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ALB

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WORLD LEADERS RANKINGS

THE BEST FIRMS IN THE REGION FOR M&A WORK

KOREA MP ROUNDTABLE:
LOOKING PAST THE
PANDEMIC

WE PROFILE 10 OF INDIA'S
RISING STARS IN THE
LEGAL INDUSTRY

HOW COMPANIES
CAN BUILD A ROBUST
COMPLIANCE PROGRAMME

ALB



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SE ASIA - October 15 (Virtual)

KOREA - November 12

PHILIPPINES - November 20 (Virtual)

HONG KONG - November 27

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Open skies



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The year 2020 will probably go down as one of the most tumultuous years in history. With the world seemingly on hold due to the COVID-19 pandemic, most activities and industries have ground to a halt. Since then, it's been a very mixed bag of performances for M&A around the world.

By Asian Legal
Business

FEATURES

14 ALB India Rising Stars 2020

The Indian legal industry is seeing young lawyers making their mark in the market by setting high standards and achieving results for their clients, even during the pandemic. ALB profiles 10 such lawyers who have upped the ante and have been making an impact in the Indian legal scene.

26 Progressing from the pandemic

Like in other countries in Asia, Korean law firms found themselves affected by the COVID-19 outbreak, but they moved swiftly to mitigate the impact, and ensure business continued as smoothly as possible. In this

roundtable, leaders of three of the largest Korean firms talk about the year so far, and the lessons they will take from the experience.

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Designing a compliance programme that is robust and yet flexible enough to span multiple jurisdictions and industries is an increasingly common challenge for businesses.

Plus:
- *Perun Consultants*

36 Virtual moves

With traditional ways of working turned upside down by the global coronavirus pandemic, and meetings largely being moved online, Thailand's government has

issued an emergency decree outlining electronic meeting regulations. While the response so far has been positive, there are a few areas where businesses awaiting further clarity.

Plus:
- *Chandler MHM*

38 Open skies

With populations largely grounded and demand for flights disappearing almost overnight, the aviation industry has taken a battering. However, new areas of opportunity are emerging, partly as a result of regulatory flexibility, but also due to advancements in technology.

Plus:
- *Incisive Law LLC*

46 ALB Malaysia Law Awards

With COVID-19 making in-person events difficult, the 7th annual ALB Malaysia Law Awards was a virtual one, making it ALB's first-ever online awards ceremony. Despite the obstacles, it turned out to be a roaring success.

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FROM THE EDITOR

Better times are around the corner.

During the pandemic period, lawyers haven't seen a lot of legal work coming out of M&A, and it's not surprising. Reuters, citing data from Refinitiv, said that total region-wide deals value fell 20 percent from the same period a year earlier to \$381.2 billion. Globally, dealmaking plunged 43.5 percent to \$1.16 trillion. The feedback from lawyers we speak to is roughly on similar lines; the vast majority of firms have seen their transactional practices affected.

But it's not all doom and gloom, with domestic consolidation likely to drive the recovery of dealmaking in the Asia-Pacific region. Reuters added that the virus, which has infected over 9.5 million people with COVID-19 and led to nearly half a million deaths globally, has caused demand to plummet across industries such as retail and travel, making it difficult for many firms to raise new capital, if to survive at all. That has created opportunities for consolidation as bigger, better-positioned companies seek to acquire smaller or distressed peers at bargain prices. Again, private equity firms have stayed busy, with 912 deals being the record number for a six-month period; by value, deals rose 4.2 percent to \$41.9 billion. Reuters cited data from Preqin that shows that the industry holds a record \$382.1 billion in investable funds for the region. Finally, it found that buyout firms are also considering the potential to take listed companies private, betting valuations that dropped during the pandemic could eventually yield profitable re-listing or sale opportunities. So, while it might look like it's all rain and clouds at the moment, it won't be long before the sun reappears.



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Managing Editor,
Asian Legal Business
Thomson Reuters

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THE BRIEFING: YOUR MONTHLY NEED-TO-KNOW

55% - Drop in market value of DWF over a period of six months ending Sept. 1, according to the Law Gazette, the most among UK-listed law firms. Only Knights bucked the trend by increasing its market cap by 22 percent.

55

IN THE NEWS

1

Dentons has released a toolkit to help GCs plan for the future. The New Dynamic toolkit was created using the knowledge of former GCs who are now part of the NextLaw In-House Solutions. The kit also contains insights on legal tech and operations.

2

Arizona has become the first U.S. state to remove the ban on non-lawyers sharing fees with lawyers and having an economic interest in a law firm. The state of Utah earlier approved a two-year trial of such alternative business structures for law firms.

HK FINANCIAL FIRMS BEEFING UP COMPLIANCE HIRING, USE OF LAWYERS

Financial firms in Hong Kong are scrambling to fortify their compliance operations following US sanctions and China's new national security law, even as the sector pushes to cut costs amid the coronavirus pandemic, Reuters reported. This underscores the growing challenges for firms operating in the Asian financial hub, which was roiled last year by often-violent pro-democracy, anti-China protests and is now in the crosshairs of mounting Sino-U.S. tensions, Reuters added.

5.3%

Revenue growth in the first half of 2020 for a group of 196 law firms, according to research from Citi Private Bank. The bank attributed it to rate growth and a shortened collection cycle.

QUOTE UNQUOTE

"LET MY JAILING TODAY BE THE RECEIPT OF HARASSMENT AGAINST THE PEOPLE."

Thai human rights lawyer Anon Nampa reacts to being jailed. He was arrested recently for sedition over his role in a political rally that called for reforms to the monarchy.

COVID-19 INCREASING WORKLOAD FOR IN-HOUSE

A survey conducted by research firm Gartner has found that unplanned work due to COVID-19 has been a burden on legal and compliance leaders in the U.S. Labour and employment issues have contributed the most to legal departments' workload according to the survey of 286 legal department heads, with 44 percent of respondents reporting an increase in the volume of work related to this area since the start of the pandemic. This was followed by government affairs and relations (42 percent) and regulatory and compliance matters (39 percent).

GREATER INTEGRATION

On Aug. 11, the Standing Committee of China's National People's Congress (NPC) passed a decision to implement pilot measures that will allow Hong Kong lawyers to practice in nine cities in the Greater Bay Area. Lawyers in Hong Kong and on the mainland say the measures provide more room for the professional development of Hong Kong lawyers, and facilitate the growth of legal services on the mainland.

HOW WILL THE NEW MEASURE HELP INTEGRATE THE LEGAL SERVICES MARKETS OF THE MAINLAND AND HONG KONG?



XU

ALAN XU, partner, Zhong Lun Law Firm

The new measures will play an important role in integrating the legal services markets of the Mainland, Hong Kong and Macau. Under the new measure, it is expected that more lawyers from the three jurisdictions will cooperate, mainly through associations between law firms, after the barriers to entry into the mainland market have been lifted. In fact, in July last year, the Guangdong Department of Justice had issued a measure to facilitate the joint operation of law firms of these three jurisdictions in Guangdong Province, by removing the requirement on the minimum capital contribution of non-mainland law firms. This trend of encouraging cross-jurisdiction legal partnerships in the Greater Bay Area has been followed and strengthened by the NPC's decision, which further opens the mainland market to qualified lawyers from Hong Kong and Macau. The partnerships between the mainland and Hong Kong/Macau law firms may become a common mode of cooperation in the market, to provide the one-stop cross-jurisdictional legal services in the Greater Bay Area for clients, such as Hong Kong enterprises conducting business in the Mainland.

The new measure also addresses the imbalance between a growing need for foreign-related legal services and a relatively small number of competent lawyers in the Mainland. With the Chinese government continuously rolling out new legislation and policies facilitating outbound investment, enterprises on the mainland have more access, and, needless to say, more risk exposure, to global transactions and become more easily involved in foreign law matters. The proposed cooperation under the new measure is a good chance to satisfy such need for foreign-related legal services.



SUNG

VERA SUNG, partner, and ANGEL LUO, registered foreign lawyer, Oldham, Li & Nie

Due to new measures recently put in place, eligible Hong Kong lawyers who have passed the qualification exam for Guangdong-Hong Kong-Macao Greater Bay Area and obtained mainland legal qualifications will be able to practice in specific areas on the mainland. It will provide more room for the professional development of Hong Kong lawyers and facilitate the growth of legal services on the mainland.

Through studying Chinese law and obtaining legal qualifications in the Greater Bay Area after passing the exam, Hong Kong lawyers will be able to help resolve the differences and conflicts of laws between the two jurisdictions. They will be able to more effectively integrate the legal resources of the two regions in legal practice, such as arbitration and mediation legal services, the implementation and protection of intellectual property rights, commercial dispute resolution and litigation, and marriage disputes.

With Hong Kong lawyers beginning to practice in the Greater Bay Area and the future development and needs of the region, the scope of law in which Hong Kong lawyers are permitted to practice in the region will likely be extended in the future to include areas such as administrative and criminal litigation cases.

HELEN LIAO, partner, Deacons

Given the current domestic and international circumstances, the central government's decision is an important move to further integrate the legal services markets in the region. We believe there are opportunities as well as challenges.

Firstly, we can foresee that this new initiative will create new room for growth for Hong Kong and



LUO



LIAO

Macao lawyers, and the area, scope and content of our practice can be extended.

Secondly, from the perspective of economic development, this measure will bring notable practical significance and effects to companies in the Greater Bay Area. In the future, the demand for legal services will be stronger. Companies in the three jurisdictions have been experiencing institutional barriers, professional barriers and service implementation barriers in many aspects, such as the application of law, foreign law ascertainment, conflict of laws and dispute resolution. As the pilot rolls out, Hong Kong and Macao lawyers will be able to practice on the mainland, which will make it easier for companies to resolve these issues.

Thirdly, from the perspective of the development of the legal services industry in the Greater Bay Area, this measure will also have a very positive impact. As the pilot programme rolls out, the resources and expertise of the legal services industry in the region will be integrated. With everyone interacting and cooperating on the same platform, the Greater Bay Area will see legal services increase in volume and gradually in scale.

In the past, lawyers mainly provided services to mainland companies to list and issue stocks in Hong Kong. Thanks to the new measure, Hong Kong and Macao legal practitioners will be able to work on the mainland, which will allow companies to feel more reassured about extending their business to the mainland. Similarly, mainland companies will feel more reassured about doing business in Hong Kong and Macao, as lawyers from both cities can

practice on the mainland. The focus of the legal sector, therefore, will not change, and there will be a greater volume of business.

That said, the details of the examination and its assessment are yet to be unveiled. Uncertainties remain about the exam format and pass rates, including the proficiency requirements in Putonghua and Chinese writing. In addition, whether there are political vetting and operational standards is also a consideration, including whether there are interviews and visits, the times and locations of closed-door training, and the length of the internships.

Then, competition will intensify in the legal services market. Law firms will compete more fiercely to recruit legal talents with dual qualifications. For young lawyers who have just joined the industry, resources could be a concern, as they may worry about the difficulties in competing with local lawyers and winning the trust of their clients.

Finally, we hope to see further relaxation of the policy which will allow qualified Hong Kong and Macao law firms to directly set up offices in the Greater Bay Area instead of just representative offices or partnership associations. When only individuals, but not law firms, are allowed to practice, this policy may not be as appealing or effective as expected. Traditionally, 80 percent of the market share is taken up by 20 percent of the law firms on the mainland. Only by allowing Hong Kong and Macao lawyers to compete for relatively high-end business can the industry integrate in a truly meaningful way. ^{ALB}

OBITUARY: HARRY ELIAS, FOUNDER, HARRY ELIAS PARTNERSHIP



Harry Elias, one of Singapore's best-known trial lawyers and the founder of Harry Elias Partnership (HEP), passed away on Aug. 26. He was 83.

Elias began his legal career at Shearn Delamore & Co. in Kuala Lumpur in 1965. In 1970, he returned to Singapore, joining Drew & Napier.

In 1988, Elias established HEP. During the 1990s, he was regularly in the public eye, winning high-profile defamation cases, including one for then-Prime Minister Goh Chok Tong. In 1997, he became one of the first 12 people to be appointed as Senior Counsel in Singapore.

He is also remembered for his philanthropic work. Elias spearheaded the setting up of the

Singapore Law Society's Criminal Legal Aid Scheme (CLAS) in 1985 to help the less fortunate obtain free legal representation. And in the early 1990s, Elias established workshops where young lawyers could practise and improve their courtroom presentation skills.

"For our firm, Harry was our founder, leader and mentor. For our profession, Harry was the epitome of a fearless and first-class advocate," said Philip Fong, managing partner of Harry Elias Partnership, in a statement. "For our society, Harry was a trailblazer with lasting legacy. For us personally, Harry was a true friend, a teacher and a kind and generous soul. We are honoured to have walked with him for a part of his impactful life." ^{ALB}



FOR COMPANIES LOOKING BEYOND HK, THE MOVING PROCESS COULD BE COMPLEX

When the U.S.-China trade war began, it triggered a sudden rush to rethink and diversify supply chains. Some in Hong Kong sought to deploy the first sale rule, while others looked to strengthen their footprint in other markets in a bid to round out their Asia presence.

But as geopolitical relationships have grown increasingly tense in the age of COVID-19, and Hong Kong's National Security Law has shaken business confidence in the finance hub, businesses in Asia are looking to approach the region more strategically.

Chris Burton, managing director for Southeast Asia at Vistra, says that countries like Japan, South Korea and

Singapore are starting to be seen as viable alternatives, noting that they benefit from "a highly developed infrastructure, excellent intellectual property (IP) rights regimes and trusted legal systems."

And more recently, Japan and South Korea have taken a proactive in their approach to attracting foreign investment.

"Japan recently announced it was considering changes to its visa processes and looking at streamlining approvals for investment management licences, and in South Korea, the government has offered additional tax breaks for financial firms in Busan," notes Burton.

But while these are promising signs, establishing an office base in Japan and South Korea can still be difficult for foreign companies, with complex labour laws and local regulatory systems to consider, apart from "higher labour costs and significantly higher tax rates."

As a result, Singapore emerged as the strongest option.

"Over the past decade, Singapore has secured its spot as Southeast Asia's predominant financial centre given its low corporate tax rate, business-friendly environment and its political stability. The country's physical proximity to China and India, along with its cultural links and language capability, make it a great strategic location for many companies interested in doing business in the region," says Burton.

Playing a significant role in cultivating this reputation, is Singapore's government, which has worked to enhance its competitiveness with other financial centres in a number of ways — including a new corporate structure, the variable capital company (VCC).

"This structure is designed to appeal to alternative fund managers in particular, and there is increasing demand being seen in this space," says Burton.

Additionally, Singapore boasts a multilingual workforce and "smart immigration policies," pitching it as a strong competitor to Hong Kong.

"In addition, Singapore's legal system follows British law and has evolved to become an international hub for arbitration and mediation. In the long run, this may be viewed as a differentiating factor against Hong Kong in the advent of the recent Security Law," Burton adds.

But for businesses looking to establishing a physical presence within Asia, preparation is key, as the process is often far from simple.

"As a foreign investor, setting up a physical presence in any of these countries will require extensive preparation and a thorough understanding of the country's compliance and regulatory requirements. Companies will also need to consider the local labour laws, which can vary drastically from one Asian country to another," notes Burton. ^{ALB}

KIM & CHANG, YULCHON INVOLVED IN ANBANG-MIRAE LITIGATION: REPORT

Kim & Chang and Gibson, Dunn & Crutcher are representing China's Anbang Insurance Group in a lawsuit before the Delaware Chancery Court over a terminated \$5.8 billion deal to sell 15 U.S. luxury hotels to South Korea's Mirae Asset Global Investments, according to a report in the *Korea Times*.

The report added that the firms representing Mirae Asset are Peter & Kim, Yulchon, Quinn Emanuel Urquhart & Sullivan, and Greenberg Traurig.

Neither Kim & Chang nor Yulchon had any comment on the report, when approached by *ALB*.

In a statement reported earlier by Reuters, Mirae Asset said Anbang did not remedy breaches of certain obligations regarding the contract signed in September last year, resulting in the termination of the deal.

The asset manager had placed a 10 percent deposit, or \$580 million, for the deal, which had originally been scheduled to close on Apr. 17. It cited the hotel shutdowns caused by the pandemic, and information being withheld about an alleged deed scam on Anbang's side, as part of a cover-up designed to ram the deal through among its reasons for cancelling the transaction, the *South China Morning Post* reported.

Kim & Chang earlier represented Anbang in its takeover of Allianz Life Insurance Korea in April 2016, and its acquisition of Tong Yang Life from Vogo Investment in February 2015, the *Korea Times* added.

According to the *ALB* Top 50 Law Firms for 2019, Kim & Chang and Yulchon are the largest and fifth-largest firms in Korea, respectively. ^{ALB}

APPOINTMENTS



BONITA CHAN

LEAVING
Han Kun Law Offices

JOINING
Ince

PRACTICE
Dispute Resolution

LOCATION
Hong Kong



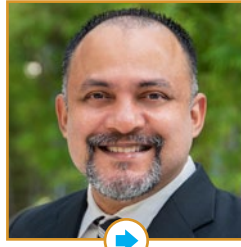
WILLIAM HO

LEAVING
Orrick, Herrington & Sutcliffe

JOINING
K&L Gates

PRACTICE
Private Equity

LOCATION
Hong Kong



CHENTIL KUMARASINGAM

LEAVING
Oon & Bazul

JOINING
Withers

PRACTICE
Litigation & Arbitration

LOCATION
Singapore



SHAUN LEONG

LEAVING
Eversheds Sutherland

JOINING
Withers

PRACTICE
International Arbitration

LOCATION
Singapore



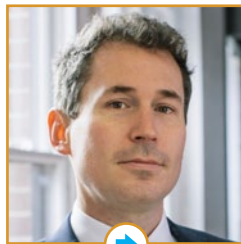
OLIVIA NGAN

LEAVING
Linklaters

JOINING
Sidley Austin

PRACTICE
Finance

LOCATION
Hong Kong



CONNELL O'NEILL

LEAVING
Allen & Overy

JOINING
Gibson, Dunn & Crutcher

PRACTICE
Technology

LOCATION
Hong Kong



SCOTT PETERMAN

LEAVING
Orrick, Herrington & Sutcliffe

JOINING
K&L Gates

PRACTICE
Private Equity

LOCATION
Hong Kong



PAUL TAN

LEAVING
Rajah & Tann

JOINING
Cavenagh Law

PRACTICE
Litigation

LOCATION
Singapore



SOOK YOUNG YEU

LEAVING
Orrick, Herrington & Sutcliffe

JOINING
K&L Gates

PRACTICE
Private Equity

LOCATION
Hong Kong

EXPLAINER

TIKTOK IN FOCUS AS TRADE TENSIONS RAMP UP

As trade tensions between the U.S. and China continue to flare up, Chinese technology companies operating on American soil have become the latest targets of the Trump administration. And Trump's recent targeting of Chinese-owned social media app TikTok is being seen as something of a harbinger for future sanctions.

