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**In-House Community
Magazine**



PHILIPPINES

Lower Barriers to Entry in the Retail Industry



CRISIS MANAGEMENT

Effective, Strategic Crisis Management - Before the Crisis Happens



**In-House
Community**

Deals of the Year

2021

**TOP DEALS OF 2021 AND
THE LAW FIRMS WHO WORKED ON THEM**



IN-HOUSE INSIGHTS

In-House Insights with
Linda Mouaz of Nestlé MENA



CONTRACTS

Termination in Commercial
Agency Contracts



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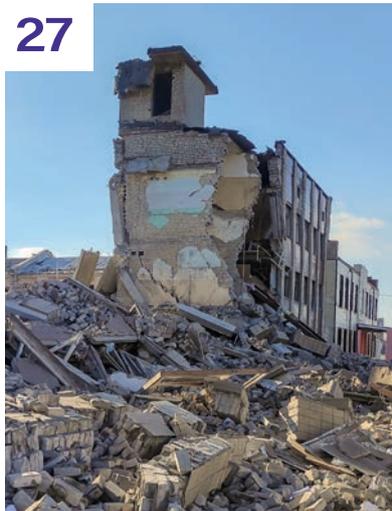
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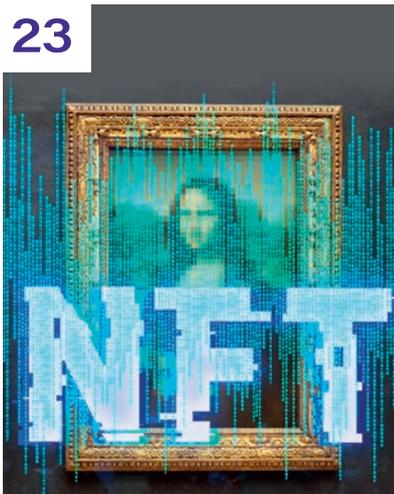
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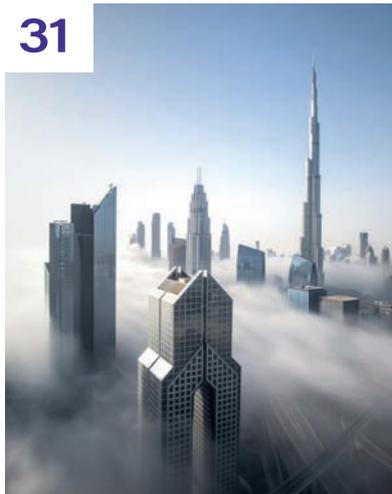
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Lower Barriers to Entry in the Retail Industry

BY MONIQUE B. ANG, ASSOCIATE, ACCRALAW

Based on the latest Foreign Direct Investment (FDI) regulatory restrictiveness index of the Organization for Economic Cooperation and Development (OECD), the Philippines obtained a score of 0.374 on a scale of 0 (open) to 1 (closed). In terms of ranking, the Philippines has the third most restrictive FDI rules out of 83 countries included in the OECD's study.

This perhaps comes as no surprise given that the Philippines has a largely protectionist policy on national economy. In fact, this economic nationalism is built into the Philippine Constitution, which enshrines the Filipino First Policy and nationalises key sectors in our society. However, it appears that the attitude has shifted in favor of FDIs.

On 10 December 2021, President Rodrigo Duterte signed into law Republic Act No. 11595, otherwise known as '[a]n Act amending Republic Act No. 8762 or the "Retail Trade Liberalization Act of 2000", by lowering the required paid-up capital for foreign retail enterprises, and for other purposes' (**RA 11595**).

Under the Retail Trade Liberalization Act of 2000 (**RTLA**), retail trade refers to any act, occupation or calling of habitually selling direct to the general public merchandise,

commodities or goods for consumption which does not cover the following:

1. Sales by a manufacturer, processor, laborer, or worker to the general public the products manufactured, processed, or products by him if his capital does not exceed PhP100,000 (approximately USD1,900);
2. Sales by a farmer or agriculturist selling the products of his farm;
3. Sales in restaurant operations by a hotel owner or innkeeper irrespective of the amount of capital, provided that the restaurant is incidental to the hotel business; and
4. Sales which are limited only to products manufactured, processed or assembled by a manufacturer through a single outlet, irrespective of capitalisation.

Despite its nomenclature, the RTLA, as amended, did not completely liberalise retail trade and retained a clear demarcation line between Filipino and foreign retailers in the Philippines, in terms of economic rights and investment privileges. However, it did ease the requirements for foreign retailers to invest in or engage in retail trade in the Philippines. Notably, its predecessor was Republic Act No. 1180 which effectively nationalised retail trade and prohibited aliens and corporations not wholly-owned by citizens of the Philippines from engaging in retail trade. RA 11595 further lowers the barriers to entry in the retail industry by (a) removing the

investment categories or classifications under the RTLA; and (b) lowering the minimum capitalisation requirements for all foreign retailers to PhP25 million (approximately USD488,000) from a minimum paid-up capital of (i) USD2.5 million (approximately PhP128 million); or (ii) USD250,000 (approximately PhP13 million) per store if the enterprise specialises in high-end or luxury products. The new minimum paid-up capital requirement will nevertheless be subject to review by the Department of Trade and Industry (DTI), the Securities and Exchange Commission (SEC), and the National Economic and Development Authority (NEDA) every three (3) years from the effectivity of RA11595.

In addition, RA 11595 lowers the minimum investment requirement per store from USD830,000 (approximately PhP43 million) per store to at least PhP10 million (approximately USD200,000). Under RA 11595, minimum investment per store is defined as the value of the gross assets, tangible or intangible, including but not limited to buildings, leaseholds, furniture, equipment, inventory, and common use investments and facilities such as administrative offices, warehouses, preparation or storage facilities. The investment for common use and facilities, as reflected in the financial statements following the accounting standards adopted by the SEC or the DTI, whichever is applicable, shall be prorated among the number of stores being served.

Other significant changes brought about by RA 11595 are (a) the removal of the requirement for foreign retailers to obtain a Certificate of Prequalification from the Board of Investments and to show proof of compliance with the prequalification requirements; and

(b) the deletion of the requirement for retail enterprises with foreign ownership of more than eighty percent (80%) to offer a minimum of thirty percent (30%) of their equity to the public through any stock exchange in the Philippines within eight (8) years from their start of operations.

However, RA 11595 retains the reciprocity requirement such that the foreign retailer's country of origin should not prohibit the entry of Filipino retailers to be allowed to register in the Philippines.

Under RA 11595, the DTI, in coordination with the SEC and NEDA, was required to formulate and issue the implementing rules and regulations of RA 11595 (IRR). In this connection, the IRR was issued on 9 March 2022 and took effect on 27 March 2022.

The IRR specifies the documentary requirements for the registration of foreign retailers, which include (a) a Certificate of Inward Remittance of Foreign Exchange issued by an authorized agent bank; and (b) a certificate from the proper official of the home state of the foreign retailer or the local embassy or

Significantly, the IRR clarifies that the registration requirements for foreign retailers apply to foreign retailers intending to engage in retail trade through purely online channels.

consulate of the home state of the retailer to the effect that such state allows entry Filipino retailers to their territory. In this regard, the

IRR defines a foreign retailer as a foreign national, partnership, association, or corporation of which more than forty percent (40%) of the capital stock outstanding and entitled to vote is owned and held by such foreign national, engaged in retail trade.

Significantly, the IRR clarifies that the registration requirements for foreign retailers apply to foreign retailers intending to engage in retail trade through purely online channels.

On the minimum paid-up capital requirement, the IRR provides that the paid-up capital of PhP25 million, which may be in cash or property, may be used to purchase assets for purposes of complying with the investment requirement per store.

On the reporting requirements, the IRR mandates the submission of annual reporting requirements with an attachment to the audited financial statements reflecting the following, among others:

1. Maintenance and actual use of the paid-up capital requirements;
2. Number and location of stores, investment per store, and the status of operation of each store;
3. Stock inventory of locally manufactured products, if applicable; and
4. Other reports as may be prescribed by the SEC or the DTI.

The foreign retailer must also keep its records, inventory, and books of accounts available at all times for inspection by the SEC or DTI, as applicable.

Finally, RA 11595 and its IRR reduce the penalties provided in the RTLA for violation of its provisions from imprisonment of six (6) to eight (8) years, to four (4) to six (6) years, and a fine from PhP1 million (approximately USD20,000) to PhP20 million (approximately USD390,000), to PhP1 million (approximately USD20,000) to PhP5 million (approximately USD98,000).

With the passage of RA 11595 and its IRR, market entry barriers in the retail industry, particularly for foreign retailers, have eased. We will likely see more players in the domestic market, whose investments will, in turn, hopefully boost the economy's recovery from the effects of the pandemic.

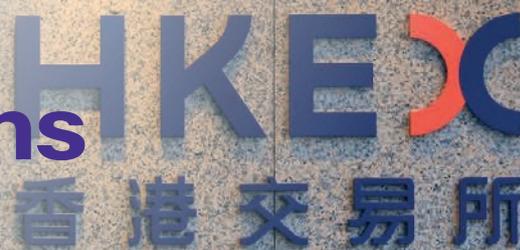
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Revisions to HKEx Listing Rules: How these revisions impact Offshore Listed Companies



BY MICHAEL PADARIN, PARTNER, CAREY OLSEN
TIFFY WAN, COUNSEL, CAREY OLSEN
CALVIN LEE, ASSOCIATE, CAREY OLSEN

From 1 January 2022, amendments to the Hong Kong Stock Exchange Main Board Listing Rules came into effect. These amendments will impact Bermuda, British Virgin Islands and Cayman Islands companies contemplating a listing in Hong Kong as well as existing listed companies. An overseas listed company whose shares are listed, or contemplated to be listed, on the Stock Exchange of Hong Kong must demonstrate how the domestic laws, rules and regulations to which it is subject and its constitutional documents together can provide the core shareholder protection standards as set out in Appendix 3 to the Hong Kong Listing Rules (Shareholder Protection Standards). For this purpose, amendments to the constitutional documents of an existing overseas listed company may be required to demonstrate its compliance with the newly amended Appendix 3. An existing overseas listed company will have until their second annual general meeting following 1 January 2022 to make necessary changes to their constitutional documents to conform to the Shareholder Protection Standards.

Under the revised listing regime, shareholders of all listed companies must be afforded with a minimum level of Shareholder Protection Standards. The following highlight the key features of these standards which are relevant to Bermuda, British Virgin Islands and Cayman Islands listed companies:

- (i) General meetings: A listed company must hold an annual general meeting for each financial year, not calendar year, with reasonable written notice (usually at least 21 days for an AGM and at least 14 days for an EGM) to be given to shareholders for each such general meeting. Shareholders have the right to speak and vote at general meetings unless shareholders are required to abstain from voting by the Hong Kong Listing Rules. The minimum threshold for the right of shareholders to requisition an EGM or to add resolutions to a meeting agenda cannot be set higher than 10% of the voting rights, on a one vote per share basis.

- (ii) **Voting rights:** Shareholders who are required under the Hong Kong Listing Rules to abstain from voting on any particular resolution, or are restricted to voting only in respect of any particular resolution, must not cast any vote in contravention of this requirement or restriction.
- (iii) **Appointment of directors:** Directors (whether appointed to fill a casual vacancy on, or as an addition to, the board of directors) shall hold office until the first annual general meeting of the listed company after his/her appointment, and shall then retire and be subject to re-election.
- (iv) **Variation of shareholder rights:** Any proposed changes to the rights of a class of shareholders with "super-majority vote"¹ must be approved by such class of shareholders.
- (v) **Amendments of constitutional documents:** A "super-majority vote" of shareholders in a general meeting is required to approve any changes to the constitutional documents of the listed company.
- (vi) **Removal of auditors:** The listed company's auditors can be removed by ordinary resolution (i.e. a simple majority of votes of such shareholders as being entitled to do so).
- (vii) **Voluntary winding-up:** A "super-majority vote" of shareholders in a general meeting is required to approve a voluntary winding-up of a listed company.

Any new overseas listing applicant must, at the time of submitting its listing application with the Stock Exchange of Hong Kong, confirm its compliance with the Shareholder Protection Standards as set out in the new Appendix 3 with the support of a legal opinion.

For on-going compliance review (including revisions to constitutional documents) or in

preparation of a prospective IPO in Hong Kong, our team of experienced equity capital markets lawyers in our Hong Kong office has the expertise and experience to provide the necessary legal advice for Bermuda, British Virgin Islands and Cayman Islands domiciled listed companies and can assist listed companies to comply with these changes. To find out more, please contact our corporate team members in Hong Kong:

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Michael heads the corporate practice for Carey Olsen Hong Kong. In addition to advising on investment fund matters, he also advises clients on all areas of corporate and commercial law. Michael represents early and later stage companies in a range of industries, including fintech, life sciences and technology, in relation to private financings, listings (IPOs), cross-border investments and other M&A transactions. Michael lived and worked in the Cayman Islands before returning to Hong Kong and has a wealth of experience dealing with inbound and outbound China deals. He specialises in Cayman Islands, British Virgin Islands and Bermuda law.



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Tiffany advises on a wide variety of offshore corporate transactional matters for Asia and PRC-based clients. Her practice focuses on commercial and corporate finance transactions, including Hong Kong and US-based initial public offerings (IPOs), mergers & acquisitions and cross-border investments. Tiffany has particular experience in acting for China-based issuers and strategic acquirers. She is fluent in English, Mandarin and Cantonese.



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Calvin is an associate in Carey Olsen's corporate and finance team in Hong Kong. He has broad experience across a range of corporate finance, IPO and equity capital markets, M&A, and other general commercial matters. Calvin is fluent in English, Mandarin and Cantonese.

¹ "super-majority vote" means at least three-fourths of the voting rights of the shareholders holding shares in that class present and voting in person or by proxy at a separate general meeting of shareholders of the class where the quorum for such meeting shall be holders of at least one third of the issued shares of the class. This is unless it can be demonstrated that shareholder protection will not be compromised by a lower voting threshold (e.g. simple majority votes in favour of the relevant resolutions with a higher quorum requirement) and in such case a "super-majority vote" is deemed to be achieved.

NEWS



ASLF Joins IndusLaw from April

On 1 April 2022, IndusLaw expanded its real estate practice as it welcomed ASLF, a real estate law firm (operating from Bangalore and Chennai), into its ambit.

ASLF specialises in all aspects of property related transactions, due diligence of immovable property, effective structuring of real estate transactions, foreign investment in real estate transactions, civil litigation, alternate dispute resolution/arbitrations, strategic planning of real estate and commercial transactions. All staff of ASLF, currently made up of 64 employees including 4 partners, moved to IndusLaw.

IndusLaw, itself, is a leading law firm in India which advises clients worldwide on Indian law in relation to transactional goals, business strategies and resolution of disputes. Its practice areas include M&A, capital markets, private equity, technology and telecommunications, and employment. The firm, additionally, has a well-rounded dispute resolution practice, working on matters of contractual disputes, IP, insolvency, tax and electricity litigation, alongside domestic and international arbitration. IndusLaw was founded in 2000 and has over 350 lawyers with offices in Bangalore, Delhi, Mumbai, and Hyderabad.

