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# INDONESIA'S RISING STARS

## SPOTLIGHTING THE COUNTRY'S YOUNG LAWYERS

GCs IN FINANCE  
DISCUSS THEIR  
CHALLENGES

WHY YOU  
SHOULD JOIN A  
LEGAL NETWORK

A CLOSER LOOK  
AT THAILAND'S  
EEC PROJECT

SINGAPORE'S  
RISE AS A  
CRYPTO HUB



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# LAW AWARDS 2020

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**JAPAN - June 11**

**SE ASIA - July 23**

**HONG KONG - September 4**

**INDONESIA - October 8**

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A template  
for Thailand



Containers Shipping on Laem Chabang Port. BkkPixel/Shutterstock.com

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By Asian Legal Business

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# FROM THE EDITOR



**RANAJIT DAM**  
Managing Editor,  
Asian Legal Business  
Thomson Reuters

## Behold the abundant promise of Indonesia.

Indonesia is a young country. The median age might be just a shade above 30, according to the CIA Factbook, but 42 percent of the population of more than 250 million people is at or below 24 years of age. Anyone who has lived in, or visited, Southeast Asia's largest economy, will attest to the fact that this has resulted in the atmosphere of a place like, say, Jakarta being absolutely electric. The country today is home to four unicorns - Go-Jek, Tokopedia, Traveloka, and Bukalapak - all of which ride on the back of the youthful population's heavy smartphone use, and thirst for new technology. The number of these companies will only continue to rise. Indonesia is a dynamic, forward-looking market that has its eyes planted firmly on the future, and is clearly one of the key economies to watch in the years to come.

Unsurprisingly, the vibrancy has found its way into the country's legal market as well. It was not that long ago that Indonesia was dominated by a small group of marquee law firms that focused primarily on traditional sectors like mining and resources. The technology revolution has upended that, as younger lawyers not only seek out new and more exciting areas of work but are also unafraid to break out on their own to set up their own shops. This has led to Indonesia becoming one of the most exciting legal markets to watch, and the ALB Indonesia Rising Stars list for

2020 looks to chronicle that evolution. The ten lawyers featured here are from a variety of firms - some are excelling at established outfits, while others have found their own footing in the market. Some are shining in new avenues of work, while others are taking traditional kinds of work to the next level. Either way, they are blazing a trail that will reshape the industry for years to come.

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## THE BRIEFING: YOUR MONTHLY NEED-TO-KNOW

## QUOTE UNQUOTE

"FEB 28, 2020 WAS A DARK DAY. IT SHOWS THE SCENE WHERE EVIL DEFEATS JUSTICE AND POWER REPLACES SELF-EVIDENT TRUTHS. ON THIS DAY, CAS LISTENED TO PREJUDICE, TURNED A BLIND EYE TO RULES AND PROCEDURES, TURNED A BLIND EYE TO FACTS AND EVIDENCE, AND ACCEPTED ALL LIES AND FALSE EVIDENCE."

Zhang Qihuai, lawyer for three-time Olympic champion swimmer Sun Yang, slams the Court of Arbitration for Sport (CAS) for hitting the Chinese freestyler with an eight-year drug ban.

## CORONAVIRUS CAUSES POSTPONEMENT OF REAL ESTATE EVENT

The annual MIPIM event in Cannes on the French Riviera, which was due to be held in March, has been moved to June after pull-outs from law firms including Baker McKenzie, Norton Rose Fulbright, and Morrison Foerster. The real estate event draws thousands of attendees, including lenders, developers, and lawyers. Shortly after the decision was taken, the French government announced a ban on gatherings of more than 5000 people.

## COULD COVID-19 OFFER BUYERS AN EXCUSE TO WALK AWAY FROM DEALS?

Many companies negotiating mergers and acquisitions (M&A) contracts are haggling over whether the global novel coronavirus outbreak should offer legal grounds for the acquirers to walk away from their agreements, according to Reuters. Merger agreements routinely include contractual provisions to protect the parties involved, citing earthquakes, pandemics and "act of God" as possible ways out of a deal, but now some companies are asking for specific references to coronavirus in contracts with acquirers. Morgan Stanley's \$13 billion all-stock acquisition of trading brokerage E\*Trade Financial offered the first example of a specific novel coronavirus reference in a publicly disclosed M&A contract. It stipulates that Morgan Stanley cannot use the outbreak as a reason to walk away from the acquisition, unless it can show that E\*Trade's business has suffered a "disproportionate adverse effect."

## \$31 MLN

Amount pledged to Move The Needle Fund, which was set up to drive greater progress in diversity and inclusion in the legal profession. The fund was founded by law firms Nixon Peabody, Eversheds Sutherland, Goodwin, Orrick, and Stoel Rives, and other entities.

## IN THE NEWS

1

Baker McKenzie temporarily shuttered its offices in London in early March after a staff member who had recently returned from northern Italy fell ill. The law firm, the first major one to close its London offices during the COVID-19 outbreak, said it was erring on the side of caution.

4%

Proportion of UK in-house counsel who feel their teams are ready when it comes to the use of technology, according to law firm Irwin Mitchell in its Future of In-House Legal report. Only 6 percent of respondents said their teams were ready when it came to processes.

## IN THE NEWS

2

Kennedys has launched a separate technology-driven company called Kennedys IQ. Billed as "Kennedys, without the lawyers" the bespoke platform will combine human and machine intelligence and pull data points from the law firm, its clients, and third parties, to provide the latest trends and insights.

# KEEPING YOUR BUSINESS HEALTHY

As the coronavirus outbreak continues to sweep across Asia, businesses have rolled out remote working arrangements and continue to monitor the developments closely. But lawyers warn that health data, and employee management during this time, should be handled with care.

**Given the recent coronavirus outbreak, what kinds of rights and obligations do both employers and employees in your jurisdiction have concerning collection of staff health data, treatment of afflicted employees and more?**

## SINGAPORE

**Lim Chong Kin, head, data protection, privacy and cybersecurity practice, Drew & Napier**

In terms of collection of staff health data, the Personal Data Protection Act 2012 (PDPA) provides that organisations may collect, use and disclose an individual's personal data without their consent where necessary in response to an emergency that threatens life, health or safety of the individual or another individual (the Emergency Exception). The Personal Data Protection Commission has noted that the Emergency Exception applies in relation to personal data collected for contact tracing and other coronavirus response measures. However, personal data collected under the Emergency Exception cannot be used or disclosed for other purposes with consent, or unless another exception under the PDPA or other written law applies. As such, employers should comply with relevant government advisories, including the Ministry of Manpower (MOM) general advisory on workplace measures to be taken by employers, as well as MOM's advisory for employees travelling to and from Mainland China. These include enforcing a Leave of Absence where relevant, and supporting employees serving Home Quarantine Orders.



LIM



TRAN



ISAACS

## HONG KONG

**Hong Tran, partner, Mayer Brown**

The areas employers should pay attention to include the following: First, employers have a statutory duty under the Occupational Safety and Health Ordinance and a common law duty to ensure, so far as reasonably practicable, the health and safety of all employees at the workplace. Second, employers must continue to comply with the obligations under the contract of employment and the Employment Ordinance (EO). Among other things, employers must continue to pay wages and other employment-related entitlements

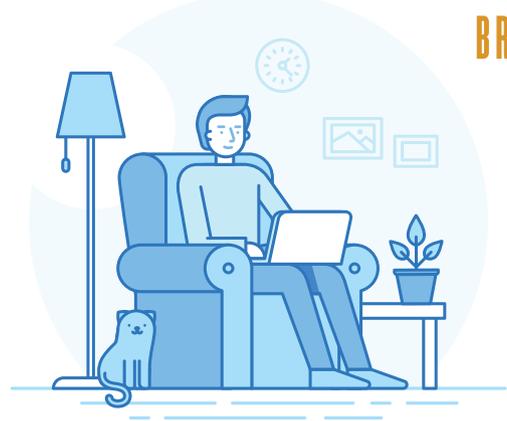
following the relevant contract of employment. An employee who is subject to mandatory quarantine and/or medical surveillance may be issued with a medical certificate with the statement of "under medical surveillance". If such employee applies for sick leave, then the employer must grant the employee sick leave and pay sickness allowance per the EO and/or the relevant contract of employment. Third, employers must be careful not to contravene the Disability Discrimination Ordinance (DDO). An employee with the novel coronavirus (COVID-19) or suspected of having it will be a person with a "disability" for the purpose of the DDO. The DDO prohibits discrimination against a person with a disability in the employment field. There is however an exception if the disability is an infectious disease (which includes COVID-19) and the discriminatory act is reasonably necessary to protect public health. Fourth, employers must comply with the Employees' Compensation Ordinance (ECO) including having appropriate insurance. COVID-19 is not currently classified as an occupational disease under the ECO for payment of compensation. However, if contraction of COVID-19 amounts to a personal injury by accident arising out of and in the course of employment (which will turn on the circumstances of each case), the employee may claim compensation under the ECO. Fifth, employers must observe the requirements under the Personal Data (Privacy) Ordinance concerning the collection, retention, use and disposal of personal data of the employees that it collects, for example, health data. Before collecting the health data of the employees, employers should inform the employees, among other things, the purposes for which the data is to be used and the classes of persons to whom the data may be transferred. Employers must not, without the consent of the employees, use the data collected for purposes other than the purposes for which the data was to be

used at the time of the collection. For employees, they should continue to comply with their obligations under the EO and their contract of employment including to comply with the lawful and reasonable directions of their employers.

#### MAINLAND CHINA

**Jonathan Isaacs, head of China employment practice, Baker McKenzie**

In terms of collection of staff health data, companies have both restrictions on and obligations regarding what and how they collect employee health data. Under a notice issued by the national cybersecurity authorities, aside from institutions authorized by government health authorities, other entities cannot collect personal information under the pretext of disease prevention and control without consent of the data subject, unless there are laws or regulations to the contrary. Further, companies should only collect data to the minimum extent necessary to achieve the relevant purpose. For example, companies should collect data from those who are confirmed as infected, suspected cases, those who have come into contact with confirmed/suspected cases, and other at-risk persons, rather than collect data from everyone from a particular region, to avoid discrimination. Companies should also take measures to protect the confidentiality of any information they collect and not disclose unless required by law or government orders. On the other hand, under national law and many local measures, companies have reporting obligations to the local health authorities, such as reporting any cases of infection to the local health authorities. Many provinces and cities (and even districts within each city) may have additional requirements regarding what employers are required to report to the local authorities, so companies should be mindful and stay abreast of these local measures, with new measures seemingly being issued every day or every couple of days. For example, under Shanghai measures, companies should do health checks and body temperature checks of their employees after operations resume and make declarations to the local health authorities. Companies should also report relevant information to the health authorities if any employees have returned to Shanghai from another location or if any employees display atypical health signs. According to local Shanghai measures, other actions that employers need to take to ensure worker safety include disinfecting/sanitizing the office/workplace, provide education to employees on how to reduce infection risk, and instruct any employees who have come back from an epidemic hot zone to self-quarantine. If companies fail to comply, and any infections occur, companies could face serious, even criminal liability. 



## IN WAKE OF CORONAVIRUS, LAW FIRMS ROLL OUT FLEXIBLE WORKING MEASURES

As the deadly coronavirus (COVID-19) continues to spread, closing offices and triggering a face-mask frenzy both on the mainland and in Hong Kong, law firms in both places are exercising caution, with many advising their staff to work from home, or offering them the option of flexible working arrangements.

Last month, Anglo-American law firm Hogan Lovells extended its Lunar New Year holiday for its employees in Beijing and Shanghai until Feb. 9, in line with the Chinese government's instructions. The firm told *ALB* it would then implement flexible working hours depending on local conditions.

Meanwhile, Herbert Smith Freehills also extended its LNY closure with staff working from home until Feb 10.

Simon Chapman, a partner in Hong Kong, said the team was continuing to monitor the situation closely. "We have robust business continuity plans in place and our crisis and operations teams are assessing and implementing recommendations by authorities in each country affected," he said.

In March, a Herbert Smith Freehills spokesperson told *ALB* that the firm was allowing staff in its mainland China and Hong Kong offices to work from home or office based on employee preference.

One issue that employers – including law firms – need to be careful about at this time is the collection of data related to employees' health. According to employment-focused law firm Huggill & Ip, employers must only gather information if it is for a purpose "directly related to the assessment of suitability of the employee's continuance in employment; or directly related to the employer's administration of medical or other benefits or compensation provided to the employee."

"An employer may only need the minimum information about a sick leave application of an employee to verify or calculate the entitlement to sick leave and other related benefits but not the details of the treatment prescribed for the medical condition afflicting the employee," said partner Carmen Tang.

It's not just law firms in Asia that have been hit. Baker McKenzie shut its central London office last month, sending home more than 1000 staff after a possible COVID-19 case was detected. 



A man wearing a mask walks past the headquarters of the People's Bank of China, the central bank, in Beijing, China, as the country is hit by an outbreak of the new coronavirus. REUTERS/Jason Lee

## 'BRAKES SCREECHING LOUDLY': ASIA DEALMAKING IMPACTED BY VIRUS

■ If any more evidence was needed that China was the engine powering the regional – not to mention the global – economy, it has arrived in the form of the fallout from the 2019 coronavirus outbreak.

As the number of cases continues to rise across Asia, China is in a veritable state of lockdown, with factories yet to resume production and employees working from home. Add to this the fact that several countries and regions have imposed travel restrictions, and the overall business and investment sentiment is jittery indeed. All this makes it a less-than-conducive climate for dealmaking.

This is reflected in the early data this year. A recent *Financial Times* article cited Dealogic data showing that number of M&A deals involving Chinese companies year-to-date had fallen by a third from the same period in 2019 to 356, with total deal value having shrunk almost 70 percent to \$18 billion.

And a recent Reuters report found that bankers were bracing for a deal drought as efforts to limit the spread of

the coronavirus epidemic had put key meetings and roadshows on hold.

"Asia M&A hasn't hit a precipice yet, but you can certainly hear the brakes screeching loudly," says Robert Ashworth, partner and co-head of global M&A at Freshfields Bruckhaus Deringer. "Some auctions, especially those involving Chinese assets or buyers, have been postponed while others have seen timetables lengthened."

The timing of the outbreak, coming as it did around the time of China's lunar new year holiday, has dealt a hammer blow. The long annual holiday is often accompanied by a dip in dealmaking,

but this time the numbers are said to be staggering.

