asian-mena Counsel

Volume 17 Issue 9, 2020

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Jurisdiction Updates
The latest from across the region

How to brief your stakeholders regarding the legal implications of coronavirus: an online resource for in-house lawyers

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Forums for the In-House Community along the New Silk Road

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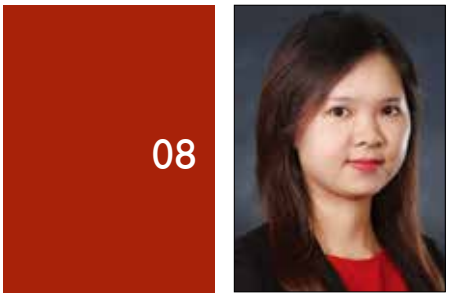

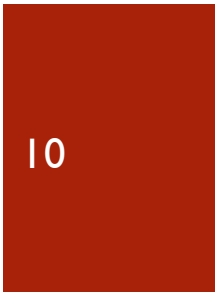

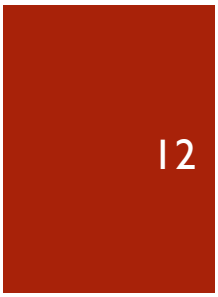

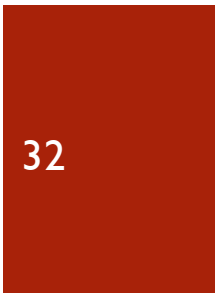

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Qatar Fact Sheet - trade marks

"Trade marks influence consumer decisions every day. A strong trade mark creates an identity, builds trust, distinguishes you from the competition, and makes communication between seller and buyer simpler. Because so much money and time is often invested in a trade mark, it is worth paying something to protect it from misuse"

– European Union Intellectual Property Office

What typically constitutes a trade mark?

There is generally no closed list of trade marks. The Intellectual Property Law [QA 9 of 2002] (the "Trade Mark Law") lists the following as possible trade marks: names, signatures, words, letters, numbers, designs, pictures, symbols, stamps, seals, vignettes, three-dimensional figures, colours, sounds, smells and any other sign or a combination of signs.

The value of a trade mark

A trade mark encapsulates a part of the goodwill of a business, which may be defined as the "attractive force which brings in custom". Goodwill has monetary value resulting in some of the top trade marks in the world being valued at tens of billions of dollars.

Must a trade mark be registered in Qatar in order for it to be protected?

Article 26 of the Trade Mark Law provides that the person who registers a trade mark shall be deemed to be the absolute owner. The Trade Mark Law does, however, make provision for objecting to a trade mark application, registration or use of a trade mark on the basis that it is the same as or similar to a well-known trade mark. Therefore, in most cases, a trade mark will only be protected in Qatar if it is registered, although there are remedies available to the owners of unregistered, well known trade marks in certain circumstances.

The benefits of registering a trade mark

In general, the greatest advantage of registering a trade mark is that it eases enforcement of the underlying trade mark rights. The statutory right granted by way of registration is a right to exclude others from using the trade mark, as opposed to granting the proprietor the right to use it.

Other advantages include the ability to:

- record the registration of your trade mark at customs level, if recordals are available, to prevent importation of infringing foreign goods;
- rely on the trade mark registration when lodging complaints at other official bodies involved with the combatting of counterfeit goods; and
- record licenses against the trade mark registration and assigning the registration to a third party.

Are any marks unregistrable or disqualified from registration?

Yes, to be registrable, a trade mark must distinguish or be capable of distinguishing the goods or services of one undertaking from those of another. This means that descriptive, common-place and laudatory marks are generally not registrable.

There are a number of other reasons why a trade marks might be disqualified from registration, including those which are likely to deceive, cause confusion, are offensive, or immoral. The following are also disqualified: official signs and hallmarks of the State of Qatar which communicate State control or guarantee; public emblems, flags and other symbols and names or denominations relating to a State or to an international organisation; signs identical or similar to the Red Cross or Red Crescent and other similar symbols and the picture of a third party or his emblem; and indications of honorary distinctions.

Who may register a trade mark?

Generally, any natural person or businesses. Trade marks may also be registered by non-profit organisations, associations, governmental, quasi-govermental bodies, and others.

The process of registering a trade mark

The registration process starts by filing an application for the trade mark with the Industrial Property Section of the Department of Commercial Registration & Licenses at the Ministry of Business & Trade.

Once applied for, trade marks are normally examined as to formal and substantive requirements. The examiner in any particular case may reject a trade mark application, accept it wholly or subject it to certain conditions.

Once a trade mark has been finally accepted, it is then published to afford third parties the opportunity to oppose it.

If the trade mark is not objected to, it should then proceed to registration.

Should anything be done before applying for the registration of a trade mark?

Before filing an application for a trade mark, it is advisable to first conduct a search of the register of trade marks, to determine whether or not the trade mark is available. It is always advisable to consult with a trade mark specialist, to guide you on your trade mark undertakings.

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Legal Counsel | 5+ yrs pqe | Hong Kong REF: 15939/AC

This technology MNC seeks an experienced litigator to join their international dispute resolution team based in Hong Kong. You will primarily be responsible for overseeing international litigation and contentious issues with a focus on M&A post-deal disputes, employment disputes, and regulatory enforcement work. You must be US/HK/PRC qualified lawyer with over 5 years' litigation and contentious work gained in leading international law firms and/or MNCs. A proactive litigator can work independently under tight schedules, and significant exposure to IT, technology, or e-commerce industry is preferred. Fluent English and Mandarin skills are required.

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Private Practice

Associate, Corporate Finance | 5+yrs pqe | Hong Kong REF: 15870/AC

This Red Circle law firm is looking for a senior-level Associate to join its corporate finance team based in Hong Kong. You must be qualified with over 5 years' PQE in Hong Kong IPOs, annual compliance, M&A, securities regulatory with leading international or local law firms. Experience in bond offerings are highly desirable. Bilingual capability in English and Chinese at drafting level is required. The willingness to travel is necessary.

Tax Associate | 4-6 yrs pqe | Shanghai REF: 15940/AC

This growing practice is seeking a Tax Associate to join its Shanghai office. You will be working closely with their highly regarded team advising notable high-net-worth clients. Ideally, you are Singaporean qualified with 4-6 years' PQE in corporate and international tax experience. Tax lawyers with excellent academics who enjoy working as part of a team would be most welcome. Fluent written and oral English and Mandarin skills are required.

Finance Associate | 3-6 yrs pqe | Hong Kong REF: 15922/AC

This global law firm is seeking mid to senior-level Associate to join its Hong Kong office. You will work under the guidance of the leading partner advising on complex financing transactions in the Greater China region. To be considered, you must be Hong Kong qualified with 3-6 years' relevant PQE with an international law firm. Experience in project finance and/or shipping/asset-based transactions would be a bonus. Fluent written and oral English and Chinese skills are required.

Associate, Life Sciences | 3-4 yrs pqe | BJ/SH REF: 15957/AC

The China life sciences practice of this White-Shoe is seeking a mid to senior-level Associate to join its Beijing or Shanghai office. You must be US/PRC qualified and ideally with 3-4 years' PQE of IP and commercial transactions in the life sciences sector with top-tier Chinese or international law firms. Knowledge of life sciences product life cycles and relevant regulations is highly desirable. You must have fluent English and Mandarin for the role.

Risk Compliance Lawyer | 2+yrs pqe | Hong Kong REF: 15919/AC

This Magic Circle law firm is seeking a Risk & Compliance Lawyer to the legal department of its Hong Kong office. You will be assisting locally to implement internal risk processes and provide proactive advice to the Partners on a wide range of compliance issues. Ideally, you are a qualified lawyer with a minimum of 2 years' PQE of risk and compliance work with a highly regarded commercial law firm or risk and compliance department of an international law firm. Strong knowledge of applicable ethical rules and guidelines and relevant compliance issues related to international law firms is essential as well as excellent English skills.

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PHILIPPINES

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Copyright and remote learning in the time of Covid-19

On August 15, 2020, Philippines' President Rodrigo Duterte approved the recommendation of Department of Education Secretary Leonor Briones to defer the opening of classes from August 24, 2020 to October 5, 2020 in view of the Covid-19 pandemic. This postponement reflects the challenges faced by the government, educators, parents, and students in providing and accessing quality education during the current health emergency. Such challenges include the lack of access to technology and reliable internet connections, and the difficulties parents face in facilitating at-home learning through no fault of their own. Educational institutions that decided to open classes earlier have resorted to on-line learning, the provision of modular printed materials, or television and radio-based instruction.

The shift from face-to-face teaching to remote instruction has given rise to copyright concerns in view of the inaccessibility of textbooks as well as the need to make available learning materials containing copyrighted work through a medium accessible remotely.

The Intellectual Property Office of the Philippines defines copyright as "the legal protection extended to the owner of the rights in an original work." Under Section 172 of the Intellectual Property Code of the Philippines (IP Code), these works are original intellectual creations protected from the moment of their creation. Pertinently, they include: books, articles, and other writings; lectures and addresses; musical compositions; illustrations and photographs; audio-visual and cinematographic works; and other literary, scholarly, scientific, and artistic works.

Under Section 177 of the IP Code, the owner of an original work's copyright has the right to control the distribution, sale, or other public display or dissemination of the work. However, if the use of a copyrighted work is "fair," as when a work is used for educational purposes, the use is not an infringement of copyright under the Code. This even includes creating multiple copies of a work for classroom use.

To determine whether use is fair, the following factors shall be considered: the purpose and character of the use, including whether such use is of a commercial nature or is for non-profit educational purposes; the nature of the copyrighted work; the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and the effect of the use upon the potential market for or value of the copyrighted work.

Prior to Covid-19, educational institutions required textbooks which may have been readily purchased, or at times borrowed, from school premises. Educators may have also played portions of a musical composition or an audiovisual work live in a physical classroom – in compliance with Philippine copyright law.

With the move from face-to-face learning to remote instruction, and in the absence of clear legal rules on the application of Philippine copyright law to the latter, some educators have opted to not require reading materials. Instead, they have resorted to creating their own content with minimal to no use of original copyrighted works. If any copyrighted material were to be included in these learning materials, educators may have to obtain permission from the copyright holders.

