

# ASIAN LEGAL BUSINESS

ALB

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LAWYERS**

HONG KONG  
MANAGING  
PARTNERS  
OPEN UP

SINGAPORE  
CONTINUES ITS  
DISPUTES PUSH

ALB GUIDE TO  
THE BVI 2020



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# LAW AWARDS 2020

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# CONTENTS

# 42

**Guangzhou  
reinvents itself**



## COVER STORY

**20**

### **ALB Asia 40 Under 40 2020**

In a record-breaking year in which nearly 400 lawyers across Asia submitted their profiles, picking the annual 40 Under 40 list was no easy task. This year's list, as in other years, features a diverse mix of lawyers, including the first-ever entrant from Bangladesh and the first from a PRC firm, as well as multiple law firm founders.

*List by ALB, text by  
Aparna Sai*

## FEATURES

**14**

### **The Hong Kong conversation**

Being next door to mainland China, Hong Kong was one of the first jurisdictions globally to experience the coronavirus outbreak. Leaders of the Hong Kong offices of three law firms look back on their experience so far this year, and also the lessons they learnt along the way.

**30**

### **ALB Indonesia firms to watch 2020**

As COVID-19 continues to sweep around the globe, Indonesia has found itself weathering an economic slump. For businesses, more than ever, this has

emphasized the need for trusted expertise and savvy counsel. The firms featured in this year's ALB Indonesia Firms to Watch have proven themselves as stand out operations for their commitment to clients, knowledge of the market and resourcefulness in the face of adversity.

**32**

### **Singapore's disputes push continues**

Last year, Singapore's landmark Convention on Mediation formalised the city-state's well-earned reputation as an attractive arbitration hub, with legal muscle and global recognition to back up its standing. But as the government continues to fine-tune the law and COVID-19

continues to cast a shadow, the market still has work to do.

#### **Plus:**

- *Eugene  
Thuraisingam LLP*

**35**

### **ALB Guide to the BVI 2020**

The ALB Guide to the British Virgin Islands 2020 focuses on key legal and regulatory developments in the jurisdiction in the past year, with updates provided by expert commentators from Carey Olsen, Conyers and Harneys

**42**

### **Guangzhou reinvents itself**

The Pearl River Delta, with Guangzhou located at its centre, was once dubbed "the world's factory floor". However, with

COVID-19 casting a shadow over the manufacturing industry, the city is beginning to embrace new industries.

## BRIEFS

**3**

### **The Briefing**

**4**

### **Forum**

**6**

### **Appointments**

**8**

### **Explainer**

**9**

### **Deals**

**10**

### **Q&A**

**13**

### **League Tables**



# FROM THE EDITOR

## The future of this industry lies in the hands of the bold.

The ALB Asia 40 Under 40 has become one of our most popular annual features ever since we launched it six years ago. And this year can be described as a record-setting one, as we attracted nearly 400 entries. This is no average list, either: the 40 Under 40 offers a glimpse into the future of Asia's legal industry and underscores the role that younger lawyers will play going forward.

This is particularly true as the legal industry moves into a future that lacks the certainties of its stable, prosperous past, particularly with the emergence of COVID-19. With the rise of innovative thinking, courageous entrepreneurship, and fast-evolving technology, the market is being disrupted like never before. The lawyer of the future will be an internet native – far more at ease with the ins and outs of technology than previous generations ever were – and will be able to harness the forces of disruption much better than many firms are able to right now. So, the gloomy cloud hovering over the industry will no doubt lift, and it is the younger lawyers who will shine the light.

What can law firms do now to future-proof themselves? For starters, they will need to acknowledge and act on the fact that the new generation is likely to think and work differently.

And accordingly, the traditional ways of firms may not apply to them for much longer. As such, flexibility is paramount, and firms also need to go the extra mile to help create more inclusive, more engaging workplaces that allow lawyers to balance their family and career as well as their passions and pursuits. But most importantly, they need to encourage an environment that cultivates new ideas and fearless risk-taking, rewarding those who can stick their neck out for what they believe in. The future, eventually, will belong to the bold.



**RANAJIT DAM**  
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## THE BRIEFING: YOUR MONTHLY NEED-TO-KNOW

60

Percentage of in-house counsel worldwide have seen the COVID-19 pandemic benefiting their communication and well-being initiatives in companies, a study conducted by LOD has found.

## GENERAL COUNSEL SHOULD PIVOT FROM LEGAL TO BUSINESS LEADERSHIP

General counsel who spend a higher percentage of their time performing strategic work and supplying business guidance are more effective than those who spend less, according to U.S. research and advisory firm Gartner. These "executive" GCs are more likely to achieve their personal objectives, have greater influence with peer executives and contribute more to corporate outcomes. The most effective GCs, who take a more executive approach to their role, have a stronger ability to influence the CEO, and provide a significant impact on strategic decision-making, Gartner added.

## ASIAN EQUITY CAPITAL MARKETS SEE Q3 BOOM

Total equity market capital raised in Asia in the third quarter of this year was \$133.8 billion, according to data from Refinitiv, a surge of 148 percent compared to the same period last year. China-led IPOs accounted for 44 percent of IPOs in the world for the first three quarters, with \$57.4 billion worth of deals, more than double the amount for the same time last year. The 62 Shanghai STAR Market listings in the third quarter raised \$14.7 billion. And Ant Group is expected to raise up to \$35 billion in a dual listing in Hong Kong and Shanghai likely in October.

## QUOTE UNQUOTE

THERE **MUST** BE SOMETHING ABOUT MY FACE THAT SAYS 'NOT A BARRISTER' BECAUSE I AM LITERALLY WEARING A BLACK SUIT LIKE EVERYONE ELSE.

Alexandra Wilson, a Black criminal and family law barrister working with London-based 5SAH Chambers, called out the prejudice she experienced in a UK court.

53

Percentage of legal professionals in the U.S. who are "worried about the success of their law firm," according to a study by Clio. Some 36 percent said they were "worried about making a living."

## IN THE NEWS

1

Eliza Chang of Cheng, Yeung & Co; Eugene Wong of Mayer Brown; and Allen Che of Wong, Hui & Co have become the first all-Hong Kong relay team to swim across the English Channel. The team completed the crossing in 13 hours 48 minutes and raised HK\$1.5 million (\$195,000) for charity.

2

Hogan Lovells has been named one of the top LGBT employers in the world. The firm was one of 17 organisations that made the Top Global Employers 2020 list compiled by LGBT rights charity Stonewall.

# COULD VIRTUAL LAW FIRMS BE THE FUTURE?

With the COVID-19 pandemic rendering offices empty (for the large part), and triggering new remote working policies and protocols, the future of the traditional office remains uncertain. And this has come at a time when virtual law firms – such as Rimon Law, which recently opened an office in Shenzhen – grow in prominence. However, some in the industry feel that working virtually may not be for everyone just yet.

ARE WE LIKELY TO SEE MORE  
LAW FIRMS EMBRACING A  
VIRTUAL MODEL IN THE FUTURE?  
WHY OR WHY NOT?



MORADZADEH

## MICHAEL MORADZADEH, CEO, Rimon Law

Virtual law firms are likely to witness exponential growth in the future, though they will take a number of forms. Some will operate like Uber or Upwork with freelance attorneys, and others will be on the Rocket Lawyer model: Technology platforms with a few lawyers serving as back-up. There will also be loose affiliations of lawyers working under one platform. At the same time, there will be high-end modern law firms like Rimon where elite lawyers work closely together, employing video conferencing and other technologies to enable a much smaller real estate than traditional firms. These firms feature remote work but include access to quality offices and resources. Associate and staff billing will play a limited role, as the firms meet clients' expectations that they should only pay for top-level work. Eventually, elite law firms will transition to this model. Already, big firm partners are reporting higher productivity working from home, and most surveys show that the attorneys prefer it that way. Now that attorneys have had a taste of real flexibility, I don't think they will go back. We have already seen this, as interest in our firm has exploded since March. So far, in 2020 alone, we have added 27 new partners, most of whom were AmLaw 100 Partners looking for a more modern platform.

## TONY WILLIAMS, principal, Jomati Consultants

We have already seen the creation of a number of virtual law firms and I do expect the numbers to

rise. This is for a few reasons. First, as a result of the pandemic lawyers have been forced to work from home often for the first time in their careers. They have found that they can be very effective, the technology works and avoiding long commutes or wasted time in office meetings can result in enhanced efficiency. Second, an increasing number of lawyers are prepared to swap the certainty of a monthly paycheck for the flexibility of working when necessary and having control over their lives. Third, without the cost base of a traditional law firm they can charge their clients less but still make the same or more income than before. Finally, some clients are very happy with this as they get the attention of lawyers they know at a lower price and with less potential conflict issues.

But this is not for everyone. First, we are generally sociable animals and benefit from interaction with colleagues, discussing problems and sharing experiences. Second, many will need the certainty of a regular income to pay rent and so on and are not at a stage of life when they are prepared to take risks. Third, law is still largely an apprenticeship model where younger lawyers learn by seeing how more experienced lawyers operate. Finally, effective teamwork and developing relationships rely on a level of personal contact. I appreciate that many but not all of these issues can be addressed by embracing social media, virtual coffee breaks and so on. So, although we will probably see a greater degree of innovation and flexibility as to the way in which law firms operate, I don't think that traditional law firms will be replaced by their virtual counterparts in the short term.

## ALASTAIR MORDAUNT, Asia co-head, antitrust, competition and trade, Freshfields

When we were coming out of the first wave of COVID-19 several months ago, we were emerging from a prolonged period of having to discharge our roles and responsibilities despite not being



WILLIAMS



MORDAUNT

in the office. We felt that learnings and benefits had emerged from this period, and we wanted to continue to leverage these once things started to return to normal. This was our aim when we revised our agile working policy, which we had launched as a pilot.


Previously under our agile working policy, there was a cap on how much time you could work away from the office and people needed to give a reason for doing so and seek permission from their line manager. We decided to remove those conditions.

But this change in our approach was not forced upon us by COVID-19. We were more focused on the kind of workplace we wanted to be in the future, after the pandemic is gone. We do have a small group of people in the office to whom that pilot doesn't apply, but we certainly haven't said that they can never work from any location other than the office. They just need to have a conversation with their line manager and team first, to ensure that they will still be able to support their colleagues appropriately.

There are a number of considerations for law firms to bear in mind when encouraging agile working, and I think these would apply to a digital law firm as well. There are needs like training, mentoring and supervision that traditionally have been conducted in person. I don't think working remotely makes those things impossible, but we certainly need to work hard to ensure that they can be delivered to the same standard and with the same effectiveness.

Another consideration is the potential negative perception of working from home. This may have existed in the past, and so it's important to drive home the message that things have changed. I find it quite hard to conceive of a fully virtual law firm, and that's certainly not the model we've adopted today. But if virtual simply means some colleagues not being in the office some of the time, then we meet the definition every day of the week because at any one time, there will be a subset of staff who are not working in the office.

One thing you lose from not being in the office is that human interaction. Certainly, our efforts in the field of mental health have intensified over the past few months, recognising the potentially negative impact COVID has had on people's sense of community and wellbeing.

This is something, when we come out of COVID, that will remain a focus – being able to check in with people at a human level is such a fundamentally important part of having a happy, successful team, and all the more so in a virtual environment. 

## DOMESTIC LAW FIRMS STAND STRONG IN ACRTAS' 2020 APAC BRAND INDEX

Legal insights firm Acritas has unveiled its Asia-Pacific Law Firm Brand Index 2020, revealing the top 10 law firms in the region by brand value. While the pandemic has triggered retreats from some markets, or the shedding of headcount, larger domestic firms have shown their market dominance and staying power in the index.

Taking the top spot this year was Sino-Australian firm King & Wood Mallesons, and it was followed closely by Baker McKenzie, last year's top firm. Both law firms have grown their brand equity across the region over the past year, Acritas research found.

The firms were referred to as "powerhouses," intent on growing their presence and popularity among in-house counsel.


"These are uncertain times for business. As our clients navigate shifting global dynamics and pursue new opportunities to strengthen their business, they are turning to the firms they trust the most. They are seeking advisers who consistently deliver high-quality legal advice and exceptional service - and this is reflected in this year's rankings," said Sue Kench, global chief executive of KWM in a statement. "The opportunity for KWM is to continue to build on our reputation for quality in our local markets and become the go-to firm in the region for complex cross-border work, setting a new global standard for service and expertise."

One place down was Anglo-Australian firm Herbert Smith Freehills, which held onto the third spot for the seventh consecutive year. The firm, which recently appointed an Asia-based CEO in Justin D'Agostino, has reaffirmed its commitment to the market both vocally and through strategic moves over the past few years.

This year's rankings also show what happens when strong ambition and dedication come together, as firms in competitive markets continue to win the confidence of new clients. After breaking into the top 10 in 2019, Beijing headquartered firm Zhong Lun showed off its impressive credentials by climbing three places into the fourth position in 2020. The firm has enhanced its reputation for top-level litigation and high-value work in China.

Another impressive trade-up saw Dentons climb 13 positions to fifth place. The firm has significantly increased its brand favourability and consideration for top-level work in China in the last 18 months, according to Acritas.

South Korean law firm Kim & Chang held onto the sixth position for the third consecutive year. The largest law firm in South Korea by headcount, Kim & Chang has gained recognition for its work at the Asian Legal Business Korea Law Awards last year, taking home six trophies – the biggest haul of the night.

Following Kim & Chang was Beijing headquartered JunHe at seventh, while Allen & Overy also had a strong year, moving up seven places to eighth spot. 



## FORMER SH LITIGATORS SET UP DISPUTES BOUTIQUE IN HK

Malcolm Kemp and Yeeling Wan, former partners of Stephenson Harwood, have established a boutique firm in Hong Kong called MB Kemp that specialises in dispute resolution and insolvency work.

Kemp was until recently the head of the dispute resolution practice at Stephenson Harwood's Hong Kong office, as well as its senior partner for Greater China. He joined the firm in 1989.

Meanwhile, Wan had been with Stephenson Harwood since 1998, becoming a partner in 2009.

The firm also has a director of legal affairs, Guijun "GJ" Wang, who specialises in marine and international trade. Wang spent 24 years at Stephenson Harwood prior to joining MB Kemp, and was most recently a legal director at his former firm. <sup>ALB</sup>

## SKADDEN GUIDES VODAFONE TO WIN IN \$2 BLN INDIA TAX CASE

Skadden, Arps, Slate, Meagher & Flom and DMD Advocates have successfully advised telecommunications company Vodafone Group in an international arbitration case against the Indian government over a \$2 billion tax claim. The Indian government was represented by U.S. firm Curtis Mallet-Prevost Colt & Mosle.

Quoting two sources, Reuters reported the tribunal ruled that India's imposition of tax liability on Vodafone were in a breach of an investment treaty between India and the Netherlands.

The dispute has its roots in 2007 after Vodafone signed a \$11 billion deal to buy the Indian mobile assets from Hutchison Whampoa. The government said Vodafone was liable to pay taxes on the acquisition, which the company contested. <sup>ALB</sup>

## APPOINTMENTS



### LIJUN CHUI

**LEAVING**  
Clifford Chance

**JOINING**  
Bird & Bird

**PRACTICE**  
Dispute Resolution

**LOCATION**  
Singapore



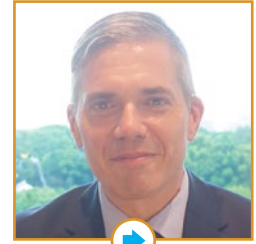
### SAM HUANG

**LEAVING**  
Davis Polk & Wardwell

**JOINING**  
King & Wood Mallesons

**PRACTICE**  
Capital Markets

**LOCATION**  
Beijing/Hong Kong



### ADRIAN JOYCE

**LEAVING**  
Norton Rose Fulbright

**JOINING**  
Nishimura & Asahi

**PRACTICE**  
Project & Asset Finance

**LOCATION**  
Tokyo



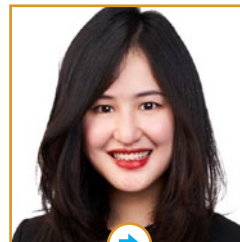
### GAVIN MARGETSON

**LEAVING**  
Sharpe & Jagger

**JOINING**  
Mishcon de Reya

**PRACTICE**  
Disputes

**LOCATION**  
Singapore



### NG YI WAYN

**LEAVING**  
RHTLaw

**JOINING**  
Oon & Bazul

**PRACTICE**  
Corporate

**LOCATION**  
Singapore



### ANTHONY PATTEN

**LEAVING**  
Shearman & Sterling

**JOINING**  
King & Spalding

**PRACTICE**  
Energy

**LOCATION**  
Singapore



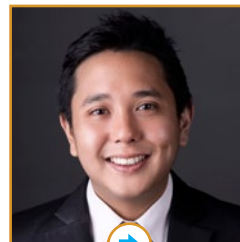
### CRAIG PAYNTER

**LEAVING**  
Bedell Cristin

**JOINING**  
Rajah & Tann

**PRACTICE**  
Private Wealth

**LOCATION**  
Singapore



### MATTHEW TEO

**LEAVING**  
Rajah & Tann

**JOINING**  
Helmsman

**PRACTICE**  
Disputes

**LOCATION**  
Singapore



### NAWNEET VIBHAW

**LEAVING**  
Khaitan & Co

**JOINING**  
Shardul Amarchand Mangaldas

**PRACTICE**  
Environmental Law

**LOCATION**  
Delhi



# COVID-19 ACCELERATES OVERHAUL OF LEGAL EDUCATION

What will law firms of the future look like? For new graduates and students looking to enter the industry, the answer to this question will have a serious impact on their future. For educators too, the pandemic has led to changes in teaching with a greater emphasis on agility and continuous learning.

