

# ASIAN LEGAL BUSINESS

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亚洲法律杂志 - 中国版 CHINA

ALB | OCTOBER 2018  
CHINA EDITION



## 2018 ALB China TOP 15 FEMALE LAWYERS

2018 ALB China 十五佳女律师

### THE FUTURE IS HERE

Fintech Explosion Leads To  
Increasing Legal Work

#### 未来已来

金融科技风生水起  
企业法律需求呈激增  
势头

### THE BIG 4 ARE AT THE DOOR

Accounting Firms Are  
Reshaping Legal Markets

“四大”进军法律业  
会计师事务所重塑法律  
市场

### SHENZHEN SUMMIT

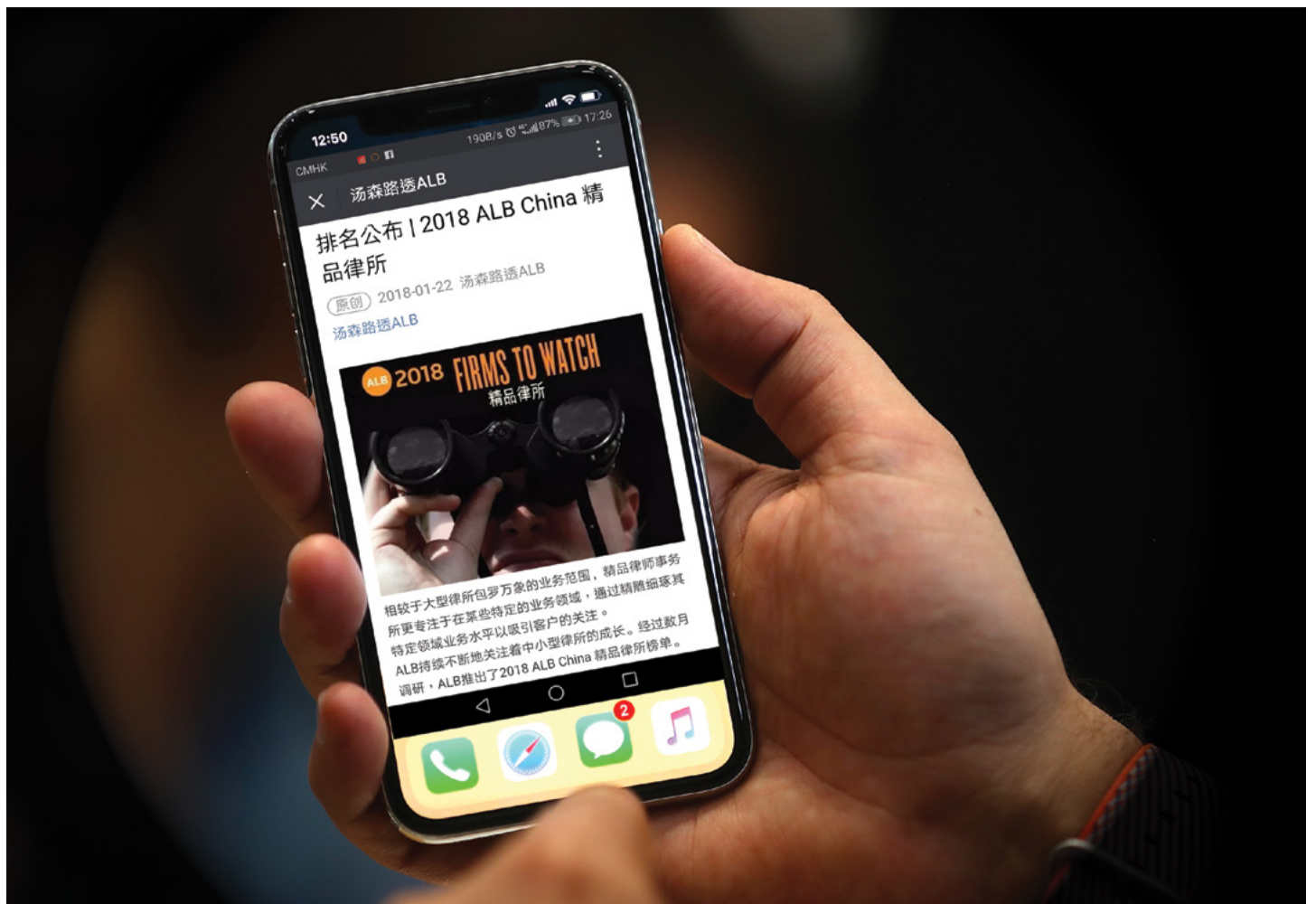
Event Brings Together  
City's Top Law Firms, In-  
House Counsel

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Wind turbines and solar panels are seen at a wind and solar energy storage and transmission power station from State Grid Corporation of China, in Zhangjiakou of Hebei province, China, March 18, 2016. REUTERS/Jason Lee

## COVER STORY

### 16 2018 ALB CHINA TOP 15 FEMALE LAWYERS 2018 ALB China 十五佳 女律师

This July, Asian Legal Business (ALB) kicked off the selection of China's top female lawyers in 2018. Through nominations and after months of survey, ALB picked the top 15 female lawyers based on their years of practice, major achievements, significant transactions and cases as well as other relevant information.

Pursuing their professional dreams already set during their growth or answering their inner voice while engaged in other

occupations, they embark on the road of becoming a charming and intelligent lawyer. As female lawyers, upholding invariable practicing philosophy, they provide clients with quality and comprehensive services by leveraging their strength, patience, and meticulousness.

今年七月,《亚洲法律杂志》(ALB)启动了2018 ALB China 十五佳女律师评选。调研团队根据律师自己申报以及数月的调查,根据申报人的执业时间、主要成就、代理的重大交易和案件以及其他相关信息,评选出了业务15名优秀的女性律师。

她们或在成长过程中早已树立未来的职业理想,或在从事其他职业时接受内心的召唤,踏上了兼具魅力与智慧的律师之路。作为女性,她们肩负着不变的执业理念,用

铿锵、耐心、严谨不断为客户提供优质和全面的服务。

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With the financial technology scene exploding in China, lawyers in the country are finding their hands full with an increase in related legal work.

金融科技在中国风生水起,金融科技类案件呈激增势头,中国的金融科技律师们开始应接不暇。

### 32 THE BIG FOUR ARE AT THE DOOR “四大”进军法律业

In the past six months, accounting firms have begun to make their presence felt in the legal markets of Hong Kong and Singapore offices with a flurry of office openings and poaching of talent. And while the general feeling is that they might take away some legal work from traditional law firms, not all lawyers are nervous.

过去的六个月中,会计师事务所开始进军香港和新加坡的法律市场,在这两地开设了多家办事处并挖角人才。虽然普遍认为会计师事务所可能会从传统的律所手中分流一些法律业务,并非所有的律师都对此感到紧张。

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# FROM THE EDITOR



**RANAJIT DAM**  
Managing Editor,  
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Thomson Reuters

## HALF THE SKY

The ALB China Top 15 Female Lawyers 2018 continues ALB's commitment to profiling and promoting the advancement of women in Asia's legal industry. Earlier this year, the Asia edition profiled key female partners and general counsel across the region. We have also held panel discussions on challenges facing women undertaking legal careers and covered the launch of organizations aimed at providing a platform for women in the legal profession to network. With this latest ranking, the dialogue continues.

The challenges that women in China's legal sector face today do not revolve so much around discrimination as they do around having to make choices, usually between career and family. While there will certainly be star female lawyers, we hope that firms can do even more in terms of taking obstacles to career advancement out of the path of women, so more can come through the ranks going forward.

## 半边天

2018 ALB China 十五佳女律师榜单一如既往展示了出色的女性律师以及女律师亚洲法律行业中的全面崛起。今年上半年,《亚洲法律杂志》亚洲版也选出了亚洲区域的优秀女性律师和总法律顾问,我们还举办了研讨会探讨女性在法律行业所面临的挑战,也报道过一些专门为女性建立的法律社交平台。随着新榜单的发布,关注女性的话题还在继续。

在中国,女性律师面临的问题并不是受到歧视,因为她们能力突出,经常是自己做选择,在家庭和事业中选择其一。虽说优秀的女律师早已经光芒万丈,可我们依旧希望能够为他们扫清更多职业障碍,让更多的女性律师能够登上榜单。

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- Data/network security compliance and anti-monopoly compliance
- Outbound Investment
- Thinking Both Legal and Tax in Corporate M&A and Restructuring
- Review of 2018 M&A hot topics: education, healthcare, new economy, etc.
- Cross-border M&A trading structure design under the New Guiding Opinions on Regulating the Asset Management Business of Financial Institutions
- Strategy for litigation and arbitration in Hong Kong & International investment arbitration
- Financial dispute resolution

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# THE END OF EVASION

## 高收入又逃 税的时代该 落幕了

The Fan Bingbing case has shown that China is taking a hardline stance towards those trying to avoid paying their taxes.

“范冰冰案”是中国政府严惩偷逃税行为的一个强烈警示。

By Ines Yang

— In June this year, China's tax authorities had launched a probe into the so-called “yin-yang contracts” of Chinese superstar Fan Bingbing, following allegations that she engaged in contract chicanery to hide a massive remuneration.

An investigation by Chinese tax authorities found Fan had evaded taxes of 7.3 million yuan (\$1.1 million) overpayments for her role in “Air Strike”. Fan and the companies she represented also had taxes that are 248 million yuan (\$36 million) overdue, among which 134 million yuan (\$19 million) for tax evasion.

Although Fan was ordered to pay 884 million yuan (\$128 million), the most famous tax evasion case in the Chinese entertainment industry was of superstar Liu Xiaoqing. In 1996, Liu's company resorted to deceptively fraudulent tactics to save on taxes to the extent of 14.58 million yuan (\$2.12 million). She was imprisoned for more than a year for tax evasion and overdue taxes.

However, following the 2009 amendment of PRC Criminal Law's Article 201 PRC Criminal Law in 2009, Fan, as a first-time offender, can avoid facing criminal charges if she pays all the money within the time limit specified by the tax authority.

Fan's case caused quite a stir in the legal industry. As one of China's highest paid actors, Fan tops New Forbes China

Celebrity List for the last five years, but will she survive the huge fines?

People in the legal profession approached the case from another perspective.

According to Bill Ye, tax partner of King & Wood Mallesons, “From tax professional's aspect, we want to identify how the 884 million yuan was determined: ‘Yin-yang contracts’ is doubtless tax fraud but does the split contract mean the ‘yin-yang contracts’? The huge fines are targeted to ‘yin-yang contracts’ only or applied to the split contract as well? The late-payment penalty is modest in Fan's case, is that because some split contract is counteracted by the anti-tax-avoidance rules?”

Ye's three questions invited us to think twice about the current practice. The split contract could either be tax evasion and overdue taxes, or be tax planning, where draws the boundary is the key. Regarding the amount of fines, more rules are welcomed to regulate the administrative discretion. Regarding the amount of the late-payment penalty, it is a question of “anti-tax-avoidance vs. late-payment penalty”.

In this case, Fan and the companies she represents were liable for administrative penalties. One reason for the legal entity's penalty is its failure to

withhold and report obligations. This raises another question: Would the amended Article 201 apply to the legal entity if the legal entity, like a natural person, is also a first time offender?

Ye reminded the enterprises that, tax compliance matters and criminal risks, like fake VAT invoices, smuggling, accounting gimmicks & fraud, etc. should not be treated lightly.

## REFORM JUST BEGINNING

China's tax reform is just beginning but headed in the right direction.

"At the beginning stage, when we deal with issues such as the split contract, tax disputes, or invoice problems, do not jump to conclusions. Be diligent, be attentive to details, be professional," Ye said.

Fan's case is a reminder to high-income earners in the entertainment industry to look closely into their own taxpaying practices before December 31, 2018.

Those who make remedial payments to the tax authorities for unpaid taxes will be exempt from administrative punishment and penalties. The grace period will help to alleviate the long-standing problems such as sky-high payments, 'yin-yang contracts', or tax evasion in the industry.

The industry-wide crackdown on tax evasion continues from January to the end of February 2019. The authorities will target certain companies and industry workers to "further self-correct" their taxes based on their self-conducted re-examination results. Those who were warned to self-correct their taxes at this stage will be penalized, but the level of punishment will vary depending on the situation.

Heavy penalties will be applied to those who would not comply between March and June next year. Authorities will review the current taxation policies applied on film and television industries and set up a new, effective measures to improve tax collection and management by the end of July 2019. <sup>ALB</sup>

今年6月初，范冰冰“阴阳合同”涉税问题浮出水面，江苏等地税务机关随即依法展开调查。

根据新闻通稿介绍的调查核实情况来看，范冰冰在电影《大轰炸》的实际片酬3000万元，偷缴个人所得税618万元，少缴营业税及附加112万元，合计730万元。此外，还查出范冰冰及其担任法定代表人的企业少缴税款2.48亿元，其中偷逃税款1.34亿元。

对于上述违法行为，范冰冰需要补缴税款及缴纳罚款共约8.84亿元。历史上最为轰动的明星逃税事件，非刘晓庆逃税案莫属。北京晓庆文化艺术有限责任公司1996年以来采取不列或少列收入、多列支出、虚假申报等手段偷税漏税达1458.3万元。因数额巨大，刘晓庆没能逃税牢狱之灾。

而范冰冰属于首次按偷逃税进行行政处罚且此前未因此受刑事处罚，所以只要交了税款和罚金，不会被追究刑事责任，这是2009年刑法修正之后第二百零一条的规定。

该案“一石激起千层浪”，公众对刑法修正案的去罪化规定是否合理展开了讨论，也对这位近五年蝉联福布斯中国名人收入榜榜首的女明星能否交得起巨额罚款议论纷纷。

但在专业人士眼里，则又是另一幅图景。金杜律师事务所税务合伙人叶永青指出，“我们更关注这8.8亿是如何确定的，这对征管实践有启发意义。首先，阴阳合同是偷逃税没有异议，但合同拆分究竟在什么情况下被认定为偷逃税？其次，3倍和4倍的罚款是仅针对阴阳合同这一明显的偷漏税行为，还是也对拆分合同的行为进行了适用？再次，此次行政处罚中滞纳金数额不高，是否因为对部分拆分合同的处理是按反避税处理所以不涉及滞纳金？”

叶永青律师提出的三个问题，也给出了进一步审视与探究税收征管实务的空间：合同拆分的认定，涉及偷逃税和合理税收筹划的界限划分；罚款数额，涉及行政处罚自由裁量权的进一步细化与规范；滞纳金的数额，直接取决于交易的定性。在该案的定性处理中，范冰冰个人和其担任法定代表人的机构都被予以行政处罚。担任法定代表人的机构被处罚的原因之一，是相关企业未履行代扣代缴义务。问题来了，如果企业采用与纳税人相同的手段逃避履行扣缴义务的，是否按逃税罪处理？在该情况下是否可以适用刑法第二百零一条的去罪化规定？

叶永青律师认为，“企业家们要重视税务合规的问题。如果有两个以上的企业或者企业和个人同时涉嫌偷逃税，无论是否已有两次以上处罚，如果分别下通知，仍存在较大的刑事风险。另外还需要关注其他常见的涉税刑事风险，比如虚开增值税发票、走私、指示财务人员改变会计记录等，这些可都是没有去罪化规定的。”

中国的税收法治道路刚刚起步，虽然道路漫长但是前进在正确的方向上，但具体到个案，叶永青律师告诉ALB，“偷逃税不应该，但纳税人自身的合法权益也应当维护。如果是拆分合同，必须认真地分析比较是避税还是偷逃税；如果仅仅因为税收争议而被处以罚款，应当认真地分析计较行政处罚是否具有合理的依据；如果企业因为发票问题被处罚或者处理，也要认真分析计较处理的方式和证据是否合理合法和充分。凡此种种，认真、专业和细节最重要。”

此轮娱乐圈“税收大地震”震荡不小，但好在中国影视行业天价片酬、“阴阳合同”、偷逃税款这些“毒瘤”问题得以暴露和逐步铲除。

国家税务总局近日下发通知，明确从2018年10月10日起，各地税务机关将通知本地区影视企业及相关从业人员对2016年以来的申报纳税情况进行自查自纠。凡在今年12月底之前认真自查自纠、主动补缴税款的影视企业及从业人员，免予行政处罚，不予罚款。2019年1月至2月底，在税务机关的提醒后自我纠正的纳税人，可依法从轻或减轻行政处罚；对违法情节轻微的，可免予行政处罚。2019年3月至6月底，税务机关将对个别拒不纠正的影视企业及从业人员开展重点检查，并依法严肃处理。2019年7月底前，根据影视行业税收秩序规范工作中发现的突出问题，举一反三，研究完善管理措施，并建立健全影视行业税收管理的长效机制。

眼下截至今年12月31日的自查自纠“窗口期”正给了行业一个自动纠偏的机会，高收入又逃税的时代该落幕了。 <sup>ALB</sup>



## DEALS 交易

**\$9.8 BLN**CK Infrastructure's bid for  
Australia's APA Group长江基建竞购澳大利亚天然气管道运  
营商APA集团

Deal Type: M&amp;A

Firms: Allens & Overy; King & Wood  
Mallesons; Linklaters

Jurisdictions: Australia, China, Hong Kong

交易类型: 并购

参与律所: 安理律师事务所; 金杜律  
师事务所; 年利达律师事务所

管辖地: 澳大利亚、中国大陆、中国香港

**\$6.7 BLN**Renesas Electronics' proposal to acquire  
Integrated Device Technology  
瑞萨电子拟收购集成设备技术

Deal Type: M&amp;A

Firms: Covington & Burling; Latham &  
Watkins; Morrison & Foerster; Nagashima  
Ohno & Tsunematsu  
Jurisdictions: Japan, U.S.

