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ASIA EDITION

ALB TRAIL BLAZERS 2020

Spotlighting
innovation in Asia's
legal industry

PLUS

Offshore firms
assess the impact
of COVID

We break down
Indonesia's
omnibus law

China-Africa ties
continue to
strengthen



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培育商事仲裁法律后备人才
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18th CIETAC CUP INTERNATIONAL COMMERCIAL ARBITRATION MOOT COMPETITION

Invitation of Judges for the CIETAC Cup

Dear Friends and Colleagues in Arbitration,

We are pleased to invite you to act as an arbitrator in the 18th CIETAC Cup International Commercial Arbitration Moot Competition ("CIETAC Cup"). This year, the oral hearings will be conducted online during **15th-20th November, 2020**.



CIETAC Cup is organized by China International Economic and Trade Arbitration Commission ("CIETAC"), receiving support from Vis Moot, the ICC, the HKIAC and SIAC. Since 2000, CIETAC Cup has been successfully held 17 times. Last year, the 17th CIETAC Cup attracted more than 700 contestants from over 60 prestigious law schools in Mainland China, and over 150 arbitrators, lawyers and experts from over 10 countries and regions to seat as judges. The CIETAC CUP aims at fostering the study of international commercial arbitration and training future leaders in the area of alternative dispute resolution by introducing international moot court, improving students' legal accomplishment, publicizing international arbitration and promoting cooperation and exchanges between domestic and foreign arbitration communities. The CIETAC Cup is the first official Pre-Moot of the Willem C. Vis Commercial Arbitration Moot Court, using the same set of case and arbitration rules. The competition is in English.

Those of you who

- Have interest in international commercial arbitration moot competition;
- Have relevant experience in international commercial arbitration, and are able to handle English cases professionally; and
- Would like to perform the duty earnestly and diligently as an arbitrator during the competition.

are welcome to be the 18th CIETAC Cup Arbitrator (Judge). Please visit **moot.cietac.org** to register and find the calendar of events. If you have any inquiry, please feel free to email us at moot@cietac.org.

We hereby sincerely invite you to join us this year and look forward to seeing you online this November.

Yours,



**China International Economic and
Trade Arbitration Commission**

Website: moot.cietac.org

CONTENTS

34

Island of potential



COVER STORY

22 ALB Trailblazers 2020

A year of upheaval has demonstrated that law firms need to be nimble and adaptive if they are to come out of this crisis and thrive in the long run. Here are some firms that are using innovative approaches to tackle existing challenges and also make themselves future proof.

By Asian Legal Business

FEATURES

18 All in one

Lawyers say that Indonesia's new omnibus law, when passed, will strengthen the economy by increasing competitiveness, creating jobs and making it easier to do business in Indonesia.

Plus:
- *Omnibus Law in Indonesia*

26 Offshore impact

COVID-19 has derailed business plans both global and domestic, and cast a long shadow of uncertainty across businesses. For offshore law firms who typically work

nimble with their colleagues across jurisdictions, the impacts have been twofold — with both their clients, and their offices to consider.

30 Digital dispute resolution comes of age

The global pandemic has rapidly sped up technology adoption across even typically conservative industries and users, and the disputes hearing process is no exception. While for some, this has created a steep learning curve, cost efficiencies and time saved, are among the payoffs that ensure digital disputes are likely here to stay.

32 Long road back

Six months into the pandemic, law firms in Asia are still looking for ways to cope with COVID-19 and its impact.

36 Strengthening ties

Chinese investments and contracts in sub-Saharan Africa totalled \$299 billion from 2005 to 2018, according to the China Investment Global Tracker, and in 2018, China said a further \$60 billion would be invested into African nations. We speak to lawyers about what the hot countries and sectors are, and the challenges that Chinese companies face.

BRIEFS

3 The Briefing

4 Forum

9 Deals

12 Appointments

14 Q&A

16 League Tables

Plus:
- *PART TWO: Highlights of CIETAC Guidelines on Proceeding with Arbitration Actively and Properly during the COVID-19 Pandemic*

FROM THE EDITOR

This is a time to come together. As you read this, we are well into the second half of the year, a year that almost no one had envisioned, and many are still struggling to adapt to. Law firms and other service providers have been unsurprisingly hit, and as a result, we have seen a wide variety of reactive measures: the closures of certain offices, changes and delays to compensation, reduced hiring of both fresh and experienced professional and so much more. While a few firms have had the courage to come out to talk about the impact and their strategy to get around it, the majority have reacted with outward stoicism and a stiff upper lip, broadcasting PR spin about how the model remains solid and resilient and the roots are strong and deep. But let's not fool ourselves; we are in the middle of tremendous upheaval, and almost no one has a playbook to get through this. In a sense, the industry as a whole is flying blind.



RANAJIT DAM
Managing Editor,
Asian Legal Business
Thomson Reuters

At ALB, we have tried our best to chronicle the unfolding crisis, from keeping track of firms' (publicly stated) coping measures, to reporting on government intervention and help, to talking about innovative approaches of firms in finding a way around challenges thrown up by the crisis (such as in our ALB Trailblazers cover story). But we could do so much more – as could the various industry players – if we saw more openness from all parties concerned.

We are keen to push the conversation forward by highlighting the various challenges to firms, and the approaches taken to tackle them, and tell a more complete story of how the legal industry is evolving as a result of this most unusual year. And so, we'd like to hear from a greater number – and a more diverse number – of voices. To make yourself heard, please contact either myself or one of our journalists at the email addresses listed on this page.

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THE BRIEFING: YOUR MONTHLY NEED-TO-KNOW

QUOTE UNQUOTE

"THERE IS CLEAR EVIDENCE THAT A POWER BEYOND THE UNIVERSITY HAS OVERTURNED THE DECISION OF THE UNIVERSITY."

University of Hong Kong (HKU) law professor Benny Tai appeals his sacking by HKU as a result of being jailed last year for taking part in political protests.

A&O REVEALS RETENTION GAP FOR MINORITY ETHNIC LAWYERS

Allen & Overy (A&O) Black lawyers recently left its London office almost two-and-a-half years before their white peers, as it pledged to publish an annual "stay gap" to improve staff diversity. The firm practice said the retention gap, which saw Black, Asian and minority ethnic (BAME) lawyers as a whole leaving an average seven months earlier than white counterparts, was troubling for both the firm and the sector. A&O announced the move after Rare Recruitment, a diversity recruitment consultancy, found that the average BAME lawyer's tenure is about 18 months shorter than white peers across the industry.

DOMESTIC CONSOLIDATION TO DRIVE ASIA M&A REVIVAL

Domestic consolidation will likely drive the recovery of dealmaking in the Asia-Pacific region, after the novel coronavirus outbreak sent the value of mergers and acquisitions in the first half of 2020 to a seven-year low, Reuters has reported.

The total region-wide deals value fell 20 percent from the same period a year earlier to \$381.2 billion, data from Refinitiv showed. The virus has caused demand to plummet across industries such as retail and travel, making it difficult for many firms to raise new capital, if to survive at all. That has created opportunities for consolidation as bigger, better-positioned companies seek to acquire smaller or distressed peers at bargain prices, bankers were quoted by Reuters as saying.

127

Number of U.S. law firms participating in the new Law Firm Antiracism Alliance (LFAA), which intends to tackle racism in the legal industry and in government.

13

13% - Drop in average law firm revenue in June 2020 compared to June 2019, according to legal tech company Clio. That's an improvement from May, when billings were down 23 percent from the prior May, and new matter creation also rose or held steady for much of June.

IN THE NEWS

1

Dentons has closed two of its UK offices to embrace full-time remote work, according to a report in the *Law Society Gazette*. Partners and staff in Aberdeen and Watford will continue to work from home as part of Dentons' goal to push for agility in work resourcing.

2

The International Bar Association (IBA) has kicked off its new global project focusing on mental health in the legal profession in light of the COVID-19 pandemic. The first phase will include the launch of two international surveys, developed with Acritas, on the topic of mental health.

DIFFICULT CONVERSATIONS

As the pandemic drags on, redundancies as a result of COVID-19 have begun to rise in the region, with Zoom, Skype or email used at times to deliver the bad news. But employers must be careful to ensure they don't cross the line or skip necessary steps during these extraordinary times. Lawyers around Asia weigh up the risks and considerations that firms should bear in mind.

WHAT LEGAL CONSIDERATIONS DO FIRMS NEED TO BE AWARE OF WHEN LETTING STAFF MEMBERS GO DURING A PANDEMIC? AND IS A ZOOM OR SKYPE CALL THE BEST WAY TO BREAK THE NEWS?



CHUA

JACQUELINE CHUA, managing director
Jacque Law, Singapore

The company should ensure that the selection process for the retrenchment does not discriminate based on age, sex or race. There should be proper documentation to justify the grounds for the retrenchment, and why that employee was chosen. As with all terminations, the termination should be carried out in accordance with the terms of the employment contract. With most of the workforce now working from home, employees have easier access to the company's information from their homes. It is, therefore, more challenging for an employer to prevent the unauthorised usage or removal of proprietary or confidential information by an exiting employee. Following the announcement of termination, a company can consider a partial restriction of that employee's remote access to the company's network or require the employee to make a written declaration confirming the return or destruction of any unauthorised information in his or her possession. Safe arrangements should also be made for the return of physical equipment, including sanitisation of such equipment. In our experience dealing with unfair dismissal claims, we have found that many claims could have been avoided if the employees had been treated with more compassion and fairness. If a physical meeting to deliver the news of termination is not possible, a personal video-conference call would be seen as preferable to an email or letter. During that meeting, the company should clearly explain why the termination is necessary and allow enough time and opportunity for the employee to ask questions so that he or she feels heard and respected. After the call, there should be proper

written communication setting out the terms of the termination and the steps moving forward. Support channels should be readily available and communicated to the employee, and it may help if there is a designated approachable HR personnel for the employee to reach out to in the event that he or she has any questions, complaints, or requires any assistance.

AVIK BISWAS, partner
IndusLaw, India

There are three key issues when it comes to letting go of somebody in these times in India. The first and foremost is to understand that for any business operating in India, there are always both central and state employment legislations applicable to it at all points of time. A proposed reduction in force is not an exception to this rule. The second critical consideration is that Indian employment legislations classify employees into "workmen" and managers. The "workmen" employees are heavily protected by statutory law in general, and especially in termination scenarios. However, most engagement terms with managerial employees are usually governed by their executed contracts. Given these two factors, a reduction in force exercise in India must be a process which has to necessarily bear in mind statutory Central and State law as well as the category of employees that would be affected by it along with the number of affected employees - there can be various statutory obligations for employers depending on these requirements. The third and most contemporary consideration is to ascertain if the State(s) where the business is operational has any restrictions when it comes to letting go of employees on account of



BISWAS

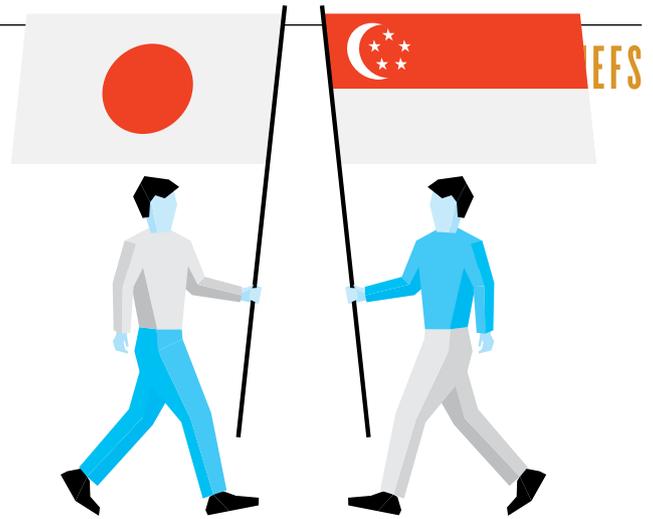


DE GUZMAN

the pandemic. As the way the discussions can be completed, there appear to be very limited options for employers other than video conferences (e.g. Zoom, MS Teams, WebEx, Google, etc). This is due to various social distancing norms and pandemic related restrictions that have been imposed on employers by the Indian government as well as individual States when it comes to operational offices.

EMERICO O. DE GUZMAN, managing partner ACCRALAW, Philippines

The Labour Advisory No.1, Series of 2020, of the Department of Labour and Employment (DOLE) states that “employees who fail or refuse to work by reason of imminent danger resulting from natural or man-made calamity shall not be ... subject to any administrative sanction”. This was issued on Jan. 13 by the DOLE secretary, before the president declared a six-month national public health emergency on Mar. 16. Twelve days earlier, on Mar. 4, upon realising the far-ranging adverse effects of COVID-19, the DOLE secretary announced through Labour Advisory 9-2020: “The adoption of flexible work arrangements is considered as (a) better alternative(s) than outright termination of the services of the employees or the total closure of the establishments.” On May 16, reiterating the preferred approach of avoiding employment terminations, the DOLE secretary reminded employers about alternative work schemes as remedies to avoid such terminations and closures: employee transfers or reassignments; reduction of work-days; job rotation; partial closure. The question then is: Can Philippine employers nonetheless resort to employee dismissals if they deem the same to be necessary? Yes, they can, even during the pandemic, as long as there are just or authorised causes for terminating the employment. Just cause refers to fault or negligence of the employee (serious misconduct, gross and habitual neglect of duties, breach of trust, commission of a crime against the employer, or an analogous cause); authorised causes involve a business decision of the employer (as a redundancy declaration, installation of labour-saving devices, retrenchment, cessation of operations) or separation due to affliction with a disease. There are however varying rules applicable to each of these causes. Generally, due process needs to be observed prior to dismissals for a just cause. Prior notices and payment of separation pay are required for authorised cause separations. Employers need not worry for as long as they have substantial evidence of the just or authorised cause and are compliant with the applicable rules. 



SINGAPORE FLAs OF JAPANESE FIRMS REFLECT INCREASED INTEREST IN SE ASIA

Even as Singapore sees tie-ups between international and local law firms coming under pressure, two major Japanese outfits have launched formal law alliances (FLAs), eager to gain a deeper foothold in the market.

First, it was Japan’s largest law firm, Nishimura & Asahi, which entered into an FLA in Singapore with local practice Bayfront Law. Shortly after that, Anderson Mori & Tomotsune announced it was forming an alliance with DOP Law Corporation (previously known as David Ong & Partners).

Market watchers say that the timing of the Singapore FLAs of Japanese law firms appears to be coincidental. Instead, they are reflective of greater Japanese investment interest in the city-state and broader Southeast Asian region. Both Nishimura and Anderson Mori say that they are looking to serve clients better.

A partner at Anderson Mori’s Singapore office points out that a number of Japanese companies have set up shop in Singapore, while “some companies like Takashimaya have even become Singaporean household names.”

And Masato Yamanaka, co-representative partner of Nishimura’s Singapore office, says there has been a growing trend of Japanese corporations choosing Singapore as their regional headquarters. The city state’s reputation as an arbitration hub was also a draw for clients, both firms say.

The Anderson Mori partner adds that establishing a strong Asia presence has always been important to the firm, which already has offices across the region. And the new arrangement isn’t part of some grand master plan, but instead a reflection of the solid working relationship with DOP Law.

For Yamanaka, the firm’s existing working relationship with Bayfront Law led them to the realisation that a formal law alliance would be a mutually beneficial arrangement.

“We have been considering the alliance since we started working with Bayfront Law, but we haven’t felt that the timing was right for our firm until now. Some ideas take a while to get to the point we are willing to move ahead, but now that we are confident that we have the right leadership, team and business case and offering for our clients, we will be moving ahead deliberately and quickly,” Yamanaka says. 



TOKYO, SYDNEY AIM TO LURE EDGY HK FINANCIAL FIRMS, BUT SINGAPORE A TOP DRAW

(Reuters) Japan, Australia and some other nations are readying incentives to attract banks and asset managers in Hong Kong that are worried about the new security law imposed by China, but finance sector experts said even if they move, it will be to Singapore.

High taxes and costs, bloated bureaucracies and cultural differences in some of these Asia-Pacific nations present formidable challenges for the Hong Kong financial institutions to relocate even partially, while Singapore's similarities to Hong Kong give it an advantage, they said, though the Southeast Asian city-state has not actively been seeking such business.

Beijing imposed a tough national security law from July 1 on Hong Kong, regional home to many global financial groups, prompting companies to reassess their operations there.

Hong Kong's financial regulators have said they had been approached by institutions concerned about the law, but they said it would not affect operations.

Nonetheless, rivals hope to benefit from the concerns.

"The political upheaval in Hong Kong has created an opportunity for Australia and Sydney to become a stronger regional financial centre," Senator Andrew Bragg wrote to Australia's Treasurer, proposing policy changes.

Japan included attracting "excellent human resources" to form a global

financial centre in an economic policy roadmap, following official remarks they could win business from Hong Kong.

