

# ASIAN LEGAL BUSINESS

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## WOMEN IN LAW

LEADERSHIP IN FOCUS

**IN-HOUSE Q&A**  
Pharma GCs on  
latest industry trends

**BALANCING ACT**  
Korean lawyers tackle  
trade challenges

**TECH TALK**  
How firms in Asia are  
adopting technology



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

# 2018年仲裁高峰论坛 将于9月17日盛大开幕

## The 2018 Arbitration Summit will be held on 17 September.

本次论坛将由中华人民共和国最高人民法院、中国国际贸易促进委员会、中国国际经济贸易仲裁委员会共同举办。为庆祝《纽约公约》实施60周年，联合国国际贸易法委员会也将作为高峰论坛的主办方。

本次高峰论坛会期一天，会议提供同声传译。

The Summit will be co-hosted by the Supreme People's Court of the People's Republic of China, CIETAC, and China Council for the Promotion of International Trade.

To celebrate the 60th anniversary for the implementation of the New York Convention, UNCITRAL will also co-organize the Summit. The 2018 China Arbitration Summit is a whole day event and simultaneous interpretation will be available.

会议相关信息请关注 [www.arbitrationweek.org](http://www.arbitrationweek.org) 和 <http://cietac.org>  
Please check [www.arbitrationweek.org](http://www.arbitrationweek.org) and <http://cietac.org> for event details.



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New Malaysian Prime Minister Mahathir Mohamad (C) speaks during a news conference in Kuala Lumpur, Malaysia, May 11, 2018. REUTERS/Athit Perawongmetha

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# FROM THE EDITOR

**Diversity is good for you.** A number of studies have highlighted the impact of diversity on companies, and in recent years, there has been hard numbers to prove it. In 2015, McKinsey studied more than 350 large public companies in North America, Latin America and the UK. They found that those in the top quartile for gender diversity were 15 percent more likely to produce better returns than their local peers. "For every 10 percent improvement in gender diversity, you'd see a 2 to 4 percent increase in profits," a consultant was quoted as saying in the *Financial Times*.

So how does this apply to law firms? Given how secretive firms are about the nature of their revenue

– and in some cases, just how diverse their workforces are – it might be hard to find similar numbers to back up the claim. But even aside from the bottom line, there are other tangible benefits that diversity brings to law firms. For starters, diverse work environment is more likely to result in greater acceptance of its employees, which results in a happier work environment, which leads to lower turnover. These are all positives for clients when it comes to the bottom line because decreasing the "churn" promotes efficiency.

Additionally, more women means a law firm has a variety of perspectives and skills. Women are generally viewed as champions in soft skills, and in the legal sector where diplomacy is a requisite skill, this is invaluable. Female lawyers can also, based on experience

and instinct, look at matters from a different angle, bringing in different insights to reach better outcomes or solutions for team members and clients. Diversity in thinking thus naturally brings along more creativity in solutions proposed to clients. Finally, gender diversity can have tangible benefits when it comes to attracting and retaining the best lawyers. The more firms can show they have women-friendly policies, and importantly, more women in senior roles, the more high-quality talent they can bring on board.



**RANAJIT DAM**  
Managing Editor,  
Asian Legal Business  
Thomson Reuters

A handwritten signature in black ink, appearing to read 'Ranjit Dam', written in a cursive style.

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THE BRIEFING: YOUR MONTHLY NEED-TO-KNOW

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**“SPEAKING FOR OURSELVES, WE WOULD NOT CONDONE PAYMENTS OF THE NATURE ALLEGED TO HAVE BEEN MADE OR OTHERWISE WITHOUT THE KNOWLEDGE AND DIRECTION OF A CLIENT.”**

A spokesperson for Greenberg Traurig rebukes Rudy Giuliani, until recently a partner at the firm. The former New York City mayor suggested that it was normal for partners at the firm to make payments like the \$130,000 paid to an adult film star to keep quiet about an affair she allegedly had with U.S. President Donald Trump.

**ASIAN ARBITRATION CENTRES SET TO BENEFIT FROM BREXIT**

According to a new study from Queen Mary University of London, in partnership with White & Case, lawyers and their clients expect Asian arbitration centres – particularly those in Singapore and Hong Kong – to see a positive impact from the United Kingdom’s withdrawal from the European Union. The survey of more than 900 arbitrators, in-house and external counsel found that 37 percent believe that London will lose its position as the top seat. A majority see Paris being the biggest gainer (70 percent), followed by Singapore or Geneva (22 percent) and Hong Kong (15 percent).

**THE 3 THINGS THAT DETERMINE A LAW FIRM BRAND**

(ACCORDING TO CLIENTS)

According to BTI Consulting, there are only three factors in play when clients and potential clients perceive a law firm’s brand: Client experience, premium work, and innovation. Based on these criteria, and following 700 interviews with corporate counsel at the world’s largest organisations, the consulting company released its Brand Elite 2018 list, which had Jones Day at the top, followed by Skadden Arps, Latham & Watkins, Dentons, and DLA Piper. The accompanying report stated firms that are deemed to offer a great customer experience are most likely to be recommended to others and short-listed for new work. Providing premium work means that clients are more willing to pay a premium price. Finally, the most innovative firms offer something competitors do not, adding value from efficiency and new services.

# 120,000

Number of trademark applications from Chinese firms to international jurisdictions in 2017, according to trademark research firm CompuMark, which says that that number is double what it was in 2015. China is expected to overtake the U.S. for foreign trademark applications in another two years.

Percentage of in-house lawyers who expect their teams to have more responsibility over cybersecurity, particularly compliance, in the next year, according to a survey from the Association of Corporate Counsel. This is up from 55 percent in 2015.

IN THE NEWS

1

UK-based litigation funder Manolete Partners is considering a listing on the London Stock Exchange, according to report in the Law Society Gazette. CEO Steven Cooklin said in the report that he was “looking very seriously” at a float, and reports estimate the listing could value Manolete at about 100 million pounds (\$135 million).

2

Quinn Emanuel Urquhart & Sullivan has sacked London partner Mark Hastings without compensation after an investigation into “allegations of inappropriate behaviour” against him. Hastings’ clients have included late Russian oligarch Boris Berezovsky. He was sacked following an investigation led by a former adviser to England’s Director of Public Prosecutions.



Mahathir Mohamad, former Malaysian prime minister and opposition candidate for Pakatan Harapan (Alliance of Hope) reacts during a news conference after general election, in Petaling Jaya, Malaysia, May 10, 2018. REUTERS/Lai Seng Sin

## A SHOCK RESULT... AND NOW WHAT?

■ The 14th Malaysian general election, held last month, produced a stunning victory for Pakatan Harapan, the main opposition coalition, which - along with an alliance partner - won 121 seats in Dewan Rakyat, the lower house of parliament. This ensured a historic defeat for the ruling Barisan Nasional coalition, which had been the governing party of Malaysia, and its predecessor state, Malaya, since the country's independence in 1957. Lawyers talk about the policies they expect to see from the new government, led by 92-year-old Prime Minister Mahathir Mohamad.

**What kind of policies do you expect from the new Malaysian government? In what ways do you expect these to impact the business and investment landscape in the country in the foreseeable future?**

### DATIN GRACE CG YEOH

*Managing Partner, Shearn Delamore & Co.*

This election was unique. It was not fought on economic policies or political

ideologies, but on good governance and improvement of living standards. The new Malaysian government was elected on the back of a manifesto, the Book of Hope, containing a laundry list of promises.

They have fast-tracked abolition of GST, commenced investigations into perceived wrongdoings and the repeal of draconian laws. Yet to come are business-friendly initiatives. On the business front, they have not shied from enlisting advice from experienced and reputable non-politicians. The four-day weekend after the elections was brilliant, allowing the market to absorb the impact of their unexpected victory.

Can the "10 Promises in 100 Days" pledge, which includes subsidies and minimum wages, be fulfilled without disrupting businesses? The impact on the business and investment landscape in Malaysia in the foreseeable future depends on whether the new government, consisting of four political parties, can consolidate itself and Malaysia's economy. Improvement of investment

platforms and levelling of playing fields to garner the confidence of external and domestic investors is crucial. The devil is in the details, and in doing all that, they must uphold the rule of law. The jury is still out, but optimism abounds."

### JULIAN M HASHIM

*Partner, Kadir Andri & Partners*

The newly elected Pakatan Harapan government will take immediate populist steps and tick certain boxes off their election manifesto. We will likely see policies introduced to tackle the *rakyat's* (ordinary people's) well-being, a review of mega projects and improving governance.

Effective June 1, 2018, the GST rate will be revised to 0 percent and targeted fuel subsidies are likely next. Policies on investments and fiscal priorities will be rolled out likely by October 2018, when the budget is presented. The government will also be looking to reduce leakages and see that businesses continue with greater transparency. This has been reflected in the recent discussion between the CEOs of the six GLICs (government-linked investment companies) and trust institutions, and the Team of Eminent Persons led by Tun Daim Zainuddin.



# New Beneficial Ownership Rule

In early March 2018, a Presidential Regulation on Beneficial Ownership Recognition Principle (BORP) for Prevention and Education of Money Laundering and Funding of Terrorism (PR 13/2018) was issued.

PR 13/2018 requires Indonesian companies to:

- determine who its beneficial owners are; and
- report details of its beneficial owners to the authorized agencies, which may include the Ministry of Law & Human Rights in the case of all companies but may also include the Investment Coordination Board (“BKPM”) in the case of PMA companies.

BORP is applicable to all companies incorporated in Indonesia, whether foreign investment companies (i.e. PMA Companies) or non – PMA Companies.

BORP, together with certain rules in the Capital Market, adds to the exception of Indonesian law which only recognizes the registered holder of a share as having any ownership interest in the share.

The beneficial owner of a company is defined to mean a person who is:

- the holder of more than 25% of the issued shares as stated in the Article of Association;
- entitled to exercise more than 25% of the voting rights as stated in the Article of Association;



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- the recipient of more than 25% of the company's profits;
- a person with the authority to appoint, replace or dismiss members of the board of directors or board of commissionaire;
- a person with authority and power to influence and control the company without limitation or authorization from any other parties;
- the beneficiary of the company's profits; and/or
- the “actual” owner of the company's capital and shares.

The language used in the definition is very board and unclear. Therefore lenders, security holders and minority investors, who may not traditionally be regarded as beneficial owners, risk being included in this definition.

The title of PR 13/2018 clearly indicates that it's primarily concerned with the prevention and eradication of corruption, money laundering, tax avoidance and the funding of terrorism activities. However, there is nothing in PR 13/2018 that limits the application of BORP to companies engaged in those activities.

There is also no specific reference in PR 13/2018 to Nominee Arrangements (NA). Given the use of NA is one of the popular means by which parties (includes foreign investors) can control Indonesian companies without being registered shareholders of Indonesian companies, it must be assumed that NA and the beneficiaries of NA could potentially be “squarely caught” by PR 13/2018. Thus, BORP has the potential to seriously compromise the usefulness of NA in general and, more particularly, the use of NA to avoid the foreign ownership limitations applicable to investments in various sectors of the Indonesian economy.

## Christian Teo & Partners

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With these policies, we then hope to see an increase in investments and activity in the consumer, healthcare, technology and petrochemical sectors, in which many of our clients are involved. Additionally, Tan Sri Zeti Aziz's (Governor of Bank Negara Malaysia, Malaysia's central bank) proposals to increase efficiency and reduce wastage will hopefully reduce the cost of doing business in Malaysia. The call for greater transparency may also see a possible impact on the award and implementation of mega projects, which may result in us seeing more negotiated deals and debt restructuring work.

## ANDRE GAN

*Managing Partner, Wong & Partners, a member firm of Baker McKenzie International*

The new Malaysian government rode into power on the back of the unhappiness with the excesses of the previous government, and populist policies which promised to ease the financial burden of the Malaysian people. Chief amongst

the policies in the new government's manifesto is the rolling back of the unpopular goods and services tax. Other policies aimed at cost of living issues include the review of certain monopolies, the gradual reduction in road tolls and the provision of more affordable homes.

The government also promises to review certain foreign-backed mega projects, which had previously been promoted. In the short term, this may dampen the popularity of Malaysia as a destination for large-scale Chinese infrastructure and development projects.

If the government delivers on its objectives of protecting the transparency, efficacy and independence of key government institutions and reducing the politicization of key enforcement agencies such as the Malaysian Anti-Corruption Commission, the office of the Attorney General and revenue authorities, I believe that the Malaysian economy will find its long-term competitiveness, and vibrancy will return to the country's business landscape.

## BRIAN CHIA

*Head of the Corporate, Commercial and Securities practice, Wong & Partners, a member firm of Baker McKenzie International*

While it is too early to tell whether there will be any tangible impact, as the government is still being constituted, they will have to prioritise many decisions. Tun Dr Mahathir is a very open and business-savvy leader. He is an extremely pragmatic and experienced individual. In his early media briefing following the win, he made the point about welcoming investments to stabilise the market. We have no doubt that more detailed investment policies will become a lot clearer in a short while from now. Politically, Tun Dr Mahathir has promised a more open and transparent system. We are confident and optimistic that this will be the same business-wise, and that this government will be business friendly. This, in turn, augurs well for deal flow and certainty as well as the private equity environment generally. 

## ISLAMIC FINANCE FEELS HEAT FROM \$700 MLN DANA SUKUK SAGA

Islamic finance operators are scrambling to tighten the industry's rules to make sure other companies cannot take the same path as Dana Gas, which this week forced a \$700 million debt restructuring.

Global standards are likely to become more detailed and explicit and a shift to centralised regulation may accelerate after the United Arab Emirates firm reached a conditional deal with creditors over a contested sukuk issue.

Dana shook the \$2.5 trillion global industry last June, saying it would not redeem its sukuk on maturity. It proposed swapping them for new sukuk with lower profit rates.

The original sukuk used a mudaraba structure, an investment management partnership, which Dana said had fallen

into disuse, making the instruments invalid under UAE law.

Its creditors won some rounds in the legal battle that followed, but Dana got much of what it wanted in the settlement, which lets investors exchange their sukuk for new three-year instruments with a 4 percent profit rate.

Investors have been worried by the prospect of other issuers avoiding redeeming their sukuk by saying conditions have changed. Market players may be more wary of Islamic bonds issued in the UAE after one of its courts declined to enforce English court rulings favouring creditors in the Dana case.

"It will definitely alter international risk perception around UAE local law enforcement and sukuk in general, driving up pricing or reducing liquidity,"

said Khalid Howladar, managing director of Islamic finance advisory firm Acreditus.

Sukuk deals have already begun changing partly in response to Dana's case, said Mohamad Akram Laldin, executive director of the Malaysia-based International Sharia Research Academy for Islamic Finance.

Whereas sukuk previously relied on implied agreements that all parties were satisfied with endorsements by Islamic scholars, this is now being made explicit in contracts, and documents sometimes include clauses saying structures should not be disputed, he added.

Some regulators are now asking issuers to acknowledge annually that the structure of their sukuk remains sharia-compliant, said a Dubai-based partner at an international law firm.

