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of the Year

Awards &
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2019

Volume 16 Issue 7, 2019



What we learned from our 2019 winners



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Shruti Ajitsaria

Head of Fuse on tech
innovation in law

**Whistleblower
investigations**

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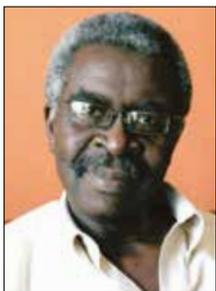
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In this issue

Volume 16 Issue 7, 2019

In-House Community Counsels of the Year 2019

27. The winners of this year's awards once again set the benchmark for excellence and demonstrate that inspiring leadership is alive and well among in-house teams in Asia, the Middle East and Africa



04

JURISDICTION UPDATES

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

4 

Local content and participation in Ghana's electricity supply industry

By Araba Attua-Afari and Patience Emieaboe of LEX Africa

6 

Settlement of disharmony between laws and regulations through mediation

By Vincent Ariesta Lie, Towy Aryanosa and Putri Rachelia Azzura of Makarim & Taira S.

8 

Revisiting the AMLA in light of transnational money laundering

By Kristian Angelo P Palmares of ACCRALAW

10 

The value of a citizen's participation trial

By Charlina Jean Ahn of Lee International

12 

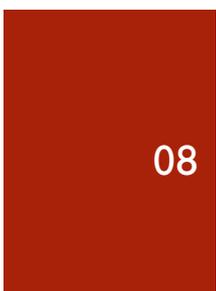
New law on competition takes effect

By Nguyen Thu Huyen of bizconsult

14 OFFSHORE UPDATE

Crypto and blockchain fundraising - 2019 market update

By James Twigg and Daniel Lo of Walkers



08



10

16 THE BRIEFING

Along with the latest moves and jobs, we take a closer look at Luckin Coffee’s Nasdaq IPO and review our inaugural event in London, as well as our outbound and Thailand events

26 SPOTLIGHT ON CIA (Collections, Investigation & Audit)

Forensic investigations and cross-border matters

Head of forensics, Erick Gunawan, looks at the constant evolution in data types and volumes, and the ever-tightening data privacy laws and regulatory intervention

36 IN-HOUSE INSIGHTS

Andrew Cooke

We speak to the head of strategy and general counsel for Flash Entertainment, and our In-House Community Counsel of the Year, about running an in-house legal team and his outlook for the profession.



SPECIAL FEATURES

40 Whistleblower investigations: Keys to responding to a dynamic event

In-house teams should be prepared for an inevitable increase in incidents requiring investigation as whistleblower protections grow, writes Michael Olver, Pacific Strategies & Assessments

44 The growth of third-party funders

Growing awareness of litigation funding is making it easier for businesses to pursue disputes, write Patrick Gearon and Gareth Mills, Charles Russell Speechlys

46 Q&A

Kirsty Dougan

The former head of Axiom and newly appointed Asia managing director of Vario talks about her new role and the future of NewLaw.

50 THE THING ABOUT...

Shruti Ajitsaria

The head of tech innovation space Fuse and a partner at Allen & Overy talks to Patrick Dransfield about legaltech, entrepreneurship and London’s role in the future of law

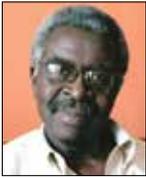
54 ASIAN-MENA COUNSEL DIRECT

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Local content and participation in Ghana's electricity supply industry

In line with the national push for a more structured approach to increasing local content and participation, the Regulations came into force on December 22, 2017. Prior to the passing of the Regulations, only the general local content provisions set out in the Ghana Investment Promotion Centre Act, 2013az (Act 865) applied to the electricity supply industry. This newsletter highlights some of the local content requirements introduced by the Regulations.

Establishment of Electricity Supply Industry Local Content and Local Participation Committee (the Committee)

– The Committee established by the Regulations to oversee the development and of local content and participation in the industry, and to monitor the implementation of the Regulations was inaugurated on May 2, 2019.

Ghanaian equity participation – the levels of local content for certain activities in the electricity supply industry range from an initial 15 percent to 80 percent, rising to between 49 percent and 100 percent. Service providers operating in the industry before the coming into force of the Regulations have five years from the date of the Regulations to comply with the relevant initial level. All other service providers must be complaint with the initial level requirements from the commencement of the activity.

Restrictions on the transfer of interest/equity – with certain exceptions (such as a company engaged in manufacturing), the rights and interests of a Ghanaian citizen under a contract, and the equity stake in a company, in the electricity supply industry may only be transferred to a Ghanaian.

Partnership – A foreign company must partner with an indigenous Ghanaian company to provide goods and services. The levels of participation are set out in the Regulations.

Registration of service providers – All persons service providers in the electricity supply industry must register with the Committee by March 22, 2018.

Exemptions – the Regulations allow for local content exemptions for the provision engineering and of technical consultancy and maintenance services. The exemptions apply where (i) proprietary equipment or technology is needed; or (ii) the service provider or any other entity engaged in any activity in the electricity supply industry can show that the expertise required does not exist locally.

Incentives – tax incentives are available to a company that establishes a plant to manufacture or assemble electrical equipment, electrical appliances or renewable energy.

Penalties – the penalty for breach of the Regulations are, for a first offence, a fine of up to C6,000 (US\$1,100) or to or to a term of imprisonment of between one and two years. Subsequent offences attract a fine of up to C12,000 or a term of imprisonment of between six months and two years.

Whilst the rationale behind the passing of the Regulations is commendable, the current form of the Regulations raises concerns. For instance, the impact of the equity transfer prohibition on the attractiveness of Ghanaian power projects to foreign sponsors cannot be ignored. In light of the restrictions on the transfer of local equity, lenders must now reconsider the suitability of their security packages as a charge over Ghanaian-held shares of the project company can only be transferred to another Ghanaian. The prohibition also imposes a fetter on a Ghanaian company's ability to exit the electricity supply industry when there is no willing Ghanaian buyer.

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INDONESIA



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Settlement of disharmony between laws and regulations through mediation

On February 12, 2019, the Minister of Laws and Human Rights (MOLHR) issued Regulation No. 2 of 2019 on The Settlement of Disharmony between Laws and Regulations through Mediation (MOLHR Reg 2/2019), which came into effect on February 14, 2019.

MOLHR Reg 2/019 replaces the previous regulation on the same subject, MOLHR Regulation No. 32 of 2017 on The Procedure for the Settlement of Disputes over Laws and Regulations through Non-Litigation.

Scope

MOLHR Reg 2/2019 reinstates the non-litigation settlement of disharmony issues between laws and regulations by introducing mediation. The types of laws and regulations between which disharmony can be resolved through mediation include:

- (1) Ministerial regulations;
- (2) Non-ministerial government institution regulations;
- (3) Non-structural institution regulations; and
- (4) Regional laws and regulations.

The above regulations can be submitted for mediation if they vertically and horizontally contradict each other and (i) cause disharmony between legal norms; (ii) conflicts of authority between ministries/institutions; (iii) cause injustice for communities and business actors; or (iv) disrupt the investment climate, business, as well as national and regional economic activities.

Mediation can commence upon receipt of the following:

- (1) an application from the parties; or
- (2) an order from the MOLHR; in which case, MOLHR will assign the Director General of Laws and Regulations (DGLR) to conduct the mediation without first receiving an application from any party.

Parties and applications

The following can apply for mediation:

- (1) individuals or groups of individuals;
- (2) agencies/institutions/ministries/non-ministerial government institutions/regional governments; and
- (3) public/private entities.

The application must be submitted in writing in the Indonesian language, and provide at least the following information:

- (1) the applicant's identity;
- (2) his/her/their date of birth/age;
- (3) the type of laws and regulations for which mediation is being applied;
- (4) the grounds for the application; and
- (5) the matters to be resolved (petition).

The application must be submitted to the MOLHR with a copy to the DGLR. The DGLR will then assign a Preliminary Assessment Team — consisting of administrative officials at the Directorate for the Litigation of Laws and Regulations — to check the completeness of the application and then register the application. Otherwise, the application will be returned to the applicants to be completed. A copy of the application will then be delivered to the parties within seven days of the date of its registration.

In addition, Reg 2/2019 also defines Related Parties as those who have a direct interest in any mediation application, either in relation to their rights and/or authorities.

The mediation procedure

The mediation must be conducted in a public hearing and chaired by the Examining Panel, appointed and established by the DGLR. The Examining Panel has five members; three from the Ministry of Law and Human Rights and two from scholars.

The mediation procedure includes: (i) hearings of the testimony of the applicant and Relevant Parties, (ii) experts providing legal opinions, (iii) providing clarification to the parties and (iv) con-

cluding and reading out the mediation result.

The mediation result can be:

- (1) an agreement between the parties to be implemented within 30 calendar days or as agreed; or
- (2) a recommendation from the MOLHR, if (i) the Relevant Parties were not present in the hearing(s); (ii) the parties did not reach an agreement; or (iii) the mediation was ordered by the MOLHR.

The parties must implement the recommendation within 60 calendar days of its receipt. Otherwise, the recommendation will be submitted to the President of the Republic of Indonesia within 30 calendar days of the expiry of the implementation time limit. The recommendation will then be used as a consideration for the program for the drawing up of the regulation of the minister, non-ministerial institution, non-structural institution, or law or regulation at regional level.

Comments

This procedure is different from court proceedings or judicial review at the Supreme Court or Constitutional Court, which rulings are enforceable. MOLHR Reg 2/2019 does not provide any clear and detailed provisions on how to enforce the mediation result, whether it is a recommendation issued by the MOLHR or an agreement between the parties.

In addition, the submission of the MOLHR's recommendation to the President seems unusual, as ideally it should be submitted to the authorities which issued the disputed regulations. Further, MOLHR Reg 2/2019 is also silent on how the recommendation should be implemented after the President has received it.

We anticipate a problem may also arise if the MOLHR's recommendation is not in the applicant's favour, as under Article 16 of Reg 2/2019, mediation cannot be applied for if the issues are the same as those which have already been resolved through the mediation under MOLHR, unless the parties (ie the applicant and the relevant institutions stated above) agree to make amendments to their agreement.



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Revisiting the AMLA in light of transnational money laundering

For several decades, money laundering has extended the reach of transnational organised crime throughout various nations. As seen in pop culture, drug lords and mobsters regularly ship off “dirty money” from their illegal trade into offshore bank accounts, thus making such funds appear “clean”.

In a more real and contemporary setting, it was recently reported that more than US\$1 billion was laundered in Venezuela through a sophisticated scheme which involved the embezzlement of funds from a state-owned oil company and the corresponding utilisation of a foreign exchange system to convert such funds at a fixed rate for US dollars, considerably below the true economic rate.

As the IMF estimates that the amount of money laundering occurring on a yearly basis could range between 2 and 5 percent of the world’s GDP, or somewhere between US\$600 billion and US\$1.5 trillion, various states have taken efforts to curtail money laundering in the form of multinational treaties, regional agreements and local legislation. Thus, amid persuasion from the international community, the Philippines and many other nations enacted local laws to curtail such acts.

In response to the recent trends in transnational money laundering, the Bangko Sentral ng Pilipinas (BSP) emphasised the need to strictly implement the Anti-Money Laundering Act (AMLA) of 2001 as means of fortifying the Philippines from money laundering activities.

Under the AMLA, money laundering is a crime wherein the proceeds of an unlawful activity are transacted, thus making them appear to have originated from legitimate sources. While the AMLA presupposes the commission of a distinct unlawful act (eg kidnapping, qualified theft, graft and corruption), money laundering itself contemplates the entry of dirty money into a legitimate financial institution to give it a semblance of legality. In addition to criminal prosecution, the state may also

“With the rampant money laundering schemes that proliferated recently, the AMLA and its IRR find relevance now more than ever”

initiate civil forfeiture, asset preservation and freezing of properties representing, involving or relating to an unlawful activity or money laundering offence. Indeed, the state imposes stiff penalties on money laundering due to its pernicious effects, such as reduced tax revenues and proliferation of underground economies that stifle legitimate businesses and financial institutions.

The Anti-Money Laundering Council (AMLC), composed of the governor of the BSP as chairman, and the commissioner of the Insurance Commission and the chairman of the Securities and Exchange Commission as members, is the lead agency tasked with implementing the provisions of the AMLA. To date, the AMLC has efficiently carried out its mandate by successfully initiating cases for violations of the AMLA and securing successful forfeiture cases relative to unlawful proceeds thereof.

The Philippine stance on money laundering remains just as dynamic more than a decade after the passage of the AMLA. Recently, the AMLC approved the 2018 Implementing Rules and Regulations (2018 IRR) of the AMLA shortly before the Venezuelan expose and in the wake of the results of the Second National Risk Assessment, where the AMLC led a thorough evaluation of the country’s preparedness against money laundering.

The 2018 IRR incorporated certain amend-

ments under Republic Act No. 10927, which included casinos, including internet-based casinos and ship-based casinos, with respect to their cash transactions related to their gaming operations. On this note, the AMLC requires casinos to report transactions over Ps5 million (US\$96,000) or other currency equivalent within five working days. This means players should keep their bets and transactions well under Ps5 million if they do not want to be flagged by this rule and reported to the authorities. Casino owners must also yield to compliance checks and investigations by the AMLC if they suspect money laundering or terrorism financing, at the risk of severe penalties and fees.

The 2018 IRR likewise feature new rules on the AMLC’s obligation to work in coordination with law enforcement agencies in the conduct of its cases, ascertain beneficial ownership relative to legal entities, enhancement of customer due diligence, national risk assessment and management, and AMLC supervision and compliance checking. Additionally, the AMLC also established guidelines on keeping databases for customer records, reporting, registration, to name a few. Adoption of these measures would enable the AMLC to easily enforce compliance in the financial and business sectors.

Indeed, with the rampant money laundering schemes that proliferated recently, the AMLA and its IRR find relevance now more than ever. Whether the current state of our justice system is sufficient to speedily and efficiently rectify the constantly-evolving money laundering concern remains to be seen. At any rate, there is no question that the AMLA and the AMLC’s recent issuance of the IRR is a great step forward in addressing transnational money laundering.

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.

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

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The value of a citizen's participation trial

Since February 2008, pursuant to the Act on Citizen Participation in Criminal Trials, defendants in many types of criminal cases in Korea have had the right to a "citizen's participation" trial, where a group of five to nine jurors acts as both finders of fact and rulers on the law (Article 12, section 1). In a traditional trial, a judge or group of judges makes all factual and legal decisions, in much the same way as would a judge in an American bench trial.

Under Article 1 of the Act, Korean jury trials were created to "raise democratic legitimacy" and to inspire more confidence in the judicial process as a whole. While similar to an American jury trial, a citizen's participation trial has some striking differences. Under Article 46, the decision of a jury is non-binding. Jurors may request guidance from the presiding judge if they cannot reach a decision. Consensus is not necessarily required. Jurors may even make sentencing recommendations.

