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Special Report

LEGAL INNOVATION & TECHNOLOGY

including

Mitchell
Kowalski

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New Strategy for
In-House Counsel



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LEGAL INNOVATION & TECHNOLOGY

Special Report

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Developments in competition law in Africa

At LEX Africa's June seminar on developments in competition law in Africa, speakers discussed the increasing trend of governments to try and use competition law as an important part of their industrial policy.

Chairing LEX Africa's seven-member panel on the topic, Pieter Steyn — director at South African LEX Africa member Werksmans and chairperson of LEX Africa — started off the session with insight into South Africa's competition law developments.

Steyn said competition law in South Africa was very developed and the country has had a very active Competition Commission since 1999. The authority, he said, has handled cases concerning mergers, but also increasingly focused on investigating conduct, especially cartels and abuses of dominance. Cartel conduct was criminalised from May 1, 2016. Proposed amendments to the South African Competition Act would increase both penalties for contraventions and the Commission's powers.

Peter Njeru, a partner at Kenyan LEX Africa member Kaplan & Stratton said: "In 2000 only 13 countries [in Africa] had competition laws in place. As of 2015 this figure had nearly doubled to 32 countries of which 25 jurisdictions have operational competition authorities."

He said that regional competition regulation and authorities is also increasing including the Common Market for Eastern and Southern Africa Competition Commission and the East African Community Competition Authority as well as in the Central African Monetary and Economic Community, the West African Economic and Monetary Union and Economic Community of West African States.

On future trends in competition law in East Africa, he said the East African Community Competition Authority could be fully operationalised by 2019 and that regulatory bodies could

increase the number of dawn raids to root out anti-competitive practices like cartels. This is currently the case in countries like South Africa, Kenya, Zambia and Namibia, said Njeru.

Neuza Dias, a partner at LEX Africa's Angolan member FBL said the government had accepted the need to implement principles and rules which safeguard healthy competition. She said this was "definitively mandatory to the improvement of Angola's business environment."

In 2015, under the oversight of the finance minister, the Competition and Prices Institute was created and the recent creation of the Competition Regulatory Authority has had a positive effect.

In Mozambique, competition law is relatively new and undeveloped. Celia Francisco, lawyer at Mozambican LEX Africa member CGA, said legislation regarding the issue was enacted in 2013 and 2014 and in August 2014, the government created the Regulatory Authority of Competition.

The country's competition law applies to all activities and focuses on prohibited acts that are considered anti-competitive. Francisco said attention is also paid to "enterprise concentration in order to avoid anti-competitive conducts that result in distortions or restrictions of healthy and fair competition".

Sydney Chisenga, partner and specialist in dispute resolution and competition at LEX Africa member Corpus, advised that the government had replaced the 1994 competition law by the 2010 Competition and Consumer Protection Act.

Under this Act — which is enforced by the Competition and Consumer Protection Commission (CCPC) — mergers and cartel conduct is regulated, raids are conducted and penalties are issued.

In terms of recent trends in abuse of dominance, Chisenga said a firm is considered to be dominant if it has 30 percent market share. "The concept of collective dominance also exists if not

more than two enterprises have a market share of 60 percent."

He said while being dominant was not illegal, there were clearly defined parameters which constituted an abuse of dominance. This included applying dissimilar conditions to equivalent transactions, excessive, unfair and/or discriminatory pricing, denying any person access to an essential facility and selling goods below their marginal or variable cost.

In Africa's largest economy, Nigeria, nine bills have previously been submitted before the National Assembly to establish a legal framework for competition law in the country. Yemi Kehinde from Nigerian LEX Africa member Giwa-Osagie & Co, said the Federal Competition and Consumer Protection Bill was passed by the National Assembly in December 2017 and was with the president to be signed into law. If signed, this will supplement and in certain circumstances override existing sector-specific legislation regulating competition and anti-competitive conduct.

The Bill establishes two bodies, the Federal Competition and Consumer Protection Commission and the Federal Competition and Consumer Protection Tribunal. Tribunal decisions may be appealed to the Federal High Court. Mergers, Price fixing, bid rigging and other anti-competitive conduct is regulated. Fines of up to 10 percent of annual turnover may be imposed.

Steyn concluded by noting the landscape of competition law in Africa is fast changing and must be monitored by business. African competition law is combining internationally accepted precedent with local factors like public interest issues in an effort to use competition enforcement as a developmental tool. The significant penalties (including personal liability for directors and managers) makes it essential for business to ensure compliance.

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INDIA

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Metro projects to spur growth in the infrastructure sector

Metro rail projects in India have gathered pace and, according to available data, 425 kilometres of metro lines are presently operational in 10 cities, and the metro network is expected to expand over 700 kilometres across 50 other cities. Where the estimate of overall cost of expansion of metro projects stands over Rs2.5 trillion, it may result in adding up an order book of Rs750-900 billion for construction contractors during the next couple of years. The current planned outlay for the current fiscal year is Rs142.6 billion with Delhi Metro being the largest metro project in India among almost 10 other operationalised metro systems, public private partnerships (PPPs) and private finance has become the preferred mode of development for metro projects.

Regulatory framework for metro projects

- a. **Governing legislations** – The Metro Railways (Construction of Works) Act, 1978 governs the construction of metros and related matters. Whereas, the operation and maintenance of metros is governed by the Delhi-specific Delhi Metro Railway (Operation and Maintenance) Act, 2002. These legislations were amended by the Metro Railways (Amendment) Act, 2009, broadening their scope to cover metro projects across all metropolitan areas in India.
- b. **Metro rail corporations** – These corporations as governing bodies oversee development of the respective metro system. For example, Delhi Metro Rail Corporation was incorporated with equal equity participation from the Government of India (GoI) and Government of National Capital Territory of Delhi; the Lucknow Metro Rail Corporation, a special purpose vehicle (SPV), is jointly

owned by the GoI and the Government of Uttar Pradesh with an authorised capital of Rs20 billion.

- c. **Metro Rail Policy 2017** – The New Metro Rail Policy 2017 was approved by the Union Cabinet in August 2017 to rationalise metro expansion in the country in terms of collaborations, standardisation of norms, etc. This Policy allows respective states to formulate rules and regulations and establish permanent fare fixation authorities. Also, it suggests that projects be cleared on the basis of an economic internal rate of return of 14 percent.

Various models of development under the Policy

The Policy highlights the following models for development of mass rapid transport systems:

- a. **Private sector participation** – Private participation for either complete project or for some unbundled yet essentially required components of the project are preferred. Private players can also be engaged in Operation and Maintenance (O&M) such as:
 - (i) **Cost and fee contract** – The authority pays operator on a timely basis and it could be inclusive of fixed and/ or variable components. The risks are borne by the authority.
 - (ii) **Gross cost contract** – A fixed sum is paid to the operator for a given time and O&M risks are borne by the operator, and revenue risks by the authority/owner.
 - (iii) **Net cost contract** – The operator collects the revenue generated from the services. If the revenue is lower than the O&M cost, the remaining cost is compensated for by the authority/owner. However, all the risks during the tenure of the contract are borne by the operator.
- b. **PPP** – State governments hereinafter are likely

to utilise financial assistance governed by the Viability Gap Funding (VGF) Scheme or from the central government, as long as PPP arrangements are explored. Some indicative models of private sector involvement are:

- (i) construction of new metro systems through design-build-finance-operate-transfer;
- (ii) award of concessions for operational services; and
- (iii) award of concessions for maintenance and upgradation of infrastructure.

Central government's support to the metro projects envisaged under the Policy

- a. **Support to PPP** – Central financing for this model is available under the VGF Scheme of the GoI.
- b. **Grant** – The central government may consider providing 10 percent of project cost to the state government (with private participation in some form of implementation), excluding the private investment, cost of the land, rehabilitation and resettlement costs and tax for development of a metro system.
- c. **Equity sharing model** – Here, equal equity would be shared between the centre and the state with formation of an SPV as essential feature. Here too, there is a requirement of having private sector participation in any feasible form.

Conclusion

Metro projects are capital-intensive ventures needing big funding from the central government or external funding agencies. However, under the Policy the states will have to come up with innovative ways to raise funds through means like value capture finance tools. They will also have to issue corporate bonds for metro projects for enabling low-cost debt capital. The Policy lays stress on private sector participation in implementation of the metro projects going forward.



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How the Mental Health Act affects employees

Mental health conditions, which include anxiety and panic disorders, depression, eating disorders, substance abuse and addictions, have become a pervasive issue which permeates our present society. Anyone can be affected by these conditions regardless of nationality, age, or gender.

These conditions have been recently brought to fore by celebrities who acknowledged that they suffered problems relating to their mental health, or worse, suffered their early demise when they lost their respective battles with their mental health conditions. If celebrities who appear to have everything they could possibly have in their lives succumb to their mental health conditions, then the ordinary working Filipino is not immune to these problems.

The workplace, and all the expectations of productivity, deadlines, performance evaluations, and the avalanche of information from different sources not only lead to stress but can actually take a toll on one's mental health. Despite this reality, the topic of mental health remains taboo. Some employees are afraid that talking about any mental health condition will lead to their discrimination, or worse, result in the loss of their jobs.

In passing the Mental Health Act (Republic Act No. 11036), the government took a step towards affirming the right of all Filipinos, not only the workers, to good mental health and mental health services.

With the passage of the law, employees no longer need to fear that they will be discriminated against since the Mental Health Act decrees that persons affected by mental health conditions should be allowed to exercise the full range of human rights and participate fully in society and work, free from stigmatisation and discrimination.

Likewise, the Mental Health Act requires the confidentiality of all information, communications and records, in whatever form or medium stored, regarding the person experiencing mental health condition. Generally, the information, communication and records cannot be disclosed to third parties without the written consent of the person experiencing a mental health condition or his legal representatives, subject to certain exceptions.

Violation of the provisions on non-discrimination and non-disclosure may lead to a penalty of imprisonment of not less than six months, but not more than two years; or a fine of not less than P10,000, but not more than P200,000; or both, at the discretion of the court.

Further, employers are now required to develop appropriate policies and programs on mental health in the workplace designed to: 1) Raise awareness on mental health issues; 2) Correct the stigma and discrimination associated with mental health conditions; 3) Identify and provide support for individuals at risk; and 4) Facilitate access of individuals with mental health conditions to treatment and psychosocial support.

In this regard, the Department of Labor and Employment has been directed to: 1) Develop guidelines and standards on appropriate and evidence-based mental health programs for the workplace; and 2) Develop policies that promote mental health in the workplace and address stigma and discrimination suffered by people with mental health conditions.

The determination of the existence of a mental health condition is based on scientifically accepted medical nomenclature and best available scientific and medical evidence. Persons experiencing mental health conditions

may avail of mental health services even down to the barangay level. The Mental Health Act also integrates psychiatric, psychosocial, and neurologic services in regional, provincial, and tertiary hospitals, and mandates the improvement of mental healthcare facilities.

The Mental Health Act does not expressly mandate free psychiatric consultations and medicines for those in need of them. As it stands, the Philippine Health Insurance Corporation (PHIC) only covers hospitalisation brought about by acute attacks of mental and behavioural disorders at a package rate of P7,800. This however, may still be remedied since the Mental Health Act directed the Department of Health, which has been charged with the formulation, development, and implementation of a national mental health program, to coordinate with the PHIC to ensure that insurance packages equivalent to those covering physical disorders of comparable impact are made available to patients affected by mental health conditions.

When employees are happy, they are more likely to perform well at work. When they suffer, their work also declines. This legislation encourages employees to be open and take care of their mental health. However, the war for mental health advocates does not end here, they need to ensure that the implementing rules and regulations of the Mental Health Act provide for the necessary provisions for the proper execution of this new law.

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.

(Note: This article first appeared in Business World, a newspaper of general circulation in the Philippines.)

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Major amendments to the Unfair Competition Prevention and Trade Secrets Protection Act

Following its amendment on April 17, 2018, the new provisions of the Unfair Competition Prevention and Trade Secrets Protection Act took effect on July 18, 2018. There had been no established opinion in Korea as to the law under which “trade dress” should be protected and what requirements should be met in order to receive such protection. However, this amendment to the Act explicitly recognises the concept of trade dress as well as the protection of ideas. It is expected to further strengthen the level of protection available in Korea to the rights of IP owners.

In its previous version, the Act did not have any provision that explicitly protected trade dress, a term that, among other things, refers to a distinctive general exterior appearance and design of a business that is associated with a particular business and constitutes such features as business methods, interior decorations, signboards, signposts, etc. In the absence of such a provision, courts protected trade dress by recognising it as one of the features protected under Article 2(1)j. of the previous Act, but only if it met certain requirements (Supreme Court decision no. 2016Da229058 rendered on September 21, 2016, etc.)

The amended Act, on the other hand, clarifies and makes explicit the protection of trade dress, as a business mark, by specifying that trade dress is a mark that expresses or is associated with a particular business, and it includes any distinctive method of selling products or providing services or any general exteriors of places of business, signage, external designs, internal decorations, etc. This is

“The amended Act clarifies and makes explicit the protection of trade dress, as a business mark, by specifying that trade dress is a mark that expresses or is associated with a particular business”

reflected in Article 2(1)b. and c. of the Act.

