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Volume 14 Issue 8, 2017

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Nick Ferguson – Managing Editor
nick.ferguson@inhousecommunity.com

Brian Chun – Design Manager
brian.chun@inhousecommunity.com

Wendy Chan – Regional Head of Events
wendy.chan@inhousecommunity.com

Gigi Ma – Events Manager
gigi.ma@inhousecommunity.com

Rahul Prakash – Associate Publisher
rahul.prakash@inhousecommunity.com

Yvette Tan – Head of Research and Development Manager
yvette.tan@inhousecommunity.com

Yannie Cheung – Office Administrator
yannie.cheung@inhousecommunity.com

Tim Gilkison – Managing Director
tim.gilkison@inhousecommunity.com

Patrick Dransfield – Publishing Director
patrick.dransfield@inhousecommunity.com

Arun Mistry – Director

Editorial Enquiries
Tel:..... (852) 2542 4279
editorial@inhousecommunity.com

Advertising & Subscriptions
Tel: ..... (852) 2542 1225
rahul.prakash@inhousecommunity.com

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Feature contributors

Atif Choudhary is part of the banking and finance team based in the *Dentons* Dubai office. Atif previously worked at Minter Ellison Rudd Watts in Auckland, New Zealand, as part of its banking and finance team, and has advised clients (both local and international financiers and borrowers) on a wide range of banking matters including acquisition financing, corporate financing, real estate financing, restructuring and general banking and finance matters.

Neil Cuthbert is a banking and finance partner at *Dentons* focusing on project and infrastructure financings. He has been based in Dubai since 2001. He has extensive experience advising banks, governments, borrowers, sponsors and others in project financing transactions covering a wide range of industries, including the oil and gas, electricity, water, mining, leisure, transportation and telecommunications industries. He also has a general banking practice that includes advising banks, borrowers and others on a wide range of banking products, including lending, structured finance, derivatives, trade finance, development finance and restructurings.

Mitchell Kowalski is the Gowling WLG visiting professor in legal innovation at the University of Calgary Law School, a Fastcase 50 Global Legal Innovator, a legal innovation columnist for The National Post and principal consultant at Cross Pollen Advisory, where he advises in-house legal departments and law firms on the redesign of legal service delivery. He is also the author of the critically-acclaimed book, Avoiding Extinction: Reimagining Legal Services for the 21st Century. His new book, The Great Legal Reformation: Notes from the Field will be published in September 2017.

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DEALS OF THE YEAR 2016

In a year that was characterised by the slowdown in the Chinese economy, the presidential election in the US, Britain's exit from the EU and the Federal Reserve's continued struggle to normalise interest rates, it is notable that plenty of large, interesting and innovative deals still managed to get done

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JURISDICTION UPDATES

Key legal developments affecting the In-House Community along the New Silk Road

SPECIAL FEATURES

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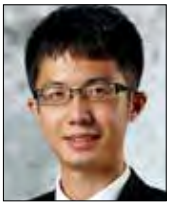

By Kevin Xu (许江晖) and Franz Li (李哲昊)

MARTIN HU & PARTNERS

8F, Kerry Parkside Office, 1155 Fang Dian Road, Shanghai 201204, P. R. China
Tel: (86) 21 50101666*990 / Fax: (86) 21 50101222
E: kevin.xu@mhplawyer.com • franz.li@mhplawyer.com
W: www.mhplawyer.com

Apple sues Qualcomm over abuse of dominant market position

In January 2017, Apple sued Qualcomm in Beijing Intellectual Property Court over the abuse of its dominant market position.

Apple alleged that Qualcomm abused its market dominance when licensing telecommunication standard-essential patents (SEPs) and selling baseband chipsets. Specifically, it complained that Qualcomm charges unfairly high royalties for licensing SEPs and sets unreasonably strict conditions for Apple to obtain the licence of SEPs; Qualcomm refuses to license SEPs to some SEP users; furthermore, Qualcomm restricts Apple to use exclusively the products/services it supplies or approves to use, etc. Therefore, Apple requested Qualcomm to compensate for its economic loss in the amount of Rmb1 billion. One week before this case, Apple also filed a US$1 billion lawsuit against Qualcomm in the US for the same reasons.

As one of the world's biggest baseband chipsets manufacturers, Qualcomm owns numerous mobile communication SEPs and is in a dominant position in the mobile communication SEP markets and baseband chipsets markets of relevant countries. In fact, in 2015, Qualcomm received a large fine imposed by China National Development and Reform Commission for violation of Anti-Trust Law. Meanwhile, Qualcomm was also investigated, sued or punished for abuse of its dominant market position in other jurisdictions, including the US, South Korea and the EU.

These cases demonstrate that Qualcomm was punished or investigated in these countries for its worldwide business model, which, generally speaking, is to coerce or induce the

Cases in which Qualcomm was investigated, sued or punished

Time	Counterparty	Reasons for claim/investigation/penalty	Result
2014-2015	National Development and Reform Commission	• Charging royalties for expired wireless SEP • Demanding free cross-licences • Bundling non-SEPs without valid justification • Coercing unfair terms on the sale of baseband chipsets, including waiver to challenge the patent licence	A fine of 8% of Qualcomm's 2013 revenue in China, amounting to Rmb6.088 billion (US$975 million)
2015	European Commission	• Restricting its customers to purchase baseband chipsets exclusively or mainly from Qualcomm through rebates or other monetary incentives • Engaging in "predatory pricing" by selling chipsets at prices below costs	Under investigation
2016	Korea Fair Trade Commission	• Refusing to license mobile communication SEPs to rival chipset makers • Coercing cell phone manufacturers in signing patent licence agreements by threatening to refuse or cease chipset supply • Portfolio licensing all of patents without distinguishing between SEPs essential to licensees and other patents • Coercing unilaterally-decided licensing terms without giving cell phone manufacturers opportunities to properly evaluate the value of the patents • Demanding cross-licences without providing fair compensation	A fine of W1.03 trillion (US$853 million)
2017	US Federal Trade Commission	• Maintaining a "no licence, no chipsets" policy under which cell phone manufacturers have to pay elevated royalties to Qualcomm for products that use a competitor's baseband chipsets • Refusing to license SEPs to competitors	Under investigation

handset makers to choose its baseband chipsets by means of bundling patent licensing into chipsets sales complemented by rebates or other monetary incentives, through using its dominant market position, and bundling patents, tie-in sales and forced cross-licence, etc.

This lawsuit brought by Apple is partly due to the fact that Qualcomm induced Apple to sign an exclusive agreement by granting rebates and because Apple provided its cooperation to the Korea Fair Trade Commission in its anti-trust investigation against Qualcomm. The dispute between these two large companies put Qualcomm into the spotlight again. It is so far reaching in terms of its impact on the industry that not only Qualcomm and Apple themselves, but also anti-trust enforcement authorities and even other baseband chipset or cell phone manufacturers in this industry may be brought into the case. Therefore, we are paying close attention to the progress of this case and will analyse the case from the perspective of facts and laws in the next article.

苹果中国起诉高通,高通再次涉嫌滥用市场支配地位?

2017年1月，北京知识产权法院受理了苹果电子产品商贸（北京）有限公司（“苹果公司”）诉高通公司、高通技术公司、高通无线通信技术（中国）有限公司、高通无线半导体技术有限公司（统称“高通公司”）滥用市场支配地位及标准必要专利实施许可条件纠纷两案。在滥用市场支配地位一案中，苹果公司主张高通公司在进行相关通信标准必要专利的许可及基带芯片销售时存在滥用市场支配地位的行为，具体包括：高通公司收取的标准必要专利许可费用及向苹果公司发出的许可条件过高;拒绝向某些标准技术实施者提供许可;限定苹果公司使用其提供的或批准使用的产品/服务等。因此，苹果公司要求高通公司赔偿其10亿元人民币的经济损失。而在该案公布的一个星期前，苹果公司也以相同理由向美国法院起诉高通公司，索赔10亿美元。

高通公司作为全球最大的基带芯片生产厂商之一，持有众多移动通信标准必要专利，在相关国家移动通信标准必要专利市场和基带芯片市场具有市场支配地位。事实上，早在2015年，高通公司就因为违反中国《反垄断法》而遭受了中国国家发展与改革委员会的巨额罚款，并且在其他国家和地区，如美国、韩国以及欧盟，高通公司都曾因滥用市场支配地位的行为被调查、起诉或处罚。本文总结了近些年来高通公司因滥用市场支配地位行为被各国（地区）调查、起诉或处罚的情况如下：

时间	案件相对人	起诉/调查/处罚理由	案件结果
2014-2015年	中国国家发展与改革委员会	• 对过期无线标准必要专利收取许可费 • 要求被许可人将专利进行免费反向许可 • 没有正当理由搭售非无线标准必要专利许可 • 在基带芯片销售中附加不合理条件（包括放弃挑战专利许可协议的权利）	处2013年度在中华人民共和国境内销售额8%的罚款，计60.88亿元人民币
2015年	欧盟委员会	• 通过回扣等金钱奖励方式，要求客户只采购高通芯片或主要采购高通芯片，以排挤竞争对手 • 通过低于成本的掠夺性定价，以排挤竞争对手	调查中
2016-2017年	韩国公平贸易委员会	• 拒绝授权芯片制造业竞争对手使用标准必要专利 • 以拒绝或停止继续供应芯片为要挟，强迫手机制造商签订专利许可协议 • 一次性打包授权全部专利，未加区分是否为被许可人需要的标准必要专利 • 强迫签订单方面决定的许可协议条款，剥夺手机制造商合理评估专利价值的权利 • 要求被许可人以不公平的价格进行反向许可	处罚1.03万亿韩元，约合8.53亿美元
2017年1月	美国联邦贸易委员会	• 将基带芯片销售与专利授权进行捆绑，如果手机厂商使用其他厂家的芯片，则需要支付更高额的专利授权费用 • 拒绝授权芯片制造业竞争对手使用标准必要专利	调查中

从以上案例可以看出，高通公司在各国被处罚或被调查都缘于其在全球范围内普遍采取的商业模式。总结说来，即是利用市场支配地位将专利授权与芯片销售相捆绑并结合回扣等金钱奖励方式，强迫或诱使下游手机制造厂商选择其基带芯片产品;同时包括打包授权专利、搭售以及强制反向授权等。

此次苹果公司的发难也与之前高通公司利用回扣方式要求苹果公司签署排他性协议以及苹果配合韩国公平贸易委员会对高通公司开展调查有关。而两家行业巨头的反目再一次将高通公司推向了风口浪尖。无论是高通公司与苹果公司自身，还是各国的反垄断执法部门乃至行业内其他基带芯片制造商或手机厂商都不能仅作为旁观者看待这一案件。因此，我们也在密切关注事件的进展，并将在下一篇文章中从事实和法律两个角度对本案进行更深入的论述与分析。

INDIA

By Gaurav Wahie and Prateek Sethi

CLASIS LAW

14th Floor, Gopal Das Bhawan, 28, Barakhamba Road, New Delhi 110 001India
Tel: (91) 11 4213 0000 / Fax: (91) 11 4213 0099
Email: gaurav.wahie@clasislaw.com • prateek.sethi@clasislaw.com Web: www.clasislaw.com

RBI intervenes in patching up of Tata and DoCoMo's joint venture

Background to the joint venture: Tata DoCoMo, an Indian mobile network operator, was set up as a joint venture between Tata Teleservices (TTSL) and NTT DoCoMo in November 2008. DoCoMo was a minority shareholder (with a 26.5 percent stake, for which it paid approximately US$2.2 billion (Rs127.4 billion), a share price of Rs117 per share) in the company. The inter-se rights and obligations of the parties were set out in a shareholder agreement (SHA).

DoCoMo Exit: According to the SHA, DoCoMo had the right to sell its entire shareholding if the joint venture fails to achieve certain performance based milestones, with TTSL having the right of first refusal. On account of losses to the tune of US$1.3 billion, DoCoMo, in April 2014, announced its willingness to sell its entire shareholding in the joint venture to TTSL. As per the timeframes prescribed under the SHA for such an eventuality, Tata Sons had to find a buyer by December 2014, failing which it would compulsorily have to purchase DoCoMo's stake in the joint venture.

Following Tata Sons inability to find a buyer, they sought the approval of the Reserve Bank of India (RBI) to purchase the shares from DoCoMo at Rs58.045 per share, in accordance with the terms of the SHA, for a valuation of US$1.1 billion. While referring to the then prevailing Foreign Exchange Management Regulations, the RBI rejected the deal in March 2015 and stated that the value of the put option should be based on the fair market value prevailing at the time it is exercised, and not a pre-determined valuation.

Following the rejection by RBI, TTSL offered to purchase DoCoMo's stake at Rs23.24 per share on the basis of a fair market value determined by PricewaterhouseCoopers on June 30, 2014. DoCoMo rejected this offer and moved to the London Court of International Arbitration, which was the agreed dispute resolution mechanism, seeking a valuation of Rs58.045 per share.

> "With the announcement of this settlement, RBI raised certain objections and approached the Delhi High Court and opposed the pact on the basis that it amounted to transfer of shares in a manner that was not permitted and that allowing this would set a wrong precedent"

It is pertinent to note that DoCoMo had also filed an enforcement application in the Delhi High Court, which the Tata Group challenged, notwithstanding that the full sum of the arbitral determination was deposited with the registrar of the Delhi High Court subject to final adjudication in the matter.

Settlement between the principals: With the intention to conclude, the parties approached the Delhi High Court on February 28, 2017 with a settlement plan. The Tata Group also released a statement that it would not challenge the enforceability of the foreign award in India, and DoCoMo agreed that it will not pursue Tata's assets in the US and UK for the next six months.

Settlement: With the announcement of this settlement, RBI raised certain objections and approached the Delhi High Court and opposed the pact on the basis that it amounted to transfer of shares in a manner that was not permitted and that allowing this would set a wrong precedent.

The RBI was also concerned whether DoCoMo would pursue enforcement of the award in the US and the UK after six months in the eventuality that it doesn't succeed in India. In this regard, the court objected to the concern raised by RBI and clarified that RBI cannot act on matters decided overseas.

Justice Murlidhar had then directed RBI to file a note or affidavit on the specific issues at the next hearing, which was fixed for March 14. On March 14, senior advocate Soli Sorabjee appeared on behalf of the RBI and sought the court's allowance for the central bank to again look into the matter "afresh", before clarifying its final position. On protests made by Kapil Sibal and Darius Khambata, appearing for DoCoMo and Tata Sons respectively, Justice Murlidhar while denying the senior counsel's request allowed Sorabjee a further day to take instructions from the central bank, before making a final stand.

On March 15, the RBI did not address the court's question on its jurisdiction over the international arbitration award. It was reported that Justice Murlidhar would decide whether RBI's intervention application was maintainable and pass a judgment in a week (awaited at the time of writing this article).

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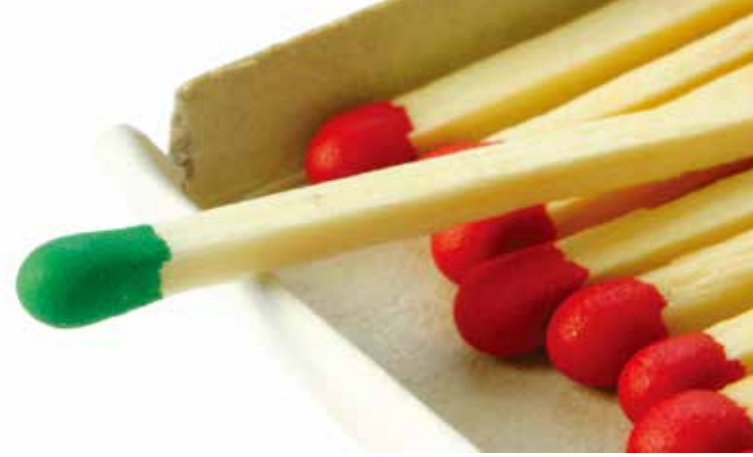

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E: haris@lgslaw.co.id• indra@lgslaw.co.id W: www.lgslaw.co.id

Key new provisions for power purchase agreements

On January 23, 2017, Indonesia's Minister of Energy and Mineral Resources introduced a regulation that limits room for negotiation and risk allocation in power purchase agreements (PPAs).

Regulation No. 10 of 2017 on the Basic Provisions of Electricity Sales Purchase Agreement (Regulation 10/2017) contains a number of provisions that are articulated in expansive terms and, bar some mandatory provisions, are subject to detailed provisions in the individual power purchase agreement.

Scope of applicability

The regulation applies to independent power purchase between Indonesia's state-owned Perusahaan Listrik Negara (PLN), as the buyer, and electricity producers, as the seller for all types of power plants, including geothermal, biomass and hydro, that have not entered bid-closing stage. Regulation 10/2017 does not retroactively apply to existing IPP agreements.

Electricity purchase project structure

Under Regulation 10/2017, IPP project structure must now use the Build Own Operate Transfer structure. The mandatory asset transfer at the end of the project life seems to depart from previous generations of power purchase agreements, wherein PLN and the power producer were free to negotiate alternative structures that could enable the latter to retain project assets after the project ends.

Government force majeure and its effects on the project

Under Art. 8 Regulation 10/2017, PLN and the power producer seem to bear risks of government force majeure events, defined as changes in policies or regulations. However, the Indonesian government's regulatory authority is expansive and could affect a broad spectrum of the project's financial model components, such as labour costs, land acquisition, construction materials and fuel prices. Where changes in government policy leads to project termination or the plant becoming inoperable, both PLN and the power producer are discharged/released (dibebaskan) of their respective obligations (Art. 28 (7)). The release under Regulation 10/2017 seems to cover all of PLN's obligations and does not seem open for contractual modification. This might be contrary to current practices, where in certain qualifying projects under the Fast Track Programme II (FTP II) or public-private partnership (PPP) in the electricity sector, political risks are absorbed by the government through a government guarantee scheme, either in the form of business viability guarantee or PPP guarantee (as applicable).

Performance security

While previously the performance security scheme varied from one project to another, Regulation 10/2017 now explicitly stipulates three stages of performance security where the first stage will cover the seller's performance from the signing of the PPA to financial closing; the second stage will cover the seller's performance from the signing of the PPA to commissioning; and, lastly, the third stage will cover the seller's performance from the signing of the PPA to the commercial operation date.

PLN's failure to absorb produced power

Art. 6 (2) of Regulation 10/2017 implies that PLN is not obligated to pay for electricity when a force majeure disrupts its grid, and as a result becomes unable to absorb the power made available by a plant. The implication is that power producers will have to share risks that they are unable to manage. Regulation 10/2017, however, allows for PLN and power producers to agree on the details of this under the PPA, therefore allowing some flexibility.

Penalty

The regulation provides that a PPA may provide for penalties. Under Indonesian law, penalty payments are expressly allowed (Art. 1304 through 1312 Civil Code) and, depending on the contract, penalty payments may apply in addition to or instead of other obligations. Penalties may be imposed for (Art. 22 Regulation 10/2017):

a. Delays in reaching commercial operations date, paid as liquidated damages;
b. Power unavailability, paid as availability factor or outage factor;
c. Shortfall between agreed and actual heat rate;
d. Failure to maintain frequency or reactive power requirements; or
e. Failure to meet the ramp rate.

Restrictions on transfer of shares

Article 24 of Regulation 10/2017 restricts share transfer in the power producer company prior to the commercial operation date, except transfer between a project sponsor and its affiliates (which must be 90 percent owned). The regulation does not expressly contemplate for share transfer between co-sponsors (eg, transfer between consortium of sponsors). Any transfer of shares after commercial operation date must be approved by PLN and reported to the Minister of Energy and Mineral Resources.

The JLegal PQE

Personality Questionnaire Experience

Every month, JLegal examines the PQE of a senior in-house counsel. This month we speak with Jasmine Karimi, who we know won't be on her mobile device or ordering the chicken feet at dinner.

- **What is on your mind at the moment?**
  My goals and objectives for 2017 - both professional and personal.
- **What secret talent do you have?**
  Ability to bring people together, to connect and make people laugh - my friends tell me I should do a stand-up comedy sometime!
- **If you weren't a lawyer you would be a ...**
  Motivational speaker OR a travel writer OR running a few schools for under-privileged children in remote parts of the world OR raising funds for charity.
- **What is your idea of misery?**
  Seeing people in a restaurant together but each busy on their own mobile device and not talking to each other!
- **What is the strangest thing you have seen?**
  A restaurant in Cambodia whose entire menu featured insects of every kind cooked in different ways, including dessert!
- **What do you consider the most overrated virtue?**
  Political correctness! It's good to just let loose sometimes!
- **What is your motto?**
  Treat everyone you meet kindly - you never know what's going on inside them - your one gesture could change their lives!
- **If you could have one superpower it would be ...?**
  To ensure no child is deprived of education anywhere in the world. Education is the answer to eradicating so much conflict and poverty in this world.
- **What irritates you?**
  Lack of attention to detail - silly errors that can be avoided by proofreading properly!
- **What was your last Google search?**
  Concert/opera listings in Prague - trying to book tickets for our upcoming trip.
- **What's the one food you could never bring yourself to eat?**
  Chicken feet!
- **Which of the Seven Dwarfs is most like you?**
  I took a couple of on-line quizzes to figure this out - turns out I'm Doc.

jlegal
your global recruitment partner

Jasmine Karimi

Senior Director and Counsel, APAC
at Illumina Inc.