In the US, jurors act almost exclusively as finders of fact. In other words, they are responsible for determining the merits of any given material fact of a case, and ultimately whether a defendant is culpable enough to be found guilty of the charged offence(s), based on the evidence provided. Generally, they play no role in matters related to sentencing. In contrast, a judge is the arbiter of the law. The judge also controls courtroom proceedings and determines sentencing. For example, a judge decides whether an objection is sustained or overruled, and whether evidence will be admitted or excluded from consideration in a given case trial.

"A fundamental assumption of the jury system is that laypersons are fully capable of making decisions regarding guilt in a criminal matter"

Historically, in common law jurisdictions, a jury trial was believed to increase fairness for the defendant based on the assumption that members of the defendant's community, from whom a jury would be drawn, knew the defendant's character and could therefore balance the scales of justice for a wayward defendant who was an otherwise law-abiding citizen. Of course, this could also have the opposite effect and a defendant's reputation could work against him or her. In either case, a jury trial allowed for a more democratic process where a defendant's fate was not tied to the opinion of a single judge.

Detractors of the jury system may argue that matters regarding the law should be determined by people who are actually trained in the law, i.e. judges and attorneys. While the sentiment is understandable, a fundamental assumption of the jury system is that laypersons are fully capable of making decisions regarding guilt in a criminal mat-

ter. In fact, using one's moral compass and life experiences to evaluate a given scenario is something most people do on a daily basis. Expertise in the law is not a necessity; common sense and a rational mind are considered equally valuable.

If creating a more democratic process is the goal, the law should be presented to the people in a way that is clear and easy to understand because the system should be accessible to all citizens equally. If citizen's participation trials become more widely used, defense attorneys and prosecutors alike will engage more with an audience (the jury), and over time perhaps mitigate the air of exclusivity that is oftentimes perceived by the public.

It goes without saying that having a jury system is not a guarantee that justice will prevail, or that a defendant who chooses a traditional trial is somehow less likely to receive justice. The value here lies in the defendant being able to choose between the two methods. A flawless judicial system does not and cannot exist because people create judicial systems and people are not perfect. Even with a jury's best intentions, guilty persons may walk free and innocent defendants put behind bars, in neither case offering justice to the victim.

Although inevitably imperfect, a jury system offers democratic legitimacy to what would otherwise remain an autocratic system. This is the very reason why citizen's participation trials were created; to build more confidence in the judicial system as it applies to criminal law. Even if an arguably more democratic process like the citizen's participation trial yields a socially or morally undesirable result in certain cases, the merits of the system as a whole are more valuable than any single outcome.

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In-house

Chief Legal Counsel | 15+ yrs pqe | Beijing REF: 15053/AC

A global media company is seeking a Chief Legal Counsel for its China operations based in Beijing. You will lead the legal team and oversee all legal and regulatory matters for their different lines of business. You will be a strong business partner, advising the Chairman on strategy and able to provide pragmatic and creative solutions. A minimum of 15 years' PQE in regulatory and corporate work relating to highly-regulated industries in China such as digital, education, media and entertainment or telecommunications is preferred. An admission to the PRC Bar and an overseas legal education is required. You should have native Mandarin and fluent English language skills, together with strong drafting skills.

Legal Director | 10+ yrs pqe | Shanghai REF: 15092/AC

This fast-growing retail chain is seeking a Legal Director to join its Shanghai office. You will be part of the legal team providing advice and support to various business units in China and overseas in areas such as regulatory risk management, commercial contracts, operational matters, and dispute resolution. You must be PRC qualified with a minimum of 10 years' relevant PQE in the FMCG or retailing sector. Fluent English language skills are required.

Legal Counsel | 10-12 yrs pqe | Shanghai REF: 15081/AC

Excellent opportunity exists to join a Fortune Global 500 manufacturing multinational in Shanghai. You will provide support to the corporate and business units on all corporate, industrial and commercial legal matters across China. You ideally have an LLB and LLM plus around 10-12 years' experience in practicing corporate and commercial law at a top-tier international law firm and an MNC. Dual legal qualifications in the PRC and overseas are highly desirable. Strong contract drafting, negotiation, and communication skills are required, plus fluent English and Mandarin Chinese.

Legal Counsel, Payment | 8-12 yrs pqe | Hong Kong REF: 15088AC

This highly valued fintech company is seeking an experienced lawyer to take on a Legal Counsel role with a regional remit based in Hong Kong. You will provide legal and compliance support on commercial contracts and cross-border transactional matters across Asia Pacific. A strong understanding of regional laws and regulations applicable to payments, international card schemes and e-commerce is necessary to succeed. You ideally will be a US/UK/SG/HK qualified lawyer with a minimum of 8-12 years' relevant in-house experience of payment-related legal matters in the region. Proficiency in both spoken and written Mandarin is essential.

Regional Legal Counsel, Commercial | 3-7 yrs pqe | Hong Kong REF: 15034/AC

A unique opportunity for an experienced commercial lawyer to join the dynamic and growing team of this prestigious luxury fashion house in Hong Kong. You will advise their business in the Asia Pacific region on general commercial matters with a focus on leasing, retail, distribution, and e-commerce matters. You must be a Hong Kong or Common Law qualified lawyer with 3-7 years' relevant experience in a similar position, preferably in both a top-tier corporate law firm and in an MNC. In addition to strong contract drafting skills, you must have proven experience of tenancy and real estate transactions plus excellent interpersonal, presentation and negotiation skills. Written Chinese with fluency in English, Cantonese, and Mandarin is a pre-requisite, you should be a team player, self-motivated, collaborative and energetic.

Private Practice

Corporate Associate | 3-5 yrs pqe | Shanghai REF: 15083/AC

This international full-service law firm is seeking a mid-level corporate lawyer to join its Shanghai office. You will be working closely with the leading partner on general corporate advisory, M&A, private equity, and corporate restructuring work. The firm is open to PRC/UK/US/AUS/HK/SG qualified lawyers with 3-5 years' corporate PQE with a leading international law firm. Fluency in English and Mandarin is required.

Capital Markets Associate | 3-5 yrs pqe | China REF: 15085/AC

This Magic Circle law firm is seeking a junior to mid-level associate with solid capital markets experience for its Beijing or Shanghai office. Ideally, you are US qualified with 3-5 years' PQE in Hong Kong listing and debts issuance work from leading international law firms. Native-level Mandarin and excellent English drafting skills are required.

Corporate Associate, M&A | 2-4 yrs pqe | Hong Kong REF: 15104/AC

A Magic Circle law firm is looking for an M&A lawyer to join its highly successful corporate team in Hong Kong. You will be working on public and private M&A transactions across Asia Pacific for leading PE funds and corporations. You must be Common Law qualified with ideally 2-4 years' PQE in M&A or private equity work in Hong Kong. A good team player with strong commercial awareness and drafting skills is sought. Mandarin Chinese skills are highly desirable but not essential.

Associate, Corporate | 2+ yrs pqe | Beijing REF: 15062/AC

This established global law firm is seeking a Paralegal/Associate level lawyer to join their Beijing office. Ideally, you are PRC qualified with at least 2 years' experience on FDI, cyber/data and general corporate matters. A capable team player with attention to detail and previous law firm working experience is best suited for the role. Excellent English and Mandarin skills are required.

Legal Consultant | 1 yr pqe | Beijing REF: 15077/AC

This White-Shoe law firm now has an opportunity for a law school graduate to join its well-established corporate practice in Beijing. You will be responsible for providing legal support on private equity or M&A work. The qualified candidate must have over 1 year's private equity or M&A practice experience at a leading international/local law firm. Good law school graduates who have fluent English and Mandarin skills are welcome to apply.

Paralegal, Litigation | 4+ yrs exp | Hong Kong REF: 15090/AC

This White-Shoe law firm is seeking an experienced trilingual Paralegal to join its busy litigation team in Hong Kong. Ideally, you hold a law degree plus a minimum of 4 years' experience gained at top-tier law firms specializing in commercial litigation, regulatory investigations and international arbitration work. Trilingual language capability (English, Mandarin and Cantonese) is mandatory.

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VIETNAM



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New law on competition takes effect

Vietnam's National Assembly passed the new Law on Competition (New Competition Law) on June 12, 2018 and it will be taking effect on July 1, 2019, 14 years after the implementation of the Law on Competition 2004.

The New Competition Law governs (i) the acts in restraint of competition, economic concentrations which have or may have a competition-restraining impact on Vietnam's market; (ii) unfair competitive acts; (iii) competition legal proceedings; (iv) dealing with breaches of the law on competition; and (v) State administration of competition.

The New Competition Law extends the scope of its applicable entities that consist of "related domestic and foreign agencies, organisations and individuals", apart from organisations and individuals conducting business and industry and professional associations operating in Vietnam. These broadened regulations aim to create the mechanism to settle anti-competitive acts and/or cases which may be implemented overseas but have or may have a competition-restraining impact on Vietnam's market and to control acts relating to competition of state authorities. This content is to meet the requirements of economic integration and create a fair competition environment for both domestic and foreign organisation/individuals.

Pursuant to the New Competition Law, there are significant changes in regulating "acts in restraint of competition", which are defined as actions that cause or may cause a competition-restraining impact, including "practices of agreement in restraint of competition, abuse of dominant market position, and abuse of monopoly position". Under the 2004 version of

"There are significant changes in regulating 'acts in restraint of competition', which are defined as actions that cause or may cause a competition-restraining impact"

Law, the "acts in restraint of competition" apply only to enterprises and consist of "economic concentration", meanwhile, these matters are now no longer provided.

The approaching method under the 2004 version of the law to control "agreements in restraint of competition" is solely based on "combined market share". At present, the New Competition Law manages these agreements by its nature or ability to have a significant competition-restraining impact in the market. The term "significant competition-restraining impact" is newly provided and shall be determined by the National Competition Committee according to market share ratio, barriers to market access or expansion, restriction of research, development and renovation of technologies, etc. The New Competition Law further provides three more types of agreements in its list of "agreements in restraint of competition", including: agreements not to trade with parties not participating in the agreements; agreements to restrain the product sale market

or sources of supply of goods and services of parties not participating in the agreements; and other agreements which have or may have a competition-restraining impact. In addition, the New Competition Law provides the new term of "significant market force", which is a ground to verify "a dominant market position" of an enterprise, apart from the one of "holding of 30 percent or more of the market share in the relevant market".

The management of economic concentration is another noteworthy change of the New Competition Law. Unlike the 2004 version of the law, which determines the prohibited economic concentration by relevant market share ratio, presently, economic concentration shall be prohibited if it causes the effect or is capable of causing the effect of significantly restricting competition in the market of Vietnam. The "significantly restricting competition effect" shall be also confirmed by the National Competition Committee based on specific elements provided in this New Competition Law. Regarding "the unfair competitive acts", the New Competition Law does not re-provide and refer to other acts that are governed under other relevant laws, and "illegal multi-level sales" are excluded from unfair competitive acts.

One last remarkable point of the New Competition Law is to strengthen and ensure the independence of the state administration of competition by having new regulation on the National Competition Committee, which is an agency under the Ministry of Industry and Trade, being in charge of advising and assisting the Minister of Industry and Trade in exercising the function of state administration of competition; carrying out competition legal proceedings and to perform other duties in accordance with the laws.

LEGALLABS

It has been a **busy** season! With our ear to the ground and a **keen understanding** of market trends and requirements, we have made numerous successful **placements** in a **diverse** range of industries.

A selection of our placements for this year:

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- *Lead Disputes Counsel, Oil & Gas*
- *VP, Ethics and Compliance, MNC*
- *Senior Finance Lawyer, Research Institute*
- *Privacy Counsel, Fintech*
- *Senior Legal Counsel, Healthcare*
- *Senior M&A Counsel, US MNC*
- *M&A Counsel, Technology*
- *Legal Counsel, Commodities House*
- *Associate Legal Counsel, IT MNC*
- *Knowledge Management Officer, Professional Body*
- *Contracts Manager, Hospitality*
- *Legal Counsel (Contract Role), US MNC*

Contact us today for a **confidential discussion**.



By James Twigg and Daniel Lo



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Crypto and blockchain fundraising - 2019 market update

Ever since the introduction of bitcoin more than a decade ago, we have seen the expansion of the cryptocurrency ecosystem, with over 2,000 cryptocurrencies in existence today and growing daily. In the race towards cryptocurrency and blockchain dominance, came the emergence of a fundraising method for crypto-founders to finance their companies, known as the initial coin offering (ICO). An ICO is a method whereby new projects sell their underlying crypto tokens/coins in exchange for fiat currencies or cryptocurrencies of immediate and liquid value such as bitcoin and/or ether.

ICOs in review

As of April 2019, over 3,500 ICOs have completed their fundraising, according to CoinLore. In 2017, CB Insights reported that ICOs raised approximately US\$6.3 billion, while in 2018 the amount jumped to approximately US\$19.2 billion, according to Strategy & with some of the biggest ICOs to date, the top four being: EOS (US\$4.1 billion), Telegram (US\$1.7 billion), TāTāTu (US\$575 million), and Dragon (US\$320 million). It is worthwhile to note that EOS and TāTāTu have both chosen the Cayman Islands as their domicile, while Telegram and Dragon have both chosen to domicile in the British Virgin Islands.

Despite this growth in ICO activity in 2018, the second half of the year saw a steep decline in ICO levels due to increasing regulatory concern over fraudulent offerings, leading to what the industry has dubbed the crypto-winter of 2018. In the first quarter of 2019 there were around half the number of ICO projects that have raised funds compared to Q4 2018 and there was also a sharp decline in the overall amount raised from ICOs compared with previous quarters. However, average amounts raised per ICO in the first quarter of 2019 is higher by US\$2 million compared to

“Amid this cooling period for the crypto community, a new fundraising method has arisen that many believe will eventually completely replace the ICO”

the fourth quarter of 2018, according to ICO Bench. Crypto market participants will continue to face sustained pressure if they continue to sell ICO tokens/coins to retail investors. Many companies have been able to sidestep regulatory scrutiny by holding ICOs for “accredited investors” only. Interestingly, amid this cooling period for the crypto community, a new fundraising method has arisen that many believe will eventually completely replace the ICO, commonly referred to as a security token offering (STO).

The rise of the STO

The STO is similar to an ICO, but is generally a more developed and regulated version. The underlying tokens/coins entitle the investor with ownership rights, voting rights, dividend rights or some other incentive in exchange for their investment. Regulation of STOs is based on local security laws, including KYC/AML requirements, so each jurisdiction is able to leverage their existing securities regulations as their framework for STOs. STOs are gaining popularity, which signals a shift towards fully regulated securities in the crypto space. STOs first appeared in 2017 with two STOs raising a total of US\$22 million. Fast forward to 2018 and STO activity has skyrocketed to 28 successful STOs and US\$442 million

in fundraising volume. To date, there are almost 170 STOs, with ICO Bench reporting that 120 have completed and 50 are continuing. The largest STO so far is by tZERO in 2018 raising US\$134 million. For STOs to continue to gain institutional acceptance, key elements of the critical market infrastructure needs to mature such as regulated exchange platforms moving into the crypto space or crypto exchanges receiving regulatory approval and reliable crypto ratings and research.