Additionally, in its prior version, the Act did not have any concrete provision that would restrict the unauthorised use of ideas, except in limited situations where certain defined requirements were met, for example, where a right was protected by a patent registration or where there was an explicit contract protecting such use of ideas.

To more aggressively protect novel business and technical ideas and restrict the unauthorised use of those ideas, particularly the ideas of small and medium-sized business enterprises (SMEs), venture corporations and developers, the amended Act contains new protective measures. It provides that any act of wrongfully using or causing others to use information that includes technical or business ideas of others, which information could possess economic value, in the course of bargaining or

transacting business proposals, bidding, public offerings, etc., would be considered a new type of unfair competition under Article 2(1)j. of the Act. The only exceptions would be situations where the recipient of such business ideas was already aware of those ideas at the time they were received or when it is proved that such ideas were already widely-known in the same field of business or industry.

Given the above amendment, the unauthorised use of business and technical ideas, which had previously fallen into a gap in the law in the absence of an explicit contract of protection between the parties, is now the subject of protection, even without concrete contract provisions.

Also of note, the amended Act specifically excludes the wrongful use of ideas from criminal punishment (Article 18(3)l of the Act). But it grants the commissioner of the Korean Intellectual Property Office authority to conduct investigations and to make correction recommendations in connection with any conduct violating the Act (Articles 7 and 8 of the Act).

Moreover, the amended Act generally provides for (i) civil claims to prohibit violations and for the recovery of damages (Articles 4 and 5 of the Act); (ii) criminal sanctions (Article 18(3) of the Act); and (iii) administrative remedies (Articles 7 and 8), as the available methods of relief for engaging in unfair competition. Additionally, Article 14-7 was newly added so that in the case of any damages lawsuit filed pursuant to Article 5 of the amended Act, the court may, if necessary, demand that the Korean Intellectual Property Office (KIPO) submit to the court the KIPO’s investigation records as to any applicable acts of unfair competition, etc. It is expected that this addition will make it easier to acquire evidence to support damages law suits in the future.

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EVENT REPORTS

In-House Congress Seoul 2018

In its sixteenth year, the Korea event brought together leading in-house lawyers, chief executives, company directors and compliance professionals.

After an eventful year for the Korean peninsula, the sixteenth In-House Congress Seoul featured some timely discussions, including a workshop on recent sanctions developments with Clyde & Co.

The day started with a plenary session devoted to the relationship between cost, quality and value for in-house legal teams, followed by a discussion on women in law, regarding mentorship and meaningful careers with Yun Choi, of LG Chem’s IP centre; Hayoung Hailey Kim, general counsel at Dell EMC Korea; Sue Hyun Lim, secretary general at KCAB International; Ji Hyung Kim, general counsel of Veolia Korea; Henry Sohn, an Allen & Overy partner; June Yeum, a partner in the global dispute resolution practice at Clyde & Co; Shareena Edmonds, a partner at Reed Smith.

During the rest of the morning, Bae, Kim & Lee provided a regulatory checklist for the EU’s new data privacy rules, while Reed Smith examined current trends influencing successful delivery of international construction projects and Yoon & Yang presented a session on the Korea Fair Trade Commission’s enforcement activities.

Afternoon sessions included an update on recent developments in white collar and regulatory enforcement across Asia with Herbert



Smith Freehills and an explanation by Yulchon of why tax can be so difficult in Korea for multinational companies.

The day’s workshops included a joint presentation by Bae, Kim & Lee and the Hong Kong International Arbitration Centre that looked at third-party funding and enforcement. Yoon & Yang discussed the legal issues of labour investigations, including the shortening of maximum weekly work hours and illegal dispatching of temporary agency workers.

Thanks to all the presenters who contributed to a successful event, and to Fronteo and LexisNexis for their support.

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



Henry Sohn
Partner
Allen & Overy LLP



David MacArthur
Senior Foreign
Attorney
Bae, Kim & Lee LLC



Michael Suh
Foreign Attorney,
Bae, Kim & Lee LLC



Juho Yoon
Partner
Bae, Kim & Lee LLC



Seokchun Yoon
Partner
Bae, Kim & Lee LLC



Avryl Lattin
Partner
Clyde & Co



June Yeum
Partner, Global Dispute
Resolution Practice
Clyde & Co



Reemt Matthesen
Partner
CMS Hasche Sigle



Hayoung Hailey Kim
General Counsel
Dell EMC Korea



Kyle Wombolt
Head of Global
Corporate Crime &
Investigations Practice
Herbert Smith Freehills



Joe Liu
Managing Counsel,
Hong Kong
International
Arbitration Centre



Patrick Dransfield
Publishing Director
Asian-mena Counsel
and Co-Director,
In-House Community



Sue Hyun Lim
Secretary General
KCAB
INTERNATIONAL



Hyun-Joon Kwon
Director of Personal
Data Policy Division
Korea Internet Security
Agency



Yun Choi
Professional, IP Center
LG Chem



Alex Andrews
Partner
Reed Smith



Shareena Edmonds
Partner
Reed Smith



Vincent Rowan
Partner
Reed Smith



Cholsoo Han
Senior Advisor
Yoon & Yang LLC



Seong Hong
Partner
Yoon & Yang LLC



Seunghyeon Sung
Partner
Yoon & Yang LLC



Yong Whan Choi
Partner
Yulchon LLC



John Dryden
Senior Foreign Counsel
Yulchon LLC



Kyu Dong Kim
Senior C.P.A.
Yulchon LLC



Dong Hun Lee
Senior C.P.A.
Yulchon LLC



Ji Hyung Kim
General Counsel
Veolia Korea



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In-house

Head of Corporate Secretarial | 10+ yrs exp | Kuala Lumpur REF: 14633/AC

A regional medical company is seeking a Chartered Secretary to head up their corporate secretarial department. Based in Kuala Lumpur, you will oversee the operations of their corporate secretarial department and provide advice on corporate governance and give administrative support to the company. You must be a MAICSA member with over 10 years' corporate secretarial experience gained in listed companies. Strong knowledge of relevant regulatory requirements relating to the medical industry is essential. Preferred candidates possess business acumen, excellent communication skills are independent, mature and committed to work. Fluency in English and Bahasa Malaysia is required.

Legal Counsel | 8-10 yrs pqe | Hong Kong REF: 14564/AC

Seize this senior role and join the legal team of this world leading investment bank in Hong Kong. You will primarily be responsible for providing advice and support to their regional units on legal, regulatory, transactional and risk issues both in Greater China and Asia Pacific. To be successful, you must have at least 8 years' PQE in asset or fund management gained at a top-tier international law firm or investment bank. Strong technical knowledge of the investment management business is essential plus experience of regulatory issues in Asia. Fluency in written and oral English and Mandarin languages are required.

Legal Counsel | 6-10 yrs pqe | Chengdu REF: 14632/AC

A multinational company is seeking a senior PRC-qualified lawyer to join their China legal team. Based in Chengdu, you will act as the lead counsel to provide legal support on their China operations and day-to-day business plus negotiate, draft and review contracts. Ideally, you have stellar academics from a leading PRC law school and an LLJ/JD from the US along with 6-10 years' PQE in contracts, real estate, foreign investment, employment and general corporate work at a leading law firm or an MNC. Experience in the medical, pharmaceutical or manufacturing industry is desirable. Strong drafting skills are required in addition to fluent English and Mandarin.

Ethics & Compliance Officer | 6-7 yrs pqe | Mumbai REF: 14164/AC

Superb opportunity to lead and manage the ethics and compliance program of a world-renowned industrial corporation. Based in Mumbai, you will be responsible for investigating internal improprieties, allegations, complaints and conflicts of interest and providing legal advice on corporate governance issues. You must have over 6 years' legal/compliance experience, 3-4 of which must be in charge of internal ethics and compliance investigations. Experience in handling compliance in a Fortune 500 company is desirable plus the willingness to travel.

Legal Counsel, Derivatives | 5+ yrs pqe | Hong Kong REF: 14605/AC

A Hong Kong-listed asset management company seeks a Common Law-qualified Legal Counsel to join its Hong Kong office at Director/VP level. You will assist the Head of Legal with all asset management legal issues, including hedge funds, private equity, prime brokerage and compliance with SFC/HKEX regulations. You must have an LLB/LLJ from a recognized Common Law jurisdiction university, plus 5 years' PQE in private practice or in financial institutions in any Common Law jurisdiction. To succeed, you must be well-organised and detail-orientated with excellent communication skills plus fluent English, Cantonese and Mandarin skills.

Private Practice

Senior Property Lawyer | 10+ yrs pqe | Hong Kong REF: 14620/AC

A dynamic Hong Kong law firm is seeking a Senior Property Lawyer to best meet the needs of their active investor client base. You must be Hong Kong qualified with solid local market experience in all aspects of real estate including conveyancing, property management and tenancy matters, sub-strata sales, development and acquisitions of holding companies. Strong supervisory experience, ideally at least 5 years, would be a huge asset. Experience of first sales in real estate developments is highly desirable. Fluent English and Cantonese skills are required.

Senior Corporate Associate | 8+ yrs pqe | Shanghai REF: 14621/AC

Come on board this European multinational law firm as a member of their corporate team based in Shanghai. Our client is looking for a PRC-qualified lawyer with over 8 years' PQE in M&A, FDI and general corporate work at international law firms. Those with team leading and client-facing experience will be ideal for this role. Native-level Mandarin and fluent English skills are essential.

Senior IP Associate | 6+ yrs pqe | Hong Kong REF: 14641/AC

A global law firm is looking to add to their rapidly growing IP team. You will handle a mix of contentious and non-contentious matters and a broad spectrum of IP work including trademarks, copyright and patents. The firm's priority is to hire lawyers with over 6 years' relevant PQE dealing with Hong Kong and China issues but strong, more junior candidates with 3 PQE+ are welcome to apply such is the anticipation of workflow. Fluent English and Chinese skills are mandatory. Hong Kong Bar qualification is preferred, PRC lawyers with significant Hong Kong experience will also be considered.

Senior Associate/ Counsel | 5+ yrs pqe | China REF: 14626/AC

A top-tier PRC law firm is seeking a senior lawyer with strong technical skills to join their China team based in Beijing/Shanghai/Hong Kong. The ideal candidate will have substantial experience of leading and managing teams and interacting closely with clients. You will have over 5 years' PQE in PE/M&A, VC or fund formation. Ideally, you have US legal education and qualification. Fluency in English and Mandarin is essential.

Associate, Outbound M&A | 3-4 yrs pqe | Shanghai REF: 14622/AC

This leading US firm is looking for a mid-level outbound M&A lawyer to join their Shanghai office. You ideally have a US JD or LLJ plus over 3 years' M&A experience from international law firms. Our client is willing to provide relocation packages to the right candidate from overseas. Fluent English and Mandarin skills are required.

Junior Patent Associate | 1-2 yrs pqe | Beijing REF: 14637/AC

Excellent opportunity for a junior patent lawyer to advance their career in this global law firm based in Beijing. The ideal candidate will have 1-2 years' relevant experience in contentious and non-contentious matters. A science/technology background and admission to the PRC patent bar is required. A PRC legal qualification is highly desirable. Strong command of English and fluent Mandarin skills are essential.



To find out more about these roles

& apply, please contact us at:

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www.hughes-castell.com



MOVES

The latest senior legal appointments around Asia and the Middle East

AUSTRALIA

Gadens has added **Jodylee Bartal** as a partner in its family and relationship law team in Melbourne. Bartal joins from Lander & Rogers, where she has practiced for over 10 years. Prior to that, she was head of the family law practice at Russell Kennedy. Bartal is an accredited specialist in family law. Highly experienced with an excellent reputation, she advises on all areas involving married and de facto couples, from separation, divorce and parenting disputes, to children's matters, binding financial agreements, all aspects of financial and property settlements and litigation/defended matters. Her experience includes acting in multi-party disputes, multiple jurisdictions and complex parenting, property (including international disputes), tax, valuation and financial matters.

CHINA

Squire Patton Boggs has added **Yan Xuan**, the former president of Nielsen Greater China, as a partner to lead its international public policy practice in China. Yan is an accomplished US lawyer, who has gained a reputation as a distinguished business leader, effective government lobbyist and respected US and China policy expert. He brings more than 25 years' experience in senior leadership roles at global companies, such as Qualcomm, Oracle, Microsoft and AT&T. In 2011, he joined Nielsen, where he led its overall business in mainland China, Hong Kong, Taiwan and Macau. Yan brings a unique understanding of the macro economy, government policy and political landscape in China, as well as deep insights into a number of dynamic and complex industries. He also has extensive experience in corporate governance, spanning industry association, corporate and university boards. He was vice-chairman of the board of governors of the American Chamber of Commerce in China, as well as a member of the board of directors of USITO, an association of leading US IT companies.