IndusLaw's merger with ASLF accords with the firms desire to create a niche in the premium real estate market. The move will complement and add value to existing capabilities in handling contentious real estate matters while enabling IndusLaw to broaden its client base and sectors, particularly in relation to real estate. With IndusLaw's capabilities across the several practice areas listed above, the clients of the incorporated ASLF practice will be additionally served across their various legal requirements. This move will likewise offer existing IndusLaw clients more resources, expanded talent and experience.

The merger will be the base for IndusLaw's expansion plans in Chennai, to strengthen its existing relationships as well as to create new business relationships.

Suneeth Katarki, Founding Partner of IndusLaw, had this to say:

"With this expansion, IndusLaw gains increased foothold in South India, a talented pool of resources and a broader network that will enable us to expand services provided to our clients. It will help us create a niche in the premium real estate space and further cement our dispute resolution practice. We welcome them all and look forward to this new journey."

In echoing these positive sentiments, Anup Shah, Founding Partner of ASLF, said:

"I am extremely proud and happy to see my team at ASFL joining IndusLaw. I am sure this will enhance the overall client serving capabilities at IndusLaw. I wish them and IndusLaw greater success."

MOVES



K&L Gates has continued to grow its Australian labour, employment and workplace safety team with the addition of partner **Dominic Fleeton**, who returns to the firm's Melbourne office from Kingston Reid. An experienced safety and industrial relations lawyer and litigator, Fleeton works across a range of industries, including construction industry.



Mourant has added **Michael Popkin** as a partner in its Hong Kong litigation team. Popkin has 25 years' experience advising international clients on contentious issues arising out of a broad range of investment and commercial disputes in Asia, Australia and other major offshore jurisdictions. He joins from Campbells in Hong Kong, where he was a counsel.



IndusLaw has added **Sourasubha Ghosh** and his team to the firm's Mumbai office in the dispute resolution practice. Ghosh has more than 15 years' experience in commercial civil litigation, dispute resolution, arbitration, mediation and conciliation. He has represented corporate houses, banks and financial institutions, and HNIs on various legal issues, including disputes pertaining to constitutional law, contract law, company law and property law. He represented these clients before different forums, such as the Supreme Court of India, high courts and NCLT. He has also advised clients in many domestic and

foreign arbitrations. Ghosh has worked on many landmark litigation matters, which have become precedents. Prior to joining the firm, he has worked with Paras Kuhad & Associates Mumbai and Hariani & Co Mumbai, where he led the litigation team. He has also been associated with Welspun Group.



Baker McKenzie has continued the rapid growth of its Hong Kong transactional practice with the hire of senior capital markets specialist **Thomas Tarala** as partner. Tarala brings a wealth of transactional experience to the firm, and will be advising clients on public offerings, private placements of debt and equity securities, secondary offerings and securitisation. He has broad experience in both equity capital markets and debt capital markets transactions, M&A, funds formation, loans, corporate restructurings, as well as litigation and regulatory issues. As a senior practitioner with over 25 years of experience, he has worked with investment banks, intermediaries and major corporations in Hong Kong, China, Southeast Asia, Europe and the US, and he is well-versed in SEC-registered offerings and Regulation S / Rule 144A offerings. Tarala joins from HNA Group (International), where he served as general counsel in the last five years, and advised on a broad spectrum of business-related issues. He has also worked at Hogan Lovells in London and Hong Kong, and is the former head of the US securities practice in Hong Kong. Tarala is admitted to practice as a US attorney in New York, Connecticut and Florida, and as a solicitor in England and Wales and Hong Kong.

MOVES



Kudun and Partners has bolstered its regulatory and compliance expertise with the hire of **Thanyaluck Thongrompo (Bee)** as a partner in the firm's corporate and

M&A practice, focusing on permits, licenses, regulatory and compliance work. She joins from PKF Tax and Consulting Services Thailand, a member firm of PKF International, where she has been a partner in the firm's corporate legal team since 2020. Prior to PKF International, she formerly worked with Bolliger & Company Consulting, DFDL Mekong (Thailand) and KPMG Phoomchai Tax & Legal. Thongrompo has over 18 years of experience in dealing with a vast array of legal issues for both local and international clients, including company formation; M&A and legal due diligence; dealing with licenses, permits and contracts; Industrial Estate Authority of Thailand incentives; Board of Investment incentives; as well as tax exemptions, personal data protection, intellectual property, and banking services. She also advises clients on foreign ownership structures and restrictions, corporate and commercial matters, employment, visas and work permits, legal aspects related to incorporation and dissolution; real estate ownership and possession; reviewing and drafting commercial agreements; and drafting wills and inheritance. She is a licensed lawyer and a notarial services attorney, and a member of the Thai Bar Association. She holds an LLM from King's College London, and an LLM from Thammasat University, Thailand. She received her LLB from Thammasat University, Thailand.



Morgan Lewis will further strengthen its global tax team with the addition of **Kai Lee Lau** as a partner of Morgan, Lewis & Bockius and a director of Morgan Lewis

Stamford. Lau, who adds local Singapore tax capabilities for the first time, will focus on civil and criminal tax litigation and supporting clients' tax-related needs. He will join the firm later this month, following his 12-year service with the Inland Revenue Authority of Singapore (IRAS). Lau has more than 17 years of experience in tax law. He began his career as a tax lawyer at another top-tier law firm before joining the IRAS, where he served as lead counsel for over a decade. At the IRAS, he led numerous high-value and complex disputes across all tax types, including matters related to corporate income tax, personal income tax, goods and services tax, property tax and stamp duty. Lau is also a chartered accountant (Singapore) with the Institute of Singapore Chartered Accountants, and has been appointed as a mediator on the panel of the Singapore Mediation Centre. During his time with the IRAS, Lau was awarded a full post-graduate scholarship, and attained a Master's in Law from the National University of Singapore.



Reed Smith has added **Bryan Tan** as partner in its entertainment and media industry group and Singapore office. Tan joins from Pinsent Masons MPillay, Pinsent Masons' joint law

venture in Singapore, where he was head of its

MOVES

technology, media and telecommunications practice. Prior to joining Pinsent Masons Mpillay, Tan was the director of Keystone Law, a firm he founded in 2005. With over 20 years' experience, Tan has a broad practice focused on transactional, regulatory and legislative work. He is renowned for advising on TMT transactions across the ASEAN countries. Tan also has extensive experience advising on venture capital investments into fast-growing technology companies, crypto currency projects, including funds, exchanges and international consortiums, as well as cyber security, data protection and digital trade facilitation matters. His client base comprises a broad range of industries across the TMT sector, including video games, fin-tech, VC funds, healthcare, media, telecoms and technology. Tan is a legal adviser to the ASEAN Single Window project and the United Nations Network of Experts for Paperless Trade and Transport in Asia and the Pacific. He is also the co-chair of the TMT sub-committee of the Inter-Pacific Bar Association, and is a member of the Advertising Standards Authority of Singapore.



Shearman & Sterling has added **Wanda Woo** as a capital markets partner in Hong Kong. Her return to the firm adds to its capital markets offering in the Asian market, further strengthening the firm's global platform. Woo brings extensive experience advising on capital markets transactions in Hong Kong, including IPOs, share placings, rights offerings and bond

offerings, as well as regulatory and compliance matters. Her clients include leading investment banks and companies listed in Hong Kong. Woo has also advised clients on M&A transactions under Hong Kong law. Prior to joining the firm, she was a partner at Wilson Sonsini Goodrich & Rosati.



David A. Wolber has rejoined **Gibson, Dunn & Crutcher** as of counsel in the Hong Kong office, where he will continue his international trade practice. Wolber advises companies on the complex legal, compliance, reputational, political and other risks arising out of the interplay of various international trade, national security and financial crime laws and regulations, with a particular focus on economic and trade sanctions, export controls, foreign direct investment controls/CFIUS, anti-money laundering and anti-bribery and anti-corruption. Before rejoining Gibson Dunn, Wolber served as global financial crime counsel for HSBC in Hong Kong, where he advised the bank globally on compliance and risk mitigation strategies associated with various jurisdictions' sanctions, export controls, AML, ABC and national security laws and regulations, with particular focus on such issues affecting the bank in Asia. Prior to that, he acted in a similar capacity as global financial crime counsel at MUFG Bank. Wolber was previously an associate at Gibson Dunn from 2011 to 2017. Prior to becoming an attorney, he spent more than ten years in business strategy and development roles at "Big Four" accounting firms and major US law firms.

MOVES

Wolber earned his law degree magna cum laude from Georgetown University Law Center in 2011. In 1997, he received a Master of Science in Foreign Service from Georgetown University, where he focused on International Trade and Asian Political Economy. “We are delighted that David has returned to Gibson Dunn after an impressive tenure at two major global financial institutions,” said Judith Lee, Co-Chair of the firm’s International Trade Practice Group. “With his in-house experience, his addition is of great benefit to our clients as they continue to navigate their most significant international trade matters.”



DLA Piper has added **Andrew Mackenzie** as a partner and new head of its litigation, arbitration and investigations practice in the Middle East. He joins from Baker McKenzie’s Dubai

office, where he was head of the arbitration, construction and offshore litigation practice. Based in Dubai since 2009, Mackenzie is an England & Wales qualified solicitor-advocate and barrister.

He is extremely active in the international arbitration space, acting for governments and international corporations on complex commercial, construction and finance disputes, as well as frequently appearing before the ADGM and DIFC courts. Mackenzie works extensively across the Middle East, Africa and the Asia Pacific, handling high-value commercial and financial disputes across a variety of sectors, from financial services, construction, life sciences to

technology, energy and natural resources, as well as advising clients on IP and insurance matters.



Clifford Chance will be adding major projects and contentious construction specialist **Spencer Flay** in the firm’s litigation and dispute resolution practice, as a partner based in Perth. With 20

years of experience, Flay advises developers, principals, project sponsors and contractors on dispute management and resolution arising from projects in the natural resources, oil and gas, and infrastructure development sectors. He has successfully represented clients on significant arbitration and litigation matters across the UK, Middle East, Singapore, Hong Kong and Australia. Flay joins from Corrs Chambers Westgarth in Perth, where he was a partner



L&L Partners has added **Ashutosh Narang** as partner in the corporate practice of the firm’s Mumbai office. Narang graduated in Law from India and pursued his LLM

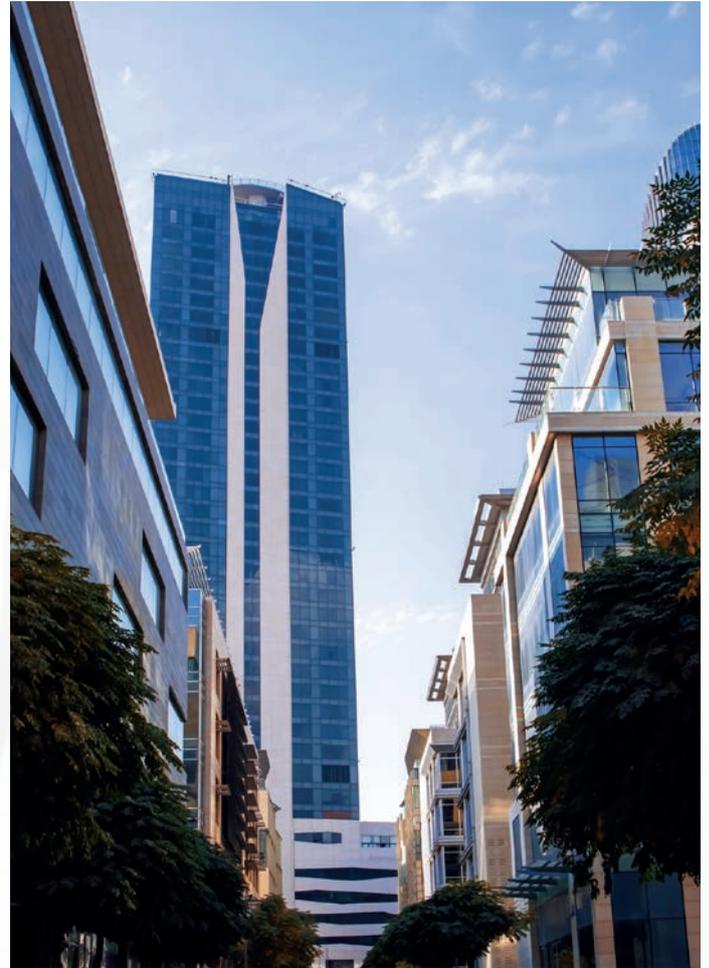
from the National University of Singapore, Singapore. He joins from Capital India Finance, where he was the general counsel and head of legal. During his career of almost 17 years, Narang has been with a number of prominent firms, such as Link Legal, AZB & Partners and Wadia Gandhi & Co.

DEALS

Clifford Chance has advised **Tencent** as lead investor in Scalapay's Series B round equity financing round, pursuant to which Scalapay raised US\$497 million in aggregate. Based in multiple markets across Southern Europe, Scalapay is an innovative payment solution for e-commerce merchants that enables customers to "buy now and pay later" without interest. Partner **Bryan Koo**, supported by partners **Claudio Cerabolini**, **Lucio Bonavitacola** (Milan), **Frédéric Lacroix**, **Laurent Schoenstein** (Paris) and **Marc Benzler** (Frankfurt), led the firm's team in the transaction.

Akin Gump has advised **Capital Investments (DIFC)** and **Capital Investments and Brokerage Company / Jordan**, as the sole structuring agent and manager, respectively, on Capital Bank of Jordan's inaugural US\$100 million Reg S perpetual Basel III-compliant additional tier 1 capital securities offering. The issuance is the first additional tier 1 capital securities offering out of Jordan. The capital securities have been admitted to trading on Nasdaq Dubai. The capital securities were issued on February 24, 2022 by Capital Bank of Jordan, a leading commercial bank in Jordan. In a move that is the first of its kind in the Jordanian banking sector, the issuance was approved by the Jordan Securities Commission, the Central Bank of Jordan and the Dubai Financial Services Authority. **Capital Bank of Jordan**, the issuer, was advised by **Obeidat, Tarawneh & Kurd** on Jordanian law.

Khaitan & Co has advised **Kongsberg Automotive (KA)**, a leading European automotive manufacturer, on the India leg of the global sale of its Interior Comfort



Systems (ICS) business unit to Lear Corporation. The ICS business unit supplies seat climate and comfort systems to major car and seat manufacturers. Kongsberg Automotive is a global automotive technology player that provides cutting-edge technology to the vehicle industry across several countries, and drives the global transition to sustainable mobility by putting engineering sustainability and innovation into practice. Lear, a global automotive technology leader in Seating and E-Systems, enables superior in-vehicle experiences

DEALS

for consumers around the world. Lear and KA entered into a master sale agreement on 28 October 2021, and the transaction closed on 28 February 2022 for a value of €175 million (US\$193m). With this transaction, approximately 3,800 KA employees from Asia (including employees in India), Europe and North America will join the Lear Group. Partner **Anshul Prakash**, supported by partners **Radhika Agarwal**, **Shabnam Shaikh**, **Sudipta Bhattacharjee**, **Shailendra Bhandare** and **Supratim Chakraborty**, led the firm's team in the transaction, which was completed on 28 February 2022. **Squire Patton Boggs**, led by Paris partner **Tony Reed**, also advised on the deal.

