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ALB

OCTOBER 2019
CHINA EDITION



2019 ALB CHINA
**TOP 15
FEMALE
LAWYERS**
2019 ALB CHINA
十五佳女律师

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As in other years, 15 outstanding female lawyers are being recognised by ALB China for their exceptional achievements. 今年，15位杰出的女律师因其在法律服务行业的卓越成就入选“ALB China十五佳女律师”榜单。

With contributions from:

- Commerce & Finance Law Offices
- Jingtian & Gongcheng

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China has the world's second biggest healthcare market today, and the government has also introduced and revised a number of laws and regulations in recent years to reform the industry. 中国拥有全球第二大医疗健康市场，作为医疗健康改革工作的一部分，中国政府近年来也出台或修订了一些相关的法律法规。

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Law firms today are grappling with a variety of challenges as they look to be competitive. Law firm networks are lending a hand by helping members with new technologies and workflow processes and even improving the way they interact with their clients. 法律市场压力不断增加，律师事务所正在努力应对变化以及因此产生的挑战。律师事务所协作网络组织能够协助其成员掌握新技术和 workflow，改

进他们与客户的互动方式。

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The summit, held on Sept. 5 at Park Hyatt Shenzhen, brought together over 100 in-house counsels, business elites and industry experts. 2019年9月5日2019 ALB深圳企业法律顾问峰会汇聚了百余位来自深圳及周边地区不同行业的企业法律顾问、商界精英与业界专家。

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- Beijing Grandway Law Offices
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FROM THE EDITOR



Half the sky. The ALB China Top 15 Female Lawyers 2019 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 be certainly 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。 ALB 2019年中国15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她们扫清更多职业障碍,让更多的女性律师能够登上榜单。

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

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- Investment Disputes Arbitration – East & Concord Partners
投资纠纷仲裁 – 天达共和律师事务所
- CFIUS Update – The Impact of the Foreign Risk Review Modernization Act of 2018 (FIRMA) and Practical Guidance on Navigating the CFIUS process – Greenberg Traurig, LLP
美国外国投资委员会 (CFIUS) 最新情况 – 《外资风险审查法案之最新版》(FIRMA) 的影响及关于CFIUS 审批流程的实务指南 – 美国GT国际律师事务所
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BIG STORY 焦点故事

SECOND COMING

第二次机遇

Four decades ago, the southern city of Shenzhen spearheaded China's reform and opening-up drive, which turned it from fishing village to boomtown. More recently, it found itself in the spotlight again as China selected it as a pilot city for innovation. Lawyers say that this new avatar will provide a significant boost to the city's legal sector.

四十年前，深圳率先成为了中国改革开放中第一个经济特区，一举从南方边陲渔村成长为一座国际化大都市。最近，深圳发现自己再一次站在了聚光灯下，成为了新的先行示范区。律师们认为这项新政将大力振兴深圳的法律产业。

BY HU YANGXIAOXIAO 胡阳潇潇

About 40 years ago, Shenzhen was the very first Special Economic Zone set up according to China's reform and opening-up policy. Benefiting from both political and economic liberalisation, Shenzhen grew overnight from a fish village into an international cosmopolis with an annual GDP of \$300 billion. While initially an industrial town, Shenzhen is now a hi-tech hub boasting

world-famous companies like Huawei, Tencent and DJI.

Now the city bordering Hong Kong is back in the spotlight once again after the national leadership granted it special status that will allow it to trial innovative ideas for growth. Under this pilot scheme, Shenzhen is expected to become one of the leading cities in the world by 2025 in terms of economic strength and

8月18日，中国发布了关于支持深圳建设先行示范区的意见。《意见》给深圳确定了高标准且时间紧迫的发展目标：到2025年，深圳要成为经济实力和创新能力世界一流的城市。

40年前，深圳作为中国改革开放中设立的第一个经济特区，享受了诸多先行先试政策优惠及优于其他地方的立法权，从边陲渔村发展为了年GDP 2.24万亿元人民币的国际都市。深圳还先后经历过几次产业调整，如今汇聚了众多高新企业，被称为“中国硅谷”，中美贸易战中备受关注的华为、中兴、大疆等都是深圳本土公司。从曾经的特区到新的示范区，深圳未来的发展重点将聚焦于创新：产业布局上要实现以高新产业为主，将5G、人工智能和高端医疗作为创新重点，还将设立粤港澳大湾区大数据中心；此外还将伴生一系列的金融、法律、社会甚至制度创新。

距离新示范区的设立仅一月有余，但由于距第一阶段目标的实现只有6年，深圳政经法各界已然着手设立各项具体措施。对此，长期深耕于深圳当地的律所又有怎样的理解，并作何应对？

“要提高到国家战略层面去理解和解读新示范区。”万商天勤律师事务所管委会主任张志律师告诉ALB。“新示范区可以和当年的改革开放深圳确立为经济特区相提并论。”

广东华商律师事务所首席合伙人高树律师则强调，新示范区将深圳的竞技舞台扩展到了全球，“尤其在科技创新和国际法领域，深圳要对标纽约、伦敦这类世界先进城市。”

据高律师介绍，9月底，深圳市司法局出台了《贯彻先行示范区首批行动项目清单》，其中涉及建设法治政

著作人身权案例研究 及其对相关法律风险 防控的启示

——从天下霸唱胜诉《九层妖塔》案说开去



阅文集团 平台法务 徐雅琴

摘要：著作人身权与著作财产权是著作权人享有的两大类权利。对于著作财产权，其能够许可、转让已为《著作权法》明文规定，毋庸置疑。但对于著作人身权能否转让、许可、放弃及其与可能对著作财产权的限制等，《著作权法》规定却付之阙如。然而著作人身权的这些问题又是文娱产业运营IP过程中不可避免会遇到的。笔者拟通过对著作人身权司法案例研究，从法律风险防控的角度，提出相应的建议。

近日，北京知识产权法院作出二审判决认定，《九层妖塔》电影侵犯了《鬼吹灯之精绝古城》的作者署名权和保护作品完整权，并判令停止发行、播放和传播电影《九层妖塔》，并赔偿作者张牧野精神损害。众所周知，《九层妖塔》的制片方确实是取得了小说《鬼吹灯之精绝古城》的改编权，然而却因为作者对著作人身权的主张，无法再使用改编后的影视作品。这一判决可能会给文娱产业的从业人士带来不少疑惑，著作人身权可通过转让、委托或者雇佣合同为创作者外的其他自然人、法人或组织取得吗？可许可吗？可被放弃吗？如果对著作人身权的行使和著作财产权的行使发生冲突会如何？笔者拟对著作人身权相关问题的司法案例进行梳理研究，并据此对法律实务中著作人身权相关法律风险防控问题提出相应的建议。

一、著作人身权能否为作者外的其他自然人、法人或组织取得的案例研究

撇开现在的AI创作及法人视为作者的情形不谈，作者一般都是自然人，根据《中华人民共和国著作权法》（以下简称《著作权法》）的规定，著作人身权与财产权属于作者。那么作者以外的其他自然人、法人或组织能否取得著作人身权呢？在实践中，其他自然人、法人或组织想要取得作者的著作人身权，可能会通过与作者签署转让合同、委托创作合同与劳动合同的方式。但对于通过这三类合同取得作者著作人身权的约定是否有效，司法实践中法院的态度不一。

（一）著作人身权难以通过转让合同转让

《著作权法》第10条第3款规定著作权人能够转让著作财产权，但却没有规定著作权人是否可以转让著作人身权，那么能否通过转让合同转让著作人身权呢？目前司法实践中的案例几乎都否认了这类约定的效力。

比如在北京三面向版权代理有限公司诉郑州世纪英合信息技术有限公司著作权侵权纠纷案中，北京三面向版权代理有限公司与案外人张会亭签订了委托汇编合同，约定张会亭将其对涉案作品所享有的著作权中除署名权外的其他权利转让给北京三面向版权代理有限公司。但一审法院仅认为该公司依此合同仅能取得涉案作品著作权中全部的财产权利¹。该案中二审法院又进一步明确依据《著作权法》的规定，著作权人仅可以将其所拥有的著作权中的财产权利转让给他人所有，故而该合同部分无效，涉案作品的财产权转让部分仍然有效²。在倪学礼诉西安曲江丫丫影视文化股份有限公司等侵害著作权纠纷案中，一审法院明确指出“鉴于著作人身权的不可转让性，依据现有证据和查明的事实，仅能确认倪学礼享有涉案小说的署名权等著作人身权以及享有《小麦进城》剧本的署名权和出版该剧本及由该剧本改编的小说的权利”³。二审法院对这一点予以了确认和重申⁴。

（二）著作人身权能否通过委托合同取得存疑

《著作权法》第17条规定“受委托创作的作品，著作权的归属由委托人和受托人通过合同约定。合同未作明确约定或者没有订立合同的，著作权属于受托人”，这是否意味着著作人身权可以通过委托合同约定由并非作者的委托人享有呢？就这一问题，司法实践的态度要更模糊一些。

在王焕华诉广州出版社有限公司等侵害著作权纠纷案中，一审法院认为由于著作人身权专属于作者，不可转让，即使王焕华与广州天地图书有限公司签订了委托编写协议，王焕华仍享有专属于作者的著作人身权，包括王焕华在本案中主张的署名权、修改权、保护作品完整权⁵。二审亦肯定了一审的观点⁶。

¹ 郑州市中级人民法院（2006）郑民三初字第54号民事判决书。

² 河南省高级人民法院（2006）豫法民三终字第54号民事判决书。

³ 北京市朝阳区人民法院（2014）朝民（知）初字第31220号民事判决书。

⁴ 北京知识产权法院（2015）京知民终字第1148号民事判决书。

⁵ 天津市第一中级人民法院（2016）津01民初205号民事判决书。

⁶ 天津市高级人民法院（2017）津民终85号民事判决书。

capacity for innovation. The technology aspect is just one part of it. Apart from embracing cutting-edge areas like 5G, AI, biotech and Big Data, Shenzhen will also undergo a series of financial, legal and even political reforms.

“The new demonstration area should be understood at the level of National Strategy,” says Zhang Zhi, managing partner of V&T Law Firm. “It’s on the same level of the reform and opening-up policy of 40 years ago.”

Gao Shu, managing partner of China Commercial Law Firm, stresses that the new scheme pushes Shenzhen onto the international stage. “Especially in areas of technology innovation and international law, Shenzhen should set its eyes on cities like New York and London.”

With the clock ticking down to the completion of the first stage that is only six years away, the city has already outlined a roadmap of how it expects to get there. According to Gao, by the end of September, the Justice Bureau of Shenzhen had unveiled an action list comprising of 74 detailed measures to develop the legal aspects, including promoting the rule of law, better addressing the legislative power of the Special Economic Zone, enhancing the availability of legal services to the public, as well as developing the legal sector.

“All economic subjects could do business in relaxed environment. They could anticipate governmental behaviours by the rule of law. And the city could provide legal environment for fair competition and the protection of lawful rights. All those add up to what it means by a legal business environment mentioned in the Scheme,” Zhang says. “China has been building Shenzhen into an international commercial dispute resolution centre, which provides huge opportunities for local lawyers.”

REFORM AND INNOVATION

Another eye-catching sentence in the new scheme document is one that allows Shenzhen to “make flexible changes to laws, regulations and local ordinances according to authorization and based on Shenzhen’s need for reform and innovation.”

According to Gao, he expects the

changes to happen “firstly in areas of people’s day-to-day lives, hi-tech innovation, the openness of the economy and the introduction of international rules. Business registration, individual bankruptcy, foreign investment and foreign exchange regulations... we might see changes in regulations concerning those areas pretty soon.”

Attracted by the scheme, a new generation of hi-tech startups is expected to blossom in Shenzhen, and both Gao and Zhang agree that there is a tremendous opportunity for law firms to provide high-quality legal services to them, particularly in IP. Anticipating this demand, China Commercial Law Firm has reconstituted its IP law committee, while V&T has set up a new company specialising in IP law and related services. “We will provide a whole circle of services, from patent early warning, to patent & trademark application and maintenance,” Zhang.

According to Zhang, law firms should also focus on the other two types of legal services targeted at hi-tech and startup companies. “The first is to provide legal advice related to the day-to-day running of the company. The second is to help the company work with potential investors and gain financing.”

Meanwhile, for the law firms themselves, “they have to keep up on strategic level, which means to scale up, to hire more talent and to better adapt to the Belt & Road Initiative as well as the Greater Bay area,” says Gao. In that regard, China Commercial has set up new branches in key cities like Hong Kong, Macau, Sanya, Zhuhai and Huizhou, and bolstered its corporate compliance, anti-trust, anti-dump and anti-money laundering departments.

Both Zhang and Gao also stressed the importance of being open-minded. V&T has set up the Shenzhen-headquartered V&T Alliance, intending to combine international legal resources to better serve Chinese companies. “It is hard to imagine Shenzhen being a leading city on world level with only Chinese lawyers working here,” Gao says. “More global law firms would need to enter. The competition would be stressful, but the cooperation opportunities are alluring.” 

府、用足用好深圳特区立法权、增强公共法律服务能力、营造法治化营商环境等74项具体内容。

“各类经济主体在这个区域内，能获得宽松环境，对政策治理有预期，通过法治确保公平竞争、实现不同所有制主体合法权益的无差别保护。这些综合起来，就是国际一流的法治营商环境。”张律师说。“在示范区之前，国家在深圳已经做了全方面的布局，很重要的一点就是深圳以后会成为国际商事争议解决的一个中心。深圳律师从争议解决角度获取了巨大机会。”


《意见》中引人注意的一点，还在于允许深圳根据改革需要，“对法律、行政法规、地方性法规作变通规定”。高律师认为：“变通首要涉及的会是民生领域、科技创新、经济开放，以及国际规则的融合和借鉴。比如商事登记、企业除名制度、个人破产制度、身份管理制度、外商投资、企业走出去、外汇管理……这些可能都需要变通。”

服务创新与创新服务

未来，更多创新企业将落户深圳，在两位合伙人看来，律所为这类企业提供服务的关键在于知识产权领域。华商重新成立了知识产权专业委员会，万商天勤则成立了知识产权运营服务公司，“从科研中的专利预警、知识产权尽调，到专利、商标的申请维护和法律保护，各方面都提供一整套服务。”张律师告诉ALB。

在张律师看来，未来律所对于创新企业的服务还集中在其他两个方面，“一是在机制、体制上提供法律层面的策划服务。比如企业设立方式、激励措施的建立；二是为高新企业引入投资通过法律帮助，实现创新和资本对接。”

此外，对律所本身，“在战略布局上要跟得上。”高律师说。具体来说，“要有规模、有专业人才，并做好一带一路和大湾区布局。”华商已经围绕深圳开设了香港分所、澳门联营所，以及三亚、珠海、惠州分所，还扩充了企业合规、反垄断、反倾销、反洗钱等领域人才。

两位律师也都提到了未来深圳律所更要具备开放性。万商天勤将通过常设在深圳的V&T法律联盟，整合国际资源，服务中国企业。“深圳要成为国际都市，不可能只有中国律师在这里从事法律服务。”高树律师说，“竞争是压力，但合作也是机遇。” 

竞业限制作为企业保护核心技术的主要手段之一



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近期科创板上市成为了“科技创新企业融资”的热点，作为“科技创新企业”，是否拥有关键核心技术是企业能否在科创板成功上市的关键因素之一。维持关键管理人员和核心技术人员的稳定性则是发行人维护核心技术的重要保障，因此发行人与相关人员的竞业限制约定也逐步成为信息披露中的关键要素。

一、竞业禁止与竞业限制的区别

竞业限制与竞业禁止都表现为对特定主体从事特定行业或实施特定行为的限制，但二者的法律依据不同，竞业禁止是根据《公司法》的强制性规定产生的，被称为“法定的竞业禁止”；竞业限制是雇佣双方根据《劳动合同法》的规定，依合同的约定产生，被称为“约定的竞业禁止”。在IPO审核反馈意见中，存在竞业限制与竞业禁止混用的情形，可以从以下几个方面进行区分：

1、适用主体

《劳动合同法》第24条第1款规定，“竞业限制的人员限于用人单位的高级管理人员、高级技术人员和其他负有保密义务的人员”。而根据《公司法》第148条规定竞业禁止适用于企业的董事、高级管理人员。因此，竞业限制的人员范围中“高级技术人员和其他负有保密义务的人员”在一定程度上公司可以通过协议约定扩大。

2、限制期限

竞业限制的期间是解除或终止劳动关系后的一段约定期间。劳动合同法限制该期间不得超过二年。竞业禁止的限制期限则是董事、高级管理人员的任职期间。

3、法律责任

《劳动合同法》第23条第2款规定“劳动者违反竞业限制约定的，应当按照约定向用人单位支付违约金”。劳动者违反竞业限制约定的，承担的是违约责任。用人单位应当事先约定违约金的具体数额，以便违约条款的执行。同时，依据《最高人民法院关于审理劳动争议案件适用法律若干问题的解释（四）》（法释〔2013〕4号）第10条的规定，竞业限制人员向单位支付违约金后，并不能免除其在剩余期限内继续履行竞业限制的义务。

根据《公司法》第148、149条的规定，公司董事、高级管理人员违反竞业禁止义务的，所得收入应当归公司所

有；对公司造成损失的，还应当承担赔偿责任。因此，董事、高级管理人员违反《公司法》竞业禁止规定的，应当承担损害赔偿赔偿责任。

二、典型问题

近期部分科创板上市公司IPO过程中关于竞业限制的问询主要集中在发行人股东、董监高及核心技术人员是否存在违反竞业限制以及企业核心技术是否存在权属纠纷或潜在纠纷风险方面。如：八亿时空、响声医疗、先临三维等企业在首轮问询中被关注到股东、董事、高级管理人员、核心技术人员是否有签署竞业限制协议、是否存在职务发明，公司是否存在知识产权或产品诉讼风险等并要求发行人披露竞业限制协议的具体内容等；有方科技的上市问询中提到因竞业限制问题有关人员对发行人产供销及技术研发等方面所做的贡献，如原单位主张损失赔偿，发行人可能遭受的损失及对其持续经营能力的影响；成都先导的上市问询中提到公司如何防范相关董事、高级管理人员、核心技术人员、研发人员违反知识产权保护的相关规定，是否已就相关违约或侵权，采取充分且必要的保护和应对措施。