Yan Xuan



Bingna Guo

White & Case has expanded its global white-collar practice with the addition of **Bingna Guo** as a new partner in Beijing. Guo has broad white-collar experience in internal investigations and providing compliance advice and representation on domestic and cross-border matters for multinational companies. She also advises companies on comprehensive compliance programmes and training. Guo has significant experience in cross-border litigation, international commercial arbitration and mediation, regulatory matters, crisis management and complex commercial litigation. Prior to joining the firm, she was a partner at O'Melveny & Myers.

HONG KONG

Walkers has added **James Gaden** as a partner in the corporate and investment funds group in its Hong Kong office. Gaden has over 15 years of experience providing legal advice to the financial services sector, with a specific focus on the investment funds industry. He has worked extensively with private equity and hedge fund managers across the region. He advises on fund formation and structuring, transactional matters, including M&As, fund restructuring and fund financing. Over the years, he has developed strong expertise in the venture capital space, particularly in fintech-related industries.



James Gaden

INDIA

ANM Global has added **Anushree Rauta** as a partner to lead its entertainment and media practice. Rauta graduated from ILS Law College, Pune in 2010. She started her career with Naik Naik & Company, where she worked for close to eight years, prior to joining ANM Global in August 2018. She specialises in media, entertainment and information technology laws, and is well-known for her expertise in structuring complex transactions and providing advisory services. She also practices litigation specific to this practice area, thereby providing a very holistic approach in this field. Moreover, Rauta runs the entertainment and media blog IPRMENTLAW.

J Sagar Associates has added **Farid Karachiwala** as an equity partner in its Mumbai office, with effect from October 1, 2018. Karachiwala has been an equity partner for many years at Wadia Ghandy & Co in Mumbai and anchored its general litigation practice. He has a strong Mumbai-based litigation practice and also a substantial real estate practice. He also brings most of his team with him.

US

King & Wood Mallesons has strengthened its New York capability with the appointment of US tax expert **Jun Kang** as a partner. Kang brings US and international tax expertise across a number of areas, from cross-border investments, capital markets to private investment funds. Prior to joining the firm, he was at Cahill Gordon & Reindel, where he worked with clients, including Chinese state-owned enterprises, financial institutions, private equity firms, asset managers, listed companies and high-net-worth individuals. Kang also practised law in China, including serving as internal legal counsel at China National Offshore Oil Corporation.



Jun Kang

The JLegal



Personality
Questionnaire
Experience

Throughout the year, JLegal examines the PQE of a senior in-house counsel. On this occasion we chat with Jaewon Yoon, and discover he is almost impervious to the effects of caffeine.

- What is on your mind at the moment?
Future of US-North Korea relations.
- What secret talent do you have?
I down three venti-sized coffees a day and have no problem sleeping.
- If you weren't a lawyer you would be a ...
better rested person.
- Where is the best place you have ever been to?
There is no place like home.
- What is your idea of misery?
Being forced to perform the same routine day in, day out.
- What is the strangest thing you have seen?
Getting yelled at by a McDonald's worker in Hong Kong for dumping my own trash in the garbage can. One's virtue can threaten another person's livelihood.
- If you could have one superpower it would be ...?
Telepathy. Too much gets lost in verbal communication, especially across cultural boundaries.
- What is your motto?
I've adopted my high school motto: Carpe Diem!
- Top 3 favourite movies of all time?
Bladerunner. The Godfather. The Matrix.
- What do you consider the most overrated virtue?
Personal virtues that could have unintended consequences at the macro-scale.
- What irritates you?
Folks who don't take ownership of their work.
- What was your last Google search?
Recipe for NY style pizza sauce.
- If you could time travel, where would you go?
30 years into the future to gain lessons for the present world.
- What's the one food you could never bring yourself to eat?
Stinky tofu.
- Which of the Seven Dwarfs is most like you?
Sleepy, according to a personality survey I took on the internet.



Jaewon Yoon

Head of Legal
Jungle Ventures



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DEAL OF THE MONTH



Asian-mena Counsel Deal of the Month

Temasek's Astrea IV private equity securitisation

A unique opportunity for ordinary investors to access private equity returns in the form of a bond.

Retail investors in Singapore were given a world-first opportunity to buy bonds backed by cash flows from private equity funds this summer when Temasek subsidiary Azalea launched a US\$501 million-equivalent securitisation.

The stated goal of the public offering component is to introduce new investment products that make private equity accessible to a wider investor base, as Temasek is an investment arm of the Singapore government and has a mandate to serve the public interest.

Astrea IV comprised three tranches — S\$242 million (US\$177m) Class A-1 secured fixed rate bonds, US\$210 million Class A-2 secured fixed rate bonds and US\$110 million Class B secured fixed rate bonds. All three have a 10-year maturity. The sponsor, Azalea, holds the US\$597.4 million unrated equity tranche.

Investors responded well to this

unique opportunity. The A1 bonds, half of which were included in the retail offer, generated subscriptions from the public of roughly S\$890 million. Overall, institutions were allocated 60 percent of the bonds, accredited investors 22 percent and retail investors 18 percent.

The transaction portfolio comprises 36 private equity funds, managed by 27 general partners and invested across 596 companies, with a net asset value of US\$1.1 billion, giving the issue significant over-collateralisation — the issue size is less than 46 percent of the portfolio size.

Azalea says the portfolio is mature, with a weighted average fund life of seven years, and cash generative, with distributions from the funds received by the issuer and then paid out to bondholders semi-annually.

The Class A-1 tranche, which is listed on the main board of the Singapore stock exchange, features a five-

year non-call period and carries a fixed interest of 4.35 percent, with a 1 percent interest rate step-up if the bond is not redeemed after five years and a bonus payment of up to 0.5 percent of principal at redemption if certain performance conditions are met. The loan-to-value ratio at issue was 16.5 percent

The Class A-2 bonds, which are not listed and not rated, feature similar terms to the retail tranche and are ranked equally in the capital structure, but paid a 5.5 percent coupon. The loan-to-value ratio was 19.1 percent. The Class B bonds pay a coupon of 6.75 percent, with the principal expected to be repaid after the redemption of Class A-2 bonds. The loan-to-value ratio was 10 percent.

Allen & Gledhill partners **Yeo Wico, Jeanne Ong, Andrew Chan, Danny Tan, Ng Wuay Teck** and **Lim Pek Bur** led the firm's team advising **Astrea IV** on the transaction.

Other recent matters include:

Skadden has advised **Pinduoduo**, a leading new e-commerce platform in China, on its US\$1.63 billion listing on the Nasdaq. Pinduoduo is offering 85.6 million American Depositary Shares, each representing four Class A shares. This is one of the largest US IPOs in 2018. Trading in the ADS commenced on July 26, 2018. Partner Julie Gao led Skadden's team in the transaction.

Maples and Calder (Hong Kong) has acted as Cayman Islands counsel to **Pinduoduo**, with partner **Richard Spooner** leading its team. **King & Wood Mallesons** acted as China counsel. **Kirkland & Ellis International** and **Jingtian & Gongcheng** acted as US and China counsel, respectively, to **Credit Suisse Securities (USA)**, **Goldman Sachs (Asia)**, **China International Capital Corporation Hong Kong Securities** and **China Renaissance Securities (Hong Kong)**, as the representatives of the underwriters.

Baker McKenzie has advised **Carlsberg** on its acquisition of an additional 25 percent stake in Cambrew, the Cambodian brewer of the iconic Angkor Premium Beer. The transaction gives **Carlsberg** management control of the business in a beer market that offers appealing long-term growth opportunities.

Hong Kong partner **Tracy Wut** led the firm's team in the transaction.

Eversheds Sutherland has acted for **Brockstone** on its successful application to the High Court for the appointment of the administrators to Force India Formula One Team. Brockstone, the services company representing Force India driver Sergio Perez, made the administration application to protect the jobs of 400 employees. The administration will also ensure a stable platform to find a buyer for the Silverstone-based team. Restructuring partner **Jamie Leader** led the firm's team in the transaction.

Allen & Overy has advised **Pilmico International**, the food subsidiary of Philippine conglomerate Aboitiz Group, on its approximately US\$400 million acquisition of a 75 percent stake in Gold Coin, one of Asia's largest agribusinesses, which operates 20 livestock and aqua feed mills across 11 countries in Asia. The transaction is the largest outbound acquisition from the Philippines, and the largest agribusiness acquisition in Southeast Asia in the last few years. The firm advised on both the M&A and financing aspects. Corporate partner **Alun Evans** led the firm's team in the transaction.



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— Legal Recruitment —

In-House

FINTECH HONG KONG 3-8 YEARS

A Start-up fintech company that utilizes blockchain technology to provide business solutions is looking for a legal counsel to support the head of legal. You should have experience with technology & software related documentation. Business level Chinese skills an advantage. AC7331

HEAD OF LEGAL HONG KONG 9-12 YEARS

Fast growing fintech company is looking for a head of legal. You should have experience in software & technology, although strong candidates with a fund administration background will also be considered. Good business acumen is essential. Chinese language skills are not required. AC7224

EQUITIES HONG KONG 4-8 YEARS

Bulge-bracket bank seeks a VP to focus on equities trading, OTC, listed/corporate derivatives & structured products. Prior in-house experience would be ideal. Chinese language skills preferable but not essential. Top quality work & attractive remuneration on offer. AC6638

DATA PRIVACY HONG KONG 4-8 YEARS

Exciting opportunity to join a leading hotel chain as a legal counsel with particular focus on data privacy issues. You should have at least 4 years of experience either in private practice or in-house. Experience in the hotel industry or in data privacy is strongly preferred. AC7281

HEAD OF CO SEC HONG KONG 8+ YEARS

Reputable financial administration company is looking for a senior company secretary. This role will involve providing company secretarial services to clients as well as involvement in business development initiatives. Business level Chinese skills would be a distinct advantage. AC7327

DATA PRIVACY HONG KONG 7-10 YEARS

A leading technology company with a significant focus on China is looking to add a senior lawyer to its offices in Hong Kong with solid experience in data privacy matters. Fluent Chinese language skills are required. Excellent work-life balance on offer. AC7276

COMMERCIAL HONG KONG 3-7 YEARS

An established design company is looking for a legal counsel to join its legal team to oversee a broad range of general commercial matters. You should be able to work autonomously & be comfortable dealing with the business & production teams. AC7016

Private Practice

US CAPITAL MARKETS HONG KONG 4-6 YEARS

Wall Street firm seeks a US qualified capital markets associate with strong IPO experience from an International law firm. Fluent Mandarin language skills are essential. Great opportunity for a driven lawyer looking to transition to a US law firm. NY rates on offer. AC7329

CORPORATE HONG KONG 5-8 YEARS

Magic circle firm is looking for a senior associate (M&A/IPO) to join its corporate team. Reporting to the Partners, you will be advising corporates & financial institutions on public & private M&A transactions and general corporate & regulatory work. Mandarin language skills preferred. AC7333

LITIGATION HONG KONG 4-6 YEARS

An international firm in HK is looking for a litigation associate to work on a mix of cross-border commercial litigation, insolvency, professional negligence and fraud related disputes & investigations. You should be HK qualified & have Chinese language capabilities. AC7336

CORPORATE HONG KONG 3+ YEARS

Top tier US firm seeks a mid-level associate to join its China team based in the Hong Kong office. You will have extensive corporate finance experience, be admitted in the US and have a US LLM or JD. Fluency in English and Mandarin Chinese is essential. AC7335

HEAD OF TAX & ACCOUNTING HONG KONG 6+ YEARS

A magic circle firm in HK is looking for a regional tax manager for APAC. You will be responsible for tax compliance & tax risk management. You will have CPA qualification and tax experience in a Big Four/multinational corporation. Chinese languages & PRC tax experience preferred. AC7299

COMPLIANCE HONG KONG 2-7 YEARS

Top tier US firm seeks a HK admitted compliance associate to support its corporate team handling ongoing compliance reporting. Great opportunity for those who wish to step away from transactional work. Fluent Mandarin and English essential. AC7316

CORPORATE HONG KONG 1-2 YEARS

A UK firm is looking to add a junior-level, Hong Kong qualified corporate lawyer to its team. You will be responsible for supporting the capital markets and M&A practices and should have at least 1 year's experience and fluent Chinese language skills. AC7326

This is a small selection of our current vacancies. Please refer to our website for a more comprehensive list of openings.

Please contact Lindsey Sanders, lsanders@lewissanders.com +852 2537 7409,
Chris Chu, cchu@lewissanders.com +852 2537 7415,
Camilla Worthington, cworthington@lewissanders.com +852 2537 7413,
or email recruit@lewissanders.com



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.

