through business flowchart but already stipulated specifically by law, such as: (i) Cleaning; (ii) Catering for workers; (iii) Security; (iv) Supporting Worker in Mining and Oil & Gas Industry; (v) Transportation service for workers. However, there are discrepancies between the work limitations as set out by the Manpower Law and the MoM

decreed. The MoM decree limits the works only to the abovementioned.

5. How is the process of Industrial Dispute in Indonesia?

There are only 4 type of industrial relation dispute in Indonesia: (i) Rights dispute; (ii) Interest dispute; (iii) Employment termination dispute; (iv) Union dispute. The disputes are resolved through the mechanism commencing from bipartite, tripartite until the industrial relation court. For a tripartite, the disputants can opt between mediation, arbitration and conciliation. Normally, however, the parties will choose mediation for a tripartite dispute.

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OPPORTUNITIES OFFSHORE

The world is facing a number of important economic challenges, including the distinct possibility of a no-deal Brexit, and a sharper slowdown in China as a result of the ongoing trade war with the U.S. However, for offshore law firms the outlook has remained bright, with work flowing in from both traditional and non-traditional sources. BY ASIAN LEGAL BUSINESS

■ The global economy is not in a good state right now. While economic growth remains sluggish worldwide, businesses and industries have several other challenges to contend with. These include the spectre of Britain crashing out of Europe without a deal, and the ongoing trade war between the U.S. and China. However, it is not all doom and gloom from the perspective of offshore law firms, who see a steady influx of work from more established industries, as well as fast-growing new sectors in Asia.

SURGING SECTORS

Fiona Chan, partner in offshore law firm Appleby's Hong Kong office, notes

a marked increase throughout various sectors.

"In particular, banking, (re)insurance, medical, pharmaceutical and biotech. These resulted in a marked increase in our offshore activities relating to different practice areas, such as banking & finance, corporate, IPOs, funds, insurance, private client and trusts and technology & innovation," says Chan.

Lishi Fong, partner in the banking and finance practice of Harneys' Singapore office, sees an increase in activity in the funds space. In particular, there has been a growth in several credit funds and commodities funds, which she thinks is the result of Singaporean

government introducing stimuli for foreign investment.

"Over the years, the government has introduced many policies to attract foreign direct investments (according to a report produced by the Economic Development Board of Singapore, foreign direct investments jumped from \$62 billion in 2017 to \$77 billion in 2018) and Singapore is seen to be politically stable with a reliable legal and regulatory system," says Fong.

"In 2018, Singapore introduced the Variable Capital Companies Act, which is aimed at providing fund managers with an alternative form of corporate vehicle for use as a collective investment scheme.



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With the variable capital companies (VCC) framework, more fund managers may look to Singapore when establishing their fund," Fong adds.

Maggie Kwok, her colleague in Hong Kong, shares similar observations.

"In APAC, we are seeing healthy growth in fund launches in both the fintech and blockchain space. A handful of cash-rich and sovereign-backed asset managers and fintech specialists in the region have, in a short space of time, been occupying themselves with setting up their investment fund platforms to allow interested participants to tap into their expertise and technology," says Kwok, a partner in the investment funds and regulatory practice of Harneys' Hong Kong office.

Philip Graham, partner in the investment funds and regulatory practice in Harneys' BVI office, is aware of "a boom over the last three years" in three specific areas within the crypto-asset space, namely: (i) crypto-asset focused fund launches; (ii) initial coin offerings (ICOs) and in more recent times, initial exchange offering (IEOs) and security token offerings (STOs); and (iii) the establishment of digital currency exchanges.

He's certainly not alone in his view. Geoffrey Tang, senior legal manager in Ogier's Hong Kong corporate team, notes the cryptocurrency and blockchain-based technology sectors are seeing a lot of interest in the region and particularly in Singapore.

The general fascination with blockchain alone is enough to drive the growth. However, there remains much accompanying nervousness about it.

