

# ASIAN LEGAL BUSINESS



**FEBRUARY 2012**  
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Spotlighting some of Asia's up-and-coming law firms

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# JAPAN

# LAW AWARDS 2012

THE RITZ-CARLTON, TOKYO - 7 JUNE



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Spotlighting some of Asia's up-and-coming law firms

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"WE'RE A VERY DEMOCRATIC FIRM THAT ALLOWS EACH PARTNER, WHETHER IT IS A PARTNER IN SHANGHAI, OR A PARTNER IN KL, TO FEEL THAT THEY ARE A PART OF THE PROCESS, AND THAT THEY ARE A *TRUE* PARTNER, NOT A SECOND CLASS PARTNER AS IN MANY LONDON-CENTRIC OR NEW YORK-CENTRIC FIRMS."

Eduardo Leite, Baker & McKenzie



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REUTERS/Erik de Castro

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THOMSON REUTERS™

# THE NEW ALB

This issue inaugurates our new product. In it, you will find:

- An all-new **Law Firm League Table** based on Thomson Reuters data;
- An improved **Deals** page and **Appointments** section focused on only the most relevant information;
- **The Big Story** highlighting an important piece of recent news accompanied by a **Forum** of insights from industry leaders;
- **Sundries**, which offers an informative view of the lighter side of the legal industry;
- **Letters to the Editor**, and much more.

Most importantly, you will discover reliable insights to help you accomplish your professional objectives. This month, we offer an analysis on why Hong Kong is increasingly becoming important as a trusts centre, an

analysis of the trends that are shaping the future of the Singapore market, an in-depth look into the potential impact of India's new Companies Bill, and a candid Q&A with Baker & McKenzie's global chair, Eduardo Leite.

Welcome to the new *ALB*; a trustworthy and reliable source for your decision-making.



**ANDREW GOLDNER**  
Managing Director,  
*Asian Legal Business*  
Thomson Reuters

## LETTERS

IF YOU WOULD LIKE TO SUBMIT A LETTER TO THE EDITOR, EMAIL: [albeditor@thomsonreuters.com](mailto:albeditor@thomsonreuters.com)



IN RESPONSE TO ISSUE 11.12

### Competition overblown

I read the article titled "Singapore v Hong Kong" [*ALB*, December 2011] with great interest. I agree with the view expressed in the article that the rivalry between these two Asian arbitration centres is overstated. My experience in conducting arbitrations has taught me that arbitration centres are ordinarily chosen because of their own peculiarities.

Accordingly, Hong Kong is likely to continue to attract more China-related work, whereas Singapore is likely to remain the preferred destination amongst Southeast Asian and Indian parties. I, therefore, do not think that they are really competing against one

another, although there may be a degree of overlap.

**ASHISH CHUGH, K&L Gates, Singapore**

### India in 2012

Thank you for your general coverage of the Indian legal market, and the law firms active in India. If the fortunes of commercial law firms are tied to the general health of the economy, one wonders what the crystal ball holds for the Indian legal market in 2012.

Recently, Morgan Stanley revised its forecast for India's economic growth in 2012 downwards to 7.4 percent. Last year, the Bombay Stock Exchange was the worst performing stock market in the world, with the Sensex sinking by 31 percent from its November 2010 high of 21,108.64 points. Contributing factors for this included oil prices, inflation, high interest rates, slowing growth, and alleged corruption scandals.

Two recent policy changes – allowing foreigners to directly invest in the Indian equities, and 100 percent investment in single-brand retail – may spur growth somewhat. The key for India is to open up its economy more broadly to long-term inward investment in all sectors.

**AZMUL HAQUE, Berwin Leighton Paisner, Singapore**



## LETTER OF THE MONTH

### DIFC: Tread carefully

The change in the Dubai court law towards the end of 2011 has extended the DIFC Courts' jurisdiction notably. This development means that the court may hear cases where two parties consent.

In theory, this has made the DIFC Courts significantly more accessible to parties. However, in practice, a party must give careful consideration to the pros and cons of each available jurisdiction – whether it is arbitration, local courts, or DIFC Courts.

In this regard, numerous considerations must be borne in mind including: the applicable law; the nature of the parties; the likely value of the claim; the location of the assets of the party most likely to be in default; any confidentiality considerations and whether the fact of a public hearing will have a bearing; the preferred language of the dispute; the complexity and nature of the likely dispute; the importance of having a right of appeal and how quickly the parties want the case dispensed with; the legal costs involved in bringing or defending a case and the filing and other fees and expenses a party is willing to pay for bringing a claim; document disclosure; use of interim remedies; use of experts; and whether the dispute is heavily concerned with local customs and culture.

Choosing one court over the other could save or cost a party millions of dirhams if the considerations listed above are not fully considered prior to the drafting of the contract.

**CLARE RAVEN, Hadeef & Partners, Dubai**



## LATERAL HIRES

NAME

LEAVING

GOING TO

PRACTICE

LOCATION

**Harpreet  
Singh Nehal**

Drew &amp; Napier

WongPartnership

Arbitration, litigation

Singapore

**Carolyn Sng**

Herbert Smith

Fried, Frank, Harris,  
Shriver & Jacobson

Corporate

Hong Kong

**Jérôme Buzenet**

Freshfields

DFDL Mekong

Corporate

Ho Chi Minh City

**Hideo Norikoshi**

Linklaters

Baker &  
McKenzie

Corporate

Tokyo

## PROMOTIONS

NAME

FIRM

PROMOTION

PRACTICE

LOCATION

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Hadley & McCloy

Partner

Corporate/M&amp;A

Singapore

**David Lang**

Vinson &amp; Elkins



Partner

Energy and projects

Hong Kong



REUTERS/Issei Kato - Former Olympus CEO Michael Woodford arrives at a news conference at the Japan National Press Club in Tokyo. Jan. 6, 2012

THE BIG STORY

## Olympus scandal puts the role of Japan GCs in the spotlight

By **RANAJIT DAM**

**T**o many industry watchers, it was a ticking time bomb that had been due an explosion for some time. But when the Olympus scandal broke out in October 2011, it happened through two unlikely agents: one, an investigative magazine that operates well outside the mainstream Japanese press and the other, an allegedly puppet CEO who, according to Reuters, was supposed to have been "easy to control." But thanks to the *FACTA* magazine and Briton Michael Woodford, the world found out about the Olympus scandal - a sordid saga of loss concealment, financial impropriety and questionable payments that shone a particularly dim light on the state of corporate governance in Japan.

Four months after the first allegations, the dust is yet to settle. Investigations are underway by bodies like the Japanese Securities and Exchange Surveillance Commission (SESC), the FBI, and the British Serious Fraud Office. The Olympus board continues to be under severe pressure, and no little criticism. But it has also given rise to an unprecedented level of soul-searching within corporate Japan, especially with regard to corporate governance (or the lack of), amongst a number of large Japanese corporations. One of the issues is the relatively limited role that in-house

counsel, usually important members of Western businesses, play in Japanese companies. While a company lacking an in-house counsel may be unusual (as compared to, say, 10 years ago), "you will still find many Japanese companies that still lack a legal department, or have one that is low-profile and staffed with non-lawyers lacking sufficient legal training and experience," says David Monroe, General Counsel and Executive Committee Member at Nikko Asset Management.

In-house lawyers working at Japanese companies interviewed by *ALB* say they are generally unconvinced that the Olympus scandal will do much to increase the amount of powers general counsels (GCs) have in Japan. But they do agree that it can only benefit the corporation if that happens. "With their legal knowledge and professional ethics, in-house counsel should be able to make a difference in the area of corporate governance as well as in technical legal issues," says a GC who asked to remain anonymous. "I think Japanese companies should realise that they need to get good lawyers in, and give them some authority," says Jonathan Malamud, VP and International Counsel at Prudential Financial, Japan. Only time will tell whether that will happen. **ALB**

### FORUM

HOW WILL THE OLYMPUS SCANDAL IMPACT THE ROLE OF IN-HOUSE COUNSEL IN JAPAN?

"I would not be surprised for board members at Japanese companies without top legal functions led by highly qualified in-house counsel to insist on upgrading the function for the protection of the company and themselves... Lots of people will buckle up after driving by an accident, and likewise the Olympus scandal could provide the impetus for boards and executives review whether they have sufficient in-house legal firepower."

**DAVID MONROE**  
Nikko Asset  
Management



"In Japanese companies, it seems that there is still a way before in-house counsel are seen as an integral part of corporate governance, or seen as advisors to company boards on governance questions beyond technical legal questions."

**ANONYMOUS GC**  
Multinational bank  
in Japan

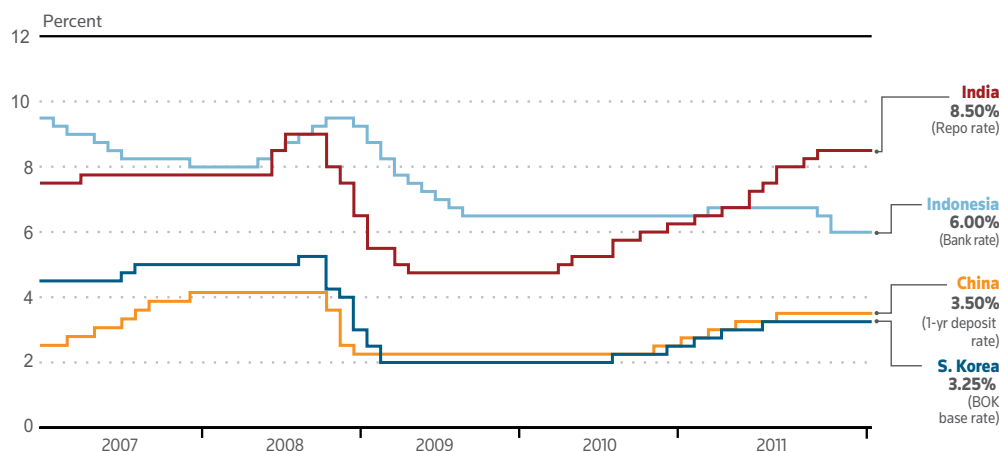


"Questions will be asked: How much voice did the GC have in Olympus? How much management buy-in was there for the in-house legal team? What checks and balances were in place? To avoid the occurrence of another Olympus, companies will have to answer these questions."

**JONATHAN MALAMUD**  
Prudential Financial



## GRAPHIC: ASIA INTEREST RATES



Source: Thomson Reuters Datastream

Reuters graphic/Catherine Trevethan

REUTERS

30/01/12

## Asian interest rates holding steady into the New Year

Bank rates in Asia remain solid entering the New Year despite sluggish growth in the US and uncertainty in Europe. Regarding these key markets, highlights include: India, which remains a foreign investment hotspot given its cheap labor force and cost competitiveness; China, which pledges to further liberalize its interest rate market; Moody's upgrade of Indonesia's credit status to investment grade will prompt capital inflows; and South Korea's central bank continues to hold its key policy interest rate steady for a seventh consecutive month. **ALB**

## GC INTERVIEW



**YOLANDE GOH**  
Vice President Legal  
Equinix Asia Pacific

**ALB: How is the role of an in-house lawyer in a technology company different from that in other companies?**

**GOH:** One needs to have a keener understanding of the product offering by the company and the technical jargon spoken. The learning curve could be steeper for someone without any technology background or experience.

**ALB: What are the most important qualities someone in your role should possess?**

**GOH:** It helps to be patient, quick-thinking, commercially savvy and inventive, and have an open mind to newer approaches to old problems. Technology by nature is constantly evolving, and there is a need to have the energy and interest to keep up with the constant change in the industry.

**ALB: How would you describe your strategy for the legal team?**

**GOH:** Among the team members, it is through open communication. By constantly communicating and sharing ideas and concerns, one encourages a collaborative approach to problem-solving and ensures buy-in from team members before any action plan is executed. Vis-à-vis the business, the strategy, for the legal department, is to be more approachable so that it is able to address potential issues early on, and be engaged in the process as opposed to fighting fires after the deed is done.

**ALB: Technology demand is currently surging in Asia. In what ways have you seen this affect the role you are performing?**

**GOH:** With the West losing ground as the workshop of the world, there is a need to balance the expertise and knowledge that flow from the west with the cultural nuances and sensitivities of the east. With Asia being the sector likely to experience

the highest growth, there is occasionally a need to inform colleagues on the methods to manage Asia in the business practices and structures.

**ALB: What main trends do you expect to see in the technology industry in the next 12 months?**

**GOH:** There is a need to develop a sustainable technology business with clear differentiating factors. Companies need to learn to be their own worst enemy and strive to constantly innovate and improve on their product offering. If they don't improve their market offering, the next better player will offer an improved or cheaper product. Losing competitive edge often translates to lost customer loyalty. The rise of cloud computing will spawn ancillary issues, particularly security related concerns for cloud applications and mobile technology. Enterprises such as Equinix will be at the forefront to deal with the increase in such demand.





# DEFAULT RISKS COULD SOUR DEMAND FOR CORPORATE DEBT IN EMERGING MARKETS

By CAROLYN COHN

**(REUTERS)** - More emerging market companies are likely to default as the world economy slows and Western banks rein in lending, a risk that is unnerving investors who were snapping up their debt just a year ago.

Emerging market corporate bonds were the top pick for yield-hungry funds in early 2011, encouraged by firms' strong balance sheets and relatively buoyant growth in domestic demand for consumer goods and financial services within emerging economies.

As a result, emerging corporate bond issuance reached more than \$180 billion (114 billion pounds) last year, just shy of 2010's record levels, according to data compiled by ING.

But appetite for the sector faded in the closing months of the year as the euro zone sovereign debt crisis squeezed confidence from global capital markets and fears mounted about the impact of deleveraging by euro zone banks.

This year also started off on a sour note, with the default last week of Kazakh sovereign wealth fund-run BTA bank, which could trigger demands for early repayment of up to \$8 billion in debt - a huge sum in the emerging corporate debt sphere.

Other flashpoints for investors include China-focused company Sino-Forest, which missed a coupon payment on its debt late last year, while Fitch last week placed Turkey's Calik Holdings on watch due to refinancing concerns.

Following state-owned Dubai World's debt standstill in November 2009, Dubai faces \$15 billion in maturing bonds and loans this year, according to the IMF. It may be difficult for government entities to find the cash without recourse to the emirate or neighbouring Abu Dhabi, analysts say.

With the euro zone crisis still unresolved, investors are also fretting about politics, with elections in a number of key countries, and the possibility of a hard landing in China.

"The year ahead appears to be laden with a number of risks," David Spegel, global head of emerging markets strategy at ING told investors this week.

"If borrowing costs remain ... higher, we might have to expect long-term default rates for corporates to be adjusted slightly higher and perhaps for us to see more frequent defaults."

ING reckons default rates for emerging markets companies will peak at just over 2 percent in August before easing, compared with less than 1 percent at the end of last year.

But in the bank's worst case scenario, in which all emerging corporate bonds which have traded at 65 cents on the dollar or below in the last three months default, the rate would jump above 8 percent by the end of the year.

Polina Kurdyavko, corporate fund manager at Blue-Bay Asset Management, expects seven defaults this year among 450 companies she looks at, including three in Indonesia, three in China and one in the Middle East.



REUTERS/Toru Hanai

With returns last year having disappointed many investors' expectations that they would outperform emerging sovereign and U.S. high-yield markets, emerging corporates may also have to pay more for their money. The benchmark emerging markets corporate bond index returned just 3 percent in 2011, compared to 7 percent for U.S. corporate bonds, according to JPMorgan.

"The market is not going to be closed but it will be more expensive for borrowers," said Kathleen Middlemiss, emerging corporate debt analyst at UBS. "Returns will not be stellar this year."

## GLIMMERS ON HORIZON

The market for corporate borrowers remains open, however, with Russian bank Sberbank holding roadshows this week for a Eurobond, and Latin American borrowers Pemex and Petrobras issuing well-received bonds this month.

If emerging market companies, particularly in Europe, cannot get loans from western banks, more of them may seek to raise funds by selling bonds. Banks are still estimating emerging corporate issuance this year of close to \$200 billion.

"As developed markets are contracting, how many loans are going to be rolled over?" said Spegel, noting that lending constraints during the sub-prime crisis had encouraged U.S. corporates to issue bonds instead.

"We might see the same occur in the CIS, eastern Europe and possibly the Middle East."



REUTERS/Supri Supri



## FUNDS SEE MOODY'S UPGRADE SPURRING FLOWS INTO INDONESIA

By **CHARMIAN KOK**

**SINGAPORE, January (Reuters)** - Moody's upgrade of Indonesia's credit status to investment grade is set to spur capital inflows into the country, with fund managers tipping that to mainly benefit government bonds and stocks with exposure to domestic consumption, such as Unilever Indonesia.

Moody's Investors Service in January became the second credit-ratings agency in just over a month to give Southeast Asia's biggest economy an investment-grade rating, paving the way for more fund managers to allocate money to Indonesia.

Most bond funds can only invest in a country if it has investment-grade ratings from at least two of the three major agencies - Moody's, Standard & Poor's and Fitch Ratings. Moody's now rates Indonesia Baa3 with a stable outlook.

Flows into the country have steadily picked up since the Fitch upgrade in December. According to fund flows tracker EPFR Global, inflows into Indonesia-focused equity funds were at their highest in the week ended January 11 since the third quarter of 2010.

That is seen accelerating now.

"While many other countries are going in the opposite direction, Indonesia's upgrade should result in further fund inflows," said Peter Elston, head of Asia Pacific strategy and asset allocation at Aberdeen Asset Management.

Aberdeen, which has invested \$2.6 billion in Indonesian equities, is overweight on the country's retail firms. Elston expects the sector to benefit from its booming middle class, which Nomura Research projects could expand to more than 150 million people in the next four years.

"The middle class is where you get the real driving force for con-

sumption and the industry is at the point where the middle class is starting to grow very rapidly, making the retailing sector interesting from an investment perspective," Elston said.

His top picks include Unilever Indonesia, Permata Bank, Ace Hardware and Ramayana Lestari Sentosa.

Reaction to Moody's upgrade was swift. Indonesian stocks rose, with the benchmark Jakarta's Composite Index gaining 1.1 percent.

With a population of 238 million and swelling investment, Indonesia is set to become one of the world's biggest economies, rebounding from credit-rating downgrades to junk status during the Asian financial crisis of 1997/98, when the 32-year rule of strongman Suharto ended.

Endre Pedersen, executive director of fixed income at Manulife Asset Management, said investors are focused on Indonesia's improving fundamentals, such as inflation which slowed in December for a fourth straight month to the lowest level since March 2010.