Ruling party draft proposals include visa support and streamlining approvals for investment management licences.

Smaller financial centres are also trying their luck.

Busan in South Korea is offering tax breaks and rent free-offices to financial firms, while Taiwan's top regulator told Reuters he hoped the island's rule of law and democratic values would attract business.

However, the mooted reforms do not move the dial enough, say some sector professionals.

"Tokyo will, frankly, struggle to steal significant market share from, let alone replace, Hong Kong," said Steven Tran, a partner at law firm Mayer Brown in Hong Kong, who was previously based in Tokyo for four years.

Tran said Japanese taxes, together with a perceived greater level of bureaucracy, higher labour costs and less English language fluency, would make it harder for financial institutions to operate regional hubs from Tokyo.

Hong Kong's corporate tax rate of 16.5 percent is a little over half that of Japan's and Australia's, and among the lowest in the region.

Convincing senior staff to give up an international lifestyle in Hong Kong is another challenge.

"Typically, when expatriates move to Japan they need much more hand-holding than when moving to Hong Kong," said Jeremy Laughlin, a Tokyo-based business development manager at Santa Fe Relocation.

Language and cultural difficulties as well as the absence of adequate financial infrastructure could scupper South Korea and Taiwan's efforts too.

Cultural issues are less difficult for Australia, but Financial Services Council CEO Sally Loane said Australia needed to implement greater tax reform and make regulatory changes to align its fund management industry with other Asian jurisdictions to attract Hong Kong business.

Institutions have not made any major moves from Hong Kong as yet, but they are being circumspect even about discussing contingency plans as the topic is sensitive and many hope to expand in mainland China.

Lawyers and advisers say Singapore is the most likely beneficiary of any relocation, thanks to its corporate tax rate of 17 percent, a business-friendly environment, and its standing as a financial centre.

"Everyone is competing for talent but in terms of population, economic profile, and ease of doing business, Singapore is the most similar to Hong Kong," said Jason Salim, a Singapore-based analyst at risk consultancy Control Risks. 

FOR FEMALE LAWYERS, WFH ADDS PRESSURE, BUT ALSO OFFERS OPPORTUNITIES FOR FAMILY TIME

COVID-19 has transformed homes into offices, removed commutes and turned the humble kitchen table into a place of business. The pandemic is drastically turning work culture on its head in almost every way possible.

But for female professionals, traditionally expected to be caretakers, at times this transformation has created more work. A United Nations report has found gender inequalities have deepened during COVID-19. Meanwhile, according to Hong Kong's *South China Morning Post*, the pandemic has "intensified existing gender inequalities and made life harder for Hong Kong women bearing a disproportionate burden at home."

Stephanie Keen, partner in Hogan Lovells' Singapore office, tells *ALB* that the shift from office to home, has required something of a careful balancing act for caregivers.

"I think both parents – mothers and fathers – have had to juggle professional commitments during COVID as a result of children. Personally, it hasn't been 'childcare' but rather the children enjoying having the parents home and wanting more time with them," says Keen.

But given that typical travel demands that come with the job, including those of commuting and travel to meetings, have been cut back somewhat, there is more time in the day which can be utilised.

"As a parent, the struggle is wanting children to cherish such time but also manage professional commitments. During lockdown I created a routine whereby, to the extent client work permitted, I would work before they



woke, kept lunch and dinner times free to eat with them and then worked once they slept," says Keen.

"I have noticed others creating schedules which work for them. Going forward, I think firms need to be less rigid about being accessible between 9-6 but rather, subject to deadlines, permit more agility to individuals' schedules," she adds.

It's fair to say that over the past few months, through Zoom and Skype calls, colleagues have gained a greater awareness of each other's families and lives outside of the office, and perhaps even have had the opportunity to get to know their colleagues better.

Keen tells *ALB* that pre-COVID, there was a clear distinction between work and personal life. "It felt intrusive to ask too much about people's personal situations. As a woman, I have always been conscious of separating the two," she says.

"At the start of the year, my mother was very sick in hospital – she was ordinarily my caregiver so it created a juggling act with childcare, hospital visits and work. However, no one at work

was aware – it was important to me that I was seen to go to work without colleagues seeing the personal challenges I might have," she adds.

Fast forward to the lockdown, when checking in on the mental wellbeing of colleagues became less taboo.

"No longer was it considered intrusive. The contrary – colleagues were responsive to sharing some of their personal stories and challenges. And at the same time, discussed the positive opportunities COVID had created such as more family time or time to take up a new hobby," Keen

notes, adding the takeaway is no one fully understands what colleagues deal with out of the office – both positive and negative.

She predicts there will be "a greater understanding and thoughtfulness going forward", as a result of the pandemic.

But while there may be more understanding between colleagues, but the global pandemic is also reshaping other areas of the business.

"I think the 'face-time' culture has always been one of the biggest workplace hurdles for lawyers generally. The need to be in the office simply in case something crops up," Keen says.

"Obviously juggling bedtimes for families adds to their issue here but I do think this was a general issue. As a profession, we were certainly moving away from that and I think COVID will have helped with this. We also have very little visibility on how/when lawyers are completing their tasks. But the fact that matters are dealt with efficiently and with strong client satisfaction, shows we should trust our teams to deliver on an agile basis which works for them," she notes. 



GLOBAL BANKS SCRUTINISE HONG KONG CLIENTS FOR PRO-DEMOCRACY TIES

(Reuters) Global wealth managers are examining whether their clients in Hong Kong have ties to the city's pro-democracy movement, in an attempt to avoid getting caught in the cross-hairs of China's new national security law, according to six people with knowledge of the matter.

Bankers at Credit Suisse Group, HSBC Holdings, Julius Baer Gruppe and UBS Group, among others, are broadening scrutiny under their programs that screen clients for political and government ties and subjecting them to additional diligence requirements, these people said.

The designation, called politically exposed persons, can make it more difficult or altogether prevent people from accessing banking services, depending on what the bank finds about the person's source of wealth or financial transactions.

The checks at some wealth managers have involved combing through comments made by clients and their associates in public and in media, and social media posts in the recent past, these people said. The new law prohibits what Beijing describes broadly

as secession, subversion, terrorism and collusion with foreign forces, with up to life in prison for offenders.

The sources, who requested anonymity because of the sensitivity of the situation, said the broadened scrutiny of clients also applied to Hong Kong and Chinese officials who had implemented the law in anticipation of any U.S. sanctions against them.

One banker at a global wealth manager that holds more than \$200 billion in assets said the audit of its clients could go back as far as 2014 in some cases to gauge a client's political stance since Hong Kong's 2014 pro-democracy "umbrella" movement. Protesters at the time used umbrellas to shield themselves from tear gas and pepper spray deployed by police.

Reuters could not learn the identities of any people who had faced enhanced scrutiny or whether the banks had decided to take any action against people identified as politically exposed.

Albert Ho, a veteran Hong Kong democrat who runs a law firm and helps organise an annual candlelight vigil to commemorate victims of the June 4, 1989 Tiananmen Square crackdown,

said he feared that people like him may face "difficulties in the times to come."

"There's not much you can do, actually, unless you cease all your financial and banking activities in Hong Kong," Ho said, adding he had not faced additional scrutiny from his bank. He declined to disclose the name of his bank.

HSBC declined to comment specifically on the security law or any U.S. move to sanction local officials. In an emailed statement, it said, "We already have a stringent set of policies and rigorous processes in place which we apply globally."

Credit Suisse, Julius Baer and UBS declined to comment.

When asked about the scrutiny after it announced its half-year results, Julius Baer CEO Philipp Rickenbacher also declined to comment, adding the bank would continue to develop its business in Hong Kong.

In an emailed statement, the Hong Kong Monetary Authority said the financial hub implements anti-money laundering requirements "based on international standards including with regard to politically exposed persons."

"The relevant international standards and our guidance to the banking industry have not changed," the city's de facto central bank said.

China's foreign ministry, the Liaison Office in Hong Kong and the State Council's Hong Kong and Macau Affairs Office did not respond to requests for comment.

Global banks have long examined the backgrounds of their clients, including screening them for political ties, to satisfy regulatory requirements. Politicians, government officials and senior executives at state-owned enterprises, as well as their family members, are typically considered politically exposed persons.

The rules are meant to enforce laws such as international sanctions and to prevent people from using the banking system to launder ill-gotten wealth.

The banks' move to subject supporters of Hong Kong's democracy movement to a similar review comes at a time when the stance of some firms on the Chinese law has drawn scrutiny from Western lawmakers and activists.

HSBC and Standard Chartered, which have expressed support of the national security law, for example, have faced criticism from UK officials that their actions enabled Beijing to undermine the rule of law in the former British colony.

The two London-headquartered banks have said they believed the law would restore stability in Hong Kong.

Both Hong Kong and Chinese officials have said the law was vital to plug holes in national security defences, rejecting criticism from governments, including the United States and the United Kingdom, that China was violating its promise to safeguard Hong Kong's freedom for 50 years after the 1997 handover.

Some wealth managers in Hong Kong say they are worried about the regulatory and reputation risks to their banks if charges under the sweeping security law are brought against some of their politically linked clients, three of the sources said.

A top executive at a regional wealth manager said that his firm's risk and compliance team prepared a list of top 10 Hong Kong individuals identified in local media as pro-democracy sympathisers within a couple of days of the enactment of the law on July 1, the anniversary of the handover.

The executive said their firm checked its internal database to see if they had existing relationship with any

of them and were "quite relieved" to see that they didn't.

Several elements of the law deal with the seizure of assets, including provisions to give a new police unit greater powers to freeze and confiscate funds and property as well as greater powers to obtain information. Companies can also face penalties, ranging from fines and suspension to the loss of business licenses.

One investment manager at a Hong Kong-based hedge fund said he expected more people to come under scrutiny from their bankers now. "I think that if even a moderate democrat came through the door wanting to invest, you'd be thinking long and hard after this law," the fund manager said. ^{ALE}

DEALS

\$4.5 BLN**Google's acquisition of stake in Jio Platforms****Deal Type:** M&A**Firms:** AZB & Partners; Davis Polk & Wardwell; Freshfields Bruckhaus Deringer; J. Sagar Associates**Jurisdictions:** India, U.S.**\$2.4** BLN**Siemens Aktiengesellschaft's sale of shares in Siemens Ltd****Deal Type:** M&A**Firm:** Khaitan & Co.**Jurisdictions:** Germany, India**\$1.8** BLN**China Bohai Bank's IPO****Deal Type:** IPO**Firms:** Clifford Chance; Commerce & Finance Law Offices; Haiwen & Partners; Paul Hastings**Jurisdictions:** China, Hong Kong**\$885** MLN**Smoores' IPO****Deal Type:** IPO**Firms:** DeHeng Law Offices; Reed Smith; Reed Smith Richards Butler; Simpson Thacher & Bartlett; Zhong Lun Law Firm**Jurisdictions:** China, Hong Kong**\$500** MLN**Sompo Holdings' investment in Palantir Technologies****Deal Type:** M&A**Firm:** Nishimura & Asahi
Jurisdictions: Japan, U.S.**\$490** MLN**Hepalink Pharma's IPO****Deal Type:** IPO**Firms:** Davis Polk & Wardwell; Hogan Lovells; King & Wood Mallesons; Sullivan & Cromwell; Tian Yuan Law Firm**Jurisdictions:** China, Hong Kong**\$490** MLN**Carlisle Group's purchase of stake in pharma unit of Piramal Enterprises Ltd****Deal Type:** M&A**Firms:** AZB & Partners; Cyril Amarchand Mangaldas**Jurisdictions:** India, U.S.**\$404** MLN**Kangji Medical's IPO****Deal Type:** IPO**Firms:** Clifford Chance; Maples and Calder; Sidley Austin; Sullivan & Cromwell; Tian Yuan Law Firm**Jurisdictions:** China, Hong Kong



中国国际经济贸易仲裁委员会
CHINA INTERNATIONAL ECONOMIC AND
TRADE ARBITRATION COMMISSION

PART TWO: Highlights of CIETAC Guidelines on Proceeding with Arbitration Actively and Properly during the COVID-19 Pandemic

III. Specific Measures

In response to the challenges posed by the COVID-19 pandemic, the Guidelines provide specific measures for the arbitral tribunals, parties and counsels to deal with the difficulties. Those measures are understood to be formulated on the further and specific explanation of the Arbitration Rules during this special period, encouraging the tribunal and the parties to reasonably consider all available measures for them to proceed with the arbitration.¹

A. On Case Filing

The Guidelines provide that “[t]he parties and their representatives are encouraged to file their arbitration applications with the CIETAC online case filing system..., or to use postal service or other non-contact means to submit their arbitration applications.”

Since 1 January 2019, CIETAC online case filing system has been put into use to improve the efficiency of the case filing procedures. On 28 January 2020, CIETAC published *Urgent Notice on Work Arrangements during the Prevention and Control of the COVID-19*, encouraging the parties to file their arbitration applications through its online case filing system. From February to April in 2020, CIETAC received 192 applications through the online case filing system, with 300% of increase on year-on-year basis, among which the highest amount in dispute reached nearly RMB 3 billion (about USD 420 million). With the outbreak of the pandemic, the online case filing system becomes an important channel for the parties to file new cases.

B. On Service of Documents

The default service of documents in CIETAC arbitration is service by courier. The Guidelines encourage the parties to



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“agree to submit and receive arbitration documents via emails to promote efficiency in service of documents”. Following the fundamental principle of party autonomy, the Arbitration Court of CIETAC and its sub-commissions/centers will ask in the Notice of Arbitration for the parties’ opinions on the submission, receipt and service of arbitration documents by emails, and the parties are expected to give due consideration thereto. “In any stage of the arbitral proceedings, the parties are always encouraged to agree on submitting and receiving arbitration documents via emails.”²

C. On Appraisal

The Guidelines advise the parties to

consider the necessity of applying for an appraisal. Pursuant to Article 2.4 of the Guidelines, “[t]he arbitral tribunal shall decide prudently by first making a comprehensive consideration on the factors such as the irreplaceability of the appraisal, the time and economic cost for the appraisal, its effects on the arbitral proceedings and the chance of having a successful appraisal during the pandemic. The parties shall fully cooperate in the appraisal procedure as requested by the arbitral tribunal. Where an appraiser is required to attend an oral hearing, his/her attendance by video conference or other non-contact means of communication shall be preferably considered.”

D. On Documents-only Case Examination

Given the fact that physical hearings can hardly be conducted, documents-only case examination becomes an alternative to be considered by the tribunal. According to the Guidelines, “[f]or cases where the Summary Procedure applies, according to Article 60 of the Arbitration Rules, the arbitral tribunal may decide to examine the case solely on the basis of the written materials and evidence submitted by the parties after hearing from the parties of their opinions. The arbitral tribunal is advised to consider the feasibility of examining the case on a documents-only basis on its own initiative, and ask for the parties’ opinions thereof.”

“For cases where the Summary Procedure does not apply, according to Article 35 of the Arbitration Rules, the arbitral tribunal shall hold oral hearings when examining the case. However, for cases with clear facts and simple evidence, the arbitral tribunal is

advised to ask for the parties' opinions on its own initiative and decide to examine the case on a documents-only basis if the parties so agree."

E. On Oral Hearing

The Guidelines emphasize that "virtual hearing is considered as a specific way of oral hearing which is in accordance with the Arbitration Rules. During the pandemic, for cases to be examined with oral hearings, the arbitral tribunal is advised to first consider the possibility of holding virtual hearings". Accordingly, the tribunals are authorized to decide on virtual hearing with comprehensive consideration on a variety of factors, including but not limited to the parties' opinions, the complexity of the case, the volume of evidence, any witness to be present, the justification of the party's reasons against holding a virtual hearing, and the convenience and equality of the participants to access to the virtual hearing facilities.

