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SINGAPORE'S TOP IN-HOUSE TEAMS 2020



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INDONESIA GETS AN AMENDED MINING ACT

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Being a legal hub for the Southeast Asian region, Singapore rightfully boasts top-quality lawyers in both the private practice and in-house spaces. But this year, as the impact of COVID continues to cast a shadow, in-house teams are under even greater pressure. This year's list celebrates lawyers who stand out for their innovation, their leadership qualities and the value they add to their businesses.
By Elizabeth Beattie

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FROM THE EDITOR



RANAJIT DAM
Managing Editor,
Asian Legal Business
Thomson Reuters

The in-house side continues to grow stronger.

Not too long ago, in-house was the “poor cousin” to private practice, seen as a safe route for those who couldn’t quite cut it as external counsel. How times have changed. Today in-house counsel are doing increasingly significant and interesting work, and the benefits, including higher pay, better hours and a chance to rise to the top of a company, means that in-house roles are sought after like never before. The rise of the in-house side – in both importance and profile – is one of the most significant developments in Singapore’s legal industry.

Keeping this in mind, *ALB* celebrates Singapore’s best in-house teams. These are corporate legal departments who are doing cutting-edge innovative work, assisting their companies navigate an increasingly treacherous regulatory landscape, and also being actively involved in the overall growth and prosperity of the business. To them, we offer our congratulations!

Finally, just a reminder that two of our big annual rankings and lists – the *ALB Asia 40 Under 40* and *ALB Asia M&A Rankings* – are now open for submissions, and we will shortly begin our research for the *ALB Asia Top 50*. Please reach out to Rowena Muniz at the email address listed on this page for submission forms and other information.

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THE BRIEFING: YOUR MONTHLY NEED-TO-KNOW

QUOTE UNQUOTE

*"THE DECISION IS
A BRAZEN
ASSAULT*

ON THE RULE OF LAW."

Baroness Helena Kennedy QC, director of the International Bar Association's Human Rights Institute, criticises the conviction of Philippine journalists Maria Ressa and Reynaldo Santos Jr on retroactive cyber libel charges.

IN THE NEWS

1

AI platform Luminance has integrated with Ansarada, a software-as-a-service information-governance platform and AI-powered virtual data room provider. The move is expected to improve the due-diligence process for lawyers under a remote-work arrangement.

2

More than 70 firms in the U.S. have shown support for racial justice as protests against racism sweep the country. They include Skadden, Arps, Slate, Meagher & Flom, Davis Polk & Wardwell, Akin Gump and Morrison & Foerster.

HONG KONG DETAILS NEW POWERS UNDER CHINA LAW

Hong Kong has released additional details of China's new national security law for the former British colony, according to Reuters, saying security forces had overriding authority to enter and search properties for evidence and stop people from leaving the city. Hong Kong returned to China on July 1, 1997, under a "one country, two systems" formula guaranteeing wide-ranging autonomy and freedoms not enjoyed on the mainland, including an independent judiciary. But under China's new legislation, crimes of secession and sedition will be punishable by up to life in prison, Reuters added, stoking concerns of a much more authoritarian era in a city which has been racked by anti-China protests for the past year.

70 PERCENT

Proportion of female lawyers of colour in the U.S. likely to seriously consider leaving the profession, according to a study conducted by the American Bar Association (ABA). Most report feeling undervalued and experiencing barriers to career advancement.

8%

Percentage of GCs who play an executive role in their companies, according to a study conducted by Gartner, even though 46 percent claimed that it was their ideal role. Some 59 percent said that they simply served as lead attorneys for their corporations.

WITH LAWYERS WORKING FROM HOME, FIRMS PONDER NEED TO RENT SPACE

The coronavirus pandemic has forced lawyers across the U.S. to work from home, leading many managing partners to ask why firms are paying for all that space, reported Reuters. The number of law firms signing new or renewing leases was down 75 percent compared to the average number during that same period in 2016-2019, real estate data company CoStar Portfolio Strategy has found. And in a recent survey of 222 law firm leaders, 72 percent said they expect they will need less office space, and 19 percent said expected that drop to be by more than 25 percent.

BOLD MOVES

The pandemic has so far had a broadly negative impact on businesses across the region, but surprisingly, the period has also seen a number of law firms open in various Asian markets. Their founders say they are using this period of upheaval as a time to start afresh, establishing new operations with energy and a determination to do things differently.

YOU OPENED AT A TIME WHEN THE PANDEMIC WAS IN FULL SWING. WHAT HAS YOUR EXPERIENCE BEEN LIKE SO FAR, AND HOW MUCH HAS COVID-19 IMPACTED YOUR WORK?



KUMAR

SARAVANA KUMAR, partner,
Rosli Dahlan Saravana Partnership, Malaysia

On Feb. 20, five of us set up our law firm, Rosli Dahlan Saravana Partnership (RDS). We had hardly completed two weeks of practice when my partner, Rosli Dahlan, was tested positive for COVID-19. He went on to become the famous Patient #33 — even the country's Prime Minister spoke of his admiration for Rosli who after his recovery, took the role of helping other victims. I was tested positive on Mar. 4, and became Patient #53, and within days, about 15 of us tested positive and were hospitalised. Our office was closed, and everyone was placed in quarantine in early March. Of course, we had our moments of despair and uncertainty, but we resumed practice on May 4 with unwavering confidence in the Malaysian economy — and that people are resilient and will bounce back quickly. We did not take any austerity measures, like reducing our staff salary or workforce, and we remain today the highest-paying law firm in Malaysia with an on-going recruitment campaign. Recovering from COVID-19 reenergised us, and we built a successful firm which focuses on customised quality legal services. We are proud that we stayed positive despite some rival law firms posting viral emails almost daily naming and shaming our partners and our firm, attempting to make us look like the proverbial leper to be shunned and cast away. For us, the COVID-19 pandemic affected all Malaysians, not just a segment of society. Rather than pointing fingers or finding faults, we are resolute to overcome the challenges together. We took an active role during the consultation processes led by the government and proposed policies and initiatives to address the economic challenges that have arisen as a result of Malaysia's Movement Control Order. Our experience and determination enable us as firm



BOWERS

to be empathetic with our clients whilst we work to resolve their legal concerns both with business partners and in court.

KEVIN BOWERS, partner,
bowers.law, Hong Kong

bowers.law opened its doors for the first time on Apr. 1, slap bang in the middle of the COVID-19 pandemic. Most other lawyers (and almost everyone else I know) thought I was crazy to be starting a brand new business and implementing a new law firm business model whilst the majority of other Hong Kong businesses and most other Hong Kong law firms were shuttered with employees mostly working from home full-time or in rotation. I initially thought that the doomsday predictors were spot on as my personal experience of getting the mechanics and logistics of opening a new law firm done on my own during this period was so much harder than would usually have been the case. I was a bit downcast. However, then came the up-sides:


- the firm's office rent (in a prime location opposite the High Court) is about 40 percent less than what it was just six to nine months ago, which together with an initial rent-free period is great for any start-up business;
- my core practice areas of commercial dispute resolution (shareholder, employment, insurance and property disputes), fraud and crisis management are well-suited to the prevailing, very challenging, business environment which inevitably provokes discord and disagreements between business partners and in all aspects of business life;
- the firm's business model of charging only fixed, capped and retainer fees across the board is attractive to both corporate and individual

clients alike as it provides them with value, certainty and a degree of shared risk - which in such tough times is an attractive proposition, especially when the model encourages legal services to be provided as quickly, efficiently and cost-effectively as possible, which is what any client wants from its lawyers; and

- the absence of timesheets is very popular with job applicants.

The firm has encountered COVID-19 related difficulties, primarily the General Adjourned Period (GAP) in the Hong Kong Courts from Jan. 29 to May 3 and the consequential backlog, lack of face-to-face meetings, absence of international lawyers and business travellers and general business uncertainty, leading to the tightening of legal purse-strings. Overall, however, I can safely say that the positives of opening the firm during such a difficult period in Hong Kong and internationally have by far outweighed the negatives, with the bowers.law team all pulling together in the same direction and working hard to make sure that we come through the challenges as unscathed and as enthusiastic about the future as we possibly can.

**LUO LING LING, managing director,
Luo Ling Ling, Singapore**

I received an unusually large number of messages and new client queries after announcing on LinkedIn that I would be establishing a new firm – and I was truly overwhelmed. As of writing, the post has around 228,000 views and the number is still increasing. I had no idea how that happened. I don't often post on LinkedIn, so I did not expect this. Why I am starting my practice? I love the law and cannot imagine myself doing anything else. In a large firm, there are too many other kinds of non-law administrative work or business development work which I rather not spend time on. In my firm, I will be able to focus on the type of work which I like. This was not possible in a large firm with billing targets, where you are expected to do any piece of work assigned to you. Why now? I was told that it is an absolute disaster to start on my own now, with COVID-19 slowing down businesses. My boss told me that it would be like "suicide." Also, if I stayed at that firm until December 2020, I would receive bonuses for 2019. What then? Since I've would have served another full year, I might as well have stayed another few months to get the bonus for 2020? That was what I told myself last year, and the year before and every other year before that. I know that I am walking away from a stable income and I am forfeiting the bonus that I worked so hard for, but if I don't do it now, then when? 



ONE-FIFTH OF MALAYSIA LAWYERS MULL CEASING PRACTICE DUE TO COVID

Some 21 percent of Malaysia's lawyers are contemplating ceasing practice or closing their law offices due to the impact of the national lockdown instituted as a response to the COVID-19 pandemic.


A small section of the respondents also said that they expected to suffer losses of more than 3 million ringgit (\$700,000) between March and September this year.

There were some of the results of a survey conducted by Bar Council Malaysia titled "The Effect of the Movement Control Order (MCO) on Law Firm Owners of the Malaysian Bar."

According to the survey, 54 percent of the 844 respondents said that they were confident that there was no need to make any changes to their law practices. However, nearly 42 percent of the respondents said they hoped to continue their practice by downsizing or merging.

Additionally, the survey discovered that nearly 36 percent of respondents indicated they would experience losses of up to 50,000 ringgit between March and September this year while 29.5 percent expected to incur losses of between 100,001 ringgit and 500,000 ringgit.

Also, feedback for the Malaysian government's 260 billion ringgit (\$60.8 billion) PRIHATIN Rakyat Economic Stimulus Package was generally negative, with the respondents averse to taking on additional financial burdens in the form of loans. "Whether it is in the lack of work available to law firms or existing clients cancelling and terminating work and requesting refunds of fees paid, the devastating shadow cast by this pandemic will continue to loom over us for the foreseeable future," Malaysian Bar president Salim Bashir was quoted as saying in *The Star* newspaper.

The survey was conducted from Apr. 10 to Apr. 20. The Malaysian government imposed its MCO on Mar. 18 in response to the COVID-19 pandemic. 



POST-PANDEMIC LAW FIRMS WILL BE AGILE AND TECH-FORWARD, AND THEIR OFFICES WILL REFLECT THAT

What will the future of work look like? Indeed, what will the office of the future look like, particularly in the aftermath of the pandemic? These are questions that law firms, among other businesses, will likely be grappling with over the coming months and years. And with COVID leaving workplaces empty for prolonged periods, firms using this time to relook at their needs and options when it comes to workspaces.

Cecilia Wang, a Hong Kong-based director at design firm M Moser Associates, says the modern legal workplace will need to reflect the “agility” of technology used by clients, staff and partners in a post-COVID world.

Wang, who works with law firm clients, has watched as expectations and needs have shifted over time, with spaces for collaboration and work-life balance growing critical.

“Moving away from traditionally cellular and status-symbolising spaces, law firms are increasingly leaning towards more agile workplaces,” says Wang, adding that she has noticed a

greater focus on “synergising aesthetics with flexibility, functionality, collaboration, and interaction.”

Neil Salton, former principal of Woods Bagot Singapore and managing director of ChangeWorq, a workplace strategy practice, assists firms with realising the type of workplace they want to create. Similarly, he has also noticed several ways that law firm workspaces are changing — and are likely to continue to evolve in the future.

