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ALB INDONESIA IN-HOUSE LEGAL SUMMIT 2023



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OVERVIEW

Asian Legal Business is proud to be back for the **ALB Indonesia In-House Legal Summit** this **25 October 2023** in **Jakarta**. This signature event is tailored to bring together leading senior-level corporate counsel, business leaders and private practice lawyers. At the summit you will get an opportunity to interact with the most brilliant minds in the region and keep up-to-date with Indonesia's emerging legal landscape.

TOPIC HIGHLIGHTS

- Indonesia Legal Landscape - An Overview
- Dispute resolution and Mediation in the Digital Age - Shifting the Paradigm
- The Rise of Indonesia's Workplace Harassment - Spotlight
- Competition Regulations in Indonesia - Latest Insights
- Indonesia's PDP Law & Cybersecurity - A year in Review
- Data Governance: Mitigating Compliance Risks through Effective Management
- Sustainability, Climate Change & Net Zero - ESG Focus
- Disruptive Digital Transformation: How to Create Efficiencies and Manage Risks by Designing an Automated Contract Workflow
- Journey towards efficiency in corporate legal work



Photos from live event that took place in Indonesia In-House Legal Summit 2022 on 19 October at Shangri-la Jakarta

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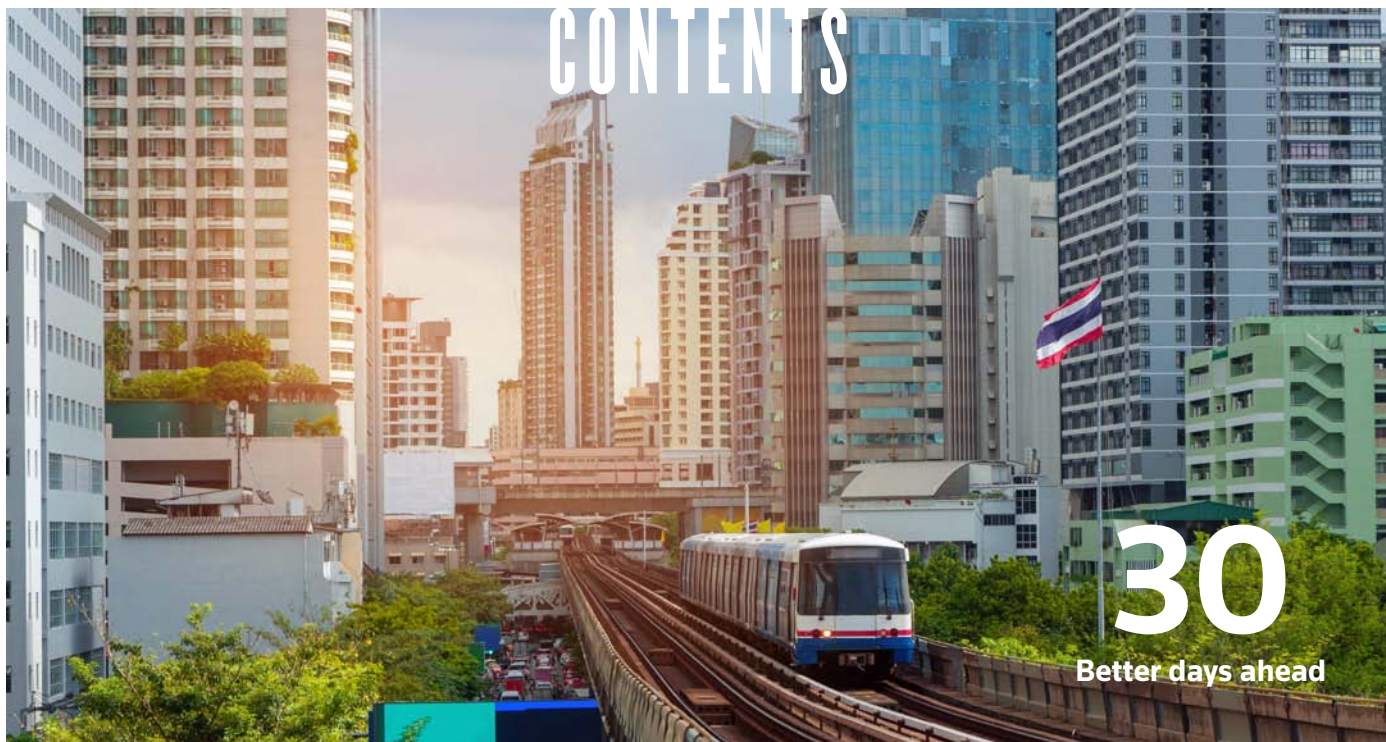
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In its annual Asia M&A Rankings, ALB spotlights the leading law firms for M&A work, shedding light on the top players driving the region's most impactful and intricate deals.

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Russians have been moving their business and dispute resolution to Asia for over a decade, but new sanctions following the invasion of Ukraine has significantly hastened that process. Dispute resolution hubs like

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30 Better days ahead

After a slow start to Thailand's dealmaking scene in 2023, M&A activities are expected to tick up in the second half of the year. But lawyers say that companies need to navigate not just tight monetary conditions and heightened geopolitical risks, but also a murky political situation in Thailand.

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- *Chandler MHM*

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34 A new regime

India recently passed a wide-ranging data protection law. Lawyers share what companies need to do to keep up.

36 Moving forward on ESG

Environmental, social and governance (ESG) considerations are essential to businesses for the opportunities they bring, and for the reputational and

economic risks that arise from making the wrong decisions. In light of the growing interest and scrutiny in ESG matters from within Japan and abroad, the Japanese government has been pushing a range of measures to implement ESG initiatives.

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Navigating choppy waters

In the ever-evolving world of mergers and acquisitions, the landscape can be as unpredictable as a tempestuous sea. In the current issue of ALB Asia, we proudly present our annual ranking of the top M&A law firms in the region. This year, more than ever, our ranking serves as a tribute to the legal luminaries who have deftly steered their clients through the stormy waters of dealmaking in a remarkably challenging environment.

2023 has indeed been a year unlike any other in recent memory. The global economic climate has been marked by uncertainty, with geopolitical tensions, supply chain disruptions, and the ongoing effects of the pandemic casting a shadow of unpredictability over the business world. In such turbulent seas, M&A activity has seen a slowdown, making each deal all the more precious and each legal strategist all the more essential.

Our ranking seeks to shine a spotlight on those law firms and their dedicated teams who have risen to the occasion, demonstrating resilience, adaptability, and unwavering commitment to their clients. Whether facilitating cross-border transactions, advising on regulatory intricacies, or negotiating complex agreements, these legal professionals have showcased exceptional prowess in turning challenges into opportunities.

While the volume of deals may have decreased, the significance of the ones that do transpire is magnified. The lawyers and law firms featured in this year's ranking have proven themselves as true captains of the M&A world, guiding their clients' ships safely to their destinations amid choppy seas.

As we navigate these uncertain times together, we commend the top M&A law firms for their unwavering commitment to their clients and for helping to shape the future of business in Asia. We hope that this issue inspires and informs, providing valuable perspectives on the M&A landscape in the year that has tested us all. 



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Managing Editor, Asian Legal Business, Thomson Reuters

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THE BRIEFING: YOUR MONTHLY NEED-TO-KNOW

IN THE NEWS



DLA Piper has launched Aiscension Bribery, an AI-enabled service for detecting corporate bribery risks in partnership with software provider, Reveal. Lawyers from the firm trained the software to recognise various forms of bribery behaviour.

U.S. LAW FIRMS SAW RISING DEMAND IN Q2

(Reuters) A survey of more than 1,200 individuals working internationally has found that 67 percent of respondents believe AI will have a transformational or high impact on their profession in the next five years, according to Thomson Reuters' Future of Professionals Report. Additionally, over half of the survey respondents (66 percent) predict AI will create new professional career paths, while 68 percent expect roles that do not require traditional legal or tax qualifications to increase over the next five years. For legal professionals, improved productivity and efficiency are seen as the biggest positive effects of AI (75 percent and 67 percent, respectively). Additionally, law firms see AI as an opportunity for increased revenue as more than half (55 percent) of legal professionals predicted that lower costs for firms, resulting from AI use, will lead to greater firm profitability. Also, 81 percent of legal respondents expect new services to emerge within the next five years, creating new revenue sources. Some 58 percent of respondents anticipate seeing a rise in professional skills. ALB

QUOTE UNQUOTE

“LET’S SEE IF SINGER CAN ACTUALLY TRY A CASE IN A COURTROOM INSTEAD OF THE MEDIA.”

A lawyer for backup dancers of U.S. rapper Lizzo, now facing workplace complaints, hits back at Lizzo’s lawyer Marty Singer’s comments that the dancers’ lawsuit was “a sham.”

91

91% - Percentage of in-house lawyers who expect law firms to make them aware of the firms’ use of emerging AI, according to a survey of in-house counsel in U.S., UK, Canada, and France conducted by LexisNexis.

LAW FIRMS TONE DOWN CHINA RISKS IN IPO APPLICATIONS

(Reuters) Law firms in China are scrambling to comply with Beijing’s new guidance to tone down the language used to describe China-related business risks in companies’ offshore listing documents, five people familiar with the matter said. The moves come after China’s securities regulator in a closed-door meeting asked domestic law firms to refrain from including negative descriptions of China’s policies or its business and legal environment in the IPO prospectuses. A failure to do so could mean their listings are not able to get a regulatory nod, the China Securities Regulatory Commission (CSRC) warned, Reuters had first reported, citing people with knowledge of the matter. The law firms are now racing to change the wordings in applications that they have filed, as well as those they are yet to file. ALB

IN THE NEWS



An existing pilot scheme that enables legal practitioners in Hong Kong and Macau to practice in neighbouring mainland cities has been extended for three years. The programme, introduced in 2020, will now run until October 2026.

\$2,000,000

Average total compensation for GCs at U.S. public life sciences companies with more \$10 billion in revenue last year, according to BarkerGillmore. The figure for those in private companies was \$838,000.

ALL ABOUT THE MONEY

In recent years, the traditional pricing arrangement between a law firm and a client has been increasingly challenged by requests for alternative frameworks, while the turbulent economic environment has further squeezed budgets on legal spending. Law firms in Asia share what they have experienced with clients' demands in fee arrangements and how they are navigating the new dynamics to achieve continued profitability.

HAVE YOU SEEN CLIENT DEMANDS WHEN IT COMES TO FEE ARRANGEMENTS AND PAYMENT TERMS EVOLVE IN THE PAST YEAR? HOW ARE YOU ADAPTING TO THE SAME?



EDDIE LOOK

EDDIE LOOK, partner, Tanner De Witt

We recognise the evolving demands of our clients in today's landscape, especially in light of the past three years. At Tanner De Witt, we take pride by adapting to changing needs, offering innovative fee arrangements and payment terms that prioritise transparency and value.

Transparency is at the heart of our approach. To address this, we will agree to fixed fee structures for specific services and matters where appropriate. By providing clients with upfront information on costs, we enable them to make better-informed business decisions with greater financial certainty. Alternative fee arrangements have emerged as a key component of our client-centric strategy. We can offer flexible options, where appropriate, such as capped fees and stepped discounts for volume work or blended rates, which all align our interests with those of our clients. This fosters a collaborative relationship and underscores our commitment to achieving the agreed objectives within budget. Our delivery approach is to maximise efficiencies by carefully balancing the involvement between partners and associates when executing tasks, ultimately leading to greater value and cost-effectiveness for our clients.

Our billing practices prioritise client engagement and satisfaction by providing detailed monthly billing statements, offering a comprehensive breakdown of services rendered. Our communication is the cornerstone of our client relationships. We maintain open channels of communication, providing regular updates on case progress and addressing client concerns promptly. This approach demonstrates our commitment to keeping clients informed and engaged throughout and helps us to achieve our

goal, which is to deliver unparalleled legal services with client satisfaction. 

CHOOI JING YEN, partner, Eugene Thuraisingam

With Singapore relaxing its rules surrounding conditional fee agreements and third-party funding, especially in arbitration-related matters in 2022, clients are demanding more sophistication in fee arrangements. Especially so if they come from jurisdictions where contingency fees have been the norm, in contrast to Singapore's strict prohibition against the same until recently and only in respect of certain prescribed matters. If requested to do so, a Singapore lawyer would have to consider the regulations very carefully to ensure that the matter in question does fall within the circumscribed exceptions, and that the client is properly and transparently informed in plain language of the various contingencies, some of which can tend to be quite complex.

The introduction of new costs guidelines for contentious court matters in 2021 also saw a general uplift in party-and-party costs awards. This is reflective of the inflationary environment in Singapore and also means that solicitor-client costs have been on the general uptrend. This has translated to more requests for deferred payment schemes and even requests for contingency fee arrangements. Unfortunately, the range of matters for which contingency fee arrangements are allowed are still narrowly circumscribed, and to fall foul of this can lead to grave professional consequences.

That said, more innovations to fee arrangements are only to be expected and we should see an expansion in the utilisation of conditional fee agreements as well as third party funding in the coming years,

especially as the latter continues to be a growing industry service and dispute amounts grow larger. ^{ALP}

ALFRED IP, founding partner, Hugill & Ip

In my experience, clients always expect a high level of certainty for legal services, from the advice that they seek to the price that they pay for the advice. In most of the non-contentious matters, such as drafting and advising on a legal document, experienced lawyers should be able to provide a fee quote and adhere to the same.

If there are any unforeseen circumstances leading to an escalation of time spent and change of quotation, they should inform the clients immediately. Clients hate surprises as much as lawyers! This is particularly the case when we are talking about legal services which are highly commoditised, such as will writing (although we have litigated a lot of

those wills), when the decision-making process is highly driven by price. To stay competitive, we need to educate our potential clients that we are providing an extra level of services to do a proper job for them, and therefore, our fees may not be the lowest in the market.

For some of our legal services that we cannot provide a fixed fee quote, e.g., in contentious legal proceedings, we may consider flexible payment arrangement, taking into account clients' financial means and resources. In Hong Kong, we cannot enter contingency fee arrangement with our clients, but we can certainly consider payment arrangement such as monthly instalments. We also consider it part of our job to provide a high level of transparency in our billing process and a regular billing cycle for our clients to understand and settle their bills. ^{ALP}

DEALS

\$5.5 BLN

Arm Holdings' planned NASDAQ IPO

Deal Type: IPO

Firms: Sullivan & Cromwell; Morrison & Foerster; Davis Polk & Wardwell

Jurisdictions: U.S., UK, Japan

\$1 BLN

Qatar Investment Authority's acquisition of stake in Reliance Retail Ventures

Deal Type: M&A

Firms: Cyril Amarchand Mangaldas; AZB & Partners; Cleary Gottlieb Steen & Hamilton

Jurisdiction: India, Qatar

\$936 MLN

MUFG's acquisition of stake in U.S. Bancorp

Deal Type: M&A

Firm: Sullivan & Cromwell

Jurisdictions: U.S., Japan

\$898 MLN

PAG Asia's acquisition of Australian Venue Co. Holdings from KKR

Deal Type: M&A

Firms: Ashurst; Allens
Jurisdictions: Australia, Hong Kong, New Zealand

\$567 MLN

Growtheum Capital Partners' debut fund closing

Deal Type: Funds

Firm: Morrison Foerster
Jurisdiction: Singapore

\$500 MLN

LNG Japan's acquisition of stake in Scarborough LNG project from Woodside Energy Group

Deal Type: Projects

Firms: Baker Botts; Ashurst

Jurisdiction: Australia

\$467 MLN

MUFG Bank's acquisition of PT Mandala Multifinance

Deal Type: M&A

Firms: Nishimura & Asahi; Walalangi & Partners

Jurisdictions: Indonesia, Japan

\$150 MLN

VNG's planned IPO on NASDAQ

Deal Type: IPO

Firms: Allen & Overy; Skadden, Arps, Slate, Meagher & Flom; VILAF
Jurisdictions: Vietnam, U.S.