Moreover, the Guidelines provide four means of virtual hearings based on the specific circumstances of the case: "(1) where the arbitrator(s), the parties and their representatives, and other participants are located in different parts of mainland China, a virtual hearing maybe conducted via CIETAC smart oral hearing platform (<https://kt.cietac.org/portal/main/domain/index.htm>); (2) where the arbitrator(s), the parties and their representatives, and other participants are located in different jurisdictions, or the language of the oral hearing is not Chinese, a virtual hearing may be conducted via other video conferencing platforms agreed by the parties and approved by the CIETAC headquarters or its sub-commissions/centers; (3) after the office facilities of the CIETAC headquarters and its sub-commissions/centers reopen to the public, the arbitrator(s), the parties and their representatives, and other participants at different localities of the CIETAC headquarters or any of its sub-commissions/

centers may participate in a virtual hearing by using the nearest CIETAC facilities; (4) where the arbitrator(s), the parties and their representatives, and other participants are located in different jurisdictions, a virtual hearing may also be conducted through the joint platforms between CIETAC and other foreign arbitration institutions (CIETAC has cooperation agreements with major arbitration institutions in the world with arrangements for mutual assistance in oral hearings. If needed, please contact CIETAC case managers)."³

Besides, in order to regulate the virtual hearings activities and maintain the order thereof, CIETAC published its *Provisions on Virtual Hearings (Trial)* ("Provisions") in accordance with the relevant laws and regulations. The Provisions provide specific rules that shall be followed by the participants in a virtual hearing, including but not limited to the confidentiality of the virtual hearing, default of the parties, requirement of the location and the surrounding environment, disciplines and etiquette, participation of witness, experts and appraisers, and electronic signing of the transcript.⁴

F. On Mediation

Mediation has a long history in China. Since it is in line with the core Chinese value of prioritizing harmony, mediation has been long rooted in the Chinese legal culture. Nowadays, it still has a significant role to play in China's legal regime, where Chinese laws continue to promote mediation to settle disputes. Being praised as "oriental wisdom", mediation is also highly valued in the field of Chinese arbitration. CIETAC has initiated the practice of combining mediation with arbitration to promote settlement between the parties. Being cost-efficient and time-saving, such mechanism works well in Chinese arbitration practice.⁵

Following the established practice, the Guidelines continue to highlight

the importance of mediation and encourage the tribunal to "make greater endeavors to mediate and actively lead the parties through the difficulties by consultation and conciliation. Where it is difficult to have a formal oral hearing, with the consent of the parties, the arbitral tribunal may encourage settlement by holding mediation meetings, especially virtual mediation meetings."

Except for the measures mentioned above, the Guidelines also highlight other measures that tribunals can take to improve the effectiveness of arbitration proceedings. The tribunals are suggested to actively make use of procedural orders, question lists, terms of reference, and pre-hearing conferences to facilitate the arbitral proceedings. Where the members of the tribunal cannot meet in person to deliberate, the deliberations of the tribunal may be hold in any manner that it considers appropriate. Besides, the arbitral tribunal shall try its best to render the arbitral award as soon as possible for cases with hearings concluded. Where a case is not ready for a final award yet but is possible to have any part of the claims to be decided first, the arbitral tribunal shall consider the feasibility of rendering a partial award according to the provisions of the Arbitration Rules.

IV. Conclusion

The Guidelines are tailored specifically to respond to the challenges caused by the pandemic, which are not binding and are temporary in nature, encouraging the arbitral tribunals, the parties and counsel to make full use of all possible measures to carry the arbitration proceedings forward.

In any case, as one of the world's well-known arbitration institutions, CIETAC acts efficiently and promptly to cope with the pandemic, tailors the Guidelines with its unique Chinese arbitration experiences, and effectively facilitates CIETAC arbitration during the COVID-19 pandemic.

¹ Mirèze Philippe, *Offline or Online? Virtual Hearings or ODR?*, Kluwer Arbitration Blog, April 26 2020, available at <http://arbitrationblog.kluwerarbitration.com/2020/04/26/offline-or-online-virtual-hearings-or-odr/>, last visited on 12 May 2020.

² Article 2.2 of the Guidelines.

³ Article 2.6 of the Guidelines.

⁴ Available at <http://www.cietac.org.cn/index.php?m=Article&a=show&id=16910>, last visited on 20 May 2020.

⁵ Tang Houzhi, *Is There an Expanding Culture that Favors Combining Arbitration with Conciliation or Other ADR Procedures?*, in Albert Jan Van den Berg (ed), *International Dispute Resolution: Towards an International Arbitration Culture*, ICCA Congress Series, Volume 8, pp. 101 – 120.

LEX MUNDI LAUNCHES NEW CLIENT DELIVERY SERVICE PLATFORM

Lex Mundi, one of the world's leading law firm networks, has launched a global client service delivery platform called Equisphere to help in-house counsel address cross-border legal challenges.

Equisphere aims to coordinate cross-border legal support in restructuring operations and business partnerships within the Lex Mundi network through a combination of people, process and collaborative technology.

The platform will enable in-house counsel and their boards to negotiate by offering coordinated services with on-the-ground expertise of local teams.

Lex Mundi has 150 member firms, boasting more than 22,000 lawyers across 125 countries. ^{ALB}

RAJAH & TANN LAUNCHES REMOTE CONTRACTS MANAGEMENT PLATFORM

Rajah & Tann Asia has released a platform that enables clients to remotely generate and digitally sign contracts from any device in real-time.

ReadyDocs is a law-as-a-service (LaaS) platform that is expected to enable Rajah & Tann's clients to work on time-critical contracts as soon as the need arises. As part of the system, the platform will generate entire suites of contracts built as easy-to-follow workflows or even automate existing contracts and processes.

Powered by tech startup Zegal, ReadyDocs aims to enable clients to generate commercial contracts, or entire suites of contracts built as easy-to-follow workflows, and also automate existing contracts and processes. ^{ALB}

APPOINTMENTS



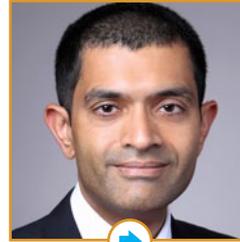
OMAR AL-ALI

RELOCATING
London to Singapore

FIRM
Reed Smith

PRACTICE
Energy & Natural Resources

POSITION
Partner



MANAS CHANDRASHEKAR

LEAVING
Latham & Watkins

JOINING
Kirkland & Ellis

PRACTICE
Capital Markets

LOCATION
Hong Kong



SAUL DANIEL

RELOCATING
Houston to Singapore

FIRM
White & Case

PRACTICE
Energy

POSITION
Partner



NEERAJ DUBEY

LEAVING
Lakshmikumaran & Sridharan

JOINING
Singh & Associates

PRACTICE
Corporate

LOCATION
Bengaluru



KEITH HAN

LEAVING
Cavenagh Law

JOINING
Oon & Bazul

PRACTICE
Restructuring

LOCATION
Singapore



DAX LIM

LEAVING
Osborne Clarke

JOINING
Simmons & Simmons

PRACTICE
Venture Capital

LOCATION
Singapore



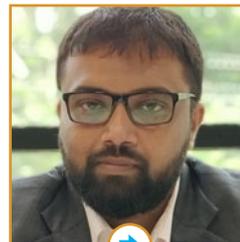
ANDREW MCCARTHY

LEAVING
Deloitte

JOINING
FTI Consulting

PRACTICE
Forensic Litigation

LOCATION
Singapore



SUBHAYU ROY

LEAVING
Mazars

JOINING
Singh & Associates

PRACTICE
Forensic Consulting

LOCATION
Gurugram



YK CHAN

LEAVING
Paul Hastings

JOINING
Hill Dickinson

PRACTICE
Capital Markets

LOCATION
Hong Kong

CORONAVIRUS STRIKES DOWN GLOBAL M&A AS COMPANIES KEEP THEIR DISTANCE



A man wears a protective mask as he walks on Wall Street during the coronavirus outbreak in New York City, New York, U.S., March 13, 2020. REUTERS/Lucas Jackson

(Reuters) Global M&A activity tumbled to its lowest level in more than a decade in the second quarter, according to data provider Refinitiv, as companies gave up on expansion plans to focus on protecting their balance sheets and employees in the wake of the coronavirus outbreak.

Chief executives were reluctant to explore transformative deals without more certainty about the financial outlook of their companies, deal advisers said. Instead, they seized on favourable financing conditions to raise capital by selling stock and borrowing cheaply, driving equity and debt issuance to record highs.

"It was the quarter for capital market activity. Companies are making sure their balance sheets are strong and durable for what comes next," said Michael Carr, global M&A co-head at Goldman Sachs Group Inc.

Global M&A totalled \$485.3 billion in the second quarter, down 55 percent from a year ago and its lowest since the third quarter of 2009, according to Refinitiv. This was based on 8,272 deals, the lowest quarterly number since the third quarter of 2004.

Most of the decline was driven by the United States, where M&A plunged 85 percent from year-earlier levels to \$94.3 billion as U.S. coronavirus cases surged. It marked the first time since the third quarter of 2009 that the United States has not led the rankings.

Europe and Asia saw more modest declines of less than 10 percent, to \$182 billion and \$150 billion respectively.

Dealmakers said the economic uncertainty wrought by the pandemic had curtailed the ability of many companies to initiate and successfully complete M&A negotiations.

"The main challenge to get deals done is that buyers have to be prepared to pay a full price while the current business performance is still well below pre-COVID-19 level," said JPMorgan Chase & Co global co-head of M&A Dirk Albersmeier.

The biggest deals of the quarter came from Europe, the Middle East and Africa.

Liberty Global and Telefonica agreed last month to merge their British businesses, Virgin Media and O2, in a \$38 billion deal that will create a powerhouse in mobile and broadband.

National Commercial Bank, Saudi Arabia's biggest lender, said last week it would buy smaller lender Samba Financial Group for as much as \$15.6 billion.

"Many of the deals you see now are between companies that already knew each other or were talking before the pandemic," said Andrew Bednar, co-president of investment bank Perella Weinberg Partners.

European food-ordering firm Just Eat Takeaway.com NV this month agreed to buy U.S. peer Grubhub Inc in a \$7.3 billion all-stock deal - one of only a few cross-border deals inked in the quarter.

"Doing cross-border deals requires a level of confidence and optimism that has taken a knock this year, especially

when it comes to transactions across continents," said Nick O'Donnell, a partner at law firm Baker & McKenzie.

Even as some deals were announced, others that had been signed but were not yet completed, unravelled.

Simon Property Group Inc, the biggest U.S. mall operator, said this month it was ending its \$3.6 billion deal to buy Taubman Centers Inc, citing the beating the retail sector has taken during the coronavirus outbreak.

Last month, private equity firm Sycamore Partners ended its \$525 million deal to acquire lingerie brand Victoria's Secret from L Brands Inc, while Japanese tech conglomerate SoftBank Group Corp dropped its agreement to fund a \$3 billion tender offer for additional shares in co-working company WeWork.

"It does require more courage to do a deal in this environment. You need a CEO with a lot of credibility with investors, and they need to be doing something very strategic," said JPMorgan global M&A co-head Anu Aiyengar.

Some dealmakers say they are seeing a gradual pick-up in M&A activity as companies adapt to a post-coronavirus reality.

"Right now we are seeing significant pick-up in client dialogue, just in the past three to four weeks," said Goldman Sachs global M&A co-head Dusty Philip.

"Many of our clients are starting to think big and outside of the box, asking themselves what has changed and how do I adjust my strategic priorities." 

Q & A

‘THE ABILITY TO EVOLVE AND ADAPT IS NOW MORE IMPORTANT THAN EVER’

Kyri Evagora has recently been appointed Reed Smith’s Asia-Pacific managing partner. Stepping into the role at a time when COVID-19 has turned the legal industry upside down, Evagora tells *ALB* the firm is looking ahead, while ensuring it innovates internally to meet the current challenges.

ALB: You’ve spent some 23 years at Reed Smith. What is the secret behind your longevity with the firm?

EVAGORA: Excellence, innovation, collaboration and inclusion are core values that underpin our law firm. My longevity at Reed Smith comes down to our commitment to these values and the tireless efforts of my colleagues to adhere to them. On a personal level, I am blessed to have worked in different and exciting places around the world within our firm and, thus, with so many people. It has kept me challenged and on my toes!

ALB: What are some of your big picture priorities for the role, and what changes are you looking to carry out?

EVAGORA: I have some big shoes to fill, and I am still learning from my predecessor, Denise Jong. We are fortunate that our global business is holding up, and I was not expecting to make drastic changes, to be honest. However, the economic and regulatory landscape in the Asia-Pacific region has shifted quickly, influenced by COVID-19. With so many organisations needing to change the way they do business in this era; we must move with that current to be responsive to clients. Restrictions on travel this year have had a silver lining by giving me the time and space to listen and reflect. I have spent a large part of my time listening to our colleagues and our clients alike, figuring out what our clients need and how to ensure we keep delivering to the highest standards. The feedback has been tremendous, and

it is informing us as to how we shape ourselves in the future.

ALB: What’s on your immediate to-do list for the Asia-Pacific market, and the firm’s office here?

EVAGORA: Bedding down the outstanding talent we have in the region and making sure that we are deploying and redeploying our teams effectively, efficiently and inclusively. You will shortly see some announcements about our commitment to growth opportunities in the region.

ALB: You’ve received recognition for your LGBTQ+ advocacy work. Can you tell us about your D&I strategy for Asia?

EVAGORA: I am proud of our track record. We have been progressive in our approach to D&I for decades, but there is always more to be done. Whether they arise in Asia, EME or the Americas, inequality that affects our people and communities matters to us, irrespective of where any of us is based. So, the starting point for our D&I strategy is that it is a global and comprehensive one. That means staying engaged with what matters to our colleagues wherever each one of us may be based. I understand that within Asia there are differences

and nuances in the types of inequality that affect us. The issues may well be different, but they exist nevertheless, and they need to be addressed. We are working right now with our global D&I team in reviewing the D&I challenges that relate specifically to Asia and what we are doing about them – including through leadership.

ALB: COVID-19 has impacted almost every firm, and Reed Smith has rolled out a temporary hiring freeze for professional staff in its wake. What has the COVID-19 experience been like for the Asia team so far, and what lessons will you take away from it?

EVAGORA: We reacted quickly to the situation. Our global workforce was able to work remotely on extremely short notice. The dedication and professionalism shown by our people have been impressive; our levels of service remain as high as ever. Our teams here were less

impacted than we had anticipated. We were busy helping to guide our clients during a sustained period of firefighting, and our efforts have helped to further deepen relationships during this difficult period. The single most important lesson learned is that we must “evolve and adapt.” The legal services industry has endured and continues to endure

what is surely the most difficult and challenging episode in living memory. Like all businesses, the ability to evolve and adapt what we do and how we do it is now more important than ever. This is hard to define because we are still going through it. Clearly, we can already see that it includes adapting ourselves to an acceleration in the use and application of information and technology, a meaningful collective effort around our client relationship as well as the re-tooling, re-training or re-deploying of our lawyers to meet the changes in our clients’ needs. 



KYRI EVAGORA

COVID-19 ACCELERATES ARBITRATION'S MOVE ONLINE

In May last year, six international law firms combined forces to create a set of universal best-practice arbitration guidelines. But Herbert Smith Freehills, Ashurst, CMS, DLA Piper, Hogan Lovells and Latham & Watkins were not aware that they would be releasing the draft protocol, which is out for consultation, in such a different climate.

How the arbitration landscape will shift in the coming days remains to be seen, but the coronavirus pandemic will doubtlessly have an impact — virtual disputes have grown more pronounced and the use of technology has spiked.

Rob Palmer, managing partner of Ashurst's Singapore office and partner in the firm's dispute resolution practice, says that he considers COVID-19 an "accelerant rather than any sort of change agent."

"There were already great concerns around the cost and time associated with arbitration, and there was a lot of focus on how to make the process more efficient — COVID-19 really has accelerated that," he says, adding that this digitalisation is only going to continue.

He cites Singapore, where he's based, as an example: "In Singapore we've got huge familiarity with virtual hearings, support of institutions, and infrastructure that's available... so all of those things point towards increasing take-up of technology and virtual dispute resolution. We've also got the fallout from the COVID-19 pandemic. There will be an increased focus on doing more for less, and virtual dispute resolution is almost certainly going to be a part of that," Palmer says.

His opinion is echoed by Myfanwy Wood, a senior international arbitration lawyer, also at Ashurst agrees. "COVID-19 has just sped up the inevitable, and the inevitable was that we were heading towards conducting online dispute hearings."

However, not all clients are on board just yet. Katherine Yap, chief executive

at Singapore dispute resolution venue Maxwell Chambers, tells *ALB* since the pandemic clients have expressed mixed feelings about adapting from physical hearings to virtual and hybrid hearing arrangements.

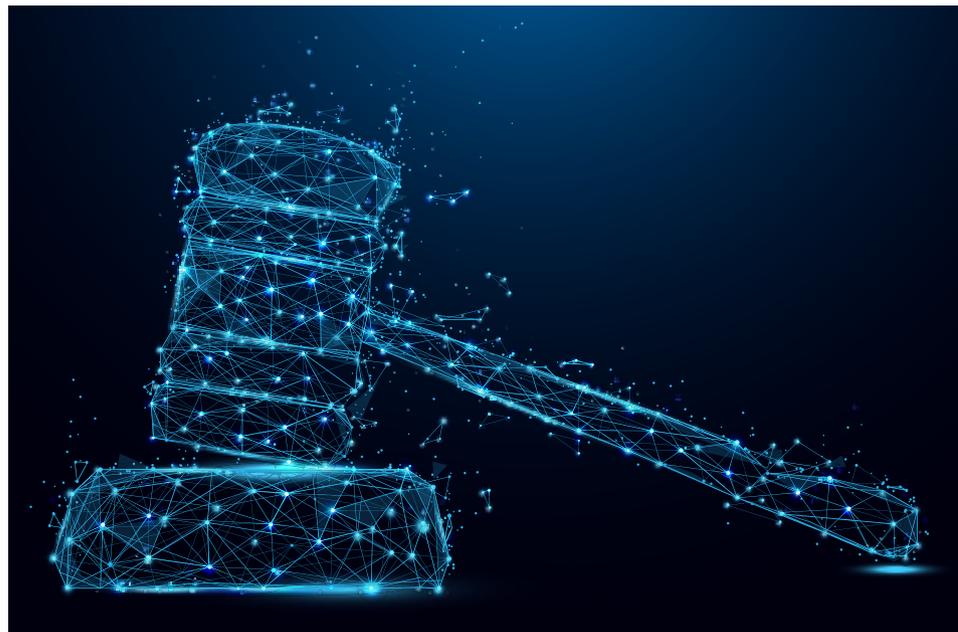
"Many have stuck to their preference of having a physical hearing hence often opting for a hybrid hearing instead of a fully virtual or a physical hearing," says Yap.