This year, classes looked different, with Zoom lessons replacing lecture halls, and internships going online.

Lutz-Christian Wolff, dean of the Faculty of Law at the Chinese University of Hong Kong, tells ALB that overall students have been positive about the shift toward online classes.

"A lot of work has gone into this, but it worked very well. Some colleagues say in particular courses, the online mode is much better," he says, citing drafting classes as one example.

But while in some cases the online version may be an improvement, Wolff says face-to-face teaching is unlikely to disappear.

"I think in the future we will see hybrid modes – online teaching, plus face-to-face teaching," he adds, noting in-person teaching is still important in order to achieve deep learning.

But while the pandemic has shaken up teaching, what it might mean longer-term for legal education is the big question for educators. Wolff says that when it comes to legal tech, the pandemic has proved to be an accelerant.

Another skill that Wolff believes is growing more important is legal entrepreneurship.

"Fifty percent of lawyers' work is not legal work. It's about business development, client management, office management, project management, accounting, and that is something which is at the moment – to a large extent – neglected. So I think legal entrepreneurship, businesses development, is something that is also becoming increasingly important," he says.

Likewise, Simon Chesterman, dean of the Faculty of Law at the National



University of Singapore (NUS) predicts that law firms of the future will require a range of people with legal skills, "in particular, combining those skills with technological and business sensibilities."

And he suggests such developments require "a radical rethink of the purpose, content, and method" when it comes to the curriculum.

"NUS Law is working to attract and develop more students with STEM backgrounds through new pathways linking law and computer science, a new JD that we're launching in August 2021, and a possible new JD/MBA," says Chesterman. "We've also expanded the number of IT electives in recent years and launched a new Centre for Technology, Robotics, AI & the Law (TRAIL), which involves students as well as faculty," he adds.

Wolff says it isn't just for universities to adapt to new industry demands and changes. Students too need to understand the legal profession is changing and prioritizing legal technology, he says.

"They have to adapt – law schools have to adapt but students also have to adapt. They need to understand that this is something that is extremely important," he adds.

But as the role of technology is emphasized, inevitably there have been questions about automation and what this means for graduate job opportunities.

"There's a lot of discussion about whether or not lawyers will have work

in the future, or whether everything will be done by machine," says Wolff bluntly, offering the example of due diligence following a business acquisition. "In the past you threw in an army of lawyers, 20, 30, 50 people were checking all the files. A lot of this work is nowadays done by AI, so you don't need lawyers for this".

But this doesn't mean there's no work for lawyers, says Wolff, saying instead this will shift to more sophisticated work, with AI taking over "the more routine work."

In Singapore, Chesterman says curricula are evolving to reflect the industry changes that graduates encounter.


"Pedagogy and the wider curriculum (embracing hard and soft skills) are now under review. In addition to the law of technology, we are expanding student exposure to the technology of law including through partnerships with tech companies and law firms," he says.

Wolff also notes that the changing legal work, and new technologies emerging are moving so fast it takes constant work to stay up to date when it comes to technologies.

"With everything moving so fast, you need to keep yourself updated on a regular basis. It's not like you study something today and that will last for the next 10 years, the world is not like that any longer," he says.

"Law schools need to adapt and react for the benefit of their students, so the magic word now days is agility. You need to have a proactive, agile approach, in order to address those new developments," Wolff adds.

Chesterman agrees that the rapid pace of the industry requires an ongoing commitment to learning.

"Though career placement for NUS Law graduates remains strong, the university as a whole has embraced lifelong learning – acknowledging the reality that a four-year degree cannot possibly prepare an individual for a lifetime of work," he says. 

## EXPLAINER

# FACEBOOK EXPERIENCE SHOWS RISKS FOR SOCIAL MEDIA FIRMS IN EMERGING MARKETS



For nearly every business, venturing into a new market comes with unforeseen complexities and uncertainty. For social media companies, which manage information flows and news, and can be somewhat broadly defined, the risks and challenges are continuing to evolve. In jurisdictions where market rules aren't so clear cut, such challenges can trigger a variety of operational risks, making the situation incredibly complex.

Managing a global digital company with branches across the world is no mean feat, but for social media companies, the risks can be immense — from the proliferation of “fake news” to moderation policies around hate speech and

propaganda, social media companies are manoeuvring new challenges while facing growing scrutiny from governments and regulators.

In recent years, Facebook in particular has illustrated just how far-ranging these challenges can be. India is the social media giant's biggest market, with more than 300 million users, but recently, the U.S.-headquartered company has come under fire for its content moderation in the world's largest democracy, with accusations of political bias. Currently, the company is also mired in a scandal in India's eastern neighbour, Myanmar, a country that stands accused of perpetrating genocide against its Rohingya Muslim community.

In markets where laws continue to be hewn, companies must look ahead to preemptively mitigate the risks, while also relying on careful compliance planning to help guide them through the uncertainty.

## 1 WHAT TYPES OF ISSUES DO SOCIAL MEDIA COMPANIES FACE WHEN ENTERING MARKETS WHERE THE LAWS AREN'T SO CLEAR-CUT?

Between navigating laws and balancing freedom of speech and hate speech concerns, social media companies can find themselves entangled in multiple regulatory nets. Social media businesses have in the past described themselves in somewhat fluid definitions, but increasingly governments are taking a harder stance.

Sheena Jacob, partner and co-head of the media and technology practice at CMS Holborn Asia, tells Asian Legal Business that there can be a variety of challenges for social media operations spread across various markets.

“In such a situation, issues facing social media companies would include having to consider the existing laws regulating media and news in these markets, especially new laws regulating

social media, political, racial and religious sensitivities,” Jacob says.

But, of course, it's far from a one-size-fits-all solution. “The global rise of ‘fake news’ and hate-speech have driven governments to push for greater regulation and companies must meet legal requirements in each country, which can differ widely from one country to another,” she says.

But it isn't just strictly about compliance — there can be longer term reputational side effects for companies that don't act proactively. In 2018, for example, United Nations investigators singled out social media in Myanmar as having “substantively contributed to the level of acrimony and dissension and conflict... within the public.”

## 2 WHAT SORT OF GLOBAL RISK AND COMPLIANCE PROGRAMMES DO SOCIAL MEDIA COMPANIES NEED IN ORDER TO KEEP THEIR OPERATIONS SAFE?

According to Jacob, social media companies must be prepared for a broad range of risks.

“To keep operations safe, social media companies need to have a proper framework for risk management, in particular in areas such as cybersecurity, data protection and privacy, intellectual property infringement, misconduct and fraud,” she says.

But companies also need to extend such policies to encompass other social media specific challenges.

“In addition, companies need to have robust programmes for administration of the sites to deal with illicit online activity,” says Jacob. “The risk and compliance framework should be part of an overarching ecosystem which establishes 1) proper governance and structure in identifying and managing social media risks, 2)

proper processes to monitor and protect operations in a cost-effective way and 3) proper systems to manage and secure data, and to mitigate social media risks," she adds.

### WHAT ARE SOME OF THE DANGERS OF SOCIAL MEDIA COMPANIES FAILING TO MANAGE REPUTATIONAL RISKS?

Consumer perception being negatively affected is one of the key risks for social media

companies, should they fail to manage reputational risks, says Jacob "especially in areas such as data protection, data privacy and content ownership."

But there are other considerations which vary from market to market. "Companies could also face legal consequences in the jurisdictions they operate in, depending on the nature of the laws and the severity of the risk event," notes Jacob.

Another critical consideration, says Jacob, is for all social

media companies to prioritize proactive risk management and incorporate strong governance and processes into internal operations and procedures.

"Many established players already do this," says Jacob. "It is also important for companies to have a comprehensive knowledge of the various cultural, legal and operational environments, and to maintain a positive working relationship with relevant governing bodies in the jurisdictions they operate in," she adds. <sup>ASB</sup>

## DEALS

**\$40 BLN**

**NTT's buyout of Docomo**

**Deal Type:** M&A

**Firm:** Orrick Herrington & Sutcliffe

**Jurisdiction:** Japan

**\$3.4 BLN**

**BCI-led consortium's acquisition of tower infrastructure from Reliance Group**

**Deal Type:** M&A

**Firms:** AZB & Partners; Cyril Amarchand Mangaldas; Khaitan & Co; Latham & Watkins; Nishith Desai Associates  
**Jurisdictions:** Canada, India, U.S.

**\$2.8 BLN**

**Hitachi Capital's merger with Mitsubishi UFJ Lease & Finance Company**

**Deal Type:** M&A

**Firms:** Skadden Arps Slate Meagher & Flom  
**Jurisdiction:** Japan

**\$2.2 BLN**

**Yum China's HKEX secondary listing**

**Deal Type:** ECM

**Firms:** Freshfields Bruckhaus Deringer; Sidley Austin; Simpson Thacher & Bartlett  
**Jurisdictions:** China, Hong Kong

**\$1.98 BLN**

**Singlife's acquisition of Aviva's Singapore business**

**Deal Type:** M&A

**Firms:** Allen & Gledhill; Slaughter and May

**Jurisdictions:** Singapore, UK

**\$1.55 BLN**

**ZTO Express' HKEX secondary listing**

**Deal Type:** ECM

**Firms:** Freshfields Bruckhaus Deringer; Global Law Office; JunHe Law Firm; Skadden Arps Slate Meagher & Flom  
**Jurisdictions:** China, Hong Kong

**\$1.2 BLN**

**Kimberly-Clark's acquisition of PT Softex Indonesia**

**Deal Type:** M&A

**Firms:** Allen & Gledhill; Gibson Dunn; Soemadipradja & Taher  
**Jurisdictions:** Indonesia, U.S.

**\$1.08 BLN**

**Nongfu Spring's HK IPO**

**Deal Type:** IPO

**Firms:** Freshfields Bruckhaus Deringer; Jingtian & Gongcheng; Tian Yuan Law Firm  
**Jurisdictions:** China, Hong Kong

## Q &amp; A

# 'SURVIVING THIS CRISIS REQUIRES A LOT OF BUY-IN FROM EVERYONE'

Singapore's Harry Elias Partnership (HEP) has had a more eventful year than most – from the end of its merger with Eversheds Sutherland to the recent loss of the firm's founder, and then of course the COVID crisis is still present. **Philip Fong**, managing partner of the firm, talks about the past few months, and offers his thoughts on what's next.

**ALB:** Your partnership with Eversheds recently came to an end. What are your thoughts on alliances, and are you open to entering into another in the future?

**FONG:** As our legal sector increasingly opens to the outside world, one way for our firm to grow, remain competitive and relevant is to merge synergistically with a global firm. Such a merger enables us to widen our service offerings and enhances our overall capability to serve existing and new clients. Eversheds was our first merger with an international law firm. It proved to be a good learning and eye-opening experience for us, and we have a lot of positives and take-aways, and we achieved several of our goals. All this have put us in good stead for the future. The timing to negotiate an extension of the merger coincided with the onset of the COVID-19 pandemic. This is a mammoth disruption event, and it was mutually decided by both parties to take a step back to regroup. Nonetheless, our reasons to merge or enter into a committed alliance with an international law firm are still present, and we are certainly open to similar mergers in the future. As Singapore globalises, it makes logical and economic sense for us to be globally and regionally minded and explore new frontiers. As has been said: If you want to discover new lands, be prepared to lose sight of the shore.

**ALB:** COVID-19 has obviously proved an incredibly tough challenge for firms everywhere. Could you tell us about how the firm has adapted over the past few months?

**FONG:** The pandemic has been massively disruptive on a global scale to say the least. It has created a lot of uncertainties in every sector including the legal sector. We hear of many law firms downsizing and closing offices around the world and the region. Our firm has been fortunate in that most of our departments have not been seriously affected in terms of pipelines of work and we are as a firm recovering from the dips in the earlier part of the year. Some reasons for the rebound are that we have very supportive clients and we have very loyal lawyers and staff who understand our cost-cutting measures and transformed work arrangements. We have maintained contacts among the partners and department heads since the onset of the pandemic and each department has maintained good communication channels with the team members. We keep in touch with our existing and potential clients through webinars and email news blasts, and created a special hotline during the circuit breaker period. We embraced the use of technology for

telecommuting and teleconferencing to minimise disruptions to work. Our administrative and finance staff also help in the overall effort by keeping a close eye on our finances and work processes. Prudent and sound financial management, which is a key legacy of our founder Harry Elias, has prepared us well for this crisis. Our headcount, which is neither too big nor too small, allows us to be nimble in adjusting to the changing economic and legal environment. Some forecasters have opined that the worst is yet to come, and we are not sitting on our hands: We continue to keep a watchful eye on developments and are ready to make further adaptations where necessary.

**ALB:** What are some of your priorities for the firm in the coming year?

**FONG:** While it is good to do horizon scanning for 2021, the concerns are still very much in the present. As a famous economist once said: "In the long run, we are all dead." I would say that the key priority is to manage the firm properly by optimising our resources to generate revenue and maintain a healthy cash-flow. If we want to continue serving our people, our clients and our community, we have to survive this crisis. This

requires a lot of buy-in from everyone in the firm and so, a key priority is also to communicate our plans to the firm as timely and as much as possible. Any downtime also allows the partners to impart the need for professional training and performance improvement. The present is also a good opportunity

to relook at, and even to rebuild, our work teams, as there will be turnover of staff for all kinds of reasons. We are looking to keep and hire good quality lawyers as we head into the new year to meet perceived growth areas. For instance, we believe there will be an increase in investigations and litigation work because global disruptions caused by the pandemic will bring many scandals to the surface. We will keep a watchful eye in such spaces to seize opportunities brought on by the crisis. **ALB**



PHILIP FONG





## NETFLIX ARGUES FOR FREE SPEECH IN INDIAN COURT OVER 'BAD BOY BILLIONAIRES'

**(Reuters)** An Indian court's decision to stall the release of a Netflix Inc series on four Indian tycoons facing fraud allegations "freezes free speech" and hurts the company financially, the U.S. streaming giant has argued in a court filing seen by Reuters.

"Bad Boy Billionaires" is a documentary series about liquor tycoon Vijay Mallya, Sahara group's Subrata Roy, Indian IT executive Ramalinga Raju and jeweller Nirav Modi. Netflix put the show on hold this month on order of a state court where Sahara alleged violation of Roy's privacy rights.

Roy is currently on bail in a case where he was ordered by court to repay billions of dollars to investors in a scheme which was found to be illegal. Roy denied wrongdoing in the case and has already repaid investors, his counsel said.

Arguing for free speech in an appeal at the High Court of eastern Bihar state, Netflix said the docuseries was an assimilation of information available in public domain. The filing has not previously been reported.

The pre-publication injunction granted by the court "freezes free

speech," Netflix said in the filing earlier, which was reviewed by Reuters. It argued it has a right to free speech "on a matter of public interest."

Some Netflix shows in India have faced court challenges and police complaints for obscenity or for hurting sentiments. The ongoing legal spat is among the most high-profile ones Netflix has faced in India, one of its key growth markets.

The court in Bihar that gave the injunction earlier had said the series "would certainly damage the reputation" of Roy. Sahara and Netflix declined to comment. Roy could not be reached for comment.

The U.S. streaming giant has argued it had invested large sums and done worldwide publicity on the series. The injunction, Netflix argued, resulted in irreparable monetary loss, as well as affected its goodwill and reputation.

Netflix describes "Bad Boy Billionaires" as an "investigative docuseries (which) explores the greed, fraud and corruption that built up - and ultimately brought down - India's most infamous tycoons."

Netflix is locked in a legal spat not just with Sahara, but also another businessman Raju, whose story was to appear in the series.

Raju, accused of a \$1-billion accounting fraud more than a decade ago, had secured a separate state court order against the show's release, but Netflix has challenged it in a higher court, said A. Venkatesh, a lawyer representing Raju.

Raju will continue to argue against the show's release, said Venkatesh.

Both Netflix's appeals are likely to be heard in coming days. It was not clear if the other two tycoons - Modi and Mallya - have filed petitions against the release of the series.

Modi is facing extradition attempts by India after his arrest in London last year over his alleged involvement in a \$2 billion bank fraud. Mallya, too, is in Britain fighting India's extradition bid for alleged fraud at his now-defunct Kingfisher Airlines.

Modi and Mallya have denied any wrongdoing.

Zulfikar Memon of MZM Legal, who is part of team representing Modi in his extradition case, said they hadn't filed any case to halt the release of the series, but were "sitting on the fence" tracking the ongoing proceedings.

A lawyer for Mallya could not immediately be reached for comment. ALB

## WITH THE UK ON THE BRINK OF BREXIT, LAWYERS SEEK STRONGER ASIA TIES

While the COVID-19 pandemic has undoubtedly taken centre stage around the world over the past few months, in the UK, Brexit is still very much going ahead, whether businesses are truly prepared or not.

According to the British Chamber of Commerce, only half of UK firms with international trade links have considered the impact Brexit will have on their business.

But while some businesses may be in denial, the Law Society of England and Wales says the UK's strong relationship with the Asia-Pacific will "only be strengthened as the UK leaves the EU" through more targeted relationships and economic ties.

Mickaël Laurans, head of international at the Law Society of England and Wales, says that following Brexit, the UK will be establishing its own international trade policy.

The UK has sought continuity agreements with countries with which the EU has existing trade agreements – including South Korea, which inked an agreement with the UK last year, much to the relief of UK-headquartered law firms operating in the market.

There are other similar discussions going on at present with other jurisdictions.

