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In-House
Community
Counsels
of the Year

Awards &
Celebration
2018

Volume 15 Issue 8, 2018



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SPECIALIST SEARCH & RECRUITMENT



Market Update
and Salary
Guide, 2018

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- E-money regulation
in Indonesia
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in Dubai:
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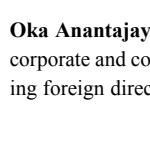


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About the IN-HOUSE COMMUNITY

A mutually supportive community of In-House Counsel helping In-House Counsel and Compliance Professionals meet their ethical, legal and business commitments and responsibilities within their organisations.

The In-House Community comprises over 21,000 individual in-house lawyers and those with a responsibility for legal and compliance issues within organisations along the New Silk Road, who we reach through the annual IN-HOUSE CONGRESS circuit of events, ASIAN-MENA COUNSEL magazine and WEEKLY BRIEFING, and the In-House Community online forum.



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Empowering In-House Counsel along the New Silk Road

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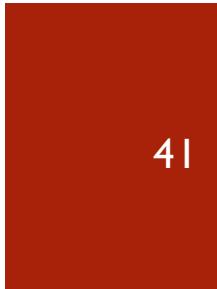
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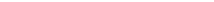


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Impact of the amendment of the Legal Guarantee of Stability in respect of existing mining projects in the DRC

The Government of the Democratic Republic of Congo (DRC) commenced the review process in respect of its Act No. 007/2002 of July 11, 2002 on Mining Code (Mining Code) in 2012. The process eventually culminated in the promulgation by the President of the Republic of the Act Amending the Mining Code (Amending Act).

As promulgated, the Amending Act contains provisions which considerably affect the fiscal, customs and exchange regimes of the Mining Code and a number of critical provisions for the protection of existing mining projects, in particular, Article 276 related to the Guarantee of Stability (Legal Guarantee of Stability).

Guarantee of Stability

The Mining Code was promulgated in 2002 to meet the needs of relaunching the mining sector, which was dormant. It put in place a legal mechanism that would attract foreign private investments in a sector which was for a long time managed by the state. Hence the establishment of the Legal Guarantee of Stability in the Mining Code is important for both the government and promoters of mining projects in the DRC. It is the bedrock of the national mining policy in that it stimulates the mobilisation of private investment in the mining sector.

The legislation affirms: "The Congolese State guarantees to the holders of mining rights the existence of a good investment climate expressed by its firm commitment to the respect of the rights granted by the Code and the fulfilment of its duties subject to such rights."

However, between 2002 and 2014, the relaunch of the mining sector did not yield sub-

"The Congolese State guarantees to the holders of mining rights the existence of a good investment climate expressed by its firm commitment to the respect of the rights granted by the Code and the fulfilment of its duties subject to such rights"

stantial revenues to the state for its social and economic development. Neither did it meet the various expectations based on the Mining Code.

Amending Act

The Amending Act has significantly reduced the scope of rights covered under the Legal Guarantee of Stability by limiting it only to the fiscal, customs and exchange regimes, and for period of five years as opposed to the period of 10 years as from the entry into force of the coming legislative amendments. As immediate enforcement of the Amending Act does not imply the implementation being backdated to July 11, 2002, especially because the legislator did not explicitly stipulate it in the Act, the Amending Act

provides for the future and does not harm acquired rights legally guaranteed by the state.

Thenceforth, it is clear that the Amending Act cannot be regarded as a prejudice to the interests of the beneficiaries of the Legal Guarantee of Stability for the mere fact of its promulgation and publication, as long as it has not been applied effectively. In this case, beneficiaries of the Legal Guarantee of Stability cannot be legally justified to request any compensation only if at the time of implementing the Amending Act, public services, administrations and civil servants tasked with implementing the Act refuse to grant them the full benefit of this guarantee, especially regarding not only its scope but also its period of intangibility. Consequently, any litigation against the government based on the mere promulgation and gazetting of the Amending Act before any court or any arbitral entity, could be considered as premature.

However, the government, being under the obligation to implement the provisions of the Amending Act, should comprehensively and unequivocally clarify, in its Mining Regulations to be amended, the scope of the Legal Guarantee of Stability and its effects on existing mining projects, as at the effective date of the Amending Act. The government should further instruct and train the civil servants tasked with implementing the Mining Code and the Amending Act on the best practices of the Code regarding the scope and the effects of the amendment of the Mining Code on the existing mining projects which are under the regime of the Mining Code. This would contribute to the good conduct of civil servants whose contrary practices would expose the State to compensatory actions for breach of acquired rights legally guaranteed by the state. This would allow the beneficiaries of the Legal Guarantee of Stability an opportunity to rightfully litigate for wrong or damaging application of the provisions of the Mining Code and its Amending Act.

The JLegal



Personality
Questionnaire
Experience

Throughout the year, JLegal examines the PQE of a senior in-house counsel. On this occasion we chat with Michelle Dillon, someone who would love to go back to New York in the Roaring Twenties or pre-Handover Hong Kong!

- What is on your mind at the moment?
What to wear for my friend's fancy dress party.
- What secret talent do you have?
Improvisation - needed frequently.
- If you weren't a lawyer you would be a ...
nicer person.
- Where is the best place you have ever been to?
Hong Kong - living there in my 20s.
- What is your idea of misery?
Boredom.
- What is the strangest thing you have seen?
My daughter cleaning up the kitchen... has only happened once.
- Top 3 favourite movies of all time?
High Society, The Usual Suspects and Bad Moms.
- What is your motto?
Work hard, play hard.
- If you could have one superpower it would be ...?
Mind reader.
- What do you consider the most overrated virtue?
Sobriety.
- What irritates you?
Lazy people.
- What was your last Google search?
Names of the seven dwarfs (see below).
- If you could time travel, where would you go?
New York in the 20s.
- What's the one food you could never bring yourself to eat?
Mango - can't stand mango.
- Which of the Seven Dwarfs is most like you?
Happy.

Michelle Dillon

Senior Director,
Head of Legal
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INDIA



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The impact of General Data Protection Regulations on Indian companies

The new European Union General Data Protection Regulation (GDPR) was adopted on May 24, 2016 and will come into effect on May 25, 2018, after a two-year transition period. This regulation stipulates that any and all businesses within the EU, or dealing with the EU, will have to comply with GDPR. This will make all businesses liable to protect any data that is categorised as "personal". Once it takes effect, it will replace the 1995 Data Protection Directive (Directive 95/46/EC).

Applicability of GDPR to Indian companies that process data

Extraterritorial applicability of GDPR — Article 3 (Territorial scope) of GDPR makes it clear that these regulations will be applicable regardless of whether the processing takes place in EU or not. Therefore, an Indian company processing personal data in context of activities of an establishment of a controller or processor in EU, will fall within the ambit of GDPR.

The challenges that GDPR poses for India

The GDPR is a legally binding regulation, not a directive that brings service providers directly under its purview. It affects Indian companies that have expanded or plan to expand globally. Certain challenges have been enlisted herein below:

- The regulation will limit EU companies' outsourcing options which will result in obvious opportunity losses for businesses in India;
- India's comparatively feeble data protection laws makes India less competitive as outsourcing markets in this space where other economies are updating their regulatory practices to ensure smooth inter-state operability;

- Largely inflexible, GDPR reduces the extent to which businesses can assess risks and make decisions when it comes to transferring data outside the EU;
- The regulations target service providers directly who will have to face high costs such as investment in "cyber insurance" whilst adopting new technology; and
- Infringements of certain provisions of GDPR shall be subject to stringent penalties.

"GDPR makes it clear that these regulations will be applicable regardless of whether the processing takes place in EU or not"

Obligations of Indian companies that process data

Prior to undertaking any processing activity, Indian companies will be required to enter into a contract with their customer (generally, a data controller). Such contract will, inter alia, stipulate the subject-matter and duration of processing activity, its nature and purpose and the type of personal data and categories of data subjects.

By way of such contract, a customer (the data controller) will seek from an Indian company a flow down of the following obligations:

- Implementation of appropriate organisational measures to ensure (i) pseudonymisation and encryption of personal data; (ii) confidentiality and integrity of processing systems; (iii) restoration of availability and access to personal data after a physical or technical incident; and (iv)

regular testing and evaluation of such measures (Article 32);

- In the event of a personal data breach, the same must be notified to the customer without undue delay (Article 34); and
- Carry out a data protection impact assessment prior to commencement of the processing activity (Article 35).

Guarantee of an adequate level of protection of data

The bedrock of GDPR, in terms of Article 45, is the stipulation of 'adequacy requirements', which curbs the transfer of personal data to any third country or international organisation that does not "guarantee an adequate level of protection". In doing so, the European Commission considers whether the legal framework prevalent in the country to which the personal data is sought to be transferred, affords adequate protection to data subjects in respect of privacy and protection of their data.

In India, the current legal framework pertaining to data privacy and protection is governed by the Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules, 2011, which is far from being adequate. The recent landmark judgment of the Hon'ble Supreme Court in the case of Justice KS Puttaswamy (Retd.) & Anr Vs. Union of India & Ors, declaring the right to privacy as a fundamental right has provided the much-needed impetus to introducing a long-awaited, all-encompassing data protection legislation in India.

Conclusion

GDPR is an excellent opportunity for India to update its regulatory practices and effectively implement the fundamental right to privacy. Indian companies, should use this as a stepping stone to move up the value chain by strengthening its automation portfolio and make the industry more competitive in the global market.



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HONG KONG 7-10 YEARS

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Yahya**

Structuring a joint venture arrangement based on musharakah mutanaqisah

Parties to a joint venture arrangement that wish to form a joint venture in accordance with the principles of Shariah may consider forming such a venture based on the musharakah mutanaqisah concept.

Musharakah mutanaqisah

Musharakah mutanaqisah simply means diminishing partnership. According to Shariah Standards published by Accounting and Auditing Organisation for Islamic Financial Institutions' (AAOIFI), musharakah mutanaqisah refers to "a form of partnership in which one of the partners promises to buy the equity share of the other partner gradually until the title to the equity is completely transferred to him. This transaction starts with the formation of a partnership, after which buying and selling of the equity take place between the two partners. It is therefore necessary that this buying and selling should not be stipulated in the partnership contract. In other words, the buying partner is allowed to give only a promise to buy. This promise should be independent of the partnership contract. In addition, the buying and selling agreement must be independent of the partnership contract. It is not permitted that one contract be entered into as a condition for concluding the other" (AAOIFI, 2008, Shariah Standard No.12, paragraph 5/1, page 217).

Brief description

Musharakah mutanaqisah can be applied in various types of business ventures including for property development. In the case of a venture for property development, the brief description of the venture is as follow:

(i) Partner A and Partner B will jointly acquire and develop the project land. Partner A shall contribute a certain sum as the initial payment, being Partner A's initial payment,

for instance, 90 percent of the total cost for acquisition and development cost of the project land (Total Cost). Partner B shall contribute a certain sum as the initial payment, being Partner B's initial payment, for instance, 10 percent of the Total Cost.

- (ii) During the co-ownership period, Partner A will lease the Partner A's ownership share to Partner B on the basis of Ijarah (Lease) for the rental payment and subject to the terms and conditions as set out in the Ijarah Agreement.
- (iii) Partner A then appoints Partner B as its service agent in relation to the project land upon the terms as stated in the Service Agency Agreement.
- (iv) At the expiry of the co-ownership period, Partner B undertakes to acquire Partner A's ownership share by making the acquisition payment promptly in accordance with a sale contract. Partner A's ownership share corresponding to the acquisition payment made by Partner B is thereafter fully transferred from Partner A to Partner B until the project land is wholly and fully owned by Partner B.
- (v) The rental payment shall cease immediately upon Partner B having fully paid the acquisition payment and fully acquired Partner A's ownership share in the project land from Partner A, but in any case immediately upon the expiry of the Ijarah tenure.

Documents involved

Based on the brief description above, the relevant agreements involve for the joint venture arrangement based on musharakah mutanaqisah are as follows:

- (a) Musharakah Mutanaqisah Agreement, to regulate on the formation of the joint venture based on the musharakah mutanaqisah concept and the co-ownership of the pro-

ject land between Partner A and Partner B.

- (b) Sale Contract, to regulate on the sale of Partner A's ownership share in the project land from Partner A to Partner B according to the agreed terms in the Musharakah Mutanaqisah Agreement.
- (c) Ijarah Agreement, to regulate on the lease arrangement of the portion of the project land owned or beneficially owned by Partner A to Partner B.
- (d) Declaration of Trust, whereby Partner B will declare that it shall hold the portion of the ownership share and rights in the Project Land that it does not own during the co-ownership period, in trust for Partner A subject to the terms of the Musharakah Mutanaqisah Agreement.
- (e) Service Agency Agreement, to regulate on the appointment of Partner B as service agent of Partner A in respect of the project land.
- (f) Purchase Undertaking by Partner B, whereby Partner B undertakes to acquire Partner A's ownership share in the project land upon occurrence of the event of default.

Shariah requirements

In structuring of a joint venture based on musharakah mutanaqisah, it is very important to ensure that the structure and all documents involved are in accordance with the Shariah principles. In the context of Malaysia, if the parties to the joint venture are Islamic financial institutions licensed or governed by the Central Bank of Malaysia, the parties must comply with the guidelines and all policy documents issued by the Central Bank of Malaysia including the policy document of Musyarakah issued on April 20, 2015.

Conclusion

Musharakah mutanaqisah is a viable structure as an alternative to a normal joint venture arrangement and this model can be applied and explored by any party especially for those who requires the venture to comply with the Shariah principles.

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Much EndO about nothing

German-American socialist editor and author, Oscar Ameringer, once said: "Politics is the gentle art of getting votes from the poor and campaign funds from the rich, by promising to protect each from the other." This is, indeed, a tough balancing act if at all possible. President Rodrigo Duterte found this to be so, at least with respect to the issue of "contractualisation".

During the 2016 elections campaign, he promised, as did the other candidates to be fair, to put an end to the "Endo" or the practice of engaging employees on a contractual basis, thus, avoiding the onset of regularisation. To this end, his administration has issued DOLE Department Order No. 174. Just recently on May 1, 2018 (Labour Day) and in a dramatic fashion, he signed the much-anticipated Executive Order No. 51 (EO 51) and, the tough guy that he is, warned firms involved in labour-only contracting that "their days were numbered". Malacañan immediately claimed that this was the fulfilment of the president's campaign promise to end the Endo. But is this really the case? Or, as Shakespeare said, is it just a case of much ado about nothing?

Let me count the ways.

The EO expressly prohibits "illegal contracting". It says: "Contracting or subcontracting when undertaken to circumvent the worker's right to security of tenure, self-organisation and collective bargaining, and peaceful concerted activities ... is hereby strictly prohibited." Pro-labour? Not so fast. Illegal contracting has always been illegal since Adam. That is why it is illegal in the first

place. The Labor Code says labour-only contracting is illegal. Certainly, the EO did not make it so. So nothing much here. Fuss over nothing.