Salton, who takes a particular interest in firms “looking to change and adapt to disruptive times,” considers law firms “interesting examples,” noting that they have a variety of needs and requirements they must balance.

“Some law firms are already changing away from the traditional partner office and separate desk-based environment for juniors towards a more layered space strategy where there are spaces for client meetings, layered with a mix of social, informal meeting areas for lawyers and clients,” Salton tells ALB.

But there are many other opportunities for firms to modernise, including “shifting from enclosed space and formality” to create spaces that promote a sense of coaching and mentoring within the physical space of the firm, he adds.


There’s a balance too when it comes to overhauling spaces and making them more open, that firms will have to navigate when reassessing their spaces post-COVID. There must be enclosed meeting spaces for confidentiality reasons, for example, and firms must balance the different work styles and expectations of various staff members.

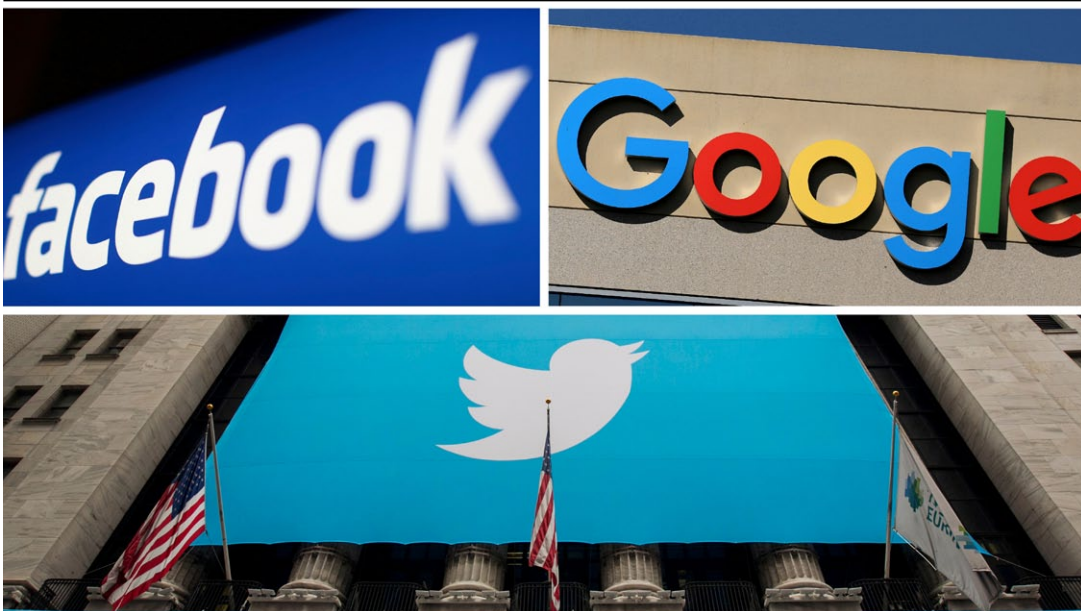
“Focus and concentration is super important in a legal practice and unless you are a partner with an office, this can be hard to achieve in a more open area. So, we need plenty of spaces where anyone (regardless of seniority) can go to concentrate,” Salton adds.

While lawyers grow more used to working in non-traditional spaces, it remains to be seen whether offices will respond by offering more privacy — or making sociable spaces the norm. But we are likely to see design imbued with greater safety considerations in the future.

Wang describes the pandemic as prompting law firms to rethink existing layouts and functionalities to ensure their teams’ safety is prioritised. She also predicts that we are likely to see “human-motivated” design post-pandemic.

“This is where the human side of transformation will play an important role in shaping the post-COVID workplace, where empathy and clear communication will enable firms to address the emotional needs that will ultimately impact the employee experience, whether it be in the physical workplace, split between the office and home, or entirely remote,” Wang says.

“In the end, workplaces will need to be designed with the human needs at their heart in such a way that is adaptable enough to accommodate future drastic changes in both their business landscape and the world. As law firms look to reassess their objectives and outlook, their new workplace will adjust accordingly,” she adds. 



U.S. TECH GIANTS FACE HARD CHOICES UNDER HONG KONG'S NEW SECURITY LAW

(Reuters) U.S. tech giants face a reckoning over how Hong Kong's security law will reshape their businesses, with their suspension of processing government requests for user data a stopgap measure as they weigh options, people close to the industry say.

While Hong Kong is not a significant market for firms such as Facebook, Google and Twitter, they have used it as a perch to reach deep-pocketed advertisers in mainland China, where many of their services are blocked. But the companies are now in the cross hairs of a national security law that gives China authority to demand that they turn over user data or censor content seen to violate the law - even when posted from abroad.

"These companies have to totally reassess the liability of having a presence in Hong Kong," Charles Mok, a legislator who represents the technology industry in Hong Kong, told Reuters.

If they refuse to cooperate with government requests, he said, authorities "could go after them and take them to court and fine them, or imprison their principals in Hong Kong".

Facebook, Google and Twitter have suspended processing government requests for user data in Hong Kong, they said, following China's imposition of the new national security law on the semi-autonomous city.

Facebook, which started operating

in Hong Kong in 2010, last year opened a big new office in the city.

It sells more than \$5 billion a year worth of ad space to Chinese businesses and government agencies looking to promote messages abroad, Reuters reported in January. That makes China Facebook's biggest country for revenue after the United States.

The U.S. internet firms are no strangers to governments demands regarding content and user information, and generally say they are bound by local laws.

The companies have often used a technique known as "geo-blocking" to restrict content in a particular country without removing it altogether.

But the sweeping language of Hong Kong's new law could mean such measures won't be enough. Authorities will no longer need to get court orders before requesting assistance or information, analysts said.

Requests for data about overseas users would put the companies in an especially tough spot.

"It's a global law ... if they comply with national security law in Hong Kong then there is the problem that they may violate laws in other countries," said Francis Fong Po-kiu, honorary president of Hong Kong's Information Technology Federation.

While the U.S. social media services are blocked in mainland China, they have operated freely in Hong Kong.

Other U.S. internet platforms are also rich with content that is banned in mainland China and may now be judged illegal in Hong Kong.

U.S. video streaming site Netflix, for example, carries "Joshua: Teenager vs. Superpower", a 2017 documentary on activist Joshua Wong whose books were removed from Hong Kong public libraries last week.


"Ten Years", a 2015 film that has been criticised by Chinese state media for portraying a dystopian future Hong Kong under Chinese Communist Party control, is also available on its platform.

Netflix declined to comment.

Google's YouTube is a popular platform for critics of Beijing. New York-based fugitive tycoon Guo Wengui has regularly voiced support for Hong Kong protesters in his videos. Google did not immediately respond to a request for comment.

None of these companies has yet said how they will handle requests from Hong Kong to block or remove content, and the risk of being caught in political crossfire looms large.

"The foreign content players have to rethink what they display in Hong Kong," said Duncan Clark, chairman at consultancy BDA China.

"The downside is very big if they get U.S. senators on their backs for accommodating. Any move they make will be heavily scrutinized." 



EXPLAINER

HKEX LAUNCHES GREEN FINANCE PLATFORM

Last year, green bond issuances in the Asia-Pacific region hit record levels, raising \$18.89 billion. Of that Mainland China's green bond market accounted for \$8.13 billion, according to the Hong Kong Stock Exchange (HKEX). So when HKEX recently announced that it would be launching its Sustainable and Green Exchange (STAGE) platform, it sent a message that Hong Kong plans to cement its position as a green finance hub. STAGE, which is described as the first of its kind, will be a centralised source for Asia-focused sustainable and green finance information. But while hopes are high, the platform is still in its early days.

1 PRACTICALLY SPEAKING, HOW WILL STAGE FUNCTION?

In its current form, STAGE is an online information platform with sustainable and green finance Asia data and information links catering towards issuers and investors. But all eyes are on later this year, when HKEX plans to launch its repository of detailed data.

"I think there are hopes and dreams concerning how this might evolve, and how

sustainable finance may develop generally, globally and in particular within Asia," Mark Uhryuk, a corporate partner at Mayer Brown, tells *Asian Legal Business*.

"The initial phase of STAGE will be a website that acts as a source of Data and information relating to green and social bonds, and on the ESG related products that may be traded on the stock exchange," Uhryuk says, adding that this will later information on bonds and other ESG-related products traded on the Hong Kong Exchange.

HKEX has also discussed STAGE becoming a place to host information that will help investors understand the basics, as well as flagging potential issues or challenges to look out for.

"One of the things that STAGE will do – it's not there yet – will be to help investors with respect to due diligence, and on selecting investments," Uhryuk says, but adds that at present there's little information available about this aspect of the platform or when it will be rolled out. However, he believes that "there's a lot more to come".

2 WHAT OPPORTUNITIES IS STAGE LIKELY TO CREATE FOR LAWYERS?

As awareness and interest in green products gains traction, and best practices grow more standardised and guidelines are published, STAGE will provide lawyers in Asia with geographically relevant information and updates – as well as a resource to direct their clients towards.

"There could be opportunities for lawyers to advise clients on whether their bonds comply, or how their bonds can comply, with the applicable international standard used in a certain green bond issuance (which is a requirement to be displayed on STAGE)," says Uhryuk.

But as STAGE develops, there is also the possibility lawyers will be able to use the platform for due-diligence purposes, as well as to provide data.

"As this platform evolves, it could go beyond just listing what bonds are available, but also provide data and tools for other industry participants – private equity asset managers, investors, as they look to adopt best

practices on making investment decisions that are supportive of broader ESG initiatives,” says Uhrynuk.

WHAT DOES THE PLATFORM MEAN FOR INVESTORS IN HONG KONG?

Recently in Hong Kong, growing interest in green and sustainable finance has led to proactive shows of commitment by financial oversight bodies within the market. In May, the Hong Kong Monetary Authority along

with the Securities and Futures Commission released a joint statement on its newly established Green and Sustainable Finance Cross-Agency Steering Group. Among its various focuses, the group aims to examine policy and regulatory issues around green and sustainable finance.

But there are likely more developments on the horizon for Hong Kong as regulations and resources ease the investment process.

“Green bond issuance in the region has been active. There’s no doubt there’s been an uptick in activity over the past few years,” says Uhrynuk about the latest developments.

But beyond this, STAGE also sends a message about how the finance hub plans to position itself. “STAGE represents a clear indication that Hong Kong is really trying to take a leadership role in devoting the time and resources, to lead the Asia region on these issues,” he adds. ^{ALB}

DEALS

\$5 BLN

Cathay Pacific’s recapitalisation plan

Deal Type: ECM, Loan
Firms: Clifford Chance; DLA Piper; Linklaters
Jurisdiction: Hong Kong

\$3.9 BLN

JD.com’s secondary listing

Deal Type: IPO
Firms: Clifford Chance; Shihui Partners; Skadden, Arps, Slate, Meagher & Flom
Jurisdictions: China, Hong Kong

\$2.7 BLN

NetEase’s global offering of new ordinary shares

Deal Type: IPO
Firms: Davis Polk & Wardwell; JunHe; Skadden, Arps, Slate, Meagher & Flom; Zhong Lun Law Firm
Jurisdictions: China, Hong Kong

\$2.14 BLN

Bangkok Bank’s acquisition of Bank Permata

Deal Type: M&A
Firms: HHP Law Firm (Baker McKenzie); Hiswara Bunjamin & Tandjung; White & Case
Jurisdictions: Indonesia, Thailand, UK

\$1.2 BLN

Alibaba’s acquisition of stake in Perennial Shenton Holdings

Deal Type: M&A, Project Financing
Firm: Allen & Gledhill
Jurisdictions: China, Singapore

\$1.2 BLN

Mubadala Investment’s acquisition of stake in Jio Platforms

Deal Type: M&A
Firms: AZB & Partners; Davis Polk & Wardwell; Nishith Desai Associates; Shardul Amarchand Mangaldas & Co.; Skadden, Arps, Slate, Meagher & Flom
Jurisdictions: India, UAE

\$993 MLN

Kotak Mahindra Bank’s qualified institutional placement

Firms: AZB & Partners; Clifford Chance; Cyril Amarchand Mangaldas; S&R Associates
Jurisdictions: India, Singapore

\$752 MLN

Abu Dhabi Investment Authority’s acquisition of stake in Jio Platforms

Deal Type: M&A
Firms: AZB & Partners; Davis Polk & Wardwell; Shardul Amarchand Mangaldas & Co.
Jurisdictions: India, UAE



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

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

Today, COVID-19 has already spread across more than 200 countries and regions in the world. The number of the confirmed cases exceeds 4 million at the time of writing, and it continues to rise globally.¹ On 11 March 2020, the World Health Organization declared COVID-19 a pandemic.²

Tribunals, parties and counsels are facing greater challenges to mitigate the adverse effects of the COVID-19 pandemic on arbitration such as delay of arbitral proceedings and obstacles to initiate new arbitration cases.