"Any deal that involves Chinese assets, a significant China supply chain or has participation from Chinese buyers is vulnerable right now, regardless of where in Asia it is taking place. The shadow that casts is huge," says Ashworth.

In this climate, there is little that companies can do now but try and reduce as much of the risk as they can. As Ashworth notes: "Whilst all dealmaking involves some degree of uncertainty, the current dynamic is at a different level."

"And that requires greater focus on key areas of deal protection: pricing mechanics, closing adjustments, material adverse change (MAC) provisions and other walk-away rights and termination provisions," he adds.

That said, it's not all doom and gloom at the moment. Ashworth notes that bilateral transactions and public market deals seem less affected. "We are seeing new opportunities in both areas, as well as in the distressed space. It will require a strong stomach, but the market is certainly still open for the right deals," he says.

While no one can predict how long the outbreak – and its resulting impact – will last, lawyers like Ashworth are optimistic that things will improve soon, and the outbreak might throw up more opportunities in the future.

"There is no doubt that investment activity, dealmaking and operations will be significantly affected in the short term," he says. "However, pent-up demand is likely to create significant forward momentum as soon as conditions start to improve. Nobody wants to be caught napping when that happens." 

**"Whilst all dealmaking involves some degree of uncertainty, the current dynamic is at a different level. And that requires greater focus on key areas of deal protection: pricing mechanics, closing adjustments, material adverse change (MAC) provisions and other walk-away rights and termination provisions."**

— Robert Ashworth, Freshfields



A worker in protective suit takes body temperature measurement of a woman inside the Shanghai Stock Exchange building, as the country is hit by a novel coronavirus outbreak, at the Pudong financial district in Shanghai, China. REUTERS/Aly Song

## CHINA IPOs SLOW TO A TRICKLE, BUT THERE IS HOPE FOR A QUICK REBOUND

In the weeks since the world got to first hear about the coronavirus outbreak in China, business activity in and around the country has been greatly affected, with initial public offerings being no different.

Capital market activity in Hong Kong started with a bang – in January, 22 companies raised HK\$8.5 billion (\$1.1 billion) through initial public offerings (IPOs), up 102 percent from the same month in 2019 – but by February, the flow of new listings had all but dried up, according to a report in the *South China Morning Post*.

In Mainland China, 48 companies had priced listings as of Feb. 11, with \$10 billion of funds raised, according to Dealogic, the numbers being up more than double and 300 percent compared to the same period last year, respectively. However, the bulk of those listings happened in the three weeks leading to the Lunar New Year holiday, when China felt the full impact of the coronavirus (COVID-19). Since then, the number of weekly listings was down to single digits.

With travel being banned outright – if not heavily discouraged – IPO schedules have been disrupted as key players in the process are unable to perform their duties: Bankers cannot meet face-to-face for negotiations, sponsors are unable to conduct due diligence, and accountants have no way of carrying out site inspections and audits.

Gilbert Li, a corporate partner at Linklaters, says that the travel bans are also impacting investor meetings, especially if the management of the listing applicants are based in China which will probably result in delay in at least some deal timetables.

**“Hong Kong regulators are focusing on the impact of the outbreak on the business operation of the listing applicants. Listing applicants and their sponsors are conducting additional due diligence and analysis to critically assess the impact such that appropriate disclosure can be made in the prospectus.”**

– Gilbert Li, Linklaters

To make it more difficult for IPO hopefuls, regulators like Hong Kong’s want them to spell out the potential effect of COVID-19 on their business.

“Hong Kong regulators are focusing on the impact of the outbreak on the business operation of the listing applicants,” says Li. “Listing applicants and their sponsors are conducting additional due diligence and analysis to critically assess the impact such that appropriate disclosure can be made in the prospectus.”

Li says that in the present scenario, he advises client to understand that it is the legal obligation of a listing applicant to ensure that its prospectus contains sufficient information to enable potential investors to make an informed assessment of the listing applicant and its business.

Despite the temporary slowdown, Li is hopeful that several companies will still push with their planned listings as scheduled.

“Most listing applicants don’t make listing venue decisions based on timetable alone. There are much more important factors such as valuation, investor base and regulatory framework,” he says.

And there are promising signs. Chinese artificial intelligence company Megvii Technology is reportedly planning to resubmit its application for a \$500 million Hong Kong IPO after its original application lapsed earlier because of COVID-19 delays.

“We expect a delay in at least some deal timetables, but we are relatively optimistic in the medium to long term. These things tend to bounce back pretty quickly once the situation is under control,” Li says. ALB

# HONG KONG'S INCOMING DATA PRIVACY LAW

Preparations are underway for Hong Kong's new proposed data privacy reform. While there is currently no draft bill available, the Hong Kong privacy commissioner, along with the constitution and mainland affairs bureau of the Hong Kong government issued a consultation paper at the start of the year, officially launching a broader discussion about data privacy in the finance hub. And while there isn't likely to be any sudden movements, with further studies and reform proposals on the horizon, lawyers are closely following the developments and advise businesses in the market to do the same.

## 1 WHAT CAN WE LEARN FROM HONG KONG'S NEW PRIVACY LAW DRAFT?

Charmaine Koo, partner, and Amy Chung, senior associate, of Deacons say that at this stage, the consultation paper has not indicated a specific timeframe for amendments — but it has started the pathway to reform.

“Essentially, this consultation paper has just kicked started the law reform process. Whilst the government and the commissioner have expressed eagerness to move forward quickly on this (and they have accordingly indicated that no public consultation will be conducted on these proposals), it will still take some time for the draft bill to be formulated, discussed and revised as it passes through the law reform and legislative processes before any actual legislative changes to the Personal Data (Privacy) Ordinance (PDPO) would come to fruition,” they say.

While there is still no draft bill available to the public yet, the consultations paper does indicate several key target areas for potential reform or further discussion.

Among these is a change in the PDPO's data breach notification mechanism from voluntary to mandatory. “At this initial stage, working details are pending further discussions to delineate, e.g., the scope of data breach or

security breach that would fall within the scope of this mandatory mechanism, the notification threshold, the timeframe for notification and rectification of breach, and the exact content and mode of notification to be made to the commissioner and affected data subjects,” say Koo and Chung.

Another aspect up for change is clarifying data users' obligations when it comes to personal data retention — but this comes with complexities. While there is a government and commissioner consensus that it would be infeasible to establish and mandate a uniform data retention period, given the diversity of types of personal data and its purposes, “the consultation paper instead has proposed to clarify and supplement the PDPO's existing data protection principles with the introduction of new requirements on data users to (i) formulate clear data retention policy and (ii) notification of such policy to data subjects, to enhance accountability and transparency on the data users' practices on protecting and handling personal data,” they say.

Also in the PDPO's reform line of sight is increasing the enforcement powers of the commissioner, introducing direct regulation on data processes, clearing up the existing definition of “personal data” and addressing cyberbullying and doxing incidents.

## 2 WHAT KIND OF COMPLIANCE BURDEN COULD THIS PLACE ON COMPANIES?

Koo and Chung say that at the moment, it's too early to tell what the regulatory requirements might be for businesses “given that the consultation paper have only covered broad topical directions for reform without providing any further specific/concrete details on the corresponding requirements/obligations to be introduced.”

However, what is clear is that the burden certainly will increase and “privacy compliance will continue to be one of the most important areas of compliance for all companies.” But it is unlikely to trigger a massive change, as many businesses are already highly attuned to compliance requirements.

“Many multinational and international corporations doing business in Hong Kong, and many larger Hong Kong companies already having businesses abroad, are accustomed to having to comply with other more stringent regimes — they will already have prepared for such additional requirements. It will be the smaller businesses data users and data processors in Hong Kong (who will be directly regulated for the first time) that

may find it more of a burden," Koo and Chung say.

### WHAT ARE THE KINDS OF BROADER IMPACT THAT THE LAW IS LIKELY TO HAVE?

In recent years, many jurisdictions have revised and updated their data privacy laws to keep pace with technological advancements, emerging needs that arise from globalisation, as well as the public's increasing expectations on the protection of privacy rights. Hong Kong's new legislation is therefore very welcome. "The

consultation paper is definitely a sensible step in the right direction," say Koo and Chung. The last major reform to the PDPO took place over eight years ago with regulations around the collection, use and transfer of personal data regarding direct marketing. As a result, the lawyers say that "law reform is long overdue to update and bring HK's personal data protection laws up to speed to tackle evolving challenges to personal data protection in this digital age."

However, "the final impact will really depend on how the

draft amendment bill may finally turn out after undergoing the entire consultation and legislative process," say Koo and Chung. "It is obvious from the consultation paper that the commissioner and the government are dedicated to trying to make it work, but right now at this initial stage when everything is still in the works, it is indeed too early to tell (or predict) whether the final output will be effective to tackle the current shortcomings of the PDPO. Companies are advised to watch this space for further developments," they add. <sup>ASB</sup>

## DEALS

# \$3 BLN

**Bharti Airtel's qualified institutional placement**

**Deal Type:** ECM

**Firms:** AZB & Partners; Latham & Watkins; Linklaters; Shardul Amarchand Mangaldas

**Jurisdictions:** India, Singapore

# \$3 BLN

**Copenhagen Infrastructure Partners' project financing of the Changfang & Xidao offshore wind project**

**Deal Type:** Project Financing

**Firms:** Watson Farley & Williams; White & Case  
**Jurisdictions:** Denmark, Taiwan

# \$2.6 BLN

**Central Retail Corporation's initial public offering**

**Deal Type:** IPO

**Firms:** Allen & Overy; Shearman & Sterling; The Capital Law Office  
**Jurisdiction:** Thailand

# \$920 MLN

**Marubeni Corporation's offshore wind projects at Akita Port and Noshiro Port**

**Deal Type:** Project Financing

**Firm:** Linklaters  
**Jurisdiction:** Japan

# \$640 MLN

**NTT's acquisition of stake in Tokyo Century Corporation**

**Deal Type:** M&A

**Firm:** Nishimura & Asahi  
**Jurisdiction:** Japan

# \$565 MLN

**Financing of Well Harvest Winning Refinery**

**Deal Type:** Project Financing

**Firms:** Global Law Office; Norton Rose Fulbright; Oentoeng Suria & Partners; Walkers  
**Jurisdictions:** China, Indonesia

# \$550 MLN

**AKM Meadville Electronics' acquisition of TTM Technologies**

**Deal Type:** M&A

**Firms:** O'Melveny & Myers; Tian Yuan Law Firm  
**Jurisdictions:** China, U.S.

# \$510 MLN

**Total Gas' acquisition of stake in Adani Green Energy**

**Deal Type:** M&A

**Firm:** AZB & Partners  
**Jurisdictions:** France, India

## SHIPPING-FOCUSED FIRMS IN SINGAPORE, HONG KONG INK FORMAL ASSOCIATION

■ Singapore shipping boutique Helmsman and Hong Kong's Tang & Co have entered into a formal association. The two firms share close ties – they were both co-founded by shipping lawyer Tang Chong Jun. Tang set up Tang & Co in Hong Kong in 2018, and co-founded Helmsman with Ian Teo in 2019.

Both Teo and Tang were previously at Rajah & Tann. Teo spent 18 years at Rajah & Tann prior to Helmsman; he was also previously at Ince. Tang was an associate at R&T Tann until 2013, after which he moved to Hong Kong to join Hill Dickinson.

The formal association is expected to help the firms expand their businesses in both jurisdictions. <sup>ALB</sup>

## TAYLOR WESSING, SINGAPORE'S RHTLAW PART WAYS AFTER EIGHT YEARS

■ Anglo-German law firm Taylor Wessing has ended its eight-year alliance with Singapore's RHTLaw.

RHTLaw became Taylor Wessing's strategic alliance firm – and a member of its international network – three months after the former launched in Singapore in 2011. From around that time, the firm had been known as RHT Law Taylor Wessing.

According to a joint statement, both the firms "have decided to move towards a collaborative relationship in place of our formal links to enable both businesses to pursue longer-term objectives."

The 22-partner RHTLaw is part of the ASEAN Plus Group, a network of 11 law firms around the Asia-Pacific region that it helped set up in 2014. <sup>ALB</sup>

## APPOINTMENTS



### MEIDYNA BUDIARTI

**FIRM**  
IABF Law Group

**PRACTICE**  
General Corporate, M&A,  
Banking & Finance

**PROMOTION**  
Partner

**LOCATION**  
Jakarta



### JONATHAN CHU

**LEAVING**  
Stephenson Harwood

**JOINING**  
Lau, Horton & Wise

**PRACTICE**  
Intellectual Property

**LOCATION**  
Hong Kong



### JONATHAN CRANDALL

**LEAVING**  
Clifford Chance

**JOINING**  
Duane Morris Selvam

**PRACTICE**  
Capital Markets

**LOCATION**  
Singapore



### DAVID KUO

**LEAVING**  
Milbank

**JOINING**  
DLA Piper

**PRACTICE**  
Corporate

**LOCATION**  
Singapore



### JEREMY LIGHTFOOT

**LEAVING**  
Campbells

**JOINING**  
Carey Olsen

**PRACTICE**  
Litigation

**LOCATION**  
Hong Kong



### HARPREET NEHAL

**LEAVING**  
Clifford Chance

**JOINING**  
Audent Chambers

**PRACTICE**  
Litigation

**LOCATION**  
Singapore



### ZHAO RONG OOI

**LEAVING**  
Hauzen

**JOINING**  
Ince

**PRACTICE**  
Litigation

**LOCATION**  
Hong Kong



### JORDAN TAN

**LEAVING**  
Clifford Chance

**JOINING**  
Audent Chambers

**PRACTICE**  
Litigation

**LOCATION**  
Singapore



### KHIN VOONG

**LEAVING**  
King & Wood Mallesons

**JOINING**  
Watson Farley & Williams

**PRACTICE**  
Finance

**LOCATION**  
Hong Kong

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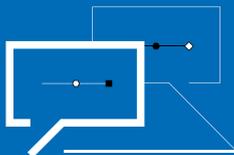
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# WITH BREXIT DONE AND DUSTED, BUSINESSES CAN NOW LOOK TO THE FUTURE

Following years of huffing and puffing rhetoric, protests, charged political debate and speculation, it's official — the United Kingdom is officially out of the European Union (EU). With post-Brexit trade negotiations beginning shortly and firms in the UK gearing up to navigate a year-long transition period, many businesses are in a state of limbo. Exactly how much upheaval Brexit will trigger remains to be seen, but according to lawyers, it all depends on what will happen next.