三、起草竞业限制条款的法律建议

《劳动合同法》中关于竞业限制的明文规定较少，在起草竞业限制条款时应重点关注以下方面：

用人单位在劳动合同或竞业限制协议中的竞业限制条款必须具体、明确并可执行，用人单位不可仅依据规章制度中关于竞业限制的规定来追究劳动者竞业限制违约责任。

竞业限制的直接对象为高级管理人员、高级技术人员和其他负有保密义务的人员，同时应当考虑相关人员利用其配偶、父母、子女等具有关联关系的人员规避其应当履行的竞业限制义务的情形。用人单位扩大相关义务对象范围需要遵循平等自愿、合法合理的原则。

此外，竞业限制的范围、地域，应当以能够与用人单位形成实际竞争关系的地域为限。实践中，可以采用概括式约定和明确的列举式约定相结合的方式。

对于科创企业或其他具有核心技术的企业而言，聘用技术员工前应重点审核其与原单位的劳动合同及竞业限制约定，并在入职时与其签署竞业限制的协议，以防止潜在纠纷。

DEALS 交易

\$5 BLN**Anheuser-Busch InBev's IPO**

Deal Type: IPO

Firms: Clifford Chance, Freshfields
Bruckhaus Deringer, Sullivan & Cromwell
Jurisdictions: Hong Kong, Belgium**百威亚太上市**

交易类型：上市

参与律所：高伟绅律师事务所，富而德
律师事务，美国苏利文·克伦威尔律
师事务所

管辖地：中国香港、比利时

\$3.59 BLN**China Yangtze Power's acquisition
of Luz del Sur's equity interests from
Sempra Energy**

Deal Type: M&A

Firms: Beijing Tian Yuan Law Firm, Baker
McKenzie, Estudio Muñiz, White & Case
Jurisdictions: China, Peru, U.S.**长江电力收购美国桑普拉能源公司在秘
鲁相关资产**

交易类型：并购

参与律所：天元律师事务所，贝克·麦
坚时国际律师事务所，莫尼兹律
师事务所，伟凯律师事务所

管辖地：中国大陆、秘鲁、美国

\$2.21 BLN**Shagang's acquisition of Global Switch**

Deal Type: M&A

Firms: Jincheng Tongda & Neal, Ashurst,
Allen & Overy
Jurisdictions: China, Singapore**沙钢集团收购英国Global Switch剩
余股份**

交易类型：并购

参与律所：金诚同达律师事务所，亚
司特律师事务所，安理国际律
师事务所

管辖地：中国大陆、新加坡

\$1 BLN**Pinduoduo's 144A/Reg S offering of
zero coupon convertible senior notes**

Deal Type: Bonds

Firm: Skadden, Arps, Slate, Meagher &
Flom
Jurisdictions: China, U.S.**拼多多发行可转换优先债券**

交易类型：债券

参与律所：世达国际律师事务所
管辖地：中国大陆、美国**\$1 BLN****Topsports Hong Kong IPO**

Deal Type: IPO

Firms: Cleary Gottlieb Steen & Hamilton,
JunHe, Freshfields Bruckhaus Deringer,
Haiwen & Partners
Jurisdictions: China, Hong Kong**滔博国际上市**

交易类型：上市

参与律所：君合律师事务所，美国佳利
律师事务所，海问律师事务所，富而德
律师事务

管辖地：中国大陆、中国香港

\$983 MLN**China Mengniu Dairy's proposed
acquisition of Bellamy's**

Deal Type: M&A

Firms: Norton Rose Fulbright, Allens
Jurisdictions: Australia, China, Hong
Kong**蒙牛集团收购澳大利亚贝拉米公司**

交易类型：并购

参与律所：诺顿罗氏律师事务所，安
德慎律师事务所管辖地：澳大利亚、中国大陆、中
国香港**\$454 MLN****CITIC's investment in Ivanhoe Mines**

Deal Type: M&A

Firms: Baker McKenzie, Stikeman Elliott
Jurisdictions: China, Canada**中信金属收购艾芬豪10%股份**

交易类型：并购

参与律所：贝克·麦坚时国际律
师事务所，司徒曼律
师事务所

管辖地：中国大陆、加拿大

\$410 MLN**Shanghai Henlius Biotech's IPO**

Deal Type: IPO

Firms: Freshfields Bruckhaus Deringer, Jia Yuan Law Offices,
Llinks Law Offices, Sidley Austin
Jurisdictions: China, Hong Kong**复宏汉霖上市**

交易类型：上市

参与律所：通力律
师事务所，富而德律
师事务所，嘉源律
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国标-时刻为客户着想的一家律所

【国标介绍】

国标律师事务所成立于2011年，2018年3月，姚克枫律师团队加盟国标，通过改制，国标目前已成为公司化、综合性律师事务所。国标以法律顾问、知识产权为核心业务，并能够为客户提供综合性法律服务，国标秉持“以专业能力，打造专业服务”的发展理念，致力于为客户提供高质量、高效率的法律服务。

国标能够为科技产业、人工智能、大数据、影视娱乐、文化传媒、游戏、新媒体等领域提供专业的专项法律服务，业务类型涵盖专利、商标、商业秘密、不正当竞争、法律顾问以及企业风险防控等。无论是在业务水平上，还是在服务态度上，国标都获得了众多客户的认可与信赖。国标以专业严谨的工作方式和团队紧密协作的服务模式，为业务发展提供了坚实的基础。经过多年的发展，国标已成为国内精品律所之一。国标正在为今日头条、奇虎360、优酷网、高德地图、酷我音乐、昆仑万维、哈林秀王、途游游戏、万合天宜、鑫岳影视、中国标准出版社、道客巴巴、斗鱼、人人车、美图、金山毒霸、猎豹浏览器、厚大法考、大麦网、秒针、北京CA、北京邮电大学等多家知名企事业单位提供法律服务。

【国标案例】

国标律师先后代理了大量具有较高社会影响的诉讼案例，诸多案例为该领域或该行业首例案件。例如，国标律师曾代理首例博客告博客名誉权案、首例司法考试网络课堂欺诈案、首例篮球培训业不正当竞争案、首例互联网机顶盒案、首例考研培训机构竞争案、首例便民服务业竞争案、首例恶搞企业标志案、首例适用避风港免责不正当竞争案、首例医疗器械竞争案、首例综艺节目与影视剧同名案、新专利法生效后首例专利纠纷案、首例玻璃杯领域专利纠纷案、首例地产代理行竞争案等，绝大部分案件均获得了胜诉判决。国标律师代理的诉讼案件，先后四次获得中华全国律师协会知识产权委员会十佳案例奖，还曾入选最高人民法院公布的2012年中国法院知识产权司法保护50件典型案例、最高人民法院公布的8起利用信息网络侵害人身权益的典型案例、最高人民法院2019年《人民司法》典型案例、北京市高级人民法院2014年度知识产权典型案例、北京市高

级人民法院2017年知识产权十大创新型案例、北京市第一中级人民法院历年典型不正当竞争20件案例、北京市海淀区人民法院互联网不正当竞争典型案例、北京市海淀区人民法院优化营商环境典型案例等，以及入选中国电子商务研究中心2016-2017年度十大互联网+法律案例、2015-2016年十大“互联网+”法律案例等。

【国标服务】

国标拥有一支由优秀青年律师组成的专业团队，团队律师均具有扎实的法学功底和丰富的执业经验，国标亦注重专业的服务品质，能够运用精深专业技术和丰富的实务经验竭诚为每位客户提供专业和完备的法律服务，国标以每一次法律服务当中所体现出来的针对性、战略性与专业性赢得了客户的赞誉。

国标团队律师能够站在客户的角度，从每位客户的利益诉求出发，并注重结合实际情况，在每个业务层面上能够提供高水平服务。国标团队以严谨态度、专家服务、团队协作的高标准方式，正在成为客户信赖的重要法律服务资源。

国标总负责人姚克枫律师，曾多次获得ALB客户首选律师奖，该奖项完全由客户评选获得。

【国标特色】

时刻为客户着想，是国标赢得众多客户青睐的法宝，国标能够第一时间响应客户的需求，能够站到客户角度思考问题，通过系统化的方式为客户提供利益最大化的解决方案。帮助客户解决最紧迫的问题，成为国标维护客户利益、处理每一个独立案件的宗旨，也正因此成为了众多客户的优选；国标同时注重法律服务的创新，在诸多案件中，国标提出创新型解决途径，已经帮助众多客户渡过难关。因国标服务质量过硬，国标先后获得奇虎360优秀供应商、美图集团优秀供应商称号。

为客户提供多元优质法律服务是国标未来的发展方向，国标一直以来都是对标大型律所和国际化标准，为自身的专业化发展做好定位并设置恰当的标尺。国标在继续深耕企业法律顾问、知识产权领域的同时，将向综合化、规模化、国际化、标准化发展，以实现国标为客户提供更为全面、更为优质，综合性法律服务的发展愿景。

CHINA'S JINGSH OPENS OFFICE IN GERMANY, TIES UP WITH U.S. LAW FIRM CKR


京师接连进行海外布局：德国分所落成，并与美国世凯瑞达成联盟

■ Beijing Jingsh Law Firm has further expanded its reach overseas by opening a new office in the German city of Dusseldorf, and also forming an alliance with U.S. firm CKR Law.

Jingsh is not the first Chinese law firm that CKR has looked to cooperate with. Last month, the U.S. firm said it was working with Beijing's Yingke Law Firm, Asia's largest domestic law firm, to create a new legal practice in the U.S. under the name YKR Law. However, that project remains suspended for the time being.

According to a press release from CKR, the firm and Jingsh will enter into a long-term strategic alliance focused on marketing, client service and client referrals. CKR will assist Jingsh in better serving its North American clients, while gaining access to more international projects in China through the network of Jingsh.

Meanwhile, Jingsh's German office will be its sixth overseas branch, and will operate in an alliance with local law firm Rechtsanwaltskanzlei Du, Pu & Wang. The new office will have a headcount of 12 staff, including six lawyers from China and Germany.


Led by manager Wang Yaozhen and partner Du Xiaoming, the new office will provide legal services related to German corporate law, labour, real estate, banking and capital markets. It aims to provide full range of legal, tax and business services. 

■ 北京京师律师事务所接连扩展了其海外布局：9月初，京师德国分所在杜塞尔多夫启动筹建，9月中旬，京师又与美国世凯瑞律师事务所签署了长期战略合作协议。

京师德国分所是京师在海外成立的第6家分所，它采用了和德国本地Rechtsanwaltskanzlei DU, PU & WANG律师事务所整合的合作方式，共有12位成员，其中中、德律师6人，律师助理等6人，由王耀箴律师出任事务部主任，合伙人杜晓明律师为分所业务主导。

京师德国分所的业务覆盖德国公司法、民商事法、劳动法、不动产法、交通运输及物流法、知识产权法、融资租赁法、投资法、银行及资本市场法等方面的法律服务，此外，分所还提供税务、商务和会计等领域的综合性服务。

京师和世凯瑞达成的联盟则显示了海外合作的另一种可能性。根据世凯瑞的新闻稿，两家律所将在市场、客户服务和客户互荐上紧密合作。随着京师北美商务中心不久前的落成，世凯瑞将协助京师更好地为北美客户服务；与此同时，世凯瑞也将利用京师在中国大陆的影响力，获得更多服务于跨境项目的机会。

值得一提的是，这不是世凯瑞第一次寻求与中国律所展开合作。8月，世凯瑞曾与盈科律师事务所商议建立新的美国执业律所YKR Law，虽然世凯瑞已宣布新律所项目将被搁置，但其将继续寻求与盈科展开中国相关业务的合作。 


DHH OPENS FAMILY OFFICE IN SHANGHAI FOCUSING ON GROWING PRIVATE WEALTH

德和衡上海设立中英家族办公室，专注私人法律服务

■ Beijing DHH Law Firm has opened a family office in Shanghai together with AVIVA-COFCO Life Insurance Company in Shanghai. The office aims to provide legal services to Chinese entrepreneurs concerning wealth and family issues.

As reported by ALB, with China now being the fastest-growing wealth market in the world, wealth management lawyers are very much in demand. As a result, Chinese law firms have begun to specialise in this fast-growing practice area.

DHH said that the new office will focus on four areas: advising on regulatory aspects of personal wealth and family business; marital and family dispute resolution; wealth management, including tax and finance services; and inheritance planning and execution.


The family office now has around 10 lawyers, with two senior partners and three partners. It focuses on tax law, marital law and trusts and funds. The team is led by senior partner Huang Xianwen, who has experience in banks and insurance companies, and a special focus on finance and asset management. 

■ 北京德和衡律师事务所上海分所，近日与中英人寿上海分公司合作设立了中英家族办公室。该办公室将主要在上海执业，为企业家提供和家庭及财富相关的私人法律服务。

根据德和衡的一份新闻稿，家族办公室的业务主要分四类：推动私人律师发展，为企业家提供个人、家族企业合规服务；婚姻家事务，进行婚前婚后财产评估、家事争议解决、跨国婚姻争议解决；财富规划，尤其是将个人财产和公司财产进行隔离，并提供税务和理财服务；最后是遗嘱的规划、确立和继承权争议解决。

家族办公室现由约10名律师组成，其中包括2位高级合伙人、约3位集团合伙人，以及多位税务、婚姻、信托基金等领域的执业律师。团队负责人为德和衡上海高级合伙人黄贤文律师，黄律师拥有银行及保险公司跨领域从业背景，近年来专注于金融资管类服务。

德和衡未来会专注于为家族办公室客户提供多元化资产配置建议，尤其在保险、信托、私募股权基金等方面为客户提供更多建议。

根据ALB之前的报道，随着中国成为世界上增长最快的财富市场，对财富管理律师的需求也逐渐增加，针对传承规划、继承、信托等提供建议。越来越多中国律师事务所开始专注于这个快速增长的业务领域。 



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文娱项目“品行条款”不断扩张，“政治条款”高歌迈进

从李冰冰、王俊凯、迪丽热巴等明星针对一众国际知名品牌（包括D&G等）的解约声明，到中国篮协、中央电视台等针对火箭队、NBA的暂停交流、合作声明，再至腾讯体育、蔡徐坤与火箭队、NBA的终止合作，涉外文娱项目合同的“爱国条款”再次成为法律行业讨论的热点。

作为长期关注、深入研究文娱领域的律师，我们发现，文娱产业合同“品行条款”在不断扩张，“政治条款”在高歌迈进。

一、“品行条款”的不断扩张

迈入千禧年，大陆影视产业刚刚兴起之际，出于履行合的目的，影视文娱行业的合作合同往往规定影视项目参与人员（尤指艺人）不得出现违反法律（尤其是违反刑法，即艺人被限制人身自由）的情形。因为在此情形的影响下，将会出现重大履行障碍，导致合同无法履行。这也侧面反映出出品方对艺人的期待相对较低。

2010年以后，随着明星吸毒、嫖娼事件的频发，2014年国家新闻出版广电总局发布“劣迹艺人”封杀令，导致文娱领域一个项目出现一名编剧、艺人、导演等主创人员的“劣迹行为”足以让一个项目流产。因此，笔者在经手的影视娱乐项目中，为最大程度规范艺人的行为，控制影视娱乐项目的风险，通常会设置严苛的“品行条款”，在合同中明确约定个人合作方若触犯刑法、严重触犯行政法规（包括但不限于“吸毒”“嫖娼”），或出现违背社会公序良俗的行为（“出轨”“虐待动物”等），委托方有权采取取消署名、换脸直至单方解除合同、返还全额报酬、赔偿经济损失，并追索高额违约赔偿金等措施。

2018年D&G等奢侈品“辱华”事件发生后，我们发现，不仅这些思想较为自由的文学艺术从业者容易出现“品行”问题，包括品牌方、出品方、制作方的合作相对方也同样会出现“品行”问题。因此普遍衍生出了法人主体的“品行条款”。仔细端详该等“品行条款”，不难发现，该条款实际已经脱离了“品行”的范畴，朝着“政治正确的条款”高歌迈进。

二、“政治条款”的高歌迈进

1、尊重合作对方的爱国情感，避免任何可能的种族歧视

2018年年末，国际一线奢侈品牌D&G（杜嘉班纳）发布涉嫌“辱华”的品牌宣传视频，因此导致李冰冰、霍思燕、王俊凯、迪丽热巴等明星针对国际一众知名品牌（包括D&G等）的解约声明。虽然我们无法确认艺人解约声明的合同依据是否基于合同条款中存在“爱国情感”条款，但我们可以推测，至此以后艺人的品牌代言合同中，对于不尊重合作对方的爱国情感、针对合作方有较为明显的种族歧视的行为，将大概率被约定为实质性违约，可能将被苛以解除合同，甚至赔偿高额违约金的违约责任。

笔者认为，尽管“爱国情感”较为主观，但涉及跨国人文和民族风情的表达，在互联网时代，极易流入不可收拾之

境地，跨国企业应争取所在国家专业人士的顾问和指导。当然，合作对方基于民族或种族的情感，在合同条款中要求合作方保证尊重己方的爱国情感，要求合作方督促其高管、雇员、承包商尊重己方的爱国热情，当属合理。

2、尊重合作对方的领土完整，避免支持分裂的行为或言论

一些跨国娱乐公司、品牌公司，在组织架构中将大陆、香港、澳门、台湾等地区分开列表。在公司网站的下拉菜单中将香港、澳门和台湾列为国家选项，虽然从理性的角度，可以声称是复制国际标准化组织（ISO）的标准代码，但从中国大陆的领土完整层面分析，确实有违“一个中国原则”原则。在此情形下，中方合作方要求外方合作方“保证尊重、理解中方企业及员工关于‘一个中国’的原则及政治立场”，成为中方合作方较为合理的主张。对于一些明确主张、支持“台独”“港独”等分裂国家的艺人甚至公众人物，大陆的国家广播电视行业及主管部门也以“你知我知大家知”的状态进行了较为严厉的限制。

3、尊重合作方政府的外交政策和国家利益

休斯顿火箭俱乐部总经理莫雷，在中国中央政府以及全国人民普遍公开谴责香港暴乱行为之际，公开发表支持香港暴乱事件的言论，属于典型的不尊重合作对方国家利益的行为。NBA总裁的回应亦无意对莫雷进行任何惩戒，以至于大陆从中央媒体到国家级篮球协会，从顶级合作视频平台到合作的体育品牌，纷纷发表声明提出与NBA中止、终止合作。

尽管合作双方政府的外交政策和国家利益，往往不应该是民事合作应该考虑的问题，但不同合作国家的意识形态、宗教信仰、政治环境等因素会导致一旦合作方冲击该国外交政策或国家利益时，若该国合作方不采取某一抵制或中止、终止行动时，会遭受该国消费者、社会公众甚至政府、行业协会的谴责、甚至抵制、处罚。因此，处于这种较为敏感的政治环境、意识形态下的合作方，更应该关注包括但不限于外交政策、民族利益、国家利益、社会公共情感等较为宏观的、长远的、复杂的背景设定，针对性的设计“合作对方不得发表任何抵触、反对中国政府外交政策的言论、不得发表任何与中国政府利益不符的言论”条款。

三、结语

中国作为全球第二大经济体，又是社会主义国家，在中美贸易战升级的事态之下，无论如何，未来的涉外贸易、服务合同中，涉及政治条款的争议大概率将会越来越多；双方以往签署的合同，也将面临不同类型民族情感、外交政策、国家利益等政治事件的冲击。因此，法律同侪可以更多地未雨绸缪，在草拟法律文本时，尽可能准备该类条款，以备不时之需。



HEALTH MATTERS

China has the world's second biggest healthcare market today, and the government has also introduced and revised a number of laws and regulations in recent years as part of efforts to reform the industry. Lawyers say that the time has come for their peers to obtain knowledge in new fields, such as data protection, that are becoming more and more integrated into traditional health care.