Next, the EO provides that: "In case the compliance order involves a directive to regularise workers, the employment of the latter shall not be terminated pending appeal of such order except for just or authorised cause." Again, this is not new. This is already in a previous DOLE Department Order on the conduct of inspection, ie DO 183. If at all, the EO even made this pro-management. Under DO 183, there is no qualification, at least not explicitly — ie pending appeal, the employees shall not be terminated. Full stop. Under the EO, the employees can be separated if there is just or authorised cause. So the employees can be separated due to redundancy pending appeal? Hell yes, and it's a management prerogative. So much for security of tenure.

The EO further provides that the "Secretary of Labor and Employment may, by appropriate issuances, in consultation with the National Tripartite Industrial Peace Council ... declare activities which may be contracted out." Finally, a new provision under the EO. But this could swing either way. The secretary's determination may or may not be in favour of labour. And the question is, can the secretary go against the Labor Code and case law? The Supreme Court has time and again ruled that even core activities can be contracted out. Ditto with the Labor Code. So, playing it safe, the secretary can just say he will act in accordance with the law and jurisprudence and we

are back to square one.

At bottom, therefore, the EO is just much EndO about nothing. In trying to balance the interests of labour and management, the EO comes up short. It is neither here nor there. Even the president himself said that the EO has "no teeth". The president, prior to the issuance of the EO, had said that it is not within his power to prohibit absolutely contracting out, let alone legitimate. It is up to the Congress to do that. He should have stuck to such a position. He should not have issued the EO, May I or not. Arguably, he has a point because Article 106 of the Labor Code only gives the DOLE secretary the power to regulate contracting out per se. Of course, our friends from the labour sector do not agree. They never agree anyway.

But I agree. Let the Congress do it. The House of Representatives has approved House Bill 6908 and the battle is now in the Senate. Let's see where this Endo saga, with politicians steering, will lead us. The more important question is, will Congress end Endo? I want to give Congress the benefit of the doubt even as I am again and again reminded of Ameringer.

This article first appeared in Business World, a newspaper of general circulation in the Philippines. The author is a partner and monitor at the labour and employment department of the Angara Abello Concepcion Regala & Cruz Law Offices (ACCRALAW). The views and opinions expressed in this article are those of the author. This article 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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Head of Listed Company Advisory Hong Kong 6-15+ PQE

Top-tier law firm has an unusual opportunity for a lawyer to assume a compliance advisory role to its Hong Kong and PRC listed company clients. You will need excellent technical knowledge of the relevant law as you will be the head of the group. As this is an advisory role heading a team, the hours will be regular. The salary is very competitive. (IHC 16516)

Data Privacy Hong Kong 5+ PQE

A lawyer with experience in Data Privacy who is interested in specialising in the sector and becoming the global DPO is sought the legal and compliance team of this household name. Whilst assuming the role as DPO there will also be the opportunity to handle other regulatory matters as well. Knowledge of the GDPR is important. No language skills needed. (IHC 16524)

Asset Finance Lawyer Hong Kong 3-6 PQE

Global corporation seeks an asset finance lawyer to oversee a financing transactions including trading, leasing and acquisition matters. Great opportunity to join an in house legal team and assist the business on high-profile deals. Open to overseas candidates and Chinese is not required. (IHC 16481)

Commercial Legal Counsel Hong Kong 5-10 PQE

This Hong Kong conglomerate is looking to hire a legal counsel with in-house experience gained with an established commercial business. As part of a team you will focus on their HK and growing SEA regional business. Experience in the consumer goods or food and beverage industry is highly beneficial. Chinese language skills required. (IHC 16332)

Senior Risk/Compliance Lawyer Hong Kong 6+ PQE

This growing international law firm seeks a risk specialist to provide strategic compliance and risk management advice and assist on projects for the firm's international offices. You will work closely with the partnership on firm-wide policies and procedures and advise on conflicts, regulatory and AML issues. Knowledge of the SRA and practices in HK is highly beneficial. (IHC 16569)

Greater China Legal Counsel Hong Kong / Taiwan / China 10-18 PQE

Global insurance and consulting company seeks an Assistant General Counsel to provide legal and Compliance support to their business across Hong Kong, Taiwan and China. Reporting directly to General Counsel for Asia and MENA, you will manage a small team and be responsible for advising on corporate and M&A and other general commercial matters. Mandarin required. (IHC 16545)

Head of Legal and Compliance Malaysia 6-10 PQE

Global leader in insurance and risk management consulting seeks a lawyer to oversee their legal and compliance matters. You will be responsible for providing legal support to the business team on their commercial contracts. You should be Malaysian qualified and ideally working in-house covering both legal and compliance in an insurance company. (IHC 16557)

Regulatory Counsel Singapore 3-6 PQE

Investment company seeks a corporate or regulatory lawyer to join their legal regulatory team. You will work closely with the business and transactional team and provide regulatory advice on anti-bribery, anti-trust, takeover code and financial regulations relating to the company's global investments. You should be Singapore qualified in corporate finance with regulatory experience gained from a top tier law firm. (IHC 15831)

Legal Counsel Singapore 4-8 PQE

Global consulting company with focus in the insurance sector seeks a legal counsel. You will advise the business on all corporate, commercial, regulatory, corporate secretarial and dispute matters across ASEAN and Hong Kong. You should be qualified in a commonwealth law jurisdiction with some experience in insurance work gained with a top tier insurance company in Singapore. (IHC 16575)

General Corporate Beijing / Hong Kong 7+ PQE

A leading PRC company with substantial assets oversees an in-house counsel with M&A experience to support its global expansion. The position will support the company's most profitable business unit in China. This is a great opportunity to join a growing business that offers a stable and supportive working environment. (IHC 16073)

Transactional lawyer - Entertainment Beijing 10+ PQE

A leading Technology company is looking for a senior legal counsel to join its substantial and award winning legal team. The ideal candidate should have solid transactional experience gained from both in-house and private practice. Entertainment industry experience would be a plus as the company expands its portfolio in this area. (IHC 16418)

Dispute Resolution Beijing 8+ PQE

A well-known private company in China is looking for an experienced dispute resolution lawyer to lead its litigation team to handle a range of commercial disputes. Candidates should possess good communication and management skills. PRC Bar is essential. (IHC 13878)

Employment Shanghai 5-10 PQE

World leading technology company with substantial operations in China seeks a PRC employment specialist who can support the HR team across China on all manner of employment work. Lawyers from either in-house or private practice will be considered. Some travel across the PRC is required. Great opportunity to join an award winning in-house team. (IHC 16521)

General Corporate Shanghai 8+ PQE

This international company which is a market leader in its sector has recently undergone a re-organisation and now seeks a senior PRC lawyer to support the company on all its commercial issues including employment, general contract work and M&A. Opportunity to build a team over the long term. (IHC 16537)

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SOUTH KOREA



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“Fat finger” mistakes in the Korean stock market

In its recent payment of a cash dividend to 2,018 members of its employee stock ownership association, an employee of Samsung Securities accidentally granted each of them 1,000 shares instead of W1,000 per each stock. Due to the error, 28.1 billion shares were granted instead of W28.1 billion, which was supposed to be paid to the members of the employee stock ownership association. The shares were worth a significant amount — W112 trillion. As a result, attention is being focused on so-called “fat finger” mistakes in the stock market, which refers to typos made in transactions.

There are two representative cases in Korea regarding such fat finger mistakes, which drew different decisions from the court.

First, in the so-called Mirae Asset case (Supreme Court decision 2013Da49794 rendered on November 27, 2014), Mirae Asset Securities was commissioned by its client to make a purchase order for a futures transaction at the price of W0.8, but the employees of the company mistakenly input the price as W80. As a result, Yuanta Securities Korea gained about W7.8 billion of profit by selling a 0.8 won futures at 100 times its market value of W80. Mirae Asset filed an application for the correction of an

erroneous transaction to the Korea Exchange due to the mistake made by its employees. Hyundai Marine & Fire Insurance, Mirae Asset's insurance provider, paid a claim of W5 billion as a result of the error. Mirae Asset cancelled the transaction and argued that Yuanta Securities Korea had been aware of the fact that the inflated value was input by mistake but still gained a profit by capitalising on the mistake.

On the above-stated matters, the Supreme Court has acknowledged the cancellation of the transaction in question by recognising the so-called “predatory order” with the following opinion: “When the very first execution of the transaction agreement was concluded at W80, Defendant (Yuanta Securities Korea) confirmed that the sell order was indeed at W80 and was sufficiently aware that such a high price was due to a mistake on the part of the person who submitted the order. But Defendant made a number of sell orders, taking advantage of the mistake, in such a short period of time in an attempt to pocket the difference between the order price and the market price by concluding sell/buy transactions before other sellers could. Therefore, even though it is true that Mirae Asset Securities was grossly negligent in placing the purchase order in the

present case, such purchase order may be cancelled by reason of error (when the other party was aware of Mirae's mistake).”

Second, in the so-called Hanmag Securities case, which was similar to the above-stated Mirae Asset case, the court determined in the first and second instances that “although the present scandal resulted from the submission of an erroneous bid by an employee who was in charge of trading, it was due to Hanmag's gross negligence and thus, it cannot be cancelled” and held that “anyone who works in the business of financial investment should be equipped with a high level of professionalism and should bear responsibility to conduct a thorough review when placing an order, and the employee who was assigned to place the order in question belonged to a company which was not an investment dealer. In light of the above, it is clear that Hanmag has made a grave mistake” as the main ground for their decision. The above case is currently pending in the Supreme Court (case no.: 2017Da238486) and there is much attention towards the final decision to be rendered by the Supreme Court.

Therefore, the decision by the Supreme Court on the so-called Hanmag Securities case is expected to provide the first barometer to the stock market in Korea on the standards of legal determination regarding fat finger mistakes.



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In-house

Head of Legal, Japan | 15+ yrs pqe | Tokyo REF: 14479/AC

This Fortune 500 life science company seeks a dynamic lawyer with native-level fluency in spoken and written Japanese to head up its Japan operations based in Tokyo. You must have at least 15 years' PQE at a top-tier law firm and/or corporate law department. Candidates with dual qualifications in both Japan and another jurisdiction are preferred. Regulatory experience in the biopharmaceutical industry in Japan is highly desirable. Strong drafting and negotiation skills are required as well as fluent English.

MD Legal, Global CIB | 15+ yrs pqe | Hong Kong REF: 14278/AC

A unique opportunity to join the market leader, this institution requires a senior lawyer with strong leadership and management experience plus a track record in driving a business forward. Based in Hong Kong, broad ranging product and transaction experience is sought with bilingual fluency in written and spoken English and Mandarin plus proven business experience covering Greater China. Given the responsibilities and executive leadership, candidates must have no less than 15 years' PQE gained at top international law firms and prestigious financial institutions.

Compliance Officer, China | 8+ yrs exp | Shanghai REF: 14482/AC

This Fortune 500 technology conglomerate seeks an experienced compliance professional based in Shanghai to lead their compliance program in China. You will be responsible for ensuring policies, procedures and standards of conduct comply with industry, regulatory and the company's requirements. You ideally have a Bachelor of Science/Arts with over 8 years' compliance

experience, 5 of which are in a management role at a large-scale corporation. Preferred candidates have an additional J.D./Master of Business Administration plus in-depth experience in investigations and compliance risk management practice within the life science, medical device or pharmaceutical industry. You must have fluent written and oral English and Mandarin for the role.

SVP, Asia Equities | 6-10 yrs pqe | Hong Kong REF: 14364/AC

This bulge bracket bank is seeking a qualified lawyer with 6-10 years' PQE to join their Asia equities legal team. Based in Hong Kong, you will provide legal advice and support on equity transactions or corporate equity derivatives. Significant banking and equities experience must be gained at a top-tier UK law firm and at an international financial institution; candidates with strong academics will enjoy a distinct advantage. Excellent communication skills plus fluent English are required; a good command of Chinese is highly desirable but not essential.

Legal Manager, India | 6-10 yrs pqe | Gurgaon REF: 14400/AC

This multinational corporation is seeking a Common Law qualified lawyer to lead the legal team for their businesses in India. You will primarily be responsible for providing legal support on sales, marketing, finance, human resources, supply chain and business development issues. You will have solid experience in commercial contract and general corporate work at MNCs in India. Being dually qualified in both India and the US/UK/other Common Law jurisdiction plus being a member of the Institute of Company Secretaries of India will give you an advantage. Strong drafting and communication skills are essential, plus fluent written and oral English.

Private Practice

Senior Insolvency Lawyer | 7-9 yrs pqe | Hong Kong REF: 14451/AC

This top-tier global law firm is seeking a senior lawyer for their highly regarded insolvency team in Hong Kong. In this role, you will take a lead role on a number of insolvency cases and as such must have 7-9 years' relevant PQE at a leading law firm. Dual qualifications in both Hong Kong and another Common Law jurisdiction are highly desirable. Candidates with first chair experience and an aptitude for business development will jump to the head of the line. Fluency in English and Chinese (either Cantonese or Mandarin) is essential.

Senior Lawyer, PE/VC | 5+ yrs pqe | Beijing REF: 14461/AC

Top Chinese law firm is seeking a high-calibre private equity or venture capital lawyer to join their highly regarded corporate practice in Beijing. Ideally, you hold over 5 years' PQE in private equity or venture capital at a top-tier law firm, while overseas qualified lawyers with international law firm experience are preferred. Strong English drafting skills plus fluent English and Mandarin are required.

Associate | 3-5 yrs pqe | Beijing REF: 14483/AC

This White-Shoe law firm is looking for an international-qualified (USA/England & Wales/Singapore/Hong Kong) lawyer with solid transaction experience in the Chinese market to join their Beijing office and handle inbound and outbound investments. You should have 3-5 years' PQE in M&A transactions and PE investments gained in an international or top-tier PRC law firm. You must have fluent written and oral English and Mandarin for the role, as well as a strong academic record.

Associate, Litigation & Enforcement | 3-4 yr pqe | Tokyo REF: 14450/AC

This White-Shoe law firm is looking for a mid-level associate to join their litigation and enforcement practice in Tokyo. Ideally, you hold 3-4 years' PQE in relevant related areas gained in a top-tier law firm. You should also have a JD and be truly bilingual in English and Japanese. Good interviewing and drafting skills are essential.



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VIETNAM



By Dao Thi
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Guidelines for food safety rules further streamlining administrative procedures

On February 2, 2018, the government promulgated Decree No. 15/2018/NĐ-CP guiding some articles of the Law on Food Safety 2010 (Decree 15). Below are some notable contents of Decree 15.

Self-declaration of food products

Organisations and individuals producing and trading food (collectively, the producers and traders) are entitled to self-declare their products on mass media or their website or they can make a public announcement at their headquarters. The producers and traders can self-declare pre-packaged processed food, food additives, food processing aids, food containers and packaging materials directly contacting food, excluding the following products which must be registered with the competent authorities regarding the product declaration:

- health/dietary supplements, medically nutritious foods, foods for special dietary regimes;
- nutritional food for children aged below 36 months; and
- mixed food additives with new uses, food additives not on the list of those permitted to be used in food products or where the user is not an eligible user as regulated by the Ministry of Health.