In order to proceed with arbitration actively and properly, protect the parties' legitimate interests, and uphold social fairness and justice, on 28 April 2020, China International Economic and Trade Arbitration Commission ("CIETAC") issues its *Guidelines on Proceeding with Arbitration Actively and Properly during the COVID-19 Pandemic (Trial)* ("Guidelines"), providing detailed guidance to tribunals, parties and counsels to conduct arbitration effectively during the COVID-19 pandemic.

This article will firstly elaborate on the challenges in CIETAC arbitration proceedings during the pandemic. Then, it will examine the Guidelines by analyzing its legal status and fundamental principles, and the specific measures provided therein.

I. Challenges brought by the COVID-19 Pandemic to CIETAC Arbitration

In 2019, CIETAC accepted 3,333 new arbitration cases, including 2,716 domestic cases and 617 foreign-related ones, of which 66 were between non-Chinese parties. The total amount in dispute was about RMB 122 billion (around USD 17.25 billion), marking a record high in its history. The parties involved were from 72 countries and regions. There were 3,146 cases concluded in 2019.³ By 7 May 2020, the number of cases in process was 2,539.

With the outbreak of the COVID-19 pandemic, measures have been taken to contain the spread of the virus worldwide, which covers almost all the places that the arbitrators and parties live in.⁴ Anti-epidemic measures such as lockdown, self-isolating, social distancing and travel restrictions not only effectively



Wang Chengjie

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limit the spread of the virus, but also disrupt international arbitration, including CIETAC arbitration, in every regard, which can be briefly summarized from the following aspects.

A. Case Filing

Previously, some parties prefer to submit their application for arbitration on site to CIETAC. CIETAC could receive dozens of parties at most for case filing service at the same time. However, ever since the outbreak of the COVID-19, on-site submission was strictly restricted and the office facilities of CIETAC were not open to the public.⁵ All these measures prevent CIETAC from providing on-site case filing services to satisfy the parties' need.

B. Service of Documents

Service of documents can be of considerable importance in arbitration, especially the service of the request for arbitration upon the Respondent, which has a direct connection to the subsequent annulment, non-recognition or non-enforcement

proceedings.⁶ Service by courier is a default service of process in CIETAC arbitration. Usually, domestic mails can be delivered by courier within 3 days, while international mails can be delivered by courier within 7 days, depending on its distance to Beijing.

Yet service by courier are impeded by the COVID-19 pandemic. Many enterprises have stopped working. In some cases, courier service companies even stopped delivering mails, and no recipients can be expected to be present at the place of business which is probably the only mailing address the Claimant can provide. Additionally, the control and cancellation of international flights on account of epidemic prevention unavoidably prolongs the delivery of international courier. The time spent for delivery has multiplied, resulted in severe delay of the arbitral proceedings.

C. Oral Hearing

Oral hearings are mandatory in virtually all international arbitration cases.⁷ Cases managed by CIETAC normally need to be examined with oral hearings conducted at CIETAC hearing rooms with the physical presence of all the participants. However, subject to travel restrictions and social distancing policy, the COVID-19 pandemic made it impossible to arrange physical oral hearings for a certain period. Actually, CIETAC and its sub-commissions/centers cancelled 360 oral hearings in total from February to April in 2020.

D. Appraisal

Appraisal is considered to be complicated, time-consuming with a potential high cost. With multiple parties to participate, the same dilemma is present in the appraisal proceedings, which has resulted in the delay of arbitral proceedings in a certain number of arbitration cases.

The above-mentioned aspects only cover some of the disruption caused by the COVID-19 pandemic. Given the above, traditional practice is not sufficient during this special period, and guidance is needed to deal with the challenges.

II. Legal Status and Fundamental Principles

The Guidelines are adopted on the basis of the existing CIETAC Arbitration Rules (“Arbitration Rules”).

A. Legal Status

The Guidelines are not binding, and do not constitute a part of the Arbitration Rules.⁸

The Guidelines are not legal provisions and do not override any applicable national law or arbitration rules chosen by the parties. The arbitral tribunal and the parties may follow the Guidelines subject to any applicable mandatory rules, in their discretion or agreement, to deal with obstacles that may possibly appear in arbitral proceedings during the COVID-19 pandemic.

The Guidelines are temporarily in force.⁹

The Guidelines are tailored to facilitate CIETAC arbitration during the COVID-19 pandemic, which are time-based in nature. The Guidelines are effective during the COVID-19 pandemic, and will cease to have effect when the pandemic is over.

B. Fundamental Principles

It is of vital importance that the basic principles of the Arbitration Rules are upheld. By taking effective measures outlined in the Guidelines, which strictly follow the basic principles embodied in the current Arbitration Rules, arbitral tribunals, parties and CIETAC are able to actively proceed with arbitration to the greatest extent possible.

i. Arbitral Tribunal shall proceed with arbitration fairly and efficiently.

The Guidelines lay emphasis on the tribunal's extensive procedural discretion granted by Article 35.1 of the Arbitration Rules, which allows the arbitral tribunal to conduct the arbitration proceedings

in any way it deems appropriate.¹⁰ The Guidelines further emphasize that, while taking such measures, the arbitral tribunal still bears the responsibility to proceed with the arbitration efficiently, which is stipulated in the Arbitration Rules and is not changed by the pandemic.

Moreover, the duties of independence and impartiality are inherent and vital aspects of arbitrator's adjudicatory role,¹¹ which are expressly set forth in Article 35 of the Arbitration Rules. The Guidelines further strengthen the importance thereof, according to which, no matter what measures are taken, the arbitral tribunal shall make sure that the parties are given full opportunity to present the case, so as to protect the arbitral awards against potential challenges.

ii. Parties shall participate in the arbitral proceedings in good faith.

The Guidelines require the parties to participate in the arbitral proceedings in good faith in accordance with Article 9 of the Arbitration Rules. The Guidelines further illustrate the “good faith” principle under the background of the pandemic, which request the parties to “try their best to mitigate the effects of the pandemic on the arbitral proceedings and avoid abuse of rights, and shall not pursue unreasonable and unfair procedural rights with the pandemic as an excuse or impede the arbitral proceedings in bad faith.”¹²

iii. Arbitration Institution shall provide necessary service and guarantee.

Arbitration institution shall guarantee the stability and functioning of arbitration proceedings for the foreseeable future,¹³ which plays an important role to facilitate the arbitral proceedings. To be more specific, it is necessary for CIETAC, as

the administering arbitration institution, to assist the tribunals, parties and counsels by all means to proceed with the arbitration efficiently.

CIETAC, therefore, is expected to act promptly to communicate with the arbitral tribunals and the parties, and facilitate the exchange of opinions regarding the arrangement of arbitration proceedings. Where it is necessary, CIETAC shall provide the arbitral tribunals, parties and counsels services and guarantee for the arbitration to be conducted in an efficient manner.

iv. Techniques applied shall be of functional-equivalence and technology-neutrality.

The adverse consequences of the COVID-19 pandemic make it more critical than ever that tribunals, parties, and counsels give due consideration to case management techniques designed to make arbitration fair and efficient.¹⁴ In light of this, techniques with higher efficiency such as online filing system, electronic service of documents, virtual hearings are introduced to mitigate the effects. However, techniques are merely mechanisms to facilitate the arbitral process, the application of which shall only be considered as a way to cater for “functional equivalence” between physical means and electronic means.¹⁵

No matter what techniques are applied, it is essential to assure that the utilization thereof is neutral so as to protect the legitimate rights and interests of the parties in accordance with the applicable law.

To be continued. Part two will be published in ALB Asia August 2020 issue.

¹ Available at <https://covid19.who.int/>, last visited on 12 May 2020.

² Available at <https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020>, last visited on 12 May 2020.

³ See *CIETAC 2019 Work Report*, available at <http://www.cietac.org.cn/index.php?m=Article&a=show&id=16872&l=en>, last visited on 12 May 2020.

⁴ Ahmed Bakry, *The COVID-19 Crisis and Investment Arbitration: A Reflection from the Developing Countries*, Kluwer Arbitration Blog, April 21, 2020, available at <http://arbitrationblog.kluwerarbitration.com/2020/04/21/the-covid-19-crisis-and-investment-arbitration-a-reflection-from-the-developing-countries/>, last visited on 12 May 2020.

⁵ See *Urgent Notice on Work Arrangements during the Prevention and Control of the COVID-19*, available at <http://www.cietac.org.cn/index.php?m=Article&a=show&id=16453>, last visited on 12 May 2020.

⁶ Gary Born, *International Commercial Arbitration (Second Edition)*, 2nd edition, Chapter 15, pp. 2220-2221.

⁷ *Supra* note 6, p. 2264.

⁸ Article 3 of the Guidelines.

⁹ *Ibid.*

¹⁰ Article 35.1 of the Arbitration Rules provides that the arbitral tribunal shall examine the case in any way it deems appropriate unless otherwise agreed by the parties. Under all circumstances, the arbitral tribunal shall act impartially and fairly and shall afford a reasonable opportunity to both parties to present their case.

¹¹ *Supra* note 6, p. 1988.

¹² Article 1.2 of the Guidelines.

¹³ W. Melis, *Function and Responsibility of Arbitral Institutions*, vol. 13 *Comparative Law Yearbook of International Business* 107, 109 (1991).

¹⁴ ICC Guidance Note on Possible Measures Aimed at Mitigating the Effects of the COVID-19 Pandemic, § 6.

¹⁵ Peter Binder, *International Commercial Arbitration and Mediation in UNCITRAL Model Law Jurisdictions*, 4th edition, p. 643.

NISHIMURA, ANDERSON MORI ENTER INTO SINGAPORE ALLIANCES

Japanese Big Four firms Nishimura & Asahi and Anderson Mori & Tomotsune have entered into formal law alliances (FLAs) in Singapore with local practices, becoming the first firms from the North Asian country to do so.

Nishimura, Japan's largest firm by headcount, inked an FLA agreement with Bayfront Law. The arrangement will allow the Japanese firm's lawyers who are qualified in Singapore — Masato Yamanaka, Masataka Sato, Yuji Senda and Tomoro Yoshimoto — to practice under the alliance name Nishimura & Asahi-Bayfront-Law Alliance.

Bayfront Law began operations in 2017 and has twelve lawyers, including six directors. It is led by managing director Kesavan Nair.

Nishimura & Asahi's Singapore office was established in 2012. It is led by co-representatives Yamanaka and Shintaro Uno. The firm has twelve lawyers, of whom eight are Japanese.

Dominant in its domestic market, Nishimura & Asahi has launched offices and alliances in Vietnam, Thailand, Indonesia, Myanmar, Taiwan, China and New York. This year, the firm became the first Japan Big Four firm to establish offices in Europe.

Meanwhile, Anderson Mori & Tomotsune entered into an FLA with DOP Law Corporation. This comes some months after AMT established a presence in Hong Kong with the opening an associated office — Nakamura & Associates — in that city.

DOP, formerly known as David Ong & Partners, was established in 1996. It currently has seven lawyers, including managing director David Ong.