Rajah & Tann Singapore has acted for **Sunseap Group** on the S\$1.1 billion (US\$810m) sale of a 91 percent stake by certain shareholders, including Thai energy firm Banpu and Singapore's Temasek Holdings, to leading renewable energy company EDPR. Partners **Chia Kim Huat** and **Hoon Chi Tern** (capital markets/M&A), alongside partners **Lee Xin Mei** and **Adzfar Alami** (banking and finance), and partner **Kala Anandarajah** (competition & antitrust and trade), led the firm's team in the transaction.

Davis Polk has advised the **joint lead managers and joint book-runners** on the debut SEC-registered takedown offering by Honda Motor of senior notes, which consisted of US\$1 billion principal amount of 2.271 percent senior notes due 2025, US\$1 billion principal amount of 2.534 percent senior notes due 2027, and US\$750 million principal amount of 2.967 percent senior notes due

2032. The net proceeds of the offering will be allocated to new "Eligible Green Projects", as set forth in Honda's "Sustainable Finance Framework." This was Honda's inaugural US dollar green bond issuance. Japan-based Honda is a leading global producer of automobiles, motorcycles and power products. The company strives to strengthen its automobile business through efficient Mono-zukuri (the art of making things) and the Honda Architecture. Honda also provides related financial services worldwide, with major finance subsidiaries in the US, Japan, Canada, the UK, Germany, Brazil and Thailand. Honda was incorporated in 1948 as a successor to the unincorporated enterprise established in 1946 by the late Soichiro Honda. Corporate partner **Jon Gray** led the firm's team in the transaction.

Paul Hastings has advised **Zhongyuan Bank** on its Rmb28.47 billion (US\$4.5b) merger by absorption of three city commercial banks, namely Bank of Luoyang, Bank of Pingdingshan and Bank of Jiaozuo China Travel Services. The firm also advised on its placing of not less than 3.105 billion H shares, in a total subscription amount of not less than Rmb3.1 billion (US\$486m). Zhongyuan Bank is the largest city commercial bank in Henan province in China. Upon the completion of the merger, Zhongyuan Bank will acquire all the shares in each of the target banks from the selling shareholders via issuance of the consideration shares. The target banks will also be de-registered. Global partner and chair of Greater China **Raymond Li** and corporate partner **Chaobo Fan** led the firm's team in the transaction.

DEALS

Allen & Gledhill has acted as transaction counsel to **DBS Bank** on its joint venture with Singapore Exchange, Standard Chartered Bank (Singapore) and Temasek Holdings to establish Climate Impact X (CIX), a global exchange and marketplace for high-quality carbon credits. CIX is an initiative from Singapore's Emerging Stronger Taskforce's Alliance for Action (AfA) on Sustainability. The AfA on Sustainability aims to position Singapore as a hub for carbon-related services and nature-based solutions. CIX comprises The Exchange, a digital platform that enables buyers and suppliers to trade large volumes of high-quality carbon credits, and the Project Marketplace, a

digital platform for buying high-quality carbon credits directly from specific projects. Partners **Prawiro Widjaja, Lim Pek Bur, Adrian Ang, Elsa Chen, Alexander Yap** and **Jessie Lim** led the firm's team in the transaction.

Rajah & Tann Singapore is acting for the **Singapore Exchange** on the above joint venture to develop CIX to address hard-to-abate emissions. Partners **Sandy Foo** and **Favian Tan** are leading the firm's team in the transaction, alongside partner **Kala Anandarajah**, who is advising on the competition aspects.

WongPartnership has acted for a **global investment company** on the sale of its entire 12 percent stake in Sunseap, part of a total 91 percent stake in Sunseap that was sold to EDP Renewables for S\$1.1 billion (US\$807.3m). Partner **Mark Choy** led the firm's team in the transaction.

Maples and Calder has acted as Cayman Islands counsel to **Lai Fung Holdings** for the establishment of US\$2 billion medium term note programme, guaranteed by Lai Fung Holdings. The programme is listed in Hong Kong via debt issues to professional investors. Partner **Lorraine Pao** led the firm's team in the transaction, while **Allen & Overy** acted as Hong Kong and English law counsel. **Clifford Chance** acted as English law counsel, while **Global Law Office** acted as Chinese law counsel for the **dealers**.

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危机

DANGER

OPPORTUNITY

Effective, Strategic Crisis Management - Before the Crisis Happens

BY JOHN ALEXANDER A. GREGORIO, ROCHE SINGAPORE

No one ever wants a crisis to happen. As a Legal or Compliance Officer, it is important to be ready and to prepare before it does. As John F. Kennedy said, *“When written in Chinese, the word “crisis” is composed of two characters. One represents danger and the other represents opportunity.”*

Depending on the crisis, there are dangers or certain high-risk situations that you and the company must overcome or resolve. You can never be fully prepared for a crisis, but you can form an effective strategy to weather the storm. You have an opportunity to show your agile leadership and plan ahead before a certain crisis happens.

Here are some useful tips to create a plan or strategy for a crisis that may arise in the future:

1. Ensure that you have a harmonised approach to Legal and Compliance risk and opportunity assessment and management in your company. A well-designed compliance program is based on the understanding and management of the company’s risks and opportunities. E.g. in Asia Pacific, one of the high-risk areas is a company’s interactions with external third parties. Implement a third party risk management approach to mitigate the risks and prepare for possible scenarios where a potential crisis may arise when interacting with an external third party.
2. Create a crisis management task force. Form the team depending on the crisis at hand. Your General Managers (GMs) and/or leadership teams in your company can have relevant training to know the process/procedure of what to do if a crisis occurs. E.g. develop a contingency & response plan; provide media training for certain key employees to properly communicate with the public if questions arise; and work with internal communications functions to effectively communicate and update internal or external stakeholders.
3. Training is a must. You, as a Legal or Compliance Officer, are needed by the business when a crisis arises. Provide the appropriate training and coordinate or collaborate with other functions to prepare, prepare and prepare. E.g. in the situation of a dawn raid, all relevant internal stakeholders should have dawn raid training. Work with your internal legal team or external counsel to enhance your local internal dawn raid policy.
4. Simple documentation is not simple. Develop and write down easy to understand processes and procedures to have in place so that key individuals know what is required of them during a particular crisis. E.g. create flow charts, visualised processes, etc.
5. Practice what you preach. It is suggested to have mock exercises or drills for a certain crisis that you think may potentially arise. We all do not want a crisis to happen, but it is vital that all employees within the company know what to do if indeed a crisis does occur. It may take a couple of mock sessions to get certain employees to learn and understand the



“It’s not about the number of hours you practice, it’s about the number of hours your mind is present during the practice.” – Kobe Bryant



processes or procedures in place. Capture the learnings and insights from each mock session conducted so that you can keep on improving. Assess how frequent these mock exercises or drills need to be done, whether it be yearly or every couple of years. Be mindful that certain employees move or transfer to new roles. Having a proper onboarding for new employees is also crucial so that they are aware of what responsibilities they need to prioritise and be ready for.

“It’s not about the number of hours you practice, it’s about the number of hours your mind is present during the practice.” – Kobe Bryant

6. Have a learning mindset. There are so many ways to improve your skills and capabilities as a Legal or Compliance Officer. The more you enhance your skills and capabilities, the more prepared you are when a crisis occurs. This is your opportunity to shine and show your value in the company. As a parent, I took first aid classes to learn how to help my family and my son in case a certain emergency happens. There was an instance when my son was watching cartoons and he tripped and bumped his head on the table while eating his dinner. He started crying and could not breathe. Food was stuck in his throat. I am thankful that I learned how to conduct first aid for my choking child. Find the areas where you need to improve on certain skills and capabilities that are needed when a crisis occurs.
7. Social media is an area to be ready for. Information on social media can spread like wildfire once posted on a particular social media platform. Ensure that a social media policy is in place to extinguish a fire if a crisis happens.

8. Hindsight is 20/20, as they say. Learn and reflect from past experiences. Engage your internal network and seek advice or guidance from relevant colleagues. It is better to be over prepared than under prepared.

“The ultimate measure of a man is not where he stands in the moments of comfort, but where he stands at times of challenge and controversy.”
– Martin Luther King, Jr.

Do you have a robust, yet flexible crisis plan in place? Is your team prepared for an unforeseen crisis? Which areas do you need to improve on? You have an opportunity to show your leadership and improve your company’s approach to crisis management when there is no crisis yet.

“The ultimate measure of a man is not where he stands in the moments of comfort, but where he stands at times of challenge and controversy.”
 – Martin Luther King, Jr.

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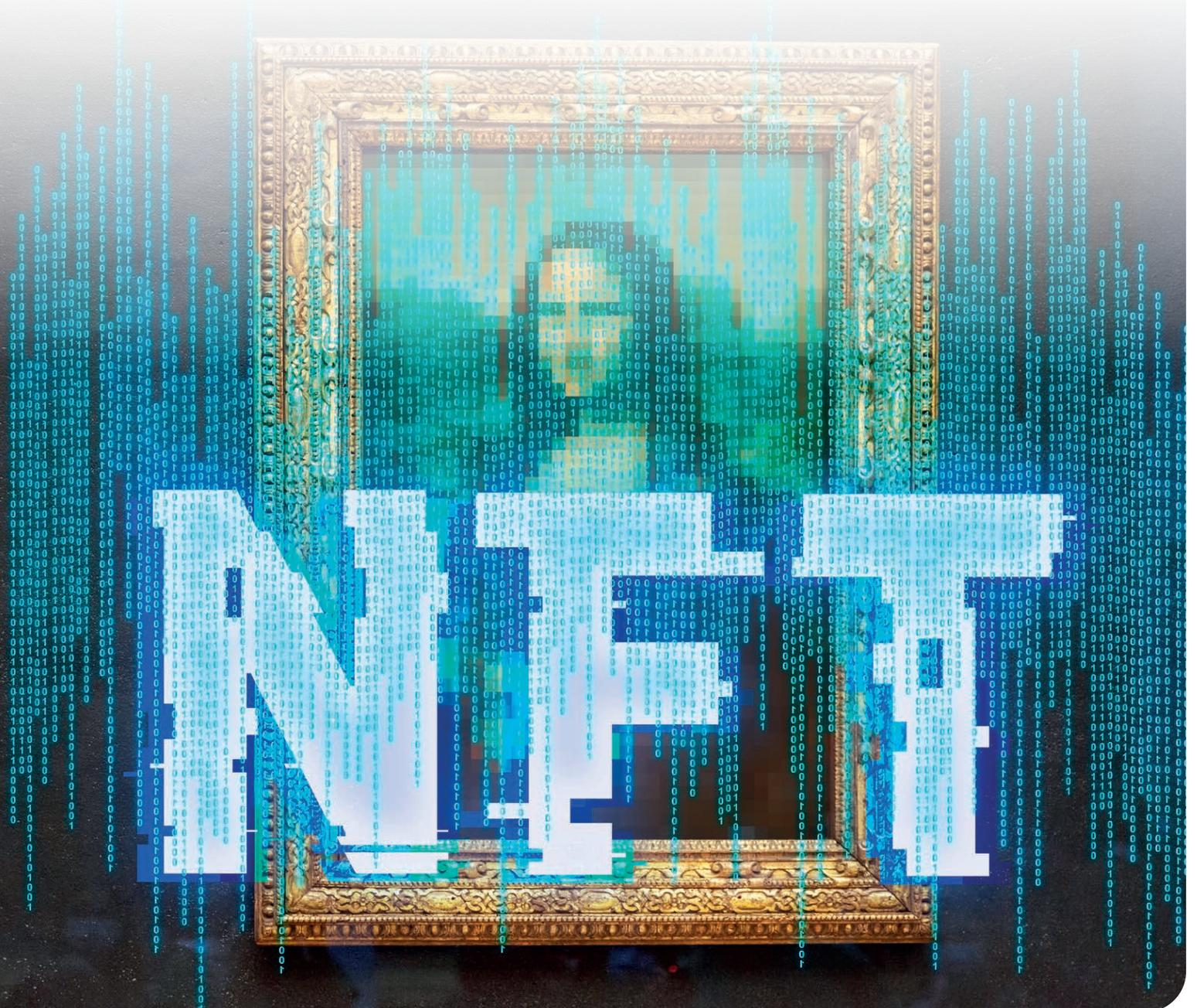


Atty. John Alexander A. Gregorio, Juris Doctor (JD)

A Global Compliance Leader, primarily responsible for the Asia Pacific Region for Roche Singapore Pte. Ltd, Pharmaceutical Division. Over 10 years of experience in the Pharmaceutical Industry. Member of the Roche Global Healthcare Compliance Leadership Team in Basel, Switzerland. Lawyer. Guest Lecturer. Family man. Golfer. Cyclist. Children’s book author.

NFT Risk: Connecting the dots

BY RONALD YU, ARCTIC AURORA ADVISORY SERVICES; CO-DESIGNER OF TARID
FRED CHAN, CO-DESIGNER OF TARID



While most people might think of funny, pricey pieces of digital art when they hear the term ‘NFT’ (non fungible token), NFTs are being employed in an increasing number of applications, including games, music and even automobiles – Alfa Romeo announced its subcompact Tonale SUV will include an NFT that will record vehicle data, generating a certificate that can be used to assure the car has been properly maintained. In addition, NFT arts are used as collateral for financing where lenders could foreclose and own the NFT of a defaulted loan “at a darn good price”. New beneficial applications of NFTs are emerging. For instance, NFTs linked to physical art made by traditional indigenous artists can be listed on online marketplaces, offering these artists a global audience that would otherwise be inaccessible to them.

THE NEED FOR NFT RISK ASSESSMENT

But, as the transaction value and usage of NFTs increase, so too do the needs for the owner to fulfil obligations in, *inter alia*, the reporting for auditing, tax and regulatory compliance purposes, due diligence (e.g. where NFT assets are part of acquisition or merger negotiations), the avoidance of fraud, and ensuring transactional confidence. These risks became all the more tangible when the UK’s tax department, Her Majesty’s Revenue and Customs (HMRC), seized NFTs as part of a £1.4 million fraud case.

Identifying these risks is obviously beneficial – the riskiness of an asset affects its validity which, in turn, impacts its value. Yet, it is far more challenging to map such risks than it would appear upon first glance.

COMPLEXITIES OF NFT RISK ASSESSMENT

To start, a proper analysis of NFTs, like any assets, physical or digital, tangible or intangible, needs to start with some commonly agreed-to basis or principles, yet these important aspects of review are overlooked due to definitional limitations. For instance, one who equates NFTs solely with JPEG images might offer an analysis that could be far more limited than analyses undertaken by others employing more robust definitions. The problem is, not everyone shares the same definition of NFTs. The World Intellectual Property Organization faced a similar problem in defining ‘artificial intelligence (AI)’ when coming to terms with managing AI and intellectual property (IP).