In order to assist these clients, Maxwell Chambers recently teamed up with Arbitration Place of Toronto and

of uncertainty" that firms have to be constantly prepared for going forward.

"Our goal is to ensure that our clients receive utmost assurance in terms of safeguarding their data with our increased firewall protocols and stringent measures to safeguard their privacy and confidentiality," Yap says. "Parties will also be advised to use a secure network to minimise data breaches and to employ reputable service providers for document sharing."

The new protocol aims to address some of the misgivings clients have



Ottawa and London's International Dispute Resolution Centre to launch the International Arbitration Centre Alliance, a global hybrid physical and virtual hearings platform.

"To further facilitate those with trouble adapting, we have dedicated moderators navigating our clients through technical difficulties to ensure that they are familiar with the platforms and tools used," Yap adds.

She additionally notes that use of technology in this arena can at times create something of "a lingering sense

when it comes to moving their arbitration online. And while this accelerated reliance on technology may have ruffled some, Wood says feedback to the protocol itself has been largely positive—especially from clients who may be cost-sensitive. "I've had a number of clients contact me to say what a great initiative it is, and for the future, they can see the cost-benefit of it because it does create a roadmap for conducting disputes much more efficiently, particularly in relation to document management and cybersecurity," Wood says. 

NORTH ASIA AND SOUTHEAST ASIA/SOUTH ASIA LEAGUE TABLES

North Asia Announced M&A Legal Rankings

Rank	Legal Advisor	Value (\$MLN)	Deals	Market Share
1	Mori Hamada & Matsumoto	12,946.4	33	5.3
2	Fangda Partners	12,452.6	31	5.1
3	Davis Polk & Wardwell	11,963.3	6	4.9
4	Nagashima Ohno & Tsunematsu	7,722.2	35	3.2
5	Sullivan & Cromwell	7,177.3	6	2.9
6	Anderson Mori & Tomotsune	7,017.1	15	2.9
7	Paul, Weiss	6,885.4	4	2.8
8	Norton Rose Fulbright	6,614.1	5	2.7
9	Commerce & Finance Law Offices	6,579.7	1	2.7
10	Freshfields Bruckhaus Deringer	5,715.1	11	2.3

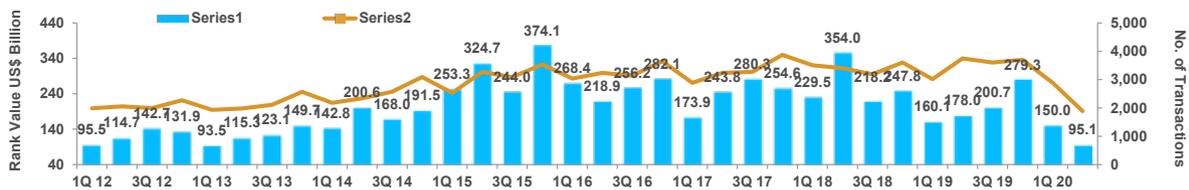
(*tie) Based on Rank Value including Net Debt of announced M&A deals (excluding withdrawn M&A)

North Asia Announced M&A Financial Rankings

Rank	Legal Advisor	Value (\$MLN)	Deals	Market Share
1	China International Capital Co	22,232.3	8	9.1
2	Morgan Stanley	19,938.5	20	8.1
3	Nomura	12,726.0	34	5.2
4	Goldman Sachs & Co	12,367.5	11	5.0
5	Deloitte	11,678.6	34	4.8
6	HSBC Holdings PLC	9,955.4	6	4.1
7	Citi	6,774.6	13	2.8
8	Somerley	6,716.9	9	2.7
9	Minsheng Securities Co Ltd	6,689.5	3	2.7
10	Lianchu Securities Co Ltd	6,579.7	1	2.7

(*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*



Southeast Asia / South Asia Announced M&A Legal Rankings

Rank	Legal Advisor	Value (\$MLN)	Deals	Market Share
1	Freshfields Bruckhaus Deringer	13,295.9	4	15.7
2	Allen & Overy	11,235.4	6	13.2
3*	Linklaters	10,600.0	2	12.5
3*	Herbert Smith Freehills	10,600.0	2	12.5
5	AZB & Partners	9,684.8	37	11.4
6	Davis Polk & Wardwell	9,336.6	3	11.0
7	Allen & Gledhill	9,163.4	9	10.8
8	WongPartnership LLP	8,059.7	5	9.5
9	Hogan Lovells	7,364.7	6	8.7
10	Cyril Amarchand Mangaldas	7,120.3	36	8.4

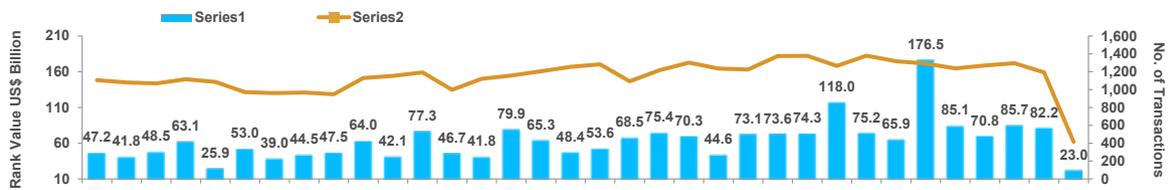
(*tie) Based on Rank Value including Net Debt of announced M&A deals (excluding withdrawn M&A)

Southeast Asia / South Asia Announced M&A Financial Rankings

Rank	Legal Advisor	Value (\$MLN)	Deals	Market Share
1	JP Morgan	21,042.8	10	24.8
2	Goldman Sachs & Co	14,414.2	5	17.0
3	UBS	10,854.4	3	12.8
4	Barclays	10,739.3	3	12.7
5	Greenhill & Co, LLC	10,600.0	2	12.5
6	Morgan Stanley	9,380.3	4	11.1
7	Deloitte	8,949.6	6	10.5
8	Credit Suisse	8,409.6	4	9.9
9	BofA Securities Inc	7,017.8	5	8.3
10	HSBC Holdings PLC	4,822.9	4	5.7

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

Any Southeast Asia / South Asia Involvement Announced M&A Activity - Quarterly Trend*



*League tables, quarterly trends, and deal lists 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: China, Hong Kong, Japan, South Korea, Taiwan; SOUTHEAST ASIA: Singapore, Malaysia, Philippines, Thailand, Vietnam, Brunei, Cambodia, Indonesia, Laos, Myanmar, Timor-Leste; SOUTH ASIA: India, Afghanistan, Bangladesh, Bhutan, Maldives, Nepal, Pakistan, Sri Lanka. Data accurate as of 4 August 2020.

ALB VIRTUAL SE Asia Anti-Corruption & Corporate Compliance Forum 2020

The ALB Virtual SE Asia Anti-Corruption & Corporate Compliance Forum 2020 will provide practical solutions for anti-corruption risks faced by companies during these trying times and discuss compliance enforcement updates within the region. Bringing together high - caliber global speakers, the full day virtual forum looks to address all burning questions regarding the U.S. and UK enforcement actions, strategies on how to pressure test compliance systems, third party risk management trends, localized whistle blowing programs, cross-border internal investigations and more.

THIS FORUM FEATURES

- Interactive panel discussion providing a balanced perspective and insights from consultants, law firms and the legal/compliance function on how to deal with day-to-day corruption issues.
- Real life case sharing on compliance failures and the lessons learnt.

ATTENDEE PROFILE

- In-House Counsels
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- Chief Legal/Ethics/Integrity/Risk Officers
- Heads of Corporate Legal, Compliance and Governance
- Corporate Legal and Compliance Directors, Managers and Executives
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- In-House Legal Advisers and Consultants
- Private Practice and Corporate Law Firms
- Information Security and Technology Providers
- Consultants and Experts from Corporate and Financial Services, Legal and Compliance Industry

FEATURED SPEAKERS



Jaroslaw M. Jankowski
Lead Counsel Asia &
Regional Compliance
Officer Asia
Siemens Logistics



Lope Del Rosario Manuel, Jr. BA, LL.B., LL.M., LL.M
Vice President for Legal and
Corporate Affairs
Frontiir



Thang Vu (Jacky)
Director of Legal &
Compliance
Liberty Insurance
Limited



Maaik van Meer
General Counsel, Head
of Legal & Compliance
Aegon Asia



Manuel Alberto Colayco
Senior Vice President - Chief
Legal and Compliance Officer
Aboitiz Equity Ventures, Inc.



Sharin Kaur Veriah
Group Chief Legal and
Compliance Officer
Fusionex International

-MORE SPEAKERS TO BE ANNOUNCED SHORTLY-

FORUM AGENDA AT A GLANCE

- Regional Spotlight Presentation: Corporate Compliance Across Southeast Asia
- Compliance Roundtable Session: Compliance In Time Of A Pandemic
- Third Party Risk Management Trends for 2020
- Mastering Internal Investigations: Covering All Compliance Bases
- Gift or Bribe: Is There A Grey Area?
- Making Your Whistleblowing Program Successful in Asia
- Pressure Testing Your Compliance Program - Spotting The Weak Links
- Beefing Up Your Compliance Program In The Face Of Increased Cross-Border Enforcement

**Forum agenda is not final and is subject to change.*

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INDONESIA

■ In February this year, Indonesian president Joko Widodo handed over to Indonesia's House of Representatives (DPR) a so-called "omnibus law" that is expected to replace dozens of overlapping measures in a bid to improve the investment climate and create jobs in Southeast Asia's biggest economy. Widodo's stated approach is to open investment opportunities further in Indonesia, which has so far been blighted by red tape and vested interests.

Defrizal Djamaris, a partner at Indonesian law firm Kudri & Djamaris, says that the omnibus law proposed by the government to the DPR contains

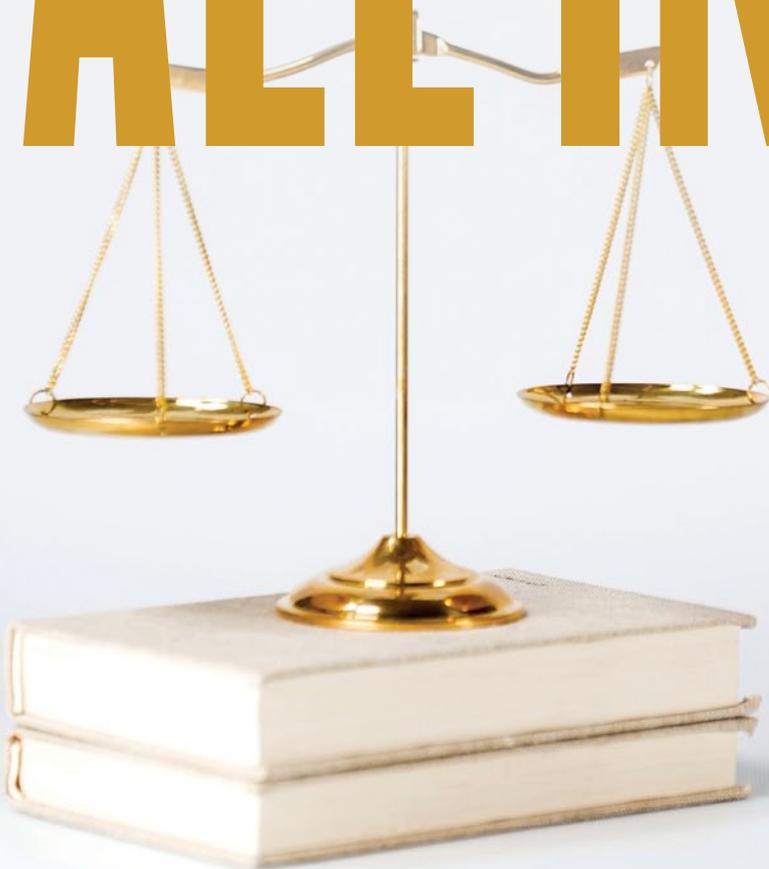
important provisions aimed at easing foreign investment restrictions, labour law, simplify business licensing, and streamline corporate tax regulations. "It has intense implications for regional and multinational companies operating in Indonesia," he notes.

However, for the time being, the law is still awaiting broader feedback, something that has been hard to procure due to the COVID-19 situation in Indonesia. Andre Rahadian, a partner at Dentons HPRP, calls it a "quite complicated" law that will require a lot of inputs from various parties. "During this pandemic, the process of getting input from relevant parties or interest groups is difficult," he

says. "That's why I feel that the discussions in the parliament about this law should be postponed until people can give required and relevant inputs, so that we have laws that will stand and not become subject of constitutional appeals." Rahadian points out that a total of 79 laws were being impacted within 11 clusters. "Now it's down to ten because the employment cluster was withdrawn by the president and will not be discussed. That's why I think we should wait until things can get back to as close to normal as possible."

Nevertheless, lawyers expect a lot of good things from the law. "As a lack of bureaucratic effectiveness is seen to

ALL IN ONE



Earlier this year, Indonesian president Joko Widodo's government submitted a draft bill to the country's parliament. The omnibus law, as it is widely known, is a comprehensive bill that would regulate many provisions in various industry sectors into one law. Lawyers say that when passed, it will strengthen the economy by increasing competitiveness, creating jobs and making it easier to do business in Indonesia.

BY RANAJIT DAM

be hampering economic growth and posing significant issues in enabling ease of doing business in Indonesia, the so-called omnibus law is drafted as a full package of deregulation aimed at boosting the economy," says Djamaris. "It is also aimed at increasing competitiveness and creating jobs. According to the result of a study conducted in 2018 by the National Development Planning Agency showed that the most binding constrains were overlapping and relatively closed regulations, including in the labour and the quality of administrations that are still low, especially on the issue of policy coordination." He adds, however, that as it proposes some drastic changes, for example concerning labour rights, the bill has been rejected by some parties so far.

Rahadian says that while the law looks good on paper, implementation will be the most important element. "Basically, the aim is to simplify process and regulations in doing business as well

"Under the omnibus law, there are at least some fresh provisions that most affect foreign investors namely simplifying business licensing, harmonising regulations, streamlining tax laws, tax incentives, easing foreign investment restrictions, and labour law."

– Defrizal Djamaris, Kudri & Djamaris

as establishing a business in Indonesia. For this reason, the law is being simplified, with unnecessary regulatory processes being cut and a one-stop regulatory window being established," he says. "However, this law will require at least 11 presidential decrees at least right now. It will also require several implementing regulations at the ministry level. Presidential regulations are required because a lot of items in the law need to be interpreted. For example, the law

says that to assess what kind of permits will be required for certain businesses, it will be using a "risk-based" approach. There are no definitions of this risk-based approach. I suppose it depends on the level of risk, but say, in the mining sector there are environmental issues - we don't know how the risk will be assessed there. That's why I think that to be effective, it has to be issued as a package, that also includes all the implementing regulations."

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“Right now, as we are not sure whether the bill will be passed by parliament this year, however we are keeping clients updated on the important aspects and possible opportunities. So, our advice is to wait while we prepare for the new opportunities as well as new requirements.”

— Andre Rahadian, Dentons HPRP

CRITICAL ASPECTS

Djamaris says that there are 11 critical areas discussed under the bill that are expected to increase Indonesia’s attractiveness in the eyes of prospective investors. First, he mentions labour. “Some key points connected to labour reform in the omnibus bill is concerning outsourcing, working hours, layoffs, severance, remuneration, bigger chances for expatriates to work without a permit both for the positions of members of directors and commissioners,” says Djamaris. “Having said that, some provisions on labours are considered to be a potentially detrimental effect on labour rights and may create problems in its implementation.”