BY ASIAN LEGAL BUSINESS

Health matters to pretty much everyone, and especially in a large country like China, it is no surprise that healthcare is a fast-growing industry, with projected total healthcare expenditure reaching \$1.1 trillion by 2020.

"Health care is the foundation of people's livelihood and has always been the focus of attention for China," says David Fu, partner at Global Law Office, noting that with the development of society and the change in macro policies, there are many more market trends in health care in recent years.

"We have implemented policies such as the two-invoice system, quantitative procurement, and the newly revised drug administration law," he says. "Under the guidance of such policies, upstream pharmaceutical and contract research organisation (CRO) enterprises and midstream

pharmaceutical production companies have been active in drug R&D, and the distribution and sales channels have also been continuously improved."

The newly revised Drug Administration Law, promulgated in August this year, is the second major revision of the drug administration law since its enactment in 1984.

"It elevates the achievements and effective practices of the drug reforms to the legislative level and provides a stronger legal guarantee for public health," says Fu.

He notes that the highlights of the new drug administration law include encouraging innovation, optimizing clinical trial management and approval processes, and aligning with international standards by introducing the Marketing Authorisation Holder (MAH) system. In addition, the newly promulgated drug administration law

also strengthens legal supervision by implementing comprehensive control systems and individual accountability.

"The government has issued a number of innovative policies and guiding principles, gradually refining and strengthening the legal supervision of the healthcare industry, which reflects the government's overarching principle of deepening the reform of the medical system, ensuring drug safety and encouraging new drug innovation," says Zhou Hanshuo, partner at Jingtian & Gongcheng.

Josh Shin, partner at Fangda Partners, says that the healthcare industry in China has seen the speeding up of drug import approval, rapid development of novel drug R&D conducted by domestic corporations, the continuous refinement of compliance requirements, progress on data privacy protections, better quality

evaluation and the reform of medical insurance system.

According to Shin, the highlights of the new Drug Administration Law include further implementation the MAH system, and promotional measures for more novel drug R&D such as simplified procedures for clinical trial application review.

“Though not recently amended, another set of regulations worth noting is the Anti-Unfair Competition Law that became effective on January 1, 2018,” says Shin.

He goes to explain that the new rule states that commercial bribery acts of employees are imputed to the employer unless the employer can prove that the employee’s actions were unrelated to soliciting business opportunities or competitive advantages for the employer. In evaluating whether the employer has met its burden of proof, enforcement agencies will evaluate whether the employer takes commercial bribery seriously, e.g., whether it has a robust compliance program with strong controls.

“Taking into consideration the current business trends, it is value added to invest in making the business more transparent, trustworthy and progressive, and also to constantly keep up with the relevant law and regulation updates and enforcement development,” says Shin.

ACCELERATED REFORM

The Chinese drug watchdog, the National Medical Products Administration, is also working on numerous new regulations to further accelerate the healthcare reform in the country, particularly related to issues such as encouraged generic drugs directory, the standardisation of medical supplies, centralized purchasing of medicines, online medical care payment and so on.

“We expect to see more supporting measures to be implemented and amendments of the existing regulations regarding issues such as drug registration, transfer of marketing license, and online sales of drugs. Detailed rules are needed to further

implement the new drug administration law,” says Zhou.

“Based on our experience, more investment deals in early-stage R&D have taken place and the IPO boom in HKEX continues,” says Shin. “Clearly we can see MNC’s interest in China and the development of home grown companies.”

With fiercer competition among market players and more regulatory reforms in China, innovation and compliance with the increasingly stringent regulatory requirements, have become the focus of pharmaceutical companies, according to Shin.

“In addition, the pace of technological advancement continues to drive the transformation of more traditional pharmaceutical companies”, he adds.

TECHNOLOGICAL INNOVATIONS

With the popularity of digitalisation in all aspects of our lives, the healthcare sector has also embraced the technological innovation. Technologies such as artificial intelligence, precision medicine, and online medical care are shaping the future of the health industry.

“The Internet+ model has penetrated into various industries including health care, so it is necessary to transform the traditional development model into one that is highly digitalised and mobilised,” says Zhou.

“With higher living standards and an ageing society, people are no longer just passively seeking medical treatment, they are willing to pay more attention to health management and chronic disease management,” says Fu. “Medical digitalisation and technological health care will be the major development directions for health care with innovation at its core. The future will be patient-centred and market-oriented.”

Fu notes that with these changes in the healthcare sector, clients’ demand in legal services is also diversifying.

For example, the development of online medical care and medical artificial intelligence, clients need lawyers to provide comprehensive legal services on the compliance of medical big data and the protection of IP rights in the medical field.

“As a lawyer focused on health care, not only is it necessary to understand and track the latest changes in laws and policies to provide the most timely and accurate advices to clients, it is also essential to keep up with the latest industry trends to uncover and solve problems for the clients,” says Fu.

RAPID CHANGE

One thing certain about the health industry is that it’s constantly evolving, so there is bound to be a time lag between the emergence of new issues and the introduction of laws in the sector.

Therefore, the main challenges for healthcare lawyers would include advising and guarding clients against risks, keeping abreast of the changes in the industry and regulatory developments so that they can provide a full range of legal advices to clients that are exploring business opportunities in these emerging areas, says Fu.

Law firms have realised that they need to diversify the legal services provided to serve as a one-stop shop for their clients.

“At present, the services we offer not only cover pharmaceutical R&D, drug production and sales, medical device production and sales, and the whole process of medical care, but also include investment and financing, merger and acquisition, IPO, compliance review and advice, intellectual property protection, and dispute resolution,” says Fu.

He also notes that more and more international capitals are being attracted to China’s healthcare sector due to the gradual relaxation of the foreign investment access policy. And with the intensification of the competition in the global market, more and more traditional multinational enterprises have reorganized and integrated their business globally, including their assets in China.

Fangda’s Shin says that he had received an increasing number of compliance inquiries from clients. For example, some companies require constantly update on the data privacy legislative development given that

健康至上

中国拥有全球第二大医疗健康市场，预计到2020年，医疗健康方面的支出总额将达到1.1万亿美元。作为医疗健康改革工作的一部分，中国政府近年来也出台或修订了一些相关的法律法规。该领域的专业律师表示，现在律师们需要开始学习新领域的知识，例如数据保护，因为它们正在越来越多地融入传统的医疗健康业务中。

作者：亚洲法律杂志

民生的基础和政府关注的焦点

环球律师事务所合伙人傅志耕说：“医疗健康领域是基础民生领域，也是国内备受关注的焦点。”他指出，近年来随着社会发展、宏观政策的变化，医疗健康领域的热点话题也日趋丰富。

他说：“在政策层面上，随着两票制、带量采购和新修订的《药品管理法》等政策的实施，上游医药研发及CRO（医药研发合同外包服务机构）企业、中游药品生产企业积极从事药物研发，终端流通销售渠道也不断得到改善。”

今年8月份《药品管理法》的修订颁布，是自1984年该法颁布以来进行的第二次重大修订。

“新法将药品领域改革成果和行之有效的做法提升到立法层面，为公众健康提供了更有力的法治保障。”傅律师说。

他特别指出，新的《药品管理法》主要包括导向创新，优化临床试验管理和审批制度，以及通过引入上市许可持有人制度与国际标准接轨。此外，新颁布的《药品管理法》还通过实施全程管控和个人问责制来加强法律监管。

“国家先后出台了多项具有革新性、创新性的政策和指导原则，逐渐细化和强化了医疗行业法律监管，体现了政府深化医疗制度改革、保障用药安全、鼓励新药创新的大原则。”竞天公诚律师事务所合伙人周晗烁说。

方达律师事务所合伙人施巍表示，在中国现在的医疗健康行业中，药品进口审批速度加快了，国内企业开展

新型药品研发的步伐也越来越快，合规要求不断细化，数据隐私保护取得了进展，质量评估和医疗保险制度的改革也得到了深化。

施律师表示，新《药品管理法》的亮点包括进一步实施上市许可持有人制度，以及促进新药研发的措施，如简化临床试验申请审查程序。

“另一项值得注意的法规是《反不正当竞争法》，该法于2018年1月1日生效。”施律师说。

他解释说，该项法律规定，除非雇主能够证明其雇员的商业行为与为雇主争取商业机会或竞争优势无关，否则雇员的商业贿赂行为应归咎于其雇主。在评估雇主是否履行了其举证责任时，执法机构将评估雇主是否认真对待了商业贿赂，例如其是否制订并落实了有效的合规计划和强有力的控制措施。

“鉴于当前的商业发展趋势，加大投入使商业更加透明、可信，并推动其不断进步，这样的投入能带来增值效应；此外，经营者还应该跟上相关法律法规的更新和执法发展的步伐。”施律师说。

中国药品监督机构——即国家药品监督管理局，也正在制定许多新法规，以进一步加快中国的医疗改革，特别是关于鼓励类仿制药目录、医疗用品标准化、药品集中采购、互联网医疗健康付款等方面的法律法规。

“我们预计，将会有一系列配套措施出台，对现行法规进行必要的修改或修订，例如涉及药品注册、上市许可证转让、网售药品等，都需要细

化规则来进一步落实药品管理法的内容。”周律师说。

“根据我们的经验，在药品早期研发方面将会有更多的投资交易，港交所的IPO热潮也将继续。我们可以很清楚地看到，跨国公司对中国市场很感兴趣，而中国本土企业正在快速发展。”施律师说。

施律师表示，随着市场竞争的加剧和中国监管改革的深入，如何在创新的同时遵守日益严格的监管要求已经成为制药企业关注的焦点。

“此外，技术的进步将继续推动更多传统制药公司转型。”他补充道。

医疗健康行业的技术创新

随着数字化在我们生活各个方面的普及，医疗健康行业也开始接受技术创新。人工智能、精准医疗、互联网医疗等各种新技术正在影响着医疗健康行业的未来。

“互联网+模式已经渗透到包括医疗健康在内的各个行业，医疗健康也不例外，必须从传统模式转向高度网络化、移动化。”周律师说。

“随着人们生活水平的提高以及社会老龄化发展，人们不再只是被动就医，而会更加注重健康管理、慢性病管理。同时，医疗信息化、科技医疗将会是未来发展的大方向，其核心仍然是鼓励创新、鼓励研发，以患者为中心，以市场为导向。”傅律师说。

傅律师指出，随着医疗健康领域的这些变化，客户对法律服务的需求也越来越多样化。

例如，随着互联网医疗和医疗人

“With higher living standards and an ageing society, people are no longer just passively seeking medical treatment, they are willing to pay more attention to health management and chronic disease management. Medical digitalisation and technological health care will be the major development directions for health care with innovation at its core.” – David Fu, Global Law Office

many implementation rules that are subordinated to China Cyber Security Law are soon to be released and many national standards are in the midst of finalization by TC260 (national standards committee).

In some other cases, emerging R&D-driven Chinese pharmaceutical firms demand comprehensive and solution-based regulatory advices on the clinical studies and commercialisation of drugs.

“Meanwhile, venture capitals that are interested in making investment in innovative life science companies come along with complicated qualification and regulatory questions,” Shin told ALB China. “To cater to the market development, lawyers in the industry of healthcare are further subdivided and dig into different fields to ensure a deep understanding of the business

itself and a timely grasp of the development of laws and regulations.”


“Healthcare is a highly regulated industry and is filled with all kinds of legal challenges, both regulatory and technological challenges,” Shin adds. “The rapid progress of the industry gives you no choice but to catch up and develop your own expertise.”

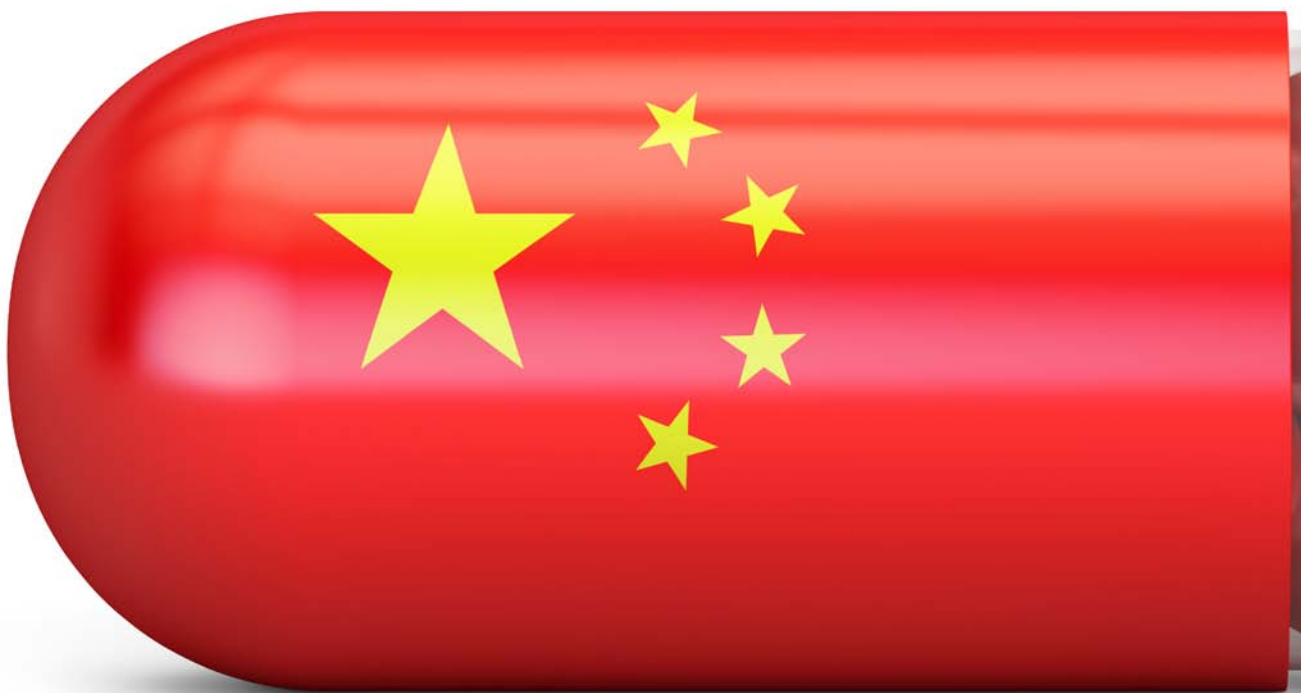
Zhou notes that, Chinese regulators have completed the promulgation of the law on traditional Chinese medicine and the administration of vaccines, as well as the revision of the law on drug administration. At the same time, some of the pilot schemes have also been rolled out across the country.

“In the future, we will definitely see more laws and systems being set up or revised. While it consolidates the existing reform achievements, it will also build a legal framework and pave

the way for further development of the industry and society,” says Zhou.

Versatile lawyers are needed in the healthcare industry. In addition to the ability to interpret the latest regulatory developments, they also need to have adequate knowledge in personal information and medical data protection, intellectual property rights, compliance management, private equity and public offering market, and many other fields that are interwoven with health care.

“From network security and data protection, GDPR, human genetic resources management, novel biotech and human ethics, to transnational anti-commercial bribery, compliance investigation, there are plenty of opportunities as well as challenges to lawyers in the healthcare business,” says Zhou. 