Matthew Townsend, partner and global co-head of Allen & Overy's international trade and regulatory law group, tells *Asian Legal Business* that from a regulatory perspective during the current transition phase the UK "is treated as if it were still an EU Member State", with the vast majority of EU laws continuing to be applied as before. Perhaps most importantly, the UK will continue to benefit from existing free trade agreements (FTAs) between the EU and third countries says Townsend, adding that "as a result, it's very much business as usual for the next few months."

The greater challenge for Asian companies, according to Townsend, is what will happen at the end of this transition period. "It's possible that no trade deal is negotiated between the UK Government and the European Commission such that the UK will then have a 'hard Brexit'. The UK will not be a member of the single market or EU customs union. Nor will it benefit from existing EU FTAs unless these have been

rolled over which a number of them have been. The impact of this will be highly sector-specific although many companies are expecting a degree of disruption," he says, noting that the negotiation timetable is "very tight" and Boris Johnson's government has vetoed asking for a transition extension.

"The UK government has also indicated that it will not remain in a customs union with the EU or align domestic rules with EU product standards and environmental, health and safety regulations. This may place constraints on the type of trade deal that can ultimately be struck with the EU," Townsend adds.

Clifford Chance partner Matt Fairclough says that The preparations businesses operating in the UK and EU need to make post-Brexit will very much depend on the nature of the operations and the level of cross-border flows of goods, services, people and finances, but he does advise that businesses consider market access and matters such as "taxation, supply chains, customs duties and tariffs, data transfer and protection, contractual terms and an ability to ensure that staff can work in each relevant jurisdiction".

"It will also be necessary to look at key operation and supply contracts for a business to ensure that there is, so far as possible, and ability for contracts to continue in full effect after the transition period and, if it comes to it, a 'no deal' scenario. Businesses would also be well advised to use this time as an opportunity for future strategic planning to ensure not only continued survival of their existing operations but also to ensure that they can succeed under the new relationship framework," Fairclough says.

"Brexit is a legal process with significant practical effects for many companies," says Townsend, adding that as of such, lawyers are tasked with "playing a critical role in helping guide clients through this period of uncertainty".

As well as assisting clients to map out the legal ramification of Brexit

outcomes, lawyers are also providing practical advice that can be applied directly to their businesses in priority areas where action is called for. "This could be licensing, passporting for services, contractual risks, FX exposures, product approvals, supply chain and delivery risks amongst others. Lawyers can then draw up contingency plans for businesses to ensure measures are in place to," says Townsend, adding that FTAs and the business opportunities and ramifications of these will trigger further advisory work for lawyers.

But, more generally considering the year ahead and likely developments, Townsend says: "Expect a lot of noise in the coming months over the terms of any UK/EU and U.S./UK trade deals".

"There will be winners and losers from any such deals so now is the time for businesses to have their voice heard by the UK government over what they'd like to see. 2020 is the calm before a potential storm. Many businesses outside financial services are waiting to see which direction trade negotiations will go before making any significant operational changes," he notes.

But the reality, while there's plenty of change on the horizon, lawyers — along with everyone else — are playing the waiting game. "Much will depend on the progress of the negotiations between the UK and the EU, and the extent to which there might be an alignment or equivalence of regulation after the transition period, which might lead to a more frictionless trading arrangement, or whether the UK does look to diverge more fundamentally from the existing EU regulatory framework, which would lead to more significant barriers to goods, services and movement of people," says Fairclough.

Adds Townsend: "It's too early to say how the UK may diverge from the EU on regulatory standards across sectors. We'll have a much better sense for this from 2021. There's a lot of speculation about the impact Brexit may have on the UK economy. In reality, no-one knows." 

## Q &amp; A

# ‘OUR CLIENTS APPRECIATE THE BENEFITS OF OUR GERMAN OFFICES’

Nishimura & Asahi, Japan’s largest law firm, recently announced new offices in Germany’s Frankfurt and Düsseldorf as the firm pursues Europe-related work after Brexit. With these offices, the firm, which acquired Thailand’s SCL Law Group last August, continues to spread its wings overseas. **Dominik Kruse**, co-lead partner of the new offices, talks about the motivations behind this recent expansion, and the response from the market.

**ALB:** Can you tell us a little about how the Europe office expansion came about and what motivated this?

**KRUSE:** Having successfully expanded and developed our operations across Asia, followed by the opening of our office in New York in 2018, we felt that the time had come for us to expand our presence into Europe. This expansion underlines our commitment to both our Japanese clients, in connection with their activities in Europe, as well as our international clients doing business in Asia. We have a long history of advising clients in Europe, working closely with top-tier European law firms, and this new presence in Germany will enable us to provide them with even closer collaboration, faster response times and more efficient services.

**ALB:** What has the response been like from your clients and the market more broadly?

**KRUSE:** Our clients tell us that they recognise and appreciate the benefits of the opening of our German offices, which will allow us to provide them with a high level of legal expertise and commercial acumen in Europe and also serve as a gateway to the best legal



“We expect that more and more of our work will come from European clients, both existing and new. We see increased demand from European companies to invest in Southeast Asia, particularly Indonesia, Thailand and Vietnam.”

services on offer throughout Asia. As for the market, the reaction has been highly positive, with extensive media coverage and friendly interest from law firms and lawyers throughout the region.

Our expansion into Germany is seen as a further welcome sign of increasing Japanese investment interest in continental Europe.

**ALB:** What are some of your immediate plans for the region?

**KRUSE:** Our German offices will provide advice on both German and Japanese laws on a wide range of cross-border transactions involving Asian, European and international businesses, assets and clients, while being supported by N&A lawyers from our international and Japanese offices. We will also provide legal advice on disputes and regulatory and compliance matters, especially in situations where our Japanese clients based in the EU are required to achieve General Data Protection Regulation (GDPR) compliance. Clients that we have already been advising from our Tokyo office on such matters will enjoy the convenience of having prompt, direct communication with our attorneys at our German offices, and 24-hour capabilities provided by a team of attorneys across N&A’s global network.

**ALB:** Where do you see the bulk of your work coming from going forward?

**KRUSE:** At the beginning at least, we expect the bulk of our work to come from Japanese companies, either from their headquarters in Japan or directly from their subsidiaries in Europe. Frankfurt and Dusseldorf, in particular, are home to many subsidiaries of Japanese companies. Therefore, we are opening a branch office in Dusseldorf as well. In the future, however, we expect that more and more of our work will come from European clients, both existing and new. We see increased demand from European companies to invest in Southeast Asia, particularly Indonesia, Thailand, and Vietnam. With our well-established offices there, we can now offer European clients the same level of service and access to the region that our Japanese clients have already been enjoying for many years. 

NORTH ASIA AND SOUTHEAST ASIA/SOUTH ASIA LEAGUE TABLES

North Asia Announced M&A Legal Rankings

No. 1 - Mori Hamada & Matsumoto

**5,713.2** Value (\$MLN)

Deals: 7 / Market Share: 8.1

Rank	Legal Advisor	Value (\$MLN)	Deals	Market Share
2	Anderson Mori & Tomotsune	4,890.3	2	6.9
3	Nishimura & Asahi	3,243.1	19	4.6
4	Nagashima Ohno & Tsunematsu	2,388.7	17	3.4
5	Loyens & Loeff	1,439.6	2	2.0
6*	Davis Polk & Wardwell	1,394.5	1	2.0
6*	Lee and Li	1,394.5	1	2.0
6*	Hibiya-Nakata	1,394.5	1	2.0
9*	Stibbe	1,336.2	1	1.9
9*	PwC Legal LLP	1,336.2	1	1.9

(\*tie) Based on Rank Value including Net Debt of announced M&A deals (excluding withdrawn M&A)

North Asia Announced M&A Financial Rankings

No. 1 - Nomura

**9,643.3** Value (\$MLN)

Deals: 13 / Market Share: 13.7

Rank	Legal Advisor	Value (\$MLN)	Deals	Market Share
2	Morgan Stanley	7,073.5	8	10.0
3	HSBC Holdings PLC	6,458.6	2	9.1
4	Deloitte	4,905.1	7	6.9
5	CB Richard Ellis Group Inc	2,755.2	1	3.9
6	CITIC	1,979.8	6	2.8
7	Mizuho Financial Group	1,746.9	8	2.5
8	JP Morgan	1,594.4	5	2.3
9	Daiwa Securities Group Inc	1,530.1	6	2.2
10	Platinum Securities Co Ltd	1,464.3	2	2.1

(\*tie) Based on Rank Value including Net Debt of announced M&A deals (excluding withdrawn M&A)

Southeast Asia / South Asia Announced M&A Legal Rankings

No. 1 - Allen & Gledhill and WongPartnership LLP

**7,998.9** Value (\$MLN)

Deals: 1 / Market Share: 23.2

Rank	Legal Advisor	Value (\$MLN)	Deals	Market Share
3	Cyril Amarchand Mangaldas	4,092.7	20	11.9
4	Picazo Buyco Tan Fider & Santos Law Offices	1,419.1	1	4.1
5	Ropes & Gray	1,076.0	2	3.1
6*	Shearman & Sterling LLP	1,028.0	3	3.0
6*	Trilegal	1,028.0	3	3.0
8*	Covington & Burling	950.0	1	2.8
8*	Davis Polk & Wardwell	950.0	1	2.8
10	AZB & Partners	921.8	12	2.7

(\*tie) Based on Rank Value including Net Debt of announced M&A deals (excluding withdrawn M&A)

Southeast Asia / South Asia Announced M&A Financial Rankings

No. 1 - JP Morgan

**8,088.9** Value (\$MLN)

Deals: 3 / Market Share: 23.5

Rank	Legal Advisor	Value (\$MLN)	Deals	Market Share
2	Credit Suisse	8,035.7	2	23.3
3	Deloitte	8,028.9	3	23.3
4	Citi	1,585.0	5	4.6
5	ICICI Bank Ltd	1,028.0	3	3.0
6*	Evercore Partners	950.0	1	2.8
6*	Bank of America Merrill Lynch	950.0	2	2.8
8	Morgan Stanley	843.7	2	2.5
9	Arpwood Capital	772.7	1	2.2
10	CBRE Inc	569.4	2	1.7

(\*tie) Based on Rank Value including Net Debt of announced M&A deals (excluding withdrawn M&A)

Any North Asia Involvement Announced M&A Activity - Quarterly Trend



League tables, quarterly trend, and deal list are based on the nation of either the target, acquirer, target ultimate parent, or acquirer ultimate parent at the time of the transaction. Announced M&A transactions excludes withdrawn deals. Deals with undisclosed dollar values are rank eligible but with no corresponding Rank Value. Non-US dollar denominated transactions are converted to the US dollar equivalent at the time of announcement of terms. North Asia includes China, Hong Kong, Japan, South Korea, Taiwan. Data accurate as of 2 March 2020.

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# MEMBERSHIP BENEFITS

For law firms around the world, the legal market is an increasingly complex and challenging place to navigate. With relationships more important than ever, partnerships, strategic alliances and legal networks are becoming more common.

However, firms are beginning to realise that to truly reap the benefits of membership, joining the right legal network is key. BY ELIZABETH BEATTIE

■ The benefits of being a member of a legal network can be seen from different angles. Southeast Asian firm Tilleke & Gibbins was one of Lex Mundi's founding members when the network was launched in 1989. Today, Tiziana Sucharitkul, Tilleke's co-managing partner and director of its regional dispute resolution and litigation group, remains a strong advocate for the firm. This is perhaps unsurprising given that she previously held the position of chair of Lex Mundi and remains a board member chair emeritus of the network to this day.

"At that time [1989], we recognised that Thailand's economy was especially reliant on incoming foreign direct investment and that the pace of globalisation was quickening. By joining Lex Mundi and working with other member firms around the world, we were able to grow our client base, and assist multinational companies that were seeking to invest

in the growing markets of Southeast Asia," Tiziana says of her early relationship with the network. Today, she views a key advantage of the members as "the guarantee of quality that you get from other members."

"Every Lex Mundi firm undergoes a thorough vetting process before being invited to join the network and is then periodically reviewed to ensure that it remains among the very best firms in its jurisdiction. Additionally, as all Lex Mundi member firms are local, independent firms, clients can be sure of benefitting from in-depth local knowledge which international firms often cannot possess," Tiziana explains, adding that it these high standards are also something clients expect too.

"Of course, clients also expect clear communication, responsiveness, and a high degree of client care, and Lex Mundi firms excel in all of these areas. When we work with other Lex Mundi firms on

multijurisdictional matters, we know that we are working with a top-tier firm, and we're confident that our clients are receiving the same excellent service that they get with Tilleke & Gibbins," she adds.

## EVOLVING BENEFITS

Agustin R. Montilla, IV, senior partner of Philippine firm Romulo Mabanta Buenaventura Sayoc & de los Angeles, is currently a board member at Lex Mundi. He says the benefits of being a part of a member network has evolved.

Mulling over the key advantages he says: "We would have answered this question differently 10 years ago. At that time, referrals were a key advantage. Today, we receive instructions from all over the world from clients that may not know about Lex Mundi."

Today, Montilla breaks it down into two main benefits: "First, it is the close and consistent interaction that we have



with the brightest legal minds in the most capable firms across the globe. Many of the same law firm leaders gather at Lex Mundi events that are much more focused and relationships that are consequently deeper than the wider associations that hold events attended by thousands of lawyers. The second main advantage is the opportunities for training and exchange of best practices between firms as facilitated by a highly capable, professional and pro-active team at Lex Mundi itself," he says.

Tiziana considers the most tangible benefit of being a part of a network is the reach it offers, with her firm getting "the ability to act on a wider range of cross-border matters than we would otherwise be able to, without compromising on quality."

"In one recent example, we were approached to advise on a matter that affected Tilleke & Gibbins' jurisdictions, as well as several countries in South America, North Africa, and Eastern Europe. No global firm was able to offer advice in every country selected, but Lex Mundi was, and what's more, we could vouch for the quality of everyone involved," she says.