"We should see more investors moving to the long end," he said. "The rupiah bond trade may be crowded but BI (Bank Indonesia) has provided relief by stepping in to inject liquidity. That is a positive."

Manulife Asset Management had \$3.4 billion invested in Indonesia as of the end of September.

Although the Moody's move will boost interest across Indonesian assets, it is likely to have the most immediate impact on sovereign bonds.

"The upgrades are related to sovereign ratings, so one would expect government bonds to see the most inflows," said Elston at Aberdeen.

### MIDDLE EAST INTEREST

S&P is the only other major agency that has not returned the country to investment level. The agency rates the country at the highest non-investment level.

"The interesting area for Indonesia here is the sukuk bonds. For some Middle East buyers who could not invest earlier because it was not investment grade, this is a new thing for them, which is good," said Guan Ong, Principal at Blue Rice Investment Management, a hedge fund that specialises in fixed income.

Ong, previously Chief Investment Officer at Korea Investment Corp, also said he expects a greater amount of funds to flow into Indonesia once S&P lifts its rating on the country.

"That would lift the final barrier (on fund flows and allocation) for those investors who have mandates but are prevented from investing because of the restrictions," he said.

Indonesia stocks gained 3.2 percent last year, outperforming the MSCI Asia Ex-Japan index's 18 percent plunge and after a 46 percent surge in 2010.

According to JPMorgan, bonds returned 7.7 percent last year, following 15.4 percent the year before.

Indonesia is also likely to see further credit ratings upgrades in the next few years, Aberdeen's Elston said, adding the economy's exposure to commodities makes it less susceptible to the slowdown seen in Europe and the United States.

"The economy is less manufacturing-oriented but more focused on primary industries like commodities, which makes it more linked to what's going on in the region than in the Western world. That places Indonesia in a much stronger position," he said.



### CHINA ANNOUNCED M&A LEGAL RANKINGS

**NO. 1** VINSON & ELKINS LLP  
**2,500.0** VALUE (\$mln)  
DEALS: 1 MARKET SHARE: 23.8

RANK	LEGAL ADVISOR	VALUE (\$MLN)	DEALS	MARKET SHARE
2	King and Wood	95.3	1	0.9
3	Rajah & Tann LLP	84.9	2	0.8
4	Skadden	63.4	1	0.6
5*	Lee & Ko	34.2	1	0.3
5*	Grandall Law Firm	34.2	1	0.3
7	Shearman & Sterling LLP	31.0	3	0.3
8	Shandong De Yi Jun Da Law Firm	19.8	1	0.2
9	Fangda Partners	15.8	1	0.2
10	Jingshi Law Firm	8.3	1	0.1

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

### HONG KONG ANNOUNCED M&A LEGAL RANKINGS

**NO. 1** UNIVERSAL LEGAL FIRM and DESAI & DIWANJI  
**99.4** VALUE (\$mln)  
DEALS: 1 MARKET SHARE: 2.2

RANK	LEGAL ADVISOR	VALUE (\$MLN)	DEALS	MARKET SHARE
3	Baker & McKenzie	96.6	1	2.1
4*	Shearman & Sterling LLP		1	
4*	Clyde & Co.		1	
-	Subtotal with Legal Advisor	196.0	4	4.2
-	Subtotal without Legal Advisor	4,423.9	74	95.8
-	Industry Total	4,619.9	78	100.0

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

### JAPAN ANNOUNCED M&A LEGAL RANKINGS

**NO. 1** NISHIMURA & ASAHI  
**3,936.3** VALUE (\$mln)  
DEALS: 1 MARKET SHARE: 35.3

RANK	LEGAL ADVISOR	VALUE (\$MLN)	DEALS	MARKET SHARE
2*	Nagashima Ohno & Tsunematsu	1,633.0	1	14.7
2*	Morrison & Foerster	1,633.0	2	14.7
4*	Milbank Tweed Hadley & McCloy	1,301.7	1	11.7
4*	Clifford Chance	1,301.7	1	11.7
6	Reebaman	254.6	1	2.3
7	Kim & Chang	117.6	1	1.1
8	TMI Associates	117.3	2	1.1
9	Mori Hamada & Matsumoto	90.4	1	0.8
10*	Habataki	75.2	1	0.7

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

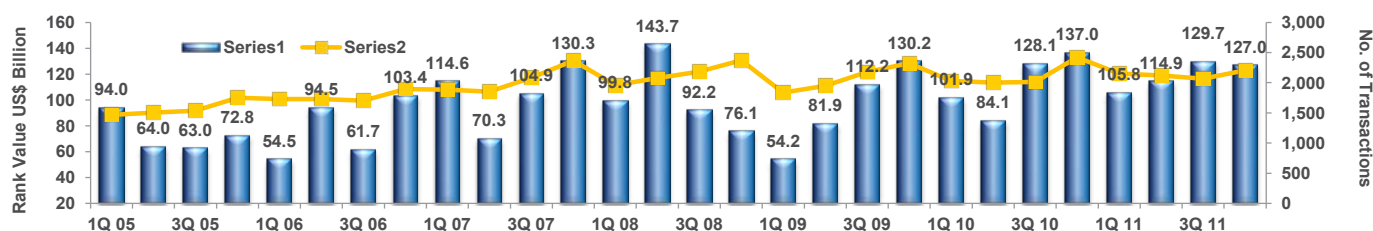
### SOUTH KOREA ANNOUNCED M&A LEGAL RANKINGS

**NO. 1** KIM & CHANG  
**117.6** VALUE (\$mln)  
DEALS: 54 MARKET SHARE: 38.7

RANK	LEGAL ADVISOR	VALUE (\$MLN)	DEALS	MARKET SHARE
2*	Lee & Ko	34.2	1	1.2
2*	Grandall Law Firm	34.2	1	1.2
-	Subtotal with Legal Advisor	151.7	2	5.1
-	Subtotal without Legal Advisor	2,824.0	58	94.9
-	Industry Total	2,975.7	60	100.0

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

### ANY NORTH ASIA INVOLVEMENT ANNOUNCED M&A ACTIVITY - QUARTERLY TREND



NOTES: League tables, quarterly trend, and deal list are based on the nation of either the target, acquirer, target ultimate parent, or acquirer ultimate parent at the time of the transaction. Announced M&A transactions excludes withdrawn deals. Deals with undisclosed dollar values are rank eligible but with no corresponding Rank Value. Non-US dollar denominated transactions are converted to the US dollar equivalent at the time of announcement of terms. North Asia includes China, Hong Kong, Taiwan, South Korea, Japan. Data accurate as of 01-February-2012



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## \$ 7.3 billion

### M&A

#### SUMITOMO MITSUI-LED CONSORTIUM PURCHASE OF RBS AIRCRAFT LEASING UNIT

- Sumitomo to pay \$7.3 billion in cash for the Dublin-based unit, which owns 206 aircraft.
- The deal is by far the largest-ever sale of aircraft-leasing assets, attracting interest from 30 financial and trade buyers, media sources say.

## \$ 10 billion

### JV

#### SINOPEC-SAUDI ARAMCO JV

- Joint venture to build, and operate a 400,000-barrel-a-day oil refinery in Yanbu port.
- Saudi Aramco to hold 62.5 percent stake; Sinopec to own the rest.
- Saudi Arabia is the top oil supplier to China, accounting for roughly a fifth of its total crude imports.

#### ■ YOUR MONTH AT A GLANCE

Firm	Jurisdiction	Deal name	Value (\$ mln)	Deal type
Allen & Gledhill	Singapore	WIL guaranteed medium-term note programme	5000	Debt
Allen & Overy	India/ Singapore/ Hong Kong/ UAE/UK/U.S.	Axis Bank euro-denominated notes programme in Singapore	2600	Debt
AZB & Partners	India/ Singapore/ Hong Kong/ UAE/UK/U.S.	Axis Bank euro-denominated notes programme in Singapore	2600	Debt
Clifford Chance	Japan/UK	Sumitomo Mitsui-led consortium purchase of RBS aircraft leasing unit	7300	M&A
	India/ Singapore/ Hong Kong/ UAE/UK/U.S.	Axis Bank euro-denominated notes programme in Singapore	2600	Debt
Commerce & Finance Law Offices	China	Shuanghui restructuring	4800	M&A
Hogan Lovells Lee & Lee	India/ Singapore/ Hong Kong/ UAE/UK/U.S.	Axis Bank euro-denominated notes programme in Singapore	2600	Debt
Jingtian & Gongcheng	China	Shuanghui restructuring	4800	M&A
Milbank, Tweed, Hadley & McCloy	Japan/UK	Sumitomo Mitsui-led consortium purchase of RBS aircraft leasing unit	7300	M&A
Paul Hastings	China	Shuanghui restructuring	4800	M&A
Trilegal	India/ Singapore/ Hong Kong/ UAE/UK/U.S.	Axis Bank euro-denominated notes programme in Singapore	2600	Debt
Vinson & Elkins	China/Saudi Arabia	Sinopec-Saudi Aramco JV	10000	JV
White & Case	China/Saudi Arabia	Sinopec-Saudi Aramco JV	10000	JV

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# ONES TO WATCH

**W**ith the balance of global economic power having shifted inexorably to Asia in the past decade or so, it is no surprise that the legal industry in the region is also starting to grow in prominence. While a number have shown global ambitions – Chinese firm King & Wood’s merger with Mallesons is among the first that comes to mind – many have already well established pan-Asian operations, particularly firms originating from Singapore and India. Look beyond the headline grabbers and you find a number of small, more recently founded firms that are also making waves. The *ALB* Ones To Watch section spotlights a few such firms across Asia: ambitious, up-and-coming firms that have appeared on our radar for showing that they have what it takes to make it to the big league.

To be considered as a “One to Watch”, firms needed to have been recently formed or be new to the region. By combining the industry knowledge of our team of legal journalists with our research sourced from publicly available information, we compiled a list of firms for further consideration. We then applied a combination of criteria – significant deals, office openings, other signs of rapid, sustainable expansion and potential for growth – to decide on the firms featured in this list. 





**MP BHARUCHA**  
Senior Partner  
Bharucha & Partners

#### **BHARUCHA & PARTNERS**

Founded in Mumbai, India in 2008 by the husband-and-wife duo of MP and Alka Bharucha, both former equity partners at Amarchand & Mangaldas, the firm also counts their son, Justin, among its partners. Banking and finance has been its busiest practice area, with major deals being netted in this field in 2011, including large borrowings by corporate houses. The most notable among these was the restructuring of Reliance Communications and its subsidiaries' extant ECBs aggregating to about \$2.95 billion, and advising them on their nearly \$2 billion facility from China Development Bank. In January 2011, Bharucha & Partners opened its New Delhi office, manned by partner Kumkum Sen and two associates, which offers both dispute resolution and transaction advisory services. The firm's current number of associates stands at 32, to go with five partners. Senior partner MP Bharucha leads the firm's dispute resolution practice, Alka Bharucha leads the firm's transactions practice, and Sen heads the firm's New Delhi practice. Justin Bharucha specialises in M&As and corporate restructurings, joint ventures, financial regulatory practice and structured finance, while Vivek Vashi specialises in litigation. Currently attempting to consolidate its position in practice areas like mining and energy, insurance and tax, Bharucha & Partners is also developing a practice in sunrise sectors like alternate energy (with the focus on nuclear, solar and wind) and water. Looking ahead, the firm is also keenly focused on the defence and retail sectors where it expects large volumes of investment, especially as the Indian government looks to implement its proposal to hike the FDI limits in these sectors.

**WHAT THE FIRM SAYS:** "BHARUCHA & PARTNERS WOULD WANT TO EXPAND ITS HORIZONS IN THE COMING YEARS; NOT JUST BY STRENGTHENING EXISTING PRACTICE AREAS, BUT ALSO BY ACTIVELY FOCUSING ON NEW PRACTICES. THIS WOULD INCLUDE EXPLORING NEW AREAS, WHICH ALTHOUGH SPARSELY EXPLORED TILL NOW, HOLD TREMENDOUS POTENTIAL IN THE COMING YEARS."



**BUN YOUDY**  
Managing Partner  
Bun & Associates

#### **BUN & ASSOCIATES**

The sole Cambodian firm on this list, Bun & Associates is led by Bun Youdy, who heads the firm's corporate, banking and finance, and commercial litigation practices. Its other partners are Antoine Fontaine, who co-founded Bun & Associates after working for the French Embassy in Cambodia and leading French law firm Gide Loyrette Nouel, and Sophealeak Ing, who heads the real estate, commercial contracts and intellectual property practices. Fontaine heads the labour, tax and regulatory reform practices. In the past year, the most significant drivers behind the firm's growth have been its banking, insurance, and tax departments, with Bun & Associates representing clients in significant, multimillion dollar deals, and also facilitating the entry of major life insurance companies into the country. Additionally, its recently bolstered tax department has significantly contributed to the firm's growth. Major work that the firm has done includes representing Manulife Financial Corp in its life insurance market entry, representing Groupe Prévoir in obtaining Cambodia's first microinsurance license, representing Minebea in its \$65 million investment project to establish Cambodia's first electronic large-scale mass production facility, representing Khmer Brewery in its acquisition of a \$60 million turnkey brewery plant and ensuing operating agreements, acting as counsel to CIMB Bank on its Cambodian market entry, representing SBI Holdings in Cambodia's first securities sector merger with a leading Cambodian conglomerate, acting as counsel to Seng Enterprise on economic land concessions in the areas of palm oil and rubber plantations, and acting as counsel to garment factory investors on their multimillion dollar property and assets acquisitions.

**WHAT THE FIRM SAYS:** "BUN & ASSOCIATES INTENDS TO CONTINUE FOCUSING ON THE FINANCIAL, INSURANCE AND TAX SECTORS. MAJOR DEALS WILL BE CONCLUDED IN THE NEXT FEW MONTHS. THE FIRM WILL CONTINUE TO GROW IN SIZE AND IN NUMBER AND IMPORTANCE OF ASSIGNMENTS."



**KRISHNA  
RAMACHANDRA**  
Managing Director  
Duane Morris & Selvam

#### **DUANE MORRIS & SELVAM**

At the end of 2010, international law firm Duane Morris and Singapore-based Selvam came together to form Duane Morris & Selvam, a joint law venture, to create a new player in Singapore. Since then, its practice has grown from strength to strength, with the director headcount doubling, and the associate headcount close to doubling. It has considerably diversified the nature of its work and client base over the past year. Duane Morris & Selvam has increasingly been involved in cross border work, spanning from Asia to Europe and the Americas, including countries such as Thailand, Indonesia, China, the UK, and Mexico. The addition of its arbitration, dispute resolution and shipping teams has also opened up new opportunities. Transactions have included advising a major global retailer on its proposed acquisition of a large Indonesian retail chain, a NASDAQ-listed company on setting up a business trust in Singapore involving the acquisition of assets in China, a leading Mexican offshore services provider on a \$60 million Singapore arbitration in connection with a \$500 million rig-building contract, a vessel owner in an SIAC arbitration in respect of a \$70 million claim for unpaid charter hire in addition to loss of profit and involving issues of Venezuelan maritime law, a Singapore-listed company on the

spin-off of its hotel ownership and management business by way of an IPO, and a Singapore-listed company on its proposed dual listing on the London Stock Exchange – the first of its kind. The firm is headed by Arfat Selvam who is highly regarded in the Singapore legal scene, particularly in corporate finance, where she has more than 40 years of experience.

**WHAT THE FIRM SAYS:** “WE ARE NOT EVERYTHING TO EVERYONE, BUT OUR PROPOSITION IS SIMPLE: WE FOCUS ON PROVIDING COST EFFECTIVE, YET HIGHLY TAILORED LEGAL ADVICE IN A PRACTICAL CONTEXT. WE DO NOT EXPEND TIME AND EFFORT ON THE MORE COMMODITISED ASPECTS OF LEGAL WORK, AND ARE FAIRLY CONSISTENT IN THIS APPROACH ACROSS ALL PRACTICE AREAS.”



**MAX NG**  
Managing Director  
Gateway Law Corporation

#### **GATEWAY LAW CORPORATION**

A specialist regional legal practice that focuses on intellectual property and corporate and commercial law, Singapore-headquartered Gateway Law has continued to thrive in a difficult economic environment. It has grown its headcount and revenue, and chalked out ambitious expansion plans even as a number of other firms stumbled. In 2011, it welcomed Michael Leow, an entertainment law specialist, as its new director as it continued to increase headcount and revenue. The firm currently has two directors – Max Ng and Leow – and two associate directors, with the total headcount of fee earners standing at nine. In the past year or so, it represented clients in matters ranging from litigation issues, corporate matters, cross border developments, IP enforcement and prosecution, technology law, franchising, and licensing. It even advised on the new Private Education Act in Singapore. With the increase in work, it is no surprise that the firm is expanding regionally, while maintaining Singapore as its base and hub. Gateway now has offices, people, and associate offices in Malaysia, Hong Kong, Indonesia and other Southeast Asian countries. Additionally, the firm plans to establish offices in Bangkok and Manila during the coming 12 months. The firm is also unique in that it strives to make the most of the opportunities provided by information technology, and all the productivity and other advantages it brings. The use of IT and social media, says Gateway, brings costs down significantly in the long run, and is a great business leveler, allowing it to compete alongside bigger firms. The next year could see the firm double its numbers if expansion plans go as planned.

**WHAT THE FIRM SAYS:** “GATEWAY FOCUSES ON THE SYNERGIES BETWEEN ALL OUR LAWYERS AND STAFF, AND ACROSS ALL OUR OFFICES AND PEOPLE WHETHER OR NOT THEY ARE BASED IN SINGAPORE, HONG KONG, KUALA LUMPUR OR JAKARTA (OR IN AN AEROPLANE, FOR THAT MATTER)... GATEWAY AS A LEGAL PRACTICE IS LARGER THAN THE SUM OF ITS INDIVIDUAL MEMBERS.”