Then there is the issue of taxation. “A big part of the omnibus law covers the taxation aspects. Major changes are made to Law on Income Tax, Law on Value-Added Tax, Law on the General Provisions and Procedure for Taxations, Law on Excise, Law on Regional Taxes and Levies, Law on Customs and Law on Regional Government at aims to give incentive for prospective investors,” says Djamaris. “For example, the government will decrease gradually the corporate income tax rate from 25 percent to 20 percent in the period 2021 to 2023; it will provide for income-tax-free dividend payments with the condition the full amount is re-invested in Indonesia; and it will facilitate a tax incentive for companies listed on the Exchange in the form of an additional reduction in the corporate income tax rate by 3 percent of the normal rate.” However, he notes that while the government suggests that decreasing the corporate income tax rate could boost economic growth by 1 percent in 2030, the large incentive

is given to investors however may cause a negative impact on the state revenues. “The government must take into account that its attempts to create a friendly investment climate for investors do not hurt the state revenues which feared would only add to the sovereign debt in financing the state’s infrastructure development.”

When it comes to the potential impact of the law on investors, Djamaris says that legal certainty is a key issue demanded by both local and foreign investors. “To clear investors doubts about overlapping regulations and ease of doing business in the country, the government has proposed omnibus law. President Joko Widodo hopes that is the solution for such issues,” he notes. “Under the omnibus law, there are at least some fresh provisions that most affect foreign investors namely simplifying business licensing, harmonising regulations, streamlining tax laws, tax incentives, easing foreign investment restrictions and labour law.”

Rahadian agrees on the certainty aspect. “It will attract foreign investors because for foreign investors and also, in general, all the investors they want the certainty. They want something that they can hold onto, especially for investments that will take long term for returns like infrastructure, natural resources, oil and gas and so on. This law creates simplifications of the requirements and with clear and complete implementing regulations, it will have a positive impact definitely.”

ADVICE TO CLIENTS

Given that the bill is still with parliament, clients need to wait and watch.

“The omnibus law contains some fundamental changes to Indonesia’s legal reform towards creating a friendlier investment climate,” says Djamaris of Kudri & Djamaris. “This is nothing but a golden moment for foreign investors to enter Indonesia’s market. However, as the bill has not yet become legislation and is still being discussed by DPR, the investment scheme at current time is still applying the old prevailing investment law.”

Rahadian of Dentons HPRP agrees. “Right now, as we are not sure whether the bill will be passed by parliament this year, however we are keeping clients updated on the important aspects and possible opportunities. So, our advice is to wait while we prepare for the new opportunities as well as new requirements. Only when the implementing regulations are released do we expect things to become clearer,” he says.

Nevertheless, Djamaris feels that while the government should play a crucial role in providing a more friendly investment climate, it is also important to make the law-making process transparent. “Another critical point is corruption,” he says.

“In order to attract more investors, the government must also put an extra effort into eradicating corruption as investors consider that corruption undermines the fair and efficient implementation of laws and regulations and has been a major concern for businesses in Indonesia,” Djamaris adds.

Rahadian feels that while the law basically reduces or deletes a lot of requirements related to licenses, one thing that is not clear is how the provincial governments and regencies are expected to follow the regulations decided under this law.

“We have autonomy laws that transfer some of the rights from the central government to the provincial governments,” he says. “So basically, the main issues that are not addressed in the investment landscape right now is in what ways, and how effectively the central government can regulate provincial regulations that can still become an obstacle to investors, especially foreign investor.”



Omnibus Law in Indonesia

Overview of the Omnibus Law

The idea of Omnibus Law is considered by many as a major attempt to achieve the government's objective to accelerate Indonesia's economy growth by attracting more investment and improving the ease of doing business in Indonesia. The government has finally decided to drastically act upon the long ingrained issues that have been deterred foreign investment in Indonesia i.e. the over-regulation and the bureaucratic inefficiency.

The concept of Omnibus Law is not actually recognized under Indonesia civil law system and is more generally adapted by common law countries. In essence, the Omnibus Law would act as a regulatory umbrella, providing an overarching framework for various laws and regulations that will become a "short" way solution to resolve the conflicting laws and regulations (both vertically and horizontally) in Indonesia. The Omnibus Law will, when passed, supersede earlier provisions on the same regulated subject matter.

Recent Development & Notable Changes

There are two bills within the Omnibus Laws framework that are currently under the government discussion, being: (i) the Job Creation Omnibus Law ("**Job Creation Bill**") and (ii) the Tax Omnibus Law.

On February 2020, the government has formally submitted the Job Creation Bill to the House of Representatives. In total, the Job Creation Bill seeks to revise approximately more than 70 prevailing laws and 1,200 articles from various sectors such as manpower law, capital investment, business licensing, land acquisition and environmental laws. The notable changes of Job Creation Bill are summarized below:

- **Relaxation of foreign investment restrictions**

Article 12(1) of the prevailing Investment Law states that: "*All business fields are open to direct investment, except for those that are declared as closed to investment or open subject to conditions.*" This provision is proposed to be amended under Article 84 (2) of the Job Creation Bill to become as follows: "*All business fields are open to direct investment, except for those that are declared as closed to investment or which constitute*



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activities that are reserved to the central government."

The replacement of the phrase "*open subject to conditions*" may be interpreted that all business activities will become either wholly open or closed for capital investment, or can only be conducted by the central government. This interpretation, however, is still far to being conclusive considering the history of Indonesia foreign direct investment regime.

As stipulated under the Job Creation Bill, this provision will be further implemented by a presidential regulation which we expect will be similar to the current presidential regulation that includes a list of closed or partially open business lines (generally known as the Negative List). Until then the interpretation above will remain uncertain but in any case, we believe the government has been aiming to relax the foreign direct investment for some time and once happen, it will be a drastic transformation of Indonesia's FDI regime.

- **Business licensing simplified**

The Job Creation Bill will implement a new concept of business licensing called the risk-based-licensing. In essence, the businesses will be divided into three categories

of low, medium and high risk. Each of the category will only require to obtain the relevant licenses which are: (i) a business identity number ("**NIB**") for low risk; (ii) NIB and standard certification for medium risk; and (iii) NIB and business license for high risk. The risk itself will be valued based on hazard level (*nilai tingkat bahaya*) and the potential hazard level (*nilai potensi terjadinya bahaya*).

The implementation and supervision of the above will be further regulated under its implementing regulations.

- **Labour laws**

Indonesia is known as a labour-friendly law country which often argued by many as one of the reason that deters foreign investment. The government is trying to work out this issue by relaxing some of the worker protection through the Omnibus Law framework. Consequently and quite predictably, it has sparked a significant resistance from the labor unions up to the recent days.

The Job Creation Bill seeks to amend the obligation of employer to pay compensation of rights, such as unused annual paid leave and transportation cost, for laid-off workers as regulated under Article 156 of the prevailing manpower law. The proposed amendment of Article 156 can be found on Article 89 (45) of the Job Creation Bill where it stipulates that the compensation of rights can now be regulated under the employment contract, work agreement, or company rules.

Further, the Job Creation Bill is also drafted to revoke Article 159 of the prevailing manpower law which facilitate the worker's right to file lawsuits to the industrial relations agency in case such worker does not accept the reason behind the termination of employment.

On the other hand, the Job Creation Bill relaxes the requirement of foreign workers to work in Indonesia. Pursuant to the amended Article 49 of the prevailing manpower law, members of boards of directors and commissioners, diplomatic and consular staff, those working at start-ups, in vocations, on business visits, doing research for a certain period and doing machine maintenance for production in emergency situations, can work without a foreign worker permit.



ALB TRAIL BLAZERS 2020



A year of upheaval has demonstrated that law firms need to be nimble and adaptive if they are to come out of this crisis and thrive in the long run. Here are some firms that are using innovative approaches to tackle existing challenges and also make themselves future proof.

BY ASIAN LEGAL BUSINESS

It is likely that years from now, when we look back on 2020, we'll remember it as the time of the Big Shift in Asia's legal industry. At the start of this year, the traditional law firm model was already under a considerable amount of strain, with shifting client expectations, rapid advancements in technology and a plethora of high-quality competition. And then turned up COVID-19 to deliver what appears to be a decisive blow. As law firms scrambled to contain the fallout to their businesses, one thing started to become obvious – that innovation and boldness were the critical keys to both surviving the current shock, but also set the stage for sustainable growth in the future.

Keeping this in mind, we sought submissions for the ALB Trailblazers listing of innovative law firms. Given

that this was the first edition, we were surprised at the diverse responses from across the legal industry – marquee names in their respective markets showcased their innovation credentials, while smaller law firms highlighted just what could happen if firms had a mix of ambition and a positive mindset.

Take for example Rajah & Tann Asia, the regionally focused network spearheaded by the Singapore Big Four law firm, which together with CMS in Europe and Cooley in the U.S., supported the development of Lupl, the world's first open industry platform for legal matters. Lupl, which is being incubated through its development by the three works, involves input from an advisory board of 16 leading in-house lawyers who represent multinationals as well as fast-growing tech companies.

This "first-in-kind partnership between major global companies and law firms" represents more than 10,000 lawyers in upwards of 100 jurisdictions.

"With COVID-19 turbocharging the shift to real-time communications tools, the demand for instant interactions has greatly increased, while navigating multiple channels across chat, email and enterprise messaging tools makes it more difficult to stay on top of things. At this watershed moment, the industry risks forgetting that all these technology solutions were supposed to make legal work easier," says Rajah & Tann. "Lupl has been formed as an independent corporation to develop, own and operate the open industry technology platform. With unique software at its core, the platform synchronizes everything that goes into a legal

matter – people, documents, information, communications and technology applications – into one secure space, empowering lawyers and legal departments to work together on complex, high-stakes legal matters in a better and more efficient way.”

The firm adds that it is a watershed for the legal industry. “Unlike the majority of legal technology solutions out there, Lupl doesn’t seek to replace existing tools or require an entire IT overhaul to implement. Our clients have been growing increasingly frustrated with new technology solutions in the legal world competing against each other and overlapping in functionality. As a result, the platform was created as different to anything else on the market,” it says.

PUSHING THE BOUNDARIES

Another firm looking to improve the way legal work is done is India’s Trilegal. It is currently looking to develop an open, accessible data hub to aggregate, store and process data about the field of law and justice and make it available to a community of researchers and policy advocates. “In India, legal data is either not digitised or, where it is digitised, it tends to be siloed and unstructured, stored in proprietary databases that are not interoperable,” says the firm. “If we are to effect legal reforms and work to improve the judicial system, it is critical that we organise this data properly so that it can be analysed and interpreted. The establishment of a legal data hub where large datasets of information from and about the legal system can be housed could give analysts and policy advocates the opportunities to better understand the stresses and strains that affect the legal system so that they can make incisive policy suggestions that could address these issues.”

According to Trilegal, this initiative will bring together a diverse community of legal researchers, legal technology companies, universities, civil society organisations and journalists to create a ‘public resource’ for the good of all. “It will enable contributors and users to share, co-create and build upon existing legal datasets to achieve results

that would not have been possible to any one of them individually. Some of the early contributors who have committed to share their data include Vidhi Centre for Policy, CHRI, Veratech, Prof. Aparna Chandra, Project 39A, and IGIDR. The legal data hub draws inspiration from similar initiatives in other disciplines such as the Coleridge Initiative, GitHub, HRDAG (Human Rights) that have pushed the boundaries of innovation through a similar approach of collaborative data platforms,” says the firm.

It adds that the initiative is original in both its goal and approach. “It is the first of its kind in India that is aimed at spurring a data-driven culture in the field of law and justice. It goes beyond using data for specific goals and aims to foster a wide cross-section of use cases in law and justice by making multiple datasets interoperable with each other and accessible as a ‘public resource,’” says Trilegal. “In its approach, it is collaborative and open. To identify the entity responsible for creating and managing the data hub, the problem was framed as a challenge that participants were invited to participate in. The challenge process was transparent and for the first time, all applications were made public so that applicants could view the applications of others and comment on it.”

IMPROVING INTERNALLY

But not all innovations need to happen at an industry-changing level; sometimes they are employed in order to impact the internal running of a firm. Take for instance Korea’s Yulchon, which has been seeing a headcount increase of between 30 to 40 percent annually since 2017, and currently boasts of more than 850 employees. “Not only has the firm grown at a rapid pace, but with more millennials joining the firm, creating an organisational culture which encourages communication between partners and associates became an important task,” says the firm, which launched a Career Development Committee (CDC) in February 2019 by integrating three independent committees that focused on hiring, training, and foreign attorneys, respectively.

“With unified resources and streamlined goal, the CDC implemented its first initiative which was to develop a constant and consistent feedback scheme for associates,” says Yulchon. “In November 2019, the CDC rolled out a new feedback program in the form of a mobile application which allows continuous evaluation more reliably and effectively. From 2009, Yulchon partnered with Seoul National University Business School to develop an objective evaluation program customized for law firms. To improve and modernise our feedback program in terms of user convenience, feedback volume, and overall credibility of the evaluation results, the CDC introduced a mobile real-time feedback application in November 2019.”

Yulchon says that the application is unique in a number of ways. “First, it is convenient and more timely. The users can access the app regardless of time and location, and it only takes about one minute to give an evaluation for an associate. Secondly, with simplified steps and more frequent evaluations, the number of feedbacks each associate receives has increased by more than ten-fold, giving more credibility to the overall feedback results. In addition, the app provides a brief analysis of the evaluator so that the partner who is evaluating an associate would be able to identify his or her evaluation style or potential bias. Thirdly, associates are able to receive real-time feedback for their ongoing work. The program gives associates more real-time coaching to help them improve while working on matters, rather than relying on formal reviews twice a year,” it notes.

Additionally, the CDC felt a need to create a regular organizational body that listens to the voices of associates and reflect their opinions when shaping any policies concerning associates. “Thus, the CDC organised the CDC Associate Channel, an advisor group of associates from each practice,” says Yulchon. “The group gathers the opinions of associates and shares them with the CDC. Then, the CDC reviews any concerns or suggestions from the group and delivers them to each practice group heads and/or the top management. In effect, the CDC works as a bridge between (i) associates

and partners and (ii) all members and the top management regarding hiring, training and career development of associates." Going forward, the CDC plans to implement new initiatives such as performance evaluation training for partners so that they could improve their appraisal and communication skills.

SMALL IS NIMBLE

Some of the more interesting innovations are being demonstrated by smaller firms that have the nimbleness to quickly adapt to changing circumstance. Take for example, Hong Kong's bowers.law, set up by legal industry veteran Kevin Bowers in the middle of the COVID-19 outbreak. With the goal of changing the law firm business and charging models in Hong Kong, the firm decided to charge only fixed, staged and retainer fees across the board, even for dispute resolution. "I don't know of another Hong Kong law firm which has eliminated timesheets, and hourly rates and billing in every practice area," says Bowers, who adds that the new business model has since been rolled out for both domestic Hong Kong and international clients. "The bowers.law model provides clients with value, certainty and a degree of shared risk, as well as encouraging its lawyers to provide legal services as quickly, efficiently and cost-effectively as possible, which is what every client wants from its lawyers," says Bowers. "In a very traditional and change-resistant legal marketplace like Hong Kong, the implementation of this new business model is innovative and hopefully, a game-changer."

He provides more details: "The bowers.law business model and its elimination of hourly rates and billing lends itself to far more straight-forward law firm management and administration from the onboarding clients with less complicated terms and conditions of engagement to less complex (and expensive) law firm accounting systems, as well as the overall provision of legal work product," notes Bowers. The implementation of this much simpler charging model also minimizes the risk and instances of lawyer-client friction over contested fees, even after the

THE LIST

LARGE FIRMS

Dentons Rodyk, Singapore

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Nishimura & Asahi, Japan

Shardul Amarchand Mangaldas & Co., India

Rajah & Tann Asia

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Trilegal, India

Yulchon, Korea

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SMALL AND MIDSIZED FIRMS

Advaita Legal, India

Anand and Anand, India

Bharucha & Partners, India

bowers.law, Hong Kong

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DivinaLaw, Philippines

Eng and Co., Singapore

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Steptoe & Johnson

VanillaLaw, Singapore

successful provision of the legal services, which should, in turn, lead to significantly higher client retention rates." Additionally, the firm also incorporates a separately branded crisis management agency called alinea which provides its clients in a crisis with a one-stop-shop together with its public relations, media, forensic accountant and investigator partners. Bowers believes that this service to clients is also unique among Hong Kong law firms.

Another example is Malaysia's Mark Law Chambers (MLC). It realised that its clients were unable to tackle challenges brought by the COVID lockdown as they did not have the budget to embrace digital. To solve this, MLC launched its Business Digitization Program which allowed its clients and other SMEs to have their very own mobile apps at an affordable rate. "As our MLC IT Department partnering with a local IT Firm, Mark Law Chambers made it possible for businesses to have their mobile apps for as low as 420 ringgit [\$100] per year," says the firm. "Secondly, our firm's mobile apps API [application program interface] will link with the client's mobile apps. Therefore, our firm can be seen in our client's mobile apps. The client and others may also add to the cart other services such as drafting of terms and conditions on mobile apps, privacy policy and cookies policy. The client may also choose to register their trademark with us Mark Law Chambers."