Looking forward to asset tokenisation

In addition to the popularity of STOs, asset tokenisation will be a prevalent trend in 2019. Asset tokenisation describes the process of converting assets into digital tokens on a blockchain, commonly referred to as a tokenised security offering (TSO). TSOs are tokenising “things”, rather than making the token that has the characteristics of a security such as with STOs. As CoinPip CEO Anson Zeall has written, the appeal of TSOs is their applicability to assets that cannot be securitised by mainstream finance such as art, collectables and intangible goods, and assets where banks will not securitise. A TSO’s attributes mirror that of the underlying asset/security, but it does not have the same rights and claims like an STO. The benefits of a TSO include but are not limited to fractional ownership, increased liquidity of assets, lower costs and faster settlement.

Conclusion

As we start to emerge from the crypto-winter of 2018, we are seeing crypto and blockchain projects place increased attention to the maturing regulatory landscape. The emergence of new fundraising methods such as the STO and TSO is indicative of the declining appeal of ICOs. Maintaining a continuing dialogue between industry participants and regulators will be vital for the adoption of these fundraising methods going forward.

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Fashion Brand 7+ Years | Hong Kong

An innovative fashion brand with a global presence is currently seeking a legal counsel in Hong Kong. This role will focus on both commercial and real estate matters. In-house experience together with strong leasing knowledge ideal.
AC7876

US Asset Manager 2-5 Years | Hong Kong

US asset manager seeks a junior to mid-level lawyer to join its legal team. This role will support expansion into the PRC, as well as dealing with the broad funds-related work. Corporate lawyers are also welcome to apply. Business level Chinese language skills are essential.
AC6938

Commercial 5-8 Years | Hong Kong

A HK based conglomerate is looking for a commercial lawyer. The global business includes retail, outsourcing, manufacturing & distribution. You will have extensive commercial experience from a quality law firm/prior in-house role. Fluent Mandarin language skills are essential.
AC4301

In-House

DCM/Derivatives 2-7 Years | Hong Kong

A leading Financial Institution is looking for a lawyer to join its team. You will provide transaction management services to the MTN, Note, Warrant and Certificate business within the Global Markets APAC operations. Prior experience from an international firm/Financial Institution is essential. AC7850

TMT 10+ Years | Hong Kong

A TMT company seeks a senior legal counsel with responsibility for global M&A projects. You must have at least 8 years' PQE in M&A at a reputable firm or well-known company. Chinese language skills needed. Great opportunity for those seeking a global remit in a close-knit team.
AC7438

Blockchain 5+ Years | Singapore

A leading blockchain solutions firm is seeking a lawyer with corporate transactional and commercial experience to join its diverse team. You will have 5+ PQE with a mix of private practice and in-house experience. Excellent opportunity to join a growing platform. Fluency in English required. AC7882

Funds 2-7 Years | Hong Kong

Top tier funds team at a UK firm is looking for an associate to join. You should have experience with SFC authorized funds or retail funds in the Asia region. Lawyers with private funds experience will also be considered. Cantonese and Mandarin skills will be a strong advantage. AC7890

Private Practice

Regulatory 3-6 Years | Singapore

Opportunity to join a top international firm in its banking & finance team focusing on financial securities regulation, fintech, licensing and general banking matters. Solid experience in these areas is required. Fluent English, Mandarin and Cantonese language skills essential. AC7895

Litigation Partner 10+ Years | Hong Kong

A leading Hong Kong firm is looking for a senior litigation partner. The firm enjoys a strong reputation in the market from both a professional and cultural point of view. You should have a strong following and existing client relationships in Asia. Chinese language skills are not essential. AC7857

Trademarks 4-8 Years | Hong Kong

A well-known regional firm is looking to add a trademarks lawyer to its IP team in Hong Kong. Experience at another trademarks practice is required. You must have Chinese language skills to apply. Excellent opportunity for lawyers seeking a stable platform and a clear career path. AC7896

Banking 3-4 Years | Hong Kong

Top tier US firm is looking for a native Korean speaker for its banking & finance team. You should be class of 2015/2016 and have solid finance experience from another US or Magic Circle firm with excellent academics. Great opportunity to join a leading practice with an excellent salary. AC7797

R&I Disputes 7+ Years | Hong Kong

An international firm is looking for a Hong Kong qualified disputes lawyer to join its leading R&I practice as a senior associate/counsel. Additional common law qualifications are advantageous but not essential. Excellent career progression and top quality work on offer.
AC7903

Corporate M&A/PE 2-5 Years | Hong Kong

An international firm is looking to hire junior (2 to 3 PQE) and mid-level (3 to 5 PQE) associates to join its corporate M&A/PE practice. This role will advise blue chip clients on a wide range of cross-border M&A, PE and VC transactions. You must be HK qualified and Mandarin is essential. AC7886

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EVENT REPORTS

Hong Kong In-House-Outbound Forum 2019



Prior to Counsels of the Year Awards in the evening, the In-House Community hosted the In-House-Outbound Forum on May 30 at the HKIAC. The forum brought together about 50 senior in-house counsel in Hong Kong — mostly representing large multinational corporations. Over the course of two hours, the attendees were updated on the legal landscape in four jurisdictions, namely, India, the Philippines, UAE and Vietnam. The forum started with a passionate presentation on the changing regulatory regime and growing opportunities in India by Vaibhav Kakkar, partner at L&L Partners. Emerico O De Guzman, managing partner of ACCRALaw, followed with his presentation on recently liberalised areas for foreign

investment and an employment law update from the Philippines. After a short break, Christopher Gunson, partner from UAE law firm AMERELLER took the stage to talk about various legal systems in the Middle East and how they have evolved, as well as touching on the Dubai Free Zones and dispute resolution in the region. The last presentation of the forum was given by Justin Gisz, partner from Vietnam law firm Frasers Law Company, who gave the attendees an overview on foreign investment rules in Vietnam, opportunities for investment and some challenges which in-house counsel may face when doing business in Vietnam.

Our thanks go to all the speakers and co-hosting firms mentioned above.



Emerico O. De Guzman
Managing Partner
ACCRALAW PHILIPPINES



Christopher Gunson
Partner
AMERELLER UAE



Justin Gisz
Partner
Frasers Law Company VIETNAM



Vaibhav Kakkar
Partner
L&L Partners (formerly Luthra & Luthra) INDIA



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



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

Inaugural London event for In-House Community™

Britain and the City of London can be described as being in a special place right now and our inaugural In-House Congress event in London on June 3 was conceived specifically to address this situation by bringing the best legal and business minds together to help change perspectives and explode myths and misconceptions regarding the emerging markets of Africa, the Middle East, India and Greater China.

“Bringing It All Back Home – Asia and the City of London” proved a great success.

More than 90 delegates – the majority from in-house departments – but including leading barristers, professors of law and company directors – engaged in topics relating to Asia, the Middle East and Africa – and went into some depth regarding the opportunities and risks relating to China and especially regarding the Greater Bay Area and the Belt & Road Initiative. Of particular note was the revelation that foreign companies litigating in China were statistically more likely to win their cases than their Chinese coun-

terparts and the progress of the Chinese judiciary relating to patent cases. The event also included a bomb shell from economist Michael Taylor that the city of Shenzhen alone accounted for 8 percent of all global patent filings in 2016 – and this figure is only increasing. The programme ended with veteran general counsel Evangelos Apostolou of Major Lindsey & Africa and Duc Trang sharing their experiences, both good and bad, of the reality of working as an in-house lawyer in the Middle East and Asia.



Keynote speaker:
Christina Blacklaws, president of the Law Society of England and Wales

Co-hosts and partnership organisations:
In-House Community, Law Society of England & Wales, Institute of Directors, The China Britain Business Counsel, American Bar Association

Co-Hosts:
Links Law Offices, Major Lindsey & Africa, Praxonomy, Quinn Emanuel, Reed Smith, Winston & Strawn



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

“A great event and very insightful about the role of in-house counsel in Asia” – General counsel of a multinational company, based in London

Bringing It All Back Home

Asia and the City of London



Michael J. Taylor
Director
Cold Water Economics



Stefan M. Gannon
Commissioner,
Resolution Office
Hong Kong Monetary
Authority



Amir Singh Pasrich
Managing Partner
I.L.A. Pasrich &
Company, New Delhi



Charles Qin
Partner
Links Law Offices



Patrick Zheng
Partner
Links Law Offices



Evangelos Apostolou
In-House Practice Group
and Advisory Services
EMEA and APAC
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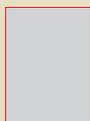
John N.M. McLean OBE
Vice-Chair
The Institute of Directors
(IoD) for the City of
London and
Board Member
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Council (CBBC)



Christina Blacklaws
President
The Law Society of
England and Wales



Stephen Denyer
Director of Strategic
Relationships
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Director of Sanctions
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Brinton M Scott
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Winston & Strawn LLP
Shanghai Representative
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Managing Partner
Middle East
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Patrick Dransfield
Publishing Director
Asian-mena Counsel
and Co-Director,
In-House Community

17th annual gathering of the Bangkok In-House Community

The most pressing challenges cited by our In-House Community members in Thailand this year were “keeping up with data privacy and cyber security regulations” and “the changes in legal work in an increasingly digital world”, so it was apt that our 17th annual Bangkok In-House Community Congress on June 5 should open with a practical presentation by Desarack Teso, corporate, external & legal affairs director at Microsoft Thailand on “Meeting your privacy and security obligations in the digital era”. Chaired by In-House Community founding director, Tim Gilkison, Teso then joined a stellar panel including Jackson Pek, chief legal officer at AirAsia Group, former in-house counsel and now a partner at Pisut & Partners, David Lawrence, V Joseph Tisuthiwongse, a partner at Chandler MHM, and Peter Shelford, country managing partner in Thailand and co-head of DLA Piper’s Asia insurance sector practice, to discuss technology and talent management in the legal department, with key discussion takeaways including the need to understand why you should invest in a particular technology (to reduce risk, save time or eliminate repetitive tasks, free-



ing up your lawyers to do more important, high-value work), and the importance of providing the right professional development environment to attract and retain the best talent.

The Sofitel, Sukhumvit proved a comfortable venue for a day of vibrant community networking and engaging workshops for our over 130 attendees, including sessions on director’s liability risks and mitigation plans presented by Kudun & Partners, investment and financing opportunities in Thailand’s EEC, by Chandler MHM, recent dispute resolution trends and notable cases presented by Pisut and Partners, and changes in Thai labour law presented by DLA Piper.



Desarack Teso, Microsoft



Satoshi Kawai, Managing Partner of Chandler MHM cuts a cake in celebration of the firm’s 15 years support of the In-House Congress in Bangkok

The Congress closed with an engaging session on anti-trust law developments from Chandler MHM, but not before In-House Community’s Tim Gilkison thanked the firm for 15 straight years of support for the In-House Community gathering in Thailand, inviting the firm’s managing partner, Satoshi Kawai, to cut a cake in celebration.

Our thanks to all our speakers and co-hosting firms for their support of this 17th annual Bangkok In-House Community Congress.

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

“The Congress went beyond my expectations” ... “I can take [what I’ve learnt] and apply it to my work” – Bangkok Congress delegate

2019
**IN-HOUSE
Congress**
BANGKOK



Jackson Pek
Chief Legal Officer
AirAsia Group



David Beckstead
Counsel
Chandler MHM Limited



Nopamon Thevit
Intralib
Senior Associate
Chandler MHM Limited



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Of Counsel
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Peter Shelford
Country Managing Partner
DLA Piper (Thailand) Limited



Kongkoch Yongsavasdikul
Partner
Kudun & Partners Limited



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Corporate, External & Legal Affairs Director
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David Lawrence
Partner
Pisut & Partners



Pisut Rakwong
Founder and Managing Partner
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Wayu Suthisarnsunton
Partner
Pisut & Partners



Tim Gilkison
Founding Director
In-House Community

MOVES

The latest senior legal appointments around Asia and the Middle East

 AUSTRALIA

Jones Day has added **Shannon Finch** as a partner in the firm's M&A practice in Sydney. Finch brings extensive experience in capital markets transactions, including IPOs, retail bonds, dual-tracks and crowdfunding; public mergers, acquisitions and restructures; corporate governance, including matters relating to directors' duties and shareholder activism; and listed entities and securities law. She is a guest lecturer on securities law and disclosure regulation masters courses at the University of Sydney and University of NSW. She is also a regular speaker at equity capital markets, global M&A, hybrids, directors' duties and securities law conferences.

 HONG KONG

K&L Gates has hired **Guiping Lu** as a corporate and capital markets partner in its Hong Kong office. Lu joins K&L Gates from the Hong Kong office of Beijing-based Haiwen & Partners. His practice is focused on equity and debt capital market deals and cross-border M&A transactions, in addition to advising clients on private equity, pre-IPO, venture capital financing, and various U.S. securities law matters.



Guiping Lu

King & Wood Mallesons has added **Rachel Yu** as a partner in the dispute resolution practice in the Hong Kong office. Yu is a next generation dispute resolution lawyer, who joins from Herbert Smith Freehills. She has over 12 years of experience advising clients, primarily on complex financial disputes. She regularly advises on regulatory investigations by regulatory and enforcement authorities, such as the Securities and Futures Commission, the Hong Kong Stock Exchange and the Hong Kong Monetary Authority, and on commercial disputes, including mis-selling, fraud, injunctions, debt recovery, security enforcement, joint venture and shareholders' disputes. Yu also advises clients on associated PR and internal crisis management strategies. She is fluent in English, Mandarin and Cantonese. Her clients include Chinese and global investment banks, retail banks, private equity funds, asset managers, brokerages, Chinese listed companies and high net worth individuals.



Rachel Yu

Reed Smith has added **Stephen Chan** as a partner in its litigation practice in the Hong Kong office of Reed Smith Richards Butler. He was previously a dispute resolution partner in the Hong Kong office of Oldham, Lie & Nie. Before relocating to Hong Kong in 2013, Chan was with McVeagh Fleming in New Zealand. He is an experienced advocate, who focuses on commercial litigation, international arbitration, intellectual property litiga-



Stephen Chan

tion, employment and labour disputes, and white-collar crime. Chan is a member of the Law Society of Hong Kong's Arbitration Committee. He is admitted to the court in Hong Kong and New Zealand, and speaks English, Cantonese and Mandarin. He qualified as a solicitor in New Zealand in 2007 and in Hong Kong in 2014, and attended the University of Auckland.