AMT's Singapore office, which was established in 2013, presently has 29 partners. ^{ASB}

APPOINTMENTS



YK CHAN

LEAVING
Paul Hastings

JOINING
Hill Dickinson

PRACTICE
Capital Markets

LOCATION
Hong Kong



JONG YOUL CHOI

LEAVING
Financial Supervisory Service

JOINING
Yoon & Yang

PRACTICE
Banking and Finance

LOCATION
Seoul



YONG HO CHOI

LEAVING
Financial Supervisory Service

JOINING
Yoon & Yang

PRACTICE
Banking and Finance

LOCATION
Seoul



HWAN JUN HEO

LEAVING
Financial Supervisory Service

JOINING
Yoon & Yang

PRACTICE
Banking and Finance

LOCATION
Seoul



LEX KUO

LEAVING
Latham & Watkins

JOINING
Baker McKenzie

PRACTICE
Media and Entertainment

LOCATION
Hong Kong



DEREK POON

LEAVING
Kirkland & Ellis

JOINING
Baker McKenzie

PRACTICE
Private Equity

LOCATION
Hong Kong



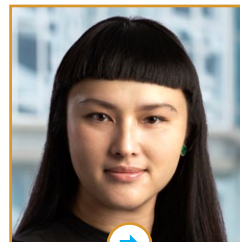
AMEET KAUR PURBA

LEAVING
Shearn Delamore & Co

JOINING
LAW Partnership

PRACTICE
Intellectual Property

LOCATION
Kuala Lumpur



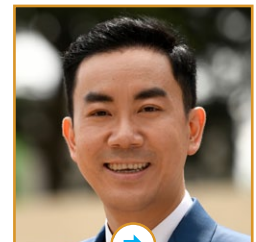
JADE TANG

LEAVING
Oldham Li & Nie

JOINING
Hugill & Ip

PRACTICE
Corporate, Commercial

LOCATION
Hong Kong



LIANG (ALEX) TAO

LEAVING
Allen & Overy

JOINING
Milbank

PRACTICE
Capital Markets

LOCATION
Hong Kong

COVID SPARKING SOMETHING OF A BUSINESS CULTURE RETHINK IN JAPAN

Could the coronavirus pandemic push Japan — a country known for its reliance on fax machines and hand-written resumes — to gravitate to a new, more digital way of working? Over the past few months, global work culture has been drastically reshaped to adapt during the pandemic, creating quirks along the way. For many businesses, everything meetings to hiring and firing has been carried out online.

In Japan, lawyers describe there being something of a divide in the workforce between those adapting to working flexibly and those expected to carry on like they did before the pandemic struck. But this is a country rooted in tradition. For example, hanko seals — similar to company chops in Hong Kong — are a critical step in the business process, used to officialise documents. They are also deeply ingrained within Japanese culture, their use stemming back some 2,000 years.

Likewise, face-to-face meetings have long been considered a non-negotiable for many traditional companies, but within some offices, COVID-19 has triggered reflection around this previously unquestioned cornerstone of business relationships.

“Japanese people definitely do face-to-face meetings,” says Kaori Yamada, a competition and trade partner at Freshfields Bruckhaus Deringer’s Tokyo office. “In Europe where the business centres are spread out across the region, people tend to do things over the phone or through email, just to get things done, but in Japan, most of the businesses are focused in Tokyo.”

“There is a notion that a proper



People wearing protective masks make their way during rush hour on the first working day after the Golden Week holiday amid the coronavirus disease (COVID-19) outbreak, at Shinagawa station in Tokyo, Japan, May 7, 2020. REUTERS/Kim Kyung-Hoon

meeting has to be face-to-face and it is almost rude not to meet or visit in person when you want to talk about something very serious. For some, that has continued even through the COVID-19 situation,” Yamada adds.

George Gibson, head of Tokyo at Norton Rose Fulbright, notes that in many cases several businesses, “especially SMEs, were not prepared to have their employees work remotely for an extended period because it was contrary to traditional business practices in Japan.”

Additionally, Japan’s reputation for high levels of customer service feeds into client expectations, Gibson notes. Being a professional service provider, “we have a strong belief that to advise and support our clients effectively, we have to be able to meet in-person and often at short notice,” he says, but for engagements before the lockdown “the shift to remote working was not as disruptive as initially imagined.”

But there have been some challenges. “Building new connections and maintaining relationships in Japan is an iterative process, with staff rotations occurring on or about Apr. 1 in most large corporations, so making courtesy visits or introductions by online methods is not as effective as inviting a client to a coffee, lunch or dinner, which is simply not an option at the moment,” Gibson says.

For both Gibson and Yamada’s

firms, switching to remote work has been a fairly seamless experience, helped in many ways by their companies prioritisation of technology.

“Everybody has laptops provided by the company and that laptop has a built-in camera and if you just click on Teams, Skype, WebEx and it automatically starts — and we have IT support,” Yamada says.

While many Japanese law firms may be considered large within the domestic market, some lack infrastructure Yamada says, adding that the ones that were able to transform completely were those with infrastructure already place.

“The law firms that are remaining in the physical spaces, offices, they haven’t invested in all the [necessary] technology, so it’s very difficult for them to work from home without that infrastructure,” Yamada says.

Gibson tells *ALB* that while many workers were unprepared, the COVID-19 pandemic has forced many industries to try out work-from-home arrangements regardless.

“While challenging in the short term, remote working is certainly gaining acceptance and is expected to become part of Japan’s work culture sooner than anticipated. We strongly support and embrace innovation, and look forward to supporting, and adjusting and growing with our clients in their transitions to increased online working,” Gibson says. ALB

Q & A

‘WE INTEND TO KEEP MOVING FORWARD’

Big Four Singapore firm Drew & Napier has undergone something of a metamorphosis over the past year, with lateral hires, the setting up of a regional network, and a greater emphasis on technology. CEO Cavinder Bull SC talks to *Asian Legal Business* about the changes, and shares plans for what’s ahead.

ALB: The past year has seen the firm embrace a new direction. Can you take us through some of the key developments?

BULL: As chief executive officer, I aim to grow the firm both in size as well as capability. This growth is driven by our clients’ needs; they want us to do more for them, not just in Singapore but also in the region. As part of this vision, we added seven people to equity last year. Of these, three were home-grown Drew & Napier lawyers who were promoted. Three more were former Drew & Napier lawyers who came home, and one was a lateral hire who I had been working with on various matters for the last four years. Amongst these are a senior counsel, one of the top tax lawyers in town, one of the most sought-after construction lawyers, and the general counsel of Ethereum Foundation. We have added an oil and gas capability, strengthened our construction law practice, grown our tax and trusts group, added cryptocurrency to our offerings and launched DrewTech, a technology law practice. We are intent on making Drew & Napier a platform for all our lawyers to be able to fulfil their professional ambitions. That will attract and keep talent, to the benefit of our clients.

ALB: As part of its regional growth plans, the firm set up Drew Network Asia (DNA). Can you talk about the plans for this network?

BULL: In March this year, we launched DNA, a network of premium law firms which aims to provide clients with seamless service for multi-jurisdictional legal matters. Joining us in DNA are Shearn Delamore & Co. from Malaysia and Makarim & Taira S. from Indonesia, well known and long-established firms, each



CAVINDER BULL SC


of which shares our vision to provide top-quality legal work. The idea is a simple one. We want to be able to help clients in cross-border situations, but we want to do that whilst still working with some of the best legal minds in the region; hence the vision of developing a network of “blue chip” law firms. This is very much just the beginning. We intend to grow this “firm of firms” to include premium law practices from several other jurisdictions.

ALB: Drew recently entered into a collaboration with financial advisory firm Vanda Global. How does it fit in with Drew’s growth strategy in the near term?

BULL: The growth strategy of Drew & Napier includes, among other things, the strategic collaboration with Vanda Global. Our corporate clients are in various stages of their business cycles, such as the start-up phase, capital and fundraising phase, growth and expansion through mergers and acquisitions, and even looking to list on an exchange. In many cases, businesses only consider the type of legal support that they

require at a very late stage in their decision-making process. By collaborating with Vanda Global, we hope to engage with a wider group of businesses at an early stage of their business cycle, to better understand their legal requirements, and be able to efficiently offer a full suite of legal services to these businesses. By engaging with these businesses in partnership with Vanda Global, we hope to become their legal advisers of choice and expand our corporate practice across various sectors, including technology, fintech, healthcare and life sciences, regulatory and capital markets.

ALB: COVID-19 has made planning more challenging, but what’s your vision for the firm for the coming months?

BULL: The COVID-19 pandemic has posed challenges. However, we are incredibly fortunate that we invested in a significant IT upgrade across the firm last year and this has paid dividends during this trying time. It has enabled our lawyers to be much more productive than otherwise. My short-term goals as CEO have been quite simple: (1) we need to look after everyone in Drew: lawyer, support staff, trainee; (2) we also have to look after our clients by maintaining the quality of our work for them; and (3) we have to continue with our growth vision regardless of the times. By way of example, so far this year we launched DNA and Drew & Napier’s Data Protection, Privacy and Cybersecurity Academy, both during the pandemic. We also launched a CSR-service platform, DrewCare, which provides a full suite of legal and corporate governance advisory for the philanthropic endeavours of business corporations. God willing, we intend to keep moving forward. 

AS EVERSHEDES AND HARRY ELIAS SPLIT, ALLIANCES IN SINGAPORE ARE COMING UNDER SCANNER

■ Eversheds Sutherland and Singapore's Harry Elias Partnership recently announced that they were ending their three-year merger with a joint media release. The statement said the firms were parting on "good terms," but those watching on the sidelines in Singapore have questioned why the arrangement didn't work out, suggesting that the split is symbolic of changing expectations in the highly competitive market.

Speaking about what led to the two firms parting ways, Stephen Kitts, managing partner for Eversheds Sutherland in Asia tells ALB: "Obviously Eversheds Sutherland had some successes during the merger, but Philip (Fong, ex-managing partner of Eversheds Harry Elias) and I agreed it was better we part ways."

"When I look back on my time as a transactional M&A partner, we always said the hard work with mergers began once the ink had dried," he adds, noting "successful integration and alignment is the key to success. After that, it's all about implementation."

The announcement comes a few months after Taylor Wessing and RHTLaw ended their eight-year association.

Tie-ups between local and international law firms in Singapore are now being increasingly scrutinised, and the stakes are growing ever higher. Successful arrangements must marry together the processes and work of two different businesses, while managing expectations on both sides. The checklist for firms entering into these arrangements is long — from considerations such as cultural fit and compatibility, to client experience.

It remains to be seen whether the Eversheds-Harry Elias split will dent enthusiasm when it comes to such arrangements, but Dharmendra Yadav, consultant at Alpha Creates and a former vice-president of the Singapore

Corporate Counsel Association, tells ALB that local firms are being more strategic when considering alliances.

"I think there is a wider conversation going on about what the value proposition of that international relationship should be," Yadav says.

The motivations of why Singaporean firms are entering into these tie-ups are also being examined more closely. Whether the arrangement will result in genuine collaboration, or whether the partnership is motivated purely by gaining an international brand name, are among the questions local firms should ask, Yadav believes.

Where it can go wrong is when expectations don't quite meet reality.



"I think Singapore lawyers are hungry," says Baldev Bhinder, managing director of Blackstone & Gold, an energy and commodities-focused law firm in Singapore.

"They're globalised lawyers. There are lawyers who studied in the UK and then came back to practice in Singapore. They understand global businesses and they want to be part of a global business," he says of the attraction of entering into a joint venture with a global firm.

"But where they might get slightly disillusioned," Bhinder says, is when they see that work for Singapore lawyers can be "very limited."

"The whole point of the joint venture must be the transfer of knowledge from

the big international law firm, to the local law firm," says Bhinder, adding that if Singapore lawyers are only given the "Singapore-centric portion of the deal," they are missing out on the whole picture.

"That trend that I've noticed is Singapore lawyers in these sorts of joint ventures want more," he adds.

The way the firms work together also trickles into matters such as billing and client experience, says Yadav, adding that an international firm's commitment to the market, as well as its investment in Singaporean leadership and talent, is another barometer of the depth of the alliance.

In this case, "there was a lot of potential with the Eversheds brand, because they've got Eversheds Agile or Eversheds consulting. I don't think the Singapore firm really took advantage of this value proposition. I sensed there was a cultural mismatch," he notes.