While educators may use open educational resources and works in the public domain or those with open licenses, resources of this nature may be very limited, especially for more specialized fields, or those specific to the Philippines, such as subjects on law, history, and language.

In the instances where schools and universities are able to obtain licenses for on-line educational resources, barriers to access them still exist, such as exorbitant prices, limited off-site access, and caps on how many users may access these databases at the same time.

Some local publishers now sell physical copies of their books on-line and offer to ship them to the students, with delivery areas even reaching more remote provinces previously not catered to. These efforts have not gone unnoticed, but the expensive price tags that come with these books remain the same.

Of course, a balance must be struck between ensuring accessible education during times of public emergency and protecting intellectual property. After all, intellectual property has its own noble goals, which include the flourishing of the arts and sciences and the safeguarding of income a creator is rightfully entitled to.

As it may take years for lawmakers to revisit the policies behind copyright legislation or for courts to rule on the issue of fair use in the particular context of online education, the various stakeholders may consider taking immediate steps to help address the challenges currently faced. Perhaps publishers can make textbooks available in digital form for ease of acquiring the same, or offer them at a lower price for a limited period. Publishers of online databases may loosen restrictions on off-campus access and allow for more simultaneous usage by members of an institution. Copyright owners themselves may explore options regarding the flexibility of their licenses, at least for the time being.

Affording quality education to students during a pandemic entails a joint effort from all parties involved. This includes parents, the government, schools and their faculty, publishers, and copyright owners. No learner must be left behind. As they say, it takes a village to raise a child. In the face of this unprecedented public health crisis, it will take the same to educate one.

This article, which first appeared in Business World (a newspaper of general circulation in the Philippines), is for general informational and educational purposes only and not offered as, and does not constitute, legal advice or legal opinion.
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Remarkable changes in the new Law on Enterprises

On June 17, 2020, the National Assembly officially passed a new Law on Enterprises ("New Law") to replace the current Law on Enterprises. The New Law (effective from January 1, 2021) is expected to make a breakthrough in improving the corporate governance, enhance the enterprise's initiative and create favourable conditions for foreign-invested enterprises to operate in Vietnam.

Reduce business registration procedures

The New Law reducing a number of administrative procedures, including, among others, eliminating the procedure for reporting changes in the information of the enterprise's manager and the procedure for notification of seal samples with the business registration office to post it publicly on National Business Registration Portal before using.

In addition, regarding the method of enterprise registration, apart from the direct registration method at the business registration authority, Article 26 of the New Law added two other registration methods, which are registration via postal service and registration through the electronic information network, with legal validity equivalent to a hard copy.

Supplemental provisions on the obligations of the legal representatives

The New Law requires the company's charter to specify the quantity, managerial title and rights and obligations of each legal representative. In case the division of rights and obligations of each legal representative is not clearly specified in the charter, each legal representative of the enterprise will be considered a duly authorised representative of the enterprise before a third party and all the legal representatives are jointly liable for any damage caused to the enterprise in accordance with the laws.

Changing regulation on term of capital contribution with assets

The New Law introduces new regulation on the term for capital contribution with assets of members/ shareholders. In particular, the term for capital contribution of the members/ shareholders remain 90 days from the date of issuance of the Enterprise Registration Certificate, but for members/ shareholders contributing capital with assets, the time for transferring, importing assets contributed as capital, implementing administrative procedures to transfer the ownership of such assets will not be counted to ensure the feasibility of contributing capital with assets of such members/ shareholders.

> "NVDR's are expected to attract more indirect investment from foreign investors into companies with limited foreign ownership"

Issuance of bonds

Under the New Law, limited liability companies and joint stock companies is allowed to issue bonds. Limited liability companies and joint stock companies that are not public companies shall carry out the procedures for a private offering of bonds according to the provisions of the New Law, while the private offering of bonds by public joint-stock companies, other organizations or the public offering of bonds will follow the law on securities. It is noted that only strategic investors and professional securities investors are entitled to buy, be transferred bonds via private placement.

Expanding rights and scope of shareholders

Rather than holding 10 percent or more of the total amount of ordinary shares for at least 06 consecutive months or a smaller percentage as stipulated in the charter, the New Law prescribed that a shareholder or group of shareholders will only need to own five percent or more of the total amount of ordinary shares or a smaller percentage as stipulated in the company's charter without a minimum holding period to exercise their right of accessing information regarding the operation of the enterprise, except for documents related to trade secrets, business secrets.

However, the right to nominate members to the board of directors, board of supervisors still reserves for shareholders or groups of shareholders owning 10 percent or more of the total amount of ordinary shares, unless otherwise stipulated in the charter with a smaller ratio.

Non-voting depositary receipt

For the first time, the Non-Voting Depositary Receipt (NVDR) is recorded in the content of the enterprise law. It is considered one of the remarkable points of the New Law.

Essentially, NVDR enjoys same economic benefits and obligations as ordinary shares, with the exception of voting rights. It is expected that a subsidiary of the Ho Chi Minh City Stock Exchange (HOSE) will be established and purchase these ordinary shares from companies, then issue NVDR's to sell to investors in need. Detailed regulations shall be specified in the guiding decrees.

NVDR's are expected to attract more indirect investment from foreign investors into companies with limited foreign ownership, but still ensures the target of state management as the investors owning NVDR's do not have voting rights, and shall therefore not interfere in the operations of companies.

The New Law also reforms certain provisions on converting private enterprises into limited liability companies, joint stock companies, partnerships and converting household-businesses into enterprises, etc.

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By Charissa Ball and Yan Li

Regulation of Virtual Asset Service Providers in the British Virgin Islands, Cayman Islands and Bermuda

British Virgin Islands

There is no specific regulation on the sale of virtual assets and virtual asset services in or from within the British Virgin Islands (BVI). On July 13, 2020, the BVI Financial Services Commission (FSC) issued guidance providing some clarity on the treatment of virtual assets and virtual assets services under existing BVI legislation. In particular, the guidance gives the FSC's current views on the treatment of virtual assets as "investments" and virtual assets services as "investment business activities" under the Securities and Investment Business Act, 2010 (as amended) (SIBA).

FSC's guidance indicates that virtual assets and related products useable as payment only for goods and services (e.g. utility token) would not be caught under the existing financial services legislation. On the other hand, where the virtual asset or investment activity provide a benefit or right beyond a medium of exchange, this may constitute as an "investment" under SIBA.

When a virtual asset constitutes an "investment", persons carrying on an "investment business activity" will require a licence or approval under SIBA, subject to certain exclusions. Examples of "investment business activities" include investment manager/advisor services and operation of investment exchanges.

For SIBA licensing/approval, a written application in the approved form is required. Additional documents or information, as reasonably required by the FSC to determine the application, will also need to be provided.

Pending the introduction of a regulatory sandbox, there is currently a six-month transition period from publication date of the guidance for relevant entities carrying on investment business activities relating to virtual assets to become compliant with the applicable BVI legislation (including SIBA).

Cayman Islands

Until recently, the Cayman Islands had no legislation specifically regulating virtual assets or virtual asset services in or from within the Cayman Islands. A new regulatory regime came into place on May 25, 2020 through the introduction of the Virtual Asset (Service Providers) Law 2020 making it mandatory for providers of "virtual asset service" to be licensed or registered. Under the law, "virtual asset service" is given a very broad definition, which covers the issuance, exchange, transfer, custodial services and "participation in, and provision of, financial services related to a virtual asset".

> "The issuance of sandbox licences provides room for new and innovative technologies. A sandbox licence allows the best approach to regulation of new technologies and innovative activities to be assessed ..."

The new licensing regime requires virtual asset service providers (VASPs) to maintain minimum standards, including having a registered office in the Cayman Islands and compliance with regulations such as the Cayman Islands AML/CFT regime[1] and Data Protection Law. Other requirements are imposed on those offering virtual asset custody services or virtual asset trading platforms.

Depending on the nature of the virtual asset services to be provided, VASPs are required by the Cayman Islands Monetary Authority (CIMA) to be registered, licensed (whether under a virtual asset service licence or a sandbox licence) or operating under a waiver given by CIMA.

The issuance of sandbox licences provides room for new and innovative technologies. A sandbox licence allows the best approach to regulation of new technologies and innovative activities to be assessed, and could be granted for a period of up to a year. The authorities may revoke the sandbox licence at any point of time if the licensee fails to comply with any requirements imposed, or if the authorities are of the view that the sandbox licence is no longer necessary.

Bermuda

In 2018, Bermuda introduced the Digital Asset Business Act 2018 (as amended) (DABA) regulating licensing for carrying on digital asset business in or from Bermuda. This is separate from the regulatory regime on issuance of digital assets covered by the new Digital Asset Issuance Act 2020, which became effective on May 6, 2020 and replaced the 'Initial Coin Offering' legislation of 2018 and related regulations.

Bermuda digital asset service providers are subject to oversight by the Bermuda Monetary Authority (BMA). Under DABA, those that are in scope require a licence from the BMA to provide digital assets services to the public in Bermuda. Examples include digital asset derivative exchange providers, digital asset benchmark administrators and digital asset trust services providers.

Application for licensing to the BMA is required before carrying on digital asset business. Either one or two classes of licence can be sought: a full digital asset business licence or a sandbox licence. The availability of the sandbox licence is to promote innovation and allow establishment of novelty start-ups to test their new products or services for a defined period of time (which can be extended) under the supervision of the BMA.