Exemption from product self-declaration applies to manufactured and/or imported products and raw materials that are only used for production or processing of export products or internal production of the producers and traders and which are not sold in a domestic market.

Exemption from certificate on satisfaction of food safety conditions

The following establishments are not required to have a certificate that the establishment satisfies food safety conditions:

- small-scale primary food manufacturers;
- production and trading of food without a fixed address;
- small-scale primary food processors;
- small-scale food sellers;
- sellers of pre-packaged foods;
- production and trading of food utensils, food packaging materials and food containers;
- restaurants within hotels;
- communal kitchens which are not registered as a food business;
- street-food vendors;
- establishments which have been issued with one of the following certificates: Good Manufacturing Practices (GMP), Hazard Analysis and Critical Control Points (HACCP), International Organisation for Standardisation (ISO) 22000, International Featured Standard (IFS), British Retail Consortium (BRC), Food Safety System Certification (FSSC) 22000 or an equivalent certificate.

Food advertisement

Food products for which advertisement contents must be registered prior to conducting an advertisement include:

- health/dietary supplements, medically nutritious foods, and foods for special dietary uses;
- nutritious products for children under the age of 36 months which are not prohibited from advertising under the Law on Advertising 2012.

Exemption from State inspection of safety of imported foods

Except where there is a warning about food safety, the following imported foods are exempt from state inspection of safety:

- products for which a certificate of receipt of registration of product declaration has been issued;
- products for personal consumption or for a journey brought in by people entering Vietnam, or sent in advance or sent after the trip; and presents and donations within the limits of import duty exemption as stipulated by the law on taxation;
- products imported for use by individuals entitled to diplomatic privilege and immunity;
- products in transit or transhipment, temporarily imported, re-exported or sent to a bonded/customs warehouse;
- product as sample for testing or research purposes in a quantity compatible with such purposes and certified by the entity concerned;
- products as samples for fairs or exhibitions;
- manufactured and/or imported products and raw materials are only used for production or processing of export goods or internal production and are not sold domestically;
- products temporarily imported for sale at duty-free shops; and
- goods imported for urgent requirements at the direction of the government or the prime minister.

With the reform of administrative procedures under Decree 15, it supports producers and traders to take the initiative in production and business activities, save costs to focus on creating products that are suitable for the market, improve product quality and increase competitiveness.

Decree 15 took effect on February 2, 2018.



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EVENT REPORTS

In-House Community Congress – Vietnam and Indonesia

Ho Chi Minh City

There was a record turnout for the fifth Ho Chi Minh City In-House Community Congress at the Lotte Hotel in District 1, held in April.

The Congress opened with two engaging panel discussions: 'The In-House Development Model — How to benchmark the in-house team's evolution?' and 'Women in Law: Women in In-House: a discussion regarding mentorship and meaningful careers', featuring the thoughts of Nang Nguyen, head of legal for ANZ Bank in Vietnam; Thuy-Minh Lai, chief admin officer and country legal counsel for Citi in Vietnam; Tran Anh Hong, chief legal counsel for Vietnam at Procter & Gamble; Tran Vo Quoc Son, general counsel and head of internal audit with the legal and compliance team at Samsung Vina Electronics; Nguyen Ha Quyen Hoang, partner at LNT & Partners; Bree Miechel, partner at Reed Smith; Ha Thi Tinh, senior Vietnamese attorney at Yoon & Yang Law; and moderated by Tim Gilkison, managing director of the In-House Community.

The event proceeded with a full day of informative workshops covering coordina-

tion between in-house and external counsel, strengthening the in-house role, global corruption investigations, Vietnam's new penal code, protecting the company from former employees, international capital markets, alternative funding in cross-border investments and protection of trade secrets in Vietnam.

Jakarta

The fourteenth In-House Congress in Jakarta brought together leading in-house lawyers, chief executives, company directors and compliance professionals from both the private and public sectors in Indonesia.

The opening panel discussion on women in law included in-house input from Heryatmita Thalib, head of legal for Samsung Electronics in Indonesia, and Reski Damayanti, head of legal for Unilever in Indonesia, alongside Mohamed Idwan Ganie, managing partner of Lubis Ganie Surowidjojo; Kendra MacDonald, senior associate at Reed Smith; and Hanim Hamzah, regional managing partner at ZICO Law.

Workshops included sessions that examined



Ho Chi Minh City Congress



Jakarta Congress

the evolving landscape of international joint ventures with Reed Smith; resolving disputes with Roosdiono & Partners (a member of ZICO Law); Indonesian financial regulations with Makes & Partners; and fundamental legal issues surrounding private equity with Dewi Negara Fachri & Partners (in association with Hogan Lovells).

Thanks to all our speakers, as well as our valued co-hosts at both events, Hogan Lovells, Latham & Watkins, LNT & Partners, Lubis Ganie Surowidjojo, Makes & Partners, Reed Smith, Russin & Vecchi, VILAF, Yoon & Yang, ZICO Law and our sponsors, Hughes-Castell and Robert Walters.

A special thanks on behalf of the In-House Community™ to all our speakers, which included:



A special thanks on behalf of the In-House Community™ to all our speakers, which included:



MOVES

The latest senior legal appointments around Asia and the Middle East



AUSTRALIA

Clyde & Co has added insurance and cybersecurity practitioner **John Moran** as a partner, based in Sydney. Moran moved to Australia in 2012, having practiced in London and Dublin, where he specialised in contentious insurance. He is admitted in New South Wales, Ireland, England and Wales. He was made a partner at his former firm in May 2016. Moran's practice encompasses cybersecurity and IT liability, professional indemnity, financial institutions and directors and officers. He was responsible for the establishment of the data breach incident response practice at his former firm, and is considered by many in the market to be a pioneer in this area. In addition to his insurance work, Moran has also shown leadership in initiatives, such as diversity and inclusion, technology and innovation and graduate recruitment. He was responsible for the implementation of several successful client-facing, technology-driven efficiency projects at his previous firm, where he also sat on the innovation committee.



John Moran

Jones Day will add **Michael Lishman** as a partner in the M&A practice in its new Melbourne office on August 1, 2018. Lishman joins from Gresham Partners, a leading Australian investment bank, where he was a managing director in its Perth office. He has acted on many of Western Australia's largest M&A transactions in recent years, including in the oil and gas, mining, financial services and transportation sectors. His experience includes public company takeovers and schemes, private M&A and complex restructurings.



CHINA

Llinks has added renowned disputes lawyer **Patrick Zheng** as head of dispute resolution. Zheng has more than 20 years' experience in cross-border dispute resolution and has worked in a couple of leading international law firms in the US and China. His previous career includes senior consultant of Herbert Smith, partner of Clifford Chance, and managing partner of Clyde & Co's Beijing office. Prior to turning to private practice, he had worked at CIETAC for eight years. Zheng has handled hundreds of cases in international arbitration and disputes, including almost 100 cases before foreign venues. He has represented clients before the CIETAC, HKIAC, ICC, LCIA, SIAC, SCC and courts of Hong Kong, London and the US. His experience include the high profile case of China Shanshui Cement Hong Kong litigation, the US investigation on alleged violation of sanctions against ZTE, PetroChina's arbitration case before the SIAC, and the investment arbitration between Beijing Urban Construction and the Republic of Yemen (ICSID). He is a panel arbitrator of various arbitration institutions, such as the CIETAC, HKIAC, KCAB, KLRCA and SIAC.



MALAYSIA

Zaid Ibrahim & Co, a member of ZICO Law, has added **Alvin Julian** and **Jeyakuhan SK Jeyasingam** as litigation and dispute resolution partners in the firm's Kuala Lumpur office. Julian brings over 25 years of experience as a litigator, and has appeared before all levels of court and alternative dispute resolution forum in Malaysia. He has extensive experience advising local and foreign clients on various matters, including anti-money laundering, anti-corruption, civil litigation, corporate and commercial litigation, regulatory compliance and enforcement, insider trading and financial regulations and securities legislation. On



Alvin Julian

the other hand, Jeyasingam has over 21 years of experience in commercial litigation services, for disputes in stratified and landed property, concerning common property, facility management, real estate acquisition, sales and leasing sectors. He has also advised a wide range of clients from an array of industry sectors on corporate law documentation for major international projects. Jeyasingam is also a frequent speaker and panelist on topics relating to land and building laws, and has contributed articles to various publications on the subject of property management.



Jeyakuhan SK
Jeyasingam



SOUTH KOREA

DR & AJU has added heft to its antitrust team this month with the addition of **Dong Eon Cha** from Yoon & Yang. After joining Yoon & Yang in 2011, Cha handled several prominent cases, such as successfully defending a federation of Korean industries vice-chair against corruption charges related to former President Park Geun Hye's impeachment trial. He is also a scholar, having written the textbook "Criminal Evidence Law" (2007) and co-authored the Korea chapter in "The Anti-Bribery and Anti-Corruption Review" (2016). Prior to entering legal practice, he served as a public prosecutor for 20 years, gaining a reputation for swift, untainted investigations of alleged misdeeds by conglomerates.

K&L Gates has further bolstered its global energy, infrastructure and resources practice with the addition of **Eugene Chang** as a partner in the Seoul office. Chang joins from the Tokyo office of Orrick, Herrington & Sutcliffe, where he was a senior counsel. He will begin his tenure with K&L Gates in its Tokyo office, while completing his registration in Korea. Chang's practice focuses on cross-border energy and infrastructure project developments, project and structured finance, and M&As. In the project development sphere, he has worked on both conventional and renewable power projects, and has represented both lenders and borrowers on a variety of cross-border financings, with recent experience including advising Korea Development Bank and Korea Eximbank on complex cross-border financings. Chang also has represented many major Korean developers/sponsors, such as Kepco, Posco, SK, Hanwha and Hyundai Heavy Industry on their overseas energy projects.



TAIWAN

K&L Gates has continued to bolster its energy, infrastructure and resources practice with the addition of **Owen Chio** as a partner in the Taipei office. Chio joins from KPMG Law, where he was a global co-leader of the compliance practice. His experience includes advising on cross-border M&As, investments and related corporate/official approvals, as well as on general corporate and commercial matters and compliance issues. He has been involved in some of the most significant deals for major multinational corporations and state-owned enterprises in Taiwan, and has substantial experience acting for MNCs on a long-term basis in post-acquisition/investment corporate commercial matters.



UAE

Simmons & Simmons has added **Lee Irvine** as a capital markets partner in its Dubai office. Previously counsel at Latham & Watkins, Lee has extensive experience in advising sovereigns, quasi-sovereigns, financial institutions and public and private companies on all aspects of conventional and Islamic debt capital markets, equity capital markets and liability management. He has been in the Gulf for more than 10 years, and his clients include sovereigns, quasi-sovereigns, financial institutions and public and private companies.

DEAL OF THE MONTH



Asian-mena Counsel Deal of the Month

Huya's US\$180m Nasdaq IPO

The Chinese answer to Twitch soared on its debut in New York.

China's most popular game-streaming platform completed a hugely popular initial public offering in New York in May.

Huya's stock has more than doubled in price on the New York Stock Exchange since its shares started trading, reflecting investors' optimism in the future of game-streaming, e-sports and particularly their popularity in China, which is the world's biggest market for video games in terms of revenue and number of gamers.

Market research company Frost & Sullivan reckons China has around 650 million gamers, while the country's e-sports market has roughly 230 million participants.

The company has a dominant position in this market, helped by the government's decision to ban Twitch, the leading game-streaming service every-

where else in the world.

Huya launched in 2014 as a unit of parent company YY. It was carved out as a standalone business in 2016 after the transfer of all assets from YY to a variable interest entity, Guangzhou Huya. A holding company structure was then created in 2017 through entities in Hong Kong and the Cayman Islands, and a series of mainland China entities to form an onshore-offshore structure.

YY remains the controlling shareholder and Tencent also owns a substantial stake in the business, while both companies also have business cooperation agreements with Huya that provide it with access to technology, payment systems, broadcast resources, game development and distribution.

Huya's underwriters — Credit Suisse, Goldman Sachs and UBS —

priced the IPO at the top of the marketed range at US\$12, which allowed the company to raise US\$180 million. But the stock had risen to more than US\$29 by the end of May, meaning that the company had left a very generous US\$250 million of value on the table for its new shareholders.

Skadden, Arps, Slate, Meagher & Flom (with a team led by partners Julie Gao and Haiping Li) and **Commerce & Finance Law Offices** acted as US and China counsel, respectively, to Huya. **Kirkland & Ellis** (led by partners David Zhang and Steve Lin) and **Fangda Partners** acted as US and China counsel, respectively, to the underwriters. **Maples and Calder** in Hong Kong acted as Cayman Islands counsel to the company, led by partners **Greg Knowles** and **Richard Spooner**.

Other recent matters include:

Colin Ng & Partners has acted as Singapore counsel for **Hera Capital Partners Holdings IV**, a Singapore-domiciled single asset fund, which is an investor in a series E-plus pre-IPO investment round by Go-Jek. Go-Jek is one of South-east Asia's leading digital platforms providing consumers with transportation, food delivery, logistics and payment services. Go-Jek's payment system, known as Go-Pay, has emerged as one of the most popular mobile payment platforms in Indonesia. The main objective of the fund is to sell its investment in Go-Jek, following a successful IPO of Go-Jek. Partner **Bill Jamieson** led the firm's team.

Squire Patton Boggs is advising on the acquisition by **International Entertainment** of Wigan Athletic Football Club from the Whelan family. The transaction is subject to approval from the English Football League and the Hong Kong Stock Exchange. Wigan Athletic has just achieved promotion from the English Football League Division One and will play in the Championship next season. In 1995, Whelan bought a stake in Wigan and, during the next 10 years, oversaw the club's promotion from the fourth tier of the football league to the Premier League. It enjoyed eight years in the top flight Premier League, which culminated in it win-

ning the FA Cup in 2013. Hong Kong-listed International Entertainment is a Hong Kong-based investment holding company, which is principally engaged in hotel management and the leasing of properties for casino and ancillary leisure and entertainment purposes. Corporate partner and football M&A expert **David Hull** is leading the firm's team.

Gibson, Dunn & Crutcher is representing **Glassdoor** on its acquisition by Recruit Holdings for US\$1.2 billion in an all-cash transaction. Glassdoor is a leading job and recruiting company well known for providing greater workplace transparency. Recruit Holdings, a leading Japanese-based HR company, plans to operate Glassdoor as a distinct and separate part of its growing HR technology business segment. Glassdoor, which launched in 2008, is one of the largest job sites in the US and welcomes 59 million people to its platform each month. The transaction is expected to close this summer, subject to regulatory approvals and closing conditions. San Francisco partner **Stewart McDowell**, supported by partners **Sean Feller** (Century City-benefits), **David Kennedy** (Palo Alto-IP) and **Paul Issler** (Los Angeles-tax), is leading the firm's team. **Sullivan & Cromwell** is representing **Recruit Holdings**.