Yadav adds the firm's D&I efforts will also reveal whether there is an alignment of values.

"There must be better integration. The firms that are doing well are not the firms that have simply parachuted talent into Asia," suggests Yadav, who says local firms need to carefully weigh up the partnership they are considering entering into.

"The question I would ask about Eversheds is: Were they really committed to Singapore?" he adds.

Eager to put this question to rest, Kitts tells ALB the firm's stance in no uncertain terms.

"Eversheds Sutherland is committed to Singapore because it is the legal, financial and business hub in Southeast Asia and the regional headquarters for a number of our global key clients. We are targeting opportunities to work for them on a number of major transactions and disputes," he says.

"Mergers are challenging at the best of times and success relies upon the long-term commitment of resources, time and, most importantly, goodwill. Some really good progress was made in Singapore in the period immediately following the merger, when enthusiasm carried the day," he adds. 

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	Fangda Partners	21,120.9	49	7.1
2	Mori Hamada & Matsumoto	14,874.8	52	5.0
3	Davis Polk & Wardwell	14,616.2	9	4.9
4	Kirkland & Ellis	11,305.6	17	3.8
5	Nagashima Ohno & Tsunematsu	9,522.8	46	3.2
6	Skadden	9,225.5	12	3.1
7	Kim & Chang	8,760.7	60	2.9
8	Han Kun Law Offices	8,118.3	5	2.7
9	Anderson Mori & Tomotsune	7,908.7	25	2.6
10	Weil Gotshal & Manges	7,611.1	3	2.5

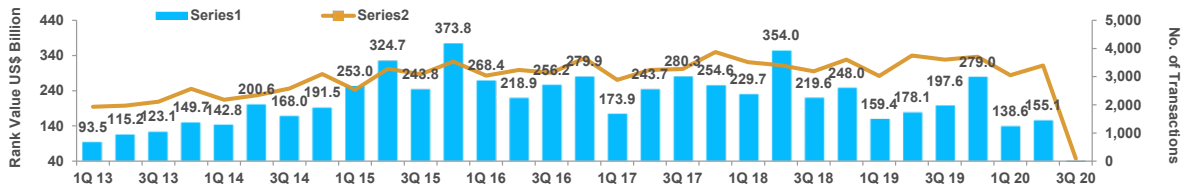
(*tie) Based on Rank Value including Net Debt of announced M&A deals (excluding withdrawn M&A)

North Asia Announced M&A Financial Rankings

Rank	Legal Advisor	Value (\$MLN)	Deals	Market Share
1	Morgan Stanley	20,713.3	25	6.9
2	Nomura	14,531.0	38	4.9
3	Deloitte	13,098.4	60	4.4
4	Goldman Sachs & Co	12,867.8	13	4.3
5	China International Capital Co	11,167.6	18	3.7
6	HSBC Holdings PLC	10,699.1	8	3.6
7	Somerley	8,478.3	17	2.8
8	CITIC	7,635.5	53	2.6
9	Citi	7,209.1	11	2.4
10	Houlihan Lokey (China) Ltd	6,910.2	3	2.3

(*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	13,405.5	7	12.5
2	Allen & Overy	12,667.7	11	11.8
3	Herbert Smith Freehills	11,818.3	8	11.0
4	AZB & Partners	10,850.0	55	10.1
5	Linklaters	10,600.1	2	9.9
6	Davis Polk & Wardwell	9,336.6	3	8.7
7	Cyril Amarchand Mangaldas	9,299.5	47	8.7
8	Allen & Gledhill	9,248.7	13	8.6
9	WongPartnership LLP	8,329.6	15	7.8
10	Hogan Lovells	7,370.8	7	6.9

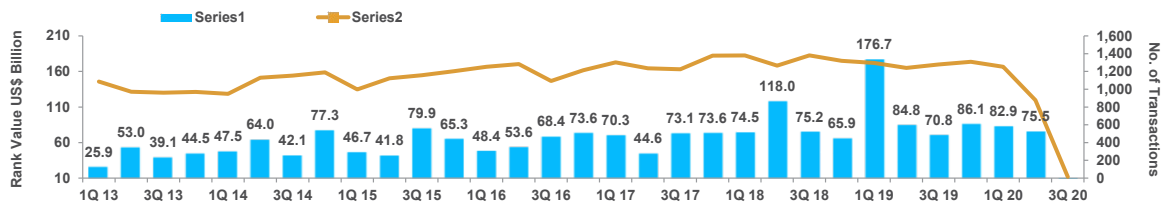
(*tie) Based on Rank Value including Net Debt of announced M&A deals (excluding withdrawn M&A)

Southeast Asia / South Asia Announced M&A Financial Rankings

Rank	Legal Advisor	Value (\$MLN)	Deals	Market Share
1	JP Morgan	21,532.9	11	20.0
2	Credit Suisse	15,797.4	9	14.7
3	Goldman Sachs & Co	15,796.1	8	14.7
4	UBS	11,618.4	5	10.8
5	Barclays	10,739.4	3	10.0
6	Greenhill & Co, LLC	10,600.4	3	9.9
7	Morgan Stanley	9,380.3	5	8.7
8	Deloitte	8,996.3	12	8.4
9	DBS Group Holdings	8,695.8	5	8.1
10	BofA Securities Inc	7,017.7	6	6.5

(*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 7 July 2020.

Ken Adams Drafting Clearer Contracts

30 & 31 July 2020 - 2-Part Webinar

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 6pm to 9pm (Singapore / Hong Kong time) GMT +8 | 7pm to 10pm (Japan time) GMT +9

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- How efficient contract drafting can benefit your business
- The basics of rigorous contract language and layout
- Why revising your contract process can improve contract language

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- Contract managers
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Ken Adams, Author, *A Manual of Style for Contract Drafting*

As the leading authority on contract language, Ken Adams has successfully coached people around the world in drafting clearer contracts. His groundbreaking book *A Manual of Style for Contract Drafting* has sold tens of thousands of copies internationally since it was first published by the American Bar Association in 2004. The much-expanded fourth edition was published in October 2017.

In 2014, the Legal Writing Institute awarded Ken its Golden Pen Award, "to recognize his exemplary work in contract drafting." As part of its "Legal Rebels" project, in 2009 the ABA Journal—the flagship magazine of the American Bar Association—named Ken one of its initial group of fifty leading innovators in the legal profession. And in 2015 the ABA Journal named Ken's blog to the Hall of Fame of its "Blawg 100"—its list of the hundred best law blogs.

For more information about Ken and his activities, go to www.adamsdrafting.com.

MALAYSIA RISING

GOH CHAI LING


36, partner,
Adnan Sundra & Low



Goh's experience includes advising financial institutions and companies on conventional and Islamic banking and finance transactions including securities borrowing

and lending, syndicated and bilateral financing, corporate bonds and sukuk, retail bonds, asset-backed securitisation, convertible securities issuances, perpetual securities issuances, project financing transactions, green bonds transactions and debt restructuring.

Having acted as transaction counsel in local and cross-border debt capital market issuances involving multi-currency Regulation S issuances and complex structures, Goh has played a major role in advising on pioneering and award-winning Malaysian Islamic capital markets transactions such as ASEAN Green SRI Sukuk and SRI Sukuk. She has also advised on M&A transactions, which include the drafting and negotiation of agreements for the acquisition of oceangoing drilling platform fabrication yards between large public-listed and government-owned entities."


Goh commenced her legal career in Malaysia in 2008 with a different local law firm before joining Adnan Sundra & Low in 2011. 

JAZZMINE KHOO WEI CHING

27, managing partner,
Jazzmine Khoo & Associates



Khoo was a protégé of late Dato' Dr. Arunan Selvaraj, the founder of Rusmah Arunan & Associates, and like him, she specialises in matrimony and family law. Following the passing of Dato'


Arunan, Khoo stepped up to lead the litigation team at the Kuala Lumpur branch of Rusmah Arunan. She eventually established her own law firm, which specialises in matrimonial and family law. Among her notable cases, Khoo represented a mother who wanted to protect her two young children born out of wedlock, aged one year and three months old, respectively, from their abusive father who was unwilling to support the family. Khoo successfully helped the mother gain sole guardianship, custody, care and control of her children. A client of hers says: "Amidst the apparent chaos and grapples of daily provides and living for the children in its entirety culminating from the lack of contribution of the other half, seeking the help of a lawyer becomes inevitable, something most of us will shy away from due to the fear of cost and sincerity. Jazzmine secured a paradigm shift in my scepticism of lawyers. She has commendably garnered my confidence, compatibility and most of all, trust." 

LEE YONG CIEH EDWIN

35, partner,
Gan, Lee & Tan (GLT Law)



A corporate, commercial and technology specialist, Lee is a co-founder and the managing partner of GLT Law. He is also a co-founder of CanLaw Asia, a homegrown legal

tech startup. Among his notable transactions, Lee has advised an airline in relation to a proposed decision issued by the Malaysian Competition Commission under the Competition Act 2010. Lee also advised various multinational telecommunication companies and service providers on the regulatory and licensing requirements of the Malaysian telecommunications industry, including their respective applications for various licenses under the Malaysian Communications and Multimedia Act 1998. He is a finalist for the Young Lawyer of the Year at the ALB Malaysia Law Awards 2020. "Edwin's strong work ethics surpass any other lawyers of his standing that I have known, met and engaged with. In the interests of working commitment and perfection for his clients, he has had, in many instances, accommodated his weekends for them. That itself, is an enduring sacrifice which I believe will provide Edwin with a fast track of breadth experience in his career progression," says a client. 

STARS 2020


Young lawyers are making great strides in Malaysia's legal industry as they work on various complex matters. ALB profiles six lawyers from the Malaysian legal market who have made an impact in the industry. BY APARNA SAI

NATALIE OOI WAN QING

32, partner, co-founder,
Ooi & Ooi



Ooi is a partner and co-founder of Ooi & Ooi and specializes in dispute resolution. She is a finalist for Women Lawyer of the Year (Law Firm) and Young Lawyer of the Year (Law Firm)


at the ALB Malaysia Law Awards 2020. Ooi says that she found that all young lawyers face the same challenges at the start of their career, although female lawyers are sometimes seen as objects rather than a subject. "So, for others to recognise me for who I am, I realised that I consciously needed to represent myself as a subject. After all, we are always treated in the way we treat others," Ooi says. She adds that she has found that female lawyers have to be assertive without being aggressive. She says: "I believe that female lawyers are generally more collaborative and tend to find common ground instead of clashing head-on. In doing so, we are able to overcome pre-existing biases against female lawyers." Earlier in her career, she worked at Skrine and Jeff Leong, Poon & Wong. "Her work ethic and ability to deliver different points of view represents the best of the next generation. I believe that her real and honest opinion gives our firm its added advantage," says Nicholas Ooi, partner at Ooi & Ooi. 

SHARIZAN SARIF

39, partner,
Azmi & Associates



With over 16 years of experience in the legal industry, Sharizan specialises in mergers and acquisitions, and corporate commercial matters. Among his notable deals, he


has advised Selangor State Economic Development Corporation in a strategic collaboration for the development of integrated tourism and commercial area in Bernam Jaya with the estimated cost of 3.6 billion ringgit (\$840 million). Other clients include Majlis Amanah Rakyat and Tenaga Nasional Berhad. "Sharizan is tenacious, driven and hugely passionate for each of the projects that he undertakes," says the firm's senior partner, Dato' Azmi Mohd Ali. "He has a keen eye for details which makes sure that no aspect of the transaction is left unturned. His strong analytical skills provide the clients with multiple negotiation options to ensure that the client always has the upper hand in negotiations. His discipline and strong work ethics aspires the team to continuously strive to meet the clients' needs, as efficiently as possible, without compromising on quality. These qualities give great comfort to the clients, and make him a treasured asset to the firm." 

DATO' FION WONG SOOK LING

34, managing partner,
Shang & Co.