交易类型: 并购

参与律所: 科文顿·柏灵律  
师事务所; 瑞生律  
师事务所; 美富律  
师事务所; 长岛·大野·常松  
律师事务所

管辖地: 日本、美国

**\$4.2 BLN**Meituan Dianping's Hong Kong IPO  
美团点评香港上市

Deal Type: IPO

Firms: Davis Polk & Wardwell; Han  
Kun Law Offices; Skadden Arps Slate  
Meagher & Flom; Zhong Lun Law Firm  
Jurisdictions: China, Hong Kong

交易类型: 上市

参与律所: 达维律  
师事务所; 汉坤律  
师事务所; 世达律  
师事务所; 中伦律  
师事务所

管辖地: 中国大陆、中国香港

**\$2.65 BLN**Adani Enterprises' acquisition of Reliance  
Infrastructure's Mumbai Power generation  
business阿达尼输电网公司收购印度信实基础设施的  
孟买电力业务

Deal Type: M&amp;A

Firms: Cyril Amarchand Mangaldas; J Sagar  
Associates; L&L Partners

Jurisdictions: India

交易类型: 并购

参与律所: Cyril Amarchand Mangaldas律  
师事务所; J Sagar Associates律  
师事务所、L&L  
Partners律  
师事务所

管辖地: 印度

**\$1.5 BLN**Japan Tobacco's agreement to acquire United  
Dhaka Tobacco from Akij Group  
日本烟草收购孟加拉国AKij集团烟草业务

Deal Type: M&amp;A

Firms: DFDL Bangladesh; Dr. Kamal Hossain &  
Associates; Morrison & Foerster; Rouf & Associates  
Jurisdictions: Bangladesh, Hong Kong, Japan,  
Singapore

交易类型: 并购

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富律  
师事务所; Rouf & Associates律  
师事务所

管辖地: 孟加拉国、中国香港、日本、新加坡

**\$950 MLN**China Reinsurance Group's acquisition of  
Chaucer Insurance from Hanover Insurance  
Group中再集团收购美国汉奥威保险集团旗下的  
英国桥社保险公司

Deal Type: M&amp;A

Firms: Debevoise & Plimpton; Sidley  
Austin

Jurisdictions: China, U.S.

交易类型: 并购

参与律所: 德普律  
师事务所; 盛德国际律  
师  
事务所

管辖地: 中国大陆、美国

**\$530 MLN**KKR India's acquisition of stake in Ramky Enviro Engineers  
KKR收购印度废物管理公司Ramky Enviro股权

Deal Type: M&amp;A

Firms: Cyril Amarchand Mangaldas; Linklegal India Legal Services  
Jurisdictions: India

交易类型: 并购

参与律所: Cyril Amarchand Mangaldas律  
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管辖地: 印度

**\$346 MLN**China Renaissance's Hong Kong IPO  
华兴资本香港上市

Deal Type: IPO

Firms: Clifford Chance; Commerce and Finance Law Offices;  
Haiwen & Partners; Maples and Calder; Skadden Arps Slate  
Meagher & Flom

Jurisdictions: China, Hong Kong

交易类型: 上市

参与律所: 高伟  
绅律  
师事  
务所; 通商律  
师事  
务所; 海问律  
师事  
务所; 迈普达律  
师事  
务所; 世达律  
师事  
务所

管辖地: 中国大陆、中国香港



# DEHENG OPENS A NEW OFFICE IN THE CITY OF ALMATY IN KAZAKHSTAN


## 德恒律师事务所阿拉木图办公室 正式设立

■ Kazakhstan occupies a significant place along both the ancient Silk Road and modern Belt and Road routes. Kazakhstan is China's biggest trade partner in Central Asia and sees the most investment from China among the countries and regions along the B&R routes.

That investment covers oil, metals, infrastructure, agriculture, auto industry, food processing and tourism, among others. DeHeng has established a new office in the Kazakh capital of Almaty, aiming to provide legal service to Chinese investors starting and building

a business in Central Asia.

China-Kazakh trade and economic cooperation has huge and untapped potential. But to many Chinese enterprises, they are exposed to many legal risks due to the exchange rate and cultural differences. The Almaty office will focus on Kazakhstan and Central Asia-related practice from other offices of DeHeng.

This new office includes 11 lawyers from both China and Kazakhstan. Their working languages are Mandarin, Russian, English and Kazakh. 




德恒律师事务所  
DeHeng Law Offices

■ 哈萨克斯坦作为中亚地区主要国家，是古老“丝绸之路”的重要贸易通道，也是我国“一带一路”建设向西延伸的第一站。哈萨克斯坦是中国在中亚的第一大贸易伙伴，也是中国“一带一路”建设的重要伙伴。

哈萨克斯坦拥有丰富的土地、矿产、能源资源，最早期与中国开展能源贸易合作，如今扩展至建筑、农业等多个领域。德恒律师事务所正式进驻哈萨克斯坦阿拉木图，旨在为中资企业走进俄语区国家提供法律服务，也为中哈法律行业搭建交流合作平台。

近年来，中哈两国经贸合作领域来往密切，但是对于众多走进来发展的中国企业而言，哈萨克斯坦汇率、文化差异等因素带来一定的法律风险。德恒阿拉木图办公室主要承担德恒其他办公室涉及哈萨克斯坦和中亚地区的相关业务，也对接中哈两国其他律师事务所的合作交流。


德恒阿拉木图办公室人员由来自中哈两国的11名律师组成，能够以中文、俄文、英文、哈萨克文开展工作。 

# JUNHE ESTABLISHES A NEW OFFICE IN CHENGDU

## 君合律师事务所新设成都分所


■ JunHe has opened a new office in the western Chinese city of Chengdu. After the launch and the contract signing, a high-end legal seminar has ensued on the same day. The topics focused on the opportunities and challenges of B&R.

Located at the intersection place of "One Belt and One Road" and the Yangtze River Economic Belt, Chengdu takes up a critical position in China's new economy. It boasts of advantages in transportation, energy, and resources. Private economy is robust in Chengdu too.

Chengdu office is JunHe's 12th office and will play a key role in the firm's strategic development. 

■ 创立近三十年的君合律师事务所在三千年历史文化古城成都，以一个盛大的开业典礼正式宣告君合入蜀，谱写历史新的华美乐章！盛大的启动仪式及战略签约仪式后，高端法律研讨会随即开启。此次研讨会特意邀请到国家发改委对外经济研究所贸易和投资研究室主任王海峰从宏观经济研究层面分析讲解“一带一路”建设的机遇和挑战。

地处“一带一路”和长江经济带建设的黄金交汇点，卓越的地理和环境优势为成都在新经济和战略格局中的发展造就了得天独厚的条件。交通、能源、资源和民营经济等基础设施建设在四川地区具有天然优势，也是四川发展“一带一路”建设的重点领域。

成都分所作为君合第十二家分所，对君合自身的改革和发展有着重要意义。 



君合律师事务所



## DHH LAUNCHES A PRESENCE IN SEATTLE

### 北京德和衡律师事务所 开设西雅图办公室

■ The Opening Ceremony of Beijing DHH Law Firm Seattle Office was held at the Safeco Plaza Building on 4th Avenue in downtown Seattle, which witnessed the establishment of the 47th office of Deheng Law Group as well as the 9th overseas office.

On the opening ceremony, the Seattle office of Beijing DHH Law Firm and DHH Washington D.C. Law Office held the seminar on the recognition and enforcement of U.S. judgments in China, and Chinese judgments in the U.S., as well as on the parallel litigation.

Beijing DHH Law Firm and DHH Washington D.C. Office co-launched the Seattle Initiative calling for both sides to make more efforts to stop any malicious flight of debts and transfer to abroad. <sup>ALB</sup>

■ 北京德和衡律师事务所西雅图办公室在西雅图市中心第四大道Safeco Plaza大厦隆重揭幕。这是北京德和衡律师事务所所属德衡律师集团在全球的第四十七家办公室，也是其海外的第九家实体办公室。

与此同时，北京德和衡律师事务所西雅图办公室和德和衡华盛顿特区办公室在西雅图联合举办了主题为“中美判决承认和执行与平行诉讼法律问题”的研讨会。

最后，北京德和衡律师事务所和DHH Washington D.C. Law Office共同提出《西雅图倡议》，呼吁中美两国律师结合跨国法律资源，共同对恶意逃废债务并将财产转移致境外的行为宣战。 <sup>ALB</sup>

## HONG KONG QUEUE OF IPO HOPEFULS FACES MARKET RECKONING

### 香港IPO排队长龙面临市场 现实

■ The number of companies filing to go public in Hong Kong has jumped almost threefold this year, driven in part by China's burgeoning technology sector, but they will have to contend with weaker markets which could hurt deals.

Hong Kong is on track for a bumper year of initial public offerings (IPOs), spurred by a market rally late last year and listing reforms designed to attract high-growth technology and biotechnology companies.

This year, 214 companies have filed with the Hong Kong stock exchange, up 170 percent from last year when only 79 submitted applications, according to Thomson Reuters data.

The financial hub also overtook New York in IPO volumes, with \$27.7 billion raised this year, the data showed.

"There's a lot more that got started than will get finished," said Stephen Peepels, head of U.S. Securities, Asia Pacific for law firm Hogan Lovells. "There's probably not enough investor demand to take on all the IPOs that have been announced during 2018."

The huge spike in companies wanting to go public is also due to the nature of the businesses, which tend to be younger, fast-growing and in need of cash - especially from China - marking a change from the years when the main IPOs in Hong Kong were done by Chinese state-owned enterprises.

However, bankers expect some of them could choose to raise money privately instead, putting off IPO plans as long as markets remain difficult.

"You'll likely see some smaller transactions push out their timetable a bit," said Sunil Dhupelia, Head of Equity Syndicate, Asia ex-Japan at Credit Suisse.

Across Asia, companies have raised \$70.5 billion in IPOs in the first three quarters of 2018, up 23 percent from the same period last year and the highest since 2014.

But performance has been patchy in Hong Kong, with some of the bigger deals still trading below their IPO price, such as smartphone maker Xiaomi, which went public in July in the world's biggest tech float in four years.

"Investing in Hong Kong IPOs has not driven investor returns in

the past six to seven months which has contributed to the general sentiment and valuation sensitivity,” said Finlay Wright, Director, Equity Capital Markets at Rothschild Global Advisory. “It feels like it would only take a few deals not succeeding to damage confidence and hit the rest of that pipeline.”

## TRADE TENSIONS

Weak markets amid global trade tensions - which have hit emerging markets particularly hard - have weighed on many deals, making investors more selective.

“When markets are falling, many investors would choose not to participate in IPOs as the company’s stock prices are more likely to fall below IPO prices once it starts trading,” said Jian Shi Cortesi, portfolio manager of Asian equities for GAM investments.

Volvo Cars and its Chinese owner Geely postponed plans to float shares in the Swedish carmaker because of Sino-U.S. trade tensions and a downturn in automotive stocks.

However companies from the region are still lining up to go public - from Chinese movie ticketing app Maoyan Weying to Tencent Music, the music streaming company owned by Chinese tech giant Tencent Holdings (0700.HK).

Last week, Chinese online food delivery-to-ticketing services firm Meituan Dianping (3690.HK) gained about 5 percent on its Hong Kong debut, sending a positive signal to other companies in the pipeline, although it was last trading below its IPO price.

“The buy side wants access to China. They want access to the consumer,” said Aaron Arth, Head of Financing Group for Asia ex-Japan at Goldman Sachs, referring to the market weakness.

“While some of these deals could be performing better, most investors would say over the long term, these companies will show growth and value creation.”

Goldman topped the league table for equity raising in the region, followed by Morgan Stanley and Citigroup. ALB



今年申请在香港上市的公司数量增长了近三倍，部分原因是受中国繁荣的科技行业的推动，但这些申请者将不得不面对一个疲软的市场，这可能会导致上市计划打水漂。

由于去年底市场反弹，以及旨在吸引高增长科技和生物技术公司上市的上市规则改革，香港市场的首次公开发行（IPO）料将在今年迎来丰收年。

根据汤森路透的数据，今年有214家公司向香港证券交易所提交了IPO申请，比去年的79家增长了170%。

数据显示，香港在IPO金额上也超越了纽约，今年共募资277亿美元。

霍金路伟律师事务所亚太区美国证券业务负责人Stephen Peepels表示，“比起能完成的上市，还有更多的业务才要开始做。可能没有足够多的投资者需求来吃进2018年已经宣布的所有IPO。”

希望上市的企业数量激增也是由于企业性质的改变，现在的IPO申请企业往往是那些更年轻、增长快速且需要现金的企业，特别是来自内地的企业。这同过去相比是一大改变，以前香港的主要IPO都是由中国国企进行的。

然而，银行家们预计，只要市场环境仍然艰难，这些IPO申请公司中的一些可能会选择私下筹集资金，推迟IPO计划。

瑞士信贷亚洲（日本除外）股权辛迪加主管Sunil Dhupelia表示，“一些较小规模的交易可能会略微推迟它们的时间表。”

放眼整个亚洲，公司在2018年前三个季度共通过IPO筹集了705亿美元，比去年同期增长了23%，是2014年以来的最高水平。

但各家公司在香港上市后的表现不尽相同，其中一些较大的交易仍然低于其IPO价格，智能手机制造商小米就是一例。该公司于7月上市，是四年内全球最大的科技股上市。

Rothschild Global Advisory的股权投资市场总监Finlay Wright表示，“投资香港IPO并未在过去六至七个月内为投资者拉动回报，这导致了整体情绪低迷和估值敏感。感觉上只要有几笔不怎么成功的交易就会打击市场信心并给其他IPO排队公司造成负面影响。”

贸易紧张局势

全球贸易紧张局势中的疲软市场已经打压了许多交易，让投资者更为挑剔。贸易紧张局势对新兴市场的打击尤其严重。

GAM投资管理公司的亚洲股票投资组合经理Jian Shi Cortesi表示，“当市场下跌时，许多投资者会选择参与IPO。这是因为一旦这些IPO公司开始上市交易，它们的股价更有可能跌破IPO价格。”

由于中美贸易紧张局势和汽车股的下跌，沃尔沃汽车及其中国所有者吉利推迟了该瑞典汽车制造商的股票上市计划。

但是，亚洲的公司仍然排着上市的长龙，其中就有中国电影票务应用程序猫眼微影和中国科技巨头腾讯控股（0700.HK）旗下的音乐流媒体公司腾讯音乐。上周，中国网络食品外卖和票务服务商美团点评（3690.HK）在香港首次亮相后上涨约5%，向其他仍在排队IPO的公司发出积极信号，但美团点评最新的交易价低于其IPO价格。

“买方希望进入中国。他们希望接触消费者，”高盛亚洲（日本除外）融资集团负责人Aaron Arth在提到市场的疲软时表示。

“虽然这其中的一些交易可以有更好的市场表现，但大多数投资者会说，从长远来看，这些公司将能显示增长和创造价值。”

高盛在亚洲的股票募集交易中名列榜首，摩根士丹利和花旗集团紧随其后。 ALB

# EXPLAINER: WHAT'S NEXT AS TIANQI, SQM FACE OFF IN CHILE COURT

## 解读：天齐锂业与SQM在智利法庭 对决，接下来的局面将会怎样？

Chile's Constitutional Court on Oct. 11 put the brakes on a \$4 billion deal allowing the sale of a coveted 24 percent stake in top lithium producer SQM SQM\_pb.SN to China's Tianqi Lithium Corp, after its controlling shareholder filed a lawsuit.

Here are next steps and what it could mean for Tianqi's efforts to complete a deal.

### WHY WAS THE LAWSUIT FILED?

The lawsuit was filed by controlling shareholder and former SQM chairman Julio Ponce Lerou, via his investment vehicles Pampa Calichera, Potasios de Chile and Global Mining, collectively known as the Pampa Group. Ponce has been a key figure in SQM since it was privatized in the 1980s under his former father-in-law, dictator Augusto Pinochet.

The lawsuit said an earlier anti-trust court decision clearing the deal did not give adequate time for shareholders to review an agreement between Tianqi and regulators.

The agreement aimed to limit the exchange of information between Tianqi and SQM, and curbed Tianqi's role on SQM's board.

Ponce objects to how the agreement was struck and what it does to limit competitive risks. In the filings, his Pampa Group said it feared the transaction would give Tianqi, a top competitor, "unrestricted access" to all of the Chilean miner's "confidential and

sensitive information."

Tianqi is also in a joint venture with No. 1 lithium producer Albemarle Corp in Australia, where together they own the world's biggest lithium mine.

The Pampa Group said it was especially concerned that Tianqi's relationship would allow Albemarle, a close neighbour in Chile's lithium-rich Salar de Atacama, to obtain its business and operating secrets.

### HAS THIS HAPPENED BEFORE IN BUSINESS DEALS IN CHILE?

Chile's Constitutional Court has seen relatively few cases like this one, challenging decisions made by the country's 15-year old antitrust court.

Francisco Aguero, a former director of the University of Chile's Center on Regulation and Competition, said the Constitutional Court had not previously contradicted findings by the antitrust court.

But he said the Constitutional Court - which has recently been bogged down by an increased caseload - may have been a good choice if Ponce's intent was to stall the sale of Nutrien's stake to Tianqi.

"This could really paralyze this process," he said, adding that it was a "procedural triumph" for Ponce to have obtained a quick audience with the court.

"It's worth mentioning that Ponce Lerou, in past cases, has done well in

在智利化工矿业公司 (Sociedad Quimica y Minera de Chile S.A., 简称SQM) 的控股股东提起诉讼之后, 智利宪法法院于10月11日宣布暂时禁止中国的天齐锂业以40亿美元收购SQM的B类股SQM\_pb.SN的24%股权。SQM是全球最大的锂生产商之一, SQM这24%的股权的确令人垂涎。

让我们看看接下来会发生什么。对于努力想要达成交易的天齐锂业来说, 这又将意味着什么?