#### ONGOING SUPPORT

According to Montilla, there are three main areas that the Lex Mundi membership supports. "First, skills development: All of the lawyers that have experienced intensive training at the Lex Mundi Institute give the program high marks. Not only does the program deliver skill development focused on a law firm partner audience it also provides networking opportunities. Participants in the intensive programs have become good friends and advocates for each firm," he says. "Second, improved execution of cross border matters: In terms of actual work, partners that manage cross-border matters can help one another collaborate much more closely to deliver the best results for clients if the matter is not the first time these lawyers have interacted with one another. Third, the network itself is focused on constantly improving each member's client service capabilities. The network has developed a client service

**"The benefits are twofold. First, it is the close and consistent interaction that we have with the brightest legal minds in the most capable firms across the globe... The second main advantage is the opportunities for training and exchange of best practices between firms as facilitated by a highly capable, professional and pro-active team at Lex Mundi itself."**

— Agustin R. Montilla, IV, Romulo Mabanta Buenaventura Sayoc & de los Angeles

platform that shares best practices and innovations across Lex Mundi."

Janet Looi, senior partner at Malaysian firm Skrine, says that being a part of the Lex Mundi network enables the firm to provide legal services to clients internationally "with the added advantage compared to an international law firm being that each of the member firms have strong local knowledge and connections as the leading local firms."

"Lex Mundi also allows member firms to keep abreast and share knowledge on the latest legal developments of importance to our clients," says Looi. Among the notable positive impact the firm has noticed has been the ability to act swiftly under pressure.

"On cross-border transactions, we have been able, through Lex Mundi firms, to put together a team of lawyers from various jurisdictions in a short time to respond quickly to our clients' needs. Also, through Lex Mundi, our firm has been able to participate in various RFPs for international local counsel panels, with Lex Mundi helping to coordinate and bring alive our seamless service protocols," she says.

#### NAVIGATING CHALLENGES

But even with reinforcements, firms still face challenges. When it comes to navigating these, innovation and planning remain priorities for firms.

"To succeed as a valued advisor, one needs to be more client-focused than ever. Understanding each client, their businesses, their needs and their concerns are skills that no law school teaches. This understanding is what we

emphasise with each member of the Romulo team," says Montilla of thriving in the current legal landscape.

He adds: "It sounds basic, but you'd be surprised how much of a differentiator this is when our clients give us feedback. That's another initiative that is starting to gain momentum — client feedback."

When it comes to facing big challenges, Looi counts retention of lawyers, "rising costs and tracking the fast-paced legal developments and trends not just locally but around the world, given we are operating in a connected world."

"The firm has had for many years a talent management programme and client alerts — these look to providing an objective criteria which is aimed both to encourage the lawyers to have personal development (such as giving talks, writing articles which are on latest legal developments, being on committees) and also helps us to meet the needs of the firm and the lawyers as part of retention and being ahead of the curve in legal developments," she adds.

Sucharitkul meanwhile says constant innovation so firms can stay competitive, is a top priority. "The challenge is identifying and applying the right tools and resources to stay on top of the latest trends—all while also keeping an eye on approaching developments," she says, adding "We meet these demands in a number of ways. We are fortunate to be able to partner with our clients on issues of technology and innovation—whether as solution providers working with us to implement our technology, or even as end-users seeking to adapt our in-house software to their ends." 



## HOPE ON THE HORIZON

The shipping industry in Asia has been experiencing choppy waters of late. However, lawyers continue to see a steady flow of work, and they are hopeful that things will continue to improve. BY RANAJIT DAM

■ It hasn't been smooth sailing for Asia's shipping industry in the recent past. For one, the U.S.-China trade war, which has impacted businesses and weighed on the global economy over the past two years, has also taken its toll on shipping: Global container shipping demand growth is said to have slowed to 0.8 percent in 2019, according to shipowner association BIMCO. Ian Teo, managing director of Singapore's Helmsman, a shipping-focused law firm, says that apart from trade war, there are other kinds of protectionist measures that countries are starting to put in place. "All these are affecting the global commodity trade, which in turn is impacting the shipping industry, because the shipping industry is driven by commodities," he notes.

Then there are the International Maritime Organisation's (IMO) 2020 regulations that are proving to be a costly proposition to comply with. Under the IMO

2020, starting January 1, ships are to reduce sulphur emissions by over 80 percent by switching to lower-sulphur fuels. "The price differential between a low-sulphur bunker and a high-sulphur bunker on a per-metric-tonne basis is about \$300, so it's a huge difference," says Teo. Add to that the disruption to trade caused by the novel coronavirus outbreak. "Certain ports are imposing 14-day quarantines on all vessels that come in from China," he notes. "This is firstly a long period, and secondly there are a lot of costs involved."

However, for all these industry challenges, shipping lawyers are continuing to see steady work. Take the IMO regulations for example. Tang Chong Jun, executive director of Helmsman, and managing partner of Hong Kong's Tang & Co. (which operates in association with Helmsman), says that his firm has been approached by a number of shipowners and charterers to advise, negotiate and manage their risks and liabilities associated with the use of "very low-sulphur fuel oil," or VLSFO. "Associated with that, we have also been seeing an increasing number of disputes involving the alleged use of unsuitable or contaminated VLSFO or unclean tanks, as owners and charterers transition from the use of high-sulphur fuel oil (HFO) to VLSFO."

Tang adds that another area where his firm has seen work increase is cyber-crime in the form of email hacking, impersonation and spear-phishing. "Despite KYC and client due diligence efforts and warning advisories issued by financial institutions, shipping companies continue to lose millions of dollars to fraudsters in the vessel's second-hand sale and purchase transactions or hire payments," he notes. "We are assisting clients to trace and recover these monies, and also to manage their exposure to counterparties." Then, with the push by international organisations, governments and private companies for the shipping industry to become environmentally friendly, there has been the emergence of work related to the liquified natural gas (LNG) sector.

Tang and Teo say there is also much hope for the future. Even as the trade war has raged, companies have been looking at alternative opportunities in the form of intra-Asia trade routes or Brazil-China routes. Then, "towards the second half of the year, we saw a bullish market in the tanker segment. Charter rates and prices for second-hand tankers spiked," says Tang, although Teo adds the caveat that it is still too early to tell how sustainable that is. Finally, there is promise in the push towards digitisation and automation in the shipping industry. "Governments in the region, with China and Singapore as examples, continue to invest significant resources into the area of technology in areas such as blockchain technology, cryptocurrency, and autonomous vehicles," says Tang. "As shipping lawyers, we can continue to play a fundamental role in shaping the contracts, norms, policies and rules as the shipping industry transforms into the digitization and automation age." 

## Helmsman LLC

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HELMSMAN

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TANG & CO.  
HONG KONG

### Company Bio

Tang & Co. and Helmsman LLC are founded by two shipping and commodity trading law specialists. Although presently based in Singapore and Hong Kong, the firm is international in terms of clients and work. The firm routinely acts for clients in high value commercial litigation and arbitrations across the world – in particularly Asia and Europe. We handle all of our client relationships with care and integrity. We draw on the experience of our award-winning lawyers and networks to help our clients navigate common pitfalls in business. This includes reviewing and advising on contracts and counterparties; understanding and identifying various risks in business operations; and assisting in restructuring business operations. The association with Tang & Co. in Hong Kong this year is a steady push for Helmsman LLC to embark on a significant expansion of its business in the areas of shipping and commodities trading beyond the Southeast Asian region.

### Achievements

Since the establishment of Helmsman LLC and Tang & Co., we have attained many accolades and achievements. Most recently, Helmsman LLC was listed as a Notable Firm in Benchmark Litigation Asia-Pacific 2020. Our Managing Director, Ian Teo, was named 30 Best of the Best Shipping & Maritime Lawyers in the World by the Expert Guides in 2019. He was also ranked in Chambers Asia Pacific 2019 for Shipping Litigation. In addition, Ian was recommended for his Maritime Law and Trade Law expertise in Best Lawyers Singapore 2020. Finally, Ian was nominated as a one of the world's leading Transport Lawyers in Who's Who Legal: Transport 2020.

Our Managing Partner, Tang & Co. and Executive Director, Helmsman LLC, Tang Chong Jun was recommended for his Shipping expertise by Expert Guides 2019 and also cited in Legal 500.

Maureen Poh, Director, Helmsman LLC was cited in Legal 500 as a key name for charterparty disputes, carriage of goods by sea and cargo claims and is 'proactive, clear and fast in analysing specific points'.

Our Associate Director, Chen Zhida has been nominated by his peers for inclusion in Best Lawyers Singapore 2021 for his expertise in Maritime Law and Commodities Law.

### Key personnel



#### Ian Teo, Managing Director, Helmsman LLC

One of the founding directors of Helmsman LLC, Ian is an authority on commodity trading and shipping law. In 2019, he became one of the first senior accredited shipping and maritime law specialists appointed by the Singapore Academy of Law. Ian was recognised by Euromoney Expert Guides as one of the world's 30 Best of the Best Shipping Lawyers. In 2016, Best Lawyers Singapore named Ian as Trade Lawyer of the Year. Qualified to practise in Singapore, England and Wales, Ian read law at the National University of Singapore (LL.B) and obtained his LL.M at Cambridge University. Ian is a member of the adjunct faculty at the Singapore Management University, School of Law, a Fellow of the Chartered Institute of Arbitration, and an Adjunct Fellow of the NUS Centre for Maritime Law. He contributes to academia regularly, and has published in Lloyd's Maritime & Commercial Quarterly.



#### Tang Chong Jun, Managing Partner, Tang & Co. and Executive Director, Helmsman LLC

A founding director of Helmsman LLC and Tang & Co., Chong Jun specializes in shipping and commodities disputes and commercial advisory work. More recently, Chong Jun successfully represented a Malaysian palm oil producer on two multi-million-dollar GAFTA arbitrations: and, an American trading corporation in its claim against a Chinese company for the latter's failure and/or refusal to take delivery of corn shipments. He was also involved in the handling of several landmark decisions in Hong Kong, including the "*Apellis*" [2018] Lloyds Law Reports Plus 11 and "*Alas*" [2015] 1 Lloyds Law Reports 211. Chong Jun is regularly invited to speak at shipping and maritime law conferences, including at the recent International Congress of Maritime Arbitrators in Copenhagen, and the 2017 Shipping Law Seminar in Shenzhen on "*One Belt One Road – International Shipping Law and Policy*".



#### Maureen Poh, Director, Helmsman LLC

Maureen is a rising star at the shipping and commodities bar. She specialises in shipping and commodity trading work, both contentious and advisory. Besides day-to-day shipping and commodities work, she has particular expertise in advising on energy-related shipping transactions, such as crude oil, LNG and FSRU charters, and matters ancillary to these including off-take contracts. Qualified to practise law in Singapore, and England and Wales, Maureen sits on the advisory board of the NUS Centre for Maritime Law.

# INDONESIA'S YOUTH FACTOR

The growth of Indonesia's legal profession is opening the door for young professionals to reach the very pinnacle of the industry and emerge as true leaders.

BY ASIAN LEGAL BUSINESS

■ In unveiling its second annual list of top 10 rising stars in Indonesia's legal market, *Asian Legal Business* spoke to some of the young professionals that made it on the list about their perspective on the changes underway in the giant Southeast Asian market.

Hans Adiputra Kurniawan, senior associate at Walalangi & Partners, understands why the legal profession has emerged as a favourite choice for many young professionals in Indonesia.

"Attractive remuneration, training and opportunities to be seconded to foreign countries are the major elements driving the continuous growth of the legal profession," says Kurniawan.

"Recently, the legal industry in Indonesia has expanded in terms of number and size of firms, and variety of specialisations. Consideration needs to be made carefully based on thorough research on which law firm will be suitable to your character and career path and goals," he says.

"Another preferred option that I have seen recently in the market is to work as part of the legal team of start-up companies in line with the massive growth of technology-based start-up companies in Indonesia over the past three to four years," says Kurniawan.

There are myriad of such start-ups in Indonesia, with some of the best-known standouts such as Go-Jek, Grab, Tokopedia, Traveloka, and OVO growing rapidly.

Rizky Dwinanto, a partner at ADCO Law, agrees that the prospects for young legal professionals in Indonesia are good.

"The environment for young legal professionals is still and will always be attractive. Legal professionals are being offered a high earning potential and prestige while having the opportunity to work with people who are exceptionally smart and highly dedicated to their careers," said Dwinanto.

"The demand and needs for legal professionals will always exist and grow. With today's technologies, domestic and international business transactions are happening rapidly regardless of time and location, and legal professionals are needed in those transactions. After all, every transaction always involves finance, tax and legal aspects," he adds.

Even with all these opportunities, Allover Herling Mengko, a partner in the Jakarta office of law firm Sandiva, makes no bones about the environment for young legal professionals in the country, which he describes simply as "very competitive."

He is not alone in this assessment.

"Nowadays, we have been looking at growth of business and its variation in Indonesia. And along with it, the regulations imposed by the government toward such businesses. Therefore, it is logical that legal departments or staff with legal background are pivotal in many companies," says Ellrico Parulian Situmorang, a partner at Parulian Situmorang & Partners. "The demand for

such positions, whether within the legal department in a company or as a lawyer, is growing so far but the competition would also be tight."

### RISING STARS

Those on *ALB's* list of rising stars are an accomplished lot that have paid their dues to get to where they are today and have laid the foundations to get even further in the future.

Mengko set up Sandiva after his previous firm closed. Sandiva started as a business consultancy before evolving into a law firm.

"I and three other partners decided to establish Sandiva business consultancy, which primarily focuses on insolvency and bankruptcy. After almost two years primarily focusing on insolvency and bankruptcy, we decided to establish a law firm which is Sandiva Legal Network. We now have 20 associates and six partners," Mengko says.

He points to the energy sector for some of his career highlights.

"I successfully assisted an independent power producer to obtain an environmental impact analysis for a 660 x 2MW power plant. I also represented Energi Tata Persada and Sumatera Persada Energy to reach the homologation of their settlement proposal with creditors," says Mengko.

He was appointed as the receiver for Dhiva Inter Sarana and successfully acted as an administrator for Indo Energy Alam in reaching homologation – the official approval – of its settlement proposal with creditors.

Some of Dwinanto's career highlights came early in his career.

"Earlier in my career, I had to simultaneously handle seven companies with extreme financial difficulties, and I managed to save them from bankruptcy," he says. "Another highlight of my career journey was when I successfully advocated a state-owned company on a global scope debt restructuring project. Those achievements came from tenacious dedication and constant hard work."

His experience is not dissimilar to the one experienced by Kurniawan, who joined Walalangi & Partners in late 2017. After stints at a law firm and a bank. Kurniawan had spent his first four and a half years as a lawyer with the founder and managing partner of the new firm. Returning to the law firm environment allowed Kurniawan to return to his professional roots when he had the chance to sink his teeth into projects involving a wide variety of industries.