### ASIA DEALS

## \$16 BLN

**Walmart's acquisition of Flipkart**

**Deal Type:** M&A

**Firms:** Hogan Lovells; Shardul Amarchand Mangaldas; Khaitan & Co.; Trilegal; Argus Partners; J Sagar Associates

**Jurisdictions:** India, U.S.

## \$10 BLN

**Xiaomi's listing in Hong Kong**

**Deal Type:** IPO

**Firm:** Skadden; Arps, Slate, Meagher & Flom; Clifford Chance; JunHe; Jingtian & Gongcheng

**Jurisdictions:** China, Hong Kong

## \$1.59 BLN

**Key Safety Systems' acquisition of Takata Corp**

**Deal Type:** M&A

**Firms:** Skadden, Arps, Slate, Meagher & Flom; Nagashima Ohno & Tsunematsu; Weil Gotshal & Manges; Freshfields Bruckhaus Deringer; J. Sagar Associates

**Jurisdictions:** Japan, U.S.

## \$1.12 BLN

**Ping An Good Doctor's Hong Kong listing**

**Deal Type:** IPO

**Firms:** Clifford Chance; Davis Polk & Wardwell; DLA Piper; Haiwen & Partners; Grandall Law Firm

**Jurisdictions:** China, Hong Kong

## \$874 MLN

**Reliance Industries' acquisition Saavn Media**

**Deal Type:** M&A

**Firms:** AZB & Partners; Shardul Amarchand Mangaldas; Gunderson Dettmer; Covington & Burling; Proskauer Rose

**Jurisdictions:** India, U.S.

## \$580 MLN

**Star Energy Geothermal's issuance of green bonds**

**Deal Type:** DCM

**Firms:** Milbank, Tweed, Hadley & McCloy

**Jurisdiction:** Indonesia

## \$405 MLN

**Alibaba's investment in SenseTime**

**Deal Type:** M&A

**Firm:** Ropes & Gray; Maples and Calder

**Jurisdiction:** China

## \$180 MLN

**Huya's ADS listing on New York Stock Exchange**

**Deal Type:** ECM

**Firm:** Skadden, Arps, Slate, Meagher & Flom; Commerce & Finance Law Offices; Kirkland & Ellis; Fangda Partners; Maples and Calder

**Jurisdictions:** China, U.S.





A view shows UAE's Dana Gas building in Cairo November 2, 2012. REUTERS/Mohamed Abd El Ghany

But the case underlined the dangers of competing legal jurisdictions. In February, a London High Court judge confirmed the Dana sukuk's purchase undertaking was valid, and ordered the company to withdraw its lawsuits in the UAE. But a court in the emirate of Sharjah then prohibited Dana from withdrawing its UAE suits, and directed enforcement of British court orders be suspended pending decisions by UAE courts on whether they were eligible for enforcement.

Patrick Drum, portfolio manager at U.S.-based Saturna Capital, said investor preferences had shifted to sukuk governed solely by English law and away from dual-jurisdiction deals like Dana's.

The case appears to mean the end of the old mudaraba sukuk structure, criticised as un-Islamic by some scholars due to features such as guarantees on principal and fixed returns. But a revised mudaraba structure has emerged in recent years and may persist. <sup>ALB</sup>

Laldin, deputy chairman of the Malaysian central bank's Sharia Advisory Council, said the Dana saga had strengthened the case for setting up centralised bodies that could approve Islamic contracts and rule on disputes, rather than leaving vetting of sukuk to scholars engaged by issuers and investors.

Meanwhile, the Bahrain-based

Accounting and Auditing Organisation for Islamic Financial Institutions, one of the industry's top standard-setting bodies, is working on new guidance for sukuk.

Bashar Al Nattoor, global head of Islamic Finance at Fitch Ratings, said Dana had not done visible damage to sukuk trade, with first-quarter issuance slightly higher than a year ago.

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FIRMS TO WATCH  
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## PINSENT MASONS TO BRING VARIO FLEX-LAWYER SERVICE TO SINGAPORE

PinSent Masons MPillay, the Singapore alliance firm of Pinsent Masons, is set to launch the flexible lawyer service Vario in the city-state.

The Singapore launch will mark Vario's first foray into Southeast Asia. The service was launched in Melbourne and Sydney last year, to go with eight Vario offices in the United Kingdom.

The Vario service in Singapore will be led by Kate Caldwell-Hunt, who will relocate from the UK. She will work closely with Vario Australia on building the Singapore service, which will recruit some 30 consultants locally over the next six months.

Mohan Pillay, joint head of the Singapore office of Pinsent Masons MPillay, called the Vario launch "a part of our overall plan and commitment to the region." <sup>ALB</sup>

## PROSECUTORS RAID SOUTH KOREA'S BIGGEST CRYPTOCURRENCY EXCHANGE

South Korean prosecutors raided the country's biggest cryptocurrency exchange, Upbit, on suspicion of fraud, Yonhap news agency reported.

The agency did not give details. Neither Upbit nor the financial investigation team of the Seoul Southern District public prosecutors' office was immediately available for comment.

Upbit sent a note to its clients that it is co-operating with the prosecutors and that it can guarantee that all its clients' assets are secure.

Four executives from two other South Korean cryptocurrency exchanges were detained in April about the alleged embezzlement of billions of won. <sup>ALB</sup>

### APPOINTMENTS



#### EUGENE CHANG

**LEAVING**  
Orrick, Herrington & Sutcliffe

**JOINING**  
K&L Gates

**PRACTICE**  
Projects

**LOCATION**  
Seoul



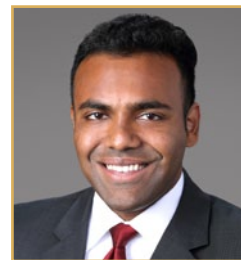
#### OWEN CHIO

**LEAVING**  
KPMG Law Firm

**JOINING**  
K&L Gates

**PRACTICE**  
Projects

**LOCATION**  
Taipei



#### RAM NARAYAN

**LEAVING**  
Sullivan & Cromwell

**JOINING**  
Kirkland & Ellis

**PRACTICE**  
Corporate

**LOCATION**  
Hong Kong



#### ALFRED NG

**LEAVING**  
Shearman & Sterling

**JOINING**  
Ashurst

**PRACTICE**  
Project Finance

**LOCATION**  
Singapore



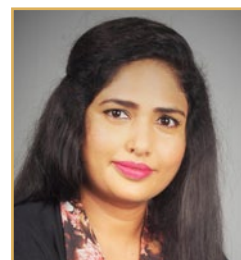
#### DICKSON NG

**LEAVING**  
Taylor Wessing

**JOINING**  
Eversheds Sutherland

**PRACTICE**  
Corporate

**LOCATION**  
Hong Kong



#### KANAN RELE

**LEAVING**  
Ogilvy & Mather

**JOINING**  
Singh & Singh|Malhotra & Hegde

**PRACTICE**  
TMT

**LOCATION**  
Mumbai



#### NIGEL STAMP

**LEAVING**  
Eversheds Sutherland

**JOINING**  
K&L Gates

**PRACTICE**  
Corporate

**LOCATION**  
Hong Kong



#### RONALD SUM

**LEAVING**  
Troutman Sanders

**JOINING**  
Locke Lord

**PRACTICE**  
Arbitration

**LOCATION**  
Hong Kong



#### JUSTIN YIP

**LEAVING**  
Morgan Lewis Stamford

**JOINING**  
Withers Khattar Wong

**PRACTICE**  
Dispute Resolution

**LOCATION**  
Singapore



# 2018 Colloquium on International Law

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Join us to rise to the challenge of addressing **legal and environmental issues** (“Go Green”), **corporate compliance** (“Deal Clean”) and **dispute resolution** (“Talk Peace”) – sure scenarios to be encountered when exploring new business opportunities arising from the Belt and Road Initiative.

— *An event not to be missed, if you're*

### Business Sector

listed company directors, CEOs, C-Suite executives, investors and strategists endeavouring to ride the wave of business boom in the wake of the Belt and Road Initiative

### Legal Sector & Government Sector

practitioners, judges, government officials, policymakers interested in exploring fresh perspectives and feasible proposals that are of utmost importance to cross-border investments

### Academic Sector

faculty members and researchers passionate about deliberating on infinite possibilities of making cross-border investments for the common good

\* CPD points being applied for \*

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## EUROPEAN REGULATORS: WE'RE NOT READY FOR NEW PRIVACY LAW

Europe's General Data Protection Regulation (GDPR) has been billed as the biggest shake-up of data privacy laws since the birth of the web.

There's one problem: many of the regulators who will police it say they aren't ready yet.

The pan-EU law comes into effect this month and will cover companies that collect large amounts of customer data including Facebook and Google. It won't be overseen by a single authority but instead by a patchwork of national and regional watchdogs across the 28-nation bloc.

Seventeen of 24 authorities who responded to a Reuters survey said they did not yet have the necessary funding, or would initially lack the powers, to fulfil their GDPR duties. "We've realized that our resources were insufficient to cope with the new missions given by the GDPR," Isabelle Falque-Pierrotin, president of France's CNIL data privacy watchdog, said in an interview.

She, like some other regulators, was

pressing her government for a substantial increase in resources and staff.

Many watchdogs lack powers because their governments have yet to update their laws to include the Europe-wide rules, a process that could take several months after GDPR took effect on May 25.

Most respondents said they would react to complaints and investigate them on merit. A minority said they would proactively investigate whether companies were complying and sanction the most glaring violations.

Their responses suggest the GDPR enforcement regime will be weaker than the bloc's anti-trust authority run directly by the European Commission, the EU executive, which hit Google here with a 2.4-billion-euro (\$2.9 billion) fine last year.

The launch of GDPR comes as data privacy is making headlines, with Facebook facing intense scrutiny over the leak of 87 million users' personal data to Cambridge Analytica, a political consultancy that advised U.S. President Donald Trump's election campaign.

The law aims to give EU citizens more rights to control over their online information. It has a slew of technically demanding requirements, and threatens fines of up to 4 percent of a company's annual revenue for serious infringements. Companies, for example, must be able to provide European customers

with a copy of their personal data, and under some circumstances delete it at their behest. They should also report serious data breaches within 72 hours.


The industries most affected will be those that collect large amounts of customer data, including technology companies, retailers, healthcare providers, insurers and banks.

Reuters sent all the regulators a four-question survey about how they would handle their responsibilities. Eighteen national authorities replied, plus data protection officers in six of the 16 German federal states who are responsible for enforcement. Only five in total said the necessary data protection laws and funding in their jurisdiction were in place. Of the 17 who said they did not have the necessary funding and legislation, 11 expected both to be provided in future.

The new law calls for national watchdogs to assume the lead role in overseeing companies headquartered within their borders. It does, however, create a central body, the European Data Protection Board (EDPB), in an attempt to ensure the law is applied consistently across the bloc. The panel would serve both as a forum for regulators and issue binding rulings in disputes.

In the recent Facebook breach case, most regulators have not taken an active role because the firm's EU headquarters is in Ireland, falling under the country's Data Protection Commissioner (DPC). Cambridge Analytica is being investigated by the UK Information Commissioner's Office (ICO).

The DPC of Ireland was among those who declined to take part in the survey, citing the complexity of the issues, as did the UK ICO. The Irish authority did, however, say its budget and staffing had been ramped up in preparation for GDPR. Yet its funding this year, at 11.7 million euros, works out at less than one-thousandth of Facebook's annual net income of \$15.9 billion.

Johannes Caspar, the data protection commissioner in Hamburg, told Reuters he had had many differences of opinion with the Irish regulator in the past over its handling of Facebook, without giving details. 



Silhouettes of laptop and mobile device users are seen next to a screen projection of Google logo. REUTERS/Dado Ruvic



## SG BOUTIQUE NAIR & CO. LAUNCHES SHIPPING PRACTICE WITH HIRE OF OTTO MARINE GC

■ Singapore dispute resolution boutique Nair & Co. has launched a shipping and construction practice after hiring Clarence Lun as a counsel from Otto Marine Limited, where he was the group general counsel.

Lun, who also served as senior legal counsel with Swiber Holdings, has experience in shipping, oil and gas, engineering, construction and He has also been actively involved in oil and gas, offshore energy and maritime disputes.

Nair & Co. was set up in October last year by Suresh Nair, partner at Advocatus Law, who left to launch his own firm. While Nair & Co. initially focused on disputes and insolvency, it added a corporate offering with the hire of partner Jean Foo from Shearman & Sterling in January this year. The firm also hired associate Lisha Soh recently.

"We are first and foremost a boutique disputes and insolvency/restructuring firm. To this, I am very happy that we have been able to add strong corporate, shipping and construction capabilities with the addition of Jean, Clarence and Lisha to our team," said Suresh Nair in a statement. "As always, we look forward to growing together with our clients. We are confident that Clarence will be an excellent addition to the team to enable us to do just that." <sup>ALB</sup>



A man walks inside the lobby of Citibank Tower in Hong Kong February 23, 2009. REUTERS/Bobby Yip

## HONG KONG REGULATOR FINES CITIGROUP'S ASIAN BUSINESS \$7 MILLION FOR FAILINGS AS REAL GOLD IPO SPONSOR

■ Hong Kong's securities regulator said it had fined Citigroup's Asian business HK\$57 million (\$7 million) for failings related to its discharge of duties as sponsor of the 2009 initial public offering (IPO) of Real Gold Mining Ltd.

The disciplinary action is the second in what is expected to be a series of measures by the Securities and Futures Commission (SFC) against banks for misconduct when sponsoring IPOs in the Asian financial hub.

The SFC said that Citigroup Global Markets Asia had failed to conduct adequate and reasonable due diligence on Real Gold's customers.

It also failed to properly supervise its staff when carrying out the sponsor work on the listing application, the SFC said.

The due diligence on Real Gold's customers was done over the telephone by the most junior members of Citi's transaction team with little supervision, using phone numbers provided by the miner, without independently verifying customers' identities and details.

Trading in Real Gold's shares has been suspended since 2011.

Citi said in a statement the resolution of the issue did not involve any licence suspension and "does not place any constraints on Citi's business activities or on any individual in Hong Kong or elsewhere".

It added, "Citi cooperated fully with the SFC's investigation and has already taken appropriate action to ensure that it meets its legal and regulatory obligations at all times."

In March, the SFC said it had found serious deficiencies in the work of several IPO sponsors from its review of new listings between 2013 and 2017.

The regulator had issued proceedings against eight IPO sponsors, its enforcement director, Tom Atkinson, said that month.