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New ultimate beneficial ownership disclosure requirements: An important step in combating financial crime in Indonesia

Financial crime has haunted Indonesia for many decades. The lack of transparency, especially around the ultimate beneficial ownership of corporations, has led to many problematic situations, including fraud, that often go unidentified and undetected. These include but are not limited to shadow monopolism; conflicts of interest among state-owned and private companies; and fictitious or suspicious transactions, debts, payments, etc., within affiliated companies to falsify their accounts, reduce taxes, or avoid state obligated liabilities such as tax, concession fee, abandonment and restoration fees. Moreover, tracing the proceeds of financial crime in Indonesia can be difficult as many criminals use nominee owners for their assets, resulting in low asset recovery rates.

But change is in the wind. President Joko Widodo recently signed the Presidential Decree Number 13 of 2018, “*Implementation of the Principle on Recognising Beneficial Ownership of Corporations in the Framework for the Prevention and Eradication of Money Laundering and Criminal Acts of Terrorism Funding*” on March 1, 2018, which is now in force. This decree mandates that all Indonesian corporations must report their beneficial ownership status, with a particular focus on ownership structures whereby any individual who has 25 percent or more of shares or capital, or holds 25 percent of voting rights or receives up to 25 percent of the profits; has authority to appoint or dismiss the board of directors or anyone who has control of the corporation; receives any benefits from a corporation’s activities; or is the true owner of the shares, funds, assets and other resources.

Although similar localised regulations already exist in Indonesia, this national legal reporting requirement will strengthen and amplify the anti-corruption, anti-money laundering, anti-tax avoidance/evasion and anti-monopolism efforts. This may also

potentially increase asset recovery rates. To date, law enforcement agencies have not *been able to repatriate all state loss and proceeds of such crimes*.¹

“This national legal reporting requirement will strengthen and amplify the anti-corruption, anti-money laundering, anti-tax avoidance/evasion and anti-monopolism efforts”

The real challenge ahead will be to ensure all corporations disclose their ultimate beneficial owner/s (as per the above-mentioned requirements) truthfully and voluntarily. The government can help create a framework for compliance by taking three key steps:

- 1. Implementing proactive, technology-enabled due diligence.** By implementing big data and forensic data analytics, enhanced with machine learning, regulators would be better positioned to ascertain if data contained in self-provided reports is accurate. Source data sets can include records of banking transactions, population data, asset ownership data (both financial and non-financial) and tax files.
 - 2. Establishing, communicating and enforcing significant consequences for noncompliance.** Stiff penalties should be imposed for noncompliance and can include consequences such as the revocation of business licences.
 - 3. Enlisting public opinion.** Societal expectations and pressure can be heightened by increasing the public’s accessibility to information.
- In support of these critical steps, the government should consider implementing as

soon as possible the supporting architecture, to include the following:

- Developing and optimising a single identification number; currently there are at least 11 different government institutions issuing different identification numbers to Indonesian citizens. Passing legislation mandating the integration of financial services institutions data including customer file, bank account, bank balance, bank transactions etc. Currently there are hundreds of national banks and thousands of rural banks as well as many other financial institutions operating in Indonesia.
- Strengthening the Ministry of Justice with sufficient resources to carry out its mission.
- Optimising and implementing an international Automatic Exchange of Information (AEoI). There are currently 79 countries committed to sharing their Indonesian-related financial data with the Indonesian Tax Office.

It should be noted that the beneficial ownership disclosure obligation in the above-mentioned Decree applies to corporations registered in Indonesia only. This means that the disclosure obligation does not apply to Indonesian citizens who own corporations registered overseas, which is a common practice. Although the war is far from over, all Indonesian corporations should be aware of and be familiar with the new legal requirement or otherwise be prepared to face consequential penalties.

1. <http://law.emory.edu/eilr/content/volume-25-issue-1/comments/reformasi-corruption-indonesia-strategy-combat-corruption.html>

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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 AVP/VP – Financial Services

3-10 yrs PQE, Singapore

A leading global bank is looking to hire derivatives or structured finance lawyers to join its legal team in Singapore as a result of growth in the region. The ideal candidates should possess about 3-10 years of experience in over-the-counter and exchange-traded derivative products. You should be trained in ISDA documentation and able to assist with documentation as well as queries related to such documentation. In this role you will be exposed to the full life cycle of such products and work with a team of specialist lawyers with whom you can learn and grow. You are qualified with a Bachelors of Law degree. [Ref: JO- 1805-170261]

Contact: Krishna Jagaduri

Tel: (65) 6407 1203 / 9060 0384

Email: krishnajagaduri@puresearch.com

Legal Director – MNC

8-12 yrs PQE, Hong Kong

A Fortune 500 multinational corporation is seeking an experienced biz-minded lawyer to take on a leadership role with a regional remit based in Hong Kong. You will work closely with the regional functional teams and the Hong Kong's management team to provide legal support on all corporate or commercial issues. You must have at least eight years' PQE in corporate or commercial work, preferably gained in an MNC environment. Pragmatic candidates with strong analytical skills and communication skills are preferred. You must have fluency in both written and spoken English and Chinese for the role. [Ref: I4506/AC]

Contact: Kelly Zhang

Tel: (852) 2520 1168

Email: hughes@hughes-castell.com.hk

Associate General Counsel – Retail

Hong Kong, 10+ years (In-House)

A global retail conglomerate is seeking an associate general counsel to join its legal team in Hong Kong. The ideal person will have at least 10 years of post-qualification experience with strong exposure M&A matters in an in-house or private practice environment. Excellent opportunity to join a growing team of a well-established brand and opportunity to gain exposure to APAC. Mandarin language skills are essential. [Ref: AC6766]

Contact: Teagan Jones

Tel: (852) 2537 7419

Email: tjones@lewissanders.com

Senior Legal Counsel – Fintech

10+ yrs PQE, Singapore

A revolutionary, fast and upcoming fintech company powered by blockchain technology is looking for a senior legal counsel. The ideal candidate should have fintech experience. The successful hire will be responsible for handling the transactional legal matters of initial coin offerings (ICOs), as well as providing legal advisory in relation to crypto currency matters and its ecosystem. This would include the issuance and management of tokens, which will require the knowledge of financial regulations and the experience managing potential disputes. This role will be based in Singapore and will be supporting the management team in their endeavours. [Ref: JGB – IS 1782]

Contact: Benedict Joseph

Tel: (65) 6818 9707

Email: benedict@jlegal.com

M&A Lawyer

7-12 yrs PQE, Hong Kong

A lawyer with private M&A experience is sought to join a leading regional company in its sector. Work involves a mix of transactional and general corporate work across the region. Lawyers from private practice as well as in-house will be considered. The successful candidate will join an established legal team and report directly to the general counsel. No language skills required. [Ref: IHC 16633]

Contact: Andrew Skinner

Tel: (852) 2920 9111

Email: a.skinner@alsrecruit.com



The In-House *Community* Counsels of the Year

Awards & Celebration

2018



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Scan the QR
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highlights video of
the celebration.

Counsels of the Year 2018

The In-House Community revealed the winners of our annual awards at a celebratory evening in Hong Kong. By Patrick Dransfield

Our third annual In-House Community Counsels of the Year Awards attracted more than 100 submissions from in-house counsel across Asia, the Middle East and Africa.

The awards recognise dedication, innovation, efficiency and value-add, integration, encouragement and improvement, and corporate social responsibility. These criteria were inspired by our white paper, *The Six Biggest Challenges*, which was based on responses from more than 70 general counsel who identified challenges such as:

- Working out the optimal legal and/or compliance department structure – with the right people, with the right skillsets, at the right level;
- Measuring the performance and value-add of the legal department; and
- Changing non-lawyer colleagues' perception of the legal function from being a barrier to being a business partner.

And by unanimous agreement of our five independent judges, the winning Asia team of the year, Telstra, excelled across the board, with its ThinkSmart software designed to triage urgent client requests and automate confidentiality agreements, thus saving 6,500 lawyer hours and, perhaps echoing Daimler China's Swarm approach



that featured in 2017, a so-called All Roles Flex solution that allows stakeholders to be served independent of location or time.

You may have been forgiven to think that, with over 100 team submissions, the judges may have found pause when considering the short list for the coveted In-House Counsel of the Year. You would be wrong – each judge presented three preferred candidates (see box), but eventually chose Valerie Velasco of NetApp in another unanimous vote.

Above right:
Pieter Badenhorst, Robyn Van Heerden and Botha Ernst of AFGRI receive their award from Kirsty Dougan of Axiom

Near right:
Marcus Crachi and Lauren Ellison of Telstra

Far right:
Andrew Cooke of Flash Entertainment FZ





In-House Counsel of the Year shortlist

Christopher Stephens, ADB

Jeffrey Koch, Dell

Andrew Cooke, Flash Entertainment

Ferheen Mohamed, Hong Kong Exchanges & Clearing

Wei Wen Wang, Intercontinental Hotels Group

Gladys Chun, Lazada

Michael Ting, Manulife (International)

Tim Sung, Melco Resorts & Entertainment

Valerie Velasco, NetApp

Varsha Gupta, Reckitt Benckiser

SHARING

The goal of the In-House Counsel of the Year Awards is not only to shower our winners with well-deserved praise and recognition. By sharing some of the innovative solutions pioneered by in-house counsel and external providers uncovered through the awards process, we also hope to help fertilise and stimulate the entire in-house community.

Perhaps the stand-out innovation in 2018 on the technological front was the Parker Chatbot by International Visionary Service Provider Law Firm of the Year, Norton Rose Fulbright. Parker, built in-house by the firm using the IBM Watson artificial intelligence platform, is the world's first AI-enabled data privacy chatbot. This provides in-house teams with a high-value, one-stop approach to the vital area of data privacy compliance. The judges noted that: "The chatbot Parker is one part of a tangible and largely successful effort by Norton Rose Fulbright to distinguish itself in both the UK and North American market."

The single biggest challenge facing in-house counsel is people management. Hong Kong's CLP Holdings won the Talent Management award on the basis of its recent practice of seconding a legal team member as chief executive of a joint venture company in Vietnam. As we predict that many general counsel are destined for the C-suite (some of you are already there), this proves a neat way to ensure team members acquire the necessary skills.

The alignment of the legal department with the goals of the business is another important and challenging aspect of the in-house role. Increasingly,

The judges, impressed by NetApp's team submission (it won the Risk Management Practice Award), were particularly struck by how Velasco approaches the extremely difficult task of team management, including teaching yoga as a certified instructor to her colleagues. As the importance of the In-House Counsel role becomes more appreciated by other stakeholders – and hence by society at large – the need for mindfulness and wisdom will become more important. Talking about the impact of technology more than 40 years ago, the late Bernard Levin, British journalist and author, predicted: "The silicon chip will transform everything, except everything that matters, and the rest will still be up to us." Congratulations to Valerie for leading the way.

Left:
Vivian Ng of NetApp picks up the In-House Counsel of the Year Award on behalf of her colleague, Valerie Velasco (inset) from Kirsty Dougan of Axiom

Right:
Jeremy Coleman, James Parker, Anna Gamvros and Declan McDaid of Norton Rose Fulbright



Suliana Shamsuddin of Yokuk

private practice lawyers are becoming aware – and not a little jealous – that the fabled role of “trusted adviser” is not being awarded to them, but to their in-house colleagues. Many of the latter have the scars to prove that they have truly been in the trenches with their non-lawyer colleagues. The outstanding team in the category of Integration was Aboitiz Equity Ventures, which had grappled with the knotty problem of litigation and developed a process through which the legal department proves to be the barrier at the top of the hill rather than the ambulance at the bottom by developing a shared Legal Risk Impact Criteria for prioritising litigation cases with the business units. A problem shared is more than halfway to being a problem solved.

Within the Innovation category, we also include technological innovation. The Hong Kong Exchanges & Clearing legal team are clearly helping Hong Kong's bourse remain at the top of its game, with a peak market capitalisation of more than US\$4.28 trillion in 2017, making it the seventh-largest exchange in the world. The team had been instrumental in implementing Bond Connect – the aligning of CFETS, PBOC, HKMA, SFC and CMU on a single trading platform – and also did some exemplary work with the London Metals Exchange regarding gold futures.

As the legal team's expertise goes beyond the strictly legal, a plethora of new non-law legal providers are now able to assist the discerning legal department. The winner of the non-law firm Visionary Client Service Firm of the Year was Australia-based Lawcadia, which digitises existing processes and improves the ways that legal departments and their law firms engage, communicate and collaborate on matters, pricing, scoping and spend management. If the aim of external law firms is truly to become that trusted adviser, then software solutions such as Lawcadia's are essential. As the judges noted: “Lawcadia was the outstanding candidate and particularly stood out as it is providing platform rather than bespoke solutions. Our IT department did due diligence on their product and it truly stands up.”

One law firm that truly impressed the judges

regarding its embrace of client-service related technology was Yulchon. Our regional winner in 2017, the Korean firm has evidently gone from strength to strength, providing a coterie of innovative services for clients, including AlgoCompliance, a client-facing digital compliance software using AI to provide each client with updates regarding legislation that is directly relevant to them. And also Fresenius-Kabi Korea, an automated compliance surveillance document centre with more than 8,000 key fields to provide day-to-day applications that embody company-specific risk.

No chatbot or AI solution is going to replace the wisdom and integrity of individual attorneys and it is with great pleasure that we honoured the eight commended external counsel of the year that joined us for the evening, and especially our External Counsel of the Year 2018, Mohamed Ganie.

With regards to Corporate Social Responsibility, our winner was the Malaysia-based team of Maybank. Not to be outdone, Lee Chin Tok from rival Malaysian bank CIMB outbid Maybank to win the charity action's grand prize, a fabulous luxury weekend for two at the Malaysia Peninsula luxury resort Tanjong Jara [www.tanjongjararesort.com], ably assisted by the indefatigable Evangelos Apostolou. The evening proved successful in demonstrating the charitable nature of the legal community by generating over HK\$55,000 for Malaysia-based charity Yokuk [www.yokuk.org].

Evaluating risk is perhaps the single most important value-add that an effective in-house counsel brings to the table. The diverse Asia region throws up significant risk, especially in its frontier and emerging markets. The Visionary Client Service Provider of the Year, Asia Emerging Markets was chosen by the judges in their appreciation of the importance of consistent and timely delivery of intelligent and business-oriented advice from markets such as Myanmar and hence DFDL Myanmar won this category.

Similarly, the in-house community awards team was delighted to receive submissions from Africa-based in-house counsel teams and this year we saw the expansion of the club to include the very worthy in-house team of Afriki as In-House Team of the Year, Africa.

Mohamed Idwan Ganie accepts his award



LOOKING FORWARD

As we have already received enquiries about submissions, we expect even more candidates vying for the top awards in 2019. And this is important in that the awards provide an opportunity for in-house counsel to not only demonstrate their worth to their present

employers and burnish their careers, but also become a deposit of best practice from which others can learn.

Congratulations to our winners and to all who took part to make this year's awards so meaningful – and fun!