There are also issues surrounding NFTs and related components or technologies that should be acknowledged in a risk analysis. For instance, whether ‘smart contracts’ (which are pieces of software code that can have legal effect) are ‘contracts’ that are legal or enforceable as such, potentially impacting the value of an NFT. Here things are still evolving – for instance, in its 2021 report, the

There are also issues surrounding NFTs and related components or technologies that should be acknowledged in a risk analysis.

UK Law Commission confirmed that “...the existing law of England and Wales can accommodate and apply to smart legal contracts, without the need for statutory law reform” and recognised Singapore’s “...advanced use of smart legal contracts and developing jurisprudence on smart legal contracts following High Court and Court of Appeal decisions in *Quoine Pte Ltd v B2C2 Ltd* ([2020] SGCA(1) 02”.

WHAT FACTORS?

Then there is the matter of what factors to include in a risk analysis of an NFT.

While online sites exist that look at the validity or value of specific kinds of NFTs (some even offering ostensibly free services, albeit with blatant attempts to upsell paid services), there are important limitations with respect to their business (i.e. are their analyses only limited to examining NFTs available on specific, or their own, marketplaces or for specific applications?), and technology (i.e. are they only limited to examining NFTs minted on a specific blockchain?). Some sites only look at specific aspects of NFTs (e.g. smart contracts or the validity of links to the underlying asset) or only provide static snapshots, typically of the shelf value of the NFT.

The validity of links is critical to the NFT’s value, for instance if one bought an NFT for a digital house that one wanted to sell on a marketplace platform. That NFT has value if the link to the house is valid. If the link is broken – the content is moved, the server is down, a cybersecurity attack occurs, the

marketplace goes out of business, there are “cash grabs/rug pulls” by the project team, or the content was simply deleted – the seller will have nothing, other than some digital bits. Moreover, the underlying asset would need to provide some actual value or, financially speaking, intrinsic value – for example, if one were to make an NFT of oneself for identification purposes, the accuracy of the information, given how such data and one’s appearance changes, would also be important.

DISCONNECTS?

These siloed observations do not, however, paint a full picture – there may be disconnects between value and validity. For instance, analysis basing the value of an NFT on the reputation of the project team or transaction volumes of the team’s best past project and focusing on these factors could be artificially inflated by wash trading, where the provider also buys the NFT he or she is selling, perhaps with the help of other agents rigging the floor price – a commonly seen market manipulation technique which exists in the real world.

Moreover, NFT values and validity are volatile. While some are aware that the value, or at least the price, of many NFTs in marketplaces fluctuate over time, they may not recognise the added contribution of legal, technological and business determinants adding to the already existing volatility which, in some cases, can effectively invalidate NFTs or their sales.

INTELLECTUAL PROPERTY COMPLICATIONS

Complications have occurred in copyright disputes between rights holders and NFT minters, among joint authors, or due to contractual restrictions. NFTs for patents can be invalidated if the underlying asset – the patent – is itself invalidated judicially by the relevant national patent office, invalidated due to a simple failure to pay the requisite fees, or

is *de facto* invalidated by rampant infringement. Plus, then, the value of the patent also depends on the relevant technology area, including its stage of development and adoption. Then there are questions whether an underlying asset of an NFT that incorporates other holders' IP rights, such as videos including someone's picture or trademark, can be invalidated through an infringement action.

The newly minted token will be traded separately and may appear to have its own value structure and pricing mechanism. For traders in traditional financial instruments like stocks and commodities, this process may sound familiar.

Aside from IP, considerable legal focus has also been devoted to issues of fractionalisation, a growing trend through the use of a DeFi protocol, particularly with the offering of new tokens minted from a fractionalised NFT or a pool of NFTs as a "spin-off" DeFi project, where the newly minted token can be used for staking, yield-earning or swap through a DEX, like Uniswap. The newly minted token will be traded separately and may appear to have its own value structure and pricing mechanism. For traders in traditional financial instruments like stocks and commodities, this process may sound familiar. In 2008, we had Mortgage-Backed Securities (MBS) – the asset type, and Centralized Debt Obligations (CDO) - the name of the staking instrument - and the insurance swap of CDOs was the Credit Default Swap (CDS). It looks as if it's an instrument of its own with different financial objectives and pricing structure. The risks associated with the first level underlying asset, i.e. the NFT, is often overlooked and

the general public may not even be aware of its existence.

There are also certain geographical and legal issues which exist in the cyberworld related to cryptocurrency (e.g. when China outlawed cryptocurrency transactions and issued a national ban on crypto mining, companies offering NFTs scrambled to redefine NFTs as 'digital collectables'), privacy, and data transfer. But, anyone trying to do such legal analysis also needs to know where to look for the right authorities and that is not always an obvious exercise (e.g. issues of IP or data localisation may be found in trade agreements, not in the IP or privacy statutes).

CONCLUSION

In short, the validity of an NFT can be highly volatile and dependent on a multitude of legal, business and technological factors. Any proper risk analysis must be dynamic and consider these multiple matters at the same time.



Ronald Yu

Ronald is a director at Arctic Aurora Advisory Services and the co-designer of TARID. He has taught classes, and written articles and books on intellectual property, information technology law, digital evidence, NFTs, smart cities, trade law, and Fintech. His upcoming book, co-authored with Prof. Bryan Mercurio of the Chinese University of Hong Kong, *Regulating Cross-Border Data Flows: Issues, Challenges and Impact*, will be published soon.



Fred Chan

Fred is the co-designer of TARID. He is a chartered accountant, forensic accountant, cybersecurity consultant, data privacy professional, business insider, crypto hodler, futures trader, melomaniac, cinephile and more. Fred has over 20 years' experience in high-tech investigations, regulatory compliance and cross border financial forensic investigations in many locations around the world.



The War in Ukraine & Our Legal Community

BY CAITLIN VAN RENSBURG,
WITH INSIGHTS FROM
MYKOLA STETSENKO, MANAGING PARTNER AT AVELLUM

It would be remiss of us not to address the invasion of Ukraine by Russian forces on 24 February 2022, following weeks of efforts across regions at diplomacy to alleviate growing tensions. In response to this conflict, in late February, the United States and the United Kingdom declared wide-scale sanctions on Russia and affiliates, sentiments which have since been echoed by the European Union, Singapore, South Korea, Taiwan and Japan, amongst others. We share key insights from Mykola Stetsenko, Managing Partner at Avellum (a full-service law firm in Ukraine), regarding the situation on the ground and take a brief look at how this conflict, coupled with sanctions, has so far impacted the legal community.

Stetsenko painted a picture of 2022 starting normally, with new projects being initiated as the country emerged from the Omicron wave of the pandemic. In January and February, plans were being made for the resumption of business travel and European conferences, and catching up with acquaintances in person abroad. However, he describes what he felt was “a slight chill in the investment appetite for Ukraine”. Looking back now, he posits that this could be explained by the many warnings in Western media about a potential Russian invasion of Ukraine, causing reluctance on the part of foreign investors to transact in

the country. These warnings, unfortunately, proved cogent as Russian forces invaded Ukraine in late February, the effects of which have rippled globally.

In considering the ramifications of the conflict on the Ukrainian people thus far, Stetsenko said that “the major and most horrific impact of the war is that thousands of innocent civilians have already been killed in Ukraine. Another major impact is that millions of people have been displaced, most of them moving to Western Ukraine and approximately 3 million Ukrainians moving into the EU as refugees.” He added that many towns and villages have been completely destroyed, including a few regional cities and once thriving communities on the outskirts of Kyiv.



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The invasion swiftly impacted the legal community, with Reuters reporting at the end of February that three of the largest international law firms with offices in Kyiv – Baker

McKenzie (with approximately 100 lawyers in Ukraine), CMS and Dentons – had closed their offices there for the time being in a bid to protect both employees and ongoing client work, with the possibility of work resuming remotely. Many other local firms predictably followed suit. On managing ongoing client matters, Serhiy Chorny, a managing partner of Baker McKenzie in Kiev, told Reuters that “[they] have well tested, top-of-the-market security procedures for client data and other sensitive data, including storage and back-up on servers outside of Ukraine”.

Beyond Ukraine, sanctions have also seen a string of international Big Law firms announce their intended wind down/closure of offices in Russia. Firms signalling such moves to exit include White & Case, Dechert, Hogan Lovells, Herbert Smith Freehills, Clifford Chance, Norton Rose & Fulbright, Eversheds Sutherland, CMS, DLA Piper and Allen & Overy. Dentons, having what it asserts is “the largest presence of any other global law firm in both Russia and Ukraine”, had originally stated that it would be maintaining its presence in Russia. However, on 14 March it said that it, too, would begin its exit – leaving its 250-strong workforce in the country to operate as an independent law firm. Baker McKenzie on 15 March said that after 33 years of working in the country, its operations in Russia will likewise break away to continue independently.

This cessation of work will not be limited to matters originating in Russia. Linklaters, in a statement released early March announcing its withdrawal, said that it would not “act for individuals or entities that are controlled by, or under the influence of, the Russian state, or connected with the current Russian regime, wherever they are in the world”. White & Case,

meanwhile, says that it is reviewing all work with Russian and Belarussian clients beyond mere requirements to comply with sanctions, while donating \$1 million to Ukrainian aid efforts.

On 28 February 2022, Singapore became the first country in Southeast Asia to impose sanctions on Russia in what has been heralded as an unprecedented move for the country. These sanctions are two-fold, including both export controls (of goods classified as military, electronic, and telecoms and information security) and financial measures (including restrictions to the entering into of transactions with certain Russian banks and the provision of financial services in relation to the export of certain goods). In a client alert released by Reed Smith, they caution that, in Singapore, “[a]ll companies should assess their risk profile in light of the new sanctions and conduct careful KYC checks to ensure that they are acting in concert not just with the Singapore sanctions, but also with the regimes of any other applicable jurisdictions such as the UK, EU, and U.S.” Such words of warning ring true for organisations world over.



On 28 February 2022, Singapore became the first country in Southeast Asia to impose sanctions on Russia in what has been heralded as an unprecedented move for the country.



In speaking on sanctions, Stetsenko thinks that sanctions imposed on Russia and its businesses are the right thing to do. He wishes, however, that they could have been imposed faster and earlier – “ideally before the

war started” – to act as a deterrent against Russia from launching the war in Ukraine in the first instance. He said that in his view, the extent of sanctions could be broader, although he realises that an embargo on the trade of oil and gas with Russia could pose problems for other European countries.

“Nonetheless, what the West and its people should realise is that this war is not between Ukraine and Russia, but it is the war that Russia started against the whole western civilization. The whole world has been complacent and now all of us have to pay the price. Ukrainians are already paying a terrible toll and unfortunately it will be mounting. It is inevitable that Europeans and the Americans have to also pay their price for the complacency of their societies and their governments. Fortunately for them this price will not be in deaths, but in gas prices, inflation, and more military spending,” Stetsenko said.

In illuminating how his legal peers globally can assist at this time, Stetsenko said that what everyone can do is to continue pressuring their governments to support Ukraine, without losing a sense of urgency. He said that it is also of great import to “penetrate the Russian information bubble and to bring the truth about this horrible war to regular Russian people.” Lastly, he reflects that even after the war there will be much to be done in rebuilding Ukraine and ensuring that such an attack never again happens.

Russia’s many ties to Asian economies through trade, together with jurisdictions in the region imposing sanctions, ensures that geographical distance alone will not buffer the effects felt by local businesses and lawyers, all of which will need to monitor the situation closely and consistently for its potential impacts on business and client relationships. If COVID-19 has taught us anything, it is that in a globalised world, crises – whether natural or man-made – and their calls to respond know no borders.



Caitlin van Rensburg
Editor, IHC Magazine



Mykola Stetsenko

Mykola is the Managing Partner at Avellum and the Head of its Corporate/M&A Practice. His expertise additionally covers tax, competition, and real estate. He has extensive experience in all types of corporate transactions, including acquisitions, joint ventures, IPOs, and corporate governance advice.

Stetsenko is actively engaged in the development of Ukrainian corporate law, namely the regulation of shareholder agreements, LLCs, corporate governance in public companies, and squeeze-out and sell-out mechanisms.

Termination in Commercial Agency Contracts

BY SARA FALAKNAZ, GROUP LEGAL MANAGER, AL GHANDI AUTO

The United Arab Emirates is a beneficial business environment and, in order to improve the same, a new law will be released concerning commercial agency contracts that will replace Federal Law No.11 of 2020 concerning UAE commercial agency law. As the UAE is a country that attracts investment, the new law will grant local markets entry to the worldwide market. Moreover, attracting foreign investments directly is one of the significant purposes of the new proposed law.

The new law will grant commercial agents numerous statutory rights. These rights are intended to protect an agent who has spent a considerable amount of effort and cost in building a profitable market profile for products or services. One of the main changes is

concerning the conditions to end a fixed-term contract. The new conditions under which a commercial agency contract may be expired are as follows:

1. Expiry of the commercial agency contract:
 - a. Expiry of the contract term unless that period is renewed by agreement of the contracting parties.
 - b. By the will of either party based on the terms and conditions of the commercial agency contract.
 - c. By agreement of the contracting parties before the end of the contract term.
 - d. Issuance of a court ruling to terminate the commercial agency based on the provisions of this law or the commercial agency contract.
 - e. Any other case mentioned in this law.

2. In an instance in which a commercial agency arrangement is being transferred to a new agent, unless the two parties to the original commercial agency contract agree otherwise or upon the termination of the commercial agency and when any of the cases set forth above are realised, the assets of the old agent shall be transferred to the new agent at the book value or market value, whichever is lower at the time of transfer. In addition the old agent is entitled to 10% commission when the following conditions are met:
 - a. That the aforementioned assets of goods, merchandise, materials, spare parts, machinery, and others are related to the commercial agency contract; and
 - b. The assets referred to are agreed upon and in the possession of the old agent at the time of the expiry of the commercial agency contract.

There is no restriction on the transfer of ownership to the new agent.

3. Observing the above, it is permissible for a temporary period to re-register the commercial agency for a new agent, in respect of which the new commercial agent shall be jointly liable solidary with the principal towards the old agent for the compensation that may be awarded to him by the competent courts in a final decision.
4. Subject to Clause (2) of Article 8 of the new proposed law and for the purposes of estimating the book or market value of assets and the amount of the aforementioned commission when no agreement has been reached in this regard, either the principal or the agent may file a lawsuit before the court in whose jurisdiction the agency's head office is located to obligate the other party to pay the value of those assets or the amount of the aforementioned commission, as determined by the court.

As per the new proposed law, all matters or disputes shall be submitted to a special

committee prior to commencing any legal proceedings. Under the existing law, either party must provide the committee/court sufficient/fundamental reasons to justify the termination and it cannot rely on the expiry of the fixed term agreement. However, the new law does not stipulate that any sufficient/fundamental reasons may lead to the end of the contract at any time during the duration of the contract.