PHILIPPINES

By Dan Bernard S Sabilala

ACCRALAW Tower, 2nd Ave. Cor. 30th St., Bonifacio Global City
Taguig City, Metro Manila, Philippines
Tel: (632) 830-8000, / Fax (632) 4037007 or (632) 4037008
E: dssabilala@accralaw.com W: www.accralaw.com

Dollar-denominated securities in relation to Corporation Code's provisions on capital

The Philippines Stock Exchange (PSE) issued rules on December 2, 2016 governing the listing, trading and settlement of US dollar-denominated securities (DDS).

The Rules on Dollar Denominated Securities (DDS Rules) were earlier approved by the Securities and Exchange Commission (SEC) on November 10, 2016 and aim to provide issuers and investors with more instruments to meet their specific requirements. It can provide issuers with dollar-denominated funding requirements and the opportunity to raise capital at the PSE without incurring any foreign exchange risks. In the same manner, the product can also reduce the foreign currency risk exposure of foreign investors who trade PSE-listed securities. In addition, the DDS offers local investors an alternative investment option for their dollar holdings.

The DDS Rules shall apply only to existing listed companies that will issue DDS. DDS listings through initial public offering shall be subject to such other rules, regulations and other guideline as may be prescribed by the PSE and approved by the SEC and other regulatory agencies. The general procedures for the listing of equity securities shall apply in processing listing applications for DDS.

In light of the introduction of DDS, does this mean that an eligible issuer who is a domestic corporation may now issue shares with a par value in dollars?

In an opinion by the SEC dated November 6, 1995, the SEC stated that an analysis of the provisions of the Corporation Code relating to corporate capitalisation reveals that the required "payment of capital stock" and "amount of authorised capital stock" are covered by different provisions. Section 62 of the Corporation Code allows a corporation to receive subscription payment for its capital stock not only in "cash" but also in the form of "property". While "foreign currency" may not qualify as actual cash, still it would qualify as property payment under the provision of the Corporation Code. Therefore, there is no legal impediment for a corporation to validly accept "foreign currency" as consideration for stock subscriptions.

> "While payment to subscriptions to capital stock in the form of "foreign currency" is allowable under existing law and SEC policy, the shares of stocks of domestic corporations cannot be denominated in terms of any currency other than in Philippine pesos"

However, the above policy should not be construed to automatically mean that the capital stock or capitalisation of a corporation can be denominated in foreign currency. The pertinent provisions of the Corporation Code are Sections 14 and 15, which explicitly require that the amount of the authorised capital stock of a corporation must be denominated in the lawful currency of the Philippines, which is represented in pesos.

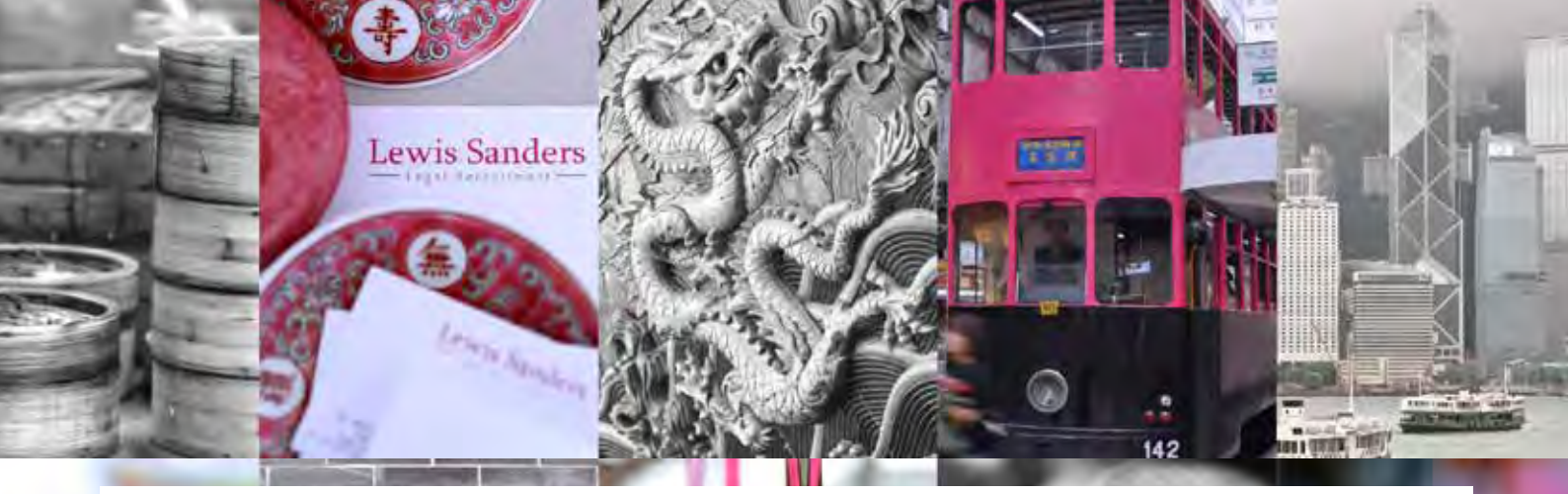
Accordingly, while payment to subscriptions to capital stock in the form of "foreign currency" is allowable under existing law and SEC policy, the shares of stocks of domestic corporations cannot be denominated in terms of any currency other than in Philippine pesos.

This notwithstanding, the SEC in a subsequent opinion dated July 8, 2003 stated that the provisions of the Corporation Code that require shares to be issued by a company shall be expressed in the legal currency of the Philippines are mere formal rules and do not apply with pedantic rigour. In fact, said provisions allow for exemptions from the requirements when so prescribed by the Corporation Code and by special laws. In that case, the SEC interposed no objection to the issuance by a Philippine bank of US dollar denominated preferred shares of stock subject to the approval of the Monetary Board on the basis of the provision of the General Banking Law.

Based on the foregoing, the introduction of DDS will only allow equity shares of a domestic corporation to be quoted, traded and settled in dollars, but the par value of the shares must remain in Philippine pesos. The introduction of DDS only pertains to the requirement by the Corporation Code on the "payment of capital stock" and not on the "amount of capital stock".

The views and opinions expressed in this article are those of the author. This article is for general informational and educational purposes, and not offered as, and does not constitute, legal advice or legal opinion.

This article first appeared in Business World, a newspaper of general circulation in the Philippines



10th ANNIVERSARY

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In-House

HEAD OF LEGAL - REAL ESTATE — HONG KONG — 12+ years

A listed conglomerate is seeking a Head of Legal for its real estate arm. You will advise on legal & risk matters & manage the Group's property development & M&A projects. In-house experience is essential. Fluent English, Cantonese & Mandarin are required. AC6343

LITIGATION & INVESTIGATIONS — HONG KONG — 6-10 years

Leading global investment bank is seeking a mid to senior level litigator. You will work with internal clients across the region & prior experience in financial services litigation/internal investigation in the region is essential. Fluency in Chinese is required. AC6317

M&A/COMMERCIAL — HONG KONG — 5+ years

Leading MNC is looking for a mid to senior level corporate/commercial lawyer. This role reports into the GC for Asia & you will advise on M&A, JVs, financial services & regulatory issues as well as general commercial matters. England & Wales qualification is preferred. AC6051

GOVERNMENT RELATIONS/POLICY — HK/BEIJING — 5-10 years

Established technology company is looking for a Legal Counsel to join its team in HK/China. You will have extensive international regulatory experience, high quality law firm training & exposure to government/policy work. Fluent English & spoken Mandarin required. AC6391

BANKING / DCM — HONG KONG — 4-8 years

Bulge bracket bank seeks a mid-level lawyer with banking & finance and/or DCM experience to join its legal team. Experience in leveraged acquisition finance ideal and candidates from both private practice & in-house will be considered. US Securities experience would be an advantage. AC6379

MEDIA/ENTERTAINMENT — HONG KONG — 4-8 years

Opportunity for a media/IP lawyer to join this HK conglomerate. You will handle media & entertainment, IP, commercial, listing compliance & regulatory issues. Prior exposure to media and/or commercial IP work preferred. Fluent English, Cantonese & Mandarin are essential. AC6371

M&A/COMMERCIAL — HONG KONG — 1-3 years

International education provider seeks a junior corporate M&A lawyer with solid training from an international law firm. You will handle M&A & real estate projects as well as general commercial & regulatory matters. Chinese language skills not essential. AC6399

Private Practice

LITIGATION — HONG KONG — 5-12 years

UK law firm is looking to expand its disputes practice by adding a Senior Associate with experience in commercial litigation & regulatory investigations. Experience representing PRC clients in litigation preferred. HK qualification & Mandarin language skills essential. AC6378

REAL ESTATE PSL — HONG KONG — 5+ years

An international law firm is seeking a PSL lawyer to support the property department. The role will involve advising with legal & regulatory changes, maintaining the knowledge management function & providing training to internal & external clients. AC6249

BANKING & FINANCE PSL — HONG KONG — 4- 10 years

Excellent opportunity to join a global law firm as a professional support lawyer in the banking & finance team. You will have strong banking & finance experience gained from international firms. Excellent English skills essential & Chinese skills are preferred. Good work/life balance. AC5791

CORPORATE X2 — HONG KONG — 3-5 + 6-9 years

Interesting opportunity at a global law firm with international presence looking for senior & mid-level corporate/ commercial lawyers. Excellent work/life balance & career prospects. Focus on cross-border M&A, commercial matters & post-IPO compliance. AC6337

FUNDS — HONG KONG — 3+ years

Top tier firm seeks a funds associate with 3 - 5 years' post-qualification experience, solid training from a peer firm & qualification in a Commonwealth jurisdiction. Lawyers with M&A or finance experience will be considered. Chinese language skills are preferred. AC6355

REGULATORY — HONG KONG — 3+ years

Well-established UK firm is seeking an associate for its regulatory practice. You will advise on the setting up of regulated businesses in HK, compliance, regulatory corporate governance, AML & data privacy amongst other issues. Fluent Chinese language skills are preferred. AC6348

LEGAL RECRUITER — HONG KONG — 2+ years

Lewis Sanders is busy across in-house and law firm recruitment & we are seeking a legal recruitment consultant to cover both areas. You may be a legal recruitment consultant with at least 2 years' experience or a junior/ mid-level lawyer looking for a change in career direction. AC1000

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

By Joon-Seok Kim

Lee International
IP & LAW GROUP

Poongsan Bldg. 23 Chungjeongro, Seodaemun-gu, Seoul 03737, Korea
Tel: 82 2 2262 6288 / Fax: 82 2 2279 5020
E: jskim2@leeinternational.com W: www.leeinternational.com

Revised Korean law to protect privacy in smartphone apps

On March 22, 2016, Korea took steps to strengthen the protection of personal information in smartphone applications through a partial revision of the Korean Act on Promotion of Information and Communications Network Utilisation and Information Protection, etc.

Under the revised act, which became effective on March 23, 2017, if a smartphone applications developer seeks permission to access a user's smartphone, the developer must make a clear distinction between permissions that are necessary for activating the apps and those that are not. The developer also must make sure that the user is informed that he/she is not obliged to grant permissions that have nothing to do with operation of the apps. The revised act also directs that the developer cannot refuse to offer the app service just because the user did not grant the developer a right to use functions and information from a user's smartphone, such as the ability to activate certain functions or to read or revise data.

> "Most users are not aware of how much information is potentially collected and used by app developers when they give access rights to certain smartphone apps"

This revision to the act was seen as necessary to better inform and protect consumers. Most users are not aware of how much information is potentially collected and used by app developers when they give access rights to certain smartphone apps. Even if they are, in the past they had no choice but to grant a right of access because otherwise they would not be able to use the apps they wanted.

Details of the act are described as follows:

1) Under Article 22-2, Paragraph 1, if a smartphone application developer wants the right to access a user's smartphone, he/she should (1) inform the user as to which permission is necessary and which is not, in order to activate the applications; (2) explain the reason for such distinction and the relevant details; and (3) obtain permission to obtain that right of access from the user;
2) Under Article 22-2, Paragraph 2, the developer is not allowed to block the user from using the applications, just because the user did not grant a right of access that is not necessary for activating the applications; and
3) Under Article 76, Paragraph 1, Subparagraphs 1 and 1-2, if the foregoing provisions are violated, the violator will be subject to a penalty not exceeding W30 million (US$27,000).

Thus far, smartphone users have had to grant a right of access to application developers if they wanted to use certain smartphone applications. This practice has been heavily criticised for potentially harvesting personal information in violation of users' privacy rights. The revised act is expected to reduce the possibility of privacy infringement and contribute to protecting personal information.

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Alex Tao | In House C&I Legal
+ 852 2499 9293 | alextao@pureseach.com

puresearch.com

Pure Search International Pte Ltd,
Level 61, Unit 09, The Center
99 Queen's Rd Central
Hong Kong

VIETNAM

By Dang Dinh Truong

Indochine Counsel
Business Law Practitioners

Ho Chi Minh City Office – Unit 305, 3rd Floor, Centec Tower
72-74 Nguyen Thi Minh Khai, Ward 6, District 3, Ho Chi Minh City, Vietnam
Tel: (848) 3823 9640 / Fax: (848) 3823 9641
E: info@indochinecounsel.com
Hanoi Office – Unit 705, 7th Floor, CMC Tower, Duy Tan Street, Cau Giay District, Hanoi, Vietnam
Tel: (84) 4 3795 5261 / Fax: (84) 4 3795 5262 / Moblie: (84) 906 242 513
E: truong.dang@indochinecounsel.com W: www.indochinecounsel.com

Vietnamese citizens allowed to game at casinos

On January 16, 2017, Vietnam's government issued a decree that allows citizens to game at casinos. Decree No. 03/2017/ND-CP on casino business operations (Decree 03) took effect on March 15, 2017.

As a three-year pilot scheme, Decree 03 allows Vietnamese citizens residing in Vietnam to access and game at Vietnam-based casinos, as long as they are 21 or older, have a regular income of at least VND10 million (US$445) per month and receive no objections in writing from siblings, spouses and/or biological and adopted parents.

To access a casino Vietnamese players must buy an entrance ticket for VND1 million per 24 hours, or VND25 million per month. The proceeds from these tickets will be contributed to the local state budget.

Any company desiring to operate a casino must issue an electronic card to every Vietnamese player to track their identities and any activities they undertake. Specifically, the card must record information about the player's code number, full name, ID/passport number, identification photo, times of entry/exit from the casino and the amount of money used for playing and the amount of prize money for each occasion of playing at the business location of the casino.

Conditions and licences

According to Decree 03, a casino is a conditional business and can only be conducted as an ancillary business in association with the main business — for example, regarding tourism, a hotel, a resort or a complex entertainment activity (a "project"). The casino, if invested by foreign investors, must apply for the following main licences : (i) investment in-principle approval of the prime minister for the project (Prime Minister's Approval); (ii) investment registration certificate for the project (IRC), and a certificate of satisfaction of conditions (SC) applicable to casino business activities to legally operate the casino business.

Under the Law on Investment, the IRC is issued by the provincial People's Committee based on the Prime Minister's Approval. In terms of minimum capital requirements, the project must have a total capital investment of at least US$2 billion.

The SC is granted by the Ministry of Finance after the casino, in addition to satisfying other technical requirements, has contributed at least 50 percent of the total registered investment capital of the project. The SC's term of validity shall be subject to the term of the project, however must not exceed a period of 20 years from the effective date of the IRC or the Prime Minister's Approval. With respect to an existing and operating casino project, the casino may apply for an SC with a maximum term equivalent to the remaining term of its existing IRC.

A casino that has obtained an IRC and has operated a casino before the effective date of Decree 03 is not required to obtain an SC, and can continue to operate based on its existing licence. In such cases, the number of permitted electronic gaming slots and gaming tables of the casino, as well as the location of the casino and its operations, must be in compliance with its issued IRC. If a casino that has undertaken casino activities would like to increase its number of gaming slots and gaming tables, then such casino may apply for an SC provided that the requested number of slots and tables does not exceed the total amount that has been approved under the issued IRC. For a casino that has obtained an IRC but has not undertaken any casino activities, obtaining an SC is mandated.

Where a casino undertakes any foreign currency activities (eg, exchanges or payments), the casino must obtain a relevant licence from the State Bank of Vietnam.

Quotas

The quota on electronic gaming slots and gaming tables for any project is to be decided by the prime minister on the basis of the total investment capital registered by the casino. As such, the casino may have 10 electronic gaming slots and 1 gaming table for every US$10 million of contributed investment capital. This provision is applied to both a newly invested project and an expanded project.

According to Decree 03, the number of slots and tables a casino may have at a specific point in time is subject to the amount of contributed investment capital. Thus, the more capital it has paid, the more electronic gaming slots and gaming tables the casino may be allowed to put into operation. In addition, any increase in the number of permitted gaming slots and gaming tables for operation would require an amendment to the SC, which can only be made if the total investment capital contributed at the time of applying for the amendment is at least US$100 million greater than the investment capital contributed at the last issuance of the SC.

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Banking & Financial Services
Hong Kong

US Capital Markets Lawyer

A leading investment bank has created a new position for a junior US Capital Markets lawyer to join its fast-growing team. A solid knowledge on US securities laws from a top tier law firm required, with Mandarin skills preferred.

2-4 years' PQE

Carmen Mok
carmenmok@taylorroot.com

Banking & Financial Services
Singapore

Derivatives Legal Counsel

Our client is a globally renowned banking and financial institution, seeking an experienced derivatives lawyer for their regional team in Singapore. Excellent and varied scope of work on offer.

4-6+ years' PQE

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jeremypoh@taylorroot.com

Commerce & Industry
Hong Kong

Legal Counsel

Our client, a leading tech corporation, seeks a legal counsel for a broad range of general commercial, legal and compliance matters. Those with strong IT, TMT and corporate backgrounds from leading law firms or corporations considered. Fluent Mandarin skills required.

3-10+ years' PQE

Charmaine Chan
charmainechan@taylorroot.com

Commerce & Industry
Singapore

Regional Counsel, APAC

Our client is a medical tech multinational with a track record of extraordinary growth. A newly-created opportunity is available for an experienced lawyer to establish the regional legal function. Prior experience within pharmaceutical or healthcare industries preferred.

10+ years' PQE

Theresa Pang
theresapang@taylorroot.com

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Contact the Taylor Root **Hong Kong** team on **+852 2973 6333**

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EVENT REPORT

Pursuing excellence at In-House Congress Beijing 2017

2017 IN-HOUSE Congress BEIJING

On March 23rd, over 200 in-house counsel gathered at the 16th annual Beijing In-House Congress.

'The Path to Excellence: How to benchmark the In-House Team's evolution, and the role of External Providers to assist In-House Counsel along this path' provided the topical framework for an engaging plenary discussion with Matthew J. Kendrick, General Counsel, Daimler Greater China; Hannah Cao, Deputy General Counsel, Silk Road Fund; David Tang, Managing Partner, Asia, K&L Gates; and Patrick Zheng, Partner, Clyde & Co, which was ably moderated by In-House Community director, Patrick Dransfield.

The session also included an opening address by Chen Fuyong, Deputy Secretary-General, Beijing Arbitration Commission/Beijing International Arbitration Center.

The day proceeded with plenty of networking, and engaging workshops including:

- China Outbound to ASEAN – Key Issues and Common M&A Structures – with focus on Cambodia, Philippines and Thailand – DFDL
- 如何运用专家证人及司法鉴定解决诉讼案件中的专门性问题How to Use Expert Witness and Judicial Assessment to Resolve Technology Related Issues in Litigations (to be presented in Chinese) – JunHe
- Commercial & Regulatory: Anti-trust; Tax Spotlight and Compliance – to survive and thrive in new tax era – King & Wood Mallesons
- 执行公司合规政策的最佳实践 — 外部律师和公司法务之洞见 Best Practice in Implementing Your Company's General Compliance Policy – Insights from Private Practice and In-House Counsel (to be partly presented in Chinese) – Reed Smith
- 跨国公司在华业务境内上市 Listing of Multinational's China Business in China – AnJie Law Firm
- Investor-state Dispute Settlement: Substantive investment protections, how they are acquired and enforced; Assessment of costs in investment arbitration; CIETAC's latest development – Clyde & Co and China International Economic and Trade Arbitration Commission (CIETAC)
- Outbound M&A: Spotlight on Blind Spots & Solutions in Cross-Border Deals – K&L Gates
- Global Anti-Corruption Enforcement: Practical Guidance on how to Protect Your Company – Debevoise & Plimpton
- Technology, Media & Telecommunications – King & Wood Mallesons
- 中国跨国公司遇到的数据保护问题和挑战 China Data Protection Issues for Multinational Corporates in China (to be presented in Chinese) – Latham & Watkins

Sincere thanks go to the above firms for their valued participation, as well as to Hughes-Castell and Taylor Root for their continued support of this important In-House Community gathering.