“随着人们生活水平的提高以及社会老龄化发展，人们不再只是被动就医，而会更加注重健康管理、慢性病管理。同时，医疗信息化、科技医疗将会是未来发展的大方向，其核心仍然是鼓励创新、鼓励研发，以患者为中心，以市场为导向。”——傅志耕，环球律师事务所

工智能行业的发展，客户需要律师能够就医疗大数据的合规性和医疗领域的知识产权保护等方面提供全方位的法律服务。

作为专注于医疗健康业务的律师，不仅需要及时了解并跟踪法律及政策的变化，为客户提供最及时、最准确的合规建议和法律咨询，同时还要“及时了解并跟踪最新的行业动态，从而及时为客户的项目发现问题、解决问题”，傅律师表示。

快速变化的领域

关于医疗健康行业有一点是可以肯定的，那就是该行业在不断变化，所以行业法规的出台必然会滞后于新问题的出现。

因此，从事医疗健康业务的律师面临的主要挑战包括：如何及时为客户提示和防范风险，及时了解行业发展的变化，以及相关监管政策的发展动态，以便为这些在新兴领域探索业

务机会的客户提供全方位的合规建议和法律咨询服务，傅律师指出。

律所已经意识到，他们需要对其现有的服务进行细化，提供多样化的服务模式，从而为客户提供“一站式”的法律服务。

“目前，我们的法律服务经验不仅覆盖了药品研发、生产和销售，医疗器械生产和销售，以及医疗服务的全流程，还包括医疗健康领域的投资与融资、并购、上市融资、合规审查和建议、知识产权保护、争议解决等各类业务。”傅律师表示。

他还指出，由于外资准入政策的逐步放宽，越来越多的国际资本被吸引到中国的医疗健康领域。而随着国际市场竞争的加剧，越来越多的传统跨国企业在全中国范围内进行业务重组和整合，其中也包括他们在中国的投资和业务。

方达的施律师表示，有越来越多的客户向他咨询合规方面的问题。例如，

由于在《网络安全法》下很快将会出台许多相关的实施细则，同时全国信息安全标准化技术委员会（简称信息安全标委会，TC260）正在最终确定许多国家标准，“有些企业不断要求我们提供有关数据隐私立法的最新进展”。

而一些新兴的研发驱动型中国制药公司则要求律师们为他们就有关药物临床研究 and 上市销售方面的问题提供全方位的、基于解决方案的监管建议。

“有兴趣投资于创新型生命科学公司的风险投资则伴随着复杂的资格和监管问题。”施律师告诉ALB。“为了迎合市场发展，律师需要进一步细分和发掘医疗健康行业不同领域，确保自己深入了解业务本身，并及时掌握法律法规的发展动态。”

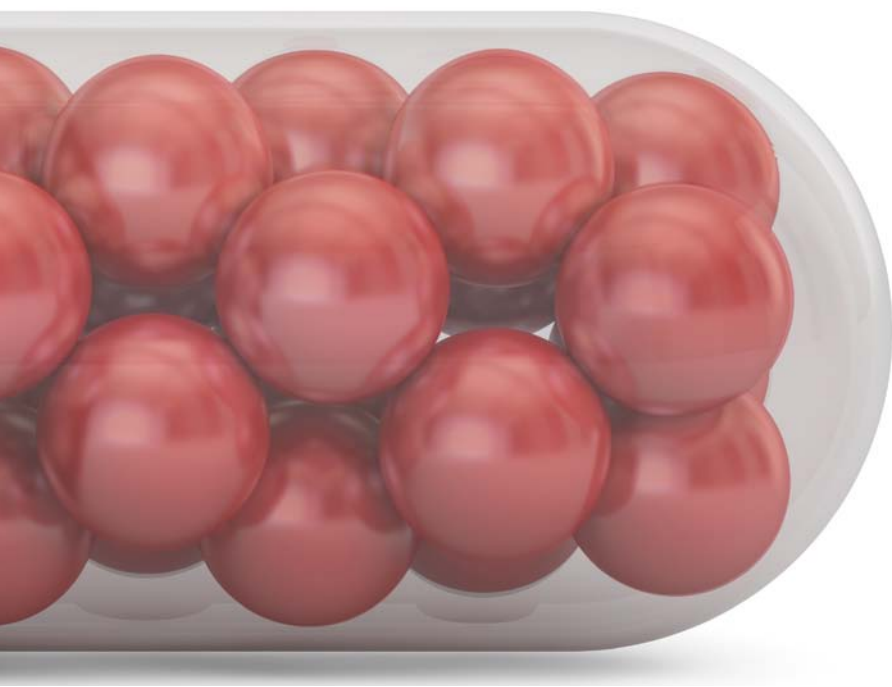
“医疗健康行业是一个受到高度监管的行业，充满各种法律挑战，包括监管和技术方面的挑战。面对这个行业的飞速发展，我们别无选择，只能奋起直追，扩充自己的专业知识。”施律师补充道。

周律师指出，中国监管机构已经完成了中医药和疫苗管理等法律的立法，并且修订了药品管理法等法规；部分试点方案也已经在全国范围内推广。

“未来我们一定会看到更多的法律法规、制度的创制或修改，在巩固已有改革成果的同时，也为将来产业、社会的深化发展搭出法律的框架，铺平道路。”周律师说。

现在医疗健康行业需要复合型的律师，他们除了能够解读最新监管政策的发展动态，还需要对个人信息和健康医疗数据保护、知识产权、合规管理、私募及私募市场等诸多与医疗健康板块交织的领域有足够的了解。

“从网络安全与数据保护、《一般数据保护条例》（General Data Protection Regulation, GDPR）到人类遗传资源管理、生物新技术与人类伦理等等，再到跨国反商业贿赂、合规调查，对于现阶段的医疗健康业务领域的律师来说，可谓是机会与挑战并存。”周律师说道。



China's New Foreign Investment Law and its Impacts on Existing FIEs

On March 15, 2019, the PRC National People's Congress promulgated the *People's Republic of China* ("PRC" or "China") *Foreign Investment Law* (the "**Foreign Investment Law**"), which will become effective as of January 1, 2020. Upon its implementation, the Foreign Investment Law will supersede and replace the existing PRC *Sino-foreign Equity Joint Venture Law* (the "**EJV Law**"), PRC *Sino-foreign Cooperative Enterprise Law* (the "**CJV Law**") and PRC *Wholly-foreign Owned Enterprise Law* (collectively, the "**FIE Laws**"), which have been governing foreign investment in China for several decades.

This article addresses (i) the key highlights of the Foreign Investment Law, (ii) a summary of significant changes to the FIE Laws raised by the Foreign Investment Law and (iii) an analysis of potential impacts of the Foreign Investment Law on the existing foreign-invested enterprises ("**FIEs**") in China, including the Sino-foreign equity joint ventures ("**EJVs**"), the Sino-foreign cooperative joint ventures ("**CJVs**") and the wholly-foreign owned enterprises ("**WFOEs**").

I. Key Highlights of the Foreign Investment Law

The Foreign Investment Law applies to investment activities conducted directly or indirectly within the territory of China by foreign natural persons, enterprises or other organizations (collectively, the "**Foreign Investors**"), including the following:

1. establishing an FIE in China, either alone or together with any other investor;
2. acquiring shares, equity interests, property shares or any other similar rights and interests of an enterprise in China;
3. investing in a new project in China, either alone or together with any other investor; and
4. investing in any other way as provided by applicable laws or regulations or rules of the State Council.

When the Foreign Investment Law becomes effective, the organization form



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and structure of a newly established FIE will conform to and comply with the PRC *Company Law* (the "**Company Law**") or the PRC *Partnership Enterprise Law*, as the case may be. An FIE already established prior to the implementation of the Foreign Investment Law may retain its current organization form and structure for a maximum period of five (5) years following the effective date of the Foreign Investment Law (the "**Five-year Grace Period**"). Accordingly, all of the existing FIEs will have the Five-year Grace Period to modify and change its current organization form and structure to comply with the relevant provisions of the Company Law.

The supervision and regulation of "investment in domestic enterprises through contracts, trusts and other agreements by Foreign Investors" (especially foreign investment structured through a variable interest entity or "**VIE**") have been removed from the final version of the Foreign Investment Law. However, we cannot rule out the possibility that "foreign investment through contractual control" may fall into the scope of foreign investment subject to the regulation of the Foreign Investment Law under the "catch-all" clause as discussed above. It remains to be seen how the Foreign Investment Law and its forthcoming implementation rules would regulate the VIE investments.

The Foreign Investment Law has set out general principles in terms of promotion and protection of foreign investment. National treatment has been introduced by reinforcing China's implementation of the *Special Administrative Measures (Negative List) for Foreign Investment Access*

(2018) (the "**Negative List**"), which sets forth a list of industries for which the foreign investment is either "prohibited" or "restricted". If the foreign investment falls into the scope of the Negative List, it shall be subject to certain restrictions and government approval requirements under the Negative List. If the foreign investment does not fall into the scope of the Negative List, the treatment to such foreign investment shall be no less favorable than that granted to domestic investors and their investments. In addition to the Negative List management system, other modernized systems such as information reporting system have been also adopted. Meanwhile, the existing regulations applicable to mergers and acquisitions by Foreign Investors such as the merger control review and national security review systems remain to be applicable.

Furthermore, protective measures such as compensation for expropriation, protection of IP rights and trade secrets, as well as establishment of complaints mechanism have been introduced to protect the legitimate rights and interests of Foreign Investors.

II. Significant Changes to FIE Laws

Upon the implementation of the Foreign Investment Law, the FIE Laws will be abolished. Accordingly, the organization form and structure of all existing FIEs are required to conform to and comply with the Company Law, subject to the Five-year Grace Period. As a result, an existing FIE will have to face certain significant legal changes and challenges such as the following:

1. Corporate Governance:

Under the existing FIE Laws, an EJV/CJV currently does not have a shareholders' meeting. The board of directors of an EJV (or the board of directors or joint management committee of a CJV) is the highest authority of the company. The powers of the board of directors include the review and approval of all major matters of the company, such as amendment of the articles of association, termination and dissolution of the company, increase or reduction of the company's registered capital, and merger

or division of the company (collectively, the “**Major Matters**”), which are subject to unanimous approval by all directors present at a duly convened board meeting.

Under the Foreign Investment Law, subject to the Five-year Grace Period, an FIE is required to have a shareholders’ meeting as the highest authority of the company in accordance with the Company Law. The powers of the shareholders’ meeting include the review and approval of all major matters of the company such as the Major Matters, which are subject to the approval by shareholders representing more than two-thirds of the company’s voting rights. As a result, those Major Matters which previously require **unanimous approval** of all directors present at a duly convened board meeting under the FIE Laws will now only require **super-majority approval** by shareholders (representing more than two-thirds of the company’s voting rights) under the Company Law. Accordingly, if a Foreign Investor has less than one third of the equity interests in an EJV/CJV, such Foreign Investor would no longer enjoy the veto right with respect to the Major Matters which it used to enjoy under the FIE Laws.

2. Transfer of Equity Interests:

Under the existing FIE Laws, if one party to an EJV/CJV intends to assign its equity interest to a third party, the transferring party is required to obtain the consent from the other party. In the case of an EJV, the non-transferring party also has the right of first refusal to purchase such equity interest to be transferred.

Under the Foreign Investment Law, an FIE is required to comply with the relevant provisions regarding the equity transfer under the Company Law. A shareholder proposing to transfer its equity interests to a non-shareholder is required to obtain the consent of more than half of the other shareholders. If more than half of the other shareholders do not consent to the proposed transfer, the non-consenting shareholders are required to purchase such equity interests, failing which they will be deemed to have consented to the proposed transfer.

3. Distribution of Profits:

Under the existing FIE Laws, an EJV is required to pay the profits to its shareholders in proportion to their respective contributions to the registered capital of the company.

Under the Foreign Investment Law, the shareholders of an FIE may, in accordance with the relevant provisions of the Company Law, reach an agreement on a percentage and method for the payment of profits which may vary from their respective contributions to the registered capital of the company.

4. Allocation of After-tax Fund:

Under the existing FIE Laws, an EJV/CJV may contribute to the reserve fund, the employee bonus and welfare fund and the enterprise development fund in accordance with the percentage decided and approved by the board of directors.

Under the Foreign Investment Law, an FIE will be required to contribute 10% of the after-tax profit to its statutory surplus reserve in accordance with the Company Law until the aggregate sum of the statutory surplus reserve reaches more than 50% of its registered capital.

III. Implications to Foreign Investors

Based on the above analysis, upon the implementation of the Foreign Investment Law, within the permitted Five-year Grace Period, each of the existing FIEs (including EJVs, CJVs and WFOEs) established prior to the Foreign Investment Law will be required to amend its organization form and structure in compliance with the Company Law. For an existing EJV/CJV, a Foreign Investor will need to consider starting to negotiate with its Chinese joint venture partner in a timely manner to (i) make revisions to the existing joint venture contract (or cooperation agreement) and articles of association of the relevant EJV/CJV; and (ii) submit the amendments to competent governmental authorities for approval or filing, as the case may be. The revisions would include, at a minimum, adding or amending the relevant provisions regarding the corporate governance of the company, such as the shareholders’ meeting and the board of directors.

The mismatch between the original corporate governance terms of a joint venture established prior to the Foreign Investment Law and the corporate governance provisions under the PRC Company Law will certainly become the subject of intensive negotiation between a Foreign Investor and its Chinese joint venture partner over the next few years prior to the expiry of the Five-year Grace Period. This would potentially reopen the negotia-

tion over corporate governance terms and other related terms for the joint venture. Foreign Investors will be well advised to get prepared before they discuss with their joint venture partners any intended revisions to the corporate governance terms and operating rules of the joint ventures.

For an existing WFOE, a Foreign Investor will also need to review the current articles of association of the WFOE to determine if any revisions are necessary to fully comply with the corporate governance provisions under the Company Law.

Furthermore, matters previously required under EJV Law or CJV Law to be stipulated in the joint venture contract or cooperation agreement, such as the purchase of raw materials, the sale and distribution of products, the introduction of technology and the use of land, are no longer required to be specified in the joint venture contract or cooperation agreement under the Foreign Investment Law. Accordingly, in connection with the amendments to the joint venture contract (or cooperation agreement) and articles of association of the relevant EJV/CJV, a Foreign Investor may also consider whether to make revisions to the relevant provisions regarding the above matters.

Conclusion

Upon its implementation, the Foreign Investment Law will replace and unify the FIE Laws to regulate foreign investment and FIEs in China. We expect that as the Foreign Investment Law becomes effective as of January 1, 2020, relevant implementation regulations will be promulgated accordingly to provide further clarity and guidance for Foreign Investors and FIEs to comply with the new law.

This publication was prepared for the general information of our clients and other interested persons. It should not be regarded as legal advice. We would be pleased to provide additional details or legal advice regarding specific situations if desired.

David Fu has more than 25 years legal experience in foreign direct investment, mergers and acquisitions, private equity investment and restructuring of foreign-invested enterprises in China.

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ALB CHINA TOP 15 FEMALE LAWYERS 2019

2019 ALB CHINA 十五佳女律师



This year, 15 outstanding female lawyers are being recognised by ALB China for their exceptional achievement in the legal service industry. We speak to them to find out the keys to their success, and the challenges female lawyers still face these days.

今年，15位杰出的女律师因其在法律服务行业的卓越成就入选“ALB China十五佳女律师”榜单。我们与她们进行了访谈，了解了她们获得成功的关键是什么，以及当今女律师所面临的挑战。

BY ASIAN LEGAL BUSINESS 作者：《亚洲法律杂志》

■ A partner at Junhe and a corporate lawyer specialising in M&A and competition, Audrey Chen has been in the legal industry for 26 years, since receiving her legal training at top institutions in China and the U.S.

Chen is best known for her outstanding efforts in mining company BHP Billiton's takeover of Rio Tinto in 2008, which marked one of the largest takeovers in history and created a global mining giant, as between them the two companies handled 70 percent of the world's seaborne trade in iron ore.

As a successful female partner, uncommon in today's legal world, Chen says that persistence and grit is her recipe for success. "You need to always work harder and never give up," she says. As for her work, she always looks at issues from the clients' perspective in order to find the best solution.

Over the years, Yin Yue partner at Jingtian & Gongcheng, has remained committed to the job that she loves. To her, success is when a person can live a life of her choice, and she strives to keep the life she wishes for.

She believes that to be a top professional lawyer, there are more requirements than the fundamentals of being a capable worker.

"Firstly, I require myself to have a wide breadth of knowledge. A commercial lawyer should be able to understand key issues in the business world other than the legal matters. This way, you can understand better what your clients need. I therefore encourage my colleagues to learn more about

economics, finance, psychology and so forth," Yin says.

"Secondly, there needs to be in-depth learning. Lawyers should study a subject in depth within the legal area that they practice in," Yin adds.

Yang Xiao, senior partner at Allbright Law Offices, has an impressive track record. She led her team to offer comprehensive legal services to Lujiazui Financial City, which is dubbed as "Oriental Manhattan", and to Shanghai New Bund International Commercial Zone, which is developed to be a new landmark of the city.

Yang says her personal philosophy at work is to pursue excellence and perfection at work in order to serve the society and foster development. "I require myself to be precise and meticulous at work. I need to balance legal and commercial considerations for my clients' interests," she says.

Yang also shares what attributes she believes can lead to success. "The first key to success is passion. This job is exactly what I love and I'm willing to work hard for it and I enjoy every second of it. The second key is persistence. I'm willing to accept challenges and I don't easily give up. The third is specialization. The legal business is supported by a solid knowledge base. Lawyers need to stay humble and hungry for new knowledge to brace themselves for rapid changes in today's economic and regulatory environment," she explains.

For Sun Wei partner at Commerce & Finance Law Offices, the desire to always strive for better is crucial to her success.

■ 陈子若是君合律师事务所的合伙人，她是一位专注于并购和竞争法业务的公司律师。陈律师毕业于中国和美国的顶尖法学院，迄今已经在法律行业工作了26年。

2008年，矿业巨头必和必拓收购力拓，并创建了一家全球矿业巨头，这是有史以来规模最大的一次收购，因为两家公司之间的交易量占全球海运铁矿石贸易的70%。陈律师因在这宗收购案中的出色表现而声名鹊起，获得了业界的广泛赞誉。

陈律师是一位成功的女性合伙人，这在当今的法律界并不多见。陈律师表示，坚持和勇气是她获得成功的秘诀。她说：“你需要坚持和持续不断地努力，永不放弃。”谈到对工作的要求时，她希望自己“设身处地为客户着想，寻求最佳解决方案”。

尹月是竞天公诚律师事务所合伙人。多年来，尹律师始终保持着对工作的热情。在她看来，成功就是“活成自己希望的样子”，她也一直在朝这个方向努力。

她认为，要想成为一名顶级的专业律师，工作能力仅仅是基本的要求。

“首先，我要求自己拥有广泛的知识。作为商业律师，应该能够理解商业领域中除法律事务以外的关键问题，这样才能更好地理解客户的诉求。所以我也鼓励我的同事们更多地了解经济、财务、心理学等范畴的知识。”尹律师说。

“其次，要深层次地学习。律师应该在其执业的法律领域内深入挖掘和学习。”尹律师补充道。

锦天城律师事务所高级合伙人杨晓的工作业绩给人留下了深刻的印象。她带领她的团队为被誉为“东方曼哈顿”的陆家嘴金融城和上海新外滩国际商

“The key to success lies in strong determination to be a successful lawyer and continuous efforts to advance further. Many fail to stay the course due to different reasons, but those who eventually become successful in this industry are the strong-willed people.”