"It is likely that new trade discussions will be actively sought with all major Asian players," Laurans says.

But the timing of Brexit – during a tense time for diplomatic relationships, does pose something of a challenge for UK foreign policy which must succeed in redefining its relationship with PRC "amidst the background of deteriorating relations between the USA and China," Laurans adds.

According to the Law Society of England & Wales, around half of the society's estimated 9,400 overseas-based solicitors work in Asia-Pacific countries permanently. But there are other enduring links between the UK and Asia, says Laurans.

"The UK has strong historical, cultural and economic links with the region which are buttressed by the English language and the role English law plays in international commercial transactions. Asia is and will remain a priority for both the UK government and the Law Society in its international work," he says.

While lawyers working in Asia experience different challenges dependent on which market they operate in, Laurans advises it is important to keep up-to-date, not with the politics necessarily, but with significant substantive

developments, "i.e. whether there is a trade deal and what it entails."


For UK-headquartered firms, says Laurans, the principal impact of Brexit will be in relation to the conditions for market access in EU/EFTA countries and the provision of EU law advice.

"On market access, we are moving away from the EU lawyers' directives, a single framework of rights and obligations applicable in 31 jurisdictions, to a patchwork of as many national regimes, each of them being different in what they allow non-EU lawyers to do," he says, noting that some of these countries will remain very open to international law firms "but some will not".

"UK-headquartered firms have therefore worked hard on their contingency planning subject to what countries they are established in and what their client needs are: do we need to have UK lawyers requalified in the host country professions? Do we need to restructure entities if UK LLPs are not recognized by national corporate laws? At the end of the day, it should hopefully make very little difference to the client experience, but it requires a lot of internal work and we are supporting our members there," he adds.

While there are plenty of new challenges to maneuver for lawyers, Laurans does believe that it will not alter the "inherent strengths and attractiveness" of English common law as a governing law of choice for international contracts. England and Wales will also remain a jurisdiction of choice for dispute resolution – both litigation and arbitration – globally.

But, in the meantime, for UK lawyers operating in Asia, in order to minimize the potential disruptions preparation is the best option – particularly given some clients and sectors are likely to be more impacted than others.

"Both the EU and the UK government have published guidance on what businesses in different sectors need to do to prepare and lawyers can translate this into concrete actions for their clients. For lawyers based in Asia, that is likely to involve liaising with colleagues back in London and/or in EU capitals," Laurans says. 

## NORTH ASIA AND SOUTHEAST ASIA/SOUTH ASIA LEAGUE TABLES

## North Asia Announced M&amp;A Legal Rankings

Rank	Legal Advisor	Value (\$MLN)	Deals	Market Share
1	Nishimura & Asahi	87,104.1	112	12.4
2	Mori Hamada & Matsumoto	81,228.9	87	11.6
3	White & Case LLP	66,152.6	23	9.5
4	Sullivan & Cromwell	60,091.8	10	8.6
5	Freshfields Bruckhaus Deringer	57,472.3	17	8.2
6	Nakamura, Tsunoda & Matsumoto	46,585.2	3	6.7
7	Latham & Watkins	46,556.6	31	6.7
8	Cleary Gottlieb Steen & Hamilton	44,343.2	5	6.3
9	Morrison & Foerster	42,870.0	15	6.1
10	Hogan Lovells	40,896.9	10	5.8

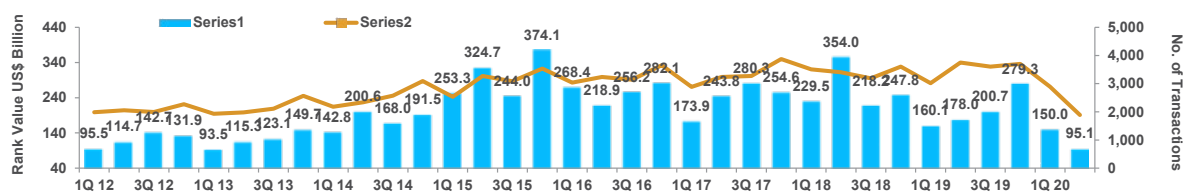
(\*tie) Based on Rank Value including Net Debt of announced M&amp;A deals (excluding withdrawn M&amp;A)

## North Asia Announced M&amp;A Financial Rankings

Rank	Legal Advisor	Value (\$MLN)	Deals	Market Share
1	Morgan Stanley	142,443.0	46	20.3
2	Goldman Sachs & Co	118,574.0	31	16.9
3	China International Capital Co	109,675.4	53	15.7
4	Nomura	103,809.7	64	14.8
5	UBS	60,544.1	17	8.7
6	Deloitte	56,994.1	77	8.1
7	China Securities Co Ltd	51,833.0	12	7.4
8	Plutus Consulting Co Ltd	47,160.4	33	6.7
9*	The Raine Group LLC	40,000.0	1	5.7
9*	Zaoui & Co	40,000.0	1	5.7

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

## Any North Asia Involvement Announced M&amp;A Activity - Quarterly Trend\*



## Southeast Asia / South Asia Announced M&amp;A Legal Rankings

Rank	Legal Advisor	Value (\$MLN)	Deals	Market Share
1	Freshfields Bruckhaus Deringer	18,486.9	14	10.9
2	AZB & Partners	18,484.8	79	10.9
3	Cyril Amarchand Mangaldas	18,232.5	85	10.8
4	WongPartnership LLP	14,875.5	26	8.8
5	Davis Polk & Wardwell	13,812.3	4	8.2
6	Allen & Overy	13,660.5	19	8.1
7	Allen & Gledhill	12,972.6	24	7.7
8	Nagashima Ohno & Tsunematsu	12,501.0	15	7.4
9	Mori Hamada & Matsumoto	12,358.5	10	7.3
10	Herbert Smith Freehills	11,794.3	11	7.0

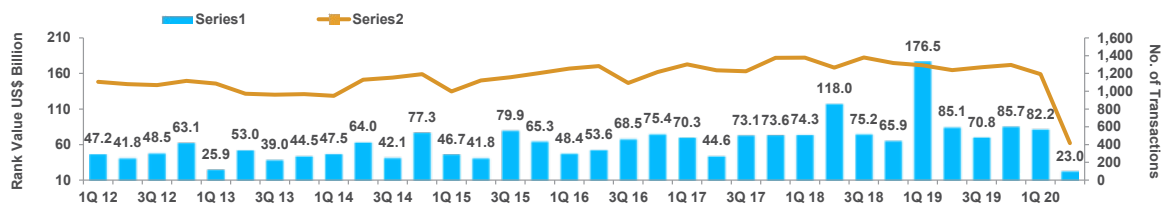
(\*tie) Based on Rank Value including Net Debt of announced M&amp;A deals (excluding withdrawn M&amp;A)

## Southeast Asia / South Asia Announced M&amp;A Financial Rankings

Rank	Legal Advisor	Value (\$MLN)	Deals	Market Share
1	JP Morgan	28,638.9	16	16.9
2	BofA Securities Inc	20,265.8	16	12.0
3	Morgan Stanley	19,017.8	10	11.2
4	UBS	16,410.4	16	9.7
5	Goldman Sachs & Co	16,222.4	12	9.6
6	HSBC Holdings PLC	15,955.5	8	9.4
7	Credit Suisse	15,630.8	11	9.2
8	Nomura	13,740.7	16	8.1
9	Deloitte	12,446.1	22	7.3
10	Barclays	10,859.9	4	6.4

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

## Any Southeast Asia / South Asia Involvement Announced M&amp;A Activity - Quarterly Trend\*



\*League tables, quarterly trends, and deal lists are based on the nation of either the target, acquirer, target ultimate parent, or acquirer ultimate parent at the time of the transaction. Announced M&A transactions excludes withdrawn deals. Deals with undisclosed dollar values are rank eligible but with no corresponding Rank Value. Non-US dollar denominated transactions are converted to the US dollar equivalent at the time of announcement of terms. NORTH ASIA: China, Hong Kong, Japan, South Korea, Taiwan; SOUTHEAST ASIA: Singapore, Malaysia, Philippines, Thailand, Vietnam, Brunei, Cambodia, Indonesia, Laos, Myanmar, Timor-Leste; SOUTH ASIA: India, Afghanistan, Bangladesh, Bhutan, Maldives, Nepal, Pakistan, Sri Lanka. Data accurate as of 5 October 2020.



# THE HONG KONG CONVERSATION

Being next door to mainland China, Hong Kong was one of the first jurisdictions globally to experience the coronavirus outbreak. Leaders of the Hong Kong offices of three law firms look back on their experience so far this year, and also the lessons they learnt along the way.

BY RANAJIT DAM

**This has been a most unique year. In what major aspects have you seen the pandemic impact your firm and its work to date?**

**ROSSANA CHU, managing partner, LC Lawyers:**

Our firm manages to maintain existing relationships and develop new clients. Some existing clients have re-scheduled transactions of traditional nature such as mergers and acquisitions, corporate finance deals and business expansions, but require us to look into consolidation of business operations, contract re-negotiations and legal managed services to remain efficient and resilient. On the other hand, new opportunities arise at the same time, such as privatisation of Hong Kong-listed companies, amalgamation of Hong Kong subsidiaries, development of technology-based business platforms and regulatory investigations.

**CHRISTOPHER WH BICKLEY, partner and head of Hong Kong office, Conyers, Dill & Pearman:** The pandemic has changed how we work, perhaps in a fundamental way that will live on after this crisis. We

have been surprised how well people have managed to adapt to a work from home environment. There of course have been issues but it has been eye-opening how well everyone has managed to cope with the use of technology. I think the pandemic has fundamentally changed how we view “work” and the “office” and these two words may not be synonymous anymore.

**WENDY WYSONG, Hong Kong managing partner, Steptoe & Johnson:**

“Unique” is only one way to describe this year, and I read it as a hopeful statement that the events we’ve overcome this year will never occur again. Steptoe Hong Kong opened in December 2019, amidst the protests, pandemic, and political tension between the United States and China. While it seems all that would have impeded our ability to establish Steptoe’s profile, in fact, everything was actually accelerated. Our clients needed immediate assistance in navigating their legal challenges, particularly, the U.S.-China trade war and the weaponised use of economic sanctions and export controls, national security laws, tariffs and trade bans.

When we moved from our prior firm, our clients didn’t want and we couldn’t offer traditional get-to-know-you cocktail parties and receptions, face-to-face in-person meetings, world tours, and large-scale networking events. We had to digitally hunker down alongside our clients and get to work. We learned to be creative communicators, how to



stay on mute and share our screens, the difference between the multitude of VC platforms, as well as the importance of just picking up the phone and talking through a problem.

Our clients, the media, and the market recognised our commitment to Hong Kong. The pandemic had an impact, for sure, but it just compelled us forward at warp velocity beyond where we thought we'd be at this point.

**What were some of the key challenges you had to overcome early on in the pandemic period, particularly when it came to employee safety and client relationships? Now it is October – what are your priorities now and going forward?**

**CHU:** Our firm has not had difficulties in maintaining employee safety. Face masks and hand sanitizers are provided to our colleagues and our office is disinfected regularly. We adopted work-from-home and flexible-hours modes. Our colleagues were also provided with appropriate equipment, IT and teleconferencing facilities. The above measures continue although more colleagues now prefer to work from the office.

Additionally, there is one rather peculiar support provided by EY which is also available to our law firm as we are a member of the global EY network. EY attaches great importance to development of "future-focused" skills. EY badges are available to people in the EY network (including our law firm) to learn, accumulate experience and make contributions on a very wide range of areas including technologies, industry sectors and management/leadership skills. Recently, an additional learning opportunity was introduced - the EY Tech MBA program. Upon completing all parts of the program, the EY colleague will be awarded by Hult International Business School with a Master of Business Administration degree. Distinct from the trainings provided by other law firms, most of such EY learning opportunities are not law focused. I encourage my colleagues to participate in such learnings as they widen our perspectives and equip us to better serve clients in the future.

We appreciate the uncertainties to our existing and potential clients which have arisen from the pandemic. Like many other law firms, we have been keeping our legal fees flexible. But more importantly, we provide clients with practicable solutions that fit their commercial needs and address the difficulties they are facing. This remains our priority when engaging clients today. Also, some companies require us to advise on areas which were not so often needed before the pandemic, such as identification of breaches of representations or warranties in share purchase agreements, potential cybercrime and

outsourcing arrangements. Thus, we will continue to expand our skill sets and advise on a wider scope of practice areas.

**BICKLEY:** As Hong Kong was one of the first places to be affected by the pandemic, our office had to develop its systems and policies to ensure that staff could be as safe as possible and at the same time continue to deliver our services seamlessly to clients. Apart from work from home, we also adopted shorter working hours for those staff members who because of the nature of their job couldn't work from home. I think the lessons we learned in the first wave



**"Before the pandemic, quite a few companies were already considering how to enhance their cost efficiency of their in-house legal functions, embrace new technologies and service delivery models. After the COVID-19 outbreak, these demands clearly grew stronger. Internal counsels are now required to shoulder more if not most of the legal work while maintaining tight control over costs spent on external counsels."**

— Rossana Chu, LC Lawyers

were extremely helpful to the rest of the group as the pandemic spread globally. The firm as a whole also established a worldwide crisis management committee which met often to discuss contingency planning and issues affecting each office. Communication with staff and with our offices has been extremely important.

The pandemic is likely to continue to affect how we go about running our business. By all accounts, it is unlikely that a vaccine will be available until well into 2021. This means that "social distancing" will continue to be a way of life for a time to come. Using

“zoom” and other technologies has become the new normal. This affects many aspects of our business including our ability to socialize with each other, organise events and seminars and meet personally with clients and travel. This is particularly challenging on the marketing front. We therefore have to look at all the different ways we engage with clients and potential clients, whether through digital media, webinars and the like.

**Wysong:** We encountered the typical logistical challenges of opening a new office, delays in equipment and furniture, opening bank accounts and obtaining



**“The pandemic is likely to continue to affect how we go about running our business. By all accounts, it is unlikely that a vaccine will be available until well into 2021. Using “zoom” and other technologies has become the new normal. This affects many aspects of our business including our ability to socialize with each other, organise events and seminars and meet personally with clients and travel.”**

— Christopher WH Bickley, Conyers, Dill & Pearman

a law firm business license. There were some delays in getting work visas as the Hong Kong government was working under lockdown conditions, so it was awhile before our whole team was able to work together at one place at one time. But our new permanent office space opened exactly on schedule, the Hong Kong Law Society gave us the attention we needed, for which we are grateful, and we were all used to working remotely as we customarily travel all over the world so we didn't really miss a beat.

It was a bit of a challenge establishing a relationship with our new Steptoe colleagues as we

couldn't just fly over to meet them in person and attend retreats and teambuilding conferences. But in many ways, it may have taken a pandemic to get folks to slow down and talk with each other, albeit by phone and internet. We did the now-usual “happy hours” which were a little weird to schedule as we were just starting our days with mocktails while other folks across the Pacific were struggling to get toddlers to sleep and sipping a well-earned glass of wine. We learned a lot about each other's home environments, colleagues, and clients, which was fun. We shared a lot of what people were experiencing in their real lives as they shed their work “personas” and opened up about their concerns about safety and health, relationships, and what they were doing to keep going.

Our priorities going forward are to build on those relationships, to build and expand our practice and our team, and to use our pent-up cache of frequent flyer miles as soon as we can.

**With employees generally working from home, how have you looked to balance productivity with employee morale and wellbeing? What are some lessons you will take for the future when it comes to employee engagement going forward?**

**Chu:** Our priority has always been our people's health – both physical and emotional. Working from home during the most severe pandemic period was the way to minimise the risk of being infected. Our productivity was not adversely affected because partners' guidance and necessary IT support were provided. Professional development in legal and non-legal topics was available to our people online. More importantly, our partners stayed in close contact with our employees daily in order to maintain morale and put together a team to manage our colleague's emotional needs on a timely basis. The above measures proved to be quite effective. Going forward, we will continue to keep our colleagues engaged by keeping them involved in our business plans and identify ways in which they can contribute.

**Bickley:** Due to the restrictions on travel and general social distancing, we have noticed that many staff have not taken as much holiday as they normally would, especially during the summer months. This is completely natural, particularly with so many people working from home. However, we have tried to communicate to everyone that it is important to try and take a break away from work and have some holiday.

At the time of writing, most of our staff are in the process of returning to the office. The pandemic has shown that work from home can work. However, in the latter stages, it was very clear that our staff missed the social interaction of coming into the office. Also, it is far more difficult to work out when

staff members are facing challenges with work issues or otherwise if they are working from home especially with all the health concerns of a pandemic. The office therefore provides not just a place to work but a social environment where people can easily engage and share ideas with and support each other. We will continue to work on ways to facilitate this.

**Wysong:** We generally did not work from home as Hong Kong did not impose mandatory lockdowns for work. We did have a voluntary WFH policy at times and many of us had mandatory quarantine periods when we returned to Hong Kong from the United States and elsewhere. But that was pretty much the same as working out of hotels, which we are used to doing.

We did learn in our first few months that, while we are a close team, we are not an “open floor plan” team. For employee morale and well-being, the move to our permanent office has probably been the most beneficial way to boost productivity. Being able to shut the door during conference calls enabled us to focus intensely when necessary and to collaborate when appropriate, rather than to be forced to overshare.

**Companies today are facing a challenging period and having to make difficult decisions. What are the ways you feel that you as their legal counsel are able to help them during this time?**

**Chu:** Before the pandemic, quite a few companies were already considering how to enhance their cost efficiency of their in-house legal functions, embrace new technologies and service delivery models. After the COVID-19 outbreak, these demands clearly grew stronger. Internal counsels are now required to shoulder more if not most of the legal work while maintaining tight control over costs spent on external counsels. We have provided clients with three key solutions during this challenging time.