**YASH RANA**  
Partner, Asia Chairman  
Goodwin Procter

#### **GOODWIN PROCTER**

Since opening in Hong Kong in 2008 with 10 lawyers, Boston-headquartered Goodwin Procter has been making its presence felt in Asia, advising on more than \$5 billion in investments and capital commitments into and between India, China and the U.S. In 2011, Goodwin was involved in large Asian PE deals, including acting as counsel to DST Global in a consortium-led \$1.6 billion tender offer for Alibaba Group, one of China's biggest e-commerce companies. In India, it advised Mphasis in its acquisition of U.S. software developer, Wyde Corporation, and was also involved in investments into tech companies like Snapdeal.com and Consim. Unlike many other foreign firms in Hong Kong, who have prioritised capital markets work, Goodwin has focused on private equity and funds practices, which should give it an edge going forward. Partner Yash Rana, the firm's Asia Chairman, maintains strong connections with both China and India. Looking ahead, the firm plans on increasing headcount in Hong Kong, mainly within private equity and M&A, while adding an office in mainland China in 2013.

**WHAT THE FIRM SAYS:** “OUR CURRENT ASIA MODEL IS A GOOD EXAMPLE OF OPENING AND OPERATING INTERNATIONALLY USING A DELIBERATELY ‘SMALL BUT MIGHTY’ APPROACH. AS OPPOSED TO OFFERING ALL THINGS TO ALL CLIENTS AND BUILDING SHEER MASS TO CAPTURE WORK, WE’VE FOCUSED ON DELIVERING MORE NARROWLY WITHIN OUR KNOWN STRENGTHS AND SECTOR SPECIALTIES.”

## DUANE MORRIS & SELVAM LLP

### OUR PARTNERS



■ GP Selvam ■ Arfat Selvam



■ Eduardo Ramos Gomez ■ Krishna Ramachandra



■ Leon Yee ■ Kim Seng Lo



■ Kelvyn Oo ■ Peter Doraisamy



■ Prakash Nair ■ Colin Jarraw



■ Ramiro Rodriguez ■ David Teo



■ Jason Yang ■ Winston Ng



■ Parikhit Sarma



A JOINT LAW VENTURE  
■ A: 16 Collyer Quay, #17-00,  
Singapore 049318

In 2011, international law firm Duane Morris and Singapore-based Selvam LLC combined to create Duane Morris & Selvam LLP, the first U.S.–Singapore joint venture to be approved by Singapore as part of the enhanced liberalization of its legal services market. Its constituent firm, Selvam LLC, has for many years been regarded as a leading local corporate finance practice. Bolstered by support from international law firm Duane Morris, the joint venture has helped numerous clients from North America, South America, Europe and Asia manage issues and concerns related to doing business in Asia. Beyond our excellent skills as attorneys, clients benefit from the cultural fluency and key relationships that we have developed over many years of practicing law within the region. Our attorneys and consultants, including a former Judge of the Supreme Court of Singapore, a previously high-ranking diplomat to Singapore, Brunei and Myanmar and a past President of the Law Society of Singapore, are fully immersed in Singapore's business and legal communities.

Duane Morris & Selvam serves clients throughout Asia as well as companies based in the United States that are conducting business in Asia. Our attorneys focus on:

- Mergers and acquisitions and takeovers
- Corporate finance and financial services
- Banking and securities
- Corporate restructuring
- International joint ventures
- Commercial real estate
- Islamic finance
- Dispute resolution
- Shipping finance, disputes and marine insurance

Our work for a diverse range of clients—from small entrepreneurial enterprises to multinational corporations—has earned Duane Morris & Selvam a growing number of accolades. We are regularly ranked among the top corporate finance and mergers and acquisitions law practices by Chambers and Partners, Leading Lawyers and the International Financial Law Review 1000, which have also noted our reputation as a “pioneer” in the Islamic banking and financial services market. Additionally, we have been recognized by the Asian Legal Business Asia Watchlist 2011 and the Legal 500 – 2010/2011 for our legal excellence.

To learn more about Duane Morris & Selvam and our legal services for companies seeking to thrive in one of the world's most dynamic markets, please contact:

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**KEVIN KWEK**Director  
Legal Solutions**LEGAL SOLUTIONS**

A boutique dispute resolution and corporate law corporation in Singapore, Legal Solutions was founded in 2005, and has since then established its reputation as a firm that punches above its weight. In 2011, its growth was fueled by the expansion of its litigation and arbitration department, where it saw a more than 50 percent increase in the headcount of fee earners. As Singapore continues to grow in importance as a regional arbitration hub, the firm should see its star rise further. Legal Solutions currently has 11 fee earners and a Chinese-qualified lawyer, an up from just two back in 2005. In 2011, it hired six fee earners across its corporate and litigation practices in addition to Henry Heng, former head of litigation at Tan Peng Chin & Partners, to its litigation practice. These recruitments took its number of litigation lawyers to eight. The firm's range of expertise also covers commercial and shipping litigation, commercial fraud and asset recovery, mergers and acquisitions, equity capital markets, China markets, and securities regulations. In 2011, the firm had a fairly productive year in seeing a 30 percent revenue increase year-on-year. Clients include a large Singapore-listed company, a Venezuelan corporation, and a European distress fund among others, and it gained 16 new international arbitration matters and two domestic ones in a 12-month period ending December 2011. It also launched a conveyancing practice in 2010, and opened an office in Singapore's Parkway Parade, from which it carries out that practice.

**WHAT THE FIRM SAYS:** "WITH THE ECONOMIC CLIMATE THAT WE ARE SEEING IN 2012, WE ARE STARTING TO SEE FROM DECEMBER 2011 ONWARDS, MORE WORK COMING IN FOR DISPUTE RESOLUTION AND M&A. THESE ARE THE AREAS WHICH WE FEEL WE CAN CONTINUE TO TAP ON, AND PROVIDE VALUE TO OUR CLIENTS GOING FORWARD."

**ROBIN LI**Senior Partner  
Li & Partners**LI & PARTNERS**

Founded in Hong Kong by Robin Li, the first PRC lawyer to receive a Hong Kong law degree and qualify to practise law in Hong Kong, Li & Partners has maintained strong ties with the Chinese mainland, and this has allowed it to flourish with the growth of the Chinese economy. The firm's strongest suits include corporate finance, IPOs, M&As, and banking and construction litigation. Apart from Li, whose well known transactions in Hong Kong's capital market include the listings of China Agrotech Holdings, Syscan Technology Holdings, Tianjin Capital Environmental Protection Co and China Communications Construction, the firm boasts of Terence Chiu, whose areas of practice include securities law, mergers and acquisitions, venture capital and private equity investments, cross border corporate investments, and Sino-foreign joint venture projects, for example, with African entities. In September last year, he was involved in the acquisition of Motel 168 by Home Inns. It is a full-service domestic law firm in Hong Kong, with a representative office in Beijing. With nearly a 100 legal staff across the Hong Kong head office and the Beijing representative office, the firm increased its number of qualified lawyers (including registered foreign lawyers) in Hong Kong from 40 to 48 in the past year. As funds continue to flow from the East to the West, with a particular M&A focus on sectors like energy, resource and technology, Li & Partners aims to develop new practice areas such as insurance and trust, and intellectual property. It also plans to continue to expand its association and ties with foreign law firms, and set up PRC practices.

**WHAT THE FIRM SAYS:** "IN ADDITION TO STRONG PRACTICE AREAS SUCH AS CORPORATE FINANCE, IPOs, M&As, BANKING AND CONSTRUCTION, AND LITIGATION, WE AIM TO DIVERSIFY INTO OTHER AREAS OF BUSINESS IN ORDER TO GROW INTO A FULL-SERVICE FIRM, AND THE BEST CHINESE INTERNATIONAL LAW FIRM IN HONG KONG (AND OTHER COMMON LAW JURISDICTIONS)."

**TAN CHONG HUAT**Managing Partner  
RHT Law Taylor Wessing**RHT LAW TAYLOR WESSING**

The Singapore firm now known as RHT Law Taylor Wessing was formed several months following a breakaway from KhattarWong, when managing partner Tan Chong Huat left along with seven KhattarWong equity partners and 17 salary partners. Since then, it has joined the Taylor Wessing group as a member firm, thus acquiring the present moniker. While remaining solely a Singapore law practice, the firm hopes the arrangement will provide its clients access to a network of more than 800 lawyers across 14 offices in Europe, the Middle East, and Asia. With a total of 55 lawyers and legal professionals on board, including 29 partners, RHT Law Taylor Wessing covers a wide range of practice areas, including corporate, securities, finance, real estate, intellectual property (IP) and technology, and litigation and dispute resolution. In the IP space, it has been particularly active in representing a number of companies in the protection of their trademarks in Singapore and elsewhere in Asia, including Hyundai RNC Asia Pacific, SunMoon Food, Nippon Paint, and Infoport Management, owners of the popular Pleasant Goat and Big Big Wolf cartoon characters. The firm has also been active in the advertising and media space, advising international advertising and public relations agencies such as TBWA Singapore, DDB Worldwide Singapore, and Porter Novelli on their IP rights. It now has 55 lawyers and legal professionals.

**WHAT THE FIRM SAYS:** "OUR STRATEGY FOR GROWTH INVOLVES BEING A LOCAL INTERNATIONAL FIRM WITH A STRONG INDUSTRY FOCUS, FOCUSING ON GROWTH IN ASIA BY IDENTIFYING SUITABLE FIRMS FOR MERGER, AFFILIATION OR BEST FRIEND COLLABORATION TO DEVELOP INBOUND AND OUTBOUND OPPORTUNITIES."



**SURESH TALWAR**  
Managing Partner  
Talwar Thakore & Associates

#### **TALWAR THAKORE & ASSOCIATES**

Founded in early 2007 by Shobhan Thakore and Suresh Talwar, two well known lawyers in the field of capital markets and corporate/M&A in India, the TT&A team was further strengthened in 2009 with the addition of ex-Linklaters partners Narayan Iyer and Kunal Thakore. Two more associates were promoted to partner which took the total number of fee earners to 23, including two managing associates and 15 associates. Major deals in 2011 included advising on a \$6 billion acquisition financing to members of the Vedanta group to fund the acquisition of a controlling stake in Cairn Energy, advising British Petroleum (BP) on its landmark \$9 billion acquisition of a 30 percent stake in 23 oil and gas production blocks from Reliance Industries (the largest capital investment into India in a single deal), and Serco Group in its \$634 million purchase of Intelnet Global Services and Sparsh BPO Services from sellers, including private equity investors Blackstone, Barclays and HDFC. The latter was Blackstone's first exit from an Indian investment. Other clients include the Adani Group, ICICI Bank, Reliance Communications, Citigroup Global Markets India, and RBS Equities (India). The BP/Reliance and Serco transactions vaulted the firm into the spotlight, and helped it acquire a reputation in the banking and finance space; something that it responded to by promoting associate Sonali Mahapatra to partnership. Matters have been helped somewhat, TT&A says, by the ever-changing regulatory environment. Recent amendments to the FDI policy and, most notably, the coming into force of the merger review provisions of the Competition Act, have ensured increased importance for the firm, even as it has impacted deal flows.

**WHAT THE FIRM SAYS:** "WE HAVE FOCUSED ON QUALITY RATHER THAN QUANTITY, AND DELIBERATELY MAINTAIN A PARTNER TO ASSOCIATE RATIO THAT IS IN LINE WITH THAT FOUND IN INTERNATIONAL FIRMS IN ORDER TO ENSURE THAT OUR ASSOCIATES ARE BOTH OF EXCELLENT QUALITY AS WELL AS WELL TRAINED AND SUPPORTED BY THEIR SENIORS."



#### **THE ANT**

*Tiny in size but it can lift 20 times its body weight. If a man could run as fast as an ant could relative to its size, he would run as fast as a racehorse.*



#### **A MICROCHIP**

*Barely the size of our fingertip, it powers every modern device from play stations to space stations.*



#### **SINGAPORE**

*An island state just 700 sq km in size, boasts having one of the world's busiest ports and the third highest GDP per capita in the world.*

## **Success is limited only by one's ability, not size.**

Like the examples illustrated above, Legal Solutions LLC is proof that size is not a substitute for drive, talent and ability.

Legal Solutions is a Singapore boutique dispute resolution and corporate law corporation. Since our inception in 2005, Legal Solutions has established a reputation for handling complex cases and closing transactions with top quality, practical and cost-effective solutions in a timely manner.

Our team of lawyers is made up of experienced practitioners who together bring with them a wealth of technical and practical knowledge in local and cross-border matters. Our wide range of

expertise covers commercial and shipping litigation, domestic and international arbitration, commercial fraud and asset recovery, mergers and acquisitions, equity capital markets, China markets and securities regulations. What is more, because of our alliances with other law firms in major jurisdictions, we are well positioned to provide legal support to clients in Singapore and throughout the region, including China.

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# INDIA

## COMPANIES BILL BRINGS M&A CONFIDENCE



REUTERS/Danish Siddiqui

INDIA'S PROPOSED COMPANIES BILL 2011 PROMISES TO FACILITATE CORPORATE TRANSACTIONS BY PERMITTING CROSS BORDER MERGERS, PROMOTING CORPORATE GOVERNANCE, AND ESTABLISHING INVESTOR PROTECTION. AS INTEREST HOLDS STEADY IN ONE OF THE WORLD'S MOST DYNAMIC ECONOMIES, THE BILL OFFERS MUCH CONFIDENCE TO INVESTORS DOING BUSINESS IN INDIA, FINDS **SEHER HUSSAIN**

Investors doing business in India are no strangers to lengthy approval processes and non-competitive regulations. For the last five decades, the marketplace has been governed by the 1956 Companies Act; legislation that has become severely outdated given the rapid growth of the Indian economy. Recent corporate scandals, including 2G (reported in the December issue of *ALB*) and Satyam, have played their own part in accentuating the loopholes in the law. The time is ripe, if not overdue, for a legislative overhaul.

The new Companies Bill, presented in the Lok Sabha in December last year, looks to replace its predecessor and bring the nation in line with global standards. Once passed, the bill is expected to have a positive effect on international and domestic investors doing business in India. However, given its far-ranging provisions, industry insiders have also raised some concerns.

### A POSITIVE DEAL ENVIRONMENT

In early January, Indian Prime Minister Manmohan Singh

predicted that the Indian economy would grow at seven percent this year, given the sluggish Eurozone and the uncertainty in the U.S. Although the growth is lower than initially forecast by the government, the Indian market remains attractive for investors due to buoyant exports, and a slowdown in inflation rates.

According to the recently published Allen & Overy M&A Index, India was in the top ten of global inbound target markets in 2011, and remains one of the top ten target markets for U.S. buyers. The outlook for M&A deals, especially in the commodities, infrastructure and entertainment sectors, is clearly cautious, yet optimistic.

Lending the market certainty are the recent completion of several big ticket outbound deals, notably GVK Group's \$1.3 billion acquisition of Australia-based Hancock Coal's assets, and Adani Enterprises' \$2 billion purchase of Abbot Point Co 1 terminal in Australia.

"Many large Indian groups that we know are standing with high cash balances, which will boost confidence and make deal-making even easier going forward. We see Indian groups, particularly in



Southern India, increasingly aspiring to enter new markets, and to acquire new technologies and brands," says Omleen Ajimal, partner at Taylor Wessing, and head of its India Group in the UK.

Furthering this outbound trend, Reuters recently reported that state-run explorer Oil India has also disclosed its interest in purchasing stakes in shale gas assets of U.S.-based companies.

On the inbound side, investor interest remains robust. "We received a lot of queries on structuring cross border investments into India; while these did not transpire due to the general cautious sentiments on the global economy which rounded off last year, we felt that this was indicative of the interest in India generally," says Farhana Siddiqui, director at Drew & Napier.

The depreciation of the rupee is also an advantageous factor as the "buying power of the U.S. dollar is 20 percent more enhanced," says Shook Lin & Bok partner Sriram Chakravarthi, "so 2012 is a favorable year for inbound investment."

Adding to an optimistic outlook is the recent revision of the foreign direct investment policy by the Indian government that now allows 100 percent foreign direct investment in single brand retail trading, given governmental approval. "There will be significant interest by global retail chains like Adidas, Louis Vuitton, Armani, and Gucci to have full ownership of their India operations," says Rabindra Jhunjunwala, partner at Khaitan & Co.

An avid interest on both the outbound and inbound sides ensures that the passage of the proposed Companies Bill is being closely watched by domestic and international corporate players.

## CROSS-BORDER MERGERS

The Companies Bill, 2011 allows inbound and outbound mergers and amalgamations between Indian and foreign companies. Previously restricted under the 1956 legislation, this is seen by many industry observers as the most salient provision for corporate transactions in the new bill.

"The existing law states that in the case of an amalgamation, the surviving company should be an Indian company. The new bill, however, permits mergers where the resulting company will be a foreign company. This transaction can be done in cash and in Indian depository receipts which pose interesting business possibilities," says Vijay Sambamurthi, founding partner of Lexygen.

The bill is expected to increase the number of cross border mergers. However, there are several caveats; that the foreign company must be based in a jurisdiction that has prior approval from the government, and that the Reserve Bank of India (RBI) holds final consent over any such transaction.

These stipulations are not entirely well received by the market. "M&A transactions are really all about timing, so putting one more hurdle in terms of obtaining another approval from the RBI will just extend the timeline of the deal," says Chakravarthi.

"The thinking behind some of the increased regulation in the bill, particularly the cumbersome regulatory regime that will now apply to M&A, is difficult to understand. It will almost certainly make certain corporate transactions much more difficult to complete," says Ajimal of Taylor Wessing, adding that "given the Indian government's stated intention to facilitate international transactions, the increased and cumbersome regulation is both surprising and disappointing."

Another expected result of the cross border provision is that Indian companies will penetrate new markets, which will help them to expand their customer base, cut competition, and reduce tax liabilities. Last year saw the India-based Spice Group's formation of a joint venture with the CSL Group in Malaysia for the acquisition

of CSL Group's mobile telephony handset assets. It was handled by Chakravarthi, who says: "Due to the double tax agreement with India, the number of incorporations in Singapore of Indian companies has definitely increased and we will see more in 2012, both SMEs and larger companies."

Significantly for the domestic market, the process of mergers between small companies, subsidiaries and holding companies has also been fast-tracked. "Previously, when it came to these sorts of transactions, you needed the dispensation of the high courts; a process that could take between four and six months. Now, they've simplified the procedure so that you can just merge following some basic procedures," says Suresh Talwar, partner at Talwar Thakore & Associates.

## ENHANCED ACCOUNTABILITY AND TRANSPARENCY

Given corporate India's recent woes in the form of the 2G and Satyam scams, the bill's provisions addressing corporate governance and enhancing accountability are vital to keeping India's economy competitive in an international marketplace.

"It is too simplistic to say that the bill has been provoked by these incidents alone. But there has been a real need for legislative reform not only due to issues which arose out of Satyam, but also otherwise and the government is trying to respond to that demand," says Siddiqui.