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

"I have attended the Beijing In-House Congress many times and it keeps getting better and better"

– Beijing Congress delegate


Richard Bell
Partner
Clyde & Co


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


Maurice Kenton
Partner
Clyde & Co


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Deputy General Counsel
Silk Road Fund Co., Ltd


Grace Fan-Delatour
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Jack Sheehan
Partner
DFDL


Henry Wang
Partner
K&L Gates


Chen Fuyong
Deputy Secretary-General
Beijing Arbitration Commission/Beijing International Arbitration Center


Yilong Du
Partner
Latham & Watkins


Li Hu
Deputy Secretary General
China International Economic and Trade Arbitration Commission (CIETAC)


Susan Ning
Partner
King & Wood Mallesons


David Tang
Managing Partner, Asia
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Hui Xu
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Ivy Liu
Senior Regional Adviser
DFDL


Jude Ocampo
Partner
Ocampo & Suralvo Law Offices


Robin Teow
Senior Adviser
DFDL


Patrick Zheng
Partner
Clyde & Co


Tony Dong
Partner
King & Wood Mallesons


Matthew J. Kendrick
General Counsel
Daimler Greater China, Ltd.


Liu Honghuan
Partner
JunHe LLP


Philip Rohlik
International Counsel
Debevoise & Plimpton


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Partner
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This well-known MNC has a vacancy for a senior in-house commercial lawyer with good China and regional experience. Work will involve advising senior management on an interesting mix of contract, general commercial, and employment work. (IHC 15097)

Senior Legal Counsel
Hong Kong 10+ PQE

Leading financial services provider seeks a senior lawyer to advise on all aspects of the business, including issues relating to asset management and global markets. You should possess solid experience gained in a financial institution. Fluency in Mandarin is required. (IHC 15109)

Legal Counsel
Hong Kong 10+ PQE

A conglomerate with a continually growing presence in Hong Kong and China has a vacancy for a strong commercial lawyer to provide legal support on operational matters in China and related cross border issues. You will have solid experience handling PRC related commercial matters. Fluency in English and Chinese required. (IHC 15067)

FMCG
Hong Kong 5-10 PQE

UK listed company with significant growth plans for Asia Pac has headcount to appoint an in-house counsel in Hong Kong to support the regional management team covering Asia Pac. Great opportunity to support a dynamic and young executive team. (IHC 15027)

Aviation Finance Lawyer
Hong Kong 5-10 PQE

Global airline business seeks a strong aviation lawyer to oversee a wide range of aircraft financing transactions including aircraft trading, leasing and acquisition. This is a rare opportunity to join an in house legal team and assist in high-profile deals. Solid experience in aircraft leasing and finance is required. (IHC 14694)

Finance Counsel
Singapore 4-8 PQE

Global US bank with strong presence in Asia Pacific seeks a legal counsel to be based in Singapore. The lawyer will responsible for advising the business on a broad range of corporate banking transactions relating to their institutional banking and global markets business in Asia. Transactional banking experience is important. (IHC 14942)

International Legal Advisor
HK/China 4-8 PQE

Global technology company has a vacancy in their international legal team. This team advises on all aspects of the company's international business, including issues related to e-commerce, b2b commerce, digital data storage, and global regulatory matters. Fluency in English and Mandarin is critical. (IHC 15135)

Employment Counsel
Singapore 4-8 PQE

Global financial institution seeks an employment lawyer to join their Corporate Services team based in Singapore. The lawyer will focus on advising the bank on employment related issues such as employment benefits, severance, and disputes across the APAC region, but will also be exposed to other general commercial work. Fluency in Mandarin is required. (IHC 14965)

Legal Advisor, China
Shanghai 7+ PQE

US manufacturing company is hiring a senior level counsel in Shanghai. A senior lawyer with commercial experience gained from both law firms and in-house is important. You will be responsible for general corporate legal affairs as well as transactions. (IHC 15071)

Securitisation
Hong Kong 3-6 PQE

Well known investment bank seeks an experienced mid level lawyer with derivatives, structured products, and/or securitisation experience. Excellent opportunity to move from private practice to in-house. Competitive salary on offer. (IHC 15104)

Legal Counsel
Guangzhou 5+ PQE

A well-known e-commerce group is looking for a lawyer to join the team in Guangzhou. This role will mainly cover commercial contracts with a particular focus on India and Indonesia. The ideal candidate should have enjoyed good experience at a reputable law firm. Fluency in Mandarin and English is essential. (IHC 15128)

Legal Counsel
Hong Kong 3-5 PQE

Opportunity to join a well-regarded financial institution and to provide legal support across the Asia region to the brokerage and investment banking business. Candidate should be HK-qualified with solid experience in advising financial services. Mandarin is required. (IHC 14752)

Legal Counsel
Hong Kong 2-4 PQE

Financial institution seeks a lawyer with private wealth management/wealth planning experience. Ideally suited for lawyers with a tax trusts background. Opportunity to move in-house and take on a business/legal position. (IHC 14745)

Compliance Officer
Singapore 5-10 YRS

Fast growing insurance company seeks a Compliance Officer to join their team in Singapore. The candidate will advise senior management on all compliance matters, including any regulatory obligations, in Singapore as well as the APAC region. (IHC 15100)

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Claire Park
Tel: +852 2920 9100
Email: c.park@alsrecruit.com

Singapore
Jason Lee
Tel: +65 6557 4163
Email: j.lee@alsrecruit.com

Beijing
Kevin Gao
Tel: +8610 6567 8728
Email: k.gao@alsrecruit.com

Shanghai
Dora Cai
Tel: +8621 6133 7946
Email: d.cai@alsrecruit.com

MOVES

The latest senior legal appointments around Asia and the Middle East

AUSTRALIA

Clifford Chance has appointed **Richard Gordon** to Australia country managing partner and managing partner of Sydney, and **Paul Lingard** to managing partner of Perth following the retirement of **Jon Carson** after a near four decade career in the legal profession. Their new roles start on May 1.

HONG KONG

Appleby has added **Nicholas Davies** as a partner in the corporate department of its Hong Kong office. Davies is a senior English and Cayman law-qualified corporate and finance lawyer. He has been based in Cayman, Jersey, Moscow and London, and advises on the offshore aspects of a broad range of corporate and finance matters, including equity and debt capital markets and structured finance, private equity, funds and fund finance, and corporate, joint venture and international investment arrangements, with a particular focus on emerging and growth markets. Davies also provides regulatory advice, particularly in relation to international sanctions. He has spent a significant part of his career as an English lawyer with Linklaters, Allen & Overy and Freshfields, with much of that time based in Moscow. In addition to his work throughout Asia, he advises on matters relating to Russia and the CIS region.


Xiao Yong


Nicholas Song

Dechert has boosted its global corporate practice with the addition of **Xiao Yong** and **Nicholas Song** as corporate partners. Xiao, who will be resident in the firm's Hong Kong office, and Song, who will work in Beijing, were most recently partners at Vinson & Elkins. Xiao practices in the area of corporate law, with a focus on the energy and natural resources, mining and metals, oil and gas sectors. He represents Chinese companies, including a number of China's largest state-owned businesses, on international M&As and foreign direct investments. His practice also includes seeking approvals from high-level government agencies and conducting anti-monopoly filings. On the other hand, Song focuses on corporate matters, with particular emphasis on the energy industry, including the mining and metals, oil and gas, and power sectors. He represents a number of China's largest state-owned companies on cross-border M&As. Additionally, Song advises clients on international arbitration matters. He has significant experience in arbitrations conducted under the rules of the HKIAC, LCIA, LMAA, SIAC and Uncitral.

Norton Rose Fulbright has appointed **Psyche Tai,** a corporate partner who has been with the firm in Hong Kong for 13 years, as head of the Hong Kong office.


Janney Chong

RPC has added **Janney Chong** as partner in the firm's Hong Kong office, beginning March 1, 2017. A broad corporate finance specialist, Chong had been a partner in the Hong Kong office of US corporate law firm Sidley Austin since 2012, specialising in IPOs, fundraisings and M&As for mainland Chinese businesses. She joined Sidley Austin in 2004. She has substantial experience representing both issuers and underwriters of listings in Hong Kong, as well as takeovers and mergers of Hong Kong-listed companies. Chong has advised on more than 30 Hong Kong IPOs during her career. She has also advised on numerous other Hong Kong transactions, including share issuances worth in excess of US$200 million, and an US$800 million acquisition by a mainland China company of a minority stake in a Hong Kong-listed business.

KOREA

Bae, Kim & Lee has added **Seong Soo Kim,** a former presiding judge of the Seoul Central District Court, as a partner in its litigation practice group. After his appointment as judge of the Seoul Central District Court in 1998, Kim served as judge of the Seoul Administrative Court, several district and high courts throughout the country, and Judicial Policy Office under the Office of Court Administration. He was also elected as a research judge of the Supreme Court and a presiding judge of the Seoul Central District Court and two other jurisdictions. During his tenure as a judge, Kim participated in publishing a compendium on litigation procedures and contributed to various journals and studies. He conducted a study on international refugee law at the University of Michigan in 2002 as a visiting scholar, and was designated as a member of the Refugee Recognition Committee spearheaded by the Ministry of Justice from 2009 to 2014. Kim was also director of the International Association of Refugee Law Judges and vice-president of its Asia Pacific Chapter.

SINGAPORE


Leon Yee

Duane Morris & Selvam has promoted managing director **Leon Yee** to chairman of the Singapore-based joint venture law firm. The role includes managing the operations of the firm's Asian offices and strategic planning for Asian expansion. Yee has extensive corporate law experience and regularly advises on banking and finance, venture capital, capital markets, takeovers, cross-border mergers and acquisitions, corporate restructurings, corporate governance and joint ventures. He has also advised banks and project companies in complex financing transactions and has a particular focus on Korea, Indonesia and China-related deals.


David Olds

Norton Rose Fulbright has made a series of changes in its Singapore office, including appointing **Yu-En Ong,** a banking and finance partner who has worked at the firm for 13 years in London, Hong Kong and Singapore, as the new head of the office. In addition, **Nick Merritt,** a project finance and banking partner based in Singapore, has been appointed head of Asia business strategy. In this role Merritt will lead the strategic coordination of business opportunities across Asia, and between Asia and other regions. He will continue to act as the global leader for infrastructure, mining and commodities. Also, **David Olds** has been appointed as of counsel in its Singapore-based technology and innovation team. Olds is re-joining the firm after a number of years working in-house for Ooredoo in Yangon and will assist in the development of the firm's Myanmar practice. He previously worked in the firm's Hong Kong and Singapore offices, and has 18 years' experience working in Asia. His practice focuses on technology and telecommunications-related matters in Asia Pacific.

Squire Patton Boggs has hired Julia Yeo, a labour and employment partner who joins the firm from Clyde & Co. Yeo has experience advising clients on all aspects of employment law, including representing clients on contentious employment issues such as disputes on enforceability of restrictive covenants and summary dismissals, across the Asia-Pacific region. She regularly advises corporate and senior C-suite level clients on hiring, internal investigations, disciplinary and grievance issues, and terminations across a range of sectors, including insurance, energy and shipping.

THAILAND


Pakdee Paknara

The Capital Law Office has added **Pakdee Paknara** as a partner. He has over 20 years of experience in M&As, power and energy projects, real estate and construction, property funds, international trade, telecommunications, computer technology and software licensing, government bidding and tax-related transactions in Thailand and across the region. Paknara advises domestic and international clients on a wide variety of matters, specialising in the preparation of documentation for complex commercial transactions, including supply, purchase and sale, service, management and employment agreements. Previously, he was a partner of Weerawong, Chinnavat & Peangpanor, formerly White & Case (Thailand).

DEAL OF THE MONTH

asian-mena Counsel Deal of the Month

Vodafone merger with Idea Cellular

The Indian unit of British telecom carrier Vodafone and domestic rival Idea Cellular agreed to a merger in March, amid a price war sparked by Reliance Jio.

Vodafone had been looking for a way to de-consolidate its struggling India business, initially through an IPO, after disappointing results. It bought a majority stake in the business from Hong Kong tycoon Li Ka-shing for US$11 billion in 2007, but last year wrote down the value of its investment by US$5.4 billion and is also embroiled in a tax dispute with Indian authorities.

Billionaire Mukesh Ambani hasn't helped. Jio, the nationwide 4G mobile company he launched in September last year, has rapidly won market share by offering free voice calls and guaranteeing to undercut rivals' mobile data plans by 20%. As a result, Vodafone lost a million subscribers in the last quarter of 2016.

The tie-up with Idea will create a bigger business that should result in cost savings and a more competitive offering.

The deal was done through a scheme of amalgamation between Idea Cellular, Vodafone India and its subsidiary Vodafone Mobile Services (VMS). The transaction is subject to various approvals of shareholders, creditors and governmental authorities. Once effective, the entire cellular mobile telecommunication business of Vodafone India and VMS, other than Vodafone India's investment into Indus Towers, its international network assets and information technology platforms, will vest into Idea Cellular. The promoters of Vodafone India will hold 45.1 percent of the merged entity while promoters of Idea Cellular will hold 26 percent of the merged entity, with the balance to be held by public shareholders.

Vaish Associates acted as lead transactional counsel to **Idea Cellular** and **Aditya Birla Group** (ABG). Partner **Bomi Daruwala,** supported by principal associates **Krishna Kishore, Amitjivan Joshi** and **Yatin Narang,** led the transaction. **Bharucha & Partners,** led by partner **Alka Bharucha,** and **AZB & Partners,** led by partner **Nisha Kaur Uberoi,** also advised **Idea Group. S&R Associates**, led by partner **Rajat Sethi; Slaughter and May,** led by partner **Susannah Macknay;** and **Shardul Amarchand Mangaldas,** led by partner **Pallavi Shroff,** advised the Vodafone Group.

Other deals during the past month:

Sullivan & Cromwell represented **Goldman Sachs** as financial adviser to Intelsat on its definitive combination agreement with OneWeb, pursuant to which Intelsat and OneWeb will merge in a share-for-share transaction. Intelsat and SoftBank Group also entered into a definitive share purchase agreement, pursuant to which SoftBank will invest US$1.7 billion in newly issued common and preferred shares of the combined company. New York corporate partner **Stephen Kotran** led the transaction, which was announced on February 28, 2017.

Shearman & Sterling advised **Petronas** on a US$7 billion investment by Saudi Aramco in Petronas's Refinery and Petrochemical Integrated Development (RAPID) project in Johor State, Malaysia. Following completion, Petronas and Saudi Aramco will hold equal ownership in selected ventures and assets of the project. The project will be the largest downstream petrochemical project in Asia after completion in 2019. Partner **Anthony Patten,** with support from partners **Sidharth Bhasin, Ben Shorten, Iain Elder** and **Daryl Chew,** led the transaction. **White & Case** advised **Saudi Aramco.**

Mourant Ozannes has advised **Export-Import Bank of China, China Development Bank, Silk Road Fund** and **International Finance Corporation** on a US$1.39 billion facility for the first infrastructure project to be announced under China's One Belt One Road infrastructure development fund. The facility was provided to Karot Power, a Pakistani incorporated subsidiary of China Three Gorges South Asia Investment, that will fund the construction of a 720MW Karot hydropower project in Pakistan on the Jhelum River east of Islamabad, which is expected to be commercially operational in 2021. Partner **Simon Lawrenson** led the transaction.

For a full list of recent deals and their advisers, go to *www.inhousecommunity.com/deals/*

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Opportunities of the Month ...

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

Company Secretary
8-15 yrs PQE, Hong Kong

A global bank seeks an executive director – company secretary to be based in Hong Kong to provide corporate secretarial services and support to its businesses. The ideal candidate will have a strong knowledge of company laws, corporate governance and compliance matters. Ability to work independently, strong communication skills as well as fluent English are essential. This is a stand-alone role and the person will need to have gravitas with the Board and advise them on best practices. Corporate lawyers looking to step into a Company Secretarial role will also be considered. [Ref: PBP6238]

Contact: Karishma Khemaney
Tel: (852) 2537 0895
Email: kkhemaney@lewissanders.com

Brokerage Compliance
7 yrs PQE, Singapore

As part of a growing global compliance team, this role reports to the head of compliance in the UK, with responsibility for the maintenance of a compliance oversight programme, code of ethics, data privacy and training, KYC and AML review, and developing compliance policies and procedures. You will also be involved in various compliance projects and licensing. The successful candidate will be a degree holder in law or accounting, and a professional qualification is highly preferable. You will have at least seven years of compliance experience in a brokerage, banking or fund management environment, with solid experience in handling and liaising with local regulators, along with strong project management skills. You will possess excellent presentation and communication skills and ability to work independently. [Ref: BC – 28032017]

Contact: Vanessa Lam
Tel: (65) 6407 1054
Email: vanessalam@puresearch.com

Regional General Counsel, MNC
12+ yrs PQE, Hong Kong

A well-known multinational corporation has a vacancy for a senior in-house commercial lawyer with good China and regional experience. Work will involve advising senior management on an interesting mix of contract, general commercial, and employment work. [Ref: IHC 15097]

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

Legal Counsel, Technology
5-9 yrs PQE, Singapore

A technology company is in search of an independent legal counsel with at least five years of experience who has worked at a technology company. Key responsibilities include supporting the sales team for the Asia-Pacific region, drafting and reviewing software licences and SaaS agreements, and managing compliance and data protection matters. Only candidates who can draft in Mandarin will be considered. [Ref: JGB – IS 1691]

Contact: Benedict Joseph
Tel: (65) 6818 9707
Email: benedict@jlegal.com

Property Finance/Real Estate Lawyer, Investment Banking
5+ yrs PQE, Hong Kong

A top international investment bank expanding business globally currently seeks a property finance/real estate lawyer to support its global legal team. Covering the Asia-Pacific region, this person will be providing legal advice on various real estate transactions and construction projects. Candidates should have at least five years' PQE with reputable law firms, financial institutions or real estate firms, including experience in handling cross-border transactions and the ability to think commercially and work alongside senior management. Good command of Chinese (both written and spoken) will be an advantage. [Ref: 212761]

Contact: Carmen Mok
Tel: (852) 2951 2117
Email: CarmenMok@TaylorRoot.com

Legal Counsel, Healthcare
6-10 yrs PQE, Hong Kong

A Fortune 500 healthcare company is seeking a talented lawyer to join its Asian headquarters based in Hong Kong to cover its business in Japan and Asia Pacific. You will be responsible for providing legal advice on a variety of general corporate issues and commercial transactions, including M&A projects and joint venture alliances across Asia. Ideally, you have at least six years' PQE in biotech or pharmaceutical transactions gained in a mix of top international law firms and multinational corporations in Asia. Fluency in English and a second language, Chinese/Japanese/Korean, is highly preferred. [Ref: 13987/AC]

Contact: Dora Cheung
Tel: (852) 2520 1168
Email: hughes@hughes-castell.com.hk

Reshmi Khurana
Managing Director

The role of reputation due diligence before investing in Asia

While the political winds of the past 12 months seem to reflect an anti-globalisation sentiment in many major economies around the globe, it remains to be seen how this will impact the global flow of investment funds.
Corporations tend to be opportunistic and Asian markets continue to present an arguably significant and growing investment opportunity, which is too large to ignore.

Strategic investors often choose to operate in emerging markets via joint ventures with local partners who control the operations of the local companies. Foreign investors in India, for example, often believe local partners are better able to manage India's operating environment, where there is a close nexus between business, government and bureaucracy. These arrangements may create a perception to the foreign investors that there is something going on that is not visible.

While local businesses can often "see" behind the scenes, foreign investors struggle to do the same, especially in the due diligence phase, when the investor usually has limited access to the company's financial information and management teams. In this case, it is not easy for a potential foreign investor to judge whether a suspicious transaction is potentially fraudulent or not. For example, local management may engage in related-party transactions to generate cash. However, it may be difficult for potential foreign investors to ascertain whether the cash is being generated for legitimate business purposes or for paying kickbacks to government officials.

It is similarly challenging for foreign investors to understand the performance of their local subsidiaries, joint venture partners and portfolio companies once the investment is complete. This may be because the foreign investor holds a minority position or because they do not control the management and operations of the local company. This leaves foreign investors with limited tools to monitor the performance of the local companies after investment.

Add to this the fact that regulatory oversight mechanisms in many emerging markets are still evolving and complex judicial systems often make it difficult for investors to enforce non-compliance with contractual rights and obligations. Tools available in developed markets — such as efficient courts and dispute resolution systems — cannot necessarily be relied upon in emerging markets to resolve disputes or recover investments in a timely manner, if at all.