### 为什么会提起诉讼?

该诉讼由SQM控股股东和前董事会主席胡里奥·庞塞·勒罗通过其投资机构Pampa Calichera, Potasios de Chile和Global Mining (统称为“Pampa集团”) 提起。SQM在20世纪80年代进行了私有化改制, 从那时起庞塞就一直一直是SQM的关键人物。庞塞是智利前独裁者奥古斯托·皮诺切特的女婿。

该诉讼称, 早前的反垄断法院判决澄清了该交易没有给股东足够的时间来审查天齐锂业与监管机构之间的协议。

该协议旨在限制天齐锂业与SQM之间的信息交流, 同时限定天齐锂业在SQM董事会中的角色。

庞塞针对该协议是如何达成的以及如何限制竞争风险提出异议。诉状称, Pampa集团担心这项交易会最大的竞争对手天齐锂业“不受限制地获取”所有智利矿商的“机密和敏感信息”。

天齐锂业还与澳大利亚第一大锂生产商Albemarle Corp合资, 共同拥有全球最大的锂矿。

Pampa集团指出, 由于天齐锂业的关系, 位于智利富锂矿区阿塔卡玛盐湖附近的美国Albemarle将能够获取其商业和经营机密, Pampa集团对此表示尤其担忧。

之前在智利进行的商业交易是否发生过这种情况?

该项诉讼是针对智利反垄断法院作出的裁决提出异议, 智利宪法法院几乎没有审理过类似案件。智利反垄断法院成立至今已经有15年历史了。

智利大学管理与竞争中心主任Francisco Aguero表示, 宪法法院此前从未反驳过反垄断法院的调查结果。

但他表示, 智利宪法法院最近的案件数量明显增加, 案件裁决所需的时

the Constitutional Court," he said.

### WHAT ARE THE POSSIBLE OUTCOMES?

Five Constitutional Court judges will hear arguments from lawyers for all parties in the case on Oct. 22. They can then decline to hear the case further or opt for a fuller hearing involving 10 judges.

If they go ahead, the judges meet again behind closed doors, before issuing their final decision in writing at a later date. While the process could be expedited, it gave no timeline on a ruling.

They can either declare the contested agreement constitutional and lift the suspension, allowing the deal to proceed, or declare it unconstitutional. In that case, all parties would have to return to the antitrust court and forge another agreement, or overturn the deal if they cannot.

The Constitutional Court's ruling is final and cannot be appealed to any higher Chilean court.

### WHERE DOES NUTRIEN STAND ON THIS?

The Canadian fertilizer company - formerly Potash Corp of Saskatchewan - must offload its stake in SQM to meet regulatory requirements following its merger with a rival fertilizer company to create Nutrien.

Chinese and Indian regulators have given Nutrien until April 19, 2019 to sell its shares in SQM, which is also an important producer of agricultural chemicals. The clock is ticking.

Nutrien told the Constitutional Court that the "real objective" of Ponce's suit was to block the deal and force Nutrien to "miss its deadline with Indian and Chinese regulators."

"Blocking this deal could cost Nutrien hundreds of millions of dollars," it said.

### WHAT IS TIANQI'S POSITION?

In a hearing before Chile's antitrust court, a lawyer for Tianqi said Ponce was seeking to block the deal to maintain his own dominance at SQM.

Ponce stepped down as president of SQM in 2015 but retained his shares in the company.

"If this is not approved, Nutrien would have to sell its stake on the bourse, atomizing the holding," said lawyer Claudio Lizana.

If the shares were sold piecemeal, Ponce would not have to contend with another "weighty shareholder," Lizana said.

Tianqi told Reuters that Ponce's actions were "desperate".

"No one has ever questioned the ability of the FNE (Chilean regulator) to reach out-of-court settlements in such issues," it said. <sup>ALB</sup>

间可能会极大延长。如果庞塞的意图是阻止Nutrien向天齐锂业出售股份，那么这对庞塞而言可能是一个不错的选择。

"这可能会使这一过程陷入瘫痪,"他说,并且补充道,这一做法有望使庞塞获得"程序上的胜利"。

"值得一提的是,从以往的案件看,宪法法院判决的有关庞塞的案件,结果大多有利于庞塞,"他说。

### 可能的结果

五名宪法法院法官将在10月22日听取各方当事人律师就该案件提出的论点。然后他们可能会拒绝审理该案件,或者要求举行一场更充分的、由10名法官组成的听证会。

如果法官们决定再次举行闭门会议,然后再以书面形式作出最终决定,这样有可能会加快这一进程,但却没有给出裁决的时间表。

法官可能会宣布有争议的协议符合宪法并解除对交易的暂停限制,允许交易继续进行;也可能会宣布交易协议违宪。在后一种情况下,协议各方必须返回反垄断法院并签订另一份协议;如果未能达成共识,则此项交易被推翻。

宪法法院的裁决是最终裁决,不能向更高级别的智利法院提出上诉。

### NUTRIEN集团的立场

加拿大钾肥公司(Potash Corp. of Saskatchewan Inc.)与一间竞争对手化肥公司合并后更名为Nutrien,而Nutrien必须出售其持有的SQM股权,以满足监管要求。

中国和印度的监管机构要求Nutrien在2019年4月19日之前出售其持有的SQM股权,原因是SQM也是农业化学品的主要生产商。因此,时间的确非常紧迫。

Nutrien告诉宪法法院,庞塞诉讼的"真正目的"是阻止这项交易,从而迫使Nutrien"错过印度和中国监管机构下达的交易最后期限"。

"阻止这笔交易可能会导致Nutrien花费数亿美元,"Nutrien表示。<sup>ALB</sup>



National Economic Prosecutor, Mario Ybar Abad, speaks in the Senate mining commission at the Chilean Congress in Valparaiso, Chile October 3, 2018. REUTERS/Rodrigo Garrido

# CHINESE SOLAR PROJECTS FACING CLOSURE AMID SUBSIDY BACKLOG: GOVERNMENT REPORT

## 官方报告称：补贴滞后，中国太阳能项目面临关闭

■ Solar power projects in the northwest Chinese region of Ningxia are struggling to maintain operations and face “bankruptcy risks” because of long subsidy payment delays, according to an investigation by regulators.

The warning follows rapid growth in China’s solar sector, which has led to a subsidy backlog of 120 billion yuan (\$17.4 billion), with prices for solar power varying wildly from region to region.

China wants to bring down renewable energy costs to allow wind and solar projects to compete subsidy-free with coal-fired power. It has already capped the number of new projects this year in a bid to ease its subsidy burden and help the sector focus on efficient supply.

The National Energy Administration’s (NEA’s) bureau in charge of northwest China said the payment backlog had forced many Ningxia projects to take high-interest loans to stay afloat, with some unable to afford basic maintenance.

Government-approved solar projects are entitled to a subsidy for each kilowatt-hour they sell to the grid, but the surge in new capacity has left the finance ministry struggling to make the payments on time.

“Local authorities in Ningxia should further control the capacity of renewable projects and strengthen supervision of subsidy distribution... in order to prevent

widespread bankruptcy in the industry,” said the report.

Some Chinese regions have already achieved “grid-price parity”, and according to draft rules published earlier this year, the government will work to provide more support for subsidy-free projects.

However, wind and solar projects in western regions like Ningxia and Xinjiang still find it difficult to compete with cheaper coal, even though grid firms are legally obliged to source as much power from renewable sources as they can.

The regulator admitted solar and wind power generation and transmission projects in Ningxia were “very expensive”, with data earlier this week showing the grid in Ningxia paid just 255.5 yuan per megawatt-hour (MWh) for coal-fired power last year, compared to 871.6 yuan for solar. <sup>ALB</sup>

■ 监管机构的调查显示，由于补助资金迟迟不到位，位于中国西北部地区宁夏的太阳能发电项目目前处于努力维持运营的状态，并面临“破产风险”。

这一警告出现在中国太阳能行业的快速增长之后。行业的快速增长导致1200亿元人民币（174亿美元）补贴滞后，同时不同地区的太阳能发电的价格迥异。

中国希望降低可再生能源成本，从而使风能和太阳能发电项目能够在没有补贴的情况下与火力发电项目进行竞争。中国政府今年已经限制了本年度（可再生能源）新项目的数量，以减轻其补贴负担，并帮助该行业专注于有效供应。

中国国家能源局分管西北地区的分局表示，补助资金不到位迫使许多宁夏项目以高息贷款维持运营，其中一些项目已经无法承担基本的维护费用。

对于政府批准的太阳能发电项目，政府对出售给电网的每度电给予补贴；但新产能的激增使财政部难以按时支付补贴款。

“宁夏地方当局应进一步控制可再生能源项目的产能，加强对补贴分配的监管……以防止行业内企业的大范围破产，”报告称。

中国的一些地区已经实现了“电网平价”，根据今年早些时候公布的规则草案，政府将致力于为无补贴项目提供更多支持。

虽然电网公司在法律上有义务尽可能多地购入并消纳可再生能源电量，然而宁夏和新疆等西部地区的风能和太阳能发电项目仍然难以与相对更便宜的火力发电项目竞争。

监管机构承认宁夏的太阳能和风能发电和输电项目“非常昂贵”，本周早些时候公布的数据显示宁夏电网去年火力发电的电价仅为255.5元每兆瓦时（MWh），而太阳能发电的电价为871.6元每兆瓦时。 <sup>ALB</sup>



Wind turbines and solar panels are seen at a wind and solar energy storage and transmission power station from State Grid Corporation of China, in Zhangjiakou of Hebei province, China, March 18, 2016. REUTERS/Jason Lee



# “一致行动”有关法律问题的再解析（下）

对一致行动的界定及监管一直是各国证券市场的重点内容，本文试图通过结合法律法规、监管部门意见及案例的方式厘清“一致行动”的定义，深入理解和分析有关“一致行动”的若干法律问题。

## 四、一致行动的表现形式：相反证据

《收购管理办法》第八十三条借鉴了国外成熟的立法经验，列举了推定构成一致行动关系的十二种情形，由于存在该种情形的相关主体并未必然构成一致行动人，故《收购管理办法》也赋予行为人通过提出“相反证据”的形式否定其一致行动关系的权利。有关“相反证据”的定义，现有法律法规并未作出明确规定，交由中国证监会进行判断。由于《收购管理办法》所列举的十二种情形涵盖了股权关系、亲属关系、合作关系、投资关系等相当多的情景，而现代社会的人际关系及利益纠葛错综复杂，导致中国证监会无法对“相反证据”的定义作出较为明确的标准，只能通过个案进行认定或进行事后监管，这也是目前证券市场普遍存在的一致行动关系乱象的根本来源。

笔者查阅了近几年中国证监会对当事人提出的“相反证据”的认可情况及行政处罚决定书中对“相反证据”不予认可的相关事实，主要集中在亲属关系层面。由于亲属关系存在一定的复杂性，实践中既存在亲属之间以不存在一致行动合意为由否定一致行动关系得到中国证监会支持的案例（如罗莱生活控股股东股权转让案），也有相关主张被中国证监会驳回的案件（美盈科控股股东王海鹏、持股5%以上的股东王治军违规减持案）。

笔者认为，尽管部分案例以虽存在亲属关系但彼此独立行使股东权利、独立决策为由主张不互为一致行动人得到证券监管部门的认可，但由于亲属关系的人身属性较为明显，关系越密切的亲属其存在一致行动的可能性越大，证券监管部门在判断亲属是否互为一致行动关系时一般也持审慎态度，故仅以独立行使股东权利、独立决策为由提出不构成一致行动关系为由不一定能得到支持，笔者建议在提供相反证据时应多列举客观证据进行证明，如相关人员取得股份的资金来源、对公司某项重大决策的不一致意见或审议某项重要议案时投票不一致等事实情况等（须有书面记录），更具有说服力。

## 五、一致行动的核心：表决权

### （一）一致行动与表决权的关系

根据规定，上市公司股东享有对所持股份的表决权、提案权、提名权、知情权、收益权、处分权等众多股东权利，其中表决权为股东最为重要的一项权利。正如《收购管理办法》第八十三条对“一致行动”的定义所指，一致行动最核心的要素在于赋予投资者以一致行动“行为”或“事实”的方式扩大其对上市公司的表决权数量，故一致行动的核心在于表决权。

实践中，在协议一致行动的情形下，除表决权外，召集权、提名权、提案权等与表决权相关的股东权利通常亦属于一致行动协议约束的范畴。

### （二）一致行动约定对股东表决权的限制

在签订书面一致行动协议的情况下，一致行动协议中关于投票的约定（如双方约定在投票结果不一致时以某位股东的投票意志为准）能否对抗股东权利中的表决权？

有观点认为，表决权是公司法 and 公司章程明确授予股东的一项基本权利，为公司股东的固有权利，而一致行动协议中有关投票权的约定属于约定权利，是股东之间的约定，在法定权利与约定权利产生冲突时，应优先保证法定权利的实现。该观点的核心在于一致行动协议只能约束协议双方，公司不受一致行动协议约束，股东之间私下的一致行动协议不能对抗载明于公司章程中的股东权利。

另一个观点认为，表决权虽然是股东的一项基本权利，但其属于可分离使用的权利，可以委托或者授权他人行使，一致行动人之间关于投票权的约定是受约束一方自愿让渡权利的体现，故在一方能提供证据的情况下，公司应按一致行动协议的约定将双方的投票结果合并计算。

在张国庆与江西华电电力有限责任公司决议撤销纠纷案中，江西省高级人民法院认为：华电公司与张国庆签订《股份认购协议》和《期权授予协议》是当事人真实意思表示，不违反法律法

规禁止性规定，经董事会决议通过，未损害华电公司及其他股东合法权益，内容合法有效，且当事人已经实际履行了协议，张国庆应当受协议条款约束，华电公司根据《股份认购协议》和《期权授予协议》，将张国庆所投票计为同意票，形成华电股东会股字（2015）第6号股东会决议，华电公司的行为符合两份协议的约定。

结合相关观点和上述案例，笔者认为，股东之间签订的一致行动协议能否对抗股东表决权的关键在于该一致行动协议是否履行了公司内部决策程序，如已经内部决议通过，客观上已起到公示作用，对公司及股东均具有约束力，故拥有对抗股东表决权的效力。从另一层面来说，一致行动协议在未经公司审议或公开（如在招股说明书、重组报告书或公告中进行公开披露）的情形下，仅为股东之间的私下约定，无法起到对抗第三人的作用。

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REUTERS/Jason Lee

# CHINA TAPS BRAKES ON OUTBOUND INVESTMENT, BETRAYS CAPITAL FLOW FEARS

## 中国对对外投资踩刹车，显示出对资本流动的忧虑

中国正在暂停对上海一个细分市场海外投资产品的批准，并要求摩根大通资产管理和安本标准投资管理公司等持牌者在该计划的营销方面保持“低调”。QDLP项目是上海的一项特定海外投资产品。

这一针对内地投资者为数不多的几个海外投资渠道之一的窗口指导，表明中国政府再度担心资本外流，这是由于迅速升级的中美贸易战对其经济和货币均造成负面影响。

国家外汇管理局（外管局）的数据显示，中国的外汇监管机构在过去三个月中还未向另一项海外投资计划，即合格境内机构投资者（QDII）计划，发放新的额度。

最近几周，负责QDLP项目监管的上海市金融服务办公室（上海金融办）已经要求持牌者在公开场合和接受媒体采访时对该业务“守口如瓶”，三位基金管理公司的高管表示。

两位消息人士称，这两项计划的新申请人被告知它们需要等待。

一位高管说，由于资本账户面临压力，“因此外管局发放给金融办的额度非常有限，这不足为奇。”

上海金融办和外管局均未回复寻求评论的传真问题。

当被问及该窗口指导时，摩根大通资产管理拒绝发表评论，而安本则未立即做出回应。

QDLP和QDII计划允许注册在中国的本土和海外基金从国内投资者那里筹集资金用于离岸投资。

收紧QDLP额度的发放显示监管机构调转了政策方向。在人民币升值的背景下，监管机构此前在两年的中断期后于2月恢复了批准该计划。

包括摩根大通资产管理、安联、法国巴黎银行、安盛、荷宝和未来资产在内的多家全球资产管理公司今年获颁了QDLP执照。外管局在4月表示将扩大QDLP计划的总额度。

2013年到2015年期间，上海金融办向15家资产管理公司颁发了共价值12.3亿美元的QDLP额度。

在经历了三年的暂停后，中国也在4月恢复了QDII计划。但由于人民币开始下跌，该计划于7月再次陷入停滞。

今年人民币兑美元即期汇率下跌约6%，下跌幅度远低于一些其他大型新兴市场，这些市场受到了美国收益率上升和喜好风险的投资组合的资金外流影响。

自3月下旬美国总统特朗普宣布了新一轮对中国进口产品加征关税后，人民币兑美元即期汇率下跌了近10%。

China is suspending approvals for a niche overseas investment product in Shanghai known as the Qualified Domestic Limited Partnership (QDLP) scheme and urging license holders, such as JPMorgan Asset Management and Aberdeen Standard Investments, to be “low profile” in marketing it, sources said.

The window guidance, targeting one of a handful of overseas investment channels for mainland investors, signals Beijing’s renewed worries over capital outflows as a rapidly-escalating Sino-U.S. trade war hurts its economy and the yuan currency. China’s foreign exchange regulator has also not issued fresh quotas in the past three months under another overseas investment scheme, the Qualified Domestic Institutional Investor, or QDII, data from the State Administration of Foreign Exchange (SAFE) showed.

In recent weeks, the Shanghai Municipal Financial Service Office (FSO), which oversees the QDLP program, has asked license holders to be “tight-lipped” on the business in public, and to the media, three executives at fund management companies said.

New applicants for the businesses are told to wait, two sources said.