“成功的关键在于有决心成为一名成功的律师，然后不断为此努力。就像大浪淘沙，很多人没有坚持下来，而那些最终在律师行业中坚持下来的人就会成为成功的律师。”

— Sun Wei, Commerce & Finance Law Offices 孙激, 通商律师事务所

She describes her motto for her work in the following way: “What I require from myself is simple: if the maximum score is 100, I try to achieve 120.”

Sun has gained herself a reputation across the education industry, representing clients such as China Education Group Holdings Limited, China New Higher Education Group and China Kepei Education Group Limited. She understands very well the policies and regulations of the industries that her clients are in to help them navigate through legal issues while meeting their business needs.

“The key to success lies in a strong determination to be a successful lawyer and continuous efforts to advance further. Many fail to stay the course due to different reasons, but those who eventually become successful in this industry are the strong-willed people,” she says.

Besides determination, a good understanding of the job nature and dedication are equally important. “I always tell the newcomers that before they pursue this career path, they need to understand that lawyers are service providers and the best we can do is to provide the best quality service,” Sun says.

“How we are different from others is that when the clients reach out to us, they must be in some trouble already. To stay in this industry, you must be prepared to be responsive around the clock,” she adds.

Apart from her clear career ambition, Beijing Dentons Law Offices’ Senior Partner Vivien Tuo also has a unique view on how to work better.

“I believe you must combine your own experience, interest and personality to maximize your strength instead of trying to work on your weaknesses,” she says. “For me, I will leverage the experience I’ve gained during the past two decades with my pragmatism to develop myself as a specialized lawyer.”

Tuo describes herself as a perfectionist at work. “For legal advice letters, I aim for perfection in punctuation and layout other than just professional analysis, as each letter must reflect our professionalism,” she talks of an example that demonstrates her meticulousness.

Since she embarked on the legal journey in 1999, Tuo has shown her strength in foreign direct investment, M&A, overseas direct investment and corporate affairs. Tuo has represented numerous clients at home and abroad, including Uponsor Group, Total, Össur, China Logistics and China Coal.

“I focus on looking at the issues from our clients’ perspective,” Tuo says. “When we amend documents and offer advice, we must consider the legal risks and feasibility in the business world to help our clients resolve their issues. Only when a lawyer helps her clients grow their business and control risks can she unleash her value.”

业区提供全方位的法律服务，后者现已开发成为上海的新地标。

杨律师说，她个人的工作理念是在工作中追求卓越和完美，从而服务社会，促进发展。“我要求自己在工作中做到专精。把准方向，关注细节，兼顾法律和商业，维护客户的正当权益。”她说。

杨律师还分享了她认为哪些特质有助于获得成功。“成功的秘诀首先是热爱。律师工作本身完全符合我的兴趣爱好，是我热爱的职业，我愿为之付出努力并且乐在其中；其次是坚持。就我个人性格而言，我愿意接受挑战，而且不轻言放弃；第三是专业化。法律业务离不开扎实的知识支撑。律师需要保持谦逊的心态，并时刻汲取最新的知识，以适应当今经济和监管环境的快速变化。”她解释道。

在通商律师事务所合伙人孙激看来，下定决心并努力追求做到更好，是获得成功至关重要的因素。

谈到自己的工作座右铭时，她说：“我在工作中对自己的要求很简单，如果满分是100分，就用120分作为标准来要求自己。”

孙律师在教育领域具有很高声誉，她代表的客户包括：中国教育集团控股有限公司、中国新高等教育集团和中国科培教育集团有限公司等。她非常了解客户所在行业的政策和法规，帮助他们解决法律问题，同时满足他们的业务需求。

“成功的关键在于有决心成为一名成功的律师，然后不断为此努力。就像大浪淘沙，很多人没有坚持下来，而那些最终在律师行业中坚持下来的人就会成为成功的律师。”孙律师说。

除了决心，对法务工作性质和奉献精神的良好理解也同样重要。孙律师表示：“我总是告诉新入行的律师，在从事这个职业之前，他们需要明白律师是服务业者，而我们所能做的就是提供最优质高效的服务。”

“而与其他服务行业不同的是，当客户找到律师时，他们一定已经遇到了比较棘手的麻烦。所以从事这个行业，要有7x24小时随时待命去解决麻烦的觉悟。”她补充道。

除了明确的职业抱负以外，大成律师事务所高级合伙人脱薇对于如何更好地工作有独特的见解。

她说：“我认为一定要结合自身经验、兴趣和个性特长，最大化地发挥自己的长处，扬长避短，而不必强求补好每一处短板。就我个人而言，我

CHALLENGES FOR A FEMALE LAWYER

Being recognised as a top lawyer is hard, and that is particularly true for a woman. Yin says there are many perks in bringing a female perspective to a lawyer's job, but there are also challenges as a female lawyer.

"We notice that there are more girls in law schools and female newcomers in law firms. But over time, there are fewer female lawyers, especially female partners. Family is one of the many reasons behind this," she explains.

Yin has been a lawyer for 14 years, and has much expertise in investment, financing, M&A, restructuring and listing. With training in law, economics and finance, Yin has shown great capabilities that have helped her get to the position of partner, after joining the law firm in 2005.

Chen says building and maintaining relationships with clients as well

as cultivating and managing a team are some of the challenges she has encountered at work. But on a personal level, trying to balance family and work is another issue for many career women.

"I was told many years ago that you need to see your family as your most important client. So far, I haven't been doing my best," Chen admits.

Yin also admits that she is still working on that balance. Her strategy to deal with the issue that is faced by many career women like her is to recognise the inevitable compromises."

When you pursue something, you have to be prepared to lose something else," she says. "One has very limited time and energy but excelling at your job and taking care of your family both require a lot of them. Whatever you choose, believe in your choice and lower your expectations in other areas."

Tuo also stresses that it is important

会考虑利用我过去近20年积累的实务经验，发展成为一名‘专家型’律师。”

脱律师形容自己在工作中是一个“完美主义者”。“以发给客户的法律建议书为例，不仅推理分析要到位，标点符号和排版也不能出一点问题，每份意见书都要体现出我们的专业素养。”从她举的例子可以看出，脱律师在工作中一丝不苟。

脱律师于1999年进入法律行业，并在外国直接投资、并购、海外直接投资和公司事务方面展现出自己的实力。她为国内外众多客户提供过法律服务，其中包括欧博诺集团、道达尔、奥索、中国物流和中煤集团等。

“我特别重视从客户的角度看待问题，我们修改文件和提供建议时，既要考虑法律风险，又要符合商业实践，从客户角度协助他们解决问题，既实现发展又合理控制风险，才是真正对客户有‘价值’的律师。”

女律师面临的挑战

成为大家公认的顶级律师非常不容易，对于女性而言尤其如此。尹律师表示，

AllBright Law Offices was founded in 1999 as a full-service law firm committed to providing the highest levels of quality advice to clients.

Based in Shanghai, AllBright has grown, innovated and provided unmatched service throughout a period of continuous economic and political change across China. Our focus on providing excellent legal advice and support to our clients has led to a rapid expansion and we have established branch offices in 20 cities across Chinese mainland (Hangzhou, Beijing, Shenzhen, Suzhou, Nanjing, Chengdu, Chongqing, Taiyuan, Qingdao, Tianjin, Xiamen, Jinan, Hefei, Zhengzhou, Fuzhou, Nanchang, Xi'an, Guangzhou, Changchun, Wuhan and Urumqi) as well as in Hong Kong and London. In addition, as a result of our increased international presence, we have also established a joint operation with the Hong Kong law firm Stevenson, Wong & Co. and a strategic partnership with an international law firm, Bird & Bird.

We have approximately 2600 registered lawyers (including approximately 600 partners and senior consultants). Aside from our regular working language of Chinese (Mandarin and major dialects), many of our lawyers are also fluent in English, Japanese, French, German, and other major languages, and many are also admitted in international jurisdictions. Our partners and senior consultants came to the firm from diverse professional and personal backgrounds. Many transactional lawyers have practiced for years in top international law firms and/or in leading multinational companies. A number of our litigators once were judges and prosecutors, and many are active arbitrators. We also have access to a strong network of former government officials and legislators. Supported by a large team of translators and legal assistants, our professionals have undertaken many complex and high profile transactions, and have won many landmark cases.

Our lawyers have played critical roles in advising the government on, and actually drafting, many of the core Chinese laws and regulations involved in our daily practices today, and were involved in drafting several international treaties concerning international investment, trade and other forms of economic cooperation.

Our practitioners possess a wealth of first-hand experience and legal expertise in providing effective solutions to the most complex of legal issues regarding the application of laws and regulations, governmental approval and legal procedures.

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“We notice that there are more girls in law schools and female newcomers in law firms. But over time, there are fewer female lawyers, especially female partners. Family is one of the many reasons behind this.”

“我们注意到，女性在法学院以及新入职律师中的占比较高，但是随着工作年限的增长，女律师逐渐减少，女性合伙人的比例就更少了。这其中的原因很多，但家庭的因素是非常重要的一个。”

— Yin Yue, Jingtian & Gongcheng 尹月, 竞天公诚律师事务所

to maintain a good mindset and know what to let go during this process.

“When you prioritize your family, you should not feel remorse for the lost opportunities at work. And when you choose your work over your family, you cannot regret not spending enough time with them. This mentality could affect your work and life,” she explains.

Speaking as a successful female lawyer who is widely respected, Sun says the biggest challenges faced by female lawyers can vary at different stages.

“When you first start your career, the challenges might seem no different than those faced by your male counterparts. As a commercial lawyer, it’s difficult to find your position and it takes time to acquire all the basic skills you need,” she says.

“At a later stage, female lawyers may come to a point when they need to consider more about their families. The legal profession requires a huge amount of time and energy, so the balance between family and work is more of a choice between reality and your dream,” she continues.

But challenges for women, as Chen says, are not as intimidating today.

“Thanks to the diversity and inclusiveness in today’s society, women do not need to think too much about external factors when planning their career path,” Chen says. “They will be fine as long as they choose a career that they love and stay committed to it.”

THE NEXT GENERATION

While many argue that it is harder for women to advance their career due to different obligations, Tuo believes any girls who are willing to join the legal industry will be given room for development.

She has two pieces of advice for her young female peers. “First, it is of utmost importance to acquire professional skills and don’t believe in tricks such as inducing clients or market development,” she says. “Second, know how to make compromises. Once you decide to be a lawyer and someday take up the role as a partner, you will need to say goodbye to the 9-to-5 schedule and be prepared for overtime work to meet your clients’ needs.”

But Tuo believes that the hard work pays off. “Leading your team to finish a project offers satisfaction so great that a regular office job cannot offer,” she says.

Another thing she has learned from her two-decade-long legal career is that persistence and time management are equally important as professionalism.

“Persistence helps you overcome challenges and survive during the hard times, while time management helps you balance your work and family life. With these two qualities, you may feel satisfied with your work while enjoying quality time with your loved ones,” she says, offering a solution to a dilemma faced by many professionals.

女性视角给律师的工作带来很多益处，但作为女律师也面临各种挑战。

“我们注意到，女性在法学院以及新入职律师中的占比较高，但是随着工作年限的增长，女律师逐渐减少，女性合伙人的比例就更少了。这其中的原因很多，但家庭的因素是非常重要的一个。”尹律师解释道。

尹律师从业已有14年，在投资、融资、并购、重组和上市方面拥有丰富的专业知识。尹律师于2005年加入竞天公诚，其在法律、经济和金融方面接受的训练让她展现出过人的才能，帮助她晋升为合伙人。

陈律师说，发展和维护客户关系，以及培养和管理团队是她在工作中遇到的一些挑战。她认为，试图平衡家庭和工作之间的关系是许多职业女性面临的一大问题。

“很多年前就有人对我说，你需要把家人当作你最重要的客户。但到现在，我还是做得不够好。”陈律师承认道。

尹律师也承认，她在平衡家庭和事业方面做得不够好。她的处理方式是：承认必须要放弃一些东西，这是不可避免的。

“当你追求某些东西时，你必须做好准备放弃其他一些东西。一个人的时间和精力非常有限，要出色地工作和照顾家人都需要大量投入。无论你选择了哪个，遵从自己的选择，然后降低对其他事情的及格线。”她说。

脱律师还强调，在这个过程中要保持良好的心态，懂得放弃也很重要。

“当你把家庭放在首位时，就不能对选择放弃的工作机会不断追悔。而确定必须工作的时候，也不能一边工作一边后悔没有花时间陪伴家人。这种纠结心理会非常影响工作和生活状态。”她解释说。

作为一位广受尊敬的成功女律师，孙律师表示，女律师面临的最大挑战在不同的阶段可能会有所不同。

“在职业生涯的最初阶段，女律师遇到的挑战可能跟男律师没有分别，尤其是作为商业律师，比较难找准自己的定位，需要通过一定时间的磨练，才能娴熟地掌握一个商业律师需要的基本技能。”她说。

“在稍后的阶段，女性律师可能面临更多来自家庭方面的取舍难题。律师行业需要投入大量的时间和精力，家庭与事业的平衡更多是在理想与现实之间做选择题吧。”她继续说道。

但正如陈律师所言，女性如今所面临的挑战并不总是那么令人胆怯。

Chen advises her young peers to focus on improving themselves while readying themselves for work. "Never give up your financial freedom and spirit of independence. While you're training yourself to be a professional, improve your inner self to be a fun and life-loving person," she says.

"When planning for my career, I will consider developing my expertise, establishing my social responsibility and seeking fairness and justice in order to contribute to the legal and economic development of China. This way, I can realize my value," Yang speaks of her vision for her career as a female commercial lawyer.


As a person who deeply cares about the society and women's rights, Yang founded Allbright's first women lawyer association to foster development for female legal professionals. As a female lawyer herself, Yang understands best what kind of challenges her peers face.

"It is not easy to become a lawyer

as it requires a great deal of time and effort. The biggest challenge is how to balance your work and family life. Everyone has the same amount of time. Once you devote more time to your work, there is less time for your family," she says.

Fortunately, Yang has a very understanding husband and an independent son who can spare her from many family obligations to let her focus more on her work.

Yang offers one piece of advice to young female lawyers. "Always remember why you want to be a lawyer and devote yourself to this profession," she says. "Persistence leads to success."

Sun reminds her peers that they need to understand that it is the client who makes the final decision, not the lawyer. "The real challenge lies in how a lawyer provides the decision maker with legal advice and helps him achieve his business goals appropriately and moderately," she says. 

"现代社会趋于多元化和更加包容，女性在规划自己的职业道路时无需过多地考虑外部因素。选择自己热爱的工作或事业，并愿意为此做出不懈的努力就好。"陈律师说。

寄语年轻一代的女律师

虽然许多人认为，由于承担的义务不同，女性很难发展自己的事业，但脱律师认为，凡是愿意加入法律行业的年轻女性都会获得发展的空间。

对于年轻的女性同行，脱律师给出了两条建议。她说：“首先，获得并发展专业能力最为重要，不要轻信那些所谓能够吸引客户或拓展市场的各种招数。第二，懂得选择和放弃。如果选择了当律师并成长为律所合伙人，就需要放弃朝九晚五规律的工作模式，并要做好加班工作的准备，以满足客户的需求。”

脱律师认为，辛勤的工作一定会有回报。她说：“带领你的团队完成一个项目所带来极大满足感，也是一般的办公室工作所不能给予的。”

她从长达20年的律师生涯中学到的

大成 DENTONS

专注于跨境投资和并购业务——大成「脱薇」律师

脱薇律师是北京大成律师事务所的高级合伙人，大成中国区管理委员会委员。她在外商直接投资、兼并与收购、境外投资和公司业务领域拥有超过18年的丰富经验，行业领域涉及制造业、矿业、电信业等众多行业。

多年来，脱律师不仅协助了众多外国企业在境内开展投资项目，包括设立合资或独资企业、收购或兼并境内企业或资产、重组或清算外商投资企业等，服务内容涵盖了外商来华投资项目的全部过程；也协助了许多境内大中型企业（特别是国有企业）在境内外开展兼并、收购、重组等各类投资项目，得到了客户的广泛赞誉和认可。

脱律师服务过的客户包括中煤集团、中国物流、诚通国际、中兴通讯、江钨集团、电科集团等大型中国企业，以及道达尔、戴姆勒、西门子、诺基亚、欧博诺、奥索等多家跨国企业。

客户评价 Client Comments

"Vivien well understands client's need and provides precise and practical advice."

— Pearl Lee, Head of Project Development and Legal (China), The Hong Kong Jockey Club.

"Vivien is not only very experienced, having a deep understanding of Chinese law, but she is also able to find always the most feasible solutions for her client, thinking also 'outside the box'. With thoroughness and dedication to her client, Vivien is able to give an accurate assessment to truly protect her client's interests in the long run."

— Annamari Ahlmark, Senior Legal Counsel, Uponor Corporation.