As a result, it often becomes difficult for foreign investors to determine the true health of the target business and ethics of local partners. While on one hand foreign investors may end up making poor investment decisions and exposing themselves to regulatory risk, such as the US Foreign Corrupt Practices Act, on the other hand, foreign investors may also miss out on making good investment decisions due to insufficient or conflicting information from various due diligence providers on the ethics of the company. Investors may err on the side of caution and forego investment opportunities due to a lack of information.

However, it is possible to manage and ride these risks. The tips we give to both new and experienced foreign investors looking to invest in emerging markets, with regards to their concerns about fraud include:

- Assess: A qualitative assessment of the operating environment and any potential partners, such as their reputation, political connections, ethical standards and business practices are as important as reviewing growth numbers, financial records and legal documents.
- Understand: Foreign investors need to understand the full dynamics of the business and political environment in the country in which they are investing, to ensure that they make investments with a certain level of confidence. That is an art.
- Prepare well: Investors should not be swayed by the competitive pressures of the investment environment in India, where often too many investors pursue the same opportunities. They should take their time so they are well-prepared and well-informed.
- Never compromise: Investors should select advisers on a "no compromise basis" to ensure that they are truly independent and the integrity of any due diligence process is maintained.

rkhurana@kroll.com
www.kroll.com

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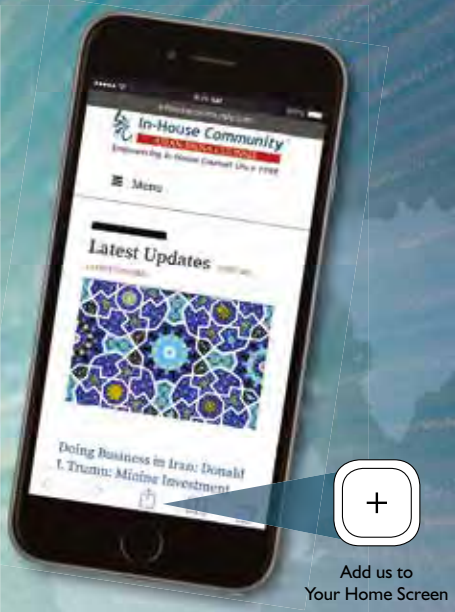

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Dr Justine Walker, *advisor to the* British Banking Association

DEALS OF THE YEAR 2016

Asian-mena Counsel's review of the top transactions and matters that closed during 2016

By Nick Ferguson

In a year that was characterised by the slowdown in the Chinese economy, the presidential election in the US, Britain's exit from the EU and the Federal Reserve's continued struggle to normalise interest rates, it is notable that plenty of large, interesting and innovative deals still managed to get done.

That success is testament to the advisers who worked hard to help clients achieve their goals despite the challenging conditions. Our list of the top deals of 2016 includes market-opening transactions in Myanmar, landmark restructurings in troubled sectors such as shipping and Chinese real estate, the financing of much-needed infrastructure projects and outbound M&A from China. There was also a focus on new technology and the environment.

The period under review was December 2015 to November 2016.

DECEMBER 2015

Qihoo 360 LBO

- **Kirkland & Ellis:** Represented consortium of China investors
- **Latham & Watkins:** Represented Qihoo360
- **Skadden, Arps, Slate, Meagher & Flom:** US legal counsel to Qihoo 360
- **White & Case:** Counsel to China Merchants Banks
- **Fangda Partners:** PRC legal counsel to the consortium
- **DeHeng Law Offices:** Advised Citic Guoan
- **JunHe:** Advised the special committee on PRC law
- **Haiwen & Partners:** Advisers to the consortium
- **Wilson Sonsini Goodrich & Rosati:** Advisers to acquirer
- **Simpson Thacher & Bartlett:** Counsel to the financial adviser to the special committee
- **King & Wood Mallesons:** PRC legal adviser to acquirers and HK counsel to New China Capital
- **Appleby:** Acted as Cayman Islands counsel to China Merchants Bank
- **Conyers Dill & Pearman:** Advised Qihoo 306 on Cayman Islands law
- **Maples and Calder:** Advised the special committee on Cayman law

This transaction is the largest take-private transaction ever, and the first to use an entirely domestic buyer group structure. In the future, it is expected that buyers will attempt to replicate this structure so that they can also obtain a clearer path to re-listing in China. The deal involved consortium of more than 30 China-based investors, who agreed to buy Qihoo 360 Technology, one of the largest internet companies in China, in an all-cash transaction that valued Qihoo at approximately US$9.3 billion, including the assumption of approximately US$1.6 billion of debt. It is the largest leveraged buyout of a Chinese company, surpassing the previous record set in 2013 when Focus Media was sold to a group of private equity investors.

FEBRUARY

AP Renewables Climate Bond

- **SyCip Salazar Hernandez & Gatmaitan:** Philippines Counsel to Aboitiz
- **Picazo, Buyco, Tan, Fider & Santos:** Philippines Counsel to the lender group
- **Freshfields Bruckhaus Deringer:** International Counsel to the lender group
- **Gibson, Dunn & Crutcher:** International Counsel to Aboitiz

This innovative project bond is the first of its kind in the Asia-Pacific region and marks the first time that a bond certified by the Climate Bonds Initiative has been issued for a single project in an emerging market. It is also the first local currency project bond in the Philippine power sector and one of the first credit-enhanced project bonds in South-East Asia since the 1997 Asian financial crisis.

The deal involved the issuance by AP Renewables of Ps10.7 billion (US$225m) of guaranteed fixed-rate term project notes and the extension of up to Ps1.8 million of a

By Nick Ferguson

senior secured fixed-rate term loan facility by the Asian Development Bank, among others, to refinance a portion of invested equity in the Tiwi and Makban geothermal power plants it owns.

The project bond model could serve as a template for similar future activity in the region, as it allows issuers in developing Asian countries to tap into domestic debt capital markets for projects that would otherwise be ineligible for financing. It also allows more investors to gain exposure to emerging market infrastructure.

LRT 1 Cavite Project

- **Shearman & Sterling:** Counsel to Light Rail Manila Corporation
- **SyCip Salazar Hernandez & Gatmaitan:** Counsel to the Light Rail Manila Corporation and the sponsors
- **Abuda Asis & Associates:** Counsel to the lender group
- **Nabarro:** Counsel to EPC contractors (Bouyges Travaux Publics and Alstom Transport)
- **Pinsent Masons:** Counsel to the government
- **C&G Law:** Counsel to the government

This deal proved the bankability of large-scale Philippine public-private partnership projects and has helped to boost investor confidence of projects in the PPP pipeline.

Work on the deal included the bidding for, and financing of, a 32-year concession for the extension, operation and maintenance of the Light Rail Transit Line 1 (LRT1), including obtaining the operating franchise.

The structure allowed Light Rail Manila (LRMC) to obtain financing on a limited recourse basis despite challenges relating to right-of-way delivery by the government and the limitations under the concession agreement, especially in respect of the prohibitions and restrictions regarding the creation of the usual security interests taken by lenders. The deal structure was also able to take into account the nuance of the termination payments under the concession agreement in a way that is mutually acceptable to the lenders, the borrower and the sponsors.

As part of the LRT 1 project, LRMC, as concessionaire, will operate and maintain the existing LRT Line 1 and construct an 11.7-km extension from the present end-point at Baclaran to the Niog area in Bacoor, Cavite. A total of eight new stations will be built along this route covering the cities of Paranaque and Las Pinas, up to Bacoor, Cavite. The contractor for the construction is a consortium composed of French companies, Bouygues Travaux Publics and Alstom Transport.

Myanmar Telecoms Project

- **Mayer Brown JSM:** International counsel for lenders
- **VDB Loi:** Local counsel for lenders
- **Allen & Gledhill:** Counsel to Overseas Investment Private Corporation

With this award we are recognising the construction of Myanmar's mobile network — one of the last greenfield telecommunications infrastructure networks in the world. Whereas many poor and developing countries have used mobile networks to leapfrog the construction of fixed telecoms networks, Myanmar was in an unusual position due to years of sanctions imposed on the previous military government. As a result, less than 10% of the country was covered, meaning that the developmental contribution of the project to the country is highly significant.

Two private mobile network operators, Ooredoo and Telenor, were awarded licences to build out the network in Myanmar. Financing for Ooredoo's expansion involved the first investment in the Myanmar telecoms sector by both ADB and IFC, while the construction of thousands of telecoms towers for Telenor involved the first lending in Myanmar by OPIC, the US government's development finance institution. This is a significant landmark in the development of Myanmar given the likely importance of these development agencies to the country going forward.

The project demanded advisers with not only excellent infrastructure finance experience, but also with a deep knowledge of undertaking transactions in developing markets such as Myanmar. The financing is reportedly the largest international debt deal in Myanmar to date.

MARCH

First Myanmar Investment YSX Listing

- **Duane Morris & Selvam:** Counsel to First Myanmar Investment

After almost half a century of oppressive military rule, Myanmar's gradual liberalisation process started in 2010 and the opening of a stock exchange was seen as a way of demonstrating the country's progress towards modernisation. That hope became reality in March 2016 with the symbolic listing of First Myanmar Investment, which became the first company to be listed on the Yangon Stock Exchange. There was no public offering or new capital being raised as shares that had already been offered through direct subscription

were simply transferred to the exchange, but the listing still required due diligence and a disclosure document, including responses to the YSX's comments on the drafts of the disclosure document; revisions to FMI's articles of association to comply with the listing rules; and the establishment of the nomination, audit and remuneration committees of FMI's board of directors. The deal took more than 16 months to complete.

Indonesia Sovereign Sukuk

- **Hadiputranto, Hadinoto & Partners:** Indonesian counsel to the Joint Lead Managers
- **Allen & Overy:** US and English law counsel to the Joint Lead Managers
- **Clifford Chance:** US and English law counsel to the Government of Indonesia
- **Assegaf Hamzah & Partners:** Indonesian counsel to the Government of Indonesia

This was the largest Islamic bond issuance in Indonesia using the wakalah structure, which is a novelty in Indonesia and has never been used in any other sovereign sukuk issuance. The wakalah combines two structures commonly used in sukuk transactions: ijarah (or sale and lease back) and a forward lease. The government agreed to sell its beneficial rights under the underlying assets in the form of projects, and then procure the delivery of those assets once completed to the sukuk holders (through the issuer). The assets are then leased back under the ijarah arrangement.

The transaction involved due diligence on the underlying assets of the sukuk (comprising land, building and projects), which required parliamentary approval, and review of all of the transaction documents relating to the sukuk issuance. The joint lead managers also had to work closely with the Indonesian National Syariah Board to ensure the issuance of clean opinions on the structure and the transaction from a sharia law perspective.

MTR High-speed Rail Further Funding

- **Slaughter and May:** Counsel to MTR Corporation

This deal facilitated the completion of one of the most significant infrastructure projects in Hong Kong — a high-speed rail project linking Hong Kong and mainland China — after the construction became mired in political controversy amid cost overruns, delays and a fall in mainland visitors that raised question marks over the entire scheme. This meant structuring a deal that would provide access to the additional funding while also satisfying the interests of the various stakeholders, including MTR's shareholders, the government, the Hong Kong Legislative Council and the general public.

The resulting structure involved the payment of a HK$25.76 billion (US$3.3bn) special dividend to all of MTR's shareholders, including the government, with the size of the special dividend receivable by government approximately equal to the estimated remaining cost to complete the project. The success of the structure was demonstrated by the overwhelming support from MTR's independent shareholders who voted more than 99% in favour of the arrangements. In addition, rating agencies judged that the deal had no impact on MTR's strong credit ratings.

MUFJ TLAC Bond

- **Paul, Weiss, Rifkind, Wharton & Garrison:** International counsel to Mitsubishi UFJ Financial
- **Simpson Thacher & Bartlett:** International counsel to the underwriters
- **Nagashima Ohno & Tsunematsu:** Japanese counsel to Mitsubishi UFJ Financial

This deal was significant as it set a precedent for other banks such as Mizuho and Sumitomo Mitsui to file with the SEC for the issuance of total loss-absorbing capacity (TLAC) bonds. The structuring of the senior unsecured bond was complex for MUFG with the adoption of TLAC requirements being uncertain and potential effects of the revised Deposit Insurance Act unknown. It was also Asia's first TLAC-bond issuance, setting a benchmark for other firms to structure their own TLAC bonds in the future.

Ponaflex IP Dispute

- **Vision & Associates:** Counsel to Ponaflex

This case has opened the opportunity for brand owners to reclaim their brands in Vietnam even in cases where they have not registered a mark domestically, despite the first-to-file principle being applied in the process of establishing the rights to a mark.

The dispute centred around a Korean manufacturer's plastic hosepipes, sold under the Ponaflex brand. When the company tried to register its trade mark in Vietnman in 2009 its application was rejected by the National Office of Intellectual Property of Vietnam (NOIP) on the basis that it

By Nick Ferguson

had already been filed. This led to a seven-year battle to win back control of the mark, which it transpired had been registered in bad faith by several former employees of an import company that distributed the hoses.

This was a challenging case given that Vietnam's IP law does not define specific behaviours as acts of a "dishonest" nature, but the NOIP was nevertheless persuaded to cancel the cited mark, paving the way for others to follow — hopefully in a much more speedy process.

APRIL

Alibaba-Lazada Acquisition

- **Dechert:** International Counsel to Lazada Group
- **Sullivan & Cromwell:** International Counsel to Alibaba Group
- **Freshfields Bruckhaus Deringer:** Counsel to Temasek
- **Noerr:** Counsel to Rocket and certain other sellers
- **Morgan Lewis Stamford:** Singapore counsel to Alibaba Group
- **Weerawong, Chinnavat & Peangpanor:** Thailand counsel to Alibaba Group
- **SSEK:** Indonesia counsel to Alibaba Group
- **Jeff Leong, Poon & Wong:** Malaysian counsel to Alibaba Group
- **Picazo, Buyco, Tan, Fider & Santos:** Philippine counsel to Alibaba Group
- **YKVN:** Vietnam Counsel to Alibaba Group
- **Tilleke & Gibbins:** Vietnam competition and regulatory counsel to Rocket Internet

With the need for further funding to continue its growth, Singapore-headquartered internet retailer Lazada sold a controlling stake to Alibaba for US$1 billion — the Chinese company's biggest overseas investment to date. As well as being big, this unusually complex transaction involved legal issues around the world, including in Germany, Hong Kong, Indonesia, Luxembourg, Malaysia, Philippines, Singapore, Thailand, the US and Vietnam.

Established in 2012 by German tech incubator Rocket Internet, Lazada has 1.4 million customers in six South-East Asian countries — and at the time of the transaction had 22 existing investors from various jurisdictions, including Tesco from the UK, Singapore's Temasek, JP Morgan and investment firms from the US, Sweden and Belgium.

Complex issues included bridge loans granted to Lazada during negotiations, a sophisticated put/call arrangement for certain Lazada shareholders, a highly complex management

incentive and liquidity plan, and negotiations over warranty insurance and recently introduced antitrust regulations in several markets. But chief among the advisers' accomplishments was the fact that the deal got done at all. To shepherd two-dozen stakeholders, each with their own priorities and interests, through the drawn-out, complex transaction meant building trust on all sides to see the transaction through to completion.

Alibaba-SCMP Acquisition

- **Slaughter and May:** Counsel to Alibaba Group
- **Norton Rose Fulbright HK:** Counsel to SCMP
- **Conyers Dill and Pearman:** Counsel to SCMP

The acquisition of Hong Kong's leading English-language newspaper by China's most famous billionaire represented a landmark deal in the Asian media landscape that would have merited inclusion in this list under any circumstances. But, as it happens, it also involved some interesting legal complications due to the suspension of SCMP's shares after its free float dropped below the 25 percent minimum.

Through the HK$2.1 billion (US$266m) acquisition, Jack Ma's Alibaba aims to transform the 112-year-old traditional print newspaper into a global media entity covering news in China for readers around the world, causing some to fear that the venerable old paper's editorial independence would be compromised.

In addition to the sale of the newspaper, the disposal includes other media assets such as its digital platform, magazines, recruitment, outdoor media, events, conferences, education and digital media businesses. What is left of SCMP Group will continue to be listed on the Hong Kong Stock Exchange with a focus on property investment.

Big C Sale

- **Baker McKenzie:** Tax Counsel to Casino Group
- **Weerawong, Chinnavat & Peangpanor:** Counsel to Berli Jucker
- **YKVN:** Local counsel to Central Retail
- **Allen & Overy:** International counsel to Central Retail
- **Linklaters:** International counsel to Casino Group
- **Audier & Partners:** Local counsel to Casino Group
- **Clifford Chance:** Counsel to the banking syndicate on the €3.2 billion financing

Big C lived up to its name with this one. Owned by France's Casino group, the sale of its network of stores and shopping malls in Thailand and Vietnam included complex issues across M&A, financing and capital markets.

In Thailand, Berli Jucker initially bought a controlling stake of 58.56% from Casino in an opened bid process and an additional 39.38% stake in a subsequent tender offer, for a total acquisition price of Bt204.3 billion (US$5.83bn). Some of the complex legal issues included the negotiation of the standard sale and purchase agreement provided by the seller, tender offer rules and regulations, and securities laws and regulations.

On the banking side, Berli Jucker raised a €3.2 billion bridge facility in the largest acquisition financing in Thailand in 2016 and was documented in just over two weeks from instruction to first drawdown. The lenders committed to provide funds on a "certain funds" basis, which is unusual in the Thai market, for both the acquisition of the controlling stake and the resulting Bt88 billion tender offer. The transaction involved a complicated financing structure with two facilities in different currencies. Berli Jucker partially repaid the borrowings through a rights offering.

In Vietnam, Thailand's Central Group paid €920 million for Big C's network of 43 stores and 30 shopping malls. Casino structured the transaction at the offshore level, which resulted in a wide range of work for the advisers, including tax planning and addressing several controversial issues with the tax authority.

Maybank Basel III Bond

- **Ashurst:** Counsel to Maybank
- **Allen & Gledhill:** Singapore Listing Counsel
- **Adnan Sundra & Low:** Singapore counsel to Maybank

This US$500 million offering by Maybank was the first ever Basel III-compliant tier-2 bond to be issued by a Malaysian bank and approved by Bank Negara Malaysia, blazing a trail for other domestic banks to raise capital in international markets instead of relying on local investors. The deal was well received among these dollar investors, with sufficient orders to cover the deal two-and-a-half times over. The structure included deep subordination and a write-down trigger for non-viability.

By Nick Ferguson

MAY

Abu Dhabi National Insurance Convertible Bond

- **Hadef & Partners:** Counsel to ADNIC

This was a landmark deal and the first of its kind in the region that overcame substantial challenges to deliver a valuable outcome for the client, Abu Dhabi National Insurance, which needed to raise Dh390 million (US$105m) of capital to maintain its rating.

The convertible bonds had to be deeply subordinated to achieve equity treatment by the rating agency, but the concept of subordination is not recognised under UAE law, forcing the legal team to come up with a creative solution. The result was a contractual mechanism in the prospectus that achieved more or less the same result as the concept of subordination.

As ever, coming up with a clever solution was only half the battle, as it then had to approved by the regulator, the Securities and Commodities Authority (SCA), who was not at all familiar with the concept of subordination or how it works, necessitating an education effort with the SCA officials and subsequent negotiation over the wording of the prospectus. Translating the concept and drafting it in Arabic was also a challenge.

This was also the first issuance of bonds under the new Commercial Companies Law, which contained new provisions in terms of bond issuance, presenting another challenge in respect of their interpretation and how SCA and other competent authorities would interpret and apply such provisions.

Cinda-Nanyang Commercial Bank Acquisition

- **Freshfields Bruckhaus Deringer:** Counsel to China Cinda Asset Management
- **Zhong Lun Law Firm:** PRC counsel to Cinda
- **King & Wood Mallesons:** Counsel to China Cinda on US regulatory matters

Bank of China's US$8.7 billion disposal of Nanyang Commercial Bank to China Cinda Asset Management was the biggest banking acquisition ever completed in Asia

ex-Japan — and was conducted through an unusual state-owned asset auction process that demanded an innovative approach from advisers.

Because Bank of China is government owned, the sale had to be carried out by way of a competitive auction process at a designated asset exchange, one of the requirements of which is that the seller has to publish a floor price and ask bidders to submit bids at or higher than the floor price. To test what kind of floor price was acceptable to the market, Bank of China ran a fishing exercise that was similar to the first and second rounds of a European-style auction, where limited due diligence information and a seller's draft of the share purchase agreement were provided and bidders were asked to submit indicative offers.

It was also important that Bank of China secured a confirmation letter from each potential bidder's financial adviser to confirm its sources of funds, similar to the requirement under Hong Kong's takeover code. However, with China's stock market in freefall during the summer, few bidders were able to step up to the plate, leaving China Cinda as the only bidder after it successfully negotiated a detailed term sheet with China Construction Bank in relation to a term loan facility of US$8 billion to finance the transaction.