IN-HOUSE LEGAL TEAM OF THE YEAR - INDUSTRY

Banking	CIMB Group
Conglomerate	Aboitiz Equity Ventures
Energy & Natural Resources	Aboitiz Power Corporation - Asia AFGRI Group - Middle East/Africa
Financial Services - ex-banking	Asian Development Bank
Insurance	Taikang Insurance
Life Science & Pharma	Sanofi (China) Investment
Manufacturing & Engineering	Schneider Electric
Property, Infrastructure & Logistics	edotco Myanmar
Retail & Healthcare	Aditya Birla Retail & Aditya Birla Fashion and Retail
Technology, Media & Telecoms	Telstra International
Travel & Leisure	Flash Entertainment - Middle-East Melco Resorts & Entertainment - Asia
Other Industries	Accenture/SATS (Joint Winner)

IN-HOUSE LEGAL TEAM OF THE YEAR - BEST PRACTICE MANAGEMENT

Change Management	Aditya Birla Sun Life Insurance
Corporate Social Responsibility	Maybank
Diversity	Dell
Innovation	Hong Kong Exchanges and Clearing
Integration	Aboitiz Equity Ventures
Risk Management	NetApp
Small Team	DNV GL Group
Talent Management	CLP Holdings
Transactional	Tencent

IN-HOUSE LEGAL TEAM OF THE YEAR - CLIENT SERVICE AWARDS

External Counsel of the Year 2018	Mohamed Idwan Ganie, Lubis Ganie Surowidjojo
Visionary Client Service Law Firm of the Year 2018	DFDL Myanmar - Asian emerging markets Yulchon - Asian mature markets
Visionary Client Service Law Firm of the Year - International	Norton Rose Fulbright
Visionary Non-Law Firm Legal Services Provider	Lawcadia
Most Responsive Law Firm of the Year	Baker McKenzie

IN-HOUSE TEAM & INDIVIDUAL AWARDS

In-House Counsel of the Year 2018	Valerie Velasco - NetApp
Africa In-House Team of the Year 2018	AFGRI Group
Middle East In-House Team of the Year 2018	Flash Entertainment
Asia In-House Team of the Year 2018	Telstra International

Our panel of judges

Evangelos Apostolou, In House Practice Group, EMEA and APAC at Major, Lindsey & Africa
Kirsty Dougan, Head of Asia, Axiom

Cherine Ghali, ex General Counsel at Dubai Group
Michelle Gon, Partner at McDermott Will & Emery
Crystal Lalime, Managing Director and Head of APAC Global Markets Legal, Credit Suisse
David Miles, Chairman of Asia Community Venture
Patrick Dransfield, Publishing Director, In-House Community
Tim Gilkison, Managing Director, In-House Community

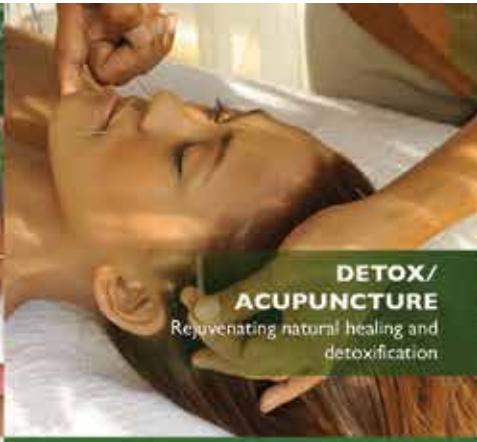


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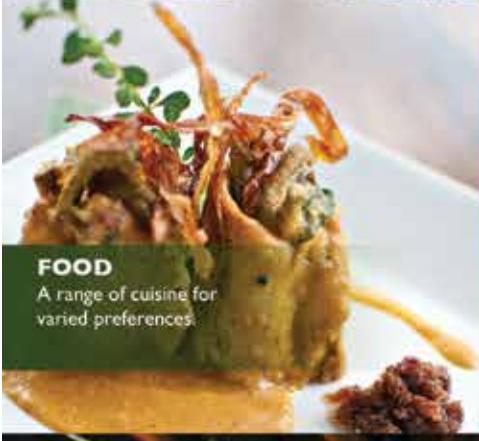
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Rejuvenating natural healing and detoxification



SPA TREATMENTS

World class pampering with that distinct Filipino touch



FOOD

A range of cuisine for varied preferences



OUR ROOMS

Rooms not only with a view



WEDDINGS

Lasting memories that start even before you say your I Do's.

HEALTHIER HAPPIER BETTER



GLAMPING

Forge better team bonds. Strengthen family and friendship ties.



OUR MEETING ROOM

Creative meetings in inspiring surroundings



FAMILY BONDS

building treasured memories



FARMACY

Discover plants that heal. "Let food be thy medicine". - Hippocrates

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Market Update and Salary Guide 2018

Asian-mena Counsel is delighted to partner with Taylor Root once again for their 12th annual report for the in-house legal and compliance sector. The aim of the report is to assist C-suite executives, General Counsel, HR and lawyers to benchmark their and their team's compensation levels with market rates. If you require more specific information or would like benchmarking data for you or your team, please contact any of the Taylor Root representatives herein.

The General Counsel Market

General Counsels continue to strive to become more well-rounded business advisors, with increasing responsibilities and influence outside the traditional legal space. This is in keeping with pressure for legal departments to encompass a more business focused role. General counsel must now balance the need to manage risk and maintain independence with the need to be actively vested in the strategy and vision of the organisation. Across Asia this has led to General Counsel achieving more exposure to senior management within their organisations, and is witnessed through more formal reporting line to a local C-suite executive rather than an International General Counsel.

Globally this has led to the rise of the Chief Legal Officer (CLO). The CLO is a counsellor and advisor and can no longer be solely a technician. Being on the C-Suite (or at least close to it) is key to fully performing the CLO role. The CLO should be a strategic business partner to the senior executive team.

Unfortunately, due to the pyramid nature of in-house legal team's, movement within the Asia General Counsel market is limited. Where possible companies also prefer to promote internally as internal knowledge of a company's or an industry's corporate governance, and risk management strategies often outweigh technical legal skills. Presently, CLO roles tend to be based in the US or UK/Europe and the market in Asia is small.

Salaries in Asia within the General Counsel market differ greatly depending on the role and responsibilities of each General Counsel. Here is a summary of the responsibilities at each level:

Global GC: Global coverage, C-suite executive, provides expertise and advice on legal, risk exposure, liability, compliance, corporate governance, reputation and integrity.

APAC GC: Multi-jurisdictional coverage, strategic adviser to Board, member of leadership group, matrix reporting line to Global GC and direct reporting to Asia management, provides expertise

and advice on legal, risk exposure, liability, compliance, corporate governance, manages a complex legal and compliance department.

APAC Head of Legal: Multi-jurisdictional coverage, strategic adviser to key stakeholders in Asia, reports to Global GC and matrix reporting line to local leadership group, provides expertise and

Salaries

United States (USD)	Lower	Upper	Average
Global GC	500,000	1,500,000+	700,000
APAC GC	350,000	1,000,000	500,000
APAC Head of Legal	180,000	500,000	250,000
Regional Head of Legal	180,000	325,000	220,000



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advice on legal and risk exposure, works closely with Head of Compliance, manages a sizable legal department.

Regional Head of Legal: Regional coverage, reports to APAC GC or International GC, manages a small legal department or sole counsel for North Asia, Greater China or Hong Kong region.



Banking and Financial Services

INVESTMENT BANKING

Hiring activity within the investment banking sector remains subdued, reflecting the challenging conditions within the sector globally. Notwithstanding the lower levels of activity within the investment banking sector generally, there has been increased hiring activity within financial markets, with derivatives and structured products lawyers particularly in demand. Chinese financial institutions are also aggressively building or expanding their global markets desks, hiring experienced individuals from international law firms and global banks.

Demand has been driven by a combination of increased trading activity within these markets, together with ongoing regulatory

reform projects as global banks implement the requirements of Dodd-Frank, MiFID II/MiFIR and EMIR reforms, and move to more efficient centrally cleared trading platforms. An interesting trend has been the move towards compliance roles by regulatory lawyers which require them to be involved in developing policies and strategies for the bank.

ISDA negotiation teams remain busy with high volume margin rules workflow. They predominantly expand at the junior to mid-level or with seasoned contractors. Derivatives regulatory work has generally required qualified lawyers which has increased the salaries especially for contractors in this area.

Salaries

Hong Kong (HKD)	NQ-2 years' PQE	3-5 years' PQE	6-8 years' PQE	9-11 years' PQE	ED+
Capital Markets (Debt and Equity)	720,000 to 1,320,000	900,000 to 1,500,000	1,200,000 to 1,800,000	1,440,000 to 2,220,000	1,980,000+
Derivatives	840,000 to 1,380,000	1,080,000 to 1,620,000	1,380,000 to 1,860,000	1,500,000 to 2,220,000	1,980,000+
ISDA ®/Master Documentation	480,000 to 750,000	720,000 to 1,200,000	840,000 to 1,320,000	960,000 to 1,440,000	1,440,000+
Litigation/Regulatory	720,000 to 1,320,000	1,020,000 to 1,560,000	1,320,000 to 1,800,000	1,440,000 to 2,220,000	1,980,000+

Singapore (SGD)	NQ-2 years' PQE	3-5 years' PQE	6-8 years' PQE	9-11 years' PQE	ED+
Capital Markets (Debt and Equity)	90,000 to 120,000	120,000 to 190,000	170,000 to 250,000	220,000 to 300,000	320,000+
Derivatives	90,000 to 120,000	120,000 to 200,000	190,000 to 250,000	250,000 to 330,000	350,000+
ISDA ®/Master Documentation	50,000 to 80,000	80,000 to 140,000	120,000 to 190,000	180,000 to 260,000	270,000+
Litigation/Regulatory	90,000 to 120,000	110,000 to 170,000	150,000 to 240,000	220,000 to 310,000	320,000+

ASSET MANAGEMENT

Maintaining the trend of recent years, funds and asset managers continue to be a growth sector for in-house legal roles. As more small and mid-cap fund managers increase their exposure, they are increasingly seeing value in adding in-house legal resources. Additionally, as their investments become more diverse and greater in value, these organizations are also under regulatory pressure to ensure that they have sufficient legal and compliance resources in place.

There is a keen interest to bring on junior to mid-level lawyers with broad experience, in view of their desire to maintain lean teams due to budget constraints. In the long run, this could play a pivotal role in contributing to a candidate-driven market within the financial services sector. Conversely, hires made at executive level remain focused on recruiting experienced counsels with a strong M&A background as the forecast for private equity firms is projected to be aggressive in the coming year.

Salaries

Funds/Asset Management	NQ-2 years' PQE	3-5 years PQE	6-8 years PQE	9-11 years' PQE	ED+
Hong Kong (HKD)	720,000 to 1,320,000	900,000 to 1,560,000	1,140,000 to 1,700,000	1,440,000 to 2,220,000	1,980,000+
Singapore (SGD)	80,000 to 120,000	120,000 to 170,000	150,000 to 210,000	200,000 to 280,000	310,000+



PRIVATE WEALTH MANAGEMENT

Wealth management has been a key growth area within the in-house legal market, with a number of organizations including investment banks, PRC and Asia banks, private wealth management firms and brokerage houses competing to capture a share of the high-net worth market, both in Hong Kong, Singapore and across Asia.

As technology platforms have evolved, wealth management firms have been able to provide clients with access to a broader range of

products, but have consequently been subjected to increased regulatory pressure, making it imperative for these firms to ensure their legal and compliance teams are adequately resourced. Given the small size of most teams within the wealth management sector, there are a small number of candidates in the market who have specific experience in wealth regulatory advice, client transaction structuring and general commercial advisory.

Salaries

Private Banking/ Wealth Management	NQ-2 years' PQE	3-5 years' PQE	6-8 years' PQE	9-11 years' PQE	ED+
Hong Kong (HKD)	720,000 to 1,320,000	1,080,000 to 1,440,000	1,380,000, to 1,860,000	1,500,000 to 2,220,000	1,980,000+
Singapore (SGD)	80,000 to 120,000	120,000 to 170,000	150,000 to 210,000	200,000 to 280,000	310,000+

GENERAL BANKING

The market for general banking lawyers' remains subdued largely due to the stability of teams and the availability of law firm secondees. Transaction banking skill sets such as trade finance, securities services and cash management remain highly sought after. However, hiring has centred on mid-level rather than senior roles.

Key drivers for the consumer finance market are innovation and technology, as banks seek to gain a competitive advantage, win market share and create greater efficiencies of scale in a high volume, low margin market. This comes in addition to increasing pressure on major financial institutions from non-traditional service providers such as electronic payments services, remittance

providers, second tier mutual banks/credit unions and mortgage providers.

Institutions have also been focused on the digital movement, in tandem with the increasingly busy FinTech sectors. In some cases, we have seen a demand for general corporate and commercial/IT lawyers within these FinTech companies, and as lawyers from such practice areas tend to be more mobile, there tends to be a higher incidence of cross industry transitions with good levels of success. Such roles tend to attract lawyers at the junior to mid-level, rather than at the senior level, as more senior lawyers tend to prefer the stability of being in more structured and established organizations.

Salaries

General Banking	NQ-2 years' PQE	3-5 years' PQE	6-8 years' PQE	9-11 years' PQE	ED+
Hong Kong (HKD)	600,000 to 1,080,000	840,000 to 1,500,000	1,200,000 to 1,800,000	1,440,000 to 2,220,000	1,800,000+
Singapore (SGD)	80,000 to 120,000	100,000 to 180,000	130,000 to 230,000	190,000 to 300,000	310,000+

INSURANCE

Monitoring the progress of emerging regulations and assessing their impacts will be critical for insurers operating in the Asia-Pacific region in 2018-19. From rules on consumer protection and cybersecurity to new common reporting standards and capital requirements across multiple markets, the regulatory landscape for insurers in Asia-Pacific has never been more complex, and is a unique challenge for an industry that in the past has been slow to change. Headcount within legal is traditionally stable compared to other banking and financial services sector institutions, but establishing a fully trained compliance team with input into strategic business decisions will be essential for mapping out the right operational and strategic responses to the evolving regulatory landscape affecting the insurance industry.

Further to regulatory/ compliance pressures, the continued

liberation of the insurance sector will ensure insurers draw on M&A to drive growth and build economies of scale. M&A will continue around the Asia-Pacific region, particularly in markets such as South Korea, Taiwan and Indonesia, where companies are getting out because of margin pressures or insolvency. Internationally, there is an ongoing appetite of Asia based firms to invest into the American and European markets. The vast majority of insurance brokers/ firms have specialist M&A lawyers and new headcount is likely to be at the junior level to cover commercial contracts, employment and litigations matter allowing the senior lawyers to focus on M&A and regulatory matters. Furthermore, as more insurance firms start to digitalise their business, there is also a demand for technology lawyers to focus solely on this aspect of the business.