UBS said in its annual report the SFC had blocked it from sponsoring initial public offerings for 18 months, adding it planned to appeal against the decision. <sup>ALB</sup>



NORTH ASIA LEAGUE TABLES

CHINA ANNOUNCED M&A LEGAL RANKINGS

No. 1 - Linklaters

30,924.6 Value (\$MLN)

Deals: 4 / Market Share: 13.2

| Rank | Legal Advisor                                | Value (\$MLN) | Deals | Market Share |
|------|--|---------------|-------|--------------|
| 2*   | Serra Lopes Cortes Martins & Associados      | 27,930.4      | 1     | 12.0         |
| 2*   | Morais Leitao, Galvao Teles, Soares da Silva | 27,930.4      | 1     | 12.0         |
| 4    | Zhongzi Law Office                           | 10,237.9      | 1     | 4.4          |
| 5    | King & Wood Mallesons                        | 8,960.1       | 25    | 3.8          |
| 6    | Jia Yuan Law Offices                         | 7,597.6       | 12    | 3.3          |
| 7    | Sidley Austin LLP                            | 6,160.9       | 4     | 2.6          |
| 8    | Han Kun Law Offices                          | 5,379.8       | 2     | 2.3          |
| 9    | JunHe LLP                                    | 4,286.7       | 5     | 1.8          |
| 10   | DLA Piper LLP                                | 3,900.0       | 5     | 1.7          |

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

HONG KONG ANNOUNCED M&A LEGAL RANKINGS

No. 1 - JunHe LLP

2,731.5 Value (\$MLN)

Deals: 2 / Market Share: 7.6

| Rank | Legal Advisor                  | Value (\$MLN) | Deals | Market Share |
|------|--------------------------------|---------------|-------|--------------|
| 2    | Grandway Law Offices           | 2,520.8       | 1     | 7.0          |
| 3    | Latham & Watkins               | 2,371.1       | 4     | 6.6          |
| 4*   | Shearman & Sterling LLP        | 1,383.6       | 1     | 3.8          |
| 4*   | White & Case LLP               | 1,383.6       | 2     | 3.8          |
| 6    | Freshfields Bruckhaus Deringer | 886.5         | 5     | 2.5          |
| 7    | King & Wood Mallesons          | 715.0         | 2     | 2.0          |
| 8    | Sidley Austin LLP              | 638.0         | 3     | 1.8          |
| 9    | Clifford Chance                | 520.0         | 7     | 1.4          |
| 10   | Davis Polk & Wardwell          | 500.0         | 1     | 1.4          |

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

JAPAN ANNOUNCED M&A LEGAL RANKINGS

No. 1 - Fried Frank Harris Shriver & Jacobson

135,574.8 Value (\$MLN)

Deals: 2 / Market Share: 61.2

| Rank | Legal Advisor               | Value (\$MLN) | Deals | Market Share |
|------|-----------------------------|---------------|-------|--------------|
| 2    | Nagashima Ohno & Tsunematsu | 91,828.9      | 25    | 41.4         |
| 3    | Nishimura & Asahi           | 88,289.8      | 32    | 39.8         |
| 4    | Davis Polk & Wardwell       | 86,948.1      | 6     | 39.2         |
| 5    | Morrison & Foerster         | 83,044.6      | 9     | 37.5         |
| 6    | Linklaters                  | 77,966.1      | 4     | 35.2         |
| 7*   | Ogier & Le Massurier        | 76,886.1      | 1     | 34.7         |
| 7*   | Slaughter and May           | 76,886.1      | 1     | 34.7         |
| 7*   | Mourant Ozannes             | 76,886.1      | 1     | 34.7         |
| 10   | Allen & Overy               | 70,858.8      | 5     | 32.0         |

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

SOUTH KOREA ANNOUNCED M&A LEGAL RANKINGS

No. 1 - Shin & Kim

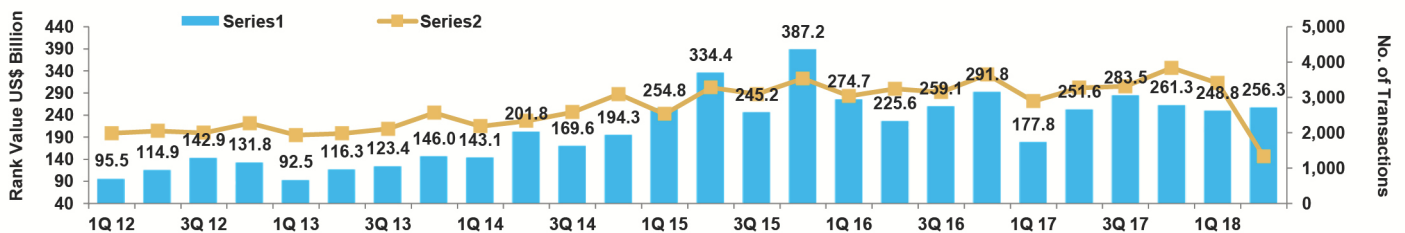
6,245.6 Value (\$MLN)

Deals: 14 / Market Share: 28.8

| Rank | Legal Advisor                  | Value (\$MLN) | Deals | Market Share |
|------|--------------------------------|---------------|-------|--------------|
| 2    | Lee & Ko                       | 4,319.8       | 12    | 10.8         |
| 3    | Kim & Chang                    | 2,856.3       | 14    | 2.3          |
| 4    | Bae Kim & Lee                  | 2,197.1       | 10    | 1.0          |
| 5    | Yulchon LLC                    | 347.1         | 9     | 0.4          |
| 6    | Jipyong                        | 289.2         | 9     | 0.4          |
| 7    | Freshfields Bruckhaus Deringer | 151.0         | 1     | 0.2          |
| 8*   | Herbert Smith Freehills        | 62.0          | 1     | 0.1          |
| 8*   | Allen & Overy                  | 62.0          | 1     | 0.1          |
| 10   | Kim Choi & Lim                 | 22.6          | 1     | 0.1          |

(\*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



Notes: League tables, quarterly trend, and deal list are based on the nation of either the target, acquirer, target ultimate parent, or acquirer ultimate parent at the time of the transaction. Announced M&A transactions excludes withdrawn deals. Deals with undisclosed dollar values are rank eligible but with no corresponding Rank Value. Non-US dollar denominated transactions are converted to the US dollar equivalent at the time of announcement of terms. North Asia includes China, Hong Kong, Japan, South Korea. Data accurate from 1 January to 17 May 2018.

SOUTHEAST ASIA/SOUTH ASIA LEAGUE TABLES

### SE ASIA/SOUTH ASIA ANNOUNCED M&A LEGAL RANKINGS

**No. 1 - Shardul Amarchand Mangaldas & Co**

**29,934.5** Value (\$MLN)

Deals: **25** / Market Share: **32.2**

| Rank | Legal Advisor                         | Value (\$MLN) | Deals | Market Share |
|------|---------------------------------------|---------------|-------|--------------|
| 2    | AZB & Partners                        | 22,249.5      | 50    | 24.0         |
| 3    | Khaitan & Co                          | 19,098.4      | 26    | 20.6         |
| 4    | Gunderson Dettmer                     | 16,843.6      | 4     | 18.1         |
| 5    | Allen & Gledhill                      | 16,322.0      | 6     | 17.6         |
| 6    | Gibson Dunn & Crutcher                | 16,051.0      | 3     | 17.3         |
| 7*   | Fried Frank Harris Shriver & Jacobson | 16,000.0      | 1     | 17.2         |
| 7*   | Hogan Lovells                         | 16,000.0      | 4     | 17.2         |
| 7*   | Dentons Rodyk & Davidson LLP          | 16,000.0      | 1     | 17.2         |
| 10   | Slaughter and May                     | 5,290.2       | 4     | 5.7          |

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

### SE ASIA/SOUTH ASIA ANNOUNCED M&A FINANCIAL RANKINGS

**No. 1 - JP Morgan**

**21,946.1** Value (\$MLN)

Deals: **2** / Market Share: **23.6**

| Rank | Legal Advisor                 | Value (\$MLN) | Deals | Market Share |
|------|-------------------------------|---------------|-------|--------------|
| 2    | Goldman Sachs & Co            | 17,876.5      | 14    | 19.3         |
| 3    | Barclays                      | 16,397.0      | 7     | 17.7         |
| 4    | Citi                          | 9,534.4       | 9     | 10.3         |
| 5    | Ernst & Young LLP             | 8,467.8       | 17    | 9.1          |
| 6    | State Bank of India           | 5,784.2       | 1     | 6.2          |
| 7    | Morgan Stanley                | 5,725.8       | 4     | 6.2          |
| 8    | Bank of America Merrill Lynch | 4,511.2       | 15    | 4.9          |
| 9    | Arpwood Capital               | 2,963.4       | 3     | 3.2          |
| 10   | Malayan Banking Bhd           | 1,519.2       | 9     | 1.6          |

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

### SINGAPORE ANNOUNCED M&A LEGAL RANKINGS

**No. 1 - WongPartnership LLP**

**1,131.5** Value (\$MLN)

Deals: **3** / Market Share: **13.1**

| Rank | Legal Advisor                      | Value (\$MLN) | Deals | Market Share |
|------|------------------------------------|---------------|-------|--------------|
| 2    | Nagashima Ohno & Tsunematsu        | 468.3         | 1     | 5.4          |
| 3    | Dentons                            | 388.6         | 2     | 4.5          |
| 4    | Lander & Rogers Lawyers            | 317.7         | 1     | 3.7          |
| 5    | Khaitan & Co                       | 313.0         | 3     | 3.6          |
| 6    | Tr                                 | 282.3         | 1     | 3.3          |
| 7    | Rajah & Tann LLP                   | 215.8         | 4     | 2.5          |
| 8    | Jones Day                          | 202.2         | 7     | 2.3          |
| 9*   | Machado Meyer Sendacz & Opice      | 195.7         | 1     | 2.3          |
| 9*   | Mattos Filho Veiga Filho Marrey Jr | 195.7         | 1     | 2.3          |

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

### INDIA ANNOUNCED M&A LEGAL RANKINGS

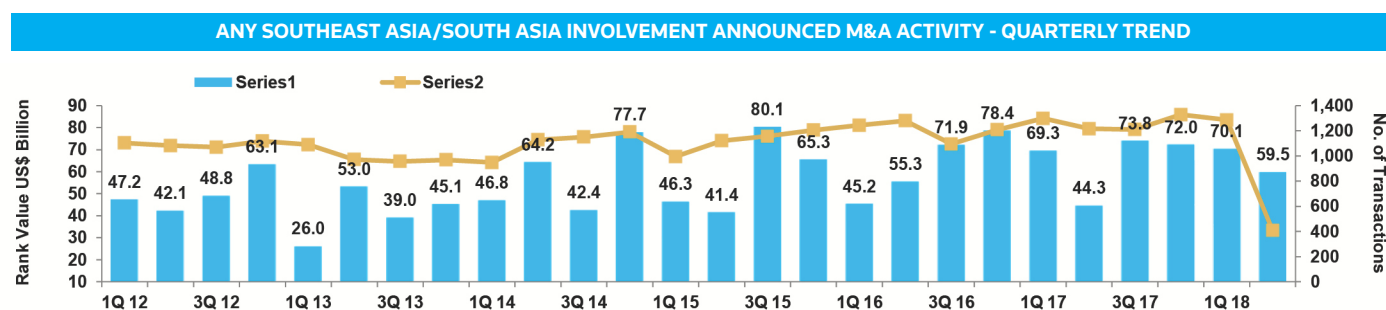
**No. 1 - Shardul Amarchand Mangaldas & Co**

**29,934.5** Value (\$MLN)

Deals: **25** / Market Share: **51.9**

| Rank | Legal Advisor                         | Value (\$MLN) | Deals | Market Share |
|------|---------------------------------------|---------------|-------|--------------|
| 2    | AZB & Partners                        | 22,149.7      | 48    | 38.4         |
| 3    | Khaitan & Co                          | 19,098.4      | 26    | 33.1         |
| 4    | Gunderson Dettmer                     | 16,843.6      | 4     | 29.2         |
| 5    | Gibson Dunn & Crutcher                | 16,051.0      | 2     | 27.8         |
| 6    | Allen & Gledhill                      | 16,049.8      | 2     | 27.8         |
| 7*   | Fried Frank Harris Shriver & Jacobson | 16,000.0      | 1     | 27.7         |
| 7*   | Hogan Lovells                         | 16,000.0      | 2     | 27.7         |
| 7*   | Dentons Rodyk & Davidson LLP          | 16,000.0      | 1     | 27.7         |
| 10*  | Slaughter and May                     | 4,304.9       | 1     | 7.5          |
| 10*  | S&R Associates                        | 4,304.9       | 1     | 7.5          |

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



Notes: League tables, quarterly trend, and deal list are based on the nation of either the target, acquirer, target ultimate parent, or acquirer ultimate parent at the time of the transaction. Announced M&A transactions excludes withdrawn deals. Deals with undisclosed dollar values are rank eligible but with no corresponding Rank Value. Non-US dollar denominated transactions are converted to the US dollar equivalent at the time of announcement of terms. SOUTHEAST ASIA: Singapore, Malaysia, Indonesia; SOUTH ASIA: India. Data accurate from 1 January to 17 May 2018.



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# PHARMACEUTICALS

From big data to social media, the pharmaceutical industry has utilised the latest technological trends and is also moving towards digitalisation of various operations, while also being conscious of compliance in a heavily regulated industry. Corporate counsel at some of the top pharma companies share trends they've been seeing, the work that keeps them busiest, and how external counsel can help.

BY JOHN KANG

■ Though the pharmaceutical industry is heavily regulated and its companies are perceived as slow-moving giants, many have been keeping up with the latest technological trends.

For example, social media has been used by pharmaceuticals to share the latest news and updates on potentially life-saving scientific advancements and medical innovations – to people around the world more quickly and widely.

What hasn't changed much is the legal work, which has remained business-as-usual for the most part, and counting on their external counsel for specific expertise. And like in many other regulated industries, corporate counsel in pharma are being acutely conscious of compliance, as consumers and regulators alike expect the industry to have greater transparency and ethical standards. 



**HWEE PING CHUA**

*Managing Counsel of  
Asia Pacific, China & Japan*

**Merck Sharp and  
Dohme (MSD)**

### **What trends are you seeing in the pharmaceutical industry, and how is it affecting your team?**

The increasing use and reliance on technology and social media is taking the pharmaceutical industry through transformational changes. Traditional methods of interacting with stakeholders and customers are no longer viable. Everyone, patients and healthcare professionals alike, is turning to the internet for rapid access to information. In order to stay competitive and relevant, it has become imperative for the pharmaceutical industry to keep up with the pace of technology, and be much more innovative and open-minded in the way we do business, disseminate information and interact with stakeholders and society.

Lawyers and compliance professionals are historically not the fastest adopters of technology. However, we have come to realise that if we do not adapt and stay ahead of the game, we will lose our ability to contribute meaningfully and bring value to our organisation. We have therefore forced ourselves to get out of our comfort zones – to learn about the latest social media platforms and search engines, and train ourselves to think faster and differently from what we have done in the past. This is a significant mindset and cultural change for my team and me, but it is absolutely necessary and urgent.

### **What kind of legal work does your team do, and what does the team focus on?**

Like most in-house teams in our region, we play the role

of general practitioners – meaning we take on legal work that spans a very wide scope. Within any given day, we could be working on a transactional contract, performing due diligence reviews of third party vendors/partners, handling labour law disputes, advising on competition laws and privacy matters, and reviewing new marketing/innovative initiatives.

Apart from legal work, my team and I also spend a lot of time providing compliance advice, focusing primarily on ethical business practices, corruption risks and corporate integrity. Within MSD, we have had an integrated legal and compliance organisation since 2015. What this means is that every attorney on the team is expected to take on the responsibility of providing compliance counsel and support to the business on a regular basis. This is, in fact, a significant portion of the workload for the team, given the highly regulated industry we are in and the high-risk market environments we operate in within this region.

**Who are your external counsel, and what kind of work do you use them for?**

We select external counsel based on the specific areas of expertise needed for each assignment. We maintain a healthy panel of law firms, ranging from large international law firms to smaller outfits that are strong in particular areas of legal practice in the local market.

While most of the legal and compliance work can be done in-house by my team, we rely on external counsel's expertise and support on more complex and specialised areas of law like competition law, privacy, complex investigations and litigation, significant corporate transactions and new regulations that may impact our operations.

We view our external counsel as an extension of our team, not just a service provider. We go through a careful selection process, to ensure that there is a good mutual understanding of expectations and shared accountability and success, in the work our selected external counsel are engaged to perform. Through this selection process, we typically end up using a firm that subscribes to a similar philosophy.

**What are some of the biggest opportunities and challenges you're currently facing?**

We are a research-based company. Our mission is to invent for life – to bring innovative medicines to patients around the world. In this social media age, we have a great opportunity to bring scientific advancements and medical innovations to the world much more quickly and effectively. This will, in turn, enable many more people to have access to new and important medicines and treatment in a rapid and timely manner.

However, this is an uncharted and untested territory, and the laws and regulations governing these areas may not necessarily keep up, and they remain largely ambiguous and uncertain. The opportunity, therefore, presents significant risks to companies like ours as well.

Despite the uncertainties in the legal environment, one thing is clear. Our work, as an in-house legal and compliance team, can no longer be based purely on past practices that are tried and tested. We need to be creative and nimble, but yet vigilant and prudent, so that we can support the organisation in bringing greater value to people in this technological age, in a compliant manner and without in any way compromising our ethical standards. This is no mean task, but I believe it is certainly achievable with the right mindset, corporate culture and support from the top.



**HIROMI FURUSHIMA**

*Head of Legal/IP Japan and General Counsel*

**Novartis Pharma K.K.**

**What trends are you seeing in the pharmaceutical industry, and how is it affecting your team?**

First, when it comes to digital transformation, the pharmaceutical industry is no exception. We started exploring the opportunity to use big data and digital technology from drug development to commercial activities as well as back-office work so that we can deliver innovative products with improved productivity.