“That should be no surprise as the SAFE quota to FSO is very limited,” due to the pressures on the capital account, said one executive.

Both the FSO and the SAFE did not respond to faxed questions seeking comment.

JPMorgan Asset Management declined



The tightly managed yuan is shielded by a host of regulatory controls on retail and institutional purchases of foreign currency and China has seen few signs yet of the kind of capital flight experienced during the 2015-16 market turmoil.

But with its FX reserves close to falling below the psychological \$3-trillion mark and having created numerous channels, such as the Bond Connect and Stock Connect schemes, to allow movement of portfolio investments in and out of China, Beijing is understandably wary of giving investors a reason to sell down yuan assets.

Ken Cheung, a senior Asian FX strategist at Mizuho Bank Ltd said, "The overshooting of RMB (yuan) depreciation and capital outflow pressure will be lethal to China growth and financial stability."<sup>ALB</sup>

中国试图转移资本外流压力的措施可能是预防性的。由于对散户和机构购汇的一系列监管措施，中国对人民币的管理严格，同时中国也几乎没有出现2015和16年市场动荡期间资本外逃的迹象。

但由于其外汇储备接近跌破3万亿美元的心理大关，且设立了如沪港通和债券通等众多允许投资组合进出中国的渠道，中国政府不愿意给投资者抛售人民币资产的机会的想法是情有可原的。

瑞穗银行高级亚洲外汇策略师Ken Cheung表示，“人民币的超幅贬值和资本外流压力过大将对中国的经济增长和金融稳定造成致命打击。”<sup>ALB</sup>

## APPOINTMENTS 律师转所信息

### LATERAL HIRES 新近聘用

**Jieni Gu**  
顾契妮

Leaving 原就职律所  
Ropes & Gray  
瑞格律师事务所

Joining 现就职律所  
Haiwen & Partners  
海问律师事务所

Practice 业务领域  
M&A  
并购

Location 地点  
Shanghai  
上海

**Xiuli Liu**  
刘秀丽

Leaving 原就职律所  
Long An Law Firm  
隆安律师事务所

Joining 现就职律所  
Duan & Duan  
段和段律师事务所

Practice 业务领域  
Intellectual  
Property  
知识产权

Location 地点  
Shanghai  
上海

**Xin Ni**  
倪鑫

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Zhong Lun Law Firm  
中伦律师事务所

Joining 现就职律所  
Duan & Duan  
段和段律师事务所

Practice 业务领域  
Dispute resolution  
争议解决

Location 地点  
Shanghai  
上海

**Jun Gu**  
顾俊

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Bao Hua Law Firm  
保华律师事务所

Joining 现就职律所  
Duan & Duan  
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Practice 业务领域  
Labor  
劳动法

Location 地点  
Shanghai  
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**Jimmy Chan**  
陈国家

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Securities and Futures  
Commission  
香港证券及期货事务监察委员会

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Clifford Chance  
高伟绅律师事务所

Practice 业务领域  
Litigation and Dispute  
Resolution  
诉讼与争议解决

Location 地点  
Hong Kong  
香港

**Peter Cheng**  
张柏皓

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Davis Polk & Wardwell  
达维律师事务所

Joining 现就职律所  
Deacons  
的近律师事务所

Practice 业务领域  
Capital Markets  
资本市场

Location 地点  
Hong Kong  
香港

**Gang Li**  
李刚

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Firm  
上海百悦律师事务所

Joining 现就职律所  
AnJie Law Firm  
安杰律师事务所

Practice 业务领域  
Insurance, Litigation,  
Arbitration  
保险、诉讼、仲裁

Location 地点  
Shanghai  
上海

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Practice 业务领域  
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Insurance  
海事海商、保险

Location 地点  
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上海

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Practice 业务领域  
Maritime and Shipping,  
Insurance  
海事海商、保险

Location 地点  
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**Lan Li**  
李澜

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AnJie Law Firm  
安杰律师事务所

Practice 业务领域  
Intellectual Property,  
Litigation, Arbitration  
知识产权、诉讼、仲裁

Location 地点  
Shanghai, Chicago  
上海, 芝加哥

2018 ALB China  
TOP 15  
FEMALE  
LAWYERS

2018 ALB China 十五佳女律师

The 2018 ALB China Top 15 Female Lawyers continues ALB's commitment to profiling and promoting the advancement of women in Asia's legal industry. With their relentless efforts and unwavering commitment to excellence, each of our top 15 female lawyers has firmly established herself as a role model in the profession.

2018 ALB China 十五佳女律师榜单一如既往展示了出色女性律师在亚洲法律行业的全面崛起。她们坚韧的底色与对卓越的不断追求，夯实了她们今天在业界取得的成就。

By Ines Yang

## METHODOLOGY 评选方法

Candidates of ALB China 2018 Top Female Lawyers can be of any nationality, provided they should be based in mainland China currently.

The list was chosen based on the following criteria:

1. Significant achievements;
2. Important deals or cases;
3. Main works done in the last 12 months;
4. Clients the candidate represents;
5. Significant awards the candidate has received for work in the form of public recognition;
6. Comments from her clients and colleagues.

参评ALB 2018年中国最佳女律师榜单的候选人需为常驻中国大陆工作的女律师，国籍不限。

获奖名单按照下列标准选定：

- 1、主要成就；
- 2、参与的重大交易或案件；
- 3、过去12个月的主要工作内容；
- 4、主要客户；
- 5、所获奖项；
- 6、客户评价和同事评价。

## LIST OF WINNERS 获奖名单

Winners are listed below by their surnames in alphabetical order.

以下名单按照获奖者姓氏首字母顺序排列。

Winner 获奖律师	Firm 所在律所
Catherine Chen 陈芳	Zhong Lun Law Firm 中伦律师事务所
Fang Yan 方燕	Jincheng Tongda & Neal Law Firm 金诚同达律师事务所
Gao Meili 高美丽	Beijing Dentons Law Offices, LLP 北京大成律师事务所
Gu Jieni 顾斐妮	Haiwen & Partners* 海问律师事务所*
Guo Shifang 郭仕芳	Global Law Office 环球律师事务所
Hu Xiaohua 胡晓华	East & Concord Partners 天达共和律师事务所
Ji Xiaohui 纪晓晖	Linklaters 年利达律师事务所
Luo Jie 罗洁	Long An Law Firm 隆安律师事务所
Wei Jun 魏军	Hogan Lovells International LLP 霍金路伟律师事务所
Xu Chumeng 徐初萌	JunHe LLP 君合律师事务所
Xu Ping 徐萍	Tian Yuan Law Firm 天元律师事务所
Yang Xiaoli 杨晓莉	King & Wood Mallesons 金杜律师事务所
Yuan Ying 袁颖	Boss & Young Attorney at Law 上海邦信阳中建中汇律师事务所
Justina Zhang 张卫华	TransAsia Lawyers 权亚律师事务所
Tiana Zhang 张天镜	Kirkland & Ellis International LLP 美国凯易国际律师事务所

\*Ms. Gu Jieni worked with Ropes & Gray LLP at the date of submission.

\*此榜单申报时，顾斐妮律师供职于瑞格律师事务所。

## SELECTED PROFILES 精选访谈

*'Life is a journey and no path is walked unnecessarily, each step brings us closer to our destination. Enjoy each step and each waypoint, taking it as it comes, the world is what you make of it.'*

‘人生就是一个旅途，没有白走的路，因为每一步都是在走向终点。尽情地享受每一步和每一景，不必刻意，因为这个世界就是为你而来。’

—Jie Luo, partner of Long An Law Firm  
隆安律师事务所合伙人罗洁

JIE  
LUO

■ Jie Luo became the firm's first and only female senior partner in Shanghai office in 2011. Since 2016, Luo works as the executive partner. She managed to attract many partners to join in Shanghai office with her excellent management skills and her soft yet tenacious personality. Shanghai office achieved a revenue exceeding 100 million for the first time and the performance continued in 2017. We approached Luo from her career before joining in Long An. Shanghai was the first pilot city to allow lawyers to start sole investor law firms in December 2002. Luo opened its own law firm the next year in her own name.

"In those days, people often praised me for my courage but honestly I was not an adventurous type. I did this only because I enjoy the challenge. This 'crazy' idea just planted in my mind after learning the ways of international law firms operate during my studying years overseas. My mother asked me what to do when I fail? I said that at least there used to be a law firm under my name," Luo says.

In the meantime, Luo was elected the 'youngest' member of Shanghai Bar Association, and the 'youngest' vice-president of Shanghai Female Lawyer Reunion.

As early as 1997, the 24-year old Luo represented China's first case on Down syndrome and defended the patients' right to be informed against the hospital. The case was called to a stop as it involved the policy of pilot hospital for Down syndrome but since then the patients' right to be informed has gained a foothold in China by Luo's efforts.

In the year of 2011, the same year Luo became the senior partner in Long An, she has been the deputy director of the Disciplinary Committee of Shanghai Bar Association. In the past decades, we saw an increasing number of litigations against lawyers in negligence due to three combined factors, which includes increased number of Shanghai lawyers, fierce competition, and a greater awareness in using law as a tool. Luo contributed a lot to discipline-building in Shanghai's legal profession.

Since May this year, Luo was elected as an international arbitrator of Shanghai International Economic and Trade Arbitration Commission. On top of all these, her deal list was very impressive in the last 12 months.

We were wondering how Luo managed all so well, especially as she is also a young mother with two kids. She says that half of her time has been devoted to firm management but she benefited a lot from her role as well.

We asked Luo to share her success recipe. She says that "where we put our priority leads to where we would go". Her time with coping with two kids also inspired her on how to manage the firm. "Thanks

## 罗洁律师

■ 隆安律师事务所的罗洁律师2011年成为隆安上海分所的唯一女性高级合伙人，2016年开始担任隆安上海分所的执行合伙人。任职期间，罗洁律师凭借卓越的管理才能、刚柔并济的人格魅力与高超的沟通技巧，为隆安上海引进了多位优秀高级合伙人和二级合伙人。2016年度，隆安上海分所业绩创收首次破亿，2017年度持续增长，稳居上海亿元大所。

而我们走近罗洁律师的“切入点”是她作为隆安合伙人之前的一个“身份”：2002年12月，上海首批试点可以设立个人所。2003年，年仅30岁的罗洁律师成为第一批“勇敢吃螃蟹”的人，设立了上海罗洁律师事务所。

“在我开设个人所的八年时间里，经常有人夸赞我的魄力和勇气，但其实我开设个人所时并没想那么多，所以不觉得需要多大的魄力与决断，因为我享受的是过程。之所以有这个想法，仅仅是因为想用留学时看到的外国律所的管理方式办个事务所。我记得我母亲问我，‘万一开不下去怎么办？’我说‘至少曾经有过一家所，叫罗洁律师事务所’。”罗洁律师谈到。

期间，罗洁律师也连续两届被选举为上海市律师协会理事，成为上海“最年轻”的律协理事、以及上海女律师联谊会“最年轻”的副会长。

1997年，年仅24岁的罗洁律师就代理了全国首例唐氏综合症及父母状告产期筛查试点医院起诉知情权的案件，当时引起社会轰动，上海电视台跟踪报道。虽然该案最终因为涉及中国产前筛查的试点推广而被相关部门干预，但罗洁律师提出的病人知情权从此得到了确立和保护。

亦自2011年开始，除了隆安合伙人这个身份，罗洁律师已经兼任上海

to being a mother with two kids, I become faster to respond to any emergency situations.”

Luo's multi-faceted role resonated with many female lawyers with a family. It seems that female lawyers put more efforts in the legal profession if they take family into account. Male lawyers do have advantages and strengths that female lawyers cannot match in certain way, but tenacity is another strength in female lawyers that is perhaps more resilient. "To all female lawyers, accept our own identity and learn to accept what we can do to push ourselves to the best while take good care of our family," Luo says. When asked about her views on the prevailing gender bias in legal profession, Luo told us that many female lawyers compared their revenue with male peers and feel a bit desperate about the gap. But she thought that the most 'award'

**'Gender in the legal profession is not a relevant factor. What really matters is one's depth of expertise and sense of responsibility. There are no shortcuts to solid legal knowledge and experiences.'**

‘性别不应是衡量律师优秀与否的标准，重要的还是律师的专业水平和责任心。专业水平的积累没有捷径，需要勤学苦练、多学多做。’

—Shifang Guo, partner of Global Law Office  
环球律师事务所合伙人郭仕芳

市律师协会纪律惩戒委员会副主任一职。由于上海律师队伍发展迅猛，律师行业竞争激烈，加上当事人法律意识提升，这些年来，上海律师行业接到的当事人对律师的投诉案件呈直线上升趋势。过去8年，上海市律师协会纪律惩戒委员会顶住各方说情托词，保护律师不被错误投诉追责，同时对有责投诉予以公平处分，并每年发布

行业警示性案例，为上海律师行业的行风、行纪做出了积极重大的贡献。

今年5月起，罗洁律师又被聘为新一届上海国际经济贸易仲裁委员会的国际仲裁员。仅从过去12个月完成的情况来看，罗洁律师的执业履历上就填满多项每个都价值数亿的复杂交易与争议解决案件。

而两年前接受上海分所执行合伙人

大成 DENTONS

## 大成高美丽律师： 专注于破产重整与公司合规业务

高美丽律师是北京大成律师事务所高级合伙人，大成中国区管委会委员，大成总部管委会委员，大成总部破产重整与清算专业组负责人。高美丽律师同时是北京市青联委员，北京市东城区青联委员，北京市破产法学会理事，具有独立董事资格。高美丽律师长期专注于破产重整与公司合规业务，高美丽律师对于企业的合规经营和危机处置具有深刻的理解，也积累了非常丰富的项目经验。

Mrs. Gao specializes in areas of Bankruptcy & Restructuring as well as Compliance, with in-depth understanding of handling enterprise crisis and extensive experiences



破产重整领域代表业绩包括川化股份有限公司（上市公司000155）重整案件管理人负责人；山东天信集团等15家公司合并重整管理人负责人；山西联盛系企业债务重组法律顾问以及山西联盛合并重整主要金融机构债权人法律顾问；东北特钢及关联公司破产重整金融机构债权人法律顾问等。

公司合规业务方面，高美丽律师为中国网通及中国联通集团每年一次（自2006年开始）的诉讼法律风险梳理项目提供全程法律服务，协助客户建立全流程的法律风险索引目录、形成法律风险事项数据库；为其历年的法律风险管理情况进行评估、评价及分析。此外，高美丽律师还担任苏宁置业集团、中国神华煤制油公司、广西中烟、正荣集团等多家大型企业法律风险管理项目负责人。

in being a lawyer was winning clients' recognition.

"It is time to ask ourselves why we want to be a lawyer, what responsibilities lawyers should assume, and what contributions lawyers should bring to society."

## SHIFANG GUO

**Shifang Guo** was promoted as partner at the age of 30, one of the youngest ever in Global Law Office.

As one of the key partners in the firm's international capital markets, Guo helped dozens of Chinese enterprises going public on U.S. or Hong Kong (China); As one of the key partners in the firm's cross-border M&A, Guo led dozens of significant deals. Guo also led the funding practice in the firm's Beijing office and helped clients set up dozens of RMB funds and US funds among others. She was also instrumental as one of the partners who lead a team of more than 50 lawyers towards successful streaks in milestone dispute resolution cases.

Deal list speaks louder. We can tell a very competent, promising, and innovative Guo. Do we want to figure out what motivated her to think out of the box behind each complicated deal under intense pressure?

Guo told us that doing deals is not that routine. She tries to find the story behind each case through careful examination and figuring out the real motivation on both sides.

"Sometimes, negotiation deadlock occurs when lawyers try to maximize the interests of their clients. Try to 'think out of the box' by inventing a win-win solution instead."

Guo proves to be a good leader too.

"Due to many reasons, female lawyers often assume a less important role than male peers in legal profession, but I believe that female lawyers

## 'The greatest appeal of female lawyers lies in their high expertise.'

‘具备高度的专业性，正是优秀女律师最大的魅力。’

—Meili Gao, partner of Dentons  
大成律师事务所合伙人高美丽

are capable of, and should believe in themselves, assuming a leadership role. We should be aware of our many unique advantages such as attentive to details, easy-going, and good at communication. Presently, female lawyers are rising in both quantities and qualities that could equal male peers in many aspects, but female lawyers somehow still get frustrated by the so-called 'glass ceiling' when they aim to advance their career. Translate: female lawyers have to pay extra efforts," Guo says.

Tenacity and resilience is Guo's signature. "There must be many obstacles, even self-doubt, on the way to be star female lawyers. We should ask ourselves if it is all worth it. To achieve work-life balance is tough. Time management is one of the recipes but it is not enough.

Guo told ALB that Jinrong Liu, the managing partner of the firm, had been her role model ever since she commenced her legal profession. "As a top lawyer, Liu has been working at the front lines and stayed hungry and foolish. In life, Liu is highly disciplined. This is the power of a model that motivates and inspires us to aim high and do our best," Guo says.