1 ARE WE LIKELY TO SEE THE U.S. GOVERNMENT CONTINUE TO TARGET CHINESE TECHNOLOGY FIRMS IN THE COMING MONTHS?

Haiyan Tang, a partner in the litigation department of Paul Hastings, tells *Asian Legal Business* that we can expect to see Chinese tech firms continue to be targeted in the future. "Particularly in light of new rules issued by the U.S. Commerce Department to limit Huawei's access to chips incorporating U.S. technology, the Trump administration's recent moves against TikTok and WeChat should be seen as part of a broader series of moves," says Tang.

"Additionally, President Trump has made comments recently confirming that other Chinese technology firms could become targets. Our sense from keeping our fingers on the pulse of the Hill is that there will be more actions against Chinese companies before the November election in the U.S.," says Tang.

But Trump is not isolated in his focus on Chinese companies operating in the U.S. More broadly, this is a stance adopted by both sides of the political divide — and it's far from a recent concern.

"Democratic and Republican lawmakers increasingly share similar views on the perceived threat of Chinese technology

companies. As early as 2012, under President Obama's administration, Congress already raised concerns about security threats allegedly posed by China's telecommunications corporations," explains Tang.

A flurry of activity over the past few years, including the changed stance on well-known Chinese technology companies, have served to illustrate this shift in attitude.

"Trade wars, the DOJ's 'China Initiative,' along with tightening of audit requirements over U.S.-listed Chinese companies, plus the recent moves against TikTok, WeChat and Huawei have only heightened the U.S. government's apparent commitment to pursuing a strategy of enforcement and restrictions against Chinese companies," Tang adds.

2 ARE THERE AVENUES TO DISPUTE THE SANCTIONS — AND ARE THESE BEING EXPLORED?

There are legal avenues to dispute the U.S. government's restrictions against Chinese companies, but these may prove difficult to access.

"The president's authority in instituting sanctions is quite broad, and challenging that authority in the courts can be a time-consuming and costly course of action," says Tang of the mechanisms to challenge such restrictions.

Some companies may apply for special licenses, should the regulations restrict their ability to do business, says Tang, noting: "Licenses are often broadly granted to all entities or all U.S. persons for certain periods of time or certain types of transactions, where sanctions might otherwise hamper transactions seen as being in the U.S. national interests, but where these general licenses do not apply, companies can apply for specific licenses."

But for Chinese companies in the U.S., there are likely to be broader ramifications as a result of such changes. An increased emphasis on compliance is likely to be part of this.

"Chinese companies in the U.S. may have to increase their resources and investment in effective compliance programs to ensure ethical and compliant conduct not only in the U.S., but globally. We expect to see this trend of increased compliance investment to continue," says Tang.

And longer term, this shift is likely to cause deeper divisions.

"These moves may be part of a broader realignment on top of a partial 'decoupling' between the world's two largest economies," suggests Tang. "With uncertainty around what hardware or software may be permissible for use in government contracts or cross-border trade from one year to the next, companies may look

for more localized supply chains or segregated sources of technology – avoiding, for example, using chips manufactured with U.S. technology in Chinese handheld sets, or operating systems from U.S. companies in smart products (refrigerators, cars, etc.) marketed in China.”

OUTSIDE THE U.S., WHAT IMPACT MAY THE SANCTIONS HAVE?

The latest developments are likely to cast a shadow beyond U.S. borders. Further afield the sanctions may restrict both U.S.

and non-U.S. entities’ transactions – depending on their scope.

“Even transactions by two non-U.S. entities can be caught by sanctions if they involve U.S. goods, technology or even U.S. financing,” warns Tang. “Sanctions may therefore have major impacts even outside the U.S., by restricting the actions of U.S. companies abroad or dictating what types of transactions non-U.S. entities are willing or able to engage in.”

As a result, many Chinese companies are placing a greater

emphasis on compliance, and looking to mitigate risks where they can, in a bid to avoid being targeted. “Companies have increased their resources and investment in effective compliance programs to ensure ethical and compliant conduct not only in the U.S., but around the world as well. This has proven especially valuable for Chinese companies with substantial business in the U.S., which can subject them to U.S. jurisdiction in certain respects. We expect to see increased compliance investment continue,” she adds. ^{ASB}

DEALS

\$30 BLN

Ant Group’s planned IPO

Deal Type: IPO

Firms: Fangda Partners; Freshfields Bruckhaus Deringer; King & Wood Mallesons; Simpson Thacher & Bartlett
Jurisdictions: China, Hong Kong

\$3.4 BLN

Reliance Groups’ acquisition of Future Group’s retail and wholesale business

Deal Type: M&A

Firms: Khaitan & Co; Shardul Amarchand Mangaldas & Co.; Trilegal; Wadia Ghandy and Co
Jurisdiction: India

\$2.3 BLN

Blackstone’s acquisition of Takeda Consumer Healthcare

Deal Type: M&A

Firms: Anderson Mori & Tomotsune; Nishimura & Asahi; Simpson Thacher & Bartlett
Jurisdictions: Japan, U.S.

\$1.5 BLN

Axiata Group’s dual tranche offering

Deal Type: DCM

Firms: Adnan Sundra & Low; Clifford Chance; ZICO Law
Jurisdictions: Dubai, Hong Kong, Malaysia, Singapore

\$1.38 BLN

Tigermed’s IPO

Deal Type: IPO

Firms: Davis Polk & Wardwell; Freshfields Bruckhaus Deringer; Jia Yuan Law Offices; Zhong Lun Law Firm
Jurisdictions: China, Hong Kong

\$780 MLN

Gland Pharma’s IPO

Deal Type: IPO

Firms: Cyril Amarchand Mangaldas; Herbert Smith Freehills; Khaitan & Co
Jurisdictions: China, Hong Kong, India

\$676 MLN

Mindspace Business Parks’ IPO

Deal Type: M&A

Firms: Khaitan & Co; Shardul Amarchand Mangaldas & Co.; Sidley Austin
Jurisdictions: India, U.S.

\$642 MLN

Reliance Bangladesh’s development and financing of Meghnaghat II gas-fired power project

Deal Type: Project Finance

Firms: Baker McKenzie; Clifford Chance; Dr Kamal Hussain & Associates; Farooq & Associates
Jurisdiction: Bangladesh

‘IN TIMES OF ECONOMIC STRESS, THERE IS A GREATER PROPENSITY FOR WRONGDOING’

The past few months have been busy for **Tan Boon Gin**, CEO of Singapore Exchange Regulation (SGX RegCo). Not only has he announced a flurry of regulatory guidelines and proposals, but he also has further areas of reform in mind. He recently spoke to *ALB* about what’s on the horizon for SGX, investors and business in Singapore.

ALB: 2020 has been an incredibly tough year so far. What have been the big challenges and adjustments in terms of your work?

TAN: As the frontline market regulator, we have had to pivot very quickly to respond to market needs. In the initial months, it was rather challenging, as the COVID-19 situation was very dynamic. As health and safety became the new priority that trumps everything else, this greatly impacted the way market interactions could take place. An example of this is how companies held virtual general meetings, as face-to-face meetings were not possible. We had to decide what that meant in terms of quorum, how investors could ask questions, and voting. Because many companies had not provided for virtual AGMs in their articles and their constitution, we needed to work with government agencies and ministries to introduce enabling legislation in parliament. Ultimately, it was about striking a balance between investors’ rights to participate in meetings, and the need for companies to be able to get on with their business. We did not write our SGX rules with something like COVID-19 in mind. Hence, when we apply the rules in this climate, we must be prepared to apply them in ways that we have not done before. Everything that we do to make life easier for our listed companies, must be counter-balanced by steps to protect investors. For example, because of the circuit breaker, we gave companies more time to announce their financial results, but at the same time, we put them on



“Our proposal is for SGX RegCo to have the powers to impose public sanctions directly, except for fines, which will continue to be reserved to the committees as fines are more punitive and severe in nature.”

TAN BOON GIN


strict notice on their disclosure obligations to shareholders.

ALB: There’s a new proposed enforcement framework from SGX RegCo. What would this look like — and why now?

TAN: In times of economic stress, there is a greater propensity for wrongdoing. That is why we are proposing changes to increase the speed of enforcement. Speedier action is important for three reasons: They are a more effective

deterrent against misconduct; we can restore market confidence more quickly; and we can give clarity to the market in a timelier fashion. Currently, we can only administer public sanctions by going through our independent disciplinary committees. Our proposal is for SGX RegCo to have the powers to impose public sanctions directly, except for fines, which will continue to be reserved to the committees as fines are more punitive and severe in nature.

ALB: Longer term, what other areas do you view as ripe for reform?

TAN: Looking forward, we are assuming COVID-19 will still be around from now until the year-end. This means continued or perhaps even more uncertainty and challenges globally both for companies and investors. Singapore introduced new insolvency legislation recently, to enhance further our restructuring regime. The latest changes include restriction of ipso facto clauses and allowing third-party funding to pursue claims to make it easier for insolvency practitioners to recover value and for companies to restructure. As regulators, we need to make sure that we do our part and apply our listing rules in a way that complements the restructuring regime and facilitates restructuring. On the other end of the spectrum, there are going to be winners out of this COVID-19 situation. We may need to figure out how to help these companies take advantage of this window to tap the public markets to scale up quickly. 

NORTH ASIA AND SOUTHEAST ASIA/SOUTH ASIA LEAGUE TABLES

North Asia Announced M&A Legal Rankings

Rank	Legal Advisor	Value (\$MLN)	Deals	Market Share
1	Sullivan & Cromwell	59,386.5	9	11.3
2	Mori Hamada & Matsumoto	36,492.3	78	7.0
3	Nishimura & Asahi	33,801.9	90	6.4
4	Fangda Partners	25,620.2	78	4.9
5	Nagashima Ohno & Tsunematsu	22,401.8	62	4.3
6	Davis Polk & Wardwell	22,196.3	14	4.2
7*	Wachtell Lipton Rosen & Katz	21,000.0	1	4.0
7*	Akin, Gump, Strauss, Hauer & Feld	21,000.0	1	4.0
9	Kirkland & Ellis	11,832.2	21	2.3
10	Skadden	11,342.9	16	2.2

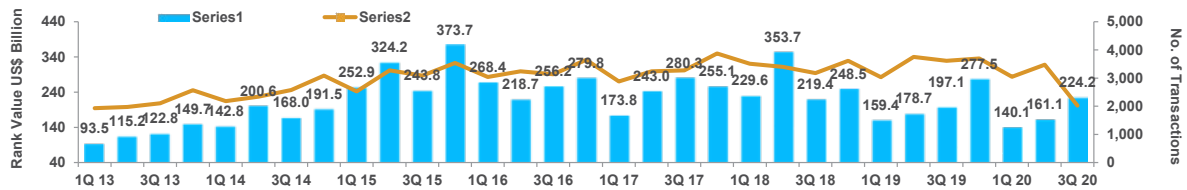
(*tie) Based on Rank Value including Net Debt of announced M&A deals (excluding withdrawn M&A)

North Asia Announced M&A Financial Rankings

Rank	Legal Advisor	Value (\$MLN)	Deals	Market Share
1	China International Capital Co	102,246.0	39	19.5
2	Goldman Sachs & Co	68,494.1	23	13.0
3	Nomura	57,053.1	51	10.9
4	UBS	55,699.3	8	10.6
5	Morgan Stanley	55,159.1	38	10.5
6	China Securities Co Ltd	51,587.4	11	9.8
7	JP Morgan	32,931.2	17	6.3
8	Sumitomo Mitsui Finl Grp Inc	29,540.8	90	5.6
9	Guotai Junan Securities	29,519.1	25	5.6
10	Credit Suisse	26,557.7	12	5.1

(*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*



Southeast Asia / South Asia Announced M&A Legal Rankings

Rank	Legal Advisor	Value (\$MLN)	Deals	Market Share
1	Freshfields Bruckhaus Deringer	18,159.9	10	12.8
2	AZB & Partners	16,416.5	62	11.6
3	Davis Polk & Wardwell	13,812.3	4	9.8
4	Cyril Amarchand Mangaldas	13,809.9	57	9.8
5	Allen & Overy	13,129.9	16	9.3
6	Allen & Gledhill	12,667.4	16	8.9
7	Nagashima Ohno & Tsunematsu	12,501.0	15	8.8
8	Mori Hamada & Matsumoto	12,219.2	8	8.6
9	Herbert Smith Freehills	11,359.4	8	8.0
10	Linklaters	10,600.1	2	7.5

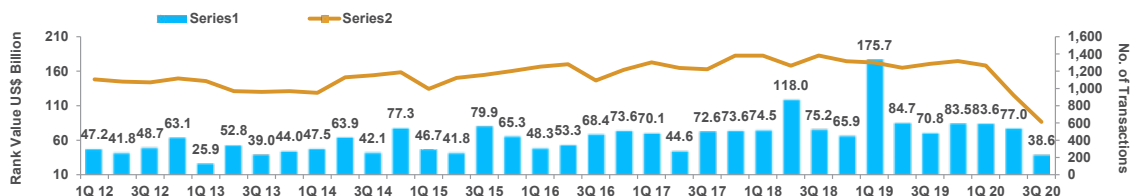
(*tie) Based on Rank Value including Net Debt of announced M&A deals (excluding withdrawn M&A)

Southeast Asia / South Asia Announced M&A Financial Rankings

Rank	Legal Advisor	Value (\$MLN)	Deals	Market Share
1	JP Morgan	26,169.7	14	18.5
2	BofA Securities Inc	19,165.8	12	13.5
3	Goldman Sachs & Co	16,586.1	10	11.7
4	Morgan Stanley	16,581.0	7	11.7
5	HSBC Holdings PLC	15,955.5	8	11.3
6	Credit Suisse	15,902.2	10	11.2
7	Nomura	13,740.7	16	9.7
8	Deloitte	11,752.9	15	8.3
9	UBS	11,730.9	7	8.3
10	Barclays	10,859.9	4	7.7

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

Any Southeast Asia / South Asia Involvement Announced M&A Activity - Quarterly Trend*



*League tables, quarterly trends, and deal lists 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: China, Hong Kong, Japan, South Korea, Taiwan; SOUTHEAST ASIA: Singapore, Malaysia, Philippines, Thailand, Vietnam, Brunei, Cambodia, Indonesia, Laos, Myanmar, Timor-Leste; SOUTH ASIA: India, Afghanistan, Bangladesh, Bhutan, Maldives, Nepal, Pakistan, Sri Lanka. Data accurate as of 4 August 2020.

*“ Commitment to quality and integrity
creates sustainable legal solutions
through a progressive &
proactive approach ”*


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The Law | Stay Healthy On Your Side | Stay Safe

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INDIA RISING STARS 2020

The Indian legal industry is seeing young lawyers making their mark in the market by setting high standards and achieving results for their clients, even during the pandemic. *ALB* profiles 10 lawyers who have upped the ante and have been making an impact in the Indian legal scene. **BY APARNA SAI**


LEKHA DINESH BAPNA

28, senior manager, corporate legal cell,
Aditya Birla Management Corporation



Bapna is a chartered accountant and a lawyer who specialises in taxes, white-collar crimes (money laundering, benami, anti-corruption) litigation and arbitration. She also works on SEBI and IBC (2016) related matters. She advises multinational and domestic companies across a range of industries in the areas of GST, VAT, service tax, excise duty, customs duty and foreign trade policy. Bapna is actively involved in policy advocacy with the government on various sectors like financial sector, research and development, express industry, etc. She has been involved in training and development initiatives and collaborations for innovative technology globally as well as handling of litigations from commissioner level to the Supreme Court. Additionally, she is involved in international disputes and cross border sanctions, anti-dumping duties and safeguards.

Bapna has over seven years of experience with Ernst & Young (EY) as an indirect tax account & project manager, technical trainer and content developer on GST laws, e-way bills, other indirect taxes. She is currently working with the central cell of Aditya Birla Group since October 2018 where she specialises in innovation and start-up collaborations, economic offences, business impact and legal academy. She has authored a book on economic offences in India.

Dhrumil Vasaiwala, senior manager, tax and regulatory services-indirect taxes, EY, says: "Lekha has worked on multiple sectors. She has been of great assistance for the organisation with her commitment, hard work and zeal to learn new things have had a positive outcome on her as well as the organisation." 

ADITYA CHOPRA

31, managing partner,
Victoriam Legalis, Advocates and Solicitors



A real estate, corporate and commercial lawyer, Chopra has eight years of experience in the legal industry. Chopra was part of the team that was responsible for securing the bail of

Subrata Roy, promoter of Sahara India, in the Supreme Court of India. He has successfully closed transactions for more than 150 billion rupees (\$2 billion) and successfully represented production houses against claims made on several feature films. In addition, Chopra successfully represented shareholders in oppression and mismanagement matters as well as successfully represented investors by recovering 100 percent investments made in various projects and also successfully prosecuted and defended many high-stake matters at various forums.

Chopra and his team have advised one of India's largest entertainment conglomerates. Besides this, his clients range from individual artists, music labels, actors, production houses, event management companies, publication houses, hospitality sector, investors, etc.

A client of Aditya says, "He is a young and enthusiastic professional who has a distinguished style of dealing with each transaction."

"I have had the pleasure to work with Aditya for the last six years now on various assignments. He is a 'prodigy'-given his age and the qualities he demonstrates; it is truly satisfying in nature for any client engaging him. He is an awesome professional who listens well, reasons well, demonstrating deep understanding of his field and delivering the best, with mostly out of the box thinking," says another client of Chopra. ALB

SHASHANK JAIN

36, head legal,
Vistara



Jain, who has over a decade of experience in the legal industry, focuses on aviation and banking and finance. He is one of the youngest persons to be appointed as general counsel of a

Tata group entity. He is the founding member of Aviation Working Group (a group involved in the implementation of Cape Town Convention in India).