1. *As provided under the Anti-Money Laundering Regulations (2020 Revision) (as amended)*

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M&A REGULATORY COUNSEL

SINGAPORE **6-10 PQE**

Major investment company is looking for a corporate regulatory M&A lawyer to join their legal regulatory team based in Singapore. The ideal candidate should be legally qualified in either Singapore, UK, Australia or US with a solid foundation in general corporate law and experience in regulatory issues on cross border M&A. (IHC 18496)

CORPORATE/COMMERCIAL

HONG KONG **6+ PQE**

Excellent opportunity for a corporate/commercial lawyer who has the right mix of attitude, vision and drive to become part of the legal function of a prestigious MNC. The ideal candidate is an ambitious 6+ year PQE lawyer with excellent Mandarin skills. (IHC 17433)

LITIGATION COUNSEL

SINGAPORE **6-8 PQE**

Global consulting company is looking for a legal counsel with strong disputes experience to join their team in Singapore. The ideal candidate should be qualified in Singapore with experience in commercial litigation work with a reputable law firm. (IHC 18512)

CORPORATE

SINGAPORE / SEOUL / HONG KONG **5+ PQE**

Our client is a major financial services provider with a substantial presence in Asia. They are looking to hire a 5 PQE+ corporate lawyer with Korean language skills to join their well-regarded legal team in either Seoul, Hong Kong or Singapore. (IHC 18502)

COMPLIANCE COUNSEL, APAC

HONG KONG **5-8 PQE**

Excellent opportunity for a compliance lawyer to join this world-renowned multinational corporation where you will be solely responsible for all compliance and regulatory matters in APAC. You will oversee all compliance programs, and advise on AML / CTF compliance, sanctions, anti-corruption / FCPA related matters. Excellent Mandarin required. (IHC 18552)

LEGAL COUNSEL

SINGAPORE **3-5 PQE**

An established European bank is looking for a legal counsel to join its legal team in Singapore to support their business in Singapore, Hong Kong and Australia. The ideal candidate should be qualified in a commonwealth law jurisdiction with good banking and finance experience. (IHC 18278)

CORPORATE LEGAL COUNSEL

SINGAPORE **3-7 PQE**

Major US-listed company in the technology space is looking for a legal counsel to join their team based in Singapore. The ideal candidate should come with good corporate commercial or commercial litigation experience. Due to the nature of the role, there is a strong preference for someone with proficiency in Mandarin. (IHC 18550)

LEGAL COUNSEL

HONG KONG **4+ PQE**

Our client is a global blockchain company behind one of the world's largest digital asset exchange by trading volume and users. They are looking to hire a Legal Counsel with structured products experience for their Hong Kong Office. (IHC 18557)

To apply, please send your updated resume to als@alsrecruit.com, or contact one of our Legal Consultants:

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By Anna Chan, Partner and Josh Kwok, Associate
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Are you ready for the global tax reform?

A brief discussion on how MNCs should respond to the OECD's new measures relating to Automatic Exchange of Information and Transfer Pricing issues

AEOI and the CRS – Enhanced tax controls on tax evasion

We are living in a globalised world, and cross-border activities have become the norm in the last few decades. In the past, multinational corporations (MNCs) often adopt aggressive tax strategies by booking most profits in tax heavens where information sharing with foreign tax authorities is often minimal. The result is that tax authorities across the world often face difficulties in gathering sufficient offshore asset and transactional information of the tax payers to conduct tax assessments in their home jurisdiction. To unplug loopholes, the OECD has led the international effort in the implementation of Automatic Exchange of Information (AEOI) and adoption of the Common Reporting Standard (CRS).

In order for participating countries to enjoy the mutual benefits of information exchange, financial institutions (FIs) of a participating country are required to report financial information regularly to local tax authorities which is then transmitted to their overseas counterparts in exchange of similar information from other participating jurisdictions. It is noteworthy that more than 100 jurisdictions are already committed to AEOI implementation as at June 2020.

> In-house legal professionals should plan ahead with their tax advisers before implementing any cross-border transactions

Why is this relevant to me?

Let's assume that you are a tax resident of your home Country A and have offshore assets or income in Country B. If both countries are committed to AEOI, Country B will become duty-bound to share your financial information automatically with the tax authorities of Country A, such that the latter may track your offshore investments beyond national borders, carry out a tax avoidance investigation and enforce any non-compliance. The most typical types of information covered include tax return and financial statements, company directors/shareholders, company registration, interests, dividends, account balance or value, sales proceeds from financial assets, etc. Such new disclosure regimes have made tax evasion through non-disclosure extremely difficult, if not practically impossible, because offshore undeclared financial assets can now be targeted by a taxpayers' country of residence.

In Hong Kong, legislative amendments were introduced into the Inland Revenue Ordinance in 2016 to enhance tax transparency and combat cross-border tax evasion. Information exchange is permitted where a bilateral agreement is concluded between the Hong Kong government and a partner jurisdiction. By the start of 2020, the number of reporting jurisdictions in Hong Kong has increased extensively to 126. FIs in Hong Kong are required by law to collect information of identified individual/corporate account holders and their financial account information for onward exchange with other jurisdictions. Furthermore, FIs in Hong Kong must require account holders to complete a self-certification form to declare their tax residence status, and any intentional or reckless false statement on residence status will constitute a criminal offence.

The AEOI regime is relatively new, which might explain why reports about defects in the CRS are not uncommon. For example, there are still many offshore jurisdictions without a public company register and the ultimate beneficial owners might remain unidentifiable. However, with increasing perfection over the CRS, the past practice of utilising offshore entities for secrecy or confidentiality purposes is deemed to be phasing out gradually.

Take-home message

Given the global enhanced tax transparency, in-house legal professionals should plan ahead with their tax advisers before implementing any cross-border transactions, especially where certain offshore financial information may be exposed and reported back to the tax authorities of the home jurisdiction. Quite often, they are no longer protected on the grounds of secrecy or client confidentiality. In addition, since the AEOI regime may take retrospective effect in some jurisdiction, companies with foreign operations are also expected to review past transactions to ensure that tax disclosure has been adequately made to avoid penalties imposed upon future investigations.

***To read the full text of this article**, including: Transfer Pricing (TP) – how does it work?; TP in Hong Kong; Mandatory Documentation – a '3-tiered' approach; Guidelines on TP Benchmarking Analysis; and Penalties scan the QR code or go to: https://www.inhousecommunity.com/article/ready-global-tax-reform/*

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"The In-house Community website provides the window on the development of commercial law, practice and compliance in the growth markets of Asia and the Middle East"

Dr Justine Walker, *advisor to the* British Banking Association

MOVES

The latest senior legal appointments around Asia and the Middle East

AUSTRALIA


Richard Hayes

K&L Gates has added **Richard Hayes** as a partner in the Sydney office. Hayes, who brings a dedicated focus on acquisition and funds financings and general corporate finance, joins from Hogan Lovells. With admissions and extensive experience in Australia, England and New York, he represents many international organizations with their multi-jurisdictional financing arrangements. His lender clients include global investment banks, commercial banks and debt funds, while on the borrower side, he supports private equity and other investment firms and corporations. For over 25 years, Hayes has advised clients on the financing of acquisitions, refinancings, restructurings, recapitalizations and work-outs.


Luke Edwards

King & Spalding has added **Luke Edwards** as a partner in the firm's corporate, finance and investments practice group, and as part of the recently-launched global human capital and compliance practice. Edwards, who is based in Sydney, Australia, will divide his time between the firm's Singapore and Tokyo offices. Joining from Seyfarth Shaw, he will be a core member of the new global human capital and compliance practice. The practice will focus on advising companies on multijurisdictional, strategic and compliance-related workforce matters around the world, including employment law issues, such as worldwide policies for safely working from home, employment and labor issues arising from cross-border M&A, large-scale workforce reductions, workplace harassment and anti-discrimination issues and international workplace investigations and litigation. He obtained his undergraduate degree and his JD from the University of Sydney.


Bryan Pointon

Norton Rose Fulbright will add leading corporate M&A and private equity partner **Bryan Pointon** to the firm's Sydney office on October 1, 2020. Pointon is a senior practitioner with a wealth of experience in the health; technology, media and telecommunications; food and beverage; and agribusiness sectors. Across his diverse career, he has advised on public law litigation, US securities (having previously been admitted to practise in New York), telecommunications and media, corporate M&A and private equity matters. He has also advised on complex government transactions and privatisations. Pointon has strong relationships with investment banking clients active in M&A, private equity and equity capital markets, along with a significant number of major international and domestic public companies across a range of other industries. He was most recently a partner in PwC Legal's financial advisory practice. Prior to that, he was Asia-Pacific head of corporate at DLA Piper, and a senior corporate M&A partner at Gilbert+Tobin and King & Wood Mallesons.


Penny Stevens

Seyfarth has added **Penny Stevens** as a partner in Melbourne. Stevens is a leading health and safety lawyer, with more than 25 years' experience advising on all aspects of work health and safety and criminal law. She is known nationally for her expertise in both proactive risk mitigation, as well as responding when an incident has occurred. Clients turn to Stevens when it matters for representation and advice on prosecutions, coronial inquests and investigations.

CHINA


Xiaowei Ye

Rimon Law is expanding its presence in China with the addition of **Xiaowei Ye**, as a partner in the firm's Shenzhen and Washington DC offices. Formerly the managing partner of Morgan Lewis & Brockius' Beijing office, Ye has over 25 years of experience in Asia representing major multinationals, financial institutions, international and Chinese companies, as well as private equity funds in China-US cross-border M&A and investments. She also advises multinationals on regulatory matters, including obtaining approvals and licenses in regulated industries, general regulatory compliance, and crisis management related to regulatory investigations, product recalls and other issues. Over the course of her career, Ye has advised on some of the most high-profile transactions involving Chinese companies and major international players doing business in China. Her groundbreaking work has included advising on the first joint-venture investment bank between China Construction Bank and Morgan Stanley, as well as representing Nasdaq in the establishment of its representative office in China. She has also advised some of the world's largest asset managers on regulatory issues related to their operations in China.

HONG KONG


Kevin Warburton

Tanner De Witt has bolstered its arbitration practice with the appointment of **Kevin Warburton** as a partner, effective September 7, 2020. Prior to joining the firm, Warburton has worked in the disputes and investigations team of Slaughter and May's London and Hong Kong offices for 13 years. He advises a broad range of clients, both inside and outside Hong Kong, on matters of arbitration, litigation, regulatory investigations and inquiries, data privacy and alternative dispute resolution mechanisms. His clientele includes private and listed companies, financial institutions, HNIs, entrepreneurs and multinational organisations in Hong Kong, China, the wider APAC region, as well as the UK and Europe. Warburton has extensive experience dealing with arbitration proceedings administered by the HKIAC, ICC, LCIA and other bodies, and is a member of relevant networks for arbitration practitioners in Asia and the surrounding region.

Continued on page 14 ....