Therefore, the extent of application of the fundamental defect is not defined by law as it will be for the discretion of the committee/court to determine on a case-by-case basis which might lead to the termination or ending of the contract. In addition, since the law is vague as to the definition of a defect, the parties to the contract have no reference to a definition or indication as to the applicability of the defect. The wide scope of meaning of what a fundamental defect is and what actions are available will affect the parties. A clear definition or example of what a fundamental defect is should be clearly defined in the proposed law. In the UAE, determining fundamental defects are at the sole discretion of the court. It is important for investors to protect their business and not to terminate contracts and agreements after the end of the contract period without legal grounds to do so as most of the contracts provide unique or specialised services which will affect the investor's business.

This will indeed raise the number of cases that will be registered with the committee and Dubai Courts to settle and to provide each party with their rights. The agent will not be in a position to settle any dispute amicably due to the wide scope of the definition of the defect.



Sara Falaknaz

Sara is currently working as the Group Legal Manager of Al Ghandi Auto. She has more than 8 years of experience in litigation and corporate legal matters. Sara has previously worked in both international and local law firm and has

appeared before the United Arab Courts.

Getting to Know Jeremy Lightfoot

From barrister to offshore law - and the lessons learned in between



Q: YOU HEAD UP THE LITIGATION TEAM IN THE HONG KONG OFFICE OF CAREY OLSEN, ONE OF THE LEADING OFFSHORE LAW FIRMS, HAVING STARTED YOUR LEGAL CAREER AND PRACTISED FOR MANY YEARS AS A BARRISTER. IN WHAT WAYS IS LEADING A PRACTICE IN AN OFFSHORE LAW FIRM DIFFERENT FROM BEING A BARRISTER, AND HOW HAS YOUR BACKGROUND HELPED YOU IN YOUR WORK NOW?

It is a real positive that there are now many different routes to progress a legal career and the professions have benefited from having a greater range of backgrounds and experiences: we all bring something slightly different and my team at Carey Olsen is all the stronger for it.

As you mentioned, my own practice started with a decade as a barrister, which often focussed on the end-point of a case, being the trial, judgment, order or appeal. This reinforced for me the value of the outcome. There is no point having an elaborate strategy to achieve various "successes" if at the end of it your client is no better off, the most poignant example being a hard-won judgment

which cannot be enforced against an impecunious defendant. I have continued to focus on truly understanding the client's objectives, asking what success looks like and then working backwards to find a strategy.

As to differences, whilst there are practical and structural differences between the role of a self-employed barrister and the wider role at an offshore law firm, at the core I find there's a great deal of commonality. The role continues to turn on working effectively together with a range of professionals to achieve the client's objectives.

Q: THE LITIGATION TEAM AT CAREY OLSEN HAS GROWN SUBSTANTIALLY IN THE PAST FEW YEARS. IN YOUR EXPERIENCE, WHAT DO YOU CONSIDER TO BE THE MOST IMPORTANT QUALITIES AND ELEMENTS FOR BUILDING A SUCCESSFUL TEAM?

I do not believe that there is anything particularly unique about teams in law firms as opposed to other businesses, and at law firms we sometimes do not focus enough on developing these teamwork skills. I think we all have much to learn from some of the leading sports



teams and organisations, with the All Blacks and Mercedes Petronas F1 being standout examples.

Frankly, I would definitely listen to them rather than me but, in my experience, really it is the basics. If you can put together a blend of complementary skills, with committed individuals and a supportive internal culture, you are on the right road. I am really fortunate to have a talented team of 10 in the Hong Kong office who tick all these boxes and come with the added bonus of plenty of experience living and working in the BVI, Bermuda and Cayman.

Q: IN YOUR LEGAL CAREER, HAVE THERE BEEN ANY EXPERIENCES THAT YOU FOUND TO BE PARTICULARLY REWARDING, CHALLENGING, OR WHICH YOU ARE PROUD OF?

I know I am probably expected to use this as an opportunity to talk about my most high-powered, or glamorous, cases; perhaps that time when I secured a stellar win which incidentally changed the evolution of the law and had wide-reaching ramifications in the market. These types of cases appear to happen daily on LinkedIn. But for me, the times I am most proud of are when things were tough; when we are operating in a difficult

scenario but together we got the job done and the client was satisfied. Those are the times when you really show what your team can do.

Q: IN THE PAST FEW YEARS, THE WORLD HAS SEEN MANY CHANGES AND CHALLENGES, FROM THE COVID PANDEMIC AND THE ACCOMPANYING IMPACT ON THE ECONOMY TO RESTRICTIONS ON TRAVEL. IN THE FACE OF THIS UNPREDICTABILITY AND UNCERTAINTY, WHAT WOULD YOU SAY ARE THE KEY POINTS FOR STAYING RESILIENT AND ADAPTING TO CHANGES? AND HAVE THERE BEEN ANY POSITIVES THAT HAVE COME OUT OF THESE UNPRECEDENTED CHANGES?

I found the most useful approach is to adopt a really rigorous, dispassionate, streaming of developments, whether they be case specific or in the wider world: some you can (and must) ignore; some you can only deal with to the best of your abilities; and some, in the most unexpected ways, can present hidden opportunities. If you keep following this approach, generally you can find a path through most things.

Q: I SEE THAT IN YOUR CAREER YOU HAVE WORKED IN QUITE A FEW JURISDICTIONS, INCLUDING ENGLAND, THE BRITISH VIRGIN ISLANDS, CAYMAN ISLANDS, AND NOW HONG KONG FOR THE PAST 5 YEARS OR SO. BEING IN HONG KONG, A MAJOR CENTRE FOR LAW AND FINANCE IN ASIA, WHAT ARE SOME SIGNIFICANT TRENDS THAT YOU HAVE SEEN, IN TERMS OF THE TYPES OF LEGAL ADVICE SOUGHT AND THE WORK THAT YOU DO?

Hong Kong is a good place to assess what is coming next in terms of litigation, insolvency and restructuring. We tend to be at or around the sharp end of evolving trends. Restructuring continues to loom large, but perhaps as impressive has been the continual flow of successful businesses and funds requiring support as they continue their expansion. We are certainly not seeing a slowdown in the market, far from it.

Q: IN YOUR PRACTICE, YOU OFTEN DEAL WITH CLIENTS FROM ALL DIFFERENT BACKGROUNDS, INCLUDING CLIENTS WHO ARE UNFAMILIAR WITH OFFSHORE LAW. WHAT PRACTICAL ADVICE WOULD YOU GIVE TO PEOPLE WHO PERHAPS HAVE NOT ENCOUNTERED LEGAL ISSUES IN OFFSHORE JURISDICTIONS BEFORE?

Discuss the issues with your offshore advisers, and discuss them early. It is not exciting or novel advice, but it remains key. Our jurisdictions are often more familiar than people expect, but there are important quirks which can catch out the unwary. A prompt short call to chat through an issue with your offshore adviser is always worth the time.

Q: RELATED TO THE PREVIOUS QUESTION, AS BENJAMIN FRANKLIN SAID, "AN OUNCE OF PREVENTION

IS WORTH A POUND OF CURE". WOULD YOU SAY THAT THERE ARE CERTAIN THINGS THAT PEOPLE SHOULD BE AWARE OF BEFORE ENTERING INTO LEGAL AGREEMENTS OR ARRANGEMENTS GOVERNED BY OFFSHORE LAW? AND IF THINGS DO GO WRONG, WHAT ARE SOME COMMON REMEDIES THAT CAN BE USED TO RESOLVE DISPUTES?

There is so much I could say here, so I'll take a different approach and just focus on one aspect: keep a copy of your paperwork and agreements, make sure you get a signed copy of the final versions, and keep a backup of everything.

It's so obvious that some people may think it's meaningless as advice, but I cannot count the number of cases I have been involved with, representing a whole range of clients, where this issue caused really serious difficulties. If one person reading this keeps an extra signed copy, I will score that as a win.

Q: OUTSIDE OF LAW, WHAT ARE YOUR BIGGEST PASSIONS AND INTERESTS?

Motorsport (particularly F1) and all things Italian. If I can combine the two, all the better.

Q: FINALLY, IF YOU COULD HAVE LUNCH WITH ANY PERSON IN THE WORLD (EITHER LIVING OR IN THE PAST), WHO WOULD YOU LIKE TO MEET, AND WHY?

Adam Grant. I've always had a keen interest in advocacy and persuasion, operating in a sphere with many great practitioners showing how it's done. Although Adam operates in a completely different arena, there is an elegant simplicity with which he reformulates concepts or ideas so as to seem self-evidently true, such that they require no further support or justification. I would like to spend lunch exploring with him the opportunities for cross-over and learning about the techniques he employs.



In-House Insights with Linda Mouaz of Nestlé MENA

On leaving comfort zones and finding opportunities in times of change

Q: TELL US ABOUT YOUR PROFESSIONAL BACKGROUND, GIVING AN OVERVIEW OF EXPERIENCE AS BOTH EXTERNAL AND IN-HOUSE COUNSEL.

I hold a master's degree in Business Law, University of Paris II Panthéon-Assas (Paris - France), and a postgraduate degree in Corporate & Tax Law, University of Paris IX Dauphine (Paris - France). I was a member of the Paris and Luxembourg Bars.

Prior to joining Nestlé MENA, I worked for nine years as a lawyer at leading law firms and as in-house legal counsel for multinational groups headquartered in Paris and Luxembourg. I have gained considerable experience in advising, both as an external and as an in-house counsel, on all areas of business law with a focus on the legal considerations of mergers, acquisitions, cross-border acquisitions, corporate restructurings and commercial transactions.





I am currently the Head of Legal & Compliance of Nestlé for the Middle East and North Africa (MENA) market (covering 19 countries). Based in Dubai, I advise on all areas of business law with a focus on commercial, contracts, corporate matters, antitrust, corporate governance and compliance.

Q: YOU HAVE BUILT A CAREER ACROSS MULTIPLE JURISDICTIONS AND NOW, AS HEAD OF LEGAL AND COMPLIANCE OF NESTLÉ - MENA MARKET, YOU MANAGE A PRACTICE AREA EQUALLY TRAVERSING BORDERS. WHAT CHALLENGES AND OPPORTUNITIES HAVE THESE EXPERIENCES PROVIDED YOU?

In-house lawyers, like other functions, are not immune from the human tendency to “do what you know” rather than “do what the job demands.”

When I decided to relocate abroad, I was leaving my comfort zone as I would no longer practice the laws of my home country that I studied and practiced for so long. It was a risk, but I was willing to take it. I had to adapt my legal skills to a new legal environment, but I personally found it easier than adjusting to the culture of a new country.

Nestlé, as the largest FMCG multinational, has amongst its main activities infant nutrition, confectionary, dairy, coffee and beverages, culinary, cereals, health science, pet care, waters etc. These businesses are diverse and require a broad range of legal skills.

Within Nestlé MENA, as we are a small multi-jurisdictional team, we are all generalists and able to advise our colleagues on any area of law in our 19 jurisdictions. It means that we are not specialised (anymore) and we have a

strong, broad legal knowledge. However, none of us are true experts in a specific legal field hence we partner with external lawyers to find such expertise.

Q: AS HEAD OF LEGAL AND COMPLIANCE, YOU MANAGE HOW THE LEGAL FUNCTION IS POSITIONED AND MARKETED WITHIN THE BUSINESS AND BEYOND. HOW DO YOU APPROACH THIS TASK?

In most organizations, it remains a challenge for the legal function to prove its value to the business.

One of the biggest challenges legal departments face is that they have to be on top of everything connected to legal at all times while it is physically impossible (in large organisations) to review every single clause of every single contract. To avoid spreading yourself too thin, empower the business with simple, standard contract templates that have your vetting, but will still require your final approval.

Not only can templates save you time, but they can also help non-legal employees to play a more active role in managing the legal risks attached to their business.

Too often, legal teams have a reputation of being insular or isolated. If you want to be seen as a valued part of the business, it is crucial to make the legal department visible in the eyes of both management and employees.



Too often, legal teams have a reputation of being insular or isolated. If you want to be seen as a valued part of the business, it is crucial to make the legal department visible in the eyes of both management and employees. Just as in-house counsels tend to operate under the radar, so do their accomplishments! Instead of operating in stealth mode, proactively let the C-suite know about your successes — particularly if your actions have generated income for the organisation or resulted in significant savings. Make your wins visible to the whole organisation, talk about them, and promote them to your boss, your peers and colleagues. The more you talk about your wins, the more the C-suite and colleagues will appreciate how much you are contributing to the organisation.

Q: COVID-19 HAS USHERED IN AN ERA OF CHANGE. WHAT IMPACT HAS THIS HAD ON YOUR WORK AS AN IN-HOUSE LAWYER, ESPECIALLY ONE LEADING A LARGE TEAM, AND WHAT ADVICE WOULD YOU GIVE TO OTHERS MANAGING CHANGE?

Over the course of 2020 much of what businesses regarded as normal changed, almost overnight. As a result, every business had to review its strategy. For legal departments, this meant adopting simultaneous reactive and proactive stances as they helped their organisations manage change triggered not only by COVID-19 and the resulting business disruption, but also by events that have generated serious conversations about gender equality and racial injustice. In advising their organisation, in-house lawyers do not only give legal advice, they also have to consider whether the matter is right or not.

Disruption brings increased regulation and risks, but also opportunities.

Disruption brings increased regulation and risks, but also opportunities. Businesses have seen governments react to COVID-19 with an array of new rules, regulations, and laws that could impact a number of areas, from cashflow management and cost reduction, to supply chain management and employment and tax. Legal departments that have successfully navigated these changes will be key to guiding their organisations into the future.

Added to this are governance issues — such as those arising out of the “Me Too” and “Black Lives Matter” movements, and growing concerns about climate change. Such issues speak to the strategic vision of an organisation and bring to light the vital role of the legal department, not only in safeguarding their businesses’ reputation through good governance, but also in helping to lead the way in driving cultural change at the enterprise level.

Q: WHAT DO YOU MOST LOOK FOR IN A LAW FIRM WHEN OUTSOURCING WORK?

I would say:

- Practical experience and excellence with the subject matter.
- Responsiveness – Are they churning a matter or resolving it quickly and cheaply?



- Personality fit / chemistry — Will we have a good working relationship based on personality, character, etc.?
- Diversity, equity and inclusion—Can we see visible efforts and proven results?
- Budget—Will the fees work with our budget?

More and more, I increasingly look to create true partnerships with external legal services providers. It cannot just be words, it has to be reflected in a genuine understanding of our Nestlé MENA legal business strategy, our goals and drivers.

Q: THE PANDEMIC HAS GIVEN US PAUSE TO RE-IMAGINE THE WAYS IN WHICH WE LIVE AND WORK, AND IN WHAT WE PLACE IMPORT. AS A KNOWLEDGE LEADER, WHAT TOPICS DO YOU BELIEVE NEED TO BE ENVISIONED ANEW?

The role of the GC is increasingly morphing towards one of leadership, resource optimisation, budget management and board-level strategy.

