

ELECTRONIC EDITION

ASIAN- COUNSEL

Vol 6 Issue 6
July / August 2008

A PACIFIC BUSINESS PRESS PUBLICATION

www.pbpress.com



Representing corporate Asia

The survey 2008

Including Asian-Counsel's
Firms of the Year as selected
by the region's in-house counsel

A
PACIFIC BUSINESS PRESS
ASIAN-COUNSEL
Firm of the Year
2008

 Digital Copyright Law in HK
Dissolving FIEs in the PRC

Anton Piller orders: Legal WMDs?
Sukuk al-ijarah explained



LEGENDARY SERVICE IN THE HEART OF BEIJING

Offering the perfect blend of sophistication and innovation, The Peninsula Beijing provides the ultimate in luxury. Enjoy elegantly designed guestrooms, award-winning western cuisine at Jing, the superb Cantonese delicacies of Huang Ting, and unsurpassed levels of personalised service that is synonymous with The Peninsula name for over 75 years. Add to this our city centre location within walking distance to main shopping areas, the Forbidden City and Tiananmen Square. For more information on Beijing's most distinctive hotel, please visit us at peninsula.com

THE PENINSULA

BEIJING

8 GOLDFISH LANE, WANGFUJING, BEIJING 100006, THE PEOPLE'S REPUBLIC OF CHINA (86-10) 8516 2888 OR PENINSULA.COM

HONG KONG NEW YORK CHICAGO BEVERLY HILLS TOKYO BANGKOK BEIJING MANILA SHANGHAI 2009



Cover Story

Representing corporate Asia

Pacific Business Press has just completed what is probably the largest survey of in-house counsel across Asia and the Middle East this year asking them, amongst other things, who they choose as their external counsel and, perhaps more importantly, why. The special report on the survey results looks at the most pertinent issues counsel cite when choosing between externals, what issues might seriously jeopardise their decision to use a firm again, and how these factors effect the overall working relationship between in-house and firm practitioners.

48



Plus

48 Anton Piller Orders

Darren Fitzgerald and Luke Ryan of *Bird & Bird* on the practicalities of how to brandish pre-emptive orders.

50 Digital Copyright Law

Over 600 submissions were made to the consultative body on digital copyright protection in Hong Kong. Robin King of *Baker & McKenzie* talks us through some of those that made the cut for further public consultation.

55



Departments

18 Ear to the ground

Allbright Law Office Of Counsel Sean Maguire on small and medium indigenous firms on the mainland.

4 News Focus

The latest proposals on the Hong Kong government's Digital Copyright Law.

5 The Briefing

The latest news, moves and deals.

55 Country Files

All the latest legal developments from across the region.

60 Helping Hands

Regional firms demonstrate their commitment to charitable acts.

60



Sharron Fast – Managing Editor
sharron.fast@pbpress.com

Simon King – Associate Publisher
simon.king@pbpress.com

Johnnie Au – Senior Graphic Designer
johnnie.au@pbpress.com

Tiffany Hsiao – Events Manager
tiffany.hsiao@pbpress.com

Wendy Chan – Distribution
wendy.chan@pbpress.com

Joseph Lee – Business Development
joseph.lee@pbpress.com

Ricky Chiu – Business Development
ricky.chiu@pbpress.com

Yvette Tan – Database Manager
yvette.tan@pbpress.com

Tim Gilkison – Managing Director
tim.gilkison@pbpress.com

Arun Mistry – Director

Editorial Enquiries
Tel: (852) 2542 4279
Fax: (852) 2575 0004
asian-counsel@pbpress.com

Advertising & Subscriptions
Tel: (852) 2542 1225
sales@pbpress.com

Published 10 times annually by
Pacific Business Press Limited
1712, 17/F, Asian House
1 Hennessy Road, Wan Chai
Hong Kong S.A.R.

Publishers of
• Asian-Counsel
• In-House Handbook
• Asian-Counsel Weekly Briefing

Organisers of
• In-House Congress events
• PBP Masterclass

© 2008 Pacific Business Press
Limited and contributors

Opinions expressed herein do not
constitute legal advice, and do not
necessarily reflect the views of the
publishers.