Oyu Tolgoi Project

- **Shearman & Sterling:** Counsel to Erdenes Oyu Tolgoi
- **Sullivan & Cromwell:** Counsel to Rio Tinto
- **Milbank, Tweed, Hadley & McCloy:** Counsel to Lender's group

The Oyu Tolgoi mine in the southern Gobi desert is a truly transformational project for Mongolia. It is one of the world's largest copper-gold deposits and, once fully operational, the IMF estimates that it would account for approximately 40% of the country's gross domestic product.

The second phase, which involves the underground portion of the project, is a giant undertaking. The latest feasibility study, which includes the underground expansion, shows recoverable copper of more than 11 million tonnes, 12 million ounces of gold and 78 million ounces of silver over a mine life of 41 years.

The project is jointly owned by Erdenes Oyu Tolgoi (34%) and Turquoise Hill Resources (66%, of which Rio Tinto owns 51%) and is subject to the "Oyu Tolgoi Underground Mine Development and Financing Plan" signed in Dubai in May 2005 between the Oyu Tolgoi shareholders and the government of Mongolia. The Multilateral Investment Guarantee Agency (MIGA) provided political risk insurance for the commercial banks.

Unisplendour-H3C Acquisition

- **Simpson Thacher & Bartlett:** International Counsel to Unisplendour
- **Skadden, Arps, Slate, Meagher & Flom:** Counsel to Hewlett-Packard for CFIUS related issues
- **Zhong Lun Law Firm:** PRC Counsel to Unisplendour
- **Jingtian & Gongcheng:** Counsel to lenders bank consortium
- **Allen & Overy:** International Counsel to Hewlett-Packard
- **Chong Guang Law Office:** Counsel to Unispeldour
- **Davis Polk & Wardwell:** Counsel to Hewlett-Packard
- **Fangda Partners:** PRC Counsel to Hewlett-Packard

This deal involved chipmaker Tsinghua Unigroup, a Chinese state-owned enterprise that is part of Tsinghua University, paying US$2.5 billion for a 51 percent stake in Hewlett Packard's enterprise technology unit, H3C Technology. It lasted for more than 500 days in total, starting from the kickoff meeting in December 2014 through to the execution of the definitive transactional documents on May 21, 2015, after multiple rounds of intensive bidding, until final completion of the transaction in May 2016.

Important issues for Tsinghua included the formation of the bidding strategy, the use of an A-share listed subsidiary (Unisplendour) to implement the cross-border acquisition, the negotiation of transaction documents, the handling of Chinese and foreign regulatory approvals and the structuring of an innovative employee equity plan to provide A-share special incentives to H3C's 8,000 employees.

Vizhinjam Seaport Project

HSA Advocates: Counsel to Vizhinjam International Seaport
Khaitan & Co: Counsel to the lenders

Successive Indian politicians have dreamed of building a deep-water transhipment port for at least 25 years. In the absence of such a facility, goods being shipped to and from the Indian market are offloaded from giant international container vessels at hubs in Sri Lanka, Singapore, Dubai or Salalah, from where they are brought into India in smaller ships. With the successful structuring of the project at Vizhinjam, which lies close to the major international shipping lanes in Kerala, the dream of bringing that maritime traffic direct to Indian shores may come true at last.

The Kerala government had earlier made three unsuccessful attempts to bid out the project. Given those earlier unsuccessful attempts, the structuring of the public-private partnership had to be approached carefully, to ensure that the project was financially viable for both the private developer — led by billionaire Gautam Adani — and the state

By Nick Ferguson

government. For example, the construction of the breakwater was initially intended to be split out from the PPP due to the huge investment required. However, considering the risks involved in splitting the project relating to accountability, delays and cost overruns, and pursuant to various consultations, an innovative structure was adopted that enabled the inclusion of the breakwater construction within the PPP project, with the government funding the cost of construction while all responsibility for completion was solely borne by the private partner.

As with most projects in India, it is not without its critics, which only added to the challenges in successfully bidding out this potentially transformative piece of infrastructure.

JUNE

Central Java Project

- **Shearman & Sterling:** Foreign Counsel to Bhimasena Power Indonesia
- **Mochtar Karuwin Komar:** Local Counsel to Bhimasena Power Indonesia
- **Ali Budiardjo, Nugroho, Reksodiputro:** Local Counsel to JBIC and other lenders
- **Milbank, Tweed, Hadley & McCloy:** Foreign Counsel to JBIC and other lenders
- **Norton Rose Fulbright:** Counsel to PLN

The US$4.3 billion Central Java project achieved a number of milestones. In terms of the technology involved, this was the first independent power project in Indonesia to use ultra-super critical technology, which allows the plant to operate at a higher level of thermal efficiency, resulting in lower coal consumption and emission rates.

On the financing side, it was the biggest project financing in Indonesia to date and the first public-private partnership infrastructure scheme to reach financial close. The PPP scheme was implemented by the government with the aim of accelerating crucial infrastructure development in the country, and is part of the government's plan to increase much-needed power capacity in Indonesia. As such, it was also the first project to benefit from a guarantee from Indonesia Infrastructure Guarantee Fund and the finance ministry in relation to PLN's obligations under the power purchase agreement.

The guarantee structure is complex and the documentation was the subject of extensive negotiation. The

project also involved creative solutions to a number of hurdles, including regulations regarding the mandatory use of the rupiah. The project was also delayed for several years due to land acquisition issues.

Line IPO

- **Simpson Thacher & Bartlett:** Counsel to the underwriters
- **Cleary Gottlieb Steen & Hamilton:** US Counsel to Line
- **Nishimura & Asahi**: Japanese counsel to Line
- **Anderson Mori & Tomotsune:** Japanese counsel to the underwriters

The initial public offering of Japan's favourite messaging app was the largest technology IPO in 2016 and the first IPO to feature a simultaneous dual listing on the Tokyo and New York Stock Exchanges, which presented numerous challenges in harmonising the registration and listing regimes in Japan and the US. By conducting a dual listing, Line was able to access both retail demand in Japan, where its services are extremely popular, as well as demand from international investors focused on the technology sector. The deal teams needed to have seamless coordination between Japan, the US and Korea, where Line's parent company is incorporated.

As the first true Japanese dual-listed IPO, there were regulatory issues involving all three jurisdictions that needed to be reconciled. Due to several delays in the transaction, which lasted more than three years (an eternity for a company in the internet industry), there were many updates and revisions that needed to be made, including with respect to changes in strategies, acquisitions and dispositions, and changes in auditors, which entailed 12 filings with the SEC. Even so, the IPO successfully priced despite launching during the market uncertainties surrounding Brexit.

JULY

Astrea III Private Equity Bonds

- **Sidley Austin:** US counsel to Temasek Holdings
- **Allen & Gledhill:** Singapore counsel to Temasek Holdings
- **Linklaters:** Counsel to Credit Suisse and DBS

These were the first listed notes in Singapore backed by cash flows from private equity funds. Traditionally, private equity as an asset class is available only to a select group of investors, but this deal made it accessible to a wider investment community through a private equity bond structure, representing a significant milestone in the development of Singapore's bond market that is expected to start a wave of similar offerings in the near future.

The four classes of notes are backed by cash flows from a diversified and mature portfolio of 34 private equity funds managed by 26 reputable general partners (including KKR, EQT Partners, TPG Capital, Blackstone and Silver Lake). The selected private equity funds predominantly employ a buyout strategy, with the remainder employing a growth equity strategy.

There was strong market reception to the offering, with the bonds being subscribed by more than eight times for the US$510 million issue. About one-third of the bonds were allocated to individual sophisticated investors. The transaction has a core Singapore component — the issuer, sponsor and asset-owning companies are all Singaporean.

Hyundai Merchant Marine Restructuring

- **Kim & Chang:** Korean counsel to certain shipowners
- **Yulchon:** Korean Counsel to HMM
- **Cleary Gottlieb Steen & Hamilton:** International Counsel to HMM
- **Shin & Kim:** Korean counsel to certain ship owners
- **Bae, Kim & Lee:** Korean counsel to HMM
- **Ince & Co:** International counsel to certain of the ship owners involved

The shipping industry has borne the brunt of the slowdown in global trade and this restructuring was a significant response to these difficult conditions. Although a conditional workout under Korean law seemed impossible given Hyundai Merchant Marine's financial difficulties, the legal advisers and corporate restructuring specialists Millstein nevertheless achieved a successful completion within just four months was unprecedented.

The deal included restructuring of public bonds, rescheduling of charter hires, restructuring of debts to financial institutions and conducting debt-equity swaps by public offerings. This was the first case where a shipping company successfully completed a restructuring through a reduction of charter hire payments.

Unlike a typical debt restructuring, which involves dealing with a single creditor committee, the adjustment of the charter hire terms required separate negotiations with more than 15 ship owner groups around the world, within a tight deadline set by HMM's financial creditors. An efficient and effective process had to be devised and executed for negotiations across various time zones.


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Arranging the equity compensation component for ship owners presented additional unprecedented challenges, including the issuance of shares to numerous ship owners who had not previously invested in Korean equity.

These efforts helped bring HMM's debt to equity ratio down to 200% from the March 31 level of 5,307%, ultimately contributing to the avoidance of HMM's bankruptcy.

Kaisa Restructuring

- **Kirkland & Ellis:** Counsel to ad hoc steering committee of the bonds and convertible
- **Tanner De Witt:** Lead Counsel to Kaisa Group Holdings
- **Mourant Ozannes:** BVI counsel to the ad hoc steering committee of Kaisa Group Holdings
- **Ropes & Gray:** Counsel to Kaisa Group Holdings on US and Securities law
- **Sidley & Austin:** Counsel to Kaisa Group.
- **Harney Westwood & Riegels:** Counsel to Kaisa Group Holdings on Cayman Law
- **Mayer Brown JSM:** Counsel to bank creditors in Hong Kong
- **O'Melveny & Myers:** Off-shore Counsel to bankholder creditors
- **Clifford Chance:** Counsel to trustees
- **Walkers:** Cayman Counsel to bondholders
- **Latham & Watkins:** Counsel to the onshore creditors

Kaisa became the first Chinese real estate developer to default on US dollar bonds after the downturn in the property sector and a sales freeze on its units in Shenzhen during an investigation. The landmark transaction, which involved borrowings of HK$82 billion (US$10.5bn), set an important model for similar cross-border restructurings in the future.

The company's restructuring efforts were challenging both as a matter of commercial negotiation and from a legal perspective as there was limited precedent in Hong Kong for many of the legal issues faced. There is an obvious tension between the offshore and onshore creditors, with the onshore creditors having taken actions against Kaisa subsidiaries in China to protect their positions while the offshore creditors are structurally subordinated.

The deal also has a strong political overlay. Allowing the collapse of Kaisa will possibly lead to systemic contagion in the Chinese property sector, a tightening of liquidity and a concern by offshore creditors that the investment structures and their position, being structurally subordinated, places them at a serious disadvantage to onshore creditors. The realisation of this, absent a favourable restructuring, could lead to diminished investment capital for such developers.

AUGUST

Didi Chuxing-Uber China Acquisition

- **Fangda Partners:** PRC counsel to Xiaoju Kuaizhi (Didi Chuxing)
- **Han Kun Law Offices:** PRC counsel to Uber China
- **Skadden, Arps, Slate, Meagher & Flom:** International counsel to Didi Chuxing
- **Davis Polk & Wardwell:** International counsel to Uber
- **Walkers:** Cayman Counsel to Uber China

Didi Chuxing was once known as the Uber of China, but after this deal it has turned the nickname into reality. The merger of China's two biggest ride-hailing companies saw Uber swap its local operations for a minority stake in its Chinese rival, which boasts 300 million users in 400 cities and is backed by China's biggest internet firms, including Alibaba, as well as other investors, including Apple.

As a result of the merger, Uber China has become a wholly owned subsidiary of Didi Chuxing, while Uber Technologies and other former shareholders of Uber China have become minority shareholders of Didi Chuxing.

Skadden's Julie Gao, who represented Didi Chuxing, termed the deal an "epic battle", involving many sensitive transactional issues, including structuring the deal in a manner that was attractive to two market-dominating competitors; handling a multitude of highly complicated multi-jurisdictional, multi-disciplinary legal issues; and addressing interests and demands from a savvy board and diverse shareholders. Each step required seamless implementation to obtain proper authorisations within a tight timeframe.

Foxconn-Sharp Acquisition

- **Baker McKenzie:** Lead counsel to Foxconn
- **Nishimura & Asahi:** Japanese counsel to Sharp
- **Tilleke & Gibbins:** Thailand counsel to Sharp
- **Khaitan & Co:** Indian legal counsel to Foxconn

This was the first acquisition of a major Japanese consumer electronics manufacturer by a foreign company, marking a landmark transaction that attracted huge interest in both Japan and overseas.

Taiwan's Foxconn (which is formally known as Hon Hai Precision) ultimately paid ¥389 billion (US$3.46bn) for a 66% stake in Sharp, the troubled Japanese manufacturer of displays.

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Lawyers representing Foxconn say the most difficult aspect of the transaction was to develop a strategy to win against the competing bidder — Japan Display, an investment fund that was ultimately controlled by the Japanese government. In the end, they successfully put their client in a competitively advantageous position and closed the deal quicker than expected.

The deal required approvals in multiple markets in Asia and worldwide.

Go-Jek Fund-Raising

- **Wilson Sonsini Goodrich & Rosati:** International Counsel to KKR
- **Allen & Overy:** International Counsel to Go-Jek
- **Latham & Watkins:** International Counsel to Warburg Pincus
- **Linklaters:** Counsel to Farallon Capital
- **Hadiputranto, Hadinoto & Partners:** Indonesian Counsel to KKR
- **Ashurst in association with Oentoeng Suria & Partners:** Counsel to Capital International
- **Ginting & Reksodiputro:** Indonesian Counsel to Go-Jek
- **Assegaf Hamzah & Partners:** Indonesian Counsel to Warburg Pincus
- **K&L Gates:** Joint counsel to existing investors Sequioa and DST Global
- **Clifford Chance:** Joint international counsel to existing investors Northstar and NSI
- **Goodwin Procter:** Counsel to existing investor Formation Group
- **Linda Widyati and Partners:** Joint Indonesian counsel to existing investors Northstar and NSI

Go-Jek's US$555 million equity capital raising was the largest single-round fundraising by financial investors for a South-East Asian technology company and deal created Indonesia's first unicorn — a startup company valued at more than US$1 billion — and one of very few in the region.

The new investors included KKR, Warburg Pincus, Farallon Capital and Capital Group Private Markets, as well as certain existing shareholders and other international investors.

Large private equity deals in the region are taking even longer to close, according to market participants, but in this case exchange and completion were achieved within a matter of weeks despite the transaction involving detailed due diligence and negotiation of a complicated, multi-investor and late-stage financing. The transaction also had to address several novel Indonesian regulatory issues, which are specific to the multi-faceted nature and size of Go-Jek's business, as well as factoring in the innovative technology and business strategy being adopted by the management.

Go-Jek's business includes motorcycle ride-hailing, online food delivery, instant courier delivery and various lifestyle services, as well as services in the fast-growing e-wallet and car ride-hailing segments.

Greenko High-Yield Green Bond

- **Shearman & Sterling:** International Counsel to Greenko Energy Holdings and Greenko Investment Company
- **Ashurst:** International Counsel to the underwriters
- **Cyril Amarchand Mangaldas:** Indian counsel to Greenko Energy Holdings and Greenko Investment Company
- **Talwar Thakore & Associates:** Indian counsel to the underwriters
- **Mayer Brown JSM:** Counsel to the trustee (The Bank of New York Mellon)
- **Bedell Cristin:** Offshore Counsel to Greenko

This offering was India's first high-yield green bond issuance and one of only a few successful high-yield offerings out of India. Green bonds are a new but growing class of securities designed to fund environment-focused projects or help renewable companies refinance debt, among other things. In this case, the deal enabled the company to access international capital markets for a competitive source of financing to address the continuing needs for green energy in India.

The seven-year bond raised US$500 million to help fund Greenko Energy's Indian operating subsidiaries, including run-of-river hydropower projects, operational wind energy projects and two run-of-river hydropower projects under construction but near operational. It is one of the largest clean energy independent power producers in India, with more than 1GW of projects across hydro, wind and thermal energy.

The transaction included an innovative structure involving an orphan special purpose vehicle issuer and two tiers of bond issuances.

NTPC Green Masala Bond

- **Cyril Amarchand Mangaldas:** Indian Counsel to NTPC
- **Allen & Overy:** Counsel to the lead managers

This was only the second masala bond transaction after the new framework on external commercial borrowings was put into place by the Indian central bank and introduced a new flavour by going green. To qualify, the Rs30 billion (US$447m) offering had to comply with the Climate Bonds Standard version 2.0 and also the Green Bond Principles 2016

issued by the International Capital Markets Association. In another novelty, it was also the world's first green masala bond to be listed on the Singapore stock exchange.

Masala bonds — rupee-denominated securities sold to overseas investors — had failed to take off until the new framework came into office and NTPC's deal played an important role in opening this fund-raising channel for other Indian borrowers.

Palestine Investment Fund Hydrocarbon PSA

- **Ashurst:** Counsel to Palestine Investment Fund

This deal involved the Palestine Investment Fund signing a production sharing agreement (PSA) with the government of the State of Palestine that grants the fund the right to carry out certain hydrocarbon exploration, development and production activities within a designated area in the State of Palestine. In due course, the fund will transfer all of its rights and obligations under the PSA to a national company led by the Palestine Investment Fund.

The PSA is the first of its kind to be signed by the Palestinian government and aims to promote the development of Palestine's nascent hydrocarbon industry to the wider benefit of the state.

SEPTEMBER

CGNPC Investment in Hinkley Point Nuclear Project

- **Ashurst:** Counsel to CGNPC
- **Clifford Chance:** Counsel to EDF
- **Herbert Smith Freehills:** Counsel to EDF Energy and NNB
- **Conyers Dill and Pearman:** BVI counsel to CGNPC

This high-profile and controversial project is the UK's first new nuclear power station for a generation. When operational, the £18 billion (US$23.4b) Hinkley Point C new-build nuclear power plant in Somerset is expected to provide 7% of Britain's electricity needs for 60 years thanks to this strategic investment by the state-owned China General Nuclear Power (CGN), which also involves the establishment of a broader UK partnership for the development of new nuclear power stations at Sizewell in Suffolk and Bradwell in Essex, and a key joint venture designed to bring Chinese nuclear technology to the UK for future projects. It is the largest ever in-bound investment by China into the UK and, in a sign of the importance of the deal, was signed in the presence of the Chinese president, Xi Jinping, and the British prime minister at the time, David Cameron.

CGN and its legal advisers were involved in multiple complex negotiations, including shareholder arrangements with its joint venture partner EDF, the contract for difference and strategic investor agreement, nuclear fuel supply arrangements, state aid, power offtake, the generic design assessment process for Chinese technology and wider project due diligence. As a result of the deal, CGN's share in Hinkley Point C will be 33.5%.

China Vitamin C Antitrust Litigation

- **Sidley Austin:** Counsel to China's Ministry of Commerce
- **Wilson Sonsini Goodrich & Rosati:** Counsel to Hebei Welcome Pharmaceutical Co and affiliated company North China Pharmaceutical Group Corp
- **Boies Schiller Flexner:** Counsel to US plaintiff Animal Science Products

This remarkable case raised thorny questions regarding how courts should treat Chinese companies accused of violating US antitrust law when they are following the mandates of their own government.

Dated 2005, the antitrust case lasted for 12 years, with the plaintiffs alleging that the two defendant Chinese companies engaged in price fixing and supply manipulation in violation of US antitrust laws in connection with vitamin C exported from China. In March 2013, a Brooklyn, New York, jury found the companies liable for violating US antitrust law. The judge awarded US$147 million in damages and issued an order barring the companies from violating the law in the future.

Then, in a historic move, China's Ministry of Commerce participated in the case as amicus curiae (a friend of the court) and urged US judges to dismiss the case against the Chinese firms. It was the first time any entity of the Chinese government has participated in such a fashion in any US court. And the strategy worked. The US Court of Appeals for the Second Circuit vacated the judgment against the defendants, reversed on international comity grounds the district court's denial of the defendants' motions to dismiss, and remanded with instructions to dismiss the plaintiffs' complaint with prejudice.

By Nick Ferguson

ICICI Pru Life IPO

- **Davis Polk & Wardwell:** International counsel to the lead managers
- **Khaitan & Co:** Indian Counsel to Prudential Corporation Holdings
- **Cyril Amarchand Mangaldas:** Indian counsel to ICICI
- **S&R Associates:** India counsel to the lead managers

This is the first initial public offering of an insurance company in India, making the company the first listed insurance company in India, after the rules for public offers of life insurance companies were liberalised in December 2015. The deal raised Rs60.6 billion (US$911 million) for the selling shareholder ICICI Bank, which held 68% of the joint venture before the IPO, with UK insurer Prudential holding roughly 26%. It is the country's biggest IPO since 2010, when Coal India raised almost US$3.5 billion in 2010. The shares up for sale through the offering were all from ICICI, reducing its stake to 55%. Prudential did not sell any of its stake.