MALAYSIA SECURES KEY ARBITRATION WIN IN REBUKE TO ALLEGED SULU HEIRS

In July, a court in France issued a verdict that was hailed by the Malaysian government as a “decisive victory” in its decades-long dispute with a group of alleged Filipino heirs of a 19th-century sultanate over claims to Malaysian state assets overseas.

Over 16 percent of Malaysia’s yearly budget was at stake after the Southeast Asian country was ordered by a Spanish arbitrator to pay \$14.92 billion to the heirs of Sulu Sultan Mohammed Jamalul Alam (Sulu Sultan), who once controlled territories spanning some islands in present-day Philippines and the Malaysian state of Sabah.

Malaysia didn’t participate in the arbitration, which began in 2017 in Spain and was initially overseen by Spanish arbitrator Gonzalo Stampa, who then moved the case to France to deliver the award.

In the latest development, the Paris Court of Appeal ruled that the arbitral tribunal in France lacked jurisdiction over the case and thus raised possibility that the second-largest arbitration award on record could be annulled.

Dato’ Nitin Nadkarni, a consultant, and Soh Zhen Ning, an associate at Lee Hishammuddin Allen & Gledhill, applauded the French court’s decision.

“Arbitration is a consensual dispute resolution process. All litigating parties

must consent to have the dispute resolved through arbitration. With respect, as the French Court correctly held, there is no valid and subsisting arbitration agreement between the parties. Therefore, the arbitration should not have commenced in the first place,” note Nadkarni and Soh.

The start of the saga dates back to 1878 when the Sulu Sultan signed an agreement with two European adventurers to relinquish lands in Borneo (now the state of Sabah) in consideration of an annual payment. After gaining independence from Britain, Malaysia took over the agreement and kept making annual payments of around \$1,000 to the Filipino heirs of Sulu Sultan.

But the arrangement stopped in 2013 when a group of self-proclaimed successors of Sulu Sultan launched a failed armed incursion into resource-rich Sabah, which killed more than 50 people, including civilians.

Malaysia’s decision to cut the payments prompted protests from the heirs, who claimed to have nothing to do with the incursion; they opted for arbitration against Kuala Lumpur initially in Spain. Spanish arbitrator Stampa ruled in the heirs’ favour and ordered Malaysia to pay \$14.92 billion to the Sulu claimants.

One of the major cruxes of the case lay at whether Stampa, or the Spanish court, had the jurisdiction to oversee this

case. Nadkarni and Soh believe Stampa’s appointment was questionable.


“There was simply no connection between the Spanish court and any aspect of the arbitration, and it is unacceptable for a former colonial nation to arrogate to itself the power to appoint an arbitrator to resolve a dispute between Malaysia and the citizens of Philippines, which involved issues of sovereignty over lands situated in Malaysia,” say Nadkarni and Soh.

After a Spanish court revoked Stampa’s appointment following a successful bid by Malaysia, he continued to preside over the arbitration in France. To Kuala Lumpur’s delight, the Paris Court of Appeal decided that the arbitrator who heard this case lacked jurisdiction over the dispute; and the appointment of the arbitrator was “incompetent”. Moreover, the French court ordered the Sulu claimants to pay Malaysia around \$107,000 in costs. But the issue of compensation remained unaddressed.

“The French Court Ruling on the Partial Award that the arbitrator lacked jurisdiction must be fatal to the Final Award (compensation amounting to \$14.92 billion). It is very likely that the French courts will eventually allow Malaysia’s application to set aside the Final Award,” note Nadkarni and Soh.

“In recent months, we have seen steps taken by the Sulu claimants to levy execution on the assets of Malaysia and Malaysia’s state-owned enterprises in Luxembourg, the Netherlands, and France. This is a cause for concern,” they add.

But most recently, in June, the Hague Court of Appeal in the Netherlands dismissed the Sulu claimants’ application for recognition and enforcement of the arbitration award. The claimants are now considering their options before the French Supreme Court. Nadkarni and Soh are not optimistic about their chances.

“Unless the Sulu claimants succeed on appeal, they will have little chance of levying execution on Malaysia’s assets in France and the Netherlands. It is safe to say Malaysia has secured significant victories in France and the Netherlands. However, the arbitration award remains enforceable outside of France and the Netherlands due to the New York Convention,” say Nadkarni and Soh. 

EXPLAINER

NEW SINGAPORE RULING OFFERS CRYPTO CERTAINTY



■ Singapore was pegged by industry experts to become the cryptocurrency capital of the world. In 2021, the crypto market in Singapore grew to \$1.48 billion, a ten-fold increase from the previous year, according to KPMG. Singapore lawmakers' progressive attitude towards digital asset finance invited investors to its shores, setting up a rapidly expanding industry.

But that changed in 2022. The value of Bitcoin halved. Singapore-based crypto hedge fund Three Arrows filed for bankruptcy, taking with it crypto-exchange Voyager Digital. Another crypto-lender in the country, Hodlnaut, lost close to \$200 million when a relatively stable token, TerraUSD, collapsed – revealing gaping holes in the country's regulatory framework.

This, coupled with the collapse of crypto-exchange FTX, forced the country's lawmakers to stop and develop a more cautious approach to building a digital asset economy and protecting investments.

The Monetary Authority of Singapore released a consultation paper in October 2022 to create a framework to regulate stablecoins – a large sector of cryptocurrency that is considered inherently more stable by virtue of it being linked to the world's top fiat currencies. The framework was finalised in August and is likely to come into effect next year.

Amid this regulatory uncertainty around the nature and legality of crypto-assets, the Singapore High Court in July brought much-needed comfort to stablecoin holders in a first-of-its-kind ruling on digital assets.

▶ WHAT WAS THE SINGAPORE HIGH COURT'S RULING?

In a case for summary judgment filed by cryptocurrency exchange Bybit against a former employee over allegations that she abused

her position to make unauthorised transfers of cryptocurrency Tether to her own secret bank accounts, the court ruled that crypto assets carry property enforcement rights.

Tether, more commonly known as USDT, is a stablecoin linked to the U.S. Dollar. USDT and another stablecoin USDC dominate around 90% of the \$125 billion global stablecoin market cap.

The court ruled that crypto assets qualify as property capable of being held on trust and consequently, any holder of such assets has a legally enforceable property right under common law.

The court also said that USDT's feature of being redeemable against the U.S. Dollar is not a necessity to be categorised as a property being held on trust, opening the door for other crypto-assets to also seek similar protections.

▶ WHAT DOES THIS MEAN FOR HOLDERS OF CRYPTO-ASSETS?

The decision brings greater certainty over the rights of crypto-holders in Singapore and creates a precedent for enforcement of such rights in the judicial system.

"The judgment will reassure crypto-asset holders that their crypto-assets are property, and so if they are defrauded they would have a wider range of actions they could take in the Singapore courts to recover such assets, including tracing and other proprietary remedies," says Amanda Lees, a partner at King & Wood Mallesons.

Lees clarifies that this does not mean an increase in value of the crypto-asset: "While it does not increase the value of the crypto assets, it may give lenders more comfort to accept such assets as

security for loans and provides certainty about how the assets will be treated legally."

The ruling is also good news for crypto-asset holders from a bankruptcy and insolvency perspective and may allow holders to assert their rights outside the asset pool available to creditors.

"A liquidator/receiver will be able to treat crypto-assets like any other property. If an exchange or platform became insolvent, if a third party was able to claim that a crypto asset held by that platform was their property (not that of the exchange or platform) they may be able to remove it from the general pool of assets available to the creditors," Lees notes.


▶ DOES THE RULING PROTECT OTHER DIGITAL ASSETS?

While the ruling protects stablecoins like USDT and leaves the door open for other crypto-assets to seem similar protection, it does not automatically apply to each digital asset.

Lees says that the courts must look at the characteristics of each digital asset to see if it can be regarded as property.

In October 2022, the Singapore High Court recognised non-fungible tokens as property.

The ruling reassures owners of NFTs around the world that their NFTs have legally enforceable rights and are to be treated in the same way as rare art, watches, or other collectors' items – at least in Singapore, Lees says.

"The greater certainty about the legal treatment of crypto assets will help market participants in Singapore, and it is good to see the courts in Singapore taking a consistent position," Lees adds. 

DENTONS, AUSTRALIA'S ALLENS LAUNCH PROPRIETARY VERSIONS OF CHATGPT


■ Dentons and Australian law firm Allens have separately unveiled proprietary versions of ChatGPT, the large language model-based chatbot released by OpenAI last year.

Dentons' solution, named fleetAI, will enable lawyers to conduct legal research, generate legal content and identify relevant legal arguments. Another bot will allow multiple legal documents to be uploaded so that key data such as clauses and obligations can be extracted, analysed and queried against.

"The ability to upload and analyse client matter documents at speed and in a secure manner is the real game-changer," said Paul Jarvis, CEO for the UK, Ireland and the Middle East at Dentons.

Allens has introduced a solution known as Airlie that will facilitate the controlled use and integration of generative AI technology to drive efficiencies and enhance client service, while maintaining the confidentiality of the firm's and its clients' information.

"With the rapidly growing influence of ChatGPT and other generative AI products, we're committed to exploring appropriate integration of these technologies into our business processes, work practices and client interactions," said Richard Spurio, managing partner of Allens.

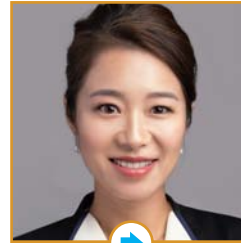
A report released in April by the Thomson Reuters Institute found that law firms see opportunities in generative AI solutions such as ChatGPT, but concerns persist. While 82 percent of law firm lawyers surveyed believe that ChatGPT and generative AI can be readily applied to legal work, only 51 percent said that these should be applied to legal work. 

APPOINTMENTS



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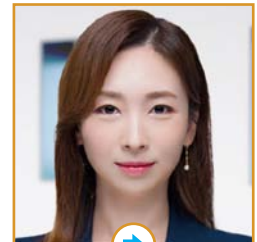
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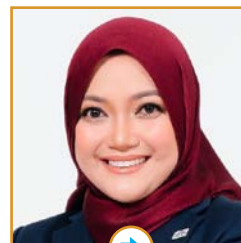
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SOUTH KOREA AIMS TO REVIGORATE BANKING SECTORS BY RELAXING LICENCE RULES

South Korea's major lenders are staring at a fundamental shake-up to their decades-long dominance of the country's commercial bank sector, following the introduction of new rules.

The South Korean Financial Services Commission (FSC) said in July that regional banks and financial firms will be allowed to apply for nationwide commercial bank licenses. "The government will proactively consider new approvals if accompanied by sufficient financial resources and feasible business plans," said Kim Joo-hyun, chairman of the FSC, in front of major financial groups in the country.

So far, the top five national commercial lenders – Kookmin Bank, Shinhan Bank, KEB Hana Bank, Woori Bank and NongHyup Bank – are home to about 63 percent of South Korea's \$3.16 trillion in bank assets, and about three-quarters of deposits.

But this could change, as the FSC aims to introduce fair and effective competition into Korea's banking sector and to bring greater benefit to financial consumers due to high-interest rates, according to Han Jin Lee and Steve Song, attorneys at Kim & Chang.

The proposal "was announced in response to the government's observation that the banking sector supplies services that strongly resemble 'public goods,' while maintaining an oligopoly resulting from a limited number of business licenses granted by the government," note Lee and Song.

Under the proposal, the FSC wants to transform more regional banks - established to provide greater access to financial services to a specific regional and rural areas – to national commercial banks, which are headquartered in Seoul and operate throughout the county without any regional restriction.

This came as South Korean President Yoon Suk-yeol criticised the big

national banks for profiting from the gap between lower interest rates on deposits and higher ones on loans at a time of roaring borrowing costs tightening the screw on customers.

In addition, regulators will encourage M&A activities amongst mutual savings banks, which provide retail and small business banking on a limited scale. That includes offering time deposit and small credit to individual borrowers and small businesses at typically higher rates. Through inorganic



expansions, the hope is for larger mutual savings banks to provide additional competition to the bank deposit and loan market.

"Such changes may bring new opportunities for Korea's legal industry to advise on not only various issues, including licensing applications (so that regional banks can convert into commercial banks) and merger transactions between mutual savings banks, but also to advise on various financial products and services due to increased

competition amongst a larger number of market participants," say Lee and Song.


Although these new measures are expected to stimulate the market and make things harder for the big lenders, Lee and Song caution regulators against potential risk arising from such increased competition in certain areas such as markets for lending or taking deposits.

Meanwhile, "in order to provide meaningful competition to Korea's banking sector, the government should continue its efforts to promote greater competition and efficiency with respect to other market players such as securities companies, FinTech companies and online banking service providers," note Lee and Song.

The Kim & Chang duo believe greater competition in the banking sector will have a positive effect on the legal industry. "There will likely be a greater demand for highly skilled lawyers who can advise on complex regulatory issues, and in that sense, lawyers with experience working in other western jurisdictions that have sophisticated banking industries will continue to be in high demand," they say.

As the banking and finance world moves towards digitalisation while embracing emerging technologies, Lee and Song believe the proposal is South Korea's answer to the increased competition between traditional banking sectors and new areas such as cryptocurrency, FinTech, and decentralised finance (DeFi).

The proposal "is part of the Korean government's efforts to upgrade Korea's traditional banking sector by increasing competition so that traditional banks can better adapt to the world that has embraced digital finance," say Lee and Song.

And law firms with the necessary vision are well-positioned to take advantage of that transition journey. "Law firms will continue to play a crucial role in supporting traditional banks in their efforts to become more competitive and innovative, but at the same time, the advent of digital finance provides law firms with the opportunity to work with tech companies and non-banking players that are looking to enter the financial sector," note Lee and Song. 

AUSTRALIA'S RENEWABLE ENERGY AMONG FACTORS LURING JAPANESE COMPANIES

(Reuters) In recent months, Australia has become a key target for Japanese companies as they seek to invest in energy (including renewables), technology, real estate and more. And lawyers expect this trend to diversify, given Australia's diverse business possibilities.

Japan and Australia have traditionally been close investment partners, with the North Asian country having been the second-largest source of foreign direct investment into Australia after the U.S. But the relationship appears to have strengthened even more recently, with Herbert Smith Freehills reporting a "step change" in the past 12 to 18 months.

"Changes in the global geopolitical environment have brought the two countries closer together as trusted partners, particularly in the mutual pursuit of decarbonisation and energy security," the report found. "Japanese M&A and investment activity in Australia was significantly higher in 2022 than 2021. Investments occurred across a broad number of sectors, including energy, technology, financial services, real estate, consumer, infrastructure, construction/housing and services. The energy and technology sectors were especially attractive targets for investment."

One major reason is that Japan is has been looking to diversify its energy supply away from Russia, but in the long-term, the country is also keen to secure green energy sources. While Australia currently supplies around 75 percent of Japan's coal for power generation and around 43 percent of its liquefied natural gas (LNG), "the Japanese government and companies are simultaneously addressing energy security in the context of decarbonisation as part of the energy transition from fossil fuels," say Ian Williams and Damien Roberts, partners at HSF.