ISSN 1729-3405

www.pbpress.com

Contributors

Darren FitzGerald is a consultant and head of Bird & Bird's Asia dispute resolution group in Hong Kong. He specialises in commercial litigation with a technology focus – in telecommunications, IT and media – and in international arbitration, especially in the IP/IT sectors. He has particular experience in PRC-related disputes. FitzGerald has practiced in Asia-Pacific for over 14 years and has worked on some of the largest and most complex commercial disputes and regulatory matters in Hong Kong.



Robin King has worked in London, Frankfurt and Hong Kong for private practice law-firms and in-house for a large UK financial institution. He provides advice on intellectual property licensing and assignment, franchising, sales and distribution, privacy and a wide variety of other commercial matters. King is a qualified solicitor in both Hong Kong SAR and England and Wales.

Luke Ryan is a senior associate in Bird & Bird's Asia dispute resolution group and is based in Hong Kong. Ryan has extensive experience acting for clients in complex commercial litigation matters. He regularly advises clients in relation to shareholder disputes; joint venture and partnership disputes; various breach of contract claims and insolvency matters.



Asian-Counsel is grateful for the continued editorial contributions of:



BEITEN BURKHARDT
百达律师事务所

**CLIFFORD
CHANCE**



Allens Arthur Robinson
Clear Thinking



www.pbpress.com

ONLINE HOME OF ASIAN-COUNSEL AND THE IN-HOUSE CONGRESS



AZURETRUSTEES

International Trusts, Wills, Estates and Probate



A Practitioner's Guide to Trusts — Hong Kong Edition

Code : 1726H ISBN : 978-988-17014-3-5 Pages : 400

Ref: HF306

HK\$795

As the leading wealth management centre in Asia, trusts are much used in Hong Kong. Trust practitioners in Hong Kong cannot rely solely on English trust law text books for proper guidance as there are many areas of difference under Hong Kong trust law from English trust law.

A Practitioner's Guide to Trusts—Hong Kong Edition builds on the fifth edition of John Thurston's well-known guide to English trusts by adding chapters authored by Hong Kong-based tax and trusts expert Deborah Annells on what can happen to trust establishment, administration and adjudication under various Hong Kong ordinances. This additional coverage—fully in tune with Thurston's justly famed crispness of style—is a valuable tool for Hong Kong and internationally-based practitioners.

With dozens of worked examples, this step-by-step guide to all the practical aspects of Hong Kong trust law provides all the information a practitioner needs to satisfy clients' queries and concerns including the following:

- rules concerning investment by trustees;
- rules for the appointment and discharge of trustees;
- powers of the court in the appointment of trustees;
- rules regarding the establishment of a Registered Trust Company in Hong Kong;
- breach of trust and removal of trustees; and
- treatment of pensions, charities, life assurance and taxation issues.

The book includes analysis on reforms proposed by other leading trust practitioners in Hong Kong. References to relevant Hong Kong legislation are also included.

To order, just fill in the form on the reverse side.

AzureTrustees Ltd **A Registered Trustee Company**

The Center, Suite 4708, 99 Queen's Road,
Central, Hong Kong

Tel: (852) 2123 9370

Fax: (852) 2122 9209

Email: info@azuretrustees.com

www.azuretrustees.com

Disclaimer

The information and articles within this newsletter are obtained from sources, which the issuer believes to be reliable. The issuer makes no guarantee, representation, or warranty in respect of the information contained herein and accepts no liability as to its accuracy or completeness. Expressions of opinion herein are subject to change without notice.

This information within this newsletter is not and should not be construed as an offer or the solicitation of an offer to subscribe any service. This document does not constitute tax advice, and no action should be taken based on the information in the document without first consulting suitable tax advisers. No liability for actions taken, or in action, based on the information in this document, is accepted.

Registered with the Chartered Institute of Taxation for the purposes of anti money laundering legislation.



AZURETRUSTEES

International Trusts, Wills, Estates and Probate



To order, just fill in the form and fax back on **(852) 2521 7874**.