One way is to work with the other professional parties such as tax advisers, business consultants, accountants, internal control experts and valuers to provide clients with comprehensive solutions and save their general costs in coordinating services provided by different professional parties.

Another area that in-house counsel currently looks to is legal managed services, and the reasons for that goes beyond just cost reduction. They include the need to optimise internal processes due to rising volumes of work, the importance of adopting new tech-enabled delivery models, and the increasing quality of benchmarking information on the productivity of internal and external resources. EY Law provides such type of services including functional analysis, contract lifecycle management, research and regulatory mapping as well as managed review

or discovery on large volume of documents. By leveraging legal, technical and business process talent in high-quality, cost-efficient delivery centres, we can help clients achieve continuity, cost certainty and scale.

The third way is to assist in-house counsel by reviewing how the pandemic affects their companies’ business operations. Common areas that clients need our help are corporate reorganisation, debt restructuring, interpretation of force majeure clauses, employment, regulatory compliance and data protection.



**“Our individual clients may not have the opportunities right now to travel and interact with the other industry participants. We can provide that oversight and market understanding to provide quick and practical advice. It doesn’t help our clients if we provide a training or compliance program that is unrealistic, unsustainable, and unnecessarily risk-averse or if it misses where the real risks arise.”**

— Wendy Wysong, Steptoe & Johnson

**Bickley:** The pandemic is unprecedented in the challenges that it is presenting our clients. Unfortunately, this means that many businesses are facing difficulties. It is always so important for clients in these circumstances to seek advice from advisors (not just lawyers) earlier rather than later. There may be options available now that down the road may not be.

**Wysong:** Our clients are generally multinational, with global operations, who need advice that reflects local knowledge in an international context. Moreover, it isn’t enough to know U.S.

sanctions or the U.S. FCPA or UK Bribery Act, without knowing how they would be implemented in compliance with local laws, customs, practices, and language. These laws, particularly U.S. sanctions and export controls, require knowledge of their historical underpinnings and evolution. But they also require forward-looking insights into the political, economic, foreign policy, and national security interests that drive the current fast and furious pace of regulatory and legislative changes. And enforcement priorities.

Our individual clients may not have the opportunities right now to travel and interact with the other industry participants to be able to benchmark and exchange ideas. We can provide that oversight and market understanding to provide quick and practical advice. It doesn't help our clients if we provide a training or compliance program that is unrealistic, unsustainable, and unnecessarily risk-averse or if it misses where the real risks arise. Spending hours on an anti-corruption policy that mandates specific gifts and hospitality threshold but misses the dangers of third-party agents isn't a good use of scarce company resources, not just monetary but managerial attention.

Clients are fighting wildfires, figuratively and literally. We have to help them manage their risks and explain to zealous regulators why a particular document request needs an additional 30 days to locate and send if the compliance officer is confined to a 5km radius of their home.

One of the hardest challenges we faced was when a client had no choice but to eliminate jobs across every department, including key compliance positions. The company, which was under investigation, recognised this could undermine the agency's view of their commitment to compliance. We took on the challenge of explaining to the regulatory agency that the company had effectively managed to mitigate the risk from cutting the compliance positions by moving these responsibilities to embedded employees within the business teams. It is this context that is most helpful to clients as they make difficult decisions.

Another key challenge for clients is how to balance competing and conflicting legal regimes; some countries prohibit compliance with foreign laws. For example, we help U.S. companies operating in certain Middle Eastern countries to navigate the U.S. antiboycott regulations which contain prohibitions on complying with the Arab League Boycott of Israel. There are also laws in Canada, the EU, and elsewhere that block compliance with certain U.S. economic sanctions against Cuba and Iran. It is difficult for companies to ensure compliance with both sets of seemingly conflicting laws

and making tough decisions which law takes precedence or seeing a path through the conflict. With China implementing laws to counter U.S. sanctions, we continue to expect companies in Asia having to navigate between Scylla and Charybdis.


**What are some major takeaways for you from this period when it comes to the firm and how it is being run? How do you feel you will use some of these lessons in the future to build further resilience?**

**Chu:** What happened during this period showed us that the world can change rapidly and sometimes in ways we could not have imagined. We cannot be complacent with what we currently have or what we are good at doing. That essentially means we should constantly keep our eyes open to what is happening around us while equipping ourselves with new skillsets to cope with the ever-changing "new normal".

Another takeaway is the use of technologies - not only in the provision of legal services, but also on how the legal functions can be brought in line with the technologies used in the business, financial and tax functions. In today's environment, lawyers should equip themselves with the latest legal knowledge and develop competency in advising clients on hot topics such as blockchain, FinTech, AI, agility, innovation, data strategies and employee motivation.

**Bickley:** The pandemic has really made us look at how we work and how we service our clients. It has also revealed some opportunities which will allow us to be more flexible. I have been truly impressed with how our employees have managed to adapt to such difficult working conditions in this crisis. We have found work from home and flexi-hours have generally not affected our efficiencies. We are certainly looking at ways in which we can incorporate these into our normal work policies.

**Wysong:** For myself, one of the most important attributes of running a successful office is to give the team a voice on how we manage our practice, how we help our clients, and on decisions affecting their careers - and making sure they understand their voices matter. Our team has great resilience and we have learned to draw on each other's strengths, intellectually, emotionally, and sometimes physically, to survive this trying time.

All of us share an interest in helping others, whether it is advising on how to export humanitarian aid where it is needed, to convince a prosecutor our client's actions have been misinterpreted or writing an amicus brief to ensure every vote counts. Being heard and making a difference are two key principles we'll build on in the future of this office. 



## Ken Adams Drafting Clearer Contracts (Oct 2020)

### 21 & 22 October 2020 - 2-Part Webinar

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- Goals for the program

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- Function and layout of recitals
- Traditional recital of consideration
- Concluding clause
- Role of exhibits and schedules

##### Categories of Contract Language

- Different categories of contract language and their function
- How to distinguish between categories

- Why does it matter?

##### Layout

- How to present sections, subsections, and enumerated clauses
- Using Adams's enumeration scheme
- Issues of typography

##### Using Defined Terms

- Two kinds of definitions
- Role of the definition section
- Using an index of defined terms

##### Ambiguity and Vagueness

- Different kinds of ambiguity
- How to avoid them

- How to use vagueness

##### Select Usages

- Problematic words and phrases
- Clearer alternatives

##### Drafting as Writing

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- Redrafting sample provisions

##### Effecting Change

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- The organization



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

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

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

For more information about Ken and his activities, go to [www.adamsdrafting.com](http://www.adamsdrafting.com).



LIST BY ASIAN LEGAL BUSINESS,  
TEXT BY APARNA SAI

In a record-breaking year in which nearly 400 lawyers across Asia submitted their profiles, picking the annual 40 Under 40 list was no easy task. This year's list, as in other years, features a diverse mix of lawyers, including the first-ever entrant from Bangladesh and the first from a PRC firm, as well as multiple law firm founders. The list is in alphabetical order. Certain lawyers are profiled in the accompanying feature.

## DHRUV ANAND

36, partner,  
Anand and Anand, India

## YOSHIYUKI ASAOKA

38, partner,  
Nishimura & Asahi, Japan

## MASAYUKI ATSUMI

38, partner,  
Miura & Partners, Japan

## AVIK BISWAS

38, partner,  
IndusLaw, India

## DAVID BULLEY

34, partner,  
Appleby, Hong Kong

## PARITHAT CHAMNONGSILP

33, senior associate,  
Weerawong, Chinnavat &  
Partners, Thailand

## YU MI CHOI

38, partner,  
Yulchon, Korea

## MONICA WY CHONG

32, partner,  
WongPartnership, Singapore

## ANGIE CHU

39, counsel,  
Conyers Dill & Pearman, Hong Kong

## SUNNY HATHIRAMANI

34, partner,  
Tanner De Witt, Hong Kong

## AMITA HAYLOCK

39, partner,  
Mayer Brown, Hong Kong

## HO WEI LIH

38, partner,  
Rahmat Lim & Partners, Malaysia

## SOHYUN (SOPHIA) HONG

39, senior attorney,  
Kim & Chang, Korea

## HYE JIN HWANG

38, partner,  
Yoon & Yang, Korea

## FILEMON RAY L. JAVIER

37, founding partner,  
Tolosa Javier Law Firm,  
Philippines

## PARIYAPOL KAMOLSILP

37, partner,  
Kudun & Partners, Thailand

## SOSUKE KIMURA

37, partner,  
Nagashima Ohno & Tsunematsu,  
Japan

## JI HOON KO

38, partner,  
Bae Kim & Lee, Korea

## PEERAPAT KUMPAYORM

34 senior associate,  
Weerawong, Chinnavat &  
Partners, Thailand

## HUAY YEE KWAN

39, partner,  
Stephenson Harwood, Singapore

## EDWIN LEE YONG CIEH

35, managing partner and  
co-founder,  
Lee & Poh Partnership,  
Malaysia

**SHUMIN LIN**

35, director,  
Drew & Napier, Singapore

**KATHERINE LIU**

39, partner,  
Stephenson Harwood, Hong Kong

**LOH CHUN KIAT**

34, partner,  
Rajah & Tann, Singapore

**MIKE MCCLURE**

37, partner and  
chief representative of  
the Seoul office,  
Herbert Smith Freehills, Korea

**WIRAMRUDEE (PINK)  
MOKKHAVESA**

39, partner,  
Tilleke & Gibbins, Thailand

**NIKHIL NARENDRA**

36, partner,  
Trilegal, India

**THUY HANG NGUYEN**

39, partner,  
Baker McKenzie, Vietnam

**DANIEL PARDEDE**

38, partner,  
Hadiputranto, Hadinoto &  
Partners, Indonesia

**LING YI QUEK**

30, resident partner,  
Dentons, Myanmar

**PROBIR ROY CHOWDHURY**

39, partner,  
J Sagar Associates, India

**SAMEER SATTAR**

39, managing partner,  
Sattar & Co, Bangladesh

**NATASHA SHROFF**

36, partner,  
Shardul Amarchand  
Mangaldas & Co, India

**DORA SI**

39, partner,  
Deacons, Hong Kong

**FREDERICK SIMANJUNTAK**

39, partner,  
Makarim & Taira S, Indonesia

**LYNN ARIELE SOH**

34, director,  
Eng and Co, Singapore

**SIDDHARTH SRIVASTAVA**

38, partner,  
Khaitan & Co, India

**CHRIS TANG**

36, partner,  
JunHe, Hong Kong

**SARAH THOMAS**

35, partner,  
Morrison & Foerster, Hong Kong

**STEPHEN IGOR WAROKKA**

35, partner,  
SSEK Legal Consultants,  
Indonesia

**FIVE FROM IN-HOUSE****MIKE CHIH F. KUNG**

39, executive director and  
senior counsel,  
Goldman Sachs, Hong Kong

**FELICIA LAI**

38, director, legal & compliance,  
Asia-Pacific, KKR & Co, Hong Kong

**ERYNNE LIM**

39, managing director,  
head of compliance,  
The Blackstone Group, Singapore

**VERNON JUDE SAMUEL**

36, general counsel,  
Mercedes-Benz Malaysia, Malaysia

**HARSHITHA THAMMAIAH**

37, general counsel,  
Xiaomi India, India

**MASAYUKI ATSUMI**

38, partner,  
Miura & Partners



Atsumi, who is one of the founding partners of Miura & Partners, is a competition/antitrust, white collar defence/ internal investigation and litigation and disputes expert. As an international antitrust lawyer, he has held various positions in private practice, competition agencies and a global company. He is qualified in three jurisdictions – Japan, New York and England & Wales enabling him to provide “one-stop” global antitrust legal service to his Japanese clients.

Atsumi says that joining Miura & Partners has been the most significant career move for him. He is heading the firm’s antitrust team and co-heading white-collar defence and internal investigation practice. He is responsible for training young associates. His clients include large TSE-listed corporations with global footprint.

“Mr. Atsumi has a deep understanding of our business needs, including the competitive environment and our future business growth plan, and provides practical advice as well as problem-solving proposals,” says a client. “We also like his communication style; he conveys his advice on difficult antitrust issues in a way that is easily understood regardless of the audience and their level of legal understanding. His advice is not only highly professional, but also reflects his motivation to always move our company’s business forward.”

Talking about his goals, Atsumi says that his career ambition is to make Miura & Partners a truly global law firm which can compete with international big names.

## AVIK BISWAS

38, partner,  
IndusLaw



An employment law and an anti-bribery & anti-corruption specialist, Biswas has spent 16 years in the legal industry. He joined IndusLaw in 2016 and started

the firm's employment law and anti-bribery practices.

Biswas has advised on various deals. His recent noteworthy matters include counselling on India's largest fintech acquisition deal where the firm's client PayU acquired a controlling stake in Nexus Venture Partners-backed fintech start-up PaySense. He led, resolved and completed all employee and employment law related issues, transitions and complications, including regulatory approvals.

Biswas also structured and completed one of the largest reduction in force exercise for a pioneer in India's gig economy sector, and also led and conducted one of the largest insurance regulatory investigations for one of India's largest private insurers. The team's report, which comprised seven months of investigation, was finally adopted by the regulator as part of its findings.

Shell India, Uber India, Zomato, Nielsen India, ICICI Lombard, Gates Corporation, InMobi, Mindtree, Kraft Heinz and Molson Coors are few of his key clients.

"Avik is one of the most commercially astute lawyers I have ever worked with," says a client. "We rely on Avik for all our employment law advisory in India. His diligent, practical and systematic approach to problem solving is par excellence. We find that Avik always delivers sound advice that is both practical and ethical."

## PARITHAT CHAMNONGSILP

33, senior associate,  
Weerawong, Chinnavat & Partners



A corporate, mergers and acquisitions expert, Parithat advises domestic and international clients in mergers, acquisitions and joint ventures involving

listed and non-listed companies and has substantial experience in capital markets as well.

He is well versed in the consumer goods and services and commercial real estate sectors, as well as the e-finance and payments sector.

Parithat has been a part of the team which represented Dusit Thani Public Company Limited, one of Thailand's foremost hotel and property development companies, in a joint venture with Central Pattana Public Company Limited for the development of a large-scale, mixed-use real estate project with an estimated value of 36.7 billion baht (approximately \$1.05 billion) in the central business district of Bangkok.

He also advised Plan B Media Public Company Limited in the acquisition of a 19 percent stake in Master Ad Public Company Limited, both key players in the out-of-home advertising media industry in Thailand, in a deal valued at 1.08 billion baht.

Parithat is the author of several articles on corporate mergers and acquisitions and merger control in Thailand.

Talking about his future plans, Parithat says that he wants "to be a trusted advisor to domestic and international clients, guiding them through complex legal issues and working in partnership with them throughout the process to obtain the best possible outcome."

## YU MI CHOI

38, partner,  
Yulchon, Korea



Choi has nearly 12 years of experience in the legal industry and is an expert in antitrust, subcontracting, broadcasting communications, healthcare and enter-

tainment. She has advised clients on numerous issues including successfully represented Otis Elevator to obtain a dismissal of all charges in a KFTC investigation of Otis' alleged violation of the Subcontracting Act.

Some of Choi's clients include SK Group, Hanwha Group, Hyundai Group, Johnson&Johnson, Big Hit Entertainment, JTBC Content Hub, Samsung Group, KT and Lotte Group.

"Ms. Choi is an attorney with a rare combination: she consistently exhibits great skill and knowledge with a friendly, direct approach that is refreshing," says a client. "Her extensive experience in anti-trust disputes and focused attention to detail has proven to be a very useful supplement to our internal resources. She has contributed to our company's ability to launch new business initiatives and has assisted in many transactions," says another client of Choi.

"I would like to continue to grow as a professional. Working at a law firm helps me develop and refine my expertise because I can collaborate with talented professionals with extensive experience. Yulchon is already a great platform, and I would like to help it develop into a true one-stop shop where clients can receive practical advice that is relevant to their business in all areas of the law," Choi says about her future plans. "My goal has been to defend the rights and interests of individuals and companies from unreasonably restrictive regulations."



**ANGIE CHU**

39, counsel,  
Conyers Dill & Pearman



Chu is a corporate lawyer with more than 16 years of experience in the legal industry.

Her practice includes all aspects of corporate law

with particular experience in mergers & acquisitions including amalgamations/mergers and schemes of arrangement.

Chu qualified as a barrister and solicitor in New Zealand in 2003 and joined Conyers' Hong Kong office as an associate in June 2011.

She is also a registered associate in Bermuda.

Chu was promoted to counsel in May 2019.

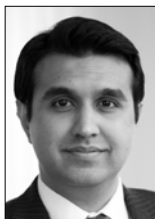
Chu has been involved in a number of significant transactions including the HK\$39 billion (\$5 billion) Hong Kong IPO of Budweiser Brewing Company APAC Limited, a beer manufacturing company that produces and distributes over 50 beer brands including Corona, Hoegaarden and Stella Artois and the \$579 million privatization and de-listing of Changyou.com Limited, a leading developer and operator of online games in China.

Other notable transactions that Chu has been involved with include the reorganisation of Joyce Boutique Holdings Limited and its group by way of a Bermuda scheme of arrangement and the privatisation of Jumei International Holding Limited by way of a Cayman short form merger.

Shedding light on her future plans, Chu says that she would like "to assist clients, especially in the current uncertain times due to COVID-19, in innovative ways with compassion."