"Anecdotally, most people accept that in certain ways, the rise of blockchain will fundamentally change every industry on the planet. Digital currencies are just a small part of it, but with the general awareness of Bitcoin and other altcoins, they lead the charge for the blossoming disruptive force," Graham explains.

"Clearly, growth is also driven by valuation and with the wildly fluctuating cryptocurrency prices, investors remain fascinated by this space, if not slightly terrified."

Besides blockchain, Ian Mann, Harneys' Asia managing partner and

"Although the reform of regulatory regimes in Asia to facilitate capital raisings by companies in emerging and innovative industries is a welcome one, most of these expanded regimes in Asia have only been in place for a short time."

— Geoffrey Tang, Ogier

the long-term head of its litigation and restructuring practice group in Hong Kong, thinks e-commerce has been a big driver of fintech in the region. However, it might be slowing down now.

"In Asia, basic e-commerce payment gateways combining direct-to-market customer participation with fully branded or 'white-label' full-service delivery has driven early fintech innovation. The market is probably slowing after initial low barrier to entry participation saturation," he says.

CHALLENGES

Despite the interest, Tang says regulators have been adopting a more cautious approach given the perceived volatility of the crypto/blockchain sector.

Graham is even more vocal, naming "regulation, regulation, regulation" as the key hurdle in this area.

"As with any new industry, the global regulatory bodies are desperately trying to bend and flex their existing laws to try and meet the relevant requirements in this space. But largely failing miserably. This will be a constantly evolving story through time, but at the moment, they simply cannot keep up with the

evolutionary process, which means they constantly over or under regulate the area," says Graham.

"This leads to a lot of the protagonists regularly "jurisdiction shopping" to find the most suitable home for their product. Some wish to operate entirely without regulation and there are jurisdictions which offer that. Some wish to operate squarely within a regulatory framework, but need those laws to be carefully thought through and allow enough flexibility for their product to flourish," he adds.

To allow space for growth but to maintain enough control, regulators have created testing grounds via sandboxes, particularly for the fintech industry.

"Regulators in APAC have demonstrated their commitment and drive for innovation by adopting regulatory sandboxes, which are formal programs designed to test financial services and business models with actual customers, subject to certain safeguards and oversight," notes Kwok.

Regulatory sandboxes have been launched in various jurisdictions in the region including Hong Kong Securities and Futures Commission's Regulatory Sandbox, Singapore's Fintech Regulatory Sandbox and Japan's Fintech Proof of Concept Hub.

However, regulators have been more accommodating with other industries.

"As the number of listed companies from more established sectors increases, a number of jurisdictions in Asia have been expanding their listing regimes to facilitate the listing of companies from emerging and innovative sectors," says Tang.

"The growth of the biotech, fintech and blockchain-based technology sectors in Asia broadly dovetail with the growth of these sectors globally as investors seek higher potential returns and to diversify their investments. The acknowledgement by regulators in Asia of the need to adapt their regulatory regimes to facilitate capital raisings by companies in these sectors to remain globally competitive has also served to drive this growth."

Examples of this include the expanded listing regime for biotechnology

9 locations

5 laws

1 firm



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companies in Hong Kong, who have traditionally had difficulty meeting the financial eligibility tests for listing. And companies with dual-class share structures with weighted voting rights in Hong Kong and Singapore, who have traditionally not been able to list without collapsing such structures.

"Although the reform of regulatory regimes in Asia to facilitate capital raisings by companies in emerging and innovative industries is a welcome one, most of these expanded regimes in Asia have only been in place for a short time," says Tang.

Thus, he says some companies are reluctant to be the "first mover" to list under the expanded regimes and are waiting for market practice to settle and develop first.

Regulatory development is a key topic in the challenges of other booming sectors too.

Fong says the VCC is new and has not been tried and tested. Although the legal framework for setting up the VCC is in place, there may be practical issues which will only be known when one is setting up the VCC.