Second, to make healthcare more patient-centred, the industry has been more focused on how to improve patient engagement and patient experience. We are becoming more active in introducing patient awareness programmes, patient support programmes, and increased interaction with patient organisations.

Last but not least, ethics and compliance remain a priority, as society is expecting the industry greater transparency and ethical standards.

All of the above trends affect our team to deal with uncertainty and "go-beyond legal" because laws and regulations, or industry standard have not been established in many of those areas. In-depth understanding of business, and skills to take smart risks, are needed more than before.

**What kind of legal work does your team do, and what does the team focus on?**

Our team does a wide variety of legal-related work, including contract drafting and negotiation, providing legal advice, managing litigations, and giving legal training to associates.



The team now focuses more on addressing the trends mentioned in the response above, by proactive involvement in the early stage of the business discussion so that the team may provide more valuable advice to the business. The other area of focus is to streamline various legal processes, while adequately managing and mitigating risks. Emerging digital technology is expected to be helpful in simplifying such procedures, and once accomplished, this will help us to focus more on value-added work.

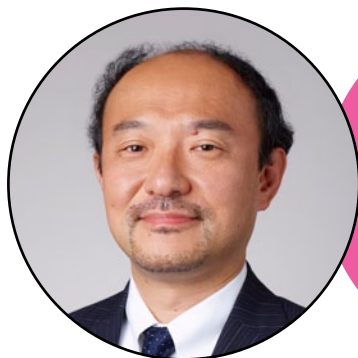
### **Who are your external counsel, and what kind of work do you use them for?**

Much of our legal work is done internally. We retain external counsel for the matters which require extensive resources or particular expertise, such as litigation, mergers and acquisitions, and issues related to labour, antitrust and patents.

### **What are some of the biggest opportunities and challenges you're currently facing?**

We see a lot of opportunities and challenges in patent strategy. Recent court cases have increased uncertainty in patent term extensions and patent linkage systems, but we are required to make business decisions under such circumstances.

Also, as mentioned earlier, digital transformation would give us further opportunity to support the business, as well as help to accelerate the productivity of our work.



**HAJIME SEKI**

*Head of Legal, Japan*

**Sanofi**

### **What trends are you seeing in the pharmaceutical industry, and how is it affecting your team?**

From my perspective, there are three key trends in the pharmaceutical industry. First is innovation: The pharmaceutical industry is innovation-driven, but recently that aspect has been expanding beyond new drugs discovery. A good example of this trend is the digitalisation in R&D, manufacturing, sales & marketing and any other activities. It has also materialised in the form of collaboration with a

technology company to develop innovative new solutions, as well as share skills and expertise. Our capability and expertise must keep pace with these emerging areas.

Second is sourcing innovation through deals. It is happening in different shapes and forms – not only M&A, but also joint ventures, out/in-licensing, co-commercialisation, etc. We have to be well equipped to provide high-quality support on all kinds of transactions.

Third is compliance. Given many scandals within the pharmaceutical industry with respect to, in particular, interactions with healthcare professionals over the past several years, we have to be rigorous and work closely with medical and Ethics & Business Integrity to protect our company. We, therefore, need to stay abreast with evolving laws, updating the company's trainings as appropriate.

### **What kind of legal work does your team do, and what does the team focus on?**

My team delivers legal advisory and support services with respect to all kinds of legal matters, including contract drafting and negotiation, dispute resolution, and advice on strategic deals in connection with operations and activities in Japan.

Further, in order to establish effective risk management within the group, the team works closely with Ethics & Business Integrity teams in connection with issues involving anti-corruption and compliance training for executives and employees. With the aim of being a true business partner for our internal clients, the team commits itself to being proactive so it can identify risks and opportunities early.

### **Who are your external counsel, and what kind of work do you use them for?**

As my team is made up of talented lawyers with diverse experience, we do most of our work in-house. If a case has a complex or high-risk nature or requires specialised legal advice, however, we work with domestic or international firms depending on their expertise and capability.

### **What are some of the biggest opportunities and challenges you're currently facing?**

The pharmaceutical industry is very dynamic and diverse, and always has a variety of legal and compliance related issues at each stage of its value chain. It, therefore, provides more opportunities to develop true business lawyers.

On the other hand, in-house legal departments are increasingly expected to be streamlined and operationally effective. Using technology and innovations is inevitable. It also requires further simplification of operational processes and focusing more on high-value work. This is a big challenge but at the same time, it is a big opportunity for in-house lawyers as well as in-house legal departments.

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**Even though women today occupy a significant proportion of senior in-house roles, they are less represented in law firm leadership ranks. Female law firm leaders talk about why this is the case, as well as what can be done to address it.**

MAIN TEXT BY ELISE MAK  
PROFILES BY CORNELIA ZHOU

# LEADERSHIP LESSONS

**W**omen are increasingly making their presence felt in the legal field in Asia, even as climbing up the ranks remains something of a challenge due to social expectations and perceptions in the region.

Recent studies have shown that women make up approximately half of in-house roles in Asia and the Middle East, and this proportion does not vary greatly at the general counsel level.

While this is encouraging, it also serves to highlight the fact that many women prefer in-house opportunities to private practice. UK-based legal recruiter Taylor Root says that only 25 percent of partners in law firms are women.

"While there has been a definite shift in the right direction since my joining the legal profession in the late 1990s, there are still too few women represented amongst the leadership teams of many law firms," says Stephanie Keen, Singapore office managing partner at Hogan Lovells Lee & Lee.

## MALE-DOMINATED

Even though law firms frequently trumpet their initiatives when it comes to gender equality in the workplace, practicing it is a different matter. Women are still placed at a disadvantage in workplace, with many norms that favour men.

"In Asia, when the international firms entered the market, the work was more project-based and infrastructure-driven, which have typically been male-dominated areas," Keen says.

"As the market developed, more women were attracted to the region but the more senior people tended to be men, and hence the leadership teams reflected the same. The simple presence of women in leadership positions questions and challenges the traditional perception of who should lead law firms," she adds.

Unconscious bias has also made things difficult.

"The legal profession is steeped in



tradition and the tradition for law firms has been to hire white males. People find it comfortable to hire or gravitate towards those who remind them of themselves,” Keen says.

Hanim Hamzah, regional managing partner at ZICO Law, echoes Keen’s view.

“Business development is key to our profession; we need to keep attracting clients,” Hamzah says. “However, lawyering is male-oriented, and clients are mostly men, so entertaining them becomes a men-to-men thing. Women can find it hard to take part in activities to maintain relationships with the clients, especially when those require staying out late night, like at a bar or karaoke parlour. It is not natural for women to go out and stay late at the bar.”

### PRESET ROLES

Hamzah has worked in five countries so far, including in Japan, which she says offers an example of how most Asian societies tend to look at women.

Kanji Kato, a senior member from Japan’s governing party Liberal Democratic Party, recently made a remark that women should have multiple children and that single women would become a burden to the state.

“In Japan, sending children to day-care is expensive,” Hamzah explains. “When childcare becomes more expensive than staying in the job, women tend to choose family over career.”

This attitude is common in many societies with deep-rooted family values, in which women are supposed to marry, give birth and play the role of a caretaker. This sets female practitioners back in their career path, and results in insufficient female representation in law firm leadership.

“There are still a lot of women who have to choose between work and other commitments such as taking care of ageing parents or sick family members, if not their children. When women lack financial security or resources, they choose to give up their careers,” Hamzah says.

This frustration is shared by other female leaders.



## LISA MATHER

Vice President, Chief International Counsel, **Paypal**

Mather began her legal career as a corporate lawyer specialising in mergers and acquisitions. About a year ago, she joined PayPal to take up a newly created role as Vice President and Chief International Counsel. Now Mather works with an in-house global legal team consisting of lawyers based in various locations worldwide.

When asked about challenges women face in the legal space, Mather thinks unconscious bias is one of the issues presenting challenges across many contexts.

“Unconscious bias, which is now widely recognised, happens through our brains making incredibly quick judgments and assessments of people and situations without us realizing, including in relation to gender stereotypes,” she explains.

Mather points out that if left unchecked in the workplace, unconscious biases can hurt good diversity and inclusion.

“There are many great tools available to companies today to overcome unconscious biases,” Mather

says. “These include awareness raising programs, training, and setting diversity targets.”

Mather was given the opportunity a decade ago to move offshore in her previous company, which gave her the means to develop a keen ability to work as an in-house counsel across many jurisdictions.

“Instead of assuming that it would be too hard for me to move offshore with young children and a spouse with his own busy legal career, my then-manager asked me if I was interested and able to take the opportunity... I am extremely grateful that it was done for me,” Mather shares. “I am now passionate about making sure I create and offer those opportunities for lawyers working in my teams today, regardless of their background.”

“My number one piece of advice is to always be prepared to ‘have a go’ and don’t be afraid to get out of your comfort zone,” says Mather to female legal professionals starting their careers. “You will be amazed at what you can achieve.”



## JASMINE KARIMI

Head of Legal, Senior Director & Counsel, Asia, **Illumina**

Jasmine Karimi has been a legal professional for over 20 years in various industries with both law firms and MNCs. Currently, she leads the legal and compliance teams for Asia Pacific-Japan and Greater China for Illumina, a U.S.-listed biotech company focusing on genomics.

Karimi says she and her team strive to balance the growth and risk appetite of the company.

"The role of an in-house legal professional has evolved tremendously in the nearly 20 years since I embraced that path, and today we are a trusted adviser and business partner," Karimi says. "At Illumina, this also requires for me to be the moral compass and risk assessor, bring the ability to look at issues from a different angle, and most importantly, be a leader in the organization."

Karimi notes that staying up-to-date with the ever-changing legal, regulatory and political landscape while proactively thinking about how these changes could impact the business is critical for any in-house counsel.

"This challenge is universal and not restricted to female in-house professionals," Karimi says. "Companies can play an important part by sponsoring and supporting the career development of in-house counsel by exposing them to not just black-letter law training courses but also to various facets of the business, providing them with a seat at the table and enabling them to learn from the business."

"There is no short-cut to growth - it's only by doing that one can truly learn and grow," she adds.

Karimi also encourages younger lawyers to be curious, believe in themselves, and get out of their comfort zones to take risks.

"Try out or learn about different industries until you find one that makes you excited about the cause or business. You will be amazed at what you discover along that journey, and marvel at your own strength to survive and thrive," Karimi says. "Surround yourself with people who inspire you but also are able to give you honest feedback, which is critical for continuous progression."

"A number of women are unable to stay the course and reach positions of senior leadership in law firms even though they have the capability," says Zia Mody, founding partner of India's AZB & Partners.

"Many of them experience a constant conflict between their more traditional role, and that of being a working professional. To train them, invest in them and subsequently lose them is frustrating," says Mody.

Margaret Robertson, chief executive officer at Withers, agrees, stating that starting a family, often at the very same point as a lawyer's career is really taking off, is both personally important and professionally challenging.

"Most law firms put people who have built large practices in management roles as that gives them credibility to lead their peers," Robertson says. "Those with family responsibilities may find the additional strain of a leadership role too much to add to their load."

Women almost always find themselves caught between career and family. In societies where women are encouraged to take on the full-time caretaker's role, there is little societal support for career women.

### FLEXIBLE WORKING

To help female lawyers stay the course, law firms can take the lead in making life easier for women by offering flexible working arrangements and other female-friendly policies.

"An important element for helping many women to progress in their careers is to offer flexibility and support in their working practices," Robertson says.

"Taking an open approach to working from home, part-time arrangements and other ways of accommodating employees when they are trying to balance the demands of work and caring for young children or other dependents can make a huge difference," she adds.

Her suggestions are broadly similar to those of Hamzah, who says firms should provide day-care in the office, flexible working hours and conditions, and longer maternity leave. And these arrangements



should not only be limited to women, but also extended to men.

“We need equal benefits for men and women, so men can take care of the child too. Women are now entitled to maternity leave of three months, while men only have seven days. How can we have a balance if the husbands are not allowed to stay home?” says Hamzah. “We need equal rights and benefits to get women back to work quicker, so they won’t lose out on their careers due to personal life choices.”

One advantage for working mothers in Southeast Asia, Hamzah says, is the affordability of help when it comes to caring for children.

“You can hire a nanny who will help you with a large part of your family role,” Hamzah says. “As a result, Southeast Asia has more women who are partners of law firms, as well as in leadership positions. This is because women don’t have to choose between work and life.”

Keen adds that women need to proactively find a balance. “All too many women, when trying to juggle between having a family and having a career, subconsciously or otherwise don’t put themselves in positions from where they can advance their careers. As a result, they don’t get the promotions they deserve, and the opportunities eventually dry up. They need to recognise that life doesn’t need to be put on hold, and that they can find the balance,” she says.

### THE RIGHT CULTURE

Other than flexible working arrangements, law firms should also recognise that inclusiveness and diversity are key to helping female lawyers advance. By creating an open and friendly environment that embraces differences and new ideas, people are encouraged to unleash their potential and thus help the law firms grow.

“Today law firms recognise the importance of diversity, which in leadership positions can set businesses apart,” Keen says. “Innovation among businesses, including law firms, is a critical component

**“ALL TOO MANY WOMEN, WHEN TRYING TO JUGGLE BETWEEN HAVING A FAMILY AND HAVING A CAREER, SUBCONSCIOUSLY OR OTHERWISE DON’T PUT THEMSELVES IN POSITIONS FROM WHERE THEY CAN ADVANCE THEIR CAREERS. AS A RESULT, THEY DON’T GET THE PROMOTIONS THEY DESERVE, AND THE OPPORTUNITIES EVENTUALLY DRY UP. THEY NEED TO RECOGNISE THAT LIFE DOESN’T NEED TO BE PUT ON HOLD, AND THAT THEY CAN FIND THE BALANCE.”**

of remaining successful in an increasingly competitive and globalized world. To be innovative, you have to look at things differently and with different lenses in order to get a variety of perspectives. This is where diversity comes into play.”

“Senior partners really have to believe in diversity for the benefit of the business, and once they are committed, they need to lead by example. We have many examples of that at Hogan Lovells with both our CEO and senior practice leaders all strong advocates of diversity,” she adds.

“Management needs this mindset to truly build a culture of inclusiveness. As leaders, it is our responsibility to actively participate in mentoring and bringing new talent into business,” says Keen.

This is what Robertson is advocating as well. “Management needs to spot talent and encourage women with potential to put their hands up for roles they might not have thought they were qualified for,” she says.

Robertson also points out that giving people autonomy encourages more to get done. “Lawyers value autonomy. Although we have a clear direction, we create an environment where people can come up with

**STEPHANIE KEEN**  
Hogan Lovells

**“WE NEED EQUAL BENEFITS FOR MEN AND WOMEN, SO MEN CAN TAKE CARE OF THE CHILD TOO. WOMEN ARE NOW ENTITLED TO MATERNITY LEAVE OF THREE MONTHS, WHILE MEN ONLY HAVE SEVEN DAYS. HOW CAN WE HAVE A BALANCE IF THE HUSBANDS ARE NOT ALLOWED TO STAY HOME? WE NEED EQUAL RIGHTS AND BENEFITS TO GET WOMEN BACK TO WORK QUICKER, SO THEY DON’T LOSE OUT ON THEIR CAREERS DUE TO PERSONAL LIFE CHOICES.”**

**HANIM  
HAMZAH**  
ZICO Law

new ideas, e.g. regarding recruiting a certain person, moving to a location or creating a new service. If you give people autonomy and encourage them to do more, on the whole they do,” she says.

#### **BRIGHTENING OUTLOOK**

Although hurdles remain, things have improved tremendously and have been looking brighter in recent years, say the women leaders. Law firms are embracing gender equality and ensuring women are given equal opportunities.

“As the number of female partners has grown, so has the number of women in leadership roles in law firms. There are now many instances of law firms of all sizes, and all specialisms that are managed by women, or have women heading practices, offices and departments,” Robertson says.