"In the areas of banking and finance, I was involved in major syndication loans (including debt restructuring and power projects) and bond-issuances. I have been part of a team representing leading global banking and financial groups on major finance transactions, bond issuance, sophisticated fund-raising projects as well

# COVER STORY

as a number of major electricity projects in Indonesia," Kurniawan says of his career highlights.

"In terms of foreign direct investment and M&A, I have represented several Japanese trading companies in their investment plans in Indonesia in numerous projects and cross-border transactions, relating to plantation projects, the steel industry, various acquisition of shares, business and assets (land) as well as other practice areas of law, such as general mining, oil and gas, tourism, property, trading (including warehouse and e-commerce), fishery, and multi-finance industry."

Kurniawan was also recently recognised by *ALB* as one of the Best Young Lawyers of 2020 and listed in the '40 under 40' list.

Situmorang, of Parulian Situmorang & Partners, has also had his share of highlights in his varied career.

"In one office I learned about criminal litigation and client service, in another office I learned about commercial litigation and office management, and in another, I learned about corporate projects. From my point of view, I think it is hard to pinpoint the very highlight of my career to this extent," he says.

Still, there are a few cases and projects that stand out, including when Situmorang advised and represented a premium worldwide hotel chain, a global power tools

company, a global telecommunications company, an international paint company and one of the Big Four accounting firms.

## CHALLENGES ABOUND

It is easy, looking at the highlights of Indonesia's rising legal stars, to overlook the often-difficult journey to the pinnacle of the profession.

Some of these young lawyers have steadily climbed the ranks of the profession, while others have chosen to blaze their path.

For those that strike out on their own, like Situmorang, the challenges can be found in managing day-to-day operations and keeping things afloat.

"We faced challenges during the growth of the office, and I understand that there are challenges in every level and area: challenges in managing the office (internally) and challenges in providing services to our client (externally)," he says.

For internal operations, it was about finding the right systems. "In managing the office, I believe that most of our challenges in these past years were solved through the systems that we employed. However, establishing and implementing systems also brings a challenge," says Situmorang.

## PRACTICE AREAS

- General Corporate and Company Law
- Banking and Finance
- Real Estate
- Merger and Acquisitions
- Direct and Indirect Foreign Investment
- Energy and Resources
- Telecommunications
- Transport and Logistics
- IT and Media
- Broadcasting
- Infrastructure
- Labour, Employment and Immigration
- Insolvency, Corporate Recovery and Restructuring
- Anti-Trust and Competition Law
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Beyond that, there is no shortcut to managing clients. It just boils down to getting to know your clients well and giving them the best you can.

"As to providing services to our client, I believe that every client has their tastes and preference. Therefore, we need to understand their respective needs to provide the best service. By understanding the needs of our client, we then can be more efficient and effective in providing our services to them," says Situmorang.

For some young legal professionals age itself can sometimes be a challenge. Some clients sometimes find young age a deterrent.

"Starting a private practice at a young age, one may end up being underestimated by clients. Most clients would underestimate your capability and experience due to your young age," says Mengko. "But with confidence and strong knowledge of the law, I managed to surpass this and prove that I am capable to handle the cases."

Kurniawan has faced similar issues.

"One of the main challenges I have been dealing with during my career as a lawyer relates to how to constantly deliver quality beyond the clients' expectations and to navigate them through their various challenging deals in Indonesia," says Kurniawan.

He cites support from his firm, particularly its

senior partners, as the main key in helping him overcome hurdles and exceed expectations.

Dealing with other people's preconceptions is one hurdle, yet the other challenges lie within. For Dwinanto, and likely for many other young legal professionals, that is the way to see yourself measuring up.

"The risk of being ineffective and inefficient is always there when you doubt your goals and abilities," says Dwinanto.

"It is important to keep going despite any obstacles or barriers, and to keep moving forward even if there is only 1 percent of viable progress. To have clarity with yourself is the best way to push your dedication to your goals."

#### PARTING WISDOM

Kurniawan suggests that young lawyers looking to make their mark in Indonesia think about building their resumes wisely and carefully.

"Choose your starting point law firm wisely, find as much as possible information of the targeted law firm, particularly in terms of career path, working culture, financial compensation, personal growth support (e.g. training, seminars and workshops), and the firm's plan toward its lawyers," he says.

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- Criminal Law

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## COVER STORY

would obviously a better option to be considered, says Kurniawan.

And Situmorang also cautions young legal professionals to not turn up their noses at any assignment and to learn as much as they can from whatever comes their way.

"With regard to this, I can share from my own experience. I would advise the young lawyers not to be picky during the early years of their career. They can learn from whatever chores are given to them. Don't be too (quick) to assign or call yourself a 'litigator' or a 'corporate lawyer,'" says Situmorang.

"Learn as much as possible whether it is litigation, corporate work or even any administrative chores in the office because you do not know what it may lead you to. Once you find your edge, your sweet spot, your strong point, only then, do not hesitate to explore it full throttle."

This approach could make it easier to spot one's preferred area of specialisation. Mengko believes it is necessary to find a niche to stand out in the sea of legal professionals. "Without having focused or specific legal knowledge, we will not stand out among the others," he says Mengko.

And regardless of whatever niche is eventually chosen, it is both necessary and smart to keep up to

date with technological trends. Digital tools will not only give young lawyers a boost, but it will also help them survive the changes to come.

"Familiarise (yourself) with the digital transformation in the legal sector. The digital transformation will give us young lawyers the advantage to excel in the legal sector," says Mengko.

Ultimately, it may come down to working both hard and smart to earn career dividends.

"Embrace all the challenges, particularly to work with constantly long office hours and high demands from clients," says Kurniawan. "Also, trust the process of your career and use your best endeavours when working on any kind of assignment given to you – it is important to show that you are a reliable and trustworthy lawyer even when dealing with a simple task or assignment."

Along with faith, patience is the key in the long run.

"There is no such thing as quick and instant results since the process is part of the journey. In my view, we achieve things when we value the process, not only the result," says Dwinanto.

"For lawyers looking to make their mark, be humble and be patient with everything you have to go through because that is part of the process towards your goals. The result will come along with your hard work." 



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## INDONESIA'S RISING STARS 2020

## THE LIST

The second annual list of Asian Legal Business Rising Stars in Indonesia includes a range of lawyers known for both their focus and range of expertise. All of them are young, some have set up their firms and at least one literally grew up in the courts and with the law. The list is in alphabetical order.

**Hendra Setiawan Boen**

FRANS &amp; SETIAWAN LAW OFFICE



Hendra Setiawan Boen is a co-founder, principal, managing partner and head of the dispute resolution practice group and intellectual property practice group of Frans & Setiawan (F&S Law Office). Before establishing F&S Law Office, Hendra was a partner in an Indonesian based litigation law firm.

Hendra has extensive experience in commercial-litigation-related work, charter party and anti-monopoly disputes, and bankruptcy proceedings IP protection and cross-border international arbitration.

Hendra successfully defended a

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key witness in the \$70 million high-profile cross-border litigation who blew the whistle on the witness' former employers' breach of fiduciary and statutory duties. The case won despite the former employer's relentless legal assaults and attempted criminalisation.

The Indonesian media considers Hendra as a key source of legal information and is constantly mentioned and approached for comments. He is also a prolific writer and has also published articles in national-scale media and a book on law.

During the 2019 Indonesian general election, Hendra coordinated the election campaign of and led a rigorous legal defence for Indonesian President Widodo and his vice-president, Islamic cleric Ma'ruf Amin against black campaigns in the mass media and social media.

"Hendra and I have been working together since our pupillage. Since then, Hendra always demonstrating professionalism and personal attention to all details. Hendra is knowledgeable and responsive, and is able to analyse and explain complex legal issues in ways that are easy to understand and provide practical advice and workable solutions to clients and his colleagues" says Jono Yeo, a former colleague who worked with Hendra in an Indonesian corporate firm.

## Meidyna Budiarti

IABF LAW GROUP



Meidyna Budiarti is the sole female on this year's top 10 Rising Stars in Indonesia list.

She joined IABF Law Group as a senior associate and rose to the position of partner.

Before joining the firm, Budiarti spent some time in Singapore at RHT Law Asia and at ABNR Counsellors at Law.

Budiarti's primary practice areas are in M&A, banking & finance, and foreign investment. Some of her cases have been nominated as a finalist for the ALB Debt Market Deal of the Year category at the ALB Indonesia Law Awards.

During her career, Budiarti has advised on significant cases which include investments by a China payment application company through its subsidiary in Singapore to E2PAY Global Utama, an Indonesian fintech company that provides payment getaway services. She also took a key role in the Singapore IPO of a company involved in the plantation business.

"Meidyna has proved herself to be an invaluable team member on several

occasions where we sought her assistance to construct legal agreement with our China counterpart, assisting our company in negotiating the terms and formulating the agreement in a way that was acceptable to all parties involved. She demonstrated her integrity and objectivity by preserving the interests of all parties involved despite the fact that she was hired by my company in this event. She had proved her resourcefulness in terms of research and interpreting a few legal rules that we were not familiar with. In short, she is an exemplary model for the legal profession that she is currently embarking," says Rudy Danandjaja, chairman at E2Pay Global Utama.

## Oscar Damarjati

HENDRA SOENARDI



With more than a decade of practice, Oscar Damarjati, specialises in corporate and M&A, project development and finance and fintech.

He was appointed partner at Hendra Soenardi at the young age of 32.



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## PRACTICE AREAS

- Insolvency and Restructuring
- Bankruptcy and Suspension of Debt Payment
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- Corporate Debt Restructuring
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- Corporate Commercial Transactions
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During his career, he has represented Adaro Power in the \$4.2 billion financing of two 1,000MW power plants in Central Java which was named as Indonesia Deal of the Year at the ALB Indonesia Law Awards 2016 and the Project Finance Deal of the Year in Asia by International Financial Law Review and the Deal of the Year in Asia Pacific for Power by Project Finance and Infrastructure Journal in 2017.

He has also represented one of the largest palm oil plantation companies in Indonesia, energy companies and state-owned enterprises and notable start-up companies and venture capital companies engaging in TMT (including fintech) both in the fund raising and products development.

Denise Lioe, VP of Legal at GOJEK, praises Damarjati as “a well-rounded lawyer” with a deep understanding of the law, but still very solutions oriented.

Yudhistira Setiawan, VP of Corporate Legal and Litigation at PT Pengembangan Pariwisata Indonesia (Persero)/ITDC and president of the Indonesian Corporate Counsel Association adds: “He sometimes gives us an example in a simple way so that we can easily understand his advice. I can see that Oscar has a bright future ahead as he has the potential to be a prominent lawyer in the future, as he possesses good knowledge and great inter-personal skills, especially on how he

interacts with the client and convinces the client to opt the best solution in solving the legal matters.”

## Rizky Dwinanto

ADISURYO DWINANTO & CO



A self-driven lawyer with a strong commercial sense, Rizky Dwinanto is a named partner at Adisuryo Dwinanto & Co (ADCO Law). He has more than 12 years of

experience in corporate debt restructuring. Early in his career as a lawyer, he earned the trust of two state-owned enterprises that became retainer clients. He was also one of the contributors to the Doing Business project, an annual report produced by the World Bank.

With his dedication to pursue perfection, he successfully advocated PT Merpati Nusantara Airlines (MNA) on a complex debt-restructuring project with total debt of \$850 million. The project was almost global in scope and involved 1,200 domestic and foreign entities. Dwinanto also represented the MNA in various legal matters including the termination of its 1700 employees.

During his career, Dwinanto has been committed to finding the best solutions for his clients. He has successfully represented clients in several debt restructuring matters, including the Dinar Hadi Group in a project involving total debt of nearly \$60 million and PT Tiga Pilar Sejahtera Food with total debt of \$160 million. His belief in focusing on process and results has helped his clients, including both executives and organizations, mitigate risk and clearly understand debt restructuring.

## Frank Hutapea

HOTMAN PARIS & PARTNERS



Graduating from law schools in the UK and Indonesia, and obtaining Bachelor of Laws degrees in both countries, has prepared Frank for his career at Hotman

Paris & Partners, where he specialises in commercial litigation and bankruptcy.

During his time at the firm, Hotman Paris and Partners has broadened its scope in corporate advisory work, and expanded its client base in litigation and bankruptcy.



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## COVER STORY

"Our firm has a history of defending debtors, now we are more known for advising banks and financial institutions," says Frank, who is a partner at Hotman Paris & Partners. He adds that they are also advising international companies in Indonesia prior into transactions, including the litigation implications of the contracts they are going into. "It is inconceivable to go into a contract not knowing the implications it may have if it ever goes into a dispute, especially under Indonesian law," he says.

Frank believes that relationship plays an important role in this business. He also states that maintaining a good relationship and open communication with the counterpart's counsel is key to his success, and says knowing what's best for the client is an important aspect. Even though his firm is known for high-profile court cases, he states that, in his years in litigation, there have been moments when winning a settlement is more favourable for the client than winning a court dispute.

Frank's extensive knowledge in litigation has been visible in the Sushi Tei dispute, and Grab's KPPU anti-monopoly investigation, to name a few.

He has spent time in an Indonesian firm known for its capital markets practice, an American corporate law firm in Singapore, and a QC barrister in London right after graduating from law school.

### Hans Adiputra Kurniawan

WALALANGI & PARTNERS



Hans Adiputra Kurniawan joined Walalangi & Partners in 2017 and is now a senior associate. His joining of the firm was, in some ways, like coming full circle.

Walalangi & Partners was set up by the founder and managing partner of the law firm where he spent his first four and a half years as a lawyer.

He credits that experience as a good starting point for his rapid ascent in the profession following his cum laude predicate graduation from law school in 2010.

Working with some of the best lawyers in the Indonesian legal industry, Kurniawan gained exposure as well as extensive regulatory and practical knowledge while assisting clients in various banking and finance projects, FDI, M&A and other general corporate matters.

In late 2014, Kurniawan moved to one of the largest foreign banks in Indonesia as a transaction manager, where he worked with the corporate

trust and the loan agency team. He was involved in major syndication loans, project finance, business acquisition financing including financing and refinancing transaction for several leading telecommunication tower companies, shipping companies, gold and copper mining companies, oil and gas companies, and a greenfield ammonia production plant.