The bill will introduce a comprehensive set of regulations aimed at protecting against fraud. Most prominent is the strengthening of the Serious Fraud Investigation Office, which comprises company secretaries, chartered accountants, and corporate law officials responsible for overseeing corporate transactions.

It also sets up specialised courts to handle corporate malfeasance. "One of the biggest criticisms to emerge from the Satyam scandal was the slowness of the mechanisms," says Chakravarthi, "Now there is a provision for the swift delivery of justice."

Other measures focus on establishing transparency: company directors must maintain their independence by disclosing their involvement with other entities, have a fixed term of service, and adhere to a code of conduct. The bill has mandated regular internal audits and rotation of auditors, and also strengthened the role of an audit committee.

Not all governance measures have received a unilateral positive response.

The bill prohibits investment through multiple layers, effectively saying that if there are two or more layers, you will have to merge one layer down, says Sambamurthi, adding that “this seems a little retrograde.” Although done with the purposes of transparency, so that the owners of a company are readily identifiable, “it impedes the flexibility of group structurings” he says.

Most practitioners tend to agree with Ajimal of Taylor Wessing, who says that “legal and regulatory issues in India are generally cited as being the biggest challenges to efficient cross border deal-making, and are causing increasing nervousness both within the Indian businesses that we know, and amongst our international clients looking with interest at India.”

As such, it is predicted that these stringent norms of accountability, transparency, and enforcement will facilitate deals in the marketplace, giving investors confidence after the recent spate of scandals.

### INVESTOR PROTECTION

A cornerstone of the bill is investor protection, most distinctly in the form of stakeholder provisions. “Indian regulators are obsessed with giving extra protection to minority shareholders,” says Mohit Saraf, partner at Luthra & Luthra. The bill introduces class action suits in the Indian marketplace, and also establishes an exit price for dissatisfied minority shareholders.

However, reaction has been discordant; some practitioners agree that the shareholder provisions will promote overall deal-making, likening it to the compulsory squeeze out procedure already implemented in Europe and the U.S.

While others challenge the measures’ efficiency: “I think class action suits are great for providing an effective remedy to shareholders, and for holding management more accountable,” says Sambamurthi, “But exits to shareholders, I’m not sure that’s a fair balance.” He adds that “if you compare the procedures that are available with respect to M&A transactions outside India, there is on one hand, a series of provisions to protect the small shareholders, but also provisions that make acquisitions painless and simple for the acquirer. The interplay between these two provisions in India may result in a confusing and painful process for an acquirer.”

However, it is not a consensus that these measures will cripple deal-making. “In light of the limitations imposed on the ability of shareholders to bring an action, it is doubtful that there will be an increase in the level of shareholder activity against companies,” says Siddiqui, referring to the provision that only shareholders with 10 percent or more of ownership can object.

### FUTURE ADVICE


Cross-border mergers, transparency and investor protection aside, the most pressing issue pertains to when the legislation will realistically be implemented. It was tabled in the Lok Sabha on Dec. 14, 2011, and industry observers cautiously expect it to be approved in the Parliament’s upcoming budget session in February. But there are no guarantees.

Leaving aside the heated discussions around the bill, it also remains to be seen how many of these provisions will play out in the marketplace.

“The structure of the proposed Companies Bill is such that many of the operational details are left to the rules to be framed by the central government. Hence, it is very difficult at the present stage to envisage the exact nature of the regulatory framework that will be put in place” says Ravi Kulkarni, senior partner at Khaitan & Co.

Despite the uncertainty, a majority of market watchers have

perceived it as a welcome and much-needed reform providing straightforward legislation, rooting out corruption, and providing a business-friendly environment in which to make deals.

“Don’t get scared or nervous by this new policy, get used to the changes,” says Prem Rajani, partner at Rajani & Associates, adding that “people have to become more transparent and we needed a system of strong checks and balances.” 

### PROBLEMATIC PROVISIONS

One of the most contentious aspects of the proposed act relates to corporate social responsibility (CSR) initiatives. The bill introduces a mandatory CSR committee for large companies, and also requires 2 percent of annual turnover to be set aside for CSR.

While many practitioners agree with the sentiment, its institutionalisation raises concerns. “It’s not so much a question of whether two percent is an appropriate number, it’s more a philosophical question of should the law be mandating this?” says Sambamurthi.

“This is mostly the government trying to keep up on their social commitments,” adds Chakravarthi, “and I’m sure the corporations will be up in arms about this as two percent is quite a bit.”

“The CSR provision has been opposed by most listed companies. It seems unlikely that it will stay when the bill moves forward,” says Talwar.

Needless to say, opinions diverge greatly. “These CSR measures may be regarded as excessive by companies but from an overall perspective, the 2011 bill, if passed, could go a long way in enhancing the Indian corporate governance regime,” says Siddiqui of Drew & Napier.

It is possible that traditional “soft approaches” to CSR such as peer pressure and codes of conduct would be more effective, as it wouldn’t mean an automatic erosion of profits to the shareholders.

The other provision currently under public scrutiny mandates a certain number of women on a company’s board of directors. The objective is laudable, says Sambamurthi of Lexygen, but “the law shouldn’t micromanage.”

The government, industry insiders say, needs to recognise that corporations are not elected public offices and caution that if you force their hand, shareholders’ value will be affected.

Debate about whether the free market should decide, or whether gender-based quotas are necessary are set to continue until the final bill is approved.

## ELITE, A THOMSON REUTERS BUSINESS



■ Cary Burch, COO of Elite

Cary Burch is Chief Operating Officer of Elite and is responsible for running the day-to-day operations of the company. He has been recognised as one of the top 20 IT executives by The CIO Forum and was a finalist to receive the Technology Visionary Award sponsored by Source Media. He received his MBA from Pepperdine University and has also completed international executive studies at Harvard Business School and Oxford University.

# MANAGING THE COMPLEXITIES OF CONDUCTING BUSINESS IN ASIA PACIFIC

The Asia Pacific region has experienced a solid recovery from the global financial crisis, according to several industry reports. The Economic and Social Commission for Asia and the Pacific (ESCAP) released a survey that expected a healthy growth rate of 7.3 percent in 2011 from developing Asia Pacific economies, and a recent report from Moody Analytics predicts continued growth in 2012.

Another indication of growth is the number of large law firms entering Asia Pacific or expanding their presence in the region, and in particular increased activity in Australia. In the past two years, Allen & Overy opened offices on the East and West coast; DLA Piper acquired DLA Phillips Fox; Norton Rose acquired Deacons; and Blake Dawson combined their regional practices with Ashurst, a leading global firm. This type of activity underscores the growing need for a local presence in Asia Pacific countries where clients are either located or where they want to do business.

However, doing business in Asia Pacific is inherently complex with managing multiple currencies, jurisdictions, and languages, and despite the relative strength of many Asia Pacific economies, clients need their providers to deliver positive outcomes with fewer resources. Firms are finding that their aging software platforms are not able to effectively support new billing demands, such as alternative fee arrangements (AFAs), or workflows between offices with different languages and other jurisdictional requirements. An investment in next-generation technology is no longer a choice—it's a competitive necessity.

Evidence of this is Elite's® momentum in Asia Pacific with ELITE 3E®. 3E as a standard provides sophisticated international functionality, including fully automated inter-currency and foreign exchange transaction management, comprehensive general ledger accounting functionality across financial and statistical books, streamlined tax jurisdiction management, and support for local, regional and global reporting.

Minter Ellison, the region's largest legal group by revenues, cited such reasons for betting on 3E. "We need a platform that will deliver the flexibility to meet our clients' requirements, the functionality to manage an international firm with multi-jurisdictional requirements, and the ability to leverage new technology in the future," said Tony Brennan, Minter Ellison's COO/CFO.

Gerard Neiditsch, Executive Director of Business Integration & Technology at Mallesons Stephen Jaques, says "Our decision to use 3E will mean that we can efficiently give clients and our staff practice information at any point in a transaction, no matter how complex it is. In addition, it supports Asian languages, which is increasingly important given the dynamic market in which we and our clients are operating." With recent news that Mallesons is joining forces with China's leading local law firm King & Wood,

Neiditsch's comments are almost prophetic.

Legal businesses are also realising value in 3E because it facilitates growth and eases reporting and business management processes. M+K Lawyers in Australia implemented 3E to assist with plans for business expansion, and have since expanded aggressively, opening several new offices across the country, resulting in the fastest growing revenues of any firm in Australia in the last two years.

Indeed, firms choosing to implement 3E invariably cite the solution's flexibility to enable them to quickly adapt to market trends and to meet emerging client demands for new service offerings. In fact, 2011 was a record year for Elite in Asia Pacific, claiming six new 3E wins and positioning the company for the first time as the leading provider for medium to large law firms since Elite entered the market eight years ago.

## THINKING INNOVATIVELY

Firms globally are increasingly recognizing the need to innovate, and to meet this emerging demand, Elite has acquired businesses in key areas to ensure a full portfolio of tightly integrated, best-of-breed solutions that meet these demands, as well as to introduce Elite to new markets. Thomson Reuters Engage™ offers powerful legal project and resource management capabilities in a lawyer-centric interface; MatterSphere (formerly FWBS MatterCentre) is a complete front office solution for lawyers providing easy access to matter, financial and business development information from directly within Microsoft® Outlook™; eBillingHub® delivers efficient, cost-effective electronic billing solutions; Elite Design Gallery offers document automation solutions that streamline data collection and distribution; and finally with the acquisition of Pilgrim Systems®, Elite is bringing the leading medium law firm practice management solution in the UK to the Asia Pacific market.

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Recognising the need for these types of tools to be successful is one thing; implementing a cohesive technology strategy to support a firm's vision is quite another. As a global organisation with a proven track record, Elite can work with your business to increase efficiency boost profitability, and improve your competitive edge.

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# IS **HONG KONG** ASIA'S NEXT TRUST CENTRE?

DESPITE THE GLOBAL ECONOMIC DEPRESSION, CHINA'S ROBUST GROWTH PROSPECTS AND THE RISE OF THE NEW RICH IN GREATER CHINA ARE ATTRACTING OFFSHORE LAW FIRMS AND PRIVATE BANKS, WHICH SEE THEM AS THEIR NEW CLASS OF CLIENTS. BUSINESS DEVELOPMENT OPPORTUNITIES EXIST FOR FIRMS THAT CAN HELP PROVIDE VERSATILE AND USER-FRIENDLY OFFSHORE TRUSTS, WRITES **ARTEMISIA NG**

GIVEN THE POTENTIALLY COMPLEX NATURE OF A HIGH NET WORTH CLIENT'S ASSETS – WHICH MAY INCLUDE MULTIPLE CLASSES OF ASSETS ACROSS VARIOUS JURISDICTIONS – **TRUSTS PRACTITIONERS HAVE SEEN A GROWING DEMAND FOR TAILOR-MADE TRUST STRUCTURES TO MEET THE SPECIFIC OBJECTIVES OF SUCH CLIENTS.**

**H**istorically, setting up private trusts offshore has been a preferred vehicle for Asia's wealthy families and individuals to manage their assets as they crave the discreetness and protection that offshore trust laws offer in times of war or major life-changing events. In recent times, several offshore jurisdictions have updated their respective trust laws to allow greater flexibility, and enhance the user-friendliness of their trust structures.

Ian Mann, a partner at Harney Westwood & Riegels, says he has witnessed pronounced growth of both private trust advisory and contentious trust work in Hong Kong, which prompted his relocation from the British Virgin Islands (BVI) to the firm's Hong Kong branch.

"Our affiliated corporate services company, Harneys Services, provides trustee services in the BVI and thus enables us to act as a registered agent for BVI Private Trust Companies (PTCs), which has proved to be very popular in Hong Kong," says Mann.

Lee Syin Long, Walkers' head of trusts in Asia, points to the versatile nature of offshore trusts as the key appeal for Asian clients.

"Trusts can be set up for a variety of reasons and can be used as a means to manage difficult heirs, to protect against future creditors and to hedge against political and social risk," explains Long.

For many wealthy families, trusts are able to offer a long-term planned ownership

structure for holding complex assets including those that may not be compatible with direct personal ownership, she says.

Using a trust, families are also able to consolidate their worldwide assets into a long-term ownership structure that allows them to effectively deal with their assets holistically from a single point of reference.

"In Asia, the idea of transferring one's wealth to a third party (i.e. the trustee) is not considered attractive, especially because the trustee has duties to the beneficiaries rather than the settlor," says Mann of Harneys, who notices Asian clients are often keen to retain control over various aspects of the trust or the management of the underlying trust assets.

In this regard, BVI's VISTA trust and Cayman's STAR trust have emerged as popular options for Asia's richest.

The BVI VISTA trust allows operating assets, such as a family business, to be placed within the trust to the extent that directors of the underlying company are able to continue managing the assets without interference by the trustees, Long explains.

Besides, families with specific legacy considerations looking to have a trust set up over many generations to hold multiple types of assets can opt for the Cayman STAR trust.

With no limit on perpetuity, the settlor can stipulate the amount of information that each beneficiary receives in relation to their entitlements under the trust, and

appoint neutral (non-beneficiary) third parties to enforce the trust for the benefit of the beneficiaries.

"This is useful in avoiding intra-family disputes amongst beneficiaries, and beneficial if the patriarch desires the trust assets to be retained for the next generation," says Long of Walkers.

#### TRUST STRUCTURING NEEDS

Given the potentially complex nature of a high net worth client's assets – which may include multiple classes of assets across various jurisdictions – trusts practitioners have seen a growing demand for tailor-made trust structures to meet the specific objectives of such clients.

"A key challenge in structuring trusts for Asian families today is that a significant portion of Asia's wealth tends to be in active, or operating investments and business," says Long of Walkers.

In structuring trusts, Long believes advisors should consider the nature of the assets and assess whether there is a need to restructure assets located in the client's home jurisdiction. With the more complex assets and trusts, foreign legal recognition risks must also be taken into account and dealt with at the structuring stage.

She advises families to seek advice early, particularly before a life-changing event occurs in the family, and also when they

#### ESTABLISHING TRUSTS IN SELECT JURISDICTIONS – PROS AND CONS?

Features	Hong Kong	Singapore	Jersey
Longest fixed perpetuity period	80 years	100 years	No period – rule against perpetuities abolished
Rule against excessive accumulations	Yes – income can be accumulated for 21 years	Income may be accumulated for the life of a trust	Income may be accumulated for the life of a trust
Recognition of non-charitable purpose trusts	No	No	Yes
Provisions within trust law to disapply foreign forced heirship rules	No	Yes	Yes
Statutory private trust company regime	No	Yes	Yes

**"THERE IS CURRENTLY LESS AWARENESS AMONG THE YOUNGER ENTREPRENEURS AND THE NEWLY RICH ON WHY, OR HOW, THEY SHOULD BE USING TRUSTS, BUT THIS IS LIKELY TO CHANGE OVER TIME."**

Lee Syin Long, Walkers

anticipate a realisation of their gains by setting up pre-IPO trusts.

For immovable assets such as real estate, Long says it is ideal to seek advice before the actual property purchase, as subsequent transfer costs – such as stamp duties and legal fees – may be prohibitive once the sale is completed.

#### BELATED REFORM

With the abolishment of estate duty in 2006, many practitioners believe Hong Kong has the potential to become an attractive trusts centre.

But the city's outdated trust law is widely viewed as an impediment to such a prospect. The Hong Kong Trustee Ordinance, which was based on England's Trustee Act, 1925, has not changed much since it was enacted in 1934.

"Other jurisdictions around the world have been updating and modernising their trusts statutes over the last few years including England in 2000 and Singapore in 2004," says Richard Norridge, a senior associate in the dispute resolution department at Herbert Smith's Hong Kong office. "In an increasingly competitive world, concern has been expressed that Hong Kong may be falling behind."

Amidst industry concerns, Hong Kong's trust law is poised to be reformed, with the bill waiting to be tabled at the next legislative session.

Two aspects of the reform proposal could make Hong Kong more competitive, Norridge points out. "The proposals in Hong Kong could restrict the scope of [trustee] exculpation clauses — the effect being that professional trustees would not be able to restrict their liability to the extent they now can," he says, while noting that if Hong Kong can introduce clear principles regarding a beneficiary's right to information, it will introduce much needed certainty to this area.

Meanwhile, Marcus Leese, Ogier's Hong Kong-based partner, believes there is "absolute potential" for Hong Kong to become an important centre of trusts, since the city is already an important administrative hub providing trusteeship to offshore trusts.

"Hong Kong and Singapore both have historical ties to the British common law systems, and both are viewed as onshore centres which still have a certain degree of freedom and dynamism," he says.

Leese suggests that Hong Kong can bring itself at par with many leading offshore jurisdictions by abolishing its 80-year cap on its trust perpetuity period, and allow the settlor to have more control over the trust assets.

#### BUSINESS DEVELOPMENT

As Asia becomes richer, many lawyers believe educating clients is fundamental to the growth of the trust businesses in the region.

"There is currently less awareness among the younger entrepreneurs and the newly rich on why, or how, they should be using trusts, but this is likely to change over time," says Long of Walkers.

In a similar regard, Leese says Ogier has been working with private banks to offer seminars and workshops, and online training materials to educate financial professionals and potential clients on the creative use of offshore trusts.

Without local law capabilities, many offshore firms often rely on business referrals from onshore firms to grow their Greater China trust advisory work.

"High net worth individuals have their own Hong Kong lawyers as long-standing family wealth advisors, and they will recommend Harneys to them before coming to us," says Mann. "We have a number of strategic partnerships in the region, and have been aggressive in marketing in the PRC. However, we have no exclusive tie-ins and generally cross refer when appropriate, depending on what's best for the client," he says.

As more offshore firms and trust corporations bolster their presence in Greater China — most notably with Ogier being the first offshore firm to set up shop in Shanghai last summer — competition has become keener.

To stand out from the pack, Mann from Harneys says calibre rather than fees is the key determining factor. "People are looking for established offshore firms with pedigree, depth of experience, and an understanding of private wealth and the legacy of successful families," he says.

#### TALENT NEEDED

With China's imminent ascent, many law firms are eager to expand their private wealth offerings. But they are inevitably competing with private banks to attract the already limited pool of talent in Asia.