Reed Smith has added **Mark West** as a partner in its litigation practice in Hong Kong. West has extensive experience in advising and representing Hong Kong-listed companies, multinational companies and high net-worth individuals on a wide array of regulatory investigations, high-value and complex commercial litigation and arbitration, white collar crimes and fraud investigations, and prosecution defense. Previously co-head of regulatory at Kennedys in Hong Kong, he is a member of the Law Society of Hong Kong. He was admitted to the court in Hong Kong in 2002 and in England and Wales in 2009. West attended the University of Southampton and the College of Law in the UK, and the Chinese University of Hong Kong.



Mark West

 INDIA

Cyril Amarchand Mangaldas has added **Richa Roy** as a partner in its IBC and policy practice. She will be based out of Mumbai. She comes with an experience of over 12 years in banking and finance, debt restructuring and bankruptcy, public policy, microfinance and social enterprises, private equity and funds. Roy has served on and contributed to multiple financial sector reform committees of the Ministry of Finance, Ministry of Corporate Affairs and the RBI. Under the aegis of the Bankruptcy Law Reform Committee, she was instrumental in drafting the corporate insolvency provisions of the Insolvency and Bankruptcy Code 2016 and the CIRP Regulations. She is a 2005 NLSIU Bangalore graduate and a 2017 Oxford (MPP) graduate. Roy has worked with ICICI Bank, where she was group head of the international banking legal team. She later moved to AZB & Partners, where she worked for over eight years before attending University of Oxford to get her Master's degree in Public Policy, following which she worked on a range of public policy projects in trade policy and banking regulation. As an expert, her views are often quoted in the media and she has also authored various articles, which have been published in legal journals and publications.

DSK Legal has hired senior partners **Aparajit Bhattacharya** and **Anjan Dasgupta**, as well as partners **Sharath Chandrasekhar**, **Nand Kishore**, **Aninda Pal** and **Harvinder Singh** from HSA Advocates. The hires add practice capability across finance and projects, core corporate and M&A, and disputes and tax practices, and will also bring their entire respective teams across offices in New Delhi, Mumbai and Bangalore. The firm has also added projects partner **Geeta Saha**, who previously practised at her own independent firm, to its Mumbai office.

 **JAPAN**

K&L Gates has added **Tsuguhito Omagari** as a corporate / M&A partner in its Tokyo office. He rejoins the firm from local Tokyo firm Sonderhoff & Einsel. Omagari focuses on domestic and cross-border M&As, private investment in public entities, private equity, domestic and international joint ventures, real estate investment transactions, and various other corporate and related regulatory matters. He also advises international companies on investing and doing business in Japan.



 **SINGAPORE**

Baker McKenzie Wong & Leow, the member firm of Baker McKenzie International in Singapore, has added **Kunal Katre** as a local principal in the finance and projects practice and **Xavier Amadei** as local principal in its capital markets practice. Joining from Allen & Overy, Katre has broad banking experience spanning a wide range of transactions, including general syndicated loans, leveraged and acquisition financing, private equity led sponsor financing, margin lending, structured financings, and P2P loans. His practice focuses on matters in South and Southeast Asia, particularly in India, Indonesia and Malaysia. Katre is admitted to practise in India and England & Wales. Amadei, who joins from Linklaters, has extensive experience acting on cross-border equity and debt offerings, advising investment banks, issuers (including sovereigns) and shareholders throughout the Asia Pacific region. His transactional experience includes SEC-registered offerings and offerings pursuant to Regulation S, Rule 144A, as well as other private placements. He has also advised clients on matters of bribery, corruption, fraud and economic sanction regimes and on the implications of the EU Alternative Investment Fund Managers Directive. He is admitted to practise in Hong Kong, Paris and New York.



KorumLegal has expanded its capabilities and offerings with the addition of **Rob Shakespeare** and **Tessa Whittle** to their HQ team. Shakespeare joins as general manager and managing consultant for Southeast Asia, while Whittle, previously a consultant with KorumLegal, has expanded her role to head of legal, as well as managing consultant. Shakespeare and Whittle, located in Singapore and Hong Kong, respectively, bring extensive private practice and in-house legal experience. Shake-



speare joins KorumLegal's Singapore office, after spending the last three years building the Asia-Pacific corporate practice at Squire Patton Boggs in Singapore. With nearly 15 years' experience in corporate transactions, he brings strong legal expertise and a passion to drive legal innovation, which he sees as ripe for change. On the other hand, Whittle expands her role in KorumLegal, having previously been a managing consultant working with one of KorumLegal's key financial institution clients for the last 18 months. With over 14 years of experience advising on corporate, commercial and compliance / regulatory legal matters, she will help drive quality legal solutions and legal operations at KorumLegal.



 **UAE**

Akin Gump has added **Rizwan Kanji** as a partner in its Dubai office. He joins from another large international law firm in Dubai, where he served as the lead of that firm's global capital markets working group and as one of the deputy heads of its financial services industry focus group. Kanji's practice focuses on debt capital markets, finance and securitisations using both conventional and Islamic finance structures. Particularly active in the Middle East and Turkey for over a decade and, more recently, in Africa, he advises investment banks, financial institutions, multilateral development banks, sovereign states, insurance companies and multinational regional corporations on high-profile transactions. Well known for his excellent client and technical skills, and his ability to structure conventional financing, as well as Shari'a-compliant sukuk, Kanji has developed a particular reputation for advising on "first of its kind" transactions. For example, he advised on the first sukuk out of Turkey, the first syndicated Murabaha financing out of Russia, the first "Blue Bond" in the world and the establishment of the largest sukuk program to date. He received his LLB from the University of Leicester and his LLM from Southampton University. He is qualified in England and Wales.



Ashurst has further strengthened its Middle East oil and gas team with the addition of **Luke Robottom** as a partner in its global projects practice, based in Abu Dhabi. Robottom joins from White & Case in Abu Dhabi, where he has been based since 2009. He has extensive experience advising on the development and financing of major infrastructure, power and oil and gas projects, including numerous midstream and downstream deals. He also has a strong transactional construction practice. He advises sponsors, owners and lenders, from pre-contract negotiation through contract administration and post-contract dispute resolution.

DEAL OF THE MONTH



Asian-mena Counsel Deal of the Month

Luckin Coffee's Nasdaq IPO

Starbucks' leading competitor in China raises capital in New York by selling tech-flavoured coffee.

Selling coffee might not be the most innovative business idea going, but the Nasdaq IPO of Chinese startup Luckin Coffee was a scorching hot hit with investors, who valued the loss-making, two-year-old business at an eye-watering US\$4 billion.

Luckin has managed to position itself as part of China's tech boom thanks to its cashless stores, delivery app and extraordinary growth. From just one store in Beijing in June 2017, the company plans to overtake Starbucks' 3,300 outlets before the end of the year.

The SEC-registered initial public offering of 33 million American depository shares raised net proceeds of US\$570 million, before the optional greenshoe of an additional 4.95 million ADSs, which contributed a further US\$84 million. Each ADS represents eight Class A ordinary shares.

Luckin also made a concurrent private placement to Louis Dreyfus at the IPO price, with an aggregate value of up to US\$50 million, and a Series B-1 share issuance for an aggregate consideration of US\$150 million to certain investors, including private funds managed by Black-Rock.

The company priced its shares at US\$17, the top end of the marketed range, and upsized the deal from 30 million shares. After peaking at almost US\$26

on the first day of trading, the stock has settled to around US\$19.

Justifying that valuation will be a challenge. In 2018, Luckin's losses were double its revenues and its business model of delivering coffee at super-low prices may struggle to generate the margins needed in the long term. Investors will be hoping they don't get roasted.

Davis Polk advised Luckin Coffee, with Hong Kong partners **Li He** and **James Lin** leading the firm's team. **Cleary Gottlieb** advised the underwriters, led by Hong Kong partner **Shuang Zhao**, alongside New York partners **Jeffrey Karpf** and **Sandra Flow**, and London partner **Sebastian Sperber**. **Conyers Dill & Pearman** advised Luckin on Cayman Islands law. PRC law was handled by **King & Wood Mallesons** for the company and by **Jingtian & Gongcheng** for the underwriters.



Other recent transactions from around the region:

Clifford Chance has advised international energy services group **Serba Dinamik Holdings** on the international aspects of its US\$300 million high yield sukuk offering, due 2022. The offering was issued by SD International Sukuk, with trust obligations guaranteed by Serba Dinamik, and is listed in Singapore and the Labuan Financial Exchange. The transaction combines a high yield covenant package and credit structure with a wakalah-bil-istithmar sukuk, and represents the first US dollar high yield sukuk offering in Asia Pacific. Partner **Gareth Deiner**, supported by global head of Islamic finance **Qudeer Latif** and partner **Johannes Juette**, led the firm's team in the transaction, while **Zaid Ibrahim & Co** acted as Malaysian counsel.

Weerawong, Chinnavat & Partners has represented **Global Power Synergy**, the power flagship of the PTT Group, on its US\$757 million investment in and development of a 250 MW energy recovery unit for the production and sale of power and 175 ton-per-hour steam from petroleum pitch under the clean fuel project of Thai Oil. The unit is part of Thai Oil's capacity expansion project. The power plant, still under construction, is expected to come

online in 2023 and will sell power to Thai Oil, which is the country's second largest refiner, with a capacity of 275,000 barrels per day. Senior partner **Veeranuch Thammavaranucupt** and partners **Samata Masagee** and **Nattaporn Pengkul** led the firm's team in the transaction, which was signed on May 10, 2019.

Clayton Utz has advised on the restructure of the **Napoleon Perdis Cosmetics** group, following its high-profile collapse into voluntary administration earlier this year. The transaction involved a complex restructure, which culminated in the sale of the business within three months of the appointment of Worrells as administrators on January 31, 2019. The expedited global sale process attracted 41 parties, with KUBA Investments as the successful bidder. KUBA's acquisition of the group was via deed of company arrangement and a subsequent creditors' trust, involving a transfer of 100 percent of the shares in the company to KUBA. Although complex, the transaction structure meant the business was able to be continued seamlessly as a going concern. Restructuring and insolvency partner **Orla McCoy**, supported by partners **Geoff Hoffman** and **Tim Webb**, led the firm's team in the transaction.



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.

Deputy General Counsel – Social Platform 8+ yrs PQE, Guangzhou

A revolutionary communication social platform headquartered in Southern China with a well-established legal team supporting its China's business operation is looking for a seasoned lawyer with proven experience in supporting business expansion and operations in SEA and Mid-East countries. To be considered, you must be Commonwealth qualified with fluent spoken Mandarin plus experience in cross-border M&A transactions and legal regulatory advisory. An HK/SG/Malaysian qualified lawyer with a result-oriented approach and leadership attributes is preferred. The role offers a competitive remuneration package and career progression opportunity growing together with the business and company. [Ref: 15112/AC]

Contact: Sherry Xu
Tel: (86) 21 2206 1200
Email: sherryxu@hughes-castell.com.hk

AVP/VP Legal & Company Secretary – FMCG 10+ yrs PQE, Singapore

- Minimum 10 of years' corporate law experience (contract law and drafting, intellectual property law, and corporate governance)
- With relevant experience and able to act as Company Secretary of a Singapore public listed company
- Must possess sound knowledge of Companies Act, SGX mainboard listing rules, ACRA and MAS requirements
- Regional coverage
- Ref: 43738

Contact: Michelle Poh
Tel: (65) 6214 3310
Email: resume@legallabs.com

Senior Associate – Law Firm 5 yrs PQE, Singapore

A leading law firm is currently seeking a senior associate to join its corporate team. The right candidate would possess at least 5 years of post-qualification experience in corporate and/or commercial laws. Exposure to M&A transactions is an added advantage. This is a great opportunity to be part of a high performing legal team with strong ties in the region and a steady pipeline. As part of the team you will be exposed to a variety of corporate transactions including corporate commercial, M&A and other matters. Reporting directly to the partner, this role provides excellent mentorship as well as the ability to form the base of a strong career in private practice. [Ref: JO-1904-173826]

Contact: Michelle Koh
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Employment Counsel – MNC 4-7 yrs PQE, Hong Kong

Excellent opportunity for a mid-senior level employment lawyer to join a large multinational as its employment counsel. Reporting direct to the GC you will advise on labour and employment-related matters in existing and proposed jurisdictions. Candidates must be team players, have excellent communication skills and have strong commercial awareness. No Chinese language skills required. [Ref: AC7887]

Contact: Camilla Worthington
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Email: cworthington@lewissanders.com

Head of Compliance – Law Firm Senior, Hong Kong

International law firm seeks a lawyer to be its head of compliance to support the firm across Asia Pacific. Knowledge of conflict rules is important as well as being able to provide quick practical and commercial advice across the region. [Ref: IHC 17535]

Contact: Andrew Skinner
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Erick Gunawan
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Forensic investigations and cross-border matters

What are the current trends in forensic investigations for cross-border matters? Head of Forensics - Erick Gunawan, looks at the constant evolution in data types and volumes, and the ever-tightening data privacy laws and regulatory intervention.

CURRENT TRENDS

Ever-evolving data types and volumes

Technology has assisted our lives and made things very efficient, but with more software, smart applications and devices, it has actually made things more complicated for forensic collection. There is an ever-increasing amount of data to be considered for relevancy.

Traditionally, forensic teams mainly used emails and possibly some internal finance and expense systems to look at during the collection phase. As mobile phones were more widely adopted and more people started using social media, it meant significant data started being saved onto devices. Now lawyers and investigators look to these devices for relevant information.

When dealing with significant amounts of data, it is important to contemplate the variety of data that is generated. There may be emails, WhatsApp messages, WeChat etc, depending on the preferences of the jurisdiction in which the data is found. It is necessary to find one, efficient way to review these different types of data.

Stricter data privacy laws and greater regulatory intervention

When it comes to multi-jurisdiction engagement, whether for investigation or eDiscovery, there will always be issues with data protection laws in various locations. Different countries will have different laws when it comes to data protection or privacy.

In cross-border litigation, when collecting data from China, there are very strict rules that have to be followed before data can be taken out of China for review.

General Data Protection Regulation (GDPR) is obviously relevant to any organisations that have offices in Europe, but it actually goes beyond that. For example, if your clients are storing any data for any EU residents then that organisation would be subject to GDPR as well.

When engaging in any data collection, it's important to discern whether it's necessary to comply with GDPR, and if so, what steps need to be taken to ensure that the only data collected is that potentially relevant for the matter as opposed to collecting everything which was the procedure back in the heyday of discovery. Generally, forensic teams will over-collect to some extent to ensure that important documents are not missed, but with the privacy changes, it is important to understand the laws and collect only what is relevant.

In China, data privacy is very important. In cross-border litigation, when collecting data from China, there are very strict rules that have to be followed before data can be taken out of China for review. For example, to review data from China in Australia, it is

necessary to go through formal state secret screening first.

Penalties for breach can include the death penalty so this is not a step that should be underestimated. For these reasons, it is important that your digital forensic team have experience and understand how to manage collections in China appropriately.