The HSF report identified another factor behind the uptick: As COVID travel restrictions were relaxed, Japanese companies were able to make more frequent trips to Australia to make on-site inspections and conduct due diligence easier. "New energy-related MOUs and joint feasibility studies that were signed in 2019-2021 are now progressing to the proof-of-concept" stage and "implementation phases as the projects aim for commercialisation by 2030."

Australia's unique resource composition is a booster of these moves. In addition to producing a great amount of fossil fuels such as coal and natural gas, Australia has a lot of deposits that are suitable for carbon capture and storage (CCS), while being suitable for solar power generation thanks to sunshine throughout the year and wind power generation due to a lot of flatlands and stable wind. In short, Australia is currently and will continue to be an energy superpower that can produce massive quantities of green ammonia and hydrogen through the production of renewable energy. It also produces the minerals necessary for large-capacity batteries.


However, Hans Menski, a partner at Clifford Chance, says that Japan still needs LNG, and Australia is its main supplier. "However, Australia has the potential to become a major green hydrogen and ammonia supplier, and in a lot of ways it's become a focal point for energy

investment not only for immediate transition but also longer term. There is a lot of pressure, particularly on fossil fuel power generation. We expect that energy supply from Australia to Japan will move to new energy, particularly hydrogen and ammonia," he projects.

Williams and Roberts hold the same opinion. "Japan is looking at all energy sources for its future energy security – renewables, CCS/CCUS, blue hydrogen (hydrogen produced fossil fuels but the by-produced CO2 are stored in unused deposits), green hydrogen, ammonia, methanol," they say. "All of these developments mean that Australia is well positioned to continue as a trusted and reliable energy supplier to Japan."

But natural resources are not the only enticements for investors, with the country offering investment opportunities. Australia is becoming known as a technology country and a center for innovation, says Williams and Roberts. They say the success of software companies such as Atlassian, WiseTech, Acconex and unicorn companies like Afterpay, Linktree, Canva, Airwallex, Realestate.com.au, Seek, Carsales, and MYOB are a factor behind the growing reliability of the Australian technology market.

There are additional areas of interest such as railroad infrastructure and real estate. Some major M&A deals of late have included Tokyo Gas' \$2.15 billion sale of its interest in four LNG projects MidOcean Energy; TAL Dai-ichi Life Australia's \$600 million acquisition of Westpac Life Insurance Services from Westpac, and Mitsui and Nomura's acquisition of 67 percent of agricultural asset management company New Forests.

Herbert Smith Freehills' report projects "increasing sector diversity with investments in consumer products, retail, real estate and services," adding that "Japanese trading houses in particular have continued to divest from carbon-intensive assets which they no longer consider strategic and reinvest in tertiary industries. Sydney and Melbourne are increasingly seen as luxury markets in the same mould as Singapore or Hong Kong where there is demand for high value products and services." 

Q & A

'WE CAN SUCCESSFULLY CREATE A SUPPORTIVE LEGAL ECOSYSTEM'

The Thai Corporate Counsel Association (THAI-CCA) was launched in June with a mission to rejuvenate Thailand's in-house community and expand its reach across the region. **Sahachai Wibuloutai** and **Thitiwat Wisarath**, co-founders of Thailand's first corporate counsel association, share their vision for the organisation and how they are planning to tackle future challenges to achieve their goals.

ALB: What have you set out to achieve through the THAI-CCA?

Sahachai Wibuloutai: The THAI-CCA was formed as a member-benefit professional organisation focused on three key objectives, which are community, career, and activation.

As we all know, the size of in-house legal teams varies by organisation depending on commercial and business needs, which are dynamic and subject to changing situations and requirements. Thus, the knowledge and capabilities possessed by in-house legal teams may sometimes be insufficient to cover all areas of work and legal challenges that a company faces.

It is possible that small-to-medium-sized teams could encounter problems, difficulties, or tensions and sometimes feel alone in work areas with which their team members are not well-equipped. Also, working as in-house counsels requires not only technical legal skills to ensure compliance with specific legal requirements and all imposed legal standards, but also important soft skills such as corporate governance and ethical conduct, stakeholder management, people management, and crisis management to advise concerned business units to impose suitable problem-solving solutions to ensure the smooth operation of the organisation.

With the community objective and development of a diverse professional network, we believe that we can successfully create a supportive legal ecosystem that provides significant benefits to all members in terms of sharing experience, closing the knowledge gap, and provid-

ing regular updates on legal developments as well as regional and global trends in more advanced jurisdictions such as Australia, Hong Kong and Singapore.

We will also include specific support to address diverse needs, such as industry community building for senior GCs, soft skill and leadership skill coaching for mid-senior level in-house counsels, and knowledge and experience sharing for junior in-house counsels. The founding members of the THAI-CCA aim to develop and modernise Thai in-house legal functions by introducing knowledge of advanced technology and AI legal tools so that our members can consider deploying the tech tools they deem fit for their work functions.

ALB: How does the THAI-CCA plan to ensure that its members stay well-equipped with the latest legal insights and industry best practices?

Thitiwat Wisarath: The THAI-CCA is focused on the development of relationships and continued expansion of collaboration with law firms, regulators, industry leaders, as well as legal platforms and media, and other corporate counsel alliances in the APAC region. This will support the THAI-CCA in optimising our capability to share knowledge and recent developments in legal and business areas with our members and keep them up to date on the ongoing development of best practices and fast-moving

trends related to public policy, the world economy, and the political environment.


As a starting point, we already have onboard key members in the Thai banking/fintech, e-commerce, digital asset, hospitality, and pharmaceutical industries, who will jointly work together as an industry community and provide legal feedback and input to the applicable regulators.

To enhance the benefits for our members, we will continue to encourage collaborations and partnerships in both legal and non-legal fields, such as corporations, legal recruitment agencies and legal tech vendors. This will enable our members to tap into networking and learning opportunities, attend annual conferences and law award events, utilise legal databases, and enjoy other membership privileges.

ALB: How important is it for the THAI-CCA to develop the careers and networks for in-house counsel?

Thitiwat: One of the main purposes of the THAI-CCA is to develop and improve personal and organisational relationships among in-house legal counsels in different industries. Due to having strong personal relationships facilitated by the THAI-CCA, members of the THAI-CCA can share career and professional development opportunities

amongst each other, which benefits members who are open for new skills, career opportunities and challenges.

A legal team in a corporate entity may generally be considered merely a support function. Our strategy is to support the success of our members in developing their value. Our view is that the legal team in a company is also a business enabler, which plays an important role in the company's business and success. 



SAHACHAI
WIBULOUTAI



THITIWAT
WISARATH

FROM RUSSIA, WITH WORK

Russians have been moving their business and dispute resolution to Asia for over a decade, but new sanctions following the invasion of Ukraine has significantly hastened that process. Dispute resolution hubs like Singapore, Hong Kong and Tokyo are increasingly attracting Russian businesses following the implementation of Western sanctions, and that trend is set to continue as the conflict drags on. **BY NIMITT DIXIT**

■ Russia's relationship with Europe and the West had been deteriorating since Putin's occupation of Crimea in 2014. But it hit new lows once Russia marched its troops into Ukraine in February 2022. Western alliances, including the G7, NATO and the EU, imposed a flurry of sanctions on Russian oligarchs, companies and banks, crippling their ability to conduct business in traditionally favoured jurisdictions like London. To keep money flowing in, Russia rapidly increased trade with Asia – in economic powerhouses like China, India and Southeast Asia – and dispute resolution has followed.

Sanctions have influenced how Russian businesses and counterparties look at arbitration agreements, says Hong Kong-based attorney Denis Brock, who chairs O'Melveny & Myers' international disputes and arbitration practice, and heads the firm's Asia litigation practice.

"There are two aspects: concerns of Russian businesses, and concerns of those doing business with Russian companies. Given the sanctions in place, doing business with Russian companies is restricted. Russian businesses will find it difficult to transfer funds to arbitral institutions to pay fees and to pay international counsel to represent them. Those doing business with Russian entities may encounter difficulty enforcing awards in their favour: it may be difficult for Russians to transmit funds internationally to satisfy awards," notes Brock.

In terms of sanctions, Asia has had a mixed response to Russia's invasion of

Ukraine. Russia's largest trading partner, China, has refused to condemn Russian actions. In fact, in 2023, bilateral trade between the nations grew 36 percent year-on-year to \$134.1 billion. India has also remained largely neutral and in fact, has ramped up import of Russian oil in the last year, with overall bilateral trade between the countries reaching a record high of \$45 billion. Other large economies like Japan, Singapore and Taiwan have imposed sanctions more in line with the West, but, in many cases, not going as far as their Western counterparts. Hong Kong has also maintained its neutrality.

Given the friendlier environment, Russian businesses have increasingly pivoted to China, India, Southeast and Central Asia, with arbitration centres like Hong Kong and Singapore seeing more Russian cases.

SINGAPORE AND HONG KONG

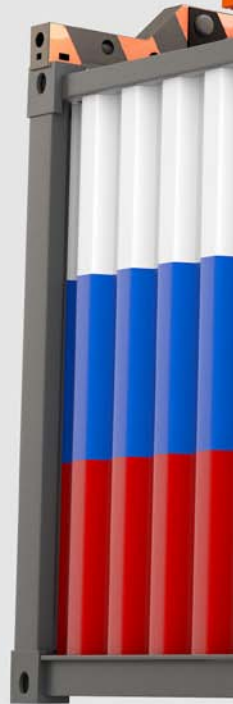
Since 2014, when the U.S. and EU started sanctioning Russian companies, businesses from the country have tended to prefer dispute resolution under arbitral institutions in Asia – including the Singapore International Arbitration Centre (SIAC) and the Hong Kong International Arbitration Centre (HKIAC) – rather than the LCIA or the ICC, says Kie Matsushima, a Tokyo-based special counsel at Japan's Anderson Mori & Tomotsune.

Russia's traditionally favoured seat of arbitration – London – has witnessed a steep decline in interest from Russian parties. As per statistics released

by the London Centre for International Arbitration, Russian party involvement in its arbitral proceedings has dropped from 7 percent in 2018 to 2.7 percent in 2022.

While numbers from the SIAC and the Hong Kong International Arbitration Centre do not necessarily indicate a steep rise in Russian parties availing their services, some arbitration lawyers believe that Russia's eastward movement following the implementation of sanctions has brought more arbitration to Asian centres, and to some more than others.

Let's start in Singapore, a global arbitration hub which has been actively





courting Russian business for the last two decades.

Lawrence Teh, Dentons's global co-head of international arbitration, says that Dentons has historically received significant arbitration work from Eastern Europe, including Russia, both globally and in Singapore. He adds that Singapore is seen as a popular arbitration seat among Russians when dealing with Chinese and other Asian counterparties, as it is considered a neutral venue.

"Singapore was a good place for Russians particularly if they were trading with a Chinese or any other Asian counterparty. The Russians wouldn't prefer to arbitrate in China in the same way that

China would prefer not to arbitrate in Russia. Therefore, Singapore became a very acceptable result," he notes.

Singapore usually only implements United Nations sanctions in international conflict scenarios, and not those imposed by the U.S. or the EU, says Teh. But on this occasion of the conflict in Ukraine, Singapore has adopted a different approach and imposed limited sanctions against four Russian banks – VTB Bank, Vnesheconombank, Promsvyazbank and Bank Rossiya.

The implementation of sanctions against these banks has affected the Singapore arbitration market a little. "Banking becomes more difficult. Russians will

find that if they're using these four banks that have been sanctioned, they may have difficulty paying advances on costs to arbitral institutions on time," says Teh.

Singapore has also always been fair to Russian parties in arbitrations. Despite hostilities in Ukraine, Singapore-based tribunals and courts continue to make and recognise awards in favour of Russian parties, including a nine-figure claim that Teh argued for on behalf of a Russian client.

Despite this, moving arbitration to more sanction-neutral venues like Hong Kong still appears attractive at first glance. The Special Administrative Region has historically been Asia's

arbitration hub and boasts world-class legal infrastructure and a track record of delivering timely and commercially sound arbitral awards.

Matsushima believes that Russian commercial arbitration is moving from London to Hong Kong as a result of Western sanctions. "In view of the UK's strong support for the sanctions regime imposed on Russian entities since the invasion of Ukraine, we understand that increasingly Russian entities look to Hong Kong as an alternative, as it provides a similar common law framework but under a sanctions-neutral regime," Matsushima says.

Teh also says that the firm's Hong Kong office has seen growing number of arbitrations with Russian parties being seated there.

Other international arbitration lawyers also observe that sanctions-neutral Hong Kong, a mature arbitration market, will continue to see Russian arbitrations. Whether it will be at the cost of Singapore depends on the level of investment of the Russian business in Singapore and the view taken of the time that the Ukrainian hostilities will take to resolve. Singapore's geographical centrality may lead Russian businesses to consider whether they should move their arbitrations elsewhere or remain in Singapore and live with the relative inconvenience of sanctions.

"I put myself in the CEO's chair. If the investment in Singapore, whether it's in terms of infrastructure or assets, is extensive. And you believe the Ukrainian question will be resolved in the relative short term. Then you won't want to pull everything out and start again in Hong Kong because once these questions get resolved, the sanctions will go away," a Singapore-based international arbitration lawyer says on condition of anonymity.

The lawyer also suggests that there are a lot more advantages to Singapore than Hong Kong economically, not least because Singapore is geographically more central: "The Russians do business with the Chinese, Indians and Central Asians. So, Singapore is quite geographically convenient. If you're in Hong Kong, you're kind of on the edge of North Asia and further away from the Indian subcontinent."

Matsushima, who represents Japanese clients in arbitration with Russian counterparties, also says that Japanese companies seem to show increased interest in SIAC arbitration except in mainland China disputes, for which HKIAC may be more attractive.

A decision is often made based on the nature of the contract, Matsushima says. "In the current circumstances, some clients seem to be concerned that Singapore is formally recognised as an unfriendly country by Russia for the time being (though Russia does not seem so hostile to Singapore), while on the other hand, Hong Kong is perceived to be exposed to political uncertainty as part of China (infringement to independence of the judiciary) in the long term. So, the choice of arbitration may depend on the content of commercial contracts," she adds.

SEARCHING FOR FRIENDS

So how does a Russian business or counterparty decide where to take its arbitration proceeding, in order to ensure least resistance to their ability to act and enforcement?

The Singapore-based anonymous lawyer says that most companies are looking for applicable law that does not get in the way of enforcement. He offers an example: "Take an arbitration proceeding where the contract is governed by English law. The claimant is a Russian company, and the respondent can be from anywhere. The respondent can raise the argument that this contract is governed by English law, which will not come to the aid of a party that's sanctioned under it. In fact, this contract may have no legal effect under English law. The Russian company will then find it hard to express its rights in the arbitration."

Teh, however, believes that Russian parties should not face issues with most governing laws in Asia. Despite sanctions, he says Singapore law continues to remain a potential choice as governing law among his Russian clients.

Russia has also changed laws to allow its courts to prevent Russian companies from resolving disputes in "unfriendly" countries, making

enforcement of awards from those countries tougher in Russia.

Russian courts have been using a 2020 law to issue anti-suit injunctions to prevent sanctioned Russian companies from arbitrating their disputes outside Russia, even where there is an agreement in place, explains Matsushima. "Enforcement of such court orders outside of Russia may face obstacles, but that will be little comfort to foreign parties with assets in Russia that can be enforced against domestically," he says.

Matsushima adds that Russian courts have been selective about enforcing awards involving parties from countries with an unfriendly political relationship with Russia since the spring of 2022.