Salaries

Insurance	NQ-2 years' PQE	3-5 years' PQE	6-8 years' PQE	9-11 years' PQE	ED+
Hong Kong (HKD)	600,000 to 1,020,000	840,000 to 1,500,000	1,080,000 to 1,620,000	1,440,000 to 1,800,000	1,560,000+
Singapore (SGD)	75,000 to 120,000	120,000 to 160,000	160,000 to 210,000	190,000 to 250,000	250,000+



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Corporate

CONSTRUCTION & MANUFACTURING

Hiring in the Construction sector fluctuated over the past 6-12 months while the Manufacturing industry remained stable throughout, with a number of senior hires made in Asia. Within Construction, the skill set in demand has mainly focused on non-contentious construction whilst the Manufacturing sectors have looked at experienced, strategic hires with demonstrable corporate, commercial and cross-border experience. The majority of in-house teams acrosss Construction and Manufacturing tend to have between three to seven lawyers and most hires are driven by growth rather than replacement hires.

REAL ESTATE

The Real Estate sector has been stable with the limited demand constrained within the larger Real Estate businesses. Headcount has not necessarily centered on property lawyers, but more broadly on the corporate/commercial side of experience. Within the Singapore market, the long-awaited upturn in the property market has boosted demand for in-house counsel with real estate and construction experience.



Salaries

Real Estate/ Construction	2-4 years' PQE	5-7 years' PQE	8-10 years' PQE	11-15 years' PQE	15+ years' PQE
China (RMB)	200,000 - 450,000	400,000 - 700,000	500,000 - 1,200,000	700,000 - 1,600,000	1,400,000+
Hong Kong (HKD)	720,000 - 1,080,000	960,000 - 1,200,000	1,200,000 - 1,500,000	1,440,000 - 2,000,000	1,800,000+
Singapore (SGD)	70,000 - 120,000	100,000 - 160,000	150,000 - 200,000	180,000 - 260,000	220,000 - 350,000

ENERGY/UTILITIES

Throughout the Asia region, a positive turn within the Energy, Commodities sectors has seen recruitment activity pick up. Whilst recruitment activity for these industries remained conservative through 2015 to 2017, we are seeing rekindled demand for in-house counsel as legal teams expand due to business growth.

Within the upstream oil & gas space, there remains a preference for lawyers with relevant industry and technical

experience. Fluctuations in oil prices continue to drive demand for lawyers with commodities shipping and trading experience, albeit at a more conservative level. We have often seen lawyers with a broad corporate commercial background transition into downstream focused positions. Candidates often range from NQ to 8 years' PQE, with an emphasis on candidates at the more junior levels.

Salaries

Energy	2-4 years' PQE	5-7 years' PQE	8-10 years' PQE	11-15 years' PQE	15+ years' PQE
China (RMB)	150,000 - 350,000	300,000 - 700,000	550,000 - 1,200,000	700,000 - 1,600,000	1,200,000+
Hong Kong (HKD)	720,000 - 1,080,000	1,000,000 - 1,200,000	1,200,000 - 1,500,000	1,500,000 - 2,000,000	1,800,000+
Singapore (SGD)	80,000 - 140,000	120,000 - 170,000	160,000 - 240,000	200,000 - 320,000	280,000 - 450,000

SHIPPING, LOGISTICS AND TRANSPORTATION

Recruitment for the shipping, logistics and transportation industries has stayed flat since 2015. Positive economic sentiment and business growth has fuelled demand across a diverse range of industries, and we have seen things take a positive turn within these industries resulting in recruitment activity slowly picking up.

Besides growth in shipping activity, technology adoption and a recovery in oil prices is also driving the upturn. A decline in world

trade volume growth may impact the industry's recovery, but positive sentiment is likely to outweigh this. The logistics and transportation industries are experiencing a period of growth as well. Beside established players who continue to assert their presence, smaller entrants are making their presence felt in the market by way of technology disruption and nimble business expansion.

Salaries

Shipping, Logistics and Transportation	2-4 years' PQE	5-7 years' PQE	8-10 years' PQE	11-15 years' PQE	15+ years' PQE
China (RMB)	150,000 - 350,000	400,000 - 650,000	500,000 - 1,200,000	700,000 - 1,500,000	1,100,000+
Hong Kong (HKD)	720,000 - 1,080,000	960,000 - 1,200,000	1,200,000 - 1,500,000	1,440,000 - 1,800,000	1,800,000+
Singapore (SGD)	80,000 - 100,000	100,000 - 150,000	140,000 - 180,000	160,000 - 240,000	220,000 - 350,000



FMCG/RETAIL

Recruitment for the FMCG sector has remained steady over the past 12 months, with most legal recruitment activity being replacement hires as opposed to an increase in headcount. However, we understand companies are submitting business cases for additional hires in 2018 to deal with increased demand across the business, and to reduce reliance on external law firms. As

with most in-house legal roles, most positions continue to be for mid-level (2 - 6 years' PQE) lawyers with commercial and IP skill sets. We have also seen an increase in the demand for interim lawyers in this sector as companies attempt to get around headcount restrictions by taking an additional lawyer on an interim basis.

Salaries

FMCG/Retail	2-4 years' PQE	5-7 years' PQE	8-10 years' PQE	11-15 years' PQE	15+ years' PQE
China (RMB)	150,000 - 400,000	400,000 - 700,000	600,000 - 1,400,000	750,000 - 1,800,000	1,500,000+
Hong Kong (HKD)	720,000 - 1,080,000	960,000 - 1,200,000	1,200,000 - 1,500,000	1,440,000 - 1,800,000	1,800,000+
Singapore (SGD)	70,000 - 120,000	100,000 - 150,000	140,000 - 180,000	160,000 - 240,000	220,000 - 350,000

MEDIA

The Media sector is undergoing significant change, with dominant broadcasters and content producers being threatened by new entrants to the market, mainly in the guise of tech companies looking to expand their offering to consumers by offering digital content at a significant reduction to traditional carriers.

The convergence and blurring of the lines between the media and tech space has broadened opportunities for lawyers looking to move into this sector. Traditional media skill sets such as production and distribution are in less demand, as opposed to content acquisition and technology.

TECHNOLOGY/TELECOMMUNICATIONS

The Technology sector has seen a significant increase in the number of new opportunities for lawyers since the beginning of 2017. We have seen a strong demand for specialised lawyers with technology, cloud contracts and data protection skills across all sectors and expect there will be continued interest in data protection expertise with the impending GDPR.

There has been an increase in the number of sole counsel, first hire positions for newly emerging tech companies growing exponentially. Founders and senior management are realising sooner in a company's lifecycle the value of in house counsel, particularly in ensuring legal risk is managed in line with their expansion and,

often future sale ambitions. In tandem with recruitment for the regional headquarters (often Singapore or mainland China), we are seeing a healthy demand for in-country counsels for locations such as Indonesia, Malaysia, Philippines, Thailand and Vietnam as well.

The telecommunications industry has seen a continued reshaping with large acquisitions and mergers resulting in a slight decrease in recruitment overall. There have been a number of exciting developments within the industry and ever closer links to more traditional technology and media businesses. Businesses have continued to recruit commercial lawyers, particularly at a midlevel, for a wide range of skillsets including IT, IP and procurement.

Salaries

IT/Media/ Telecommunications	2-4 years' PQE	5-7 years' PQE	8-10 years' PQE	11-15 years' PQE	15+ years' PQE
China (RMB)	150,000 - 450,000	350,000 - 700,000	600,000 - 1,300,000	750,000 - 1,600,000	1,300,000+
Hong Kong (HKD)	720,000 - 1,080,000	1,000,000 - 1,200,000	1,200,000 - 1,440,000	1,440,000 - 1,800,000	1,800,000+
Singapore (SGD)	80,000 - 140,000	100,000 - 160,000	150,000 - 220,000	200,000 - 300,000	220,000 - 400,000

PHARMACEUTICALS

The Pharmaceuticals sector has continued to see consistent growth with new opportunities for industry specialist lawyers. With many multinational corporations, national and regional organisations looking to expand their Asia legal teams and the combination of the highly regulated nature of the industry, lawyers with at least five years' experience in healthcare, life sciences, pharmaceuticals or medical technology are highly sought after.



Salaries

Pharmaceutical/ Chemical	2-4 years' PQE	5-7 years' PQE	8-10 years' PQE	11-15 years' PQE	15+ years' PQE
China (RMB)	200,000 - 450,000	350,000 - 700,000	600,000 - 1,500,000	850,000 - 1,800,000	1,500,000+
Hong Kong (HKD)	720,000 - 1,080,000	960,000 - 1,300,000	1,400,000 - 1,600,000	1,500,000 - 1,800,000	1,800,000+
Singapore (SGD)	80,000 - 140,000	120,000 - 170,000	160,000 - 240,000	200,000 - 320,000	280,000 - 450,000



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Compliance

The compliance market in Asia should remain buoyant throughout 2018 with hiring activity across all sectors. As demand continues to outstrip supply for compliance and risk professionals, employers will find it challenging to secure top talent. While there were obvious movements at the Executive Directors to Managing Director positions in 2017, financial institutions will focus efforts to expand and grow their teams with new head counts at AVP to VP in 2018. Compliance specialists will expect to receive a higher salary increase and employers will need to focus on the potential career progression when securing top talent, offering clear and realistic promotion outlines to potential employees.

Across top tier financial institutions with a large presence in Singapore, there is a focus on ensuring Monitoring, Controls &

Testing teams are robust. Although plans to hire started in 2017, things are in full-swing this year with seemingly more commitment from hiring companies. The drive towards automation has led to the need to hire candidates with experience in coding, machine learning and system knowledge. Additional Asian languages such as Japanese, Mandarin and Bahasa have also been highly sought after. Still hiring managers have stressed on the importance of growing the team due to increasing pressure from regulators and management, but the challenge lies in attracting the right talent at the AVP and VP level (7-15 years). With most banks going through restructuring and job stability being a rarity, candidates move for other factors such as promotions or significant salary increments to mitigate their risk.



CONSUMER, INVESTMENT & PRIVATE BANKS

For the first quarter of 2018, monitoring and surveillance was top of the agenda for recruitment across the permanent market. Banks have been consistently under pressure in the past year to meet new demands from the regulator and improve controls. There was a notable trend towards hiring staff at the VP level focusing on candidate with expert knowledge of audit, assurance, monitoring, review and surveillance. Candidates with good knowledge of regulatory policies and procedures been in demand. Hiring managers are keen to meet with specialized talent as opposed to professionals with generalist background as specialist knowledge is increasingly required in areas such as Control Room, Monitoring &

Testing and Surveillance.

Singapore has become known as the APAC hub for KYC/AML with very active hiring in this space. While Hong Kong traditionally houses the advisory functions, Singapore based candidates often take on the operations and execution responsibilities. However, as our local compliance market matures, and MAS regulations tighten, there is now a need for candidates to assume a business-facing role. This is particularly so for the tightly regulated sectors such as Private Banking and Investment Banking, where mid-level professionals are expected to take on decision making and advisory responsibilities.

Salaries

Hong Kong (HKD)	2-4 years	5-7 years	8-10 years	11-15 years	15+ years
Investment Banking	240,000 - 480,000	600,000 - 750,000	800,000 - 1,300,000	1,500,000 - 1,800,000	2,200,000 - 3,500,000
Consumer/ Retail Banking	200,000 - 300,000	360,000 - 550,000	600,000 - 960,000	1,400,000 - 1,800,000	1,900,000 - 2,600,000
Private Banking/ Wealth Management	240,000 - 400,000	450,000 - 650,000	720,000 - 1,200,000	1,400,000 - 1,700,000	2,000,000 - 3,000,000

Singapore (SGD)	2-4 years	5-7 years	8-10 years	11-15 years	15+ years
Investment Banking	50,000 - 90,000	80,000 - 130,000	120,000 - 200,000	180,000 - 300,000	250,000+
Consumer/ Retail Banking	50,000 - 90,000	80,000 - 110,000	100,000 - 200,000	160,000 - 250,000	250,000+
Private Banking/ Wealth Management	55,000 - 100,000	80,000 - 150,000	120,000 - 250,000	200,000 - 350,000	250,000+

ASSET & INVESTMENT MANAGEMENT FIRMS

China is an important market and has become essential to most Asset Managers' strategies for Asia. While obtaining the WFOE license will enable firms to establish an on-the-ground presence in mainland China, most firms will need to look for compliance professionals with knowledge and experience

working with Chinese regulations i.e. CSRC. In addition, firms are looking to strengthen their existing communications and marketing compliance framework, so they are keen to speak to candidates with thorough understanding of marketing regulations in Asia.

Salaries

Funds & Asset Management	2-4 years	5-7 years	8-10 years	11-15 years	15+ years
Hong Kong (HKD)	200,000 - 360,000	500,000 - 700,000	750,000 - 1,200,000	1,300,000 - 1,600,000	1,800,000- 2,800,000
Singapore (SGD)	60,000 - 100,000	90,000 - 150,000	100,000 - 250,000	200,000 - 350,000	250,000+

FINANCIAL CRIME COMPLIANCE

On a positive note, there is an increased awareness of financial crime threats along with a more collaborative approach to strengthening the integrity of the financial system. Tougher regulation ensures banks are better equipped to fight financial crime, but that comes with additional costs. Financial institutions are still keen to speak to candidates with solid fraud control, investigations and AML/CTF background. As payment processing becomes faster and more efficient, financial crime control processes need to keep up. Candidates with RegTech, IT background with exposure to compliance will be in very high demand. As a matter of fact, we have seen a few AML specialists moving from investment banks to Fintech payment companies in the recent 12 months.



Salaries

Financial Crime (Anti-bribery & Corruption, Sanctions, AML Advisory and etc.)	2-4 years	5-7 years	8-10 years	11-15 years	15+ years
Hong Kong (HKD)	180,000 - 360,000	400,000 - 650,000	720,000 - 1,200,000	1,300,000 - 1,800,000	1,900,000 - 2,600,000
Singapore (SGD)	36,000 - 72,000	70,000 - 110,000	100,000 - 160,000	150,000 - 200,000	200,000 +



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Big steps, long strides: China's progress on intellectual property rights

A clear signal has been sent over the past year that IP rights are to be respected in accordance with the law.

By Ai-Leen Lim and Xiaofan Chen of **AWA Asia**

The intellectual property environment in China has seen significant developments over the past 12 months. IP reform has been at the front of the Chinese government's economic agenda, with several developments enacted and other impending changes coming up.

The announcement from the Chinese government on the merger of the patent and trademark offices into a single combined IP office has been applauded by the IP community. This will likely result in stronger protection and accordingly enforcement opportunities for rights holders. In another move, stripping many general courts of their IP jurisdiction and placing the same with specialised IP tribunals could prove beneficial to IP owners who have legitimate rights they wish to enforce.

In two landmark trademark cases, Under Armour won a major victory for trademark

infringement, as did New Balance over its N letter design in one of the largest trademark damage awards awarded to a foreign company, echoing President Xi Jinping's words: "Wrongdoing should be punished more severely so that IP infringers will pay a heavy price."