Collecting data in cross-border matters is complex, constantly changing and governed by strict laws and regulations. It is a process best left to the experts to ensure that the process is done efficiently, cost-effectively and without breaching any laws.

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Established in 1999, Law In Order is the leading supplier of end to end document and digital solutions to the legal industry providing expert litigation and arbitration support through our cost-effective document production, expert discovery management and specialist eArbitration services. Law In Order has offices in Singapore, Hong Kong, Brisbane, Sydney, Melbourne, Perth and India that operate 24 hours a day, 7 days a week.

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The In-House Community Counsels of the Year Awards & Celebration 2019



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In-House Community Councils of the Year 2019

The winners of this year's awards once again set the benchmark for excellence, write *Patrick Dransfield* and *Nick Ferguson*.



Left: Andrew Cooke of Flash Entertainment, our 2019 In-House Community Counsel of the Year

One definition of leadership in the workplace is to have the ability to inspire people to work together towards a common altruistic goal. The In-House Community Councils of the Year awards (99 submissions) proved that true and inspiring leadership is alive and well among the in-house teams in Asia, the Middle East and Africa.

Stand-outs include our In-House Counsel of the Year, Andrew Cooke, general counsel of Flash Entertainment, who when faced with the perfect storm of a headcount and spend freeze, and an exponential increase

in work volume due to a major cross-border dispute, dug down and sought inspiration from Taiichi Ohno's 'Toyota Production System' and implemented the Six Sigma approach to perfecting processes through eliminating waste.

As inspiring was the Schneider Asian team's immediate response, led by general counsel Paul Fredrick, to assist the 12 teenage boys trapped in a cave in Thailand's Chiang Rai province. The Schneider Southeast Asia team immediately mobilised employees to send multiple sets of electrical load and generator equipment



upon the request of the Energy Authority of Thailand and proved to be a game changer during the two-week period that resulted in the inspiring and widely reported rescue of all 12 boys.

Such leadership does not have to be so dramatic to prove successful over the long term. The winning Asia Team of the Year, MTR Corporation, led by Gillian Meller, has consistently stayed ahead of the game when it comes to providing a multi-disciplinary legal team of 70 members of staff, including engineers and risk managers. The legal team has proved instrumental in their ability to service immediate stakeholders, as well as people at large, as MTR becomes a truly international company, exploring business opportunities in major world cities including London, Stockholm, Sydney, Toronto, Beijing, Shenzhen and Hangzhou.

In the context of legion award ceremonies in the legal sector, many of the participants of the In-House Counsel Awards – whether winners or not – expressed appreciation for the consistent criteria used in determining the winning teams, namely: dedication; innovation; efficiency and value-add; integration; encouragement and improvement; corporate social responsibility; and diversity.

In addition, the In-House Team and In-House

(individual) Counsel of the Year awards are adjudicated by an independent panel of judges that includes reclused practitioners that have done the hard yards themselves and therefore can accurately assess the merits of the in-house teams, as well as sympathise with the challenges that the function is inevitably beset by.

Smart use of technology in the legal space was evident in Beijing-based Taikang Group, which registered 461 patents, thus helping the insurance company become increasingly technology-driven, as well as Korea Gas Corporation’s creation of a multi-disciplinary energy and natural resources eLegal community (incidentally one of our increasing number of submissions from Korea).

It has become abundantly clear over the years that in-house teams in markets other than North America and Europe tend to be much smaller in terms of head count and therefore inevitably have to do “more with less”. This became apparent for Small Team winners DNV GL (Asia) and AFGRI (Africa) – both five-people teams with coverage over multiple and various jurisdictions and diverse business groups.

In-house teams are taking increasing internal responsibility for complex transactions, including first-time nominee and winner Grab, in Other Industries - Asia, relating to its US\$3 billion series H fund; and multiple returnee Melco Resorts & Entertainment’s successful completion of the US IPO of Studio City with a pre-IPO synthetic Up-C structure.

Legal teams can constructively change societies and the multiple victories of Abu Dhabi Global Markets, one of the world’s most innovative and new financial centres, proved that a multi-national and dedicated team can prove to be an inspiration to other regulatory regimes around the region, not least by applying the common law of England and Wales directly to its legal regime (a first in Mena, but also ‘firsts’ in both fintech and crypto-currency regulation).

Top left:
AFGRI Group – Africa In-House Team of the Year

Top right:
MTR Corp – Asia In-House Team of the Year

Left:
Abu Dhabi Global Markets - Middle-East In-House Team of the Year (joint winner) receiving their award from Peter Connor



Above left: Baker McKenzie were voted the Most Responsive Firm for the 10th year running

Above centre: Aditi Manchanda (right) of Cyril Amarchand Mangaldas received one of the firm's two awards of the night from Jonathan Macey

Above right: Andrew Beasley of Clifford Chance receives the International Visionary Client Service Law Firm of the Year award from Stefan Gannon

Below: Schneider Electric's Paul Fredrick picked up the team's CSR award



Numbers matter – and CIMB once again showed its integration with its other stakeholders in winning the Banking Industry award with its across-the-board coverage assisting the parent with a record net profit of 30 percent year on year. The final number perhaps matters most of all – the US\$10,000 that the assembled in-house and private practice lawyers raised for our worthy charity, Children's Cancer Therapy Development Institute. Thank you to all who generously contributed gifts and donated money to help save children facing life-threatening cancer.

VISIONARY CLIENT SERVICES PROVIDERS

Once again, the In-House Community research team set the challenge for New Silk Road-based legal service providers to demonstrate that they can truly stand inside the shoes of their clients and provide inspiring service. Our Visionary Client Service Providers 2019 identify the very best examples of client excellence. To do so, we canvassed legal providers and asked them to provide examples of budget-orientated project management for a client; advice to a client

regarding productivity and efficiency; and exceeding client expectations.

In the non-law firm category, three-year-old Australian startup Lawcadia impressed with its innovative cloud-based legaltech platform that combines RFPs, e-billing and analytics. The platform was built in direct response to the frustrations experienced by in-house teams and has been designed to be intuitive, easy to use and simple to implement in legal teams of all sizes.

In-House Counsel of the Year shortlist, 2019

Andrew Cooke – Flash Entertainment
Andrew Kim – China Citic Bank International Limited
Christopher Stephens – Asian Development Bank
Chungjin Chung – Korea Gas Corporation
Ghada Qaisi Audi – Seddiqqi Holdings
Jiaxing Zhou – China International Capital Corporation (Hong Kong) Limited
Larry Wang – JM Huber Corporation
Paul Fredrick – Schneider Electric
Yun Choi – LG CHEM

Note: Alphabetical Order by First Name

Our Visionary Client Service Law Firm of the Year for Asia went to Cyril Amarchand Mangaldas, which launched India's first legaltech incubator in February. The judges gave credit for the fact that the whole firm has taken part in driving new ideas focused on legal service delivery and client focus. This has led to pioneering use of artificial intelligence tools in the Indian market, with the ability to provide end-to-end services based on AI for large transactions and disputes. The firm has also been on a mission to standardise documents and legal drafts to ensure consistency, quality and efficiency for clients.

In the international law firm category, Clifford Chance demonstrated real commitment to the region, devoting significant resources to initiatives aimed at ensuring its clients in Asia have the best possible experience. In partnership with the Economic Development Board in Singapore, the firm has launched the region's first legal innovation lab, Create+65, to identify, incubate, test and pilot new legal technology solutions. The lab is part of Clifford Chance's innovation and best delivery hub in Singapore.

In a difficult decision for the visionary law firm award in the Middle East, the judges eventually

selected Galadari Advocates & Legal Consultants, which demonstrated its willingness to go the extra mile for clients. In Dubai, the firm made an extremely rare request for the recusal of three judges and set an important legal precedent in a high-profile case. The judges commended Galadari for striving to operate at a high standard and in some cutting-edge areas.

DEAL FIRMS OF THE YEAR

Latham & Watkins was named International Deal Firm of the Year thanks to its role on a host of impressive transactions across the whole region, including the first Cambodian issue of offshore bonds, Vietnam’s biggest ever equity offering and the first infrastructure project finance securitisation in Asia.

South-East Asia Deal Firm of the Year went to Allen & Gledhill, with notable roles on Temasek’s US\$3.6 billion MTN programme that facilitates retail access to debt securities, Posco ICT’s SIAC arbitration proceeding against Hitachi, the first true IPO in Myanmar and Grab’s acquisition of the Southeast Asian operations and assets of Uber, among many others.

Jingtian & Gongcheng won China Deal Firm of the Year, having helped clients to raise more than US\$9 billion during the year, including on Pinduoduo’s US\$1.6 billion Nasdaq IPO, Xiaomi’s US\$4.7 billion Hong Kong IPO and iQiyi’s US\$2.25 billion Nasdaq IPO.

In addition to being named our Visionary Client Service Law Firm of the Year for Asia, Cyril Amarchand Mangaldas also won India Deal Firm of the Year. It played key roles on a number of significant transactions during the year, including India’s first national highway project undertaken on toll, operate and transfer basis, Monnet Ispat & Energy’s corporate insolvency resolution process



Left:
Doreen Jaeger-Soong presents Alain Charles Veloso with his External Counsel of the Year award

and Essar Steel’s auction and acquisition by ArcelorMittal.

Alain Charles Veloso from Quisumbing Torres was named External Counsel of the Year and his firm, Baker McKenzie, was once again named Most Responsive Firm of the Year.

Many thanks to everyone who joined us on the evening and to all those who took part in the process.

Below left:
Yijing Zheng and Sigrid Wettwer of DNV GL receive the Small Team of the Year, Asia award



A message from Michael Lin, Board Director of the Children’s Cancer Therapy Development Institute (CC-TDI)

CC-TDI wishes to express our great and sincere appreciation to the many individual and corporate donors, Patrick, Tim, Rahul and the entire In-House Community for recognising us as their charity for 2019. The total of HK\$74,000 raised in a single night was significantly more than we expected and will go far to keep the lights (and refrigerators/freezers!) on and running at our Portland Oregon facility.

On a personal note, I was especially touched with the many personal stories that event attendees shared with me. Cancer is a truly terrible disease taking many forms – and is consistent only in how it destroys lives and families. I am deeply honoured and appreciative of the trust and kindness bestowed upon CC-TDI and I that evening.

We at CC-TDI will endeavour to be eternally worthy of your complete trust and support. CC-TDI is continuously seeking to improve our facilities and processes to achieve our long-term goal of making all childhood cancers survivable and to help preserve lives and families.

Once again, our sincerest thanks for your incredibly generous donations and support.

For more on CC-TDI, visit <https://www.cc-tdi.org/>



WINNERS: IN-HOUSE COMMUNITY AWARDS, 2019

IN-HOUSE COMMUNITY LEGAL TEAMS OF THE YEAR, 2019

- Asia In-House Team of the Year, **MTR Corporation Limited**, Successful opening of High Speed Rail, West Kowloon & bids for rail projects in London, Stockholm, Sydney, Toronto, Beijing, Shenzhen & Hangzhou
- Middle East In-House Team of the Year (Joint Winner), **Abu Dhabi Global Market**, Registered more than 1200 companies & authorised 80+ financial services firms; First FinTech regime in ME
- Middle East In-House Team of the Year (Joint Winner), **Flash Entertainment**, Elimination of waste in legal supply chain through 6 Sigma implementation
- Africa In-House Team of the Year, **AFGRI Group**, Coverage including handling landmark Silico financing; Team of 5 covering 11 jurisdictions: coverage includes Agriculture, Food, Banking & Finance

IN-HOUSE COMMUNITY COUNSEL OF THE YEAR, 2019

- Andrew Cooke**, Elimination of waste in legal supply chain through 6 Sigma implementation; and delivery of FIFA Club World Cup UAE 2019

IN-HOUSE COMMUNITY INDUSTRY LEGAL TEAMS OF THE YEAR, 2019

- Banking - Asia, **CIMB Group**, Across the board coverage assisting parent with a record net profit 30% increase year on year
- Banking - Middle East, **Abu Dhabi Global Market**, Registered more than 1200 companies & authorised 80+ financial services firms
- Conglomerate, **Mahindra & Mahindra Ltd.**, Group Legal Portal (incl. Litigation) for highly diversified conglomerate
- Energy & Natural Resources - Africa, **AFGRI Group**, Coverage including handling landmark Silico financing
- Energy & Natural Resources - Asia & Middle East, **DNV GL**, Credit Collection Initiative, incl. debt recovery and dispute resolution
- Financial Services (ex-Banking) - Africa, **Alexander Forbes Group Holdings Limited**, Innovative outsourcing solution with Exigent to ensure coverage
- Financial Services (ex-Banking) - Asia, **ICBC International Holdings Limited**, Integral role in Haier / China Europe International Exchange & HK Stock Exchange consultation
- Financial Services (ex-Banking) - Middle East, **SHUAA Capital Psc**, Taking more transactional work in-house, thus avoiding time and money wasted getting external counsel up to speed
- Insurance, **Manulife (International) Limited**, eClaim Project for customer-friendly medical claims
- Life Science & Pharma, **Sanofi (China) Investment Co., Ltd.**, Collaboration with Insurance group on improving patient awareness & access to healthcare
- Manufacturing & Engineering, **Schneider Electric**, Coverage includes Thailand, Vietnam, Myanmar, S Korea, Philippines, Mongolia, Malaysia, & Taiwan
- Other Industries - Asia, **Grab**, Assisted in raising USD3 billion Series H fund
- Other Industries - Middle East, **Aujan Group Holding**, Working closely with Management to ensure compliance in challenging jurisdictions especially prone to international sanctions
- Property, Infrastructure & Logistics - Asia, **MTR Corporation Limited**, Successful opening of High Speed Rail, West Kowloon & bids for rail projects in London, Stockholm, Sydney, Toronto, Beijing, Shenzhen & Hangzhou
- Property, Infrastructure & Logistics - Middle East, **FedEx Express International BV**, Negotiated 140 sales contracts & 1100 procurement contracts & TNT / FedEx integration
- Retail & Healthcare - Africa, **Life Healthcare Group**, Multi-Billion Rand Cross-border deal with India healthcare conglomerate
- Retail & Healthcare - Asia, **AEON Co. (M) Bhd**, Launch of AEON Member Plus Visa Card and AEON Wallet Mobile app
- Retail & Healthcare - Middle East, **Seddiqi Holding LLC**, Standardization of processes for pre-contracting and contractual legal terms with commercial team
- Technology, Media & Telecoms - Asia, **Telstra International Limited**, Project Morpheus - implementing automation in advising clients
- Technology, Media & Telecoms - Middle East, **Gartner**, Business alignment through 360 Risk assessment
- Travel & Leisure - Asia, **Melco Resorts & Entertainment Limited**, Successful completion of US IPO of Studio City with pre-IPO synthetic Up-C structure
- Travel & Leisure - Middle East, **Flash Entertainment**, Elimination of waste in legal supply chain through 6 Sigma implementation