Wong focuses on matrimonial and family law. Having spent nearly a decade in the legal industry, she has co-authored a handbook on family law practice in Malaysia, including

commentary, procedures and forms. In 2016, Wong was part of the team that won the Matrimonial and Family Law Firm of the Year award at the ALB Malaysia Law Awards. In 2019, she successfully submitted and argued on the court's power in granting custody for children in which the court has the rights to only grant sole custody and not joint custody in accordance to the reading of s.88 of the Law Reform (Marriage & Divorce) Act 1976. In the earlier cases, the court had given joint custody, as it had relied on the Singapore cases which referred to the Women Charter Act. That Act gives judges the power to grant joint custody, while the Malaysian Law Reform (Marriage & Divorce) Act 1976 only allows sole custody. The distinction between Singapore's Women Charter Act and Malaysia Law Reform (Marriage & Divorce) Act 1976 was ignored by the Malaysian judges in the High Court and Court of Appeal. With Wong's argument, the previous landmark cases would not be able to stand. 

SINGAPORE'S TOP IN-HOUSE TEAMS 2020



Being a legal hub for the Southeast Asian region, Singapore rightfully boasts top-quality lawyers in both the private practice and in-house spaces. But this year, as the impact of COVID continues to cast a shadow, in-house teams are under even greater pressure. This year's ALB Singapore In-house Teams list celebrates lawyers who stand out for their innovation, their leadership qualities and the value they add to their businesses. BY ELIZABETH BEATTIE

■ In an unprecedented year, general counsel globally have been relied upon on to guide their teams and organisations through unsteady waters and ambiguity in the wake of COVID-19. There have been difficult decisions to make, preemptive planning required and budgetary restrictions to navigate. Given the challenges of the past few months, that some in-house teams have emerged stronger are all the more impressive.

Even before COVID, in-house teams had been feeling the pressure. There are shrinking budgets, rising expectations and condensed timelines to grapple with and in many cases, GCs are also tackling the mammoth project of reshaping their teams to meet these challenges head-on.

For Gregory Chew, general counsel and chief legal officer at Nanyang Technological University (NTU), change has been the name of the game for the past few years, well before the disruptions brought about by COVID-19 came about.

"The administration leadership has changed significantly since the start of our transformation journey," Chew tells Asian Legal Business, noting that this was necessary to meet the University's growing ambitions. As well as a "significant transformation" in terms of people and processes, NTU has rolled out several new policies over the past few years.

"We have been positively aggressive in tangentially leveraging new systems brought to the University intended for other functions, such as retooling e-signing platforms for electronic contract approval workflows, legal contract matter management through a digital workflow platform intended for enterprise operations, and electronic 'whistleblowing' software forms instead of traditional channels, to name but a few," he says of the many internal developments undertaken by NTU.

THE LIST

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"But systems and process improvement does not bring significant results without the right people at the helm," Chew adds, noting that the team has prioritised "and have been very deliberate in retaining, growing, bringing and diversifying talent who believe in our 'purpose' and theirs."

Although such change and transformation have been difficult, NTU is "undoubtedly better positioned today than we were yesterday", says Chew, noting that these changes have held the university in good stead when the pandemic arrived.

UNPACKING THE IMPACT OF COVID-19

It's impossible to examine the performance of in-house teams this year without considering the ongoing challenges sparked by the global pandemic.

The teams that stood out this year were those that innovated and worked collaboratively.

Wei-Pin Choo, chief legal and compliance officer at Razer, Singapore's most well-known gaming lifestyle brand, says that along with many other companies, the firm had to adjust to working from home. But the legal and compliance team was somewhat at an advantage.

"We didn't have to be in the office to access certain equipment or tools the way some of our colleagues had to (e.g. engineers)," says Choo, and besides, as the global team was undergoing the same challenges at a similar time, "there was a great sense of solidarity and shared purpose between us," he says of team's experience of the pandemic over the past few months.

This time also provided an opportunity for Razer to respond directly to the outbreak. "On the business and CSR side of things, we successfully pivoted some of our know-how and resources to begin mask production," Choo says.

"We converted existing production lines and started a mask manufacturing line in Singapore," he says, adding that Razer's masks are now available in vending machines throughout Singapore.

In addition to illustrating adaptability and innovation, other attributes have grown increasingly essential for in-house teams over the past few months.

Choo says the need for cost-consciousness and efficiency have been heightened during this time, with new approaches and strategies being explored.

"On the intellectual property side of things, for example, we are looking at alternative strategies such as more tech-

noting that this has most likely made the team even more efficient and effective from a technology perspective.

Xae Hoyy Loh, vice-president, general counsel and compliance officer at Pilmico International, says the past few months have provided an opportunity to look at the business logistics.

With the firm's headquarters in Singapore and manufacturing facilities situated in various sites throughout the Asia-Pacific region, the firm prizes connectivity.

"We are used to the running of the operations team with our management team offsite. The challenge, however, is within the management team, we were all tasked to work from home as Singapore implemented the country-

arise in a lock-down situation," says Choo of Razer. "We've made an active effort to personalise our communications by using video as much as possible as a substitute for face-to-face meetings as well as to host regular team meetings online," he adds.

"As a global team with members in various countries and across different time zones, we have always made full use of various tech solutions to enable effective communication. Whilst we are able as we are in continuing to perform our respective roles as we work from home, and we realise that with voice and video calls we need to make an extra effort to ensure that the communication is clear," says Choo of navigating the work from home quirks that many teams are navigating at present.

While technology has enabled much of the team to work seamlessly, Choo believes that sustained remote work is not ideal for everyone. "I believe that most of us do look forward to a return to the office at some point given the value of daily face-to-face interaction," he notes.

Chew, meanwhile, whose university was called out as an essential service provider in Singapore, was in something of a different position.

"We have the benefit of a local campus community where we could meet and dialogue in person, as opposed to leveraging audio-visual platforms, the communication standard in most global enterprises," he says.

Additionally, the background of change that the university has already undertaken helped to establish a strong base from which to tackle the challenges of COVID-19.

"Fortunately the effort and work we put in over the last couple of years prepared us for this unfortunate event, not only because we had proactively introduced electronic capabilities to enable our team to remain highly productive 'offsite', but because we first understood how to work as a team bonded together by a common purpose," says Chew.

Loh's team meanwhile has been adjusting to telecommuting. Initially, a major challenge for the team was meetings being held online, with Xae Hoyy

"Over the span of the work-from-home period, we have completed the rollout of our new internal document management systems. It goes to show that productivity has not gone down during this period and all our employees still play their part in ensuring that work gets done."

— Xae Hoyy Loh, Pilmico International

nology sharing and licensing arrangements, as opposed to more unilateral and defensive registration strategies," he explains.

"Given the state of the global economy, we do see companies taking a closer look at the value of their IP assets and we see an increase in transactions involving the sale and acquisition of IP portfolios, M&A transactions or IP licensing arrangements," Choo notes.

Additionally, COVID had also illustrated how much of a priority technology has become for in-house teams. "Not that we weren't already doing it but this period has brought to the fore our reliance on tech tools such as e-signing of legal documents, video and audio conferencing solutions etc.," Choo says,

wide Circuit Breaker where telecommute is mandatory for all. It was challenging but essential for us to ensure the safety of all our employees and we must do our part to support our government to combat the pandemic," Loh says.

ADAPTING TO THE 'NEW NORMAL'

Globally, work and internal office culture has appeared markedly different during the COVID pandemic. Office spaces have remained empty for months, while teams have gained a more personal view of their colleagues (and their homes).

The way teams operate has also markedly changed over the past few months. "We were mindful that a sense of being disconnected and isolated could

noting: “It was not as effective as physical meetings at first, but we gradually got used to it.”

But in the longer term, this hasn’t proved overly disruptive. “Over the span of the work-from-home period, we have completed the rollout of our new internal document management systems. Our initial expectation was to complete this by Q4 of 2020 but we have delivered this way before the expected dateline. It goes to show that productivity has not gone down during this period and all our employees still play their part in ensuring that work gets done,” Loh notes.

While the pandemic has triggered a large setback in some of the firm’s plans to develop and build business in certain jurisdictions, overall the team has already witnessed positive changes that Xae Hoyy will look to hold onto in the future.

“Although we are now working from home, we are communicating more often as we make sure to catch up every week to find out and obtain updates as compared to the previous once a month catch up with the team. This is something that we will continue after the pandemic,” he says.

The past few months have also offered him another perspective. “The biggest take away from this experience is one of patience. With many offices (both private and public) being closed due to the pandemic, we have seen processes slowed down in some of the regions and countries which are still developing,” he adds.

SHAPING WINNING TEAMS FOR THE FUTURE

Emerging post-COVID, the big question is what will the long-term impacts of the pandemic be? While these are yet to be seen, there is much speculation about what further transformation may look like.

Of course, for GCs, change has been a constant over the past few years as the role increasingly demands these leaders to step further into the spotlight within their organisations, and during COVID this has only grown more important.

Chew, who played an essential role in NTU’s internal transformation over the

past few years, explains that throughout COVID the overall mindset shift that has been cultivated has played a significant role in how the team operates.

“The legal and compliance team was traditional in approach and thinking, rather than seeing ourselves as solution providers, or thought leaders. So, we had to purposefully change mindset and talent, transitioning from archetypal roles to agile and purpose-driven ones,” he says.

This internal shakeup has also changed the way NTU look for talent going forward and what is prioritised when it comes to seeking talent that will be able to go the distance.

“When we interview prospective candidates, we say ‘If you’re inter-

Choo says that during difficult times, in-house lawyers will have an opportunity to stand out.

“Whenever we enter into a crisis situation, there are always clear opportunities for lawyers to step up,” he says.

“Our training and expertise prepare us particularly well to deal with challenging situations. We can help address risks, allocate resources and troubleshoot issues. The best in-house lawyers not only have a solid foundation of legal expertise and experience but also develop an acute understanding of business needs and priorities. Difficult times like these are an opportunity for such in-house counsel to ‘flex their muscles’ a little and start to play roles beyond the purely legal one,” he notes.


“The best in-house lawyers not only have a solid foundation of legal expertise and experience but also develop an acute understanding of business needs and priorities. Difficult times like these are an opportunity for such in-house counsel to ‘flex their muscles’ a little and start to play roles beyond the purely legal one”

— Wei-Pin Choo, Razer

ested in learning and growing, creating sustainable things that don’t exist today, improving areas that should be improved for the better of our organisation, and above all think of the team first, then this is the place for you. In return we promise an environment where you can make an impact not only to the higher mission of education which in itself helps to shape our leaders of tomorrow, but a place which you can proudly call your own because it resonates with your purpose,” says Chew, noting that millennials now represent the majority of the university’s legal and compliance team.

Increasingly, companies are looking for talent with an ability to adapt, and take initiative, and show leadership.

From Loh’s perspective, ongoing preparation is important for legal teams to ensure they are always ready for future challenges on the horizon. “We live in an age where change happens constantly. We are therefore always planning for the next big thing,” he says, noting that the past few months has also shown the value and strength of teamwork.

“In this, the team has always worked together based on one main principle of teamwork. We trust our colleagues and at the same time, we earn the trust of our team members. This will remain the way we collaborate and work together as we achieve our goals. With the right attitude, we are able to weather any storm, together,” Loh notes. 

A NEW ERA OF MINING

Indonesia recently ratified a long-anticipated bill amending the country's 2009 Mining Law. Lawyers say that the large-scale revisions to the law could improve the feasibility of doing business in Indonesia's natural resources sector. BY RANAJIT DAM



In June, Indonesian President Joko "Jokowi" Widodo signed Law No. 3/2020, about a month after the country's House of Representatives approved the bill on May 12. The law amends Indonesia's 2009 legislation governing coal and mineral mining. The amendment is aimed at expanding the country's mining industry, but it has also met with some criticism over potential socio-environmental impact, as well as lack of transparency.

From the perspective of lawyers, the amendment is deserving of applause. "It is consistent with the commitment of the Indonesian government under the leadership of President Jokowi to ease hurdles faced by the mining industry, ranging from complex bureaucracy, inconsistencies of regulation at all levels, conflict of authorities between central

and regional government to market volatility," says Eva Armila Djauhari, a partner at law firm Armila & Rako.