## MEILI GAO

**Meili Gao** has over 17 years' experience at Dentons, with many impressive deals in her pocket. As the key partner of the firm's bankruptcy and restructuring,

职务时，罗洁律师的两个孩子一个6岁、一个1岁半，期间她的家人还突发身体情况。可以说，在担任隆安上海分所执行合伙人后，罗洁律师把业务时间的一半都分给了律所管理。但是这两年的律所管理，让她熟悉了隆安上海的每一位律师，也认识了隆安全国很多优秀的合伙人。

作为两个孩子的母亲、身兼数个行业职责、还带领隆安上海业绩永攀新高的这位“女律师”是怎么“三头六臂”做好自己的时间管理的？

罗洁律师告诉ALB，“如何分配精力和时间，如何管理自己各项事务的优先顺序，最终决定了我们能够在哪方面取得成就。身为两个孩子的母亲，在孩子教育上的体会和心得，对事务所管理同样有帮助。规律是相通的，就看我们怎么发现和运用。我觉得成为两个孩子的母亲后，我的临场处理危机（二娃的矛盾）能力大大提高。有时候旁观、有时候主裁、有时候装糊涂、有时候主动出击。”

罗洁律师的心得一定被很多为人妻、为人母的女律师认同，从这个层面上讲，在执业领域获得突出成绩的女律师似乎比男律师更加不易。她们的家庭角色使她们承担着比男律师更大的家庭责任，很多情况下她们也无法像男律师那样心无旁骛地社交和工作。男性律师在特定方面确实有着女性律师无法比拟的优势与力量，但紧盯着强有力，往往就忽视了柔软也是力量、女性特有的柔中带刚。

“女律师们，请接受自己的性别，有些领域我们无法做到最好，有些时间我们必须留给家人，这些均构成我们要学会接受的一部分。”罗洁律师告诉ALB。

最后在回答“您觉得社会对女律师的包容度与认可度怎样”这个问题时，罗洁律师认为，“很多女律师觉得做女律师很难，创收上无法和男律师比。可是，为什么女律师一定要和男律师比创收呢？我们做律师，不就是为了做自己喜欢的事、发挥自己的聪明才

she led many deals that made a significant impact. Guo is also the member of Beijing Bankruptcy Law Association and published her work on Bankruptcy of SOE in China. On top of these, Gao is also a trailblazer in legal advice for enterprise risk management.

Besides legal works, Gao assumed many social roles as well. She is the vice president of the committee of female lawyers at Chaoyang Bar Association. According to Gao, this role enables her to get more engaged with female lawyers and other female working groups. She realized that women are playing an increasingly important role in all walks of life, and the frequently discussed topic still focuses on work-life balance.

"Bankruptcy and restructuring involve

***'I enjoy my finance lawyer legal career because I value the opportunities to facilitate deals that build a power plant, a liquefied natural gas pipeline or a port. These projects improve livelihood and change people's lives for the better.'***

*'我很享受我的执业领域带给我的工作体验，每当促成基建、能源领域的重大交易，都会令我兴奋不已：因为每一个发电厂、液化天然气管道、交通设施的建设，都意味着民生的逐步改善。'*

—Xiaohui Ji, partner of Linklaters  
年利达律师事务所合伙人纪晓晖



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many conflicting interests. Frequent business trips are inevitable. It is much more demanding for female lawyers but on the other hand female lawyers are also 'suitable' for dealing with bankruptcy and restructuring as our prudence and attention to details play a key in reducing risks of the projects," Gao says.

## XIAOHUI JI

Linklaters has been mandated on a large number of complex and high-profile Belt & Road transactions over the past five years. Linklaters is also the only firm invited to attend the Belt & Road Forum for International Cooperation hosted by President Xi Jinping in Beijing on May 2017, which is testament to the firm's capability in and contribution to the Belt and Road Initiative.

"It is no coincidence that Linklaters has become a leader in advising on

智，去促成异常艰难的谈判、去解决当事人的难题、去还原事实的真相、去追求心中的公平和正义吗？我们做律师，做自己客户心中的优秀律师，就是最大的回报。”

### 郭仕芳律师

环球律师事务所的郭仕芳律师在30岁时晋升为环球律师事务所合伙人，是事务所最年轻的合伙人之一。

作为事务所国际资本市场业务领域的主要合伙人，帮助数十家中资企业实现在美国和香港首次公开发行股票并上市；作为事务所跨境投资并购业务领域的主要合伙人，牵头负责数十个重大跨境投资并购交易；作为事务所北京办公室基金设立业务领域的牵头合伙人，主办数十支人民币基金、境外美元基金、境内外平行基金的设立；作为牵头合伙人带领事务所争议解决团队近五十位律师代理了行业内里程碑式重大案件。

业绩是对能力最好的证明，我们从郭仕芳律师的业绩中充分感受到一位年轻有为、前途无限、实力满满的女律师形象。我们很想知道在每一个重大复杂交易的背后，是什么在驱使她每一次都能成功做出创新力的解决方案？

郭仕芳律师坦言，“做项目不是冷冰冰的案头工作，每个交易背后都有故事，交易方的诉求都有其合理性。作为一方律师，如果一味机械去为客户争取所谓的‘最大利益’，那可能会浪费大量时间精力在细枝末节上，而模糊了焦点，甚至可能导致交易陷入僵局。我们不能一上来就站在对立面去假设对方的恶意，要试着客观、理性地去了解双方的诉求及背后的考量，寻找双方立场的一致之处和折中点，进而达成双方都能接受的有效解决方案。”

郭仕芳律师无疑满足了优秀女律师的全部条件，她同时还是一位杰出的领导者。

“由于种种主客观因素，女律师在工作中经常处于从属或辅助角色，但我认为女律师应该有信心和有能力扮演领导者的角色，甚至可以发挥女性特有的细心、耐心、亲和力和沟通能力等优势，更加出色地带领好团队。如今女律师数量越来越多、能力越来越强，女律师已真正撑起了律师行业的半边天。但随着执业阶段的提升，女律师的长远发展可能多少还是会受到一些主客观条件限制，比如体能的不足、对工作生活平衡的追求、生儿育女的压力等等，这些都意味着女律师



***'I appreciate those who can take time to appreciate life, and have an amicable and easy-going personality. For female lawyers, in particular, expertise is a priority but remaining calm under fire is equally important.'***

***'我比较欣赏那种内外兼修，专业、知性、温婉、豁达的女律师，遇事时云淡风轻、处事不惊；注重专业素质的同时，也有“闲看庭前花开花落、漫随天外云卷云舒”的气度与情怀。'***

—Catherine Chen, partner of Zhong Lun Law Firm  
中伦律师事务所合伙人陈芳

BRI transactions. From the perspective of sectors, Linklaters has traditionally been very strong in infrastructure, power and oil & gas; and in terms of products, Linklaters has been consistently ranked tier 1 for banking and project development and financing. A large proportion of BRI projects involve investment and financing in the infrastructure, power and oil & gas sectors and so they play to our strength. Xiaohui, partner at Linklaters,

told ALB.

Ji leads Linklaters Chinese banks outbound financing practice and has supported Chinese banks and Chinese sponsors in achieving financing close on many high profile BRI transactions with strategic importance.

According to Stuart Salt, the global head of Linklaters' Project Finance practice, "Xiaohui was trained at Linklaters and is our first and only home-grown

要在执业生涯中每向前一步都面临更多的阻力，也需付出更多的努力。”郭仕芳律师认为。

我们在郭仕芳律师的身上看到了女性特有的坚韧，因为在成为杰出女性领导者的路上，一定克服过诸多难题与挑战，甚至有时是自我怀疑：我们真的需要这么拼吗？做到工作生活平衡没有那么容易，工作生活平衡的高手，秘诀也不仅仅是对时间的高效管理。

郭仕芳律师告诉ALB，从业以来一

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\* Office of integrated alliance partner Allens

\*\* Office of formally associated firm Widyawan & Partners

\*\*\* Office of collaborative alliance partner Webber Wentzel

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## COVER STORY

female mainland Chinese partner. She has over 16 years' experience of complex financing work at Linklaters. In addition to her accomplishments in client work, she is a great mentor and coach to our people. A fantastic person with unique and outstanding capability and a positive approach to work and life, she epitomizes the intellectual quality, technical excellence, values, drive and diversity."

Beside legal work, Ji enjoys doing volunteer work for the community, supporting migrant workers' children's schools, blind children's orphanages, charities providing care and education to disadvantaged women and children and the UN Refugee Advice Centre.

# CATHERINE CHEN

Catherine Chen established her role

直师从环球律师事务所主任刘劲容律师，无论从专业技术、工作和生活态度、为人处世等方面，均受到刘律师的深远影响。“刘律师作为业内顶级律师，从业二十多年始终坚持在业务第一线，亲自处理具体工作，孜孜不倦地学习和更新专业知识。在生活上，刘律师也是极其自律的人。前辈的这些品行，都激励着我们作为后辈律师更应勤学苦练、严于律己。”

### 高美丽律师

从业17年，大成律师事务所高美丽律师履历上可圈可点之处不一而足。高美丽律师是大成总部破产重整与清算专业组负责人，也是北京破产法学会理事，积极参与破产立法理论研究，是国务院国资委《国有企业依法破产操作实务》的执笔人，承办的项目在全国具有深远影响力，部分项目被省级高院列为十大案例。同时，高美丽律师还是企业风险管理领域的创新者及专业律师，是国内最早介入企业法律风险管理业务的专业律师之一。

作为北京市青联委员，高美丽律师积极发挥带头及示范作用；作为北京市朝阳区律协女律师工作委员会副主任，高美丽律师负责专业化培训工

作，推进“法眼视界”和“法慧人生”等法律执业共同体项目建设，为女工委的专业化平台建设贡献自己的力量。

高美丽坦言，女工委的工作使得她有更多的机会与女律师及其他女性职业群体接触与合作，最大的体悟是女性在各行各业发挥着越来越重要的作用，而女性职业群体的共同话题也经常集中在家庭与事业的平衡。

“我的主要业务领域是破产重整，因破产项目涉及多方利益，矛盾集中甚至很多情况下非常尖锐，工作模式上也需要长期出差。作为一名女律师，在破产专业知识与经验之外，还需要更多的坚韧与坚持。此外，女性律师的细致以及更加审慎的风格，一定意义上也更加有利于项目的推进和对风险的把握。”

### 纪晓晖律师

年利达在过去的五年中获得大量“一带一路”倡议下重大、复杂的投融资项目委任，成为“一带一路”项目的领军律所。年利达也是唯一受邀参加2017年5月由习近平主席主持的“一带一路”国际合作高峰论坛的律师事务所，凸显了年利达在“一带一路”法律服务领域的杰出资质和贡献。



as an innovative private equity funds lawyer in a male-dominated field. She designed the structure for RMB funds that is now widely used, led the government's pilot programs on QFLP/QDII/QDLP/QDIE, and given birth to asset securitisation products.


"I started my career from setting up funds and investments. As one of the pioneering RMB funds lawyers in China, I witnessed the growth of PE funds market in China. I poured out all my passion and devotion to this field. The recognition from my clients for my work consolidated my determination and confidence to continue doing well in the future," says Chen.

Zhong Lun's capital markets practice the firm was named as one of the top PE firms by several global legal awards under Chen's co-leadership

Her career which spans 18 years made Chen a noted expert in the most complex financial and asset management dealings. In the past 12 months, she led shape an innovative equity REITs for apartments, which served as a model for rental housing asset-backed securitization in China. She advised GGV Capital on setting up funds in China, which served as a sample case for foreign venture investment institutions entering into RMB funds market. Just name a few.

"It took only less than 20 days from the day when the project got formally launched to the day when we obtained the letter of no objection issued by the Shenzhen Stock Exchange. Then, another 23 days to issue with the letter of no objection," Chen says.

"To be a good female lawyer, find your passion for this profession in the first place. It rings particularly true for non-litigation lawyers as new challenges are always out there. It is not easy to be a good non-litigation lawyer but it is very rewarding. I enjoy myself in accomplishing the work and am happy to pass the joy on to younger legal professionals by giving them advice on work and in life," Chen adds.

Chen's clients say that they rediscovered in her the natural advantages in female lawyers, such as elegance, amicability, easy-going personality, and keen eye for details. 

"年利达在'一带一路'倡议法律服务领域取得的领先优势并非偶然，在行业方面，基建、电力、油气是年利达全球范围内的传统强项，而在产品方面，年利达在项目开发和项目融资领域常年在国际法律评级机构中排名一级。'一带一路'倡议下的项目多为基建、电力、油气领域的投融资项目，正好契合了我所的强项。"年利达律师事务所合伙人纪晓晖律师向ALB表示。

纪晓晖律师作为年利达负责中资银行境外融资业务的合伙人，带领团队为中资银行和企业及外资银行提供法律服务，助力了一个又一个具有战略性影响的"一带一路"项目实现融资。

年利达项目融资的全球负责人 Stuart Salt对纪晓晖律师给出这样的评价：纪晓晖律师是年利达培养的唯一一位从见习律师一路成长为合伙人的中国大陆女性律师。在年利达的16年执业经历，纪晓晖律师向我们展示了她在复杂跨境投融资领域的过硬专业技能。此外，纪晓晖律师还是年轻律师的楷模与挚友，帮助年轻律师解决在事业、生活上遇到的各种困惑和难题。她对工作和生活的积极态度对整个团队都有着很强的感染力，用"过硬的专业技能"、"利他的价值观"、"追求卓越客户服务的动力"、"对多元文化的尊重与追求"来描述纪晓晖律师，是恰如其分的。

除了法律工作，社区服务与公益事业也是纪晓晖律师生活中重要的一部分。民工子女学校的义务助教；盲童孤儿院孩子们的读书和演出活动；弱势群体/女性群体生活和教育改善项目；联合国难民救助行动等——她以自己的方式尽着自己的微薄之力。

#### 陈芳律师

中伦律师事务所陈芳律师在业内深耕多年，在私募基金领域具有相当的权威地位，也是目前市场上很多开创性首单或目前已广泛被采用的人民币基金结构、资产证券化产品的设计者。陈芳律师尤为擅长处理各类复杂跨境基金事务，特别是涉及各类全国性或地方性创新试点项目（如QFLP、QDII、QDLP、QDIE等）。

"基金设立与投资是我在律师行业立身的主要领域，作为国内最早一批从事人民币基金法律服务的中国律师，我也一同见证着中国私募基金市场的发展与壮大。可以说，对这一领域的


业务是倾注个人感情最深的，也正是因为首先在这一领域得到了市场和客户的认可，才能让我更有信心在这个行业内为中国的私募基金市场的发展贡献绵薄之力。"陈芳律师谈到。

作为中伦律师事务所资本市场部联席负责人，陈芳律师牵头领导中伦的投资基金业务，中伦也连续多年被各类权威评级机构评为私募基金领域的顶尖律所。

陈芳律师执业18年，为境内外诸多顶级私募基金管理人或专业机构投资者提供涉及各类投资工具的结构设计、设立、投资、架构重组及运营等多方位的法律服务，曾参与数百支不同种类基金和金融机构资产管理计划的设立或投资，覆盖包括医疗健康与生命科学、房地产、通讯、互联网金融、信息计划、旅游、能源等众多领域，并涉及各类具有复杂度高、专业化水平强等特征的金融及资管产品。

仅在过去的12个月中，陈芳律师带领团队就完成了诸多"首单"和"典型案例"。比如首单长租公寓类REITs的成功发行，架构上实现诸多创新，为国内住房租赁市场开展资产证券化和REITs的全面启动起到重要示范作用。"该项目正式立项到取得深圳证交所的无异议函只用了不到20天的时间，拿到无异议函后，发行用了不到23天。"陈芳律师告诉ALB。又比如，帮助全球顶尖风险投资机构GGV Capital（纪源资本）发起设立人民币金设立及持续合规运营提供法律服务，该项目成为外资风投机构踏入人民币基金领域的典型案例。

"我觉得成为一名优秀女律师，最重要的是对法律事业发自内心的热爱，尤其对从事非诉业务的律师而言——挑战常在、做起来也会很辛苦，但确是一个能带来极大成就感和幸福感的职业。我个人非常享受这个过程，也希望将工作中体会到的这种幸福传递给新一代法律年轻人，在专业技能上无保留地传帮带、在执业规划上积极给予他们建议。"陈芳律师说到。

陈芳律师的"客户背书"无一例外含如下关键词：优秀敬业、专业高效、极高商业素养、丰富财务知识（陈芳律师持有注册会计师资格）、高度责任心、极强亲和力、经验丰富……在陈芳律师身上，我们看到了"女律师"这个群体具备的与生俱来的性格魅力和自身优势——优雅、有亲和力、贴心细致。 

# FINTECH NATION

## 中国： 领跑金融科技

With the financial technology scene exploding in China, lawyers in the country are finding their hands full with an increase in related legal work.

金融科技在中国风生水起，金融科技类案件呈激增势头，中国的金融科技律师们开始应接不暇。

By Ines Yang

China is poised to leapfrog developed nations and is emerging as the world's fintech market leader, as evidenced by the spectacular growth in its fintech investments. Numbers speak for themselves—by the end of 2017, China boasts of 164 unicorns with a total estimated value of \$628.4 billion. The top 14 are all super unicorns, most of which are fintech unicorns.

2018 is also a blockbuster year for Chinese “unicorns” or billion dollar companies as they invade U.S. and Hong Kong capital markets for IPOs.

Digital economy is a buzzword that fuels China's economy since 2016 and saw the birth of many Chinese unicorns. The market is also bolstered by large government support for innovation.

For Chinese fintech unicorns, opportunities abound amidst challenges. Cybersecurity and data compliance have never been more important.

King & Wood Mallesons is one of the earliest firms that focuses on cybersecurity and data compliance, and has the largest team in this regard.

“The beginning is always the hardest. When data becomes their core asset, the priority alternates to the realisation of digital asset value. We, as lawyers, have the responsibility to assist our clients to realize the value of their data asset. Simply put, compliance creates

value. If the former data has flaws, the asset has flaws accordingly, the business model will lose a solid foundation and all will go down in no time," says Susan Ning, senior partner of King & Wood Mallesons.

For Fintech unicorns, they must refresh their notion about the role of compliance it plays to the key success of their business and stops putting compliance in the back burner like the prevailing practice most companies adopt. "It is also important to understand that the flexibility of digital commercialisation will be key to the extent their success which they would like to attain," Susan Ning adds.

"Sometimes we were even involved in their IPO negotiations as compliance is indispensable to a successful IPO," says Leon Liu, partner of MWE China Law Offices.