Counsel – Media

8-12 years PQE, Singapore

A global multimedia company is seeking a senior and experienced media lawyer who can advise them globally, although Asia will be a focus given the location of the role in Singapore. You will have significant experience in areas including providing pre and post-publication advice to media organisations, dealing with copyright and IP issues, counselling on laws affecting the company, defending claims, dealing with urgent injunctions and handling other litigation associated with the operations. Confidence and the ability to make sound judgments are key to the role. You will also need a sound background in IP and strong media litigation and dispute resolution experience. Based in Singapore, this is a newly created position and will appeal to someone who is excited by a fast-paced environment, and an opportunity to be part of a truly global player reaching more than one billion people every day. [Ref: JL – IS 1802]

Contact: Julia Lee
Tel: (65) 6818 9701
Email: julia@jlegal.com

Legal Counsel – Commodities

5-8 years PQE, Singapore

This role is with a leading player within the commodity trading industry. As the business prepares for growth, it is currently seeking an experienced counsel to be part of its high-performing legal team. Reporting to the head of legal, you will be responsible for reviewing, advising on a variety of agreements relating to each aspect of the international trading and supply business in the commodity groups they trade in, and take lead of the specialists in commodity derivatives. As they are not limited to paper trades, the role will also expose you to the entire value chain of the business — upstream, midstream and downstream, as well as ship chartering, trading and optimisation. You will also be responsible for regulatory, corporate and compliance advisory, and providing support to other corporate functions where needed. Ideally, you are with 5-8 years PQE, preferably a banking or commodity derivatives environment. [Ref: JO 1808 171076]

Contact: Michelle Koh
Tel: (65) 6407 1202 / (65) 9027 2804
Email: michellekoh@puresearch.com

Transactional Lawyer

8-10 years PQE, Hong Kong

This Hong Kong-listed company with a strong presence in the Asia Pacific is urgently seeking a commercially savvy and mature transactional lawyer to join its expanding team. You can expect to work on large local or regional deals and be involved in strategic corporate matters. You will also need to manage legal due diligence for major corporate transactions. You need to be diplomatic and have an outgoing personality plus a background in corporate finance and M&A transactions. Prior work with reputable international or top local law firm preferred good knowledge in listing rules a must. Fluent Chinese is essential along with good English. [Ref: I4653/AC]

Contact: Doreen Jaeger-Soong
Tel: (852) 2520 1168
Email: hughes@hughes-castell.com.hk

Legal Counsel/Senior Legal Counsel – Technology

5-8 years PQE, Hong Kong

This is an opportunity to join a reputable Chinese conglomerate as the senior legal counsel where you will primarily be focusing on international M&A transactions. Based in Hong Kong, you will be supporting and advising on international investment and M&A deals and managing external counsel. You will be handling and negotiating a variety of overseas M&A transactions. Candidates must be qualified in PRC, HK or US with JD/LLM with around 5-8 years of international M&A experience gained from leading international law firms. Excellent command of English and Chinese language skills. [Ref: I13183]

Contact: Charmaine Chan
Tel: (852) 29512104
Email: charmainechan@taylorroot.com.hk

Legal Counsel – Fintech

3-8 years PQE, Hong Kong

This startup fintech company that helps its clients utilise blockchain technology to provide business solutions is now looking for a legal counsel at junior to mid-level experience to assist the head of legal as the operations of the business grows. Candidates should have experience with technology and software related documentation and be comfortable with working in a hands-on, entrepreneurial environment. Business level Chinese skills are a strong advantage. [Ref: AC7331]

Contact: Chris Chu
Tel: (852) 2537 7415
Email: cchu@lewissanders.com

Regional Counsel – Hospitality

5-10 years PQE, Hong Kong

The regional legal team of a well-known hospitality chain is looking for a senior commercial counsel to join the group to advise on a broad spectrum of operational matters including commercial contracts, HR and IT issues. There will also be corporate projects including JV's and M&A work that you will be involved in. Industry experience is not required and lawyers from reputable law firms will be considered as well as established in-house lawyers. No language skills required. [Ref: IHC 16116]

Contact: Andrew Skinner
Tel: (852) 2920 9111
Email: a.skinner@alsrecruit.com

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Innovating internal investigations in today's hyperconnected world

When controls fail and fraud occurs, internal audit departments are generally held to be an organisation's last line of defence. Likewise, when fraud or bribery and corruption cases are discovered or when regulators come knocking, in-house counsel are often the ones to take ownership and deal with the issues.

For in-house counsel and internal audit departments conducting internal investigations, the primary sources of information to review have included network servers, computers, laptops and handheld devices (ie, those belonging to the organisation and not falling under the increasing practice of employees' using their own devices).

While these sources might have been sufficient in the past, the current smartphone generation is much more socially connected (albeit in electronic format) than 15-20 years ago and, as a result, the number of interactions made through instant messaging and similar applications for work-related matters has increased exponentially. This has directly affected companies' ability to monitor, obtain and retain information for compliance and audit purposes.

Today, fraud and bribery and corruption investigations require the review of not only internal data (eg, books and records, computers, laptops and handheld devices), but also information from external sources, including but not limited to media, internet, search engines and social media platforms. For example, Kroll was retained through an external counsel to investigate allegations of bid rigging and receipt of gifts and inducements by an employee. Often,

part of the investigations by Kroll includes retrieving and analysing relevant electronic data that had been deleted on selected hard drives and smartphones. This analysis can help identify questionable communications which provides additional investigative leads. In a similar way, when attempting to identify and recover assets, data obtained from geotagged posts on social networks made by a subject in a specific area might allow for the identification of the property of interest.



Data visualisation tools have emerged as a powerful resource for internal investigations

Alas, making sense out of vast sets of data can be daunting and overwhelming for most organisations. The need to adapt and evolve the collection and analysis of data is critical.

Over the years, data visualisation has taken a host of forms, from the simplest x-y axis charts to the infographics ubiquitous on most media platforms today. Recently, data visualisation tools have proved extremely enlightening in the context of internal investigations. They are able to combine structured data (eg, tables) and unstructured information (eg, social

media posts, emails, documents) in a manner that makes it easier to find increasingly smaller needles in ever-growing haystacks.

With data visualisation tools, data can be connected from a variety of sources such as social media or computer records to represent the level of interconnections between various identified parties.

Once links are identified, an analyst can then focus on specific clusters and nodes to dig deeper in a more timely and cost-effective way.

By following the leads highlighted by data visualisation tools, the analyst can conduct a more in-depth analysis of financial transactions across accounts if for example money laundering is suspected. The hotspots that emerge can also help identify missing funds or heretofore unsuspected connections among customers, suppliers and/or employees.

In a world growing ever more connected and generating ever more information, in-house counsel and internal auditors face tremendous challenges in their efforts to discover, analyse and interpret data that is critical for their internal investigations. Innovative uses of technology, such as data visualisation tools, can enhance the ability to not only investigate instances of fraud, bribery and corruption, but also to help develop data-driven preventative strategies.

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Toward an innovative new strategy for In-House Counsel

An in-house legal team can achieve much more than saving money, but it requires a more strategic approach than most companies have adopted, writes **Mitchell Kowalski**, the **Gowling WLG** Visiting Professor in Legal Innovation at the University of Calgary Law School.

The years since the beginning of the 21st century have seen an explosion in the number of in-house counsel across the globe. The Association of Corporate Counsel has more than 43,000 members in 85 countries employed by over 10,000 organisations; the Corporate Legal Operations Consortium boasts thousands of legal operations personnel; and of course the In-House Community has over 20,000 members with responsibility for legal and compliance issues in the Asia-mena region.

The in-house field is now exceptionally large and it should be no surprise that there is a direct correlation between the rising costs of outside counsel and the growth in in-house legal teams. It's cheaper to simply build an in-house team than to rely upon outside counsel for great swathes of corporate legal work. And that is the predominant strategy used by general counsel around the world. But is it a long-term solution, or merely a short-term labour arbitrage play?

In my view, building an in-house team and

expecting that tactic to solve all your legal woes is overly simplistic. Ideally, the legal function of any corporation should, among other things: enable better strategic sourcing of external suppliers; inform management processes to control the delivery and cost of legal work (internally and externally); highlight non-legal work being done by the legal department that may be handed back to the business; enable a continuing strategic overview as to the shape and size of the internal legal department; and create management information for the legal team.

Creating a behemoth legal department doesn't address many of these items. Nor does asking outside law firms to come up with some ideas on their own. Casey Flaherty, an American consultant and commentator, has pointed out in a number of blogs and talks that outside lawyers are often truly befuddled by RFP questions such as: "What innovations will you use to create added value for us?" In many cases, according to Casey, firms tend to answer with some variation of: "We upgraded to Windows 10."



“True sustainable innovation in the context of in-house legal departments is not simply jumping on to the newest technology”

Photo: Phil Brown

In-house counsel who want a truly client-centred, unique and innovative solution to their “more for less” challenge will have to come up with it themselves.

What is needed is a new approach to how in-house legal departments operate, and how they view their role – an approach that sits somewhere between the “build a giant in-house team” idea and the unhealthy “in-house versus outside law firm” tension that I often see in the marketplace. There has to be a third way that meets the goals of in-house counsel while also being manageable and cost-effective. Alvin Toffler’s 1980 bestseller, *The Third Wave*, was based in part on the premise that major business breakthroughs come not from single, isolated technologies, but from imaginative juxtapositions, developed through large-scale thinking and the application of general theories. In other words, breakthroughs come from moving the existing pieces of the puzzle around in a way that not only achieves the desired result, but also leaves room for future changes.

True sustainable innovation in the context of in-house legal departments is not simply jumping on to the newest technology (although technology may form a part of innovation), but rather the careful integration of the in-house team, outside providers and the business units under the umbrella of a master strategy that aligns with the corporation’s values and goals. Few in-house departments think in these terms, mostly because they’re too busy dealing with the work that seems to unceasingly flow to them each day.

So let me suggest a simple framework to help in the creation of an innovative master strategy – one that is based on achieving legal service balance. A corporation is out-of-balance when its legal service needs are not aligned with the skills and costs of its providers (both internal and external). Legal service imbalance not only results in corporations overpaying for legal services or underutilising legal skills, it also adversely affects customer satisfaction of the business units, as well as the job satisfaction and engagement of those on the internal legal team.



Some corporations, such as the American operations of Cisco Systems, assess legal service imbalance through a core/risk matrix (based on level of risk and connection to the core business of the corporation) that incorporates some of the principles of Design Thinking (start with empathy/understanding) and Lean (ensure the right people are doing the right tasks). The ultimate goal is to achieve perfect alignment of legal resources with both risk to the corporation and the corporation's core business.

The matrix is divided into the following four quadrants:

1. Legal work that is high risk to the corporation and also core to the corporation's business should be the only work that the in-house legal team deals with. As this work represents the highest and best use of internal legal talent, it should result in higher employee satisfaction and better employee engagement.
2. Legal work that is high risk and not core to the corporation's business should be the only work done by external law firms. This capacity and expertise is not required by the in-house team.
3. Legal work that is low risk but not core to the corporation's business should only be done by a reliable low-cost provider with appropriate playbooks and quality control. This work is fairly repetitive, not continuing, and does not require a high level of legal skill. This work also has some tolerance for slight imperfections. The recent EY and Riverview Law tie-up is an indication of the number of quality options in this area for in-house teams.
4. Legal work that is low risk but core to the corporation's business is typically well-suited for a DIY technology solution (such as an expert system) used directly by the business teams with little or no involvement from the internal legal team. This work is repetitive, does not require high levels of legal skill and has some tolerance for slight imperfections; but it's continuing and needs to be done quickly and efficiently. Australian-based Wesfarmers' use of Neota Logic to automate its non-disclosure agreements is a great example of this.

	Core	Non-core
High risk	In-House	External firms
Low risk	DIY technology	Low-cost provider

But that is just the beginning. A strategy of innovative optimisation can then be instituted in each quadrant with the goal of not only continuously improving operations, but also of engaging the business units and empowering the internal legal team. For example, in connection with the High risk/Non-core quadrant, a corporation can initiate a disciplined/rigorous selection process to create new pricing models that reward valuable behaviour and penalise undesirable behaviour, all with clear, measurable key performance indicators. New technology may or may not form part of this approach. The selection process may involve an RFP or it may involve negotiations with a few select providers; the key is for this model to be a win-win for both parties, which requires the internal legal team to spend a great deal of time clearly and precisely defining the behaviour and outcomes that it values. American-based Wolverine used this approach quite successfully for its trademarks portfolio with law firm Seyfarth Shaw.

At a minimum, each quadrant will require:

1. Someone on the internal team to lead, and be accountable for, innovation within that quadrant.
2. Internal legal team leadership must continually walk-the-talk of innovation and continuous improvement to signal its importance to team culture and to the master strategy.
3. Members of the internal team and the business units must be empowered to make suggestions (without fear of ridicule or repercussion) and be given clear direction as to how those suggestions are to be made.
4. A transparent, disciplined and unbiased evaluation process must be created for all suggestions.
5. Suggestions that are acted upon and that achieve success should be celebrated widely and rewarded.

Unfortunately, the space requirements of this article only allow for a very high-level explanation of the two-step process involved in creating a more innovative strategy for operating an in-house legal department. This strategy and executing on it will require a large time commitment that goes beyond the day-to-day work load. It also requires strong, focused leadership and may also benefit from outside assistance, which may explain why the simple "build a giant in-house team" approach is so pervasive globally. But is that approach really adding value for shareholders and business units? And is it providing a rewarding career for the internal legal team?