Djauhari believes that the amendment has the potential to improve the business outlook in the mining industry. "This is especially important with the slowdown of global economy, weak commodity prices and protectionism practise in many countries," she notes. "For this amendment to be effective, the central government should strengthen its resources and infrastructure in anticipation of receiving its expanded authority, intensify cooperation and coordination among ministerial departments as well as produce comprehensive and clear implementation regulations."

For the extractive industry in Indonesia, the most important legal

aspects are consistency, clarity, certainty, simple bureaucracy, law enforcement, transparency and inclusion of all stakeholders, says Djauhari. "The aforesaid legal aspects, if applied altogether, will lead Indonesia to achieve the national aim as set out in the constitution, i.e. to provide greatest benefit for the people."

For her the key provisions in this amendment include the reform and the focus on ease of doing business in mining sector. "It simplifies the licensing system and centralises the authority to issue licensing," says Djauhari. "The management of mining so far had been constrained by the dual authority of the central and regional government and concerns on the management capacity and competency of the regional governments that have failed to provide conducive climate for mining industry. This has been the motivation to shift the mining authority to the central government."

INCENTIVES FOR INVESTORS

According to Djauhari, given the level of complexity faced by miners in Indonesia, the amendment endeavours to offer incentives to investors among others by assuring a steady zoning plan of an already-determined mining area. "Another incentive is also granted for holders of IUP [mining business licence] and IUPK [special mining business licence] to develop downstream facilities by granting an initial 30-years period of license with 10-years for each extension," she says. Holders of an IUP whose shares are majorly owned by foreign entities must divest down to 49 percent share ownership directly pursuant to the set hierarchy. Should it be failed, divestment may be carried out through the Indonesian stock exchange."

The amendment also imposes new obligations for mining industry to allocate funds for community development program, for conducting yearly exploration program and for a new resilience fund, says Djauhari. "There are also few provisions to stimulate exploration, whereby the government is now able to assign business entities a right to conduct investigations and research in the context of preparing a new mining

Amended Mining Law: A Step Forward Towards Good Governance in Extractive Industry

Hardship and battle against Covid-19 did not dissuade the Indonesia House of Representatives (DPR) to swiftly complete the long-awaited revision to the Law No 4 of 2009 ("**Mining Law**"). Precisely, the Law No. 3 of 2020 concerning the amendment to the Mining Law has been published and effective as of 10th June 2020 ("**Amendment**").

Ongoing challenges suffered by the industry, inconsistencies, conflict authorities between central and regional government, market volatility, the state interest and benefit for the country and intention to improve governance in extractive industry were major drives to issue this Amendment.

The selected key points under the Amendment to the extent of its consequences to the mining business, include the reform of the licensing system whereby the system is now centralised such that eliminating the authority of the regional government. There are also various incentives for mining operators and junior mining companies as well as the holders of Contract of Work (CoW) and Coal Contract of Work (CCoW) granted in the Amendment. The Amendment gives a lot of highlight on the CoW and CCoW, therein it grants necessary business certainty



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and smooth transitioning into the IUPK licensing regime. The Amendment also reiterate divestiture obligation of foreign ownership in a mining company down to 49% and impose new obligations to all miners such as

allocation funds for community development program, yearly budget allocation for exploration program and resilience fund. The details of the provisions of this law will be regulated in the implementation regulation which shall be prepared by the government within a year of this Amendment.

The encouragement and incentives for the mining industry under the Amendment is aimed to invigorate the uncertain investment climate that has weakened an already globally depressed industry. Not only to achieve the aforesaid objective, the Amendment is also purposed to improve the mining governance in Indonesia so that the objective to manage the mineral and coal resources based on the principles of accountable, for the nation's interest as well as sustainable and environmental soundness may eventually be achieved.

While the Amendment is a step forward towards a good mining governance, nevertheless, there remains uncertainties, controversies and flaws in the Amendment that might lessen the effectiveness and objective of the law. Hopefully the implementation regulation to be issued within a year of this law can help the nation accomplishing its mission.

area for auction and subsequently to confer a right to match in the auction."


However, the biggest highlight is the continuation of Contracts of Work (CoW) and Coal Contracts of Work (CCoW). "The amendment guarantees the CoW and CCoW an extension to continue their mining operations after its expiry without tender by way of converting the contract or agreement into Continuation Operation IUPK. This conversion also exempts the holder from the rules of maximum mining area as it may still retain the present mining area in its entirety," she notes.

Djauhari also points out that the amendment at this stage is effectively an outline of principles, rules and laws, standards and norms, and as such it does not regulate and encompass all issues in mining industry exhaustively. "The amendment indicates that detail of the rules to be regulated in the government regulations, which shall be issued within one year of the promulgation of the amendment," she says.

DESIRE TO IMPROVE

Additionally, the amendment comes from the desire of the state to improve the management of the mining industry by giving greater certainty to businesses and benefit for the country, as opposed to producing robust mining governance. "As a consequence, a few components in the mining industry are somewhat overlooked such as the delicate issue of complex and vulnerable communities surrounding mining areas that often be a material obstacle for the business," Djauhari notes. "While the amendment recognises the obligation to support of sustainable national development and therefore imposes obligations for mining industry to allocate funds for community development program and requires mandatory consultation between the mining industry with all levels of government and locals, nevertheless there is no mention as to how to govern this issue nor is there guidance regarding compensation, resettlement, or griev-

ance mechanism which in fact is crucial for all stakeholders and may significantly disrupt investment activities in this sector."

Djauhari acknowledges that despite the hard work that has gone into creating a conducive law for the industry, there remain uncertainties, controversies and flaws in the amendment, not to mention part of the stakeholders who are dissatisfied with, and felt left out by it - which might impair the worth of the amendment. "Ideally, the law is an instrument of equilibrium between the interests of business, nation and its people," she says. "In reality, it is not an easy document to write out, particularly in the absence of the national mining policy and a long-term strategy as guiding principles. Having said that, this effort of search for better governance and harnessing the mineral and coal resources for sustainable development deserve an appreciation and support from all elements of nation." 



DEAL DIP

The coronavirus pandemic has resulted in a drop in M&A transactions across the Asia-Pacific region. Lawyers say that while they are still seeing deals, there are differences in both the nature of the transactions as well as the deal terms and process. BY RANAJIT DAM

COVID-19 has certainly taken its toll on dealmaking in Asia. A report from Refinitiv found that M&A transactions across Asia-Pacific (excluding Japan) had fallen to their lowest in three years to \$29.9 billion across 709 deals in May, following 855 such deals worth \$52.6 billion in April.

The Refinitiv report added that overall in the first five months of 2020, the APAC region saw deals worth \$249.9 billion, a drop of 10 percent year on year, and the lowest year-to-date level since 2013. However, given how M&A has been impacted globally, the APAC contribution to overall deal value rose to 28 percent from 18 percent for the same period last year. Worldwide, \$903.1 billion worth of deals were announced during the first five months of 2020, a drop of 43 percent compared to 2019, and the lowest such period since 2013.

With the outbreak prompting governments to impose widespread measures disrupting business activity, stock markets have plunged as well. Reuters reported earlier that bankers and lawyers fear they will continue to see negotiations and deals signed but not completed or put on hold as sellers and buyers reassess business fundamentals. Of the deals that are being pursued at the moment, a large chunk

includes distressed sales and take-private deals.

"In terms of the nature of the transactions, there is greater focus on distressed assets and privatisations of undervalued public companies," says David Bulley, a partner at offshore law firm Appleby who leads the firm's private equity, venture capital and M&A team in Hong Kong, as well as that office's corporate restructuring, distressed debt and special situations practice specialising in Cayman law. "We are also seeing reduced PE M&A activity as funds work through the pre-COVID M&A pipeline but struggle to originate new deals due to COVID travel restrictions. Finally, large corporations are increasingly focussing on carve-outs as financially stressed businesses assess their non-core assets and divisions."

Bulley highlights that there are differences not just in the nature of the transactions, but also the deal terms and process. "Focus on due diligence has increased as buyers try to accurately assess the impact of COVID on a potential target, particularly given some of the accounting provisions which companies are using, for example EBITDAC [earnings before interest, tax, depreciation, amortisation and coronavirus]," he notes. "There is also a greater focus

on allocation of risk through tightened MAC provisions and reps, warranties and indemnities. Finally, sellers are looking for increased certainty on a buyer's financing. Whether this is a return to true 'financing condition' deals or deals which involve large reverse break fees if the buyer pulls out is to be seen."

The Refinitiv report also found that the decline in deal value came in spite of a slight increase in global M&A activity, which saw deals worth \$100.6 billion in May, up 9 percent from April, a month when transactions fell to their lowest monthly value since September 2004. However, the number of deals was significantly smaller; in May, global deals were 65 percent lower year-on-year. "In our experience, deal volume is being driven by deals between existing stakeholders and by companies looking to carve-out non-performing assets," says Bulley. "Conversely, we are seeing fewer deals being completed between unrelated parties."

SECTOR FOCUSES

According to Bulley, there are two primary sectors where Appleby is seeing a lot of M&A activity. "The first is health-care," he says. "Last year's top industry for M&A has seen continued strength. COVID has created short term demand

for medical products, focused attention on the sector and created opportunities, particularly in Chinese healthcare where consolidation is required.”

The second is technology. “COVID has provided further impetus for the acquisition of, or investment in, technology companies by corporates looking to support their core-business activities. Solutions to support logistics, inventory and supply chains have been a particular focus,” he notes.

Bulley says that due to the firm’s client base, other than a slight dip in the January-February period, Appleby has remained very busy throughout COVID. “Currently work is ongoing throughout the transaction cycle including structuring of proposed deals (particularly take-privates), ongoing diligence work, pre-closing negotiations and post-closing equity co-investments,” he adds. “Given the increasing focus on due diligence, this has formed a greater proportion of our work compared to pre-COVID


deals. Working with clients on reviewing and analysing take-private opportunities has also proportionately increased compared with pre-COVID.”

LOOKING FORWARD

Bulley feels that while the growth in cases of COVID may be slowing in most jurisdictions other than the U.S. and Latin America (and recently a second outbreak in Germany), business is a long way from returning to “normal.”

“There is also a key question for businesses of what the new normal will look like post-COVID as governments unwind aggressive stimuli and look to reduce their fiscal deficits,” he says. “In terms of M&A activity, we expect early trends to include activity in deals aimed at consolidation or vertical integration driven by a need for companies to improve and repair their supply chains; and bargain-hunting by PE firms in some of the sectors hit hardest by COVID including energy and retail.”

Bulley adds that from a deal terms perspective, COVID has increased focus on due diligence and allocation of risk. “In the longer term, we expect this to trend back to pre-COVID levels as increased competition for assets once markets fully open will lead to more aggressive buyer-side deal terms being dropped,” he notes.

He believes, however, that the world is only at the beginning of the wave of M&A opportunities that will ultimately be created by COVID. “Whilst the number of cases has been the primary focus, the pain from COVID has not yet truly been felt in many countries,” says Bulley. “Further distressed opportunities will be created in the coming months as governments withdraw support for business which has negated the need for immediate redundancies. This is likely to cause unemployment to increase significantly, hurting consumer-facing industries and creating further distressed opportunities.” 

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TALKING RETAIL

The COVID-19 outbreak has added an extra layer of complexity to China's retail industry, offering lawyers in these companies yet another challenge to tackle. General counsel at retail companies discuss how they are assisting their companies in this ever-evolving market. BY HU YANGXIAOXIAO

ALB: What is the current size of your legal team and what services are you providing to the company?

Elle Hu, legal counsel, Zegna Greater China Region: We have a small legal team at Zegna currently with only two people – me and a legal assistant, but we provide a full range of legal support for Zegna's Greater China region markets. Although the luxury sector is cautious in developing digital marketing and e-commerce platforms, we are seeing an obvious trend of going online, and our job now involves more legal matters related to e-commerce, and data and privacy compliance.

Ruan Zhijie, general manager of legal department, Red Star Macalline: Our legal department now has a headcount of 51 people. We're providing legal support and managing legal risks on all aspects both horizontally and vertically. Horizontal support refers to legal team's geographical coverage, and vertical support refers to the depth of our services.