Despite the complexity of being the first IPO in a new sector, the offer witnessed one of the fastest executions (within five months of the kick-off). In addition to the Sebi review of the draft red herring prospectus, the offer was subject to the prior approval of Irdai. The regulator has been keen to prepare domestic insurers for heightened competition by encouraging consolidation and modernisation. This was reiterated in August by the announcement of a merger between HDFC Standard Life and Max Life, the first significant domestic M&A deal in the country's insurance sector.

Postal Savings Bank of China IPO

- **Davis Polk & Wardwell:** Issuer's counsel
- **Clifford Chance:** Counsel to the underwriters
- **Haiwen & Partners:** Issuer's PRC counsel
- **King & Wood Mallesons:** PRC counsel to the underwriters

With the largest distribution network and customer base in China, Postal Savings Bank of China's Hong Kong listing marked the world's largest IPO in 2016, the world's biggest new listing since Alibaba's US IPO in 2014 and Hong Kong's largest IPO since 2010.

PSBC is not an ordinary Chinese bank. Unlike other China-based commercial banks that have listed in Hong Kong, it is run under a directly-operational and agent-oriented business model, with China Post Group being the bank's largest

shareholder. Under this operational model, which consists of both directly-operated outlets and agency outlets in the form of post offices owned by China Post Group, the bank and its owner share a unique relationship in that the former has to pay the latter to help run its branches.

This was one aspect that regulators in Hong Kong were most concerned about, with the pricing of the agency fee being the biggest area of concern among investors. This involved a series of talks with authorities of the Securities and Futures Exchange in Hong Kong on issues including the price-setting method adopted for the agency fee and the disclosure of relevant operational agreements between both parties in the prospectus. All of those aspects needed innovative efforts to drive the deal to final success.

OCTOBER

Pacific Andes Restructuring

- **Mayer Brown JSM:** International Counsel for Maybank
- **WongPartnership:** Singapore Counsel for lenders
- **Linklaters:** Counsel to HSBC
- **Clifford Chance:** Counsel for liquidators of China Fishery
- **DLA Piper:** Counsel for certain of bank creditors and Counsel for Rabobank and SCB
- **White & Case:** Lender counsel to the Taipei Fubon Bank syndicate
- **Jingtian & Gongcheng:** PRC counsel for Maybank
- **Drew & Napier:** Counsel for Pacific Andes Resources
- **Rajah & Tann:** Singapore counsel for Maybank
- **Tan Rajah & Cheah:** Counsel for Sahara Investment Group
- **Advocatus Law:** Counsel for the Informal Steering Committee of bondholders
- **Cavenagh Law:** Counsel for bondholders
- **Meyer, Suozzi, English & Klein:** Counsel for the Companies (US)
- **Kelley Drye & Warren:** Counsel for the Companies (US)
- **Harney Westwood & Riegels:** Counsel for Rabobank and SCB (British Virgin Islands)
- **Sidley Austin:** Counsel for Bank of America (US)
- **Luskin, Stern & Eisler:** Counsel for Rabobank (US)
- **Lowenstein Sandler:** Counsel for NS Hong Investments (BVI) (US)
- **Forbes Hare:** Counsel for Sahara Investment Group (British Virgin Islands)
- **Appleby:** Counsel for Maybank, Hong Kong Branch (Bermuda)
- **TSMP Law Corporation:** Counsel for Bank of America
- **Walkers:** Cayman counsel to HSBC

The list of firms involved on this deal is testimony to its complexity. The Pacific Andes group is one of the world's biggest seafood companies and involves three listed entities in Singapore and Hong Kong, with Russian, European and South American operations. The group entered negotiations with its bank lenders with a view to rationalising the overall group's more than US$1.5 billion debt structure, given the significant imbalance between its debt and cash.

The complexity of the corporate structure gave rise to significant challenges in trying to establish creditors' rights and the effects of any action at specific levels of the corporate group, particularly in light of guarantees and security on a syndicated and bilateral basis. The summary of competing interests, due to the level at which the barrowing was given has caused significant complexity to this assignment. The creditor profile is further complicated by the involvement of both institutional and private bondholders at different levels in the corporate structure.

The restructuring has involved an informal standstill among the banks; a petition for the winding up of China Fishery and the contested appointment of provisional liquidators in Hong Kong and the Cayman Islands, in the midst of allegations of extensive fraud, supported by an external report from FTI Consulting; the subsequent removal of the provisional liquidators by the Hong Kong court; and the appointment of chief restructuring officers at all three companies; extensive security/enforcement reviews across the group; and processes for asset sale implementation.

Rosneft-Pertamina JV

- **Freshfields Bruckhaus Deringer:** International counsel to Rosneft
- **Soemadipradja & Taher:** Indonesian counsel for Rosneft
- **Dentons:** International counsel for Pertamina
- **Anya & Associates:** Indonesian counsel for Pertamina

Rosneft's US$13.8 billion joint venture with Pertamina, the Indonesian state-owned oil and gas company, to build an oil refinery in Tuban in the East Java region of Indonesia constitutes the largest-ever Russian investment into Indonesia. The deal involved complex political, economic and legal dynamics, and was achieved in a very short space of time under considerable political pressure on both sides.

Through the deal, Rosneft acquired a 45 percent stake in the Tuban refinery and petrochemical project, with Pertamina holding the remainder. The new refinery, the first to be built in Indonesia since 1997, will have a crude processing capacity of 300,000 barrels per day and is expected to become operational in 2021.

By Nick Ferguson

The project forms part of Indonesia's Refinery Development Master Plan, which involves the upgrade and expansion of four of the country's seven existing refining facilities and the construction of two new major greenfield refinery projects.

It also forms the centrepiece of the strategic cooperation between Pertamina and Rosneft, not just in Indonesia but throughout South-East Asia and Russia, and across the full oil and gas value chain. The project is linked to an option for Pertamina to acquire assets producing 35,000 barrels of oil per day from Rosneft's portfolio of upstream interests, constituting the biggest upstream deal by a South-East Asian company in Russia to date.

NOVEMBER

BHP Billiton Forests Bond

- **Baker McKenzie:** Counsel to BHP Billiton

BHP Billiton is one of the world's biggest producers of commodities such as iron ore, metallurgical coal, copper and uranium, but it is also committed to demonstrating the validity of the UN's initiative to reducing emissions from deforestation and forest degradation and the role of conservation, sustainable management of forests and enhancement of forest carbon stocks in developing countries (Redd+).

The Forests Bond was co-developed in conjunction with, and issued by, the IFC. It focuses on providing conservation finance to protect forests under the Redd+ mechanism. It is a first of its kind globally and has a highly innovative structure involving BHP Billiton providing price support for the Redd+ carbon rights issued as part of the bond coupon.

Baker McKenzie provided legal and strategic advice in respect of the bond's structure, and legal advice in relation to the documentation of the bond and negotiation with the IFC and other relevant parties, as well as assisting on detailed due diligence on the underlying Redd projects into which the bond would invest in Indonesia, Peru, Brazil and Kenya among other countries.

The bond will leverage private sector capital into Redd+ projects, an area that is critically important to meet global efforts to achieve the goals set under the Paris Agreement.

Samsung BioLogics IPO

- **Cleary Gottlieb Steen & Hamilton:** US counsel to Samsung BioLogics
- **Kim Chang & Lee:** Korean counsel to Samsung BioLogics
- **Simpson Thacher & Bartlett:** US counsel to the underwriters
- **Bae, Kim & Lee:** Korean counsel to the underwriters
- **Lee & Ko:** Korean counsel to the Samsung Electronics

Samsung BioLogics' W2.25 trillion (US$1.97bn) IPO was the largest equity deal in Korea since Samsung Life Insurance's launch in 2010 and the largest ever IPO in the biopharmaceutical industry in Asia. The company is one of the world's fastest-growing players in the large-scale biologics contract manufacturing industry, and also engages in the development and commercialisation of biosimilar drugs through its joint ventures.

The 144A/Regulation S deal presented some unusual challenges as Samsung BioLogics was the first company to go public on the KRX Kospi market despite reporting a net loss every year since its formation. Indeed, senior executives told investors during the roadshow not to expect a profit until 2020. This lack of positive earnings meant that potential investors placed special emphasis on the due diligence — and the success of this effort was demonstrated by the response to the deal. The offering priced at the top of the marketed range and surged more than 25% during the first few days of trading, despite some market uncertainty caused by the US presidential election, which was decided between pricing and the first day of trading, and several disappointing Korean IPOs that had preceded it.

Yum Brands Spinoff

- **Simpson Thacher & Bartlett:** Counsel to Primavera Capital Group and Ant Financial Services Group
- **Fangda Partners:** PRC legal counsel to Primavera and Ant Financial
- **Wachtell, Lipton, Rosen & Katz:** Counsel to Yum China

Primavera and Ant Financial's US$460 million investment in Yum China, the largest fast-food chain in China and owner of KFC and Pizza Hut, and concurrent spinoff from Yum Brands set a precedent and opened a new path for Chinese investment in US listed companies. It was also an important milestone in Yum's business expansion on the mainland and set a solid foundation for its future as an independent restaurant business.

As well as being high profile, the transaction involved highly complex structuring and implementation — it is only

the third known spin-off with a concurrent private investment in the past decade in the US market, and the only one involving any Asia-based investor. Due to the complexity of US tax, corporate, regulatory and stock exchange rules, this type of sponsored spin-off is challenging to execute even for seasoned US-based investors, and in this cross-border transaction, the legal advisers played an instrumental role in helping their clients navigate the complexities and designing an innovative transaction structure to accomplish the business goals.

After the spinoff and concurrent completion of the investment, Yum China started trading on the New York Stock Exchange as an independent company under the ticker symbol YUMC.

TOP FIRMS (by number of winning deals)

Rank	Firm	Deals
1st	Clifford Chance	7
2nd	Simpson Thacher & Bartlett	6
3rd =	Ashurst	5
	Allen & Overy	5
	Baker McKenzie *	5
	Mayer Brown JSM	5
7th =	Davis Polk & Wardwell	4
	Fangda Partners	4
	Freshfields Bruckhaus Deringer	4
	Linklaters	4
	Shearman & Sterling	4
	Sidley Austin	4

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The thing about ...
Paul Rawlinson

We sat down with ***Paul Rawlinson***, global chair of *Baker McKenzie*, and ***Gary Seib***, *Asia Pacific chair* and *a member of the firm's global executive*, to discuss the firm's strategy in Asia and globally.

and Gary Seib

ASIAN-MENA COUNSEL: Paul, you took up the chairman role in October and have been busy visiting offices and clients throughout the network. What is your vision for the Asia region?

Rawlinson: Asia is, in many senses, the jewel in the crown for Baker McKenzie because of our pre-eminent status in a number of the markets here, coupled with the generation of new client opportunities coming out of China and in the region generally. So this is a great market for us, not just in Asia itself but for the whole firm. And having the operation in the Shanghai free trade zone has really catapulted that as well, so that we now offer the full piece.

It's a very interesting time to have such an established and successful practice here in Asia Pacific. I know many of our competitors would love to have something similar, but the cost of any of them even coming close to what we have created would be very high.

Seib: During this past financial year Asia was the region with the strongest revenue growth in the firm, which is a good news story for Baker McKenzie. I get excited by the opportunities in this region because we're on the doorstep of some of the most dynamic markets — China, Asean, India, plus Japan outbound, which has been a very strong area for us. We've been in the region for 50 years. We have strong revenues, depth in our markets and depth in terms of our industry and sector focuses.

"The challenge for us is to remain competitive for the kind of global, high-end work that our clients are doing, but also to deliver it in a way that delivers more for less"

Paul Rawlinson


Gary Seib

"One of the key things about Baker is that we grow organically. Of course, we have lateral hires and acquisitions and so on, but the story of our growth through this region and globally is really the story of one firm growing organically. "

We keep a close eye on the flows globally and through this region, and while there is some short-term uncertainty given the current environment it's not having a material impact on deals at the moment.

AMC: Indeed. Donald Trump did plenty of China bashing on the campaign trail and we saw some reaction against Chinese acquisitions in Europe last year, and then there's Brexit. But you don't yet see this affecting deal activity?
Rawlinson: Our M&A forecast report published with Oxford Economics in January is pretty positive overall. Far from suggesting a big downturn in 2017, it forecasts about the same level of global M&A, which is a key metric for what we're doing, and then an up-tick again in 2018, so the horizon looks good and it's broad-based. Obviously, Asia is still a strong market, particularly with new clients and new entrants, but the eurozone is still showing reasonable growth in the circumstances and North American domestic corporate activity has certainly held steady.

On China outbound, I think people need to tell a better story. The track record of the outbound deals they've done is positive. It's not at all the scenario of taking all the knowhow back home — Chinese acquirers have been successful in growing the companies that they've acquired, probably more so than acquirers from other countries.
Seib: I'd also say that some of those decisions have been very deal specific, so it's not really a policy around China as such. It's a policy around local industry or issues that arise from a particular acquisition or proposal, which happens in every country.

AMC: China's One Belt, One Road policy is clearly another potential driver of activity.
Rawlinson: Yes, One Belt, One Road presents a lot of opportunity for our clients not just in China but throughout this region. Everyone's got a stat for their organisations and ours is that we're in 28 countries along the One Belt, One Road avenue, so we're well placed to service that.
Seib: There are things that are starting to happen and we expect to see more of that coming through. We've surveyed clients around Asean and something like 70% said they were gearing up for One Belt, One Road, so I think people see it quite positively and I don't think it's going to be impacted at all by some of these recent macro issues.

AMC: Gary, I understand that you asked partners in the region to sign on to a quality compact last year. What was the goal with that?
Seib: We recognise that to stay a strong brand we need to make sure that we keep delivering for our clients. On the technical side, black-letter law and quality lawyering is not an issue, and as Paul mentions we are a leader in so many of our markets here in this region. But where we see an opportunity is in terms of the delivery — the commerciality of our advice, responsiveness, consistency and also some internal factors around the way we

manage work and people, so what we've developed in Asia-Pacific is a 10-point compact that goes into some relatively micro things.

AMC: How micro? Can you give an example?
Seib: One example is that we stay committed to start meetings on time. If we have a 1pm meeting, we start at 1pm. We have also made commitments about how we deliver: around the mentoring and supervision of our teams, for example. So, we've roadshowed the compact through our network here, 17 offices in 12 countries, and every partner has signed up to it.

Our clients tell us that what they really need in a multi-jurisdictional matter is consistency of delivery, so that remains a critical factor for our ability to deliver for our clients and we've just got to stay vigilant on it.
Rawlinson: We've got global client principals around this but what Gary's describing is a particular booster programme for Asia Pacific that has been well received. Presenting a single client solution is what it's all about these days and we've put a lot of work over the last 10 to 15 years around that. We're also looking at our clients more strategically, with a global client service mandate. When it comes to delivering international advice across borders, that's our DNA, that's the normal client relationship.
Seib: One of the key things about Baker is that we grow organically. Of course, we have lateral hires and acquisitions and so on, but the story of our growth through this region and globally is really the story of one firm growing organically. It's much easier when everyone is working from the same platform — with shared DNA, shared culture — than to try to bolt on different cultures and get them to work together, so we're fortunate in that way.

AMC: One of the things we hear a lot from buyers of legal services, though probably not as much as you, is the imperative to "do more with less" and a general desire to get more value from external advisers. How are you responding to this changing client environment and the competitive pressures it brings?
Rawlinson: The challenge for us is to remain competitive for the kind of global, high-end work that our clients are doing, but also to deliver it in a way that, as you say, delivers more for less — and the way you do that is by driving efficiencies, so service delivery is something that we've spent a lot of time on. In this region we've had a Global Services Centre in Manila for a long time now, 15 years or more and more recently we've opened a similar operation in Belfast, which in my former role as London managing partner I played a role in getting up and running. We have 250 people now based in Northern Ireland, roughly half of whom are legal professionals, doing the more commodity end of a transaction or a piece of litigation. Interestingly, because they've been looking at things afresh as a relatively young function, it's become a bit of a think tank for driving efficiencies generally through the organisation and re-engineering workflows, so as a result we've got smarter in this space and Belfast will be central to our commitment to innovation.

AMC: Innovation is one of those words we hear a lot. What does it mean to you?
Rawlinson: It means a lot of things. In the short term, it's about being as efficient as possible by deploying our various tools that we've already got. On a two- to three-year track it's about starting to deploy machine learning and artificial intelligence, and we're already testing some products. So there are various aspects to innovation but what we need to do, and I'm going to be piloting some projects in the next few months, is to get into the mindset of being an organisation that embraces change in the way we do work. I think that's what clients want to see — they're not really interested in how you're doing it but the fact they're getting a quality service and you're investing in them rather than perpetuating a business model that they perceive as creaking at the seams.
Seib: For example, we are the biggest non-voice BPO [business process outsourcer] in Manila. We have a great team there with a new state-of-the-art site and even here in this region we also make strong and growing use of Belfast — we've had teams doing construction litigation in Melbourne, financial services investigations in Singapore, M&A transactions in China, all using the Belfast facility. It reduces the cost of delivery and increases the speed, so it's just terrific.

Bankable construction contracts in PPP projects

Careful negotiation of construction contracts is one of the most important factors in ensuring that lenders are willing to finance a PPP project, write Neil Cuthbert and Atif Choudhary of **Dentons.**

The broad concept of public-private partnership (PPP) projects is becoming increasingly understood across the world, however, more work is required in understanding the key factors that make a PPP successful. One such factor is ensuring that the PPP project is "bankable".

"Bankability" refers to the overall structure of a project being such that lenders are prepared to finance it. As lenders fund the vast majority of capital required to undertake projects (in some cases, up to 90 percent of required capital), bankability is of critical importance during the project structuring phase. In addition, PPP projects are unique to other more traditional procurement methods, as financing by lenders depends heavily on the ability of the project to repay lenders' loans. Therefore lenders have a very close eye on the structuring of the project, including all project agreements (and not just the financing agreements). Put simply, if the parties are unable to find a bankable structure, the project will not proceed.

In most concession-based PPP projects, the construction contract is one of the most important agreements that will be entered into. The price to be paid to the contractor under the construction contract is generally the largest capital expenditure and as such is one of the key areas of focus for all stakeholders in PPP projects, not least the lenders.

The stakeholders

Sponsors' involvement in the project is motivated largely by the return on their equity contributions. They want to balance achieving a competitive price for the construction works with protecting their expected returns by ensuring that construction risk is borne by the contractor to the greatest extent possible and not borne by their project vehicle, the project company.

Lenders will carefully check the terms and risk allocation under the construction contract and the experience of the contractor before committing to financing the project. They will also look to minimise the construction risk taken on by the project company, given that repayment of the project loans could be directly impacted where the project company takes on a greater level of risk than it should. This is even more so where the contractor is an affiliate of one of the sponsors.

The concession grantor/employer obviously has an important interest in the construction contract as the relevant infrastructure asset is the whole purpose of the project and it will be relying on the asset to function and produce the relevant output during the concession period (and after handover to the grantor at the end of the concession period in the case of a BOT type PPP).

As the party charged with constructing the facility, the contractor needs to ensure that the contract is crafted in such a way that it is only bearing risks which it can control and manage and which generally limit its exposure. Mechanisms for doing so are discussed below.

The requirements for a project to be bankable are not fixed and it is common to see different approaches to bankability, whether it be from sector to sector or between different jurisdictions or regions of the world. The purpose of this article is to explore some of the common/generic aspects of bankability and the usual base position for negotiation of construction contracts when it comes to those aspects.

A key premise to be mindful of is that the parties to a project tend generally to agree that project risks (including construction risk) should be allocated to those parties that are best in a position to manage that risk or at least make a reasonable determination of that risk. Where the lenders are required to take on a greater degree of risk, thereby

By Neil Cuthbert and Atif Choudhary, ***Dentons***

rendering the project less bankable, the cost of financing is likely to be higher than it otherwise would be and/or the lenders will look to the sponsors to provide additional security or support. This is likely to impact on the project's viability.

The "back-to-back" principle

Under a typical BOT-style PPP project the concession agreement (or off-take agreement) will be the overarching agreement that sets out the rights and obligations of the grantor and the project company. The primary obligation of the project company is to construct and operate the relevant facility, be it a power plant, toll road, water desalination plant or otherwise. The project company will, through separate agreements such as the construction contract, pass through various risks to third parties, including of course the construction contractor. To ensure that the risks and obligations are properly passed down, the project company will seek to ensure that the obligations that it passes down under the construction contract are "back to back" with the corresponding obligations it has under the concession agreement, so that there are no gaps between the obligations being taken on by it and those delegated by it to third parties.