DEAL OF THE MONTH

Asian-mena Counsel
Deal of the Month
August 2020

Kimberly-Clark's acquisition of Softex Indonesia

Holding the number two market share position in Indonesia, Softex has a considerable portion in the US$1.6 billion diaper market in the country. Its most popular diaper brands, 'Sweety' and 'Happy Nappy' generate about 80 percent of the company's revenue. Indonesia is the largest economy in South East Asia and the fourth largest country by population - an important and growing market for diaper and personal care products. The absorbtion of Softex Indonesia, Kimberly-Clark looks to increase its foothold in this fast growing market in Asia, as well as continue to provide long-term value to its shareholders.

> "Owner of the brands Kleenex and Huggies, Kimberly-Clark has seen its sales of essential products increase in the Covid-19 health crisis"

Owner of the brands Kleenex and Huggies, Kimberly-Clark has seen its sales of essential products increase in the Covid-19 health crisis. The company will pay US$1.2 billion in cash for the acquisition, which represents about three times Softex Indonesia's sales in 2019. The cash was generated from a group of shareholders including CVC Capital Partners.

Mike Hsu, Chairman and CEO at Kimberly-Clark stated, "As we move ahead, we will leverage our combined strengths in innovation and brand building while maintaining the local market expertise and advantages that Softex Indonesia has built with its strong portfolio of brands."

Gibson Dunn and Crutcher acted as legal counsel to Kimberly-Clark, while Partner Rahmat S. S. Soemadipradja from Soemadipradja & Taher and Allen & Gledhill partners Prawiro Widjaja, Elsa Chen and Eugene Ho and Senior Associate Jessie Lim and Associate David Ho advised CVC Capital partners.

See all this month's deal activity, and seach the archive at:

https://www.inhousecommunity.com/deals

Moves, continued from page 12 ....

He also advises clients on privacy matters arising under Hong Kong and English law and the GDPR. He read Law at the University of Oxford and completed his LPC in London in 2007, before passing the OLQE in Hong Kong in 2019.

INDIA


Anu Tiwari

Cyril Amarchand Mangaldas has added **Anu Tiwari** as a partner in its financial regulatory practice, and he will be based in Mumbai. Tiwari has represented many Indian and multinational fintech, banking, broker-dealer, exchange, asset management, speciality finance and information/emerging technology companies on transactional, enforcement and regulatory matters. His transactional practice focus is on public and private M&A, capital raising, commercial agreements and activism matters. Tiwari joined erstwhile Amarchand & Mangaldas & Suresh A Shroff & Co Mumbai in June 2007, after completing graduation from NUJS, Kolkata, and was with the firm until May 2016.

SINGAPORE


Anthony Patten

King & Spalding has added prominent energy lawyers **Anthony Patten** and **Lachlan Clancy** as partners in its corporate, finance and investments practice group in Singapore. Clancy, who will join later in the month, is scheduled to relocate to the firm's Tokyo branch in due course. Their practice focuses principally on corporate, project development and finance matters in the international oil and gas industry, across the entire upstream, midstream and downstream sectors, with a particular emphasis on LNG-related work. They have advised on headline projects in Asia, and represented Asia-based clients on key international investments, including in the Middle East, Africa and the Americas. Patten and Clancy were most recently at Shearman & Sterling, where Patten was a partner and co-head of the firm's oil and gas group.


Lachlan Clancy

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Opportunities of the Month ...

Be it a case of wanting to spice things up or break the pattern, every now and then, it's nice to know there's something else. Whether you do so casually or stringently, take a look below to see what the legal sector can offer you.

Legal Counsel

7+ yrs PQE, Hong Kong

China's leading financial institution is seeking a HK/US/UK qualified lawyer with solid private equity and M&A experience to join its Hong Kong legal team. Reporting to the Head of Legal, you will be responsible for handling private equity and other investment transactions, as well as providing legal advice and support to various investment teams. Welcome private equity and/or M&A lawyers with 7-10 years' PQE with top international law firms. A good team player who has high responsibility, diligence, and professional ethics is best suited. Excellent written and spoken English and Mandarin Chinese is required.
[REF: 15972/AC]

Contact: Sharon Siu
Tel: (852) 2520 1168
Email: ssiu@hughes-castell.com.hk

M&A Counsel (In-house)

8+ yrs PQE, Singapore

Top Asia-based TECH COMPANY is hiring an M&A Counsel with at least 8 years of M&A experience gained at a top international firm (BigLaw), ideally with some experience in a major market such as New York or Silicon Valley. The ideal candidate has a mix of M&A, private equity, and VC experience with some exposure to e-commerce. We have made several placements at this company over the past 18-24 months, and the GC has a track record of hiring straight out of BigLaw for their in-house team. They operate in industries which are poised for aggressive growth in the post-COVID reality, and their stock has doubled in the past 6 months and tripled in the past year. Stock is a key part of the compensation package, which is on par with the international BigLaw scale.
[Ref: JVIHC-0045]

Email: alexis@jowersvargas.com

China Legal Counsel (In-house)

7-10 yrs PQE, Hong Kong / Shenzhen

A Hong Kong listed tech company is actively looking for a senior corporate / commercial lawyer to be based in Hong Kong or Shenzhen. It is a lead role and the right candidate is expected to manage the PRC legal team based in China. Ideally, you should have familiarity with the PRC legal and compliance framework, but also have experience in Hong Kong. Native Mandarin and fluent English skills are essential.
[Ref: AC8459]

Consultant: Nicole Hu
Tel: (852) 2537 7890
Email: nhu@lewissanders.com

Derivatives

4-8 yrs PQE, Hong Kong

Our client is a well established fintech and is one of the world's largest digital asset exchanges by trading volume and users. They are looking to hire a Legal Counsel with structured products and derivatives experience for their Hong Kong Office.
[Ref: IHC 18557]

Contact: Matthew Chau
Tel: (852) 9089 4112
Email: m.chau@alsrecruit.com

Spotlight on eDiscovery

Many people are still confused about what electronic discovery encompasses.

The primary function of eDiscovery is identifying and organising data to ensure litigation review runs accurately and efficiently.

It's a two-stage process. Firstly, it involves identifying, collecting and producing Electronically Stored Information (ESI) including emails, documents, databases, audio and video files, social media and web sites, etc. Secondly, the conversion and production of hard copy evidence into electronic format.

The importance of consulting

A consultant can assess key challenges and establish a solution including timelines and costs. They are a guide for the entire document management process and keep the litigation document management on track.

The Role of digital forensics

Litigation or regulatory response can involve large scale data audit, establishing and improving data governance and developing strategy to preserve and collect data. Digital Forensic specialists can provide support at audit stage or in response to court dictated discovery or investigatory requests.

During data collection, Digital Forensics experts assist with tailoring a forensics collection workflow, collection auditing and staff augmentation for collections. Assisted self-collection using preconfigured devices (for certain folders, file types, etc) and other remote collection services are also possible.

The impact of analytics

Analytics can identify the key facts of a case early on. Unlike keyword searches, analytics is based on how and where ideas and concepts intersect with similar ideas and concepts in a document collection. It makes predictions on relevancy based on input and changes how reviews are run.

There is an array of analytics tools including email threading, grouping conceptually similar documents, communication analysis, near duplicate identification or technology assisted review (TAR). These tools create unique workflows that match the project's needs - whether it's investigating the claim's merits, sorting data into key issues or preparing evidence for litigation.

Analytics tools reduce how many documents need to be reviewed and ensure key documents are identified much faster.

> An experienced Managed Document Review team provides scalable support from review experts with the latest legal technology

Early case assessment - an early snapshot

Early Case Assessment (ECA) provides an understanding of the evidence and data early in a matter allowing the risks and costs of pursuing a particular legal course of action to be estimated.

Using analytics and search features, the legal team can quickly identify the relevant issue, key people and gaps in email communications, thereby identifying patterns in the data which assist in making decisions.

TAR - increasing efficiency

Technology Assisted Review (TAR) or 'predictive coding' can dramatically reduce the time and cost of review by reducing the amount of documents requiring human review.

Using computer algorithms, TAR categorises the documents based on decisions made by human reviewers on a subset of documents, for accurate review. The method is efficient, low risk, and cost and time effective.

TAR technology continuously learns from human review decisions, refining its understanding of what's responsive and what's not as the human review progresses, actively pushing the most relevant documents to the front of the review queue. TAR also identifies irrelevant documents to be excluded.

Continuous active learning is the latest form of TAR with minimal set up and human input. There are no training sets or manual batching of documents. Reviewers simply log in, enter a review queue and start reviewing the most relevant data. As the review queue is continuous, administrators can easily monitor the results.

MDR - scalable solutions

An experienced Managed Document Review (MDR) team provides scalable support from review experts with the latest legal technology.

A MDR team can provide support with discovery reviews and investigations, to complex and time-restricted regulatory responses, and unique applications such as data-cleansing, contract review and cataloguing of data.

Our MDR team in India and our Australia-based Project Management team provide in-house legal teams around the world available 24/7, all year round. Our teams provide support to our clients in the United States, Europe and the Asia Pacific region.

Sanctions and Investigations Q&A

Asian-mena Counsel sought wise counsel on the key issues in these risk-heavy areas from those with expertise at leading International law firm ***Baker McKenzie***, and two thought-leading GC's:

From Baker McKenzie:

Mini vandePol, head of the firm's Asia Pacific Compliance & Investigations Group, focuses on anti-bribery and corruption, trade sanctions, fraud and other senior executive misconduct investigations across Asia but most particularly in Hong Kong, China and India.

Celeste Ang's practice encompasses corporate dispute resolution, compliance and investigations. She has significant experience acting for global clients in cross-border disputes and advising clients on compliance and regulatory issues in the context of cross-border investigations.

Simon Hui is ranked among the leading lawyers for dispute resolution/regulatory and compliance in China. He has conducted complex internal investigations for a large number of multinational companies across a range of industries.

Vivian Wu focuses on China-related corporate regulatory and compliance matters, in particular anti-corruption and trade compliance. She is experienced in compliance investigations, due diligence, risk assessment and training. In 2014, Ms. Wu worked at the Baker McKenzie's Washington DC office with our North American Compliance and Investigations Practice Group on various compliance matters. She is experienced in advising Chinese companies and financial institutions on managing overseas compliance risks, including without limitation bribery, trade sanctions and export control issues.