These experiences at law firms and banks helped supercharge Kurniawan's career. One of his career highlights was playing a key role in the business integration of the HSBC Jakarta Branch and Bank Ekonomi Raharja into a single banking entity, namely PT Bank HSBC Indonesia.

### Yohanes Masengi

MAKARIM & TAIRA S



Yohanes Masengi is a partner in the corporate and commercial group at Makarim & Taira S. He is the youngest partner of his firm, achieving that milestone at the

age of 33. He has extensive experience and has represented prominent



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## Joel Shen

CHRISTIAN TEO & PARTNERS



With 15 years of legal experience under his belt, Joel Shen, a foreign counsel at Christian Teo & Partners in Jakarta, has worked his way up to be regarded as one of the leading technology lawyers in Indonesia today.

Shen has particular expertise in technology, financial services, media, marketing and communications, food and beverage and consumer sectors. His clients are household names that include multinationals, technology majors, financial institutions, Indonesian conglomerates, Indonesian unicorns and some of the most prominent VC investors in Indonesia and the region.

Shen recently joined global law firm DWF as partner in their Singapore office and, prior to his role, has spent more than a decade in private practice in Singapore and English law firms. He is qualified in Singapore and the UK, and is a foreign registered lawyer in Indonesia. He divides his time between Jakarta and Singapore.

Shen is listed as a Notable Practitioner for Fintech and a Recommended Lawyer for Corporate M&A by several trade publications, and was recognized as the only non-Indonesian practitioner in ALB's inaugural Rising Stars in Indonesia list last year. Shen was also included in ALB's 40 Under 40 list for 2019 and was short-listed as Young Lawyer of the Year at ALB Indonesia Law Awards 2018.

Shen is a member of the governing council of the Singapore Chamber of Commerce in Indonesia, a faculty member of the Singapore Institute of Legal Education and a tutor of the Singapore bar course. He is also an adjunct lecturer at the University of Indonesia and Universitas Pelita Harapan.

## Ellrico Parulian Situmorang

PARULIAN SITUMORANG & PARTNERS



For Ellrico Parulian situmorang, a partner at Parulian Situmorang & Partners (PSP), the passion for law bloomed 16 years ago as a staff member in a legal aid office at

the University of Parahyangan, Bandung. Upon graduation, he joined Adnan Buyung Nasution & Partners, a law firm founded by a senior and highly regarded lawyer, the late Adnan Buyung Nasution. Ellrico considers himself lucky to have had the chance to work directly with Mr Buyung and credits that time as the foundation for his career trajectory. Ellrico continued his career in several other top-tier law firms before finally establishing his own practice.

The firm, which provides services in litigation and corporate work, has been appointed by many clients, multinationals and locals, to represent them in various forum. The mission of the firm, he says, is "to deliver excellence in providing solutions for our clients and constantly equip ourselves with the knowledge in order to maintain the highest quality of services." PSP is built on the twin values of integrity and excellence. "We practice law by adhering to the principles of maintaining personal integrity, independence and avoiding conflicts of interest," he says.

Ellrico, who considers himself a versatile self-starter, looks at a number of mandates as his career highlights including representing international companies that run the gamut of hotel chains, power tools makers, telecommunications, aviation, and a Big 4 accounting firm. 

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# BANKING AND FINANCE

**ALB: It's been a tough year with the economy in Asia under duress, how have you mitigated this and what kinds of conversations have you been having internally?**

**FUMITAKA ESHIMA, Managing Director and General Counsel Japan, UBS:** The financial sector has indeed had a tough year. Interest rates have stayed low and fee pools have shrunk, adding to the pressure on the margin level for banks. In the meantime, costs of running a global bank continue to be high, and the increasing costs of regulatory compliance do not help. In these environments, a bank should re-focus on its core strength while making efforts for new ideas. At our bank, we have leading franchises across different segments of the financial sector – global wealth management, investment bank and asset management, as well as commercial banking in our home market. Collaboration across the divisions and teams is high on our agenda, with ever-increasing importance. This “one bank” approach has helped us identify new revenue opportunities and achieve greater efficiency in our operations.

**CARMEN KAN, General Counsel, Bank of China (Hong Kong) Limited:** Aside from the legal department, I also head up the compliance, operational risk, fraud and complaints handling functions within the bank. Therefore, my role is to manage the above categories of internal risks, and they happen to be the ones always under the spotlight in Hong Kong and ASEAN in recent months! The business continuity plans that the bank had in place served their purposes well right when it was needed.

**ALB: What are some of the notable trends that you have witnessed across the banking and finance sector over the past year or so?**

**TOM KIMURA, Chief Compliance Officer, Japan, Australia and New Zealand Banking Group Limited:** Some of the

notable trends we see of late are around practical effect of fiduciary duty principles that the Financial Services Agency (FSA) in Japan requested banks and financial institutions to adopt a few years ago. For example, there was a discussion recently in terms of life insurance type of investment products on how best to increase transparency for fees and commissions disclosure which customers need to bear. Another trend

we are seeing is stronger personal information protection, especially around cross border operations outsourcing in today's increasing use of cloud computing. This is an evolving and very challenging area for global banks as the relevant data privacy requirements are different from country by country in many cases, and constantly reviewed and enhanced.

**ESHIMA:** In addition to obvious themes such as fintech and increasing awareness of cybersecurity threats, what comes to my mind is a growing concern over so-called “financial market fragmentation,” which refers to problems arising from inconsistencies and overlaps among financial regulations of different jurisdictions. After the financial crisis, the world's major regulators introduced new or tightened regulatory rules, quite often with extra-territorial reach but sometimes without enough coordination among the regulators. What resulted was fragmentation – different countries' rules differ with inconsistencies. Examples include capital rules and derivatives reforms in

major financial centres. Individual banks have felt the burden of fragmented regulations for some time. What has been notable in the last year or so is that international industry groups started voicing concerns about financial market fragmentation. They include the Institute of International Finance (IIF), International Swaps and Derivatives Association (ISDA), FIA and World Federation of Exchanges. A highlight was G20 Summit in Osaka in June 2019, when Leaders' Declaration included the statement: “We welcome the work on market



“At our bank, we have leading franchises across different segments of the financial sector – global wealth management, investment bank and asset management, as well as commercial banking in our home market. Collaboration across the divisions and teams is high on our agenda, with ever-increasing importance.”

- Fumitaka Eshima, UBS

In the first of a series of general counsel roundtables focused on specific industry sectors, heads of legal and compliance departments in the banking and finance space share their thoughts with ALB on what's ahead in 2020, as well as how their work is evolving. BY ELIZABETH BEATTIE

fragmentation, and will address its unintended, negative effects, including through regulatory and supervisory cooperation." I am much interested in whether and how this statement will lead to concrete initiatives among the major financial regulators in the world.

**KAN:** The first one that comes into mind is definitely fintech.

We are talking not only about fintech for different customer-facing segments, but also the application of fintech internally to enhance efficiency and accuracy and to reduce costs and man-hours. With the rise of virtual banking, open APIs and so on, traditional banks are making sure that we remain a key player in the field.

**ALB: What are the biggest challenges facing GCs and Chief Compliance Officers (CCOs) working in the finance sector in Asia at present – and what type of work takes up the bulk of your time?**

**KAN:** Business continuity and crisis management take up the bulk of my time. Since I look after also other control functions, like operational risk and fraud, mine is quite a different role to GCs who take up only the legal and compliance functions. Given the broader range of controls that I look after, I am in a better position to advise and assist the board during matters of crisis and emergencies – whatever form or shape they may be in.

**KIMURA:** One of the many challenges we face as local CCOs working in the global financial institution is enhancing the entire corporate governance and corporate culture of the Japan local organisation by working closely with home office and local management including the CEO, the CRO and business leaders. Considering the recent regulatory approach and more principle-based regulations, tackling with these points are increasingly important with taking into account global harmonisation of financial regulations,

home-host country supervisory roles, to minimise potential conduct risk, exercise fiduciary duty and protect its corporate culture. These are new areas and it takes time to implement control effectively and such control takes root in the entire organisation.

**ESHIMA:** In my view, the biggest challenges for GCs in global

institutions are not too different from sector to sector, or region to region. The main challenges are how to navigate your institution in a globalised and yet fragmented world, and also how to be at the forefront of enterprise risk management in a world where a risk event in one part of the world can quickly affect the entire global organisation. Still, I can think of additional pressure on GCs in the financial sector, whether in Asia or elsewhere. We operate under the burden of financial market fragmentation, dealing with the regulations of multiple jurisdictions which are not always consistent. Work in this area definitely adds to our workload. Further, reputation risk management at global banks is challenging, particularly after the global financial crisis when business and ethics standards at banks were heavily criticised. Hence GCs in the financial sector must be particularly mindful of conduct and ethics issues.

**ALB: GCs and CCOs across the board are becoming more involved in the leadership of the business, why is important to put legal and compliance at the heart of all strategic decisions?**

**KIMURA:** Quoting a recent paper published by the FSA in Japan on compliance risk management, it says that "the regulator's stance has been shifted from a backwards-looking, element-by-element compliance check, into substantive, forward-looking and holistic analysis and judgment. Compliance risk today is defined more closely related to



"Since I look after also other control functions, like operational risk and fraud, mine is quite a different role to GCs who take up only the legal and compliance functions... I am in a better position to advise and assist the board during matters of crisis and emergencies – whatever form or shape they may be in."

- Carmen Kan, Bank of China (Hong Kong)

business model/strategy and corporate culture.” In my view, I concur with the regulator’s view that financial institutions should take a proactive view in managing regulatory and compliance risk and being more forward-looking to pre-empt and identify potential and emerging compliance risks that are associated with its unique business model. Also, increasingly we see significant regulatory sanction cases which have damaged reputation of the company outside of the financial industry. This means the tolerance level for regulatory breach among general public becomes extremely low these days. In this regard, I see the GC and CCO role has become critically important to a business and it’s at the heart of key strategic decisions.

**KAN:** Firstly, no board member likes to see negative publicity of their bank on the front page of papers, and secondly, but not less importantly, heavy fines and penalties hurt the bottom line. Lessons learnt from our competitors show that it is cheaper (and more efficient!) to involve legal and compliance early in the embryonic stages of strategic decisions.

**ESHIMA:** I can think of two reasons in particular. First, different countries have different rules even in the world of globalisation. This problem is felt acutely in the financial sector, but other sectors have the same problem with different degrees. At a global institution, it is hard to make any major business decisions unless management has legal and regulatory expertise within the team. Second, enterprise risk management is very high on the agenda for the management of any global business. Within the vast spectrum of risk categories, the significance of legal and regulatory risks is ever-increasing large regulatory fines imposed upon banks are a most notable example. GCs with their legal expertise and deep understanding of the business must be integral part of enterprise risk management at companies. Some time ago I came across an interesting academic paper by a business school professor suggesting that management’s capability to utilise and deploy legal expertise was a competitive advantage for the business. I am not sure whether the paper’s hypothesis has been followed up with empirical studies, but I very much agree with her suggestion based on my experience working as in-house counsel for more than 20 years.

**ALB:** In terms of financial regulation or regulation targeting banks, what new developments can we expect, and how should firms start preparing for this?

**KAN:** Looking back at the past decade, one would expect financial regulations to be stricter and more robust in the future, but on the other hand, technology and financial inclusion may tip the balance to the other side. We may need to wait and see on this front. However, I believe data privacy and anti-trust laws will be enforced with much rigour and higher penalties around the globe.

**KIMURA:** Given the rise of fintech companies and its “threat” to the bricks and mortar banks, it is inevitable that more functional based adjusted financial regulations will be introduced. As a result, financial institutions should be prepared to revisit its business model and strategy, not only from a financial perspective, but anticipate potential future regulation change. Innovative thinking will be required to utilise this opportunity for new business model. I think GCs and CCOs can play an important role in this regard, too.

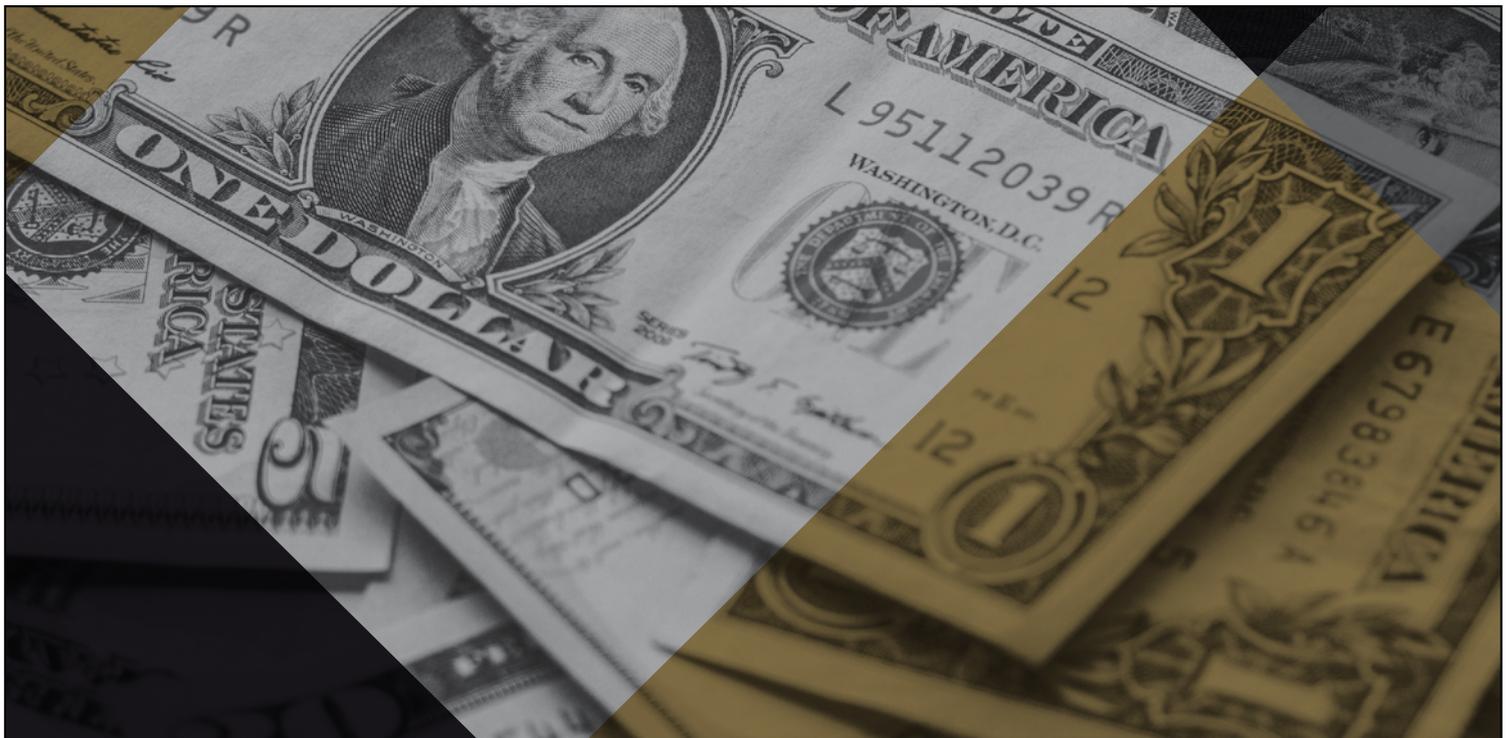
**ESHIMA:** We do have new challenges in the near term. For example, the discontinuation of LIBOR will add to our work on benchmark regulations. We have been working on those challenges. However, I am also personally interested in a higher-level topic – how international financial regulations will evolve from here. After the global financial

crisis, the major financial regulators were busy introducing and tightening regulations. They were intended to stabilise the world’s financial systems. The so-called “too big to fail” was one of the problems that they tried to address. However, one notable effect has been the increased cost of regulatory compliance for banks, adding pressure for banks to consolidate further. Ironically, the problem of TBTF may well have grown bigger as a result. Will the regulators try to have greater coordination and achieve a more efficient regulatory environment for the banking sector? Or will the fragmentation of international regulations grow further, adding to the costs of global banks? Either trend will have a big impact on the banking sector. While we respond to challenges in the near term, we also try to be forward-looking to identify trends emerging in the longer term. 