She offers the example of two cases: An HKIAC award with a British Virgin Islands-based company and an ICC award in favour of a Japanese company, both sought to be enforced in Russia.


"From these two cases, it is understood that Russian courts look at whether those parties enforcing awards are a company of an unfriendly country or a friendly country, and do not pay attention to whether seats are in an unfriendly country, or whether arbitration institutions are based in an unfriendly country," Matsushima says.

OTHER JURISDICTIONS

Other Asian countries, including India, Turkey, UAE, Thailand and possibly China, may also be the beneficiaries of Russian movement to sanctions-light countries, experts say.

Countries that have not imposed sanctions could see Russians move relevant disputes there, O'Melveny's Brock notes. This includes India, China, and Thailand, Brock says.

While arbitration in India might be attractive to Russian counterparties due to the perceived neutrality of India in relation to the Ukraine invasion, Matsushima believes India would be less attractive to Japanese companies than the traditional jurisdictions of Hong Kong and Singapore.

"We note that Russian companies started looking at arbitration in Turkey or Dubai as well, but these options might not be preferable for Japanese companies, either," Matsushima says. 

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ASIAN LEGAL BUSINESS

ASIA M&A RANKINGS

Even as dealmaking slowed down in the first half of 2023, the Asian region still recorded a number of notable M&A transactions. In its annual Asia M&A Rankings, ALB spotlights the leading law firms for M&A work, shedding light on the top players driving the region's most impactful and intricate deals.

BY ASIAN LEGAL BUSINESS



CHINA DOMESTIC**TIER 1**

- Commerce & Finance Law Offices
- Haiwen & Partners
- Han Kun Law Offices
- Jingtian & Gongcheng
- JunHe
- King & Wood Mallesons
- Tian Yuan Law Firm
- Zhong Lun Law Firm

TIER 2

- AllBright Law Offices
- DaHui Lawyers
- DeHeng Law Offices
- Dentons China
- Global Law Office
- Grandall Law Firm
- Guantao Law Firm
- Jia Yuan Law Offices
- Jincheng Tongda & Neal Law Firm
- Llinks Law Offices

TIER 3

- AnJie Broad Law Firm
- Co-effort Law Firm LLP
- East & Concord Partners
- FenXun Partners
- Grandway Law Offices
- Hui Ye Law Firm
- Long An Law Firm
- Merits & Tree Law Offices
- Shihui Partners
- T&D Associates
- Tahota Law Firm
- V&T Law Firm

NOTABLE FIRMS

- Beijing DHH Law Firm
- Beijing Docvit Law Firm
- China Commercial Law Firm
- HHP Attorneys-At-Law
- Hylands Law Firm
- JunZeJun Law Offices
- Kangda Law Firm
- Zhejiang L&H Law Firm

CHINA INTERNATIONAL**TIER 1**

- Clifford Chance
- Freshfields Bruckhaus Deringer
- Linklaters

- Skadden, Arps, Slate, Meagher & Flom

TIER 2

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

TIER 3

- Cleary Gottlieb Steen & Hamilton
- Kirkland & Ellis
- Morgan, Lewis & Bockius
- Morrison & Foerster
- Orrick, Herrington & Sutcliffe
- Paul Hastings
- Shearman & Sterling
- Slaughter & May
- Sullivan & Cromwell
- Weil, Gotshal & Manges

NOTABLE FIRMS

- Ashurst
- Bird & Bird
- CMS
- Dorsey & Whitney
- Eversheds Sutherland
- Gibson, Dunn & Crutcher
- Gide Loyrette Nouel
- Herbert Smith Freehills
- Jones Day
- K&L Gates
- Latham & Watkins
- Mayer Brown
- Milbank
- Nishimura & Asahi
- O'Melveny
- Reed Smith
- Ropes & Gray
- Seyfarth Shaw
- Simmons & Simmons
- Winston & Strawn

HONG KONG**TIER 1**

- Clifford Chance
- Freshfields Bruckhaus Deringer
- Kirkland & Ellis
- Linklaters

Despite plenty of opportunities for M&A across Asia in 2023, the first half of the year proved to be somewhat disappointing, with the value of deals down significantly from a year earlier.

The value of deals in Asia Pacific in the first half of the year fell almost 40 percent year-on-year to \$173 billion, according to GlobalData. The drop has been generally attributed to an uncertain geopolitical environment and unstable macroeconomic conditions. Also contributing to the drop has been the slower-than-expected growth in consumer spending in mainland China along with concerns about the property market there, two big factors that have gone a long way towards denting sentiment for dealmaking in the region in the first six months of 2023.

Several unexpected crises further afield may have also had an impact on dealmaking in the region. These crises included the fall of Credit Suisse (and its acquisition by UBS) as well as liquidity issues that led to a number of failures among smaller regional banks in the U.S., most notably Silicon Valley Bank. Continuing and rapid interest rate hikes in the U.S. and other major markets as part of efforts to tame inflation also had a hand in sending dealmaking to the backburner.

Most of the more visible deals in Asia Pacific took place in the industrial sector, according to Refinitiv, which tracks such deals. The sector accounted for 21.1 percent of all deals in H1 2023, an 11.5 percent rise year-on-year. The materials sector saw the second largest number of M&A deals, accounting for 17.8 percent of the total and worth \$61 billion in the first half of the year. In contrast, M&A activity in the often-ebullient technology sector plunged 60 percent in terms of deal value to \$35 billion.

GlobalData's league table shows that JPMorgan and UBS were the top advisers by deal volume and value in the region for the first half of 2023. JPMorgan was on the top of the table in terms of deal value, with \$25 billion worth of deals under its belt. UBS led the pack in terms of deal volume by advising on 18 deals.

COVER STORY

These were the only two companies with deals worth more than \$20 billion, with no other deal coming close to this level in the first half of the year. Morgan Stanley was in third place in terms of deals it was involved in by advising on deals worth \$5.7 billion, followed by Moelis & Co and Goldman Sachs, both at \$4.9 billion.

One type of deal that is increasingly common in Asia is acquisitions via special purpose acquisition companies (SPACs). There were 25 SPAC combinations announced in the first six months of 2023 worth an average of \$34 billion, representing a 145 percent rise in value compared to the same period in 2022. In terms of numbers, SPAC deals rose 56 percent over the same period, according to Refinitiv.

Also impacting the total number and value of deals was a drop in private equity (PE) fundraising. According to London-based research firm Perqin, PE fundraising in Asia Pacific could hit a 10-year low in 2023, as investors move away from China-focused funds. Their quarterly report indicates that funds raised in the area in the first half of the year accounted for 22 percent of 2022's total. Average capital targeted by China-focused funds was down to \$116 billion at the end of Q2 2023, from \$142 billion on a quarter-on-quarter basis. PE fundraising was also weak at \$5.6 billion in the second quarter, although the figure was almost two times the \$3 billion raised in the first quarter.

Refinitiv data shows deal value in Asia Pacific M&A transactions in the first half of the year fell 38 percent to a decade low of \$340 billion, with JPMorgan being the top M&A adviser. M&A fees in the same period fell 46 percent on a year-on-year basis to just over \$1 billion.

GlobalData research shows a total of 2,765 M&A deals were announced in the region in H1 2023, a decline of 16.3 percent on a year-on-year basis. They believe that several key markets in the Asia Pacific region saw subdued M&A action due to recession fears and macro-economic concerns, in line with the rest of the world, which dented dealmaking sentiment.

- Skadden, Arps, Slate, Meagher & Flom
- Slaughter and May

TIER 2

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

TIER 3

- Ashurst
- Baker McKenzie
- Deacons
- Debevoise & Plimpton
- Gibson, Dunn & Crutcher
- Hogan Lovells
- King & Wood Mallesons
- Mayer Brown
- Morrison & Foerster
- Paul, Weiss, Rifkind, Wharton & Garrison
- Reed Smith
- Shearman & Sterling
- White & Case

NOTABLE FIRMS

- Akin Gump Strauss Hauer & Feld
- Bird & Bird
- Charltons Law
- Cleary Gottlieb Steen & Hamilton
- CMS
- Dechert
- Dorsey & Whitney
- Eric Chow & Co. in Association with Commerce & Finance Law Offices
- Eversheds Sutherland
- Fangda Partners
- Gallant
- Georgiou Payne Stewien
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- Tanner De Witt
- Winston & Strawn
- Vivien Chan & Co

INDIA

TIER 1

- AZB & Partners
- Cyril Amarchand Mangaldas
- DSK Legal
- Economic Laws Practice
- IndusLaw
- J Sagar Associates
- Khaitan & Co.
- Kochhar & Co.
- Luthra & Luthra Law Offices
- Majmudar & Partners
- S&R Associates
- Shardul Amarchand Mangaldas & Co
- Trilegal

TIER 2

- Argus Partners
- Bharucha & Partners
- Desai & Diwanji
- HSA Advocates
- Link Legal
- Nishith Desai Associates
- Phoenix Legal
- Samvad Partners
- Saraf and Partners
- Talwar Thakore & Associates
- Touchstone Partners
- TT&A
- Veritas Legal

TIER 3

- ALMT Legal
- Chadha & Co
- Chandhiok & Mahajan, Advocates & Solicitors
- Clasis Law
- Dhir & Dhir Associates
- Fox Mandal & Associates
- Hammurabi & Solomon Partners
- Juris Corp
- Krishnamurthy & Co. (K Law)

- LexCounsel
- P&A Law Offices
- Rajani & Associates
- Sarthak Advocates & Solicitors
- Singh & Associates
- Singhanian & Partners
- Spice Route Legal
- Tatva Legal
- Vertices Partners
- Wadia Ghandy & Co

NOTABLE FIRMS

- Ahlawat & Associates (NEW)
- AKS Partners
- Archer & Angel
- Begur & Partners
- Burgeon Law
- Caibre Legal
- Dua Associates
- Gravitas Legal
- Khaitan & Khaitan
- Lakshmikumaran & Sridharan, Attorneys
- Mansukhlal Hiralal & Co
- NovoJuris Legal
- Pioneer Legal
- Sagus legal
- Stratage Law Partners, Advocates & Solicitors
- Tempus Law Associates
- Vaish Associates, Advocates

INDONESIA

TIER 1

- ABNR Counsellors at Law
- 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
- Oentoeng Suria & Partners in association with Ashurst
- Soemadipradja & Taher

- Walalangi & Partners (in association with Nishimura & Asahi)
- Widyanan & 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
- UMBRA – Strategic Legal Solutions

NOTABLE FIRMS

- Adisuryo Dwinanto & Co (ADCO Law)
- Adnan Kelana Haryanto & Hermanto
- Azwar Hadisupani Rum & Partners
- Budiarto Law Partnership
- Budidjaja International Lawyers
- FKNK Law Firm
- Hendra Soenardi
- Hutabarat Halim & Rekan (HHR Lawyers)
- IABF Law Firm
- Imran Muntaz & Co
- Leks&Co
- Sutedja & Associates
- TNB & Partners in association with Norton Rose Fulbright Australia
- TnP Law Firm

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
- Hibiyu-Nakata
- Kojima Law Offices
- Miura & Partners

SMALLER DEALS

M&A activity in 2023 has not been attention-grabbing with not a single mega-deal announced during the first half of the year. A mega-deal refers to deals worth more than \$25 billion.

Bankers believe large deals involving organisations with a presence in several geographies are becoming more and more difficult to pull off due to higher scrutiny from regulators around the world.

One notable change is that antitrust lawyers are being brought into the M&A process much earlier than before, which is also slowing down deals. Nevertheless, there has been a healthier level of mid-market deals as companies pursue strategic growth agendas.

Smaller deals also help companies with transformation and growth plans, and mid-market transactions are expected to dominate the market in the remaining months of the year.

CHINA LEADS THE DROP

The decline in deal volumes in the region was triggered by a fall in M&A activity in China, traditionally Asia's biggest deals market ahead of Australia and South Korea.

Refinitiv data shows deals involving Chinese companies fell 35 percent compared to a year earlier, which is a decade low. Outbound M&A plunged to the lowest level since 2006.

China's outward direct investment touched \$75.4 billion, a 9.6 percent growth on a year-on-year basis, according to E&Y, a global consulting and accounting firm. Chinese companies declared total overseas M&A value of \$11.7 billion, a 14 percent fall from a year ago, and the lowest in a decade.

E&Y says 224 deals were announced in the first half of 2023, indicating a 13 percent decline on a year-on-year basis. Sector-wise, E&Y data shows the power and utilities sector was at the top in terms of deal value, financial services ranked second, and advanced manufacturing and mobility came in third. These three sectors accounted for 54 percent of total deal value in H1 2023, with power and utilities seeing the biggest surge.

One of the big transactions that took place in the second quarter of this year was a Chinese organisation acquiring two Peruvian companies in the power distribution and energy service sectors. Another large deal involved a Chinese enterprise buying a real estate investment trust (REIT) in the United Kingdom worth approximately \$1 billion.

An E&Y report shows that M&A deal value by Chinese companies in Europe stood at \$3 billion in H1 2023, a decade low. The UK and Germany bucked the trend, with M&A deal values involving Chinese companies rising 117 percent and 91 percent, respectively.

The increase in deals follows a similar increase in high-level diplomatic visits between European countries and China during the period, as China ramps up efforts to cooperate with Germany and France in the fields of auto manufacturing, new energy, semiconductors and the digital economy. North America was the only continent where Chinese M&A deal volumes increased, but deal values declined 28 percent in H1 2023 on a year-on-year basis.

JAPAN: RISING INTEREST

With low inflation and low-interest rates, Japan has created a stable investment environment. Japanese M&A action in H1 2023 was similar to H1 2022, and the country has seen rising interest from global investors.

The total value of outbound deals had plunged to the lowest in seven years in 2022, but 2023 has seen a gradual revival of overseas acquisitions by Japanese conglomerates.

S&P Global research, however, shows transaction value of PE and venture capital deals plunged in the first half of this year, but deal volumes remained relatively flat.

One big deal that is attracting attention involves Japanese conglomerate Toshiba, which is set to go private in a \$15 billion deal that is expected to conclude at the end of 2023.

This year has also been a strong for equity issuances in Japan, with \$17 billion being raised in the first six months of 2023. This figure is a four-fold rise from the year before and a five-year high for the country, says Refinitiv.

- Oh-Ebashi LPC & Partners
- Southgate
- Tokyo International Law Office (TKI)

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
- 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)

NOTABLE FIRMS

- Ashurst
- Jones Day
- King & Spalding
- Latham & Watkins Gaikokuho Joint Enterprise
- Mayer Brown GJB
- Milbank
- Morgan, Lewis & Bockius
- Norton Rose Fulbright
- Orrick, Herrington & Sutcliffe
- Paul Hastings
- Ropes & Gray
- Simmons & Simmons
- Squire Gaikokuho Kyodo Jigyo Horitsu Jimusho

MALAYSIA

TIER 1

- Christopher & Lee Ong
- Rahmat Lim & Partners

- Shearn Delamore & Co
- Skrine
- Wong & Partners (member firm of Baker McKenzie)

TIER 2

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

NOTABLE FIRMS

- Albar & Partners
- Azmi & Associates
- Chooi & Company + Cheang & Ariff
- Donovan & Ho
- Halim Hong & Quek (NEW)
- Jeff Leong, Poon & Wong
- LAW Partnership
- Lim Jo Yan & Co
- MahWengKwai & Associates
- Mohamed Ridza & Co
- Naqiz & Partners
- Peter Ling & van Geyzel
- Raja, Darryl & Loh
- Ramesh Dipendra Jeremiah Law
- Tay & Partners
- Wong Beh & Toh
- Zul Rafique & Partners

PHILIPPINES

TIER 1

- ACCRALAW
- Picazo Buyco Tan Fider & Santos
- Quisumbing Torres (member firm of Baker McKenzie)
- Romulo Mabanta Buenaventura Sayoc & De Los Angeles
- SyCip Salazar Hernandez & Gatmaitan
- Villaraza & Angangco (V&A Law)

TIER 2

- Castillo Laman Tan Pantaleon & San Jose
- Cruz Marcelo & Tenefrancia
- Gatmaytan Yap Patacsil Gutierrez & Protacio (C&G Law)

INDIA BUCKS TREND

India was another market that bucked trends with the busiest-ever six months in terms of the number of deals announced, with an increase of 5 percent in H1 2023, according to Refinitiv. However, Refinitiv says that while deal volumes were up, deal values slumped and there were few large deals.