With In-House Insight from:

Stanley Lui is TI Automotive's Legal Director for the APAC region, mainly dealing with the legal and risk aspects in both the selling and manufacturing fronts.

Carl Watson is a GC and member of the leadership team for Arcadis covering the Asia region. He is passionate about optimizing legal operations, using digital tools, so his team can focus on enabling practical and commercial solutions to a wide range of contractual, legal and compliance matters.

INVESTIGATIONS

Pro-actively identifying the legal liabilities for your corporation can be a complex task. Can you suggest an ideal process which in-house legal departments can implement to detect these liabilities? What key points should an organisation bear in mind when mapping out a process?

Mini vandePol: A helpful way to approach this task is through a risk assessment exercise. While such an assessment will look different for each company (e.g., based on its jurisdictional reach and business profile), the idea is for counsel to look more deeply into the jurisdictions and types of business model that the company engages in, to better understand the core risk areas. To frame the process, it's often helpful to start out with a scoping document laying out the breadth of the exercise and its methodology. Elements can vary depending on the risk assessment, but it usually involves a combination of review of key documents, conversations with key individuals in high-risk business areas and transaction testing. The results of such a risk assessment can be used to further the company's compliance programme going forward, such as to tailor policies and trainings to identified risks. We often do such risk assessments for clients, but they can also be structured such that in-house counsel conduct the risk assessment and we provide

guidance. This can be a great way for in-house counsel to get a bird's eye view of the company's risks.

We have also developed the Compliance Cockpit, which provides companies with unique insights into their risk exposure in multiple areas of law and enables them to assess whether the implemented compliance program effectively reduces the overall risk exposure. The Compliance Cockpit aggregates the information collected from multiple sources within the company, analyses it via pre-defined risk evaluation formulas and presents the results in interactive dashboards.

Simon Hui: A company will be exposed in different types of risks in doing business. It is always hard to exhaust all underlying legal liabilities. However, operating routine business with risk awareness will make a big difference. From the legal perspective, the first step is to have an accurate and complete understanding of the company's business and the challenges it is facing. After an assessment of current operations, the counsel will need to map out potential labilities from different parts of the operation, such as, in general, corporate governance, license/approvals, interactions with public sectors, sales and marketing, procurement, and special regulations related to the company's business. Given the fact that the business may change from time to time, the assessment should be conducted periodically in order for the risk control to be effective and proactive. In addition, when a company is exploring new areas or planning future transformation, it is advisable for the in-house counsel to step-in at the very beginning and evaluate the legal risks in advance. For instance, when a trading company decides to enter the manufacturing industry, safe production and environment protection requirements will become new areas for it to focus on.

The in-house counsel will also need to keep an eye on the recent legislative development and enforcement trends and to have the company react promptly to the changes in laws and be prepared for potential government actions. Moreover, some risks might be common in their particular industry, so those lawsuits, administrative orders, and punishment decisions against competing companies may have reference value.

Nonetheless, as aforesaid, legal liabilities cannot be eliminated completely. There could still be unexpected government investigations into the company. In a number of jurisdictions in the Asia-Pacific region, such investigations are usually commenced by the government conducting a dawn raid. The company is required to put in place a well thought out procedure and arrangements to handle such investigations. The legal counsel should be clear as to which government organs are the key regulators of the industry in which the company is operating in, the boundaries of their powers, and enforcement trends.

Another point that needs attention is that the company's obligations/labilities could be extended due to certain contractual arrangements. Compliance requirements may not only come from local laws and rules, but also from the home jurisdictions of counterparties (such as rules under the FCPA and the UKBA). It is also worth noting that directors and employees of state-owned or state-controlled companies would be deemed as public officials under ABC related laws and regulations in many jurisdictions. Control measures should extend to the business with these types of business partners.

Celeste Ang: The risk assessment is a practical starting point. Once a risk assessment is done, and the gaps and deficiencies (if any) are identified, the next steps are to:

- bolster/supplement the existing compliance policies and processes and/or put in place the necessary policies and processes to address the gaps and deficiencies;
- ensure that these policies and processes are effectively communicated to all employees and that there is comprehensive training offered to all employees.

In order to properly assess whether these policies and processes are effective in detecting, avoiding or managing liabilities, an active monitoring and auditing schedule or process should also be put in place and implemented. If there are any further gaps or weaknesses detected, the policies and processes will have to be further improved. Internal reporting systems, such as whistleblowing policies and hotlines are critical to the detection of liabilities that may not arise in the normal course.

Mini vandePol

"Create a "core group" outside of which information about the crisis is not shared. This is important to allow consistent messaging, to ensure that the "rumor mill" does not exacerbate the problem"

It is important to bear in mind that the above process of risk assessment, audit/ monitoring, improvement of the policies and processes and communication/training is a continuous process.

Celeste Ang

"What would help a company tide through these unrelenting waves is to have a proper crisis management plan already in place before the crisis hits"

Stanley Lui: A commercial process should ideally (perhaps must) reflect commercial reality. It's therefore crucial that the formulation of the same is based on first-hand knowledge and 360° analysis.

A few effective ways to gather the relevant building blocks are:

i. ride shotgun when front-line sales/ marketing colleagues go on customer or on-site visits to experience and verify pain points up-close;
ii. be the co-pilot of internal audits, with the aim to identify regulatory and operational deficiencies, game out possible disruptive scenarios from those inadequacies, then develop process checkpoints to counter; and
iii. (when normalcy returns…) attend key industry / product conferences, in order to acquire latest market intelligence on the risk landscape, gain insights into the operations of your customers, suppliers and competitors, then zero-in on key areas of improvement

"What gets measured gets done" – so the saying goes. Similarly, a process would stay relevant only if it's rigorously applied and undergoes timely tweaking.

As such, it's critically important for the in-house legal team to maintain continuous communications with and react swiftly to feedback from stakeholders and corresponding business units, who carry out the process in their day-to-day operations. Another vital means to ensure sufficient meeting of process standards is via the introduction of unannounced audits and spot-checks in the process workflow.

Expected or unexpected, a crisis situation can be overwhelming and disastrous for the corporation if ill-managed. What are your suggestions for in-house counsel on crisis management? Have there been changes to what companies should focus on between pre-pandemic days and the 'new normal'?

Mini vandePol: The Covid-19 pandemic has created a range of challenges for compliance. Work-from-home arrangements, while necessary, have made it harder for management, as well as legal and compliance departments, to oversee employees (especially those in high-risk business areas). Furthermore, the economic downturn resulting from Covid-19 has created pressures for companies to get creative to "make ends meet", and this can sometimes happen in non-compliant ways. When a crisis hits, there are a number of things that in-house counsel should do to ensure that a crisis does not become a catastrophe. The first is to create a "core group" outside of which information about the crisis is not shared. This is important to allow consistent messaging, to ensure that the "rumor mill" does not exacerbate the problem and to tackle the crisis in a coordinated fashion. It's also important to protect legal privilege, in those jurisdictions that have privilege protection. We offer a range of training options to clients that can help prepare in-house counsel and others for potential crises. One is our dawn raid training, which prepares companies for what to do in the event of a dawn raid by a regulator, such as an antitrust, anti-bribery and corruption or securities regulator. Another is our Investigations Academy, that takes clients through the lifecycle of an internal investigation, from when the crisis is first revealed (e.g., through a whistleblower report) until it is resolved, either internally or via negotiation with a regulator. These programmes can help clients to be well-prepared should such a crisis scenario arise.

Celeste Ang: There are usually many ongoing issues to consider when a crisis befalls a company, including internal and external communications, public relations, reputational impact and legal ramifications. What would help a company tide through these unrelenting waves is to have a proper crisis management plan already in place before the crisis hits, so that individual teams or departments know their roles within the company and what they should be dealing with. How the company reacts would then depend on the nub of the crisis. Is the issue one of widespread defect of the company's products, leading to a product recall? Was a whistleblower report on the company's alleged shady dealings released to the press? Senior management will have to be

prepared to make tough decisions on the issues that surface, but it can be dealt with in a much smoother manner if a proper crisis management plan was put in place. Taking control of internal and external communications is important particularly in these times of information and social media explosion.

In the current post-pandemic world, crisis management may have a slight shift towards being prepared to deal with issues such as a breach of data privacy, data leakage and cyber fraud. With the increasing volume of online activity as employees work remotely, there may be a higher threat of fraudsters committing cyber fraud by impersonating a colleague or a counterparty, directing payments to be made out to the fraudster. As companies steadily get on the e-commerce bandwagon to maintain an online presence, they must also be better equipped with data collected from its customers – a corollary of that is to be prepared in the event of a breach of data privacy.

Simon Hui: When encountering a crisis situation, such as a dawn-raid by an enforcement authority, etc, it is very important for the company that the in-house counsel take on the role of coordinator. The coordinator should become the exclusive voice from the company on the matter to avoid further impact or a new crisis resulting from misconduct by others in interaction with officials or the public. For the same reason, the in-house counsel/coordinator should be delegated with sufficient resources, authority and independence to perform his/her duty, even in monitoring senior management activities.

Apart from legal exposure or consequences, a crisis may also lead to an operational and reputational impact on the company. Therefore, cross-department cooperation is vital. For instance, the human resources department will need to guide and monitor employees' individual social media to prevent improper discussions and comments. Simultaneously, the public relations department shall proactively communicate with the media and provide timely and transparent disclosure to the general public. All the actions require the legal department's advice and coordination. We also noted that, since the Covid-19 pandemic commenced (the new normal), more and more people are inclined to follow or discuss breaking news or events via their individual social media. This gives the legal, PR and HR teams a greater challenge in how to effectively control and manage reputational risks and handling inaccurate and inappropriate voices.

Work-from-home arrangements have led to a large number of employees are relying heavily on IT networks to communicate with each other. This has created increased cybersecurity risks for organisations leading to potentially substantial losses.

Stanley Lui: This may sound counter-intuitive, but "Slow and Steady Wins the Race" should 'always' be the legal department's mantra when facing a crisis. One of the main tasks of an in-house counsel is to anchor all stakeholders in order to navigate a business through a sea of chaos, uncertainty and misinformation. Regardless of whether pre- or in the midst of Covid-19, the legal team must preserve the methodical approach to adding value with legal review, risk mitigation, temporary procedural and policy changes, and supporting the business with an effective internal and external communications strategy.