“Given the rise of fintech companies, it is inevitable that more functional-based adjusted financial regulations will be introduced. As a result, financial institutions should be prepared to revisit their business model and strategy, not only from a financial perspective, but anticipate potential future regulation change.”

- Tom Kimura, ANZ



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- **Safeguarding Creditor's Debt Enforcement Rights** to Ensure Successful Asset Recovery Efforts
- **Getting through Indonesia's Debt Restructuring** – Tips and Best Practices
- **The Art of Successful Turnaround** – Navigating Divergent Interests, Recovering and Transforming Post Restructuring
- **Rescue and Distress Financing** – Seizing Opportunities for Lenders and White Knights
- **Special Situations, Stressed and Distressed Investing Opportunities in Asia** – Translating Legal Differences into Opportunities

## WHO SHOULD ATTEND

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## A TEMPLATE FOR THAILAND



Containers in the port of Laem Chabang in Thailand. nattan726/Shutterstock.com

Thailand's special economic development zone, the Eastern Economic Corridor (EEC), reportedly attracted more than 100 billion baht (\$3.3 billion) in outside investment last year. Apart from boosting the country's economic growth, it has also resulted in an increase in legal work. BY ELIZABETH BEATTIE

■ According to the *Bangkok Post*, investment in Thailand is set to grow by 10 percent this year — largely driven by the Eastern Economic Corridor (EEC). With extensive infrastructure projects on the horizon, lawyers are highly involved in the latest developments.

David Beckstead, counsel at Chandler MHM, tells *Asian Legal Business* that big investment activity under the EEC policy initiative has flown largely from infrastructure development projects.

"The initial set of projects have included expansions of two existing ports (Laem Chabang and Map Ta Phut), a high-speed rail to connect Don Muang and Suvarnabhumi airports in Bangkok with the EEC region and U-Tapao Airport, as well as developments at U-Tapao Airport itself," he outlines, explaining that these infrastructure projects are being tendered by the Thai government "under a public-private partnership model, and each project is currently at a different stage in the process. We expect construction to be ongoing over the next four to five years, meaning these mega-infrastructure projects will be a continuing source of investment activity over that time."

It's not just the infrastructure projects exclusively that have courted EEC investment activity. Over the past two to three years, there has also been something of a boom in traditional manufacturing sectors. But while the government is also attempting to promote "higher-value projects, including robotics, digital services," says Beckstead, there hasn't yet been a significant influx of interest at this stage. "Perhaps once the EEC's infrastructure is further developed following the government's policy objectives, the region will attract greater attention from private investors," Beckstead suggests.

### INFLUX OF WORK

Where infrastructure work leads, lawyers are quick to follow. Beckstead's work for Chandler MHM has included the representation of several bidders in the submission process for the initial infrastructure projects stemming from the EEC initiative — among these are Thailand's Airport Link High-Speed Rail Project and the Laem Chabang Port, Phase III Expansion Project. The firm has also advised on proposal terms and is currently working with investors who

are "exploring opportunities to invest in smart cities in the EEC," he says.

"Going forward, we anticipate an influx of work coming from private investors who are looking to build or expand within the EEC region, taking advantage of the investment promotions on offer from the Board of Investment (BOI). This will also include services which we customarily performed in connection with these developments, such as license and regulatory applications, labour and employment compliance, corporate structuring, and financing," he says.

At the same time, the Thai government has also been proactive in putting in place measures to attract further investment. "The BOI has devised additional incentives for promoted projects in the EEC which mainly consist of lengthened corporate income tax holidays. There is no question that the BOI's direct investment incentives play a significant role in attracting investment. By regional comparisons, Thailand's infrastructure and energy supply are also important factors in attracting investment; the government's overall policies in this regard are also quite important," Beckstead says.

While the BOI is successful in promoting large-scale projects, it remains "out of reach for many small- and medium-sized enterprises," he adds. Beckstead, however, warns that while the BOI does "an excellent job in carrying out its designated functions, but given its mandate, it may not be the most appropriate government agency to effect overall strategic goals," adding that greater deregulation would help promote innovation.

Additionally, Beckstead says the government may need to consider additional infrastructure projects – including water treatment facilities – in order to ensure that the EEC region is able to remain competitive in the future.

While the recent developments are promising, there are still investor challenges that require further improvement. “Investors encounter regulatory and administrative overlap because the EEC Office has been designated to administer a number of licensing and regulatory requirements as a one-stop service centre under the EEC Act,” says Beckstead.

“This has required us to obtain a better understanding of the EEC’s functions with respect to projects in the EEC area and advise clients how this differs from projects throughout the rest of Thailand. Since the EEC Office is still relatively new, we expect these functions to become clearer over time. However, the existence of this service is

an indicator of the Thai government’s interest in promoting investment in the EEC, intending to make investment in the region accessible, and simpler than under existing investment policies,” he adds.

**ONWARD**

While there is plenty of work ahead, further EEC-related policies are expected soon. Meanwhile, 2020 is also likely to see several infrastructure projects concluded.

“We are expecting the Laem Chabang Phase III terminal project to be concluded, with the Port Authority signing the PPP Agreement with the winning consortium. It will be interesting to note whether the EEC issues RFPs for any further infrastructure projects,” says Beckstead. “We would also expect to see further refining to incentives from the BOI and EEC Office to attract further private investment. The government has targeted at least 10 industries

that can attract foreign investors to the EEC. These are divided into two groups. The group of ‘First S-curve’ industries features next-generation automotive, smart electronics, affluent and wellness tourism, agriculture and biotechnology, and food processing. These industries already exist in the country and will be further promoted under the EEC. The second group is the ‘New S-curve’ industries: robotics, aviation and logistics, biofuels and biochemicals, digital, and medical hub,” he adds.

Additionally, according to Beckstead, the EEC has the potential to be a “significant driver of Thailand’s economic growth over the coming decade, and potentially further into the future.” “This presents investors with a number of opportunities. The success of the EEC to date and it’s potential to be a major driver of economic growth could be a template for future development initiatives in other areas of the country,” he says. 

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# CRYPTO HUB

Cryptocurrency regulation in Asia has long been a polarising issue, but Singapore stands out for championing the new phenomenon. The city-state's new Payment Services Act, which came into force in January, is considered its latest supportive move, and according to lawyers in the market, this is already triggering serious investment interest.

BY ELIZABETH BEATTIE

■ Singapore has emerged as a key hub in Asia for emerging technologies such as cryptocurrencies and blockchain due to its welcoming attitude and its willingness to experiment. The most recent move has been the new Payment Services Act, passed in January, which will regulate cryptocurrency payments and trading enterprises under some aspects of the regulatory regime that currently governs traditional payment services and require them to hold a licence.

Derick Ting, a corporate partner at Eversheds Harry Elias, says the new regulations offer "legitimacy" to businesses operating in the market, and as a result, is triggering broader investment interest in the crypto market. "While there are many jurisdictions which are imposing increasingly stringent rules on digital payments and digital assets, Singapore is one of the few leading international financial centres where applicants have the opportunity to obtain a licence from

the Monetary Authority of Singapore to operate legitimately alongside other traditional financial services," he says.

Further to this point, "obtaining a licence under the Payment Services Act, particularly where one of the licence categories is 'Digital Payment Token Services', is effectively seen as a 'badge of legitimacy' for companies which deal in what the Payment Services Act refers to as 'digital payment tokens' and which may include cryptocurrencies, crypto-assets, or other digital assets," Ting says.

That "badge of legitimacy" has quickly created more opportunities within the crypto market. Says Ting: "We have seen very strong interest from established players with significant investor backing approach us for advice and support in the licensing application process. At the same time, the added regulatory and compliance cost in applying for the licence is weeding out less serious players who were just trying to ride the hype in cryptocurrency."

KK Lim, head of cybersecurity, privacy and data protection at Eversheds Harry Elias adds: "The application process includes the applicant agreeing to comply with stringent cybersecurity controls as part of the application assessment regardless of the size of the applicant involved. This is one of the criteria to obtain the 'badge of legitimacy' so to speak and is a good policy move and only applicants with the necessary ability to execute these controls are likely to be selected."

## TWIN EFFECT

Chia Ling Koh, managing director at Osborne Clarke's OC Queen Street, tells Asian Legal Business that the Payment Services Act brings crypto companies into the Monetary Authority of Singapore's regulatory fold "with the implication that such companies will be monitored for money laundering and financing of terrorism activities."

While it's potentially too early to assess the impact of the regulation on the allure of Singapore's crypto market, Koh says it will have something of "a twin effect."

"This licensing regime may appear to be onerous for crypto-companies, but it also provides greater legal certainty to industry players. Compliance with this regime may also allow crypto-companies to better garner investor trust and confidence," he says.

Such developments also send a clear message about Singapore's validity as a crypto capital. Kenneth Oh, senior partner at Dentons Rodyk's corporate and blockchain and distributed ledger technology practices, says licensing will increase the city state's allure and "bolster Singapore's position as a cryptocurrency and blockchain hub."

"Licensing of cryptocurrency intermediaries allows parties – whether individuals, corporates or institution investors – to engage or transact or place digital assets with such intermediaries with increased confidence and will lead to increased adoption and activity," he says, adding that the market has "seen many corporates including listed companies and institutional investors having to stay on the sideline in cryptocurrency

markets as they had internal and risk management policies that restrained them from participating as they cannot transact with sufficient confidence and accountability with cryptocurrency intermediaries in the absence of licensing”.

Much like Koh, Oh also expects the licensing tackle existing money-laundering challenges. “Lack of banking support attributable to AML concerns has been a bugbear of companies across jurisdictions including Singapore — particularly those who have raised funding through ICOs as well as of cryptocurrency intermediaries,” says Oh. “It is anticipated that licensing will encourage financial institution to deal with cryptocurrency intermediaries as licensees are subject to stringent KYC/AML requirements and accord the much-coveted banking support,” he says adding that evidence of this “increased allure is that we have been receiving between one to three enquiries week-on-week on PSA licensing since November 2019.” 

## Spring is coming

Looking to the future of the market more broadly, Appleby partner Fiona Chan says that across Asia, the cryptocurrency market is back on track.

The Chinese government announced in October last year that it would accelerate proposals to adopt blockchain across different industries, while news that the country is looking to launch its own “central bank-backed digital currency during 2020 certainly gave the sector a massive boost,” says Chan. “Digital currencies are continuing to gain traction to help resolve some of the key problems identified by financial institutions and governments. There have been signs that the global crypto market appears to be coming out of the so-called ‘Crypto Winter’ which saw a significant drop in the number of cryptocurrencies and the price of Bitcoin throughout 2018. Recent developments in Asia contributed to the anticipated arrival of ‘Crypto Spring.’”

While Chan has also seen a continuation of the bear market for ICOs, she suggests the recent economic downturn in Asia may have “halted certain crypto projects and speculative investment,” she says this may offer market opportunities. “The use of decentralised cryptocurrency as an alternative for payments and savings to fiat may grow in times of economic downturn or recession. With the advancement of technology and expansion of the cryptocurrency network, we expect to see a continuous rise in the use of cryptocurrency in Asia,” says Chan. 

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# DEBT DELUGE

As of 2019, Chinese companies had defaulted on nearly \$20 billion in loans, and the country's default rate is expected to grow further. In the next two years, companies will owe hundreds of billions of dollars in debt that is coming due, with the government also less willing to provide support for such defaults. Lawyers say that China needs to take a balanced approach towards its insolvency and restructuring landscape.

BY HU YANGXIAOXIAO

■ The rapid growth of Chinese companies has led to a surge in borrowing, and companies are under unprecedented financial pressure as the debt is coming due. For example, in late 2019, Tewood Group failed to repay its \$1.25 billion offshore bond, marking the first offshore default by a state-owned enterprise (SOE) in 20 years. The country also saw more defaults by Chinese companies such as CEFC China Energy and HNA Group.

The Chinese government has also changed its practice of "providing support to secure employment" and strengthened market-based measures to regulate the exit mechanism for the companies. "At the national policy level, it is a general trend that the exit mechanism for market entities will follow marketization and rule of law. The 'Reform Plan on Improving the Exit Mechanism for Market Entities' issued by 13 agencies including the National Development and Reform Commission and the Supreme People's Court in July 2019 also reflected this core idea. The

fifth portion of the plan mentioned the improvement of the exit mechanism for SOEs," says Chi Weihong, managing partner at Tiantong & Partners.

"From a legal perspective, the government is never obliged to subsidize SOEs that are facing huge debt or bankruptcy. The government is less willing to help these SOEs for their defaults and is pushing them to the market to let it determine their survival, development or withdrawal," says Zhu Linhai, senior partner at AllBright Law Offices. "This points to the improvement of the government's ability to rule the country in accordance with the law. It is also an example of optimising the business environment and adhering to the principles of marketization and rule of law."