There is a feeling among GCs that technology (and the legal technologists and legal operations experts who apply it) will change the face of how both legal departments and law firms operate. But the general consensus in the discussion was that technology is not the answer in and of itself. Rather, it is the careful application of technology in shoring up departmental inefficiencies, freeing up internal lawyers to focus on more strategic and

higher-value application of their skills, which will separate the top-tier GCs from the crowd.

In summary, it is a time of change, which is not always welcome as budgets are cut and headcounts brought under scrutiny.

In summary, it is a time of change, which is not always welcome as budgets are cut and headcounts brought under scrutiny. But for many GCs, it's an extension of wider pressures that their businesses are facing and have been grappling with for some time. Therefore, the emergence of these same pressures in the legal profession was seen by many as having been a long-time coming.

Legal departments can determine their destinies and decide if and how they choose to embrace innovations in technology, new service delivery models, and increased operational efficiencies. No matter what future a legal department envisions for itself, it will need to start forming a strategy and vision for how to get there today.

Q: WHAT VALUES / ATTRIBUTES DO YOU BELIEVE A BUDDING IN-HOUSE LAWYER SHOULD BE CULTIVATING IN ORDER TO SUCCEED AND CREATE AN IMPACTFUL CAREER?

I recently wrote an article called “Becoming General Counsel” which talks about that and was really well received by my legal peers.



I can summarise the different skills as follows:

- Demonstrate a ‘presence’, but adjust it to the audience: always be yourself, but do not forget how you can be perceived or misunderstood by others.
- Understand the business...and a P&L: it is very challenging to be effective and strategic unless you understand your company’s business and the competitive dynamics it faces in the market.
- Being the boss...and facing the storm when things go badly: as general counsel, you are the final legal decision maker, you will be the scapegoat and/or the person to blame.
- Make your way to the top...everyone should know that you would like to be the next/ future general counsel: promoting yourself will not automatically get you on the list but you will be noticed and considered.
- Think strategically, not only legally.
- Enhance your legal skill and your non-legal skills: just being a good lawyer or a strong legal technician is not enough anymore.
- Seek out complicated projects that have exposure to senior management: these types of projects are usually high profile and will give you an exposure to senior management.
- Play politics and understand power dynamics: if you want to get to the top, you need to be able to learn to understand what motivates people, what drives them and what their objectives are.

HK CPD POINTS APPLIED FOR **FREE TO ATTEND**

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An IN-HOUSE COMMUNITY Webinar

Speakers:

VIVIAN YIU **RUOMU LI** **MARCIA ELLIS** **YILONG LUO**

How to Run a De-SPAC Transaction

Wednesday, April, 27th, 2022
10:30am -11:30am Hong Kong Time

Co-hosted with **MORRISON FOERSTER**



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Community**

Deals of the Year

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Deals of the Year

2021: A beacon for growth in pandemic-hit markets

BY CAITLIN VAN RENSBURG, EDITOR, IHC MAGAZINE

2021 saw pandemic-hit markets begin to recuperate, even as a new COVID-19 variant saw borders shuttering once again at year end. Asian markets, in particular, were ones to rebound with clout, with almost all the world's biggest equity capital markets deals coming from the region. EY further reported that Asia-Pacific mergers and acquisitions (M&A) reached all-time highs in the first half of 2021, reframing the year perhaps as more than mere recovery, but as a beacon for growth.

In picking up on trends, we saw the issuance of green bonds (being those the proceeds of which are utilised for environmental or social projects) growing exponentially. Refinitiv reported on a 32% increase in such issuance across Asia, excluding Japan, with a staggering 282% growth reported for Hong Kong alone. On the project front, many of our winning deals have come from the area of renewable energy, with FinTech and telecommunication deals making noteworthy appearances.

EQUITY CAPITAL MARKETS

Bloomberg reported that 7 of the top 10 initial public offerings (IPOs) globally came from Asian companies, up from 5 of the 10 biggest the year prior. Tencent Holdings' US\$14.7 billion secondary share sale proved the second biggest recorded block trade and the biggest follow-on offering globally for 2021.

The region saw many more record-making offerings. In Hong Kong, Kuaishou Technology's US\$5.4 billion IPO and listing is Hong Kong's largest technology IPO in history, and the world's largest by a technology company since that of Uber Technologies in 2019. Kuaishou is one of the most widely used social platforms in China, seeing real investor value placed in this offering with the retail tranche more than 1,200 times oversubscribed, being the most oversubscribed deal in Hong Kong.

In gaming, Krafton – a leading game developer well-known for its PlayerUnknown's Battlegrounds – raised US\$3.8 billion through a global offering and listing in Korea.

FinTech also brought some significant IPOs in 2021. KakaoBank's IPO in Korea drew in US\$2.2 billion. KakaoBank, the leading mobile-only bank and FinTech platform in Korea, is a member of Kakao Group, the Korean internet conglomerate. The IPO of Bairong, a prominent independent AI-powered technology platform in China serving the financial services industry, itself saw the listing of approximately 123.82 million Class B ordinary shares on the Stock Exchange of Hong Kong, raising roughly HK\$3.94 billion (US\$500m).

Breaking further national records, the IPO of PT Bukalapak.com Tbk (a leading Indonesian e-commerce company) on the Indonesian Stock Exchange, including a Rule 144A/Regulation S offshore tranche, raised approximately US\$1.5 billion to become the biggest IPO in the country's stock exchange history. Bukalapak is notably the first Indonesian unicorn technology startup company to list on this exchange.

India logged its largest IPO since the onset of the pandemic with the listing of Zomato, in July 2021, raising Rs93.75 billion (US\$1.26bn), being 38 times oversubscribed. Thailand, meanwhile, recorded its second biggest IPO in history with the listing of PTT Oil and Retail Business Public Company Limited, as well as its highest valued capital markets media sector IPO with The One Enterprise Public Company Limited.

Staying in Thailand, an IPO of interest is that of Prosper Engineering on Thailand's Market for Alternative Investment – noteworthy for it being the first in history to be held exclusively online (due to COVID-19 related constraints), from which investors saw 100% return on the IPO price.

DEBT CAPITAL MARKETS

Our debt capital markets winning bonds in 2021 were overwhelmingly coloured green. Environmental, social and governance (ESG) factors are increasingly finding prominence in investment and business decision making and, as detailed above, this has seen a surge in green bonds globally – with Asia being no exception.

Of note in 2021, was the Industrial and Commercial Bank of China's (ICBC) multi-branch issuance of green bonds listed across Hong Kong, Singapore, Luxembourg, London, and Macao. Issued under ICBC's US\$20 billion medium term note programme, the four-currency, five-tranche transaction comprised: 1) US\$1 billion 1.625 percent bonds due 2026 by ICBC Hong Kong Branch; 2) US\$1.05 billion 1 percent bonds due 2024 by ICBC Singapore Branch; 3) €500 million (US\$579m) 0.125 percent bonds due 2024 by ICBC Luxembourg Branch; 4) £250 million (US\$340m) 1.625 percent bonds due 2025 by ICBC London Branch; and 5) Pt2 billion (US\$249.5m) 0.60 percent bonds due 2023 by ICBC Macau Branch. The proceeds are intended for the financing and/or refinancing of eligible green assets which promote environmental protection, sustainable economic development, and the combating of climate change in eligible green asset categories (as defined in the ICBC Green Bond Framework).

Our debt capital markets winning bonds in 2021 were overwhelmingly coloured green.

Similarly, the Government of Indonesia issued a three-tranche, US\$2.5 billion Sukuk Wakala, comprising US\$1.25 billion five-year, US\$1 billion ten-year, and US\$750 million 30-year (green) Reg S/144A trust certificates. This is

the first 30-year and the longest tenor green sukuk issuance in the world.

Vietnam saw its first green bond in 2021, with BIM Land Joint Stock Company’s offering of US\$200 million 7.375 percent high yield bonds due 2026 for listing in Singapore.

PROJECTS

COP26, held in late 2021, saw 190 countries agreeing to phase down coal power. We saw similar such moves toward greener energy, including solar and wind, in many of our winning deals – this being in line with the green bonds covered above, the purpose of which are to finance such projects.

B.Grimm Power, one of the oldest and largest infrastructure developers in Thailand, in a cross-border investment transaction acquired

COP26, held in late 2021, saw 190 countries agreeing to phase down coal power. We saw similar such moves toward greener energy, including solar and wind, in many of our winning deals...

100 percent shares in a company with the right to develop the first ground-mounted solar photovoltaics project in Cambodia, together with a power purchase agreement for 30 MW with Electricite Du Cambodge for 20 years. The solar project (which is one of three newly approved solar photovoltaic developments in the country), will be one of the last awarded with a favourable electricity tariff, demonstrating B.Grimm’s strong investment and financial capacity in the Cambodian solar power industry.

In-House Community
Deal of the Year 2021
Winner

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VIETNAM INTERNATIONAL LAW FIRM

“EXTREMELY RESPONSIVE AND ABLE TO PROVIDE SOUND LEGAL ADVICE IN A CHANGING MARKET.”
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In Indonesia, Quantum and Sambelia utility-scale solar PV power projects (developed by Berkeley Energy, a leading renewables energy fund) saw US\$20 million in financing. Quantum and Sambelia are part of the first wave of utility-scale solar projects in Indonesia, launched in 2017, and support the national utility PLN and Indonesia's strategy to reduce reliance on diesel and coal power generation. These solar projects are also the first in Indonesia financed solely by an international commercial bank.

2021 also brought project financing for Zhanatas Wind-Power Station LLP's construction and operation of a 100 MW wind farm, including an 8.6km, 110kV single circuit line connecting to an existing substation in the Zhambyl region of south Kazakhstan.

Doosan Heavy Industries & Construction (DHIC) further invested US\$60 million in US nuclear power plant manufacturer, NuScale Power, raising total investment to US\$104 million which will expand the supply of small modular reactor (SMR) equipment and materials. An enhanced cooperative relationship between DHIC and NuScale Power is expected to speed up the commercialisation of SMRs.



In a mammoth deal, both in value and jurisdictional spread, LSEG acquired all shares in Refinitiv, a global provider of financial markets data and infrastructure, for US\$27 billion.



M&A

In a mammoth deal, both in value and jurisdictional spread, LSEG acquired all shares in Refinitiv, a global provider of financial markets data and infrastructure, for US\$27 billion. This deal involved an impressive 21 jurisdictions, including the UAE, UK, US, Botswana, Japan, Kenya, and Ukraine.

2021 also heralded significant mergers in the telecommunications space. These include the US\$12.1 billion merger of Digi.com and Celcom Axiata. The merged company will become Malaysia's largest telecommunications company. Axiata Group, the seller, will transfer its stake in Celcom to Digi.com. Axiata will receive new shares and cash from Digi Telecom and from Telenor Asia, Digi's largest shareholder. The merged entity will have a pre-synergy equity valuation of close to M\$50 billion (US\$11.8bn). It is the largest telecommunications deal in Malaysia.

A similar deal was struck between Gojek, Indonesia's first decacorn, and Tokopedia, one of Indonesia's largest and most recognised unicorns. The merger, effective as of 17 May 2021, formed GoTo Group which is projected to become the largest technology group in Indonesia.

Moving on to education, we recognise that the preceding few years have been particularly difficult for students who have been kept out of the classroom. This next deal looks to boost educational access. Aakash Educational Service's (AES) US\$1 billion acquisition, via a combination of cash and stock, of AES by Think & Learn (Byju's) will enable a business consolidation, via strategic merger, of AES with Byju's. AES operates in the coaching industry in India, also offering short-term classroom courses to prepare students for upcoming

examinations. The company provides its services through classroom-based coaching and digital and distance learning, under the Aakash Medical, Aakash IIT-JEE, and Aakash Foundations brands.

BANKING & FINANCE

Eversheds Sutherland advised on the financing of phase 2 of the cross-border integration of two trade finance initiatives, eTradeConnect (HK) and People’s Bank of China Trade Finance Platform (PBOCTFP) (Mainland China). 13 major banks are providing trade financing services on eTradeConnect which, together with PBOCTFP, comprise the first blockchain multi-bank platforms enabling Hong Kong and Mainland China banks to conduct trade finance business with their customers. This initiative, jointly led by the Hong Kong Monetary Authority and the People’s Bank of China is a major milestone for FinTech collaboration between Hong Kong and Mainland China.

INSURANCE

In insurance, 2021 ushered in the establishment of Greater Bay Re, the first Hong Kong-incorporated special purpose insurer (SPI) authorised by the Insurance Authority to issue insurance-linked securities (ILS) in Hong Kong. This heralds the first-ever SPI authorisation approval granted by the Insurance Authority, and the issuance of the first catastrophe bond in Hong Kong by Greater Bay Re, which provides protection against typhoons on the Mainland. The successful launch of this transaction reflects the strong foundation of the legislative and regulatory framework for ILS in Hong Kong, paving the way for Hong Kong to tap into the burgeoning China reinsurance market, and to become a leading domicile for issuing ILS.

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In-House Community Deal of the Year 2021 Winner

Combining local expertise and international standards of excellence, we help our clients develop business opportunities worldwide.	Top tier firm in Thailand	Awarded Firm of the Year for 8 consecutive years	Awarded Deal of the Year for ten consecutive years	Awarded Employer of Choice for 9 consecutive years
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DISPUTES

This year we recognise Zul Rafique & Partners' handling of Maxis Mobile Services' unfair dismissal claim originating from the Industrial Court (IC), concerning an employee's dismissal for exiting WhatsApp groups at work without her superior's prior approval together with her failure to submit the daily sales reports on seven occasions. The IC found that the dismissal was with just cause which saw the respondent apply for judicial review seeking to quash this decision. The High Court overturned the IC's decision and ordered that the case be remitted to the IC to be heard anew by another chairman. Maxis appealed this decision, finding favour with the Court of Appeals which ruled that the IC's findings were not plainly wrong and that there were no valid grounds for the High Court to interfere with those findings. As such, the IC award was reinstated, and the respondent was deemed to have been dismissed with just cause.

RESTRUCTURING AND INSOLVENCY

J Sagar Associates advised Ares SSG, a leading Asia-Pacific alternative asset manager and the successful resolution applicant, on the debt resolution of Altico Capital India. Altico was undergoing an out-of-court, lender-driven debt resolution process. Lenders led by the State Bank of India formed a committee and initiated the resolution plan. Approximately 27 lenders had exposure to Altico. Ares SSG, through the entities identified by it, acquired all outstanding loans and investments from Altico as part of the debt

resolution process. This deal stands out as the first resolution of a stressed non-banking financial company outside the Insolvency and Bankruptcy Code 2016, through a lender-driven process, and represents Ares SSG's single largest investment in India to date.



This year we recognise Zul Rafique & Partners' handling of Maxis Mobile Services' unfair dismissal claim originating from the Industrial Court (IC)...