Jain has drafted and participated in negotiation of transaction documents in connection with several financing transactions, including in a 6.25 billion rupees loan facility, a bridge loan facility which rolled over into a long term loan facility and facility which comprised of both term loan and unlisted NCDs aggregating to 3.5 billion rupees. He has also drafted and assisted a foreign investor's \$425 million subscription to compulsorily convertible debentures in an Indian company engaged in the real estate sector. The funds were utilised by the investee to subscribe to onshore secured bonds issued by its subsidiaries. The on-shore bonds and the security attached acted as indirect security for the cross-border debentures.

In addition to this, he has advised on financing of two B-787-9 aircraft by TATA SIA Airlines from DBS Singapore; leasing of 37 A320-family aircraft by TATA SIA Airlines from GECAS, ALC and Avolon; purchase of 10 (including four options) B787-9 aircraft by TATA SIA Airlines from the Boeing Company; and purchase of 16 A320-family aircraft by TATA SIA Airlines from Airbus.

Jain advised and reviewed transaction documents in connection with an offshore facility secured by a guarantee provided by the borrower's Indian parent in a \$400 million deal. ALB

ADITYA JHA

35, partner
Trilegal



An asset management and investment funds specialist, Jha started his practice in 2008 with the London office of the legacy SJ Berwin, where he worked across multiple practice

areas, including funds, private equity, M&A, and insolvency. In 2012, Jha relocated to India intending to build a sustainable practice of his own.

Jha spent a few years at the erstwhile Amarchand & Mangaldas & Suresh A. Shroff & Co. (Amarchand) and AZB & Partners, where he had the privilege of working with some market-leading practitioners. At Amarchand, Jha executed fund closings.

In August 2018, Jha moved to Trilegal, where, alongside partner Ganesh Rao, he built the firm's asset management and funds practice. In just two years, the practice advised on commitments above \$11 billion to funds investing in and around India, with the targeted and committed capital aggregating well over \$20 billion.

Among his noteworthy work, Jha has advised on an investment by International Finance Corporation (IFC) and funds managed by IFC Asset Management Company in multiple private equity fund III of up to \$70 million.

Nitin Khakee, executive director at Morgan Stanley, says: "Aditya has been instrumental in our firm's realisation of its business strategy in India; tirelessly leading complex legal negotiations with large institutional investors. In the time that I have known Aditya, he has proved time again to be both savvy in his strategic observations and commercial in his legal advice. Most important, however, is that Aditya is a man of great integrity and has become a trusted adviser." ALB

SHRUTI KANODIA

35, founder,
Sagus Legal



Kanodia, who has over a decade of legal experience, specialises in public and private M&A, distressed acquisitions, investments, restructuring, banking and finance, insolvency and bankruptcy, regulatory advisory and white-collar crime. She left Shardul Amarchand Mangaldas last year to set up Sagus Legal.

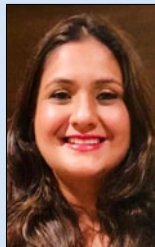
Among her noteworthy cases, she has advised Tata Power in connection with its takeover of Central Electricity Supply Utility (CESU) of Odisha. Kanodia has also counselled a major Indian corporate group on debt recovery proceedings for an aggregate amount exceeding 10 billion rupees by one of the largest private banks in India. In addition, she has acted for the issuers, in connection with the investment by KKR and L&T in unlisted debentures issued by Avantha Holdings and its subsidiary for 14 billion rupees.

Besides this, Kanodia has advised several clients on regulatory issues related to foreign exchange management act and notices by the enforcement directorate.

Navneet Raghuvanshi, head legal and secretarial, Jindal Stainless, says: "I have been dealing with Shruti for the last three years when she was a part of Shardul Amarchand and later when she started her own practice. Her two standout qualities are client commitment and domain knowledge. She is your go-to person in case of any crisis with a belief that she will come up with a solution. I have seen her handling matters with a full team of lawyers on the opposite side and more often than not she has been able to convince the other side in accepting our position." ^{ALB}

SHEETAL SAWHNEY KAPUR

36, director legal, India, South Asia and ANZ,
Netflix



Kapur is well-versed with laws, rules and regulations governing the information technology, data privacy and protection, payments, other financial services and e-commerce and has extensive knowledge of the payments and fintech industry in India.

She has advised APG Strategic Real Estate Pool N.V., an entity floated by a Dutch pension fund manager, in acquiring approximately 49 percent stake in Lemon Tree Group, a Delhi based mid-market hotel group operating under brands such as Lemon Tree Hotels and Lemon Tree Premier. The transaction was valued at 6.5 billion rupees. She also advised Stichting Depositary APG Strategic Real Estate Pool in connection with the commitment to invest 7.7 billion rupees in Indian residential real estate projects.

Besides this, she led the demerger of PayU and Ibibo Group as part of a strategic restructuring initiative as well as led the discovery, design and integration phase post PayU's acquisition of Citrus Payments in a transaction valued at nearly \$130 million.

Kapur has also been a part of product launches including LazyPay and GPay.

Ashish Anand, assistant vice president, global solution sales and treasury and trade solutions, at Citibank, says: "Sheetal not only has deep payments domain knowledge but also exhibits the rare ability to interpret legal matters in the practical realm of the business environment. Her understanding of business situations in respect of each contract is admirable as she persistently works towards getting an insight into the technological aspects of the same." ^{ALB}

SHIVLI KATYAYAN

37, associate director and head of legal,
Policybazaar Group



Katyayan is a general corporate, fintech and e-commerce specialist with over a decade of experience. She was a finalist for the Woman Lawyer of the Year (In-house) at the 2020 ALB India

Law Awards. She advises on matters including insurance, mutual funds, regulatory compliance, intellectual property rights and fundraising. She has advised and trained stakeholders on compliance-related risks and requirements and was responsible for tracking and implementation of new laws, regulatory developments and checklists.

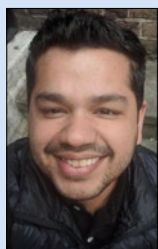
Katyayan participated as a member of the core team for Series E & F funding rounds with active participation in management of legal due diligence, drafting process and closing. She also supported all legal aspects of growth strategy, including acquisitions, structuring and reorganisations. In addition, she drafted, reviewed and negotiated legal documents for various business lines including web aggregation, insurance, mutual funds, payments, IPR, service agreements, RFPs and more.

Besides this, Katyayan is leading the trademark litigation on misuse of trademarks via the Google AdWords program, and on access to credit information by fintech companies.

"At a very young age, Shivli has set up and lead the Legal Function from scratch for the entire Policybazaar Group and its sister concerns (like Paisabazaar, Quick Fix Cars and Docprime)," says Alok Bansal, chief financial officer, Policybazaar Insurance Brokers. "She helps in ensuring that a tech-based business keeps in tandem with the law. She is committed to making business happen." ^{ALB}

TUSHAR MEHRISHI

35, senior counsel, South Asia,
Airbnb




With nearly 15 years of legal experience, Mehrishi is one of the youngest lawyers to act as senior legal counsel in Airbnb. He is also heading legal for Airbnb India Airseva, a

1000-member-strong capability centre of Airbnb.

He has put multiple legal compliance processes in place, including but not limited to a more robust process on cases pertaining to sexual harassment in the workplace and other issues and a more robust labour compliance process among others. He has led the diversity and belonging efforts for APAC along with three other colleagues.

Mehrishi was the lead counsel on Airbnb's investment into Oyo. He is also supporting the transition of Airseva from a pure-play customer support centre to a global capability centre. He supported the trust and safety team at Airbnb to make the first of its kind host verification process more robust and played the role of a thought partner along with being the legal counsel.

Talking about his future plans and career ambitions, Mehrishi says that he wants to be a dependable and trusted inhouse lawyer.

Daksh Ahluwalia, partner at J Sagar Associates, says: "I have worked with Tushar since he joined Airbnb in July of 2018. We have collaborated on several projects and its great working with him. Tushar is a master of managing expectations and ensuring he gets the best out of external counsels. He has a practical approach, clear thought process and balances the commercial interests with legal risks very effectively. One of the brightest young GC's in India. He is also fun to work with." 

ARKA MOOKERJEE

37, partner,
J Sagar Associates



Mookerjee, who is well versed in capital markets work, has been with JSA for 14 years, and currently leads the firm's equity capital markets practice. He advises primarily on equity

capital markets issuances which covers a wide range of products such as initial public offerings, rights issues, and qualified institutions placements.

Mookerjee was part of a team which advised on the first-ever qualified institutions placement in the country as well as part of the team for the first-ever public issue of non-convertible debentures of Tata Capital. He advised Axis Capital and ICICI Securities in relation to the IPO of Rossari Biotech and also represented Tata Sponge and Iron's rights issue.

Some of Mookerjee's clients include IRB, L&T, Dilip Buildcon, ICICI Securities, Axis Capital, Citigroup Global Capital markets, IIFL, Credit Suisse and HSBC. He was recently named as one of India's Super 50 Lawyers for 2020 by *Asian Legal Business*.

"Arka is a dynamic and talented partner who leads our equity capital market practice. He has evolved over the last 14 years into a force to recon within the capital markets space. He is an excellent team leader who has mentored and built a talented pool of attorneys dedicated to the capital market practice. The capital market team at JSA is highly regarded in the industry," says Vivek Chandy, joint managing partner of the firm. "Over a period of time, he has become the go-to counsel for underwriters who rely on his advice in marquee fundraises. He has also steadily earned the confidence of promoters and CEOs who trust him with their fundraising plan." 

POONAM VERMA

39, partner,
J Sagar Associates




Verma, a disputes specialist, has spent 14 years at JSA. She spearheads JSA's civil aviation practice and has been a part of several landmark cases in the aviation and power

sectors since 2007. Verma has been consistently advising and representing Federation of Indian Airlines and Inter Air Transport Association amongst individual airlines on legislative, policy and regulatory issues.

Verma has been regularly representing the India's corporate, government institutions and industry associations on several landmark and sectoral issues arising in power and aviation transport. She has been regularly dealing with issues arising out of power purchase, concession, transmission service, operations, maintenance, development, state support agreements based on model public-private partnership (PPP), and such relevant agreements issued by the concerned ministries of the Government of India.

Among her noteworthy cases, Verma has successfully represented Adani Power before the Appellate Tribunal for Electricity where for the first time the rate circulars issued by Ministry of Railways have been recognised to have the force of law.

Ujjwal Dey, director of the Federation of Indian Airlines, says: "I have witnessed Poonam taking up challenging issues with ease and confidence not only in the board rooms but in the courtrooms too. She comes prepared, equipped with the in-depth knowledge of the subject and carrying a very pleasant aura around her, which helps in creating the environment conducive to achieve the desired goals." 

MWVA

RANKINGS

2020

BY ASIAN LEGAL BUSINESS

CHINA DOMESTIC

TIER 1

- Haiwen & Partners
- Han Kun Law Offices
- JunHe
- King & Wood Mallesons
- Zhong Lun Law Firm

TIER 2

- AllBright Law Offices
- Commerce & Finance Law Offices
- DaHui Lawyers
- DeHeng Law Offices
- Global Law Office
- Grandall Law Firm
- Guantao Law Firm
- Jincheng Tongda & Neal Law Firm
- Jingtian & Gongcheng
- Llinks Law Offices
- Tian Yuan Law Firm

TIER 3

- Beijing Dentons Law Offices
- Broad & Bright
- East & Concord Partners
- Grandway Law Offices
- Jia Yuan Law Offices

CHINA INTERNATIONAL

TIER 1

- Clifford Chance
- Freshfields Bruckhaus Deringer
- Linklaters
- Skadden, Arps, Slate, Meagher & Flom

TIER 2

- Allen & Overy
- Baker McKenzie FenXun
- DLA Piper
- Hogan Lovells
- Norton Rose Fulbright
- Paul, Weiss, Rifkind, Wharton & Garrison
- Simpson Thacher & Bartlett
- White & Case

TIER 3

- Cleary Gottlieb Steen & Hamilton
- Davis Polk & Wardwell
- Morgan, Lewis & Bockius
- Morrison & Foerster
- Orrick, Herrington & Sutcliffe
- Paul Hastings
- Shearman & Sterling
- Sullivan & Cromwell
- Weil, Gotshal & Manges

HONG KONG

TIER 1

- Clifford Chance
- Freshfields Bruckhaus Deringer
- Kirkland & Ellis
- Linklaters
- Skadden, Arps, Slate, Meagher & Flom
- Slaughter and May

TIER 2

- Allen & Overy
- Davis Polk & Wardwell
- Herbert Smith Freehills
- Latham & Watkins
- Norton Rose Fulbright
- Shearman & Sterling
- Simpson Thacher & Bartlett
- Sullivan & Cromwell
- Weil, Gotshal & Manges

TIER 3

- Ashurst
- Baker McKenzie
- Deacons
- Hogan Lovells
- King & Wood Mallesons
- Mayer Brown
- Morrison & Foerster
- Paul, Weiss, Rifkind, Wharton & Garrison
- Reed Smith Richards Butler
- White & Case

INDIA

TIER 1

- AZB & Partners
- Cyril Amarchand Mangaldas
- Economic Laws Practice
- IndusLaw
- Khaitan & Co.
- Kochhar & Co.
- L&L Partners
- Majmudar & Partners
- S&R Associates
- Shardul Amarchand Mangaldas & Co
- Trilegal

TIER 2

- Bharucha & Partners
- Desai & Diwanji
- DSK Legal
- Gagrats
- HSA Advocates
- J Sagar Associates
- LexCounsel
- Nishith Desai Associates
- Phoenix Legal
- Platinum Partners
- Talwar Thakore & Associates
- Vaish Associates
- Veritas Legal

TIER 3

- ALMT Legal
- Argus Partners
- Clasis Law
- Dhir & Dhir Associates
- Fox Mandal & Associates
- Hammurabi & Solomon Partners
- Juris Corp
- K Law
- Platinum Partners
- Rajani & Associates
- Samvad Partners
- Sarthak Advocates & Solicitors
- Singh & Associates
- Singhania & Partners
- Spice Route Legal
- Tatva Legal
- Vertices Partners
- Wadia Ghandy & Co

INDONESIA

TIER 1

- Ali Budiardjo, Nugroho, Reksodiputro
- Assegaf Hamzah & Partners
- Ginting & Reksodiputro in association with Allen & Overy
- Hadiputranto, Hadinoto & Partners, a member firm of Baker McKenzie
- Hiswara Bunjamin & Tandjung in association with Herbert Smith Freehills
- SSEK Legal Consultants

TIER 2

- Dentons HPRP
- Lubis Ganie Surowidjojo
- Makarim & Taira S.
- Makes & Partners
- Melli Darsa & Co (PwC)
- Oentoeng Suria & Partners in association with Ashurst
- Soemadipradja & Taher
- Widyanawan & Partners

TIER 3

- AYMP Atelier of Law
- Christian Teo & Partners
- Hogan Lovells DNFP, in association with Dewi Negara Fachri & Partners
- Mochtar Karuwin Komar
- Roosdiono & Partners
- Walalangi & Partners
- Widyanawan & Partners

JAPAN DOMESTIC

TIER 1

- Anderson Mori & Tomotsune
- Mori Hamada & Matsumoto
- Nagashima Ohno & Tsunematsu
- Nishimura & Asahi
- TMI Associates

TIER 2

- Atsumi & Sakai
- Ushijima & Partners

TIER 3

- City-Yuwa Partners
- Hibiya-Nakata
- Miura & Partners
- Oh-Ebashi LPC & Partners
- southgate

JAPAN INTERNATIONAL

TIER 1

- Allen & Overy Gaikokuho Kyodo Jigyo Horitsu Jimusho
- Baker McKenzie (Gaikokuho Joint Enterprise)
- Herbert Smith Freehills
- Morrison & Foerster/ Ito & Mitomi
- Shearman & Sterling
- Simpson Thacher & Bartlett

TIER 2

- Clifford Chance Law Office

- Davis Polk & Wardwell
- DLA Piper
- Freshfields Bruckhaus Deringer
- Hogan Lovells Horitsu Jimusho Gaikokuho Kyodo Jigyo
- Linklaters
- Paul, Weiss, Rifkind, Wharton & Garrison
- Skadden, Arps, Slate, Meagher & Flom
- White & Case - White & Case Law Offices (Registered Association)

MALAYSIA

TIER 1

- Christopher & Lee Ong
- Rahmat Lim & Partners
- Shearn Delamore & Co
- Skrine
- Wong & Partners

TIER 2

- Abdullah Chan & Co
- Adnan Sunda & Low
- Kadir Andri & Partners
- Lee Hishammuddin Allen & Gledhill
- Mah-Kamariyah & Philip Koh
- Zaid Ibrahim & Co (a member of ZICO Law)
- Zain & Co

PHILIPPINES

TIER 1

- ACCRALAW
- Quisumbing Torres
- Picazo Buyco Tan Fider & Santos
- Romulo Mabanta Buenaventura Sayoc & De Los Angeles
- SyCip Salazar Hernandez & Gatmaitan

TIER 2

- Castillo Laman Tan Pantaleon & San Jose
- Cruz Marcelo & Tenefrancia
- C&G Law
- Puno & Puno
- Puyat Jacinto & Santos Law Offices
- Villaraza & Angangco

SINGAPORE DOMESTIC

TIER 1

- Allen & Gledhill
- Rajah & Tann Singapore
- Morgan Lewis Stamford
- WongPartnership

TIER 2

- Drew & Napier
- TSMP Law Corporation

TIER 3

- Baker McKenzie Wong & Leow
- Bird & Bird ATMD
- CNPLaw
- Dentons Rodyk

- Duane Morris & Selvam
- Harry Elias Partnership
- Pinsent Masons MPillay
- RHTLaw
- Shook Lin & Bok

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- Clifford Chance
- Linklaters
- Milbank

TIER 2

- Freshfields Bruckhaus Deringer
- Herbert Smith Freehills
- Hogan Lovells Lee & Lee
- Jones Day
- Latham & Watkins
- Norton Rose Fulbright
- Morrison & Foerster
- Skadden, Arps, Slate, Meagher & Flom
- White & Case

TIER 3

- HFW
- K&L Gates - Straits Law Practice
- King & Spalding
- Shearman & Sterling
- Sidley Austin
- Stephenson Harwood

SOUTH KOREA DOMESTIC

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- Bae, Kim & Lee
- Kim & Chang
- Lee & Ko
- Shin & Kim
- Yulchon

TIER 2

- Barun Law
- DR & AJU
- Hwang Mok Park
- Jipyong
- KL Partners
- Yoon & Yang

SOUTH KOREA INTERNATIONAL

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- Cleary Gottlieb Steen & Hamilton
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- Ropes & Gray
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TIER 2

- Ashurst
- Baker McKenzie
- Clifford Chance
- Dechert

- Herbert Smith Freehills
- Latham & Watkins
- Skadden, Arps, Slate, Meagher & Flom

TAIWAN

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- Jones Day
- Lee and Li, Attorneys-at-Law
- Tsar & Tsai Law Firm

TIER 2

- Eiger Law
- Formosa Transnational Attorneys at Law
- K&L Gates
- LCS & Partners
- Lexcel Partners
- Lin & Partners Attorneys-At-Law
- Winkler Partners

TIER 3

- Chen & Lin
- Formosan Brothers Attorneys at Law
- Lee, Tsai & Partners
- Liang & Partners
- PricewaterhouseCoopers Taiwan

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- Baker McKenzie
- Linklaters
- Weerawong, Chinnavat & Partners

TIER 2

- Chandler MHM
- Hunton Andrews Kurth
- Siam Premier International Law Office
- Thanathip & Partners
- The Capital Law Office
- Tilleke & Gibbins

VIETNAM

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- Allen & Overy
- Allens
- Baker McKenzie
- Freshfields Bruckhaus Deringer
- VILAF
- YKVN

TIER 2

- DF DL
- Frasers Law Company
- Hogan Lovells
- LNT & Partners
- Mayer Brown
- Nishimura & Asahi
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- Tilleke & Gibbins
- Vision & Associates

According to data and analytics company GlobalData, mergers and acquisitions (M&A) deal activity in the Asia-Pacific (APAC) region have been “inconsistent” during the first half of 2020.