IN-HOUSE COMMUNITY BEST PRACTICE LEGAL TEAMS OF THE YEAR, 2019

- Change Management, **Swiss Re Asia Pte. Ltd.**, Advising Singapore Govt. on the proposed introduction of re-domiciliation
- Compliance, **COSCO SHIPPING Ports Limited**, Corporate wide training re US sanctions & coordination with SASAC companies
- Corporate Social Responsibility (Joint Winner), **Aboitiz Equity Ventures**, Rehabilitation of Wetland 4, Barangay with Dept of Environment & Natural Resources
- Corporate Social Responsibility (Joint Winner), **Schneider Electric**, Essential assistance by providing power generators to rescue the trapped 12 young Thai boys, July 18.
- Diversity, **Hyundai Engineering & Construction Co., Ltd.**, Team comprised engineers and lawyers, thus breaking business silos
- Innovation - Asia (Joint Winner), **Korea Gas Corporation**, Creation of multidisciplinary & international Energy & Natural Resources eLegal Community
- Innovation - Asia (Joint Winner), **Malayan Banking Berhad Group**, Collaboration with GRAB for eWallet
- Innovation - Middle East, **Abu Dhabi Global Market**, First FinTech regime in ME
- Integration, **MERALCO**, Road shows on basic legal principles for internal stakeholders, including 'Let's keep it private'
- Small Team - Africa, **AFGRI Group**, Team of 5 covering 11 jurisdictions: coverage includes Agriculture, Food, Banking & Finance
- Small Team - Asia, **DNV GL**, 5 lawyer team in Singapore, Shanghai and Dubai coverage includes: Maritime, Oil & Gas, Business Assurance & Digital Solutions
- Technology - Asia, **Taikang Insurance Group Inc.**, Registered 461 patents in 2018
- Technology - Middle East, **Accenture Middle East**, Utilization of DP chatbot directing users to tools, people and know-how on data privacy
- Transactional, **Asian Development Bank**, Advised on US\$21.3 billion over 130 loans in 2018

VISIONARY CLIENT SERVICES FIRMS OF THE YEAR, 2019

Visionary Client Service Law Firm of the Year, Asia, **Cyril Amarchand Mangaldas**, Firm-wide effort to drive new ideas focused on legal service delivery and client focus, including pioneering use of AI

Visionary Client Service Law Firm of the Year, Middle East, **Galadari Advocates & Legal Consultants**, Commended for striving to operate at a high standard and in some cutting-edge areas

Visionary Client Service Law Firm of the Year, International, **Clifford Chance**, Demonstrated real commitment to the region, devoting significant resources to initiatives aimed at ensuring its clients in Asia have the best possible experience

Visionary Non-Law Firm Legal Services Provider, **Lawcadia**, Impressed with its innovative cloud-based legaltech platform that combines RFPs, e-billing and analytics

Most Responsive Firm of the Year, 2018, **Baker McKenzie**, Voted most responsive international firm of the year in the most jurisdictions by members of the In-House Community.

DEAL FIRMS OF THE YEAR, 2018

International Deal Firm of the Year, **Latham & Watkins**

South East Asia Deal Firm of the Year, **Allen & Gledhill**

China Deal Firm of the Year, **Jingtian & Gongcheng**

India Deal Firm of the Year, **Cyril Amarchand Mangaldas**

The above firms advised on the most winning deals in our 2018 Asian-mena Counsel Deals of the Year.



Sungjin Kang,
Latham & Watkins



Leonard Ching,
Allen & Gledhill



Liujie Li, Jingtian
& Gongcheng

EXTERNAL COUNSEL OF THE YEAR, 2019

Alain Charles Veloso, Charles Veloso is responsive, diligent and knowledgeable. The thing that stands out the most about Charles is that he offers practical legal advice ... working with me to strategize and provide guidance on the appropriate response"

COMMENDED EXTERNAL COUNSEL OF THE YEAR, 2019

Nominated entirely by in-house counsel and corporate decision-makers in the *In-House Community*, the following external counsel all received the outstanding recommendation of their clients. From our Commended Counsel we also announced the In-House Community External Counsel of the Year (above). Congratulations to all those below:

<p>China</p> <p>Annie Wu (Guohua), Jincheng Tongda & Neal Bangmin Wang, Tianyuan Law Firm</p>	<p>Japan</p> <p>Akiko Monden, Endeavour Law Office Lucas Oliver-Frost, TA Lawyers</p>	<p>Singapore</p> <p>Gareth Deiner, Clifford Chance Gerald Singham, Dentons Rodyk Josephine Choo, WongPartnership</p>
<p>Hong Kong</p> <p>Alvin Ho, Pinsent Masons Anthony Wong, White & Case Asha Sharma, Reed Smith Charmaine Koo, Deacons David Watkins, Slaughter and May Donovan Ferguson, King & Wood Mallesons KK Cheung, Deacons Lilian Chiang, Deacons Mabel Lui, Withers Martin Rogers, Davis Polk Pattie Walsh, Bird & Bird Simon Deane, Deacons</p>	<p>Malaysia</p> <p>Dato' Andy Low, Low & Partners Deepak Sadasivan, Adnan Sundra & Low Lee Shih, Skrine Shannon Rajan, Skrine Tan Sri Dato Cecil Abraham, Cecil Abraham & Partners</p>	<p>South Korea</p> <p>Andrew White, Yulchon Keun Woo Lee, Yoon & Yang Sun Chang, Lee & Ko Sungjin Kang, Latham & Watkins</p>
<p>India</p> <p>Cyril Shroff, Cyril Amarchand Mangaldas Hemant Sahai, HSA Advocates</p>	<p>Myanmar</p> <p>Chris Hughes, SCM Legal</p>	<p>Thailand</p> <p>Ampika Kumar, Baker McKenzie Athistha (Nop) Chitranukroh, Tilleke & Gibbins Peter Shelford, DLA Piper Weerawong Chittmitrapap, Weerawong, Chinnavat & Partners</p>
<p>Indonesia</p> <p>Emir Pohan, Suhardiman Kardono Swadiri Hazwar Melli Darsa, Melli Darsa, PwC Dr. Mohamed Idwan Ganie, Lubis Ganie Surowidjojo Theodoor Bakker, ABNR Dr. Yozua Makes, Makes & Partners</p>	<p>Pakistan</p> <p>Mansoor Khan, Khan & Associates</p>	<p>United Arab Emirates</p> <p>Andrew Greaves, Addleshaw Goddard Christopher Gunson, AMERELLER Robert Flaws, CMS Sara Khoja, Clyde & Co</p>
	<p>Philippines</p> <p>Alexander Poblador, Poblador Bautista & Reyes Law Offices Antero Jose M. Caganda, ZGLaw Alain Charles Veloso, Quisumbing Torres Danny Bunyi, Divina Law Jose Cochingyan III, Cochingyan & Partners Law Offices Lynn Alcantara, Esguerra & Blanco Law Offices Patricia Prodigalidad, ACCRA Law Ramon Esguerra, Esguerra & Blanco Law Offices</p>	<p>Vietnam</p> <p>Bu Ngoc Hong, LNT & Partners Chi Anh Tran, LCT Partners Dang The Duc, Indochine Counsel Hoang Anh, Mayer Brown Dr. Net Le, LNT & Partners</p>

Our panel of independent judges



Doreen Jaeger-Soong, Managing Director, Hughes-Castell (HK) Ltd.
Michelle Gon, Partner, McDermott Will & Emery, former general counsel in China and the US
Peter Connor, Founder & CEO of AlternativelyLegal, former GC and global compliance head
Clinton Swan, Experienced law firm business development and management professional
Nigel Francis, Senior Consultant, YTL, former head of Addleshaw Goddard's Hong Kong office

In-House Community Judges:
Patrick Dransfield, Director, In-House Community
Nick Ferguson, Managing Editor, Asian-mena Counsel



Alexander Forbes Group won Financial Services (ex-Banking), Africa



Life Healthcare Group won in Retail & Healthcare, Africa



Chris Gunson presents MERALCO with their Integration Award



Melco Resorts & Entertainment – Travel & Leisure Team, Asia



Grab received the Other Industries, Asia award



Vincent Connor of Pinsent Masons picking up the Diversity Team award on behalf of Hyundai Engineering & Construction



FedEx Express – Property, Infrastructure and Logistics Team, Middle East



COSCO Shipping Ports – Compliance Team of the Year



Manulife (International) celebrate their Insurance Team award presented by Michael Parker (centre)



Korea Gas Corp were joint winners for Innovation



Aboitiz Equity Ventures were joint winners for CSR Asia



AEON Co. – Retail & Healthcare, Asia winners



Asian Development Bank – Transactional Team of the Year



Sanofi (China) won the Life Science & Pharma Team award



Swiss Re won for Change Management



ICBC International won for Financial Services (ex-Banking), Asia



Our attending 2019 In-House Community Commended External Counsel of the Year take a well-deserved bow



CIMB won the award for Banking Team of the Year, Asia



Joint winners for Innovation, Malayan Banking Berhad



Taikang Insurance won the award for Technology



Andrew Cooke

We speak to the head of strategy and general counsel for Flash Entertainment, and our In-House Community Counsel of the Year, about running an in-house legal team and his outlook for the profession.

By Nick Ferguson, In-House Community

Flash Entertainment is an events company based in the United Arab Emirates. It hosts some of the biggest events in the region, including world-class sports, A-list musical acts, festivals, stage shows and community events.

Overseeing the legal aspects of a company that puts on events for millions of people a year is a challenging proposition that requires a general counsel with a broad range of skills.

Can you describe your professional background and your current role?

I worked for Norton Rose in London, Prague and Dubai. Having qualified into dispute resolution, I subsequently transferred into M&A, focusing on telecoms and retail.

I joined Flash Entertainment in 2011 as its first legal counsel. During my eight years with the company I've had responsibility for IT, HR, internal audit, company secretarial matters and business continuity. Today my title is head of strategy and general counsel.

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

Three is the magic number for both De La Soul and Flash Entertainment! I'm joined by my superstar

colleagues Elham Al Marzooqi and Akshay Narula.

We operate within a workstream framework, the purpose of which is to push responsibility down to the lowest level possible across everything we do. Using structured workstreams also facilitates management to strengths – because we can shine a spotlight on to capability within a specific aspect of our responsibilities – and identifies areas for growth.

What are the biggest challenges you face in this role?

Because I was Flash's first legal counsel, I started with a relatively clean sheet of paper in terms of departmental design.

My primary challenge was to address client perception of what a legal department exists to do and how it interacts with the business. My experience suggests there are two types of clients: those who 'get' what the legal department wants to achieve and understand that building an effective process to lower business risk requires collaboration; and those that have a much more fixed conception of legal as the place you go to get paperwork done. The process of moving clients along this spectrum, from the latter type to the former, is a battle for hearts and minds.

For this reason, we spend a lot of time on internal outreach work. During the Pope's visit to the UAE in February 2019, I worked with the transport team, helping load more than 100,000 devotees off and back onto buses; my colleague Akshay worked in our joint operational command centre, logging incidents and helping to distribute resources; and my colleague Elham helped with lost children. For other events we have sold tickets, shown fans to their seats in grandstands, and worked in the operational control centre. These activities have been incredibly helpful in generating empathy and furthering relationships.

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

First, a clear view of what the legal department exists to do. I strongly endorse the development of a vision and mission for the legal department – it can really help generate focus and meaning.

Second, having a plan. What resources do you have – human, monetary, know-how, IT, etc? How will you deploy them in support of your vision and mission? How do you give your team visibility on issues so that they are not constantly firefighting? GCs should have good answers to these questions.

Third, the GC is an office; it's an institution. It is something you are appointed to which means something more than 'just a job'. So you need to be aware of your behaviour and the messages you send through the things you do and say. This is the proper context for the requirement that GCs should have, for example, a decisive approach to decision-making, and bulletproof integrity; that's because the office of GC demands these kinds of behaviours.

How is technology changing the way you work?

Building on my response regarding resources, above: we look at tech as something to be harnessed rather than beholden to, to the extent that is possible! I am grateful to bigger, much better resourced teams than mine, who have spent millions on products that are of zero use to us (like e-discovery solutions and fancy DMSs) but which have created a market for the kind of creative, niche vendors who we are interested to work with. For example, our contract-building chatbot has fully automated our volume contracting workflow – it cost us time, a bit of thought and the cost of a rounding error on a magic circle firm's bill.

Has the in-house legal function changed significantly during your career?



Absolutely. There's now clear water between the skillset of counsel in-house and in private practice. In the Middle East I think the difference is particularly marked because (at least anecdotally) many in-house counsel have seen both the companies they advise, and the nature of the risks those companies face, change rapidly during their tenure. Growing with these business has given in-house counsel a deep understanding of how they work, which is near impossible to replicate as an external adviser. That's why you see the responsibility of in-house counsel really expanding: first, you take a smart person with natural authority; then you have them engage and regularly problem-solve with multiple business departments, giving them fantastic business empathy – and, surprise, fantastic results.

What do you look for in external counsel?

Readiness to operate within our process flow. That sounds a bit cold but it's amazing how hard some counsel find it to comply with our rules around the quality of narratives, or who break through a cap without prior notice and expect us to meekly accept it.

What type of work (and how much) do you outsource to external firms?



“We’re already at the stage where automation is prevalent – the future is here, so to speak. Just as in healthcare, I see legal moving in a more holistic direction”

As little as possible (or alternatively as much as our process requires). Our mission as a department includes long-term value return to our shareholder. In most instances, it is more aligned with this mission for my team to create a solution and optimise it over time than it is to create a short-cut through the engagement of counsel. The main exceptions are administrative work, like the maintenance of trademark portfolios or the renewal of trade licences; new market analysis, where local insight is advantageous; and frontier work where the initial learning curve is too steep for us to confidently attack.

Looking forward, what changes do you foresee in the way that legal services will be provided in the future?

We’re already at the stage where automation is prevalent – the future is here, so to speak. Just as in healthcare, I see legal moving in a more holistic direction. Risk management will shift from infrastructure to behaviour, and lawyers are going to have to make the same transition – away from paperwork and towards people.

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

With very limited exceptions, I love lawyers.

They’re commonly clever, opinionated, hard-working, goal-oriented high achievers. They get things done. Sometimes this can get lost or forgotten, particularly for lawyers working in big firms (where these kinds of behaviours are common; if you were to look for the incidence of these behaviours across the general population, law firms would be a statistical anomaly).

So my advice to young lawyers is: recognise your worth. Do something that creates meaning in your life and which makes the most of your many wonderful capabilities. In my career I have moved from litigation to M&A and from M&A into entertainment; so don’t focus relentlessly on practice area, because you can change it if you want to.

What are your interests outside of the legal profession?

My wonderful family, of course, including a dog called Chief who is better across every conceivable measure than any dog owned by anyone reading this column.

Working in entertainment allows me the opportunity to mix work and pleasure, which is a blessing; if Flash was more involved in cricket and cycling (and we are ready to help!) then the Venn diagram of these two worlds would finally become a circle.