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Lawyering in the gig economy

Working on an interim basis offers the benefit of flexibility and greater work-life balance for lawyers, writes Mardi Wilson, head of ES Agile in Hong Kong.

Stepping off the traditional career path may not seem like the sensible thing to do. However, more and more lawyers are finding that there are advantages to breaking out of the mould and taking the less obvious path, with some startling and positive developments for their CV.

For most lawyers, the typical career path is pretty clearly set out – secure a training contract in private practice, land a role as a newly qualified solicitor, get a few years of experience, then decide if the rest of your career is going to be in private practice or move across to an in-house role. Occasionally, in-house lawyers may decide to move the other way and go into private practice. However, for the most part, it's a fairly predictable career path.

The question then is, in this ever-changing landscape of innovation and technology, is there a different way? This may be where alternative legal service providers come in.

“The ability to add a skilled contractor on short notice allows the in-house legal department to remain agile and to flex quickly in response to the requirements of the business it supports, without sacrificing quality”

Alix Grice, BT

Can a lawyer have a career in the “gig economy”?

One area that is growing rapidly in the legal sector in Asia is the gig economy, where a lawyer may choose to work on a contract or freelance basis rather than take a permanent role (also called interim, consulting, outsourcing, etc.). This is where businesses engage a lawyer for a defined, short-term period to deliver a specific service or outcome for their legal team.

“The ability to add a skilled contractor on short notice allows the in-house legal department to remain agile and to flex quickly in response to the requirements of the business it supports, without sacrificing quality,” says Alix Grice, vice-president and regional counsel for BT in AMEA. “The providers who specialise in this area have a ‘bench’ of candidates with a range of skills and experience – from individual subject matter experts (able to provide support for an unusual event such as a one-time M&A) to the ‘safe pair of hands’ (the experienced commercial lawyer with a broad range of law-firm and in-house experience who can cover for a spike in workload or extended leave periods).”

Some common career misconceptions about short-term engagements are that the work is either low level or it's for lawyers with lots of experience stepping into roles such as interim general counsel. This is not the case. Legal consulting or contract work is just as open to lawyers at the junior and mid-level as well. And there is probably more to be gained by a lawyer at this stage in their career.

Lawyers often ask if they should specialise early in their career and then generalise, or vice versa. There is no right or wrong answer – but the

consulting platform can support lawyers in doing both. Lawyers interested in getting to a certain career milestone such as partner, head of department or general counsel may find that working outside of their specialist area or sector can give them great experience and insight to help them advance. At any major crossroads in a career, a lawyer should assess their experience and any gaps they have as well as their strengths and what they really enjoy doing. This can then help inform the decision as to what the right step will be (ie, to specialise or generalise) and what options may be available to address any gaps. Sometimes consulting is the only way to build experience if opportunities are limited for secondments or different legal projects.

Why should junior and mid-level lawyers consider a career in the gig economy?

Lawyers at all levels can benefit from contract work at different stages in their career, but it's worth saying that an ideal stage for a contracting career could be between two to six years post qualification experience. At the junior to mid-level it may be easier to move into contract work because they have sufficient legal skills, strong commerciality/ business knowledge and the flexibility to use this knowledge across sectors. Sometimes work opportunities may be dependent on what is happening in the market at the time (eg, regulatory changes, economic upturns/ downturns) or whether a client is looking for a particular skill set to address a business need.

Looking at CVs for interim lawyers is "generally no different from a permanent hire", according to Bill Wang, executive vice-president and senior legal expert at Industrial and Commercial Bank of China (Asia). "Perhaps I valued even more the candidate's quality of flexibility and adaptability in covering various matters in a short period of time."

In addition, at the junior to mid-level, a private practice lawyer may be considering in-house versus private practice. If a lawyer lacks in-house experience, then contracting is likely be extremely beneficial later in their career if they make the decision to make the move permanently. The work that alternative legal service providers can offer is generally with exceptional client names that can really add value to a CV. By undertaking an in-house role while at this level, clients may be more

understanding and more likely to provide on-the-job guidance to succeeding in-house. Also, if it's not the right client fit or type of work for a particular lawyer, the contracts are for a set time frame, so you can always choose to do something different at the end of the contract without any drawbacks.

"The work that alternative legal service providers can offer is generally with exceptional client names that can really add value to a CV"

There is a lot to be said for the soft skills a lawyer will develop by working in-house and on short-term assignments. Lawyers must have the ability to adapt quickly to working in new areas, teams or sectors. They need to hit the ground running to deliver as much as they are able to in the short time of their placement – it's essential to establish relationships quickly and be comfortable outside of your comfort zone. A key part of working in-house is how you communicate on legal matters to the wider business. They are not looking for pages of legal opinion, they are looking for guidance on how you, as a lawyer, feel the matter will impact the business as a whole, and the level of risk that may be involved in moving forward.





What's in it for clients?

At a more experienced level, clients will expect that you have the necessary skills and aptitude to adapt to in-house culture. Clients typically look for the combination of strong in-house and private practice experience and contract lawyers with a diverse CV are more likely to increase their opportunities.

“We look for contractors that have done several other contract stints, or who have a flag in their resume that shows us that they can adapt from one environment to another, such as cycling between law-firm and in-house experience, or a move from one industry to another,” says Grice. “This means that it is more likely that the candidate is a flexible thinker and can quickly adapt to a new corporate culture.”

“If a lawyer is adaptable, making the move to contracting can provide a great platform for doing more diverse and interesting work”

If a lawyer is adaptable, making the move to contracting can provide a great platform for doing more diverse and interesting work.

The reason clients look to engage contractors will vary in many different ways.

“As the incoming new general counsel, I was in the process of building up an effective legal team on a more permanent basis,” says Wang. “It was a continuing process. Meanwhile, I needed to cover any interim gaps in terms of both capacity and capability. A contract lawyer arrangement was a suitable solution as it provided the kind of coverage flexibility and immediate availability that I was looking for.”

While clients benefit from their input, it is important for an interim lawyer to understand and work with a client's unique culture. It is not up to the contractor to revolutionise the legal processes / structure of a client.

“It is important to cultivate the team culture of the existing permanent staff,” says Wang. “I would expect the contractor to understand, and better yet, subscribe to the existing team culture; meanwhile, a fresh pair of eyes looking at the way of working would be beneficial to the existing team and I appreciate deeply what a contractor can bring to the table that can enlighten us to continuously improve the way we work.”

What role does technology play in a contract career?

If we are thinking about the way that careers may change and adapt in the future, the obvious answer is the move to remote working. Legal tech now supports work such as remote contract review, as well as the increasing development of digital or cloud-based contracts. AI is being used for the first review of contracts and then being flagged where necessary for a lawyer to review it. Clients can now use Uber-style platforms to put their work request out into the digital market place and lawyers can bid or quote for the work. While these changes and work options are not yet mainstream in Asia, experience tells us that businesses here will soon start to adopt to this way of working.

What is perhaps more immediate for a lawyer is the benefit of working in a larger number of organisations, therefore seeing more of the technology solutions being developed both in-house and in private practice to meet a wide variety of business needs. This is where a lawyer may choose to focus on assignments in a particular area such as fintech, e-commerce, digital contracts, document automation, business self-service, the list goes on. What a lawyer learns working on one placement can be added to their CV and used on another placement. This essentially is a way to fast-track their experience in a broader capacity.

“An unexpected benefit to the use of fixed term contractors is that they bring a new point of view and outside the box thinking that can result in improvements or at least reconsideration of engrained practices and less than efficient workflows,” says Grice.

Are there any drawbacks?

So, having read all of this, if you are ready to embark on a career as a consultant lawyer, there are some key things to consider.

Firstly, working on a contract basis means that there is no defined career path. The type of roles that you work on will build your experience immeasurably, but if your ultimate goal is the career ladder either in-house or in private practice, you need to decide for yourself how long is right for you to work on a contract basis. The benefit with contracting is that it doesn't rule out permanent positions in the future, indeed contracting might be something you do at several points in your career. Secondly, you will need to identify and understand if your training and development needs are going to be

met. Some alternative legal service providers offer access to training but this will obviously differ if you are on the fast track to promotion. Do find a mentor with an open mind to work with you during this time so you can get an external view on how your CV and your experience is developing to help you achieve your ultimate goals.

There are also a few other practical things you need to think about with contracting. You need to understand if the financial structure is going to work for you. Income is project dependent so make sure you assess your own financial situation and do your research on the contract market. Assignments move quickly, contractors need to be available within four weeks. While on a placement, there is usually a two to four week notice period, therefore consultants also need to be prepared if a placement finishes earlier than expected. Speak with colleagues and friends who are consultants as well as the ES Agile team and other alternative legal service providers in the market to find out more. The consulting models are all a little different in Asia and you may find it possible to work with a couple, or that one may suit you best.

The future of working in a gig economy

At the end of the day, there is the benefit of flexibility and greater work-life balance through the working model of the gig economy. Ultimately, you control your career, selecting the projects that are of interest to you and when you work. It is possible for junior lawyers to take on more challenging work sooner and increase their responsibility faster than on a traditional career path. Then, when you are not on an engagement, the choice is yours for what you do with one of the most precious resources – time.



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My journey from Big Four to legal tech startup

Michael Lew, founder of LegalComet, talks about his move from working with large corporations to the world of legal tech startups in Singapore.

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

Michael Lew: I have been a technology consultant and legal technologist for over 17 years specialising in technology risk management, digital forensics, e-discovery and, in recent years, legal AI [artificial intelligence]. I have primarily worked with a barristers chambers, a leading law firm and Big Four advisory firms among other sizable corporations. In addition, I am a qualified digital forensics investigator who had provided expert testimonies in several high-profile cases and is the immediate past president of the High Technology Crime Investigation Association (Singapore Chapter). Towards the end of 2016, I left Deloitte as a director and embarked on my startup journey. Following my interest in the use of machine learning and predictive data analytics for the legal domain, I had a stint with the National University of Singapore as a researcher in the field of AI and blockchain, and had the opportunity to work directly with distinguished professors and data scientists. I am currently the founder of LegalComet, an innovation-driven legal tech advisory firm with a focus on delivering quality tech-enabled solutions in Asia. I remain active in both local and international legal tech communities and was recently invited by Russia's Skolkovo Innovation Centre as a keynote speaker for their Legal AI Conference in Moscow. I would like to think of myself as a legal tech evangelist as I am always very excited to share my experience and to get more people on board this legal technology revolution.

AMC: How did you get into legal tech and why now?

ML: While pursuing a masters degree in information systems with the London School of Economics, I wrote a dissertation on bridging lawyers with technology for the 21st century and subsequently started my first job with a set of Chambers at Lincoln's Inn, during the dot.com boom with a rather interesting role of interfacing between barristers and programmers to develop "intelligent", self-drafting legal documents for one of the first document automation technologies, Rapidocs for desktoplawyer.co.uk.

Since the turn of the millennium, I have been intrigued with the potential convergence of technology and law and was determined to pursue a legal technology career back in Southeast Asia. Unfortunately, I was ahead of the times and realised that the local legal industry wasn't ready for any drastic changes to the way that legal services were delivered. I reinvented myself as a digital forensic investigator and e-discovery consultant, and worked with Big Four advisory firms while keeping a very close interest in the development of legal technology around the globe. Fast forward 15-18 years later and now legal technology in Southeast Asia, especially Singapore, has taken a new lease on life. The success of many fintech firms with their innovative and somewhat disruptive business model has garnered a lot more interest for legal tech





startups from both the providers and customers of legal services. In addition, the emergence of game-changing technologies such as AI, blockchain and cloud computing is instrumental in levelling the playing field between large corporations and smaller startups. When size does not matter as much, speed and innovation is the new denominator of building a successful business and that's just fine with me.

AMC: Is Singapore a good environment for legal tech startups?

ML: It's awesome. Riding on the introduction of Singapore's Legal Technology Vision in 2017, the energy and activity of the legal tech startups in Singapore has been phenomenal. The Legal Technology Vision is a five-year roadmap that encourages both innovation and technology in the legal industry. It also serves as a call-to-action for lawyers to enhance their practices by leveraging on technology and for non-lawyers or legal technology providers to engage in public-private collaboration for the building of a strong legal tech ecosystem. One such initiative is the Singapore Academy of Law's Future Law Innovation Programme (FLIP), which aims to connect lawyers, technopreneurs, investors, academics and regulators under a common platform that will support the development of new models for the delivery of legal services in the future economy. FLIP is hugely successful in bringing together legal tech startups and

stakeholders under one roof with thought leadership workshops, fantastic events and a legal innovation lab (co-working space) across the road from the Singapore Supreme Court where I now spend most of my time, interacting with like-minded legal technology professionals.

“The energy and activity of the legal tech startups in Singapore has been phenomenal”

AMC: You co-authored a book on e-discovery in Asia, can you tell us more?