OTHER

Finally, another winning deal in our books is the formation of the Global Shipping Business Network, founded in October

2020 by eight global national freight maritime cargo companies, to build a blockchain platform for the shipping industry that digitises shipping processes, such as document issuance, clearance, and logistics data. We make special note of this as, like the eTradeConnect deal outlined above, it is enabled by blockchain technology – something poised to feature prominently in many deals to come.

METHODOLOGY

We selected our winning deals this year based on submissions to the IHC Briefing newsletter that we received during the year. To make sure your deals are considered for next year's Deals of the Year, please make sure to send your completed deal announcements to thebriefing@inhousecommunity.com.

● Equity Capital Markets

DEAL	FIRMS INVOLVED
WINNERS	
Bairong IPO	Maples Group, Davis Polk & Wardwell, Tian Yuan Law Firm, Skadden, Arps, Slate, Meagher & Flom
KakaoBank IPO	Paul Hastings
Krafton's global offering and listing in Korea	Paul Hastings; Kim & Chang; Cleary Gottlieb
Kuaishou Technology's US\$5.4 billion IPO and listing in Hong Kong	Clifford Chance; Maples Group; Gibson Dunn
MicroPort CardioFlow Medtech Corporation spin-off from MicroPort Scientific Corporation, and IPO	Jingtian & Gongcheng; Simpson Thacher & Bartlett; Commerce & Finance Law Offices; Sidley Austin; Maples Group
Prosper Engineering IPO in Thailand	Kudun & Partners
PT Bukalapak.com Tbk's Indonesian IPO	White & Case; Wicara Cakra Advocates; Milbank; Assegaf, Hamzah & Partners
PTT OR IPO	Weerawong C&P; Shearman & Sterling
The One IPO	Weerawong C&P
Trip.com secondary listing in Hong Kong	Skadden, Arps, Slate, Meagher & Flom; Commerce & Finance Law Office; Latham & Watkins; Jingtian & Gongcheng; Maples Group
Zomato IPO	J Sagar Associates; Indus Law; Cyril Amarchand Mangaldas; Latham & Watkins
HONOURABLE MENTIONS	
Zylox-Tonbridge Medical Technology's US\$330 million IPO and listing in Hong Kong	Clifford Chance; Davis Polk & Wardwell; JunHe; Grandall Law Firm
Thailand's Don Muang Tollway's IPO	R&T Asia (Thailand); Baker McKenzie
XPeng Inc. listing on the Hong Kong Stock Exchange	JunHe; Fangda Law

● Debt Capital Markets

DEAL	FIRMS INVOLVED
WINNERS	
BIM Land Joint Stock Company's regulation S international bond offering	VILAF; Shearman & Sterling
Industrial and Commercial Bank of China's (ICBC) multi-branch issuance of green bonds	Allen & Overy; Jingtian & Gongcheng
The Government of Indonesia issuance of a three-tranche US\$2.5 billion Sukuk Wakala	Assegaf Hamzah & Partners; White & Case
Xiaomi Best Time International issuance of US \$855 million of guaranteed convertible bonds on the Stock Exchange of Hong Kong Limited	Jingtian & Gongcheng; Maples Group
HONOURABLE MENTIONS	
Issuance of Singapore Airlines' five year convertible bonds.	Clifford Chance
Issuance of Surbana Jurong Group's (US\$188.3m) bond offering	Clifford Chance; Allen & Gledhill
Singtel Group's first sustainability-linked financing	WongPartnership; Clayton Utz

● Projects & Energy

DEAL	FIRMS INVOLVED
WINNERS	
B.Grimm Powers' Solar energy power investment in Cambodia	Kudun & Partners; DFDL
Doosan Heavy Industries & Construction investment in NuScale Power	Yoon & Yang
Financing of the Quantum and Sambelia utility-scale solar PV power projects in Indonesia developed by Berkeley Energy	Ashurst; Oentoeng Suria & Partners; ADTLaw
Financing of wind farms in Zhanatas, Kazakhstan	White & Case
HONOURABLE MENTIONS	
Caisse de dépôt et placement du Québec (CDPQ) co-investment in the Greater Changhua 1 offshore wind farm and associated holdco financing	Clifford Chance; Tsar & Tsai Law Firm
Financing of 145MWac floating solar photovoltaic power project on the Cirata Reservoir in Indonesia	Shearman & Sterling
Financing of Vung Ang 2 BOT power project	VILAF; Ashurst; Kim & Chang
Project financing of the USD\$1billion Xiamen Xiangyu integrated stainless steel plant	Pinsent Masons
Transfer of Cyberjaya Flagship Zone (CFZ) land development rights for the continuity of Cyberjaya's future development. [Project Apollo]	Zaid Ibrahim & Co; BH Lawrence & Co

● Mergers & Acquisitions

DEAL	FIRMS INVOLVED
WINNERS	
Aakash Educational Services acquisition by Think & Learn (Byju's)	Khaitan & Co; Shardul Amarchand Mangaldas; Trilegal
LSEG acquisition of Refinitiv	Afridi & Angell; Simpson Thacher & Bartlett
Medlinker Group merger with Doctorwork	Jingtian & Gongcheng; Zhong Lun W&D Law Firm
Merger of Digi.com and Celcom Axiata	Ashurst; Allen & Overy; Zaid Ibrahim & Co; Christopher & Lee Ong; Skadden, Arps, Slate, Meagher & Flom; Adnan Sundra & Low
Merger of Gojek and Tokopedia	Assegaf Hamzah & Partners; Davis Polk & Wardwell; Ginting & Reksodiputro; Hiswara Bunjamin & Tandjung; Simpson Thacher & Bartlett; Herbert Smith Freehills
NewQuest Capital Partners' sale of Integreon to EagleTree Capital	White & Case; Jones Day; Paul Hastings; Trilegal; Maples Group; SyCip Salazar Hernandez & Gatmaitan
Ninjas in Pyjamas Merger with ESV5	Baker McKenzie; FenXun Partners
PropertyGuru and Bridgetown 2 Holdings Merger	WongPartnership; Rajah & Tann; Baker McKenzie
Thai state telecoms TOT and CAT merger to create 'National Telecom'	Chandler MHM Limited
The Siam Commercial Bank Public Company Limited proposed acquisition of 51% interest in Bitkub Online Co., Ltd.	Weerawong C&P
Truong Hai Auto acquisition of E-Mart Vietnam	Indochine Counsel; VILAF
VPBank's sale of 49% Stake in FE Credit to Japan's Sumitomo Mitsui Financial Group	YKVN; Freshfields Bruckhaus Deringer
Wipro Acquisition of Metro	Khaitan & Co; Baker McKenzie; AZB & Partners

HONOURABLE MENTIONS

BW Group acquisition of Hawaiki	Stephenson Harwood (Singapore) Alliance; Troutman Pepper; Maddocks; Hesketh Henry; Walkers; DLA Piper; Morgan Lewis
China National Bluestar and REC Solar Holdings sale of 100 percent equity interests to Reliance New Energy Solar	Baker McKenzie Wong & Leow; AZB & Partners; Fangda Partners
Merger filing in Korea for Fiat Chrysler Automobiles N.V. and Peugeot S.A. (PSA) merger	Sullivan & Cromwell; Linklaters; Kim & Chang; Shin & Kim
NSK acquisition of Brüel & Kjær Vibro	Clifford Chance
SCG Packaging acquisition of equity stake in Duy Tan Plastics Manufacturing	VILAF; YKVN
Sinochem Group and China National Chemical Corporation merger.	Clifford Chance; Haiwen & Partners; VILAF
Tyme joint venture with JG Group	Ashurst; ENSafrica; Webber Wentzel
Termination of JV between PepsiCo and Indofood	SSEK Legal Consultants

● Banking and Finance**DEAL****FIRMS INVOLVED****WINNERS**

eTradeConnect & PBOC Trade Finance Platform connectivity	Eversheds Sutherland; Deacons
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● Insurance**DEAL****FIRMS INVOLVED****WINNERS**

Establishment of Greater Bay Re	King & Wood Mallesons; Cadwalader, Wickersham & Taft
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● Disputes**DEAL****FIRMS INVOLVED****WINNERS**

Maxis Mobile Services unfair dismissal claim	Zul Rafique & Partners
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HONOURABLE MENTIONS

ChildLife interlocutory injunction in Hong Kong High Court	Baker McKenzie
MSD Dispute over 'Merck'	WongPartnership

● Restructuring & Insolvency

DEAL	FIRMS INVOLVED
WINNERS	
Altico Capital Debt Resolution	J Sagar Associates; Shardul Amarchand Mangaldas; AZB & Partners, Cyril Amarchand Mangaldas
HONOURABLE MENTIONS	
Anant Raj Group Restructuring	Phoenix Legal
Cross-border restructuring of SuperPark Asia Group Pte Ltd	Shook Lin & Bok; TKQP; RevLaw; Providence Law
Dewan Housing Finance Insolvency Resolution	AZB & Partners; Cyril Amarchand Mangaldas
Insolvency Resolution Process of Garden Silk Mills	Khaitan & Co; Vaish Associates and Advocates

● Investment Funds

DEAL	FIRMS INVOLVED
WINNERS	
Issuance of Fullgoal-Capital Water Closed-end Infrastructure Securities Investment Fund	East & Concord
HONOURABLE MENTIONS	
Establishment of Hanwha Global ESG Innovators Fund and the listing of the fund on ADDX	Allen & Gledhill
KKR's investment in EQuest Education Group	Indochine Counsel; Sidley
Launch of the Samsung NYSE FANG+ ETF	Simmons & Simmons

● Other

DEAL	FIRMS INVOLVED
WINNERS	
Formation of the Global Shipping Business Network, a blockchain platform for the shipping industry	Tiang & Partners; PwC Australia Legal; Xin Bai Law Firm; Freshfields Bruckhaus Deringer; Kim & Chang; Nixon Peabody
Renegotiation of Manila Water- Concession Agreement with Metropolitan Waterworks and Sewerage System	Gulapa Law
HONOURABLE MENTIONS	
Reliance Retail Ventures and 7-India Convenience Retail master franchise agreement	Khaitan & Co; Plave Koch PLC



Digitalisation Momentum Driving Corporate Digital Responsibility up the Agenda for Asian Corporates

BY RHYS MCWHIRTER, PARTNER, EVERSHEDES SUTHERLAND



Global businesses are forecast to spend \$10 trillion on digital transformation in the five years to 2025, capitalising on rapid technological developments that are reshaping every corner of the corporate world.

While digitalisation is game-changing, it comes with risks, challenges and obligations that must be understood and navigated to succeed.

Globally, complex laws and regulations are leading to significant legal obligations around digital responsibility for companies – which often diverge, rather than converge, across various jurisdictions. These laws extend significant duties and expectations to boards and senior leadership to ensure adequate oversight and governance in this area.

In 2022, it is a business imperative to employ the right strategy to deal with these risks and obligations.

'GOING DIGITAL' VERSUS DIGITALISATION

There is often confusion between a company 'going digital' and digitalisation. Implementing new technologies in a siloed manner, without consideration of the business-wide implications, can lead to major negative repercussions for the most senior leadership of an organisation.

Digitalisation – the application of digital technologies to transform business activities, processes, competencies, and models to fully leverage the opportunities from technology and data – encompasses companies' procurement, deployment and use of such technologies.

It also includes businesses developing, selling or licensing out these technologies. This could be for internal use or customer-facing purposes, making it relevant to all companies, regardless of sector.

Businesses in Asia, and globally, are seeking a competitive edge and digitalising at breakneck speed, a trend that has been accelerated by the global pandemic. Fifty-five per cent of products and services are at least partly digitalised today, compared with only 35 per cent in 2019, prior to the pandemic.

Businesses in Asia, and globally, are seeking a competitive edge and digitalising at breakneck speed, a trend that has been accelerated by the global pandemic.

Industries that were traditionally not considered technology businesses have embraced digital transformation as a pivotal strand of their strategy, in recognition that no sector can ignore the commercial gains that digitalisation delivers. A new company motto has emerged over the past 12 to 18 months – being we are a “technology business” first, that just happens to provide services to customers in a particular sector.

For example, Singapore's DBS Bank leveraged advanced technologies to improve customer experiences as part of a 2014 digital transformation strategy. Recent innovations include creating an online exchange for blockchain-based fundraising and carbon credit trading. These innovations contributed to revenue growth of S\$14.6 billion in 2020 from S\$9.6 billion in 2014.

'TECHLASH' AND NEW LAWS SIGNAL NEED FOR CORPORATE DIGITAL RESPONSIBILITY STRATEGIES

There is a growing imperative to ensure ethical, responsible, and legally compliant use of technologies and data and to apply a responsible approach to digitalisation – known as a Corporate Digital Responsibility (CDR) strategy.

CDR is a set of responsibilities relating to commercial, legal, compliance, ethics, ESG, governance and oversight imperatives. Organisations should consider these when making decisions relating to technology and data and when implementing their digitalisation strategy.

Businesses risk major adverse reputational damage and the erosion of significant value if there is a misalignment of their digitalisation strate-

gies and their approach to ethics in technology and corporate digital responsibility. A growing backlash against companies perceived to be using technology irresponsibly that emanates from stakeholders, including customers, investors, and employees – often referred to as 'techlash' – contributes to these risks.

Techlash can also arise where it is perceived that the use or misuse of technology or data leads to bias, discrimination, mistreatment of customers, digital disenfranchisement, data breaches or damage to society or the environment.

In parallel, a plethora of new laws are being introduced globally, augmenting existing regulatory responsibilities, to ensure digital technologies are developed, used, bought, and sold

responsibly. Many of these laws carry significant enforcement consequences, including fines and imprisonment, for non-compliance.

Yet, 61 per cent of businesses struggle to keep up with the legal and guidance requirements that apply to digital technologies, according to a new report by Eversheds Sutherland in conjunction with Longitude, a Financial Times company. The report – Shaping the future of digitalization: Global perspectives on digital technologies, risk and corporate digital responsibility – surveyed 700 senior professionals globally to investigate the adoption of digital technologies, risk and approaches to CDR.

A clear CDR strategy will drive consistency and agility, ultimately enhancing commercial success.

Adopting a CDR strategy not only helps mitigate the many significant risks with developing, selling, licensing and/or embedding digital technologies, but also

helps maximise the benefits of any digitalisation initiatives. Increasing stakeholder confidence and trust is a pivotal part of this.

Importantly, CDR is not just about mitigating downside risk. Implemented correctly, it helps to build trust with a wide range of stakeholders, from customers and employees to regulators and investors. A clear CDR strategy will drive consistency and agility, ultimately enhancing commercial success.

BUSINESS CONSIDERATIONS WHEN IMPLEMENTING A CDR STRATEGY

There is no one-size-fits-all approach to CDR. The legal, governance and ethical responsibilities that need to be factored into each project involving digital technologies will

depend on the business model, sector, location, and the technologies involved.

CDR strategies must account for current and emerging commercial issues, the regulatory landscape, cultural factors, ethical principles, corporate values, and best practices. But, given the changing regulatory environment and technology, such a task is not easy.