Whistleblower investigations: Keys to responding to a dynamic event



Michael Olver

In-house teams should be prepared for an inevitable increase in incidents requiring investigation as whistleblower protections grow.

By Michael Olver, Pacific Strategies & Assessments

Over 15 years I have had the privilege of working with some of the best in-house and external teams as they work to mitigate critical risks to their organisations. Among these challenges, the process of investigating and responding to whistleblower allegations of corrupt practices is uniquely dynamic. It is often fast paced and tense, with significant implications for both the company and the individuals allegedly involved. From this experience I have only seen a handful of truly excellent responses, but they each share several core aspects in common – even though the allegations, responses and companies and industries involved may differ significantly.

Leadership

In times of crisis, external law firms and investigations firms can bring decades of expertise to help prepare an opinion, obtain information and arrive at a solution. But an organisation needs strong leadership to be able to ask the right questions and appropriately scope an investigation, direct its consultants and then act decisively and effectively on the basis of

the investigation's conclusions. An experienced in-house counsel who has the support of the CEO and has been empowered to act quickly is best placed to lead investigative efforts and, in turn, to quickly limit vulnerabilities.

On several occasions I have been engaged by parties whose only power lay in infrequent access to a distant C-suite figure who was only marginally present. They had no ability to change consultants or the scope of work of the investigative team, and they could not act on information in anything close to real time. Such limitations would often delay the delivery of findings to key decision-makers, which in turn would limit options. In cases where allegations are proved to be correct, this model of organisation will often heighten rather than reduce vulnerabilities. Most commonly it results in a scenario in which strong indications or even proof of significant corrupt practices might be discovered but are nonetheless “permitted” to continue for months because of an inability to take action. It goes without saying that a regulator's view of such inaction would hardly be forgiving.

Preparation

Only the exceptional rise to meet a crisis – the rest of us fall to the highest level of preparation. The companies that deal the best with whistleblower events are those that already have whistleblower protocols in place and have procedures for responding to such allegations. A great response team comes to the investigation from the outset with a detailed understanding of its internal reporting and external disclosure requirements for a range of issues. The team members understand when to “wake up the board” and have already planned out whom to engage, how to maintain confidentiality and how to initiate a process that preserves as many options for their firm as possible.

A company where the chief legal officer is learning the company whistleblower handbook (or worse, that of another company) at the launch of a response should likely cancel any big plans for a while and prepare itself for a steep and painful learning curve. It should also expect to rely on a lot of expensive external advice and make some significant mistakes along the way.

The variability in content and jurisdiction make preparation for a whistleblower event difficult. There are many potential complications that can and must be anticipated, discussed and thought through in advance. For example, over the past two years we have had numerous discussions with informed clients on the implications of the notable May 2017 ruling in the matter of SFO v ENRC. This is one of several recent rulings to introduce ambiguity regarding the extent to which privilege can be relied upon in investigative matters. These discussions always indicate to me a well-prepared team seeking to think through the likely practical implications of the potential for a UK judge ruling to suspend privilege. Such conversations may extend to the types and extent of safeguards which would need to be put in place to prevent this from happening during any prospective interviews or investigations into alleged corrupt practices.

As with all preparation, one should plan and develop tactics and strategies to avoid something that may never occur. Such groundwork will be much appreciated if the contingency arises. In the one instance in the past year where this privilege issue was judged to be a potential factor, having a formula for managing a complex but known risk at the outset enabled an investigation to assist a client in identifying a risk, rather than creating one.

Responsibility

The best responders consist of a well-organised team that allocates and reallocates responsibilities on a frequent basis in response to events as an investigation unfolds. But it is also important to clearly delineate responsibilities before an investigation even commences. Depending on the scenario, a response team may consist of two to 100 people conducting interviews, document reviews, e-discovery or engaging in other field-based investigations. At every moment of discovery each member of the response team must understand what the group is trying to accomplish that day and must know who they are responsible for reporting to. Effective teams have clear organisational structures and unambiguous reporting lines that include cascading oversight and, ultimately, access to key stakeholders in the organisation. They have clear policies covering who may instruct or adjust an investigation.

“On more occasions that one might expect, I have seen an inexperienced mid-level leader in a client company take a team and its rather costly resources down an expensive and ultimately counterproductive rabbit hole”

On more occasions that one might expect, I have seen an inexperienced mid-level leader in a client company take a team and its rather costly resources down an expensive and ultimately counterproductive rabbit hole before more experienced hands prevailed. Alternately, but with largely the same outcome, capable investigative teams might sit idle for weeks for lack of clear direction once on the ground. Planning and oversight are essential to an effective response.

Priorities

Allegations of corruption generally present several possible actions, including multiple investigative avenues. Elements of an allegation requiring confirmation or identification can include the claimed payment mechanism, names or descriptions of the alleged parties involved, the description of the arrangement and its alleged frequency, named affiliated companies, shell companies and names of individuals known and unknown to your organisation. Investigators might

be able to interview the whistleblower or correspond with them. Or they may have access to a key witness. Once an allegation is made, there is typically a broad array of options, ranging from taking no action, to conducting a google search, to engaging an external firm.

The best teams start from the premise that even though they may be well prepared, the clock is ticking from the moment the complaint is received and they do not have infinite time or resources. They also acknowledge that choosing to initiate an investigation is the first in a chain of key decisions, not the last. The best even acknowledge that they are going to get some of the decisions wrong, but that wrong or right, decisions need to be made to move forward.

Investigative priorities need to be set by leadership but should subsequently be revisited often – even daily – by investigators, responders and researchers to avoid a dissipation of efforts. In almost every investigation of any difficulty, a good investigative leader will work directly with a client to ensure that their focus is only on those lines of inquiry that materially impact the focus of the case. Without actively and consistently refocusing and making decisions on what not to follow up on, an investigation will stall. Investigators often frame it as regularly “thinking strategically rather than tactically” with the guiding question being, “which action today will have a maximal impact on the investigative goal?” No matter how it is framed, a good whistleblower response investigation is an exercise in the active and regular setting and resetting of priorities.

“In selecting a team, it is best to review the allegation in detail and break down its component parts to identify the minimum required personnel”

Discretion

The best response teams know to balance the need to be discreet with the need to get things done quickly. The fact that representatives of human resources, audit or IT all had a role in the last investigation does not mean that they must be part of every investigation or indeed that they should be privy to the full facts of an allegation while the matter is still at the stage of a complaint. It is actually preferable for an investigation into any allegation – regardless of its sensitivity – to be limited in the number of

people involved. Ideally a team should be composed of the minimum number of people representing the required skillsets or access.

In selecting a team, it is best to review the allegation in detail and break down its component parts to identify the minimum required personnel. For example, if there is an IT component to the case one might ask whether it is necessary to involve the head of IT or instead simply request logs for a particular day without disclosing any details as to why. Sometimes, it is necessary to go to greater lengths to maintain discretion.

To give a (highly anonymised) example, a client received an allegation in which the claim and the persons named were so sensitive that it could not be openly investigated without significant potential impact on continuing business, stock price and, if true, action by the local authorities. A C-level executive was therefore assigned ownership of the matter by the board. He engaged an external law firm, which in turn tasked our investigations firm under privilege. On engagement we first ran a standalone research and investigations team to seek to validate those broad aspects of the claim that were entirely external to the client to confirm the veracity of the allegation. This was done without any one of the external investigators knowing the client’s identity or the total dimensions of the allegation they were investigating.

In parallel, a completely separate team was deployed to the client’s site as “a consultancy seeking to look into breakdowns in processes and policies”. This included an evaluation of the anti-bribery policy and the vendor on-boarding process, which allowed us access without misrepresenting ourselves. Logs were requested from IT and files from HR by the consultants when appropriate and by the appointed manager when this was not. For three months the investigation employed over 20 people. By the end of the case only three people in the client company were aware of the existence of the allegation or of the investigation, and only five people either within or outside the company ever knew the full details of the allegation.

Perspective

The best teams approach every case as if it is likely to be a long-running issue even while team members may move on and off the team. This means they keep accurate case files and records, establish rules governing communications, chains of evidence and storage of material, and maintain

multiple electronic and hard copies of relevant material including investigative notes.

It is always better to approach each allegation and subsequent investigation from the beginning with a view to potential litigation or regulatory action rather than to try to prepare for this at the end of the process once all external parties have moved on.

A good team must keep in mind during the investigation and especially during its communication on the process that the matter may be subject to either affirmative or defensive litigation and to plan accordingly. In cases where either is a potential outcome, rules covering what is communicated and to whom should be put in place at the outset and modified as the matter and understanding of the risk develops. A flowing email chain with multiple parties in CC is rarely a good idea for critical communication either from an evidentiary standpoint or in the interests of discretion. Instead, it is advisable to provide limited recipients who must be kept informed with dated memos or briefing notes and reports containing detailed findings and evidence in associated annexes for later use. It may be worthwhile to have a monthly update report provided to maintain detailed records of actions as well as associated findings. These tempo reports then become the basis of all knowledge as personnel cycle through and events move on. They should also be used to create or modify the final evidential pack and overarching report of findings. This becomes more essential the longer an inquiry runs and the more turnover in team members and leadership occurs.

An example of the importance of such practices comes from a colleague at a previous firm who participated in a case that started as a six-week engagement and turned into a multi-year investigation into multiple complex and varying allegations of corrupt behaviour across 54 countries. Some years later the client chose to pursue the counterparties in civil court for damages, which subjected its investigation and documentation methods to scrutiny by the defence. It became clear that because of the duration and the turnover in participants during the investigation, key materials supporting the client's case had been misplaced and could not be recovered or recreated. In some areas of the case there was uncertainty about what evidence specific conclusions were based on. This severely limited the positive financial outcome of a sophisticated five-year investigation.

Looking forward

In the past decade, whistleblower protection legislation has become an important part of the international good governance agenda. Following commitments made by the G20 in 2010, more than a dozen countries have added or revised whistleblower protection statutes, and dozens more have legislation planned. As whistleblower protection continues to grow as an integral part of the compliance landscape, in-house teams should be prepared for the inevitable increase in incidents requiring investigation.

“It is always better to approach each allegation and subsequent investigation from the beginning with a view to potential litigation or regulatory action rather than to try to prepare for this at the end of the process”

According to the largest dataset of whistleblower reports available, published by PSA's partner Navex Global, approximately one-quarter of complaints relate to integrity issues such as corruption and fraud, or misuse of company assets – and nearly half of such complaints are substantiated in some way. It is therefore not a question of if, but only a question of when, the in-house counsel of any company will face the challenge of running an investigation into corruption. With this in mind, I've presented these insights in hopes that they can comprise a helpful primer for dealing with the inevitable challenge of managing or controlling an investigative response into corruption allegations. However, at the end of the day there is no substitute to an experienced team operating under an experienced and prepared leader in a time of crisis.

Pacific Strategies & Assessments is a global risk consulting firm offering ethics & compliance, investigative and advisory services.



The growth of third-party funders

Growing awareness of litigation funding is making it easier for businesses to pursue disputes.

By Patrick Gearon and Gareth Mills, Charles Russell Speechlys

When contemplating the commencement or defence of litigation proceedings (be they court proceedings or arbitration) it is almost trite to say that the most common uncertainties/concerns expressed by in-house counsel, and the businesses they represent, relate to the costs of the litigation itself.

Cost is now ranked as one of the worst features of international arbitration and litigation, according to a survey by Queen Mary University of London, yet despite this concern the headlines in the legal and financial press during the past 24 months have shown that litigious proceedings are increasing both in terms of cost and the number of cases. The 2018 English Commercial Courts Report revealed a continuing upward trend in litigation, with the number of international commercial cases heard in the preceding year rising by 7 percent and the number of litigants by 22 percent. A similar report issued in 2018 by the Dubai International Financial Centre (DIFC) Courts revealed that the number of cases filed with the first instance courts there had spiked by 64 percent in the first half of 2018, while the overall value of claims increased by 181 percent over the same period – these increases were also reflected in enforcement actions brought to recognise foreign judgments and small claims at the DIFC Court’s Small Claims Tribunal.

The fact of an increasingly litigious global business environment has been concurrently reflected in business’s approach to litigation in recent years. According to a Thomson Reuters

survey of in-house counsel and litigation lawyers in the US, the UK and Australia conducted in 2017/2018, more than 72 percent of the lawyers surveyed noted that the costs of litigation were increasingly important to the business of law.

The reasons for the increases evidenced by these statistics are various, but one important factor has been a concurrent increase in the availability and utilisation of third-party litigation funding.

Third-party funders and the role of external counsel

At a basic level, third-party professional funding is where a third party funds all or part of the cost of a dispute in return for a share of the proceeds of the dispute if it is successful. If the litigation is not successful, the funder bears the costs it has agreed to fund. Increasingly litigation funding can be deployed in innovative ways and via the efficient use of technology: this area is predicted to significantly increase its use in the near future.

Although most of the recent articles and promotional literature surrounding litigation funding intimate that it is a novel phenomenon, in fact the availability of third-party funding (of one form or another) has been permitted in the UK since 1967. What has changed, however, is the awareness of the availability of these options.

An Ipsos Mori survey commissioned in 2008 found that half the FTSE 350 executives interviewed knew nothing about options such as “after the event” insurance or “third-party funding”.



Patrick Gearon



Gareth Mills

By contrast, by March and April 2019, The Lawyer surveyed more than 200 companies and law firms to gauge their opinions and attitudes towards litigation funding and found that:

- most respondents say that the future of litigation funding looks bright, with it set to increase in volume and value;
- one-third of survey respondents reported that they have already worked with a litigation funder; and
- of those who had used litigation funding, 77 percent said that it was the partner from external counsel in charge of their case who was responsible for driving the use of litigation funding in their organisation (as opposed to the GC, managing partner or other individual).

The research therefore shows that third-party funding has not only increased in availability and awareness, but is also generally viewed positively by the market place – although businesses continue to rely on their external lawyers to recommend and negotiate appropriate agreements with the funders.

The role of counsel and the potential pitfalls

It would be easy, therefore, to assume that the issues of costs that have been the historic stumbling block to substantive litigation for some institutions have been alleviated by recent developments. To make this assumption would, of course, be to conflate all of the third-party funding industry into an amorphous body that offers the same standard of service and who approach case management and case oversight in the same manner.

This is clearly not the case and it is crucial when exploring the option of third-party funding that the parties funding the case and the lawyers prosecuting the case have a working relationship that serves the ultimate client's best commercial interests (in conjunction with those of the funder). As with all dispute matters, the main role of external counsel is to lead and prosecute the case in the best interests of the client: when a third-party funder is involved, this means that the external lawyers must maintain a tri-partite/multi-partite dialogue with regard to case management and settlement.