Name:	_____	Company:	_____
Job Title:	_____		
Address:	_____ _____		
Industry:	_____	Company size:	_____
Tel:	_____	Fax:	_____
		Email:	_____
Signature:	_____ _____		

AzureTrustees Ltd

We are moving... with effect from the 23rd July 2008 our new address will be:
Suite 1010, 10/F Lippo Centre, Tower Two, 89 Queensway, Hong Kong.

Tel: (852) 2123 9370

Fax: (852) 2122 9299

Email: info@azuretrustees.com

AzureTrustees Ltd A Registered Trustee Company

The Center, Suite 4708, 99 Queen's Road,
Central, Hong Kong

Tel: (852) 2123 9370

Fax: (852) 2122 9209

Email: info@azuretrustees.com

www.azuretrustees.com

Disclaimer

The information and articles within this newsletter are obtained from sources, which the issuer believes to be reliable. The issuer makes no guarantee, representation, or warranty in respect of the information contained herein and accepts no liability as to its accuracy or completeness. Expressions of opinion herein are subject to change without notice.

This information within this newsletter is not and should not be construed as an offer or the solicitation of an offer to subscribe any service. This document does not constitute tax advice, and no action should be taken based on the information in the document without first consulting suitable tax advisers. No liability for actions taken, or in action, based on the information in this document, is accepted.

Registered with the Chartered Institute of Taxation for the purposes of anti money laundering legislation.

In-House

Financial Services

Manila 15+ PQE
Premier European financial institution seeks insurance/financial services lawyer for management level role in its Philippines operations. A good understanding of the Philippines financial services and regulatory environment is very important for this role.
AC5508

Private Banking

Hong Kong 5-8 PQE
Premier global bank seeks lawyer to provide legal & regulatory support to its Asia wealth management business. You will have experience of banking, financial services and investments work from either a leading international law firm or financial institution
AC4739

Structured Credit/Lending

Hong Kong 3-6 PQE
Premier global banking group seeks lawyer to provide legal & regulatory support to its expanding Asia PWM businesses. You will be HK/common law qualified lawyer with background in either corporate lending, structured products and/or investments work.
AC5663

Consumer Finance

Hong Kong 2-6 PQE
Asia-Pacific bank seeks lawyer to provide legal & regulatory support to its expanding Greater China consumer finance businesses. You will be HK qualified lawyer working for either a premier law firm or financial institution. Mandarin language skills required.
AC5657

M&A

Hong Kong 6-10 PQE
European financial services group seeks HK/common law qualified lawyer with M&A and corporate finance transactions experience from the Asia-Pacific offices of a leading international law firm or financial institution. Mandarin language skills would be useful.
AC5510

Equity Capital Markets

Hong Kong 4-7 PQE
Premier global bank seeks lawyer for business-facing role within its China focused capital markets group. You will have solid ECM and M&A deal experience from the HK offices of a leading international law firm. Mandarin language skills are important.
AC5015

Equity Derivatives

Hong Kong 2-4 PQE
Global banking group seeks derivatives lawyer to support its Asia region equities businesses. You will be a HK/common law qualified lawyer with experience of equity derivatives, securities and/or funds offerings products from a leading international law firm.
AC5489

General Counsel

Hong Kong 10+ PQE
Fortune 500 company seeks senior lawyer for management level role within its Greater China operations. You will be HK qualified with solid experience of M&A, investments, commercial and company secretarial law matters. Previous In-house experience is important.
AC5681

Insurance/Investments

Beijing 6-10 PQE
Leading US financial services group seeks lawyer to provide legal support to its Greater China operations. You will be PRC/HK qualified lawyer with legal and regulatory background in financial services, insurance and/or investments matters. Mandarin is required.
AC5800

Commercial Property

Hong Kong 2-5 PQE
HK listed conglomerate seeks HK qualified lawyer with experience of commercial and residential property law matters from either private practice or in-house. Knowledge of the HK listing rules and PRC property development business would be very useful.
AC5645

For further information, in complete confidence, please contact Lesley Hobbs
Day: +852 2521 1460 Email: lesley.hobbs@hays.com.hk

Law Firm

Banking & Finance

Hong Kong 3+ PQE
Get the best exposure in the market and take your career higher. Excellent opportunity to work on a variety of all banking & finance-related matters in Asia including syndicated lending, acquisition finance & LBOs, derivative products and restructuring.
AC2650