"Fintech unicorns tend to have legal service demands primarily in four segments: regulatory advice, capital markets & IPO, M&A and IP. Regulatory advice tops the list as the financial industry has always been heavily regulated," says Fang Liu, partner of Clifford Chance.

"Their legal demands will also involve cross-border data transfer, data security and information management, data breach crisis management, etc. Once crisis happens, they will be doomed," says Leon Liu.

## THE FUTURE IS HERE

Fintech firms might touch many sectors like internet finance, consumer lending, investments, funding, etc. They collect data generated from each sector respectively and these collected data will be like an "isolated data island". That would be non-compliant if those fintech unicorns break this "isolation" to present a digital profile or a credit report for users in the form of data marketing as the use of data in the first place is not authorised by users.

But seeing in a long-term, those fintech companies need to capitalise

on these data by establishing connection of them. It is the responsibility of lawyers to help design the model thus justifying the connections between these data. This is to ensure the sufficient flexibility of commercialising digital data assets in the future.

According to Susan Ning, fintech unicorns represent a future of the economy. The performance of the economy depends on how compliant their digital assets are, and the way of commercialising their digital assets.

"The future is here. Data is undoubtedly the core and soul of the future economy. We need to foresee the future of commercialising digital assets and before that, we help fintech clients with a proper business model. Based on the authorised data, we help them identify the scope of the authorisation and justify the utilization accordingly," Susan Ning says.

Susan Ning told ALB that, there are quite a few law firms in China that can help fintech clients readjusting their business mode in accordance with data compliance. Many firms in this practice still need sufficient understanding of data economy. KWM is a leading law firm with a global vision that enables it to provide the best solution, with a systematic and multi-dimensional approach, that is in line with the economic trends and legislative developments.

Another key issue for commercialising data assets is to explore new

■中国在金融科技领域弯道超车，成就瞩目，正在成为全球金融科技的领军者。几组数字是最好的例证：截止2017年底，中国共有164家独角兽企业，总估值6284亿美元，排名前14的独角兽企业估值均超过80亿美元，其中金融科技又是诞生独角兽最多的‘赛道’。

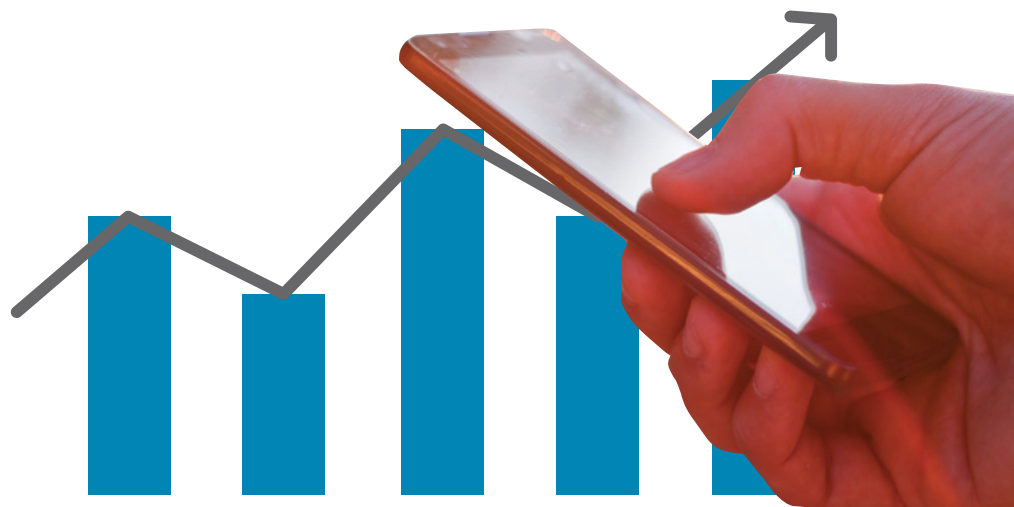
2018年也是金融科技企业大举进军资本市场的一年：很多独角兽企业选择到美国和香港上市。

2016年开始，数字经济开始助推中国经济，也催生了中国的独角兽企业，背后自然离不开政府对创新的鼎力支持。但对金融科技独角兽来说，这个时代充满机遇也不乏诸多挑战，网络安全与数据合规就被摆到了前所未有的重要位置。

金杜是中国最早专注于网络安全与数据合规的业务律师事务所之一，也是目前国内最大网络安全和数据合规专业团队。金杜律师事务所高级合伙人宁宣凤律师谈到，“筚路蓝缕，以启山林！当数据成为其核心资产，关键就是要实现数据资产变现。我们作为专业律师，有一种天然而生的使命感，协助客户实现数据资产的价值，让合规工作创造价值”。

针对金融科技独角兽企业，宁宣凤律师特别提到，“如果前端数据获取存在瑕疵，资产就有瑕疵，商业模式未来就会面临崩塌。对于这些企业来说，一要颠覆对未来发展的认知，认识到自身与传统企业的区别，不能边做边合规；二要预见到数据商业化的弹性将是他们未来发展道路有多宽的一个重要评判标准”。

“我们现在也常常介入到企业的上市谈判中，这就是合规发出来的扩张性工作。”元达律师事务所合伙人刘晨光提



# FINTECH UNICORNS

markets. For fintech unicorns, technology serves as a tool, finance is just a form, data is their asset, so when all sizable data building up together into something bigger that would be revolutionary--Data defines all, or rather, new markets are data-oriented, Susan Ning emphasized.

"Fintech unicorns enjoy high-profit margins, fast growth rate, and make a significant impact. Their innovative business model and their products rely on the so-called ABC. A stands for Artificial Intelligence, B stands for Big Data, and C stands for Cloud computing. Data is essential to develop ABC," Leon Liu pointed out.

"Presently, the fintech market is growing at a very fast pace and the regulators have to strike a balance between the risk management and potential benefits of fintech development, so this can play a role ultimately in supporting the real economy. After China's P2P industry exposed huge risks in the country, the CBRC has tightened its supervision. But only those who are not compliant are now out of the market. Overall speaking, the development of the entire fintech industry is very promising in China, although in the short term, the Chinese regulatory authorities seem to be quite selective in issuing relevant licenses for fintech businesses such as the Internet banking, also known as virtual banking licenses in Hong Kong." Fang Liu pointed out.

According to Hong Kong Monetary Authority, it has received a total of 29 applications for the virtual bank licenses by the end of August this year, including Tencent, Ant Financial, JD finance, Xiaomi finance, Pingan Insurance, etc. Hong Kong has played supportive role for the development of fintech by encouraging more fintech firms to set up virtual banks in Hong Kong.

Fang Liu told ALB that Clifford Chance is one of the few law firms which can assist fintech clients with applying for their virtual bank licenses in Hong Kong.

Will this Hong Kong policy lessen the interest in fintech unicorns to the

mainland market?

Susan Ning says, "What the market could offer to enterprises is the key. The Hong Kong policy will only help the development of Chinese mainland fintech companies as most of them are no longer rooted in one place. They are more likely to do their technology research, fund setting-up, IPO in different places but their product will be in China as China has the biggest market. The more advanced the finance infrastructure in those markets is, more favourable to the development of Chinese mainland fintech companies."

When it comes to the number of fintech unicorns, China is not equal to the U.S., but when it comes to the estimated value, China is twice than that of the U.S. China is emerging as a kingdom of fintech unicorns, although there is much more for China to bridge the gap such as the maturity of financial market, the variety of derivatives, the stability and flexibility of the market, and technology.

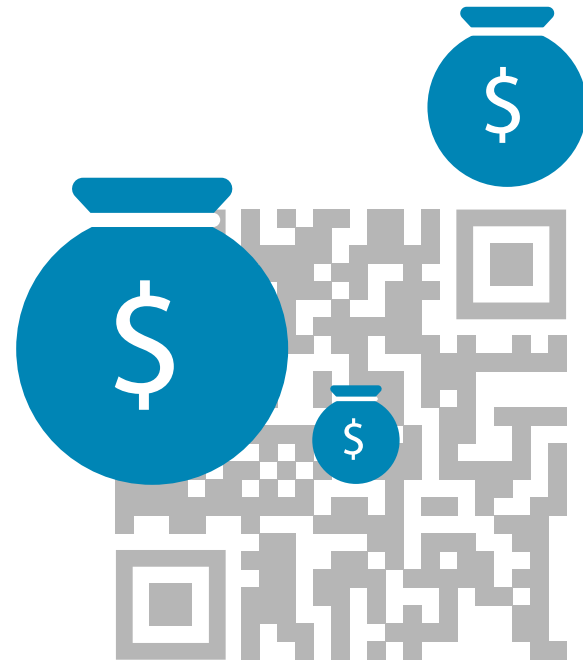
"China has a fertile ground for innovation in fintech as the government is very supportive to the development of innovative technologies like AI and Blockchain, and China's digital infrastructure and big data is quite leading in the world, all these, in turn, are favourable for better and fast development of new technology in China. Many fintech unicorns are calling China home as everything here is fintech-friendly then they can be better prepared to extend their global reach," Susan Ning points out.

"Many fintech unicorns are still focused on the domestic market. With their accelerated expansion into Europe, these fintech unicorns will be increasingly exposed to GDPR regulation," Fang Liu adds.

## OPPORTUNITY IN DISGUISE

Fintech clients took up 20-30 percent of KWM's cybersecurity and data compliance work. The number of fintech clients reached more than 25 in 2018.

"There are increasing numbers of fintech firms realizing they couldn't do



及。

"总的来说，金融科技独角兽企业的法律需求集中在四个方面：企业合规、资本市场和上市、并购和知识产权。其中，监管是重中之重，因为金融行业历来受到严格监管。"高伟绅律师事务所合伙人方刘指出。

"分得再细一些，他们的法律需求还涉及数据跨境传输、数据安全与信息治理、数据泄露危机管理等。一旦重大危机事件发生，便是生死问题。"刘晨光律师补充道。

## 未来已来

金融科技独角兽企业一般涉及多个应用场景：互联网金融、征信、消费贷款、投融资等等。每个场景下，每个产品收集上来的个人数据可能形成“数据孤岛”。倘若企业贸然打通，形成比较完整的数据画像来做数据营销或者信用报告是不合规的，因为未经用户授权。

但从未来来看，金融科技企业需要将这些数据变成打通的资产为其所用。律师的角色正在于帮助企业前期设计好这个模式，从而在产品层面形成一个合理性、在用户层面形成一个必要性，确保企业数据资产商业化保有足够弹性。

在宁宣凤律师看来，金融科技代表整个经济的未来，整个行业能走多远取决于数据资产的合规性、变现渠道和方式，“未来已来，毫无疑问的是，数据是未来经济的核心和灵魂。我们需要看到数据变现的未来，帮助企业调整好商业模式，同时基于获得经授权的数据，帮助企业判断授权范围、并在授权与产品之间建立必要性联系。”

without cybersecurity and data compliance. This is tough because data compliance in fintech is new to us too. In the meantime, this also presents opportunities. We help them with both the current compliance issues as well as correcting previous non-compliant issues,” Susan Ning says.

Given the fintech regulatory landscape is not entirely clear in China, it is not surprising that this poses many challenges for law firms.

As one of the leading law firms on data compliance, what KWM provides is to do a “compliance health check” for their fintech clients. Comparing to the earlier face-to-face talk with clients, by teaming up with KWM’s legal tech incubator Legal Miner, one of the pioneering legal analytics and intelligent search services in China, this ‘compliance health check’ is using technology-based solutions that incorporate big data and AI turned out to be much more efficient and effective by producing a score of risk analysis. KWM also work with many legal tech providers to offer the best solution that guarantees it is technologically feasible, commercially wise, and legally compliant.

MWE China is the first law firm in China that explored digital solutions in legal service with an emphasis on digital evidence analysis. The firm is well prepared in digital legal service by entering an alliance with McDermott & Will & Emery to provide Data Due Diligence (DDD) by the new hires of technology consultant, by establishing strategic cooperation with BAT-alike companies to share the pool of technology, product, standard, models, etc.

“The most challenging issue is to provide a feasible solution that combines compliance advice, commercial insight, and technology consultancy,” says Leon Liu.

“Chinese companies were not attaching importance to compliance in the past decades but now the change is happening as there are increasingly Chinese fintech firms going global and their legal demands for data compliance

据宁宣凤律师介绍，目前国内能够帮助客户调整商业模式、实现数据合规的律所很少，多数律所缺乏对数据经济前瞻性的判断。金杜是国内顶尖的具有全球化视野，能够为客户提供多维度、体系化、符合未来经济发展趋势和立法趋势的数据合规法律服务的律所。

数据未来商业化很重要的一点还在于：发现新的市场。对于金融科技企业来说，技术是工具、金融是形式、资产是数据——当所有大体量数据结合形成新的势能后，未来将是“数据定义一切”或者说“新的市场需求将源于数据指向”，宁宣凤律师指出。

“金融科技企业利润率高、发展速度快、影响力全面，新兴的商业模式与产品都依赖于ABC技术（A代表人工智能、B代表大数据、C代表云计算），这些技术的核心是数据。”刘晨光律师指出。

“当下，金融科技市场发展太快，以致于监管机构不得不在鼓励发展与管控风险中间找取平衡，最终起到支持实体经济的作用。我国P2P行业在经历‘暴雷’及暴露出巨大风险后，银监会的监管更趋严格，但真正从市场出局的仅是那些不合规企业。总体来看，金融科技整个行业的发展空间在中国是非常被看好的，尽管短期来看，中国的监管机构似乎在选择性地颁发金融科技业务的相关许可证，例如互联网银行牌照，类似的在香港是虚拟银行牌照。”方刘律师指出。

另据香港金管局数据，截至8月31日已收到29家机构递交虚拟银行牌照申请，其中包括腾讯、蚂蚁金服、京东金融、小米金融、中国平安等。香港近年来加快金融科技发展步伐，鼓励设立虚拟银行，引进内地金融科技力量。据方刘律师介绍，高伟绅是为数不多的、可为金融科技企业在香港申请虚拟牌照提供法律服务的律所之一。

香港此举会否削弱中国内地对金融科技独角兽的吸引力？

对于这个问题，宁宣凤律师认为“市场对企业的吸引力才是最根本、最重要也是最突出的，金融科技行业更是如此，用户永远是兵家必争之地。香港此举只会催化内地金融科技企业的发展，因为大部分金融科技企业的发展都不再局限于‘一城一池’：技术开发、设立基金、上市融资等业务可能分散在世界各地，但最终产品一定会落地中国，因为中国有最大的用户市场。所以中国周边国家和地区提供的这种融资环境和渠道反而会促进扎根中国内地的金融科技企业的

快速成长。”

总体看，中国金融科技独角兽在数量上虽然略逊于美国，但估值上却是美国的3倍，中国正成为金融科技独角兽大国，但无论从金融行业的成熟度、衍生品的多样性、市场的灵活度和稳定度、还是金融科技技术层面本身，中美仍存在不小差距。

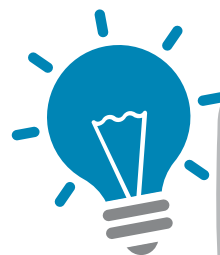
“中国有比美国金融科技企业发展更好的土壤，一方面国家层面大力支持人工智能、区块链等新技术发展，另一方面大数据和数字化基础设施又反哺这些新技术在中国更好更快地发展，这也使新型共享企业在中国的落地速度很快，从而助力这些企业更有底气去做全球布局。”宁宣凤律师告诉ALB。

“现阶段，中国金融科技企业的发展重点仍放在国内市场，随着未来几年业务逐步渗透至欧洲，中国企业也必将在更广及更大程度上受制于GDPR规制。”方刘律师指出。

## 是难点，也是入口

金融科技企业目前至少占到金杜律师事务所整个网络安全与数据合规业务的20%-30%，2018年数量超过25个。“越来越多的金融科技企业已意识到网络安全与数据合规是他们无法躲避的一条路，这既是数据合规律师工作的难点，也是一个入口——一方面我们帮助企业做好现在的合规，另一方面也对其之前的存量瑕疵数据做‘亡羊补牢’，”宁宣凤律师告诉ALB。

受访的三位合伙人亦均表示，金融科技行业发展太快、中国在这方面的监管和立法又尚未完善，这为法律工作者在为这些以数据为生产力、以数据安全为生命线的企业提供法律服务时，提出了不小挑战。



is a 'new normal'. Another change happened is in the scope of the application of laws. No matter how sophisticated a litigation is, it would cover multiple jurisdictions at most. While in the case of data compliance, it is global in nature. Therefore it is a must for law firms with global vision, global expertise and global resources," says Leon Liu.

It is an irresistible trend for data flow on a global level but in the meantime, the legislations in this regard are conflicting with one another. The challenges for data compliance lawyers are to provide legal service with a global vision to take all involved jurisdictions into consideration and help fintech firms to design their cross-border data flow against a global context.

"KWM provides one-stop solution that unites our global network. We help our fintech clients to avoid any impacts when conflicting legislations in multiple jurisdictions would disrupt their data flow and their business models by giving them a comprehensive advice from both perspectives of legal and business. One-stop service under one roof by the firm proved to be most effective as our team treat the issues at par and provides professional approach," Susan Ning says.

"We help clients do calculations of the risks and potential benefits and help them manage to achieve their success by taking calculated risks, kind of like walking on a tightrope but never falling off. Although the fintech regulatory landscape in China is developing, this offers us great opportunities to witness the development in the sector. These insights will in turn allow us to better serve fintech companies," Fang Liu says.

"Clifford Chance is well positioned to meet the needs of fintech unicorns as we are traditionally strong in serving financial institutions and we have one of the broadest practices of any international firm in Mainland China that covers all their legal demands in their development," Fang Liu adds. 