**SUNNY HATHIRAMANI**

34, partner,  
Tanner De Witt



Hathiramani, who has been in the industry for 11 years, is one of the youngest high-profile insolvency and restructuring lawyers in Hong

Kong.

He was appointed partner in 2019 and has been a protégé of Ian De Witt and Robin Darton, two of Hong Kong's best-known insolvency lawyers, throughout his career.

Among his notable work, Hathiramani has advised Pininfarina S.p.A, a leading Italian car design firm listed on the Italian Stock Exchange, in relation to claims for breach of contract against a subsidiary of a Hong Kong listed company in the region of €10 million to €70 million (\$12 million to \$82 million) and successfully wound up the subsidiary in Hong Kong.

Hathiramani has been involved in successfully obtaining a recognition order on behalf of the Joint and Several Liquidators of a Cayman Islands exempted fund and obtaining summary judgment against the fund's former director in excess of \$11 million.

He also advised a Japanese bankruptcy trustee in claims with a value of over 140 billion yen.

"I have known Sunny and worked with him for around six years," says a client of Hathiramani.

"Sunny has many positive attributes including excellent client handling skills, strong technical skills and also a pragmatic and commercial approach to problem solving. This is critical mixture and makes him a very able advisor," the client adds.

**PARIYAPOL KAMOLSILP**

37, partner, co-head of the  
dispute resolution and litigation  
practice group, Kudun and Partners



Pariyapol joined Kudun and Partners in 2016 and was promoted to be a litigation partner in 2017. With more than a decade of experience, he is well known

in dispute resolution, domestic and international arbitration related to administrative and commercial disputes, and debt restructuring and insolvency.

Pariyapol has spearheaded many cases representing numerous creditors objecting to rehabilitation cases for large debt-ridden public-listed industrial companies as well as major breaches of construction contract cases. He continues to represent companies from industries including engineering & construction, steel, manufacturing, mining and telecommunications.

Notable representation of Pariyapol includes Advanced Info Service Public Company Limited (AIS) in claims filed in arbitration against a former state enterprise of the Thai government for over \$645 million and a class action proceeding involving over 41 million users, and NCP Consortium, in challenging the unlawful order dismissing its bidding proposal for Laem Chabang Port Phase 3 Project of the Port Authority of Thailand valued over \$5 billion.

Kom Vachiravarakarn, partner and co-head of corporate and M&A at Kudun & Partners, says, "Pariyapol assisted one of our firm's major clients who was in a dispute with one of its suppliers related to the purchase of floating solar panels. My client is incredibly grateful to him as he was able to mitigate its risk and provide pragmatic and sound solutions to them. He is a team player and leader that is energetic and goes beyond to ensure his clients are well taken care of."

## LOH CHUN KIAT

34, partner,  
Rajah & Tann



Loh is a corporate/mergers and acquisitions lawyer who has nine years of experience in the industry.

Loh has acted for Tencent in its \$1 billion investment in

Indian e-commerce company Flipkart and advised Arch Capital Management in its acquisition of Anson House for around S\$210 million.

Loh was the Singapore counsel to Viva China Holdings in its acquisition of a majority stake in Bossini.

Loh also advised City Developments in its approximately \$977.6 million divestment of Nouvel 18. He represented Brambles Limited in its restructuring and demerger exercise to facilitate the listing of Recall Limited and counselled Royal & Sons Organisation in the disposal of Royal Hiranandani, the holding company for the property known as Orange Grove Serviced Residences for approximately \$160 million.

Some of Loh's clients include Arch Capital Management, Universal-Investment-Luxembourg S.A., Keppel Corporation and City Developments.

He has also represented clients like CapitaLand, Royal & Sons Organisation, DWS Investments, SLB Development, OKP Holdings and Pageant Media Holdings.

A client says that Loh "is highly competent, responsive and very commercial. He knows the issues and gets transactions across the line and is a fair negotiator who provides commercial and practical solutions to issues."

Another client of his says that Loh "is sharp, can distil the most critical issues out of any situation and land people where they need to be."

## SOSUKE KIMURA

37, partner,  
Nagashima Ohno & Tsunematsu



Kimura, who has been with Nagashima Ohno & Tsunematsu for 13 years, is an expert in capital markets. He advises on capital transactions,

covering all equity, debt and hybrid securities. He focuses on structuring securities with complicated terms and conditions, such as hybrid securities, and equity offerings amid turbulent market conditions, like when he handled transactions arising from, or during, the global financial crisis in 2008, the Japan earthquake of 2011 and the COVID-19 pandemic in 2020.

Among his noteworthy cases, Kimura led a team of attorneys of Nagashima Ohno & Tsunematsu that acted for Open House, a leading real estate group based in Tokyo, as its Japanese counsel in connection with the global offering of its common stock conducted in July 2020. He represented NEC Corporation, a Japanese multinational information technology and electronics corporation, in the 64.4 billion yen offering of its common stock to NTT Corporation, the largest telecommunications corporation in Japan, to establish a new capital and business alliance in 2020.

Kimura's clients include Open House, NEC Corporation, Toshiba Corporation, Renesas Electronics Corporation, Citi, SMBC Nikko and Mizuho.

Regarding his plans, Kimura aims to continue acting for clients in connection with capital markets and become more active in collaboration with investment banks in order to originate new capital markets products.

## JI HOON KO

38, partner,  
Bae Kim & Lee



Ko specialises in litigation (both civil and criminal) and has more than nine years of industry experience. He advised Samsung Electronics and Samsung SDI in

the lawsuit over the issue of disclosure of working environment report in relation to its semiconductor manufacturing facilities.

He also counselled Yuanta Securities Korea (formerly known as Tong Yang Securities) on the class action suit over losses incurred from fraudulent commercial paper (CP) issuance and advised Korean and foreign financial institutes and won a case on lawsuit of collateral security expenses worth approximately \$700 million.

Besides this, Ko also represented WiniaDaewoo (formerly known as Daewoo Electronics) in the damage claim lawsuit against Iran's Dayyani group, a major shareholder of Entekhab in relation to the M&A transaction involving Daewoo Electronics. He also counselled Berjaya Jeju Resort, a Korea-Malaysia joint venture, on the lawsuit with relation to the suspended construction of development project of a major tourist site in Jeju Island.

Ko has represented numerous clients, which include KT (Korea Telecom), Samsung Electronics, Samsung SDI, LG Electronics, GS Power, SK Engineering & Construction, Hanwha Engineering & Construction, Kumho E&C (formerly known as Kumho Industrial), MAN Truck & Bus Korea, Yuanta Securities Korea, WiniaDaewoo, NH bank, CHA Biotech, T'way Air, Export-Import Bank of Malaysia and Berjaya Jeju Resort.

*"They have a deep understanding of not just the legal aspects, but the commercial and strategic factors, too."*

*"When a client asks them why, they explain things and think outside the box, which is why we work with them."*

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## PEERAPAT KUMPAYORM

34, senior associate,  
Weerawong, Chinnavat & Partners



Peerapat is well versed in mergers and acquisitions with significant experience advising on a wide variety of sectors, including e-commerce, oil and

gas, retail and distribution.

Peerapat represented PTT Public Company Limited (PTT), Thailand's largest energy firm, in an oil retail spin off and 120-billion-baht (approximately \$3.75 billion) restructuring. PTT restructured its oil marketing and retail business, renamed as PTT Oil and Retail Business Public Company Limited (PTTOR), including more than 1,400 service stations, representing 40 percent of Thailand's petrol station market. The deal involved the transfer of assets, undertakings, licenses, IPs and contracts in more than 20 jurisdictions.

Peerapat also represented TCC Assets (Thailand) Co., Ltd. in relation to the joint investment through Siridamrongdham Co., Ltd. and Bhakdivattana Co., Ltd. with GMM Grammy Public Company Limited in digital television, radio and online broadcasting and content provider businesses by the subscription of 50 percent newly issued shares in GMM Channel Trading Co., Ltd. The deal was valued at 1 billion baht.

A client of his says, "Peerapat has been a pleasure to work with. He is always responsive to our queries and demonstrates a high degree of responsibility. Peerapat is well-equipped with legal, technical, and, in particular, commercial knowledge, all of which enable him to have a multi-dimensional view on the issue at hand and effectively tailor solutions that best suit our needs in those contexts."

## HUAY YEE KWAN

39, partner,  
Stephenson Harwood  
(Singapore) Alliance



A shipping and offshore finance expert, Kwan is a key member of the asset finance team at Stephenson Harwood. She has established herself

as the "go to" lawyer for PRC clients, including many major state-owned lessors and corporates. She has advised on the \$185.2 million financing of two containerships chartered to a global logistics giant through a Japanese operating lease with call option structure. This was one of the first vessel JOLCO transactions for a Chinese leasing company in the market.

Her highlight matters further include advising a major Chinese lessor on the lease financing of five mega container vessels which will utilise LNG technology which has been hailed as "the way forward" in the liner sector's efforts towards addressing environmental issues.

She regularly advises on award winning mandates, most recently, a landmark ships-for-shares deal for a fleet of 29 ships chartered to Trafigura, and sold to Scorpio Tankers and Frontline Ltd.

In addition to growing her shipping and offshore practice, Kwan plays an integral part in the wider practice's expansion, by leading on learning and development and CSR initiatives. She is the first female Singaporean to be admitted to the international partnership of Stephenson Harwood, and spends considerable time mentoring female associates and championing them to senior leadership of Stephenson Harwood. She sees this as the most important part of her future legacy with the firm.

## EDWIN LEE YONG CIEH

35, managing partner and  
co-founder, Lee & Poh Partnership



Lee is a corporate, commercial and technology expert. Among his notable work, he assisted in negotiations and documentation for a sale of business

of a food coating, seasoning, sauces, dressing and process flavours manufacturing company in Malaysia to a UK public-listed company. He was also part of the team assisting in due diligence and documentation in relation to a sale of the largest energy business in Asia and Middle East to a Malaysian GLC.

In addition, Lee advised in negotiations and documentation for an Asia-based private equity firm on the acquisition of shares and trademarks of the second largest cereal and snack producer in Indonesia as well as a property from an Indonesian company. Lee also led a team of eight lawyers to conduct and complete end-to-end PDPA compliance exercise for 30 clients with businesses involved in logistics, public transportation, banking, retail, property development etc.

In recent years, Lee has helped an equity crowdfunding platform to secure a license from the Securities Commission Malaysia and he has since been appointed as the exclusive legal partner for the platform, helping all issuers and investors with their legal documentation. He also has advised two peer-to-peer financing platforms and was involved in legal work for Asia's first fully-licensed digital asset stock exchange in Labuan.

Lee was named in ALB's Malaysia Rising Stars list for 2020, and was a finalist for the Young Lawyer of the Year at the ALB Malaysia Law Awards this year.



**KATHERINE LIU**

39, partner,  
Stephenson Harwood



Liu is co-head of the regulatory practice at Stephenson Harwood's Hong Kong office. Liu has experience in advising sector participants such as banks, securi-

ties brokers, asset managers and money lenders. She has dealt with most regulators in Hong Kong who have supervisory functions over the financial services industries.

Additionally, as lead partner for the firm's regulatory and fintech practice, Liu advises clients on the application of new technologies to finance. She was

one of the first lawyers in the market to advise on the regulatory aspects regarding the e-wallet/e-payment regulations in Hong Kong. Among her notable work, Liu advised HKT Flexi on their successful launch of its credit services through a mobile financing platform. She also regularly speaks at seminars and conferences on financial services regulations, seeks to raise people's awareness on topical issues and considers how new technological and legal developments can impact the financial services industry.

Shedding light on her future plans, Liu says: "Given the rapid change of the regulatory environment, I hope that I can use my expertise to contribute to the legal and financial services industry. My aim is to help the firm build and expand the regulatory team. In my spare time, I will continue to contribute by volunteering and doing pro bono legal work."

**METHODOLOGY**

- **ALB accepted submissions for the 2020 edition of its 40 Under 40 list in the months of July and August this year.**
- **Only lawyers under the age of 40 as of Nov. 1, 2020 were considered. Lawyers had to be permanently based in Asia; however, submissions from mainland China and Australia/New Zealand were not considered.**
- **Lawyers were selected on the basis of doing high-quality work – for example important deals, in key disputes and more – innovative approaches, and also recommendations from colleagues and/or clients.**

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Stephenson Harwood's Huay Yee Kwan and Katherine Liu are both featured in the Asian Legal Business '40 under 40' list.



Huay Yee Kwan



Katherine Liu

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## HO WEI LIH

38, partner,  
Rahmat Lim & Partners



Ho specialises in cross-border M&As, representing multi-national corporations and private equity funds as lead counsel in transactions spanning the ASEAN

region. Her advisory roles are extensive, ranging from public takeovers, private investments in public equity and privatisations to acquisitions and disposals of companies and businesses by public listed corporations.

Ho leads the firm's China practice group and has advised various Chinese listed companies on M&A transactions. "Her bilingual command of the Chinese and English languages advantages us in decisive negotiations, as well as easing management pressures on us for results," says a Chinese MNC executive.

Well regarded for her expertise and innovative deals in the technology, education, energy, healthcare and real estate sectors, Ho's forte in matching client needs with customized solutions has won her wide clientele appeal and respect by competitors. "She is proactive, providing comprehensive solutions that satisfy our commercial objective. She is our preferred legal advisor for all outbound cross-border transactions," notes a private equity client.

Ho is equally at ease as a leader or in teamwork as circumstances dictate, with client satisfaction and staff motivation as her primary focus. "Technical capability aside, she displays an in-depth understanding of local market practices and is both perceptive of needs and responsive to timelines. We value her strong support," says an international law firm senior partner.

## SHUMIN LIN

35, director, Dispute Resolution,  
Drew & Napier



Lin is a dispute resolution expert with over 11 years of experience in the legal industry.

She regularly acts in complex commercial disputes and has particular experience with freezing injunctions.

Lin recently acted for the leading data centre provider in Indonesia in a multi-jurisdictional shareholders' dispute where the sum in dispute was in the region of \$50 million.

She has also acted for several notable entities, including Intel Capital Corporation and private equity firms TPG Capital Asia and Affinity Equity Partners.

In addition, Lin recently successfully resisted a winding-up application which had been made on the basis that the company had failed to repay a loan which exceeded S\$100 million, and she successfully resisted a novel application to reinstate the company to the ACRA register for the purpose of enforcing the loan.

She also led the mediation of a S\$40 million dispute, which resulted in a favourable settlement for the client, who was a high net-worth individual. The dispute was multi-faceted involving issues in Singapore, Brunei, and other jurisdictions.

"Shumin is knowledgeable, analytical, reliable and meticulous," says a client. "Often working on tight deadlines, Shumin can be counted on to respond, even on weekends. We are very pleased with the legal advice and attention that Shumin has provided. She is very quick to grasp the issues and thorough in her analysis and advice."

## QUEK LING YI

30, resident partner,  
Dentons Myanmar Limited



Accelerated to partnership in 2019, Quek is the resident partner of Dentons Myanmar Limited (DML), and one of the partners under the regional practice group of

Dentons Rodyk & Davidson.

Quek specialises in regional investments, with a focus on investments in Myanmar. She has advised various clients on investment structures, Myanmar business climate and legal regulations, and has provided compliance training to companies. Most recently, she led DML to recognition as a 'Notable Firm in Myanmar' in a leading guide for financial and corporate law firms and lawyers.

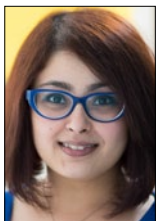
Some of Quek's key clients include Brother International, Toyota Motor Asia Pacific, Delivery Hero, BASF, Fraser and Neave Group, Naza Automotive and UMW.

"Ling Yi understands commercial realities and the nature of cross-border transactions. She is responsive, quick and ensures smooth completion of transactions – an instrumental partner to our transactions," says a client.

When asked about her future plans, Quek recognises that legal work in the ASEAN region has a huge potential for growth, and she hopes to be able to contribute to this growth by strengthening DML's presence in Myanmar and expanding the regional practice of Dentons Rodyk. "Our corporate clients prefer to have the flexibility of structuring investments into developing markets via more developed markets, and our expertise across all sectors coupled with our experiences on global deals gives our clients added comfort", says Quek.

**NATASHAA SHROFF**

36, partner,  
Shardul Amarchand Mangaldas



Shroff, who specialises in general corporate matters with 14 years of industry experience, is a partner in the M&A and private equity practice group at Shardul Amarchand Mangaldas. She has experience on a wide range of M&A activity such as control and minority acquisitions, public and private M&As, cross-border investments, corporate restructuring, amalgamations, business unit acquisitions, joint ventures and private equity investments. Her clientele includes Indian and international corporate groups, private equity funds, public and private companies.

Some of her significant deals include Walmart's acquisition of Flipkart (approximately \$16 billion); Facebook's investments (along with 9 other investments) in Jio Platforms (approximately \$14.33 billion); and ONGC's acquisition of HPCL (approximately \$5.78 billion/ 369.15 billion rupees).

Among her achievements, Shroff was awarded the Young Lawyer of the Year at ALB India Law Awards 2019. Several of her transactions have won deal of the year awards over the years.

"Natashaa is a bright, dedicated and ambitious lawyer who, at a relatively young age, has gained valuable experience of working on some of the largest and complex mergers & acquisitions in the country," says Raghubir Menon, regional practice head-Mumbai, M&A and private equity, general corporate, Shardul Amarchand Mangaldas. "Her client-centric approach is a key ingredient in her success that will go a long way in ensuring a promising and rewarding career for her."