Litigation – TMT

Hong Kong 1-4 PQE
Established international firm with one of the strongest teams in the global market. Work alongside market leading lawyers on cutting edge matters. You will be HK/UK admitted with at least 1 PQE from a top practice. TMT/competition law exposure advantageous.
AC3189

Project Finance

Hong Kong 2+ PQE
Join the magic circle. This department is widely regarded as a market leader. This is a rare and excellent chance to launch your career to the next stage. Regional exposure, dynamic and challenging work on offer – what else is there to think about?
AC2363

Real Estate

Beijing 5+ PQE
A truly global firm operating in 25 countries worldwide, the real estate practice handles all levels of transactions. There is great scope and opportunity for the right candidate here. Strong PRC exposure is expected from a reputable practice in HK or China.
AC5694

Corporate

Shanghai 2+ PQE
This global firm has a clear market share and visibility. Its PRC practice is extremely strong, advising market-leading clients, and now requires lawyers with strong IPO, M&A and corporate finance experience. HK admission/Chinese language not essential.
AC3266

For further information, in complete confidence, please contact Katie Hogue
Day: +852 2521 1460 Email: katie.hogue@hays.com.hk

Insurance Litigation

Hong Kong 4-6 PQE
Winners of a number of accolades and awards this leading international law firm has one of the longest established insurance practices in Hong Kong. Applicants must have relevant practice experience gained at an international or leading local law firm. Cantonese languages.
AC5759

Project Finance

Hong Kong 3-6 PQE
Renowned as the best in the industry this projects, construction and energy practice is where you want to be! The role is pure transactional and requires a lawyer with the proven ability to undertake major transactions as part of a team. Utilities sector experience an advantage.
AC5481

Corporate

Hong Kong 4-6 PQE
Looking for the chance to join a broad corporate practice? Our client advises on a wide variety of matters, such as mergers and acquisitions, private equity transactions, reorganisations and refinancing, joint ventures and general corporate and has an impressive international client base.
AC5217

Immigration

Hong Kong 3+ PQE
Take your career to the next level with this global employment practice. You will be afforded a significant level of responsibility, supervising two junior staff and reporting directly to the sole partner of the group. At least 3 years of Immigration related experience required. Chinese languages.
AC5632

Corporate/Real Estate

Hong Kong 3-5 PQE
Are you a corporate lawyer with property transaction experience? This is an interesting and diverse opportunity with a top tier global law firm. You must have solid experience of any of the following: M&A, projects, financial and general corporate gained at an international law firm.
AC0993

For further information, in complete confidence, please contact Lisa Sassi
Day: +852 2521 1460 Email: lisa.sassi@hays.com.hk

Lie to the ACCC at your peril

The ACCC commences criminal prosecution for breach of section 155 of the Trade Practices Act

By Kathryn Edghill and Graham Maher, *Addisons*

In a high profile case demonstrating the seriousness with which Australia's competition regulator, the Australian Competition and Consumer Commission (ACCC) will pursue those involved in breaches of the Trade Practices Act (TPA), the ACCC has commenced criminal proceedings against the chairman of the Visy Group of companies, Mr Richard Pratt, alleging that he gave false evidence to it during its investigation of price fixing between Visy and a competitor, Amcor, in the corrugated cardboard carton industry in Australia.

Background – the Visy/Amcor cartel

In December 2005 the ACCC commenced civil proceedings against a number of the companies in the Visy Group and a number of senior executives including its chairman Mr Richard Pratt, alleging a price fixing cartel in breach of section 45 of the TPA. This followed, among other things, the grant of immunity from prosecution to Amcor as a result of it blowing the whistle on the cartel and the issue of a notice pursuant to section 155 of the TPA requiring Mr Pratt to attend before the ACCC for examination on oath. The civil proceedings were eventually resolved with Visy and Mr Pratt being found liable for their roles in the cartel and the Visy companies receiving penalties totalling \$36 million from the Federal Court.