Prabha Sasidharan, senior associate at Appleby, says the legal hurdles for any new industries are often linked to the development of the legal and regulatory regimes of any relevant country.

For instance, the SFC in Hong Kong had only issued guidelines to regulate digital assets towards the end of 2018 by imposing licensing conditions on intermediaries who manage or distribute funds investing in virtual assets of more than 10 percent of their portfolio, irrespective of whether virtual assets meet the definition of "securities" or "futures contracts."

These include guidance on custody requirements, portfolio valuation and risk management. The issuance of eight digital bank licenses by the Hong Kong Monetary Authority only occurred in 2019, after years of discussions.

"All these proactive steps are welcoming signs that the jurisdiction is positively defining the regulatory framework within which businesses may operate, but further development and refinement are required for such

"In 2018 Bermuda introduced a new legal and regulatory framework designed to govern and regulate initial coin/token offerings and the digital asset business and InsurTech sectors. The Cayman Islands and the BVI both have flexible systems and are well placed to become an attractive destination for technology entrepreneurs."

— Prabha Sasidharan, Appleby

frameworks to become mature," says Sasidharan.

ADVANTAGES AND OPPORTUNITIES

But Fong believes that Cayman funds will co-exist with VCCs, given the familiarity international investors have with the Cayman fund structure. Therein lies the opportunity for offshore firms.

"There will be more cross-selling opportunities between offshore firms and onshore firms as we will have clients wanting to explore the VCC structure and clients of onshore law firms may want to explore the Cayman or Luxembourg fund structure. We play a supporting counsel role in the funds formation space and we will continue to work closely with the onshore counsel to support our clients and provide them with innovative and practical solutions," says Fong.

In comparison with Asian jurisdictions, Sasidharan says there are less legal

hurdles in Bermuda, the Cayman Islands and the BVI.

"In 2018 Bermuda introduced a new legal and regulatory framework designed to govern and regulate initial coin/token offerings and the digital asset business and InsurTech sectors. The Cayman Islands and the BVI both have flexible systems and are well placed to become an attractive destination for technology entrepreneurs," says Sasidharan.

Ogier's Tang describes the use of offshore jurisdictions by companies in the fintech and blockchain-based technology-based sectors as "exceedingly popular."

"Many of the established offshore jurisdictions (for example, the Cayman Islands and the BVI) combine tax neutrality with a stable and internationally recognised legal platform," says Tang.

For those companies from other emerging and innovative sectors that wish to come to market, the traditional advantages of using an offshore jurisdiction remain, including the flexible nature of offshore company law to facilitate the compliance with listing and ongoing requirements for listed companies; speed and efficiency in setting up new offshore entities; and robust common law legal system based on English law.

Therefore, offshore law firms are well placed to advise companies from these sectors on the advantages of using offshore jurisdictions for their businesses and navigating the relevant regulatory and legal requirements from early stage to when they come to market (and beyond).

According to Harneys, the jurisdictions of the BVI and the Cayman Islands have proved exceptionally welcoming to this line of business and as a result, offshore firms have seen a huge amount of the work in this area.

"Harneys took a pioneering role in the cryptocurrency space back in 2016 with several exceptionally talented clients from the west coast of the US, whilst all of our competitors initially took a backseat. Since then, we have launched over 100 crypto-asset focused funds across both jurisdictions with clients based all over the world," says Graham.

The firm has also claimed to be

involved with some of “the truly premier ICOs,” including the world’s largest (at the time) in 2017 when a client raised \$1.7 billion using a BVI domiciled vehicle.

“Both jurisdictions have regulators who are keen to get the relevant laws in this area exactly right and private sectors who have genuine expertise with this unique type of work. We find clients continue to come to us directly and so offshore law firms are truly at the coal-face of this industry,” says Graham.

WINNING, RETAINING CLIENTS

While the benefits of tapping an offshore legal firm are clear, the path to winning and retaining the clients is another artform of its own. Many of those that *Asian Legal Business* spoke to have a view on how to do it.