Ensuring that the "back-to-backing" is undertaken properly is a key priority for lenders. After all, the project company is usually a special purpose vehicle and financing will be provided on a limited recourse basis (such that the lenders only have recourse to the project company and the project assets). As such, a bankable construction contract is usually one under which the back-to-back principle has appropriately been applied and which ensures that minimal risks are parked with the project company.

One of the key clauses that lenders will look for in this regard is an "equivalent relief" clause, which ensures that the contractor will only receive any time or costs relief from the project company for risks that are ultimately borne by the grantor (such as political force majeure relief) if the project company has received such relief from the grantor. In effect this transfers to the contractor the risk of the project company receiving an unfavourable outcome in respect of a disputed claim for relief from the grantor.

Key risk issues

To understand what constitutes a bankable construction contract, one must consider a number of bankability factors from the perspective of the various key stakeholders in the project. The following are some of the important aspects of construction contracts that are carefully considered by lenders, the project company, the contractor and the grantor alike when structuring the project:

General structure

The "single point turnkey contract" is generally considered to be the most bankable in large-scale infrastructure projects. Under a turnkey construction contract is that the lead contractor (appointed by the project company) bears the risk and responsibility for delivery of the entire facility (or, where the contractor is comprised of a consortium, on a joint and several basis). Any arrangements between the contractor and its subcontractors, suppliers and other third parties will be the responsibility of the contractor alone. The other parties to the project (project company, lenders and grantor) will not want to or need to look too far into the arrangements the contractor has with those third parties unless, perhaps, these are significant sub-contracts.

Fixed price

A bankable construction contract is generally one which is for a fixed price (subject to common "re-openers") plus provisional sums, being amounts allocated for work which cannot be accurately priced at the time of entry into the contract.

From the lenders' perspective the entire debt repayment profile will be based on a fixed amount of lending – any further advances which need to be made to the project could compromise the economics on which they have agreed to finance the project. These economics are often very precise and leave little room to manoeuvre, meaning sponsors cannot usually rely on lenders to agree to advance further amounts. In cases where there are significant cost overruns, the entire financing arrangements may need to be restructured, whether it be through additional sponsor equity injections or perhaps even selling an interest in the project, both of which have significant drawbacks.

Fixed time

Time for completion of construction is an important aspect of construction contracts, which is focused on by all key project parties. From a bankability perspective, the impact of delays on lenders and the project company must be carefully considered.

Failure to achieve the fixed completion date can have various

Neil Cuthbert

ramifications which they want to avoid, for example delays in repayment of loans, additional interest payments and penalties.

Completion

A clear definition of when completion of construction is deemed to have occurred is a vital aspect of a bankable construction contract in a PPP project. Given the importance of the construction completion milestone, completion parameters are often very heavily negotiated. The point of completion of the facility usually triggers various actions, including commencement of the commissioning process of the facility, transfer of ownership of the facility to the grantor (in the case of a BTO project), and, with it, ownership risks associated with the facility, output payments becoming payable to the project, commencement of repayments under the financing agreements and insurance requirements transitioning into the next phase.

Liquidated damages for delay

One of the key remedies for sponsors (which is also a requirement of lenders for a construction contract to be bankable) is the requirement that the contractor pays delay liquidated damages where construction completion does not occur by the agreed time.

The amount of damages that are payable have traditionally been required to be a "genuine pre-estimate of loss or damages" that would be suffered and more recently the courts have looked to whether they are "proportionate to the legitimate interests" of the party that will receive the liquidated damages. In practice, delay liquidated damages are usually payable by reference to a daily rate for each day that completion is delayed.

Liquidated damages for performance

Lack of performance of the facility — for example, the power plant does not produce power to specifications or the toll road is not available for use — means the project company cannot deliver the required level of output under the concession and faces penalties. Therefore, these need to be passed down to the contractor through the construction contract.

Payment of the contract price

The precise times when payments are to be made to the contractor and the method of payment are a key bankability issue. The contractor wants to get its hands on funds as soon as possible in order to pay its costs and release profits, whereas lenders do not want to release funds until there is commensurate value in the facility. As for sponsors, they want to fund as late as possible given that some of their cost of funding decreases the later that payments need to be made.

Lenders will usually expect the construction contract to contain staged payments, drawdowns on the basis of payment certificates certified by an engineer, and the requirement for retention and advanced payment guarantees.

Performance security

As the contractor is the payee of the projects largest capital expenditure, its standing is of key importance to lenders. However, notwithstanding the extent of comfort lenders are able to get in relation to contractors before approving their appointment, there are mechanisms employed by lenders and sponsors to ensure contractors perform as expected. For example, under a parent company guarantee, the parent will guarantee performance of obligations under the construction contract. Under a performance bond the issuer is only guaranteeing payment of amounts following the guarantee being called.

Design responsibility

In concession-based projects, design responsibility and risk lie primarily with the project company under the concession agreement. As with most construction-related risks, the project company will generally pass this risk down to the contractor (who may separately subcontract this work to a design contractor or consultant).

Insurance arrangements

In keeping with the theme of the project company divesting itself of as many risks as possible, lenders will require the project to maintain certain levels/types of insurance. The challenge in large-scale projects is that certain insurances can be very costly or insurance is not always available to cover all types of risk. As such, the stakeholders must find a middle ground which is reasonable and, of course, bankable. The grantor may have to bear any risks which cannot be insured.

Atif Choudhary

Typical types of insurances lenders will expect to see include construction all risks insurance, third party liability insurance, professional indemnity insurance and employee liability insurance. In addition, lenders will require to be named on the policies as a co-insured party, named as co-loss payee (or sole loss payee) and require the insurance policy to include endorsement wording noting the interest of the lenders in the insurance proceeds.

These requirements will be supplemented in the financing agreements with detailed provisions setting out how proceeds of insurance claims are to be applied, i.e. in early repayment of the loan, reinstatement of the facility or otherwise, and the lenders will also take a security assignment over the policies (if permitted) and the proceeds of insurance.

Liability caps

Contractors typically seek to limit their liability under the construction contract to the greatest extent possible. The lenders, of course, want to maximise the potential liability of the contractor as a means of protecting the creditworthiness of the project company, which is the beneficiary of claims under the contract.

Ground risk

The allocation of ground risk is usually driven by what (if any) ground risk the grantor is prepared to accept, which varies significantly from region to region. The contractor being responsible for ground risk, except in the case of unforeseeable risks, is generally considered a fair and practical approach. Any costs involved in remedying unforeseen risks are usually borne by the grantor (often on a deferred basis).

Consents

PPP projects rely to varying extents on legal/regulatory consents and permits being issued by governmental authorities of the jurisdiction where the project is being undertaken. Obtaining the required consents for the entire project is a condition precedent to financing being made available, ie lenders are unwilling to fund (or sign off on the construction contract) until and unless they are comfortable that the required consents are in place.

Conclusion

It is without doubt that interest in the PPP model will continue to grow rapidly, particularly in emerging markets such as many in the Middle East that have long relied on government balance sheets to fund infrastructure needs. Conceptually the PPP model makes for a win-win situation for all the key project stakeholders. As a consequence, many projects are enthusiastically pursued on an accelerated or "fast-track" basis. However, those looking to participate in PPPs will need to ensure that the process of risk identification, allocation and mitigation is as thorough and robust as ever. More investment in this stage of the procurement process can prove invaluable many years into the life of the project. However, many have been and continue to be caught short for failure to devote adequate time and resources to the process, leading to lengthy and costly disputes between parties arising.

In most large-scale projects, construction risks will be one of the risks, if not the key risk, that lenders and sponsors will focus on. The lenders' position in relation to these risks is of critical importance, as the parties need to find bankable solutions to construction risk allocation for financing for the project to be made available. This requires the contractors and sponsors to clearly understand the lenders' requirements when it comes to construction risk allocation — failure to do so has been one of the reasons why many PPP projects have taken far longer to reach financial close than intended.

Experienced contractors with track records of successful completion of large-scale projects will always find favour with project lenders. However, even with experienced contractors, if lenders see weaknesses in the construction arrangements and how construction risks have been allocated, they will look to the shareholders/sponsors to step in and cover these risks. Of course, the more guarantees the shareholders/sponsors have to give, the less attractive the project financing model becomes to them. Ultimately, there is a fundamental balance to be achieved between risk and reward.

Please find attached the link to the full article. http://www.dentons.com/en/insights/guides-reports-and-whitepapers/2017/april/11/bankable-construction-contracts-in-ppp-projects

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neil.cuthbert@dentons.com
atif.choudhary@dentons.com
www.dentons.com/en.aspx

Law as a team sport

Having spent more than 25 years in a variety of roles across the legal services industry, Mitch Kowalski* argues there are better ways to deliver legal services; ways that reduce costs for law firms and clients, enhance the lawyer-client relationship and improve access to justice. *Asian-mena Counsel* asked Kowalski a few short questions about where the industry is going.

Photo: Phil Brown

ASIAN-MENA COUNSEL: I understand your new book and your speech at the *Legal Inno' Tech Forum* will discuss "law as a team sport". Can you give a summary of what you mean by that?

Mitchell Kowalski: Now more than ever before, successful legal service providers need to find competitive advantage to differentiate themselves in a crowded marketplace. There are thousands of really smart lawyers; so many in fact that providing quality legal services is merely table stakes. It's a given, and expected by clients — it does not differentiate.

Legal service providers who provide a unique client experience, one that cannot be easily duplicated, will gain market differentiation and competitive advantage. Market leaders of the legal services industry of 2025 will be those that take an enterprise approach to legal services — those who see law as a team sport.

These market leaders will deliver their services through a proprietary mix of people, process and technology, seasoned by a culture of continuous improvement. Such an enterprise approach to legal services attracts and retains clients — as well as attracting and retaining

LEGAL INNO' TECH Forum

*Mitch Kowalski will be speaking at the ***Legal Inno' Tech Forum*** on June 8 in Hong Kong where he will talk about Law as a Team Sport and Re-imagining Legal Services for the 21st Century. Other topics include 'What's driving legal change?', 'Will law firms become software companies?', AI, legal technologies, Data protection, IP, eDiscovery, RegTech and new legal delivery models for legal services.

talent. It also increases the number of opportunities for non-legally trained staff and will begin to dismantle lawyer-dominated hierarchies. Lawyers, in both in-house and private practice settings, will simply be one piece of the puzzle, instead of the entire puzzle.

AMC: What are the most exciting innovations you're seeing affecting legal practice in North America right now? Given the regional differences, are these relevant to legal practice in Asia and the Middle East?
MK: The hottest thing in North American legal service innovation is legal technology; such as artificial intelligence and machine learning applications like ROSS or Kira, or data analytics programs like Loom, Premonition and Lex Machina, expert systems like Neota Logic and BlueJ Legal, or even smarter document assembly programs like Contract Express. These new products are created and driven by a millennial generation that sees legal services as broken. Over time we will see savvy lawyers augmenting their practices with these products to provide better, faster, more accurate and less expensive legal services.

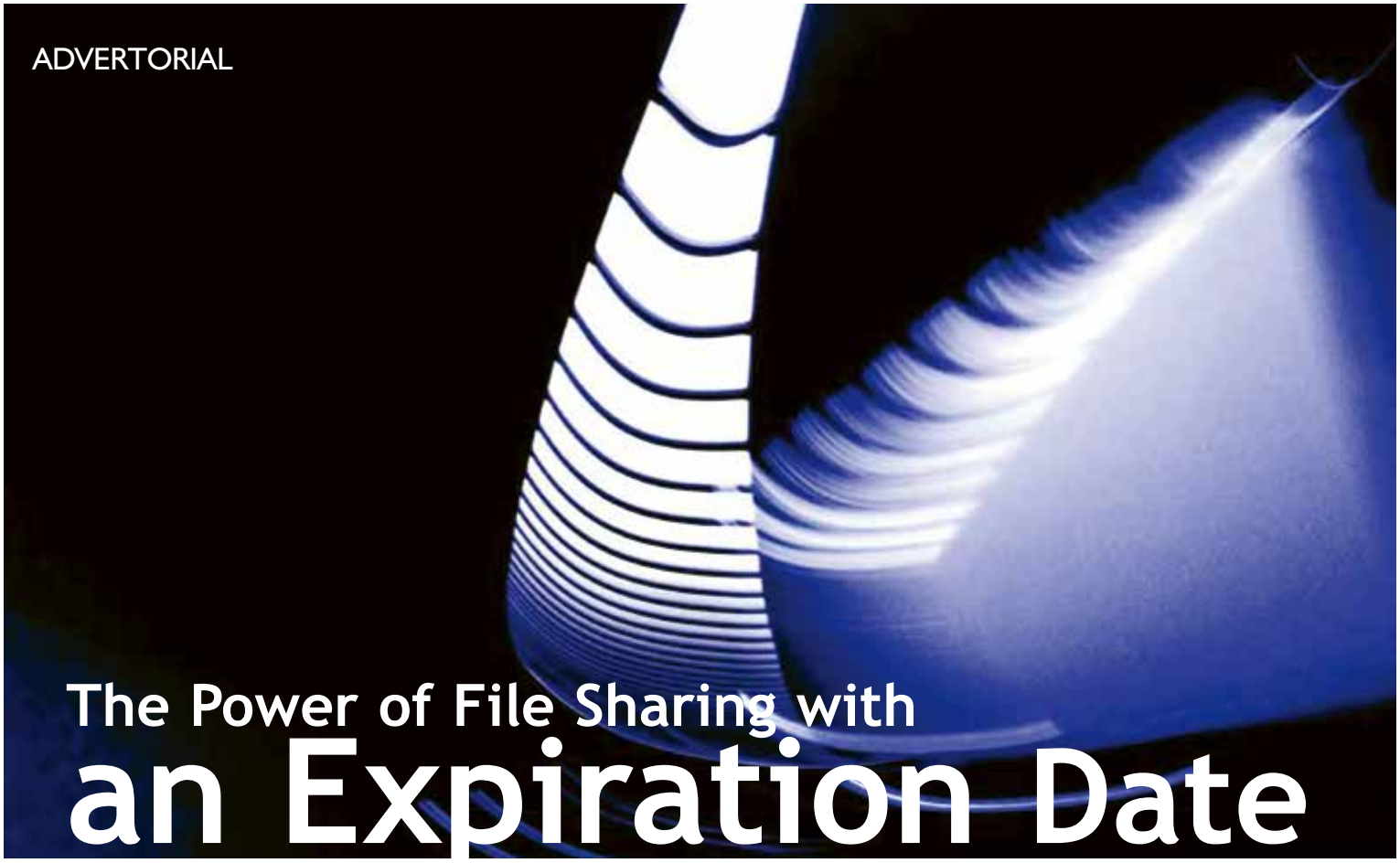
None of these products are jurisdiction-specific — and some are not even language specific. They are globally relevant and capable of use around the world. Their successes have normalised the idea that technology has a very important role to play in legal services, which will encourage more entrepreneurs around the globe to become the next big legal tech success story.

AMC: How much change is driven by clients and how much by technological innovation?
MK: Since clients are the ultimate beneficiaries of technology-driven innovation, the answer is: half-half.

Traditionally, legal technology companies have assumed that since they have a great product, law firms will immediately see the competitive advantage of using the product and start buying it. But that is the exception, not the rule. In fact, most legal technology sales success happens on the other side of the fence — by selling to law firm clients. The client, if impressed, then demands that its law firms use the technology to provide better service and lower costs. Without an innovative product, client-driven change is glacial because, with few exceptions, neither clients, nor law firms know what that change would look like.

AMC: Are you seeing any other innovations in legal services that are not driven by technology?
MK: Process, Process, Process. There are a very small number of firms that understand the value of continuous process improvement; a disciplined approach to critically assess what is being done and why, based on the methods of Lean and Six Sigma. These firms have reduced timelines and errors to provide cost-effective, quality legal services for clients. Even fewer firms have applied Lean thinking to their processes in combination with workflow that allows non-legally trained team members to work on higher value work.

Mitchell Kowalski is the Gowling WLG visiting professor in legal innovation at the University of Calgary Law School, a Fastcase 50 Global Legal Innovator, a legal innovation columnist for The National Post and principal consultant at Cross Pollen Advisory, where he advises in-house legal departments and law firms on the redesign of legal service delivery. He is also the author of the critically-acclaimed book, *Avoiding Extinction: Reimagining Legal Services for the 21st Century*. His new book, *The Great Legal Reformation: Notes from the Field* will be published in September 2017. Follow him on Twitter @mekowalski or visit his website www.kowalski.ca



The Power of File Sharing with an Expiration Date

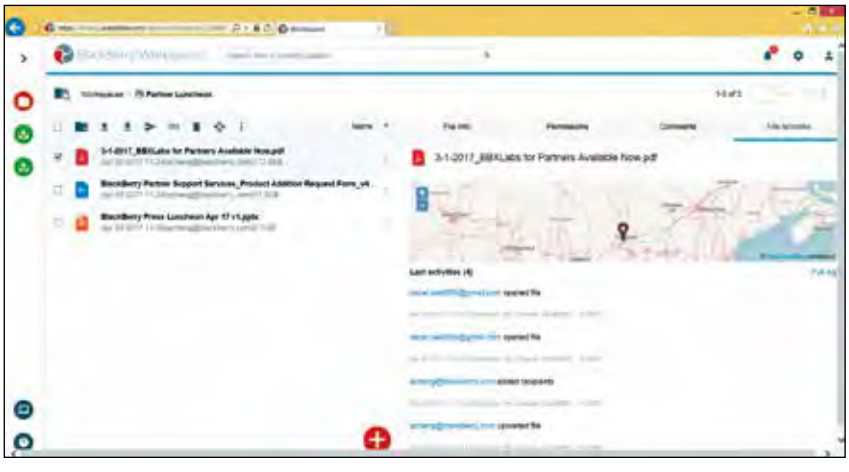
Security That Stays With Your Files

BlackBerry® Workspaces is the leading secure Enterprise File Sync and Share (EFSS) solution, enabling users to share, edit and control their files on every device. Only Workspaces can provide the level of security organizations require — wherever files are, wherever they need to go, whoever needs to access them.

Now, stakeholders can safely access, share, sync, and collaborate on even the most sensitive files, using any endpoint — desktop (Windows®, Mac®) or mobile (iOS®, Android™, BlackBerry®).

Wherever the files are, and wherever they need to go, your organization stays in control. With Workspaces, you can establish who has permission to view, edit, print, and share each file; track who's doing what; and set content expiry dates or revoke access if you need to.

"Workspaces also placed second in the "Mobile Workforce" and "Extranet" categories."



File Activities Tracking

BlackBerry Workspaces takes a unique, document- centric approach to security that allows controls and tracking to be embedded in enterprise files, with permissions that can be set at an individual user or group level

Security to Suit Every Enterprise EFSS Use Case

BlackBerry Workspaces makes your files secure wherever they travel, through a unique data- centric architecture. With protection layered on at a file level, security stays with your content, wherever it goes — even after it's downloaded and saved locally. Workspaces is the only EFSS solution that builds security into the files themselves. It's also the only solution that can address the multiple demands of enterprise environments: helping users get the job done and providing the tools IT needs to retain visibility and control of corporate information on any device, whether it belongs to an employee, a business partner, or the organization.

BlackBerry Workspaces offers an unparalleled level of security through true digital rights management (DRM) that applies wherever files travel, and wherever they're opened. Some other solutions only apply security to files while they're open in a

"Workspaces was positioned #1 for "High Security" in Gartner's 2015 Critical Capabilities Report on EFSS."

proprietary viewer — which doesn't give you the option to use or control files offline or within the native applications enterprise users rely on.

Control the ability to access, view, edit, copy, print, download and forward files, online and offline, on any device, even after they're downloaded from the system. Set up customized watermarks: you can splash the user's email or IP address across the document or in the viewer to deter screenshots and increase accountability. If you're giving a presentation and you're concerned about surreptitious photo-taking, you can use the spotlight feature, which blurs out the screen except where the mouse or pointer is hovering. While maintaining control has a lot to do with restrictions, Workspaces is also a productivity enabler: provide all users with access to a suite of collaboration tools, so they can manage, view, create, edit and annotate files from any device — without having to open up third-party tools unless they want to.

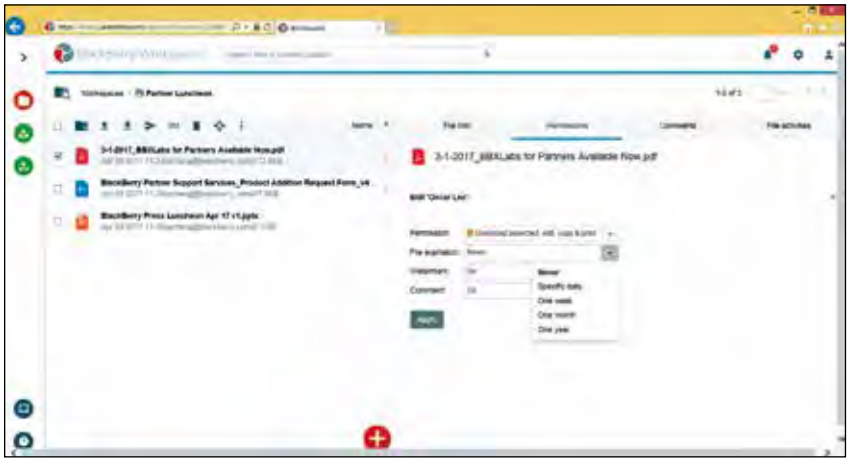
Why Trust BlackBerry for Secure EFSS?