Leese from Ogier admits that finding candidates "with the right skills has been very difficult." He is looking for talented people with "high intelligence" combined with "practical skills" and an "awareness of practical reality." "There's a very important human aspect to private client work. You need to understand how people think and act," he says, while adding that the new recruits will need to master broad legal knowledge, especially good corporate law knowledge, which proves to be very useful when advising trustees entering contractual agreements. **ALB**



WITHERS

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## THE LAW FIRM FOR WEALTH PRESERVATION AND PLANNING IN ASIA

In 2010 Withers Hong Kong was recommended by Asian Legal Business as one of the “top 10 law firms to watch” in Asia for business growth. Since then, Withers has grown from strength to strength, with its unique blend of wealth planning, family and contentious trust and succession lawyers. It has a focus on wealth preservation just as much as it has on wealth planning.

Withers Hong Kong has one of the largest teams of specialist, tax and trusts, personal wealth planning teams in Asia, including Regional Senior Partner, Joe Field, partners, Mimi Hutton, Jay Krause (Head of Wealth Planning Asia), and Katie Graves. Recently, the highly respected Pearl Lam has joined the team. Its Wealth Planning Group totals 135 solicitors and qualified lawyers worldwide.

The work of Withers Hong Kong’s Wealth Preservation Group (WPG), formed in 2011 (including contentious trust and succession specialist, Patrick Hamlin, Marcus Dearle [family lawyer], Pearl Lam and Katie Graves [both wealth planning lawyers] -pictured below), has attracted considerable interest due to the wealth planning industry’s recognition that family discord and divorce is a clear and present danger to family wealth. This has led to an increasing focus on asset preservation. Withers’ WPG has unrivalled expertise in Hong Kong in this area, in strength and in depth. The group’s wealth planning, family law and contentious trust and succession lawyers work together formulating innovative and cutting-edge solutions to reduce risks and the potential for future expensive and acrimonious litigation. The team stress tests existing trust and corporate structures from

potential attack. It also provides advice on complex international pre- and post-nuptial settlements and dynastic trust planning, pulling in further international tax expertise from its other offices as necessary.

The contentious trust and succession group worldwide at Withers includes 15 specialist solicitors. It works closely with the family group worldwide and represents trustees of leading international bank trustee companies when, for example, a spouse seeks to include a trust asset as a financial resource in the matrimonial pot for division on divorce or seeks to apply to the court to vary the terms of the trust. Patrick Hamlin, the head of the team in Hong Kong, is also regularly approached for advice in situations where a beneficiary is in dispute with trustees in non-divorce cases, or in disputes where a wealthy family member becomes embroiled in disputes over a will.

Withers launched the world’s first international family law practice in late 2010, hiring partner Sharon Ser as head of a new family law department and her team, joining Hong Kong office managing partner, Marcus Dearle. Within a year of opening, the team won the Asian Legal Business Matrimonial Law Firm of the year award. The family team in Hong Kong includes 9 solicitors and regularly works with the pre-eminent family team in London comprising 28 solicitors and acts in some of the most complex local, as well as international cross border, cases. Marcus Dearle is representing Florence Tsang in the ultra high net worth high profile divorce case in Hong Kong which has attracted substantial worldwide media attention.



L-R: Patrick Hamlin, Marcus Dearle, Katie Graves and Pearl Lam

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# SINGAPORE

## CHEER DESPITE THE SLOWDOWN

THE ECONOMIC GROWTH MAY BE SLOW, AND THE FORECASTS MAY BE NEGATIVE, BUT NOT EVERYTHING IS DOOM AND GLOOM IN SINGAPORE. M&A WORK, WHILE HAVING DECLINED SOMEWHAT, IS STILL FAIRLY ROBUST, ARBITRATION IS MOVING AHEAD IN LEAPS AND BOUNDS, BANKING AND FINANCE IS SEEING THE COUNTRY BENEFIT FROM THE WOES OF THE WEST AND SINGAPORE IS EMERGING AS ONE OF ASIA'S MAJOR ENTERTAINMENT HUBS, PROVIDING MUCH TO SAVOUR FOR THE LEGAL COMMUNITY, FINDS **RANAJIT DAM**

**W**ith the global financial outlook continuing to look uncertain, it is no surprise that the Singapore economy has been slow-moving as well. In the third quarter of 2011, the last quarter for which statistics are available, domestic economic activity rose modestly; at the same time, key industries like electronics continued to contract alongside global economic demand. As the Eurozone crisis simmers, and the U.S. economy seems stuck in second gear, Singapore can look ahead to slower growth amid a downturn in external demand. According to the Monetary Authority of Singapore (MAS), the country's economic growth for 2012 is expected to be between one and three percent, with trade-related sectors likely to face significant headwinds over the next few quarters.

From a law firm's perspective, work is declining in some cases as a result of the slowing economy, and firms are feeling the pinch, the least of which is not the continuing downward pressure on fees.



REUTERS/Tim Chong

Singapore currently has 100 foreign law firms involved in a variety of structures – joint law ventures, law alliances, QFLPs and so on – to go with the myriad local practices. Competition is understandably intense, as investors look to exploit the potential of the ASEAN region and India.

But despite the negative forecasts, Singapore isn't all gloom and doom. M&A work, while having declined somewhat, is still fairly robust, arbitration is moving ahead in leaps and bounds, banking and finance is seeing the country benefit from the woes of the West, aviation is seeing the rise of the low-cost carriers, and Singapore is emerging as one of Asia's major entertainment hubs.



**"SINGAPORE IS INCREASINGLY RECOGNISED IN ADDITION TO HONG KONG – AND OVERTAKING TOKYO – AS A THRIVING INTERNATIONAL FINANCE CENTRE FOR SOUTH AND SOUTHEAST ASIA, AND A NECESSARY SECOND LIMB TO ANY ASIAN STRATEGY FOR INTERNATIONAL BUSINESS NOT JUST FOR WESTERN MNCs, BUT FOR PRIVATE EQUITY – BOTH THE INTERNATIONAL HOUSES AND LOCAL ONES – AND FOR ASIA'S OWN MULTINATIONALS."**

Andrew Martin, Baker & McKenzie.Wong & Leow.

"Singapore is increasingly recognised in addition to Hong Kong – and overtaking Tokyo – as a thriving international finance centre for South and Southeast Asia, and a necessary second limb to any Asian strategy for international business not just for western MNCs, but for private equity – both the international houses and local ones – and for Asia's own multinationals," says Andrew Martin, principal at Baker & McKenzie.Wong & Leow. Clearly, Singapore has much silver lining to savour.

#### CORPORATE/M&A: CAUTIOUS OPTIMISM

Two important developments looming ahead for Singapore include an overhaul of the Companies Act, which last saw a total revamp back in 2005, and proposed amendments to the Singapore Code on Takeovers and Mergers, as the country looks to keep pace with market innovations and international practices. While the Companies Act is expected to be overhauled in 2013, the amendments to the takeover code are could take effect sometime early this year. "We expect to see a number of changes being brought about by the amendments," says Andrew Ang, partner at WongPartnership. "For example, it will alter the existing financial assistance rules, close the gap for compulsory acquisitions, and also bring changes to procedures for schemes and amalgamations under the code." Ang adds that the code will be "good for some, bad for others," and says that as it will be more difficult to squeeze out minority shareholders in an acquisition, he expects a number of M&As to happen quickly before the amendments come into play. Martin from Baker & McKenzie.Wong & Leow calls the ground rules of the takeovers code and the listing manual "well understood and encouraging." "We note recent signs of greater flexibility on the part of the regulators, in line with international standards, regarding certain areas such as the tricky issue of special deal arrangements on takeovers," he says.

However, for many law firms in Singapore, a lot of the work has been cross border and multijurisdictional, with a focus on emerging markets like China, Indonesia and India. Ang says that more than half of his work in 2011 was related to China, particularly the delisting of Chinese companies listed on the Singapore Exchange (SGX) or S-chips, which are headed back to China and Hong Kong for relisting on the exchanges there. "I expect this to continue until all the S-chips are gone," he says. "Good S-chips," says Ang, or the ones with high PE ratios, are moving to Hong Kong as they find better value there



than from the SGX. The “bad S-chips,” on the other hand, are being forced out following corporate scandals involving embezzlement, forgery, accounting fraud and the like. Ng Wai King, also a partner at WongPartnership, says he has seen a sizeable amount of work come from Japanese acquisitions in Southeast Asia. Martin concurs. “In terms of acquirers, the Chinese and Japanese strategic acquirers have been very active,” he says. “For the Chinese entities, a lot of the focus has been on resources. For the Japanese, their focus is more across the board, especially food and beverage, but also financial services, principally insurance.”

In terms of how deals are put together, Martin says that there is a lot more stress on due diligence, especially on compliance issues including antitrust and anti-corruption. Ang says that the market has evolved and become more sophisticated, with the introduction of what he calls a “PE approach to deals with unique structures.” Ng says that clients have become more discerning, asking for specialised lawyers to work on transactions. “Three years ago, the same lawyer may have been working on different aspects of a transaction,” he says. “These days, clients will ask for lawyers with different specialisations, such that a deal can be divided into different work streams with specialist lawyers working on each part.”

Overall, the M&A picture has looked a bit bleak for the past year, and this is expected to continue into the first quarter of 2012 at least. “Partly because of the intensity of the competition, partly because of the shortage of real quality assets in emerging markets, and in part because of caution about the integrity of targets and the broader macro environmental uncertainty which has stifled some of the traditional sources of bank credit, we are still short of where we were in terms of M&A activity levels pre-GFC,” says Martin of Baker & McKenzie. Wong & Leow. Ng of WongPartnership says he remains optimistic even in difficult times. “The Eurozone crisis has made it difficult for a number of M&A transactions, particularly with respect to financing,” he says. “The crisis will continue to have an impact on deal volume and deal value in Asia”. That said, he notes that the firm has made a “pretty good start” in 2012, given deals that have been signed up in January and existing corporate/M&A work in the pipeline.

Firms remain hopeful for the year ahead. Ng and Ang say they are “cautiously optimistic,” noting that in difficult times, M&A deals still take place, as there are a number of distressed assets available. Martin says that he is “quietly confident” for 2012 and beyond. “The macroeconomic picture may be one of uncertainty from which Singapore and the rest of Asia is not insulated, but there are areas of opportunity,” he says. “The depressed public markets raise prospects of ‘take private’ transactions, and so we expect to see several of these.”

#### ARBITRATION: SINGAPORE COMES INTO PROMINENCE

As reported in ALB's December issue, Singapore is now seriously

vying with Hong Kong to become Asia's premier arbitration hub and this, says Chong Yee Leong, partner at Rajah & Tann, is no accident. “This has come about... as a result of the concerted efforts made by the Singapore government, judiciary, and the whole legal and arbitration industry over the last few years,” he says. But circumstances are also playing their part. “The current economic lassitude is leading to disputes stemming from failed transactions, deals and investments going awry,” says Randolph Khoo, director at Drew & Napier. “The extent of foreign investment into Asia has also led to the internationalisation of arbitral disputes being resolved in Singapore.”

The numbers show that arbitration is certainly on the up: The Singapore International Arbitration (SIAC) Annual Report for 2010 said that SIAC arbitral filings had risen for the 10<sup>th</sup> consecutive year. Interestingly, a significant number of cases heard in the island state involved parties and matters that have no connection with Singapore, including matters from far-flung jurisdictions such as Iran, Cyprus and the UAE. “[Their] choice is driven mainly by Singapore's reputation for transparency, integrity and efficiency,” says Davinder Singh, CEO of Drew & Napier. India and Greater China contribute the bulk of international arbitration at the SIAC, with Southeast Asia (in particular, Indonesia) featuring prominently, notes Chong. There has been a spike in the number of arbitrations originating from the Indian subcontinent; the number of cases involving at least one Indian party at the SIAC has gone up by nearly 200 percent in the past two years.

Not surprisingly, Singapore is beginning to attract law firms with the amount of business on offer. “In addition to the local Singapore practices, there are currently over 100 foreign law firms located in Singapore, many of which have arbitration practices to service the industry,” says Chong, pointing that the last couple of years have



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Randolph Khoo, Drew & Napier.



REUTERS/Tim Chong

seen the arrival of new global entrants to Singapore like Bankside Chambers and Nabarro, and also specialist arbitration firms such as Hanotiau & van den Berg. Additionally, local Singapore law firms are fast gaining recognition as world players in arbitration. "At the same time as the landscape here is being liberalised to allow greater participation of foreigners in the corporate and dispute resolution spaces, Singapore lawyers are increasingly involved in cross-border work and are being seen in international arbitrations seated elsewhere," says Singh.

One of the ways in which the approach of Singapore firms to arbitration has changed of late is an increased emphasis on specialisation. "Rajah & Tann's approach to arbitration has qualitatively moved to focus on high-yield, complex arbitration covering larger claims," says Chong. "A major factor behind this approach has been the increase in client demand for specialised legal advice in industries such as oil and gas, telecommunications, power and energy, infrastructure development, and process engineering." Singh says that because some of Drew & Napier's cases involve esoteric issues, it has required the firm to "acquire in-depth knowledge on the latest developments in the fields of bilateral investment treaties, international law, and technology."

Looking ahead, Singapore can expect to see the amount of arbitration growing. "With an economic slowdown predicted in Europe cast against the broader shift in economic influence from the West to the East, steady economic growth in mainland and maritime Southeast Asian jurisdictions is

likely to represent an increase in arbitration work for... all international arbitration practices in Singapore," says Chong. Singh of Drew & Napier, who notes that the continuing global slowdown will result in more parties being "prepared to fight," says that the bulk of the work will likely continue to come from Asia, in particular India, Indonesia, China and Vietnam.

#### PROJECTS AND ENERGY: A SURPRISINGLY BUSY YEAR

For a country that possesses a particularly well-developed energy and infrastructure sector, 2011 was a notable year for the number of major projects and financings that achieved key milestones in Singapore, say David Platt, project finance partner, and Ajoy Halder, senior associate at Pinsent Masons MPillay. The year's biggest project finance deal was executed in May, when Jurong Aromatics Corp signed a S\$2 billion (\$1.57 billion) package to finance its Singapore petrochemical plant. In July, GMR Energy secured a limited recourse term-loan facility of \$549.7 million, and a credit and working capital facility of \$270 million for its 800 MW Island Power project, one of the largest independent power projects in Singapore. A consortium consisting of Siemens and Samsung will design and build the plant, which is expected to become operational in 2013. Meanwhile, in the water sector, Hyflux was awarded a contract in March to develop the S\$890 million Tuas II desalination plant – Hyflux's biggest project – and in early July, Sembcorp started construction on a \$40 million integrated wastewater treatment plant in Jurong Island. In the energy sector, Singapore-based electricity provider SP PowerGrid started the tendering process for the construction of two multibillion dollar underground cable tunnels. Finally, in the transport sector, the Singapore Land Transport Authority has awarded contracts over the last year for the development of the 21 km Downtown Line Stage, the final and longest section of the 42 km Downtown Line. Around 12 contracts with a combined value of about \$2 billion were awarded to 12 companies.

With most projects and energy lawyers in Singapore handling work from around the region, 2011 has also been a busy year for countries like Indonesia and Vietnam, say Platt and Halder. Vietnam has seen progress in its infrastructure sector with the successful financing of AES' Mong Duong power project. "However, the boost that investors

hoped this would give to private sector infrastructure development in Vietnam has not yet happened," they say. "Uncertainties over the economic situation, and government concerns as to the level and nature of guarantees needed to support projects still persist."

On the other hand, the Indonesian government continues to be a strong supporter of infrastructure development. In May 2011, it launched the Master Plan for the Acceleration and Expansion of Indonesia's Economic Development between 2011 and 2015. Around the same time, it also announced plans for 17 new projects (including infrastructure) across four provinces, with the total cost estimated at \$21 billion. "In Indonesia, there is always a concern that the announcement of projects is not always followed by the implementation," say Platt and Halder, "but this year, there are positive signs that indicate some real activity is possible in 2012." One of the biggest energy projects, the Central Java Power Plant, in Indonesia was awarded in 2011 by the state-owned electricity firm, Perusahaan Listrik Negara, to a consortium consisting of JPower, Itochu and Adaro. The consortium will develop a 2x1000 MW power plant in Central Java at an estimated cost of \$3.48 billion. The project is notable for two reasons: Firstly, it is the first project effected under Indonesia's public-private-partnership (PPP) law, and there are indications that future projects in both the power and other (for example, transport and water) sectors will be implemented next year. Secondly, it is the first project to enjoy the Indonesia Infrastructure Guarantee Fund's support and guarantee, representing a major improvement in terms of clarity and transparency on the previous guarantee regime.

The further development of the PPP model, say Platt and Halder, is possibly the most significant trend in the projects and energy sector around the region. "This may seem at first to be a strange statement as far fewer PPP projects have been announced than hoped for in 2011," they say. "However, there are indications that, in the Philippines and Indonesia particularly, progress is being made in the capacity building that is a necessary first step to implementation of projects. Most participants are hoping that after the false starts we have seen in 2011, there will be some real progress in 2012."

Looking ahead to 2012, they say that an inevitable lull is expected in construction activity in Singapore, particularly given the number of public and private projects effected over the last two years, with construction expected to recover in late 2012. "The primary reasons for the expected growth in construction activity in 2012 are execution of several large-scale commercial construction contracts in 2011, the ongoing attempt by the government to boost supply of affordable housing for Singaporeans, and the completion of tendering process for most of the railway contracts," say Halder and Platt. Meanwhile Indonesia, with its newly minted investment grade status, is expected to be a significant help in developing infrastructure investment. "More generally, the need for infrastructure (transport and energy in particular) is becoming more and more obvious around the region, and the pressure on governments to actually deliver projects is likely to increase," they add. "Given this, guarded optimism seems to be the order of the day."

#### **BANKING AND FINANCE: OVERSEAS WOES BRING BENEFITS**

With U.S. and European banks mired in troubles, there has been a significant increase in regional banking transactions, with Singaporean banks benefiting from their troubles, says Susan Kong, director at Stamford Law Corporation. "More international loans and capital market transactions are now being denominated in Singapore dollars," she says. "Previously, they were in other more international currencies like the U.S. dollar, or borrower's or issuer's domestic

currency. This has happened in part due to the credit crunch in other parts of the world, and the liquidity of Singapore dollars." Kong adds that she has seen a continued development in the wealth management space amid tightened regulatory controls and licensing requirements for professionals rendering financial advice and/or managing funds.