Demonstrating the right leadership is equally important: keeping an open mind, being strategically creative, fostering a trusting environment that permits "rumble with vulnerability" and upholding dignity and a healthy sense of humour when everyone really needs it.

Carl Watson: Roadblocks can be navigated but to do so, mindset is critical. That mindset (of the organisation and its people) needs to be built upon clear compliance communication pathways together with an appreciation and understanding of what the bespoke compliance and governance framework of the organisation is intended to achieve. The role of inhouse counsel is to act as the translator of often complex regulatory/legislative and/or risk governance frameworks into digestible modules of deployable knowledge. With a "bought in" mindset, a business team that understands the benefits and consequences of actions can then, to a point, self-serve around key aspects of compliance and provide a depth of assurance to the corporate. That said, engagement and awareness of the strategic drivers of the corporate, the contextual understanding of the global, regional and national priorities of the

Simon Hui

"When encountering a crisis situation, such as a dawn-raid by an enforcement authority, etc, it is very important for the company that the in-house counsel take on the role of coordinator"

Vivian Wu

"It is important to have the appropriate organisational structure to manage the trade compliance risks... [for which] the legal and compliance department has taken on a much more important role"

corporate; and, fundamentally, the proactive engagement (including, listening first) to the business teams are the invaluable investments the in-house counsel should make in order to capture and then retain the mindset of compliance.

What are some of the potential compliance roadblocks for corporations?

Mini vandePol: While it really depends on the particular company's business, a big issue tends to be developing the connection between legal/ compliance on the one hand and the business on the other. Trainings that are more conversational in style and focus on the actual challenges faced by the business can be very helpful in this respect. Developing this relationship is essential so that legal/ compliance are informed before issues arise.

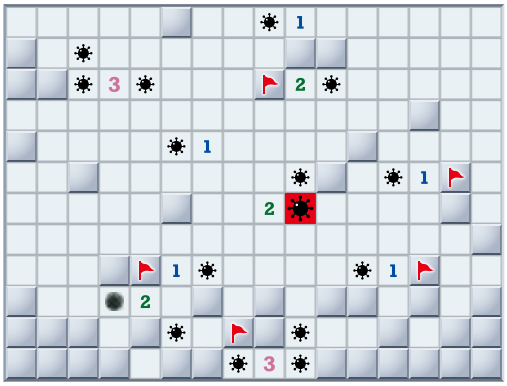
Simon Hui: In mainland China, along with the development and reform of the legislation, administration and enforcement activities (such as government inspections and investigations) have become more transparent and standardised. Nonetheless, it is inevitable that some grey areas in administration will bring uncertainty and potential risks to the business team when they interact with local governmental organs. Legal advice and guidance will be needed in this regard.

The growing tensions and competition between major trading nations in the world also presents challenges to a company with operations in different parts of the world. Legislation issued by national governments designed to prevent or frustrate the long-arm jurisdiction of other nations means that a company needs to tread carefully so as not to be caught by the conflicting legal obligations.

While internally, as the business grows, a company may use more complex structures with operations in different regions. How to implement a consistent compliance standard over different types of business and multiple locations is a considerable task for those responsible for compliance. Periodical assessment is thus necessary. Furthermore, although most companies have some compliance training at present, that training is often becoming less effective as the form is too rigid and the content out-of-date. Among others, functions like public relations, marketing, sales, procurement are higher compliance risk. Enhanced and customised training sessions (perhaps with case studies that originate from the participants' daily work) will be more beneficial and effective.

Last but not least, on some occasions, in-house counsel might be aware of the risk-related issues but lack the resources to take prompt remedial action, therefore, it is always advisable for a company to seek advice and assistance from external legal and compliance professionals.

Celeste Ang: The attitude towards compliance remains one of the biggest hurdles for corporations, especially in the current economic climate. Where revenue and growth have been hampered due to a slump in economic activity, there may be a disconnect between the focus on compliance by the legal and compliance team on the one hand, and a focus on growth and profits by the management on the other. Companies may now be more focused on conserving resources, but compliance should not be overlooked.



SANCTIONS

For corporations working on cross-border transactions, which jurisdictions should the legal department consider high-risk for sanctions and political environment?

Mini vandePol: In terms of US sanctions (and US sanctions tend to be the most aggressive), the "comprehensively sanctioned" jurisdictions are Iran, Syria, Cuba, North Korea and Crimea. However, there are individually sanctioned individuals and entities in a broad range of countries, including ones that one would not picture as "high-risk." As a result, it is important to screen individual counterparties, customers and other business partners for a

global range of sanctions programmes, and to create a sanctions compliance programme tailored to the company's unique jurisdictional exposure and business focus.

Vivian Wu: Recently, China has become a jurisdiction with relatively high US sanctions risk, although not at the same level as other jurisdictions subject to comprehensive sanctions. Due to the geopolitical considerations, this is an area under fast development, which warrants close monitoring and timely adjustment as needed.

Sanctions lists are ever-evolving and becoming more complex. How can in-house legal departments stay on top of these changes and proactively manage risks?

Mini vandePol: This is an area that many of our clients struggle with. The first line of defense, as noted above, is to put together a sanctions compliance programme tailored to the company's unique jurisdictional exposure. This is something that we regularly help clients with. A portion of this programme should involve a clear, easy to follow sanctions policy and procedure, which should (among other things) guide employees in conducting regular sanctions screening of counterparties, customers and other business partners. A user-friendly, functional training on the policy and procedure for those employees engaged with sanctions issues (and those who need to be aware of them) is another key component of such a sanctions compliance programme. If resources allow, we strongly recommend using a reputable, professional screening service that aggregates the various global restricted parties lists, and that updates these instantaneously as new sanctions are announced. We have found that such a method is less likely to lead clients astray than conducting individual "word searches" on PDF lists provided by the various governments and international organisations operating sanctions programmes. Some of these screening vendors offer reasonable cost options. Another important element to keep in mind is when (and how often) the company does sanctions screening. Screening at the on-boarding of a new customer is essential, but so is screening at regular intervals, so that the company is aware should a customer (or other business partner) be added to a sanctions list mid-way through the commercial relationship. Such regular screening will allow the company to act pro-actively if such a mid-stream sanctions listing does occur.

Vivian Wu: First of all, it is important to have the appropriate organisational structure to manage the trade compliance risks. In the past, quite often trade compliance functions in many companies would be performed by the logistics another business department. Nowadays, given the increasing complexity of trade compliance matters as well as the aggressive enforcement, we have seen a trend in the separation of the trade compliance function from the business operations and as a result of such, the legal and compliance department has taken on a much more important role in managing trade compliance risks.

Further, in the past many companies mainly relied upon the in-house automated or manual screening tools as the primary risk-mitigating measures, and quite often the focus has been the name of the business partner itself. Nowadays, the screening process becomes more complicated. For instance, the trade compliance due diligence needs to look into the direct and indirect shareholders of the business partners, in particular those controlling more than 50 percent of the equity interests of the business partner. In addition, how to draw the distinction between a civil and military end-user would require further due diligence on not only the company's shareholders but also its staff and any connection with any militaries, which can be quite challenging. As a result, we have seen in-house legal and compliance teams enlist support from external counsel with respect to such a due diligence exercise.

Carl Watson: Research is showing that now, and increasingly as we move to a post-Covid-19 landscape, a global trend in governmental policy is toward protectionism in terms of pandemic recovery in the near term. That recovery may see governments (and blocs) "looking after their own" for a period, with the potential to impact established multi-lateral arrangements. This adds a layer of complexity to established sanctions regimes which are more overt and entrenched. Global businesses operating across multiple jurisdictions for a blend of

Stanley Lui

"It's critically important for the in-house legal team to maintain continuous communications with and react swiftly to feedback from stakeholders and corresponding business units"

Carl Watson

"Retaining a trusted expert sanctions counsel who undertstands your global footprint and operations; and ensuring a tailored programme of alerts and practical guidance is flowing into the business is an essential and basic fundamental"

global, regional and national clients/ customers need to be aware of this shift, having eyes open to the impact on established sanctions compliance systems; and exposure to other operating restrictions that may be imposed in a "new normal". Retaining a trusted expert sanctions counsel who undertstands your global footprint and operations; and ensuring a tailored programme of alerts and practical guidance is flowing into the business is an essential and basic fundamental. It is critical, not only when building new business but also for established work, that proactive screening is undertaken at both the gateway point (via tailored due diligence, etc), but also through the delivery of a programme of work. To manage the evolution of risk in this area. the importance of being alert to the fact that policies and politics are evolving ever more rapidly is essential for in-house teams – having agile screening systems in place which enable reviews of projects/programmes of work from "cradle to grave" will provide greater assurance in a complex operating environment.

What are some key licensing considerations in the context of compliance to sanctions?

Mini vandePol: In terms of US sanctions, the US Office of Foreign Assets Control (OFAC) provides licenses which are authorisations from OFAC to engage in a transaction that would otherwise be prohibited for a US person. There are two types of OFAC licenses: (1) general licenses, which authorise a particular type of transaction falling within the parameters and conditions of the general license without the need to apply for a license; and (2) specific licenses, which are issued to a particular person or entity, authorising a particular transaction in response to a written license application. Persons engaging in transactions pursuant to general or specific licenses must make sure that all conditions of the licenses are strictly observed. A range of license types exist. One common type of license is the "wind-down" license that allows parties a limited amount of time to cease interactions with a recently sanctioned entity. For example, on July 31, 2020, OFAC issued General License No. 2 to its Global Magnitsky Sanctions Regulations, which authorised transactions necessary to wind down dealings with Xinjiang Production and Construction Corps (XPCC)'s subsidiaries until September 30, 2020. These wind down licenses tend to acknowledge that it is often impossible for parties to immediately cease dealings with a newly-sanctioned entity. Other general license types also exist, such as those to allow parties to protect their intellectual property in sanctioned jurisdictions.

How do US and EU sanctions on China affect international entities doing business there?