“As many companies from the emerging and innovative sectors are still early-stage companies and may not have a clearly delineated legal function, it is important for offshore firms to build

relationships early, be pro-active in considering alternative legal structures that enable their clients to achieve their commercial aims and become trusted advisers to these companies on an ongoing basis (rather than on a project to project basis),” says Tang.

Tang also cites flexibility in pricing as important as these companies may be operating under stringent budget constraints as they seek to grow their businesses.

Graham thinks showing a willingness to understand their client’s business and needs is key.

“Besides that, having dedicated teams on the ground with local network and expertise in the various regions working with the onshore regulators to ensure that the laws are suitable and appropriate. We are still at a very embryonic stage and so being nimble and pragmatic as the evolutionary process unfolds will also be crucial,” he says.

Appleby’s Sasidharan believes it

to be imperative for offshore firms to develop a clear strategy both globally and locally and provide an all-round service covering key offshore jurisdictions.

In preparation, she says that the firm has for the past few years developed a global Technology & Innovation group with a sizable Hong Kong team focusing on China, Hong Kong and Singapore.

Language skills are also a winning factor.

“Our language capabilities allow us a considerable advantage in assisting clients with a Chinese background,” says Chan. She adds that her firm can provide advice from the initial set up of corporate structures right through to complex legal analysis. And in a fast-moving sector, informing and updating clients is highly beneficial. “Our service to the clients does not end with the completion of our legal work – we continue to update clients as the law and regulation evolve, which is essential given these fast-changing industries,” she says. 

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ALB MARKS 15TH EDITION OF JAPAN LAW AWARDS IN STYLE

The 15th ALB Japan Law Awards, held at the Grand Hyatt Tokyo on June 13, was a resounding success. The event saw Nishimura & Asahi walk away with the biggest award of the night – the Japan Law Firm of the Year. The firm won in six categories, as did fellow Japanese Big Four firms Nagashima Ohno & Tsunematsu and Mori Hamada & Matsumoto.

Nishimura & Asahi also claimed the titles of Young Lawyer of the Year (for Yuki Oi), Japan Deal Firm of the Year, and Restructuring and Insolvency Law Firm of the Year. “All of us at Nishimura thank the judges and organisers for our prestigious awards, and we salute all the winners for their hard-earned achievements.”



YOUNG LAWYER OF THE YEAR
Yuki Oi, Nishimura & Asahi



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BANKING AND FINANCIAL SERVICES LAW FIRM OF THE YEAR
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These awards continue to go from strength to strength and serve to provide a fantastic highlight of the year for the entire legal community in Japan," Masaki Hosaka, the firm's managing partner, said.

Meanwhile, Nagashima Ohno & Tsunematsu won the Dispute Resolution Lawyer of the Year (for Oki Mori). And Mori Hamada & Matsumoto's haul included Banking and Financial Services Law Firm of the Year, Japan Intellectual Property Law Firm of the Year, Tax and Trusts Law Firm of the Year, and more.

Davis Polk & Wardwell, which won the International Deal Firm of the Year award, was also recognised for its role in three award-winning deals. And Morrison & Foerster was declared the International Intellectual Property Law Firm of the Year, while Simpson Thacher & Bartlett was named the Investment Fund Law Firm of the Year.

Atsumi & Sakai walked away with Overseas Practice Law Firm of the Year title as well as the Managing Partner of the Year (for Hiroo Atsumi). Expressing his delight, managing partner Hiroo Atsumi said, "It was a great honour for our firm to be selected for this prestigious award for the second consecutive year. We believe that this comes from the trust placed by our clients in us as the first



INTERNATIONAL DEAL FIRM OF THE YEAR
Davis Polk & Wardwell



IN-HOUSE LAWYER OF THE YEAR
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Hiroo Atsumi, Atsumi & Sakai

Japanese law firm to create a foreign law joint venture, including having offices overseas that are staffed by Japanese and non-Japanese attorneys serving clients together. We are thankful that ALB recognizes our long-standing policy to promote diversity."