PwC, another Big Four accountancy and consulting firm, expects the latter half of 2023 to remain active in India from a dealmaking perspective on the back of a strong economic growth outlook, a stable business environment and interest in the country's startup ecosystem.

In terms of equity issuance, Refinitiv says India enjoyed growth of 14 percent to \$10 billion in H1 2023.

There are several factors that are working in India's favour and driving interest from the foreign investment community. As economic growth slows in developed nations, a weaker export scenario is being offset by strong domestic demand.

“This year has also been a strong for equity issuances in Japan, with \$17 billion being raised in the first six months of 2023. This figure is a four-fold rise from the year before and a five-year high for the country.”

SMALLER MARKETS SHINE

Smaller markets like Thailand and Vietnam have experienced an increase in M&A activity, pushing the number of Southeast Asian deals up 4 percent year-on-year. This was one of the few regions in the world to experience growth in the first half of 2023.

PwC expects Thailand's M&A activity to recover further in the second half of this year, after several businesses that had paused M&A activities due to an economic slowdown, inflation and geopolitical concerns return to the market.

Meanwhile, Vietnamese electric SUV manufacturer, VinFast Auto's US\$27 billion reverse U.S. listing was the big talking point this year as it is the biggest Vietnamese M&A deal in history.

AUSTRALIA: LAND OF TWO TALES

Dealmakers down under faced a unique situation with falling home-grown activity but rapidly rising foreign deals.



Being an Arsenal for Our Clients to Succeed
in Global Competition



**TOKYO INTERNATIONAL
LAW OFFICE**

**ALB Asia M&A Rankings 2023
Japan Domestic / Tier3**

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Domestic activity saw a 55 percent decline while outbound deals saw a 70 percent plunge in H1 2023, according to Refinitiv. The equity market raised \$7.7 billion in the first half of the year, a 20 percent year-on-year rise.

Australia's M&A outlook is proving to be resilient to the headwinds on local and global economic concerns. A Deloitte survey shows that while activity levels are not likely to boom to the levels of 2021, but most M&A leaders expect the number of deals they pursue to rise or remain stable over the next few months.


WHAT'S IN STORE FOR H2

Buzz in investment banking circles is that dealmaking in Southeast Asia will lift Asian deal activity in the remaining months of 2023, as several sectors in local markets consolidate.

PwC believes deal flow is likely to open up in H2 2023, particularly if sellers focus on pre-sale preparation and readjust pricing expectations. For many buyers, financing is getting increasingly difficult and a lot more expensive, which is placing more importance on alternative funding and trying to create value from a deal.

Many believe the uptick seen in restructuring activity in H1 2023 will continue in the second half as financing pressures are growing for many, including higher cost of debt, tight credit and challenges in raising capital.

PwC sees a need for market players to go deeper into M&A targets and identify levers of value that can help realise the potential of each transaction. This is already happening with more interest and greater focus on strategic repositioning as well as specific drivers of value like energy efficiency, green tax credits and sustainable financing.

Going by the green shoots that are sprouting in multiple markets, there is optimism that the rest of 2023 will see some transformational M&A activity. While current macroeconomic conditions are likely to influence dealmaking activity, a more stable interest rate environment will make it easier to price transactions. 

- Puno & Puno
- Puyat Jacinto & Santos Law Offices

NOTABLE FIRMS

- Cochingyan & Peralta Law Offices
- DivinaLaw
- Gorriceta, Africa, Cauton & Saavedra
- Gulapa & Quicho / Gulapa & Lim (Gulapa Law)
- Insights Philippines Legal Advisors
- Kua Sy & Yeung Law Offices ("SKY Law")
- Martinez Vergara Gonzalez & Serrano
- Morales & Justiniano
- Platon Martinez Flores San Pedro & Leaño
- Sarmiento Loriega Law Office
- Siguion Reyna, Montecillo & Ongsiako

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
- RHTLaw
- Shook Lin & Bok

NOTABLE FIRMS

- Atlas Asia Law Corporation
- Eng & Co
- Oon & Bazul
- Prolegis
- Quahe Woo & Palmer
- Virtus Law (Member of the Stephenson Harwood (Singapore) Alliance)
- Withers KhattarWong

SINGAPORE INTERNATIONAL

TIER 1

- Allen & Overy
- 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

- Ashurst
- Dechert
- DLA Piper
- Gibson Dunn
- HFW
- K&L Gates Straits Law
- King & Spalding
- King & Wood Mallesons
- Pinsent Masons MPillay
- Shearman & Sterling
- Sidley Austin
- Stephenson Harwood (Member of the Stephenson Harwood (Singapore) Alliance)

NOTABLE FIRMS

- Bryan Cave Leighton Paisner
- Clyde & Co
- CMS Cameron McKenna Nabarro Olswang (Singapore)
- Eversheds Sutherland
- LNT & Partners
- Mayer Brown PK Wong & Nair
- Nishimura & Asahi-Bayfront Law Alliance
- Reed Smith

SOUTH KOREA DOMESTIC

TIER 1

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

TIER 2

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

SOUTH KOREA INTERNATIONAL**TIER 1**

- Cleary Gottlieb Steen & Hamilton
- Paul Hastings
- Ropes & Gray
- White & Case

TIER 2

- Ashurst
- Baker McKenzie
- DLA Piper
- Herbert Smith Freehills
- Latham & Watkins
- Milbank
- O'Melveny
- Paul Hastings
- Simpson Thacher & Barlett
- Skadden, Arps, Slate, Meagher & Flom

TAIWAN**TIER 1**

- Baker McKenzie
- 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
- Dentons
- DTT Attorneys-At-Law
- Formosan Brothers Attorneys at Law
- Innovatus Law
- Lee, Tsai & Partners

- Liang & Partners
- Nishimura & Asahi
- PricewaterhouseCoopers Legal, Taiwan

THAILAND**TIER 1**

- Allen & Overy (Thailand)
- Baker McKenzie
- Linklaters (Thailand)
- Weerawong, Chinnavat & Partners

TIER 2

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

NOTABLE FIRMS

- Axis Legal
- Blumenthal Richter & Sumet
- DFDL
- DLA Piper
- ILCT
- KPMG Law Thailand
- Kudun & Partners
- Norton Rose Fulbright
- Rajah & Tann Thailand
- SCL Nishimura & Asahi Limited
- Silk Legal
- SRPP
- The Capital Law Office
- Watson Farley & Williams

VIETNAM**TIER 1**

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

TIER 2

- DFDL
- Duane Morris Vietnam
- Hogan Lovells
- LNT & Partners
- Mayer Brown
- Nishimura & Asahi

- Rajah Tann LCT Lawyers
- Tilleke & Gibbins
- Vision & Associates

NOTABLE FIRMS

- Allen & Gledhill
- Global Vietnam Lawyers
- Indochine Counsel (NEW)
- MHM Vietnam

METHODOLOGY**OUR RESEARCH**

- The research covers the period spanning from August 2022 to July 2023. This includes both ongoing work and matters that were closed during this timeframe.
- ALB will draw results from firm submissions, Thomson Reuters M&A data, interviews, editorial resources and market suggestions to identify and rank the top firms for M&A in Asia. Interviews will be conducted only if needed.
- The rankings will be divided into tiers, with the first tier identifying the strongest M&A firms in each jurisdiction.
- The rankings will cover the following jurisdictions: China, Hong Kong, India, Indonesia, Japan, Malaysia, Philippines, Singapore, South Korea, Taiwan, Thailand and Vietnam. There will be no Asia-wide table.
- The rankings will feature both domestic and international firms. The following jurisdictions will have separate tables for domestic firms and international firms: China, Japan and South Korea.
- Our research does not cover Australia and New Zealand.

OUR RANKINGS

Our rankings are based on the following metrics:

- The volume, complexity and size of work undertaken
- Presence across Asia and in individual jurisdictions
- Key personnel hires and growth of the practice group

MOVING THE NEEDLE

The role of general counsel at pharmaceutical and healthcare companies has become increasingly complex, particularly with the increased focus on health and wellbeing following the COVID-19 pandemic. GCs today must possess a diverse skill set that stretches far beyond legal expertise, if they are to effectively help their organisations meet legal and regulatory requirements while driving innovation and ensuring the highest standards of patient care. **BY SARAH WONG**





ALB: How has three years of the COVID-19 pandemic revolutionised the pharmaceutical and healthcare field, and what are some of the new challenges and opportunities for the industry and the in-house legal departments?

Christy Zhou, senior director, Legal & Compliance and Internal Audit Departments, CanSino Biologics:

I would like to answer this question with the development progress of our company and department in the past three years. In 2020, we just had a total of about 400 employees in our company and two legal professionals in the legal department. However, by 2023, we have already had more than 1,500 employees in our company with several subsidiaries and branches globally and have established our mRNA technology platform during this period. With the development of our company, the legal department has grown into the Legal and Compliance Department, which has 14 employees in charge of legal, compliance and intellectual property.

From the abovementioned development of our company and the department, we could find that the past three years really brought new opportunities to the whole pharmaceutical industry especially advanced pharmaceutical manufacturing, and some technical areas has undergone a rapid development under the epidemic pressure achieving lots of technological breakthroughs and quickly entering the stage of industrialisation and commercialisation. Meanwhile, the pharmaceutical industry, especially biotech enterprises, has their own characteristics and rules of development so when facing these opportunities, such rapid development of the enterprise itself has also brought challenges in all aspects including strategy, operation, management, and so on.

With such development of the industry and the company, on the one hand, as

the legal management department, we must quickly adapt to the industrialisation and commercialisation of the development of the demand for legal work and such requirement is bound to be a challenge to the personnel, organisational structure, internal management. On the other hand, the development of the industry is also accompanied by continuous improvement of the regulation, which has continuously expanded the scope of legal work and put forward higher requirements for the refinement of legal work. If we could find practical

ways and implementation of these two aspects, to expand the traditional boundaries of legal work and improve the quality and efficiency, I think it gives legal work a huge opportunity for development in the long-term perspective.



Christy Zhou



Ethel Yeo



Jisun Nam

Ethel Yeo, general counsel, Parkway Pantai: During COVID, pharma and healthcare services were essential services that were required to continue operating under very restrictive and ever-changing regulatory and physical landscape. One key challenge was securing medical supply chain in all stages of production, ensuring supplies arrive timely, from production to laboratories to end users in hospitals.

While supply chain across all industries is impacted, for pharma and healthcare, it was all the more critical. We have taken this opportunity to

explore digitalisation in sourcing and supply chain stock-taking to ensure accuracy in usage vs. needs. This promotes efficiency and reduces wastage in the face of rising or unpredictable costs of medical supplies. It has also prompted healthcare service providers to explore upstream investments.

What this means for the legal team is how to lock in potential partners quickly with efficient supply chain/distribution agreements, digitalisation platform agreements and so on, to potentially reallocate rights and obligations

which provides a better level playing field for smaller players.

Jisun Nam, head of legal department, Hanmi Pharmaceutical: Due to the COVID-19 pandemic, there have been significant regulatory changes and exceptions in the pharmaceutical and healthcare sectors. For instance, restrictions exist for telemedicine and medicine delivery in South Korea; however, exceptions were implemented during the pandemic to protect public health. These changes have provided a crucial opportunity for experiencing how existing regulations might need to be eased or controlled. Also, many business opportunities have emerged for utilising these changes regarding this industry.

Furthermore, the importance of research and efforts for promoting human health has been emphasised. Collaboration possibilities between different fields have increased. This has also led to increased activity in research and attempts to develop new drugs or repurpose existing drugs.

Pharmaceutical and healthcare companies have needed to respond swiftly and prepare with adaptable strategies. Consequently, in-house teams are required to deliver results and capabilities in terms of both knowledge and speed.

ALB: In light of the shifting economic and geopolitical landscape in the jurisdiction(s) of your company, how are you adjusting legal strategies to power business growth while ensuring compliance with evolving regulatory developments and policy priorities?

Zhou: The strategy and objectives of legal work are inextricably linked to the general environment and development stage of the company, and it is indeed a difficult and arduous task to achieve sustained support for business growth while taking the ever-changing regulatory environment into account.

To do this work well, I believe it's essential to consider two foundations. The first is to have an in-depth understanding of the industry in which we are engaged, especially the segments under the industry, including the characteristics of research and development,

industrialisation, and commercialisation. Besides, if we have a global layout, we may also have a full understanding of the business characteristics of its international target markets. Secondly, we need to return to the legal work itself, which encompasses carrying out legal risk identification, analysis and assessment based on the in-depth analysis of the business, and establishing a good set of internal legal risk controls. Adjusting the specific legal risk control measures in accordance with continuous changes in the internal and external environments in a timely manner, which can be achieved by combining the company's strategy, business development and changes in regulatory policies together. Importantly, we need to obtain the understanding and support from relevant departments and management team within the company when implementing the above work.

Yeo: In times where companies operate in both developed and developing countries, there is no one-size-fits-all all business and/or legal strategies. More so, we are mindful that different countries and regions will require different focus. We look to fine-tune legal strategies by looking carefully at where our business needs are, how they have changed in different geographical regions, and putting in emphasis on them where it matters. Amidst deep diving into the needs of different regions, we make a point to ensure that compliance is always paramount to the integrity of our business.

ALB: On that note, how do you anticipate legal and regulatory challenges in your jurisdiction(s) in areas including drug innovation, licensing and approval, and patent disputes, and what will be your approach to navigating these operational complexities and legal nuances?

Zhou: As an innovative vaccine biopharmaceutical company in China, I predict that the risks in some areas of the pharmaceutical industry will increase in a short time significantly, including the management of human genetic resources, the application of international clinical data in China's new drug approvals, the approval of cross-border

biologic products transactions, as well as international patent dispute risks on innovative medicines and platform technologies especially those having great commercial values.

In order to deal with these risks, I suggest that the first and foremost thing is to maintain close communication with regulators and industry experts. As enterprises, we should understand the legislation's purpose and the regulatory's focus to prepare well for business scenario prediction and legal analysis. Based on the above work, we need to collaborate with relevant internal departments to formulate relevant rules and processes, and reasonably and appropriately set up the control measures at the key control points. Lastly, we also need to conduct internal training and dissemination about the new regulations and policies in the company, so that the conducting level knows what to do and management level knows why to do it.

At the same time, as I have mentioned earlier, with the internal and external environment changes, the legal department should also dynamically update and adjust the relevant risk assessment and initiatives to maintain the flexibility and appropriateness of the work.

Yeo: In this highly competitive environment of innovation and the need to be the first, it is critical for all internal support functions to put mind maps in place and plan with the end in mind. Prepare for the unexpected hiccups. For the legal team, it is to ensure legal documentation, licensing and approval are first thought through and communicated with partners, regulators, and suppliers beforehand. Once the groundwork is laid, the project or innovation can more effectively take place and take root.