From a professional firm's perspective, with the introduction of the QFLPs, there is now stiffer competition for work in the Singapore-law-governed banking and finance space, says Kong. "Also, we see many mid and junior banking and finance lawyers leaving large Singapore firms to join foreign firms," she adds. The proposed merger of Allen & Gledhill and Allen & Overy is also looking like it will complicate things. "The larger Singapore firms in the Tier 1 and Tier 2 space will be watching it closely, and will be under pressure to either find a partner firm to merge or collaborate with," she says. "This merger is perceived to have the effect of putting pressure on these Singapore firms to compete for the Tier 1 and Tier 2 work, and poses great challenges for talent retention and recruitment."

Additionally, she says that she expects to see more fragmentation in the market, with some firms undertaking small local "vanilla" transactions, other firms undertaking such transactions and some larger domestic real estate driven transactions, and the rest undertaking large capital market transactions and regional transactions. Despite these pressures, she expects to see healthy growth in the banking and finance space as "Singapore becomes increasingly successful as a significant international financial center and is well-poised to take advantage of the growth in Asia."

Yu-En Ong, Singapore-based partner at Norton Rose, says that he expects to see some banks downing shutters in the country. "Singapore is a major financial centre with many Asian and international banks having a presence," he says. "Any bank that wanted to establish a presence is already here. This year, we anticipate there to be some consolidation in the banking and finance sector, and even one or two banks exiting from the country."

#### **INTELLECTUAL PROPERTY: ADR COMES INTO FOCUS**

Among the significant developments in the intellectual property (IP) space in recent times, has been the boost to alternative dispute resolution (ADR) infrastructure





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Susan Kong, Stamford Law Corporation.

for IP conflicts in Singapore by way of the introduction of a joint dispute resolution procedure framework between the Intellectual Property Office of Singapore and the WIPO Arbitration and Mediation Centre (WIPO Centre) in 2011. "The procedure, which is expected to be available from early 2012, enables IP disputes to be resolved through mediation which is administered by the WIPO Centre in Singapore," says Yvonne Tang, director in Drew & Napier's intellectual property department.

Tang says she has found more parties prepared to turn to the courts to resolve their IP disputes, and local courts signaling a willingness to depart from the UK approach in trademark infringement matters. For example, she says, in the *Polo/Lauren Co v Shop-In Department Store* case, the Singapore Court of Appeal, while adopting the "three-step" test in *British Sugar v James Robertson & Sons*, made clear the fact that a sign is similar to a registered mark does not automatically mean that there will be a likelihood of confusion. It also held that the court is entitled to look outside the mark and the sign, as well as the articles, to assess whether a likelihood of confusion exists. "This approach was followed or referred to in notable subsequent cases," says Tang, citing as examples *MiTac International v Singapore Telecommunications*, *City Chain Stores v Louis Vuitton*, and *Ferrero SpA v Sarika Connoisseur Cafe*. Tang notes that ADR options and recent developments in local case law have become increasingly important in her firm's approach towards IP conflicts. "We can expect the alternative dispute resolution scene to gradually shape up, and play an increasingly important role in IP conflicts over the next one to two years," she says.

#### SHIPPING: A PERFECT STORM

While it is obvious that the shipping markets are in a fairly difficult state, what has surprised industry watchers is just how bad it is. "It's obvious that this is a tough market," says Martin Green, managing partner of Stephenson Harwood's Singapore office. But this downturn is unlike any other. Unusually, both lenders and borrowers are facing problems - banks in accessing funding, and shipping companies in creating value from the loans they've taken." The upshot, he says, is that there is bad news on the horizon. "Quite a few substantial shipping companies are having problems," he says. "I foresee trouble ahead in 2012."

A consequence of this market, he says, is an increase in the amount of restructuring and enforcement work. "There's a far greater requirement for enforcement of security," says Green. It has been a

similar experience for Goh Mei Lin, partner at Watson Farley Williams' Asia Practice. "There has been a marked decrease in predelivery (construction) financing of ships, and a marked increase in the number of restructurings and enforcements over the last 12 months or so, which is another area in which we have been actively involved," she says. "We were, and are, involved in the majority of ship arrests undertaken by banks in Singapore." Goh adds that with access to commercial bank funded transactions being tightened, there has been a significant increase in the number of ECA-backed ship finance transactions, particularly SINOSURE and K-SURE transactions.

Hard times have meant that an increasing number of borrowers are now approaching courts in order to seek protection from creditors. Green from Stephenson Harwood says that one avenue is attracting increasing attention: U.S. courts. A verdict won last year by Netherlands-based global maritime shipping company Marco Polo Seatrade in the Southern District of New York showed that U.S. Chapter 11 proceedings were a viable restructuring strategy for international shipping companies, as long as they had the minimal connections needed to satisfy U.S. jurisdictional requirements, and confirmed that U.S. bankruptcy courts would maintain jurisdiction over foreign debtors as long as the Chapter 11 filings were made in good faith and with the intention to properly reorganise the business. "Since much of the shipping business is a U.S. dollar business, I think we will see more local shipping companies seeking recourse to U.S. courts now," says Green.

Looking ahead, Green sees the trend of enforcement and restructuring work continuing. At the same time, he says, banks

will continue to lend in order to make loans to cover loans that have been repaid or otherwise recovered. "However, they will be a lot more selective about it," he says. Goh expects about a year or more of pain before things begin to look up. "The continued tightening in the banking market, the still-challenging shipping market, and the fact that many companies no longer have the cash reserves which they had two or three years ago will make the next 12 to 18 months a difficult period. But with it come opportunities, and from this we anticipate a consolidation cycle occurring over the next 12 to 24 months," she says. "Given our experience and expertise in the corporate, commercial, finance and dispute resolution areas within the maritime and aviation sectors, we are well placed to help the borrowers, lessors, lessees and the banks, and financial institutions through this challenging period."

#### AVIATION: BUDGET CARRIERS BUCK TURBULENCE

Much like the global economy, the world aviation industry has been facing turbulence of late. According to Paul Ng, partner and global head of aviation at Stephenson Harwood, the reasons are numerous. For one, new lending practices introduced under Basel III regulations, some of which will be enforced as early as 2013, will increase the cost of funding for banks, and whilst not specifically targeted at the aviation industry, is expected to be passed to borrowers (such as airlines) through increase in pricing of their loans. Aircraft flying into and out of European airspace began to be subject to the EU Emissions Trading Scheme from January, potentially increasing operating costs greatly, and a number of countries are talking about bringing into force retaliatory measures. Finally, under the 2011 OECD Aircraft Sector Understanding (ASU), the cost of export credit (ECA financing) has increased. ECA financing has become one of the backbone sources of financial support for the industry, and as the cost of such funds, in some cases, have doubled, industry players may be forced to seek cheaper financing in an already liquidity-scarce environment. This has contributed to a period of belt-tightening in the aviation industry, says Ng. Over the course of last year, quite a few aircraft lessors have also been going through a phase of divestment of their fleet; these include ILFC, Macquarie and the aircraft finance arm of RBS.

This shortage of funds, says Mehraab Nazir, partner at Watson Farley Williams' Asia Practice, is leading to more borrowers seeking funding from capital markets, and equity from third party funds. Nazir adds that the number of Japanese operating lease transactions has also been increasing. Assets covered by the Japanese operating leases include both aircraft, and an increase in the use of Japanese operating leases for container box transactions. There are also an increased number of private equity, junior debt, and mezzanine finance players and products available in the market.

Ng says that the silver lining in the industry has come from low-cost carriers, especially regional low-cost carriers like Lion Air, AirAsia, Cebu Pacific and Indigo. "These airlines have the steepest growth trajectory at the moment," he says. With profits continuing to grow – AirAsia made \$500 million in 2010 – they are targeting corporate customers now by introducing business class seats and other perks. "Budget carriers are now established brands," says Ng. "They are the ones who need capital now; they are the ones who the market arguably have the most confidence in. It is no surprise that the investors are circling."

#### MEDIA AND ENTERTAINMENT: A NEW LEVEL OF EXCITEMENT

With Singapore growing in prominence as an Asian entertainment hub, financing opportunities for its entertainment industry have increased correspondingly. Samuel Seow, managing director of



Samuel Seow Law Corporation, says that Singapore's Media Development Authority's (MDA) recent announcements of new funding schemes have "sparked a new level of excitement in the entertainment industry in Singapore, and indeed, worldwide." He adds that these should have the effect of renewing interest in Singapore as a fast-developing entertainment base.

In October 2011, the 46 assistance schemes previously made available by the MDA were streamlined to just five, with a \$88 million budget being set aside for these five schemes, all of which were open to the seven sectors of the media industry namely animation, broadcast, film, interactive media, music and publishing. Seow says that a key change in these new financing schemes is that MDA will no longer seek to own a share in funded projects, and companies under the schemes can own all rights to their works. "The regime has changed from one of 'investment' into 'grants,' he says. "As much as the new found freedom is welcome, it also brings with it the responsibility of ensuring that companies develop their own expertise in the protection and exploitation of their intellectual property around the world, without the formidable shadow of the government funding body looking over them in protection." Seow adds that he



REUTERS/Bazuki Muhammad

believes the new grant scheme will allow enterprises to build on their capabilities, and develop competitive advantages for long-term growth.

Another development is that funding is now available to any company incorporated in Singapore, with the previous requirement of a minimum percentage of local shareholding being removed from the funding criteria. "This could have the effect of attracting even more international entertainment businesses to set up a base in Singapore for the financing opportunities," says Seow.

Seow adds that international cooperation between Singapore and other countries will lead to the creation of new work for consumption worldwide. "Singapore has signed many co-production treaties with other countries, including Australia, Canada, New Zealand and China," he says. "However, few official co-productions have been completed and exploited under these treaties. It is anticipated that there will be increasing pressure to use these co-production treaties in the coming years." Seow's firm has worked on *Bait 3D*, an upcoming horror film that is the first Singapore-Australia 3D co-production, and he says he believes this film could provide Singapore's film industry a shot in the arm. In a similar vein, the partnering of the MDA and Singapore's Cybersports and Online Gaming Association with China Information Broadcast Network has allowed Singapore produced games access into the Chinese market, which consists of an estimated 60 million gamers, says Seow.

Looking ahead, he says that with international heavyweights turning their eyes to the region, as well as substantial government support in the form of funding and partnership platforms for local businesses to reach a regional and international audience, the media and entertainment industry should "grow more outward looking for its local players to become more mature in their negotiations and approaches to intellectual property." "We are heartened by the tremendous growth in the industry within the region in the last few years, and anticipate sustainable future growth," he adds. "The development of sound stages in Mediapolis in Singapore and Pinewood Iskandar Malaysia Studios in Malaysia is set to further establish the region's significance in the global media and entertainment market." 

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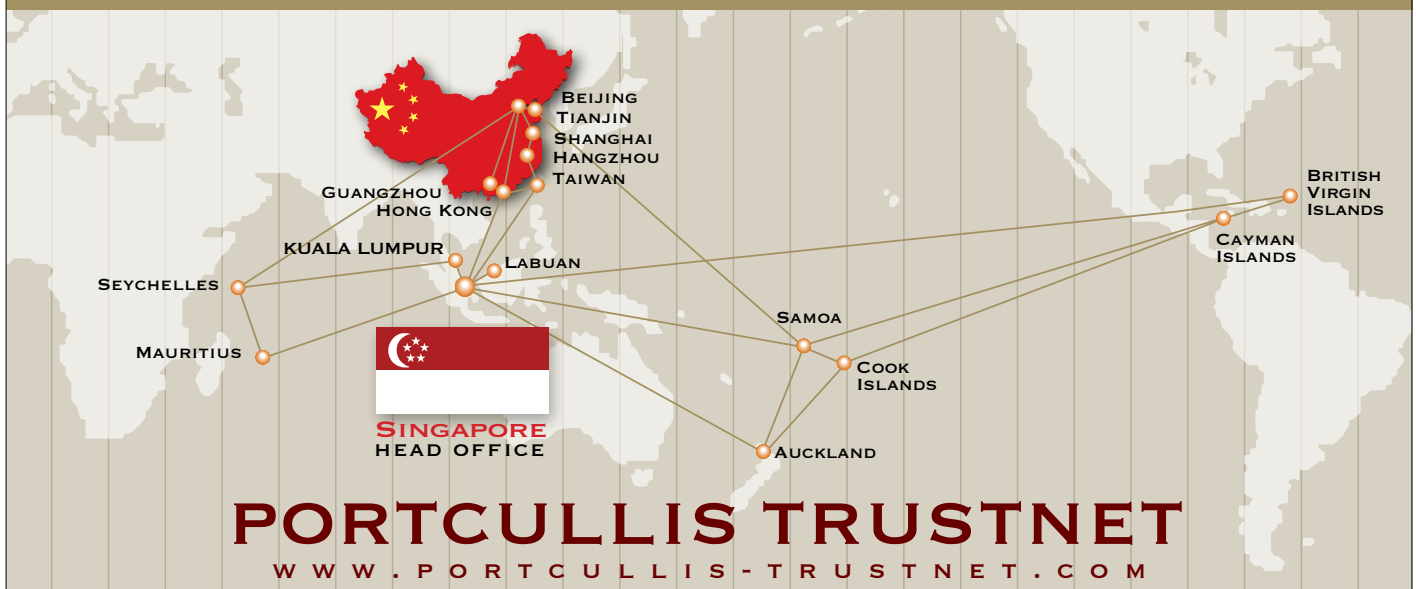
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AS GLOBAL EXECUTIVE CHAIRMAN OF BAKER & MCKENZIE, BRAZILIAN EDUARDO LEITE OVERSEES A LEGAL EMPIRE OF 3,800 LAWYERS AND 70 OFFICES ACROSS 42 COUNTRIES. IN A CHAT WITH **RANAJIT DAM**, HE TALKS ABOUT WHAT IT TAKES TO BE A GLOBAL FIRM LIKE BAKERS, HOW THE FIRM DEALS WITH CHALLENGES ARISING FROM OPERATING ACROSS JURISDICTIONS, AND WHY ATTEMPTS TO EMULATE IT WILL PROBABLY FAIL.

"A LOT OF THE FIRMS ARE INSISTING ON GOING INTERNATIONAL AS THEY'RE LOOKING FOR OPPORTUNITIES OUTSIDE THEIR HOME COUNTRIES. **MANY OF THEM ARE GOING TO FAIL; IT'S CLEAR THEY'RE GOING TO FAIL BECAUSE THEY DON'T HAVE THE STRUCTURE, THEY DON'T HAVE THE CULTURE,** THEY HAVEN'T DEVELOPED THE EXPERIENCE, AND THEY'RE STILL TOO HOME COUNTRY-CENTRIC. I CAN SEE THAT WITH MANY OF THE NORTH AMERICAN FIRMS, AND IT'S GOING TO HAPPEN WITH THE EUROPEAN FIRMS AS WELL."

#### WHAT SETS YOUR FIRM APART FROM THE PACK?

**T**he secret to our global expansion goes beyond mere strategy. The firm was created with the vision of being a global firm. When it was founded in 1949 – shortly after World War Two – that was the original vision of Russell Baker and John McKenzie. They wanted a firm that was not just a domestic firm operating out of Chicago, but one that could help clients in their worldwide operations. We opened our first office in Caracas in 1955, because our client Abbott Laboratories needed us. This vision predates the internationalisation of many, many firms, who are today eager to expand internationally, and are investing very heavily and very quickly. It is in our DNA to be global.

We're a very democratic firm that allows each partner, whether it is a partner in Shanghai, or a partner in Kuala Lumpur, to feel that they are a part of the process, and that they are a true partner, not a second class partner as in many London-centric or New York-centric firms. Just the other day, I was talking to a Japanese lateral who is joining our Tokyo office, and he said: "I'm coming from a Magic Circle firm, and I was shocked to see how serious Baker & McKenzie is about being diverse." We are culturally respectful of differences, and to some extent, give a partner in a local jurisdiction the responsibility of deciding many of the local issues, instead

of managing them out of our London office or New York or Chicago or wherever. This is very unique, and a key factor in what sets us apart.

#### WHAT IS CAUSING A LOT OF TODAY'S FIRMS GO GLOBAL?

Earlier, law firms were more interested in becoming stronger either locally, or in some cases regionally. Take North America for example, where most firms were strong in certain practice areas like corporate, litigation, or in certain regions or sub-regions like the U.S. Northeast or the U.S. Southwest. Now they're expanding, or rather, they're being forced to expand internationally. We are also seeing that expansion among firms from the Asia Pacific, as well as European firms, and even some South American firms, are moving within the region. This has been the most dramatic change in the last five years, although it started even earlier than that. But in the last five years, what has been amazing has been the pace of the change. It is a result of the way the makeup of clients has changed, both geographically and economically.

#### CAN BAKER & MCKENZIE PROVIDE A TEMPLATE FOR THESE FIRMS?

Can we be a template? Well, I think each firm has to find its own strategy, its own future, based on what each firm is. It's important to understand one's culture and appreciate it, and using one's knowledge

of one's culture, get the best out of it. It's very difficult to import some other template, or someone else's strategy, or someone else's structure. It doesn't work like that in the long run. It's okay to use it as a benchmark to compare, to learn, to adjust what we are, but each institution has to be what the institution is in terms of culture, personality, DNA, and values. We have been cited by some firms who are expanding internationally. I can't remember the name, but there was an article I read somewhere where a Chinese firm said: "We want to be the Baker & McKenzie of Asia-Pacific." It's nice to be looked at as an example, but we don't expect to be a model for anyone except for ourselves.

#### SO WHAT DO YOU THINK OF THE PROSPECTS OF THESE FIRMS OVER THE NEXT DECADE OR SO?

A lot of the firms are insisting on going international as they're looking for opportunities outside their home countries. Many of them are going to fail; it's clear they're going to fail because they don't have the structure, they don't have the culture, they haven't developed the experience, and they're still too home country-centric. I can see that with many of the North American firms. It's going to happen with the European firms as well. Over the next ten years, the market and the who's who is going to be much clearer. I think there's going to be few very large,

very global firms leading the pack, and I'm not talking "Big Four" like the accounting industry. I think I see maybe 20 firms doing the work globally for large clients, including large cross border transactions, large high-value and high-stakes litigation. That is going to be a trend, and it will be worldwide, not just European or pan-Asian.