GlobalData’s Financial Deals Database shows that the number of announced M&A deals decreased from 494 in February 2020 to 457 in March 2020. However, the value of deals went up from \$24.1 billion to \$28.6 billion for the same period.

In Q2, the number of announced M&A deals went from 505 in April then decreased to 493 in May. But it then rebounded to 564 in June.

It tracked a similar down-down-up performance in terms of deal value. The value of deals has decreased from \$33.9 billion in April to \$31.5 billion in May, before increasing to \$35.6 billion in June.

CHINA AND HONG KONG

Despite the global situation, China continues to top the region both in terms of volume as well as value.

China took the top spot in value terms with \$16.5 billion (accounting for 19.5 percent of total APAC deal value) in Q1 2020. It was also just behind Japan amongst the top countries in terms of deal volume. It would then take the crown for both in Q2.

“China, where the COVID-19 outbreak started, started opening up its economy in March, which helped it to witness decent M&A activity,” says Aurojyoti Bose, lead analyst at GlobalData.

That helped China to see its deal volume and value bouncing back in June, when the APAC region recorded a rise to \$35.6 billion in June after two decreases.

Despite the rise in June, China’s share as a proportion of total deal volume went down consistently in volume terms. However, the country’s share of total deal value still witnessed growth in June.

Nonetheless, increased financing difficulties and travel restrictions from the COVID-19

pandemic led to the postponement or cancellation of a large number of M&A transactions.

According to Mergermarket, Mainland China and Hong Kong started to recover in the second quarter of 2020 after bringing the pandemic under control, “but outbreaks in Europe, the U.S. and other regions dampened consumer demand and continue to disrupt supply chains.”

In the first half of the year, inbound deal-making increased significantly compared to 2019. The numbers for Q2 2020 also rebounded remarkably compared with Q1, boosted by the privatisation of 58.com as the biggest deal.

“PE buyout figures were largely driven by the deal value of \$7.6 billion 58.com take-private,” says Mergermarket analysts.

There are other take-private deals of Chinese companies listed in the U.S. expected as a response to the increased efforts of the administration of President Donald Trump “to cut Chinese companies from U.S. capital markets”. Any such companies may want to re-list on markets in Mainland China or Hong Kong bourses to evade regulatory pressure in the U.S.

The resumption of production after the COVID-19 outbreak was brought under control has gradually warmed up foreign investment activities. But many factors continue to challenge China’s economic expansion; tension between the U.S. and China has been affecting China’s cross-border transactions, while a deadly clash at the Sino-Indian border had a relatively large impact on China’s investment in India.

Meanwhile, a Germany-led European Union and China are also seeking to strengthen economic ties and finalise a long-delayed bilateral investment agreement, despite disagreements on a range of political issues, including Hong Kong.

The COVID-19 epidemic and escalating tension between Beijing and Washington led to a rush of deal-making activity in the technology industry.

“Top Chinese policymakers have advocated for accelerated domestic development in areas such as blockchain, fintech and artificial intelligence, among others,” says Mergermarket analysts. “However, economic downturn dampened consumer demand and led to a noticeable slowdown in M&A activity in the consumer industry as well as in other traditional industries such as energy, mining and utilities, consumer, and industrials and chemicals.”

Nonetheless, the Chinese government unveiled a series of policies to stimulate domestic demand to accelerate economic recovery, as well as counterbalance a potential drop in exports.

The U.S. is also working to stem the flow of American businesses investing in China, which is still opening its domestic market to foreign capital. But these efforts to curtail U.S. investment in China have not been very successful yet. Some private equity (PE) firms in China and Hong Kong have put buyout deals on hold as they manage their portfolios but take-private offer of Chinese companies' American Depository Receipts (ADRs) could attract PE investors chasing high returns after re-listing.

Even as companies seek to re-list on Mainland China or Hong Kong bourses to evade U.S. regulatory pressure, several Hong Kong-listed companies are also considering privatisation due to a slide in valuations following the recent sell-off in the stock market. These could be companies such as Wheelock, Yixin Group, Li & Fung, and Fuxin.

PE investors could actively participate in

the privatisations of high-quality companies despite the impact on timelines that travel restrictions and other disruptions could cause. For now, PE exits have remained subdued with investors waiting for valuations to increase in the wake of an economic recovery.

According to Mergermarket, volatility due to an uncertain environment and cratering top-line revenues are undoubtedly set to have a negative impact on exit valuations and timing, especially for the commercial aerospace, retailing and leisure industries.

"Geopolitical concerns and risks related to the second wave of COVID-19 infection still prevails, prompting a cautious approach from investors when considering big investments," says Bose.

But there are new opportunities to emerge for deal makers as corporate China works to attract more foreign investment and undertake internal restructuring efforts in the second half of 2020.

Still, there were some big deals in August. Mergermarket named China Education Group Holdings's acquisition of a 60 percent stake



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in the Haikou University of Economics from Hainan Shenzheng Industrial Group as one of the top deals of the business services sector that month. The deal was estimated at a value of \$389 million.

While the larger domestic firms had a solid year for M&A work, a notable name among domestic firms in China was East & Concord Law Firm, which was ranked at Tier 3.

JAPAN AND KOREA

Both Japan and South Korea had a similar trajectory in 1H20. A slow Q1 followed by a more

“The U.S. is also working to stem the flow of American businesses investing in China, which is still opening its domestic market to foreign capital. But these efforts to curtail U.S. investment in China have not been very successful yet. Some private equity (PE) firms in China and Hong Kong have put buyout deals on hold as they manage their portfolios but take-private offer of Chinese companies’ American Depository Receipts (ADRs) could attract PE investors chasing high returns after re-listing.”

brisk Q2. Japan and South Korea are the other top markets by deal volume for Q2. Japan also ranked among the other top markets in terms of value.

In the first quarter of 2020, Japan occupied the top position in terms of deal volume with 317 M&A deals. Those made up 22.7 percent of the total APAC deal volume.

It slid to second position based on GlobalData’s rankings for Q2, but that’s not to say it was lacking. In the month of May, Japan saw a huge leap in value terms on the back of big-ticket deals announced during the month.

“Japan managed to stay in a relatively better position and witnessed few big-ticket deals during Q2,” says Bose.

Some of the notable deals in this mix include Sony’s acquisition of the remaining stake in Sony Financial for \$3.7 billion, divestiture of a 5 percent stake in Softbank by SoftBank Group for \$2.9 billion and Bain Capital’s acquisition of a 100 percent stake in Nichii Gakkan for \$1.1 billion.

But Japan M&A activity recorded \$23.7 billion across 216 deals in 1H20. According to Mergermarket, this is the lowest half-year period since 1H16 in terms of deal count as the COVID-19 outbreak’s negative impact on M&A became more evident in the second quarter.

However, the Japanese government lifted the state of emergency in late May after having brought the epidemic under control, leading to expectations of a recovery in deal-making activity in the second half of the year.

South Korea M&A activity there in 1H20 recorded 164 transactions worth \$14.8 billion, the lowest first-half of the year value since 2013.

But the value of the deals during Q2 increased by 86.7 percent compared to the first quarter, showing signs of recovery from the COVID-19 crisis.

“M&A activity in the pharma, medical, and biotech sector was particularly brisk in the first half of the year, recording \$2.5 billion across 14 deals – equal to a 3.7x increase in value year-on-year (1H19: \$661 million, 13 deals). Listed companies in the sector enjoyed a strong stock rally during Q2 2020,” says Mergermarket.

Namely, the \$1.7 billion acquisition of Aprogen by Aprogen KIC in April and Korea Kolmar Group’s sale of its pharmaceutical unit as well as a 62.1 percent stake in KolmarPharma to IMM Private Equity for \$416 million in May.

The acquisition of the APAC Primary Care Business of Takeda Pharmaceutical Company by Celltrion for \$278.3 million was also the fourth-largest outbound transaction by a Korean company in the first half of the year.

Mergermarket believes private equity houses drove M&A activity in the first half of the year, accounting for six out of the top 10 deals in South Korea during the period. The largest buyout transaction was the acquisition of Dong-A Tanker by Pine Tree Partners for \$532 million.

“The technology sector, which was the largest in terms of value (\$1.1bn, eight deals), accounted also for the second-largest buyout deal during the period – the acquisition of MagnaChip Semiconductor’s Foundry Services Group and factory in Cheongju by Credian Partners and Alchemist Capital Partners Korea for \$435 million,” says Mergermarket.

The financial services sector was the largest in terms of value. The largest deal in South Korea in 1H20 was in this sector – the acquisition of Prudential Life Insurance Company of Korea by KB Financial Group for \$1.9 billion.

Another key deal was the 7.85 percent stake acquisition in Industrial Bank of Korea by the Government of South Korea for \$336 million. These two deals accounted for 64.1 percent of financial services sector activity.

Going forward, South Korea also expects better deal flow in the second half of the year, given the improved sentiment of investors about the quick recovery of the stock market.

“The ongoing asset sale driven by cash-strapped groups such as Doosan and Hanjin could also materialise in 2H increasing domestic deal activities,” says Mergermarket.

SOUTHEAST ASIA

According to Mergermarket, Southeast Asia recorded 402 deals worth a total of \$66.8 billion

in 2019. Despite the pandemic, Southeast Asia still managed 190 deals worth \$33.7 billion of August 17, 2020, about half the value of the whole of 2019 generated.

The region’s M&A activity slowed down in the first half of the year, despite having recorded its highest Q1 deal value on Mergermarket record since 2001.

GlobalData estimates that Southeast Asia helped lead the region to growth in deal value in the first quarter of 2020. The company cites the \$10.6 billion acquisition of Tesco’s operations in Thailand and Malaysia by Charoen Pokphand as largely responsible for raising the total value for March 2020.

But that’s not an indicator that deal activity was booming in Q1 2020.

“Asia-Pacific witnessed growth in deal value in March, mainly due to one high-value deal announced during the month, excluding which, deal value too declined. The subdued deal activity could be attributed to acquirers adopting a cautious approach due to the COVID-19 outbreak,” says Bose.

The impact of the COVID-19 pandemic



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on deal-making fully emerged in the second quarter.

M&A activity in that corner of the world ground to a halt in April and May when several countries were under strict lockdown following the COVID-19 outbreak. M&A deal-making in the second half of the year could remain subdued as corporates are expected to retain higher amounts of cash on their balance sheets to face uncertain economic conditions.

The consumer sector made up most of the deals amongst the 2020 batch. It was valued at a total of \$12.7 billion and made up a whopping 37.8 percent of the market share.

Following that are the 11 deals in the real estate sector worth \$9.9 billion that made up

“M&A activity in Southeast Asia ground to a halt in April and May when several countries were under strict lockdown following the COVID-19 outbreak. M&A deal-making in the second half of the year could remain subdued as corporates are expected to retain higher amounts of cash on their balance sheets to face uncertain economic conditions. The consumer sector made up most of the deals amongst the 2020 batch. It was valued at a total of \$12.7 billion and made up a whopping 37.8 percent of the market share.”

29.5 percent of all the deals in Southeast Asia, marking it as the second biggest sector in 2020 so far.

Inbound deal-making in Southeast Asia declined both in value and volume due to the COVID-19 outbreak.

Singapore topped the inbound list by value (\$2.7 billion across 27 deals) on the back of Grab’s \$706 million investment from Mitsubishi UFJ – the largest inbound deal in 1H20.

Vietnam ranked second with overall inbound investment of \$872 million, which was largely driven by Vinhomes’ \$651 million investment received from the KKR consortium – the second largest Southeast Asian inbound deal so far.

“PE buyouts started to pick up in Q2 2020 to \$1.3 billion from \$67 million in Q1 2020. Most PE investments in 1H20 headed to the Real Estate sector (\$1.1 billion, 3 deals). PE firms might also opt for “wait-and-see” approach to exits as near future prospects remain uncertain,” says Mergermarket.

The materialisation of several deals currently under negotiation could be delayed due to swings in target valuations.

Among standout firms in Southeast Asia this year were Weerawong, Chinnavat & Partners (Tier 1 in Thailand) and Walalangi & Partners (Tier 3 in Indonesia).

INDIA

Indian M&A activity for the first half of 2020 recorded a year-on-year increase in deal value of 14.55 percent to \$43.54 billion, despite the COVID-19 pandemic. Mergermarket says this is largely thanks to a series of stake sales by Jio Platforms – India’s largest telecom operator – to 10 investors over the past three months. However, deal count plunged by 24.69 percent year-on-year to 243 transactions.

“M&A activity in India for 1H20 saw a reduction in deals count due to the COVID-19 pandemic. In the second half of the year, Indian deal-making volume could further decrease as the country’s domestic economic slowdown and uncertainties related to the potential resurgence of the pandemic are concerning financial investors,” says Mergermarket.

However, GlobalData said Indian M&A deals are ranked among the top five markets within Asia Pacific in terms of value during Q2 2020.

Ongoing deals might face significant delay in obtaining regulatory and third-party approvals as offices, banks, courts, and government departments are either closed or working with limited staff. Deals at preliminary stage might also be delayed as due diligence may not be able to take place.

“Infrastructure, renewables (solar energy), pharmaceuticals, and healthcare may attract investments in 2H20 as deals that are at advanced stages may be closed. JB Chemicals sold its majority stake to KKR for \$617 million. The deal was announced earlier this month,” says Mergermarket.

A few other deals in the pharma segment include Adar Poonawala’s Serum Institute

looking to raise up to \$1 billion for its pandemic division's development of vaccines for COVID-19.

In the renewables sector, Sembcorp Energy India, Infrastructure Leasing & Financial Services (IL&FS) and Mytrah Energy (India) could sell stakes to potential PE investors that are in active discussions with these companies.

"Sectors hit hardest by the pandemic – such as aviation, hospitality, tourism and cinemas – are not expected to rebound in the near term due to social distancing norms and fear of contagion. Large cinema chains like PVR and INOX may consider raising funds through rights issues, while others may resort to debt capital to keep the business afloat," says Mergermarket.

EdTech and Fintech segments might continue to attract investment in the second half of the year thanks to a surge in demand for online education and online financial transactions. Players in these segments may seek to raise capital to cater to the increasing demand for their products.


In 1H20, edtech companies like Byju's and Unacademy successfully raised substantial


amounts of capital, despite the ongoing pandemic.

"Due to the ongoing pandemic crisis, small-sized banks would be hit hardest as they tend to lend to the real economy, and a surge in bad loans is expected to lead banks to raise capital through IPOs," says Mergermarket.

"Indian venture capital industry continues to be heavily reliant on international capital for its development. Edtech, fintech and e-commerce segments offer significant investment opportunities to foreign players, but border tensions with China might impact investment flows."

As a case in point, India-based Zomato lost access to \$100 million funding from its biggest investor in China, Ant Financial, due to India's new foreign investment laws. Online insurance aggregator Policybazaar, said it is open to buying back shares from Chinese tech giant Tencent.

In addition, the Indian government has also banned a series of Chinese apps including Bytedance's TikTok and Tencent's WeChat, among others. 



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PROGRESSING FROM THE PANDEMIC

Like in other countries in Asia, Korean law firms found themselves affected by the COVID-19 outbreak, but they moved swiftly to mitigate the impact, and ensure business continued as smoothly as possible. In this roundtable, leaders of three of the largest Korean firms talk about the year so far, and the lessons they will take from the experience. **BY RANAJIT DAM**

ALB: This has been a most unique year. In what major aspects have you seen the pandemic impact your firm and its work to date?

SUNGJIN KIM, Bae, Kim & Lee: It has been a particularly unique experience for us because we executed a major move earlier this year from South of the Han River where we were located for most of our firm's history to North where the old city centre is located. Therefore, we were already prepared to make some adjustments while we settled in and our clients got used to the new location. Having established the most up-to-date infrastructure in our new office (e.g. video conference system and IP phones), it has become rather helpful for us to work under the new work environment in the COVID era. That preparedness and the government's relatively early response to the pandemic helped us keep most of our operations relatively normal.

Of course, we were not without our challenges. Relocating in the middle of a global pandemic heightened awareness of everyone's health concerns and therefore it was difficult to find appropriate opportunities to promote our beautiful new offices.

Also, we noticed some differences in the workload of each practice area after the outbreak of the pandemic. We have experienced an increase in urgent legal advisory and litigation needs of clients including in areas of corporate restructuring, labour/employment, construction and contract disputes. In contrast, transactional matters including M&As and IPOs saw some slowing down.

KYE SUNG CHUNG, Kim & Chang: The major impact is in the way our mode of interaction with clients and with one

another within the firm has been transformed. With clients, video conferencing has become the norm, even for clients in Korea. In place of in-person briefings, webinars have become an important tool for reaching out to clients to provide updates and discuss new developments. We do miss the in-person interactions with clients, but the shared experience of living and working through the pandemic has made communication whatever the medium more personal and franker than before, contributing ironically to a strengthening of relationships with clients.