BlackBerry delivers proven security, trusted by thousands of companies around the world, to protect your most important assets — your privacy and your business data.

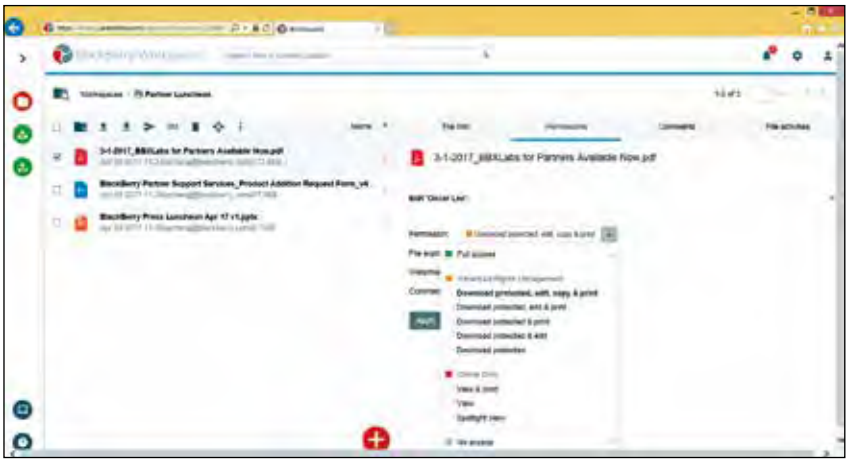
Why choose BlackBerry for secure Enterprise File Synchronization and Sharing (EFSS)?

- Leading the industry with over 70 certifications to meet your security and compliance needs*
- BlackBerry® 10 approved by NATO for classified communications up to "Restricted" level (BES®10 and BlackBerry 10 smartphones were the first to receive this approval)*
- 16 of the G20 governments trust BlackBerry*
- The top 10 largest law firms trust BlackBerry*
- 5 out of 5 of the largest oil and gas businesses rely on BlackBerry*

Interested to see a demo?
Email: kauyeung@blackberry.com or
Call +852 3653 6035



Set File Expiration Date



Set File Permission

BlackBerry Workspaces

About Workspaces

BlackBerry Workspaces makes your content secure wherever it travels. With Workspaces, all stakeholders can safely access, share and collaborate on even the most sensitive files, using any device — desktop (Windows, Mac) or mobile (iOS, Android, BlackBerry). By combining a user experience that's as easy and intuitive as any consumer solution with a unique data-centric architecture (which embeds protection right in your files), BlackBerry Workspaces is designed to meet the needs of your organization, IT team, and users. To learn more, visit www.blackberry.com/workspaces.

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- AV Aviation
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- CM Capital Markets
- CMA Corporate & M&A
- E Employment
- ENR Energy & Natural Resources
- ENV Environment
- IA International Arbitration
- IP Intellectual Property
- IF Islamic Finance
- INS Insurance
- LS Life Sciences
- LDR Litigation & Dispute Resolution
- MS Maritime & Shipping
- PF Projects & Project Finance (inc. Infrastructure)
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- REG Regulatory / Compliance
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Tel: (856) 21 222 732-3
Email: varavudh@la.scl-law.com
Contact: Varavudh Meesaiyati
Website: www.siamcitylaw.com
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Tilleke & Gibbins
Tel: (855) 23 964 210
Email: cambodia@tilleke.com
Contacts: John E. King
Website: www.tilleke.com
CMA IP LS REG TMT

LAOS:

LS Horizon (Lao) Limited
Tel: (856) 21 217 762, (856) 21 217 768
Email: information@lshorizon.com
Contact: Mr. Sunpasiri Sunpa-a-sa
Website: www.lshorizon.com
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Siam City Law Offices Limited (SCL Law Group)
Tel: (856) 21 222 732-3
Email: info@la.scl-law.com
Contact: Nilobon Tangprasit
Website: www.siamcitylaw.com
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MYANMAR:

LawPlus Myanmar Ltd.
Tel: (95) 92 6111 7006, (95) 92 6098 9752
Email: kowit.somwaiya@lawplusltd.com
prasantaya.bantadtan@lawplusltd.com
khinhtwemyint@lawplusltd.com
khinkhinzaw@lawplusltd.com
Contacts: Kowit Somwaiya
Prasantaya Bantadtan
Khin Htwe Myint
Khin Khin Zaw
Website: www.lawplusltd.com
BF CMA ENR LDR RE

LS Horizon (Myanmar) Limited
Tel: (951) 860-3435 Ext. 6001
Email: information@lshorizon.com
Contact: Mr. Sunpasiri Sunpa-a-sa
Website: www.lshorizon.com
CMA ENR LDR PF RE

Myanmar Legal Services Limited
Tel: 951-657792; 951-650740
Email: info@mlslyangon.com
Website: www.myanmarlegalservices.com
Contacts:
Daw Khin Cho Kyi (kckyi@mlslyangon.com)
Jutharat Anuktanakul (jutharat@ctlo.com)
CMA ENR LDR PF RE

Siam City Law Offices Limited (SCL Law Group)
Tel: (951) 653348-49
Email: info@sclhlegal.com
Contact: Vira Kammee
Website: www.siamcitylaw.com
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CHINA

East & Concord Partners
Tel: (86) 10 6590 6639
Email: Beijing@east-concord.com
Contact: Mr. Qi Zhou
Website: www.east-concord.com
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Guantao Law Firm
Tel: (86-10) 6657 8066
Email: xuling@guantao.com
Contact: Xu Ling, Partner
Website: http://www.guantao.com/
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P.C. Woo & Co. AMC 2013
Tel: (852) 2533 7700
Email: pcw@pcwoo.com.hk
Website: www.pcwoo.com
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INDIA

Anand and Anand AMC 2014 2015 2016
Tel: (91) 120-4059300
Email: pravin@anandandanand.com
Contact: Pravin Anand (Managing Partner)
Website: www.anandandanand.com
IP LDR

INDONESIA

Ali Budiardjo, Nugroho, Reksodiputro AMC 2013 2014 2015
Tel: (62) 21 250 5125/5136
Email: info@abnrlaw.com
infosg@abnrlaw.com
Contacts: Emir Nurmansyah
Nafis Adwani
Agus Ahadi Deradjat
Email: enurmansyah@abnrlaw.com
nadwani@abnrlaw.com
aderadjat@abnrlaw.com
Website: www.abnrlaw.com
MR FS BF CM CMA ENR PF

Assegaf Hamzah & Partners AMC 2014 2015 2016
Jakarta Office:
Tel: (62) 21 25557800
Email: info@ahp.co.id
Contacts: Fikri Assegaf (ahmad.assegaf@ahp.co.id)
Bono Adji (bono.adji@ahp.co.id)
Eri Hertiawan (eri.hertiawan@ahp.co.id)
Eko Basyuni (eko.basyuni@ahp.co.id)
Surabaya Office:
Tel: (62) 31 5116 4550
Contact: Yogi Marsono (yogi.marsono@ahp.co.id)
Website: www.ahp.co.id
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Kudri & Djamaris
Tel: (62) 21 5225453
Email: office@kndlawyers.com
Contact: Fadriyadi Kudri & Defrizal Djamaris
Website: www.kndlawyers.com
BF CMA E LDR RES

Lubis Ganie Surowidjojo
AMC 2014 2015 2016
Tel: (62) 21 831 5005, 831 5025
Email: lgs@lgslaw.co.id
Contacts: Timbul Thomas Lubis, Dr. M. Idwan ('Kiki') Ganie, Arief Tarunakarya Surowidjojo, Abdul Haris M Rum, Harjon Sinaga, Rofik Sungkar, Dini Retnoningsih, Mochamad Fajar Syamsualdi and Ahmad Jamal Assegaf.
Website: http://www.lgsonline.com
MR BF CMA LDR PF RES

Makarim & Taira S.
AMC 2014 2015
Tel: (62) 21 252 1272, 520 0001
Email: info@makarim.com
Contact: Rahayu Ningsih Hoed
Website: www.makarim.com
FS BF CMA ENR PF RE

Mochtar Karuwin Komar
AMC 2010 2011 2015
Tel: (62) 21 5711130
Email: mail@mkklaw.net / ek@mkklaw.net
Contact: Emir Kusumaatmadja
Website: www.mkklaw.net
AV BF ENR LDR PF

SSEK Legal Consultants
AMC 2014 2015 2016
Tel: (62) 21 521 2038, 2953 2000
Email: ssek@ssek.com
Contact: Rusmaini Lenggogeni (Managing Partner)
Website: www.ssek.com
Blog: Indonesian Insights (http://blog.ssek.com/)
Twitter: @ssek_lawfirm
FS BF CMA E ENR PF

MALAYSIA
Raja, Darryl & Loh
AMC 2014 2015 2016
Tel: (603) 2694 9999
Email: rdl@rdl.com.my
Contact: Dato' M. Rajasekaran
Website: http://www.rajadarrylloh.com
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Shearn Delamore & Co.
AMC 2014 2015 2016
Tel: (603) 2027 2727
Email: info@shearndelamore.com
Contact: Robert Lazar - Managing Partner
Website: www.shearndelamore.com
MR BF CMA IP LDR RE

Messrs Shook Lin & Bok
AMC 2014 2015 2016
Tel: (603) 20311788
Email: (603) 20311775/8/9
Contact: Managing Partner
Website: www.shooklin.com.my
BF IP LDR

Trowers & Hamlins LLP
AMC 2015 2016
Tel: (601) 2615 0186
Email: nwhite@trowers.com
Contact: Nick White, Partner
Website: www.trowers.com
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ZUL RAFIQUE & *partners*
AMC 2014 2015 2016
Tel: (603) 6209 8228
Email: zrp@zulrafique.com.my
Contact: Ms Mariette Peters
MR BF CMA E LDR RE

PHILIPPINES
ACCRALAW (Angara Abello Concepcion Regala and Cruz Law Offices)
AMC 2015 2016
Tel: (632) 830 8000
Email: accra@accralaw.com
Contacts: Emerico O. De Guzman
Neptali B. Salvanera
Website: www.accralaw.com
MR CMA E IP LDR TX

Esguerra & Blanco Law Offices
AMC 2015 2016
Tel: (632) 840-3413 to 15
Email: bleslaw@bleslaw.com
Contact: Atty. Abelaine T. Alcantara
Website: http://bleslaw.com
CMA E IP LDR TX

Morales Justiniano Peña & Lumagui
Tel: (632) 834 2551; (632) 832 7198; (632) 833 8534
Email: ramorales@primuslex.com
Contacts: Mr. Rafael Morales - Managing Partner
Website: www.primuslex.com
BF CM CMA IP LDR

SyCip Salazar Hernandez & Gatmaitan
AMC 2011 2015 2016
Tel: (632) 9823500; 9823600; 9823700
Website: www.syciplaw.com
MR BF CMA E ENR PF

TAN ACUT LOPEZ & PISON Law Offices
Tel: (632) 635-3671
Email: talfirm@talfirm.com
Contact: Martin Pison
Website: www.talfirm.com
CMA E IP LDR TX

Villaraza & Angangco
Tel: (632) 9886088
Email: fm.acosta@thefirmva.com
Contacts: Franchette M. Acosta
Website: www.thefirmva.com
CMA IP LDR REG TX

SINGAPORE
Aequitas Law LLP
Tel: (65) 6535 0331
Email: lim.tat@aequitasllp.com
Contacts: Lim Tat
Website: www.aequitasllp.com
CMA IA LDR RE REG

Joseph Tan Jude Benny LLP
Tel: (65) 6220 9388
Email: info@jtjb.com
Contact: K Murali Pany (Managing Partner)
Website: www.jtjb.com
CMA INS LDR MS RE

Providence Law Asia LLC
Tel: (65) 6438 1969
Email: abraham@providencelawasia.com
Contact: Abraham Vergis, Managing Director
Website: www.providencelawasia.com/
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Tel: (65) 6713 0200/(65) 6220 7779
Email: contact@straitslaw.com.sg
Contact: N. Sreenivasan SC
Website: www.straitslaw.com.sg
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SOUTH KOREA
Bae, Kim & Lee LLC
AMC 2014 2015 2016
Tel: (82 2) 3404 0000
Email: bkl@bkl.co.kr
Contact: Kyong Sun Jung
Website: www.bkl.co.kr
MR FS BF CMA IA LDR RE

Cho & Partners
AMC 2012
Tel: (82-2) 6207-6800
Email: ihseo@cholaw.com
Contact: Tae-Yeon Cho, Ik Hyun Seo
Website: www.cholaw.com
IP LDR

Jipyong
AMC 2012 2016
Tel: (82-2) 6200 1600
Email: hglee@jipyong.com
Contact: Haeng-Gyu Lee (Partner)
Website: www.jipyong.com
FS COM BF CMA E LDR

Kim & Chang AMC 2014 2015 2016
Tel: (82-2) 3703-1114
Email: lawkim@kimchang.com
Website: www.kimchang.com
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Lee International IP & Law Group
AMC 2012 2014 2015
Tel: (82 2) 2262 6000
Email: law@international.com.
Website: www.leeinternational.com
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Shin & Kim AMC 2014 2015 2016
Tel: (82 2) 316 4114
Email: shinkim@shinkim.com
Contact: Sinseob Kang – Managing Partner
Website: www.shinkim.com
FS COM BF CMA LDR RE

Yoon & Yang LLC AMC 2014 2015 2016
Tel: (82 2) 6003 7000
Email: yoonyang@yoonyang.com
Contacts: Seung Soon Lim; Seung Soon Choi; Jinsu Jeong
Website: www.yoonyang.com
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Yulchon LLC AMC 2014 2015 2016
Tel: (82 2) 528 5200
Email: mail@yulchon.com
Website: www.yulchon.com
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TAIWAN

Deep & Far Attorneys-at-Law
Tel: (8862) 25856688
Email: email@deepnfar.com.tw
Contact: Mr. C. F. Tsai
Website: www.deepnfar.com.tw
COM CM E IP LDR

THAILAND

Chandler MHM Limited
AMC 2014 2015 2016
Tel: (66) 2266 6485
Email: jessada.s@chandlermhm.com
niwes.p@chandlermhm.com
Contacts: Jessada Sawatdipong; Niwes Phancharoenworakul
Website: www.chandlermhm.com
MR BF CMA ENR PF REG

LawPlus Ltd. AMC 2012 2014 2015
Tel: (66) 2 636 0662
Fax: (66) 2 636 0663
Email: kowit.somwaiya@lawplusltd.com
prasantaya.bantadtan@lawplusltd.com
Contacts: Kowit Somwaiya
Prasantaya Bantadtan
Website: www.lawplusltd.com
BF CMA E IP LDR

LS Horizon Limited
AMC 2014 2015 2016
Tel: (66) 2627 3443
Email: information@lshorizon.com
Contact: Mr. Khemajit Choomwattana
Website: www.lshorizon.com
CM CMA LDR PF RE

Siam City Law Offices Limited (SCL Law Group) AMC 2016
Tel: (66) 2 676 6667-8
Email: siamcitylaw@siamcitylaw.com
Contact: Chavalit Uttasart
Website: www.siamcitylaw.com
BF CMA IP RE TX

VIETNAM

Indochine Counsel AMC 2015
Ho Chi Minh Office:
Tel: (848) 3823 9640
Email: duc.dang@indochinecounsel.com
Contact: Mr Dang The Duc
Website: www.indochinecounsel.com
Hanoi Office:
Tel: (844) 3795 5261
Email: hanoi@indochinecounsel.com
CMA CM PF

LuatViet Advocates & Solicitors
Tel: (848) 38248440
Email: canh.tran@luatviet.com
Contact: Mr TRAN Duy Canh
Website: http://luatviet.com/
BF CM CMA LDR RE

Russin & Vecchi AMC 2015 2016
HCM City:
Tel: (848) 3824-3026
Email: lawyers@russinvecchi.com.vn
Contacts: Sesto E Vecchi – Managing Partner
Nguyen Huu Minh Nhut – Partner
Nguyen Huu Hoai – Partner
Hanoi:
Tel: (844) 3825-1700
Email: lawyers@russinvecchi.com.vn
Contact: Mai Minh Hang - Partner
Website: www.russinvecchi.com.vn
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Tilleke & Gibbins
Tel: (84) 4 3772 6688
Email: vietnam@tilleke.com
Contacts: Thomas J. Treutler
Website: www.tilleke.com
MR CMA E LS IP TMT

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BAHRAIN

Trowers & Hamlins
Tel: (973) 1 751 5600
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Contact: Tracey Bulger, Office Manager
Website: www.trowers.com
BF CMA IF LDR RE

OMAN

Trowers & Hamlins
Tel: 968 2 468 2900
Email: oman@trowers.com
Contact: Tracey Bulger, Office Manager
Website: www.trowers.com
BF CMA LDR PF RE

UAE

Abdelaziz Alhanaee Advocates and Legal Consultancy
Tel: (971) 4 3809666
Email: info@alhanaee.com
Contacts: Mr. Abdelaziz Alhanaee – Founding/Managing Partner
Website: www.alhanaee.com
BF CMA E LDR RE

Addleshaw Goddard (Middle East) LLP
AMC 2016
Email: a.elson@aglaw.com
Tel: (971) 4 350 6450
Contact: Amanda Elson, Head of Business Development – GCC
Website: www.aglaw.com
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Afridi & Angell AMC 2016
Tel: (971) 4 330 3900
Email: dubai@afridi-angell.com
Contact: Bashir Ahmed, Partner
Website: www.afridi-angell.com
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Alsuwaidi & Company
Tel: (971) 4 321 1000
Email: info@alsuwaidi.ae
Contact: Mr Mohammed Al.Suwaidi, Managing Partner
Website: www.alsuwaidi.ae
CMA IA LDR MS RE

Trowers & Hamlins LLP AMC 2015 2016
Dubai office:
Tel: (971) 4 351 9201
Email: dubai@trowers.com
Contact: Jehan Selim, Office Manager
Abu Dhabi office:
Tel: (971) 2 410 7600
Email: abudhabi@trowers.com
Contact: Jehan Selim, Office Manager
Website: www.trowers.com
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CANADA
Fasken Martineau
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Email: mstinson@fasken.com
Contact: Mark Stinson, Primary Contact
Website: www.fasken.com
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— Law Firms — Africa

JOHANNESBURG
Fasken Martineau
Tel: (27) 11 586 6000
Email: johannesburg@fasken.com
Contact: Blaize Vance, Regional Managing Partner
Website: www.fasken.com
CMA E ENR LDR PF

— Arbitration Services

Beijing Arbitration Commission / Beijing International Arbitration Center (Concurrently use)
Tel: (86) 10 65669856
Email: xujie@bjac.org.cn
Contact: Mr. Jie Xu (許捷)
Website: www.bjac.org.cn

Hong Kong International Arbitration Centre
Tel: (852) 2525 2381
Email: adr@hkiac.org
Website: www.hkiac.org

— Due Diligence — Risk & Investigation

FTI Consulting
Tel: (852) 3768 4500
Contact: David Holloway
Email: david.holloway@fticonsulting.com
Website: www.fticonsulting.com

Kroll
Tel: (852) 2884 7788
Contacts: Tad Kageyama: tkageyama@kroll.com
Colum Bancroft: cbancroft@kroll.com
Website: www.krolladvisory.com

— Recruitment —

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Beijing – (86) 10 6567 8729
Shanghai – (86) 10 6372 1098
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Tel: *Singapore* (65) 6220 2722
Tel: *Beijing* (86) 10 6581 1781
Tel: *Shanghai* (86) 21 2206 1200
Email: hughes@hughes-castell.com.hk
Website: www.hughescastell.com

JLegal
Tel: (65) 6818 9701
Email: Singapore@jlegal.com
Website: www.jlegal.com

Legal Labs Recruitment
Tel: *Singapore* (65) 6236 0166
Tel: *Hong Kong* (852) 2526 2981
Email: resume@legallabs.com
Website: www.legallabs.com

Lewis Sanders
Tel: (852) 2537 7410
Email: recruit@lewissanders.com
Website: www.lewissanders.com

Pure
Tel: (852) 2499 1611
Email: liamrichardson@puresearch.com
Website: www.puresearch.com

Taylor Root
Tel: *Singapore* (65) 6420 0500
Tel: *Hong Kong* (852) 2973 6333
Email: jamienewbold@taylorroot.com
Website: www.taylorroot.com

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