**SIDDHARTH SRIVASTAVA**

38, partner,  
Khaitan & Co



A banking & finance and restructuring & insolvency expert, Srivastava has spent 14 years in the legal industry. He is advising NBCC (India) Limited in the acquisition of Jaypee Infratech Limited under the insolvency process as well as representing Resolution Professional in relation to the insolvency proceedings against Era Infra Engineering Limited (one of the Dirty Dozen cases). He also counselled Resolution Professional in the first of the 'Dirty Dozen' corporates referred by RBI to insolvency (Jyoti Structures). His most recent deal involved advising Brookfield in relation to purchase of certain real estate assets of Jet Airways (under insolvency). It was one of the first transaction under the IBC where a material asset was sold during the IBC process outside the normal course of business, with the approval of the NCLT.

Srivastava has done his masters from Columbia Law School, New York and is currently pursuing Ph.D. in Law from one of India's premier law schools, NALSAR Hyderabad. He has also written multiple articles on topical subjects published in various newspaper and journals.

Additionally, Srivastava was one of the founding member of CAN Foundation. It is a foundation established to help students and aspiring fresh graduates by supporting them financially and mentoring them to hone their professional abilities. CAN Foundation has already help generate more than one million rupees to support multiple students pursuing education with reputed national law schools.

**STEPHEN IGOR WAROKKA**

35, partner,  
SSEK Indonesian Legal Consultants



Warokka, who has more than a decade of legal experience, specialises in M&A, shipping, labour, expatriate work permits, immigration, construction and general corporate matters. He has represented various foreign shipping companies in the acquisition and sale of vessels.

Warokka is currently advising and representing an Indonesian offshore oil and gas services company in its restructuring and licensing. He is also representing an Indonesian shipping company in connection with a multimillion-dollar facility agreement with syndicated lenders in respect of a floating production storage and offloading unit.

Zippo Manufacturing Company, Enasco plc, Fugro, BW Offshore, Van Oord Equipment B.V., Carnival Corporation & plc, Coeclerici, Wilhelmsen Ships Service (S), McDermott, General Electric and Mead Johnson are some of the clients that Warokka has represented.

This year, Warokka successfully organised and moderated an exclusive webinar for Japanese investors (both potential and existing) on Indonesia – Japan Trade and Investment post COVID-19, which was co-hosted with the Indonesian Ministry of Trade, the Indonesian Embassy in Tokyo, and the Indonesian Capital Investment Coordinating Board.

"Stephen is an excellent lawyer and a pleasure to work with. I have always been impressed by Stephen's quality of work, his professionalism and his leadership skills in getting the best out of his team and everyone he works with," says Denny Rahmansyah, managing partner of SSEK.



# INDONESIA FIRMS TO WATCH

As COVID-19 continues to sweep around the globe, Indonesia has found itself weathering an economic slump. For businesses, more than ever, this has emphasized the need for trusted expertise and savvy counsel. The firms featured have proven themselves as stand out operations for their commitment to clients, knowledge of the market and resourcefulness in the face of adversity.

**LIST BY ASIAN LEGAL BUSINESS, TEXT BY ELIZABETH BEATTIE**



**IABF Law Group**  
*Established: 2003*  
*Partners: 5*

Established in September 2003 and headquartered in Jakarta, Ivan Almada Baely & Firmansyah Law Firm – IABF Law Group – is one of Indonesia’s leading smaller law firms.

Led by founders Ivan Baely and Almada Askandar, the operation spans everything from corporate and company law, banking and finance, capital markets, energy and resources,

real estate and hospitality, technology, telecommunication, infrastructure and litigation.

Since it launched, the firm has provided legal services to Indonesia’s business community with its clients ranging from individuals and start-ups to large national and multinational businesses.

Today the firm has 32 fee earners and a well-established profile in the Indonesia market.

The firm makes a point of striving to establish ongoing, strong client relationships, utilising its network of contacts to ensure clients are kept up to date

with the latest developments and are rewarded with unique market insights and expertise.

With a team of lawyers with broad working experience that ranges between government bodies to international law firms, the firm positions itself as something of an expert, and an insider.

IABF also works closely with international law firm Bryan Cave Leighton Paisner in order to assist its clients with local legal interests in Indonesia.

Recently, the firm has advised on a number of big-ticket deals and litigation, including several state-owned enterprises, banks and corporations.

The firm acted as legal counsel for property developer firm PT Makmur Berkah Amanda Tbk, when it carried out its initial public offering on the Indonesia Stock Exchange in March this year.

It also acted as legal counsel to Shanghai headquartered Chailease International Financial Service, in relation to a vessel financing facility in the amount of (i) \$7 million and (ii) 5.27 million euro (\$6.2 million).

## PRACTICE AREAS

- General Corporate and Company Law
- Banking and Finance
- Real Estate
- Merger and Acquisitions
- Direct and Indirect Foreign Investment
- Energy and Resources
- Telecommunications
- Transport and Logistics

- IT and Media
- Broadcasting
- Infrastructure
- Labour, Employment and Immigration
- Insolvency, Corporate Recovery and Restructuring
- Anti-Trust and Competition Law
- Litigation Court Practices
- Corporate Secretarial Services



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In June this year, the firm was hired by Los Angeles-based Chris Burden Estate to sue Bandung's commercial theme park Rabbit Town over alleged copyright infringement in a case that gained a slew of coverage in the art industry.

While the firm has a long reputation behind it, it says the trick to its success in the business world is underpinned by a team that truly values teamwork and offers an open exchange of ideas.



## LHB Counsel

*Established: 2016*

*Partners: 4*

This Jakarta-based boutique law firm is truly on the rise.

Established in 2016, LHB Counsel has tripled its fee earners over the course of two years — and its revenue is also on the up.

Led by founders and partners Rio Lassatrio, Alexander Hutauruk and Heru Muzaki, LHB Counsel works across a variety of different practice areas ranging from IP to corporate and M&A.

"We are more than just traditional lawyers serving general practices," says the firm, whose teams have recently focused on expanding their knowledge of industry-specific areas by working to

understand capital markets work, fintech and healthcare and start-ups.

While it is working on gaining depth, the firm has tackled big projects. During the COVID-19 pandemic, LHB Counsel assisted with the acquisition of PT Pyridam Farma Tbk. It also represented PT Kembar Abadi Prima KAP in the contract negotiation related to the supply and construction of 500kv transmission line tower T516a.

But while the firm has been busy during the pandemic, this has been something of a double-edged sword.

"On one side, we are forced to be out from comfort zone," the firm says, citing remote working, challenges around access and it not being easy to meet people, "but on the other hand we are blessed with new work (mostly force majeure related), reduced costs, and experience for our people."

Despite building a strong operation, LHB Counsel are still striving to round out its knowledge and expertise. For the firm, it is important to know what is best for its clients across different areas. "We

want to speak in their language. This is the key strategy to grow our business," the firm says.

When it comes to key drivers behind the operation, the secret to LHB Counsel's external success has been


resilience and trustworthiness. For its clients, this was only further reinforced during the pandemic.

"Many of our clients gave feedback that we could get the work done in toughest situation. We are able to sort out complex circumstances and provide information in layman terms for clients to make decisions."

"We are not afraid to lose work if it is not adding any value or if it is not in the best interest of the client. This creates trust," the firm adds.

Internally, the firm also promotes a flat structure, with the team "trained and encouraged

to speak their mind regardless of how senior he or she is".

"We practice open culture in the office so no one has to be afraid to throw out an idea. In our office, the best idea wins," it says. 

## 2020 LIST

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# SINGAPORE'S DISPUTES PUSH CONTINUES

Last year, Singapore's landmark Convention on Mediation formalised the city-state's well-earned reputation as an attractive arbitration hub, with legal muscle and global recognition to back up its standing. But as the government continues to fine-tune the law and COVID-19 continues to cast a shadow, the market still has work to do. **BY ELIZABETH BEATTIE**

■ In 2019, Singapore continued its push to develop its reputation as an arbitration hub and a pinnacle for legal technology in Asia – and it broke some pretty big ground in the process, with the first United Nations treaty named after Singapore. The Singapore Convention on Mediation, which allows the enforcement of mediated settlement agreements across countries, triggered widespread interest, and lawyers in the region were quick to celebrate the new law as a testament to Singapore's work in developing its reputation.

The convention was officially enacted into Singapore law this year, coming into force on Sept. 12. It happened at a time when the country continues to fine-tune various laws related to disputes. In early October, Singapore's parliament passed changes to the International Arbitration Act, in part to hold parties account-

able for confidentiality obligations. The amendments also outline powers for the High Court and arbitral tribunals.

Edwin Tong, Second Minister for Law, said these changes would serve to strengthen Singapore's international arbitration framework and continue to bolster its pull as an arbitration hub, according to local media. And those watching the market feel more developments in support of the city's arbitration sector may be in the offing.

Suang Wijaya and Chooi Jing Yen, lawyers at Singapore law firm Eugene Thuraingam, tell Asian Legal Business that the authorities have been "extremely supportive" of the convention.

"There is also high awareness and support for the convention in the legal and business community," the lawyers say, adding that in one to two years they anticipate the Supreme Court will

release data on the number of internal settlement agreements that have been recorded as orders of the Singapore High Court, "in the spirit of the convention."

While there is certainly a lot of optimism around the convention, it is the longer-term payoff that lawyers are really interested in.

"We anticipate an increase in international commercial parties entering into settlement agreements governed by Singapore law, with exclusive jurisdiction clauses in favour of the Singapore courts," Wijaya and Chooi say, noting that there is "strong legislative and judicial support in Singapore towards enforcing international settlement agreements."

And this attraction is only further backed up by the Singapore markets growing reputation in the global arbitration scene.

"Singapore courts also have a strong reputation as a neutral and impartial international dispute resolution forum, whose money judgments are readily enforceable around the world," the lawyers say.

## THE COVID EFFECT

COVID-19 has led to quite a shakeup in many different aspects of legal work, from workplace culture to the type of work firms are busy with, and new disputes trends are also emerging as part of this.

Wijaya and Chooi have been charting the developments in the region, and they tell Asian Legal Business that mediation appears to be growing in popularity.

"There will likely be a significant increase in parties resolving their commercial disputes amicably through mediation and settlement agreements. Remote or partly remote hearings in both litigation and arbitration have and will likely continue to be the norm moving forward," they say.

Hearings conducted online have gained significant interest in recent months, as more traditional measures are rendered untenable. The relative ease of these digital hearings has not gone by unnoticed.

"There is a lot of support for mediation efforts to continue or even be



## Singapore Disputes

Virtual hearings were not unheard of pre-2020. The family courts for years experimented with allowing counsel to appear virtually for pre-trial conferences subject to certain conditions being satisfied. Likewise the State Courts, although the response was lukewarm. Teething issues with technology for the conduct of virtual hearings were never really properly ironed out; or perhaps the inertia was because the lawyers preferred the camaraderie of bantering in person.

The Supreme Court has never had an established practice of allowing counsel to appear virtually. Physical hearings were the norm. Applications for witnesses outside Singapore to give evidence at trial by video-link had to fall within set parameters, and would be scrutinised by both opposing counsel and the Court. By and large the preference of the Courts was, and probably still is, for witnesses to be physically present to allay fears of witness-coaching and so that judges can observe witness demeanour.

Covid-19 changed some, but not all of this. Now, almost all hearings which involve only counsel (and no witnesses) are conducted



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virtually. These include pre-trial conferences and proceedings in chambers, whether contested or otherwise. A side effect of this has been a massive reduction in paper usage, since most judicial officers have also stopped accepting hard copy bundles from counsel. This has not made hearings less effective,

though, as the screen sharing function on Zoom brings all parties onto literally the same page when necessary and expedient.

Trials, and in particular criminal trials, remain the exception to the new normal. These are still conducted physically. A key change perhaps is that the bar for applications for a witness to give evidence by video-link has been somewhat lowered (in a loose practical sense of the word), especially where that witness can provide a cogent reason for why he or she is unable to travel physically.

The Court of Appeal has also embraced virtual hearings. For some, being questioned from the comfort of one's own office can never equal the intensity of riposting with the eminent Justices of Appeal in the grandeur of the Court of Appeal. For others, it is a welcome relief.

It took a pandemic to move the courtroom online. This is a strong tell-tale that is was inertia, and not technological deficiencies, that was holding us back. The question, then, is where next will technology take us, if we let it?

stepped up especially in light of the COVID situation as this would reduce the caseload of the courts," Wijaya and Chooi say.

"Virtual mediation has been adopted by all the key mediation providers. One benefit of this is that there is now greater flexibility not just in terms of the timing for the mediation to be conducted, but also in terms of location of the parties (being able to participate from whichever country they are in) which is especially important for cross-border disputes," the lawyers add.

But while the process may have been relatively seamless, Wijaya and Jing are cautious about overstating the success of digital processes prematurely.

"It remains to be seen whether the success rate (measured by whether a settlement is achieved) of a virtual mediation can match that of physical mediation. Anecdotally, we have seen a lower success rate, possibly in part due to the fact that parties might not feel such a strong impetus to compromise

when they are mediating from comfort," they say.

### **PUSHING ONWARD**

As Singapore continues to enhance its reputation on round out its capabilities, there is still a sense that the market has more maturing to do – but that it is continuing to take a proactive approach.

From their perspective, Wijaya and Chooi say more industry support is important for building "deeper connections with the legal and business communities in South East Asia and the broader Asia-Pacific region."

In the meantime, government-backed initiatives continue to plant the seeds for domestic improvement. Recently Singapore's Ministry of Law launched its Technology and Innovation Roadmap, a 10-year plan aimed at supporting new entrants in the legal sector to embrace technology and innovation.

And this year the government awarded a grant of \$10.8 Million to The

Singapore Management University's (SMU's) School of Law for a research programme that focuses on smart contracts and statutes.

This follows similar initiatives to support the domestic development and research of legal tech.

But while stronger links and development will help the region to achieve its ambitions, there is a bright future ahead for Singapore as a disputes hub, – and this is likely to only continue to develop within the coming months.

"Debt recovery cases are likely to rise. In any economic downturn, the market also expects insolvency cases to rise," the lawyers say, when asked to gauge the market conditions of the near future. However, the Singapore government has largely mitigated this by introducing legislative protections for businesses and individuals whose insolvency is due to the COVID situation, including effectively implementing a moratorium on applications for bankruptcy and winding up," Wijaya and Chooi say. ALB

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ASIAN LEGAL BUSINESS

# GUIDE TO THE BVI 2020

Even if we ignore the global pandemic taking place, the year 2020 has been an eventful one for the British Virgin Islands. In early October, the BVI government committed to introducing public registers of beneficial ownership for companies incorporated in the tax haven. It is understood that the BVI will be adopting public registers by 2023.

Also, recently, the BVI Commercial Court issued the first reasoned written judgment in which it approved third-party funding for litigation and other liquidation fees and expenses as permissible as a matter of BVI law. The decision related to a Ponzi scheme operated by Exential Investments between 2011 and 2016, and one of our contributors, Carey Olsen, acted in the case.

Additionally, in August, the Financial Services (Fintech Regulatory Sandbox) Regulations 2020 came into force in the BVI, significantly enhancing the jurisdiction's regulatory framework and providing room for innovation in the fintech sector. The sandbox is a controlled environment for fintech businesses to conduct live testing with temporarily adjusted regulations.

The ALB Guide to the BVI 2020 offers updates about key developments in the year gone by. We hope our readership will find it extremely useful.

## TO LITIGATE OR ARBITRATE – THAT IS THE QUESTION



By James Noble (Partner), Kate Lan (Senior Associate) and Yan Chng (Associate)

*This article considers a recent trend in cases involving the extent of the Court's jurisdiction to determine a just and equitable winding up petition when faced with a valid arbitration agreement between the parties.*

The tension between the exclusive jurisdiction of the Court to determine whether a company should be wound up on the just and equitable ground and the contractual obligation to arbitrate disputes between shareholders exists in multiple jurisdictions. Two recent decisions by the Cayman Islands Court of Appeal and the Hong Kong Court of First Instance provide welcome clarification on the position. It remains to see whether those decisions will be mirrored in other common law jurisdictions such as the British Virgin Islands.

### Cayman Islands

In a landmark decision by the Cayman Islands Court of Appeal in *China CVS (Cayman Islands) Holding Corporation*<sup>1</sup> ("**China CVS**"), it was held that the underlying issues raised in a just and equitable winding up petition are subject to the Court's exclusive jurisdiction and are not arbitrable. As such, the Court will not stay a just and equitable winding up petition in favour of arbitration.

In *China CVS*, the Court held that the winding up petition was founded on allegations of misconduct and loss of confidence which were inextricably connected to determination of the statutory question whether the company should be wound up on just and equitable grounds, and could not be distilled into discrete issues to be hived off to arbitration. The Court was required to evaluate all the circumstances of the case to determine whether there were sufficient grounds to justify a winding up on just and equitable grounds.

The *China CVS* decision has cemented the Cayman Islands Court's exclusive jurisdiction to determine whether there are just and equitable grounds to wind up a company and it is only in cases where discrete issues can be identified and hived off to arbitration that the Court may stay a winding up petition.

### Hong Kong

In the recent Hong Kong case of *Champ Prestige International Ltd v China City Construction (International) Co Ltd*<sup>2</sup> ("**Champ**"), the Hong Kong Court of First Instance reached a similar conclusion in refusing to stay a just and

equitable winding up petition in favour of arbitration, albeit the judgment did not refer to *China CVS*. In *Champ*, Harris J held that as the complaints in the petition all formed part of one continuing narrative, the Court will not exercise its discretion to stay the petition unless it is clear and obvious that the dispute forming the subject of the arbitration clause would be central and probably determinative of the factual issues raised by the petition.