On his personal win, Atsumi said, "I am very honoured to have been recognised as the Managing Partner of the Year. This would prove that not only the biggest law firms but also any mid-sized full-service independent Japanese law firm can win an award. I thank all our clients, colleagues and peers as well as ALB and their judges for their consideration and support. I hope this would serve as a great encouragement to other mid-sized law firms." 



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Committed to promoting diversity

In addition to having both partners and associates who are registered foreign lawyers, our firm is notable for employing women in numerous roles throughout the firm

- Asian Legal Business Japan Law Awards 2017
“Woman Lawyer of the Year”

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THE MACALLAN ALB HONG KONG LAW AWARDS SEES STRONGER LINE-UP WITH NEW JOINERS

The one-of-a kind The Macallan ALB Hong Kong Law Awards is returning for its 18th edition this year, to be held on Sept. 6 at the JW Marriott Hong Kong. The annual ceremony will continue to give recognition to the outstanding legal practitioners and finest deals from law firms and in-house teams.

This year, leading the nominations within the private practice categories are Baker McKenzie, Herbert Smith Freehills, and King & Wood Mallesons, while COSCO Shipping Ports, MTR Corporation and Telstra International top the in-house nominations.

INCREASING NEW FACES

A number of new faces feature in the event

this year. Law firms nominated for the first time include Campbells, Carey Olsen, Jonathan Mok Legal, Ella Cheong, Hugill & Ip, LC Lawyers in association with Chen & Co. Law Firm, Binnersley & Associates.

Among in-house teams, China Merchants Securities, Emperor Group, Kerry Logistics, Klook, Agile Group, Huobi Group, ANZ, HK Airlines and ICBC International entered their first submissions this year.

SUBMISSIONS GROWING

A total of 600 submissions has been received from over 120 law firms and in-house teams. The Woman Lawyer of the Year continues to be the blockbuster category with 39 nominations, followed

by Taylor Root Award Young Lawyer of the Year (30) and Technology, Media and Telecommunications Law Firm of the Year (22).

JUDGING PANEL

Our panel of judges comprises more than 30 esteemed individuals from legal academia, in-house teams, law firms, legal associations and non-profit organisations in the region. Each judge will assess only in the categories that does not have any conflicts of interest to maintain absolute fairness.

As a result of enthusiastic participation, this year's event is definitely worth looking forward to. We hope to see you there! 

TO SEE THE SHORTLIST, PLEASE VISIT WWW.LEGALBUSINESSONLINE.COM/AWARDS/HONGKONG-LAW-AWARDS-2019

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In 2018, The Macallan unveiled its new £140 million distillery and visitor experience on its Speyside estate, increasing investment in whisky, warehousing and in The Macallan's signature sherry-seasoned oak casks. The striking contemporary architecture, cut into the slope of the land, takes its cues from ancient Scottish hills. It stands nearby Easter Elchies House, the Highland Manor built in 1700 which has been The Macallan's spiritual home since 1824. The new distillery marks an important milestone, recognising the significant journey of The Macallan since 1824 and marking an exciting new chapter in the evolution of the luxury single malt.

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HOW TO PRACTICE LAW LIKE AN OLYMPIAN BY NATE KLEMP

Being a successful lawyer requires an elite-level mind. It demands extreme focus, attention to detail, innovative thinking, and the ability to think quickly amid intense stress. Each day, lawyers run the cognitive equivalent of a marathon.

So why don't modern attorneys then train their minds the way elite level athletes train their body? Why are these mental qualities assumed rather than cultivated and trained?

Part of the reason has to do with time. Unlike a professional athlete, who has dedicated time each day for stretching, strengthening, and conditioning, most lawyers face an unrelenting list of daily events and to-dos. They simply don't have the time to train their mind for peak performance.