作为数据合规的领先律所，金杜通过为企业做“合规体检”来协助客户快速、有效的实现数据合规。相比于传统的“体检”方式，金杜创造性地借助技术的力量来帮助企业“查缺补漏”，达到商业利益和法律合规的完美平衡。金杜孵化的法律科技公司理脉，是中国法律研究与分析及数据可视化领域的先锋，早已在业界名声鹊起。理脉通过智能评估方式对企业进行初步评分和风险提示，能更好使企业从宏观和客观角度了解自身合规整体状况以及存在的重大隐患。此外金杜还与多家技术服务提供商展开合作，为客户提供技术上可行，商业上合理及合规上可控的解决方案。

作为数字证据分析方面的领先律师事务所，元达是中国首批专注于运用数字信息工具解决法律问题的。元达目前在数据方面的法律服务布局已经完成，通过与McDermott Will & Emery建立战略联盟提供DDD（数据合规尽调）、招聘技术顾问、与BAT类的公司合作或签约战略合作，共享技术、产品、标准、模板等等。

“服务金融科技企业的难点在于要提供‘合规+商业+技术’并能落地的整体解决方案。”刘晨光律师指出。


“中国企业过去很多年合规工作相对滞后，但现在欣喜看到：以金融科技企业为代表的新兴企业在数据合规方面已经走向全球市场，他们产生了批量化的、稳定的数据合规法律需求。在法律适用层面的变化是：以往再复杂的诉讼，至多同时涉及几个法域，但数据合规很不一样：一定要由全球视野、全球

经验、全球资源的律所来提供服务。在这样一个全球背景下，被摆到一个前所未有的重要程度。”刘晨光律师指出。

数据全球化流通是不可阻挡的趋势，很多司法辖区关于网络安全与数据合规的法律本身是有冲突的。作为数据合规律师来说，不能仅仅提供局限于单个司法辖区的服务，应结合多个司法辖区的网络安全数据合规要求，从全球高度给企业设计数据全球跨境流通的顶层设计。

“金杜在这方面提供的是全球一体化服务，我们从商业、模式、法律等多维度去帮助企业避免现有法律冲突对其实际数据流通与商业模式造成巨大影响，也减少因每个人看问题不同的角度与高度带来的沟通成本问题。”宁宣凤律师介绍说。

“我们帮助企业进行风险评级，不固步自封也不铤而走险，就像在高空走钢丝绳，存在一定风险，但这些风险均经过了前期审慎权衡与测算。正是由于目前中国金融科技行业的立法处于‘发展中’状态，给律师提供了机会参与和见证相关立法从无到有、不断完善的发展进程，这使我们能从宏观视角更好地服务金融科技企业。”方刘律师谈到。

“高伟绅在为金融科技独角兽提供法律服务方面具备独特优势，借助我们服务传统金融机构的悠久传统和丰厚经验，以及我们在中国大陆的广泛执业能力，我们可为金融科技独角兽企业提供一站式服务，覆盖他们的全部法律的需求。”方刘律师告诉ALB。 



## 安理律师事务所 ANLI PARTNERS

# 网贷行业资产端的红线在哪里？



郭君磊  
北京安理律师事务所 高级合伙人

郭君磊律师现为北京市安理律师事务所合伙人，主要执业领域为科技、媒体与电信，私募股权与互联网金融，现任北京市律师协会风险投资与私募股权法律专业委员会委员，曾获得“2016年度LEGAL BAND中国十佳互联网金融律师”荣誉。

今年6月份以来，互联网借贷（业内称“P2P”）行业危机集中爆发，据统计，6、7月份平均每天都有多家P2P平台发布清盘公告，甚至不少还是规模较大的头部平台。如此大规模的危机，导致全行业人人自危，投资人信心亦降至冰点。作为从事互联网金融法律服务多年的法律工作者，本人在此轮行业危机中对若干家宣布清盘的互联网金融平台有过深度接触和了解，总结起来，此次行业危机的集中爆发，固然与P2P行业的互联网风险传导的特性有关，但是根本问题还是在资产端，诸如借款主体真实性、借款用途的真实性，以及借款项目的合法性等。

对照来看，经历本次行业危机后的排名靠前的平台，无一不展示了其资产端风控的卓越能力。每家成功的平台各自有其不同的资产风控模型，风控模型的选择从来都是创业者的主场，作为一名业内律师，从法律的角度阐明与资产有关的哪些红线不能碰，就资产端的风控模型的搭建而言是一件非常有意义的事情。

### 资产端不能直接从线下搬到线上

某些P2P平台其实并不真正清楚互联网借贷的业务逻辑，只是冠以“互联网+”的噱头，其目的仅仅是从线上获取资金，即把P2P平台作为非法获取资金的一种工具而已。以某车贷平台为例，其业务操作模式为：以某融资租赁公司为主体，在线下与借款人签署售后回租合同，然而该融资租赁公司在签署合同后并不直接提供资金，而是引导借款人在其指定的P2P平台上注册，并在融资租赁合同中约定资金来源于该指定的P2P平台。该业务模式中资产端的获取、风控等均在线下进行，线上只是资金来源渠道而已。从法律上讲，此等业务逻辑直接违反了《网络借贷信息中介机构业务活动管理暂行办法》第十六条不得线下经营的规定。资产端极度依赖线下，一方面极易伴生暴力催收、违法催收的问题；另一方面，会极大的拉升P2P平台的运营成本，反映在借款端必然就是突破法律规定的畸高利率。

### 资产端不能来自于关联方

曾经有一段时期，不少P2P平台在介绍中着重点出控股股东为上市公司或者某大型企业集团，以此为平台做信用背书，以吸引投资用户。其实，此次爆雷潮中不少平台背后或明或暗的与境内外的上市公司，甚至不乏一些“国资”企业。这里面反映的问题在于，凡是从事实业的公司触网设立P2P平台，多半都有为了给自己控制其他业务输血的目的，而且接受输血的业务大多数是因为无法从持牌金融机构获取资金，风险极高甚至已经出现亏空。已经公开的爆雷平台中，

为数不少是为实际控制人控制的其他关联方融资导致平台大面积逾期。总结这些因涉及关联方融资而导致逾期的平台，会发现一个共同点：凡是为关联方融资的平台，其资产端的借款人大部分为公司而非个人。

### 资产端不能是机构债权或收益权的转让

在《P2P网络借贷风险专项整治工作领导小组关于做好P2P网络借贷风险专项整治整改验收工作的通知》（网贷网贷整治办函〔2017〕57号）出台之前，业界对于资产端的债权转让模式一直存在争议，因而不少P2P平台对接的资产为小贷公司的债权转让，融资租赁公司的债权转让或者收益权转让。其实，前述债权转让类资产的业务实质是没有破产隔离和增信机制的低端“资产证券化”，风险极大，P2P平台根本没有能力对全部基础债权的真实性、合法性进行必要和审慎的调查，也无力进行真实、全面、准确的信息披露。

### 资产端的风控不能依赖保证金

曾经在一段较长的时期内，P2P平台依赖于以自有资金或者向借款人收取的一定比例的费用来覆盖平台的坏账，各平台对该等费用的称谓花样繁多，名称各异，有的称之为“风险备用金”，有的称之为“保证金”，有的称之为“风险缓释金”，但是其背后的逻辑是一致的，就是试图以高于坏账率的保证金来覆盖平台坏账，在功能上类似于银行业的风险拨备。但是进一步深究一下，就会发现该做法与平台信息中介的定位是有冲突的：既然平台的定位是信息中介，自然就不能采用银行等信用中介风险拨备的做法。其实，P2P平台真正的竞争力是以算法逻辑为基础的大数据风控技术。从这个意义上讲，一家P2P平台的实力并不在于规模做的多大，有多少注册借款用户；反而在于通过大数据风控技术拒绝了多少借款人的借款申请。

从某种角度来讲，本轮网贷行业的市场出清是一件好事情，它预示着网贷行业竞争已经到了下半场。各家平台拼的不再是高大上的股东背景，也不是光彩亮丽的风险投资人，更不是必备的资金存管银行，而是资产端的大数据风控能力。可以说，未来资产端大数据风控能力的执牛耳者，才是这个行业的胜利者。

## RISE OF THE BIG FOUR

# THE BIG FOUR ARE AT THE DOOR

## “四大”进军法律业

In the past six months, accounting firms have begun to make their presence felt in the legal markets of Hong Kong and Singapore offices with a flurry of office openings and poaching of talent. And while the general feeling is that they might take away some legal work from traditional law firms, not all lawyers are nervous.

过去的六个月中，会计师事务所开始进军香港和新加坡的法律市场，在这两地开设了多家办事处并挖角人才。虽然普遍认为会计师事务所可能会从传统的律所手中分流一些法律业务，但并非所有的律师都对此感到紧张。

By Elizabeth Beattie

***'Law firms will have to re-think their business models and the question they will have to ask is this: What's my real value-add to the client? Clients are much more sophisticated these days and for the more routine transactions, they will no longer pay for the 'best' when 'good enough' can get the job done.'***

***'律所将不得不重新思考它们的商业模式，并且不得不弄清楚其究竟能带给客户哪些真正的附加价值。今天的客户已经非常老练，当'够好'的律所就可以完成常规性的业务时，客户不会花钱聘请'最好'的律所。'***

—Stefanie Yuen Thio, TSMP Law Corporation  
Stefanie Yuen Thio, 義正律师事务所

A decade ago, they were but a speck on the horizon, faraway bogeyman causing lawyers to feel a bit uneasy. Years ago, they were making inroads into Asia's smaller markets, testing the waters, so to speak. And as of summer 2018, accounting firms are officially here, competing toe-to-toe with traditional firms in the region's biggest markets for a share of work. The looming threat that kept some law firms awake at night is real; now how will lawyers respond?

Accounting's Big Four, namely Deloitte, KPMG, PwC and EY now possess the expertise to compete alongside well-established traditional legal practices and the resources to leave less adaptable outfits in the dust. With access to technology and mighty funds at their disposal to innovate, these professional service firms are equipped with an enviable range of tools and the power to reshape the future of key legal markets such as Hong Kong and Singapore.

And while their ambitions have never been in doubt, it is the speed and profile of their recent hires in Asia's two main hubs that have really shaken up the market. Last year, PwC launched a new firm in Hong Kong, Tiang & Co. Since then, it has lured over King & Wood Mallesons partner Martyn Huckerby, Mayer Brown JSM's corporate practice head Martin Robertson, Jones Day

partner Michelle Taylor and O'Melveny & Myers partner Gigi Woo. In Singapore, Rachel Eng, deputy chair and a capital markets stalwart at WongPartnership, departed to set up a local law practice for PwC.

EY has not been far behind. In July, it added Singapore's Atlas Asia Law Corporation, established by former Dentons Rodyk & Davidson senior partner Evelyn Ang, to its network. In Hong Kong, where EY operates as LC Lawyers (Lin & Associates), the professional services firm snapped up six lawyers from Troutman Sanders' recently closed Asia offices, including Rossana Chu, who joined as co-managing partner. Finally, Deloitte became the latest Big Four professional services firms to declare its ambitions in Singapore's legal space after launching a foreign law practice, Deloitte Legal International.

#### CLIENT DEMANDS

Dmitry Tetiouchev, EY Asia-Pacific Law Leader says that the Big Four's expansion is "very much driven by client demands." And as traditional firms expand their service offerings to combat the Big Four's push into the legal market, Tetiouchev predicts "this will all lead to increased competition, which is good for the clients."

A key attraction for clients opting to

十年前，它们还只是地平线上的一个小点，是远方的一种怪物，让律师们略感不安。几年前，它们开始试水进军亚洲较小的法律市场。而到了2018年的夏天，会计师事务所正式进军法律市场，在亚洲最大的市场上与传统的律所正面遭遇，竞争法律业务机会。可以说，迫使一些律所寝食难安的竞争威胁是真实存在的，那么现在律师们又会如何回应呢？

四大会计师事务所，即德勤，毕马威，普华永道和安永，现在拥有与老牌律所并驾齐驱的专业技能和能让适应性较弱的律所败下阵来的资源。这些专业服务机构拥有先进的科技和强大的资金来进行创新，配备了令人羡慕的全套工具，也具备重塑香港和新加坡等主要法律市场未来走向的力量。

虽然从未有人怀疑过“四大”进军法律市场的雄心，它们最近在亚洲两个主要市场上招兵买马的速度以及所聘人员的知名度还是震撼了市场。去年，普华永道在香港成立了一家新律所，即程伟宾律师事务所。此后，该所已经将原金杜律师事务所合伙人Martyn Huckerby，原孖士打律师行企业业务负责人Martin Robertson，原众达律师事务所合伙人Michelle Taylor和原美迈斯律师事务所合伙人胡洁贞收入麾下。新加坡方面，原王律师事务所副主席和资本市场资深律师翁晔毅也离开该所以助力普华永道在新加坡开设律所。

安永也不甘人后。7月，它将由前Dentons Rodyk & Davidson高级合伙人Evelyn Ang建立的新加坡Atlas Asia Law Corporation纳入网络。安永在香港的法律业务由林朱律师事务所开展，这家专业服务机构从长盛律师事务所近期关闭的亚洲办事处挖来了六名律师，包括担任联席管理合伙人的朱静文律师。同时，德勤成为最新一家表明其在新加坡法律市场雄心壮志的“四大”，启动了Deloitte Legal International开展外国法律业务。

#### 客户需求

安永亚太区法律负责人Dmitry Tetiouchev表示，四大在法律市场上的扩张“主要是受客户需求的推动”。随着传统律所扩大服务范围以抗衡“四大”进军法律市场，Tetiouchev预测“这将导致竞争加剧，对客户当然是有利的。”

Tetiouchev补充道，吸引客户选择安永这样的专业服务机构的一个重要原因是能够获得全球各地专家的服务。“较小的独立律所没有这种优势，”他说。“因此，我们的优势不仅仅是能提供附加服

# RISE OF THE BIG FOUR

use a professional service firm like EY, Tetiouchev adds, is access to a global community of experts. "Smaller independent firms will not enjoy such an advantage," he says. So, it is not only about providing add-on services; it is the way we are able to seamlessly deliver advice on our client's projects beyond legal aspects that truly differentiates us."

Rashed Idrees, managing director of Deloitte Legal International in Singapore, also views the connection to a global network and well-rounded service offerings as key for serving today's clients.

"Deloitte Legal complements Deloitte's multidisciplinary service capabilities (audit & assurance, tax & legal, consulting, financial advisory, and risk advisory); and together with our strong consulting advisory base; these are key service offerings that differentiate us from our competitors," he says.

"In today's increasingly borderless economies, multidisciplinary services seem to be well appreciated by clients that are looking for cost efficiencies, which in turn may make the regional legal market, as a whole, more competitive," Idrees adds.

One obvious advantage is the Big Four's mighty investment in technology. Deloitte launched its global multidisciplinary offering Legal Management

Consulting (LMC) in January this year, while EY has made a global investment of \$1 billion in tech solutions across the business, and recently acquired managed services firm EY Riverview Law.

Idrees says the legal world is transforming as demand for technology-enabled solutions grows. "We like to think that Deloitte has been at the forefront of this change advising our clients on the challenges and opportunities offered by what is seen as the fourth industrial revolution," he says, explaining that the technology-enabled legal solutions the team offers to clients allows them to be more efficient and offer the business intelligence "we understand our clients are looking for."

Tetiouchev agrees: "Technology is an area that professional services firms need to constantly keep an eye on. Previous ways of working are no longer sustainable. Clients are looking for solutions that reduce their risk, are easier to administer, efficient and cost-effective. The teams that deliver multidisciplinary solutions enabled by technology will be the winners in the long run."

## ADAPTATION IS KEY

Much of the predicament that lawyers today find themselves in might just be their own fault. Stefanie Yuen Thio, joint

partner at Deloitte Legal International, says. "We can provide our clients with a seamless transition from traditional legal services to a more integrated approach, which is what they need today." "We can provide our clients with a seamless transition from traditional legal services to a more integrated approach, which is what they need today."