另一件事是，“坚持”和“时间管理”是与专业精神同等重要的品质。

“坚持”可以帮助你遇到困难或低谷的时候熬过去，‘时间管理’可以让你在家庭和事业之间做到兼顾。拥有这两种品质，你既能够享受工作带来的成就感，又有机会感受家庭的温馨幸福。”她说。这也为许多因此而感到困扰的专业人士提出了一个解决方案。

陈律师建议年轻的同行们在为工作做好准备的同时，也要注重自身的提高。“永远不放弃财务自由和人格自由。在培养专业能力的同时，提高自己的综合素质，成为一个有趣且热爱生活的人。”她说。

“谈到职业规划，我的目标是专精于自己的专业领域，树立社会责任感，追求公平正义，为法治建设和经济发展作出贡献，在奋斗中实现自己的人生价值。”杨律师与我们分享了作为一个女性商业律师的职业愿景。

杨律师很有社会责任感，十分关心女性的权益。她创建了锦天城律师事务所女律师协会，以帮助女性法律专业人士的发展。作为一名女律师，杨律师最了解同行面临的挑战。

“律师职业并不容易，需要付出大量的时间和努力。最大的挑战是如何平衡工作和家庭生活。每个人的时间都是同等的，在工作中投入多了，在

生活中投入就少了。”她说。杨律师有一位非常善解人意的丈夫和一个很独立的儿子，让她有更多的时间可以专注于工作；对此杨律师在感到庆幸的同时也非常感谢家人的充分支持。

杨律师给年轻的女律师提出了一条建议。她说：“永远不忘初心，热情投入，坚持不懈，最终一定能取得成功。”

孙律师提醒年轻的同行们，作为律师需要明白，真正的决策者是客户而不是律师。“律师如何适当及适度地帮助决策者提供合法建议，并助其达成商业上的意图，这是真正的难点所在。”

TESTIMONIALS 推荐理由

Audrey Chen, JunHe LLP
陈子若，君合律师事务所

“Audrey has guided us through the legal requirements associated with complex transactions in China. Her assistance was essential in ensuring successful outcomes and she showed remarkable skill in balancing her legal expertise with practical advice. We highly recommend Audrey Chen for her deep knowledge and outstanding ability to assist international clients engaging in activities in China.”

“陈律师指导、帮助我们了解与中国复杂交易相关的法律要求。她的协助对于确保取得成功至关重要，她在平衡法律专业知识和实践建议方面表现出非凡的技巧。我们强烈推荐陈律师，她知识渊博，能力出众，能够帮助国际客户在中国开展活动。”

- Cynthia Carr, Deputy General Counsel at Yale University
Cynthia Carr，耶鲁大学副总法律顾问

Fu Changyu, Zhong Lun Law Firm
傅长煜，中伦律师事务所

“Fu is one of the lawyers who we trust and rely on the most. She can always resolve legal issues for her clients with her energy and passion.”

“傅长煜律师始终是我们最信任、最依赖的律师之一，她始终能够保持旺盛的精力与激情，帮助客户解决一个又一个法律难题。”

- Frank Li, Legal Director at Beaufour-Ipsen (Tianjin) Pharmaceutical Co. Ltd.
李翔宇，Ipsen法务总监

Silvia Gong, Fangda Partners
贡亚敏，方达律师事务所

“We always praise and rely on the quality professional services of Gong’s team.”

“我们一直以来都赞赏和依赖贡律师团队的高品质专业服务。”

- Yao Lan, head of legal department at Cainiao Logistics
姚兰，菜鸟法务总监

Gong Weiwei, Shihui Partners
龚炜炜，北京世辉律师事务所

“Gong is a co-founder, member of the management committee and director of Shihui. She has played a significant role in Shihui’s establishment, business development and organization. The law firm wouldn’t have had gained a presence in the industry in only three years without Gong’s contribution.”

Gong is an experienced transaction lawyer with extensive experience. She is good at handling cross-border transactions and complex projects. During the recent two years, Gong has led her team to complete the restructuring and financing projects of JD Logistics, JD Finance and JD Healthcare and many other projects that have a far-reaching impact on the industry. Gong is highly praised by her clients.”

“龚炜炜律师是世辉律师事务所的创始合伙人之一、管委会成员、律所主任，她对世辉律所的创立、业务开拓及组织建设，发挥了重大作用。世辉律所能够在三年内迅速崛起，获得较高的市场地位，离不开龚律师的贡献。

龚律师是行业内非常资深的交易律师，经验丰富，擅长处理跨

通商律師事務所
COMMERCE & FINANCE LAW OFFICES



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商业视角出发 法律奇招致胜

——专访通商律师事务所资本市场律师孙激

ALB: 作为一名成功的女律师，您认为女律师在资本市场和兼并收购的执业领域中具备何种优势？

孙激: 我认为女律师更有韧性。这种韧性体现在很多方面：首先，在与同事协作的过程中女律师可以在团队里起到润滑作用，更好地磨合一些尖锐的矛盾。其次，在与客户相处时，尤其是当项目遇到困难比如在谈判进入艰难阶段时，女律师能够更平滑地进行处理。另外，律师行业是艰苦的，我发现在长期处于不停加班、没有足够休息时间的情况下，女律师更能做到持之以恒，支撑自己熬过艰难时刻，不断提高。

ALB: 您多次通过创新的方式帮助企业解决难题、完成境外上市，对此您可以和我们分享一两个案例心得吗？

孙激: 我认为创新就是面对困难不要轻易说不，去思考一些没人采用过的方法，然后论证其可行性，完成目标。这也是客户对我最欣赏的地方之一。举中教控股的例子来说，虽然刚开始中介机构对于这种没有见过的情况存在诸多疑虑，学校也难以搭建传统VIE结构，但通过深入了解客户，深挖支持性条件，我们最终设计了通过收费权质押达到同样效果的新型VIE架构，打消了中介机构的疑虑，帮助客户顺利上市。这来自于我们通商不断从客户利益出发进行创新的基因，比如我们早在互联网企业海外上市受产业政策影响而困难重重时，开创了通过协议控制上市的解决方案。所以我认为作为资本市场的律师，要深入理解商业逻辑，在此基础上才能在法律层面提出创新的解决方案。

ALB: 目前资本市场环境愈加复杂，企业境外上市面临着诸多挑战。您是如何做到对法规和政策趋势进行精准的把控和预测的？

孙激: 我认为资本市场律师在做好本职工作以外，要不断去扩充自己的行业知识储备，密切关注行业动态，多与客户、行业专家进行交流，这样虽然我们很难对法律法规的变化进行细节和时间上百分之百精准的预测，但一定能看出宏观趋势，提前为自己和客户做准备。

ALB: 未来您对工作有着何种预期？除了教育行业的企业，今后您还会重点服务哪些企业类型呢？

孙激: 从业至今我服务过很多行业的客户，在我参与过的项目中我都尽力做到最好，获得了丰富的经验和行业知识。在中国教育行业受到越来越多投资机构的关注时，我的经验就帮我赢得了这样的契机来服务教育行业，所以其实不是我选择了客户而是客户选择了我。对我来说，未来也期待通过各类项目的契机去服务更多的行业类型。

ALB: As a successful female lawyer, what do you think are the advantages of female lawyers in the practice areas of capital markets and M&A?

Sun Wei: I believe female lawyers are more resilient. They are better at ensuring smooth operation and avoiding conflicts in teamwork, and they can fix problems more smoothly for clients. What's more, as tough as this industry can be, female lawyers are more persistent during difficult times.

ALB: In many cases you have successfully helped enterprises to accomplish overseas listing by adopting creative approaches. Would you please give us a few examples of this?

Sun Wei: I believe the key to creativity is that you don't give in easily to challenges, but instead you try to come up with solutions no one has created before, prove their feasibility and make them work. This is one of the reasons why my clients are very satisfied with my work. Taking China Education Group Holdings Limited as an example, at first the agencies had many doubts, and the schools could not build a traditional VIE structure, but as we got to know the client better and found out more about the project, we solved the agencies' doubts and designed a new VIE structure by using the pledge of the right of charge, helping the client to be listed successfully. This is evidence of Commerce & Finance's gene: creativity is driven in the pursuit of our clients' benefit. Similarly, we have also created an industry-leading solution for Internet enterprises where they could use agreements to control listing, despite the adverse industry policy. Therefore, I believe for a lawyer practicing in capital markets, it is important to deeply understand the business logic so that creative solutions can be made on a legal level.

ALB: capital markets landscape is becoming increasingly complicated, bringing many challenges for enterprises interested in overseas listings. How do you manage to offer good insights and predictions about relevant regulations and policies?

Sun Wei: I believe lawyers should be constantly expanding their knowledge about the industry, paying close attention to industry dynamics and actively communicating with clients and industry experts, so that although we may not be able to predict the changes in regulations precisely in all details, we can still see the macro trends and prepare ourselves and our clients in advance.

ALB: What are your anticipations for your career in the future? In addition to enterprises in the education industry, do you plan to expand your focus on other types of enterprises?

Sun Wei: I have served clients in various industries and I do my very best in all the projects. The experience and knowledge that I obtained from these projects have earned me the chance to help clients in the education industry, which at that time was getting increasing attention from investment agencies. Therefore, it is not me who chooses the clients but the other way around. In the future, I also look forward to opportunities to help clients from more types of industries.

境交易及重大复杂项目。最近两年，龚律师带领团队完成了京东物流重组融资、京东金融重组融资，及京东健康集团重组融资等诸多有重大行业影响力的项目，得到客户高度评价。”

- George Niu, founding partner of Shihui
牛振宇，世辉律师事务所创始合伙人

Helena Huang, King & Wood Mallesons
黄春光，金杜律师事务所

“Hong Kong remains a key strategic location for the firm. The establishment of the KWM International Center in the past year has accelerated the firm’s progression in globalisation. We are committed to establish a highly effective team that is focused and dedicated to lead the firm in preparing the influx of work from the Greater Bay Area region. I believe Helena’s outstanding international experience and demonstrated track record will help us bring in new ways and energy to move forward with the development of the International Center.”

“对于金杜而言，香港特别行政区一直处于重要的战略位置。去年成立的金杜国际中心加快了本所在全球化进程中的步伐。我们致力于打造一支高效、专注的团队，牵头准备好应对将从大湾区涌入的工作。我相信，以其出众的国际经验和以往良好的业绩，Helena能够帮助我们以新的方式全力推动金杜国际中心的发展。”

- Wang Junfeng, Global Chairman of KWM
王俊峰，金杜律师事务所全球管理委员会主席

Kong Xiaoyan, Tian Yuan Law Firm
孔晓燕，天元律师事务所

“Kong is responsible for offering IPO advice for us on behalf of Tianyuan. She is professional, serious and dedicated to her work. With her extensive hands-on experience, she can always deliver satisfactory legal solutions to her clients. As we highly recognise the work of Kong and her team, we continue to work together on legal matters in the capital market after our company has been listed. Kong is a lawyer whom we trust and rely on.”

“孔晓燕律师是天元为我公司上市提供法律服务的负责合伙人。她专业精深、态度严谨，职业性强，实务经验丰富，相关法律事宜均能给客户以满意的交付；也是基于对孔律师及其团队的高度认可，公司上市后，我们依然延续了资本市场法律事务合作。孔律师是值得信赖的合作伙伴。”

- Miao Xiaoming, Board Secretary of Quick
苗小鸣，快克智能装备股份有限公司董事会秘书

Lan Jie, Haiwen & Partners
蓝洁，海问律师事务所

“Lan has solid legal knowledge and she looks into new issues relentlessly. She leads her team to complete large, complex

and pioneering projects one after another with her serious, diligent and responsible attitude at work. She not only gains the clients’ trust, but also is an outstanding securities and M&A lawyer in China’s legal services market.”

“蓝洁律师以其扎实的法律功底，对新问题不懈探究的热忱以及认真、勤勉、负责的工作态度，领导项目团队完成了一个又一个重大、复杂的或创新性项目，不仅赢得了客户的信赖，也成为了中国法律服务市场一名不可多得优秀证券及并购业务律师。”

- Wang Pei, partner at Haiwen & Partners
王佩，海问律师事务所合伙人

Haiping Li, Skadden, Arps, Slate, Meagher & Flom LLP
李海平，世达律师事务所

“Haiping has extensive experience in advising on a broad range of transactions on behalf of companies, private equity funds and financial institutions, which makes her a uniquely strong advisor in the Shanghai legal market. Ever since becoming the leader of our Shanghai office, Haiping has further strengthened our presence in mainland China and our service to the clients within close geographic proximity.”

“海平在为公司、私募股权基金和金融机构的广泛交易提供咨询方面有着丰富的经验，因此在上海法律市场上拥有独特的地位。自从担任上海办事处的负责人以来，海平一直致力于进一步扩大我们在中国大陆的业务，并持续为上海和临近地区的客户提供更好的服务。”

- Julie Gao, Partner, Skadden, Arps, Slate, Meagher & Flom LLP
高准 (Julie Gao)，世达律师事务所合伙人

Cherrie Shi, Baker McKenzie
施淼，贝克·麦坚时律师事务所

“Cherrie is a highly versatile practitioners, able to service MNCs in complex inbound transactions as well as State-owned and privately-owned Chinese enterprises on their outbound transactions. She is a highly skilled negotiator and a highly-honed commercial sense, able to bridge the gap in difficult circumstances to move the deal forward, a rare skill set in the market that is very much valued by clients and counter-parties.”

“Cherrie是一位复合型律师，能够为跨国公司在复杂的入境交易中提供服务，也能为中国的国有和民营企业的出境交易提供服务；她是一位技巧娴熟的谈判专家，具有很高的商业意识，能够在困难情况下消除隔阂，推动交易向前发展，这是市场上罕见的才干，因此得到了客户和交易对手的高度评价。”

- Howard Wu, Managing Partner/Chief Representative, Baker McKenzie Shanghai Office
吴昊 (Howard Wu)，贝克·麦坚时上海办事处管理合伙人及首席代表

競天公誠律師事務所
JINGTIAN & GONGCHENG

競天公誠律師事務所尹月律師：資本市場執業領域前沿引領者



尹月 / Yin Yue
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尹月律師2005年加入競天公誠律師事務所，2013年成為合夥人，主要執業領域包括資本市場、兼併與收購、境外投資等。尹律師憑藉豐富的執業經驗和多領域的專業知識多次幫助企業成功境外上市，取得行業領先成就。

跳出固有思路，拓寬執業領域邊界

在迄今14年的從業經歷中，尹律師多次在沒有可借鑒經驗的情況下成功幫助企業完成頗具革新性的境外上市項目，包括助力上海錦江國際酒店成為中國內地首家登陸香港資本市場的純中國酒店概念股、幫助地利集團成為全國第一家開發使用及經營地下人民防空工程的上市公司等。在每一項新的交易架構開展時，尹律師敢於大膽假設，在對現有規則具備深刻理解的基礎上，擺脫慣有思路的束縛，同時也進行詳實的法律論證，仔細解讀法律法規並充分理解立法者意圖。競天公誠合夥人評價道：“她是我從業以來培養的最有天才也是最敬業的律師。法律和商業的雙重背景讓她總能在商業結構設計上更有創造力和洞察力。”

優秀的女律師優勢與挑戰並存

作為一名在執業領域碩果累累的女律師，尹律師認為女性具備更強的語言表達能力。在性格上，女律師更注重大事、善於觀察。同時她們也更傾向於友好合作而非競爭，但這一優勢到了合夥人階段面對更多對抗性競爭可能會轉變為挑戰。因此尹律師對初入行的女律師的建議是：首先要了解行業，仔細觀察每個人的角色，明確自身定位並建立大局觀；其次，通過客戶、合夥人和指導律師等多方反饋對自身形成客觀認識，這有助於進行職業發展中的決策。

打造多面手型的律師團隊

尹律師不僅自身擁有美國賓夕法尼亞大學法學碩士和北京大學經濟學院金融碩士雙重學位，還很注重團隊保持學習和研究的氛圍，鼓勵團隊成員汲取多領域知識。對此尹律師表示：商業實質決定法律形式，宏觀政策、微觀經濟、財務等知識都和我們的工作密不可分，客戶也要求我們對其所處的行業具備深入了解。在此基礎上，我們才能更好地服務客戶。

未來行業展望

尹律師認為在未來，科技的不斷創新和發展將會給法律行業帶來顛覆性革命。律所需要考慮的是如何參與到這一進程中去；而強化個人差異化的優勢則是每個律師都需要考慮的問題。

Yin Yue joined Jingtian & Gongcheng in 2005 and became a partner in 2013. Her practice areas include capital market, M&A and overseas listing. Yin's rich experience and multi-area knowledge have helped many enterprises achieve overseas listing, making her an industry-leading figure.

Out of the box, expand the box

In her 14-year's career so far, Yin has successfully helped enterprises to be listed overseas in many cases even when she did not have any precedent to learn from. These projects include helping Shanghai Jin Jiang International to be the first China mainland pure Chinese hotel concept stock listed in Hongkong capital market and helping Dili Group to be China's first listed company developing, using and operating underground civil air defense work. When every new deal structure is being established, Yin dares to make bold hypothesis, break the constraint of traditional thoughts based on a deep understanding of extant regulation, meanwhile she also conducts strict and detailed legal argument by reading into the rules and understanding the intention of policymakers. Jingtian & Gongcheng's partner says: "she is the most talented and diligent lawyer I have ever trained. With her background in law and business, she is always creative and insightful in business structure design."

Advantages and challenges for excellent female lawyers

As a successful female lawyer, Yin believes that female lawyers have stronger communication skills. In personalities, they are also more detail-oriented and observant. Meanwhile, female legal professionals are more inclined to friendly cooperation than competition, which is an advantage that can transfer into a challenge when there are more rival competitions after reaching a partner's level. Therefore, Yin's advice for young female lawyers is: firstly, understand the industry deeply, observe everyone closely to have a clear positioning of themselves and establish a vision of the big picture; secondly, develop an objective understanding of themselves by listening to feedback from clients, partners and supervising lawyers, which will be helpful for future career planning.

Building an all-round team

Yin has obtained master's degrees in law and finance respectively in University of Pennsylvania and Peking University, and she also encourages her team to constantly learn and have knowledge of multiple areas. Yin believes that the essence of business decides the form of law, thus knowledge in all segments of business is what the clients expect from them, and only based on this can they provide better legal services.

Anticipations of the industry

Yin believes that in the future, the fast-paced development in science and technology will bring game-changing revolutions to the whole industry. What law firms should consider is how they can participate in this progress whereas for lawyers, they should think about strengthening their distinguished advantages.

Sun Wei, Commerce & Finance Law Offices
孙激，通商律师事务所

"Sun is a meticulous lawyer and she has extensive hands-on experience in China's legal affairs. She is a rare find in the industry, who has solid legal knowledge as well as a creative mind for business. In a tradition-bound profession, Sun has executed many first cases. Her dedication to her work is something we should all learn from."