Section 155 of the Trade Practices Act

Section 155 of the TPA confers on the ACCC significant powers to, amongst other things compel the production

of documents and information to it and to require individuals to attend before the ACCC to be examined on oath where the ACCC has a reasonable belief that there has been a contravention of the TPA. Section 155(5) of the TPA prohibits a person from knowingly furnishing information or giving evidence to the ACCC that is false or misleading in purported compliance with a section 155 notice. A contravention of that section is an offence punishable on conviction by a fine of up to \$2,200 or imprisonment for 12 months.

The allegations against Mr Pratt

Full details of the allegations against Mr Pratt are not yet known but reports are that they relate to evidence given by Mr Pratt during his section 155 examination. The ACCC will bear the onus of proving beyond reasonable doubt that the evidence which Mr Pratt gave to it was given by him knowing that it was false or misleading. It is not yet known whether, and on what basis, Mr Pratt will defend the proceedings.

The penalty

At this stage it is not known what penalties the ACCC will seek in the proceedings against Mr Pratt. There is, however, precedent for the Federal Court to award prison sentences in respect of breaches of section 155 of the TPA, the most recent being a sentence of 6 months imprisonment which was handed down to Mr Paul John Rana following his conviction for offences under the TPA including failure to comply with notices issued under section 155. It would not be surprising, in our opinion,

The commencement of the proceedings ... sends a very clear message about the ACCC's determination to seek appropriate punishment for those it alleges breach the TPA, particularly where it involves cartels

for the ACCC to seek a jail term for Mr Pratt should they be successful in convicting him in respect of the alleged offences because: the maximum financial penalties under the section are relatively small; in the case of a wealthy businessman such as Mr Pratt, such penalties may not be regarded by the ACCC as having sufficient deterrent effect; and while cartel conduct itself is not yet a criminal offence in Australia, and although these allegations against Mr Pratt do not directly relate to the cartel offence itself, we would expect the ACCC to seek to use these proceedings to reinforce its position that cartel participants should be subject to the full weight of the criminal law.

Conclusion

It is early days yet in respect of the proceedings commenced by the ACCC and it is important to bear in mind that these serious allegations will need to be proven. However, the commencement of the proceedings themselves sends a very clear message about the ACCC's determination to seek appropriate punishment for those it alleges breach the TPA, particularly where it involves cartels.

kathryn.edghill@addisonslawyers.com.au
graham.maher@addisonslawyers.com.au
www.addisonslawyers.com.au

Troutman Sanders to merge with Ross, Dixon & Bell

The law firms of Troutman Sanders LLP and Ross, Dixon & Bell have announced their intention to merge, creating a 750-attorney international firm. The merger will combine the traditional multi-faceted corporate, finance, litigation, real estate and public policy practices of Troutman Sanders with Ross Dixon & Bell's insurance, professional liability and commercial

litigation practices. When complete, the merger will provide Troutman Sanders with access to West Coast and Chicago offices, while Ross, Dixon & Bell will gain access to the London and Asian markets where Troutman's presence has been long established. The merger takes effect as of January 1, 2009, and will be named Troutman Sanders LLP.

Sri Lanka angles for piece of outsourcing action

With practitioners increasingly turning to outsourcing as a reality rather than a novelty, Sri Lanka is set to challenge India for a piece of the action. The effects of the global credit crunch aside, it is cost that is the main force behind the marketing of services of Indian lawyers to US and European counterparts. Legal process vendors tend to target the more mundane, time-intensive tasks, such as those related to discovery, areas where hourly charges can add up. And with LPO salaries for Indian lawyers generally below US\$10,000 a year compared to the US\$160,000 earned in associate base salaries at major firms in New York, the math has been made easy for many companies.

Eager to attract some of the millions of dollars of legal work estimated to flow out of Western economies in the years to come, Sri Lankan attorneys Ali Tyebkhan and Sudath Perera launched *LegalBase* in January of this year. The venture was established in response to increasing demands for quality offshoring opportunities to manage corporate and firm costs.

But the Sri Lankan venture sees their role as having the potential to expand on its current role, and broaden the current standards of acceptable use of offshoring. "Most legal outsourcing focuses on process, for example e-discovery rather than 'real' legal work," Says Tyebkhan. "However, a real opportunity exists in providing higher value legal work to law firms and corporations. In order to do this it is necessary to match work produced by in house teams and law firms. If you are going to focus on process you run the risk of losing out to a cheaper provider...It is more about being an offshore law firm rather than an outsourcing factory."