#### **CAN BAKER & MCKENZIE STAY NEAR THE TOP OF THAT PACK?**

Well, my vision and my hope is that we are at the top of that elite global list, but it isn't easy to be at the top, or be among the top five or ten in each jurisdiction, which is our goal. We have a very strong brand; according to a survey by a firm called Acritas, we were named the strongest law firm brand worldwide for the third year in a row. It won't be easy keeping it up. One good thing about our firm is that we're not afraid to reinvent ourselves. We're constantly discussing changes to our strategy, our compensation, our focus, our structure, and our organisation. It's good not to let values become dogmas, and we're constantly challenging our values to make sure they don't become blinders that don't allow us to see what's next. We also like to try different things very carefully. So I think the firm will continue to evolve, and the firm should be one of those elite global law firms.

#### **WHAT ARE THE CHALLENGES THAT COME WITH RUNNING A GLOBAL FIRM LIKE BAKERS?**

First of all, there is the local regulatory aspect. There are some jurisdictions where international firms can only do non-local work. Another is one not many people talk about: the competition for the best talent. When we start a new office in an emerging market, competition is very hard. While this is not new, this has become particularly difficult recently in emerging markets. The war for good talent is incredible.

We invest a great deal in training, and we make sure our lawyers have not only a deep knowledge of the local law, but also international standards and a global experience. This is what a model attorney should be, and it makes us invaluable in the eyes of the clients too. But we're facing extreme competition in most of the emerging markets, and some established economies too, in some mature markets like Australia, for example, and even in Europe and North America.

#### **HOW DO YOU ENSURE YOU UPHOLD BEST PRACTICES ACROSS VARIOUS OFFICES?**

We have a professional development framework, or PDF, which is a series of key performance activities and personal qualities that we utilise in the process of training our lawyers, as they go from junior lawyer to senior partner, and we expect them to follow it as they progress from junior to mid-level to senior. Each and every one of our 4,000 lawyers around the globe has to follow the PDF, and is evaluated against its parameters.

We also invest in exchanging best practices around the globe. Every three or four years, depending on the location of the office, each one of Baker & McKenzie's 70 offices is audited by a group of partners who are very prominent in different countries, including generally a managing partner and a leader of a practice. It's been

very successful, because it helps offices improve, and learn from others' successes.

#### **DO YOU SEE THE NEXT WAVE OF GLOBAL LAW FIRMS COMING FROM ASIA?**

I think it's happening already. I was recently in New York for the Thomson Reuters Legal Executive Briefing, and I spoke about the strategy for emerging markets. There were other managing partners of Asian firms from China, from Japan, and from India. They are looking to becoming pan-Asian; other Asian firms from Singapore and elsewhere are also





looking more and more at becoming pan-Asian. There is a growing trade, a growing investment flow within Asia-Pacific that is very attractive, and that is sure to generate a stronger wave of pan-Asian firms. Of course, there are combinations on the horizon, and you know there will be more. There are Asian firms that have offices today in New York and London. Maybe in the beginning, these are small operations, but it is an indication of the expansion. It's already happening, and I think the trend is going to get stronger with new alliances in the form of best friends, or in the form of more formal alliances, or as combinations

and mergers.

#### HOW IS BAKERS EQUIPPED TO TAP INTO THE POTENTIAL OF ASIA?

I think what we have first of all is longevity in the Asia-Pacific region, as we have in North America and Europe. We've been in Asia-Pacific for a long time, in some cases we're talking about the third generation of Baker & McKenzie. That gives us strong roots in each community, and also gives us a very deep understanding of the reality of each jurisdiction, from Japan to Australia, to China, to Thailand, and so forth. I think that for us, the Asia-Pacific is an engine of growth, not because there's a lot of inbound work into China, inbound work into Vietnam, and many other countries, but also because of the rapidly increasing outbound work. Chinese outbound investment is growing tremendously. We have done



"WE HAVE BEEN CITED BY SOME FIRMS WHO ARE EXPANDING INTERNATIONALLY... THERE WAS AN ARTICLE I READ SOMEWHERE WHERE A CHINESE FIRM SAID: 'WE WANT TO BE THE BAKER & MCKENZIE OF THE ASIA-PACIFIC.' IT'S NICE TO BE LOOKED AT AS AN EXAMPLE, BUT **WE DON'T EXPECT TO BE A MODEL FOR ANYONE EXCEPT FOR OURSELVES.**"

for Chinese SOEs and private clients with sizeable investments in energy and mining, for the automotive industry; you name it, whether it is in the established world like Europe, or in the U.S., or in other emerging markets, be it the so-called south-south trade, investment has been growing incredibly fast. We are very well-positioned, both in Asia-Pacific, and in the other regions, to serve those clients.

I think there is also a third area in addition to inbound and outbound; this is the local work. We have local lawyers everywhere we go, everywhere we are established; and we appreciate that. We don't move expats from London to Singapore, from London to Beijing; we're not that kind of firm. We do it in the initial phase when we are forming an office, or because of the need of a specific practice area, but that insistence is on investing locally and grooming the local lawyers into leadership roles. This also gives us the ability to do local work for domestic companies, and be an important player in the legal community of each jurisdiction that we are based in. Asia-Pacific is no different.

#### **HOW WOULD YOU DEFINE THE STRATEGY YOU HAVE SET FOR THE FIRM DURING YOUR TENURE?**


Our vision is to be the premier global law firm, and I would add, in client service. We want to be seen and appreciated as being truly global, which is very unique and very challenging, and we want to be much more than just international. Most importantly, we want client service at the top of our

minds. We want to be a client-friendly firm; everything we do, I tell my partners, has to be client driven: Not only client focused, but more than that, client driven, with the client in the driving seat.

We have a shared leadership, a collective leadership; that is the only way to bring about this transformation. So what I would like to see from this firm is that it continues to challenge its objectives, and renews and refreshes its objectives based on how the world is changing; what the clients are seeking; a firm that listens very carefully to what the clients are asking of us, and what they want and need. In the year 2010 and 2011, we have done 50 percent more client feedback sessions than the previous year. That is essentially because our global client teams need to understand very, very clearly what the clients are saying. Sometimes clients don't say it, they just mean it, and it is hard to read between the lines. Then, we need to act on what they are asking us. That is my vision, and that is what I expect us to be, before the end of my term.

#### **WITH MORE THAN THREE DECADES AT BAKERS, WHAT MAKES YOU CONTINUE TO BELIEVE IN THE FIRM?**

Baker & McKenzie has what I call our "culture of friendship." After I graduated, I spent more than one year in the Chicago office, training. In those days, there was a young attorney there called John Conroy, who later became my predecessor as chairman of the firm. So if you look at what starting your career means in terms of relationship, leadership, succession, it's very extraordinary. It's very good for the firm to have this smooth transition. It's not just at the very top of management; it happens also among global practice group leaders, in global industry group leadership, in office management, in regional management; we share a lot of time together. That culture really helps, and culture, as you know, is more important than structures, systems, or incentives in the end.

So we invest a lot in meetings. We're having our Asia-Pacific meeting in Vietnam this month in Ho Chi Minh City. We are bringing together all the partners in the region, because they are a meaningful part of the process. The other important part of our culture is that we're very democratic and very respectful of cultural diversity; we appreciate that, we like that. That is part of our value proposition. Those aspects: being democratic, being appreciative of diversity, and having a culture of friendship make us unique. 

"WE ARE CULTURALLY RESPECTFUL TO DIFFERENCES, AND TO SOME EXTENT, GIVE A PARTNER IN A LOCAL JURISDICTION THE RESPONSIBILITY OF DECIDING MANY OF THE LOCAL ISSUES, **INSTEAD OF MANAGING THEM OUT OF OUR LONDON OFFICE OR NEW YORK OR CHICAGO OR WHEREVER.**"



## UK REPORT

### GC SALARY RISES STILL BEHIND INFLATION

Despite salary increases of an average of 2.5 percent, the vast majority of heads of legal in the UK have taken a salary cut in real terms, as inflation remains at 5.2 percent. According to research conducted by the UK-based employment research organisation Incomes Data Services (IDS), the average compensation for general counsels in the UK over the past year was £132,310 (\$205,735), which included the 2.5 percent increase.

Bonuses also remained static, with only heads of legal reporting an average increase in bonus payments. Almost two-fifths (39.5 percent) of those surveyed said their bonuses were higher than last year, while 35.2 percent said their bonuses were lower compared to last year. IDS head of research, Nasreen Rahman, attributed the low figures to a low rate of hiring in general, with only four of the companies surveyed actively looking to hire in-house lawyers.

### UPTO 70 TO GO IN LINKLATERS RESTRUCTURING

Partners higher up the food chain are said to be caught up in the latest information on the Linklaters restructuring. Originally, around 30 partners were to be shown the door, but according to latest press reports, the figure stands at 70. This number includes more senior partners than first thought of, as well as those outside London. The report also says that partners in areas including "mainstream corporate" practice are in the firing line. Managing partner Simon Davies, who is based in London, is said to be travelling around regional offices, and was in Germany explaining the restructuring process to partners in the jurisdiction.

Management is also said to be in discussion with partners, allowing time for them to find new positions. The latest news means that this restructuring could equal the firm's 2009 "New World" restructuring where 70 partners, and around 10 percent of associates were axed.

### SQUIRE SANDERS DROPS HAMMONDS FROM NAME AHEAD OF SCHEDULE

Squire Sanders Hammonds has officially unveiled a rebrand that will see it known only as Squire Sanders henceforth in 36 countries across the world. The firm was known as Squire Sanders Hammonds throughout Europe and most of Asia, and as Squire Sanders Dempsey in the U.S.

The firm displayed the new branding on its redesigned website, but reports in the media emerged after a court filing alerted a Los Angeles federal judge about the move. Squire Sanders chair and chief executive James Maiwurm said that the firm wanted to operate with a "crisper" image around the world, and that the move was a sign of the firm's integration having gone as well, or better than expected.

### GTM LONDON REVENUE INCREASES TO £8.7 MLN

Greenberg Traurig Maher's (GTM) revenue from its London office has increased to £8.7 million in March 2011 from the corresponding period last year – up from £3.5 million it took during its first eight months of operating in the City, following the hire of Mayer Brown's Paul Maher. The firm has been one of the most active in hiring lateral partners, taking in 15 during 2009, and a further 12 in 2010.

Overall, the office's expenses totaled to about £9.4 million. This means that the London base made a loss of £714,000 in its first full year of operation. The news comes six months after GTM pulled back from further expansion plans to focus on transactional work, mainly in the energy sector.

## ROUNDUP

- 1 HSBC Holdings has hired its first chief legal officer after general counsel Richard Bennett announced his retirement after 33 years in the organisation. Stuart Levey will take on the new role gradually over the course of a year.
- 2 SJ Berwin looks to have lost its two highest billing clients following the departure of a funds team for Proskauer Rose. Private equity

house HgCapital and PE investment manager Adam Street Partners transferred their work there after relationship partner Nigel van Zyl began work at Proskauer in January. SJ Berwin is said to be maintaining relationships with both.

- 3 UK barristers' chambers 11KBW has decided to follow a trend and appoint David Stead as its first chief executive. Stead has spent much of his career in the professional services, and leaves his position as head of marketing and communications at patent attorney Gill Jennings & Every to join 11KBW.
- 4 GTM has lost a second City partner to SJ Berwin in the space of a month. Construction partner Stuart Jordan will join the latter along with former consultant and partner Neil Upton, whose departure was announced on Jan. 3. Both had joined GTM from DLA Piper in 2010.
- 5 Shearman & Sterling has hired Ashurst City projects partner John Inglis in a bid to boost its energy and resources practice. Inglis has a large Middle East and Asian projects practice, and has spent five years as partner at Ashurst.
- 6 A former partner with Fulbright & Jaworski, Richard Simkin and his office manager wife Zakia Sharif, have pleaded guilty to stealing £100,000 from the firm. The pair kept their relationship secret on Simkin's recommendation, according to reports in the media. Sharif allegedly denied the charges initially.



## U.S. REPORT

### DLA PIPER IN HIRING SPREE

DLA Piper has hired another five partner group from Hogan Lovells for its Washington office. Partners Lee Alexander, Stefan Krantz, John Lilyestrom, Kevin Lipson and Christopher Schindler all join the firm's energy practice.

Lipson was previously head of the energy group and co-head of the global energy industry group at Hogan Lovells; Alexander has served as a FERC Deputy Chief of Staff; Schindler is well versed in mid-stream and energy trading matters; Krantz handles regulatory litigation and Lilyestrom focuses on power generation and transmission transactions.

The team has expertise in counseling oil pipelines, distribution companies, investor-owned electric utilities, shale oil and natural gas developers, and financial institutions. The group also has particular knowledge of regulatory matters.

### NEW GC FOR NEWS CORP

News Corp has named Gerson Zweifach as its new general counsel after Lawrence Jacobs stepped down in June 2011, according to reports in the media. Jacobs was News Corp's general counsel since 2004.

Zweifach will now oversee all legal work at News Corp, which is still dealing with the aftermath of the News of the World phone hacking scandal. His clients include former New York Stock Exchange chief executive Richard Grasso.

Other law firms engaged by News Corp include Debevoise & Plimpton, and Paul, Weiss, Rifkind, Wharton & Garrison.

## ROUNDUP

- 1 DLA Piper has hired five lawyers from Reed Smith for its Silicon Valley practice. Effective Jan. 11, partners Armando Castro, Matt Oshinsky and Richard Scudellari (also co-managing partner of the office) joined the corporate and securities group, while David Lisi joined the litigation group and Craig Opperman, the IP group.
- 2 Cleary Gottlieb Steen & Hamilton, and Simpson Thacher & Bartlett have scored the lead roles on the \$2.1 billion sale of France Telecom's Orange Switzerland mobile business. Cleary will represent France Telecom, while Simpson Thacher will represent the acquirer, Apax Partners.





## Paul Weiss

### SPONSORED UPDATE: CHINA



#### SARFT'S NEW GUIDELINES ON THE FILM INDUSTRY

The Chinese film industry regulator State Administration of Radio, Film, and Television ("SARFT") issued a set of new guidelines to promote the harmonious development of film production, distribution and exhibition (the "Guidelines") on November 29, 2011.

The Guidelines provide certain suggestions on how box office receipts and advertising revenues should be shared among the different industry players and how theaters should be operated. Specifically the Guidelines have the following suggestions:

1. Theaters should, in principle, share no more than 50 percent of the box office receipts from a first run exhibition;
2. Annual theater rental should not exceed 15 percent of its annual box office revenue;
3. If any theater wishes to join a theater circuit, the minimum franchise cooperation term between the theater and a theater circuit should be 3 years; and if during the cooperation period, the theater wishes to join another theater circuit, then it could only do so if more than 50 percent of the total equity interest of such theater is being acquired by the second theater circuit, AND if the first theater circuit consents; and
4. The theater operators, as oppose to the film producers, should have the right to display advertisements before the exhibition of a film and the advertising revenues should belong to the theater operators.

Even though the various industry operators are not mandatorily required to follow these Guidelines, it would not be surprising if SARFT decides to codify these Guidelines in the near future. The Guidelines have the following impact on the film makers and the theater operators:

1. We understand the current practice for the split of box office receipts between film makers and theater operators (including theater circuits) is around 43 percent and 57 percent. The Guidelines lift the revenue share for film makers. However, if the theater operators obtain the right to the advertising revenue generated from the

exhibition of the movie, then the theater operators will be able to make up the loss from the box office receipts.

2. If a theater circuit plans to acquire a theater in the future which has joined another theater circuit through a cooperation contract (which would need to be at least 3 years under the Guidelines), the acquiring theater circuit would need to obtain the first theater circuit's consent, and this may constrain the ability of the acquiring theater circuit to roll out its theater network quickly.



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#### SPONSORED UPDATE: SINGAPORE



#### BIDDING FAREWELL TO A LISTED STATUS VIA A SCHEME OF ARRANGEMENT

On 23 December 2011, Hsu Fu Chi International Limited ("Hsu Fu Chi") was successfully delisted from the Singapore Exchange Securities Trading Limited ("SGX-ST") following the acquisition of a 60 percent stake by Nestlé S.A.

Reasons cited by companies seeking delisting include, attractive premium of the offer price, costs of compliance, low trading liquidity, and the need for greater operating flexibility. Some companies also embark on delisting with a view of seeking listing on another exchange which provides a better valuation for its shares.

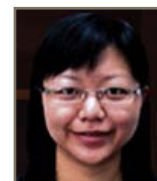
A company listed on SGX-ST ("Issuer") can be privatised through several ways: (i) voluntary delisting; (ii) scheme of arrangement ("Scheme"); (iii) general offer; and (iv) amalgamation. A general overview of delisting via a scheme of arrangement is provided below.

An Issuer which is incorporated in Singapore can be delisted by way of a Scheme pursuant to section 210 of the Companies Act, Chapter 50 of the Statutes of Republic of Singapore ("Companies Act"). However, the Companies Act will not apply to a company incorporated under the laws of other jurisdictions. Accordingly, a solicitor practising the law of incorporation of the Issuer shall need to be engaged to provide legal advice on relevant and equivalent provisions pertaining to a Scheme.

A Scheme is entered into between the Issuer and its shareholders with a view to either: (i) cancel issued shares of the company and issue new shares to the acquirer; or (ii) transfer all issued shares to the acquirer. The Issuer must appoint an independent financial adviser to opine on whether the consideration to be provided to the shareholders pursuant to the Scheme is reasonable.

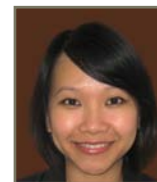
The Scheme must then be approved at a court meeting by a majority in number of the Issuer's shareholders holding at least 75 percent in value of the Issuer's shares, either in person or by proxy at the court meeting. It also requires the sanction of the High Court. Once the Scheme has been approved, it binds all shareholders of the Issuer.

When the Court makes an order approving the Scheme, a copy of the order will be lodged with the Accounting and Corporate Authority of Singapore. Subject to the satisfaction of all other requisite conditions required under the relevant laws, the Scheme will become effective from the date of lodgement of the order or such other date as the court may specify. The Issuer will be delisted after the settlement of consideration by the acquirer.



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## SPONSORED UPDATE: MALAYSIA

**MALAYSIA TO ACCEDE TO THE MADRID PROTOCOL BY 2013**

Amendments to the Malaysian Trade Marks Act 1976 (TMA) have been underway and are expected to be tabled at Parliament within the first quarter of 2012. In line with this reform, the Ministry of Domestic Trade, Co-operatives and Consumerism (MDTCC) recently announced that Malaysia will accede to the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks ("Madrid Protocol") by 2013.

The Madrid Protocol will allow Malaysian traders to protect their marks in over 80 member countries worldwide via a single application filed with the Malaysian Trade Marks Registry as opposed to filing the application separately with the trade mark registry of each country in which the applicant seeks protection. Any person who has a valid establishment or is resident in Malaysia would be eligible to file an international application under the Madrid Protocol.