"孙律师工作一丝不苟，在处理中国的法律事务方面拥有丰富的实践经验。她是业内难得的人才，既有扎实的法律知识，又有创新的商业头脑。在这个深受传统影响的行业，孙律师以创新的方式处理了许多案例，开创了许多首例。她对工作的奉献精神值得我们所有人学习。"

- Billy Chu, managing director at BNP Paris
朱泉星 (Billy Chu) ，法国巴黎银行董事

Judy Tan, JunZeJun Law Offices
谭炯，君泽君律师事务所

"Tan is a very friendly lawyer who is highly professional and understands the aviation market. She has high English proficiency, work experience at top law firms abroad and a broad vision. She knows the aircraft financing and leasing market very well. She is a senior partner and a Chinese lawyer who understands international law."

Tan is excellent in communication. She sees the big picture while paying attention to details. Her documents are impeccable and she offers her feedback in a timely manner. She can provide targeted solutions according to our business needs and offer value-added service to support us."

"谭律师为人热情，专业水平高，对航空市场有深入的了解，精通英文，有国外一流律所的工作经验，视野开阔，熟悉飞机融资与租赁相关市场，是行业内资深的合伙人，是一位具有国际法律视野的中国律师。谭律师善于沟通，有大局观，也注重细节，文件严谨，反馈及时，能准确掌握交易节奏，能够在具体交易中根据我公司的商业意向提供有针对性的解决方案，并提供增值服务，给予我们大量支持。"

- James Lin, Assistant CEO at ICBC Aviation Financial
Leasing Company Limited
林锋，工银金融租赁有限公司航空事业部总经理

Vivien Tuo, Dentons
脱薇，大成律师事务所

"Vivien well understands client's need and provides precise and practical advice."

"Vivien非常了解客户的需求，总是提供精确、实用的建议。"

- Pearl Lee, Head of Project Development and Legal (China),

The Hong Kong Jockey Club
李明珠 (Pearl Lee) ，香港赛马会项目开发与法律负责人
(中国)

Yang Xiao, AllBright Law Offices
杨晓，锦天城律师事务所

"Yang is a highly proficient lawyer with integrity and dedication. She prioritizes the clients' interests and navigates all kinds of legal issues for them. Yang is able to offer the most reliable solutions to non-litigation projects and litigation cases that are large, complex and of innovate nature. She fights for the best interest for her clients and is trustworthy and reliable."

"杨律师正直、敬业，对所从事的行业非常精通。她总是优先考虑客户的利益，为他们解决各种法律问题。针对大型、复杂、具有创新性的非诉项目和诉讼案件，杨律师都能为客户提供最可靠的解决方案。她努力为客户争取最大利益，非常值得信赖。"

- Liam Shao, Head of Legal Department at Shanghai
Lujiazui Finance & Trade Zone Development Co. Ltd.
邵浏 (Liam Shao) ，上海陆家嘴金融贸易区开发股份有限公司法务部负责人

Hazel Yin, Freshfields Bruckhaus Deringer
尹冉冉，富而德律师事务所

"Hazel is one of the rising stars of Chinese competition law, delivering the highest quality competition law expertise in the most important jurisdictions is the hallmark of our leading global practice"

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- Thomas Janssens, global head of Freshfields' competition
practice
Thomas Janssens，富而德律师事务所竞争业务全球负责人

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NEW APPROACHES FOR A NEW ERA

新时代，新方法

As the nature of business becomes increasingly globalised and multijurisdictional deals ramp up, so too does the pressure on the legal market amid evolving client expectations. While law firms grapple with these changes and the challenges they create, and adapt to meet these new demands, they must also think competitively. Law firm networks are lending a hand by helping members with new technologies and workflow processes and even improving the way they interact with their clients.

随着经济发展日益全球化以及跨司法管辖区交易数量的增加，客户期望亦不断变化，法律市场的压力也随之加大。律师事务所正在努力应对这些变化以及因此而产生的挑战，从而适应这些新的需求；与此同时，他们必须从提高竞争力的层面进行思考。律师事务所协作网络组织为其成员律所提供广泛的协助，从帮助他们掌握新的技术和工作流程，直至帮助改进他们与客户沟通和互动的方式。

BY ELIZABETH BEATTIE

■ With cross-jurisdictional work on the rise and a burgeoning demand for the best and brightest tools, law firms across the region face similar challenges – how can they work smarter, prepare for the future, and stand out? Enter law firm networks, which are finetuning their offerings to better equip lawyers so they can give clients the very best without stretching themselves too thin.

Glenn M. Cunningham, chair at Interlaw, refers to law firm networks as “the quiet giants in the global legal services revolution.” Cunningham says networks have been modelled in the image of

■ 随着跨司法管辖区业务量的不断增加，对最合用、最智能化工具的需求也不断增长，整个地区的律师事务所都面临着类似的挑战——如何在工作中实现更加智能化，为未来发展做好准备，从而脱颖而出？加入律师事务所协作网络组织为达成这一目标提供了可能，这些法律协作网络针对律师的需求调整其产品，帮助律师更好地装备自己，使他们在为客户提供最好的服务的同时不至于压力过大。

Interlaw的董事会主席Glenn M. Cunningham将律师事务所协作网络称为是“全球法律服务革命中安静的巨人”。Cunningham表示，律师事务所协作





today's clients' needs and are "flexible, collaborative, specialist, and truly international." These capabilities combined with the knowledge and skills of partner firms that are market leaders in their jurisdictions birth operations that can compete with large international law firms, he adds.

Similarly, Gordon Vala-Webb, senior advisor of technology and innovation at Lex Mundi tells Asian Legal Business that the rise of cross-jurisdiction work means that firms need to be able to promote their services both individually and collectively, "and also be able to demonstrate their ability to work seamlessly together."

Given the many network models and client expectations have evolved over the past few years, Vala-Webb says that extensive value-added services and service standards governing what clients can expect when member firms are working together are reassurances and capabilities appreciated by clients.

"The result is a novel value proposition," he says. "Top law firms with extraordinary local jurisdictional capabilities with a track record of working together leveraging digital workspaces and innovative technologies. Lex Mundi helps to bring this approach to potential clients directly through our global business development team, supporting member firms doing so, and by sponsoring various client-driven events such as ACC and CLOC."

NEW APPROACHES

While law firms require increasingly nuanced, yet diverse support from networks as competition intensifies, networks themselves also say that new mindsets and approaches are highly important to consider. It's not just about resources, but about technique, they explain.

Adam Cooke, executive director at Multilaw, tells Asian Legal Business that there are many different areas where law firms can implement new approaches and discover success. His network, for example, is "transforming" the pitch process for international work, he says.

"Over Multilaw's 30-year history it is fair to say that a member firm somewhere is acting for the vast majority of all the international banks, Fortune 500 or FTSE 250 companies and global brands in one way for another whether it be putting together an M&A deal or simply registering a trademark. This means that our firms can call upon that experience whenever they are putting together a pitch. There will almost inevitably be a history or current relationship with the target and this will often provide a competitive edge," he says.

This is one key advantage that networks often trade on – their ability to better connect law firms

and provide referrals for lawyers and legal talent for savvy clients – but today, this is just one part of their function, say network heads.

Vala-Webb of Lex Mundi says successfully identifying new approaches, as discovered by teams within its 160-member strong network, is useful data for all its members collectively. When breakthroughs are made, the network makes sure it promotes these findings widely, he adds.

One recent example in Asia has been Singapore firm Rajah & Tann releasing a mobile application called RTA Competition Trade which provides users with updates on the competition and trade regulatory landscape across Southeast Asia. Following this, the firm has promoted this both internally and externally. "We include those in our quarterly Innovation newsletter, highlight them in our conferences, and post in our members' only knowledge sharing site," Vala-Webb says.

TECH AT THE FOREFRONT

While new methods are essential, given the pressure all-round on legal teams to do more with less, the whole market is closely watching for new technology developments. Cunningham of Interlaw says this is also an area that networks are closely watching.

"There has been an explosion in new technological solutions in the legal services market," says Cunningham. "Together, our partner firms are sharing best practice and collectively filtering the best solutions for their clients' needs – in our experience, when it comes to tech you have to use it to choose it. Interlaw has forged successful relationships with many leading technology partners – big players and niche specialists – and we have invited them to deliver training and expertise at our meetings so that our partner firms can be sure they are abreast of the latest innovations," he adds.

He cites the network's recently completed project – a digital infrastructure programme to connect partner firms with each other and their clients as an example of how connectivity and technology can be synched better.

"This new digital award-winning infrastructure is a game-changer - the connectivity between our digital products is a first among law firm networks. We created a new website, with an easy-to-use 'connect to a lawyer' button, to allow easy access to our experts across the world," he says.

"The real transformative development is digital client management and feedback system, providing every partner firm with complete visibility of all referral activity in real-time and the capability to work together seamlessly in a secure online environment. With the built-in functionality

“Standing out from the crowd involves doing all the traditional things well i.e. by offering timely, expert advice and delivering value for money - which is easier said than done.”

“要从同行中脱颖而出，首先需要保证最基本的工作品质，即提供及时、专业的建议，提供物有所值的服务——这些事情说起来容易做起来难。”

— Adam Cooke, Multilaw

网络是按照当今客户需求的样式建模，因此具有“灵活性，协作性，专业性，和真正的国际化”。协作网络与那些在其所在司法管辖区内的市场上处于领军地位的律师事务所达成合作伙伴关系，将协作网络的能力与合作律所的知识和技能相结合，形成能够与大型国际律师事务所竞争的优势，他补充说。

Lex Mundi的技术和创新高级顾问Gordon Vala-Webb也持同样的看法。他对《亚洲法律杂志》表示，跨司法管辖区业务量的增加意味着律师事务所需要既能以单独的方式也能以协同的方式推广他们的服务，“并且能够向用户证明他们有协同开展无缝合作的能力。”

Vala-Webb表示，虽然在过去几年中许多协作网络的模型和客户的期望都发生了变化，但由于涉及成员律所之间的合作，广泛的增值服务以及管理客户预期的服务标准是客户所认可的保证和能力。

“其结果是一种新颖的价值主张，”他说。“在本地拥有卓越司法能力的顶级律师事务所，他们在共同利用数字工作空间和创新技术方面有良好的记录。Lex Mundi通过其全球业务开发团队直接为潜在客户提供这种方法，支持成员律所在这方面的工作，并赞助各种由客户主导的活动，例如公司法律顾问协会和公司法律运营联盟等。”

新方法

随着竞争的加剧，律师事务所要求协作网络提供越来越细致而又多样化的支持；协作网络自身也表示，培养新的思维模式和开发新的方法非常重要。他们解释说，这不仅仅涉及到资源问题，同时也涉及到技术问题。

Multilaw的执行董事Adam Cooke告诉《亚洲法律杂志》的记者，律师事务所可以在许多不同的领域实施新方法从而找到获得成功的途径。他举例说，Multilaw的网络正在“改变”全球工作的推广过程。

“基于Multilaw 30年的经验，我们可以说，Multilaw在某地的某个成员律所以这样或那样的方式代表了绝大多数的国际银行、全球500强企业或富时250指数成分股公司和国际品牌，无论是代表他们进行并购交易，还是提供注册商标这样的服务。这意味着，我们的成员律所可以在进行交易时利用这些经验；而且通常会发现与交易目标存在某种关系，无论是过去曾经的联系还是目前拥有的关系，而这往往会带来竞争优势，”他说。

协作网络的负责人表示，这是协作网络经常利用的一种关键优势——他们有能力更好地联络律师事务所，向精明的客户们推介律师和法律人才——如今，这仅仅是他们职能的一部分。

Lex Mundi的Vala-Webb表示，他们的网络十分强大，拥有160个成员律所；因此，成功地确定新的方法，对所有成员来说都是有用的信息。当取得突破性进展时，Lex Mundi会确保这些新发现得到广泛推广，他补充道。

最近的一个例子是在亚洲。新加坡的一家律所Rajah & Tann发布了一款名为RTA Competition Trade（RTA竞争交易）的移动端应用程序；该应用程序为用户提供有关东南亚竞争和贸易监管环境的最新信息。随后，该所在律所内外对该应用程序进行了推广。“我们在季度时事通讯《创新》（Innovation）中收入了这些内容，在各个会议中推广这些内容，并在成员间唯一的知识共享网站上发布了这些内容，”Vala-Webb说。

最前沿的技术

虽然新的方法是必不可少的，但由于法务团队在“少花钱多办事”的问题上面临着来自各个方面的压力，整个市场都在密切关注新技术的发展。Interlaw的Cunningham表示，这也是协作网络密切关注的一个领域。

“在法律服务市场上，新技术解决方案呈现爆炸式增长，”Cunningham说。“我们的合作律所一起分享最佳实践，并按照客户的需求共同筛选出最佳解决方案——根据我们的经验，当涉及到技术问题时，我们必须应用技术来作出选择。Interlaw与许多领先的技术机构建立起合作伙伴关系，其中有大公司也有利基市场的专家。我们邀请这些技术专家在我们举办的会议上提供培训并讲授专业知识，确保我们的合作律所了解创新领域的最新进展，”他补充道。

他列举了Interlaw最近完成的一个项目，说明如何更好地将建立连接与技术进行同步整合。该项目是一个数字基础设施项目，目的在于在合作伙伴律所及其客户之间建立起连接。

“这一新的数字基础设施改变了游戏规则，并且屡获殊荣——我们的数字产品之间的连接性在律师事务所协作网络中属于首创。我们创建了一个新的网站，其中包含一个易于使用的按钮，能够实现一键“连接到律师”，方便使用者与世界各地的专家取得联系，”他说。

to automatically generate a client feedback form for each piece of work, our new approach also supports continuous refinement in service delivery," Cunningham adds.

Vala-Webb agrees that technology is indeed having a drastic impact on the legal market, and on expectations. "Technology is changing every aspect of the ways law firms operate and deliver services. Moving to use software-as-a-service with secure cloud-based data storage is dramatically shifting the advantage from the very big laws firms to those who are the most agile," he says, noting that Lex Mundi is working to accelerate member firms' shift to the cloud which encouraging innovative technology adoption more broadly.

"Last year we started our Technology and Innovation program to support member firms do this. The program works to help firms share information about their successes; and we have established partnerships with technology vendors so member firms can easily try new software (e.g. Diligen's machine-learning contract review tool) or to make available HighQ's Collaborate sites for member firms to use as digital team spaces when working together on behalf of a client," he adds.

INTO THE FUTURE

Of course, connectivity and technology are pieces of the puzzle, but member networks say across the board firms must completely rethink the way they interact with clients. While this is already on the agenda for many firms, the practicalities of changing practice as the market enters new and uncharted territory can make this complex.

"The legal sector is still in the midst of transformational change, with new technologies offering a new way of doing things, as well as impacting on the expectations and needs of clients. Clients want borderless, tech-savvy, enterprising and accessible legal service providers that can combine global reach with in-depth local expertise. Clients increasingly need a 24/7, 365 days a year service, which means that all legal providers must keep adapting and investing if we are going to deliver the seamless cross-border service clients demand," says Cunningham.

"This requires investment and careful thought so that technology is incorporated into legal services in a way that makes us more efficient and effective for our clients. While it's important to think about how technology fits into the picture, we mustn't lose sight of the fact that effective client relationships are about day to day communication and working practices. As an organisation designed to collaborate, we promote a 'one-team' ethos with our clients. There is no 'them and us', we're

all working together to achieve a shared goal. We know clients want commercially savvy lawyers who adopt a problem-solving approach to their work and that can only flourish in a genuinely collaborative environment," he adds.


Vala-Webb notes that, going into the future, there are several key areas of development that firms will need to consider to stand out – and legal networks are well equipped to support them with this.

"Firms need to understand how, in a globally-integrated world, they can demonstrate their ability to deliver service seamlessly and efficiently across multiple jurisdictions. The foundation of this, for Lex Mundi member firms, is the superior collection of top firms around the world who have strong relationships with one another which creates a deep cross-border capability. We add to that a set of client service standards, innovative technologies, a work management methodology (based on lean / Agile), and central support for large client matters," Vala-Webb says, adding that his network firm already assists in matters of marketing, business development strategies, professional development, and technology.

A change of mindset is also critical, warns Cooke of Multilaw, adding that firms need "to understand that there is a whole world out there beyond the general counsel and start speaking to CEOs, CFOs, CTOs, DPOs and HR directors as well. They are increasingly the ones who are directly engaging law firms these days."

"Standing out from the crowd involves doing all the traditional things well i.e. by offering timely, expert advice and delivering value for money - which is easier said than done. The key advantage that a network can lend a firm is the opportunity to give that firm's clients access to an international network that the global law firms can," Cooke adds.

While it may feel like there are a vast array of options, Cunningham meanwhile notes that given how swiftly the market is evolving, being decisive is important. "This is a competitive landscape and to stand out, you can't afford to stand still. We take our training program very seriously at Interlaw to ensure our lawyers have access to world-class continual learning opportunities," he says.

"We want to help our firms evolve and grow in response to client needs. There can still be a tendency for the profession to be inward-facing – preoccupied with the day-to-day challenges of running a law firm. Our focus is firmly on the client and their multijurisdictional needs, looking out to the ever-changing business landscape and adapting our offer to meet the needs of global enterprise," Cunningham says. 

“Firms need to understand how, in a globally-integrated world, they can demonstrate their ability to deliver service seamlessly and efficiently across multiple jurisdictions.”