ML: My foray into e-discovery came about by happenstance during my first job in Singapore with Rajah & Tann, a leading law firm in Asia, where I was tasked to identify a better way to manage and review electronic evidence. Anyone who dealt with litigation support in the 2000s can attest that it was an interesting time, where 'electronic' discovery involved both soft copy (electronically stored documents) as well as a sizable amount of hard copy (paper documents) that required digitalisation, OCR [optical character recognition] and coding. There was a lot of background work involved to get both sets of documents into a common platform. Over the years, more electronic data was created and the proportion of soft-copy documents clearly overshadowed hard copy documents. Due to the



exponential volume of electronic data to be reviewed, the use of machine learning or AI was introduced in what is commonly known as technology-assisted review. In fact, this was one of the earlier attempts by legal tech professionals, including myself, to use AI for legal processes. And following the introduction of Singapore's E-Discovery Practice Direction in 2009, I had the opportunity to managed hundreds of e-discovery projects and had developed some best practices that are better suited for projects in Asia. Through a chance conversation with Benjamin Ang and Bryan Tan, who were my ex-colleagues from Rajah & Tann, we decided to collaborate as co-authors and subsequently launched our book on e-discovery in Asia in 2017.

“Many people say that AI cannot replace human lawyers, which is true to some extent, but it is also true to say that lawyers cannot replace AI”

AMC: Is AI overrated or overlooked by lawyers in Singapore?

ML: Following my first-hand experience on the effective use of AI in the form of machine learning and predictive data analytics for e-discovery, I am convinced that AI is not just a passing trend and should not be overlooked by lawyers. AI in many ways is an enabling tool for lawyers but it's a lot more than what a typewriter was for lawyers in the 19th century or a computer in 20th century. Artificial intelligence, as the name suggests, has the capability of producing some manner of intelligence albeit using 'artificial' means, in other words AI can perform a desired task such as a first pass review of a legal document with little or no human

intervention. Many people say that AI cannot replace human lawyers, which is true to some extent, but it is also true to say that lawyers cannot replace AI. What do I mean? AI is designed to handle big data and can review or analyse millions of documents in hours, as compared to weeks or months for a team of lawyers. On mundane and repeatable tasks, AI is consistent, works 24/7, does not get bored and does not ask for a raise. Hence it is a super enabling tool or 'trusty sidekick' for lawyers when dealing with a large amount of data or a huge volume of repeatable tasks. Most lawyers in Singapore that I have spoken to are cautiously optimistic on the use of AI and understand that, ultimately, AI and lawyers will need to work together to achieve high-value outcomes for their clients.

AMC: What advice can you give those who wish to launch a legal tech startup?

ML: A quote from Steve Jobs springs to mind: “Think different.” In my experience, the biggest disruption for a legal tech startup is yourself, as it requires a drastic change of mindset and is definitely not for the faint-hearted. Most founders of legal tech startups like myself had worked for large corporations for many years and are accustomed to a certain corporate culture and expectations. When it comes to launching a legal tech startup, the only certainty is uncertainty. Prepare to think differently and accept that things may not always go according to plan. The common challenges of a startup are the uniqueness of the business model or product, commercial viability, getting the right people on board and the race against time. Of course, capital or funding is always a crucial consideration – be realistic on how much you need to spend and exercise self-discipline in adhering to the budget. Before launching a legal tech startup, my advice is to do a lot of research, talk to your potential clients and investors, start small with a minimum viable product and take your time in selecting the right co-founders. While you can expect challenges, it is also very rewarding to be in the driver's seat of something new and innovative that could potentially change the landscape for the delivery of legal services in the near future.

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A fresh approach to legal solutions

We talk to Titus Rahiri, director and founder of KorumLegal, about technology, disruption and the future of legal services.

Asian-mena Counsel: What is your impression of the NewLaw environment in Asia?

Titus Rahiri: The market is growing at a fast pace. A few years ago, there were only a few players in Asia, but as NewLaw becomes part of the normal legal ecosystem, we've seen new entrants starting up or moving into Asia. With Asia competing to be a hub of innovation and entrepreneurship, and with a growing startup community and investors looking for the next 'unicorn' business, it makes sense that NewLaw legal innovators could thrive here. Singapore, in particular, has provided government support with the Singapore Academy of Law's Future of Legal Innovation Programme which is a legal innovation hub for startups to grow in a nurtured environment. Hong Kong has a lot of talent and NewLaw innovation, which is gaining some real traction. With the right government support, it could really take off.

AMC: How much potential is there for disruption in Asia?

TR: Asia is a fairly traditional market, with a general reticence to embrace innovation in legal solutions. However, that is changing and clients are seeking alternative, value-driven legal solutions from their legal service providers. It's an alternative to traditional law that is often a big strain on the purse strings, and it also ensures that legal departments are at their peak – whether they are supported through flexible people or streamlined technology-enabled processes. As we see it, NewLaw or alternate legal service providers are a permanent part of the legal framework. This has been validated by some recent



investments and acquisitions by private equity, the Big Four and investments from large multinational law firms into alternative legal service providers – or NewLaw.

AMC: How competitive is the legal services market in the region?

TR: As you would expect, the number of NewLaw players is growing so there is growing competition. But we think this is a good thing. NewLaw is about constantly innovating and bringing a fresh approach to the delivery of legal solutions. This is enhancing legal services delivery for clients. We all have a collaborative mindset because we all want to move towards the same goal – to provide better and client-centric legal services.

AMC: What's more important at KorumLegal – people or technology?

TR: Right now, our people solutions model is successful, because it makes a lot of sense to the market and is more familiar to established general

counsels. I was once on the buy-side of this model in my role as regional general counsel, so I know exactly the benefits it can provide from a cost and resource perspective. It is particularly useful for specific projects, maternity cover or additional support, hiring gaps, head-count freezes or as a flexible legal counsel.

Technology is a key enabler to growth – it is the way the world is headed and no-one can ignore it. But people will always remain central to legal solutions. Legal is ultimately a service-based business – and those who use technology as an enabler to more effective, efficient and client-centric solutions will make the most impact in the years to come. Legal tech is still in its relative infancy compared to other industries, but it is making some great progress. KorumLegal is making sure that it is ahead of the curve and staying abreast of the latest developments in legal tech. We see technology as a key pillar to our business in coming years as it matures and starts solving some of the major pain points of our clients – and it will support our clients’ people and process demands and become an enabler to their businesses.

AMC: What types of clients are receptive to KorumLegal’s value proposition?

TR: KorumLegal is shaping the new reality in legal solutions and the types of clients coming to us are diverse. We work with startups, SMEs, multinational companies, law firms, banks, interest groups and regulators... and particularly those who are interested in doing things differently, who are being challenged to do more for less, or who are focused on disruptive legal solutions. A key reason for such diversity in our clients is our diverse offering of solutions across people, process and technology. There is no-one size fits all and each client is provided with a bespoke solution to suit their needs.

AMC: What most differentiates KorumLegal from a traditional law firm?

TR: We are a law company, and not a law firm. Up until very recently, the legal services industry has seen very little disruption or innovation. Traditional legal solutions continued to be expensive, inaccessible and complex. At KorumLegal, we are flexible, innovative, smart and value driven. Rather than time input, our focus is on value output to our clients. Our range of solutions across people, process and technology is also a key differentiator. We use Lean management principles, Six Sigma and other efficiency processes in our internal HQ operations and also in our client assignments and projects to unlock capacity and underutilised capabilities. Our legal consultants can sit with the client or they can work

remotely, depending on client needs or budget. An example of this is where we had a senior consultant from Hong Kong, who worked remotely in Canada for a few months for a London-based client, managing the client’s Asia legal support needs. This was enabled by technology and a flexible mindset of both client and consultant.

On this note, our legal consultants are integral to the KorumLegal community and are key to our business. Our consultants have come from international reputable law firms, in-house legal teams in Fortune 500 companies and listed MNC’s as well as fast-growing startups. Whether it is more flexibility in their work, time to travel, starting a business or starting a family, our model provides a very attractive career alternative. There’s life beyond traditional law and we think that’s key. We put a lot of time, money and effort into getting a law degree and legal training, so we are very attracted to being able to put those skills to good use outside the traditional sphere.

AMC: Looking forward, what’s your outlook for the legal services industry in Asia?

TR: The legal services industry, as we know it, will not be the same in the next five, let alone, 10 years. The rate of technology advancements in this space make it almost impossible to predict. But what I can say, is that more and more NewLaw models will appear. Some will thrive, others may not, but NewLaw is here to stay. It is a market that is ripe for the picking because law has been so immobile for most of the last century. Data analytics, artificial intelligence, blockchain and people in the gig economy will be keys to the future of law. And the future of law will not just be lawyers. It will include technologists, project managers, data analysts, software engineers and others. And this is what makes it exciting to be a part of right now.



Cryptocurrency regulations and their prospects in Korea



Chan Sik Ahn

Lawmakers and regulators have struggled to come to terms with bitcoin and other cryptocurrencies.

By Chan Sik Ahn, HMP LAW

Cryptocurrencies have generated heated interest during the past few years, particularly in Korea. From one day to the next, new cryptocurrencies are being generated along with numerous exchanges that facilitate transactions, and some who have invested in cryptocurrencies have earned enormous investment returns equivalent to tens of billions of Korean won within only a few days.

The Korean government has taken considerable efforts to establish proper regulations that cover various cryptocurrency transactions by forming a joint task force from among related government authorities and publishing their findings. However, since it is quite difficult for the government to set policies on cryptocurrency, as such policies might have the effect of impairing the foundation of the legal currency system, there exist many unsolved and continuing problems related to cryptocurrency.

In the following, we will introduce and share the current issues on cryptocurrency regulations in terms of regulations on initial coin offerings (ICOs) and regulations on the establishment and the usage of cryptocurrency exchanges, as of August 2018.

REGULATIONS ON ICOS

In Korea, Hdac, BOSCoin, PlusCoin, HYCON, ICON and MediBloc have successfully completed their ICOs, and many other currencies are currently undergoing the ICO process or are scheduled to commence such process. In recent years, many ICOs have been conducted through the establishment of corporations or foundations in foreign countries due to the uncertainty of the legal regulations in Korea.

On September 29, 2017, the Korean Financial Authority (KFA) announced that it would ban ICOs entirely. In its announcement, the KFA expressed its hard-line stance against all forms of ICO, including security-type ICOs conducted by way of allocating revenues from a given project or granting certain rights or dividends of a company, or coin-type ICOs by way of issuing new cryptocurrency on the relevant exchange's platform, regardless of the technology or terminology used.

Since then, in January 2018, the Korean government, retreating from this hard-line stance, has announced certain guidelines for the prevention of money laundering on cryptocurrency exchanges and, accordingly, introduced a real-name financial transaction

system for cryptocurrency exchanges to cool off the overheated social phenomena regarding cryptocurrencies. However, this has been described by some as a mere indirect regulation through existing banks and other financial institutions, and the Korean government seems to have been unable to make any further progress in relation to regulating ICOs.

If any cryptocurrency issued through an ICO can be converted into a “security” as defined under the Capital Markets Act, then such ICO may be subject to the provisions on issuing securities under the Capital Markets Act. However, since the existing Capital Markets Act adopts the principle that securities are only securities if stipulated by law, an instrument should not be regarded as a security if it does not fall under one of the definitions of “security” explicitly listed in the Act. Moreover, it is difficult to find a case where Korean financial authorities have applied the Capital Markets Act directly to any ICO case. On the other hand, considering the various forms and types of cryptocurrency, the possibility cannot be excluded that cryptocurrencies will be regarded as securities sometime in the future, as there have been several attempts to establish procedural regulations for ICOs, stipulating that ICOs constitute the issuance of securities under the Capital Markets Act, or similar arguments under other statutes.

The phrase ‘conducting a fund-raising business without permission’ as defined in the Act on Regulation of Conducting Fund-Raising Business without Permission, applies to any business that is conducted to raise funds from unspecified individuals (i) without first obtaining authorisation or permission or making a registration or report under other statutes or their subordinate regulations, and (ii) while also requiring a contract that guarantees a so-called ‘deposit guarantee’ to such investors. Therefore, ICO fund raising without ‘deposit guarantee’ may not generally constitute ‘conducting a fund-raising business without permission’. However, if the investment is designed to guarantee compensation for any investment loss for the ICO participants during a given ICO, then this could possibly be deemed as conducting a fund-raising business without permission (note that in Korea, some who raised funds under the guise of ICOs have been punished for violating the Act on Regulation of Conducting Fund-Raising Business without Permission). In addition, the Financial Services Commission and the Korean courts both maintain their position that the act of raising such funds may be deemed fraudulent in accordance with Article 347 of the Criminal Code, if there appear elements of deception or gambling in relation to those funds.

REGULATIONS ON CRYPTOCURRENCY EXCHANGES

There are no direct regulations governing the establishment and operation of cryptocurrency exchanges, and therefore the Korean government has announced its intentions in relation to regulating cryptocurrency exchanges merely based on authoritative interpretations. Similar to ICO procedures, however, it is anticipated that regulations on cryptocurrency exchanges will be legislated in the near future.