Video/audio conferencing has also become the norm with colleagues, with clear advantages and some downsides. We had some misgivings in the beginning, given our highly collaborative work culture at Kim & Chang, but we were pleased by the gains in efficiency made possible, especially by doing away with the need to move among different buildings. However, the move to video/audio conferencing has required management step up communications with colleagues, especially younger colleagues, to maintain morale and show that management cares.

Fortunately, the pandemic has not had a major impact on the nature and magnitude of the work we do. There was a small adjustment at the outset of the pandemic, but work levels quickly recovered.

JINSU JEONG, Yoon & Yang: It is true that the pandemic has adversely affected our firm's M&A and other investment transaction activities, as many deals have become suspended or postponed. The uncertainties posed by the pandemic, like elsewhere, have temporarily stopped

many of our clients from pursuing new business ventures.

But other practice areas remain strong, with some even expected to grow as a result of the economic fallout of the pandemic, namely those associated with insolvency, restructuring and contractual disputes

For Yoon & Yang, the uncertainties posed by the pandemic are not new. We have been here before, notably during the 08-09 financial crisis, and like then and now, we have and will come out much stronger as a law firm with new avenues for conducting legal work through innovation and adaptability.

Indeed, when the pandemic first broke out in January, the firm was quick to adopt technology to facilitate safe communications. Online meetings with clients, via Zoom, Webex or MS Teams, have become the norm. The computer networking system has also been updated to allow attorneys and staff members to work safely from home.

The change is also welcomed by our corporate clients who have had to roll out a work-from-home protocol to their employees. Although we look forward to the day when we can get back to a sense of normalcy with in-person meetings, for the present, we are committed to providing top-quality legal service by tapping all the resources that we have available.

ALB: What were some of the key challenges you had to overcome early on in the pandemic period, particularly when it came to employee safety and client relationships? Now it is September – what are your priorities now and going forward?

KIM: Luckily for us, the Korean government started its response quite early and effectively, so our main task was to implement the suggested precautions, but this involved securing the health of over 1000 members along with keeping our office relocation on track. Most people in Korea are familiar enough with mask-wearing that it didn't cause any social opposition so, other than being extra vigilant about social distancing, we were able to operate mostly as normal.

However, the extended period of crisis globally seems to have worn down our will power as well evidenced by some recent increases in cases. From mid-August, Korea has shown signs of a second wave of the pandemic. Our offices outside of Korea, which are strategically spread over seven key global cities have also been significantly impacted by the inability of our professionals to smoothly and continuously travel between the offices since the outbreak of COVID.

To date, since our practices have not felt substantially threatened by the pandemic, we were able to operate with less stringent measures (for example, remote working in shifts, flexible working hours to accommodate mass transportation conditions) compared to others. However, if the current resurgence of COVID looks to be getting worse, not better, then we may need to implement more aggressive measures such as working fully from home for all employees.

CHUNG: The key challenges at the outset were to protect the health and safety of our clients and colleagues as well as the broader community, maintain effective communication with clients, and advise clients when they looked to us to help them navigate the legal and practical challenges brought on by the pandemic.

Although it has been six months since the pandemic erupted, the need for vigilance to protect the health and safety of our colleagues and clients has not changed fundamentally, as Korea has experienced continued waves of infections despite having done relatively well at containing the virus when compared with other countries. The challenge of maintaining meaningful communication with clients when in-person communica-

tion is not possible continues to be with us, while the need to advise clients on pandemic-related issues is less so.

A newer challenge now is to maintain high morale among our younger colleagues and to make sure they get the training and mentoring they need to thrive given that face-to-face interaction with colleagues is somewhat more limited than before.

JEONG: The COVID-19 pause felt like a small parting with our clients. Without regular face-to-face meetings, it certainly became more challenging to fully understand their legal needs. Early on, we did everything we could to avoid any miscommunication that could arise from physical separation. Nonetheless, when physical contact was necessary, we were there to meet them in our conference rooms, under the protection of strict safety protocols.

Going forward, the health and safety of our workplace will remain our top priority. Yoon & Yang rigidly implements the government's guidelines. Finally, we have developed an internal COVID-19 response guideline for everyone to follow should an outbreak occur inside the building. All in all, our firm is committed to overcoming the challenges posed by the pandemic.

ALB: With employees generally working from home, how have you looked to balance productivity with employee morale and wellbeing? What are some lessons you will take for the future when it comes to employee engagement going forward?

KIM: If the situation worsens, we may have to implement working from home more fully, however, to date, we have not had to take such drastic measures. Therefore, with most of our workforce still commuting to the office, the impact to our productivity as well as morale and

wellbeing are probably a lot less of a concern for us. With that being said, we are sensitive to the morale and wellbeing of our people being impacted by the "Corona Blue" in general. Therefore, we are continuously endeavouring to create a corporate culture where our members can rely on each other for support and comfort with a common sense of purpose even in these tough times.

CHUNG: Korea was never under lockdown, so our offices have continued to remain open, and despite flexible work from home arrangements, most colleagues have continued to come to the office for work. Nevertheless, while we are mindful to abide by distancing measures, being able to see colleagues at work and sharing in the sense that everyone is getting through this together has helped a great deal. We are also taking care to communicate often to our colleagues, apprising them of the measures that the firm is implementing, being transparent as possible about the why and the how of these measures and on areas where we can do better to ensure everyone's safety.

The key lesson we have learned is that effective, meaningful communication within the organisation and lots of it is critical to overcoming unprecedented challenges like those posed by the pandemic.

JEONG: Despite the disruptions, work productivity has remained the same. But for some, it has even shot upward

thanks to the time saved from not having to travel to work and the extra efforts input by our various practice groups to smooth the transition.

The technical team at Yoon & Yang has done an excellent job at setting up the computer networking system so that whether you are working from home or in office, you can have an identical PC setting. The firm is flexible and is open



SUNGJIN KIM



KYE SUNG CHUNG



JINSU JEONG

ROUNDTABLE

to the needs of those attorneys and staff members who feel more comfortable working from home.

ALB: Companies today are facing a challenging period and having to make difficult decisions. What are the ways you feel that you as their legal counsel can help them during this time?

KIM: Our employment and labour practice group has had a particularly difficult time in this regard. Although they often have to help guide clients through the most difficult of times, this year the challenges posed by COVID were mostly unplanned and therefore, many companies were caught off guard. Employment issues and labour relations under Korean laws can be complicated enough under the best of circumstances with plenty of planning so you can imagine the challenges this year. Our team had to stay up to date on all the changes imposed by the government so that we could provide proper feedback to our clients on a timely as well as practical basis. Again, providing practical advice on a timely basis is nothing new for us but the importance of maintaining those high standards under this year's unique circumstances were especially pronounced.

Taking this opportunity, BKL has been activating more virtual meetings via phone and video conferences, creating an atmosphere conducive to contacting clients more frequently and having discussions more candidly. Further, BKL is also considering more flexible fee arrangements for clients that are suffering from financial difficulties since the pandemic.

CHUNG: We believe continuing to be a trusted adviser to clients as well as their legal counsel is the best way to help our clients, to advise on challenges holistically, while seeing the "big picture." At the outset of the pandemic, we created a COVID-19 taskforce comprised of senior management and attorneys specializing in employment, health and safety, finance, privacy, contract law, corporate governance and other relevant areas to leverage our professionals' collective knowledge, expertise, and experience to serve clients' COVID-19 related legal needs in various areas.

On a more personal level, we are checking in often with clients to see how they are doing, outside of ongoing projects or outstanding tasks – everyone appreciates having an empathetic ear to share this unprecedented experience with.

Finally, we have been exploring more flexible fee arrangements to help clients manage legal costs in these difficult times.

JEONG: Our firm has been proactive in preparing for the legal issues stemming from the pandemic. We established our

“Our team had to stay up to date on all of the changes imposed by the government so that we could provide proper feedback to our clients on a timely as well as practical basis. The importance of maintaining our high standards under this year's unique circumstances were especially pronounced.”

– Sungjin Kim, Bae, Kim & Lee

COVID-19 taskforce early on to monitor the COVID-19 situation and to identify and explore customised ways to address the legal issues faced by the companies during the pandemic. The taskforce has been composed of senior partners and professionals from across the board, and it regularly holds seminars to share their findings with our clients so that our clients can proactively assess their legal positions. The information is also shared with the wider public through newsletters, articles and reports.


ALB: What are some major takeaways for you from this period when it comes to the firm itself and how it is being run? How do you feel you will use some of these lessons in the future to build a more resilient firm?

KIM: We realised the importance of transparent information-sharing and swift internal communications to prevent unnecessary misunderstanding and conflict between BKL members, enabling them to return to and focus on their work. In addition, we are also aware that a solid VDI system should be built and maintained well in case of natural disasters or for creating a more efficient working environment to improve productivity. BKL's management group will run this firm based on the belief that only a healthy law firm which is able to respond to emergencies flexibly can resolve its clients' issues thoroughly.

CHUNG: We feel that the technological aspects of the virtual office are here to stay – and for the better, especially as we grow larger in numbers and more diverse in terms of lifestyles and work habits. The COVID-19 taskforce we set up to advise clients on pandemic-related challenges, which is also responsible for setting the firm's virus-related policies, has proved to be very effective; We will be relying on this taskforce-based approach to meet future challenges.

Perhaps most importantly, the sense of common well-being is something that we were concerned was being diluted as we grew in size but we have gratefully been able to recapture as we worked through the new challenges together.

JEONG: The major takeaway from the COVID-19 experience is the importance of being flexible and proactive. The ability to respond swiftly to any crisis and to effectively adapt to the new environment, I think, is the key to success going forward.

Our partners and the management always place the interests of our clients first. The swift establishment of our COVID-19 taskforce is a statement of our commitment to providing top-quality legal service to our clients. Yoon & Yang will always remain one step ahead to meet any challenges going forward. 

Ken Adams Drafting Clearer Contracts (Oct 2020)

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As the leading authority on contract language, Ken Adams has successfully coached people around the world in drafting clearer contracts. His groundbreaking book *A Manual of Style for Contract Drafting* has sold tens of thousands of copies internationally since it was first published by the American Bar Association in 2004. The much-expanded fourth edition was published in October 2017.

In 2014, the Legal Writing Institute awarded Ken its Golden Pen Award, "to recognize his exemplary work in contract drafting." As part of its "Legal Rebels" project, in 2009 the ABA Journal—the flagship magazine of the American Bar Association—named Ken one of its initial group of fifty leading innovators in the legal profession. And in 2015 the ABA Journal named Ken's blog to the Hall of Fame of its "Blawg 100"—its list of the hundred best law blogs.

For more information about Ken and his activities, go to www.adamsdrafting.com.

COMPLIANCE ACROSS BORDERS

Designing a compliance programme that is robust and yet flexible enough to span multiple jurisdictions and industries is an increasingly common challenge for businesses as they expand their presence across Asia's varied countries. And regardless of where businesses may be located, there are a few essential elements to include, experts say, warning there can be significant costs for overlooking these. **BY ELIZABETH BEATTIE**

■ Asia is a vast region, and the compliance varies significantly from country to country due to disparate laws and unequal enforcement activities. The risks from non-compliance also differ substantially, affecting business decisions. And though an increasing number of companies have equipped themselves with compliance systems, or seek advice in this regard, setting up a compliance programme can still be a challenge.

Beth Junell, head of FTI Consulting's risk advisory & investigations practice in Asia, says that when designing a compliance programme that addresses single or multiple jurisdictions, there are a number of important elements which must be carefully considered.

"The essential elements consistently referenced across the body of global guidance include: culture of ethics and compliance; appropriate governance and oversight functions; demarcation of roles and responsibilities; enterprise-wide compliance risk assessments; policies and procedures; training, education and communications; incident response and reporting; required management information and metrics; and monitoring or independent testing," Junell tells *ALB*.

While each of these elements are equally essential, says Junell, some organisations may place more emphasis on culture than others.

When designing compliance programmes, adequate resources to implement and operate these—including people, technology and funding—are "essential," Junell notes.

While these are important across the

board, there are a few areas that pertain more specially to global programmes, says Junell.

"There needs to be a clear articulation of applicable requirements – laws, regulations, guidelines and so on – which should be set out, in hierarchy, in global- and country-level policies and procedures. Country nuances and conflicts should be addressed/resolved via established protocols," she says.

In Asia specifically, Junell says, FTI Consulting is often called up to assist clients to design controls, mitigate, or investigate and address non-compliance, whether intentional or unintentional,

"There needs to be a clear articulation of applicable requirements – laws, regulations, guidelines and so on – which should be set out, in hierarchy, in global- and country-level policies and procedures. Country nuances and conflicts should be addressed/resolved via established protocols."

— Beth Junell, FTI Consulting

with laws and regulations in a number of key areas.

"The first is fraud, or white-collar crime, for example asset misappropriation, specifically employee embezzlement; procurement fraud; intellectual property theft, as accompanied by fraud; and misreporting to stakeholders, including misstated financial statements, public statements by CEOs of publicly-traded companies or mandatory reporting to government agencies," she says.

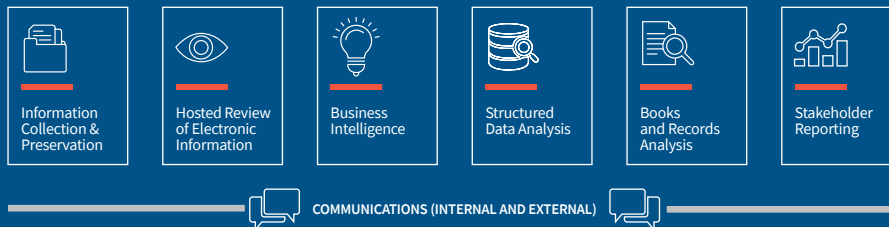
Another area is corruption – "Specifically, bribery, relating to violations of local and global anti-corruption laws, and conflicts of interest; bid rigging based on collusion; and economic extortion," says Junell. "The risk of violating laws or regulations is obvious, and certainly an effective compliance programme would mitigate the risk of intentional violation."

Gwynn Hopkins, managing director at Perun Consultants tells *ALB* that when developing a compliance plan that spans multiple jurisdictions, it's important to localise plans for employers and employees, adopt layered approaches, incorporating different tiers of policies on global and local levels, while also offering localised and tailored training to fit local laws and regulations.

Other important ingredients Hopkins cites for businesses are "nurturing a culture of integrity, observing local data protection regulation, recognising inherent risk of each jurisdiction, roles and responsibilities (leadership and corporate culture), regulatory business plans," and clear guidance including

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case studies regulatory approvals as among the important considerations when tailoring a plan to fit.

Hopkins adds that among the risks, generally speaking, which companies are typically looking to mitigate against are “financial crime – AML and ABC policies and procedures, insufficient ongoing monitoring, Inadequate risk assessment/ratings, doing business with Politically Exposed Persons (PEP), sanctioned parties and attempts to circumvent tax regulations – CRS, FATCA, plain tax evasion and so on.”

SERIOUS RAMIFICATIONS

With myriad considerations required, there are a number of oversights that are commonly made when designing and implementing compliance programmes across multiple jurisdictions, say experts.

“Two big mistakes related to implementation of a compliance programme across multiple jurisdictions are: Failing to understand actual compliance risks in each jurisdiction, and instead assuming risks identified at a global or regional headquarters level are universally applicable and that there are no additional country-level risks,” says Junell.

Another, she adds, can be failing to get ‘buy-in’ or establishing ownership from local business management “who is responsible for executing the programme on a day-to-day basis,” says Junell.

“An organisation cannot design and implement an effective compliance programme for a global organisation by only engaging a group of people from within the four walls of global headquarters,” she adds.

Among the common big mistakes Hopkins sees in compliance plans are not catching up with new regulations, insufficient practical directions for implementing compliance programmes, lack of adequate training.

And these can result in serious ramifications for businesses and staff, she says, noting that fines or penalties, reputation damage, negative press, remediation costs, personal legal risks for senior staff (for example, the business director), can all be dealt out, should the firm be found to be in breach.

“Multinational companies face greater challenges due to the diversity of the legislation in the jurisdictions in which they operate. Establishing an adequate and effective whistleblowing compliance programme is an important element in successfully implementing a robust system.”

— Gwynn Hopkins, Perun Consultants

Junell adds that the implementation process can also trigger a range of challenges for businesses should be aware of.

“If risks in the jurisdiction, or business unit, are not accurately assessed, then the ramifications are two-fold. On one hand, the business unit could be trying to implement policies and procedures that are irrelevant if the risks to which they relate do not exist for the business. While on the other hand, policies and procedures necessary to manage actual compliance risks that are present locally may not be implemented at all. Both scenarios would likely cause the compliance programme to be ineffective,” Junell says.

“Employees at the business unit are the front-line responsible for executing a compliance programme’s policies, procedures and controls. Therefore, these need to fit within the structure of what people are doing in their everyday jobs. If employees do not execute the compliance programme’s policies, procedures and controls as designed, or worse, circumvent out of frustration, then there is no first-line of defence. Designing workable procedures and controls is more easily accomplished by engaging with the business unit to

understand their operating environment and what employees are already experiencing in their daily work life,” she adds.

NEW AREAS OF RISK

Another area where there has been increased focus for companies is in the online sphere – specifically around the mitigation of cyber acts of aggression.

“Mitigating the risk of cyber-based attacks and crimes is at the top of many, if not most, risk management agendas today, and for good reason,” says Junell.

She adds the organisations are susceptible to different types of fraud, in the way of threat actors coming into an organisation through the internet, “often in collusion with insider threat actors”.

“Theft of IP, theft of credit card number databases or outright economic extortion are just a few examples,” Junell adds.

There are other, emerging risks too – including navigating different legal demands across jurisdiction tensions.

“Another key risk that is becoming more of a factor in Asia, presently in the context of China-U.S. tensions, is the conflict between laws with which an organisation must comply,” says Junell.

She notes that the recent developments in Hong Kong have triggered cause for careful consideration.

“The recent OFAC (Office of Foreign Assets Control) sanctions imposed by the United States against certain government officials in Hong Kong has raised a lot of discussion about whether complying with those sanctions would potentially be a violation of Hong Kong’s new National Security Law,” she adds.