Based on our experience working across hundreds of digitalisation projects around the world, key business considerations when implementing a CDR strategy include:

- Base your CDR strategy on an understanding of the full spectrum of current and emerging strategic, legal, corporate, regulatory, sectoral, ethical and ESG risks and responsibilities that accompany digitalisation. It should address board-level oversight and governance obligations. The Eversheds Sutherland report found that just 20 per cent of businesses have CDR ownership and oversight at board-level.
- Understand and audit what technologies the business is developing, selling, licensing, or using or intending to use, as well as where, for what purpose and what the implications will be. It's critical to consider use cases in detail.
- Place data and rights to use at the heart of the strategy. Fewer than 20 per cent of businesses surveyed feel 'very confident' about their ability to securely handle customer data.
- Consider and address upfront the implications for and impacts on staff. The Eversheds Sutherland report found 27 per cent of respondents anticipate employee/skills shortages due to the organisation's use or provision of digital technologies.
- Review your contract templates and playbooks to ensure they are fit for purpose. Only

17 per cent of survey respondents consider that their contracts are fit for purpose in relation to their digitalisation activities.

DYNAMIC STRATEGY ESSENTIAL TO MANAGING KEY RISKS

Companies must develop a strategy to understand the risks as they develop and change, and to mitigate and overcome them. Risks include falls in company share prices or valuations, investigations and criminal prosecutions, loss of a license, class actions and blocked M&A activity.

Fewer than 20 per cent of businesses feel 'very confident' about their ability to manage the use of data and cyber incidents.

The Eversheds Sutherland report highlights that businesses are often aware of some of these risks, but not all. Unsurprisingly, cybersecurity and data privacy breaches and associated potential litigation are considered most concerning to our respondents. Yet, fewer than 20 per cent of businesses feel 'very confident' about their ability to manage the use of data and cyber incidents.

Legal, regulatory or commercial consequences can stem from a simple misunderstanding of the technical, legal and ethical risks posed by new technology or confusion over legal and regulatory obligations. According to the Eversheds Sutherland report, 63 per cent of businesses say the complexity of technology and related laws makes it challenging to assess their risk and liability.

Many issues stem from not considering the sentiment of consumers, shareholders, governments, and employees. These groups are now more engaged in asserting their influence on business outcomes.

One of the key challenges is that not everyone involved in digitalisation projects within a company fully understands the risks, the organisation's strategy regarding them, and the consequences of not mitigating against them. Everyone involved should have a sufficient understanding of risks, reporting up on risks, and the consequences of failing to mitigate risks. Upskilling and training staff in this area is key.

Everyone involved should have a sufficient understanding of risks, reporting up on risks, and the consequences of failing to mitigate risks.

The Eversheds Sutherland survey results expose the growing “digital safety gap” between advances in customer-facing technology and businesses’ backroom capability to ensure its safety. Globally, respondents were most concerned about the threat of investigation and/or prosecution by regulatory authorities relating to product safety. This fear is well grounded given the increasingly proactive and severe measures taken by regulatory authorities in response to product incidents – particularly those which placed a significant reliance on technology, often in the absence of human intervention.

Given this threat, it is increasingly important to bake in safety, as well as security and

privacy by design, which involves getting lawyers involved at the earliest design stages.

What is clear is that businesses have started to recognise the importance of having a strategy to understand and address their legal obligations, commercial priorities, and stakeholder expectations. An effective strategy acts like a golden thread woven throughout the entire organisation.

EFFECTIVE CDR STRATEGY CENTRAL TO SUCCESS OF DIGITALISATION STRATEGIES

As businesses continue to accelerate their digitalisation activities to realise the immense benefits digitalisation can bring, they recognise there are major challenges and risks that must be carefully navigated. What is now very apparent is that an effective CDR strategy is not only key to driving the success of your digitalisation strategy – it serves as a critical pillar of what investors, shareholders, and customers alike demand of a modern “technology business”.

Our research highlights that many businesses have begun the work to develop a CDR strategy to govern their digitalisation efforts, but many do not have a holistic approach fully embedded into their organisation, meaning there is more work to be done.

EVERSHEDS SUTHERLAND



Rhys McWhirter

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Navigating the REITs Pilot Project in China: In conversation with East & Concord

BY JENNIFER ZHANG
SONGJUN ZHAI



Q: APRIL 2020 SAW A PILOT PROJECT FOR INFRASTRUCTURE PUBLIC REAL ESTATE INVESTMENT TRUST (REIT) PROJECTS OFFICIALLY LAUNCHED BY THE CHINA SECURITIES REGULATORY COMMISSION (CSRC) AND THE NATIONAL DEVELOPMENT AND REFORM COMMISSION. PLEASE CAN YOU PROVIDE SOME BACKGROUND AND COLOUR TO THE REASONS FOR THIS SIGNIFICANT MOVE BY CHINESE AUTHORITIES?

China Infrastructure Real Estate Investment Trusts (hereinafter referred to as “C-REITs”) are another beneficial exploration of financial supply-side structural reform since the pilot registration-based IPO of the Science and Technology Innovation Board and ChiNext. After several rounds of large-scale infrastructure construction, China currently has a huge amount of infrastructure assets.

Such illiquid assets restrict reinvestment and cause huge financial pressure on the government. C-REITs aim to revitalise the huge amount of infrastructure assets and strengthen the ability of the capital market to serve the real economy. We believe that C-REITs are the key to realising the dual circulation development model. In the future, C-REITs are expected to become an effective tool for local public investment, and the C-REITs market is expected to become an internationally leading REITs market with large scale, variety, low risk, and strong liquidity.

Q: ONE OF THE INTENTIONS FOR THESE VEHICLES IS TO FUND PROJECTS LOCAL GOVERNMENTS WOULD OTHERWISE HAVE TO FINANCE. WHAT CHANGES AND DEVELOPMENT CAN WE EXPECT



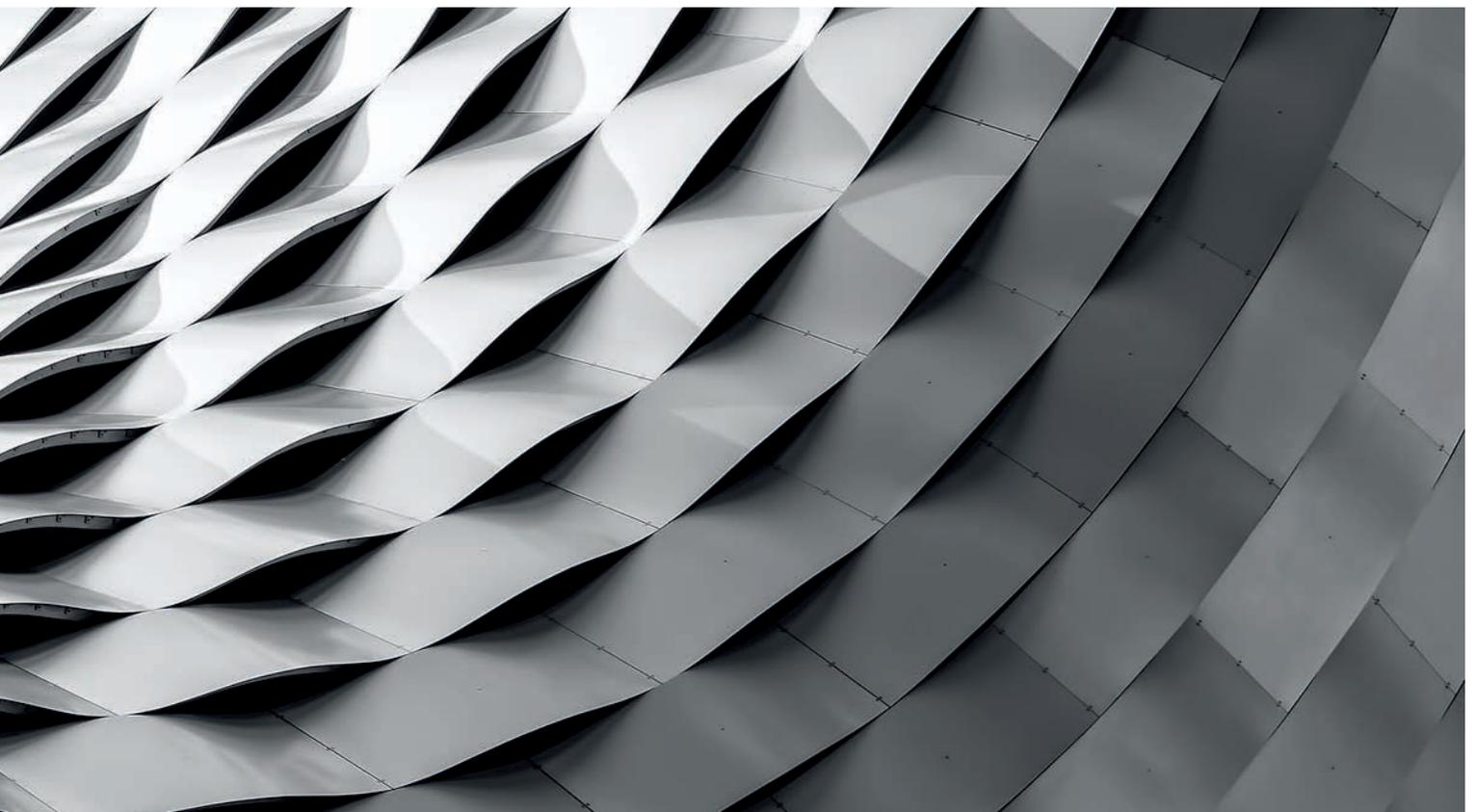
TO SEE IN THE REAL WORLD IN THE COMING YEARS GIVEN THE REITS WHICH HAVE ALREADY BEEN REGISTERED, APART FROM THE FINANCIAL MOVES OF THESE FUNDS?

In addition to revitalising existing assets and opening up a new channel for infrastructure project financing, from the perspective of REITs' development, C-REITs are expected to cover more types of real estate (including other potential infrastructures and commercial real estate) in the future, and many different types of new C-REITs products will be derived. C-REITs will eventually become an indispensable part of China's capital market. From the perspective of the capital market, C-REITs are expected to reverse the situation that investors are keen on financial assets rather than real assets and then reduce the overall leverage ratio of the whole society, thereby reducing the risks caused by

irrational investment. From the perspective of investors, C-REITs provide a new option for personal investment, which supports infrastructure investment while increasing residents' property income. It is expected to become an important measure to expand domestic demand, open internal circulation, and enhance the ability of the capital market to serve the real economy.

Q: EARLY 2020 WAS A SIGNIFICANT TIME GLOBALLY GIVEN THE ONSET OF A PANDEMIC. WHAT CHALLENGES OR OPPORTUNITIES DO YOU BELIEVE THIS UNCERTAIN CLIMATE HAS PROVIDED TO THIS PILOT PROJECT?

In terms of challenges, due to the COVID-19 epidemic the data collection and due diligence work of the project was adversely affected to some extent. However, the current unstable situation caused by the epidemic has also



created opportunities for the development of C-REITs. In 2020, the capital market was severely affected by the pandemic, resulting in lower valuations of company stocks. Since most of the income of C-REITs comes from fixed income such as rent and service fees, they can effectively resist the adverse effects caused by uncertain factors such as the pandemic and inflation. All C-REITs products have been sought after by Chinese investors since their issuance. Up to now, the market value of Fullgoal Capital Water REIT has risen by more than 50%, which is the best-performing REITs product in the first pilot program.

Q: EAST & CONCORD WAS INVOLVED IN THE ISSUANCE OF THE FULLGOAL CAPITAL WATER CLOSED-END INFRASTRUCTURE SECURITIES INVESTMENT FUND, ONE OF THE FIRST 5 REITS APPROVED FOR REGISTRATION UNDER THIS PILOT PROGRAM. PLEASE CAN YOU PROVIDE SOME DETAIL AS TO THE PROJECTS THIS REIT WILL BE LINKED TO?

The underlying assets of Fullgoal Capital Water REIT are four sewage treatment projects in Shenzhen and Hefei held by Beijing Capital Eco-Environmental Protection Group Co., Ltd. For details, please refer to the prospectus published by Fullgoal Capital Water REIT.

Q: WORKING ON A NOVEL PROJECT SUCH AS THIS MUST HAVE HAD ITS CHALLENGES. CAN YOU PROVIDE US SOME INSIGHT AS TO WHAT WENT INTO BRINGING THIS ISSUANCE TO SUCCESSFUL FRUITION?

First, we have accurately grasped the development trends of policies and regulations of C-REITs. As the first batch of lawyers engaged in C-REITs in China, we have

deeply participated in the legislative work of the National Development and Reform Commission, the China Securities Regulatory Commission, Shanghai and Shenzhen stock exchanges, and other relevant institutions on C-REITs, which has provided great assistance to our work.

Second, we give full play to our long-term experience in related business fields. The lawyer service team of Fullgoal Capital Water REIT is one of the few lawyer teams in China that are deeply involved in the fields of infrastructure, project financing, and construction engineering with broad practical experience in Quasi-REITs issuance. Based on such experience, we can provide enterprises with full-process and all-round project investment and financing legal services. The long-term experience in related business fields has become the magic weapon for this successful issuance.

Q: AS A LAWYER WORKING ON A REIT'S PROJECT IN 2022, WHAT ARE SOME KEY CONSIDERATIONS AND POINTS TO KEEP IN MIND?

In 2022, China's economic development is likely to encounter greater downward pressure and face a more complex situation due to the global pandemic, weakening trade growth, lack of consumer demand, and other factors. In this context, more and more immature projects are expected to be packaged and listed through C-REITs to obtain financing. As C-REITs lawyers, we should focus more on the compliance of the underlying assets, especially in projects that may cause hidden government debt, and prevent C-REITs' original owners from putting assets with non-compliance risks into the C-REITs.

Q: LOOKING FORWARD, WHAT DEVELOPMENTS DO YOU SEE HAPPENING/HOPE TO SEE IN THE REITS ARENA IN CHINA AND THE WIDER ASIAN REGION?

We hope that with the joint efforts of relevant government departments and other institutions, the C-REITs market will become a world mainstream REITs market with the trading value of more than RMB 100 trillion yuan and a variety of estate assets. At present, China's economic situation and the RMB exchange rate remain relatively stable under the dual influence of the Russian-Ukrainian war and the pandemic so that capital in Asia and the rest of the world has a positive attitude towards China's capital market. The further development of C-REITs can benefit both the economic environment and the dual circulation development strategy, at the same time, it can attract more foreign investment and enhance the international status of China's capital market.



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COM Antitrust / Competition

AV Aviation

BF Banking & Finance

CM Capital Markets

REG Compliance / Regulatory

CMA Corporate & M&A

E Employment

ENR Energy & Natural Resources

ENV Environment

FT FinTech

INS Insurance

IP Intellectual Property

IA International Arbitration

IF Islamic Finance

LS Life Sciences / Healthcare

LDR Litigation & Dispute Resolution

MS Maritime & Shipping

PF Projects & Project Finance
(inc. Infrastructure)

RE Real Estate / Construction

RES Restructuring & Insolvency

TX Taxation

TMT Telecoms, Media & Technology

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