It is important to note that the Court acknowledged there may be cases in which part of a dispute can sensibly be hived off and referred to arbitration, while the winding up petition is stayed until the arbitration is complete. However, given that the factual matrix in just and equitable winding up petitions often consists of closely interlinked issues, the Court may be slow to refer any disputes to an arbitral tribunal.

### Singapore

The issue of the arbitrability of a just and equitable winding up petition has not come for determination before the Singapore Courts. The Singapore Courts have generally adopted a pro-arbitration stance in establishing that minority oppression claims are arbitrable, adopting the *prima facie* standard of review in deciding whether a stay should be granted hence departing from the English position, and decoupling the issues of remedial jurisdiction and arbitrability where it held that a dispute may be arbitrable even if a tribunal cannot award the relief sought.

In *Tomolugen Holdings Ltd and another v Silica Investors Ltd and other appeals*<sup>3</sup> ("**Tomolugen**"), the Singapore Court of Appeal remarked in obiter that it favoured the approach taken by the courts in England in *Fulham FC v Richards*<sup>4</sup> and in *Hong Kong in Re Quicksilver Glorious Sun*<sup>5</sup>, of staying an application for winding up on the just and equitable ground in favour of arbitration. Once the arbitral tribunal had resolved that factual dispute, the petitioner could apply for the stay to be lifted and invite the court to grant any appropriate relief including the making of a winding up order, having regard to the findings of the tribunal.

*Tomolugen* was decided before the recent Cayman Islands and Hong Kong decisions of *China CVS* and *Champ*. The Singapore Court of Appeal did not have the opportunity to consider the issue with reference to facts before it. If an

appropriate case comes before the Singapore Court, it may well adopt the same reasoning in *China CVS* and *Champ*, that is, to determine whether the underlying allegations and facts in a just and equitable winding up petition are inextricable with the question of whether a winding up order should be granted, which is a question within the exclusive jurisdiction of the Court.

### BVI

In the BVI, just and equitable winding up petitions under section 162(1)(b) of the Insolvency Act 2003 are often brought in parallel with unfair prejudice proceedings under section 184I of the Business Companies Act 2004. While there have been several decisions of the BVI Court considering the relationship between a winding up petition on the ground of insolvency and an arbitration agreement<sup>6</sup>, or the validity of an agreement to arbitrate unfair prejudice claims, the issue of the arbitrability of just and equitable winding up proceedings has not been tested.

It will be interesting to see the approach taken by the BVI Courts having regard to the recent cases of *China CVS* and *Champ* which evince an international trend of judicial reluctance to find that Courts do not have exclusive jurisdiction over just and equitable winding up petitions.

On the one hand, the BVI Courts will undoubtedly wish to prevent any abuse of process which might arise from a party seeking to circumvent the contractual obligations which it owes under a valid arbitration agreement. On the other, there will be a desire to avoid eroding the Courts' jurisdiction in such proceedings, as has occurred in cases elsewhere, such as in *Fulham FC v Richards*. The authors believe that the latter approach is more likely and that the Courts will find it increasingly difficult to determine that the subject matter of a dispute is something that can be hived off for arbitration and which does not give rise to the fundamental statutory question of whether it is just and equitable for the company to be wound up.

<sup>1</sup> CICA (Civil) Appeal Nos: 7&8 of 2019

<sup>2</sup> [2020] HKCFI 355

<sup>3</sup> [2015] 1 SLR 373

<sup>4</sup> [2011] EWCA Civ 855

<sup>5</sup> [2014] 4 HKLRD 759

<sup>6</sup> C-Mobile Services Limited v Huawei Technologies Co. Limited (BVIHCPMAP 2014/0017)

## BVI COMMERCIAL LITIGATION IN THE DIGITAL AGE: RESPONDING TO COVID-19 AND BEYOND



By Alecia Johns (Associate, British Virgin Islands) and Andrew Hay (Legal Manager, Hong Kong)

The Covid-19 pandemic is the single most globally impactful event for decades. It is no surprise that, as in most fields, the functioning of courts has warranted urgent and necessary adaptation in its wake. The pandemic has accelerated modernisation towards electronic filings and virtual hearings across the world. The BVI Commercial Court is no exception.

### Asian users and the BVI courts

A considerable proportion of the BVI court's users are based in Asia. Given the geographical separation and difference in time zone, this can present logistical difficulties for parties, their lawyers and witnesses. The BVI court's move towards digital and remote processes provide great promise for the future involvement of Asian parties and their lawyers in BVI commercial litigation.

### Previous modernisation efforts

The BVI Commercial Court launched its e-Litigation Portal (ELP) in November 2018, and electronic filing and service was possible for all court documents in claims initiated after the ELP went live. However, hard copy filing and physical service was still necessary for claims filed before launch of the ELP. Before the pandemic, all hearings were still held in person by default, and special permission was required for counsel to appear virtually.

### Covid-19 Emergency Measures

The Covid-19 Emergency Measures Practice Direction (issued in March 2020) revolutionised the position overnight. Key measures include:

- Electronic filing and service of all court documents as necessary (including those initiated before launch of the ELP);
- Remote hearings (on Zoom) as the default position, with in-person hearings expressly discouraged;
- Provision for electronic court bundles; and
- Video hearings for applications for admission as a BVI legal practitioner.

The court, and its legal practitioners, adapted swiftly and seamlessly to these changes. Several

hearings, including trials, were conducted entirely remotely between March and July 2020. The Conyers Hong Kong and BVI offices have acted in trials and applications conducted remotely.

### The court's decision on e-litigation issues

In July 2020, the court was asked to rule on several e-litigation issues in respect of one such remote trial. In *PT Ventures SGPS SA v Vidatel Ltd (BVIHC(Com) 2015/117 and 2019/067; 27 July 2020)*, the court was asked to determine the following issues.

- (i) *Could a third party's Zoom platform be used for the trial?*

The court ruled that a third party's Zoom platform would not be allowed given that the court's Zoom service had operated satisfactorily since 2017. The court noted further the need to ensure the security and control of its proceedings. The main advantage of the external system was its ability to display relevant pages of the electronic bundles as and when they arose. However, the court held that physical bundles had been provided and that these were, in general, easier to navigate than electronic bundles where multiple screens were unavailable.

- (ii) *Was LiveNote software permitted for provision of real-time transcripts?*

The court allowed the use of LiveNote software on the basis that the general principle of open justice permits the taking of notes in court, including a verbatim note. Notwithstanding, the court emphasised that the court reporters' transcript remains the only official record of the proceedings.

- (iii) *Were LiveNote operators permitted to make a recording of the proceedings?*

Permission was sought to enable the LiveNote team to check the transcript overnight. The court disallowed the LiveNote operators from making a recording. The court held that this

was unnecessary given that the official court reporters provide daily transcripts overnight in any event. The court went further in expressing concern regarding security issues associated with unofficial recordings of court proceedings being made and kept outside the jurisdiction.

On the whole, the *PT Ventures* decision reflects progress in the BVI court's willingness to adapt to new electronic processes, while balancing its concern to maintain the security and control of its proceedings against undue third party intervention. It is positive that the court noted its satisfaction with the operation of its Zoom platform since 2017, and that it has provided reliable service during the pandemic.

However, the court also recognised the limitations of its own adaptation to a fully electronic system: the use of paper bundles was said to be preferred given the lack of multiple screens necessary for a paperless transition. Therefore, while the BVI court has made significant strides, there is indeed further to go in its digital modernisation efforts.

### The future for Asian users of the BVI court

The changes made to date represent great progress for parties and their lawyers based in Asia. BVI trials and hearings have taken place remotely in several cases involving parties and witnesses from the Asia-Pacific region. Attendance at such hearings has proven easier and more cost-effective.

Further, the court's willingness to conduct admission hearings by video has made it easier for Asia-based practitioners to be called in the BVI. Digital and remote processes allow the Asia-based offices of BVI firms (including Conyers' Hong Kong office) to even more effectively support Asian clients in their own time zone.

Further modernisation is expected in the years to come as the BVI maintains its standing as a leading jurisdiction for commercial dispute resolution.

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## RESTRICTED PURPOSE COMPANIES – THE SPV IN ITS PUREST FORM



By Ellie Crespi (Partner)

A few weeks ago a colleague and I ended up on the phone speaking about British Virgin Islands (BVI) restricted purpose companies (RPCs); an exciting chat because frankly, and despite their numerous advantages, RPCs, aren't incorporated very often at all. Of all the offshore transactions I've worked on, only three have featured restricted purpose companies, and I feel rather lucky about that, as I know many even more experienced practitioners who haven't seen any at all. As an advocate of the RPC, and with one RPC transaction under the belt in 2020, the conversation made me speculate whether RPCs might finally be getting the traction they deserve. Certainly, any corporate vehicle that can offer investors the certainty of insolvency remoteness in the age of covid-19 has to be well placed to win its share of incorporations. When August yielded a further query about structuring a margin lending transaction with an RPC, I resolved it was time for a wider conversation on the topic.

This article explains what an RPC is, how it differs from the classic BVI business company and how it compares to insolvency remote corporate vehicles offered by other offshore jurisdictions. It then considers typical uses for RPCs with reference to real client case studies. Finally, and in the interests of balance, it concludes by considering some of the reasons for the relatively low number of RPC incorporations.

### Does exactly what it says on the tin

An RPC is simply a BVI business company that has restricted purposes; that is to say, it has an old-fashioned objects clause and the *ultra vires* rule - reversed by BVI statute in respect of all other corporate vehicles - is re-instated, meaning that an RPC cannot undertake actions outside of, or proscribed by, its objects clause. It is the polar opposite of the BVI business company, which enjoys the widest corporate powers possible and can enter into any transaction that is not prohibited by law or subject to additional regulation in the British Virgin Islands (for example, trust company business). In common with most modern legal systems, the usual guiding

principle is that persons who deal with a BVI company should not normally be concerned that a certain type of transaction might turn out to be invalid if it should fall outside of the company's corporate capacity. Similarly, those who own or manage BVI companies should not be fettered as to the types of transactions which they can engage in. So why have we taken a step back?

It was the popularity of the jurisdiction for special purpose vehicles used as debt issuers in structured finance transactions - and perhaps also the competition from other offshore jurisdictions fielding SPV solutions - that prompted the industry to recognise that in certain circumstances, there may be good legal and commercial reasons to form a corporate vehicle that is constitutionally, rather than contractually, restricted in the activities that it can carry out. Imagine investing in a bond issuance with the additional comfort of knowing that the issuer cannot breach its restrictive covenants because any third party transaction it seeks to engage in, any disposition of assets, any attempt to grant security, any attempt to put the company into liquidation - will be *prima facie* void? Note: not voidable, but void. Enter the RPC, introduced by the BVI Business Companies Act 2004.

In creating a vehicle like an RPC, the legislature was clearly concerned that if such vehicles became widely used, then there might be a risk that persons dealing with BVI companies generally may have become concerned about the ability of all companies to engage in day to day transactions. Equally, there is a raft of legislative provisions in the BVI designed to protect third parties dealing with BVI companies; protections that would undermine the function and utility of the RPC and accordingly are unavailable to third parties dealing with RPCs. In order to avoid confusion, the statute requires all RPCs to include the designation "(SPV) Limited" in their name, to make sure they are readily identifiable as such even without reviewing their constitutional documents. This puts the entire world on notice that they

are dealing with an RPC, as opposed to a regular BVI business company. Investors and third parties can also take comfort that BVI business companies cannot simply re-register as an RPC (or vice versa): a company is incorporated either as a business company or as an RPC and cannot change its registration status from one to the other. (As a side note, in circumstances where there is a commercial requirement to transpose an RPC into a capital structure with an existing BVI business company, our recommendation would be to use the statutory merger regime to merge the existing business company into a newly-formed RPC that survives the merger.)

The difference in operational functionality between BVI business companies and RPCs is best illustrated in tabular form: the comparison on the opposite page is taken from Harneys' client guide to RPCs.

### If you enjoyed RPCs, you might also like...

It would be remiss not to give a brief mention to segregated portfolio companies, which since 2018 have been available for use in structured finance transactions, having previously been permitted to operate only as licensed insurers or professional, private or public funds. It is widely anticipated that SPCs, which can statutorily ring-fence their assets held in separate portfolios, might prove to be as popular in the structured finance sector as their Cayman counterparts have been. It is also worth noting that, whilst the Cayman Islands has positioned itself to offer attractive insolvency remote structures through its recognition of limited recourse provisions and statutory protection of non-petition clauses, there is currently no Cayman Islands equivalent of the BVI RPC.

### Case studies

- In Danone SA's US\$613 million notes issuance, we incorporated three RPC issuers, each with a tightly worded memorandum which prevented the issuers from doing anything outside of the strict confines of the issuance, including further issuances. We then



	Conventional companies	RPCs
<b>Capacity and powers</b>	Unrestricted capacity to carry on or undertake any business or activity, do any act or enter into any transaction	Restricted capacity and powers to only undertake specific activities
<b>Saving provision</b>	No act of a company or transfer of assets by or to a company is invalid by reason only of the fact that the company did not have the capacity, right or power to perform the act	Saving provision does not apply
<b>Constructive notice</b>	A person is not deemed to have notice or knowledge of publicly filed documents relating to a company, including the memorandum and articles	The entire world is deemed to have notice of the constitutional documents of an RPC
<b>Dealings with third parties</b>	Transactions with third parties acting in good faith are not vulnerable only because corporate formalities are not complied with	All third parties are deemed to have notice of the restricted powers of an RPC
<b>Naming requirements</b>	Largely unfettered	Must include "(SPV) Limited" in name
<b>Incorporation fee/ annual licence fee</b>	US\$450	US\$7,500

reformulated the memoranda of the BVI RPCs some years down the line in order to permit the terms of a second issuance. No changes were permitted without bond trustee consent. The bonds were listed and the RPC structure proved extremely popular with the ratings agencies

- In a 2020 transaction, we advised a major Thai conglomerate in connection with the incorporation of an RPC to be used as the investment vehicle to hold the shares in a HKSE listed entity. The parties required an unusually high level of control over the vehicle's operations
- CEMEX and Dong Fang have also notably utilised RPCs in notes issuances and securitisations

#### **A note from Devil's Advocate**

RPCs are not popular. A peer of mine described them as "dangerous". Certainly, anyone trying to transact general business

with an RPC is going to run into a myriad of challenges: it would be nigh on impossible to use an RPC as an operating company. But that is not what they were invented for.

It has been suggested that the significantly higher incorporation fees of an RPC were imposed by the legislature to control their use (cynics point to the high costs as reason for their lack of popularity). Indeed, the costs are high, and in many cases, despite their advantages, cost alone may be enough to put investors off using an RPC, although our strong view remains that there will be appropriate cases where the transaction size, or degree of risk, means that the fees are money well spent in order to achieve the commercial end goal.

Finally, many critics would note that one can use a conventional company as a structured finance vehicle, and further, that one can also take the memorandum of a vanilla BVI business company and tailor it to include restrictions on the sorts of activities that it

can undertake in exactly the same way as with an RPC. Both points are fair, and indeed, we routinely advise clients to hardwire contractual covenants into companies' memoranda in order to frame the directors' duties and give additional protections to third parties who would otherwise have to rely upon breach of contract claims, which of course only sound in damages. But again, any breach of those restrictions will not usually invalidate the transaction, but only leave the directors potentially exposed to liability for misfeasance. Only with an RPC is the restricted act actually void, and accordingly, whilst they're not going to be suitable for all transactions, there's most definitely a market for the RPC where absolute control is required.

We have seen an increase in RPC transactions and queries in 2020. The economic uncertainty of the post-Covid world might well make RPCs increasingly attractive where highly-controlled insolvency remote vehicles are required to transact business. Watch this space.

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# 16<sup>TH</sup> ALB JAPAN LAW AWARDS PAYS TRIBUTE TO COUNTRY'S LEGAL LUMINARIES

The 16th annual ALB Japan Law Awards, a virtual event held on Sept. 24, was a resounding success, honouring the who's who of the country's legal industry, including in-house counsel, law firms and private practice lawyers.

Nishimura & Asahi claimed six awards on the night, including the Dealmaker of the Year for Yo Ota, Woman Lawyer of the Year (Law Firm) for Asa Shinkawa, Restructuring and Insolvency Law Firm of the Year and Japan Law Firm of the Year.

"We are delighted to have been named Japan Law Firm of the Year for the last two years and have received other prestigious awards. We thank the judges and organisers, and also congratulate all the other winners on their great success," said Masaki Hosaka, Nishimura's managing partner. "As we focus on continuing to fulfil our mission of serving both our clients and society in this challenging time, this award reflects our ongoing commitment to provide the highest-quality legal services."

Nagashima Ohno & Tsunematsu also had a big night, picking up four awards, including Managing Partner of the Year for Fumihide Sugimoto and Young Lawyer of the Year (Law Firm) for Daisuke Fukamizu. Sugimoto said: "In recent years, we have focused on improving our law practice efficiency through means such as LegalTech. We will continue to strive to provide high-quality legal services more efficiently to



The 16<sup>th</sup> Annual ALB JAPAN LAW AWARDS 2020



WINNER Japan Practice Foreign Law Firm of the Year  
Guodong Zhang  
Managing Partner and Head of Japan Desk  
JT&N



The 16<sup>th</sup> Annual ALB JAPAN LAW AWARDS 2020



WINNER Japan Law Firm of the Year  
Mugli Sekido  
Partner  
Mori Hamada & Matsumoto

clients, and to actively promote social contribution activities, such as pro bono initiatives."