“律所需要了解，在经济全球化的进程中，他们应该如何证明他们有能力跨多个司法管辖区提供无缝、高效的服务。”

— Gordon Vala-Webb, Lex Mundi

“真正的变革性发展是数字客户管理和反馈系统，为每个合作律所实时提供所有推荐活动的完全可见性，以及在安全的在线环境中无缝协作的能力。此外，我们的新方法通过内置功能为每项工作自动生成客户反馈表，同时还支持服务交付的持续改进，”Cunningham补充道。

Vala-Webb也认为，技术确实对法律市场和客户预期产生了巨大影响。“技术正在改变律师事务所的方方面面，包括运营模式和提供服务的方式。通过将软件即服务应用模式与安全的基于云的数据存储技术的结合使用，可以显著地将优势从大型律师事务所转移到最具灵活性的律师事务所，”他说，并且透露Lex Mundi正在致力于加速其成员律所向云计算技术应用的转变，从而更广泛地鼓励创新技术的采用。

“去年，我们启动了技术和创新计划，为成员律所采用创新技术提供支持。该计划旨在帮助律所分享其在应用创新技术方面的成功案例。我们与技术供应商建立起了合作关系，方便我们的成员律所尝试应用新的软件（例如：Diligen的机器学习合同评审工具），或者为成员律所使用HighQ的协同办公网站提供便利，使他们在代表客户共同工作时能够使用数字团队空间，”他补充说。

展望未来

当然，连接性和技术仅仅是难题的一部分；协作网络表示，律所必须全面地重新思考他们与客户互动的方式。虽然许多律所已经将这件事提上了议事日程，但随着市场进入新的未知领域，在实际操作过程中实施改变的可行性可能会使这一问题变得十分复杂。

“法律行业仍处于转型变革的过程中，新技术提供了一种新的办事方法，同时也影响了客户的期望和需求。客户需要无国界、技术娴熟、有进取心且能提供无障碍服务的法律服务提供者——他们既在全球范围内有影响力，又对本地专业知识有深入的了解。此外，客户越来越需要法律服务提供者能够为他们提供全天候、全年无休的服务；这就意味着，为了满足客户需求，提供无缝跨境服务，所有法律服务提供者都必须不断进行调整，并持续投资，”Cunningham说。

“这需要投资和认真的考量，以便将技术融入到法律服务中，使我们能够为客户提供更为有效和高效的服务。虽然考虑如何在当前的大环境里合理地应用技术非常重要，但我们不能忽视这样一个事实：有效的客户关系管理关键在于日常工作中有效和顺畅的沟通。作为一个以协作为宗旨的

组织，我们与客户一起倡导“一个团队”的精神——没有‘他们和我们’之分，我们都在为实现共同的目标而共同努力。我们知道，客户想要的是拥有商业头脑的律师，而他们在工作中所采取的解决问题的方法，只有在真正的协作环境中才能发挥应有的巨大作用，”他补充道。

Vala-Webb指出，将来律所需要着重考虑发展几个关键的领域才能脱颖而出，而法律协作网络具备足够的力量支持律所在这些领域的发展。

Vala-Webb表示：“律所需要了解，在经济全球化的进程中，他们应该如何证明他们有能力跨多个司法管辖区提供无缝、高效的服务。对于Lex Mundi成员律所而言，其基础是Lex Mundi集聚了世界各地顶级的律师事务所，这些律所彼此之间的关系深厚，从而形成了深层次的跨境能力。我们在此基础上增加了一套客户服务标准、创新技术、工作管理方法（基于精益/敏捷原则），以及对大客户事务的集中支持。”他随后又补充道，Lex Mundi已经在市场营销、业务发展战略、专业发展以及技术等方面为律所提供协助。

思维模式的改变也是至关重要的，Multilaw的Cooke提醒道；同时他又补充说，律师事务所需要“明白，除了总法律顾问之外，他们还需要与很多人打交道，因此需要开始与首席执行官（CEO）、首席财务官（CFO）、首席技术官（CTO）、数据保护官（DPO）和人力资源总监建立联系；现在，越来越多的时候是他们直接与律师事务所接洽。”

“要从同行中脱颖而出，首先需要保证最基本的工作品质，即提供及时、专业的建议，提供物有所值的服务——这些事情说起来容易做起来难。协作网络能为律师事务所提供的主要优势是，让成员律所的客户有机会访问全球各地的律师事务所可以使用的国际网络，”Cooke补充道。

Cunningham同时指出，虽然可能感觉有很多选择，但鉴于市场的迅速发展，行事果断是非常重要的。“现在全球处在一个竞争激烈的环境中，要想脱颖而出，你就不能停滞不前。Interlaw非常重视其培训计划，确保我们的律师能够获得世界级的持续学习机会，”他说。

“我们希望帮助我们的成员律所根据客户的需求发展、成长。法律行业目前可能仍然倾向于注重内部事务——忙于应对律所日常经营中所遇到的挑战。但我们紧紧围绕客户及其跨管辖区业务方面的需求，关注不断变化的商业环境，调整我们的产品以满足全球企业的需求，”Cunningham说。



ALB SHENZHEN IN-HOUSE LEGAL SUMMIT 2019 CONCLUDES SUCCESSFULLY

ALB Shenzhen In-house Legal Summit was successfully held on September 5, 2019, at Park Hyatt Shenzhen. The Summit brought together over 100 in-house counsels, business elites and industry experts from different industries in Shenzhen and surrounding areas, and more than a dozen speakers shared in-depth observations and had active discussions on topics such as STAR Market, interaction between financial regulation and judicial adjudication, private fund regulation, law enforcement after the antitrust institutional reform,

business risk and prevention, M&A and restructuring of listed companies, and financial investment opportunities and challenges in the context of the Greater Bay Area initiative.

The Summit officially started at 9:00 in the morning. The chairperson of the Summit, Ms. Peng Juan, Assistant General Manager of Legal Compliance Department and Director of China Resources Capital Management Limited gave the welcoming remarks.

Shenzhen Court of International Arbitration (also known as Shenzhen International Economic and Trade

Arbitration Commission) (SCIA) is the special supporting organization of the Summit. Ms. An Xin, 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 of enterprises in the Greater Bay Area in corporate dispute resolution.

The Summit kicked off the first presentation session with a presentation delivered by Ms. Huang Xiaoli and Ms. Zhang Huili. They both are partners



2019 ALB深圳企业法律顾问峰会

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at JunHe LLP. Their presentation, entitled "With STAR Market Rising, How Can Foreign Capital Catch the Tide?" elaborated the topic from four aspects: (1) What are the breakthroughs of the STAR Market? (2) What companies are suitable for the STAR Market? (3) What is the significance of the STAR Market to foreign capital? and (4) Typical cases of foreign capital in the STAR Market.

Ms. Huang and Ms. Zhang were followed by two partners at V&T Law Firm, Mr. Chen Tong and Mr. Zhang Dong. They gave presentations separately, sharing with the audience on topics "Interaction Between Financial Regulation and Judicial Adjudication-From the Perspective of Determination of Contract Validity" and "New Trend of Private Fund Regulation." In his presentation, Mr. Chen started with the idea that the validity of contracts is the foundational risk, then share in-depth views on the influence of financial regulation on the validity of contracts and the attitude of judicial adjudication towards financial regulation. Mr.

9月5日, 2019 ALB深圳企业法律顾问峰会在深圳柏悦酒店圆满举办。本次峰会汇聚了百余位来自深圳及周边地区不同行业的企业法律顾问、商界精英与业界专家。十余位演讲嘉宾针对科创板、金融监管与司法裁判的互动、私募基金监管、反垄断机构改革后的执法、企业经营风险防范、上市公司并购重组、粤港澳大湾区下的金融投资之机遇与挑战等话题等诸多热点问题进行了深度分享与热烈讨论。

早上9点, 大会主席华润资本管理有限公司法律合规部助理总经理、董事彭娟女士向参会嘉宾致开幕辞, 大会正式开始。

深圳国际仲裁院(又名华南国际经济贸易仲裁委员会、深圳仲裁委员会, 英文简称SCIA)是本次ALB深圳企业法律顾问峰会的特别支持机构, 安欣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大湾区企业法务在企业争议解决中应扮演的角色和作用。

君合律师事务所合伙人黄晓莉律师和合伙人张慧丽律师以“科创板开板外资如何谋定而动”为主题开启了本次峰会的第一个演讲环节, 二位律师的演讲涉及科创板有哪些突破、适合哪些企业的介绍和解读, 科创板对外资意义的启示, 以及科创板外资所涉典型案例的深度分析。

随后, 万商天勤律师事务所合伙人陈彤律师和合伙人张东律师分别就“金融监管与司法裁判的互动——以合同效力判定为视角”和“私募基金监管新动向”向现场观众进行了精彩分享。陈彤律师从合同效力问题是基础性的合同风险谈起, 继而深度解读了金融监管对于合同效力的影响和司法裁判对于金融监管的态度。张东律师则从





Peng Juan, Director, China Resources Capital Management Limited
彭娟, 法律合规部助理总经理、董事, 华润资本管理有限公司



An Xin, Vice-president of Shenzhen Court of International Arbitration
安欣, 深圳国际仲裁院副院长



Huang Xiaoli, Partner, JunHe LLP
黄晓莉, 合伙人, 君合律师事务所



Zhang Huihui, Partner, JunHe LLP
张慧丽, 合伙人, 君合律师事务所



Chen Tong, Partner, V&T Law Firm
陈彤, 合伙人, 万商天勤律师事务所



Zhang Dong, Partner, V&T Law Firm
张东, 合伙人, 万商天勤律师事务所



Zhan Hao, Managing Partner, AnJie Law Firm
詹昊, 主任合伙人, 安杰律师事务所



Song Ying, Partner, AnJie Law Firm
宋迎, 合伙人, 安杰律师事务所



Yang Zhengyu, Partner, Grandall Law Firm
杨征宇, 合伙人, 国浩律师事务所



Wang Li, Senior Partner, AllBright Law Offices
王立, 高级合伙人, 锦天城律师事务所

Zhang analyzed the regulatory data from the aspects of market access data and regulatory penalties, and then briefed the regulatory framework and latest trends of private funds. And finally, he reviewed the warning line in private fund compliance.

The afternoon session started with the presentation jointly given by Mr. Zhan Hao, managing partner at AnJie Law Firm, and Ms. Song Ying, a partner at AnJie Law Firm. Their presentation was entitled "New Trends, New Rules and New Strategies for Enforcement Post Antitrust Institutional Reform." Their presentation focused on the practical aspects. They shared with the audience how to respond to anti-trust investigation after the antitrust institutional reform in China, and put forward new and insightful opinions on new trends of antitrust law enforcement based on the latest antitrust case studies and review of new legislations.

Mr. Zhan and Ms. Song were followed by Mr. Yang Zhengyu, a

partner at Grandall Law Firm. Mr. Yang gave a presentation entitled "Business Risk and Prevention." He elaborated this topic from legal and practical dimensions, including five aspects: shareholders' limited liability and exceptions, contract risk prevention, corporate governance risks, guarantees and judicial punishment risks, and bankruptcy reorganization.

Then the audience heard a wonderful presentation given by Mr. Wang Li, a senior partner at AllBright Law Offices, which was entitled "The Latest Interpretation of M&A and Restructuring of Listed Companies." Mr. Wang started his presentation with an analysis of the latest data of M&A and restructuring of listed companies; then he interpreted the latest policies on M&A and restructuring of listed companies; and finally he anatomized some hot issues in the M&A and restructuring of listed companies.

After hearing wonderful keynote speeches, the Summit entered the

most exciting and much anticipated session – the panel discussion. The panel discussion was moderated by Mr. Wang Ancheng, Senior Partner at AllBright Law Offices. The panelists were Mr. Liu Zhong, Assistant Executive & General Counsel of China Resources Land Limited and Mr. Wang Jidong, Executive Director and Co-head of Infrastructure and Real Estate Group of CITIC Securities Company Limited. Based on real cases and their own experiences, the three experts shared their insightful ideas about how to control risks effectively while achieving the goal of maximizing return on investment in light of the opportunities and challenges of financial investment in Greater Bay Area.

Regarding the investment opportunities in the Greater Bay Area, Mr. Liu Zhong said that the real estate sector still has a certain growth space, but the investment approach will change. From the perspective of industry concentration, the real estate sector

is currently at a stage of changing from an incremental market to a stock market; from the perspective of investment, it is notable that the real estate investment trust fund is a new financial product, which takes real estate as the underlying asset, and is expected to be further implemented.

Mr. Wang Jidong shared with the audience the investment opportunities in the Greater Bay Area from the perspective of financial market. He said that about how the funds are invested in the corresponding assets, at present, the relevant parties are clarifying the channels to determine the supervision of the direction and orientation of capital flow. He also pointed out that after the formulation of the corresponding rules and regulations, a sufficient market will be formed, which will pose the biggest opportunity for investment. Speaking of the challenges of financial investment in the Greater Bay Area, Mr. Wang said that the entry of foreign capital and the foreign capital that enters China through the capital accounts might have an impact on the pricing of China's capital market.

Mr. Wang Ancheng believes that under the new financial situation, the main risks faced by enterprises in carrying out cross-border business activities include policy risk, market risk, management risk, business risk and technical risk. In this regard, he put forward the following suggestions to respond to risks: keeping abreast of new laws and regulations, accurately analyzing and adapting to the market, strengthening cross-cultural management, focusing on business strategy adjustment and improvement, and retaining talent and strengthening innovation.

The wonderful sharing of the three experts was closely related to the latest hotspots and brought the participants with great insights and had the audience fully involved in the discussion.

This Summit was a great success and widely welcomed and highly praised by all participants – the speakers shared great insights with the



FROM LEFT: Wang Ancheng, Senior Partner, AllBright Law Offices; Liu Zhong, Assistant Executive & General Counsel, China Resources Land Limited; Wang Jidong, Executive Director, Co-head, Infrastructure and Real Estate Group, CITIC Securities Company Limited
左起：王安成，高级合伙人，锦天城律师事务所；刘中，助理总裁、总法律顾问，华润置地有限公司；王继东，投资银行管理委员会基础设施与房地产行业组执行总经理、联席负责人，中信证券股份有限公司

市场准入数据与监管处罚两方面进行监管数据剖析，并向大家介绍了私募基金监管框架及最新动向，最后，就私募基金合规红线进行重新梳理。


在下午的议程中，安杰律师事务所主任合伙人詹昊律师和合伙人宋迎律师聚焦“反垄断机构改革后的执法新趋势、新规定、新对策”，从实务角度向参会嘉宾分享了机构改革后反垄断调查的企业应对之策，并基于最新的反垄断案例分析和新规梳理，在反垄断执法的新趋势方面提出了精彩见解。

国浩律师事务所合伙人杨征宇律师围绕“企业经营风险防范”这一主题，分别从股东有限责任及例外，合同风险防范，公司治理风险，担保及惩戒风险和破产重整五方面，以法律规定和实务经验多维度进行了阐述。


锦天城律师事务所高级合伙人王立律师就“上市公司并购重组最新动态解读”进行了精彩演讲，王立律师从上市公司并购重组最新数据分析切入，继而进行了上市公司并购重组最新政策解读，并就上市公司并购重组热点问题进行了深度剖析。

精彩的主题演讲过后，进入到本次峰会颇受瞩目的最后一个环节—专家话题讨论环节。话题讨论环节由锦天城律师事务所高级合伙人王安成律

师主持，讨论嘉宾为：华润置地有限公司助理总裁、总法律顾问刘中先生和中信证券股份有限公司投资银行管理委员会基础设施与房地产行业组执行总经理、联席负责人王继东先生。围绕着粤港澳大湾区下的金融投资之机遇与挑战：如何实现最大化投资回报与风险管控这一话题，三位实务专家结合实际案例与自身经验分享了精彩的见解。关于粤港澳大湾区的投资机会，刘中先生提到房地产行业仍旧会保持一定的增长空间，同时投资方式会有所转变。从行业集中度来看，目前房地产行业是从增量市场到存量市场的转变，从投资角度，以房地产作为底层资产的房地产投资信托基金这个新的金融产品值得关注，有待进一步落地实施。王继东先生从金融市场的角度分享了大湾区的投资机会，他提到关于资金如何投入到相应资产中，目前有关方正在厘清渠道，明确资金流向和定向监管；同时，他提出相应的规则制度确定后，形成一个充分的市场，这对投资来言是最大的机遇。谈到大湾区金融投资的挑战，王继东先生提到外资的进入，外资通过资本项下账户进入国内，或对中国资本市场定价产生冲击和影响。王安成律师认为新金融形势下，企业开展跨境业务主要风险包括政策风险、市场

participants about the forefront and hotspot legal issues and won rounds of applause from the audience. ALB, as the organizer of the Summit, wants to extend our gratitude to everyone who participated in and made the event a success, and looks forward to seeing you again at the next summit. 

风险、管理风险、经营风险和技术风险等，对此，他提出以下风险应对建议：及时把握新形势下的法律法规及政策，准确分析和适应市场，强化跨文化管理，注重经营战略调整与改进，以及留住人才并强化创新。三位专家结合时下最新热点的实务讨论，再次将会场气氛推向高潮。

本次峰会智慧观点精彩纷呈，现场观众掌声如潮，演讲者和参会嘉宾基于对行业的深度观察，就当下前沿和热点的法律问题进行了专业的分享和讨论，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。ALB作为大会组织者，真诚感谢各位嘉宾的莅临，期待下次峰会与您们再次相约。 

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Grandall Law Firm

Yang Zhengyu lawyer team is a part of Grandall Law Firm. Mr. Yang Zhengyu had been working as a judge in the Commercial Court of the Supreme People's Court for over 20 years, and he was awarded the National May 1st Labor Medal for the excellent work. At present, Yang Zhengyu lawyer team consists of over 20 lawyers with commercial litigation expertise who dedicate to complex and high profile commercial disputes. With the deep understanding of the commercial trial and internal operation mechanism of courts, the remarkable advantages on social resources in the legal market and business thinking, Yang Zhengyu Lawyer Team focuses on the realization of customer goals in pragmatic strategies that result from detailed legal analysis and rich practice experience.



JunHe LLP

JunHe, founded in Beijing in 1989, was one of the first private partnership law firms in China. Since its establishment, JunHe has grown to be one of the largest and most recognized Chinese law firms. The firm has twelve offices around the world and a team comprised of more than 730 professionals, including over 220 partners and legal counsel, as well as over 510 associates and legal translators.

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汤森路透《亚洲法律杂志》(ALB)即将启动2020 ALB中国知识产权法务15强评选活动,这将是ALB首次聚焦中国法律市场上顶尖的知识产权法务工作者。此次评选结果将刊登在2020年3月《亚洲法律杂志》中国版。

2020 ALB中国知识产权法务15强评选由中国国际贸易促进委员会专利商标事务所独家赞助。

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