Deloitte Legal International驻新加坡的董事总经理Rashed Idrees也认为，拥有全球网络和能提供全方位的产品是服务当今客户的关键所在。

"Deloitte Legal补充了德勤在多个领域的服务专长，如审计与鉴证、税务与法律、咨询、财务咨询和风险咨询等。加之我们强大的咨询业务根基，这些是使我们与竞争对手区别开来的关键服务内容，"他说。

"在当今国界日益模糊的经济环境中，综合性服务似乎更受到寻求高性价比服务的客户的青睐，这反过来可能使亚洲的法律市场在整体上更具竞争力，"Idrees补充说。

"四大"在科技方面的巨额投资是其较之律所的一大显著优势。德勤于今年1月上线了Legal Management Consulting (LMC)，其全球综合性法律服务。安永则在全球范围内投入10亿美元，为各大业务领域开发技术解决方案，最近还收购了托管服务提供商EY Riverview Law。

Idrees表示，随着对由科技支持的解决方案的需求日益增长，法律世界正在发生变化。"我们相信德勤一直站在这一变革的最前沿，为我们的客户提供咨询服务，以便它们应对和抓住所谓第四次工业革命带来的挑战和机遇，"他说。他进一步解释到，其团队向客户提供的由科技支持的法律解决方案能帮助客户提高效率，并让德勤提供"我们认为客户所需的"商业情报信息。

Tetiouchev对此表示赞同："科技是专业服务机构需要不断关注的领域。这是因为以前的工作方式已经不再可持续了。客户想要的是能够降低风险、更易于管理，高效且性价比高的解决方案。从长远来看，能提供由技术支持的综合性解决方案的团队将成为赢家。"

## 适应是关键

面临如今所处的困境，律师们可能只能怪自己。新加坡精品律所正义律师事务所的联席管理合伙人Stefanie Yuen Thio认为，过去一些特定律所的"不良记录"是加剧法律行业目前面临的挑战的一大原因。

"长期以来，律师是一个稳定的职业。国际律所向它们的大型公司客户收取的每小时费用可谓天文数字，这给我们带来了坏名声，"她说。

"律所将不得不重新思考它们的商业模式，并且不得不弄清楚其究竟能带给客

***'Technology is an area that professional services firms need to constantly keep an eye on. Previous ways of working are no longer sustainable. Clients are looking for solutions that reduce their risk, are easier to administer, efficient and cost-effective. The teams that deliver multidisciplinary solutions enabled by technology will be the winners in the long run.'***

***‘科技是专业服务机构需要不断关注的领域。这是因为以前的工作方式已经不再可持续了。客户想要的是能够降低风险、更易于管理，高效且性价比高的解决方案。从长远来看，能提供由技术支持的综合性解决方案的团队将成为赢家。’***

—Dmitry Tetiouchev, EY  
Dmitry Tetiouchev, 安永会计师事务所

户哪些真正的附加价值。今天的客户已经非常老练，当‘够好’的律所就可以完成常规性的业务时，客户不会花钱聘请‘最好’的律所，”她说。同时，她也预测在“以能提供物美价廉和快捷服务而引以为豪”的律所之间会发生价格战。“随着会计师事务所开展更多商品化的服务，大型律所将不得不裁掉一些员工。”

她说，毕竟“四大”在法律市场上的扩张并不是影响该市场变化的唯一因素：“从长远来看，科技和（例如来自零工经济模式律所）所带来的影响才是对传统的律所模式构成真正威胁的因素。这是一个更大的关乎‘生死’的挑战。”

“我不认为会计师事务所想要竞争高端法律工作，”Yuen Thio说。“它们补强法律服务可能旨在捍卫自身的客户群，避免将与会计工作互补的法律工作‘拱手让给’律所...我不认为它们会对经验丰富的高级法律顾问或身经百战的商业谈判专家构成真正的威胁。”

## 效仿“四大”

行业顾问John Grimley对不断变化的法律市场环境持谨慎态度，他认为虽然律所可能低估了另类法律服务提供商所构成的威胁，传统律所仍然有办法可以挑战大型市场参与者。独立律所“可以走超专业化的道路，这是与‘四大’竞争的明智做法。然而，这并非它们能有效参与竞争的唯一方法，”他说。

“‘四大’与传统律所相比之所以能成功的主要区别因素是前者有面向客户的业务开发团队来甄别、追求和抓住新的工作机会。传统律所（除非在极少数的情况下）从不这样做。这是传统律所可以设法效仿‘四大’以便能更有效地与其竞争的最重要的领域，”发布Asia Law Portal的Grimley说。

另一位行业顾问Tony Williams认为律所仍有机会，因为目前“四大”关注的重点似乎是与其他的业务一起提供的产品和解决方案；“法律服务可能只是它们风险管理解决方案和全球员工流动性服务等业务中的一部分，但却是其中很重要的部分。”

Tony Williams是Jomati Consultants的负责人。他同时也警告说，长远来看，竞争的累积效应可能侵蚀律所的盈利能力：“律所需要了解并关注这些发展动态，并以针对性强和性价比高的方式予以应对，以展示它们能为客户带来的价值。市场的新晋进入者可以带来较之现有模式更为有吸引力的新模式，特别是如果这一新模式包含的服务和专长比现有律所提供的更广，并且价格也具有竞争力的话。”

managing partner of Singapore boutique TSMP Law Corporation, reflects that past poor behaviour from select firms has been responsible for exacerbating challenges the industry now faces.

“Lawyers have, for too long, had a rice bowl that was iron-lined (if not ironclad). International law firms milking their large corporate clients with astronomical hourly rates gave us all a bad name,” she says.

“Law firms will have to re-think their business models and the question they will have to ask is this: What’s my real value-add to the client? Clients are much more sophisticated these days and for the more routine transactions, they will no longer pay for the ‘best’ when ‘good enough’ can get the job done,” she says, predicting that there will be a price war between firms that “pride themselves on providing cheap and fast service,” notes Yuen Thio. “Large firms will have to shed some headcount as accounting firms move in on their more commoditised work offerings.”

She says, after all, expansion from the Big Four isn’t the only force shaping the changing landscape of the legal market: “In the long run, it is technology and disruption (e.g. from gig economy lawyers) that is the real threat to the traditional law firm model. That’s a bigger existential challenge.”

“I don’t believe the accounting firms want to be a competitor for top end legal work,” Yuen Thio says. “Their legal bolt-ons are probably aimed at defending their client base, and not ‘leaking’ legal work that is ancillary to accounting work to law firms...I don’t see them being a serious competitor against a seasoned senior counsel or a battle-hardened corporate negotiator.”

## EMULATE THE BIG FOUR

Taking a measured view on the

changing legal climate, industry consultant John Grimley says that while law firms may have underestimated the threat posed by alternative legal service providers, there are still ways traditional law firms can challenge the big players. Independent law firms “would be wise to hyper-specialise as one means to compete against the Big Four, however, this is not the only method by which they might effectively compete,” he says.

“The prime distinguishing factor in the success of the Big Four versus traditional law firms is the use of client-facing business development teams to identify, pursue and capture new work. Traditional law firms do not do this (except in rare circumstances). This is the most important area where traditional law firms can seek to emulate the Big Four in order to compete more effectively,” adds Grimley, who publishes Asia Law Portal.

Another consultant, Tony Williams, believes there is still opportunity for law firms as the Big Four’s focus at present appears to be on products and solutions in conjunction with other parts of their business; “legal may only be part but a significant part of their offering e.g. risk management solutions and global employee mobility to name but two.”

But the principal of Jomati Consultants also warns the cumulative effect of competition could erode firms’ profitability, over the long term: “Firms need to be aware of and monitor these developments and to be able to respond in a targeted and cost-effective manner to demonstrate the value that they bring to their clients. New entrants can bring a fresh approach which is appealing when compared to the status quo especially if it includes a wider package of services and expertise compared to the incumbents and is price competitive.”

2018 ALB SHENZHEN IN-HOUSE LEGAL SUMMIT

# 2018 ALB SHENZHEN IN-HOUSE LEGAL SUMMIT SUCCESSFULLY CONCLUDES

## 2018 ALB深圳企业法律顾问峰会圆满落幕

The Third ALB Shenzhen In-house Legal Summit was successfully held on September 6, 2018, at Sheraton Shenzhen Futian Hotel. Over 100 in-house counsels, business elites and industry experts from different industries gathered together at the summit to discuss a range of legal topics and business hotspots including cross-border mergers and acquisitions, outbound investment, corporate compliance, financial supervision, and international commercial dispute resolution.

The summit officially started at 9:00 in the morning. The conference chair Ms. Ines Yang, ALB China Analyst of Thomson Reuters, gave the welcoming remarks on behalf of ALB.

Shenzhen Court of International Arbitration (also known as Shenzhen Arbitration Commission) (SCIA) is the special supporting organization of the Summit. Mr. Dong Lianhe, Vice President of SCIA, made the opening speech, and briefed the audience on the innovation and development of the arbitration work in Shenzhen Special Zone, as well as the roles and functions of in-house counsels in it.

A strong line up from Grandall Law Firm, Mr. Eric Wu Shuang and Ms. Paula Yu Chengzhi, partners from Grandall Law Firm, took the lead in starting the discussions about "Opportunities and Challenges of Legal Services in Capital Markets in the Guangdong-Hong Kong-Macao Greater Bay Area". The presentation given by Mr. Eric Wu was entitled Shenzhen Metropolitanization

and Latest Legal Approaches to Cross-border Investment & Financing. He shared his ideas and observations from three aspects: the development trend of Shenzhen metropolitanization, new policies to attract foreign investment, and new approaches to cross-border investment and financing. Ms. Paula Yu gave a presentation entitled Enterprise Compliance Strategy under Current International Trade Environment, in which she shared with the audience the current international trade environment, enterprise compliance status in the international trade, and compliance strategy.

They were followed by Mr. Zhang Jun and Ms. Gao Wen, who are senior partners from Dentons. They delivered presentations respectively on the topics of Restructuring of Company Ownership Against the Background of Comprehensive Compliance and Prevention and Control of Corporate Legal Risks Against the Background of Strict Financial Regulation. In his presentation, Mr. Zhang started with allocation of company ownership, control, management and right to returns. Then he made an in-depth analysis with regard to challenges and requirements imposed by comprehensive compliance on ownership structure. He wrapped up his presentation by sharing his ideas about logic and path of company ownership restructuring and legal service value for company ownership restructuring. Ms. Gao Wen's presentation mainly focused on three aspects: prevention and control of legal compliance risks in financial

2018年9月6日，第三届ALB深圳企业法律顾问峰会在深圳大中华喜来登酒店成功举办。百余位来自不同行业的企业法律顾问、商界精英与业界专家齐聚一堂，针对跨境并购、对外投资、企业合规、金融监管、国际商事争端解决等一系列法律话题和商业热点进行了热烈的讨论。

早上9点，大会主席Ines Yang, ALB China Analyst, Thomson Reuters代表ALB向参会嘉宾致开幕辞，大会正式开始。

深圳国际仲裁院（深圳仲裁委员会）是本次ALB深圳企业法律顾问峰会的特别支持机构，董连和副院长代表深圳国际仲裁院向参会嘉宾进行了欢迎致辞，并向大家介绍了深圳特区仲裁的创新及企业法务的角色和作用。

国浩律师事务所合伙人吴爽律师和余承志律师组成强势阵容，开启了“粤港澳大湾区规划对资本市场法律服务的机遇与挑战”话题的演讲。在这部分中，吴爽律师就深圳大都市化与跨境投融资的最新法律路径展开讨论，涉及深圳大都市化的发展趋势，吸引外资的新政，和跨境投融资的新路径。余承志律师则与大家分享了国际贸易新形势下的企业合规策略，涉及当前国际贸易新形势，企业合规在国际贸易中规定地位，以及企业合规策略等方面。

随后，大成律师事务所高级合伙人张钧律师与高雯律师围绕“全面合规背景下的公司所有权结构重构”与“金融严监管背景下企业风险的法律防范与控制”两个话题做了精彩演讲。张钧律师从公司所有权、控制权、经营权与收益权的配置讲起，深入剖析了全面合规对所有权结构的挑战与要求，继而提出公司所有权结构重构的逻辑与路径以及公司所有权结构重构法律服务的重大价值。高雯律师则就金融企业经营合法合规性风险、防范和控制，融资下的公司股权及控制权变动的风险与博弈，实体经济企业应

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enterprises, risks and competition in changes of corporate equity and control rights when financing, and pointers and suggestions from a legal perspective on how enterprises in the real sector of the economy cope with business risks.

The afternoon session started with the presentation jointly given by Mr. Harry He Lei and Ms. Maggie Qin Zhen, partners from AllBright Law Offices. Their presentation was entitled New Mechanism and New Trend of International Commercial Dispute Resolutions. They elaborated on this topic from four aspects: brief introduction, status and trends of international commercial dispute resolution mechanism; domestic recognition and enforcement of commercial judgment and arbitral award made by foreign institutions, and recognition and enforcement, in other jurisdictions, of domestic commercial judgment and arbitral award; overview of the China International Commercial Court (CICC); and changes and opportunities brought by CICC.

The Summit included two panel discussions – dialogue with general counsels is always the most exciting and much anticipated session. The first panel discussion was moderated by Ms. Ines Yang. The panelists included: Mr. Shang Dongning, General Manager of Legal Department of Agile Group Holding Limited, Mr. Wei Wei, General Counsel of BGI Group, and Mr. Allen Zhou Yu, Group General Counsel of Midea Group. The South China Legal Market Report 2018 was published in the August issue of Asian Legal Business. ALB found that one issue has been frequently mentioned during interviews with many law firms' managing partners and industry experts in Guangzhou and Shenzhen, which was that since the Greater Bay Area (GBA) initiative has become a national strategy, the inter-regional conflicts of law will gradually emerge in the future, thus bringing new challenges to the legal sector. Shenzhen is a hot spot for economic development. The innovation and diversity of economic forms there



Ines Yang, ALB China Analyst,  
Thomson Reuters  
杨超, ALB China Analyst, 汤森路透



Mr. Dong Lianhe, Vice  
President of SCIA  
深圳国际仲裁院 (深圳仲裁  
委员会) 副院长董连和



Eric Wu, Partner, Grandall Law  
Firm  
吴爽, 合伙人, 国浩律师事务所



Paula Yu, Partner,  
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余承志, 合伙人, 国浩律师  
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Jun Zhang, Senior  
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# 2018 ALB SHENZHEN IN-HOUSE LEGAL SUMMIT



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贺雷, 合伙人, 锦天城律师事务所



Maggie Qin, Partner, AllBright Law Offices  
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Shang Dongning, General Manager of Legal Department, Agile Group Holding Limited  
尚东宁, 法务部总经理, 雅居乐集团控股有限公司



Wei Wei, General Counsel, BGI Group  
韦炜, 法务总监, 华大集团



Allen Zhou, Group General Counsel, Midea Group  
周宇, 集团总法律顾问, 美的集团



Daniel Wang, Legal Department, Group General Counsel, China International Marine Containers (Group) Co. Ltd.  
王宇, 法律事务部总经理、集团总法律顾问, 中国国际海运集装箱(集团)股份有限公司



Liu Zhong, Assistant Executive & General Counsel, China Resources Land Limited  
刘中, 助理总裁、总法律顾问, 华润置地有限公司



Yao Jun, Chief Legal Officer and Company Secretary, General Manager of Legal & Compliance Department, Ping An Insurance (Group) Company of China, Ltd  
姚军, 公司首席律师、公司秘书, 公司法律合规部总经理, 中国平安保险(集团)股份有限公司



have led to new types of legal issues which enterprises and law firms never faced before, all of which are forcing changes in the legal sector in terms of legal service skills and level – becoming further globalized, more sophisticated, and higher-level of specialization. However, amid more and more high-end cross-border transactions, there is a gap between legal services and customer needs: there are not enough legal professionals who can provide customers with highly professional and specialized services. The panel discussion focused on the shortage of high-end legal talents and how to seek a breakthrough to cope with this challenge. The panelists, based on actual cases and their own experiences, gave detailed answers to the questions posed by the audience.

The second panel discussion invited three general counsels as the panelists, who are Mr. Liu Zhong, Assistant Executive & General Counsel of China Resources Land Limited, Mr. Daniel Wang Yu, General Manager of Legal Department and Group General

对经营风险的法律维度之思路三方面进行了详尽的分析讲解。

锦天城律师事务所合伙人贺雷律师和秦蓁律师在下午的议程中，继续就“国际商事争端解决的新机制和新形势”进行了精彩演讲。在该部分中，内容涉及国际商事争端解决机制简述、现状和趋势；外国商事判决、裁决在国内承认与执行；国内商事判决、裁决在其他法域被承认和执行；中国国际商事法庭简介；以及中国国际商事法庭的设立带来的改变和机遇等方面。

本届法律峰会共安排两个圆桌讨论，“与总法对话”环节总是备受期待！第一场圆桌讨论由Ines Yang担任主持人，对话嘉宾分别是：雅居乐集团控股有限公司法务部总经理尚东宁先生、华大集团法务总监韦炜先生、美的集团集团总法律顾问周宇先生。ALB 8月刊推出了2018华南法律市场报告，在与广州、深圳诸多律所管理合伙人及业界专家探讨的过程中，ALB发现无论广州还是深圳都普遍提及一个问题：随着“大湾区”战略提升至国家战略，未来逐渐显现的区际法律冲突将给律师业带来不小挑战，同时在深圳这片经济发展的热土，经济形态的创新性与多样性也引发了全国前所未有的新型法律问题，所有这些都倒逼法律服务技能和水平进一步国际化、

高端化、专业化。与此同时，随着跨境高端业务越来越多，法律人才却没有在量上、专业度上达到一个理想的匹配。本次圆桌论坛则围绕高端法律人才短缺及如何寻求突破口展开了讨论，三位总法同时还结合实际案例、自身经验，回答了参会嘉宾的踊跃提问。

第二场圆桌讨论邀请了华润置地有限公司助理总裁、总法律顾问刘中先生；中国国际海运集装箱（集团）股份有限公司法律事务部总经理、集团总法律顾问王宇先生；以及中国平安保险（集团）股份有限公司首席律师、公司秘书、公司法律合规部总经理姚军先生。总法们紧扣“合规”，结合大湾区战略，共同探讨了企业在新机遇与新挑战下，有哪些合规重点、有哪些要防范的合规“雷区”。GDPR实施半年多来，总法们还就企业如何确保做到GDPR全面合规进行了深入探讨和交流。最后，三位总法还分享了带领优秀法务团队的秘诀，优秀企业法务如何保持对行业的敏感性与警觉度，以及领导力与组织氛围均实现绝佳状态是如何做到的。


本次峰会在热烈的氛围中取得圆满成功，受到与会嘉宾们的广泛好评。我们真诚感谢各位嘉宾的莅临，期待下次峰会与您再次相约。ALB



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Counsel of China International Marine Containers (Group) Co. Ltd., and Mr. Yao Jun, Chief Legal Officer and Company Secretary, General Manager of Legal & Compliance Department of Ping An Insurance (Group) Company of China, Ltd. The panel discussion focused on compliance related issues and explored new opportunities and challenges faced by enterprises in the GBA initiative background, in terms of the compliance priorities and the compliance "minefields". Since the General Data Protection Regulation (GDPR) became enforceable over six months ago, the panelists also had

in-depth discussions and exchanges concerning how to ensure full compliance with GDPR. Then the three general counsels shared the secrets of leading an excellent legal team, tips for in-house counsels to maintain industry sensitivity and attentiveness, and how to achieve and maintain excellence in terms of leadership and organizational atmosphere.

The Summit was a great success, widely welcomed and highly praised by all participants. We sincerely thank you all, our distinguished guests and participants, for your attendance and participation. We look forward to seeing you again at the next summit. 



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