Mini vandePol: The main concern for companies as to the US and EU sanctions has been the volatility we have seen over the past few months (as well as other restricted parties listings, such as those related to export controls). It often seems that new restricted parties are announced every day. Further, China has implemented its own sanctions as regards certain US individuals and entities (such as the Unreliable Entity List Regulations), meaning that companies need to be aware of these as well, and must include them in their screening programmes. Fortunately, a robust sanctions compliance programme can bolster a company's defenses even in such volatile and unpredictable times. With all of the new sanctions being announced, it is doubly important for companies to understand their jurisdictional exposure and to ensure that they are conducting screening at regular intervals.

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Investigations: effective, strategic crisis-management – the first 48 hours

When a crisis such as a regulatory raid or phishing attack grips an organisation, there are essential steps to take that can steady the business and help it steer clear of further danger.

By *Yvette Anthony, Counsel, dispute resolution practice head, Singapore* and *Lyndon Choo, Legal Associate*, **Osborne Clarke**.

It is a Sunday evening. You are the general counsel of a global technology multinational company. You have just been informed by someone from the business that investigators from the commercial affairs department are present at the office premises and are demanding access to all your company's documentary, personnel and electronic records. There is a vague idea that the investigation relates to alleged corrupt practices involving a foreign joint venture.

Meanwhile, the company's staff in the office are (naturally) alarmed by the presence of investigators. In their panic, they reach out to their contacts in the joint-venture partner. Some post videos and text messages about the incident on social media, while others start deleting emails they perceive as incriminating.

The above may be a hypothetical, but it is a real and very possible scenario given the increase in corporate scrutiny. Indeed, crises can come in various forms – from warehouse fires to phishing incidents and regulatory investigations.

Yet, organisations often scramble and flounder when faced with such situations. Potential ramifications of this include the inadvertent disclosure of sensitive information or accusations of evidence tampering. But there are some proven measures that an organisation can take to better prepare for unexpected events.

> "The establishment of a standing crisis-management committee helps ensure that organisations are able to effectively take charge of a crisis"

Crisis committee

The establishment of a standing crisis-management committee helps ensure that organisations are able to effectively take charge of a crisis.

This committee should be made up of individuals managing the organisation's main functions. This could include representatives from human resources, compliance, finance, legal and others.

To minimise confusion, a single point of contact within the committee (with a deputy) should be identified. This person would ideally have undergone some training in crisis management and be familiar with the standing orders to be followed during any incident.

Assemble the team

Organisations should try to bring external

Yvette Anthony

Lyndon Choo

counsel on-board early to take charge of the response to an incident. This has a number of important benefits. External counsel with expertise and experience in investigations management can quickly oversee the situation, work with the crisis committee to prepare an action plan, and maximise the prospects of privilege over correspondence and documents that are to be retained.

In order to speed up the appointment of external consultants during a crisis, an organisation may prepare beforehand a shortlist of possible counsel with suitable expertise (for example, for tech companies, lawyers familiar with technology regulation). Companies may also consider having pre-agreed engagement terms, which can be quickly activated.

Privilege considerations

Privilege is a right to resist compulsory disclosure of correspondence and documents.

One type of privilege is legal professional privilege, which generally applies (at least in the main common law jurisdictions) over correspondence and documents exchanged between the external counsel and the client for the purpose of legal advice or the dominant purpose of litigation. In Singapore, such privilege extends to communications with in-house counsels.

To increase the prospect of successfully relying on privilege, it would help to state clearly on the face of correspondence and documents between the organisation and its external and in-house lawyers that these are privileged and confidential. Although not conclusive, this generally provides a starting point for arguments to be made on the nature of the correspondence/documents in question.

Communications protocol

In a crisis or an unexpected situation, there is often a temptation to update as many business recipients as possible to keep them 'in the loop'.

This practice carries certain risks, especially when there are ongoing investigations and potential litigation. For example, documents may lose privilege if sent to individuals with little or only tangential interest in the investigations.

> "Care should be taken to limit communications to personnel on an absolute "need to know" basis, and mark such communications as privileged ..."

Care should therefore be taken to limit communications to personnel on an absolute "need to know" basis, and mark such communications as privileged as discussed in the preceding section. Communications on the incident should also be done on a single secured channel (for example, encrypted work email), to avoid any information leakage.

Data retention policies

Once an incident occurs, it is important to have data retention protocols to preserve evidence relating to it. This could include standing orders to employees, and the suspension of any auto-delete IT policy. Doing so increases the chances of the organisation being able to review and evaluate critical evidence. It also minimises the likelihood of the organisation being accused of destroying evidence/interfering with investigations.

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Anti-corruption compliance in India

In recent years, there has been a paradigm shift in how corporate India addresses corruption, according to *Manjula Chawla, Chandni Chawla* and *Ashna Gupta,* of **Phoenix Legal**.

How has anti-corruption compliance evolved in India?

Companies in India have started taking a more pro-active and conscious approach in dealing with corruption within and outside their organisations. Bribery and corruption have become key concerns for companies, especially for those engaging in business globally. Hence, this change has also come about mainly to comply with anti-corruption and bribery laws of other countries, especially the United States and United Kingdom, which also provide the authorities with extra-territorial powers.

> "The Prevention of Corruption Act is the principal legislation in India which provides for penalties in relation to corruption by public servants and also for those who are involved in the abetment of an act of corruption"

Changes in domestic laws have also necessitated the required shift. Recently, the Prevention of Corruption Act, 1988 (Prevention of Corruption Act) has been amended and now prescribes for corporate entities to have compliance procedures in place, in order to prevent its employees from engaging in any act which may be categorised as corruption or bribery under the said Act.

Accordingly, the companies have started to adopt their own internal procedures and policies to comply with anti-corruption laws. These policies are usually prepared in order to cover compliances as required by the applicable laws in India as well as overseas jurisdictions.

Indian companies, which are subsidiaries of foreign multinational companies, have to adhere to the strict US and UK anti-bribery and anti-corruption laws and with the applicable laws of the jurisdiction wherein the parent company is located. The subsidiaries are required to mandatorily follow the exhaustive anti-corruption policies and frameworks laid down by their global counterparts.

Further, recent trends indicate that companies have actively started hosting workshops and training sessions to create awareness amongst their employees and personnel on the rights, obligations and duties under anti-corruption laws, bribery and ethics internal policies, specifically in respect of business dealings with third parties. Some organisations have also set up whistle-blower protection mechanisms through their internal policies and procedures, to encourage reporting of acts of corruption or bribery by their counterparts in the organisation.

What are some of the key laws and regulations addressing corruption?

The Prevention of Corruption Act is the principal legislation in India which provides for penalties in relation to corruption by public servants and also for those who are involved in the abetment of an act of corruption. The term 'public servant' has been broadly defined in the Prevention of Corruption Act to mean "any person who is in

the service or pay of the Government or remunerated by the Government for the performance of a public duty".

Until 2018, the Prevention of Corruption Act only took into consideration and criminalised bribe-taking by public servants and not bribe-giving, thereby excluding bribes given by private entities.

With the growing economy and foreign investment in India, there was an imminent need to bring the Indian anti-corruption legal framework in conformity with current international practices, and thereby amendments were proposed to be made to the existing Prevention of Corruption Act.

The Prevention of Corruption Act was amended in 2018 by way of the Prevention of Corruption (Amendment) Act, 2018 which sought to prospectively include, within its scope, commercial organisations (which includes companies) and its employees who are involved in the payment of bribes to public servants in order to (a) obtain or retain business for such a commercial organisation; or (b) obtain or retain an advantage in the conduct of business for the commercial organisation.

In such instances, the individual (being the officer/employee of such commercial organisation) involved in payment of bribe and the commercial organisation, will be held liable under the Prevention of Corruption Act, unless the organisation can prove that it had adequate procedures in place to prevent such conduct by persons associated with it. However, the individual/employee of such commercial organisation may still be held liable if the offence is proved.

The other laws which deal with/regulate corruption and bribery in India have been discussed below briefly:

- The Prevention of Money Laundering Act, 2002 aims to prevent instances of money laundering and prohibits use of the 'proceeds of crime' in India. The offence of money laundering prescribes strict punishment, including imprisonment of up to 10 years and the attachment of property of accused persons (even at a preliminary stage of investigation and not necessarily after conviction).
- The Companies Act, 2013 (Companies Act) provides for corporate governance and prevention of corruption and fraud in the corporate sector. The term 'fraud' has been given a broad definition and is a criminal offence under the Companies Act.

  In cases involving fraud specifically, Serious Frauds Investigation Office (SFIO) has been set up under the Ministry of Corporate Affairs, Government of India which is responsible for dealing with white collar crimes and offences in companies. The SFIO conducts investigation under the provisions of the Companies Act.
- The Indian Penal Code, 1860 sets out provisions which can be interpreted to cover bribery and fraud matters, including offences relating to criminal breach of trust and cheating.
- The Foreign Contribution (Regulation) Act, 2010 regulates the acceptance and use of foreign contributions and hospitality by individuals and corporations. Prior registration or prior approval of the Ministry of Home Affairs is required for receipt of foreign contributions and in the absence of such registration or approval, receipt of foreign contributions may be considered illegal.
- The Lokpal and Lokayuktas Act, 2013 provides for an establishment of an ombudsman for the central and state governments (Lokpal and Lokayuktas, respectively). These bodies are required to act independently from the government and have been empowered to investigate allegations of corruption against public servants, which include the prime minister and other ministers.


Manjula Chawla

As on date, the extent of the anti-corruption laws is limited to the private and government sectors in India, and does not have any extra-territorial jurisdiction to cover instances of illegal gratification and payments made to foreign officials or persons employed by public international organisations.

Pursuant to the changes to the Prevention of Corruption Act notified in 2018, there are currently no further amendments being considered by the government.

What are the recent trends?

In recent years, there has been a strong public sentiment against corruption in India, especially by the government, with the citizens demanding accountability from their elected representatives. This has led to a change in

Chandni Chawla

approach towards enforcement of anti-corruption laws. Additional measures are being taken to tackle corruption, not only in the public sector, but in the private sector as well. Indian authorities, such as the Central Bureau of Investigation and Enforcement Directorate, have become more aggressive in enforcing anti-corruption laws and have targeted individuals and corporations, alike.