Current market predictions indicate that the industry is set to expand to the tune of US\$4.5 billion being injected into offshore providers. In Tyebkhan's view, "As long as quality and confidentiality can be assured, it should make little practical difference to a client whether legal work is done in Hong Kong, Singapore or Colombo, Sri Lanka."

MOVES

Asia's latest corporate legal appointments

 AUSTRALIA

DLA Phillips Fox has welcomed **Scott Alden** and his team of lawyers to the property, infrastructure and development team. Formerly a partner at TressCox, Alden brings many years of experience and recognised expertise encompassing government infrastructure projects, general contractual and legislative advice and the tendering process, NSW government capital and services procurement and infrastructure contracts and performance based contracting. Alden is also highly regarded for advice in the areas of public transport and water infrastructure.



Scott Alden



Janine Ryan

Janine Ryan has joined **Gilbert + Tobin** as a partner in the corporate transactions group. She was previously a special counsel for Freehills. Ryan specialises in equity capital markets with significant expertise in equity capital raisings, hybrid securities and other capital management initiatives including on and off-market share buy-backs, capital reductions, dividend reinvestment plans, share purchase plans and share sale facilities. She also specialises in mergers and acquisitions.

 CHINA

Matthew McConkey will join **Mayer Brown JSM** to lead the global trade group in Asia. Most recently, McConkey was a partner at a large global law firm in Beijing where he advised on a wide-range of international trade matters, with a focus on trade litigation and other US and Chinese market-access issues. He frequently represents Chinese and Vietnamese companies in antidumping and other import relief actions in the US and Europe. Early in his career, McConkey was an attorney with the Office of the Chief Counsel of the US Bureau of Customs and Border Protection. He also served in an Of Counsel capacity at the former Coudert Brothers law firm in both its Washington and Beijing offices.



Matthew McConkey

Norton Rose LLP has announced that **Justin Wilson** will join as a partner in the Shanghai practice. He joins from Clifford Chance Shanghai where he was a counsel specialising in cross-border M&A, private equity and investment into China. Wilson is an experienced corporate lawyer with more than 10 years experience in the Asian market, having worked in Shanghai, Beijing and Singapore. His areas of expertise include advising on cross-border M&A transactions, regional joint venture arrangements, corporate reorganisations and restructuring and advising on the establishment of businesses in Asia.



Justin Wilson

 HONG KONG

Milbank, Tweed, Hadley & McCloy LLP welcomes the arrival of **Weiheng Chen**, an experienced private equity/M&A and capital markets lawyer. Chen, who has joined the firm's Hong Kong office as Asian Counsel after eight years at Sullivan & Cromwell LLP in New York and Hong Kong, is an experienced capital markets lawyer and has advised on major securities offerings including the global IPOs and HKSE listings of Alibaba.com, Bank of China and China Shenhua Energy as well as the SEC-registered offerings and NYSE listings of China Nepstar Chain Drugstore Ltd and Mindray Medical International Ltd.



Weiheng Chen

Vinson & Elkins LLP has announced that **Christopher Walker**, a leading lawyer in international arbitration and litigation, is joining the law firm as a partner effective immediately. Walker, a long-time partner at Linklaters in London and Hong Kong, joins V&E's international dispute resolution practice group.



Christopher Walker

 SINGAPORE

Kenneth Chee has joined **Drew & Napier** as an associate director from Allen & Gledhill. He brings with him over 10 years of experience in private equity, M&A, REITs and business trusts. Chee's recent transactions include the CapitaRetail China Development Fund II and the CapitaRetail India

Development Fund by CapitaLand Ltd. With a keen interest in technology law, he also has experience in the high tech and telecoms industry. Chee has advised numerous internet companies, systems integrators and software developers on structuring, licensing and other issues.



Kenneth Chee

Meanwhile **Marcus Chow** has joined the firm from the Issuer Regulation department of the Singapore Exchange.