MLC believes that the initiative has not been done before in our jurisdiction. "This is a creative way of creating affiliates marketing which may improve the firm's visibility in the market without violating any rules or undermining the legal professions," says the firm. "We are able to deliver much value to our client by not only resolving their legal issues, but also assisting them in making their business transformation possible and quickly without huge allocation of fund. Secondly, the firm is able to improve the visibility as it exists in every of its customer digital store and apps. And Mark Law Chambers assist many more businesses to turn and adopt into digital world immediately, fast and economically." 



OFFSHORE IMPACT

COVID-19 has derailed business plans both global and domestic, and cast a long shadow of uncertainty across businesses.

For offshore law firms who typically work nimbly with their colleagues across jurisdictions, the impacts have been twofold – with both their clients, and their offices to consider.

BY ELIZABETH BEATTIE

■ As the global pandemic continues to test law firms' tech adoption, ability to adapt quickly and lead through uncertain times, offshore law firms remain cautiously optimistic. Challenges run deep, but opportunity is there for those who respond smartly, lawyers say.

Anthony Oakes, partner and head of the finance practice in Asia, and Oliver Payne, partner and head of dispute resolution in Asia, say that for both individuals and institutions, the challenges the virus posed are profound and diverse.

Within institutions, both management and legal teams are grappling with issues spanning financial, risk, litigation and regulatory. "Some of these issues have not been seen before and others are more intense than in the past," say Oakes and Payne.

As a result, there is more focus and pressure on management and legal teams, but simultaneously, "their value to their respective organisations will be more obvious than ever," they say. "Rapid analysis and clarity of thought are key. Given the ever-changing landscape, it will also be important to recognise that approaches and solutions may not be perfect and need to be re-thought and revised over time. This will require good communication and, perhaps more importantly, patience and resolve."

But a general sense of business uncertainty has not changed the fact that clients need to litigate disputes within offshore courts.

"A significant concern, particularly for those clients with litigation that was already ongoing, was how the offshore courts would react to COVID-19, and how well they could continue to function in the face of lockdowns and sealed borders. The answer is, remarkably well," Oakes and Payne say.

While offshore courts may have adapted quickly, it has been an adjustment. "It hasn't entirely been business as usual," the partners say, nevertheless, court lists remain busy and cases are moving through. "For instance, the Cayman Islands courts have been conducting hearings virtually for weeks now and, in the BVI, electronic court filing was up and running well before the pandemic hit," Oakes and Payne say.

On the transactional side, Michael Padarin, managing partner of Carey Olsen's Hong Kong office, tells *Asian Legal Business* that over the past few months, liquidity has been the primary concern for clients – but by no means has it been the only consideration.

"Our private equity clients have also been busy analysing their portfolio companies to ensure they'll remain as viable businesses despite current market conditions," says Padarin.

"For clients in the course of making acquisitions, there have been concerns voiced around the impact of valuation uncertainty, resulting in deals being shelved or cancelled altogether. Borrowers may have taken steps to extend facilities or avoid covenant breaches," he adds.

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INTERNAL CHANGES

For firms across the board, the pandemic has triggered internal examinations of everything from strategic priorities to ways of working. Offshore firms have also changed the way they work over the past few months, pushing flexibility and streamlining communication processes.

Vivien Fung, a partner in the Hong Kong office of Conyers Dill & Pearman, tells *ALB* that communication has been key to manage the business impacts of the pandemic, with knowledge sharing across the various offices part of the firm's approach.

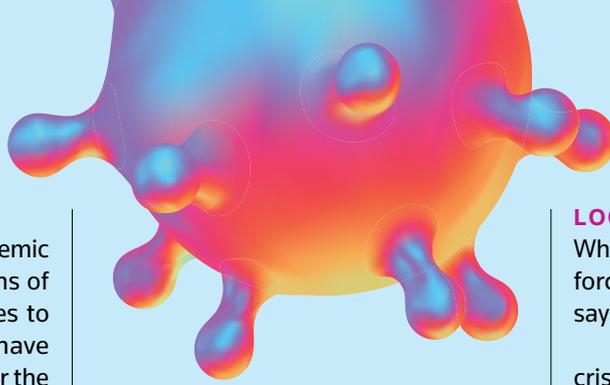
"To facilitate this, we have internally created a COVID hub to share information on the work arrangement of our worldwide offices and the accessibility of Registry of Companies and Courts for conduct of searches," she says, adding that new policies and precautions advised by government authorities and public health organisations are being closely followed by the firm, to "strike a balance between protecting the health of our staff and delivery of service to clients."

"We encourage lawyers and CCS supervisors (who have remote access to our office network) to work from home and reduce the number of times in a week support staff need to work in the office. We also allow staff to come into the office later in the morning and leave the office earlier after work to avoid congestion," says Fung of minimising the risks of spreading the virus.

"The arrangement has been smooth, and our work quality has not been compromised. In the past few months, we have gone through unprecedented challenges and have learnt to work together in new ways. We are looking to develop even more flexibility to cope with the new COVID norm," Fung adds.

Oakes and Payne of Ogier also tell *ALB* that remote working has become the norm in most of the firm's jurisdictions, while tech adoption has helped smooth the process.

"As part of our commitment to innovation, Ogier has invested heavily in technology over the past few years. Accordingly, employees were well



"Employees were well equipped with the tools to work remotely. We are also able to offer e-signature and data room platforms which have proved valuable to clients, during this period."

— Anthony Oakes and Oliver Payne, Ogier

equipped with the tools to work remotely. We are also able to offer e-signature and data room platforms which have proved valuable to clients, during this period. We have been grateful for how flexible and helpful the Ogier teams have been in these challenging times," they add.

Similarly, Padarin of Carey Olsen cites suddenly working from home as one of the most dramatic changes for businesses in Hong Kong.

"The speed and efficiency with which this was carried out by our group technology, information security and business continuity teams was exceptional, and we have been able to maintain our service and productivity levels throughout," Padarin notes. "Flexibility, regular communication and trying to keep a sense of humour have been key to making sure our staff have felt connected, supported and motivated."

But the shift has also been a learning opportunity for the firm. "We have also adapted our business development strategy away from in-person meetings and international travel, and have pivoted to greater involvement with collaborative webinar sessions, virtual meetings, electronic client briefings and one-to-one training with key clients and contacts," says Padarin.

LOOKING AHEAD

While the pandemic remains a disruptive force around the world, offshore firms say for clients, the future isn't all gloomy.

"There is an opportunity in every crisis," says Fung of Conyers. "I am sure that some clients will see COVID-19 as a good opportunity to buy undervalued assets. Lockdowns have exposed a wider population to the use of apps and online services. Companies operating a business of online services or sale platform will likely see a sharp growth."

Oakes and Payne of Ogier also note that there are likely to be long-term, deep changes in work culture.

"Given the trend towards remote working, there will be an opportunity for clients to reconsider their office space and their approach to working style more generally. There may be opportunities around assets which have been devalued as a result of the COVID-19 induced economic downturn," they say.

Opportunistic purchases may also be on the cards, as well as "take-privates of listed companies whose shares are currently unappreciated by the market or the securitisation and work-out of underperforming loan portfolios."

Meanwhile, Padarin of Carey Olsen has observed how international policy and trade tensions are forcing Chinese businesses with operations or listings overseas to "rethink their global structuring."

"International policy and trade tensions are forcing Chinese businesses with operations or listings overseas to rethink their global structuring. We'd expect to see more Chinese businesses listed in the U.S. seeking dual listings in Hong Kong or other regional exchanges, which will provide great opportunities for alternative sources of capital," Padarin says.

"For the Hong Kong office, the bulk of our business continues to come directly and indirectly from China. Going forward, we'd expect more of the same, although with trade tensions disrupting traditional East-West supply relationships, we anticipate regional players such as Japan, India and Indonesia becoming increasingly important sources of work," he adds. 

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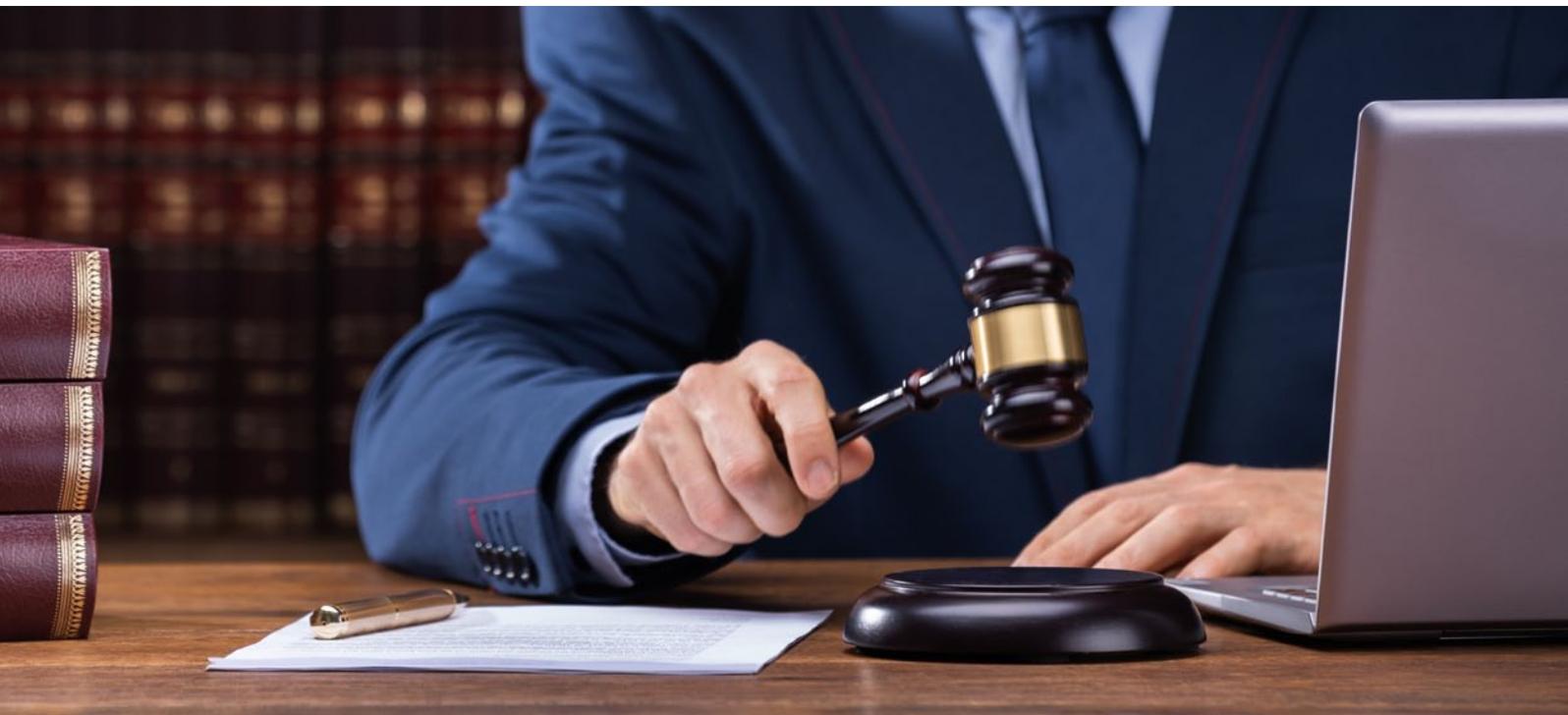
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DIGITAL DISPUTE RESOLUTION COMES OF AGE

The global pandemic has rapidly sped up technology adoption across even typically conservative industries and users, and the disputes hearing process is no exception. While for some, this has created a steep learning curve, cost efficiencies and time saved, are among the payoffs that ensure digital disputes are likely here to stay. BY ELIZABETH BEATTIE



COVID-19 has disrupted processes around the world, and for dispute resolution, it's no different. While the transformative role of technology has been immense, with dispute hearings quickly moving online, many of these mechanisms have existed before the pandemic. But as clients who would typically demand in-person hearings lean toward digital, the entire industry is undertaking something of a culture shift.

The team at Davis Polk & Wardwell know this acutely. The firm recently completed a virtual hearing with counsel and witnesses spread around the world, using real-time language interpretation.

Partner Martin Rogers, Davis Polk's lead lawyer on the hearing, tells *Asian*

Legal Business that the increased importance of technology as a result of the pandemic will continue. "In fact, we view the pandemic as a trigger for a process of technology adoption in dispute resolution that will advance much further," says Rogers.

The pandemic has also demonstrated that even complex hearings can be conducted remotely, and large volumes of evidence can be handled smoothly — all thanks to existing technology, he adds.

Jonathan Chang, a counsel at Davis Polk who was also involved in the hearing, says that it spanned across 10 days, with "45,000 documents displayed using electronic bundles and links, 11 witnesses (two of which required inter-

preters), the tribunal, each advocacy team (one in London, one in Hong Kong) and most of the witnesses being in four different locations around the world, with the 11 witnesses giving evidence from seven different locations." Nevertheless, it all went generally quite smoothly.

"We did not feel the effectiveness of the advocacy was compromised by the format of the hearing. Even though we were not in the same room with the Tribunal members, the witnesses, or the lawyers from the other side, we were able to observe their facial expressions and body language clearly and closely from their blown-up image on the screen. It was still possible to develop rapport with the Tribunal members and witnesses, and the remote nature of the hearing

did not impede the ability to conduct a searing cross-examination,” Chang says.

Similarly, Nick Gall, senior partner at Hong Kong dispute resolution boutique Gall, has watched the role of technology growing during the pandemic.

“In February, we acted for the plaintiff in Hong Kong’s first telephonic hearing in *Cyberworks Audio Video Technology v Mei Ah (HK) Company Limited & Ors*,” says Gall, who calls this a milestone in the judiciary’s approach when it comes to cost-effectiveness and speed.

“A key witness in the trial was unable to be in Hong Kong due to travel restrictions so we requested permission from the Judge for him to give evidence via video link. We also used digitised trial bundles and wrote to the Judge asking to provide submissions via email which the Judiciary proceeded to roll out,” Gall adds, noting his team were proactive in suggesting new solutions for clients and were “crucial in helping to modernise the Judiciary,” says Gall.

REMOTE BENEFITS

While social distancing restrictions and congregation rules have created new perimeters for businesses and courts, there have also been positives.

“An unexpected benefit of the remote hearing was that the virtual platform provided us with the equivalent of a technology-enhanced courtroom,” says Chang.

“We were able to display documents we want to show on the screen quickly by giving the precise references to the electronic hearing bundle to the document operator. We were even able to display multiple documents side by side on the screen, which enabled us to more clearly demonstrate the inconsistencies or commonality between the documents,” he adds.

To ensure that processes remain smooth, Chang says it was important for all the parties involved to work collaboratively to come up with a protocol for the hearing, “setting out the technological requirements (both hardware and software), the location from which the attendees participate in the hearing, arrangements for testing and tech-

nical support, what to do when there is a disconnection, the arrangements for hard copy and electronic hearing bundles, etc.”

Additionally, using facilities at established arbitration centres, “in our case, HKIAC and London IAC,” and engaging a vendor with experience in virtual hearing is also advised says Chang. He notes: “This will enable the advocates to focus on the case, rather than being distracted by technical hiccups that may occur during the hearing. Although this may seem like a small point, accurate bundle references and links to documents are critical and do need to be double-checked or triple-checked.”

ANXIETY DISSIPATING

With cost-effectiveness at the front of mind for many, for sophisticated clients there has been something of a realisation that virtual hearings definitely cut expenses (including those related to travel), and time.

“The anxiety that a fair and effective hearing is only possible remotely in a physical setting is dissipating,” says Rogers. “Arbitrators and judges have become more confident that they can manage hearings and resolve disputes fairly without the need for physical hearings. Everyone is moving in the same direction. Crucial are (1) high-quality and reliable videoconferencing, (2) document management and display Systems, and (3) good transcription services. These are key.”

But while there are benefits, increased reliance on technology also requires new considerations including data privacy measures and practical challenges such as wrangling global staff. Chang also concedes that coming up with a hearing timetable which involves multiple time zones could be a challenge.

“Certain attendees may have to testify at very early or late hours. For a witness that needs to testify for more than three or four hours, we find it helpful to break it into separate sessions on consecutive days so the witness does not need to get up too early or stay up too late, which will necessarily affect their performance,” he tells *ALB*.

There is also the question of technology accessibility — particularly given the number of jurisdictions with work-from-home rules — but this is something that can be worked around.

“It might also be challenging if a witness or counsel needs to attend the hearing from his/her home or office without the facilities provided by the arbitration centres or the vendors. Having a proper testing session in advance of the hearing and an emergency hotline to the technology support team that can be used during the hearing is crucial to ensure smooth participation in the hearing,” Chang says.