Hamzah also says female lawyers are facing fewer barriers in developing relationships with clients.

“Now there are more women in the boardroom, and female partners at the law firms can relate to them. It’s easier to be involved in activities now as they now come in many different forms, such as having lunch

or joining charity events,” she says. “At ZICO Law, we are proud to have leadership that is 54 percent female and a total workforce that is 52 percent female.”

As the younger generation grows up gender fluid and advocating gender equality, it encourages women to stand up to unfair treatment and fight for equal rights. This opens opportunities for dialogue and boosts women’s confidence in pursuing their ambitions just like men.

“Nowadays, people are not afraid to talk about taboo subjects such as equal pay and sexual harassment. For example, we had the ‘me too’ movement,” Hamzah says.

Keen agrees, calling on women to be brave, have the difficult conversations and challenge the status quo.

“Silence simply leaves the issues undressed and likely to fester,” she says.

#### **LEADERSHIP TRACK**

While a friendly working environment can offer a tailwind for women who aim higher in their careers, much of the onus rests on them. Their attitude to work plays a big role in advancing their causes, the female leaders say. They offer a few pieces of advice on how women should approach their careers.

First of all, raise your hand.

“Women systematically underestimate their capabilities and fail to attribute their success to themselves,” says Keen. “They need to have a voice and be brave. Women often expect their work to speak for them, instead of having the conversation themselves. Let people know you are interested in taking on a position. There may be initial setbacks but you need to accept these and learn from them.”

Robertson advises the same: when the opportunity presents itself, make sure you leave an impression.

“Volunteer solutions to problems early on and take responsibility for fixing things you can fix. That gets you noticed, and making people’s lives easier wins you influence,” she says. “Say ‘yes’ to as many opportunities as you can early on in your career even



if they make you feel uncomfortable,” says Robertson.

Second, be yourself.

“Act like yourself. Don’t try to be someone you are not,” Keen says. “Understand your particular strengths and focus on them. Diversity is about the differences we bring to the table and so don’t feel the need to try to be strong at what has traditionally been the accepted norm,” she says.

Mody has similar views. “Do not try to be more like a man. Get the respect of the team around you. Always send the right, honest messages,” she says.

Third, find your passion and the right people.

“Find your passion, dedicate your effort to be really good at it, and then find a team. That’s very important,” says Hamzah. “Nobody can do well alone. It’s hard in a world where we are all related. Therefore, find a firm that you connect with, colleagues who respect each other and collaborate, and make the environment more fun to work in.”

Robertson feels the same way. “Find somebody who backs you and tells you to ‘just get on with it’ and congratulates you when you do a good job; it does wonders for your confidence. Make sure your life partner, if you have one, is really supportive of your career in really practical ways so that you have the time you need to grow,” she says.

Fourth, be determined and resilient.

“Women simply have to be mature, set the course, keep up the passion and understand the inexorable path of nature,” Mody says. “There will be hiccups in the journey. That is not the end of the world. The ability to get back up, move forward and assert positions of both intellectual and moral authority is key.”

“It’s very important that people develop resilience and the ability to move on,” Robertson says. “Although a particular transaction or management intervention didn’t go as well as it could, you learn from it, move on and look at it objectively to see ‘what could I have improved?’ You also have to recognise that there may be external, objective reasons



## DEBORAH BARKER SC

Managing Partner, SG,  
**Withers KhattarWong**

## SHARON SER

Senior Regional Partner and  
Managing Partner, HK, **Withers**

**Could you share a bit more about the diversity within Withers, as well as the diversity initiatives in Asia?**

**Barker:** In Asia, one barrier which women do face is an unspoken and invisible one of attitude. There are some in positions of power with a deep-seated belief that women are not as driven as men and thus, not as capable. The founders of KhattarWong, however, had no such prejudices and there are I believe no such prejudices at present in Withers KhattarWong.

**Ser:** Two thirds of our total workforce (including partners) is female, 40 percent of our partners and over 50 percent of our entire senior leadership team are women, and over the past three years, the percentage of new partner promotions who are female have been 57 percent in 2016, 62.5 percent in 2017 and 62.5 percent in 2018. The business has been led by a female CEO since 2002.

**Any advice for younger female legal professionals?**

**Barker:** My advice to younger female legal professionals is that no matter what area of law you are working in, you are not the only woman who has chosen this path and there is a history in Singapore and elsewhere of women who have made their mark in the law. In Singapore there are many women who head law firms, the bench of the Supreme Court now has a historic number of women members and we have for the first time a female judge – Judith Prakash JA in the Court of Appeal. You can take comfort from this and be assured that succeeding in the law is something that for women is entirely doable.

To women litigators, I say: do not be intimidated, be brave and patient and persevere. You must always put your clients’ interests in the forefront but do not let this overwhelm you.

**Ser:** Stay with the law as it remains a great career for a woman. It is important to build your internal profile at your firm at the same time as building your practice. Essentially, internal business development is about finding ways of demonstrating your skills, your interests and your personality to your colleagues to ensure you receive internal referrals, preferably from an existing client base. There are many ways of doing this, and different methods will be suited to different people. Internal committees, sector groups, pro bono activities, CSR and diversity initiatives are all avenues that can be utilised, whilst simultaneously achieving constructive ends.

Of course, your competence as a good lawyer is a fundamental consideration, but if you want to stand out, you need to think beyond your day-to-day work and responsibilities.



## MAREE MYERSCOUGH

General Counsel, **Conergy**

Maree is the General Counsel of renewable energy company Conergy, managing Conergy's legal affairs in the Asia Pacific region and participating in the full spectrum of business issues.

Interestingly, Maree names stress as one of the factors that have gotten her where she is today.

"I believe women are natural multi-taskers and relationship builders – and, like most women, I tend to excel in times of high pressure," Maree says. "It was during the most challenging and stressful times of our group's corporate restructurings that I was able to really step up and actively contribute to resolving the complex issues our group was facing, which consequently allowed me to build rapport with and gain the trust of our senior management."

Maree believes that it is essential for workplaces to embrace flexible working practices to allow employees to manage their family and personal commitments that suits their individual circumstances.

"I do not believe this challenge is unique to women, particularly in

this modern day where fathers are embracing the opportunity to play a more hands-on role in their children's upbringing," she says.

Maree had her first son while working in private practice Latham & Watkins and took advantage of a longer maternity leave and the opportunity to work on a reduced workload during her son's first year.

"I still work very long hours but I try to manage my work schedule so that I can be at home to spend time playing with my active little boys before their bedtime, which is really important for me," Maree says.

She suggests young female lawyers seek out organisations that are aligned with their own interests and values and mentors within their peer groups while at the same time, embrace the chance to act as a mentor, particularly for other women.

"As women, we need to have more confidence in our own abilities and encourage one another by championing each other's successes and achievements," she says.

why things didn't go so well. It's not so much the outcome, but what you do with that outcome that matters," she adds.

Fifth, be versatile in your style.

"Often in the legal profession, women can be allowed greater latitude in behaving in a less conventional way," Robertson says. "People sometimes accept observations and can be moved along by women who use humour in a different way than men. On the whole, women tend to use a wider range of social styles in terms of dealing with clients and others."


### AT THE TOP

Once women reach the leadership positions, there are also things they should keep in mind.

Robertson says there are ways for female leaders to maintain good relationships with their staff and manage their team. "It is still common for authoritative women to be characterised as 'bossy' which turns people off," says Robertson. "Sometimes you need to adopt a coaching style and get people to think things are their idea."

"In addition, people who succeed in the long term, are people who can accept feedback and change aspects of their behaviour," she says. "People are very different and you have to be careful not to stereotype them. You have to give people the opportunity to do a wide range of things early in their careers and see what they are good at in practice."

Meanwhile, Hamzah reminds women leaders to think about their obligations. "If a lawyer lands a prestigious position to lead the firm, think about giving back. It is what people forget sometimes when they're in position of authority and influence," she says. "Use your influence for a good cause. If you have more, then you should give back more. It's part of social responsibility."

"Purpose before profit – that's what I believe in. Do the work well, do it sincerely, and the money will come. It will give you real happiness, a true sense of satisfaction that you are changing lives," Hamzah says. 





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# CORPORATE COMEBACK

In 2017, dealmaking in Singapore hit its highest level since three years ago, driven in part by big real estate transactions. Interestingly, inbound M&A activity also grew an impressive 115.6 percent in deal value from over a year ago. Corporate lawyers in Singapore talk about some of the key trends they have witnessed in the past year.

BY RANAJIT DAM



■ The year 2017 was a good one for dealmaking in Singapore. The total value of M&A activity reached \$89 billion in the year, an increase of 4 percent compared to 2016, according to Thomson Reuters' data. This was the highest since the city-state saw a record \$93.7 billion being posted in 2014.

In terms of sectors, real estate led the way with a 47.3 percent market share worth \$42.1 billion, a stunning 195.7 percent jump from 2016. This was the record for the sector, according to Thomson Reuters data, surpassing the previous high of \$35.2 billion set in 2014. This was led by the \$11.6 billion acquisition of Global Logistic Properties (GLP) by Chinese consortium Nesta Investment Holdings, the largest private equity buyout of an Asian company of all time.

Total cross-border deal activity in Singapore amounted to 59.1 billion, a 58.6 percent increase over last year, according to the data, which also found outbound M&A activity increased 10.5 percent. Additionally, inbound M&A

activity also grew an impressive 115.6 percent in deal value from over a year ago.

"There were several large deals in the real estate sector such as the takeovers of GLP and ARA Real Estate Management and the sales of TripleOne Somerset, Jurong Point to foreign buyers, which inflated the deal values somewhat," says Andrew Martin, principal at Baker McKenzie Wong & Leow. "We have seen interest in financial services especially insurance, and Temasek's \$7.5 billion sale of Bank Danamon has also contributed to the higher deal value numbers. We have seen a lot of interest in tech M&A and the VC space although the deal size can be quite small depending on the stage of investment."

Florence Goh, head of corporate at Joseph Tan Jude Benny (JTJB) says that the firm has experienced a surge in corporate-related work as a result. "I believe this is because nearly every country in the South East Asian region has an emerging and growing economy,

thereby offering a wide spectrum of business opportunities," she says. "We see local companies partnering foreign entities to set up joint venture companies in Singapore. The Singapore company is established as a headquarters and base to branch out into the region."

Melissa Ng, a partner at Clifford Chance, says that her firm is seeing a strengthening in the economies of various Southeast Asian jurisdictions, which has led to continued inbound investment in consumer-related sectors, driven by the growing middle class with a disposable income for consumer goods and services, technology, healthcare and education. "More private equity, real estate and infrastructure funds are seeking investments in Southeast Asia, with PE buy out activity more than tripling in value as compared to 2016. In particular, stiff competition for quality assets in the market has resulted in very hefty price tags, sometimes well in excess of \$1 billion," she says.

She adds that with respect to



## Overview of ICO Regulatory Framework in Singapore

Joseph Tan Jude Benny | JTJB  
LLP | Lawyers



Initial coin offering (“ICO”) has surged in popularity as a novel method of fundraising amongst startups focused on blockchain technology and cryptocurrency. An ICO is a method through which a venture raises funding by creating and selling its own cryptocurrencies and tokens in exchange for cryptocurrencies of immediate liquid value such as Bitcoin or Ethereum. Singapore is now one of the preferred locations to conduct token sales, emerging third after US and Switzerland.

On 1st August 2017, the Monetary Authority of Singapore (“MAS”) clarified that if a digital token constitutes a product regulated under the securities laws administered by MAS, the offer or issue of digital tokens must meet the requirements of the applicable laws. On 14 November 2017, MAS issued guidelines on the application of the securities laws administered by MAS in relation to offers or issues of digital tokens in Singapore to safeguard the interest of investors, prevent money laundering and related fraud. Whilst cryptocurrency is not regulated, MAS regulates activities involving them if they pose specific risks.

Licensing would be required if the structure and characteristics of the tokens constitute a type of capital markets products under the



**Florence Goh**  
Partner  
Head, Corporate Department  
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Securities Futures Act for which a prospectus may be required prior to the ICO, unless exemptions apply.

If the company launching the ICO carries out the following regulated activities, the relevant licence must be obtained from MAS, failing which penalties will be imposed:

- an operator of a primary platform in relation to digital tokens which constitute any type of capital markets products;
- the provision of advice in respect of any digital token that is an investment product, unless exempted;

- the operation/establishment of a trading platform relating to cryptotokens which constitute securities or futures contracts, unless exempted.

A further note is that the requirements set out in MAS’ Notices on the Prevention of Money Laundering and Countering the Financing of Terrorism may apply even where the tokens are classified as utility tokens which are not caught under MAS’ purview.

An ICO is a complex process. Based on our experience in advising clients on ICO regulatory issues and assisting in their token sale process, a well drafted Whitepaper is absolutely essential. We would advise companies seeking to launch their ICOs in Singapore to obtain legal advice to ensure compliance with regulatory requirements and have their Whitepaper thoroughly reviewed prior to release.

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financial technology investments, Asia continues to be the leading region and Singapore has emerged as the leading tech hub in Southeast Asia. “There was a significant increase in financial technology investment and M&A activity in 2017, and this is expected to continue throughout 2018,” she says. “To seek technological innovation, corporates are also looking at alternative cooperation strategies to M&A, such as joint ventures and licensing and outsourcing arrangements.”

Also, “despite a global fall in China outbound M&A in 2017 – as compared to 2016 – China outbound investment into Southeast Asia has remained fairly buoyant where investments are aligned with the Belt and Road investment policy,” Ng notes.

Quak Fi Ling, a partner at WongPartnership, is also seeing continuing interest from China, with her firm having been involved in major transactions involving logistics companies that were acquired by Chinese buyers. “One

“Singapore is increasingly regarded as the gateway and link to doing business in other parts of this region, being a major global commerce and financial hub with a robust and transparent legal system that promotes ease of setting up businesses. Generally, these companies coming into Singapore have regional expansion plans in manufacturing, wholesale and services industry.”

– Florence Goh, JTJB

can perhaps attribute this to China’s push for its Belt and Road Initiative (BRI) and the approval process under China’s strict capital control rules being relatively more forthcoming for BRI-related projects and investments,” she says.

### TRENDS AND TARGETS

So what are some of the trends in the M&A space in Singapore, and also regionally, at this moment? Martin has

been seeing start-ups and early early-stage enterprises going through multiple successful fund raisings. “A lot of Asian conglomerates have been making these sorts of investments and there is a lot of interest from both the corporates as well as their family sponsors,” he says.

He adds that the firm is receiving a lot of queries around the technology sector. “Companies such as financial institutions are looking for opportunities

“Companies such as financial institutions are looking for opportunities to bolt on tech players and anything involving payment solutions seems of interest. Private equity has driven activity in precision engineering and remained interested in education although there is probably more opportunity in the broader Southeast Asia region.”

— Andrew Martin, Baker McKenzie Wong & Leow

to bolt on tech players and anything involving payment solutions seems of interest,” says Martin. “Private equity has driven activity in precision engineering and remained interested in education although there is probably more opportunity in the broader Southeast Asia region.”

Quak agrees. “Given that advancement in technology such as artificial intelligence and the internet of things is fundamentally disrupting every industry, investors see great potential for growth in technology companies,” she says.

Additionally, Martin has seen the return of the en-bloc sales in Singapore real estate as the property market picks up. “En-bloc activity should spur on many other related sectors like the construction and building sectors,” says Martin. “In addition, the improved and stabilising oil prices are leading to increased interest in the offshore marine sector.”

Goh says that the key trend she is witnessing is that overseas company are comfortable to venture into the region using Singapore as the first stepping stone, before they actually reach out to the other jurisdictions in South East Asia. “Singapore is increasingly regarded as the gateway and link to doing business in other parts of this region, being a major global commerce and financial hub with a robust and transparent legal system that promotes ease of setting up businesses,” she says. “Generally, these companies coming into Singapore have regional expansion plans in manufacturing, wholesale and services industry.”