But Junell says while this issue has received significant attention, “it is not the first time that organisations, particularly those with global footprints, have had to deal with conflict of laws situations,” she says.

Besides, compliance is no one-size-fits-all deal. Hopkins tells *ALB* that some companies do face more of an uphill climb when rolling out compliance programmes than others.

“Multinational companies face greater challenges due to the diversity of the legislation in the jurisdictions in which they operate,” she says. ALB

COVID-19: the perfect storm for white-collar crime

The COVID-19 pandemic has fundamentally changed many aspects of our lives, from the way we work to how we live. And in doing so it's given rise to an increase in fraud.

2020 is a year few of us are likely to forget in a hurry. Since the start of the year, the coronavirus pandemic has caused disruption not just in our personal lives, but across the business world.

As millions of people work from home because of social distancing, and with a looming recession caused by a slowdown in the economy, the pandemic has created the perfect storm for fraud, allowing criminals to take advantage of the ensuing anxiety and uncertainty.

According to data from Experian and the National Hunter Fraud Prevention Service, instances of fraud increased by 33% since April. And in the UK, fraud and cybercrime has risen by 400%, reports Action Fraud.

This fraud takes many forms, and many are old scams with new coats. We've come across increases in accounting or financial statement fraud, and we also predict there will be a noticeable increase in insolvency fraud and false claims. And, with employees working from home, the pandemic has led to an increase in the misappropriation and theft of company assets.

There's also some new scenarios arising out of the COVID-19 outbreak, with millions of dollars already paid to fraudsters. There are cases of cheats filing fake claims to scam government coronavirus relief funds. And fake vendors selling personal protective products and medical equipment, which inevitably doesn't arrive. There's also fraudulent charities using phishing emails that mimic health agencies, soliciting donations to help fight COVID.

The fraud triangle

How has the pandemic created the perfect storm for fraud to take place? It's best expressed in the "fraud triangle theory", an auditing framework made up of three components that together explain the factors that can cause someone to commit fraud. They are:



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Opportunity

Working remotely is new and unexpected for many businesses. Employees now have access to assets and information that allows them to commit and conceal fraud much more easily than they could sitting in an office because there's less supervision and weakened internal control procedures.

Rationalisation

With a slowdown in the global economy, a recession looming and businesses under pressure to cut costs, people's jobs are at risk. In some cases, this gives people the personal justification they need to commit fraud. "I have to do this to support my family". "My employer did not treat me well". It is a thought process that enables people to maintain two conflicting and seemingly incompatible states: the ability to initiate or partake in unethical acts while maintaining a positive moral code. The types of crimes themselves may be familiar, but the form of rationalisation is likely to trend post-COVID toward personal entitlement and temporary need.

Pressure/incentive

Completing the triangle is the pressure or incentive to commit fraud. People might be facing financial difficulties or potential unemployment. Ordinarily, they might never have contemplated fraud, but in

these exceptional circumstances they might feel they have no other choice.

What can businesses do to counter constantly evolving fraud?

Around the world, law enforcement organisations and the courts are feeling the pinch of coronavirus. There's a slowdown of the judicial system, enforcement agencies are reducing the scope of investigation work and there's a lack of remote access to investigation files and physical evidence. So, detecting and counteracting these frauds is challenging in the current climate.

At Perun Consultants, we believe the first thing organisations can do is cultivate and maintain a positive ethical community where employees are more likely to frequently and subtly counteract dishonest rationalisations. It is crucial to establish a culture that supports accountability at all levels of the organisation, together with comprehensive anti-fraud training, codes of conduct and ethics programs.

When presented with the stressors and pressures of a fraud scenario, we often behave differently than expected – rationalisations can creep in rather subtly. If employees are being fostered to become more ethical thinkers and to unconsciously act ethically, the tone from the top must be the anchor.

When checking for fraud risks, a formal risk assessment is usually recommended since no system of internal controls can fully eliminate the risk of fraud. However, well designed and effective controls can deter most would-be fraudsters since they reduce the opportunity for fraud.

Perun is able to assist organisations in managing their fraud risks by conducting formal risk assessments to measure the factors that influence fraud and how susceptible an organisation is. Organisations that demonstrate consistency and predictability in their approach to managing unacceptable behaviours significantly reduce their risk. And with the pandemic showing no end in sight, and economic pressure mounting, it's imperative businesses protect themselves from these increasing new trends in fraud.



FRIENDS IN NEED

When the pandemic hit, law firms went into a state of emergency as they looked to mitigate the worst of the impacts. Now, as the conditions begin to evolve and economies look to re-open, firms are carefully weighing up what the picture may look like in the longer term. Assisting them are legal networks, which are working hard to ensure their members can operate at their best. **BY ELIZABETH BEATTIE**

Law firms look to legal networks for access to experts who understand the nuances of varied markets, and resources to respond quickly and wisely to new developments. But during the pandemic, law firm networks have become part of a critical part of member firms' survival tool-chest — and their COVID-19 recovery strategy.

Law firm networks have been in the position of having witnessed the past few months from a truly global perspective — and there's plenty of lessons that can be taken away from the experience, they say.

Daniel Himpson, head of business development and strategy for Asia-Pacific at Lex Mundi, tells *Asian Legal Business* there is little doubt businesses have been seriously impacted by the global pandemic over the past few months. While different jurisdictions and countries have deployed various methods and approaches, for busi-

nesses, the impacts have been largely similar.

For clients of law firm network members, the biggest needs have been somewhat similar. "We've noticed a remarkable consistency in how the pandemic has affected clients across the globe, and how in turn their priorities have shifted together as events have unfolded," says Himpson.

He thinks back to the earlier days of the pandemic noting: "As the shock of the pandemic first hit, many businesses went into crisis response mode, focusing on keeping afloat — essentially just looking to survive to fight another day," he says.

But while businesses had to overnight change their priorities, he considers the relative advantages operations now have.

"During this initial phase one of the most pressing tasks for multinationals

was to carry out global contract risk reviews, often involving many thousands of documents across dozens of countries. If this had happened 10 or 15 years ago it would have been a monumental task for any business, with them struggling to manage many different law firms across many different jurisdictions," Himpson notes.

And while today, it might be a somewhat more manageable situation than it was in the past, it still wasn't an easy task for law firms to react.

"Even so-called global firms rarely manage to fully cover any a multinational's total geographical footprint, and they're especially lacking in some of the smaller, more remote jurisdictions away from large business hubs," he says.

TECHNOLOGY

There is little doubt that for law firms, transformation has been the name of

the game for the past few years. With increased competition and consolidation, market players have had to respond strategically, and smartly in order to minimise costs, and maximise resources.

While these pressures have been in place prior to the COVID-19 pandemic, they have only grown.

"Luckily both technology and alternate legal solutions have come a long way since then," says Himpson of the market evolution over the past years, noting there are a number of tech tools that firms are now seeing the payoff for.

"AI contract review tools are really starting to come of age, and they played a big role in helping clients get to grips with the initial phases of the pandemic. Combining these tools with an organization such as ours, which provides clients with a single access point into well over 100 countries, in-house counsel were able to react much more easily and effectively," Himpson adds.

Additional resources are no doubt in high demand, during these unprecedented times.

J. Michael Bernard, chairman of WSG notes that legal networks provide a strong resource for law firms and their professionals — particularly during a time when accessibility has been inhibited.

"Firms will continue to get great value from the network as long as lawyers are able to easily and effectively transition their network interactions as they have day-to-day client interactions," Bernard says. "Networks that can adapt to the changes in the industry, adapt to the evolving requirements of the firms and offer real accessibility to each other in these unprecedented times will succeed and be needed during something as unprecedented as a global pandemic."

"With digital connectivity more important than ever, WSG's proprietary digital platform has been able to adapt quickly to changing needs for information and accessibility," Bernard adds.

UNDER THE SHADOW

But as employees slowly return to physical locations, this can come with further complications.

Indeed, progress, and a more positive outlook, also may breed challenges for some businesses — particularly those who have resorted to emergency measures, and stayed in survival mode, without looking ahead.

"Many businesses went into what might best be described as 'extended life support'. Propped up by various government subsidies, companies that might otherwise have folded continued to struggle along," says Himpson.

"As government support measures slowly start to ease, and as businesses are coming to accept that we'll be living under the shadow of COVID-19 for the foreseeable future, it brings us onto what we now see as a realignment phase," he adds, noting how businesses will have to adapt," he notes. "In the short term, this presents clients with practical issues around dealing with large, remote workforces. How can they deal with data privacy issues? What about employee management and discipline? How do their responsibilities as an employer change?"

But there are other, external factors to consider, and these are areas that firms emerging post-pandemic should keep a watchful eye on.

"From a more strategic point of view, clients are keeping a close eye on how regulators are adapting antitrust and competition laws, seeking advice on the opportunities and threats this poses. And of course, deal-making is slowly making a comeback," says Himpson, noting that M&A, in particular, has been fraught with additional challenges.

"M&A in the time of COVID-19 presents a unique set of challenges, with very limited opportunities for international travel — especially to major markets such as China," says Himpson.

LONGER TERM CULTURE SHIFT

Of course, navigating through these various challenges and hurdles has also led to changes in thinking and approaches for a number of firms — in addition to stark takeaway lessons.

"I would say there are two main themes we've seen throughout the pandemic: This first is that companies must be able to act quickly and decisively

if they are to survive. This seems to be universal across all industries, so legal teams must have access to fast, high-quality legal advice whenever and wherever they need it. Delays, while things get forwarded around, simply aren't acceptable," Himpson adds.

"The second theme is an increasing need for transparency and remote oversight on the client side. We're in touch with GCs around the world all the time, and this was always one of their chief requests, even before the pandemic hit. With the shift to remote working, the need has only increased."

For Lex Mundi, such demands and needs around multijurisdictional work has led to the development of new client tools.

"Our clients are increasingly looking for ways to decrease complexity in multi-jurisdictional work. Our strategy over the past two years has been based around providing clients with a single access point into the entire network, and the pandemic actually coincided with the launch of our new service delivery platform called Equisphere," says Himpson.

"Equisphere is a way for clients to have a single point of access into all of our firms around the world, with full visibility on progress and spend via a web tool. In many ways, it answers lots of the challenges posed by COVID-19, and it's so simple clients can use it while working from their kitchen tables," he adds.

With 2021 bearing down, the industry will have refined the strategy as they move forward. Himpson says that given the way 2020 has panned out, he "wouldn't dare make predictions about anything".

But, despite the challenging situation business around the globe have found themselves in, many have emerged resilient, while others have undertaken complete transformations in order to emerge stronger.

While the picture ahead is uncertain — it's largely optimistic. "I would say that the legal industry in general seems to have proved more resilient and performed far better than many were expecting six months ago, so I'm cautiously optimistic about what comes next," Himpson says. 



VIRTUAL MOVES

With traditional ways of working turned upside down by the global coronavirus pandemic, and meetings largely being moved online, Thailand's government has issued an emergency decree outlining electronic meeting regulations. While the response so far has been positive, there are a few areas where businesses are awaiting further clarity. **BY ELIZABETH BEATTIE**

Businesses across the board have been hit in a variety of ways since the COVID-19 pandemic began its rapid spread earlier this year. Some operations have folded, or haemorrhaged staff, while others have shuttered physical locations and moved exclusively online. Even for operations that have been able to make the move online seamlessly, there is still a broad range of complications to grapple with. A move to extend online operations can trigger compliance complexities, or create demand for new company policies as communication shifts increasingly online and leaves behind an enduring digital footprint.

In the wake of the global pandemic, government and regulatory bodies across Asia have had to be flexible in order to create some semblance of

consistency. In Thailand, the government recently adjusted regulations around electronic meetings for state and private organisations in response to pandemic-related disruptions.

The motivation for the latest regulatory developments is to help ensure businesses do not face undue disruptions and are able to hold essential meetings legally while maintaining the social distancing restrictions that have kept many out of the office.

The latest changes came after a number of companies reportedly resorted to postponing obligatory annual shareholding meetings and directors' meetings, without proposing alternative dates, while other companies were forced to postpone important meetings.

Given the bind this has placed business in, the emergency decree has been broadly welcomed. Nuanporn Wechsuwanarux, partner at Chandler MHM, tells *Asian Legal Business* that the regulation outlines procedures around joining meetings, while providing guidance around the recording of these, and how participants should behave during the online meeting.

"The key elements of the regulations are: (A) electronic meetings must comply with the security policy and standards as prescribed by the regulation issued by the Ministry of Digital Economy and Society; (B) the standard requirements for arranging all e-meetings include: (1) all the attendees must identify themselves before joining the meeting; (2) all attendees must be able to cast votes, whether it be an open or secret vote; (3) there must be record of the audio, or audiovisual record of all attendees throughout the meeting in the form of electronic data, except if the meeting is confidential; (4) records of computer traffic data in respect to the meetings must be maintained; and (5) the minutes must be maintained in writing," Nuanporn says of the new rules.

The guidelines around how participants should engage in meetings, will provide a number of answers to previously grey areas, while also enabling meetings to go ahead.

"During COVID-19, which resulted in restrictions such as social distancing and border closures, these changes have made it possible to arrange board of directors and shareholders' meetings while ensuring physical distancing and for non-resident directors to attend board meetings," says Nuanporn.

UNLIKELY TO DISAPPEAR

Of course, one unavoidable question applicable to law changes rolled out during the pandemic is how will these sit within the new, post-pandemic business climate? The other unavoidable question perhaps, is what will "business as usual" look like in a post-pandemic world. Are digital meetings likely to continue to play a significant role or will business leaders look to revert to physical meetings and traditional, pre-COVID expectations?

E-Meetings – The New Normal

The Covid-19 situation has accelerated digital transformation across the globe. Many organizations in Thailand, started to use e-meetings as an alternative to physical meetings during the early stages of the spread of Covid-19 in order to reduce face-to-face contact. The use of e-meetings was further accelerated by city lockdowns, travel bans and implementation of work from home procedures.

The law has allowed board of directors and shareholders' meetings to be conducted by electronic means since 2014. However, previously various requirements had to be met to hold electronic board of directors and shareholders' meetings by electronic means. Some of these requirements defeated the purpose of holding e-meetings. The key requirements that were thought to make e-meetings impractical were: (i) the requirement that one-third of the quorum must physically attend the meeting at the same venue and (ii) all attendees must attend the e-meetings from within Thailand.

Thai companies must hold annual shareholders' meetings (AGM) to approve the audited financial statements within 4 months from the end of the fiscal year. A board meeting must be convened to call for an AGM. Since most Thai companies adopt 1 January - 31 December as their fiscal years, therefore, April is usually the busiest month



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during the "AGM season". Coincidentally, this year the number of persons infected by Covid-19 Thailand reached its peak at the end of March. A lockdown, which was to reduce Covid-19

infections was ordered before the beginning of the busiest month of the AGM season.

In response to the Covid-19 situation, the Ministry of Commerce and Stock Exchange of Thailand issued interim measures to allow AGMs to be delayed. Furthermore, in order to make e-meetings more practical, on 19 April 2020, the Emergency Decree re Teleconference through Electronic Media, B.E. 2563 (2020) was enacted to remove the requirements that one-third of the quorum must physically attend the meeting at the same venue and that all attendees must attend the e-meetings in Thailand. As a result, companies have started adopting board and shareholders meetings in the form of e-meetings.

Currently, the Electronic Transactions Development Agency is accepting applications for certification of conformity with standards for maintenance of security for electronic meetings under the applicable notification issued by the Ministry of Digital Economy and Society. If the system used for e-meetings is certified by this agency, it is deemed to be compliant with the standard set forth in the relevant notification.

Even though it would take some time for e-meetings to be established as routine practice, it is fair to say that e-meetings have already become part of 'new normal'.

Nuanporn says it's too early to tell how exactly companies will use e-meetings after COVID-19, but these are unlikely to disappear overnight.

"However, we are of the view that e-meetings would be used by joint venture companies between Thai and foreign investors and by subsidiaries of MNCs in Thailand in the long run," she says of the likely developments ahead.

In the meantime, the local reaction to the law change so far has been something akin to a sigh of relief.

"This long-awaited change has been warmly welcomed by the private sector," says Nuanporn, noting that the reaction throughout the business community in Thailand has been "very positive overall".

FURTHER DEVELOPMENTS

But while there's ample support for the changes, there are a few areas around the more technical and technological elements that remain uncertain.

"Since the relevant government authority has not endorsed any e-meeting software as being compliant with the technical requirements, concerns remain about compliance with the security policy and standards," Nuanporn says.

At present, the most common concern, she adds, "is whether the software that a company uses complies with the technical requirements".

While one set of regulatory changes, may sometimes hint at further development to come, there are still details which businesses are waiting to be unpacked, before thinking ahead.

While Thailand already has a full suite of laws in relations to e-meetings, there are likely to be further peripheral announcements that will add to the clarity of the latest legal changes.


"We would like to see a list of programs/software that the Electronic Transactions Development Agency (ETDA) endorses as being e-meeting software which meets the technical

requirements," says Nuanporn of further developments that would be helpful for business, noting: "This would clear up uncertainty in relation to the practice of holding e-meetings."

Following the clarity around digital meetings, there are likely to be further regulatory developments on the horizon that will also support digital working, Nuanporn says.

"The ETDA has been very proactive in enacting laws which relate to the digital economy. We expect that there will be many other laws, regulations and guidelines which are enacted and updated to facilitate the digital economy," Nuanporn adds.

Taking a more general stance, business will expect further clarity before they can confidently blaze ahead with the latest legal developments, but the outlook ahead is a positive one, says Nuanporn.

"We anticipate that Thai law will soon catch up with the fast-evolving digital landscape," she adds. 



OPEN SKIES

With populations largely grounded and demand for flights disappearing almost overnight, the aviation industry has taken a battering. However, new areas of opportunity are emerging, partly as a result of regulatory flexibility, but also due to advancements in technology. **BY ELIZABETH BEATTIE**

When COVID-19 hit hard earlier this year, travel plans came to a screeching halt almost everywhere. Since the beginning of the pandemic, aviation has been one of the most severely impacted sectors. Airlines around the globe have struggled with the ramifications of a suddenly grounded global population — and not all operations have survived.

These dire, uncertain circumstances have led to some degree of stringency from regulatory authorities, says Piyush Gupta, head of the aviation and competition practice at Incisive Law in Singapore.

“In respect of competition laws, the competition regulators across the world have shown a willingness to relax some competition rules during these tumultuous times,” says Gupta, who notes that this isn’t a blanket response from all.