More proactive firms, including Charles Russell Speechlys, have taken an additional step (in the interests of clients) of forming a panel of preferred litigation funders, each of which is best suited to various case types and sizes. The additional expertise of such law firms ensures that clients secure the most appropriate type of litigation funding and are able to obtain the maximum cost-benefit from the way in which such funding is deployed. This partnering therefore allows the benefits of third-party funding to be realised by the ultimate client, whilst at the same time ensuring that a close relationship between counsel/funder is maintained.

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ASIAN-MENA COUNSEL Q&A



Kirsty Dougan

The former head of Axiom and newly appointed Asia managing director of Vario talks to Nick Ferguson about her new role and the future of NewLaw.

What is Vario?

Vario is a flexible law service that provides legal consultants (we call them Varios) who want to work differently and enjoy the challenge of new assignments and a more flexible way of working. Vario has been established in the UK for around six years or so and is now in Australia, Hong Kong and Singapore. Since establishing in Asia Pacific, Vario has built a strong bench of over 100 legal consultants in the region.

Vario builds flexible legal solutions tailored to specific business requirements of clients in the region. This offers clients the ability to bring in resources for specific projects or to cover a period of absence with the flexibility to bring this to an end when the need changes. It also gives clients control over costs without compromising on quality.

Our Varios vary in terms of experience, sector and skillset. However, they do also possess certain commonalities – for example, all are choosing this career path and enjoy the flexibility it brings. This choice and their careers are underpinned and empowered by the resources of the Pinsent Masons group. In addition, our Varios understand the benefit of relationships, both with us, each other and with our clients and how this helps them achieve their ambitions in life. Furthermore, all of the Varios go through a rigorous assessment process to ensure our consultants possess the technical ability and behavioural qualities that they need to succeed and that they are suited to the life of a consultant.

What attracted you to join Vario and how does it differ from other flexible-law providers?

Vario is now the largest global bench of legal consultants, attached to a law firm. The rate of growth has been phenomenal, with a new location being added every nine months over the past two years. This is an ambitious business that is having a substantial impact internationally. We are looking at adding another two countries in the next 12 months. That's exciting and I wanted to be a part of it and lead it across Asia.

Another thing that attracted me is the answer to the second part of your question. What makes Vario different? As a part of Pinsent Masons, our Varios get the global support of the firm behind them. When working through us, they will be able to access the knowledge systems and support from a global firm. Being part of the largest bench of legal consultants means that we can find the solution for our clients. It's not just about the size either; each legal consultant is of the calibre that Pinsent Masons would employ. This means that our clients access the very best talent and that more often than not; we can find someone for their needs.

Having led the growth of NewLaw in the past nine years in the region, as the former head of Axiom, the opportunity to bring all my expertise into building a disruptive and innovative business model but within the infrastructure of an international law firm was a compelling and very appealing proposition for me.

What is driving the growth of this sector?

I think it's a real range of factors affecting the sector at the moment. Firstly, client demand – 2008 had a significant impact on business on a global scale. Ever since, clients have sought ever greater value, more transparency, more flexibility and more control. This has placed pressure on all business and law is no different. Hence the rise of ALSPs such as Vario.

Secondly, technology has undoubtedly had an impact. Many of our Varios work remotely for all or part of their contract. This couldn't have been achieved 10 years ago, not without some fall in output. However, nowadays technology enables legal consultants to be just as effective whether they are in the office, at home or working somewhere else remotely. Of course, the relationships that are built through physically being in the office are still really important and I personally advocate this as an important part of being part of a team. It's about balance; time in the office alongside some working remotely is, I feel, a healthy way to operate. This has meant people can accept work they wouldn't have previously, if they had been required to be full-time in the office.

Thirdly, the change in attitudes that has evolved. We've heard lots about Generation Y over the past years and more recently Gen Z. Generations of people who seek greater work-life balance and place more emphasis on their own personal plans and development than they do solely on their career. The millennials are now firmly entrenched in the workforce and we see the impact of this in their career decisions. They are choosing a flexible career, to give them time out to travel, run a passion project or be more available for the family. Interestingly, I don't feel it's just limited to these generations, I think their focus on work-life balance has inspired others to follow in this career path and explore life as a legal consultant.

How have you seen the attitude to such innovations in Asia change over the past decade?

In the early years, pioneering New Law was a rather lonely venture. A lot of time was spent educating the market as to what innovation in

the legal profession could look like for in-house general counsel – and clients were too busy firefighting to adopt innovation in any form. Lawyers are traditionally conservative and risk-averse and there was reluctance to embrace alternative ways of working. Fast-forward a few years, however, and the landscape has dramatically changed in Asia. In-house legal departments have adopted alternative legal services providers as a clever and cost-efficient way of delivering legal services. The next wave of innovation will be technology-led solutions and in this regard Asia is fast catching up on technological developments in the profession elsewhere.

You helped to open the Hong Kong office earlier this year – what are Vario's plans in Asia?

Yes, Hong Kong is the latest addition to Vario. We opened in early May and have had a terrific response in the market since then. I have hired several people to my business team from the New Law sector in Asia and they will all start in July this year. We have a hugely ambitious growth plan for Asia Pacific. Not only will we be looking to serve clients in the market and achieve growth that way, but we will also be looking at new market opportunities and potential acquisitions to accelerate our plans. For me, the opportunity to achieve this within an international law firm platform with the backing of all senior management and the board for my plans for the Asia region is tremendously exciting. There is a refreshing understanding within Pinsent Masons that Asia is not a cookie-cutter market and what might work well in the US or London, does not necessarily translate to success in Asia.

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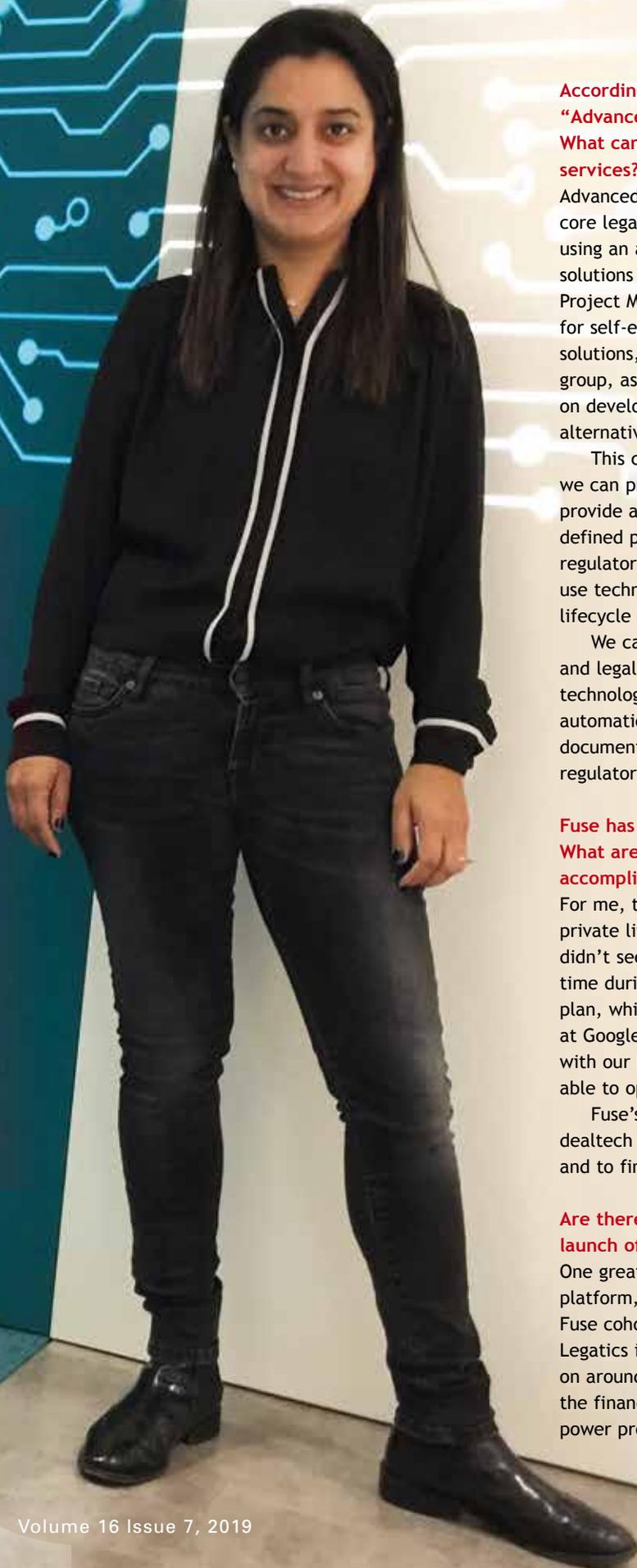
Fuse

The thing about ...

Shruti Ajitsaria

The head of tech innovation space Fuse and a partner at Allen & Overy talks to **Patrick Dransfield** about legaltech, entrepreneurship and London's role in the future of law.

Photo: Patrick Dransfield



According to the Allen & Overy website, Fuse is part of “Advanced Delivery - new solutions designed for clients”. What can a general counsel gain from these suites of services?

Advanced Delivery is A&O’s way of ensuring we deliver our core legal expertise in a client-focused way, whether it be using an appropriate resource or technology. Our resourcing solutions include our Legal Services Centre (LSC), Legal Project Management Office and Peerpoint, our global platform for self-employed consultant lawyers. For technology solutions, we have Fuse and our dedicated legal technology group, as well as our markets innovation group, which focuses on developing solutions for clients using new technology and alternative resource models.

This combination of resourcing and technology means that we can provide a breadth of services to GCs. For example, to provide additional legal resources for a specific project for a defined period of time, such as a major acquisition or regulatory compliance exercise. Alternatively, to help them use technologies such as artificial intelligence and contract lifecycle management to achieve major efficiency gains.

We can also undertake projects for clients, where our LSC and legal technology group deliver an integrated resourcing/technology solution. Recent examples include a document automation project for an asset manager, and a large-scale document review exercise to assist a global bank meet regulatory compliance requirements.

Fuse has certainly lit up a lot of interest in the legal media. What are the origins of Fuse and what does it aim to accomplish?

For me, the idea was sparked from seeing legaltech in my private life, as an angel investor. It made me wonder why we didn’t see emerging technologies as lawyers. I spent some time during my maternity leave putting together a business plan, while attending a three-month course for entrepreneurs at Google Campus. After detailed, but fast-moving discussions with our board, we started funding in February 2017 and were able to open in September 2017.

Fuse’s philosophy is to identify legaltech, regtech and dealtech companies relevant to A&O lawyers and their clients and to find ways to start working together.

Are there any early successes you can share since the launch of Fuse in September 2017?

One great success story is Legatics, an intelligent online deal platform, which has been a member of our first and second Fuse cohorts. We have just celebrated the first year of using Legatics in our banking practice, and it has already been used on around 40 major transactions across 12 countries, including the financing of the Jawa-1 integrated liquefied natural gas-to power project in Indonesia.



Photo: Patrick Dransfield

Just recently, another member of our first Fuse cohort, Vable, launched a new service, Vable Connect. The idea for this service originated from Vable's close collaboration with the global head of A&O research and library, Sarah Fahy, while the company was in Fuse. This kind of co-creation is exactly what we had hoped to achieve with Fuse, and it is fantastic to see it in action.

We had a ground-breaking achievement with Nivaura, a member of our first and second Fuse cohorts. Supported by A&O lawyers, Nivaura executed the world's first fully automated cryptocurrency-denominated bond issuance that was also cleared, settled and registered on a public blockchain infrastructure.

Are there contributing factors relating to the culture of A&O that have contributed to the success of Fuse? Mitch Kowalski among others has identified that law is increasingly a team sport. How has the implementation of Fuse affected the culture at Allen & Overy?

One of the traditional strengths of major law firms is that they offer clients specialist knowledge and expertise in a particular area, be it derivatives, project finance or M&A. Our Advanced Delivery strategy allows us to see the increasing demand for "packaged services" that require more than just our core legal expertise. This, in turn, creates the need for more collaborative ways of working and sharing of knowledge and experience.

The commitment to a culture of innovation and collaboration comes from the very top, and our senior partner, Wim Dejonghe, has stated our clear ambition to become a “second generation innovation business” – that is, one where more than half of the people working there are adopting or actively thinking about innovation and technology. Fuse is definitely at the vanguard of achieving that ambition. It has been a success with clients and A&O lawyers alike, as it has opened – and is still opening – everyone’s eyes to the art of the possible.

You recently took Fuse on a roadshow to New York – do you think London is in the vanguard of global legal innovation?

Aside from e-discovery technology, where the US is leading the field, London has a very strong position in legal technology innovation. But our lawyers and clients are international, and that is why we have taken Fuse on tour to New York, Paris and Singapore. With all these events, we have been steadily building our legaltech capability across the entire A&O network, and engaging with our clients around the world, to explore how technology can help address their particular challenges.

A friend recently asserted that it is harder for a lawyer to become a tech entrepreneur than a tech entrepreneur to learn the basics of law. Do you agree?

Well, you need look no further than some of the founders of our Fuse cohort companies to challenge that theory. Avvoka’s founders, David Howorth and Eliot Benzecrit, were lawyers who, by coincidence, first met while they were both on a vacation scheme at A&O. Similarly, Legatics founder, Anthony Seale, was a lawyer at Clifford Chance.

If you understand the client problem you are trying to address – which these three former lawyers certainly do – and have a clear vision of the technology solution you want to develop, that forms a fantastic foundation for entrepreneurial success.

Who is your mentor?

I’m fortunate enough to have so many.

At work, I would single out derivatives partner David Benton, with whom I worked for over a decade, and Jonathan Brayne, who has supported me to achieve so much with Fuse.

At home, I have an entrepreneur for a husband and three young children, who all remind me every day with their actions, that you can achieve so much with enthusiasm and determination.

“Fuse’s philosophy is to identify legaltech, regtech and dealtech companies relevant to A&O lawyers and their clients and to find ways to start working together”

Shruti Ajitsaria is the head of Fuse, Allen & Overy’s tech innovation space, which opened in September 2017. She is a member of A&O’s i2 - Ideas and Innovation panel and Advanced Delivery board, which are tasked with authorising funding for legal technology pilots and larger projects, respectively.

Prior to launching Fuse, Ajitsaria was a counsel in the derivatives and structured finance group based in London, specialising in credit derivatives – involving drafting almost all of the standard documentation in this area over a period of 10 years.

Ajitsaria is a regular speaker and moderator at legaltech industry events, sharing her experiences of Fuse and how it has changed client and lawyer engagement with technology, as well as her insights into the future potential for legaltech.

She is also leading A&O’s participation in a major research project, ‘Unlocking the Potential of AI for English Law’, which is being led by the University of Oxford and includes the Law Society, Legal Education Foundation and other private sector organisations. Ajitsaria was also selected to partake in the UK’s Judicial Support Scheme, aimed at increasing diversity in the judiciary.

During her maternity leave after the birth of her third child, Ajitsaria undertook the FT diploma in non-executive directorships and a three-month course for entrepreneurs at Google Campus.

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