On the other hand, the government intends to make other market entities take more responsibilities. "The government is encouraging and, in some cases, effectively forcing banks and creditors to take more proactive actions, such as to deal with zombie companies. What it means is that banks can no longer extend



the maturity date and then continue as if nothing has happened. The rationale behind this is to recycle capital back into a positive economy, and to move towards building a functioning system with more market discipline," says Viola Jing, of counsel in Allen & Overy's Asian Restructuring & Recovery Group.

## THE FIRST TO BE HIT

The dual pressures of debt maturity and changes in government attitudes will inevitably hit the SOEs first. "The SOEs with poor compliance and risk management usually have an ill-founded internal management system, a backward business model, and poor awareness of risk control. They always rely on support from



government policies and subsidies. Once the market takes over, these enterprises will exit the market as they cannot cope well," Zhu says.

Meanwhile, data shows that listed companies are also struggling. "In 2019, seven listed companies underwent restructuring, hitting another record after 2008," Chi says. "In addition, nearly 50 listed companies filed for restructuring. Among the Chinese companies, financial institutions and listed companies have the best capability to pay their debts. If many of the listed companies are seeing defaults, entering bankruptcy, and restructuring, it shows that even the most capable companies have exceeded their limits."

He also noted that this trend is likely to continue in 2020. "More listed companies will undergo restructuring compared to 2019. The new Securities Law, which will come into effect on March 1, stipulates that when a listed company meets the delisting conditions, there will be no longer a suspension of listing and the company will delist directly. Therefore, listed companies with a debt crisis will have a more urgent need to initiate restructuring," he adds.

#### **RIPPLE EFFECTS**

This round of default crisis of the Chinese companies is also poised to create ripple effects for other market entities and even overseas markets.

If the Chinese government intends to increase the sense of responsibility of other market players while fighting the zombie companies, these efforts are paying off. Ian Chapman, co-head of Allen & Overy's Asian restructuring practice tells *ALB*: "We have been very focused on the major PRC banks for a number of years, in respect of their onshore as well as offshore exposures, and we have noted that they are responding to the increasing levels of default by building up their workout teams, building up a special asset expertise. It's an increasingly sophisticated game being played on how these things should be run."

"Banks are also increasingly seeing the need to be less reactive and

“There are four criteria to test if a restructuring case is successful. The first is the outcome, as the court has to approve the restructuring plan. Second is the complexity and the scale of the case. The larger the debt amount or asset size is, the more complex the case is. Third is the influence of the case. Lastly, speed and efficiency are also important considerations.”

— Chi Weihong, Tiantong & Partners

to monitor situations as they develop databases with watchlists and trackers. This allows them to follow their credit portfolios and track when credits start to deteriorate to step in and take action when there is still some cash and viable business and still a few more options available to restructure. We’d now say that well over a majority of our Chinese banking clients have experience and know-how to guide companies through the situations,” adds Richard Woodworth, fellow practice co-head.

As the Asia-Pacific markets become increasingly interlinked, the impact of this wave of debt restructuring by Chinese companies is not only an issue for the domestic market. “We’ve seen the emergence into the global markets of a large number of major Chinese corporates. They’ve got Singapore listings, they got Hong Kong listings. More and more Chinese restructurings now have a very significant offshore element,” Woodworth says. “The development of the legal and regulatory environment in China now gives offshore creditors more opportunities to take direct action against PRC entities and assets. Creditors, whether international banks or PRC banks, onshore or offshore branches, are now more willing and prepared to take direct enforcement action within the PRC,” Jing adds.

## LEGAL WORK GROWING

For law firms, this scenario means more restructuring work; it also meant that they are playing a wider role. Zhu cites a case handled by AllBright on behalf of

an East China SOE as an example. “The company’s debt ran high as the original legal representative was derelict in his duty and the management was disorganised, which led to a large number of lawsuits. Due to protectionism for SOEs, the shareholders provided guarantees for the company’s debt and fell into heavy debt themselves. Before the East China company filed for bankruptcy, we took a comprehensive look at its assets, liabilities, and litigation,” he says.

“We sought reverse piercing of the corporate veil through judicial auditing, and we tried to recover as many assets as possible through criminal recovery of stolen property,” Zhu adds. “These efforts helped all creditors credit bid their claims after the company moved into bankruptcy proceedings, and the company was able to exit the market legally and efficiently. This demonstrates that legal service providers can play a bigger role,” he says.

In terms of legal work, Zhu says the number of bankruptcy restructuring and liquidation cases has been on a rise since the second half of 2018.

Allen & Overy’s restructuring practice team draw the same conclusion. “And now that there has been this policy shift towards market discipline and allowing defaults, the number of defaults is only going to keep increasing,” Woodworth comments.

Law firms have adopted different strategies to improve their services against this backdrop. “In Asia, it’s still quite often seen as more of a litigation practice. Whereas what we think is it’s a far more holistic practice. The

philosophy of our team is that our clients expect Asian based specialist restructuring lawyers like ours who not only understand banking and finance, but also know their way around M&A. Even so, litigation capabilities are essential which is why our team uniquely is an integrated team, and one with a real depth of Chinese language skills – I think you need all these combined skills if you are looking to find the best solution for all stakeholders,” Woodworth continues.

Jing of Allen & Overy notes: “Building on Richard’s comments, in this region, most of our clients accept that it is not easy to engage in a restructuring discussion before a crisis occurs and so they expect advice on enforcement and litigation strategies in order to push the company to engage in restructuring discussions with them. The client’s expectation is no longer just insolvency litigation expertise or transactional rescheduling or re-papering expertise, but for a team like ours which offers a combined skill set to deal with all of the challenges in a cross-border scenario.”

Chi suggests four criteria to test if a restructuring case is successful. “The first is the outcome, as the court has to approve the restructuring plan. Second is the complexity and the scale of the case. The larger the debt amount or asset size is, the more complex the case is. Third is the influence of the case. Lastly, speed and efficiency are also important considerations,” he says.

He cites the restructuring that Tiantong handled on behalf of listed company Pangda Automobile Trading as an example. It generally takes 11 months to complete restructuring in China, but it took only 95 days for the case to be established and approved by the court. In terms of complexity, Pangda’s debt amounted to 24.7 billion yuan, involving negotiations with 164 financial institutions. The group also had around a thousand subsidiaries and 300,000 shareholders. “To be able to close a case under such enormous pressure in a short time is a good outcome,” he says.

## ADDING VALUE

As more Chinese companies default, law firms hope to provide value-added

services in other ways. The most typical is to initiate a dialogue between creditors and the company as early as possible to avoid catastrophic consequences.

Woodworth tells *ALB* that they have a number of deals where the creditors have been very active in pushing the company for engagement. He shares one example: "There was a fairly high-profile Chinese conglomerate and the creditors spotted that the group was likely heading towards difficulties and quickly got organised with a creditors' committee. They took leadership, put pressure on the debtor group to engage and to work with the committee to find a solution. As a result, they were able to get to a position where the debtor was able to successfully refinance their liabilities with a number of the lenders being comfortable to continue with the relationship."

But he also points out: "But one of the key challenges in Mainland China like in Hong Kong is that it can be pretty hard for a creditor to work collaboratively to find solutions, unless the company is willing to engage and recognise it has a problem. In other jurisdictions around the world, there is greater ease to get the problem addressed earlier if there are potential personal liabilities for directors who fail to seek help. Now, both Mainland China and Hong Kong are very lenient in this area, which means directors more often than not carry on too far and too long and the banks can only get involved when they're already at crisis point."

While agreeing with Woodworth's observation, Chapman also has a different take on this: "I agree a much higher level of accountability of directors is needed, but I think we also have to be very careful not to get to an over-regulated situation which then stifles the entrepreneurial spirit, which is the engine of growth and innovation in Asia. And it's a fine balance."

On the other hand, cross-border factors are driving the development of the legal system. "The ultimate objective of cross-border insolvency is to have a global system. Specifically in Hong Kong and the Mainland, we are seeing increasing judicial collaboration

**"The ultimate objective of cross-border insolvency is to have a global system. We are seeing how Hong Kong and the mainland have much more of a judicial collaboration in terms of how we have the systems meshing with the cross-recognition. And we are seeing very encouraging developments in terms of how the mainland is in a way driving it."**

— Ian Chapman, Allen & Overy

in terms of our systems meshing with cross recognition. You're seeing Hong Kong arbitration recognition and how this assists on the Mainland in terms of asset preservation orders and the like. And we are seeing very encouraging developments in terms of how the Mainland is in a way driving it. Economics will drive the system," says Chapman.

With a focus on getting positive results, Allen & Overy calls this business sector their "Restructuring and Recovery Group", "because that's what our goal is. It's a double play on words, but our primary goal is to rehabilitate, to save jobs, and to get the best result for all stakeholders, without destroying businesses. Ironically, the best recoveries are the ones that the market never hears about," says Chapman.

### LOOKING AHEAD

Tiantong, AllBright and Allen & Overy all say that they are ready to expand their teams in expectations of a steady increase in restructuring business over the next one to two years.

Tiantong plans to expand its restructuring team to 40 members. "As the Bankruptcy Law is applied, the professional requirements for bankruptcy lawyers will increase, especially for administrators. We are also seeing more cases in which the administrators are sued for default in the performance. In addition, bankruptcy lawyers are required to integrate resources and coordinate better. They need to fully understand what the creditors need in order to provide a solution," Chi says.

AllBright is also enhancing its competitiveness. Zhu tells *ALB* that the law firm's headquarters in Shanghai is one of the first-tier administrators designated by Shanghai High People's Court to handle corporate bankruptcy cases. Fifteen offices of the law firm are qualified as bankruptcy administrators. AllBright has also established a bankruptcy restructuring and liquidation committee convened by Zhu that manages over 300 bankruptcy legal professionals, and it plans to expand its team in the next two years.

Allen & Overy continues to build its restructuring strengths in Asia. "We have the hub in Hong Kong. We have dedicated resources in Singapore and Jakarta, and at the beginning of this year we have announced our joint operation with Shanghai Lang Yue Law Firm, as approved by the Shanghai Bureau of Justice. Through this Joint Operation, we can offer our clients service concerning PRC law. Over the past 12 months our regional restructuring team has doubled in size," says Chapman.

"Jane Jiang, a partner in our Shanghai office is actually a founder member of the INSOL Asia committee driving regional development and cross border cooperation in the insolvency space. But there were limitations on the client service that we could offer. In particular, Allen & Overy cannot litigate for clients. In contrast, Allen & Overy working together with Lang Yue will give the clients the full service that they need across all aspects of restructuring and recovery matters," Woodworth adds. 

# FIGHTING BACK FAST: AI COMES TO CYBERSECURITY

BY DON PHILMLEE

Recently, more than \$240,000 was stolen by someone pretending to be an executive at a British energy company. This event does not seem all that out of the ordinary, except that the executive was not a real person. Thieves used voice-mimicking software to imitate the real executive. And they got away with it. This scam was enabled by artificial intelligence (AI) that was used to create a realistic deep-fake imitation. It is being called the world's first AI heist.

Today's AI represents a collective group of technological capabilities that — to most observers, at least — appears intelligent. These capabilities include such tasks as: complex analytics and predictions; speech, image, and video recognition and simulation; augmented reality; facial recognition; natural-language processing; and even the ability to converse. Computers can now learn how to act autonomously without being given explicit programming. Indeed, these learning algorithms can allow a computer to deeply and quickly analyse large amounts of data and reach conclusions that would have formerly taken decades to deduce.

However, AI technologies are now also being used to break into networks or computers and, as in the above example, create highly effective phishing scams using deep-fake conversations to steal money. An AI-enabled cybersecurity attack is capable of being much faster and much more sophisticated than anything done in the past. For example, if your network is breached, the AI attacker could observe and then be

able to mimic network traffic, allowing it to so effectively hide that you would never know your system even had been breached.

### AI TO THE RESCUE

The good news is AI-enabled technologies are not just in the hands of those who wish to attack us. AI-enabled technologies now are also being used to better defend your data and systems. The following are examples of what AI-enabled cybersecurity technologies can do:

- **Detecting a threat in progress** — Today's manually automated cybersecurity technology involves large amounts of log files, network traffic, and other data that is difficult to access quickly and meaningfully. AI-enabled cybersecurity technologies will be able to quickly analyse this mound of data, while machine-learning algorithms can create a baseline of your network and systems, login times, typical network traffic, and more. If there any irregular activities, the AI systems could send alerts, block the problem or user, and even fix the problem if possible.

- **Detecting a threat before it happens** — AI-enabled cybersecurity would not wait for an attack to happen. Instead, such systems would actively monitor online activity for any news of fresh attacks, hacker discussions on the dark web, known sources of threats, as well as other sources. The technologies could then correlate its understanding of your systems against the likelihood of an attack and make predictions of how you should lock down your systems, helping you shorten your response time and quickly build responsive strategies.

- **Using new-generation malware & virus protection** — Much of today's virus protection is signature-based. The virus protection software company learns of a virus and builds a detection and fix and then sends the information (signature) to your virus scanners. Such systems cannot keep up with the onslaught of malware and viruses that are created

every month. AI-based virus scanners can learn to detect viruses and malware using pattern recognition before those threats even get into your systems.

- **Detecting & preventing phishing quickly** — Phishing is an extremely effective and often-used attack. It is estimated that AI-enabled by machine learning can find and track more than 10,000 phishing attack sources at the same time and will be able to help a user determine whether a website is fake or real before they click on an email website link.

- **Eliminating the hegemony of passwords** — Passwords have always been problematic. Biometric authentication has been often touted as an alternative. However, attackers have found ways to trick such authentication roadblocks by mimicking key biometric information. AI technologies are being used to enhance biometric authentication by creating a more sophisticated model of your face with infrared sensors to better identify key patterns that cannot be easily mimicked.

- **Building better security policies** — Step one in building good security policies is understanding what is on your systems. This is often a very time-consuming task. AI can be used to not only quickly learn about users and systems, but to observe network traffic and understand how your systems are being used. By analysing those observations, AI technology can make suggestions for new security policies or updating older ones.

AI will play an important role in how we use our computers and devices in the future. 

*Don Philmlee is an entrepreneur, consultant, strategist and technology advocate with a broad range of experience finding and making useful technology work successfully.*

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