The MDTCC hopes that Malaysia's accession to the Madrid Protocol will encourage local small and medium enterprises (SMEs) to protect their trade marks abroad. The benefits of the Madrid Protocol include the fact that trade mark owners will have the option of filing their application in a single language (English, French or Spanish) within an affordable cost – otherwise, translation into the local language of a designated country would have been required. Further, in many countries, the issuance of a decision by the trade marks registry may take between 2 to 3 years depending on its complexity. Under the Madrid Protocol, the local trade marks registry of a designated country is required to deliver a decision within 12 to 18 months as to whether the mark should be refused, failing which the mark will be given automatic registration in that country.

Malaysia's accession to the Madrid Protocol is one of a number of measures taken by the Malaysian government to elevate the protection of intellectual property in Malaysia and in line with its current and potential free trade agreements with foreign countries. Other recent amendments include changes to the trade marks and patents regulations, which now provides for expedited examination amongst other things. The Copyright (Amendment) Bill 2010 was

also recently passed by Parliament, which introduces safe harbour provisions for service providers and other intermediaries.

*This article is for information purposes only. The contents do not constitute legal advice and should not be regarded as a substitute for detailed advice in individual cases. No decision to act or not to act in a particular way should be taken merely on the basis of this article, and detailed legal advice should always be sought at the earliest possible moment.*



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## SPONSORED UPDATE: PHILIPPINES



**PHILIPPINE CENTRAL BANK  
AMENDS REGISTRATION  
REQUIREMENTS  
FOR REGISTRATION OF FX LOANS AND  
EQUITY INVESTMENTS**

The Bangko Sentral ng Pilipinas (BSP) recently issued Circular Nos. 742 and 743 (Series of 2011) amending certain provisions of the Manual of Regulations on Foreign Exchange Transactions (Manual). Under the Manual, loans and equity investments must be registered with the BSP if the foreign exchange needed to service repatriation of capital, remittance of dividends, profits and earnings accruing from such investments or payment of interest and principal on foreign loans shall be sourced from the Philippine banking system.

Among other amendments, Circular No. 742 added foreign loans of resident private sector borrowers (not publicly-guaranteed) to finance infrastructure projects included in the government's list of Public Private Partnership Projects to the list of loans that do not require prior BSP approval. The exemption, however, is valid only up to three years from December 11, 2011.

Circular No. 742 also provides that in respect of registration of inward foreign direct investments, foreign exchange funding for cash investments must be inwardly remitted but need not be converted to Philippine pesos. Prior to the effectivity of the circular, foreign exchange funding for cash investments should have been converted into Philippine pesos as a condition for registration of the investment.

Circular No. 743, on the other hand, provided for a prescriptive period for filing of requests for registration with the BSP of foreign direct investments. Prior to the effectivity of the circular, there was no specified period within which inward foreign direct investments must be registered with the BSP. With the effectivity of the circular, the Manual now requires that all applications for registration of foreign direct investments must be filed with the BSP within five years from the date of inward remittance/actual transfer of assets to the Philippines. For existing unregistered direct investments that are currently recorded in an investee firm's books and whose foreign exchange funding were inwardly remitted or assets were transferred more than five years prior to December 15, 2011, applications for



registration may be filed with the BSP until December 15, 2012. After said date, the BSP will no longer register such investments.



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# AT THE IP FOREFRONT

ATMD Bird & Bird is one of the few law firms in Singapore that has a widely diversified intellectual property (IP) practice with specialist in-house patent attorneys and a litigation team that handles only IP work. All its IP lawyers handle both contentious and non-contentious work, making them stronger overall IP advisors. The firm offers a full range of intellectual property services from the protection of IP rights including trade marks, patents and designs, to the enforcement of IP rights including IP litigation and anti-counterfeiting as well as the exploitation and commercialisation of IP rights.

The firm offers advice and counsel in all sectors on IP matters ranging from major strategic reviews to one-off counsel on the application of specific IP law. The firm combines its legal expertise with an in-depth understanding of the various sectors and industries in which their clients operate, including aviation & aerospace, communications, life sciences, food & beverage, information technology, media, and sports.

The firm is consistently recognised as a leading Singapore law firm for IP by top legal publications like Chambers & Partners and The Legal 500, and has won many awards in the last few years including the Singapore IP Law Firm of the Year for the third consecutive year at the Managing IP 2011 Global Awards. The firm has also been involved in many landmark IP cases before the Singapore courts.

#### AN OVERVIEW OF IP CASES IN SINGAPORE IN 2011

In *Dien Ghin Electronics (S) Pte Ltd v Khek Tai Ting* [2011] 3 SLR 227, the High Court revoked the defendant's patent for a system comprising LED panels which could be mounted on vehicle rooftops to display messages on the grounds of insufficient disclosure, lack of novelty and lack of inventiveness. Notably, the Court held that where the patent specification was pitched at a higher level of abstraction than the prior art publications, the proper approach was to notionally perform the prior art from the perspective of the skilled person, and then to reduce the notional end product to the same level of abstraction as the patent claims for the purpose of determining anticipation.

In *Campomar SL v Nike International Ltd* [2011] 2 SLR 846, the Court of Appeal held that the relevant date for determining the existence of an "earlier trade mark" for the purposes of s 8(1) of the Trade Marks Act ("TMA") was the date when the mark was to be entered on the register, and not the date of the registration application. (S 8(1) TMA prohibits the registration of a later trade mark if it was identical with an "earlier trade mark" for goods or services identical with those for which the "earlier trade mark" was registered.) As such, Campomar SL's ("Campomar") registered 'NIKE' mark was not an "earlier trade mark" because it had been revoked by the time Nike International Ltd's ("Nike's") identical 'NIKE' mark was to be registered. Nevertheless, registration of Nike's mark was prohibited because Nike had failed to request that Campomar's mark be revoked with effect from a date which preceded the date of its own registration application so that there would be two identical marks on the register at the same time at some point, causing confusion.

In *Ferrero SPA v Sarika Connoisseur Café Pte Ltd* [2011] SGHC 176, the High Court found Ferrero SPA's ("Ferrero") registered "Nutella" trade marks to have been infringed by Sarika Connoisseur Café Pte Ltd's ("Sarika") use of the name 'Nutello' on the drinks menu of The Connoisseur Concerto café outlets which it runs in Singapore. The Court also found 'Nutella' to be well-known to the public at large in Singapore, and that it was possible that the use of Nutello on drinks would cause the dilution of the distinctiveness of the 'Nutella' marks. Ferrero also succeeded on its claim for passing-off.

In *Guy Neale and others (suing as a partnership) v Ku De Ta SG Pte Ltd* [2011] SGHC 136 the Singapore High Court in dismissing a striking out application held that the proprietor of an unregistered well-known trade mark "Ku De Ta" was entitled to rely on s 55 to restrain use of the mark even where the trade mark "Ku De Ta" was registered in Singapore by a third party, because the possible invalidity of said registration was raised in the pleadings. The court's reasoning was that s 55A(2) of the TMA, which provides that no injunction shall be granted under s 55 to restrain

the use of a registered trade mark, only applies in respect of valid registrations. Notably, this was notwithstanding the fact that the invalidation proceedings were commenced against the third party in separate proceedings.

In *Asia Pacific Publishing Pte Ltd v Pioneers & Leaders (Publishers) Pte Ltd* [2011] 4 SLR 381, the Court of Appeal, overturning the High Court, held that authors of copyright works must be natural persons and that companies could not qualify as authors. The plaintiff failed in its claim for infringement of copyright in its horse-racing publication because no human author of the works had been identified and as such, the plaintiff's publication could not be deemed an 'original work' capable of copyright protection.

#### IP IN SINGAPORE

Singapore continues its drive to develop itself as an IP centre for the South-east Asian region. As companies in the region innovate, the need to protect their intellectual property should increase. Yet Singapore and other South-east Asian countries continue to lag behind the developed countries and their neighbours in North and South Asia, in terms of generating IP.

Although there was a modest increase in the number of filings at the Singapore Patent and Trade Mark offices, the overall number of trade mark and patent applications filed remains relatively low at 9,773 trade mark applications and 17,404 patent applications in 2010. Interestingly the majority of both trade mark and patent applications are filed by non-resident companies. In 2010, Singapore companies filed about 25 percent of all trade mark applications and even fewer patent applications, less than 10 percent of all patent applications filed. There continue to be incentives for local companies to protect their IP and tax incentives to place IP portfolios in Singapore. Whether this will result in a significant increase in IP protection, still remains to be seen.

However, IP litigation is on the increase. Businesses appear more inclined to take action when their IP is misused and IP litigation is on the rise for both foreign and local companies alike. Foreign companies are attracted to litigating IP disputes in Singapore because of the efficient disposal of cases in court.

One trend that has appeared is the move towards mediation and ADR for IP disputes, previously largely ignored. The Singapore International Arbitration Centre and WIPO both have IP dispute resolution capability based in Singapore for the region. Whether this will take off is still difficult to predict.

In 2012 Singapore is likely to significantly revise its patent laws to move towards a positive grant system. This will certainly be welcome by many and is seen as a sign of maturing into a more developed IP regime.

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SPONSORED UPDATE  
EMERGING MARKETS

## CAMBODIA'S CIVIL CODE COMES INTO FORCE



Four years after its promulgation on 8 December 2007, the Civil Code of Cambodia ("CCC") has finally taken effect as of 21 December 2011.



Cambodia had been a civil law jurisdiction since 1920, when a French-style Civil Code was enacted, until it was abolished by the Khmer Rouge in 1975. Since the defeat of the Khmer Rouge in 1979, Cambodia's legal system has been haunted by problems of inconsistencies, inability to deal with modern commercial transactions, and lack of proper means to interpret existing regulations.

The new CCC was based on the Civil Code of Japan (“CCJ”), and notably has taken into consideration a number of special laws and judicial decisions of Japan. However it should be noted that instead of the five-book structure in the CCJ, the CCC had adopted a structure comprised of nine books, namely: (1) General Rules, (2) Persons, (3) Real Rights, (4) Obligations, (5) Particular Types of Contracts/Torts, (6) Security, (7) Relative, (8) Succession, and (9) Final Provision.

Significantly, the CCC now provides certainty of legal relationships in commercial transactions. Many legal professionals will be encouraged to find the CCC in line with prevailing international practices, which allows the CCC to reduce the risk that commercial transactions will be subject to arbitrary decisions.

The CCC also introduced a number of other changes, such as:

- repealing Decree #38D Referring to the Contract and Other Liabilities, and has certain retroactive effect with respect to certain legal provisions or customs (or lack thereof);
- abrogating many provisions of the Land Law, e.g. reducing the maximum period of perpetual lease from 99 years to 50 years, and establishing two basic real estate security mechanisms, i.e. hypothec and pledges;
- providing an alternative means of creating a pledge over movables and rights/claims (in addition to existing mechanism based on Article 9 of the Uniform Commercial Code of the U.S.);
- raising the maximum interest rate for non-financial institution lenders from 5 percent p.a. to 18 percent p.a., and providing 27 percent p.a. as the cap for default interest / liquidated damages (it is not yet clear whether the new caps apply to financial institution lenders); and
- requiring any guaranteed amount be handwritten by the guarantor in a written instrument.

While its implementation in the short term will certainly have its share of teething problems, particularly given how long the existing, often confusing practice has been in place, the CCC will be the corner stone of Cambodia's effort to modernize its legal practice, and will play a major role in civil and commercial matters in Cambodia.

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## UK CROWN DEPENDENCIES HIT BACK AT UK OPPOSITION PARTY LEADER OVER 'TAX HAVEN' LABEL



The UK Labour Party leader Mr Edward Miliband has come under fire from Jersey, Guernsey and the Isle of Man, after he announced the party wanted the three jurisdictions persecuted as “tax havens”.

Earlier this month, Miliband told newspapers he was asking the UK's coalition government to press for tougher EU action against so-called "tax havens". According to an anonymous party spokesman, Miliband wants "The UK's tax havens" to be targetted first. He is urging the government to force the crown dependencies to reveal the names of wealthy UK investors who use tax planning, with the threat of putting them on the OECD's blacklist if they do not co-operate. This policy, Miliband's spokesman implied, would be included in Labour's 2015 election manifesto.

Jersey Finance retaliated with a critical statement, backed by a letter to the Financial Times by chief executive Geoff Cook TEP. "It is disappointing when political leaders choose to make inaccurate accusations about Jersey which do not reflect the positive contribution that Jersey and the other Crown Dependencies make to the broader UK economy", it said.

It also pointed out that the Foot Review, commissioned and published by the previous Labour government, had concluded that the amount of tax avoided by UK corporates using crown dependencies and overseas territories was significantly lower than the “wildly inflated figures produced by self-appointed lobby groups such as the Tax Justice Network”.

“The characterisation of Jersey as a tax haven fails to recognise the regular endorsements that the island has received from the OECD and IMF”, it added.

The Isle of Man's chief minister Allan Bell said Miliband was "ill-informed" and had made his statement to boost his own image. "You must look at Ed Miliband's own position at the moment, he has been under severe attack for lack of leadership", Bell told Manx Radio. "He is looking for scapegoats."

This interpretation was echoed by Guernsey's treasury and resources minister Charles Parkinson, who dismissed Miliband's comments as "without credibility".

"They are political posturing by a Labour leader who is struggling in the opinion polls", he said.

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JICN

The Japan In-house Counsel Network (JICN) is a professional association for in-house counsel working in, or having other affiliations with, Japan. JICN offers a forum for communication between members, social and networking opportunities, legal seminars, roundtable member discussions and other activities, as well as events with other lawyer and in-house groups. Visit [www.jicn.jp](http://www.jicn.jp) for more details.



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The Hong Kong Corporate Counsel Association is the pioneer association run for in-house counsel by in-house counsel in Hong Kong. It provides an efficient and effective range of benefits and services for its members' professional development, including continuing legal education, a platform for networking and the exchange of ideas, information and experiences that are unique to the in-house role.



SSCA

The Singapore Corporate Counsel Association or SCCA was set up in 2002. It is the pioneer association representing in-house lawyers in Singapore. <http://www.scca.org.sg>

**SCCA** Singapore Corporate Counsel Association



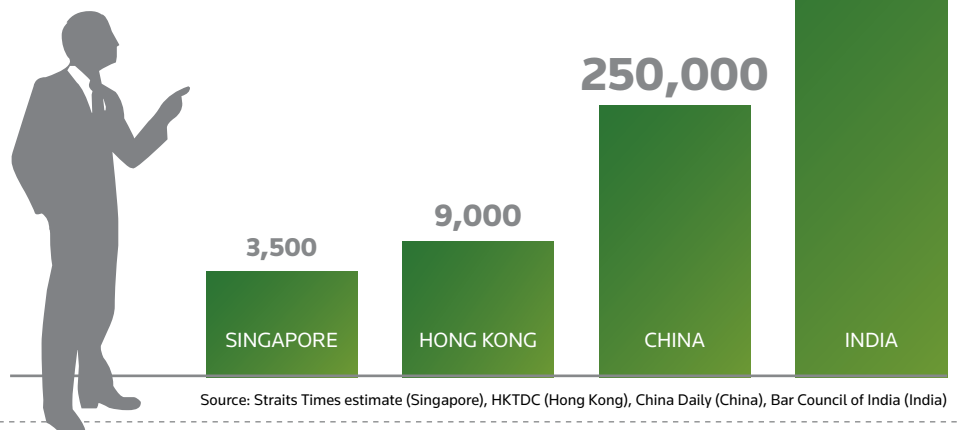
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## TOO MANY LAWYERS?

A look at the number of lawyers in four major jurisdictions



### QUOTE OF THE MONTH

"AT PRESENT, IT IS OBSCENE IMAGES OF GODS AND GODDESSES; TOMORROW IT CAN BE AN IMAGE OF SOMEONE IN YOUR FAMILY."

Delhi High Court judge Suresh Chait tells Facebook India and Google India to screen and censor user-generated content following a controversy over "anti-social" and "anti-religious" content appearing on the two websites.

## LEGAL THREAT PUTS STEVE JOBS ACTION FIGURE BACK IN THE BOX

Apple's lawyers probably wouldn't have imagined that they would have to defend Steve Jobs' image after the tech visionary's death. But given how much the Apple founder is loved in Asia – home to a gazillion knockoff iPhones – it might have been less of a surprise when Jobs materialised recently as an action figure.

Created as a loving homage to the man who made technology both consumer-friendly and outright cool, the 12-inch Steve Jobs action figurine is, however, no longer in production following a legal notice from Apple Inc and Job's family to In Icons, its Hong Kong-based manufacturer.



REUTERS/Yuri Gripas

As of press time, the figure was on sale for \$1200 on eBay. The doll is clad in Jobs' trademark black turtleneck sweater, blue jeans, sneakers and a leather belt, and comes with two apples amongst other accessories. "The original intention for creating the figurine was driven by a fan's admiration for Steve," said In Icons on its website, as it announced the halting of production. "Unfortunately, we have received immense pressure from the lawyers of Apple Inc and Steve Job's family. Though we still believe that we have not overstepped any legal boundaries, we have decided to completely stop the offer, production, and sale of the Steve Jobs figurine."



THE LENGTH OF THE JAIL SENTENCE RECEIVED BY THAI MAN AMPON "UNCLE SMS" TANGNOPPAKUL, 62, FOR SENDING TEXT MESSAGES DEEMED INSULTING TO THE MONARCHY IN 2010.

## LIGHTS, CAMERA, LAWSUIT!

Is Bollywood India's new litigation capital?

Any time a Bollywood blockbuster is ready for release, it seems like a potential lawsuit is around the corner. Take, for example, **The**



**Dirty Picture**, which received a legal notice from the deceased subject's brother on the grounds that the film was obscene and made without the family's consent. Then there was **Rockstar**, which earned the ire of a writer who threatened to sue if his name was not in the credits, and **Desi Boyz**, against which a petition has been filed by a writer who claims to have copyright on the story and the title. Then there is Shah Rukh Khan-starring monster **Ra.One**, which faced a lawsuit from a writer who claimed to have created the film; the Bombay High Court asked Khan to deposit \$200,000 before the film could be released. Looks like Indian film producers need to factor in the costs of at least one lawsuit when procuring financing for the film.

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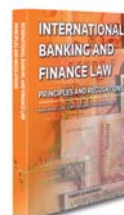


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