President Xi made these remarks during the National Financial Work Conference in July last year and they are thought to be the most extensive remarks he has made in public on the subject of intellectual property enforcement.

The international business community has been watching these and many other developments unfold closely because the IP regime in China as we know it is changing. A clear signal has been sent over the past year that IP rights are to be respected in accordance with the law – not only to please or appease foreign investors, but also for the benefit of domestic companies as they grow in

stature and relevance on the world stage.

The growth in IP filings in China has been exponential – last year alone more than 5.7 million trademark applications were filed with the China Trademark Office (CTMO), an increase of more than 55 percent from the previous year. The number of patent applications for inventions reached 1.3 million, an increase of 14.2 percent compared to 2016. Most of the filers are Chinese nationals or entities.

IP litigation numbers have risen drastically as well. The courts accepted a total number of 237,242 new IP cases of first instance, second instance and retrial (up 33.5 percent) last year and concluded 225,678 cases (up 31.43 percent) compared with 2016.

Surging past the 200,000 mark for the first time, Chinese IP cases have more than doubled in four years. That is about 18 times greater than the total figure for new patent, trademark and copyright cases in US federal courts during 2017, which was 11,602.

The authorities investigated 17,000 cases related to IPR violations or making and selling counterfeit products last year, involving a combined sum of Rmb6.46 billion (US\$1.02 billion). Shen Changyu, head of the State Intellectual Property Office (SIPO), has stated that China's strengthening of IP protection is not only due to international obligation, but also because the country's own development demands it.

The government's 13th Five Year Plan had foreshadowed this chain of legislative and administrative pronouncements. Its focus on economic growth through innovation and boosting of local consumption have no doubt brought about this flurry of legislative and administrative rulings. China is no longer satisfied with being the factory of the world, it seeks to be a place that supports innovation with strengthened IP enforcement and protection as the backbone to realising the goals of "Made in China 2025", adding innovation to its total industrial output. Foreign IP owners should ride this wave and benefit from it.

SIPO Restructuring

During the first session of the National People's Congress on March 13, 2018, China's government approved a large-scale restructuring of SIPO, which is responsible for all patent-related matters and coordinating foreign-related affairs in the field of intellectual property rights.

The restructuring incorporates the Trademark Office of the State Administration for Industry and



Ai-Leen Lim

Commerce (SAIC) and the Administration for Quality Supervision, Inspection and Quarantine as regards geographical indications.

The restructured SIPO will be responsible for accelerating the establishment of a protection system for IP rights, the granting and adjudication of trademarks, patents and geographical indicators, and the supervision of related law enforcement.

Consolidating trademarks, geographical indications and patents shows the government's determination to further strengthen IP protection

in China. The move is also encouraging for rights holders as their intellectual property can be protected and enforced under a single office in the future.

The reshuffle could also signal stronger enforcement opportunities for patent holders by utilising the power and experience of local Administrations of Industry and Commerce. Historically, these local authorities, under the supervision of the SAIC, have been very strong and effective in tackling trademark infringement through administrative procedures.

SIPO will administratively come under the newly created State Administration of Market Supervision and Management (SAMSM)¹. In addition to SIPO, the SAMSM will oversee the National Development and Reform Commission's price supervision and antitrust enforcement functions, the Ministry of Commerce's antitrust enforcement functions and the State Council's Antitrust Committee.

This consolidation creates a powerful overarching oversight over the intellectual property protection regime in China and the opportunity to improve the efficiency of law enforcement and ensure consistency when interpreting and practising legal matters under different regimes.

“Surging past the 200,000 mark for the first time, Chinese IP cases have more than doubled in four years”

Expanding IP tribunals

China has continued to develop its adjudicatory framework for intellectual property disputes as the total number of IP tribunals reached 15 in March of this year. The tribunals are part of the IP courts system, stemming from the three specialised IP courts created in Beijing, Shanghai and Guangzhou in late 2014.

The IP courts were created to try cases involving patents, trade secrets, computer software and cases regarding recognition of well-known trademarks and antitrust issues. The IP tribunals have a similar function to IP courts, but operate within the local-intermediate court system

and are comprised of 12 to 15 judges, all with extensive IP litigation experience.

The IP tribunals have cross-regional and exclusive jurisdiction over IP matters in first-instance cases and their jurisdiction extends beyond the city's Intermediate Court where they are located. This power has stripped many Chinese courts of their jurisdiction over IP disputes, leading to a fundamental change in the forum selection strategies of both multinational and Chinese companies.

IP tribunals may also help to alleviate concerns about regional protectionism, because many defendants will not be sued in their own cities. For example, Xi'an is the capital city of Shaanxi Province, and one of 11 cities in the province, and although the Xi'an IP Tribunal is a part of the Xi'an Intermediate People's Court, its jurisdiction over significant IP matters covers all of Shaanxi Province.

For companies facing an IP dispute in China, understanding the IP tribunal framework and jurisdiction is paramount in order to select the appropriate jurisdiction for a case as location can have a significant impact on the time to resolution, as well as the ultimate merits of the case.

This rapid expansion of IP tribunals shows that China wants to strengthen their jurisdiction over IP cases and improve the quality, efficacy and consistency of IP adjudications. It also shows a determination to establish an IP judiciary system separate from the administrative divisions (provinces, province-level municipalities and cities within a province).

It has been widely speculated that China will eventually set up a unified IP appellate court, similar to the US Court of Appeals for the Federal Circuit. On a number of occasions, officials and judges of the Supreme People's Court have expressed support for the establishment of such a court. This would further enhance adjudicative consistency between IP administrative proceedings and infringement actions, and among different trial court decisions. It may also help to eliminate local protectionism.

Patent Law amendments

The State Council Legislation Plan for 2018 was released in April 2018, specifying that the draft of

¹SAMSM : The official English name is not available at this time — this name is based on a translation of the Chinese
國家市場監督管理總局管理

the amended Patent Law would be submitted to the Standing Committee of the National People's Congress for deliberation. This suggests that the text of the latest draft version Patent Law will likely be adopted as is. It is expected that the amendment will be issued later this year.

Highlights from the amendment include a partial design becoming an eligible subject matter for design patents, extending the term for design patents to 15 years, increasing statutory compensation (from Rmb1 million to Rmb5 million) and punitive damages for wilful infringements (up to three times the damages assessed), imposing fines, clarifying indirect infringement liability and mediating the amount of compensation.

Notably, the amendments also introduce new provisions regarding the good faith principle when applying for patents and exercising patent rights, and a credit record on the protection of patent rights to be established and incorporated into the national credit database.

The amendment also requires internet service providers (ISPs) to delete, block, disconnect or take other preventive measures to prevent patent infringement if they know or should have known the existence of patent infringement. The draft further allows patent right holders and SIPO to notify the ISP (which in China includes e-commerce platforms) to adopt preventive measures after being notified of patent infringement, otherwise the ISP shall be jointly liable with network users for the preventable losses.

Patentable business methods?

On February 28, 2017, SIPO announced its decision to Revise the Guidelines for Patent Examination (Revised Guidelines), which became effective on April 1, 2017. The Revised Guidelines provide significant changes to business methods.

Previously in China, patent applications involving business innovations in e-commerce faced patent eligibility challenges. Examiners used to reject these applications forthwith as not constituting a technical solution when they were considered to fall within the category of business methods.

The following has been added to Section 4.2, Chapter 1, Part II in the Revised Guidelines for Patent Examination: "For claims involving business models, if they contain both the content of business rules and methods and technical characteristics, the possibility of obtaining patent rights shall not be excluded under Article 25 of the Patent Law."



Xiaofan Chen

"This rapid expansion of IP tribunals shows that China wants to strengthen their jurisdiction over IP cases and improve the quality, efficacy and consistency of IP adjudications"

This suggests a sort of lowering of the allowance bar as it opens new doors for business methods with technical features to be allowed patent protection. While this does not guarantee patentability as the technical elements test still remains, many have interpreted the above Guidelines to assist patentees who have business method-type claims. Applicants must still prove or argue technical contribution for a business method-related application in order to be eventually patented.

For e-commerce, banking, securities and insurance-related businesses the relaxation is encouraging news. In the past, companies in these fields have discounted using patents to protect their innovations due to the rarity of applications being granted. The Revised Guidelines have prompted more companies to actively file patent applications to keep their competitive edge, especially in the booming industries of fintech and insurtech.

Other companies that may benefit from the relaxation are tech companies engaged in the development of social media as their core products and services, previously considered as relating to ways of doing business in operating organisations and institutions, thus being an unpatentable subject matter are now eligible for patent protection.

Landmark trademark cases and CTMO reforms to shorten processing time

In August 2017, the Suzhou International People's Court ruled that three domestic shoemakers must pay New Balance US\$1.5 million in damages and legal costs for infringing the American sportswear company's signature slanting N logo.

This is definitely one of the largest trademark infringement awards ever granted to a foreign business in China and is not only a victory for New Balance, but also for many other foreign companies that have long complained that China has not done enough to protect their brands.

Also in August, Under Armour won a major victory against the Chinese sportswear company Fujian Ting Fei Long Sports Products, which had used a similar logo to one used by Under Armour for its Uncle Martian athletic footwear.

“The Revised Guidelines have prompted more companies to actively file patent applications to keep their competitive edge, especially in the booming industries of fintech and insurtech”

The Higher People's Court of Fujian Province ruled in favour of Under Armour, finding that Fujian Ting Fei Long Sports Products' use of the logo constituted trademark infringement and awarded the plaintiff approximately Rmb2 million.

This case was important because the preliminary injunction was awarded before the matter was tried in full, which was relatively rare in the past. The Court approved Under Armour's application for a preliminary injunction and ordered the defendant to immediately stop the manufacturing, selling or advertising of shoes and clothing using the contested logo.

CTMO is making way to facilitate the registration, recordals, renewal and assignments of trademarks. By the end of the 2018, CTMO will shorten the window for trademark search (time lag between the trademark details available on the CTMO website and the filing of the trademark application) from three months to two months.

The office will also shorten the examination period for national trademark registrations from nine months to six months; for issuing filing receipts from two months to one month; for trademark assignments from six months to four months; and for recordals of changes and trademark renewals from three months to two months.

Moving forward

This is the “new China” that many have been looking forward to and have not expected to see so quickly, and so readily progressed by the central government. It is only in China that changes can take place as such breakneck speed, and from the perspective of IP practitioners on the ground here, we believe that the best is yet to come.



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Off-plan sales in Dubai: Risks and rewards

Opportunities abound for investors, but there are some important considerations before making an off-plan investment.

By Shahram Safai and Anna White of **Afridi & Angell**, and Richard Waind of **Better Homes**

Whether buyers are looking to expand their real estate portfolio or buyers are simply looking to find their ideal home, great deals can be found in Dubai's off-plan real estate sector as developers face pressure to shift their inventory amid a concern that the market is over supplied.

However, it is critical that prospective buyers do their homework; work with a reputable broker and a reputable lawyer who understand the off-plan market in Dubai; and ensure that they purchase a quality off-plan investment.

This article discusses the risks and rewards of Dubai's off-plan real estate sector, and the legal protections afforded to off-plan buyers.

“In the short term poor quality projects may suffer loss in value and those buying off plan should choose their investment carefully”

Rewards

Over the last few years off-plan buyers have had the opportunity to invest and make returns with minimal capital outlay. Investors, in particular, have been able to spread their investments and hedge their purchases over several projects in order to maximise future gains. And while off-plan investors do not see the immediate rental return from those investing in the secondary market, buyers of units in some new communities have been able to attract tenants at the expense of

some older communities, which has helped with occupancy rates and attractive yields. The affordable sector in particular has seen strong returns with yields exceeding 8 percent in the last year in communities such as Jumeirah Village Triangle, Jumeirah Village Circle and International City.

For the end user (as well as the attraction of living in a ‘box fresh’ home), low first payments and attractive payment plans have brought home ownership within reach of many residents previously priced out of the secondary market due to the 25 percent deposit requirement. This has been an important factor in enabling the younger generation to take that all important first step on to the property ladder and has further driven strong demand in the affordable sector.

Risks

While the Dubai Land Department (DLD) recorded that off-plan transactions were up 36 percent in 2017, there are signs in recent months that demand in the sector has softened with the pendulum slowly swinging back to the secondary market. A major concern for many is that recent off-plan demand has driven a surge in development, and the potential of significantly increased upcoming supply will have a negative impact on future values. Memories of the 2008/2009 market crash still loom large and the fear is that with 42,000 units under construction, where will the demand for these units come from?

It is clear that there is a large amount of

SPECIAL FEATURE



Shahram Safai



Anna White

supply in the pipeline, but delivery rates may not live up to expectations. The first quarter of 2018 saw only approximately 3,500 units handed over, and while that will increase in the coming months, the supply of good quality projects may be more in line with future population projections. But while today's development may be catering for tomorrow's population, there is a risk that in the short term poor quality projects may suffer loss in value and those buying off plan should choose their investment carefully.

Increased supply creates choice for end users both for the resale and rental of any off-plan investment and the savvy investor will have the requirements of the future occupier of the property firmly in mind when buying. Picking off-plan projects with attractive amenities and services such as schools, shops and recreational facilities, coupled with good transport links and infrastructure, will help future proof any off-plan investment. Build quality and the reputation of the developer are also important factors to consider, especially if you are hoping for the property to be handed over on time.

Legal protections

Off-plan real estate investment in Dubai is governed by a set of real estate laws and regulations aimed at protecting buyers' interests, the most important of which are discussed below.

The interim registration law (Law 13 of 2008 (as amended)) requires all sales (and all other disposals) of off-plan units to be registered on the interim real estate register maintained by the DLD. If a sale is not registered, it is considered null and void.

The interim registration law (Law 13 of 2008 (as amended)) also governs the developer's right to terminate a sale contract for an off-plan unit in the event that the buyer falls into default, and sets out: (i) the termination procedure to be followed; and (ii) the monies that may be retained by the developer in the event of termination which is linked to the percentage of completion of the off-plan unit as follows:

- if the percentage of completion of the unit exceeds 80 percent, the developer may retain up to 40 percent of the price of the unit specified in the off-plan sale contract;
- if the percentage of completion of the unit is between 60 percent and 80 percent, the developer may retain up to 40 percent of the price of the unit specified in the off-plan sale contract;
- if the developer has commenced construction work on the project as per the designs approved by the competent authorities and the percentage of completion of the real estate unit is less than 60 percent, the developer may retain up to 25 percent of the price of the real

- estate unit specified in the off-plan sale contract; and
- if the developer has not commenced the execution of the project for reasons beyond his control and without negligence on his part, the developer may deduct not more than 30 percent of the amounts paid by the buyer.

Furthermore, the trust account law (Law 8 of 2007) protects buyers by requiring developers selling off-plan units to be registered with the Real Estate Regulatory Agency (RERA), and to deposit all amounts paid by purchasers into an escrow account with an escrow agent accredited by the DLD. The amounts deposited in the escrow account are exclusively allocated for the purposes of construction of the particular real estate project (and directly related activities) and may only be withdrawn by the developer on application to RERA in accordance with the law.