A GROWING TREND

Looking ahead, as COVID-19 continues to bear down on countries around the world, Gall predicts that virtual disputes are unlikely to go away any time soon.

“I expect the use of virtual dispute cases to continue throughout this period of uncertainty as disputes are likely to increase in number due to the environment we are operating in. COVID-19 is forcing lawyers to hold virtual hearings as the other option may, in some instances, mean no hearing at all,” he says.

“If this is the ‘new normal’ then lawyers and clients will have to learn to collaborate and change the way they usually work together as the Courts pivot towards virtual hearings. What is yet to be seen is whether virtual hearings will continue after the pandemic subsides — if they do, they could end up being a welcome catalyst for change in the way we handle disputes,” Gall adds.

Rogers agrees that virtual hearings are becoming more commonplace as the pandemic drags on “and parties are more and more anxious to resolve their disputes sooner rather than later”.

“Courts in most, if not all, of the major jurisdictions have also been conducting remote hearings. Looking ahead, we expect that lawyers and arbitrators will grow more and more familiar and comfortable with virtual proceedings and adopt the arrangements in an even greater number of cases,” says Rogers. ^{ALB}

LONG ROAD BACK

Six months into the pandemic, law firms in Asia are still looking for ways to cope with COVID-19 and its impact. While firms are rolling out various initiatives to ensure smooth working and keep morale up, there is the realisation that things will never be the same.

BY RANAJIT DAM

Starting from the first quarter of this year, almost every jurisdiction in the Asian region has experienced a complete or partial lockdown for at least some period. With offices shut and people stuck at home for long periods, there has been an unsurprisingly negative impact on business, and as a result, on legal work as well. Deals have been held up as parties have been unable to accomplish a number of things they took for granted, such as doing due diligence or even showing up in the same place

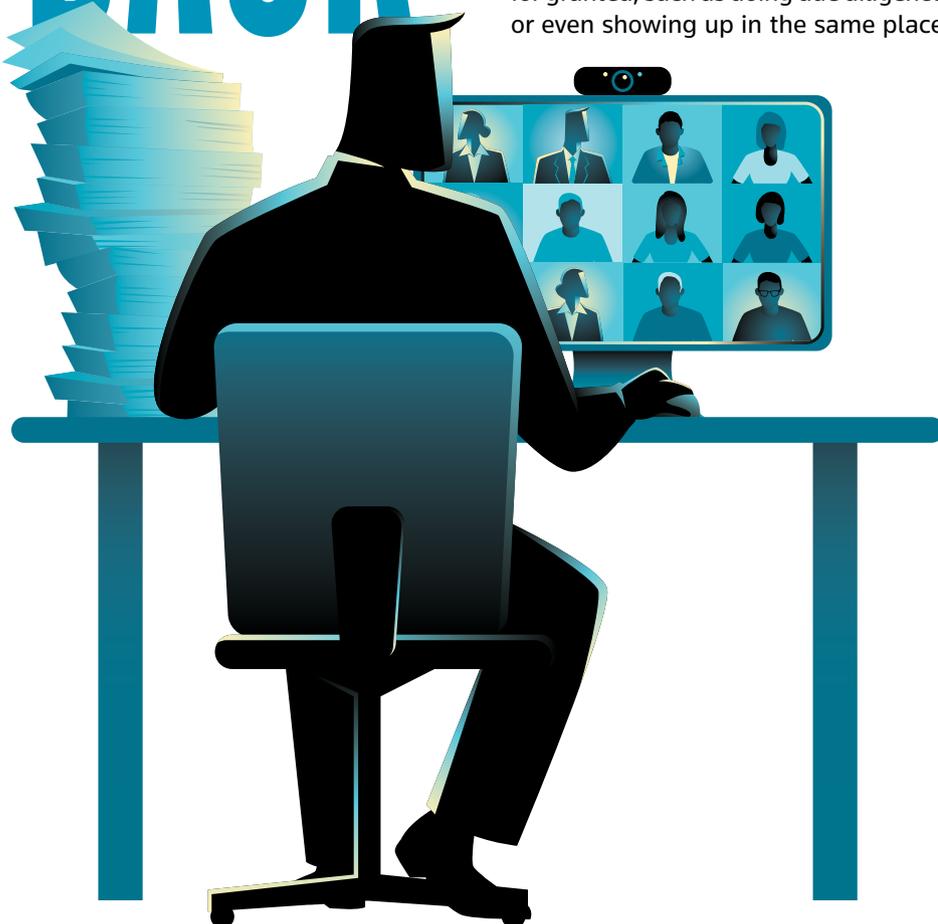
to negotiate and sign documents. Add to that the phenomenon of companies slashing external legal spend, and law firm leaders have had a lot on their plate to deal with.

While many of these challenges, brought about by COVID-19 and more, need a long-term strategic rethink, law firms have for the most part been engaged in the initial months in fighting the most immediate fires – keeping staff safe, ensuring business continuity, and generally exuding a sense of normalcy. With lockdowns prevalent across the region, firms were forced to move quickly to remote working, and ensure that they had the technology to back it up.

“Across the region, we made a successful transition to full remote working in response to coronavirus and maintained high levels of productivity,” says Peter Scott, managing partner for Europe, Middle East and Asia at Norton Rose Fulbright. “We continue to prioritise the health and safety of our people and our clients. In some jurisdictions, we have started a gradual and phased return to working in our offices and in line with government recommendations. In the medium to long term, and following a survey of our staff in Europe, Middle East and Asia, we are planning for a new model of working which includes greater flexibility of working from home alongside office-working as it becomes safe to do so.”

David Cho, Asia co-managing partner and head of Hong Kong office at Dechert, says that the firm had robust business continuity plans already in place, having conducted extensive crisis planning exercises in recent years. “This meant we were able to respond quickly to the pandemic, implementing an early work from home arrangement for our people and ensure we had the necessary processes and structures in place to best support our clients and the situations they may face,” notes Cho.

He adds that the firm is currently engaging with its people extensively on matters such as the re-opening of offices at global, regional and local levels, and offering flexibility in choosing a work arrangement that best suits each employee’s circumstance. “We value



each person and the contributions that they bring to the company and we have embedded gratitude as a practice into our culture so that people feel recognised and appreciated,” Cho. “We have given our business professionals globally an extra day of annual leave – a ‘Day to Thrive,’ and recently introduced an e-version of our hard copy Dechert gratitude cards to send a thank you to any colleague anywhere in the world. We were extremely pleased to see more than 1,000 cards were sent in the first week that they were introduced.”

WORK IMPACTED

There is no doubt that the pandemic has been a blow to corporate legal work. Take M&As for example. The total value of deals regionwide fell 20 percent from the same period a year earlier to \$381.2 billion, according to data from Refinitiv. Reuters reported that the virus, which has led to nearly half a million deaths globally, has caused demand to plummet across industries such as retail and travel, making it difficult for many firms to raise new capital.

But it hasn’t been all gloom of late. Psyche Tai, head of Hong Kong at Norton Rose Fulbright, says that the firm’s activity levels have remained “resilient,” with the Chinese corporate team in Hong Kong taking on five IPOs in recent weeks and currently working on 13 in total. “We are also seeing more demand for restructuring advice and over time, we expect to see distressed acquisitions in the M&A space,” notes Tai. “Our regulatory investigations team in Asia has been busy over the last year in particular and we anticipate that to continue. We also expect to see increased fraud and related litigation as well as disputes related to force majeure and business interruption.”

Cho feels that while undoubtedly COVID-19 and subsequent lockdowns have greatly impacted the global economy, there are a number of other factors such as the upcoming U.S. Presidential election, Brexit, China’s increasing economic development and global influence, growing protectionism by governments and a general sense of international political uncertainty, that

have presented a range of challenges for businesses. “We have seen an uptick in litigation, particularly in pandemic-related litigation, including cases against universities, nursing homes, manufacturers, and transportation companies,” he says. “We expect additional cases to be filed against life sciences companies and others as the plaintiffs’ bar expands its focus to other industries. We have seen an increase in life sciences patent litigations filed, especially with COVID-19 related therapies.”

Similarly, in the international arbitration sector, parties are regularly invoking force majeure clauses, while other parties are seeking to terminate or significantly alter their contractual arrangements, Cho notes. “In securities litigation and enforcement, plaintiffs’ firms continue to file securities litigation cases arising from COVID-19, and we expect this trend to continue,” he says. “Numerous claims have been filed asserting violations of Section 10(b) and 20(a) of the Securities and Exchange Act of 1934 (Exchange Act) arising from alleged false statements or omissions relating to known risks arising from the pandemic, as well as overstatements regarding a company’s ability to thrive in this environment.”

In addition, Dechert is seeing COVID-19 related M&A litigation. “We also expect an increase in derivative cases, particularly those alleging a failure of oversight, as we proceed through and emerge from the pandemic,” says Cho. “Additionally, we expect a rise in fraud cases related to COVID-19 and in the product liability sector, we are seeing plaintiffs’ counsel trying to push courts and defendants toward remote discovery and even remote trials.”

NEW WAYS OF CLIENT SUPPORT

In this “new normal,” law firms have found that they need to go the extra mile to service clients. “We are drawing upon the knowledge acquired advising clients through previous market upheavals and we are also providing support in new ways,” says Tai. “For example, in Hong Kong, we recently hosted a series of virtual legal clinics about legal and regulatory issues for FinTech start-ups

including corporate, restructuring, commercial arrangements and financial services.”

Jasmine Kaur, director of business development, marketing and communications for the Asia-Pacific at Baker McKenzie, says that businesses are being tested like never before, with multinational companies often facing a lockdown in one market while relaunching operations in another, all while keeping employee safety paramount. “The impact of the pandemic has also significantly varied by sector for companies, leading to sharp declines and business disruptions for some sectors and an increase in demand and new growth opportunities for others,” she says. In response, Baker McKenzie has launched its the Resilience, Recovery and Renewal (3R) framework, a three-phased approach resilience: dealing with immediate implications; recovery: stabilizing their business operations; and renewal: transformation of business models and strategies post COVID-19.

Firms themselves are also taking this time to rethink and restructure their approaches to the region.

“We plan to develop our contentious and non-contentious capabilities in key centres including in China and Singapore. We will also continue to leverage our strength in Australia across the Asia Pacific region including in international arbitration, restructuring and insolvency, and projects,” says Scott at Norton Rose Fulbright.

Kaur says that Baker McKenzie is regularly conducting virtual hearings, closing multi-jurisdictional deals and engaging in complex client discussions and advice, across multiple time zones, over its video conference systems and via its legal tech platforms. “While it’s too early to know what parts of this remote work we will adopt as regular practices in the longer-term, it is important that the technology infrastructure and processes are in place to facilitate our work and client service, regardless of our location,” says Kaur. “As we move to a different balance of in-person and virtual business interactions, we will also keep in mind our target of reducing our carbon footprint.” 

ISLAND OF POTENTIAL

China recently unveiled a plan for the construction of the Hainan Free Trade Port, which aims to turn the island province into an open, world-class free trade port by the middle of the century. And as a series of reform measures involving customs, taxation and systems are rolled out, law firms are gearing up to service clients taking advantage of Hainan's new status. BY HU YANGXIAOXIAO

■ In 2018, Hainan Province celebrated its 30th anniversary of becoming a special economic zone of China. At that ceremony, President Xi Jinping announced that the central government would support Hainan in the construction of a "pilot free trade zone" spanning the island, which would gradually become a "free trade port [FTP]."

Two years later, Hainan's FTP dream is becoming a reality. On June 1, Hainan's FTP Plan was released. "Different from the other 17 free trade zones in China, the Hainan Free Trade Zone has a two-phase goal at the beginning of its establishment," Wang Peng, partner at King & Wood Mallesons, tells *ALB*. "A free trade

port is the continuation of a free trade zone, but they are substantially different in terms of the opening up degree, business environment, and legal system."

"The Hainan free trade zone plan, which was introduced in 2018, contains no impressive new policies, apart from the remarkably large geological area of the island province. Back then, Hainan faced two major problems: the absence of legal system guarantees and the lack of talent," Huang Ningning, managing partner of the Shanghai Office of Grandall Law Firm, points out.

The new FTP Plan defines the goals and sets forward clear approaches for Hainan: "Aiming at world-famous free

trade ports, Hainan now can implement the development plans in phases, and comprehensively build a globally-influential high-level free trade port in about 30 years."

According to Wang Yao, partner at the Sanya office of KWM, the Hainan FTP Plan is inspired by two places - Hong Kong and Singapore, which are international free trade ports.

In her view, a free trade port involves a wider range of businesses. "It is not limited to the trade of goods and capital investment, but focuses more on the trade of services, as well as culture, education, agriculture, tourism, healthcare, and other fields," says Wang.



The construction of the free trade port also means that the systems will be updated at the same time. "To be a region with the highest opening-up level in the world, it needs to make a series of special policy arrangements in terms of market access, financial system and taxation. The biggest difference between a free trade zone and a free trade port is that the former focuses on the opening up in the exchange of goods, while the latter opens up in all aspects," Wang adds.

ATTRACTING ATTENTION

Neither the term "special economic zone" or "free trade zone" is new to China. According to a report, there were more than 5,000 "free trade zones" in various forms in the world in 2019, and nearly half of them were in China.

But the FTP Plan has attracted much attention from both inside and outside China because the plan includes many policies that have exceeded expectations, increasing the degree of opening of Hainan to a level unprecedented in China.

Among the many new policies, which ones are the most noteworthy? Lawyers refer to three most important points.

First of all, in the future, Hainan will implement an island-wide special customs clearance operation, which is a brand-new model that does not yet exist in China. Under that, Hainan will implement an import and export administration system featuring "first-line liberalisation and second-line control," says Wang. "First-line liberalisation" means that most goods imported into Hainan FTP will be exempted from import tariffs, except for those falling within the list of restricted imports.

Meanwhile, "second-line control" means the establishment of a new administration process between Hainan and other regions of China, adds Wang. For example, when imported goods enter the mainland from Hainan, procedures must be completed and taxes paid according to import regulations.

Secondly, it is worth noting that the special tax system arrangement includes zero tariff, low tax rate and a simplified tax system.

The corporate income tax rate will be reduced from 25 percent to 15 percent, says Huang, and the maximum marginal personal income tax rate will be reduced from 45 percent to 15 percent. "This indeed can attract enterprises and talent to the island province," he adds.

And thirdly, a new legal system will be established in Hainan. As stated in the FTP Plan, it is "a legal system for free trade port which is established based on the free trade port law, with local regulations and commercial dispute resolution mechanisms as important components."

"The greatest highlight of the FTP Plan is promoting the formulation and implementation of the Hainan Free Trade Port Law," Wang comments. "Looking at the world-famous free trade ports, such as Hong Kong SAR, Singapore and Dubai, they all started the operation of free trade ports with legislation, and set up the legal framework and foundation for the areas, thereby facilitating the rapid developments."

REDEFINING LEGAL SERVICES

As Hainan begins on its road to development, lawyers are gearing up to assist clients in taking advantage of this new status. And the openness enshrined in the FTP Plan extends to the legal market as well.

Last October saw the promulgation of the Regulations on Lawyers in the Hainan Special Economic Zone, which indicates "the prelude to the reform of the legal sector in Hainan. The regulations nullify a decade-old rule, according to which law firms from outside Hainan are prohibited from setting up branches here, and lawyers from Hainan Province are prohibited from setting up new law firms in Haikou or Sanya," Du Ning, partner at the Haikou Office of KWM, tells ALB.

The regulations have led to tremendous changes in Hainan already. On June 5, a ceremony was held in Hainan to issue certificates to law firms that have either established or opened offices in the province. Over the past ten months, 57 law firms have opened offices or set up in Hainan, and among them 41 have the capability of providing foreign-related

legal services, two are joint operation offices with Hong Kong firms, and 28 are branches of domestically renowned firms. It can be said that the landscape of Hainan's legal market has completely changed.

"The market is only going to get more competitive in the future," Jiang Dan, director of the Hainan office of Grandall Law Firm, says. "Without expanding the scope of services and improving the capabilities and service standards, some local 'old' firms might be forced out of the game. And driven by market demand, there probably will be law firm merger waves."

Speaking of the future, "there will be more intense competition for the existing business opportunities, posing higher requirements for service capabilities, methods, and scope. In many new fields, competitions and opportunities exist side by side – whoever makes achievements first will gain the leading position," Jiang says.

The regulations not only bring in more players, but, like other sectors, it also breaks the many "ceilings" at the institutional level in terms of the operations of law firms.

"The regulations result in innovations in the models law firms and relaxes requirements for the admission of partners in special general partnership law firms. In addition to practicing lawyers, other professionals such as certified public accountants are allowed to become partners of law firms," Du says.

"The regulations also draw on Singapore's legal system, encourages qualified law firms to implement corporate management, and allows the establishment of company-type law firms in accordance with relevant regulations," which is a breakthrough in the prevailing Lawyers Law, she adds.