Regulators, Gupta says, are also drawing a hard line at anything that may have ramifications post-pandemic, when competition is expected to be substantially reduced.

The Competition and Consumer Commission of Singapore (CCCS) issued a guidance note last month that acknowledged that while the regulator recognised that various logistics and supply chains have been disrupted as a result of the pandemic, and that collaborations between competitors during

this period may need to be put in place. However, these would for a temporary period, and need to satisfy the Net Economic Benefit (NEB) criteria under the competition legislation in Singapore, says Gupta.

To mitigate the negative effects of the outbreak on the aviation industry, governments may also step in to aid airlines in financial need in order to keep national carriers afloat and to protect jobs in the sector. However, Gupta warns that this could lead to distortions if the aid was to discriminate among those on the receiving end.

“Additionally, governments may create regulatory exceptions for airlines, such as allowing them to grandfather slot rights regardless of compliance with ‘use-it-or-lose-it’ rules. This may result in the preservation of inefficient airlines in the market and the crowding-out of the most efficient companies with limited access to state funding,” Gupta says.

In some more extreme cases, airlines are at risk of leaving the market altogether. In some scenarios, this could leave markets with only one major player — in other words, a forced monopoly.

“For instance, Virgin Australia Group has entered into voluntary administration, raising the prospect of rival Qantas remaining as the only signifi-

cant provider of domestic air travel in Australia,” outlines Gupta. “Similarly, should the loss-making Malaysian Airlines go bankrupt, without financial aid or fresh capital, merging the state carrier with the Malaysia-based AirAsia Group could be the only option left.”

But while there have been such cases, competition regulators in such jurisdictions have made it clear that a monopolised domestic airline industry is not an option, Gupta notes, citing recent comments made by the Chairman of the Australian Competition & Consumer Commission (ACCC), and the Malaysian Aviation Commission, which both raised aviation competition laws in comments.

But elsewhere, there have been cases of leniency.

In South Korea, HDC Hyundai Development’s acquisition of Asiana Airlines, the country’s second-largest carrier, received a quicker-than-usual approval, Gupta says, while India’s antitrust regulator has said it will make concessions to the merger rules in order to make it easier for struggling companies to merge.

DRONE DEMAND

Elsewhere, there have been interesting pandemic influenced developments has been around drones.

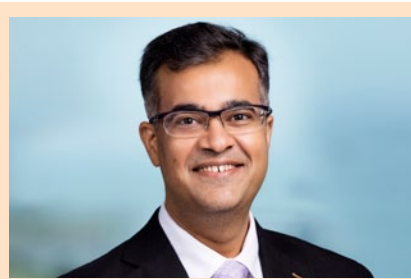
CCI Taking Strides Towards Penalising Individuals

In a recent development in India, the Central Board of Direct Taxes ('CBDT') has authorised the Indian tax authorities to share 'relevant and precise' information with the Competition Commission of India ('CCI').

This is important because the CCI requires financial information of companies (as well as individuals) to investigate violations under the Competition Act ('Act'). With this development, it seems that the CCI intends to penalise individuals (acting on behalf of the concerned company) on a more proactive basis.

When the CCI was in its infancy, its position on the issue of 'individual' liability was that separate proceedings were required to be initiated after following the necessary procedure¹. Up until 2013, no penalties had been ascribed to individuals in any case.

After a number of cartel decisions, the CCI probably realised that levying a nominal penalty on the turnover of 'associations' was not deterring its significantly more wealthy individual members from engaging in anti-competitive behaviour.



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To remedy this situation, CCI has been increasingly imposing penalties on individuals, with

the first penalty on an individual being levied in 2014 in the *Bengal Chemist* case². To determine the penalty of the individuals, the CCI took into account, the income certificates of the concerned office bearers. This decision was a breakthrough for the CCI as it was the first instance wherein penalties on individuals were imposed.

The issue of 'individual culpability' and penalty has been enshrined in the CCI's thought-process and decision-making for some time now⁴. However, the CCI was facing issues in getting the requisite financial information from the individuals.

To this effect, CCI required access to the income tax returns being filed by errant individuals, and that is where the development of CBDT agreeing to share relevant information with the CCI suddenly gains significance.

By getting the requisite 'individual' financial information from the CBDT, the CCI be better equipped to assess and penalise individuals who run afoul of the Act.

¹ <https://economictimes.indiatimes.com/news/economy/policy/cbdt-allows-income-tax-authorities-to-share-information-with-cci/articleshow/77291049.cms>

² *Kapoor Glass Pvt Ltd v Schott Glass India Pvt Ltd*, Case No. 22 of 2010; *GKB Hi-Tech Lenses Pvt Ltd v Transition Optical India Pvt Ltd*, Case No. 01 of 2010

³ *Bengal Chemists and Druggists Association, Suo Moto* Case No. 2 of 2012

⁴ See *Indian Sugar Mills Association v Indian Jute Mills Association*, Case No. 28 of 2011 and *P.K.Krishnan v Alkem Laboratories & Ors*, Case No. 28 of 2014

"In recent times, not only have we seen drones being used for aerial surveillance and other COVID-19 related work, but also for broadcasting of warnings, measuring temperatures, remote deliveries of personal protective equipment and lab tests," Gupta tells ALB.

"In my opinion, COVID-19 has been significant in highlighting the use of drones - similar to how the stocks of the companies proffering video-calling competencies has suddenly soared. Under normal conditions, this tech was not getting its due as people were concentrating on revenue maximisation through their regular course of work and were not giving much attention to the huge benefits that are attributable to this new sector," he adds. "Once the movement control restrictions were enforced on people in various jurisdictions that was when the focus shifted on drone and the advantages they brought to the table."

Meanwhile, India has been taking "massive strides towards becoming a pioneer in drone operations and use in

a safe, commercially-savvy manner," says Gupta, citing the Indian government's draft guidelines on the operation of unmanned aircraft in 2018, and the subsequent guidelines - the Drone Ecosystem Policy Roadmap by the Ministry of Civil Aviation, released in 2019.


Drone training schools have also been rising in popularity in India, with a number of academies across the county gaining approval from the Directorate General of Civil Aviation (DGCA).

"The Indian government has realised the potential of this new industry and has started working towards fine-tuning its policies to make this industry commercially and legally viable. That is not the case with some of the other countries where flying of drones - while legal - is still governed by a set of rules that remain open-ended and liberal and are prone to misinterpretation and indeed, misuse," says Gupta.

This interest is catching on in other countries.

"Within the Southeast Asian region, Singapore is taking big steps in ensuring that drone-tech gets its due. For instance, with effect from Feb. 1 next year, users of commercial drones, as well as operators of drones for recreational purpose (where the weight of the drone exceeds 7kg), will be required to obtain a pilot license which will be bestowed only after one completes a theory as well as a practical assessment administered by the CAAS," says Gupta.

While there's plenty of opportunity, it is hoped that laws can keep up. As Gupta puts it: "Drone-tech is set to challenge the archaic set of laws, rules and regulations considering the overarching effects of the technology in question."

While there may be areas which will have to be rewritten, "the entire practice of international carriage of goods is set to witness a 'sea change' as the whole multimodal transportation system can be done away with by the increased use of drones," says Gupta. 



GLOBAL MIGRATION AND MULTIPLE CITIZENSHIPS AS A POWERFUL FINANCIAL PLANNING AND WEALTH MANAGEMENT TOOL

The past 30 years have undeniably been marked by the development of easy access to information. The world wide web has made people more aware of their surroundings, giving them the opportunity to consider alternative options available to them which could direct their future.

Access to knowledge and awareness has led the way to a more frequent exercise of conscious choices to acquire a new citizenship and/or to migrate to a foreign country.

In the past 15 years, immigrant investor programs offering high net worth individuals (HNWI) residence or citizenship in exchange for local investments have proliferated around the world. Such programs have been modelled as tools to fuel local economies. A natural corollary of this is that these programs can also be used by investors as powerful financial planning and wealth management tools.

This article attempts to highlight some of the reasons for the choices that investors make. These choices are often (although not always) influenced by the financial planning and wealth management opportunities that the residence and citizenship programs offer.

1. Global migration: a conscious choice and privilege

- 1.1 For many, the daily commute to another country for work, school, or relocating to settle down to in a foreign country, can appear normal and effortless.
- 1.2 Citizens of the European Union (EU)¹ enjoy free movement between other EU countries. Freedom of movement and residence in the EU is the cornerstone of EU citizenship, which was established by the Treaty of Maastricht in 1992. EU citizens can establish themselves to live and work in other EU countries in search of a better future. Nowadays, it is common to meet Spanish students in Paris, French bankers in Frankfurt, or German retirees in the Algarve in Portugal, in search of better education and work opportunities, higher standard of living, or even simply a more desirable climate. All of this is possible for one primary reason, the passport they hold.
- 1.3 The Schengen area (comprised of 26 countries that have abolished passport control at their mutual borders) counts for approximately 1.7 million people commuting to a foreign Schengen country daily. Out of these 26 countries, only 4 are not members of the EU (i.e. Iceland, Norway, Switzerland, and Liechtenstein).
- 1.4 Other arrangements exist to ease the movement of people, such as the Nordic Passport Union which has since 1954 allowed

citizens of the Nordic countries (Iceland, Denmark, Norway, Sweden, and Finland) to travel, work and reside in another Nordic country without any travel, work or residence permit.

- 1.5 In 2016, the Organization of Eastern Caribbean States (OECS) implemented a free movement regime for citizens of all its full member states (Antigua and Barbuda; Dominica; Grenada; Montserrat; Saint Kitts and Nevis; Saint Lucia; and Saint Vincent and the Grenadines). As a direct result, all OECS nationals have the right to move, find employment, and access services such as education and healthcare in the same manner as the nationals of the member country.
- 1.6 However, for many, having such kind of choice, is a privilege. A person cannot just freely relocate to a foreign country at convenience without complying with specific and often stringent visa requirements.
- 1.7 Migration opportunities (or even just visa-free access to foreign countries without long-term migration) will very much depend on the passport you hold, your citizenship. It is in this context that global migration and multiple citizenships can be a key aspect of one's overall life management and strategy.

2. The important distinction between migration and citizenship

- 2.1 Distinction needs to be drawn between "migration" and "citizenship" as the two do not necessarily go hand in hand. Many HNWI seek additional or alternative citizenship(s) but do not intend to physically move to the country of the new citizenship as they are often physically located in the country of their choice.
- 2.2 Lawyers can help HNWI achieve their goals, whether it be to migrate to another country or to obtain a new citizenship. If the HNWI seeks an additional (or alternative) citizenship without relocating to a new country, then programs such as Caribbean citizenships may be better suited given some programs require local residency before granting citizenship (such as Spain or New Zealand).
- 2.3 Lawyers will need to assess the specific circumstances of the HNWI to advise on best options on a case by case basis.
 - a) Some countries offer attractive citizenship although not in a location where HNWI typically intend to relocate.

¹ EU countries: Austria; Belgium; Bulgaria; Croatia; Cyprus; Czech Republic; Denmark; Estonia; Finland; France; Germany; Greece; Hungary; Ireland; Italy; Latvia; Lithuania; Luxembourg; Malta; Netherlands; Poland; Portugal; Romania; Slovakia; Slovenia; Spain; Sweden.

- Turkey started its citizenship by investment program in 2016. Many investors chose this program to benefit from the ability to gain a faster access to E2 immigration opportunities to the USA rather than to migrate to Turkey.
- HNWI seeking to quickly migrate to Germany may look at Cyprus passport as a possible option giving the HNWI access to all EU countries once he holds a European passport. Different European programs are not equal and will need to be carefully considered with a lawyer for successful result.

- On the other hand, HNWI may intend to relocate to countries in which they do not wish to become citizens. For instance, HNWI may purposely stay away from a USA passport that would make them liable to worldwide taxes as it is based on nationality regardless of their place of residence.
- Some countries have mechanisms in place to grant permanent residence to HNWI rather than citizenship which can be extremely difficult (for instance, in Hong Kong, due to the need to be of Chinese descent) or undesirable (for instance, Singapore requires boys to undertake military service and does not allow dual citizenship). Sometimes, permanent residency will cover the benefits that HNWI might be looking for such as good quality of life and medical care, advantages for asset protection due to reliable and trusted banking system in close proximity, and a favourable tax regime.

2.4 Citiznships by investment programs evolve constantly and so require experienced and trusted lawyers.

- Citizenship by investment programs have often been used by governments as tools for local development and to attract foreign wealth. Accordingly, they constantly evolve based on how well local economies perform.
- Just recently, the Moldova program was cancelled (in June 2020), and the rules of the Malta Individual Investor Program (MIIP) are expected to be revised shortly.
- On the other hand, new programs may be rolled out for economic and political reasons, such as the recent Jordan (2018) and Egypt (2019) programs. Those programs are intended to boost local investment by treating investors as citizens instead of foreigners which can also serve to bring some political weight to a country that has a growing population. These countries have limited visa free access and their primary purpose is local investment and stability, rather than flexibility to travel out country.
- The profiles of the HNWI/investors have also evolved. More choices at various level of investment required means a higher number of individuals can afford to participate. Some Caribbean options are available for families from USD125,000, and Turkey requires real estate investment of only USD250,000.
- HNWI may base their decision to migrate and/or acquire another passport on many different factors, such as their perception of social justice, political and economic environment, or even sanitary and health factors. Their choice

is generally based on what they require to achieve their living goals, for themselves and their family. Sections 3 to 6 below seek to look at some of those factors.

- Although global migration and multiple citizenships can be used as powerful financial planning and wealth management tools, it is not a 'one fits all' situation. The programs are constantly changing, as do the economic and political climates, and thus, advice from reputable and competent lawyers will be paramount to successful long-term planning. Lawyers should understand the individual needs of their clients so that they can help navigate through the various immigration programs then available. The lawyers will also be able to help assess what is achievable, help clients prepare for the many steps ahead to maximise their chances of success, and will liaise with other third parties which are often based in different jurisdictions and time zones (such as local migration agents, local tax and legal advisors, property agents, business incubators etc.) to assist the client achieve their goal.

3. Global migration and multiple citizenships: for lifestyle

- A particular passport/citizenship can impede the HNWI's lifestyle, for instance limited visa free access to foreign countries. Therefore, access to a passport with a wide range of visa free countries (even just for short trips) might be the motivating factor not only for leisure purposes but also for business purposes.

For instance, passport holders of Australia, Canada, Malta, Portugal, Singapore or USA can enjoy visa free access to over 180 countries, whereas passport holders of Bangladesh or Afghanistan are restricted to access to a mere 41 and 26 countries respectively. This will inherently affect their lifestyle.

- Nowadays, many people place lifestyle among their top personal achievement goals. This may require migration to another country, for instance to live in a less polluted environment, or to practice hobbies more easily accessible in certain parts of the world.
- Education opportunities is a key determining factor for families of HNWI. Wealth planning tool and lifestyle are long term objectives. HNWI and families will often plan not only for now but also for the next 10 or 20 years to come.
- Choosing a new lifestyle is the luxury some HNWI possess where they can choose where to live, study, work, raise children and retire. Sometimes the sole decision to acquire a passport is to give a better opportunity to their children and future generations at minimal costs. For instance, a European passport will give children good and affordable education throughout Europe.
- This "lifestyle" rationale for migration and multiple citizenship is very personal and often an emotional choice. However, citizenship by investment options are not cheap and will need to be considered carefully to ensure they will be sustainable. The choice needs to make sense in view of the business or other income generating activity that will permit to maintain the lifestyle year after year. Accordingly, wealth growth and preservation opportunities will also be considered to assess if this is a viable option, even if they are not the main purpose of the migration/multiple citizenships.

4. Global migration and multiple citizenships: for wealth growth

4.1 Wealth growth through real estate investment

- a) Different citizenship by investment programs have different criteria to satisfy and investments to make.
- b) Sometimes the quickest and cheapest way (in terms of dollar amount) to acquire citizenship may require payment of a specified lump sum in national development funds. However, often there is a choice to elect to make a local investment in property. The property minimum investment amount may be higher than a lump sum payable to national development funds but the investor will be the owner of a tangible asset that can be rented out to generate revenues (or not, for instance in Malta) and sold after a number of years (usually 3 to 5 years, but note that certain countries such as Cyprus require to hold property worth a minimum EUR500,000 for an indefinite period of time). Often, the immigration program will require both a real estate investment and lump sum payment to national development funds (for instance, Malta and Cyprus).
- c) The real estate opportunity creates a potential for wealth growth based on property appreciation (and in many cases also passive income through rents).

4.2 Wealth growth through investment funds

- a) Given that citizenship/residency programs are modelled to fuel and support local economies, it is no surprise that certain jurisdictions require HNWI to invest in local funds and/or companies. This gives HNWI the opportunity to invest and participate in the future potential growth of the local economy.
- b) For instance, Australia's significant investor visa 188c requires the HNWI to make a AUD 5 million investment (with a genuine intention to hold that investment for at least 4 years) broken down into 3 components: (i) at least AUD 500,000 in venture capital and growth private equity funds which invest in start-ups and small private companies; (ii) at least AUD 1.5 million in approved managed funds investing in emerging companies listed on the Australian Stock Exchange; (iii) a balancing investment of at least AUD 3 million in managed funds that may invest in a range of assets.

4.3 Wealth growth through work and business opportunities

- a) Global migration and multiple citizenships can facilitate employment opportunities and be conducive to the establishment of business or business expansion in various regions of the world.
- b) Those opportunities will be the base of the wealth created through work and business opportunities. This will demand some hard work and involve a certain amount of risks to be taken by the HNWI. This type of wealth will by nature be very different to wealth that is generated by passive revenues and appreciation through the real estate and investment funds.
- c) The Canadian SUV program is a good example of a national program that allows innovative business persons

who have a business idea to connect with local business incubators to further their business plan and take active steps to carry out the venture with professional advice and support. Portugal also has a similar program. Those programs result in a resident permit which, after a few years, can be the basis of an application for citizenship.

- d) Once obtained, citizenship can also allow a person to undertake business or investments that are normally reserved to nationals.