Ng finds that with big oil companies announcing commitments to invest in

clean energy, investment firms questioning the long-term value proposition of coal and other conventional hydrocarbons, and rapidly falling technology costs, there has been increased appetite for renewable energy sector investment across the APAC region, which has translated into highly competitive auction processes for strong assets and hefty price tags.

Additionally, the trend of consolidation in the private banking/wealth management industry in Asia has continued in 2017. “This was primarily caused by a squeeze in margins driven by, amongst other reasons, a rise in compliance costs due to tighter regulatory framework,” says Ng says. “In order to remain competitive and profitable at the same time, banks with assets under management of less than \$25 to \$30 billion either were looking to expand or divest their private banking businesses.

Traditional PE houses now face increased competition from smaller fund managers and family offices, says Quak. “As the latter can be more flexible in their investment terms, they have an edge over the large PE firms in certain type of deals, particularly those family-run businesses who are reluctant to relinquish control,” she notes.

“In an auction process, the traditional PE houses will also often find themselves on the losing end as they are usually up against strategic buyers who have the better ability to create value internally through consolidation, innovation and greater operational experience, and therefore offer sellers higher value,” Quak adds.

## IMPACT ON LEGAL WORK

Martin of Baker McKenzie Wong & Leow says that there have been some new entrants in niche areas such as the VC space and with the increasing competition generally, the firm has had to be innovative in its approach, including fee arrangements, in order to stay competitive and relevant. “There is a lot of concern about data privacy regulation regionally and globally and the impact on the ability to exploit data as an asset given the restrictions on cross-border data transfer and its usage,” he says.

Quak of WongPartnership says the firm continues to support clients in both inbound and outbound M&A transactions as it works more closely with its PRC, Real Estate, Banking & Finance and Infrastructure practices given the increased activity in BRI related transactions. “In addition, the increased fund raising activities by technology companies and venture capital investments have led to a wave of initial coin offerings and venture capital investments,” she says. “This, in turn, meant that expertise from our tax, financial regulatory as well as intellectual property practices are required to augment our M&A work.”

As for challenges facing both buyers and sellers, Lean Min-tze, also a principal at Baker McKenzie Wong & Leow, says that with the competition for assets and increasing number of disposals by PE in a controlled auction environment, buyers are being forced to make their bids as attractive as possible to sellers by purchasing warranty and indemnity W&I insurance.

Goh at JTJB says that some M&A deals involve the acquisition of shares in foreign entities requiring due diligence on these foreign entities. “Buyers and sellers alike are faced with cross-border issues such as tax, and unfamiliar legal requirements in foreign jurisdictions, for example, having to fulfill the requirement of local participation in a regime which does not recognize nominee shareholding or trust arrangement,” she says. We are trying to help them by becoming knowledgeable about foreign legal systems and business environments, identifying potential issues

early and working closely with lawyers in those jurisdictions via our international network of lawyers.”


Ng of Clifford Chances lists a number of challenges for clients in Southeast Asia. First, there is local protectionism and regulatory uncertainty. “Southeast Asia is a collection of disparate jurisdictions with dissimilar legal environments. In some countries in the region, the regulatory regime can be opaque and subject to change, resulting in legal – and therefore deal – uncertainty. We help our clients to structure M&A transactions in a manner which achieves commercial objectives while staying compliant with laws and regulations.”

Then, there is the rapid expansion of competition laws. “More Southeast Asian jurisdiction are implementing merger control regimes which require M&A transactions that meet specified threshold to be reported to, and cleared by, competition authorities,” she says. “This has created a more complex

**“More Southeast Asian jurisdiction are implementing merger control regimes which require M&A transactions that meet specified threshold to be reported to, and cleared by, competition authorities. This has created a more complex environment for deal-doing, requiring detailed analysis in order to identify where merger filings may need to be made.”**

– Melissa Ng, Clifford Chance

environment for deal-doing – requiring detailed analysis in order to identify where merger filings may need to be made – and greater uncertainty for the parties involved, as transactions need to be conditional upon regulatory approval. In transactions in the region, our M&A team works closely with our competition law specialists to analyse and provide our clients with practical guidance.”

Finally, there is a lot of liquidity in the market, but a limited number of quality assets in the market,” she says. “This means that sale processes for good quality assets tend to be over-subscribed, and result in purchase considerations in high multiples. We assist our clients in structuring M&A transactions in ways that allows parties to bridge the pricing gap.” 

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# BALANCING ACT

From being involved in an anti-missile dispute with China to renegotiating a free trade deal with U.S. President Trump, it's been an eventful period for South Korea on the trade front. Lawyers in the country talk about how this has been affecting the way their clients do business, and what trends to look forward to in the future.

BY JOHN KANG

These have been uncertain times for South Korea's trade-reliant economy as its top two trading partners, China and the United States, have been on the verge of a trade war since March.

The world's two economic superpowers have threatened each other with tariffs on tens of billions of dollars' worth of exports, worrying nations around the world that it could lead to a full-scale trade war that could damage global growth and destabilise financial markets.

During talks between top economic officials from Washington and Beijing in early May, the Trump administration presented a lengthy list of demands to the Chinese side, including a mammoth \$200 billion cut in the Chinese trade surplus with the U.S. Last year, China had a record U.S. goods trade surplus of \$375 billion.

The talks, which ended inconclusively, were described by China's state-run Xinhua news agency as "constructive, candid and efficient" but

with disagreements that remain "relatively big."

"The trade tension between China and the U.S. is one of the biggest risk areas for trade and business for the Korean business community," says Youngjin Jung, a partner at Kim & Chang. "In particular, the tit-for-tat tariff threats between China and the U.S. make our clients nervous about their impacts on the global supply chain."

"The recent Section 232 steel and aluminium tariffs by the United States

are a good example of U.S.-China trade frictions having a negative impact on other countries," he notes. "Although Korea received the country exemption, questions remain regarding the administration of the quota system by the U.S. and the Korean governments."

The U.S. imposed a 25 percent duty on steel imports and a 10 percent tariff on aluminium imports on all countries, effective from March 23. Several major trading partners and allies have received some exemptions, including South Korea, the U.S.'s third-largest steel exporter last year after Canada and Brazil, which avoided the hefty steel tariffs.

However, the South Korean government did instead agree to cut its steel exports to the U.S. by 30 percent from the past three years' average. "Internally, a new problem arose, which was deciding how much each Korean steel company should reduce its quota by," says Sungbum Lee, a partner at Yoon & Yang. "There are disagreements among the companies with regard to what standard should be applied in allocating the volume that an individual steel company could export to the U.S."

There are other issues beyond steel. When Seoul and Washington met in late March to renegotiate their bilateral free trade deal – U.S.-Korea Free Trade Agreement (KORUS) – the countries agreed to extend U.S. tariffs on Korean pickup trucks by 20 years until 2041. This agreement to prolong the tariff reduction period for Korean pickup trucks exported to the U.S. was the most outstanding issue that damaged Korea, says Lee.

While the market access for South Korean pickup trucks in the U.S. is restricted, conversely, U.S. automakers won improved market access to South Korea as they will be able to bring into the market 50,000 vehicles per automaker per year that meet U.S. safety standards, not necessarily Korean standards, up from 25,000 vehicles previously.

All in all, South Korea's trade relationship with the U.S. is still rocky due to the drastic measures by the Trump administration against major South Korean exporters to the U.S., says Shin Tong-chan, a partner at Yulchon.

**"Korea has signed a Free Trade Agreements (FTA) with Vietnam, one of its biggest trade and investment partners, as well as with the Association of Southeast Asian Nations (ASEAN), in addition to working closely with other countries, such as Thailand, the Philippines, Malaysia and Singapore to pursue closer economic and political relationships." – Youngjin Jung, Kim & Chang**

"Especially among my clients, a substantial number of them are worrying about the increased economic sanctions by the Trump administration against Iran and Russia, which are among the major trading partners of South Korea."

Iran, in particular, has recently been subject to severe sanctions. On May 8, Trump announced the U.S. was withdrawing from the 2015 international nuclear agreement with Iran and reimposed an array of wide sanctions, and a day later, the White House said that it is preparing to impose new sanctions on the Islamic Republic to ensure it does not develop nuclear weapons.

Iran is the third-largest oil producer in the Organization of the Petroleum Exporting Countries (OPEC) and a key supplier, especially to refiners in Asia. South Korea's Ministry of Trade, Industry and Energy said it planned "to minimize the damage" to its companies, adding it would seek an exemption from sanction.

#### CHINA RELATIONS CALM DOWN

Fortunately, South Korea's trade relationship with China, its largest trade partner, seems to be calming down since the dispute over the deployment of U.S.-made Terminal High Altitude Area Defence (THAAD) anti-missile system in South Korea last year.

Seoul and Beijing were at a standoff since then, with China saying the anti-missile system's powerful radar could see far into its territory. As a result, trade and business exchanges between the two froze, denting South Korea's economic growth, especially its tourism industry, as group tours from China came to a halt while charter flights from South Korea were cancelled.

The THAAD disagreement prompted an undeclared Chinese boycott of products ranging from South Korean cosmetics to cars, and was estimated to have knocked about 0.4 percentage points off South Korea's expected economic growth in 2017.

But after the commencement of the current South Korean administration in May last year, and especially after this year's summit between Chinese President Xi Jinping and South Korean president Moon Jae-in, Yulchon's Shin finally sees the light at the end of the tunnel regarding the so-called THAAD retaliation by Chinese government to South Korean companies in China.

"Especially under the renewed engagement policy of South Korea's new administration towards North Korea, it seems to us that the South Korean government has encouraged South Korean companies to conduct more business in China, which may help broker the political deal between the two Koreas," he says. "State-owned companies of South Korea are actively exploring business opportunities in various Chinese industry sectors such as electricity and energy."

Though the THAAD dispute between South Korea and China seems to have been settled, the trade metrics between the two countries, including the number of Chinese visitors to Korea and the number of Korean automobiles sold in China, have not recovered yet, notes Yoon & Yang's Lee.

"Korean companies have made tremendous amount of investments in China. However, after the THAAD disagreement, Korean companies have started moving their facilities from China

“Among my clients, a substantial number of them are worrying about the increased economic sanctions by the Trump administration against Iran and Russia, which are among the major trading partners of South Korea.” – *Shin Tong-chan, Yulchon*

to Southeast Asian countries,” he says. “This is because of the lack of predictability when it comes to Chinese policies and measures. We expect to see more Korean companies move from China to other countries which have more predictable policies.”

Southeast Asia, a region that has undergone fast economic development and possesses growth potential for the next few decades, has always been a very important area for Korean businesses in terms of trade and investment, notes Kim & Chang’s Jung.

“Reflective of this importance, Korea has signed a Free Trade Agreements (FTA) with Vietnam, one of its biggest trade and investment partners, as well as with the Association of Southeast Asian Nations (ASEAN), in addition to working closely with other countries, such as Thailand, the Philippines, Malaysia and Singapore to pursue closer economic and political relationships.”

All of the major South Korean firms already have some presence in Southeast Asia. Yoon & Yang, for example, has two offices in Vietnam.

Most of the work the firm does there relates to the business of Korean companies in the region, including advising on regulations governing foreign investment, as well as local regulations. There is also a lot of FTA-related work related to the goods imported from this region into Korea, shares Lee, adding that numerous global companies have their manufacturing facilities in this region.

“Consequently, many importers of goods that are made in Southeast Asian countries apply for preferential tariff rates under the Korea-ASEAN FTA, as well as FTAs that Korea has signed with individual ASEAN member countries,” he notes.

“The Korea Customs Service actively conducts origin verification investigations of these goods, and most of the companies that we assist from FTA perspective come to us seeking help with this issue,” Lee adds.

**OTHER TRADE TRENDS LAWYERS IN SOUTH KOREA ARE SEEING:**

**REGIONAL TRADE AGREEMENTS**

Despite the growing trend of protectionism coming out of the U.S., the world is still busy signing regional trade agreements for further trade liberalization. In particular, the growth of mega-regional trade agreements is by far the most visible phenomenon in Asia, with South Korea leading negotiations for mega-regional trade agreements with key trading partners.

South Korea is a negotiating party to the Regional Comprehensive Economic Partnership (RCEP) agreement, a 16-party regional trade agreement which includes ASEAN, China, India, Japan, Australia and New Zealand. Korea is also considering joining the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP).

In addition, Korea, Japan and China are negotiating a trilateral free trade agreement; Korea anticipates that the trilateral Korea-Japan-China FTA will facilitate economic integration as well as regional security and stability.

Korea is also considering the feasibility of FTAs with the Eurasian Economic Union (EAEU), Mercosur, GCC and Mexico, whose common characteristics include natural resources; geopolitical importance; and size

of the market with growing number of young middle-class consumers with purchasing power. - *Youngjin Jung, Kim & Chang*

**INVESTOR-STATE DISPUTE SETTLEMENTS**

Nowadays, foreign investors are more frequently utilizing investor-state dispute settlement procedures.

The Korean government had not expected to face such a growing number of investor-state dispute, but in the past few years, we have seen key cases like Lone Star, Hanocal and Dayyani. The government can expect more in the near future.

In the past, subjects of the trade agreements were limited to sovereign countries, and foreign investors could not utilize trade agreements on their own. However, this has changed since the adoption of Investor-State Dispute Settlement mechanism. Private companies are actively using this tool to protect their civil rights.

In response to such phenomenon, the Korean government might seek to remove the investor-state dispute mechanisms from the trade agreements it will be signing in the future, and may challenge these mechanisms at the annual meeting under FTAs already signed. - *Sungbum Lee, Yoon & Yang*

**ENGAGEMENT WITH NORTH KOREA**

Another trade trend in South Korea is the possibility of engagement with North Korea. We already saw that during the 2018 Pyeongchang Winter Olympics, when some of our clients were asked by the South Korean administration to provide certain goods and services to North Korean delegations in South Korea, and to certain sporting and cultural events held in the two Koreas.

However, given the tight international sanctions regime against North Korea’s nuclear programme already in place, those requests need to be carefully reviewed from the sanctions’ perspective. Often, we may ask for guidance from U.S. Treasury Department’s Office of Foreign Assets Control, which is responsible for the enforcement of U.S. sanctions.

We believe that, even if there’s a possibility of a breakthrough in the North Korea nuclear crisis, much like the Iran sanctions, the current sanctions regime against North Korea will continue to affect our clients in the foreseeable future.

So, we have expanded our knowledge and expertise related to sanctions in order to address those challenges, and also increased our cooperation with U.S. law firms’ sanctions experts. - *Shin Tong-chan, Yulchon*





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# A GREEN FUTURE

As the United States seeks to turn back to coal, the Asian region, and particularly China are embracing renewable energy in a big way.

BY DAVID HO AND CORNELIA ZOU

■ President Donald Trump's administration may have aimed the U.S. back to coal and other traditional sources of energy, but that has not dampened the progress towards sustainable energy project in other parts of the world.

Interest in this area remains strong, even from US companies. Tech conglomerate Microsoft recently signed deals to purchase solar power in India and Singapore, its first in the region. Payment service company Visa also committed to switch to renewable energy for its global operations by the end of 2019.

These are but a few recent examples of demand. So how is Asia stacking up in terms of meeting this need?

## CHINA AT FOREFRONT

China is now at the forefront of the movement in the region, if not the world.

According to China's National Energy Administration, the country's photovoltaic power generation installation capacity reached 102 gigawatts as of the end of June 2017. It then added another 10.52 gigawatts to its national

total in July to surpass its own solar energy goal of 105 gigawatts, which was originally slated for 2020.

They are not stopping there. China stated that it would invest \$360 billion in renewable energy by 2020.