Act on Consumer Protection in Electronic Commerce

Under the Act on Consumer Protection in Electronic Commerce, an online order distributor shall file a report to the Korea Fair Trade Commission, and cryptocurrency exchanges have been operating their business as an online order distributor by selling (trading) cryptocurrencies online. However, as the Korea Fair Trade Commission stated in 2018 that cryptocurrency exchanges should not be regarded as online order distributors, it is now well-known that the major cryptocurrency exchanges have given up their position asserting that they are online order distributors.

“There are no direct regulations governing the establishment and operation of cryptocurrency exchanges”

Foreign Exchange Transactions Act

The Foreign Exchange Transactions Act applies to cases of providing services for the conversion of cryptocurrency into legal currency, and in this regard conducting a small-scale overseas remittance business shall be registered in accordance with the Foreign Exchange Transactions Act in order to provide such services. Unlike the foregoing, it is arguable whether remitting “cryptocurrency itself” (without converting to legal currency) to foreigners constitutes a case of remittance of funds as prescribed by the Foreign Exchange Transactions Act.

In this regard, referring to Japanese law as a comparison, the transfer of cryptocurrencies directly to third parties is not regarded as a remittance; however, the conversion of legal currency into cryptocurrency is deemed to constitute a remittance if the converted cryptocurrency is exchanged again for a third country’s legal currency.



In Korea, it is necessary to have further discussions regarding legislative movement on whether or not such remittances should be seen as actual remittances in accordance with foreign exchange concepts, or whether other regulations are needed instead.

Personal Information Protection Act; and Act on Promotion of Information and Communications Network Utilisation and Information Protection

The Personal Information Protection Act is a general law on the protection of personal information, which applies to all personal information processors and personal information entities. The Act on Promotion of Information and Communications Network Utilisation and Information Protection is a special statute that applies to the relationship between service providers and service information entities who use electronic communications networks (such as the internet). As cryptocurrency exchanges provide services online, both of the aforementioned statutes apply to them as information and communication service providers in charge of the establishment and operation of exchanges.

Also, if there is an EU user on the exchange in Korea, the General Data Protection Regulation (GDPR) may be applied, in addition to the Personal Information Protection Act of Korea. In such case, a registered EU agent shall be appointed for the EU users not established in the EU in compliance with GDPR.

Act on Real Name Financial Transactions and Confidentiality; and the Act on Reporting and Using Specified Financial Transaction Information

With regard to know-your-customer (KYC) and anti-money laundering (AML) obligations, there are certain statutes such as the Act on Real Name Financial Transactions and Confidentiality, and the Act on Reporting and Using Specified Financial Transaction Information. However, these statutes do not apply to cryptocurrency exchanges, as such exchanges are not financial institutions.

However, based on an authoritative interpretation issued on November 1, 2017, the Korean government's joint task force has proposed guidelines on strengthening identity verification and the reporting of suspicious transactions. As the Korea Blockchain Association's self-regulatory proposal also stipulates user protection/ identity verification, and most of the proposed legislation relevant to cryptocurrency already prescribe KYC/AML obligations, certain procedures involving KYC/AML should be prepared in advance.

APPLICATION OF CRIMINAL CODE

In addition to the specific regulations mentioned above, cases of allegedly conducting ICOs or operating cryptocurrency exchanges improperly are generally subject to criminal penalties. For example, any ICO seemingly without business value can constitute a crime related to fraud. Also, if a cryptocurrency is listed, but cannot be properly used in any transactions due to some deficiency, the representative director of the relevant cryptocurrency exchange may be punished for "receiving or giving bribes by breach of trust" and directors who arbitrarily use funds from exchanges may be punished for embezzlement or misappropriation.

Also, the Supreme Court has recently ruled that "bitcoin is an intangible property containing value, which can be confiscated and subject to confiscation thereof" (Supreme Court Decision 2018do3619, dated May 30, 2018). In light of the foregoing judgment, it seems very likely that the court will be more active in directly intervening in cases of misconduct relevant to cryptocurrency transactions, by applying criminal penalties in relation to such acts as fraud or embezzlement.

CONCLUSION

The price of bitcoin, which skyrocketed to W24 million (US\$21,500) at the end of 2017, has now dropped to approximately one-third of that price during 2018. Considering the abatement of cryptocurrency fever in Korea, it is unlikely that the Korean government will immediately rush to enact or amend laws relating to cryptocurrency. Rather, it may take its time in deliberating on legislation based on opinions from relevant industry players, as well as considering various other matters. Without the enactment of such legislation, institutions and banks may continue to maintain a conservative approach towards cryptocurrency-related matters, while ICOs will continue to be established in foreign countries such as Malta, Singapore, Switzerland, Estonia, Hong Kong and Gibraltar. In conclusion, investors and cryptocurrency exchange operators should continue monitoring the legislative trends in the future, while continuing to act in accordance with the Korean government's authoritative interpretations.

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

Carl Watson



Carl Watson

The general counsel of Arcadis Asia discusses effective in-house functionality and how he has worked to build a legal team that is fit for purpose.

I'm a relative newcomer. I started my in-house journey four years ago. Fresh faced and without pre-conception. After 12 years in private practice as an infrastructure finance/commercial lawyer, I was handed a clean slate by my new employer and tasked with building a lean and keen in-house function for a leading global design and engineering business to serve its Asian operating footprint.

In my tool bag I had a passionate alignment to my new employer's core values (integrity, people first, client success, collaboration and sustainability); the feeling that it was time to step up and make a difference; years of experience on large, multi-stakeholder transactions with a focus on closing out an end-game; my legal skills (a given!) and objectivity; and, most important, on a personal-level, the backing of my wife.

I wanted to map out some reflective thinking from lessons I learned at this stage of my journey and some thoughts on the exciting, digitally disturbed future ahead.

Culture and context

Culture is the lifeblood of any business. For me, moving in-house or taking a step-change in any career pathway is fuelled by a close cultural understanding and alignment between employee and that new employer. It is at the core of the employment relationship and sits above other elements such as remuneration, line management, performance, reward, etc. If you

believe in what the business values, does and prioritises, everything flows. That belief (and focus on it) ensures that in those tough times, when that "to do" list is as high as a mountain and your prioritisation radar is off-line for maintenance, you can step back and contextualise your value-add. So, after establishing a cultural symbiosis, what next?

To deliver effective and fit-for-purpose legal solutions and to keep any business "compliance safe", you must first understand that business. In simple terms, what do we do? By definition, if you're in-house you're embedded in a host business, no longer a law firm – understanding, intimately, what that business does, how it does it, where it does it and who does it for it are essential syllabus items for the first six months and beyond. Deep awareness of these elements will then provide a platform to build out your initial design thinking for your functional team. I was lucky. I was given the opportunity to join my employer initially as a secondee. So both parties could "try before they bought". During that secondment, I made sure I had as much outreach face-time with a broad cross-section of the business. Functional colleagues, client-facing colleagues, global colleagues in other regions and head office, leaders and even clients where and when I got the opportunity. That gave me a blueprint, a gut feeling, for the pulse of the organisation I was now embedded within.

After I joined permanently, and to date, a key learning is that it is a priority for me to retain face time, to meet with my internal

stakeholders, speak to clients and members of my in-house network and community to always monitor that pulse.

Fitness for purpose

We see that phrase in many contracts we have to review. We often don't like it and seek to red-pen it. Ironically though, it is fundamental to building a functioning in-house functional team. Overhead optimisation is never going to disappear; and, with both the emergence of low-cost excellence centres across Asia and globally, and the pace of robotisation and automation in all facets of professional service, punching above your weight as a legal functional team is crucial. Budget for more headcount/lawyers is never going to be popular with the CFO - I'd go further and also argue that it is often unnecessary.

As I mentioned, I was handed a clean slate but, initially, no budget apart from for myself! So during that first nine months of flying solo, I carefully analysed what I was being asked to do. It was just me, so prioritisation skills need to be honed. We are a design and engineering business, not a law firm. So, as the business sells the technical expertise housed in the brains of my excellent professional colleagues, I focused on enhancing commerciality, so they can better police the contracts and risks at the front line and only escalate key risk factors to me. I mapped out what I was focused on: contract reviews, awareness training, some corporate secretarial work, compliance investigations, a bit of travel for face time and claims evaluation and handling/reporting. On my travels, I asked around and soon realised that within the business were existing resources in the form of law degree holders and even non-practising lawyers, but in client-facing service side roles. I approached their bosses to "borrow" some of their time. They kindly agreed. My team-building phase had begun.

After the first nine months, it was time to invest. I built a business case for my first recruit and invested an inordinate amount of time (more than 30 interviews!) to select an experienced, tri-lingual (English, simplified Chinese and traditional Chinese) commercial lawyer with a broad-based in-house background. Over time we gelled and we started driving commerciality in partnership with our internal clients. Seeking to focus on higher risk pursuits, bespoke training (train the trainer) and policy/

process/guidance drafting and dissemination.

Since then, I have designed and built a blended pan-regional team that includes: fixed-fee retained counsel from trusted law firm partners; full-time/line-managed counsel; and my original "loaned" in-house resource. This innovative resourcing model and structure means that I am cost-effective but still can spin the plates we're handed.

All that said, I'm looking to drive further. We have the benefit of my employer's global business having excellence centres in lower-cost geographies compared to that of my regional HQ here in Hong Kong. I am now designing for the future with a strategy for a small team of lawyers in such an excellence centre that I have been collaborating with and have built understanding of for the last two years. Quality and efficiency in-house (and not cash) is king, so I have and will increase my investment by making the right hires who can take over some of the commoditised aspects of our functional role (base contract reviews, aspects of corporate registration/filings, process-based tasks, etc) and allow the rest of the team to get as much of that rubber on the road. That comes next.

"Budget for more headcount/lawyers is never going to be popular with the CFO – I'd go further and also argue that it is often unnecessary"

Adding value

On reflection, legal in-house functionality is a mixed bag of push (as a publicly listed global business, elements we have to push into the business, including compliance, reporting, assurance, governance and controls), but also pull (the value-adding, client-focused, profit-enhancing elements we'd like the business to seek from us and we, in turn, want to focus our energy on). The real juice.

I am not going to touch on it here, but another area to consider (where appropriate) is in-house client billability. But let's leave that for another time.

So, by liberating my team across the region, embedded within and working closely with those country or service line specific business teams, from the more commoditised elements



Carl Watson and the Hong Kong members of his team

of work – we can drive attention and performance around the pull items. For me they fit into three categories:

Front line:

Where the business teams are analysing the markets we operate in and identifying clients and pursuits for us to win and then capture to sell services. So, my team will, for example, be supporting proposal development, market research, risk assessments for market entry or exit strategies, bespoke compliance and due diligence services, etc.

Engine room:

A core for adding value, this is where we support the landing of pursuits or opportunities and enable the business to convert them into tangible revenue raisers. We should guide the business through the various push components related to on-boarding the opportunity (internal approvals, levels of authority, etc); provide a toolkit to the business to enable a strong commercial outcome through their negotiations; listen first and then explain the why in terms of advice and commercial counsel at this stage of the process – never give a hard No, always seek a client-focused solution if one is available; support the business in analysing the service scope or deliverables for the opportunity to ensure we have the resources to deliver on our promises and if not to set up partners from outside correctly (due diligence and allocation of the “Four Rs”: roles, resources, risks and revenues); and once the opportunity is landed, close out the contractual formalities and, importantly, invest time as part of the briefing for the implementation/delivery team in the handover from sales to delivery. This final component, where the key commercial risks are itemised and socialised, is a crucial value-add and risk-mitigation factor as we move to the final stage below.

Delivery:

For me, this is the stage where commercial vigilance is essential. We have captured a great opportunity to serve a valued client – now we must perform to deliver the results both parties to the contract shook hands on at the end of the last stage. However, things can change, resources can move on, scope can creep and budgets can become strained. The legal team can add so much here. Whether that be analysing the contracts to determine entitlement or exposure; driving commerciality through structuring and negotiation for variations/additional fees for additional services/EoTs, etc; to participating in client-focused reviews of our performance, feeding in objectivity and a “four eyes” viewpoint. The in-house legal business partner can additionally proactively monitor claims’ exposure and, from a commerciality perspective, ensure that revenue is captured where due to eliminate exposure to loss-making pursuits. All this is augmented by value-adding training and awareness sessions that are tailored to specific teams and risk-based attention points (often driven from audit and structured reviews).

“Leveraging low-cost locations is an interim solution for us, but embracing the pace of digital change and disruption is something to be inspired by and not fearful of in my mind.”

Another key driver to adding value is effective collaboration within the business. For me, checking in weekly with my colleagues leading other functional teams (finance, HR, health and safety, risk management, marketing, communications, etc), checking in weekly with my own team, checking in with my global legal and group headquarters colleagues at least quarterly ensures legal delivery in my region, Asia, is both bespoke, current and aligned to global strategic direction. Of course, it is never perfect, but by collaborating closely with other enablers allows for a contextual awareness; and closer understanding to be reached, helping prioritisation and focus items to be identified and, if necessary, re-appraised.