Finally, pursuant to the jointly owned property law (Law 27 of 2007) and the Directions released in 2010, developers must disclose all relevant information pertaining to their off-plan development in a “Disclosure Statement” to prospective buyers as well as have a jointly owned property declaration describing the common areas and the rules and regulations associated with them, including the calculation of service charges.

Although off-plan buyers can take comfort in the protections afforded by the legislation described above, we recommend that purchasers check that:

- the real estate project is registered with RERA;
- there is an escrow account for the real estate project;
- the percentage of completion of the real estate project and the expected date of completion;
- the developer is registered with RERA;
- the developer owns the land or there is a development agreement between the owner and the developer; and
- the developer has the required permits and approvals from the DLD and RERA to sell units off-plan in that particular real estate project.

Conclusion

Dubai's off-plan real estate laws and regulations serve to increase investor confidence and attract more foreign investment.

With respect to the market, there are some excellent deals to be had from developers in Dubai today and off-plan enquiries remain high. However, today's off-plan buyers should not expect immediate gains, but should shop around and choose a quality product that will deliver long-



Richard Waind

term sustainable returns, or provide a stable, affordable home for themselves and their family.

Dubai remains an attractive proposition for domestic and international investors alike with globally high rental yields and relatively low prices per square foot. Dubai itself continues to attract hard-working and entrepreneurial people from across the world and the marketplace is maturing as more people choose to settle and raise families in the UAE. There is much to be positive about regarding the future of the Dubai property market and the off-plan sector will continue to play a big role in such market.



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Bank Indonesia issues new e-money regulation

The central bank has revoked its 2009 regulation and introduced an updated set of rules.

By Oka Anantajaya, Mochtar Karuwin Komar

The use of e-money has increased along with a growing number of e-money providers in Indonesia. This has led to significant development in the industry itself within the past couple of years, followed by the rise of the financial technology industry. The Indonesian central bank, Bank Indonesia (BI), recently issued Bank Indonesia Regulation No. 20/6/PBI/2018, concerning Electronic Money (2018 E-Money Regulation) and the 2018 E-Money Regulation repeals and revokes the previous e-money regulation, which was enacted in 2009, along with its amendments.

Under the 2018 E-Money Regulation, there are several key changes and the introduction of new rules that should be taken into consideration. The major changes and new rules will be further described in this article.

Open loop and closed loop

Under the 2018 E-Money Regulation, e-money is classified as a) closed loop and b) open loop. Closed loop is considered as an e-money that may only be used as payment instrument to goods and/or service provider that also acts as the issuer of such e-money. On the other hand, open loop is considered as e-money that may be used as payment instruments for goods and/or service providers that are not issuers of such e-money.

Requirement to have an e-money licence

A party that wishes to conduct e-money activities is required to obtain a licence from BI. The requirement to have a BI licence, however, can be exempted for a party acting as a closed loop e-money issuer with a floating



fund of less than Rp1 billion. The licence is valid for five years.

Storage, user identity recording and maximum limit

The 2018 E-Money Regulation classifies the storage media over the value of such e-money, which can be in the form of server-based storage and chip-based storage.

In relation to the recording of user identity, the 2018 E-Money Regulation classifies user identity into two types, namely unregistered and registered. As for the unregistered type, the user identity is not registered and recorded with the Issuer. In contrast, for the registered type, the user identity is registered and recorded with the Issuer.

The 2018 E-Money Regulation also sets out the maximum limit of the value of the e-money deposited. For unregistered e-money, the maximum deposit limit shall be Rp2 million and for registered e-money the maximum deposit limit shall be Rp10 million. The transaction value limit of an e-money within one month shall not exceed Rp20 million.

Front-end and back-end

The 2018 E-Money Regulation classifies the types of payment system services providers into two groups, namely front-end and back-end. Front-end comprises issuers, acquirers, payment gateway providers, e-wallet providers and fund transfer providers. On the other hand, back-end comprises parties that do not have any direct interaction with consumers such as

principal, switching companies, clearing operators and final settlement operators.

Capital (equity) requirements

Under the 2018 E-Money Regulation, non-banking institutions carrying out e-money activities as an issuer shall have paid-up capital of at least Rp3 billion.

“The 2018 E-Money Regulation classifies the types of payment system services providers into two groups, namely front-end and back-end”

However, it is noteworthy that the minimum paid-up capital requirements must be increased should the proportion of the floating fund held by the issuer increase. An increase in the minimum paid-up capital requirements shall occur under the following circumstances:

- a. If the average floating fund is more than Rp3 billion and reaches up to Rp5 billion, then the issuer will be required to increase its paid-up capital up to at least Rp6 billion;
- b. If the average floating fund is more than Rp5 billion and reaches up to Rp9 billion, then the issuer will be required to increase its paid-up capital to at least Rp10 billion; and
- c. If the average floating fund is more than Rp9 billion, then the issuer will be required to increase its paid-up capital to at least Rp10 billion with an additional 3 percent of the value of the floating fund.



Oka Anantajaya

“Under the 2018 E-Money Regulation, an issuer can only have foreign share ownership up to a maximum of 49 percent”

The average floating fund shall be calculated based on the data of the average floating fund from the previous year (calculated as of January to December). For an issuer that first enters into operation after the month of January, the average floating fund shall be calculated as of the first month that the issuer enters into operation until the month of December of the previous year. The increase of paid-up capital due to an increase of floating funds and following calculation of the average floating fund mentioned earlier shall be carried

out by no later than the end of June of the current year.

Foreign shareholding restrictions

Under the 2018 E-Money Regulation, an issuer can only have foreign share ownership up to a maximum of 49 percent. This limitation applies to both direct and indirect ownership based upon BI's assessment. In addition, BI is authorised to set out the amount of foreign share ownership in non-bank institutions that carry out e-money actives based on certain considerations. Certain considerations include, among others, the track record of the company itself and/or its shareholder, the technology utilised and the scope of the use of e-money.

Controlling shareholders restrictions

A party is prohibited from acting as (i) a controlling shareholder (having shares with voting rights of more than 25 percent or shares with voting rights less than 25 percent but with the authority to exercise control directly or indirectly) in more than one non-bank institutions having a licence to operate the same group of payment systems services provider (eg a party cannot be a controlling shareholder of two types of entities each having an issuer licence); and (ii) a controlling shareholder in more than one non-bank institution that is in different payment system service group (eg, a party cannot be a controlling shareholder in one entity having a licence as an issuer (front end) and the other entity has a licence as a principal (back end)).

Non-bank institutions that engage in e-money activities are prohibited from carrying out corporate actions that will result in a change of its controlling shareholder for five years from the time the licence is initially granted by BI unless in certain conditions and with the approval of BI.

E-money features and currency

E-money features that may be provided by issuers under the 2018 E-money Regulation can be in the form of a) top-up; b) shopping payment transactions; and/or c) payment of bills. Apart from the earlier mentioned features, the issuer may also provide other types of features, such as a) fund transfer and cash withdrawal, for registered open loop e-money; and/or b) other features as may be agreed by BI.

Fund transfer features may only be provided by the issuer following an approval as a fund transfer provider being granted by BI under the laws regarding fund transfer. Apart from the features, e-money issued in the territory of Indonesia must use the Indonesian Rupiah currency. In addition, providers are prohibited from accepting, using, relating, and/or conducting payment transaction processing of e-money using virtual currency.

Representation and warranties in applying for a licence

The 2018 E-Money Regulation introduces a new requirement for banks or non-bank institutions to provide a written representation and warranties in applying for a licence to carry out e-money activities with BI. The representation and warranties shall include, among others, the following:

- a. It has been duly established under the laws of Indonesia;
- b. It is not in a default condition, and is not subject to sanctions by the relevant authorities, and/or is not involved in any criminal or civil proceeding that may materially affect its business continuity;
- c. It is not subject to a petition of bankruptcy or suspension of payment of debt obligations before the competent commercial court; and
- d. Warrants that it will adhere to the laws and regulation, both for activities conducted by itself and together with other affiliated parties;

The above representation and warranties shall be signed by the board of directors representing the bank or non-bank institutions accompanied by a statement from an independent and professional legal counsel based on legal due diligence.

Fit and proper test requirements and director's residential requirements

In applying for a licence to carry out e-money activities, the 2018 E-Money Regulations gives the authority to BI to conduct a fit and proper test on: a) controlling shareholder; b) members of the board of directors; and c) members of the board of commissioners for non-bank institutions that are in the process of obtaining a licence to carry out e-money activities.

The purpose of having the fit and proper test is to ensure the fulfilment of integrity, financial reputation and financial competence of each of the controlling shareholder, members of the Board of Commissioners and members of the Board of Directors.

In addition to the fit and proper test requirements, the majority members of the Board of Directors of non-bank institutions that conduct e-money activities must be domiciled in Indonesia.

“Non-bank institutions that engage in e-money activities are prohibited from carrying out corporate actions that will result in a change of its controlling shareholder for five years”

Sanctions

A sanction is imposed for violation of the 2018 E-Money Regulation which can range from: a) verbal warning; b) fines; c) temporary freezing of a part or all e-money activities and/or other payment system services activities; and/or d) revocation of the licence in carrying out e-money activities and/or other payment system services.



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Shelf Drilling's associate general counsel for the Middle East and Africa discusses the changing role of in-house counsel and the effect of technology on the profession.

Hani Abosamra Abdelrasoul

Asian-mena Counsel: Can you describe your professional background and your current role?

Hani Samra: I am an Egyptian lawyer with more than 15 years of in-house experience in the oil-and-gas sector. I am currently assuming the role of associate general counsel of Shelf Drilling for the Middle East, Africa and Italy. Shelf Drilling is a major offshore drilling service contractor headquartered in Dubai, UAE. The role involves working with senior management to manage the legal risks associated with the company's offshore drilling contracts and corporate finance transactions. In the meantime, I am actively working on an AI-powered project in Silicon Valley and am hoping this initiative turns into a commercially feasible project.

AMC: How big is the team you manage and how is it structured?

HS: We are a small size team of five lawyers. The team is headed by the vice-president and general counsel. Two associate general counsel report to the VP, with two junior lawyers assisting them in the day-to-day legal and corporate work.

AMC: What are the biggest challenges you face in this role?

HS: The oil-and-gas business is cyclical, with uncertainties due to market fluctuations and changing macroeconomics. In some business cases, taking a standard approach to managing certain legal risks may not be the best solution that would help management solve the problem. Sometimes we

need to think of other innovative ways of managing certain legal risks to enable management to come up with the best commercial decision given the circumstances and market conditions.

AMC: What are the most important qualities of a good general counsel?

HS: We are living in the golden age of digitalisation and automation of almost all major industries. A good general counsel must be conscious to this fact no matter what industry she is in and needs to make sure that her team and resources are capable to provide innovative solutions to the legal issue at hand in a time- and cost-effective manner.

AMC: How is technology such as AI changing the way legal industry works?

HS: Since my visit to the Codex Institute at Stanford Law School in 2015, I realised that automating the legal industry is the most important thing happening in the legal space right now. This is a fact that every lawyer (whether in-house or at a law firm) must be conscious of. Artificial intelligence is increasingly making a significant impact on the way the legal industry works. Now, machines are performing some lawyers' tasks with a high level of accuracy, very close to a lawyer-like output or even better. AI branches such as machine learning and natural language processing are being used in many successful legal applications in contract analytics, legal research, e-discovery, self-service compliance and outcome prediction.

AMC: How will AI shape the future of legal services?

HS: The use of AI in the legal industry is increasing and scalable every day. This is because AI works on historical data and learns from it to perform the desired human-like outcome. The legal industry is very rich with data and is a perfect fit for AI deployment wherever it is possible to provide automated solutions to mechanistic or repetitive tasks or to predict an outcome. This increasing deployment of AI-powered applications will enable law firms to provide cost- and time-effective legal services to their clients and legal departments to provide innovative solutions to their management. Overtime legal AI will be a label of quality assurance for law firms and legal departments. Clients and management will ask whether a law firm or legal department uses legal AI in providing their services. Administrative and paralegal jobs will disappear or be significantly re-defined over time. Access to justice will be cheaper. The

increasing use of AI will also prompt law schools to teach law students data science and machine learning besides law. This will create a new generation of lawyers capable of dealing with and managing AI to optimise efficiency and costs of legal services.

AMC: Will AI replace lawyers in the future?

HS: No. However, AI will take over admin and repetitive tasks so that lawyers will be dedicated to cerebral tasks. As the level of accuracy of AI output increases, lawyers will be dedicated to more strategic thinking and bringing more added value to clients at lower costs.

AMC: What advice can you give to young lawyers starting out in their careers today?

HS: Get educated on data science and machine learning and watch how legal AI is being deployed. Think of any legal problem and see how this legal problem can be automated.

AMC: What skills should they aim to acquire and what are the most promising areas of practice to focus on?

HS: In my opinion, the most important skill that any young lawyer should have for success is the ability to innovate and provide creative solutions to legal problems. Learning how to be innovative is not hard. A young lawyer needs to constantly engage her mindset in the approach of finding other ways of solving the problem.

AMC: What is your hinterland – what are your interests outside of the legal profession?

HS: Machine learning and data science, where I am planning to launch my legal AI startup in the future. That is my dream.



Hani Samra is currently assuming the role of associate general counsel of Shelf Drilling for the Middle East, Africa and Italy, based in Dubai. He has more than 15 years of experience with a focus on oil-and-gas and corporate finance. He held previous regional roles with Schlumberger and Transocean, covering various countries in the Middle East, Africa, Europe and Asia. Since 2015, Hani has been actively engaged in the legal technology and innovation space, and is currently working on his own initiative of cognitive development and legal AI platform in Silicon Valley.

ASIAN-MENA COUNSEL DIRECT

Your 'at a glance' guide to some of the region's top service providers.

 **AMC** Indicates an ASIAN-MENA COUNSEL Firm of the Year. **2015** **2016** **2017**

 **MR** An ASIAN-MENA COUNSEL Most Responsive Firm of the Year.

 **MR** An ASIAN-MENA COUNSEL Honourable Mention Most Responsive Firm of the Year.

 One of this firm's five largest practice areas in this jurisdiction.

 **FS** Indicates a full service firm in this jurisdiction.

Practice Area key:

INV Alt' Investment Funds (inc. PE)
COM Antitrust / Competition
AV Aviation
BF Banking & Finance
CM Capital Markets
CMA Corporate & M&A

E Employment
ENR Energy & Natural Resources
ENV Environment
IA International Arbitration
IP Intellectual Property
IF Islamic Finance

INS Insurance
LS Life Sciences
LDR Litigation & Dispute Resolution
MS Maritime & Shipping
PF Projects & Project Finance
(inc. Infrastructure)

RE Real Estate / Construction
REG Regulatory / Compliance
RES Restructuring & Insolvency
TX Taxation
TMT Telecoms, Media & Technology

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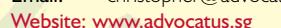
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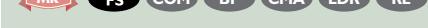
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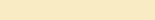


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