"China is still carrying out its five year energy plan, which focuses on shifting away from coal into renewables and gas. The country continues to put a lot of emphasis on clean energy and long term environmental impact," says Hilary Lau, partner at Herbert Smith Freehills' Hong Kong office.

"China will move away from coal as feedstock, which is currently around 60 percent. The country will need to reform its laws and regulations especially with more competition in the power market. One of the key issues China will need to consider is how it plans to shift away from coal to other energy sources, the country currently has a large number of coal companies and they will need to carefully consider how they manage these reforms," adds Lau.

Given these changes, Lau believes

there will be ample opportunity for lawyers from both local and international firms to help deal with these reforms and work on the development of clean energy projects. There have been some key updates in regulations of late.

"The key environmental regulations that came out recently include the new Environment Protection Tax Law and its implementation rules that provides for a new tax regime to replace to previous pollutant discharge fee regime from 1 Jan 2018; the new Administrative Measures for Pollutant Discharge Licensing (for Trial Implementation) which now provides a uniform and clear licensing regime for pollutant discharge by different industries – companies engaging in oil and gas and power are required to obtain such licenses within specified time limits," says Lau.

The Reform Program for the Ecological Environment Damage Compensation System also came into effect in January 2018. Now, local governments are required to set out remediation and compensation system for eco-environmental damage within two years.

"In addition, China has amended a number of its environmental laws in 2017, including Administrative Regulations on the Environmental Protection of Construction Projects, Maritime Environment Protection Law, Water Pollution Prevention and Control Law, etc.," says Lau.

These amendments impose stricter HSE (health, safety and environment) compliance requirements on projects, with more severe fines and sanctions for non-compliance.





It remains to be seen if Chinese companies can comply with these regulations and what would be the cost of compliance. Lau thinks they may need to impose stricter controls and restructure parts of their businesses.

### BELT AND ROAD

China's ambitious Belt and Road Initiative (BRI) to build infrastructure within the region also carries its green aspirations.

"For BRI projects, the Chinese government has published Plan for Cooperation in Eco-environmental Protection for the Belt and Road Initiative in 2017. The Plan is only a general overview and sets goals and plans to promoting the eco-environmental protection and cooperation for BRI projects by 2030," says Lau.

"It seems that China is trying to use its environment laws, regulations, and standards as a 'forerunner' for BRI projects to help Chinese goods, services and technologies to "go out" and win the market in BRI countries. To achieve this, the Plan listed 25 initiatives including policy communications, facility inter-connection, trade flow, capital and financing, ideology promotion, and capability building," Lau adds.

David Yu, partner at Llinks Law Offices, thinks that the BRI is "both relevant and irrelevant" to green energy, as the biggest market for it is within China, especially in green automobiles and new energy power generation.

"In terms of China's offshore investment in BRI countries, we used to acquire mines in Africa or participate partially in the development of oil fields in the

Middle East- it's all part of the energy layout. But the focus of green energy is within China. I think it's the right direction to domestically develop the technologies first and export products, services or even technologies when they've matured," says Yu.

A report by the McKinsey Global Institute says these trends are slowing the growth of primary energy demands. If the adoption of new technologies continues at this rapid pace, the demand for traditional could see its peak in 2025.

This will undoubtedly affect the many countries along the silk road, many of which are situated in Southeast Asia. The region would provide for an interesting study as it is quite a mixed basket in terms of development and economies.

"As you would expect, there is not a uniform approach across Southeast Asia, although in many countries there is a desire to promote and support gas to power and renewable capacity, including small scale and off-grid renewable solutions for remoter locations," says David Clinch, partner at Herbert Smith Freehills's Singapore office. "A number of countries are still looking to add baseload capacity with coal being currently seen as a lower cost option and comparatively easy to implement when compared to gas fired or large scale hydro projects."

"Despite that we still anticipate a desire for gas to power and renewable energy in the medium and long term, although delivering this requires a commitment from all stakeholders. We also envisage further interest in waste to energy as part of the power generation matrix in Southeast Asia," adds Clinch.

Clinch believes all that interest will eventually translate into opportunities for the legal sector.


"Any downward trend in feed-in tariffs (or) subsidies for new renewables projects is likely to further drive M&A activity in relation to established projects which have the benefit of prior feed-in tariff (or) subsidy regimes," says Clinch, who adds that developments in battery storage technology would make renewables projects even more attractive as solutions to Southeast Asia's power needs.

"Most of the BRI countries are developing countries that rely highly on technology. For Chinese law firms, the opportunity lies mainly in offshore direct investment," says Yu of Llinks Law Offices.

"But we have been doing overseas acquisition for a long time – since 2004 for Llinks Law – so this time around it will be reflected in the increasing number of transactions as well as the raised status of Chinese lawyers in these cases. Overall, this is beneficial to Chinese firms and their international communication," Yu adds.

Even Asia's neighbours are wanting in on the green action.

"Australia is clearly wanting to be seen as moving away from coal as an energy source at least in terms of electricity generation," says Andrew Crooke, partner at Clifford Chance's Sydney office.

"This is driven in part by environmental concerns, in part by political concerns, and in part by business reputational concerns (in the case of lenders and investors)," says Crooke. 







## BUILDING ALONG THE BELT AND ROAD

China's Belt and Road Initiative (BRI) is spurring a construction boom, not just in Asia, but in parts of Europe as well. And lawyers in the PRC and beyond are poised to reap the benefits from the increased flow of work. BY DAVID HO AND CORNELIA ZOU

China's Belt and Road Initiative (BRI) is a development strategy proposed by the Chinese government that focuses on connectivity and cooperation between China and countries across Europe and Asia.

And Chinese enterprises have been very active in infrastructure projects in these countries. According to data from the State-Owned Assets Supervision and Administration Commission, 47 central state-owned enterprises (SOEs) participated or invested in the construction of 1,676 projects throughout Belt and Road countries between 2013 and 2016.

"To date, Chinese contractors have been most active in Belt and Road infrastructure projects, both primary infrastructure and now increasingly in secondary infrastructure and services as

well," says Hew Kian Heong, a partner at the Shanghai office of Herbert Smith Freehills.

"However, given the vast scale of the initiative, there is ample opportunity for construction companies outside of China to also get involved and we are seeing increased interest from Australian, European, Japanese and Korean contractors, with both Japan and Korea being China's biggest competitors," Hew adds.

Between October 2013 and June 2016, there were 38 large-scale transportation infrastructure projects undertaken by Chinese SOEs, which included 26 countries along the Belt and Road.

There were also 40 major energy projects covering power stations, power transmission and the transmission of oil and gas, signed and carried

out overseas. Those projects involved 19 different countries along the BRI.

By 2020, the overseas turnover associated with these investments will account for more than 20 percent of the total turnover of China's SOEs.

A construction boom that has gripped Asia for some time is likely to continue, led by Indonesia, Malaysia, the Philippines, Thailand and Vietnam. And in all those cases, money from China and lawyers with links to China are likely to play a big part.

In a recent report, economics consultancy Oxford Economics says those countries will lead the way in the construction boom that is expected to last for at least the next decade. Construction investment in Asia is expected to average \$1.61 trillion per

year over the next five years. This figure is double the expected \$697 billion that the United States is likely to spend or the \$890 billion that will be spent in the European Union.

### WIDENING THE REACH

Even though Southeast Asian countries will be the primary hotspots, the region will not be the only place likely to experience a burst of construction activity. Hew says both Russia and the Middle East will likely be busy areas as well.

"These regions are home to clusters of projects and transport hubs that will pave the way for secondary investment and business development," he notes.

Meanwhile, Nancy Sun, senior partner at Dentons, thinks that Central and Eastern Europe are key locations for infrastructure projects.

"Over the past five years, the investment of Chinese companies in the 16 Central and Eastern European (CEE) countries increased from \$3 billion to over \$9 billion in cumulative terms," says Sun.

According to Big Four accounting firm Deloitte and the Bank of China, bilateral trade between China and CEE countries rose from \$43.9 billion in 2010 to \$58.7 billion in 2016, accounting for 9.8 percent of the total China-Europe trade. "A number of iconic infrastructure projects participated by Chinese companies have begun to operate in CEE regions, such as the Belgrade bridge over the Danube having been completed and opened to traffic, and the thermal power plant in Bosnia and Herzegovina having been connected to the grid," says Sun. "Projects on infrastructure connectivity, including Hungary-Serbia Railway and China-Europe Land-Sea Express Line, are making steady progress as well."

Despite the continued political and economic turmoil in Western Europe, CEE regions have achieved positive economic growth of 3 percent in the past two years. Further infrastructure will be needed to support that growth.

Sun believes policy support, such as the establishment of the 16+1 cooperation, is essential to expanding trade exchanges and cross-border cooperation between China and the 16 CEE countries.

In November 2017, China and the CEE countries also formulated cooperation guidelines to emphasise their willingness to continue to discuss, build and share Belt and Road based on "16+1 cooperation."

"Emphasis is placed on promoting the alignment of BRI with major initiatives like the European Investment Plan and national development plans of the countries, particularly the infrastructure connectivity between CEE countries and countries along the Belt and Road," Sun says.

### OPPORTUNITIES IN CHALLENGES

The BRI is also generating substantial opportunities for law firms.

Herbert Smith Freehills claims it has already captured a healthy amount of Chinese project and investment work generated by the BRI.

"We've advised on over 30 investments and projects related to the initiative in the last four years. Our Belt and Road team, comprising more than 80 lawyers globally, assists Chinese and non-Chinese clients alike. Our track record in the initiative so far, and relationships with key players, helps us advise newcomers to the Belt and Road particularly effectively," says Glynn Cooper, partner at Herbert Smith Freehills' Kuala Lumpur office. "As more and more projects move from planning to construction, that institutional knowledge will become ever more valuable."

Complex infrastructure projects in developing and emerging markets always carry significant political, legal and regulatory risks.

"Every country has its own legal framework, with some less developed than others. Each industry also has its own regulatory and technical framework that demands specific specialist advice, including but not limited to legal advice," Hew says.

By way of example, Sun pointed to the complexities that contractors face. "There are many challenges in managing these infrastructure projects," Sun says. "For example, for the main contractor of an infrastructure project, the owner in many cases expects the contractor to provide the financial support."

"It is not only a commercial challenge requiring the contractor to be capable in bringing in fund for the project, but also a legal challenge on how to align the governing law and other legal arrangements in the financial agreement with those in the project documentation," Sun says.

She believes many might be unfamiliar with the legal environment of the target countries and may lack in-house talent able to coordinate projects, especially when there are multi-jurisdictions involved. It is at this stage that it is critical to engage a capable firm to assist from an early stage.

"As an example, a private company in Jiangsu Province invested in a photovoltaic power plant project in Germany. The project didn't work out due to defects in decision-making and project management. There was a shortage in the capital chain and the investment could not be recouped," Sun says.

"When this company invested abroad, it didn't have a team that understood how to operate such an investment in international markets, but simply engaged a local German law firm to help it handle the investment," Sun says.

"The contracts and legal documents signed by the company were all in German, making it difficult or even impossible for the project team of the company to understand. The investment put into the project is nearly 50 million yuan (\$7.8 million), and it is hard to get it back," she adds.

Given how complex and spread out these projects can be, lawyers emphasise the importance of having a wide network of offices in Asia.

"The clients are very much happy to have an international firm like us who has more than 170 offices across 68 countries and regions to provide local knowledge and support at any time they need and also understand their needs very well through our Chinese lawyers who normally have been working with them for years as legal retainers. The clients rely on us and trust our capability of leveraging the global resources and the professional work done by both Chinese and foreign lawyers," says Sun at Dentons. 



Workers package items for delivery at online retailer Lazada's warehouse in Depok, south of Jakarta, Indonesia March 26, 2018. Picture taken March 26, 2018. REUTERS/Darren Whiteside

## RISK AND REWARD

Chinese tech giants are betting on untangling the logistics of Indonesian e-commerce

BY CINDY SILVIANA AND ED DAVIES OF REUTERS

■ In a warehouse on the outskirts of Indonesia's capital, supervisors at e-commerce company Lazada use bikes or electric scooters to zip around a floor the size of four soccer fields, where up to 3,000 staff pack and dispatch goods around the clock. The warehouse is one of five that Lazada has opened across Indonesia to cut costs and expand its reach in an archipelago whose 17,000 islands are sprinkled across an area bigger than the European Union.

Chinese tech firms, including Lazada's top investor, Alibaba Group Holding, have poured at least \$6 billion into nearly every aspect of Indonesian e-commerce.

Lazada uses Alibaba's inventory management systems and has tied up with ride-hailing companies, often using

their motorbikes to deliver goods in a country with creaking infrastructure and traffic-clogged cities.

The payoff could be huge. It is a market forecast to grow from about \$7 billion last year to \$63 billion by 2027, according to Morgan Stanley.

"Indonesia, both in terms of the customers and behaviour, is a very unique challenge and we need to adapt," says Florian Holm, co-chief executive at Lazada Indonesia.

Lazada and Tokopedia, in which Alibaba is also an investor, dominate Indonesia in customer traffic, with more than 117 million monthly website visits each, according to data from e-commerce aggregator iPrice.

Alibaba doubled its investment in loss-making Lazada to \$4 billion in

April, underscoring its global ambition to secure a bigger share of the e-commerce market.

Between the investment and the rewards, however, lie enormous complexities.

The World Bank has said logistical costs swallow up around a quarter of Indonesia's gross domestic product, citing bottlenecks in supply chains, long dwelling times in ports and lengthy trade clearances.

Lazada has opened warehouses in places like Balikpapan, on the coast of Borneo, to avoid hauling everything from Jakarta. Holm says that has in some cases reduced shipping costs by 90 percent.

Competitive pressure is growing. Another Chinese heavyweight, JD.com, arrived in Indonesia in 2016. And the U.S. giant Amazon, which opened a warehouse in Singapore last year, may be prepared to dip a toe into the Indonesian market soon.

### CHINESE INFLUENCE

Indonesia's e-commerce sales are set to rise from 3 percent of retail activity now to 19 percent by 2027, Morgan Stanley estimates. The same report said there were 159 million smartphones in Indonesia at the end of 2016, a number that could rise to 275 million by 2021.

Indonesia's young population and room for improvement in transportation and communications add to the prospects for growth, the bank said.

That has attracted other Chinese companies. Tencent Holdings, which owns regional e-commerce player SEA, has entered the fray.

Tencent and JD.com have stakes in Indonesia's ride-hailing firm Go-Jek, while JD.com has invested in online travel company Traveloka.

But Usman Akhtar, a partner at Bain & Co in Jakarta, said Indonesian companies such as Blibli, backed by a unit of the Djarum group, remain a force.

"I would not characterise Indonesia as turning into a replica of China's e-commerce market, at least not yet," says Akhtar, referring to how JD.com and Alibaba dominate in China.

Kusumo Martanto, who heads Blibli, says the company has seven warehouses



in Indonesia with seven more planned, and says it is important for local e-commerce companies to compete against Chinese players.

Alibaba founder Jack Ma is on an Indonesian government steering committee for e-commerce, advising on areas such as tax, cybersecurity and human resources.

Indonesia's communications minister, Rudiantara, says there is no conflict of interest in Ma's role, describing him as a "guru" who could help sell the country's potential.

But some policies seem to be turning towards Ma's home turf.

Indonesia, which is trying to tackle a shortage of talent in the digital sector, dropped sponsorships for 20 students to study in places like Australia and the United States.

Instead, 10 students will go to India and 10 to China to study this year "because the future of the digital economy is in China and India," says the minister, who uses one name.

#### EYING AMAZON

Caterine, a 30-year-old housewife who lives west of Jakarta, used to shop in conventional stores once a week, but after her baby was born six months ago, she has been shopping online two to three times a week for convenience. "I prefer online shopping because it is quick. I can just click and click and the goods will arrive," she says, adding she mostly uses Shopee and Tokopedia for goods such as diapers and clothing.