Added Fukamizu: "I feel truly honoured to receive this prestigious recognition from ALB. I will try to continue to live up to the award by contributing to global legal practices and society even under the uncertain circumstances due to the pandemic."

The Japan Deal Firm of the Year title was claimed by Anderson Mori & Tomotsune. "We are honoured and delighted to have won International Deal Firm of the Year against such prestig-

ious competition. This is all thanks to our diverse team of lawyers and business services here in Tokyo and our global network, who come together to work seamlessly as one team on cross-border transactions," commented Jochen Ellrott, global transactions partner.

Meanwhile, JT&N was the winner of the Japan Practice Foreign Law Firm of the Year. Guodong ZHANG, senior partner, said, "It's a great honour for us to be awarded as Japan Practice Foreign Law Firm of the Year 2020 from ALB, which is famous for its profession. This is the highest recognition of our efforts,



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MORI HAMADA & MATSUMOTO

NAGASHIMA OHNO & TSUNEMATSU

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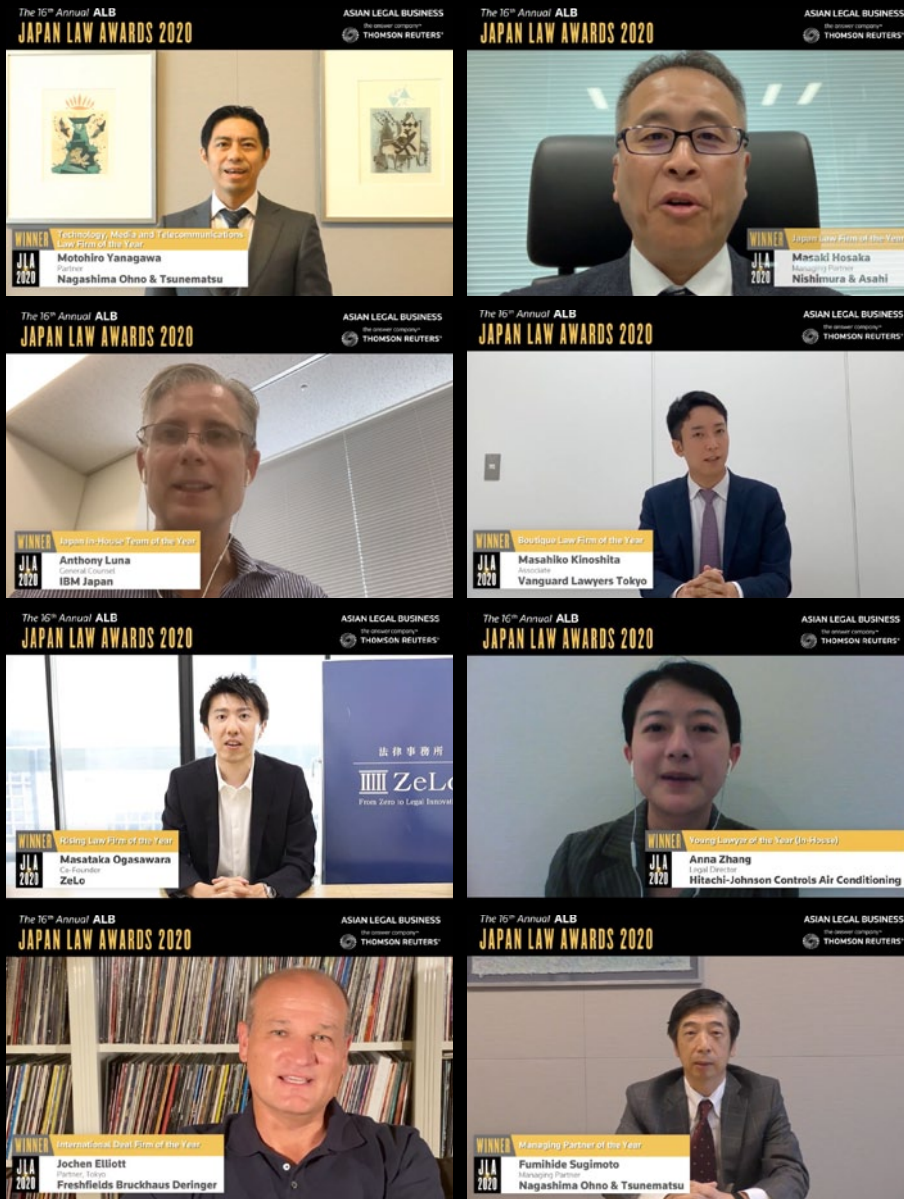
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and we will continue to strive to provide customers with more quality and efficient services."

The title of the Litigation Law Firm of the Year went to Mori Hamada & Matsumoto. "We are honoured on this achievement. This is a result of hard works of our entire team including our staff members, outside experts and international firms we work with. We also appreciate this ceremony in this challenging time. It is encouraging and guiding us for a favourable direction," Mugi Sekido, partner, commented.

The International Arbitration Law Firm of the Year title went to Herbert

Smith Freehills, while Freshfields Bruckhaus Deringer was named the International Deal Firm of the Year.

Atsumi & Sakai was the winner of the Overseas Practice Law Firm of the Year and Regulatory and Compliance Law Firm of the Year. "We believe this prestigious achievement is truly the result of all of our colleagues' diligent, and innovative, work and assistance, both on matters for clients, and on integrated, forward-looking, operation of our firm to support our legal practice. We sincerely thank Asian Legal Business for honouring Atsumi & Sakai with these wonderful awards," the firm said.

Meanwhile, the Rising Law Firm of the Year title was claimed by ZeLo. Masataka Ogasawara, representative attorney, said: "ZeLo is honoured to be recognized with ALB Japan's Rising Law Firm of the Year award. We have worked hard to attract Japanese and foreign qualified legal talent and have grown rapidly from two to over 20 lawyers who can assist clients in practice areas including start-up finance, IPOs, M&A, FinTech, IP, blockchain, and rulemaking."

Hogan Lovells won the International Intellectual Property Law Firm of the Year and Foreign Lawyer of the Year title for Dr. Frederick Ch'en. The firm commented: "As we celebrate our 30th year in Japan, we greatly appreciate the recognition of our interdisciplinary work as we continue to collaborate and put clients at the centre of everything that we do. We look forward to continuing to deliver on our commitments to citizenship and interaction with the community."

In the individual categories, Morrison & Foerster's Chie Yakura was named the Dispute Resolution Lawyer of the Year.

In the In-house categories, IBM Japan walked away with the Japan In-House Team of the Year title. And Bayer's Akiko Kikuchi and Anna Zhang from Hitachi-Johnson Controls Air Conditioning won the Woman Lawyer of the Year (In-House) and Young Lawyer of the Year (In-House), respectively.

Expressing her joy on her win, Zhang said: "I am happy to receive the award. I have had a great opportunity to work with a talented legal team. I look forward to taking on more challenges and making more contributions."

Meanwhile, Airbnb was awarded the In-House Lawyer of the Year for Yu Watanabe. Commenting on the victory, Watanabe said: "I am humbly pleased to be awarded again and truly appreciate all people helping me to get better. There has been no success achieved by myself but piles of mistakes and learnings where people helped me to get better. Life is a journey, not easy and too short for what-ifs." 🍀



# GUANGZHOU REINVENTS ITSELF

The Pearl River Delta, with Guangzhou located at its centre, was once dubbed “the world’s factory floor”. However, with COVID-19 casting a shadow over the manufacturing industry, the city is beginning to embrace new industries. **BY HU YANGXIAOXIAO**



■ Law firms look to legal networks for access to experts who understand the nuances of varied markets, and resources to respond quickly and wisely to new developments. But during the pandemic, law firm networks have become a critical part of member firms’ survival tool-chest — and their COVID-19 recovery strategy.

Guangzhou has always taken pride in its manufacturing industry. But the growth rate of Guangzhou’s secondary industry dropped by 7 percent during the first half of the year; it might be because of the basis of Guangzhou’s manufacturing industry – a considerable part of its industrial structure is composed of traditional manufacturing industries, such as petrochemical and automo-

bile manufacturing, which are greatly affected by the pandemic, according to an analysis report by the National Business Daily.

Automobile, petrochemical and electronic manufacturing have been the three pillar industries of Guangzhou, enabling it to achieve rapid and remarkable development during the past 15 years. But in fact, the growth rates of those industries have dropped sharply since 2014, and they are no longer the main driver of the economic growth in the region.

Han Yu, a partner at Kingpound Law Firm, points to three reasons why Guangzhou’s traditional manufacturing industry can’t keep up the momentum: (1) strict environmental protection

supervision has made it difficult for the heavily polluting manufacturing industries such as the chemical industry to survive; (2) in the context of national industrial upgrading, the heavy industry has become less competitive; and (3) the market demand for products of such enterprises is declining, too.

The sagging performance of the traditional manufacturing industries is reflected in the legal services market. “The business performance decides how much the companies are willing to pay for legal services fees. With the decline of traditional industries, there’s no longer high demand for lawyers serving in these industries, such as traditional legal consulting works,” Han says.

But changes have taken place.



"Guangzhou is reinventing itself from a 'world's factory floor' to a hub of strategic emerging industries and advanced manufacturing. The integration of digital and industrial development will become a new trend," says Lu Yuefeng, a director at Dentons' Guangzhou office.

Wu Guoquan, a director at DeHeng Law Offices, tells ALB that lawyers have observed such changes in their legal services. "There have been a number of industrial Internet projects launched in Guangzhou since 2018; and some large domestic and foreign technology companies in Guangzhou have started to apply technologies in industrial production. In particular in the machinery manufacturing and processing industry, we have some clients who widely use robots, manipulators and other technological means in the production of equipment."

Guangzhou is also building advanced manufacturing zones, such as the advanced manufacturing cluster in the Guangzhou Development Zone in Huangpu District, the National New Industrialization Demonstration Base (in big data) in Pazhou, and the Nansha Industrial Base.

According to the Three-year Action Plan for Making Guangzhou a City of Advanced Manufacturing Industry, by 2021, Guangzhou will build two world-class advanced manufacturing clusters in terms of automobiles and ultra-high-definition video and new display, and build four national advanced manufacturing clusters, including new materials, urban consumption industry, high-end equipment manufacturing, and biomedicine.

All these efforts have started to pay off. Autonomous driving companies Pony.ai and WeRide.ai are now headquartered in Nansha; and Xpeng Motors, headquartered in Tianhe District of Guangzhou, completed its \$1.5 billion IPO on the New York Stock Exchange at the end of August. And industrial clusters of new display, semiconductor and integrated circuit have also taken shape.

#### A NEW IMAGE

While the city is accelerating the transformation of traditional industries,

Guangzhou has something deeper to think about: what kind of image the city is trying to build? Especially in the Greater Bay Area, how to make Guangzhou a city that is different from Shenzhen, Hong Kong or other places?

In fact, the Outline Development Plan for the GBA already gives a quite clear positioning for Guangzhou, that is, Guangzhou should "be given full play to the leading role of the national central city, and should comprehensively strengthen its functions as an international trade centre, a comprehensive transportation hub, and a technology, education and cultural centre."

In order to match the above-said expectations, Guangzhou is picking up speed to attract businesses of emerging industries; and its first target is the new economic industries represented by the Internet.

"Guangzhou had a painful experience in (the Internet) field. There were several Internet companies started up in Guangzhou, but it failed to keep them here. For example, NetEase moved from Guangzhou to Hangzhou. In the era of mobile Internet and 5G, Guangzhou has a strong desire to win a place in this sector in the future competition," Han of Kingpound says.

Drawing on its advantages in terms of education, scientific research and talent, Guangzhou has started to vigorously build an Internet industry cluster in recent years. Wu tells ALB that Pazhou, Panyu, Donghu Development Zone, Nansha, and Huangpu Development Zone have all attracted innovation and technology companies. Pazhou, once known for the Canton Fair, stands out from the aforesaid areas. In the future, "it will become an area where the Internet companies gather and the digital Guangdong economic cluster area."

According to Cyzone.cn, there are currently 20 Internet companies building their headquarters in Pazhou. DeHeng's Guangzhou office moved to Pazhou just a year ago. "We are observing the development and changes in Pazhou every day. It is now at the stage of construction and laying the foundation, the relevant industries will have significant outputs in three to five years," Wu comments.

The financial industry is another sector that Guangzhou has an eye to.


"In fact, Guangzhou has been pressured by neighbouring cities in recent years; the pressure from Shenzhen is mainly at the financial level. Because of the Shenzhen Stock Exchange, Shenzhen's financial assets are several times that of Guangzhou ... Guangzhou has always wanted to increase its competitiveness in the financial sector," Wu says.

The financial sector in Guangzhou met the expectations during the first six months, achieving a growth rate of 8.1 percent. Standard Chartered announced not long ago that it would invest \$40 million to establish a GBA Center in Guangzhou, which is expected to be put into operation in the third quarter.

Wu tells ALB that Guangzhou has built international financial cities in Dongpu and Chebei, and Nansha has also joined hands with the International Finance Forum to promote the construction of the Guangzhou Nansha International Financial Island Project.

"In addition, Guangzhou is also considering the development of futures trading and carbon trading, and the establishment of related resource trading centres to drive the development of financial businesses. It also expects to give play to the role of a city of commerce and trade in promoting the development of trade finance, including trade financial settlement and trade financial product supply chains," Wu says.

It is not only the Internet and finance sectors; the medical and pharmaceutical, as well as the information technology industries in the city are also making rapid progress.

Today Guangzhou is home to some leading enterprises in the medical and pharmaceutical sector, such as Guangzhou Kingmed Diagnostics Group Co., Ltd., GE, BeiGene, and Thermo Fisher Scientific. And in the field of artificial intelligence and new generation technology, there have emerged some technology companies such as PCITECH, Gizwits, Ehang, and Guangzhou NINED Digital Technology Co., Ltd. 

# UNDERSTANDING HOW THE CLIENT'S BUSINESS MAKES MONEY

BY NANCEY WATSON

Amid the current pandemic crisis, the impact felt by law firms and their clients has been great; and this pressure has ratcheted up the necessity for law firms to better address their corporate clients' growing needs during this time. Indeed, one area of need is particularly acute — the requirement that lawyers deeply understand their clients' businesses in order to offer the savviest advice and most valuable solutions.

Corporate clients represent about 80 percent of all legal spend, even though on average, companies spend 0.5 percent of total revenue on outside legal work. This could give one the idea that legal is not a top priority for companies.

Jaap Bosman, founding partner at TGO Consulting and co-author of *Data & Dialogue: A Relationship Redefined*, sees it a bit differently. "In helping to understand when it would make business sense for a company to spend money on lawyers, we have to take a closer look at a matrix created after analysing huge amounts of legal binning data in combination with budget expectations on company side," Bosman explains. The matrix below clearly shows that companies do not mind spending — indeed, spending substantial amounts — of money on outside lawyers if it helps the client make money or avoid losing money.

In those situations, he explains, legal fees are seen as part of the investment that is justified by the return on

investment (ROI). "Any legal work that is not considered part of the investment to get ROI is considered part of the cost, as it does not contribute to the company's bottom line."

Companies often focus on cash flow and profit rather than costs. In the case of a litigation matter, for example, the calculation should be made as to how hiring outside counsel will prevent a loss or reduce the size of the loss. Companies need to consider not only the direct cost to the business but also the possible result in terms of revenue and cash flow — in addition to the corporate brand.

Law firms must be given this information when preparing their fee structure so that they understand the ramifications of the matter. Indeed, transparency on both sides of the equation are critically important.

"The key to providing quality analytics and sound approaches to how matters are supported is with the use of tools like the TGO matrix," says Vincent Cordo, co-author of *Data & Dialogue*. "The matrix is invaluable for the in-house allied professionals supporting the legal team, the in-house counsel teams, and equally for the firms bidding on work."


So, what can lawyers do to demonstrate their willingness to understand how important certain matters are for clients? "For any lawyer, both external and in-house, it is paramount to understand how their client company makes money," Bosman says. "Only lawyers that understand how to be part of the opportunity rather than part of the cost, will be able to return added value to the company."

While this may sound straightforward enough, in reality, most lawyers do not have a clue how their client companies make money, Bosman explains, adding that surprisingly, this is also true for most in-house lawyers. "I have asked in-house lawyers, including General Counsel, on numerous occasions if they were able to say which of their company's product or services had the

highest profit margin or even the highest sales volume, and most of them did not know."

Knowing where the highest profits come from in a company's portfolio of products is crucial when deciding where to focus the attention of the legal department — whether it's on certain files, on staffing, or on outsourcing. It is also important for law firms when responding to Request for Proposals (RFPs) for legal services and pricing requests. Firms need their responses to demonstrate whether the firm has a solid understanding of the client's business in order to prove that they are the best lawyers for the matter. Unfortunately, this is sorely missing in the RFPs I have seen and, in the responses, gathered from law firms.

In-house legal teams, too, can do a better job to prioritise those matters that have the biggest impact on their companies' bottom-line — and they also should convey that information to their outside counsel. To remain relevant in times of an economic crisis, in-house lawyers must get the business perspective on the business and share that with those external service providers that need to better understand where the client sees its business priorities.

Law firms need to bone up on the revenue stream and profitability factors of their clients. This may require meeting with department heads, the company's finance team, and even the CFO. If external lawyers take a leading role in helping their clients understand the math, they will add significant value to their clients and develop a stronger relationship during these difficult times and on into the future. 

*Nancey Watson is president of NL Watson Consulting.*

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