Finally, digitalisation as a value add. For me, efficiency comes from leveraging down and up the chain outputs/deliverables to the most appropriate unit – to then liberate each tier to drive value/benefit. I see digitalisation and automation of legal services coming in to initially replace repeatable, commoditised services in the financial services space first off. Then developing, as artificial intelligence expands and becomes affordable and more menu-based, to the full spread of bespoke, algorithm-fuelled contract and documentation drafting in future. Leveraging low-cost locations is an interim solution for us, but embracing the pace of digital change and disruption is something to be inspired by and not fearful of in my mind. So, digitalisation is a “most appropriate unit” in its own right (see above) to leverage up and down to. Innovation, thought leadership and emotional intelligence from human lawyers will always be necessary – and will remain a unit too. I just hope it drives performance in in-house counsel – as what will remain after the digital transition is a smaller, distilled and connected group of legal and risk innovators who can quickly identify change and risk well in advance, but at the same time create new processes and ways of delivering both commerciality and compliance in future, fit for purpose.

Conclusion

If we consider the following takeaways I’ve distilled from my own journey to date, we in-house legal professionals will deliver more SPICE than rice to the businesses we serve and, crucially, the clients beyond:

- ✓ **Size of team** is not everything, be focused, agile and entrepreneurial – build expansion space and reactive flexibility space in to your in-house structure chart so you can constantly map on to the business you serve and the clients they serve (and risks they may encounter).
- ✓ **Prioritise** and direct energy on and to areas of importance and don’t be afraid to make and take a value judgment on activities that are not critical (following a risk-based mindset) to and/or value adding for those internal and external clients.
- ✓ **Invest** continually in knowing your internal and external clients and stakeholders. That contextual knowledge is your licence to operate and is fundamental to designing the value add and commercial credibility.
- ✓ **Importantly**, don’t forget what we said at the start. The **Culture** that binds you to the business and their clients – focus on making a positive contribution. Remember the aligned values that drew you to your employer. Always enjoy your journey (*carpe diem*).
- ✓ Finally, **Embrace** change, innovation and digital disruption – listen first, particularly to next gen and millennials – they have a different *modus operandi* and are the leaders of our future. Resist silos by staying connected to other sectors, other functions, clients, strategies, markets, thought-leaders, internal and external stakeholders to constantly pick out the drum beat from which to model the finite resources/budget you hold for maximum return.

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The thing about ...

Paul Starr

King & Wood Mallesons' Joint Worldwide Head of Arbitration and partner talks to Patrick Dransfield about Hong Kong, dispute resolution and working for China's first international law firm.

Photo: Patrick Dransfield

Asian-mena Counsel: What brought you to Hong Kong?

Paul Starr: In 1980, I won my university's travel scholarship. You had to write an essay to win the prize, explaining where you wanted to travel and why. There were many laudable applications: to Antarctica, monitoring receding glaciers; to Galapagos, studying the blue-footed Boobie. I wrote a slightly risqué entreaty, concluding that I wanted to visit Hong Kong to make money – and won the prize! I so loved the first visit that I vowed to return immediately upon completing my UK law articles, which I did in September 1985. I rushed so quickly to Hong Kong that I missed my admission ceremony in London, presided over by the late Lord Denning. I made up for it some years later, when he very kindly autographed his caricature.

AMC: You must be sick of being asked about what has changed since 1985 – so, what hasn't changed?

PS: So much remains. The food – my favourites are still foo yung dan fan, zap har, crispy chicken, dim sum. Our beaches, islands, country parks. But most of all the resilience of Hong Kong people. We are so good at re-inventing ourselves. Our low point was the Sars epidemic in 2003. Brian Downie [now in-house with MTR] and I were lucky, because we had an assignment at that time with Siemens Dematic, in beautiful Lake Konstanz, Germany. All of our secretaries ordered us to buy up as many masks as we could find, which we did. There was not one surgical mask left west of the Maginot Line. No one was flying at that time – there were so few business travellers that Cathay wrote my name on one of the toilet doors. Siemens banned us from their canteen: "Oh well," we said, "we'll just have to take (long) lunches by the lake." But after Sars, Hong Kong bounced right back. And now, the Greater Bay Area and Belt and Road Initiative are once again placing Hong Kong at the regional forefront.

AMC: What did your practice focus on in those early days?

PS: Arbitration law. I had loved my articles at Frere Cholmeley [now Eversheds], where I had the great fortune of being able to attend the US-Iran Arbitral Tribunal at the Hague and a huge ICC arbitration in Paris. Someone told me that if I wanted to combine Hong Kong with arbitration, I should apply for a job in construction law. A few firms saw me, but Denton Hall (as they then were) interviewed me in Courts wine bar, Chancery Lane. Five hours of “interview” later, I was hooked. I had a fabulous induction at Dentons Hong Kong. I was met and taken out by a very young Jonathan (now Justice) Harris. At my first lunch with the partners, I made the slight faux pas of copying what 1980s London did at lunchtimes and ordered a vodka. Imagine if one did that today.

“The Greater Bay Area and Belt and Road Initiative are once again placing Hong Kong at the regional forefront”

AMC: What are your earliest arbitration memories in Hong Kong?

PS: Climbing up the endless steps of Hong Kong’s first international arbitration centre, in 1986 (photographed above). It was housed within the then working Central Prison (now the Tai Kwun Museum). There were no Lifts, so you lugged up your hundreds of files, step by step. There was no internet then - no “e-bundles”. If we (then) youngsters found that challenging, imagine the more elderly Arbitrators. We used to deliberately accelerate past them, as they lay gasping on the steps, with a cheery “Good Morning”, and of course no offer to help. The old Centre had two hearing rooms. I recall the infamous arbitration where, while we sat eating the same Olivers sandwiches every lunchtime, those in the other hearing brought in daily caterers, with silver service three-course lunches. One or two of those luncheon participants still work in Hong Kong today: you know who you are.

AMC: So why King & Wood Mallesons?

PS: I have only ever been in two Hong Kong law firms: Dentons, and then from 1990 different iterations of Bateson Starr in association with Mallesons – today KWM. The firm has just grown and grown. I cannot

believe that we are now third largest in Hong Kong. Had I known that I’d end up in China’s first international law firm, I definitely would have learned Putonghua back in the 1980s. In truth, I never wanted to work in a mega-sized firm. That’s why for articles I had chosen Frere Cholmeley. Now, though, I love it.

AMC: What do you love about it?

PS: I love in particular our people. Our Hong Kong DR team, many of whom have been with us for years and years. I always joke with our lawyers when they reach a milestone of five or 10 years with us, because our firm gives them a crappy pen or a Park n Shop voucher worth tuppence. But of course we really treasure them. Then there’s the international arbitration group, headed worldwide by Meg Utterback and me. Dispute resolvers are of course quite individualistic and our group members are no exception.

The China mainland DR team is fabulous, involving us in far-flung pitches, my two favourites so far being Shandong (very pretty) and a certain client’s office where in the month of May, they still had displayed a lit Christmas tree and decorations, replete with Christmas music. Much to the consternation of our partner, James Guan, Meg and I didn’t win the tender – because we were too busy giggling. And of course I have known our wonderful Australian team for decades and still get a buzz visiting them.

Then there are my Hong Kong and worldwide partners. There is a huge drive to integrate all of our offices. The Southern China partners, Beijing and Shanghai teams are an inspiration, always ready to receive us warmly, spend time with us and work on opportunities. I spent six months in Shenzhen as part of our chairman’s “100 Lawyers Abroad” initiative. Gao Feng, Haidi Teng and the whole office made me part of the Shenzhen family. Last but not least our support team. Again, there are long-termers: Matt Coleman, our head of IT, walked in off the street for a job when we were tiny Bateson Starr. David and I said “You’re hired!” I don’t think he really knew how to switch on a computer back then. Danny, our chief messenger, must have given the first message to Adam and Eve. Joanne, Marie, Constance and Maggie, our DR secretaries, wouldn’t want me to reveal the decades they have worked with us.

And then of course I love the work.

AMC: What about the work?

PS: Well, leaving aside our international projects and infrastructure practice, of which I am immensely



Photo: Patrick Dransfield

proud, my work load has so phenomenally changed since we became KWM. Previously, at Mallesons, we wouldn't have got through the door of a Sinopec, Alibaba, Huawei. Now, more than half of my practice has a China mainland element to it. And where possible, we work in cross-office teams. It isn't just about referrals. To achieve cultural integration, we need to work together. So on the ground-breaking Shandong Chenming case in the Hong Kong courts, we are a dual team of Hong Kong and our Beijing referrers Huang Tao and Xu Xianhong. For two arbitrations referred to us by Ariel Ye in Shenzhen, we have her team, Xinyu Li in Beijing and us. On the Kingkey litigation here, a client of Gao Feng and Haidi Teng, it is again Shenzhen and us. Shanghai referred

“The Southern China partners, Beijing and Shanghai teams are an inspiration, always ready to receive us warmly, spend time with us and work on opportunities”

to us a major defamation case. Handel Lee in New York a US\$500 million alleged fraud in Angola. Former judge Liu Shoujie in Beijing a force majeure arbitration in Africa.

AMC: You gave some African examples. Is that Belt and Road?

PS: The Belt and Road Initiative is of such widely popular scope that it is dangerous to categorise qualifying projects too narrowly. My head of projects, Sam Farrands, with partner-supremo Ching Wo Ng and senior associate Ashley Phelps, are currently working on a huge proposed new port and railway in Ghana – and I’m not even sure that Ghana is actually deemed a Belt and Road country. Basically, where there is massive China investment into projects that broadly span the Belt and Road route, many are terming those endeavours “Belt and Road”. Certainly, as a construction lawyer, I am immensely excited about that initiative and I see huge opportunities for Hong Kong.

“As a construction lawyer, I am immensely excited about that initiative and I see huge opportunities for Hong Kong”

AMC: What opportunities, and what challenges?

PS: Starting first with the challenges, and looking at them as a disputes resolution lawyer, Singapore got off to a much better start than did Hong Kong, marketing itself as an arbitration forum and getting Singapore written into infrastructure contracts as the situs of choice. I handled a massive Guatemalan dispute where Singapore was selected, and when I visited Papua New Guinea, as a guest of UNCITRAL, the first thing that the solicitor-general said to me was: “Now, about Singapore arbitration...”

But Hong Kong is catching up in terms of visiting host countries to explain the advantages of Hong Kong. And I don’t just mean our rule of law. What host countries misunderstand is that they think Hong Kong is too proximate to the Mainland, so that they should shy away from Hong Kong as not being a sufficiently neutral venue to stage an arbitration. But those host countries misunderstand the huge advantage a Hong Kong arbitration award can bring to enforcement over assets held in the Mainland. They often don’t know about the special arrangement between the Mainland and Hong Kong governments for the mutual enforcement of arbitration awards. In other words, there is a special vehicle by which the Supreme People’s Court will look at Hong Kong awards and strive to enforce them. The statistics of successful enforcement are very promising.

The opportunities for Hong Kong are vast. Starting with the Greater Bay Area, there is a massive programme for connectivity (spearheaded of course by the high-speed rail and the HK-Macau-Zhuhai Bridge), but also for social development whether that be exhibition centres, retail and leisure, real estate, sports hubs, museums, concert halls, theatres. Hong Kong businesses can partner with mainland entities to develop and service all of this. Further afield, in my own area of infrastructure development, Hong Kong developers, contractors, suppliers and consultants can joint venture with recipients of Belt and Road funding to bring projects to successful realisation in countries, many of which carry high risk but high reward.

AMC: We heard that your firm is setting a trend for law firms as regards Greater Bay Area integration?

PS: Yes, we have opened our GBA International Centre, which will see a seamless service from our Hong Kong, Shenzhen, Guangdong and Hainan offices.

AMC: And the future of Hong Kong?

PS: Well, people always ask: “What of the common law – will it survive? What about your judges wearing wigs and gowns and still quoting Lord Wilberforce?” All I can refer you to is Mainland policy documents and formal agreements made between the Mainland and Hong Kong governments. If you look for example at the very first clause in the formal bi-governmental arrangement for Hong Kong’s “full participation in and contribution to the Belt and Road Initiative”, it stresses that the two governments’ overriding objective is the continued preservation of One Country Two Systems. This was emphasised again in the keynote speeches of top Mainland officials at Hong Kong’s recent (third) annual Belt and Road Summit. It is difficult to see how one could have two systems without preserving our common law. Indeed, abolition of our unique juridical features would surely give rise to the widespread loss of confidence in Hong Kong, which the very Belt and Road Initiative is there to promote. I thus remain extremely optimistic about our future.

In addition to being King & Wood Mallesons’ Joint Worldwide Head of Arbitration, Paul Starr is a partner of King & Wood Mallesons. He is practice team leader in Hong Kong for infrastructure and dispute resolution. An honours graduate in law from Peterhouse, Cambridge University, he won a scholarship and the university’s prestigious Squire Law Prize. Starr’s team has won awards for arbitration and construction, he has been cited as a world leader in litigation.

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