ALB: How has your role as GC in the pharmaceutical and healthcare sector in your jurisdiction evolved and what would you describe as some of the most important skills to succeed in your position?

Zhou: I often joke that I am a grass-roots GC, which, in fact, is the truth because I started my career in CanSinoBio as the sole person in legal and gradually

completed the process of building legal departments and systems from zero to one. While such route of development is inseparable from the rapid development of the company itself, it puts forward more demands on my work and management scope in turn. In the process, the company's leaders, benefitting from their international vision and foresight, have been helping and supporting me and asking me to look at my work from the perspective of a GC even though I wasn't one then.

Overall, the scope and departments I managed went through three development stages. The first stage is to expand from legal affairs to internal control, the second stage is to separate the compliance section from legal affairs and internal control, and at the same time, to clarify the overall management of the company's intellectual property rights (IPR), for which we established our own IPR team and the third stage is to separate internal control and internal auditing from legal affairs and compliance, improving the management lines and responsibilities of the internal auditing department.

It may be too early to say that I have been successful in my position. As I mentioned, the development of our department and the evolution of its functions are inseparable from the rapid development of the industry and the company, and the high-level requirements of the company's management. So, I prefer to say what important factors may have been crucial for me to take on these jobs.

I suppose there are three main points important to me. The first is the ability to learn. The role, function, and development of the organisational structure, will inevitably determine that I need to be like a sponge to fully absorb knowledge of the professional field as well as the business field and management skills, only by which I could accomplish the tasks with ease when taking new responsibilities.

The second factor is a high sense of responsibility. As the company's internal legal leader, such a position itself is responsible of managing some important risks of the company. I believe only with a high sense of responsibility and

even a high sense of mission, I could seek solutions with the behavior of beginning with the end in mind when meeting all kinds of difficulties.

The third factor is the capability of "founder thinking". If you want to obtain support and understanding from internal departments and management team to accept, recognise and perceive the value of legal work, you need to think with the perspective of "founder thinking" to plan and arrange our work, so that the upstream and downstream relating to legal work could understand what legal is, how to carry out the work, and what it can bring to them.

Yeo: Three key attributes: 1) integrity and ownership; 2) creativity; 3) agility. The second and third attributes are increasingly important for GCs seeking to run ahead of, and alongside, business strategies.

ALB: Healthcare and life science are among the sectors where continuously strong growth is widely predicted in the medium to long term. Together with emerging technologies and novel legal issues arising from globalisation and supply chain challenges, what does it mean for the demand of legal talents in this space, and how is that reshaping your department's talent strategy?


Zhou: Indeed, the pharmaceutical and healthcare and life sciences industry will be one of the industries that will continue to grow in the future long term. However, at the same time, globalisation also brings more new issues, actually raising higher demands on legal talents in this field, which specifically involve the understanding of the legislative purpose, background and supervision scale of new rules and regulations, the knowledge and understanding of the industry and specific business depth, the ability and level of legal risk assessment, as well as the application of legal risk control measures before and during the event.

In our department, the personnel composition is diversified, not only limiting to the talents with pure legal backgrounds, but also with a hope to have talents with technical backgrounds, financial backgrounds and business backgrounds to join us. Only in this way

could we have a more comprehensive control and management of emerging technologies and new legal issues.

In addition, we also attach great importance to identifying the connecting points of different teams within our department, and clarifying the responsibilities and control measures at specific connection points, to achieve the accuracy and consistency of information communication under legal management. During this process, the talents in different teams in our department will deepen their understanding and knowledge of each other's work to achieve the long-term growth and development of the talents in different legal management teams, enhancing the value of the entire department and work in the company.

Yeo: While there's strong growth in the healthcare space via M&A, the expertise needed from an in-house counsel is certainly over and beyond mere M&A skilled lawyers. Due to the speed of growth in every imaginable direction, it is important for an in-house team to remain nimble, multi-skilled and being not afraid to get their hands dirty. The outlook for hiring legal talents is to keep versatile and keen learners with strong core expertise but join the team to be exposed to different areas of practise to continue to keep the team multi-skilled and confident to deal with new challenges.

Nam: The pharmaceutical and healthcare industry is a prominent sector encompassing the convergence of technology, legal aspects, and government regulations. Due to the diverse nature of subfields within this industry, we often notice that the languages of each department are quite different, even within the same company. In this context, the legal department is required to have rapid comprehension of new matters and the ability to grasp concepts swiftly. Not only is coordination with operational departments crucial, but the ability to understand the fundamental essentials of contracts and legal principles is also necessary. We are enhancing the capabilities of our department through activities such as monitoring industry trends and conducting internal seminars to prepare for external environmental changes. 

ASIAN LEGAL BUSINESS

THAILAND RISING STARS 2023

In its inaugural list, Asian Legal Business introduces the emerging legal practitioners in Thailand's new era. These practitioners have demonstrated great potential in the industry and have received high praise from their clients. The list is in alphabetical order, and features profiles of select lawyers.

LIST BY ASIAN LEGAL BUSINESS, TEXT BY BINGQING WANG

CHAVAPOL AKKARAVORANUN

Baker McKenzie

CHANAMAS AURA-EK

TMI Associates (Thailand)

DAVID BECKSTEAD

Chandler MHM

PARITHAT CHAMNONGSILP

TTT+Partners

RACHATA CHAMPATHONG

Herbert Smith Freehills (Thailand)

JITTIPONG CHAMPREECHAR

Weerawong, Chinnavat & Partners

CHOSITAR DAECHARUX

SRPP

KUNADHA GAJASENI

Watson Farley & Williams

NOPPARAT LALITKOMON

Tilleke & Gibbins

CHAI LERTVITTAYACHAIKUL

Kudun & Partners

RIMA NEERASINT

BH2I

KRITCHAKORN NIMWENAI

Ananda Intellectual Property

NONNABHAT (NIAB) PAIBOON

Herbert Smith Freehills (Thailand)

KANYAMOL PHUPAPEIW

ILAWASIA

SUPACHOT PRASANKIATTIRAJ

IAS Advisory

PANYAVITH PREECHABHAN

Baker McKenzie

CHORMAS PREMSIRINIRUND

Norton Rose Fulbright

SIREGRAN SAKULIAMPAIBOON

Weerawong, Chinnavat & Partners

APINYA SARNTIKASEM

SCL Nishimura & Asahi Limited

RACHAPOL SIRIKULCHIT

Watson Farley & Williams

PEERASANTI SOMRITUTAI

Kudun & Partners

YAOWALAK SULEESATHIRA

Pisut & Partners

ARCHAREE SUPPAKRUCHA

KPMG Phoomchai Legal

WAYU SUTHISARNSUNTORN

Pisut & Partners

TANANAN THAMMAKIAT

Chandler MHM

USA UA-AREETHAM

LawPlus

TEERIN VANIKIETI

Norton Rose Fulbright

PAWAT VARAPIROM

TMP Intellectual Property

VORALUCK WORACHUTTHARN

The Capital Law Office Limited

YASINEE WUTTISON

ILCT



PARITHAT CHAMNONGSILP

36, counsel, TTT+Partners

Parithat Chamnongsilp, aged 36, is a counsel at TTT+Partners with over 11 years of legal experience specializing in M&A and capital markets. He has proven track record of delivering effective solutions.


One of his notable accomplishments was representing private equity investors in Flash Group’s impressive \$440 million Series F fundraise within Thailand’s logistics sector. He demonstrated strategic acumen in this complex matter.

Parithat meticulous approach and understanding of intricate financial transactions were crucial in facilitating Goldman Sachs’ investment and subsequent divestment of Thai baht-denominated non-performing loans through regulated asset management.

He further displayed his proficiency in structuring deals to meet client objectives and market dynamics in the \$440 million share sale of Plan B Media to VGI.

Parithat also played an integral role in Sri Trang Gloves (Thailand) ’s \$441 million initial public offering and share listing on the Stock Exchange of Thailand, contributing significantly to its success.

His clients include industry leaders such as PTT and Thai Beverage, highlighting his status as a trusted legal advisor.

“I have worked with Parithat for more than six years. Apart from his strong technical skills, he demonstrates strong commitment and works diligently. He is creative and always seeks to find optimal solutions for clients. He is clearly passionate about his work,” says Veeranuch Thammavaranucept, founding partner of TTT+Partners. 

METHODOLOGY

Individuals needed to be under the age of 40 and based permanently in Thailand. The list was chosen based on the following criteria:

- Important deals or cases
- Key clients
- Significant accolades received in the form of public recognition, awards, and more.



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BETTER DAYS AHEAD

After a slow start to Thailand's dealmaking scene in 2023, mergers and acquisitions (M&A) activities are expected to tick up in the second half of the year, with businesses finally taking their feet off the brakes.

But lawyers say that companies need to navigate not just tight monetary conditions and heightened geopolitical risks, but also a murky political situation in Thailand. **BY SARAH WONG**

High interest rates, geopolitical uncertainty, and heightened regulations have severely stymied the wave of dealmaking that reached its peak in 2021 during the COVID-19 pandemic. Thailand, the second largest ASEAN economy, was not unscathed either, with both deal volume and value experiencing a slowdown in the first half of 2023 as a result of delayed transactions.

But things are starting to look up. Chantanuch Chotikapanich, deals leader at PwC Thailand, has predicted that Thailand's mergers and acquisitions activities are likely to pick up for the remainder of the year.

"Thailand's M&A deals are likely to recover in almost every sector. Whether it's businesses looking to expand their operations, acquire new portfolios or venture into new s-curve industries, they're all reviving their M&A activities again," says Chantanuch in a PwC report, calling 2023 "a great year for businesses who are interested in buying or selling through M&A".

Meanwhile, 60 percent of CEOs surveyed said they are not planning to delay deals this year despite some negative economic factors impacting businesses, according to PwC's 26th Annual Global CEO Survey.

Economists are predicting a pause in the Thai central bank's monetary tightening cycle after Thailand's GDP rose 1.8 per cent year on year in the second quarter, missing market estimates. High rates have led to expensive acquisitions, tamed asset valuations, and complicated financing options both pre- and

"To effectively address the complexities of this evolving landscape, law firms must invest to cultivate a deep-seated understanding of the local legal intricacies, prevailing business environment, and geopolitical risks."

— Nuanporn Wechsuwanarux,
Chandler MHM

post-acquisition, sapping the appetite of dealmakers and investors. The pause in the rate cycle could be a lifeline.

Sooksun Popun-Ngarm, a senior associate at Chandler MHM, thinks it's unlikely a potential rate pause might immediately shift the outlook for dealmaking throughout the remainder of the year.

"The persistence of high-interest rates continues to influence M&A dynamics, and the recent increase in the policy rate to 2.25 percent by the Monetary Policy Committee of the Bank of Thailand on Aug. 2, marking its highest level in nine years, underscores the current challenges in the financial landscape," explains Sooksun. "The heightened cost of borrowing inevitably leads

to a more thorough assessment of the deal's value within the context of the current business landscape.

But Sooksun believes there have been valuable dealmaking opportunities in the market.

"This is especially evident in targets with small or medium enterprise values, as such deals typically require less financing, allowing valuations to remain relatively stable despite prevailing interest rates. This encourages sellers to consider transactions," says Sooksun.

POSITIVE SENTIMENT

The positive sentiment is echoed by Nuanporn Wechsuwanarux, a corporate partner at Chandler MHM. "Since the start of the year, we have advised on a range of M&A transactions, both inbound and outbound, and a cross-border acquisition encompassing different sectors. Active sectors include renewable energy, F&B, automobile-related, manufacturing, and TMT. We are now seeing a sharp pickup in M&A activity in the final quarter of the year," notes Nuanporn.

In an interview with ALB earlier this year, Chandler MHM was bullish about deal flows in the clean energy and infrastructure, technology, e-commerce, insurance and healthcare sectors. Nuanporn says deal flows remain strong in these industries while ESG-propelled diversification continues to dominate a proportion of transactions.

Furthermore, the strong momentum in Thailand's manufacturing sector is likely to translate into a robust deal-

Thailand's ESG Journey: Sustainability and Progress

In Thailand, a significant spotlight is now directed toward the adoption of Environmental, Social, and Governance ("ESG") principles, attracting the attention of regulators, investors, and other stakeholders. This resonates with the global implementation of ESG-related regulations and societal expectations. Thailand's ESG policy framework consists of a series of guidelines that may be observed by enterprises in those relevant sectors.

Presently, ESG-related disclosures are mandatorily required only for listed companies and sustainable and responsible investing funds ("SRI Funds"). Listed companies must comply with the guidelines set out by the Thai Security Exchange Commission ("SEC Reporting Guide"). This comprehensive guide encompasses all aspects that must be reported annually through the 56-1 form ("One Report"), with a specific focus on areas like climate change, environmental preservation, low carbon footprint, and inequality reduction. The disclosures are on a "comply-or-explain" basis. For instance, if a listed company does not disclose its GHG emissions, the company must clarify its reasoning for not making the disclosure. Listed companies are not required to align with international standards, although are encouraged to do so. Furthermore, asset managers overseeing SRI Funds are subjected



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to stringent reporting requirements to prevent instances of greenwashing.

In addition, The Bank of Thailand has introduced a policy on the business operations of financial institutions related to the environment and climate change. Although not mandatory, financial institutions may be expected to make ESG

disclosures under this policy as the adoption will allow financial institutions to manage risks, attract investors and customers, and contribute to long-term business viability in a sustainability-focused landscape.

In parallel, to facilitate the implementation of ESG policies, the country has established various sustainability policies, such as mobilizing transition finance for decarbonization projects and implementing the Bio-Circular-Green framework. Additionally, private companies are voluntarily reassessing their practices to prevent human rights violations, implement stringent corporate governance measures to prevent corporate oversight and engage in initiatives related to carbon credits aimed at reducing their carbon footprint.

A noteworthy recent development is Thailand's introduction of the Thailand Taxonomy, aligned with the ASEAN and EU taxonomy. In its initial phase, this framework will adopt a targeted approach, focusing on the energy and transportation sectors. While not mandatory for companies to formulate transition plans, listed companies have the option to utilize the Thailand Taxonomy as a means of showcasing their commitment to sustainability, which can encompass transition plans, among other aspects.

making scene. "We see a steady flow of transactions in the TMT and manufacturing sectors (whether acquisitions or disposals). The move towards diversification of supply chains will result in some new investment in Thailand," says Nuanporn.

Nuanporn notes that Thailand remains a popular investment destination from countries across Asia, including Japan and China, because of its "well-established manufacturing base and incentives." "Investment from Japan remains strong, and we are seeing increasing interest from China," she notes.

Across the board, Nuanporn points out trends, including energy transition, adoption of ESG principles, and digital transformation will drive some M&A transactions. "For example, traditional energy companies have been diversifying into other industries, and investment into clean energy remains strong," she says.

Despite the optimistic predictions, investors have been cautiously keeping an eye on Thailand's political situation,


which since the general elections in May has been marred in uncertainties. In August, real estate tycoon Srettha Thavisin of the Phew Thai party was voted as the country's 30th prime minister, putting an end to three months of political deadlock after Pita Limjaroenrat, the progressive Harvard graduate who won the most votes, failed to secure enough parliamentary support to claim the premiership.

Sooksun believes the appointment of a new prime minister will conclude the political uncertainty in Thailand and thus is good news for investment. "Investors are now anticipating a clear stance from the new government regarding their strategies for business investments. A heightened sense of stability is anticipated within the investment landscape, consequently leading to an upswing in M&A activities," says Sooksun.