"Furthermore, the Regulations also allows the representative offices of foreign firms and of law firms of Hong Kong SAR and Macao SAR to be engaged in certain Hainan-related commercial non-litigation legal affairs according to relevant provisions. Hainan has and will surely become the test ground for the business models of law firms in China," Du says. 

STRENGTHENING

TIES

Chinese investments and contracts in sub-Saharan Africa totalled \$299 billion from 2005 to 2018, according to the China Investment Global Tracker, and in 2018, China said a further \$60 billion would be invested into African nations. We speak to lawyers about what the hot countries and sectors are, and the challenges that Chinese companies face. BY HU YANGXIAOXIAO

China's investment story in Africa can be traced back to the 1980s. "China made its early-stage investments in Africa in the early 1980s. Back then, the investment scale was rather small, with an average investment of approximately \$500,000 per project," Lin Wei, partner in charge at P.C.Woo & Zhonglun W.D. tells *ALB*.

In the early 1990s, this investment expanded. "In addition to offering aid to Africa, China started to facilitate Chinese enterprises in setting up joint ventures with African enterprises. In 1995, the Chinese government reformed its foreign aid approach, encouraging

and supporting more Chinese enterprises to play a more important role in China-Africa cooperation, and gradually shifting from trade-based investments to resource development investments," Lin continues.

In his view, the establishment of the China-Africa Cooperation Forum in 2000 indicated that China's investments in Africa had entered a stage of gradual maturity. At this stage, more and more new measures, such as the China-Africa Development Fund, were introduced. Lin cites some data: according to Chinese customs statistics, China-Africa trade volume reached a record of

\$208.7 billion in 2019, and South Africa, Angola, Nigeria, Egypt, and Algeria have been the top five trading partners of China in Africa for seven consecutive years. Construction, manufacturing, leasing and business services, mining, and wholesale and retail are the top five industries of China's investments in Africa.

But in the eyes of Noor Kapdi, CEO of Dentons Africa, China's investment in Africa is still in the early stage compared with that of key European economies, such as France and the UK. "In fact, the FDI stocks sourced respectively from the UK and France into Africa are each still

larger than that from China. The main difference lies in that Chinese capital is accommodating African demands and development strategies at a national level," he says.

Kapdi continues: "For example, Projects such as the Chambishi Multi-Facility Economic Zone in Zambia involved a large-scale investment and the potential to generate thousands of local employment opportunities and millions of dollars in local procurement contracts."

Mohamed Abayazid, founding partner of CAA Law Firm in the Republic of Djibouti, provides a vivid example of his own country. "Djibouti has a unique strategic position as it controls access to the Red Sea and acts as Ethiopia's port, a major regional economic power without a seafront."

"Today, almost a third of the maritime traffic passing through the Strait of Bab-el-Mandeb is of Chinese origin, this is why consequently the Chinese investments in the field of port and rail infrastructures and logistics have just exceeded \$10 billion in the countries of the Horn of Africa region," he adds.

MAIN PLAYERS

Over the past 40 years, the profiles of active Chinese investors in Africa have also changed greatly.

Lin points to 1995 as an important dividing line, when China's investments in Africa started to gradually change from "government foreign aid" to "investments by enterprises". Meanwhile, the identities of Chinese enterprises investing in Africa also changed. "From 1990 to 2003, most Chinese investors in Africa were large State-owned enterprises. More and more Chinese private enterprises participate in the game since 2003. At present, more than 70 percent of Chinese investments in Africa are from Chinese private enterprises in terms of the number and the amount," Lin says.

And Chinese State-owned enterprises and private enterprises focus on different areas of investment. "The State-owned enterprises are more interested in infrastructures and energy fields such as construction and mining; while

private enterprises mainly invest in manufacturing and service industries, and gradually become the main force exploring these markets," Lin adds.

According to Kapdi, active Chinese investors also include major investment agencies such as Hillhouse Capital, GaoRong, IDG Capital, Sequoia China and GSR Ventures, as well as TMT and internet heavyweights such as Huawei, ZTE, China Telecom, Meituan-Dianping, Transsion and NetEase.

Another surprising category is "a significant number of Chinese start-ups and entrepreneurs flocking into Africa and driven by the opportunity to test their ambitions outside of their home country." In Kapdi's words, "Chinese

BUILDING ROADS

People have some fixed ideas or impressions about foreign investment activities in Africa. In the view of lawyers, things have changed in recent years, but those ideas or impressions still reflect, to a certain extent, the current status of investments in Africa as well as the needs of African countries.

"Investment in Africa has always been a story of infrastructure and that has not changed in 50 years. Among African leaders, there has been a strong consensus that the infrastructure impediment must be addressed so as not to restrict increased trade integration." Wildu du Plessis, Baker McKenzie's head of Africa, tells *ALB*.

"The number of active tech hubs in Africa has almost doubled over the last couple of years. Projects such as China's 'Digital Silk Road' ambition to link emerging markets with hi-tech telecommunications hardware infrastructure continue to be more relevant than ever in African economies and we see an increased focus in the 'digitalisation of Africa'."

— Noor Kapdi, Dentons

businesspeople are looking at Africa as something of an entrepreneurial renaissance."

Lin echoes Kapdi's observations and adds that China's economic and trade cooperation zones in Africa have made it possible for small enterprises to enter. "Up to now, China has built around 25 economic and trade cooperation zones in Africa. Unlike other countries, China's foreign investments usually include both large companies as well as small and medium enterprises, with the latter relying heavily on platforms like economic and trade cooperation zones that provide relatively concentrated and well-established infrastructures."

Kapdi adds: "If you want to prosper, first build roads - this is a Chinese proverb and particularly relevant in a continent such as Africa. The African Development Bank put the continent's minimum infrastructure needs at \$130 billion to \$170 billion per annum. At least 50 percent of that requirement is currently unfunded."

"Over the past two decades, China has assisted in meeting a number of Africa's infrastructure financing requirements and is now the single largest financier of African infrastructure in sectors such as energy, mining, power, property and real estate, shipping and ports, transportation and technology and telecommunications," he continues.

Du Plessis pointed out that in 2018, Africa got around \$25 billion infrastructure investment from China and of the overall amount, 40 percent went to energy infrastructure. "This is much more sophisticated outbound lending than the cliché about China investing in African minerals and rail to get commodities to feed manufacturing – the data clearly shows Chinese lending predominantly shifting towards African power projects," he adds.

Apart from this, in recent years, China's overseas direct investment has also increasingly focused on Africa's construction, manufacturing and financial services sectors. "Chinese companies have supported the construction

comprised of 54 diverse countries each with its own cultural, social, political and commercial nuances," Kapdi warns.

Du Plessis echoes his observation: "Investors can never assume one country is the same as any other in Africa. Even if they are geographical neighbours, each country is vastly different to the next."

Abayazid shares the story of Djibouti International Free Trade Zone as an example. "There is the coexistence of the Djiboutian legal system and those of neighbouring within the perimeter of the Free Zone, for example, the Djiboutian legal system is of the tradition of the civil law, opposed to the legal system of Kenya which is of the tradition of common law."

to provide smooth cross-jurisdictional legal services.

Another solution is by the help of legal networks. For example, Baker McKenzie has an extensive cooperation network of law firms in Africa, which includes many top-tier African law firms; Zhonglun W&D relies on two legal networks, Interlaw and GLA; and CAA led the establishment of a Pan-African network of business lawyers which is called the African Business & Legal Expertise (ABLE Network).

Abayazid also points out the benefit for a local firm to maintain a long-term cooperative relationship with a Chinese law firm, which allows the local law firm to provide stable and high-quality legal services to Chinese clients. Taking CAA as an example, in the past five years, the firm and a team led by Zheng Chenghai, partner of Chinese firm Jingtian & Gongcheng, have worked together on a series of major Chinese infrastructure investment projects and achieved remarkable results.

FULL SERVICE

For any overseas investor, doing business in a foreign country is not only about the business and the law, but also about cultural and social challenges in a new environment.

"There are many challenges facing Chinese investors in Africa, including political risks, social and economic instability. Poor governance, currency risks, complex regulatory systems and high levels of corruption pose hurdles to investors in Africa," du Plessis concludes.

As a result, for Abayazid, local counsels not only advise and issue legal opinions in the light of local law, but also assist and represent Chinese clients with local public authorities.

Kapdi adds: "Like China, African countries are culturally rich and doing business is all about relationships. We assist clients by leveraging our strong relationships with African regulators and political bodies to assist with breaching the gaps culturally, socially and commercially."

Sometimes legal counsels could even help clients to play active roles in building local legal systems. "Where

"More than 70 percent of Chinese investments in Africa are from Chinese private enterprises. The State-owned enterprises are more interested in infrastructures and energy fields such as construction and mining; while private enterprises mainly invest in manufacturing and service industries, and gradually become the main force exploring this market."

— Lin Wei, P.C.Woo & Zhonglun W.D.-

of three major economic zones in sub-Saharan Africa, including Zambia-China Economic and Trade Cooperation Zone, Eastern Industrial Zone in Ethiopia and China-Nigeria free trade zone. Such investments have been helping to create jobs and develop local industry," du Plessis says.

LANGUAGE BARRIERS

The growth of Chinese investments in Africa poses increasing demands for legal services. Chinese enterprises not only have to navigate the law, but also the culture, and both are diverse in a continent of this size.

"When doing business in Africa one must be mindful that the continent is

Du Plessis points out the risks: "As a result, cross-border legal compliance has become so complex... Communication in multi-jurisdictional matters and deals can also sometimes be overwhelming, particularly where differing terms are used in different jurisdictions, making it difficult for investors to understand the large volumes of communication coming in from varying advisors."

Facing this challenge, lawyers point to the advantages of their firms' global networks – Baker McKenzie has more than 100 practicing lawyers in Africa and Dentons has the world's largest coverage network in Africa – which not only lay a solid foundation for providing local services, but also enable the firms

Chinese investors enter new or unregulated business models in local markets, they need solutions on how they can interact with the public sector in order to understand the approach taken by local government, as well as act as a stakeholder in the development of new regulations," Du Plessis says.

To ensure that clients continue to achieve business success after the completion of the transactions, "Some companies hire us to serve as directors of local companies and to continue to play the role of legal counsel in the day-to-day business activities of the companies to ensure that Chinese enterprises continue to achieve business success after the completion of the M&A transactions," Lin adds.

CLIENTS' CHOICES

What standards do Chinese companies generally follow when selecting legal advisers for their investment projects in Africa?

Dentons has participated in a number of investment projects of Chinese enterprises in Africa over the past few years. "Chinese clients require their legal counsels to understand the law and can leverage the relevant business or government relationships; to demonstrate competence in the relevant practice area and/or sector; they also want legal services to be cost savings," Kapdi concludes.

For Abayazid, "The reputation and representation criteria of Chinese clients are decisive and are key requirements for a Chinese company when selecting a local law firm."

Zhonglun W&D also represented Chinese enterprises in their projects in Africa. Based on his past experiences, Lin suggests that a Chinese company should hire a team of experienced Chinese lawyers to lead the projects and use local lawyers as helpers. "On the one hand, Chinese lawyers can accurately understand the client's business objectives and demands; on the other hand, we are familiar with the services and the ways of thinking of foreign law firms. Therefore, we can effectively coordinate and facilitate communication between clients and foreign law firms."

In addition, law firms can also utilise technological means to provide related services.

"Dentons leverages various technological resources to cooperate with our clients, such as video conferencing, intelligent file sharing portals, electronic messaging systems and more. We also use bespoke technological resources for specific deals, such as artificial intelligence due diligence software is used in M&A deals," Kapdi says.

Du Plessis adds: "Baker McKenzie has adopted a global e-discovery and investigations platform and has also employed document analytics tools... Tools such as these can enable the effective implementation of multina-

technology and high technology infrastructure. "The number of active tech hubs in Africa has almost doubled over the last couple of years – from 314 in 2016 to 618 in 2019. Projects such as China's 'Digital Silk Road' ambition to link emerging markets with hi-tech telecommunications hardware infrastructure continue to be more relevant than ever in African economies and we see an increased focus in the 'digitalisation of Africa' by leaders on the continent and their investors."

Another opportunity lies in Africa's rapid urbanisation. Abayazid tells *ALB* that he has already seen feasibility plans for two airport projects and construction of a business district and also

"Cross-border legal compliance has become so complex. Communication in multi-jurisdictional matters and deals can also sometimes be overwhelming, particularly where differing terms are used in different jurisdictions, making it difficult for investors to understand the large volumes of communication coming in from varying advisors"

– Wildu du Plessis, Baker Mckenzie

tional projects spanning 60 or 70 countries at a time at a surprisingly rapid pace – an incredibly useful tool in a continent with so many different legal systems."

FUTURE TRENDS

Kapdi mentions the importance of the 2018 Beijing Forum on China-Africa Cooperation when talking about future trends. "China's commitment (\$60 billion) remains strong, but cautious. China has shifted from identifying its financial contribution as development assistance to development finance," he says.

Speaking of specific highly pursued sectors, Kapdi mentions digital

large-scale commercial and residential buildings.

Even with the COVID-19 pandemic lingering, law firms believe 2020 has a great deal of opportunities. "A new report participated by Baker McKenzie, BRI Beyond 2020, shows that the ripple effects of COVID-19 are affecting the nature, pace and scope of China's Belt and Road Initiative activity in Africa," Du Plessis says.

He continues: "The report highlights that one key area of potential for the BRI is in projects focused on strengthening the health systems of low-income countries. China's MedTech sector may similarly find opportunities abroad." 

APP DEVELOPMENT PLATFORMS AS A LEGAL SERVICE OFFERING

BY KENNETH JONES

■ To some within the legal technology field, the value of enterprise software vendor app development platforms is not widely appreciated.

This is a function of our industry, one in which many law firm chief information officers (CIOs) or corporate technology managers assigned to legal operations are generally focused on implementing existing applications and tools. Those specializing in building new legal applications — often having to code them from the ground up — is a comparatively small number.

To put that another way, most legal technology leaders generally are working on projects to purchase, configure, and deploy cloud-based apps both from enterprise-level software providers, such as Microsoft, Amazon Web Services (AWS), Google, or more legal-centric providers in core disciplinary functions such as e-discovery, document management, practice support, time entry, etc.

Even given the impressive portfolio of products in the marketplace today, there are further opportunities to leverage development platforms within the current legal sector. These platforms offer even more utility within the rapidly changing business climate created by the recent global pandemic.

WHAT IS AN APP DEVELOPMENT PLATFORM?

Simply put, app development platforms are developmental toolkits hosted by large enterprise software vendors. These environments allow for rapid build-out of new applications within these platforms. The building is usually done by skilled configuration specialists rather than pure software programmers.

Let's start with an example we all can relate to — our mobile devices. We all get

the concept of the Apple App Store (for iOS) or Google Play (for Android) — these are “stores” that allow users to browse and download useful apps for our phones and tablets. Pretty simple concept.

Well, similar marketplaces have emerged for corporate apps rendered within enterprise-level platforms used by the world's largest companies. Some examples are the Salesforce App Exchange and Oracle Cloud Marketplace. That means that companies who use Salesforce as their customer relationship management (CRM) system or the Oracle database to power their business can access business-related applications in these marketplaces.

TARGETING FUNCTIONAL AREAS

Salesforce, for example, offers various functional suites such as a Healthcare Cloud or Financial Services Cloud. The general value premise is that users of their core product — in the case of Salesforce, that's its sales/business development CRM offering — benefit by using software in other vertical markets which are integrated with CRM data. One example of the anticipated synergies available through these interrelationships is the ability for users to tie their financial applications that manage cash flow to order receivables.

So, how might all of this relate to legal operations? Corporate law departments work on many types of transactions that can be integrated and streamlined within an organisation (e.g., contract management, business development and licensing work, real estate transactions, and IP work to name a few.)

DEVELOPMENT BENEFITS

App development platforms can offer significant advantages, including:

Rapid Builds — Development platforms such as Oracle Visual Builder or Salesforce Lightning offer skilled technology professionals the opportunity to configure, rather than code, applications from the ground up. The ability to build application objects, place them on forms, and develop reports — all without coding — drastically slashes both the cost and time required to build out new applications or enhance feature sets within existing software tools.

Customisation — A “build it yourself” model also allows for personalisation and customisation. Products like the Google App Engine or the offerings from Salesforce and Oracle all offer customisation options beyond the flexibility alternatives offered by many common legal applications in the marketplace today.

Integration — Connecting all the pieces is a huge benefit of app development platforms designed for the corporate legal space. To explain, within the broader legal technology world, standardisation bureaus like the Standards Advancement for the Legal Industry (SALI) Alliance strive to provide improved connectivity between different legal platforms that want to exchange data efficiently. ^{ALB}

Kenneth Jones oversees various aspects of technology at Tanenbaum Keale LLP in the role of Chief Technologist.

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