Another part of the reason has to do with an inherited assumption from past generations of lawyers. Call it the "that's the way it is" assumption. Unfortunately, this assumption about human nature extends far outside of the legal world.

THE PLASTIC BRAIN

The problem, of course, is that this assumption is both misleading and dangerous. It's misleading because it flies in the face of an emerging mountain of neuroscience research showing that our mental states and abilities are less like *plaster*, more like *plastic*. They're malleable. We can change our baseline level of focus, resilience, and emotional well-being through intentional practice and training. What we've come to see is that the mind is no different from any other muscle in the body. Through regular practice, it can be trained, sharpened, and transformed.

And this assumption isn't just misleading, it's also dangerous. In a climate of rising rates of attorney anxiety, depression, burnout, and suicide, this familiar platitude hides

something important. It masks the fact that attorneys can take proactive steps to prevent burnout. It also conceals the reality that the "that's the way it is" assumption leaves many talented attorneys feeling hopeless when they encounter a rough patch in their career and can't sustain the demands of their job the way they once did.

THE LEGAL OLYMPIAN

The good news is that we can use simple, time-efficient habits to begin practicing law less like assembly line workers and more like Olympic athletes. Here are two powerful practices for making this shift:

Sprint and Recover — One of the most powerful tools to shift to more positive habits comes from the work of Tony Schwartz at The Energy Project. It's the simple strategy of oscillating between moments of high-intensity work and moments of recovery. This is exactly what top athletes do when training for a big race. Marathoners, for instance, don't run marathons every day to train for a marathon. Instead, they alternate between intervals that require intense exertion and periods that allow for recovery.

How can attorneys sprint and recover? Clearly, the constraints of the legal profession often don't allow for taking long breaks or for working with high intensity for 24 minutes and then taking 6 minutes off. You can, however, alternate between more and less intense tasks. You can also use short breaks — your walk into the office, a trip to the bathroom, or an Uber ride to a client — as times for intentional recovery, for taking a couple of breaths and relaxing, even if only for a moment.

Notice-Shift-Rewire — Another tool that's been developed for building greater focus, attention, and resilience in the

midst of the chaos of daily life is called Notice-Shift-Rewire. The basic idea is that most of us spend the bulk of our day "mind wandering," lost in unproductive and stressful thoughts about the past and future, distracted from the task at hand. This ordinary state that psychologist Linda Stone calls "continuous partial attention" is the mental equivalent of eating junk food. It results in mental dullness, negative rumination, and a lack of razor-sharp focus and attention.

To train your mind to begin shifting out of this state, the first step is to simply *Notice* that you're lost in thought or distraction. Then, the next step is to *Shift* — to redirect your attention to some other, more productive, mindset. You can do this by shifting your attention to the task at hand, becoming more present, or taking a moment of gratitude. The final step is to *Rewire* — to savour this powerful shift by taking just 15 seconds to further build the mental habit of directing your attention more skilfully.

The goal of these tools is to interrupt the flow of ordinary habit. For most of us, after all, the urge to be responsive and complete our tasks is so strong that we easily overlook the value of training our most precious resource — our mind. And yet by cultivating these skills, we can begin to raise our baseline state of focus, mental flexibility, and productivity.

With practice, we can build our level of mental and emotional fitness so that, when the next crisis or challenge comes, we're less likely to fall into the traps of anxiety, depression, and burnout. 

Nate Klemm is co-founder and Chief Innovation Officer at Life Cross Training (LIFE XT), an employee engagement programme that uses mindfulness and wellbeing to improve work performance in law.

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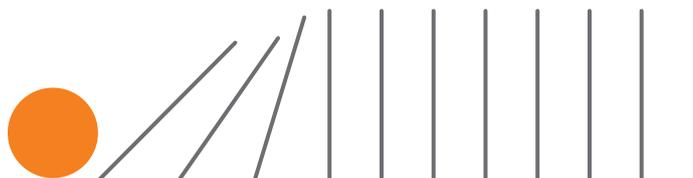


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