Morgan Stanley said delivery times of all types across Indonesia are down to about 3 days from 10 days, while deliveries in big cities can take 24 hours or less.

While in urban areas delivery times have greatly improved, other parts of Indonesia's e-commerce supply chain are still inefficient, says Willson Cuaca, co-founder of East Ventures, a tech investment fund. "To send goods from point A to B, the logistics company needs at least two modes of transport," he says, referring to the complications of operating across so many islands.

Amazon, by contrast, prefers to control its own supply chains from start to finish. But entering a market like Indonesia could require it to revisit that strategy.

Much of the U.S. giant's international focus has been on developing its business in India, even though some view its entry into Singapore last year as a stepping stone for expansion in the region. "At this moment, I believe it is trying to test the market, by selling products through third-party sellers," says Daniel Tumiwa of the Indonesian e-commerce Association.

Zhang Li, who heads JD.com's Indonesian joint venture with Provident Capital JD.ID, is not overly concerned about competition from the likes of Amazon.

"E-commerce is a global and borderless business, so we have to prepare and do continuous improvement to make our customers happy," Zhang says. 

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# TAKING UP TECH

Technology today is a top priority for law firms globally, and the situation is no different for law firms in Asia. However, even as firms in the region have taken big steps in the adoption of technology, experts feel that more can be done to accelerate the take-up, as well as awareness of the benefits it brings. BY RANAJIT DAM

■ The past few years have seen technology permeate and enhance virtually every part of the services sector, and the legal industry, despite its well-known aversion to change, is no exception. Lawyers today are beginning to appreciate the benefits that the use of technology brings, ranging from improved financial performance to enhanced engagement with clients, increased productivity and reduced use of time and resources.

In Asia – and, in particular, the hubs of Hong Kong and Singapore – while law firms are definitely more aware of legal technology and its uses compared to a few years ago, actual take-up is still quite low. “There are a number of ongoing initiatives to encourage the take-up of baseline technology solutions but overall, the level of adoption among law firms remains fairly low, particularly among the small and medium law firms,” says Noemie Alintissar, manager of the Singapore Academy of Law’s (SAL)

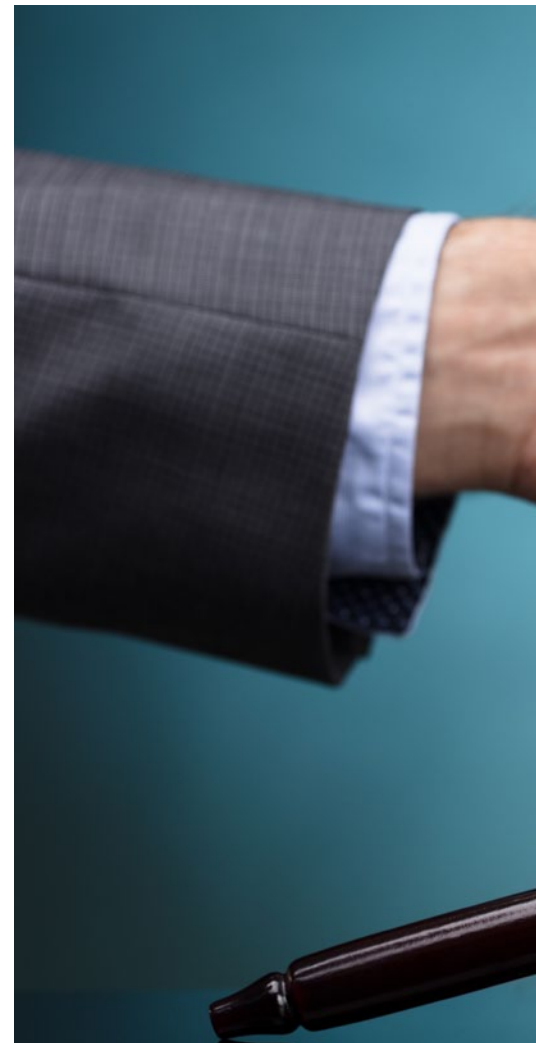
Future Law Innovation Programme (FLIP), a legal innovation incubator accelerator programme.

The situation is not much different in Hong Kong. “There is strong interest, but generally speaking, the take-up of technology at the Hong Kong law firm level is happening at a moderate speed, despite there being many individual lawyers in Hong Kong who are very tech-savvy,” says Nick Chan, partner at Squire Patton Boggs, and vice chairman of the Law Society of Hong Kong’s InnoTech committee, which recently organised the Access to Justice (A2J) hackathon.

Tony Kinnear, managing director, ASEAN and North Asia at Thomson Reuters, says that while traditionally international firms have led technology adoption, the emerging trend of the last 12 months is that large local firms are taking strides in investing in legal technology to enhance the business of law. “Small and medium-sized firms that are aggressively growing and/or have

**“Cost, fear of the unknown, and decision makers not fully being made aware of the benefits of adopting technology are just some of the obstacles to adoption. You need to think of it as an advantage to gain and maintain your business and reputation.”**

— Nick Chan, Squire Patton Boggs



an early adoption mindset are also leveraging technology to differentiate themselves from the competition,” he says.

When asked to name the most popular technology tools used by law firms in Hong Kong, Chan lists of several, including word processing, electronic time entries, billing, back office accounting, scanning for storage, and the increasing use of cloud technology for document storage and editing, e-discovery tools, virtual data rooms and cyber security tools. “Some are starting to develop own client-facing apps, CRM tools, AI chatbots, big data analytics, e-translation, e-RFPs, e-court filings and online dispute resolution solutions,” he says.

According to Kinnear, online legal research tools are now the norm in the industry. “The exciting developments in the research space are the ability to continually streamline the process through the application of next-generation technologies like AI,” he says. “As



Kinnear. “It’s important to note that the demand for legal services in the face of an increasingly complex world and increasing levels of regulation is not declining, but the share of legal work being performed by law firms is under some pressure in some areas. A more competitive landscape means that challenges such as ever-increasing fee pressures from clients, keeping associates happy, the emergence of alternative providers and uncovering growth opportunities for firms are more prevalent than ever.”

Chan agrees on the benefits. “Law firms with AI technology tools readily accessible may be able to process information much more cost-effectively than conventional methods, once the team members in the firms grasp how to use those tools to their utmost potential,” he says. “Technology can help law firms to become more cost-effective, provide a better user experience for clients, and be an attractive differentiator. Whilst AI would not completely replace lawyers, it and other tools and automation do help redefine the practice development paradigm, help maintain or expand market share, help increase client loyalty to the firm, improve early detection of potential money laundering or abuse of processes, provide more live data and insights, impress more clients, and generally make us better lawyers.”

Alintissar says that for the time being, adopting these kinds of technologies can certainly be a competitive advantage. “Clients are increasingly demanding transparency, efficiency and lower bills – particularly corporate clients,” she says. “The challenge for law firms is not only in embracing these new technologies, but also in getting beyond

an example, Westlaw Answers has been developed to take certain questions that are commonly asked within the research platform and mine the data in the Westlaw database to provide answers, as opposed to your traditional search, filter and identify model. One of the easiest ways for law firms to access greater efficiencies is to subscribe to a service that consistently upgrades its services to leverage the latest developments in the industry.”

He adds that pockets of real progress also exist in leveraging technology to optimise business performance, by driving efficiencies to increase profitability. “Document automation and management, e-discovery, contract analysis and due diligence, and litigation analysis are where we see the industry making the most gains,” says Kinnear.

Most of the smaller firms that Alintissar speaks to already have some sort of technology in place, such as a practice management system,

client-relationship management software or a billing system, according to her. “Among the larger law firms, there’s also a lot of buzz around AI-based document analysis tools, such as the AI platform Luminance.”

#### TANGIBLE BENEFITS

All this is important because of the tangible benefits that these tools provide, according to experts. “Law firms are operating in a highly competitive market for legal services,” says

**“We need to keep having conversations about this, to educate the sector, but we also need to encourage the firms to try-out these tools to experience the benefits first-hand. Be curious, don’t be scared to experiment and find out what works for your practice.”**

— Noemie Alintissar, Future Law Innovation Programme (FLIP)



**“It’s important to note that the demand for legal services in the face of an increasingly complex world and increasing levels of regulation is not declining, but the share of legal work being performed by law firms is under some pressure in some areas. A more competitive landscape means that challenges such as ever-increasing fee pressures from clients, keeping associates happy, the emergence of alternative providers and uncovering growth opportunities for firms are more prevalent than ever.”** – Tony Kinnear, Thomson Reuters

the gimmick and demonstrating how these tools are used to deliver better solutions to their clients.”

### AWARENESS AND OBSTACLES

Awareness of technology solutions and the benefits they can bring is on the rise, agree experts, but that does not always equate to take-up. “Current law firm business models often mean that mid to long-term investment strategies can be challenging to fund,” says Kinnear. “For law firms to truly get value from technology solutions they need to ensure that they are addressing the core challenges the firm is facing, and like any other business, allocating sufficient capital and operating expenditure to implementing the technology platforms and capabilities that their clients will expect. Working with a trusted service provider that can provide broad domain expertise and connect the firm to peers that have experienced a range of solutions is a key enabler.”

Chan has a similar take. “Many law firms have been talking about AI technology tools, but ultimately the adoption rests with whether there is budget, time spent to train up on the use of the system, and whether the caseload which requires use of those tools is proportionate to those frontloading drawbacks,” he says.

Most of the law firms Alintissar speaks to recognise that technology can bring boundless benefits to their practice, but a lack of knowledge and understanding makes decision-making

around technology adoption and implementation difficult, she says. “We need to keep having conversations about this, to educate the sector, but we also need to encourage the firms to try-out these tools to experience the benefits first-hand. Be curious, don’t be scared to experiment and find out what works for your practice,” she adds.

It turns out cost is just one of the obstacles standing in the path of adoption of technology. “Cost, fear of the unknown, and decision makers not fully being made aware of the benefits of adopting technology are just some of them,” says Chan. “You need to think of it as an advantage to gain and maintain your business and reputation, not just spending barely enough to patch up old IT systems.”

Kinnear sees the culture of the industry and traditional law firm business models as obstacles. “The pockets of real progress and adaption are coming through a willingness to shake up the industry and drive closer collaboration with clients,” he says. “Technology is only as good as the business models it powers and should never be the end goal. New roles, such as legal engineers and legal operations teams are emerging both within in-house teams and law firms. The firms that can partner and leverage these resources are the ones that will continue to grow and win in the market.”


For Alintissar, most law firms don’t know where to start, or how to curate and select the right tools for their business.

“Even after purchase, they often don’t have the resources or manpower to integrate these technologies within their workflows and processes. FLIP is launching a consulting package, Lighten-Up! Consulting, to assist law firms with these types of challenges,” she says.

### ADVICE AND HELP

So, what’s the main piece of advice these experts have for law firms looking to take the plunge? Kinnear of Thomson Reuters says that practice management solutions, on the whole, are only as robust as the underlying data used within the tool. “Working with a provider who understands data, the way it is structured and how to get the most value out of it is the key to success,” he says. “As with all change management projects, focus in on one area first; once the implementation is successfully deployed, it can be used as an example to build a network of advocates within your firm to convince your partners that technology and business success go hand-in-hand. Firms also clearly need to allocate sufficient funds and focus towards implementing the technology solutions that best fit their strategy and client needs.”

Chan of Squire Patton Boggs says that as with all businesses, it is important to look at the cost of the product. “The cost needs to take into account not only monetary cost, but also the time cost to train, process and maintain the system,” he says. “Weigh it against the efficiency and effectiveness and revenue that those cases using it can generate.” The Law Society of Hong Kong’s InnoTech committee also helps smaller law firms looking to get started on - and improve on - their legal technology, he adds.

To assist lawyers, Alintissar says the FLIP organises a number of events, including monthly open-house events, twice-monthly tech demos and monthly workshops. “We also organize loads of activities that provide a great platform to network with folks going through a similar journey,” she says. “For practitioners in solo or small practice, it’s great to realise that they’re not alone and that a lot of firms are facing similar challenges.” 

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# CLIENT-CENTRICITY: INNOVATING BUSINESS DEVELOPMENT TO WIN CLIENTS (PART 1)

BY JENNIFER ROBERTS

■ Bringing people and data together empowers firms to provide what clients demand. After all, it is the articulation of value that helps firms win new business.

In all other industries, winning business happens through a combination of customer experience and product excellence. This does not waver in the case of law firms; the product is the experience and expertise delivered by the lawyer. In that vein, business development and pricing functions must highlight the firm's experience not just to articulate how the lawyer is a right fit for the client but also to justify cost-to-value. As we know, keeping a client isn't just about loyalty these days.

So how are law firms creating a stickiness factor to keep clients coming back? How are they winning new business? According to recent studies, they are making the strategic investments necessary to win.

While the market continues to slump along with modest demand growth, these innovative firms are not sitting still. Looking at the firms that are pulling away from the pack and excelling in the market on all standard success metrics (demand, revenue and profits), the key differentiator comes down to marketing spend. According to a recent Thomson Reuters study, the firms that are excelling are spending more on business development (up 4.6 percent compared to only 1.8 percent for static firms) and technology (3.2 percent growth while static firms added only 1.2 percent on a per-lawyer basis). As marketing spend grows, so does the proportion allocated to client-centric activities around the firm. According to the Legal Executive Institute's 2018 Marketing Partner Forum (MPF) survey, client visits, interviews, and surveys not only have the highest perceived value as compared

to other more latent approaches (one-too-many marketing calls) but also have seen increases in spend. The bottom line: These innovative firms are accelerating growth through strategic investments in client-centricity.

These types of strategic initiatives leverage technology to drive efficiency (hence the uptick in spend) allowing the firm's business development apparatus to proactively pursue initiatives when it comes to targeting clients, cross-selling, collaboration, and so on — places where technology plays a key role as well. This is also seen with more traditional activities that aren't new to business development, such as pitch generation and league table submission. These activities themselves are now beginning to take on new forms made smarter and easier with technology that leverages intelligent data capture, integration, and workflows for easier data collection, collaboration, and streamlining processes.


Given the uplift from technology, business development has a robust source of data and the ability to quickly pull credentials together for the day-to-day needs, but also provides the bandwidth to pursue opportunities proactively — something in the flavour of a key account program that targets top clients. With the data necessary to gain a deep understanding of the client, business development can pull together offerings drawing on the firms' strengths and the clients' desires (which one could argue is responding to the call for law firms to listen to their clients. It is a big step in the client-centric direction as it provides a better justification of value, something that is only bolstered as firms enter the realm of pricing — the development of which is listed as a top priority for business development in the MPF survey.

Supporting these efforts has elicited cultural changes in the orientation in

which firms handle client relationships. With technology facilitating and providing rich intelligence, firms are equipping dedicated resources to develop and deepen client relationships. In fact, a growing number of firms are dedicating resources to business development (outside of marketing) and adopting a formal sales methodology.

As firms become more progressive in their approach to business development, they are also expanding their horizons — specifically bringing pricing and client experience into the business development fold. Looking outside of the industry, it is the natural progression of a client-centric strategy. The outliers, the firms truly innovating in this space, are beginning to provide a packaged offering from pitch and proposal to pricing the work, monitoring the engagement to align value and ensure client satisfaction.

Law firms know they must find ways to innovate and effectively articulate their value to compete to win. And these innovative client-centric pursuits are giving those firms willing to make the investment a leg up amongst competition — a smart move in a time when the client is more empowered than ever.

In the second part of this series (to be published in the July issue of ALB), I will examine pricing-to-win strategies and how best to make the case for cost-to-value. 

*Jennifer Roberts is a data scientist with legal software company Intapp, where she is responsible for the analytics and research component that supports thought leadership and new initiatives. Leveraging her skills to advocate, evangelize and build data-fueled products and insights, she examines the legal industry to drive analytical intelligence that informs strategic decisions and solves organizational needs.*

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