5. Global migration and multiple citizenships: for wealth preservation

- 5.1 To the extent possible, HNWI will seek to establish their tax residency in a low tax jurisdiction that is close to their main place of business. This is the base for wealth preservation.
- 5.2 In addition, the investments HNWI may be required to make, whether in the form of real estate or in local investment funds (as per sections 4.1 and 4.2 above) may also present an opportunity for wealth preservation in the sense they may be used as diversification to hedge currency and country risks.
- 5.3 HNWI may time their investments to make the most out of foreign exchange. For instance, to a Hong Kong person, buying a property in Euros now is considerably cheaper than some months ago due to exchange rates.
- 5.4 Global migration and citizenship can help plan and preserve wealth during the life of the persons but also at the time of their death. The choice of migration and citizenship can give people the opportunity to structure their estate to preserve their capital and to plan their succession.
- 5.5 Successions and tax regulations may change by the time of death. However, HNWI would benefit from ensuring that they have will(s) in place, drafted by lawyers who have a clear understanding of their residency and citizenship plans. The wills should be structured to take account of the HNWI's assets, as well as place of residence, domicile, and nationality. In certain cases, based on European regulations, nationality might offer a choice of law to the HNWI, that could govern their successions. HNWI may also wish to seek legal advice to assess the extent to which local laws may impose forced heirships.

6. Global migration and multiple citizenships: for financial privacy

- 6.1 Increasingly, HNWI are considering acquiring an additional citizenship or tax residence to better protect their assets and financial information.
- 6.2 While financial regulations are enacted with the best of intentions, they tend to overcomplicate the business operation and disclosures required.
- 6.3 In hope of facilitating business, some countries have applied a more flexible regime on corporate governance. For instance, St Kitts and Nevis:
 - a) unlike traditional countries that require corporations to report their financial standing on an annual basis, St Kitts and Nevis tend to subject corporations to minimal financial reporting standards.

- b) Not only is there no requirement for filing of annual returns in St Kitts and Nevis, the territory does not make the information in their company registry available to the public.

6.4 HNWI looking to best maintain their financial privacy could therefore consider establishing themselves and their corporations in countries and territories that offer strong asset protection and financial privacy laws like St Kitts & Nevis.

7. Global migration and multiple citizenships: more options in case of crisis

7.1 Citizenship of different countries may be valued due to the consular and health care protection that may be beneficial in a crisis.

7.2 For instance, citizenships of Commonwealth member states (which include Malta, Cyprus, Vanuatu, Antigua & Barbuda, Dominica, Grenada, St Kitts and Nevis) offer the following advantages:

- a) support of British embassies/consulates in foreign non-Commonwealth countries where their home countries have not established diplomatic or consular posts; and
- b) in many cases, visa free access to visit United Kingdom for up to six months for business, tourism and family visit.

7.3 The recent COVID-19 sanitary crisis has highlighted other potential benefits of having multiple citizenships, such as having the choice where to live or travel to, in the event of health crisis.

- a) COVID-19 unprecedented long-term lockdowns and worldwide travel bans except for nationals have shown the importance of having the right passport.
- b) This could allow a person access to a place with better medical care and more favourable hospital occupancy rates.
- c) Potentially, this could result in priority of treatment by having the right to travel to countries where medicines or technologies for treatment become available first.

7.4 Additional citizenship can be used by HNWI as powerful financial planning and wealth management tools, but also as insurance in case of health crisis or any other political and economic crisis. Additional citizenship gives an additional back-up plan and alternative location to preserve wealth and split risks.

8. Looking out to the future

8.1 Citizenship by investment programs are costly. Sometimes, an additional citizenship can be acquired as a mark of status or a backup plan, but in most cases it is a personal choice which is carefully planned after review of the HNWI's personal goals, wealth growth and preservation opportunities that can be realised on a long term basis.

8.2 Our experience shows that HNWI tend to acquire multiple citizenships primarily for mobility (which can be for personal or professional reasons), not so much for the tax residency (unless they are single and nomad). This indicates that there is more to citizenships than just tax planning.

8.3 HNWI will need lawyers to help them navigate through the many different types of citizenship by investment programs and identify the best fit. Not all programs are regarded as equal (for instance in terms of reputation), and programs that are being offered change constantly to reflect market conditions.

8.4 In the last few years, significant focus has been placed on the avoidance of tax evasion and banks have tightened up their practices and due diligence processes, in particular in respect of foreign residents and citizens by investment. We can expect this trend to continue and financial institutions may be required to update their practices regularly to address any new scheme that may be put into place.

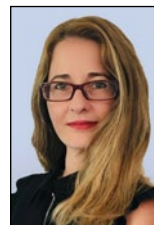
8.5 As an extension of this, in the future, it might be possible that countries offering citizenships by investment and residence programs get together to vet applicants through third party nations which have major intelligence databases (US, Canada, UK, Interpol etc.).

8.6 An even more extreme development could be to grant people the right to travel visa free not based on nationality but based on whether they have personally been vetted as beyond suspicion by third party nations which have major intelligence databases. So, there would effectively be two classes of people: those beyond suspicion able to travel visa free; and others.

8.7 With the COVID-19 pandemic, we have seen initiatives toward the tracing of people's movement. Full transparency and tracing might become a future accepted norm and common choice. In that case, HNWI would need a tax residency with substance and may consider, the tracing of people's movement before deciding which investment program is the best suited.

8.8 In summary, time will tell how migration opportunities and citizenship by investment programs will develop. Although global migration and multiple citizenships can be used as powerful financial planning and wealth management tools, there is no one miracle program that fits all. The programs change constantly function of the economic and political climates, and advice from reputable and competent lawyers will be paramount to successful long-term planning.

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Laure Cochet started her journey in the law in Canterbury (United Kingdom) where she obtained a Bachelor of Laws (LLB and Licence) in English Law and French Law in 2001. She then pursued her legal education in Paris to undertake a Master of Laws in European Business Law (DESS, Paris II, 2002), and moved on to Hong Kong to complete a Postgraduate Certificate in Laws (PCLL, HKU, 2005).

Laure has been based in Hong Kong for over 15 years and has practiced as Hong Kong and English practicing solicitor in international law firms before joining Harvey Law Group. Her practice areas have included non-contentious construction projects, and

the development, acquisition/divestment and financing of energy businesses and infrastructure and the commercialization of energy resources.

Laure joined Harvey Law Group in 2020 and now practices as a registered foreign lawyer in the areas of immigration law, commercial law, and private client.

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Amelia Polisano completed her Bachelor of Arts (Honours) in Law with Accountancy at the University of Brighton in 2003 and pursued further legal education at the College of Law in Surrey in 2004. Amelia successfully qualified as a solicitor of the Senior Courts of England and Wales in 2008.

Over the years, Amelia gained invaluable wide exposure into different areas of the legal profession. She completed her training contract in a boutique firm in Central London, and then practiced in several London firms before moving to a large national firm in Surrey.

At various times, Amelia took leading roles within law firms, for instance as Operational Team Leader of the Commercial Team, and head of the Contested Probate Department.

This has helped her become a one-stop legal adviser for many companies, assisting them on all aspects of their businesses including civil litigation and commercial law. It also gave her insight into the preventive measures required when dealing with private client matters.

During her career, Amelia worked on many high-profile employment and criminal cases with prominent Queen's Counsels in the UK.

Since 2014, Amelia has been working in Hong Kong and joined Harvey Law Group in 2015 and practices as a registered foreign lawyer in the areas of immigration law, commercial law, and private client.



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Polly obtained her Juris Doctor degree from the University of Ottawa and is a licensed barrister and solicitor in Ontario, Canada. As an Associate based in the Hong Kong office of Harvey Law Group, Polly regularly advises clients of all sizes, from individual startup investors to multinational corporations, on business and professional immigration, cross-border investment, and corporate matters. Polly enjoys sharing her rich insights on global migration trends and

helping clients navigate the complex challenges they face when moving their business operations overseas.

Prior to joining Harvey Law Group, Polly has experience prosecuting invention and design patents in various jurisdictions, including United States, China, and Japan.

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Harvey Law Group (HLG) was founded in Montreal, Québec in 1992 by Attorney Jean-François Harvey.

Mr. Harvey completed a Bachelor of Laws Degree from the University of Ottawa and was appointed to the Québec Bar in 1992. He is a member in good standing of both the Québec and Canadian Bar Associations. Mr. Harvey is recognized internationally as an expert in immigration law, and he brings a wealth of experience in providing comprehensive immigration law services to corporations and high net worth individuals.

Mr. Harvey also brings extensive experience in commercial legal matters, including many high-value due diligence and merger and acquisition activities for a broad range of International and multinational industries.



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Bastien Trelcat obtained his Master in Business Law and Corporate Taxation from the Law School of Aix-Marseille University, France in 2002. During his studies, he was ranked among the 10 Best business law students by Freshfields Bruckhaus Deringer in 2001 and won the 1st edition of the Landwell Award (PwC) in 2002.

In 2003, Bastien successfully completed an LLM in International Business Laws in Hong Kong. He then qualified as a French lawyer in Paris in 2004.

After that, Bastien gained extensive professional experience in private practice in France and throughout Asia (Hong Kong, Shanghai, Bangkok).

Bastien has been based in Asia for over 15 years. His practice areas have included taxation and mergers and acquisition covering structuring and negotiation of joint ventures. He also assisted companies in the tax structuring of their investment in Asia and creation of their distribution networks. He has worked on several cross-border transactions in South East Asia.

Bastien manages six of Harvey Law Group's Asian offices and two offices in Africa.

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Harvey Law Group (HLG) is a multinational law firm specializing in corporate law and investment immigration, with a worldwide reputation for representing high-profile clients and corporations. HLG was awarded the Immigration Law Firm of The Year at the Annual Macallan ALB Hong Kong Law Awards in 2014 and 2017. As Asia's pioneer within the Residency & Citizenship-by-Investment industry, HLG has notably been offering investment immigration services for over 28 years. HLG is headquartered in Hong Kong with over 22 offices worldwide including Thailand and Vietnam in Asia. HLG offers Residency & Citizenship-by-Investment programs to 23 countries and counting.



Immigration Law Firm of the Year Awards



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HLG is headquartered in Hong Kong with over 22 offices worldwide including Thailand, Vietnam, Cambodia, Philippines, Ivory Coast, Indonesia, South Africa and expanding. Currently, HLG offers Residency & Citizenship-by-Investment programs to 23 countries and counting.

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7TH MALAYSIA LAW AWARDS: ALB'S FIRST VIRTUAL AWARDS A REAL SUCCESS

With COVID-19 making in-person events difficult, the 7th annual ALB Malaysia Law Awards was a virtual one, making it ALB's first-ever online awards ceremony. Despite the obstacles, it turned out to be a roaring success.

Held online on August 14, the awards paid tribute to the outstanding performance of private practitioners and in-house teams in Malaysia and around the region.

Adnan Sundra & Low was the top recipient, picking up seven awards, including the prestigious Malaysia Law Firm of the year award, along with the Banking and Financial Services Law Firm of the Year, Malaysia Deal Firm of the Year and West Malaysia Law Firm of the Year awards.

Wong & Partners and Christopher & Lee Ong clinched three awards apiece. While Wong & Partners won the Tax and Trusts Law Firm of the Year, Dealmaker of the Year for Munir Abdul Aziz and Managing Partner of the Year for Andre Gan, Christopher & Lee Ong's wins included Energy and Resources Law Firm of the Year and Technology, Media and Telecommunications Law Firm of the Year.

Munir said: "This is unexpected, but I am very grateful to have been recognised by ALB. I share this with my colleagues because the successful completion of these deals stems from

the team's effective collaboration and collective hard work. My sincere thanks also go to our wonderful clients for their trust."

Gan added: "I am grateful for the recognition from ALB, which is a wonderful way to cap my term as MP. During my tenure, I was fortunate to be able to always count on the support of my fellow Partners and heads of departments who embraced my policy changes and helped make them a success. My thanks go to them all."

The Matrimonial and Family Law Firm of the Year title was claimed by Rusmah Arunan & Associates. En. Yahya, a partner of the firm, said: "We at Rusmah Arunan & Associates are happy to win the ALB Matrimonial & Family Law of the Year 2020 Awards. The award is recognition for our dedication and work, and we dedicate this award to our beloved late Dato' Dr. Arunan Selvaraj."

Rahmat Lim & Partners won the Arbitration Law Firm of the Year. Chong Yee Leong, partner and head of the projects and international arbitration at the firm, said: "We are very honoured to have won this award and I wish to thank all our clients for their trust and confidence in our ability. I also wish to commend our arbitration team for this success which would not have been possible without their hard work and dedication."

Ooi & Ooi claimed the title of Rising Law Firm of the Year. "We just want to say a massive thank you to our clients for trusting us to deliver the results. We don't take anything for granted and will continue to work hard for our clients. To our fellow nominees, it is an honour to be considered in your company," said Nicholas Ooi, partner.

Meanwhile, David Allan Sagah & Teng Advocates won the East Malaysia Law Firm of the Year. David Toh, the firm's managing partner, said: "I would like to thank Thomson Reuters and Asian Legal Business for conferring the Award of 'East Malaysia Law Firm of the Year' on David Allan Sagah & Teng Advocates. We feel honoured and privileged to receive this recognition from the prestigious Thomson Reuters."

Herbert Smith Freehills was named the International Law Firm of the Year. Peter Godwin, managing partner, Kuala Lumpur, regional head of practice disputes Asia, said: "We were delighted to be recognised as International law firm of the year for the second year in succession. We are proud of the contribution we have made to the Malaysian legal environment since establishing our office in Spring 2017 and this award suggests that contribution has been recognised by our clients."

Cecil Abraham & Partners won the awards for Dispute Resolution

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Boutique Law Firm of the Year and Dispute Resolution Lawyer of the Year for Tan Sri Dato' Cecil W.M. Abraham.

In other individual categories, Skrine's Sharon Chong Tze Ying won the Young Lawyer of the Year (Law Firm) title. "I am very grateful for the recognition from ALB. My sincerest thanks to all my clients for their faith and confidence in me and for the opportunity to serve them, and to my team and all my colleagues at Skrine for inspiring me to do better every day," said Chong.

Meanwhile, Vivian Kuan Hui Xian of Nik Hussain & Partners (NHP) was the winner of the Woman Lawyer of the Year (Law Firm). Dato' Yeap Yu Lin, senior partner of the firm, said: "NHP is very proud that one of our lawyers has won this prestigious award. Vivian wears many hats – as a young lawyer, litigator, athlete and animal lover. We expect Vivian to achieve more in her chosen fields of interest."

In the in-house categories, Nestlé (Malaysia) was the winner of the Malaysia In-House Team of the Year. Tengku Ida Ismail, executive director, legal & secretarial, said: "It was fantastic to hear Nestlé Malaysia being named as the winner. The entire team was thrilled and joyous at winning the prestigious ALB Award. I felt incredibly proud of them. This is a big recognition for us and only reinforces our commitment to always deliver the best."

Lazada Group was awarded the Innovative In-House Team of the Year. Meanwhile, L'Oreal Malaysia's Melissa Chia Mei Li was named the Woman Lawyer of the Year (In-House) and Samuel Loh Khian Seah of 3M Malaysia claimed the title of the Young Lawyer of the Year (In-House).

"I am honoured to be awarded the Young Lawyer of the Year (In-House) this year. I could not have achieved this without the support of my peers and the recognition of my clients. My success comes with the support of those around me, and I look forward to striving even more," said Loh. 

HOW WILL LEGAL OPERATIONS TEAMS SHAPE THE “NEW NORMAL” FOR LEGAL?

BY BILL JOSTEN

■ The “new normal” is something more to be guessed at than completely understood at this point, as there remains a high degree of uncertainty around so many facets of life. This holds equally true for the legal industry.

Yet, that same high degree of uncertainty present opportunities for law firms to provide stability and timely advice for their clients, and to innovate how they deliver legal services in a way that will hopefully make those firms more competitive in a market in flux.

I recently had a chance to participate in a call with members of the Pricing Leaders Cohort for the True Value Partnering Institute (TVPI), a community of senior business professionals who are responsible for driving value in the legal sector. The cohort, one of several that TVPI runs, is made up of experienced pricing leaders who meet regularly for premium business education and to discuss the bigger picture issues facing the legal sector and how they are meeting those challenges as a general means of learning from their peers.

The meeting I attended featured the following discussion question: What is going to happen with clients and law firms in response to this crisis — and how do we shape this?

Some of the key takeaways from the discussion included:

- The spread of law firm operating models will widen. Stronger law firms will double down on pricing and legal project management teams while weaker firms will maintain or reduce their team size.
- Firms with mature pricing functions will see an increased focus

on project management as pricing pressure increases. Firms with less mature pricing functions will need to build out those functions before they will be able to focus on their legal project management team.


- Many client in-house teams will hold headcount steady or may even decrease in size, both in terms of attorneys and legal operations staff. As matter volumes continue to increase, this will likely cause the pendulum to swing back to law firms and alternative legal services providers (ALSPs). This may also be the catalyst for more law firms to build out their alternative business models.
- Firms will compete on price in the short-term in industry sectors impacted by COVID-19; and for some sectors, this competition could be quite aggressive. Efforts by some law firms to offer discounted rates, as opposed to time-bound fee relief, could move clients away from an exploration of alternative pricing models, even if those alternative models might have greater long-term benefits.
- Firms will respond to the market disruption with staffing model changes. These could include exploring alternative positions for associates and other timekeepers, such as off-site contract attorneys. These changes in how matters are staffed will necessarily impact how those matters are priced.
- Data analysis and integrity will become more important. Clients have already begun asking for data to back up service delivery, and as

the desire for data increases, we will see more uniformity and categorization of matter-level and task-level data as well as the adoption of software that facilitates data analysis.

- Clients with significant books of business with a given firm will request additional levels of support, such as secondments and other value-adds in return for continued high spend. Even in the absence of such requests, firms may proactively offer such support in areas where in-house teams at key clients have a need.
- Procurement functions will re-enter the legal cost-control field and re-engage with similar tactics seen after the financial crisis.

Some of these trends are already being seen. Others will have slower rates of development but could lead to much longer-lasting change, nonetheless.

While much of what the so-called new normal will look like remains uncertain, a few things are clear. Clients will continue to expect an increasing degree of clarity and certainty around pricing — this was true before the economic crisis that has accompanied the pandemic, and current circumstances certainly will not leverage away from it. Indeed, clients will re-examine how they source their legal services, and those with the capability to do so will likely involve corporate procurement resources.

Those law firms with the capability to address both the buy-side and the sell-side of the legal operations equation will be best positioned to not only meet the demands of the new normal but also to shape what this next phase will be. 

Bill Josten is Strategic Content Manager for the Thomson Reuters Legal Executive Institute.

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