"We anticipate forthcoming government announcements concerning business policies, along with the resumption of deliberations on critical bills that have

a significant impact on investments in Thailand—examples being regulations on electric vehicles and climate change policies. Overall, the presence of a new leadership dynamic is anticipated to infuse a renewed sense of certainty, consequently stimulating a surge in M&A transactions," he adds.

Looking more broadly across Southeast Asia, foreign direct investment continues to be robust. Law firms in Thailand, hence, need to position themselves to advise on the rising cross-border investment within ASEAN jurisdictions, according to Nuanporn.

"To effectively address the complexities of this evolving landscape, law firms must invest to cultivate a deep-seated understanding of the local legal intricacies, prevailing business environment, and geopolitical risks. This multifaceted understanding is necessary in rendering legal services that are efficient and streamlined within the realm of cross-border investment across the ASEAN region," says Nuanporn. 

ASIAN LEGAL BUSINESS

ASIA TOP 15 TMT LAWYERS 2023

In this annual ranking, we honour the top technology, media, and telecommunications (TMT) lawyers across Asia who have powered through the pandemic, continuing to grow their practices at a remarkable pace while adapting to new markets, disruptive technology and ever-changing regulatory regimes.

RANKING BY ASIAN LEGAL BUSINESS, TEXT BY NIMITT DIXIT

STUART BERAHA
Latham & Watkins

CHARUWAN CHAROONCHITSATHIAN
Tilleke & Gibbins

KIERAN DONOVAN
N/A

KOJIRO FUJII
Nishimura & Asahi

JU BONG JANG
Lee & Ko

LIM CHONG KIN
Drew & Napier

DARREN KOR YIT MENG
Zul Rafique & Partners

GORDON MILNER
Morrison Foerster

CHANDRIMA MITRA
DSK Legal

PUTU RADITYA NUGRAHA
UMBRA – Strategic Legal Solutions

CONNELL O'NEILL
Gibson Dunn & Crutcher

MIN CHUL PARK
Kim & Chang

WAEWEN PIEMWICHAI
Tilleke & Gibbins

STEVE TAN
Rajah & Tann Singapore

NAMITA VISWANATH
IndusLaw

Stuart Beraha of Latham & Watkins' TMT practice has over twenty years of experience in Japan and a loyal client base that includes Kioxia, Yahoo Japan (YJ), Otsuka, TDK and Hitachi.

Charuwan Charoonchitsathian leads Tilleke & Gibbins' TMT transactional and regulatory practice in Thailand. In her 16-year legal career, she has helped many of the world's top entertainment, e-commerce, technology, satellite and AI companies enter and excel in the Thai market, advising on product launches, business structuring and regulatory compliance.

Data and technology lawyer Kieran Donovan has been a touchpoint for global companies on TMT and data-related matters in Asia. He has advised on a number of significant projects involving global privacy compliance programs for leading technology conglomerates, as well as emerging companies in the same sector.

Nishimura & Asahi's competition and international trade partner, Kojiro Fujii, is a leading advisor to the world's top tech companies, driving a range of innovative public policy and regulatory matters in the TMT and digital economy sectors.

Lee & Ko TMT partner Ju Bong Jang carries over two decades of experience advising on some of the top South Korean deals in the space. This includes the acquisition of Korea's second-largest cable TV operator, T-broad by SK Broadband, worth over \$3 billion.

With 30 years of legal experience, Lim Chong Kin has played a key role in the development of Singapore's telecommunications, media and postal industries. Apart from leading the TMT practice at Drew & Napier, Lim is also a managing director of the firm's corporate and finance practice; co-heads the competition law and regulatory practice; and data protection, privacy and cybersecurity. He is currently assisting Singapore's IMDA in drafting and implementing a comprehensive competition code for the telecommunications and media industries. He also works with Brunei's AITI on setting up the country's personal data protection framework. This is in addition to his representation of top global telecom, data and technology companies on their expansion into Asia.

Zul Rafique's TMT practice head Darren Kor Yit Meng has over two decades of experience advising Malaysia's biggest TMT players.

A conversation with Lim Chong Kin

Could you please share a recent case or project that you consider a highlight of your TMT practice? What were the challenges you faced and how did you navigate them?

It is difficult to pick one matter, as I have been involved in almost every milestone in Singapore's transformation into a key info-communications hub since 1997. I had the privilege of acting for regulators in structuring Singapore's frameworks, and for market participants in deploying infrastructure and rolling out services in Asia. If I must sum up this journey in one word, it would be "phenomenal" in describing the speed of technological development, the roll-out of advanced infrastructure to support innovative services, and the legal challenges that follow suit to address policy and public interest concerns that may arise. Regulations which try too hard to predict and move ahead of technology may stifle innovation, but regulations which lag too far behind may allow issues to arise that harm consumer and even national interests.

Since I must pick a one project, it would be Singapore's Telecom and Media Competition Code 2022. I was involved in formulating the very first drafts of their precursors (the Telecom Competition Code in 2000 and the Media Market Conduct Code in 2003), drafting revisions in subsequent years, and up to the present iteration where both were converged into a unified framework to govern the entire info-communications industry. This Code is a living document that requires constant updating and best describes my journey in this area of practice.



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With the rise of international data flows and digital services, how do you foresee the evolving landscape of cross-border regulations and jurisdictional challenges impacting the way TMT companies operate and seek legal counsel?

First, huge growth will continue in the cross-border delivery of digital services, which means an exponential growth in cross-border data flows. Second, more APAC jurisdictions will adopt data protection and cybersecurity laws, and standard harmonisation

will be a challenge as there will always be domestic agendas. Third, evolving geopolitics and the bifurcation between 'Western' and 'Eastern' models of governance has given rise to country data localisation and other national security requirements that impede cross-border data flows, and this seems to be a continuing trend.

TMT companies operating across regions will thus face challenges in managing data flows and navigating diverged data protection and cybersecurity regulations. It is imperative that counsels have a good grasp of the comparative differences in the regulations, have their ears on the ground to clearly detect nuances that are not apparent on the face of the regulations, and are able to offer practical advice that facilitates rather than impede the business.

How do you anticipate legal challenges evolving and growing more complex as emerging technologies continue to reshape the TMT sector?

Over the last few years, we have witnessed the emergence of many technologies (from IoT to 5G, to blockchain / Web3, AR/VR, AI / ML, etc) that will doubtless unleash new legal challenges (AI is often cited as the best example) and regulations will always be playing catch-up to identify and address harms. In my view, regulation should not impede but serve to promote the adoption of emerging technology. If regulation is necessary, it must be strictly proportionate to address any clearly defined harm that may arise from the unbridled exploitation of technology.

Morrison Foerster's Asia technology practice leader Gordon Milner has over two decades of expertise in the gaming sector.

DSK Legal partner Chandrima Mitra is one of India's leading lawyers to A list film actors, some of the biggest production houses, and film associations in the Indian film industry.

Putu Raditya Nugraha has been a partner in UMBRA – Strategic Legal Solutions' banking and finance, technology and M&A practice groups for over five years, guiding some of the largest cross-border transactions in the country. Nugraha led UMBRA's representation of travel and lifestyle company Loka Holdings in obtaining \$300 million in financing from a global financial syndicate.

Connell O'Neill heads Gibson Dunn's APAC TMT, data, sourcing and technology transactions practices. He is geographically mobile and regularly works across APAC.

Kim & Chang attorney Min Chul Park has over 19 years of experience advising

SUBMISSION BREAKDOWN

Jurisdiction	Submissions	Winners
Hong Kong	7	2
India	16	2
Indonesia	4	1
Japan	4	2
Malaysia	1	1
Singapore	7	3
South Korea	6	2
Thailand	3	1
Vietnam	2	1
Total	50	15

domestic and international companies in the telecom regulatory space, including four years with the Korea Communication Commission.

Waewpen Piemwichai has spent the last 9 years of her legal career at Tilleke & Gibbins' Hanoi office (after eight years in Bangkok) advising companies on TMT, data protection, financial technology and commercial transactions. In 2021, she assisted a global satellite communications company on its offering of services and devices in Vietnam.

Rajah & Tann's TMT partner, Steve Tan, has emerged as one of the region's top legal minds on data privacy and cybersecurity. Tan was the first lawyer in Singapore to conceive and conceptualise outsourced data protection officer services, and now serves as Data Protection Officer for over 10 companies in the country.

Namita Vishwanath, a TMT partner at IndusLaw, brings her decade-long extensive in-house experience working with Bharti Airtel, Oracle and Lenovo to deliver dynamic advice to clients focused on meeting their business objectives. Her client list includes Amazon, FedEx, Google.



A NEW REGIME

India recently passed a wide-ranging data protection law. Lawyers share what companies need to do to keep up.

BY NIMITT DIXIT

India's digital transformation has permeated to almost every aspect of personal life. From healthcare and employment to e-commerce and tourism, the country's digital infrastructure connects more than 692 million internet users to domestic and international businesses, whose operations and services depend on the personal information they collect from their customers.

This quantum digital leap was so far largely unchecked, with little attention given to building personal data protection architecture in the country. In 2011, the Information Technology Rules, also known as SPDI Rules, did introduce concepts like consent, privacy policy and reasonable security practices into India's digital framework. But without a robust enforcement mechanism and reporting requirements, the SPDI Rules did little to amend data collection and processing practices in the country.

The Digital Personal Data Protection Act, 2023, enacted in August is poised to change all that. The act introduces significant obligations on private businesses collecting data, called "data fiduciaries," setting broad rules for data processing, use and retention. It prescribes specific regulations for consent, purpose limitation, data accountability, transparency and accuracy.

Udit Mendiratta, a partner in Argus Partners' technology and data protection practice says the new act completely overhauls the previous SPDI regime. "The SPDI Rules were fairly basic. They had very basic compliance requirements - consent and reasonable security practices being in place. Those are not sufficient to meet the demands of today. This new act, while building on SPDI principles, overhauls the system and provides far more stringent, detailed and nuanced compliance requirements."

In a significant shift in policy from previous drafts, the act widens the scope for cross-border data flow and makes relaxations in data localization requirements.

The act provides specific parental consent requirements for processing data of children, restricting data fiduciaries from tracking or behavioural monitoring, and targeted advertisements directed at children.

The act also establishes a Data Protection Board, which will serve as a complaint redressal mechanism for personal data providers, regulate compliance and prescribe penalties for breaches.

For non-compliance and data breaches, the act prescribes penalties of up to 2.5 billion rupees (\$30 million).

MORE OBLIGATIONS

Experts agree that with the introduction of specific consent and notice requirements, regulations on data processing, reporting obligations and high penalties, companies will no longer be able to skirt personal data-protection obligations as was the case under the SPDI Rules.

The act's coverage is wider than under the previous regime, says Anirudh Rastogi, founder and managing partner of Bengaluru-based law firm Igikai Law. "While the SPDI only governed a subset of personal data, the new act governs the entire set of digital personal data," he notes. "Businesses have obligations to implement security measures, notify breaches, and delete data after processing."

Moreover, Mendiratta notes that the onus of proving compliance under the law is now a positive obligation on the data fiduciary. While the SPDI Rules had consent requirements, the new act “says consent has to be free, specific, informed, unconditional, unambiguous, affirmative action. So it’s really on the data fiduciaries now to demonstrate how they have checked all these boxes.”

On the other hand, the act also empowers data principals - people who share their personal data with fiduciaries - to control and verify how their data is used, stored, and transferred. “This requires a sophisticated user-facing consent process as well as internal systems and tools that are largely absent in the Indian market today and will come at a significant cost for the small and medium sized companies,” says Mathew Chacko, the head of Spice Route Legal’s TMT practice.

Data fiduciaries must also ensure that data is only used for the purpose for which consent was given. This includes “where users may have denied the use of ad-tech tools to process their data for data analytics or targeted advertising,” Chacko says.

Even data processors, while exempt from compliance requirements under the act, are not in the clear. “While data processors are exempt from the law, we expect data fiduciaries to subject them to similar obligations – so your classic processors (SaaS tools, outsourcing companies, etc.) should begin to explore compliance as well,” Chacko adds.

DATA ARCHITECTURE

While data architecture is to be drastically enhanced across the board, some companies may already be better placed to comply with the act than others.

Multinational companies are better placed than local companies due to their exposure to more than 150 global privacy laws, while tech businesses are also better placed than others due to Google and Apple’s app store privacy requirements, Rastogi says.

So how does a company go about building infrastructure to comply with the act when its provisions are notified?

“Businesses need to have a 360-degree view over their data handling practices – know where the data is flowing in, how it is used, where it is stored, who it is shared with and when is it deleted,” Rastogi says. Once a company has gained visibility, it must take steps to identify gaps and implement measures to rectify those gaps, he adds.

This is an elaborate exercise, explains Mendiratta: “Companies must firstly, list down the kind of data being collected and decide what is essential for their purpose. Secondly, companies must also very clearly define for themselves and for their end users the purpose of this data collection.”

Companies also need to do a risk and cost-benefit analysis on whether they want to build internal capabilities to ensure compliance or outsource to third party consent managers, as often is the case in other jurisdictions, Mendiratta adds.

Particular to India are also questions around the capability to obtain consent in regional and local languages. “There’s a huge volume of apps which penetrate local markets based on language because they are offered in multiple languages,” Mendiratta explains. While the law prescribes the requirement of informed and verifiable consent, it is unclear whether companies will be expected to build capabilities to obtain consent in local languages.

Building critical data infrastructure will require companies to considering increasing investment in technology and manpower. Tech tools to automate data collections and storage, identify breaches, and to empower users to monitor the use of their data might significantly bring down costs in the long term.

“Companies will also have to start exploring the option of in-house data privacy officers and privacy teams to implement and oversee compliance, which will require corporate data governance strategies, organisation rehaults, and significant training,” Chacko adds.

START THE COMPLIANCE

While the provisions of the act will come into force when notified by the Central

Government, and some leeway period to allow organizations to fall in line is expected, experts believe companies must get serious about building compliance capabilities today.

It is unclear how much time the government is going to grant companies to comply with a provision once notified, so to ensure no disruptions to data collection and business operations, it is essential companies start working towards compliance immediately, Mendiratta advises his clients.


The burden may be higher in particular sectors as the act leaves space for sectoral regulator to impose higher obligations. Rastogi says its likely the finance sector may see higher obligations as the Reserve Bank of India is pro-active about regulating transactional and lending data, and entities including payment providers and digital lenders.

Experts agree that finance and banking, social media, e-commerce, healthcare and ed-tech companies have the most to worry about, given their exposure to high quantities of sensitive data and strong regulatory oversight.

There have also been talks of the government exempting start-ups from compliance with certain provisions, as there is a fear that the burden of compliance may take a toll on their ability to operate.

But this could be a double-edge sword warns, Chacko. “Limited obligations will remove the barriers to entry and innovation that the law could create for smaller companies. However, this must be balanced against the potential misuse of data that a blanket exemption could permit,” he says.

Moreover, data principals are growing more conscious of how their data is used. Mendiratta notes that companies that are exempt may lose business to competitors that are collecting and storing data in compliance with the act.

“Users will perhaps hesitate to engage with organizations that are exempt. You’re enjoying an exemption, but there is a certain set of the population which will say, maybe I don’t want to give my data to you.” 

JAPAN: MOVING FORWARD ON



Environmental, social and governance (ESG) considerations are essential to businesses for the opportunities they bring, and for the reputational and economic risks that arise from making the wrong decisions. In light of the growing interest and scrutiny in ESG matters from within Japan and abroad, the Japanese government has been pushing a range of measures to implement ESG initiatives.