Daniel Shih, general counsel and chief corporate affairs officer, Walmart China: Walmart China's legal team is composed of five teams with over 30 legal professionals, namely corporate legal team, e-commerce and Sam's Club legal support team, Walmart legal support team, real estate legal team and dispute resolution team.

The corporate legal team handles all legal issues related to the company's business functions, including finance, M&A, personnel, ethics and compliance, treasury and taxation. The e-commerce and Sam's Club legal support team was established in 2016 when Walmart started the digital transformation to accelerate its deployment of omni-channel retail, and effectively combine the e-commerce business with brick-and-mortar stores. Walmart legal support team mainly supports businesses under Walmart brand, such as commodity procurement, supply chain, store operations, and crisis management.

Ashley Zhu, legal director, Sephora China: Including me, our team now has five in-house lawyers with everyone focusing on a different legal practice area, for example real estate, data protection and privacy compliance, new retail and e-commerce, intellectual property, corporate issues and consumer protection. We share the core values of keeping track of the latest industry trends, understanding company's strategy, and delivering concrete services to better meet the needs of different business scenarios.

ALB: In what areas are external lawyers meeting your legal team's expectations, and in which ones are they failing to do so?

Hu: External lawyers are reliable strategic partners, especially when dealing with issues requiring specific expertise or facing with legislative grey zones. We usually seek advices from external lawyers in areas such as general business risks, litigation and arbitration, anti-counterfeiting, antitrust and data privacy. We would choose specific partners under



A man wearing a face mask walks past an Apple store in an upmarket shopping district in Beijing as the country is hit by an outbreak of the novel coronavirus, China, March 4, 2020. REUTERS/Thomas Peter

considerations of expertise areas and fee rates.

Ruan: External lawyers could provide effective support to in-house lawyers because we sometimes are stuck in dilemmas between business and law and they could help us think out of box. However, we're also experiencing the uneven quality of legal services provided by external lawyers.

To be frank, in some less developed regions, sometimes it would be very difficult to find qualified lawyers and we have to rely on ourselves to provide remote support, which is not so timely or effective.

Shih: Law firms are our important partners. We maintain close relationships with many firms, especially regarding some newer legal issues and

the resolution of disputes related to major business transactions.

Lawyers could create more value for clients if they could give more insightful and forward-looking advice. For example, the prevailing unfair competition law and the consumer protection law mainly deal with issues in the traditional retail industry. As we're developing e-commerce

business, it's important if external lawyers could furnish us with valuable opinions on the legislative trends and the risks we might be exposed to in those regards.

Zhu: From my career experiences and personal preferences, I would advise external lawyers to first, provide the best compliance practice in one specific area on the basis of truly understanding clients' pain points; and second, provide forward-looking strategic advice on the possibility and future risks of a certain business model. We need external lawyers to have deep understanding of the industry, especially in this era of internet and open-source information, external lawyers are no longer competitive by simply selling regulation search results or even risk assessment and analysis.

ALB: Given the impact of COVID-19 outbreak on the retail industry in China, what have your team done to help your company tackle the challenges? And what do you learn from this crisis?

Hu: In the era of globalization, the supply chain and the market are interconnected. In the short term, as the retail industry outside China has been greatly impacted by the COVID-19 outbreak, it'll also have a negative impact on the Group's performance. In the long run, the integration of online and offline retail business models requires this century-old traditional brand accelerate its transformation, which could be even more challenging.

Ruan: As a home and furniture shopping mall operator, we indeed suffered during the crisis. Faced with the forced closures of nearly all malls, we could neither collect rents nor help tenants to resume businesses.

The legal team provided support from the following three aspects: Firstly, seeking for rent reductions for both the malls and the tenants. Secondly, assisting on the building of e-commerce channel. Finally, assisting on the funds providing to the tenants.

Shih: During the outbreak, with the shutting down of nearly all businesses, we could see retailers still working on



"The so-called 'new retail' is an experimental and innovative model first introduced in China. As in-house counsels, we need to keep abreast of new business knowledge and legislation trend, to help the company navigate business through all the uncertainties."

— Elle Hu, Zegna



"External lawyers could provide effective support to in-house lawyers because we sometimes are stuck in dilemmas between business and law and they could help us think out of box. However, we're also experiencing the uneven quality of legal services provided by external lawyers."

— Ruan Zhijie, Red Star Macalline

the frontline. Supermarkets somehow were becoming as important places as hospitals.

Our legal department has actively participated in safeguarding the supply chain and supporting store operations by accelerating the procurement process in a controllable but flexible manner. Now as the COVID-19 outbreak is slowing down, we started to help the company formulate internal procedures for enhancing the ability to respond to crisis, and advancing the business digitalization, among others.

Zhu: During the outbreak, our legal team helped on issues like negotiation of rent reduction, providing compliance plans for new business models such as live streaming, cross-border e-commerce, and cooperation with home delivery platforms, for example Meituan and Eleme.

In my eyes, the more prepared you are in the era of omni-channel retailing, the more resilient you will be during crisis like the COVID-19 outbreak.

ALB: What regulatory and compliance challenges has your company faced in China over the past one or two years? How is the legal team tackling them?

Hu: One of the challenges faced by us is consumer's data protection, which involves a lot of sub-topics, such as the competition and collaboration with the EU's GDPR, the ban of facial recognition technology, and the boundary between big data and personal privacy.

Ruan: We have a special compliance department in Red Star Macalline who's responsible for all compliance issues, but our legal team is also assisting from different aspects. On one hand, the legal team's responsible for sending compliance requirements to all the shopping malls and business sectors; on the other, we also need to collect compliance-related issues encountered by different sectors and report them to the compliance department.

Shih: Given that the combination of online and offline business is an irreversible trend, we've been working to help business department to achieve

business goals and reduce risks, from the aspects of consumer protection, data protection, and personal privacy protection. For example, we've briefed our business department several times recently concerning the latest trends on personal privacy protection and we've taken concrete moves to strengthen this protection.

Zhu: Our regulatory and compliance focuses include: cross-border data transmission, cybersecurity and privacy protection, and importing products, among others.

ALB: With the rising of e-commerce platforms and the ever-evolving of business models in the retail industry in China, how is your legal team helping the company to remain competitive?

Hu: The so-called "new retail" is an experimental and innovative model first introduced in China. As in-house counsels, we need to keep abreast of new business knowledge and legislation trend, to help the company navigate business through all the uncertainties.

Ruan: Red Star Macalline is not a representative retailer: we mainly provide logistics services and space rather than selling furnitures by ourselves. In the past, we focused more on brick and mortar stores and now, we have to create a new type of service which combines offline and online channels altogether.

We've explored a lot in this regard and our legal team is making preparations of our own from three aspects: First, the knowledge aspect. In-house lawyers have to keep learning about the latest business models and legislative updates, so as to provide precise solutions when the company is exploring certain new models. Second, the talent aspect. We have to diversify the knowledge and experience backgrounds of our talents within the legal team. And finally, the toolkit aspect. We need to adopt new technology tools to better share core data within the whole company.

Shih: In the era of omni-channel retailing, we need to help the business



"We are called 'general counsel' because we're expected to be advising generally on all corporate issues. Apart from providing legal advices, general counsel should also play the role of ambassador of one company's culture and value."

— Daniel Shih, Walmart



"Sephora has its own product lines, own membership and own e-commerce platform, which give us a lot of room to play with different business models. This could be both challenging and benefiting, for each project is providing a real scenario to test our business sense and in depth understanding of the law."

— Ashley Zhu, Sephora

department better understand the changes in regulatory mechanisms, and design and implement a workflow that can effectively handle risks in multiple processes, even some risks that are not fully aware by the business department.

Take cross-border e-commerce as an example. You have to face a whole different set of regulatory issues compared with simply doing retailing business locally. Besides, there usually are data protection problems related to e-commerce models, so our legal team has to be familiar with data protection laws of different countries/regions, such as GDPR in EU and relevant laws in the U.S.

Zhu: Sephora has its own product lines, own membership and own e-commerce platform, which give our business department a lot of room to play with different business models. From the legal team's perspective, this could be both challenging and benefiting, for each project is providing a real scenario to test our business sense and in depth understanding of the law.

ALB: How are you planning to develop the legal team further?

Ruan: We need to focus on both strengthening our expertise as well as broadening our skill kit. In-house lawyers can never gain enough knowledge on both law and business. Besides, we also require lawyers to keep track of other colleagues' works, and we even have internal rotation system to nurture legal all-rounders.

Shih: Given the focus of retail enterprises has shifted from opening new stores to the combination of online and offline sales models, our legal department is faced with challenges from the transformative changes in the retail business model. Therefore, we need to be forward-looking, willing to build business acumen, and help push forward the robust business development when regulatory rules are vague. In-house lawyers have to learn to operate in legislative grey zones and to provide rather risk-free advices to avant-garde models. ALB

THE TOP 5 THINGS LAW FIRMS HATE ABOUT RFPs

BY NANCEY WATSON

Request for proposals (RFPs) is necessary in the legal industry to help corporate clients decide which law firms to select for a panel or certain matters. The current COVID-19 pandemic crisis has only made this reality more crucial.

In my experience, many RFPs are poorly written, do not provide the information law firms need to customise their responses, and do not ask the right questions — especially in the fee section — to get corporate law department leaders or legal procurement specialists the answers they need to make a well-informed decision. Legal departments need to improve not only how they craft the RFP but also how they determine exactly what they are trying to get out of the process.

I recently worked with a client on a proposal for a global panel and was shocked to see that it was sent from a top Fortune 500 company. The format was poor, the questions were ambiguous, and the fee section did not permit transparency. I have no idea how the corporation would have been able to fairly appraise the submissions they would receive and then come up with the best selection of law firms.

Now, however, some procurement and legal operations professionals are becoming more sophisticated and are striving to create smartly worded, well-thought-out RFPs. However, I think that all in-house legal departments would be wise to periodically review their proposal processes to ensure that they implement best practices in order to achieve a win-win outcome.

TOP FIVE REASONS WHY LAW FIRMS HATE RFPs


The way the RFPs are worded and how they solicit answers from law firms can be a challenge for those firms. Some of

the top reasons why RFPs can frustrate law firms include when corporate clients do things such as:

1. **Ask for AFAs but they really don't mean it** — Corporate law departments that say they want alternative fee arrangements (AFAs) but revert to hourly rates even when provided with detailed AFA proposals top the list of frustrations for many law firms. These AFA requests are often simply fishing expeditions. And I have seen this tactic more often than you may think. Law firms take a lot of time to involve partners, legal project managers, and pricing specialists to provide AFAs that they believe would be beneficial to the client. Of all the pet peeves of law firms, this is a big one.
2. **Impose unrealistic deadlines** — Crazy deadlines that don't allow for thoughtful responses or are imposed with the expectation that law firms will drop everything to reply on time. This tactic may indicate to some law firms that a specific firm has been pre-selected, and that the RFP is being proffered simply because it is corporate policy to seek three bids.
3. **Fail to test software or spreadsheets** — Often the RFP software or Excel documents included in the offering have glitches that are not discovered until the proposal is almost due. This can be a disaster because pricing information is often the last information to be added to the bid submission.
4. **Exclude selection criteria, such as weighting information** — Corporate

clients that don't communicate the scoring process and proposal assessment criteria are putting themselves at a disadvantage. Law firms need to know what the rating is for fees versus other technical factors. The responses to the selection criteria will give in-house departments the best indication of how the strengths of the competing law firms align with the company's goals.

5. **Neglect to notify law firms that were not selected** — It is common business etiquette (or should be) to notify those law firms that were unsuccessful in their bid. It is amazing that very often firms are not notified as to the results of the selection process. Even if debriefs are not permitted (and that information should appear in the RFP) a phone call or at least an email is appreciated as a common courtesy by the bidders that were not selected.

Hopefully, remembering these top five law firm frustrations will give in-house legal teams some insight into how treating law firms better during the RFP process can end up resulting in a more beneficial outcome for everyone involved. 

Nancey Watson is president of NL Watson Consulting, and consults with in-house counsel on developing request for proposals (RFPs).

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