Increasingly in the last few years, there have also been instances where the authorities have discovered financial defaulters, who have absconded from India to avoid prosecution. These are individuals/promoters who have taken or guaranteed large loans from banks and financial institutions, and have been alleged to have wilfully defaulted on these loans thereby defrauding the public and private sector banks at large. In order to curb this trend, the government ratified the Fugitive Economic Offenders Act, 2018, to allow confiscation of defaulter's properties in India.

To ensure a thorough investigation, the authorities have also started looking into bank officials and personnel to determine any instances of corruption or bribery that they may have been involved in, by sanctioning of such large loans without proper documentations and collateral.

> "The Prevention of Corruption Act expressly prohibits provision or receipt, directly or through a third party, an undue advantage, including gifts, free transport, boarding and hospitality"

Another recent trend that can be seen is that the law enforcement agencies have become more tech savvy and have increased their reliance on technological tools in tracking down complex corporate structures by removing their layers.

How about the acceptance of gifts or hospitality?

The Prevention of Corruption Act expressly prohibits provision or receipt, directly or through a third party, an undue advantage, including gifts, free transport, boarding and hospitality. However, under the Central Civil Services (Conduct) Rules, 1964 (amended till 2019), there is a provision for a nominal pecuniary threshold for gifts that a public servant may accept. Thus, while the public servant may accept gifts, meals or hospitality within the prescribed thresholds, the general perception is that there should be no intention to violate the provisions of the Prevention of Corruption Act.

Moreover, the Supreme Court of India in AB Bhaskara Rao v. Inspector of Police, CBI, Visakhapatnam, [AIR 2011 SC 3845] held that the quantum paid as gratification is immaterial and that conviction will ultimately depend upon the mens rea and conduct of the public official and proof established by the prosecution regarding the acceptance of such illegal gratification.

Therefore, to avoid any potential liability, most companies have clearly laid down their policies and monetary thresholds in relation to offering and acceptance of gifts, hospitality, especially during festivals in India.

What are the disclosure/reporting guidelines for corporations in India?

There is no specific legislation in India that requires corporations to disclose or report violations, potential or otherwise, of anti-corruption and bribery laws within their organisation.

However, under the Securities Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations 2015, listed companies are required to make disclosures relating to fraud and defaults committed by the company or its promoter, key managerial personnel, directors or employees, as applicable, in a prescribed manner.

Further, under the Companies Act, in case the statutory auditor of a company, while carrying out an audit, has reason to believe that fraud is being or has been committed, they are required to report the potential offence to the government if the sum involved is INR 10 million (approx. USD 135,500) or more. In cases where the amount involved is less than INR 10 million, the auditor must report the matter to the company's board of directors or audit committee (as applicable), which must then disclose the details of the offence in the director's report (which is required to be prepared on an annual basis).

What about whistle-blowing?

The Whistleblower Protection Act, 2014 was

passed by the Parliament of India in 2014 but it has still not come into effect. The legislation seeks to establish a mechanism to receive complaints relating to corruption or wilful misuse of power by public servants and to inquire into those complaints. While the whistleblower must be disclose his or her identity, the relevant authorities are statutorily obliged to ensure the whistleblower's anonymity and prevent their victimization thereafter.

There are various corporate legislations which emphasize on the requirement for companies to formulate a whistleblower policy.

For instance, the Securities Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 requires listed companies to devise an effective whistle blower mechanism to allow free communication of illegal and unethical practices.

The Companies Act also requires listed companies to establish a vigil mechanism for its directors and employees, to enable them to report legal violations, unethical behaviour or other such concerns. This encourages the employees to flag any unethical and illegal acts that they become privy to.

On a similar note, the Companies (Auditor's Report) Order, 2020 was issued by the Ministry of Corporate Affairs on February 25, 2020, with a view to encourage greater transparency in the financial affairs of the company. It not only introduces the requirement for companies to include a wide range of financial details and statements in its auditors' report like loans, deposits, taxes, properties, proceedings against the company for benami properties etc., but also mentions the need to disclose if any whistleblower complaints have been considered by the auditor, as received by the company, during the course of that financial year.

It is interesting to note that while there is no legal protection afforded to whistleblowers who make disclosures in connection within the private sector, most companies tend to provide protection to such whistleblowers through their internal policies and programmes.

How can corporations include law firms in their anti-corruption efforts?

There has been a considerable shift in the manner in which companies have attempted to raise awareness amongst employees and managerial personnel about anti-corruption and anti-bribery practices. This has primarily been implemented by conducting training sessions to educate the personnel of the applicable anti-corruption laws and dealings with third parties.

In order to better implement these training sessions, corporations can engage law firms to periodically conduct or participate in such workshops/sessions to educate and update the employees on the laws and also on the consequences of violating the applicable laws.

Depending on the size of the corporations, the law firms can also be called upon to make separate presentations to the board of directors and high-level managerial personnel.

In addition to raising awareness, the assistance of law firms can be sought in reviewing the internal policies relating to code of conduct, ethics and anti-corruption, payment facilitation, procurement and supply chain management from time to time. This will enable the corporations to keep their policies updated in line with the laws applicable in India and also jurisdiction of the parent company (as the case maybe).

As a matter of caution and to cover all bases, corporations can engage law firms on an annual basis to conduct an internal compliance review and audit of its practices and procedures already in place. This exercise will ensure that the internal controls of the company are kept in check and are strong enough to detect any bribes or other such corrupt practices.

Lastly, as a step to make the employees feel secure, a contact desk/point can also be allocated within the law firm to whom the employees can reach out without inhibitions in case any situations/dealings relating to anti-corruption have to be reported.

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Always learning

Greg Chew is General Counsel and Chief Legal Officer at Nanyang Technological University in Singapore, a research-intensive publicly-funded university with some 33,000 undergraduate and postgraduate students.

Having grown up in the UK, Malaysia and Australia, the Lion City has been his home for the past 18 years. Here Chew shares on his career journey, the benefits of collaboration, and the 'skills' all in-house lawyers need.

Tell us a little about your professional background and how you came to your current role?
Growing up I was fortunate to watch my Dad in chambers and in the courtroom. He would take me on road trips for his out of town court appearances, memories that I cherish.

I started as an in-house counsel with Keppel Offshore & Marine. Keppel gave me the opportunity to learn the commercial realities of the profession. Allens Arthur Robinson and Ashurst taught me precision. I was also fortunate enough to be given opportunities to learn discipline and flair at Motorola and Firmenich respectively. I have always been passionate about education and its role in our society, I even considered a career switch to an early childhood educator. So I jumped at the opportunity when offered to serve as General Counsel and Chief Legal Officer at Nanyang Technology University in Singapore.

How big is your team and how is it structured?
The team comprises 17 legal and compliance professionals. We work as one team, though we have divisional units focusing on ethics and compliance, corporate and commercial, corporate governance, innovation, investment, research and legal operations.

> "If a formal mentorship program is not offered, go out and seek mentors who you can or want to learn from, and then pay it forward"

What do you think are the biggest challenges facing in-house lawyers today?
The skills that unfortunately we pay less attention to in our early years as legal practitioners. Some of us refer to them as "soft skills", "emotional intelligence", "being commercial", "business partners" etc. From my perspective at least, these now just seem to represent skills that every in house lawyer should, or must, possess to support the complexity of the world we operate in.

What have been your biggest challenges? How did you and your team overcome them?
Accountability, Culture, Respect and Trust. We have taken great strides in our transformation, in change management, people evolution, new systems, policies and processes, and dispensing with others that were no longer relevant. We are still on that journey, always looking and pushing forward.

Did you have a mentor early in your career? Is mentorship important?
I didn't have a specific mentor but fortunate

enough to be mentored by individuals from all walks of life. I learnt something different from each of them, and I am grateful for the time and energy they spent with me. Mentorship provides life lessons and for those who are interested, don't wait for a formal program if one is not offered, go out and seek mentors who you can or want to learn from, and then pay it forward.

What are the biggest challenges you see specific to your industry?
The world is moving at such speed that universities, and educators, must evolve as quickly in the "how" and "what" to educate our leaders of tomorrow. For example, traditional learning is conducted in person, in a class setting. The current pandemic has accelerated e-learning. The legal and compliance enablers in universities must, to support the evolution, adapt, shift and prepare for the next stage of the learning journey, by enabling more accessible legal and compliance solutions.

Is technology changing the way you work? If so, how?
Audio visual tools and collaboration platforms are no longer a "nice to have", but an essential way of communicating and doing business. Most of our work is now electronic, "mobile" and on many occasions, automated. These tools make our work more efficient, so the time we save from it should be converted to opportunities which technology cannot replace nor replicate, which is the "partnership" our peers need and want.

What do you most look for in a law firm when outsourcing work?
The ability to translate great legal advice to real world situations.

Other than law firms, what service providers and tools help you most as a legal department?
Corporate secretarial providers, legal platforms that can support routine transactions and cloud based contract management solutions which can provide a sustainable legal model given financial prudence.

What aspects of your role do you most enjoy?
"Business Enablement" and "People Enablement". Its highly motivating to collaborate with our partners to find and deliver good and practical solutions. The education industry attracts individuals who have a "purpose", and so I focus, and get most enjoyment out of, helping our team grow and develop "their purpose". I have a responsibility to the University to build and sustain a great organisation to achieve the University's ambitions, but in equal measure a responsibility to care for my teammates beyond the role.

> "The successful legal service partner, whether in an individual capacity or as an organisation, has to be able to advise, work and communicate in adjacent fields not traditionally reserved for lawyers"

Looking forward, what changes do you foresee in the way that legal services will be provided in coming few years?
There is a lot of opinion out there on how legal services will evolve, some have come to pass, others have not. The need for specialist legal services will always remain, but there is so much readily available information in the public domain and multiple offerings that generalist legal services will continue to be commoditised. The successful legal service partner, whether in an individual capacity or as an organisation, has to be able to advise, work and communicate in adjacent fields not traditionally reserved for lawyers.

What advice would you give to young lawyers starting out in their careers today?
Grow in whatever area that interests you (it doesn't have to be legal), keep pushing your boundaries, be courageous, above all be kind and generous, and if you continue to act and think in this fashion, then you will be ready and willing for both the opportunities and challenges that come your way.

What is your hinterland (what do you most like to do away from work)?
Spend time with people I care about, help and have an impact where I can, and at the end of the day look back and know it was all enough.

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