BY ASIAN LEGAL BUSINESS

One of the world's most developed economies, Japan has stayed ahead of the curve in terms of environmental, social and governance (ESG) regulations.

Earlier this year, on Feb. 10, the Japanese government approved a Green

Transformation (GX) policy to lay out the country's strategy to achieve its target of achieving net-zero carbon emissions by 2050. The ultimate aim of the policy is to create a shift in the country's industrial structure, which is currently heavily

dependent on fossil fuels and create one powered by green energy.

The GX policy covers a wide range of measures for the development of some 22 industrial sectors over the next decade, from the use of nuclear power to expanding renewable energy sources, along with implementing a carbon-pricing mechanism to facilitate the country's transition to clean energy. The policy also includes efforts to replace decommissioned nuclear reactors with next-generation ones.

Over time, the GX policy will span five key initiatives, including putting in place growth-oriented carbon pricing, integrated regulatory and assistance promotion measures, new methods of financing, an international development strategy that would include the creation of an Asia Zero Emissions Community and the development of a GX league that would include companies, the government and academia.

"On the 'E' pillar, while immediate decarbonisation would be ideal, 'transition' has been strongly sought in Japan. The goal to reduce greenhouse gas emissions is the same as other countries, but the approach to it might be slightly different locally," Akihiko Takamatsu, a Tokyo-based partner at Norton Rose Fulbright, tells ALB.

Even before the latest Green Transformation policy was adopted, Japanese authorities issued a range of measures to push ESG forward, including finalising a code of conduct for providers of ESG data and evaluation, proposing new guidelines that define the scope for ESG Public Funds and introducing mandatory ESG disclosures for public companies. More recently, the issuance of the country's first guidelines on impact investing also signals market interest in the space.

The Japanese legal landscape in regards to ESG measures has changed rapidly.

"Like other countries, ESG is essential to all sorts of businesses, both positively and negatively in Japan," says Takamatsu. "On the positive side, they will bring new opportunities, but on the flip side, they may potentially cause reputational, economic and even regulatory

risks when each company treats them erroneously.”

Several measures are in place to promote ESG in Japan.

Amid the fast-changing regulatory landscape, Takamatsu says: “Our advice would be driven by these trends. As we need to focus on cutting-edge progressed ways for decarbonisation, we also need to properly advise on the transition at the same time.”

MANDATORY DISCLOSURES

The performance of public companies is always a key focus for the market in Japan. Japan’s Financial Services Agency (FSA) announced its sustainability and corporate governance disclosure requirements for listed companies earlier this year.

The changes apply to annual securities reports and securities registration statements for financial years after Mar. 31.

“The amended Ordinance and other relevant regulations will introduce mandatory disclosure by public companies of ESG-related information such as the

company’s attitude towards sustainability and related initiatives, including information about governance and risk management (and strategy, and index and target if the company considers these to be material),” said Sayako Shiraki and Eriko Kadota, managing associates at Linklaters, in a note.

Companies will also need to disclose information on human capital and diversity, including their policies on human resource training, improvement of the work environment, and the related index.

“If the company is required by relevant laws and regulations to publish information about the proportion of women in management, rate of male employees who took paternity leave, and pay gap between male and female employees are also to be disclosed in the annual securities report, etc.,” said Shiraki and Kadota.

“In Japan, the ‘E’ pillar has been strongly accelerated by the commitments from the governmental and private sectors, and the other two ‘S’ and

‘G’ pillars look less accelerated comparatively,” says Takamatsu.

The amendments also offer clarification on forward-looking statements and liability for misstatements, while bringing some much-needed focus to the ‘S’ and ‘G’ pillars that have lagged somewhat.

IMPACT INVESTING

The issuance of the first guidelines on impact investing in Japan signals a growing interest in this area.

And it is not just in Japan. Impact investing is a growing market globally, especially in Europe and the U.S.

Takamatsu of Norton Rose Fulbright says that though Japan is a bit behind in the development of impact investment, companies are now more focused on it. The key to success in this area is “disclosure.”

“Once the disclosure is sufficient and consistent so that investors can evaluate, this area will progress,” Takamatsu says.

The upshot is that Japan is taking steps to catch up with other developed



economies regarding impact investing, along with many others putting a stronger ESG-regulatory environment in place.

Takamatsu says that on Jun. 30, 2023, the FSA published a report from ongoing working group discussions relating to impact investing and laying out eligibility requirements. The report is open to public comments until Oct. 10, 2023.

The upcoming guidelines for impact investing will establish four requirements: novelty, effect, profitability, and disclosures.

The FSA aims to encourage impact investors to disclose the impact and profitability of their investments using

According to an FTSE Russell report, ESG investment in Japan is expected to further increase the need and demand for passive investment using quantitative ESG scores that are based on transparent methodologies.

DATA, EVALUATION IN FOCUS

Given this need for more comprehensive ESG ratings and scores, Japan has also stepped up efforts to improve the transparency of ratings and the methodologies that data providers use.

The value of ESG assets are set to reach \$53 trillion by 2025, and concerns are growing over the substantial influence that unregulated ESG data providers could have over the industry.

tion and data provision services based on their initiatives and ensuring flexibility in response to future business model changes.”

Satoshi Ikeda, Chief Sustainable Officer at the FSA, said the code opened a dialogue between data providers and regulators, even if it is just in its initial implementation stages.

Hideki Takada, Director for Strategy Development at the FSA, said in an interview that the FSA hopes the code of conduct will improve the transparency and fairness of ESG data and assessment services, as well as the development of the ESG market.

Japan’s approach “emphasises flexibility rather than obligation,” Takada said.

Therefore, the code of conduct is designed to be voluntary on a “comply or explain” basis.

With the recent finalisation of the code, ESG data providers operating in Japan will be requested to adhere to the six principles that the code outlines.

These six principles relate to the quality of ESG ratings and data, the establishment of basic procedures, the availability of professional human resources to ensure the quality of ratings and data provision services, the development of professional skills, policies to ensure independent decision-making, and how to handle conflicts of interest appropriately.

“While not perfect, the FSA’s approach takes Japan one step closer to improving the transparency and function of ESG ratings. However, the effectiveness of a voluntary code has yet to be tested in this nascent sector. The regulator’s permissive stance over the possibility of diverse rating results is also questionable,” Hazel Ilango, an energy finance analyst with the Institute for Energy Economics and Financial Analysis, said in a February commentary.

FTSE Russell, MSCI, Sustainalytics, Refinitiv, Moody’s ESG, and ISS ESG have all made public statements in support of the code of conduct.

Japan is not alone in stepping efforts to develop standards for ESG

“Like other countries, ESG is essential to all sorts of businesses, both positively and negatively in Japan. On the positive side, they will bring new opportunities, but on the flip side, they may potentially cause reputational, economic and even regulatory risks when each company treats them erroneously. Various stakeholders would have been escalating demands for environmentally sustainable businesses to be conducted by the company with which they have a relationship.”

— Akihiko Takamatsu, Norton Rose Fulbright

objective indicators such as the number of people who benefited from their investments or the amount of greenhouse gas emissions reduced, aiming to prevent misleading fundraising and help investors make informed decisions.

In October 2022, the FSA established the “Working Group on Impact Investment” under the Expert Panel on Sustainable Finance. The group is expected to explore ways to expand impact investment that contributes to solving social and environmental issues and creating new businesses, including startups, while referring to trends and examples of impact investment in Japan and overseas.

The International Organisation of Securities Commissions (IOSCO) said in a 2021 report that a lack of standards could lead to a series of risks, including greenwashing and the misallocation of assets.

Following the calls included in the report for tighter oversight of ESG ratings and data providers, Japan’s FSA finalised a new code of conduct for ESG ratings and data providers in December 2022 and opened it up for endorsement for six months.

The draft code aims to ensure that ESG evaluations and data are used reliably throughout the investment chain. It is intended to encourage “... further improvements in ESG evalua-

ratings and data providers. Both the UK and Singapore are also in the process of developing their respective codes of conduct.

COMBATING GREENWASHING

Japan's FSA has also put forward a series of guidelines to promote ESG investments while combating greenwashing by investment trust managers (ITMs).


The proposed guidelines define the scope of ESG Public Funds and include checkpoints for disclosures and management of ESG Public Funds, noted Tomoko Fuminaga, a partner at Morgan, Lewis & Bockius, and Kyoko Nagano, of counsel of the firm in a note.

ESG Public Funds are defined as public investment trust funds that use ESG factors as primary factors to make investment selections and which hold themselves out as such in their summary prospectus. The guidelines require ITMs to disclose specific ESG factors used in investment selection, how such factors are considered, limitations and risks in the investment process, and any ESG-related stewardship code policies.

They also require ongoing disclosures about the actual proportion of investments, performance results, and actions taken under ESG-related stewardship code policies. If an ITM delegates its investment authority, it must conduct due diligence on the delegated manager and disclose any relevant matters.

In terms of management, the guidelines require ITMs to ensure it has appropriate resources, such as data and information technology infrastructure and human resources, to monitor investment management following the investment strategies of ESG public funds.

If investment management activities are delegated, the ITM should have an appropriate system for due diligence on matters related to strategies, portfolios, reference benchmarks, and ongoing disclosures.

The guidelines also require ITMs to conduct due diligence on the internal controls of ESG evaluations and data providers, including their objects, methodology, limitations, and purpose. 

China: ESG driving increasing legal work

By Hu Yangxiaoxiao

Governments, regulators, and investors in an increasing number of countries have started to recognise the significance of environmental, social, and governance (ESG) factors. As a result, many businesses have integrated ESG standards into their operations and development strategies, and Chinese companies are no exception.

ESG factors are increasingly considered in domestic investments due to the ESG wave and China's carbon peaking and carbon neutrality goals. Zhang Nei, senior partner at Co-effort Law Firm, states that private equity (PE) and venture capital (VC) firms in China are incorporating ESG considerations into their investments. ESG investment aligns with China's green development philosophy, which aims to achieve carbon peaking by 2030 and carbon neutrality by 2060.


Comprehensive ESG assessments are gaining greater attention from investors.

ESG investments in China are booming in key areas such as new energy (renewable energy, smart grids, wind power), green transportation (electric vehicles, charging infrastructure), agricultural improvement (innovation and capacity increase), and new infrastructure (green construction). PE/VC firms conducting ESG assessments in domestic investments need to refer to both Chinese and foreign laws, regulations, and guidelines. These include the United Nations Sustainable Development Goals, the Global Reporting Initiative's Sustainability Reporting Standards, the International Organisation for Standardisation's Guidance on Social Responsibility, and the Chinese Corporate Social Responsibility Reporting Guidelines.

Zhang emphasises the pivotal role of lawyers in ESG assessments conducted by PE/VC firms. Lawyers provide legal advice based on domestic and foreign laws and regulations related to ESG investment, offer optimal solutions according to regulations and standards promulgated by foreign institutions and organisations, assist with documentation management and review, and more.

Furthermore, green bonds and other green financial products have seen increased adoption in China in recent years as clients leverage these products to accelerate their transformation. This has become another important service area for ESG lawyers. For example, energy industry clients use green bonds to promote investment in renewable energy projects, while power industry clients utilise such bonds to upgrade facilities or establish green power generation projects. Manufacturers tap into green financial products to advance environmentally friendly transformations in their production processes. Financial institutions actively issue green products to drive green finance development.

Advising on such projects requires lawyers to possess knowledge not only of margin trading and securities lending laws and regulations but also of the characteristics of green finance. They must implement effective compliance measures based on each client's circumstances and design optimal deal structures.

The increasing emphasis on ESG factors, both domestically and internationally, has fueled the rapid growth of the first generation of Chinese ESG lawyers. During this process, lawyers have realised the unique requirements they must meet when advising on ESG matters. 

AI & LAWYER TRAINING: THE NEW DRIVERS OF PROFESSIONAL DEVELOPMENT

BY DAVID CURLE

Law firms' successful adaptation to the increased use of advanced artificial intelligence (AI), such as ChatGPT and other forms of generative AI, may hinge upon how firms change their approach to lawyer training and development.

The legal profession finds itself in a new wave of hype about artificial intelligence (AI) due to the popularity of ChatGPT and other forms of generative AI. There's no question that AI has now made significant inroads in legal practice, with machine learning methods currently at work in eDiscovery, contract review and analysis, document generation, and legal research.

The amazing interest in the public-facing ChatGPT, and ongoing discussions about how it might be leveraged in legal work, is largely driven by the fact that anyone can test it out and use it today. Even in its current, fairly primitive form and with all its limitations, it's easy for lawyers to see how generative AI could take on some of the tasks that human lawyers now handle.

Training and development

Traditional training of new lawyers in law firms can be described as informal mentoring combined with throwing young associates into routine tasks such as document reviews. However, what happens when technology automates many of those routine tasks?

A 2022 study, the Litera Technology in M&A Report, looked at some of the impacts of AI-based tools on firms' M&A practice. On the one hand, most agreed that using AI in M&A deals creates new career paths, and freeing young associates from menial tasks gives them time to focus on their analytical and advisory

skills. Almost as many respondents, however, thought that using AI-based tools in document review makes it harder for young lawyers to learn the craft because they don't get the experience of identifying and extracting contract terms.

It's an odd paradox that AI tools make legal work more efficient and accurate but might also make it harder for young lawyers to learn their craft. The struggles that young lawyers have when tossed into a sea of documents that need review, and the realisation that they are in over their heads, is a source of that cognitive friction. Dealing with cognitive friction in legal work provides pathways to learning. It's a "valuable catalyst for growth, as it encourages critical thinking, creativity, and problem-solving skills by pushing individuals to engage more deeply with the task at hand," says Josh Kubicki, Director of Legal Innovation & Entrepreneurship and Assistant Professor of Legal Practice at the University of Richmond.

The answer, says Kubicki, is a more intentional approach to learning and development. "How can we manufacture cognitive friction in a controlled environment? Well, then you start looking at structured learning programs." Such programs are more interactive, planned, and just-in-time. They move beyond the legal profession's preferred model of sitting in a room watching someone narrate a PowerPoint deck, and instead they tie training to the work at hand and vary the pace, medium, and format.


And some firms are already putting that kind of intentionality into practice. However, it's not just the training challenges presented by AI that are driving them there.

Other drivers of change

Interestingly, the growth of AI is not the only factor pushing law firms to take a closer look at how they train associates. The pandemic, and the technological accommodations that many law firms had to make to enable remote work, have also had a big impact. In addition, law firms are increasingly influenced by trends and research in learning and development outside the legal industry.

Even before the pandemic forced the issue, many organisations outside the legal profession were already re-examining their learning and development efforts. Recognising the importance of training in employee satisfaction and retention, a number of new techniques had become commonplace, including:

- Continuous learning, a focus on embedding learning throughout an employee's experience.
- Blended learning, where classroom-style learning gives way to training that combines some online portions, which users can access at their convenience, as well as in-person experiences.
- Increased use of technology to create more engaging and interactive online learning tools that go beyond simply transmitting a canned curriculum of information.
- Emphasis on soft skills training, including critical thinking, problem-solving, and creativity.

Law firms are starting to professionalise the management of their learning activities. Firms are taking a more strategic view of lawyer training that recognises its role in building value. 

David Curle is an independent journalist and analyst, focused on the legal services industry and on the role of technology in modern legal practice and systems. A version of this piece was originally published by the Thomson Reuters Institute. Reprinted with permission.



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