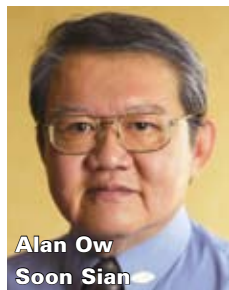
Marcus Chow

Chow is dually qualified in Singapore and New York and practiced briefly with international law firms in New York and Hong Kong. He regularly advises on corporate governance and stock exchange related matters. Chow has been involved in regional cross border jurisdictional transactions in China (including Taiwan and Hong Kong), India, Indonesia, Malaysia, Thailand and Vietnam.

Joseph E Bauerschmidt has been appointed to **Jones Day's** capital markets practice, which he joins from Milbank, Tweed, Hadley & McCloy LLP in Hong Kong. Bauerschmidt's principal focus has been on securities offerings in the public and private capital markets representing leading international investment banks as well as corporate issuers. In addition, he has worked on more than 30 capital markets offering for financial institutions. He has also regularly worked with oil and gas and oilfield service companies on Wall Street and since coming to Asia, he has worked on transactions involving PTT, Petronas, MISC, Petro Vietnam, PT Medco, Bangchak Petroleum, Essar Oil, BHP and SingaporeGas.



Joseph E Bauerschmidt



Alan Ow Soon Sian

Alan Ow Soon Sian, former Senior Deputy Commissioner of the Inland Revenue Authority of Singapore has joined **KhattarWong** as a Tax Consultant. Ow boasts a long and illustrious career at IRAS spanning more than 30 years. In 1970, he joined the ranks of the Inland Revenue Department as an assessor responsible for the computation and issue of

tax assessments, and rose through the ranks to occupy the number two post of Senior Deputy Commissioner, earning three Public Administration Medals along the way. He is also the CEO of the Tax Academy of Singapore, an institution jointly established by IRAS and the accounting and legal professions to provide specialised and structured tax training and education for practitioners and professionals who wish to embark on a career in tax.

Brad Roach has joined **Lovells** from White & Case in Singapore. Roach has more than 15 years' experience advising clients in the energy, infrastructure and project finance industry throughout Asia including Indonesia, Vietnam, Thailand, Malaysia, Singapore, India, the Philippines, South Korea, the PRC, and Australia. He focuses on advising developers of infrastructure projects, with an emphasis on the upstream and downstream sectors of the petroleum industry. Roach has extensive experience advising exploration and production companies on joint operating agreements, farm-out agreements, production sharing contracts and concession agreements, drilling agreements and gas and LNG sale and purchase agreements. He also advises companies in connection with the sale and disposal of interests in major energy projects.

THAILAND

Manida Zimmerman has joined **Hunton & Williams** as a partner in its Bangkok office in its corporate department. She had been in-house legal counsel with True Corp PCL, one of the largest telecom conglomerates in Thailand, and is a former international partner of White & Case. Zimmerman recently co-founded the legal education foundation, The Law Review Group, and has authored and published a text book on contract law for businesses. She also lectures at the Institute of Directors on legal issues for directors of listed companies as well as corporate governance generally. Zimmerman centres her practice around corporate, business and financial matters with special emphasis on capital markets, M&A and regulatory compliance.



Manida Zimmerman

Asian-Counsel welcomes details of new senior legal appointments from offices in Asia. Please send information and a high resolution image to thebriefing@pbpress.com

ICANN backs custom domains, gives brand-owners nightmares

The managing body for the internet's domain name system will massively increase the 'real estate' of the internet, letting brands and generic words become top-level domains. A legal expert said that the plans will make brand protection a nightmare.

The board of ICANN, the Internet Corporation for Assigned Names and Numbers, backed the move at a meeting in Paris yesterday. Presently, users have a limited range of 21 top-level domains (TLDs) to choose from, like .com, .org, .info.

Dr Paul Twomey, ICANN's president and CEO, said in a statement: "The Board today accepted a recommendation from its global stakeholders that it is possible to implement many new names to the Internet, paving the way for an expansion of domain name choice and opportunity."

"The potential here is huge," he said. "It represents a whole new way for people to express themselves on the Net. It's a massive increase in the 'real estate' of the Internet."

ICANN authorises the launch of every new TLD, though the launch itself is conducted by an ICANN-approved registry and the domain names are sold by registrars. Under the new proposal, applicants for new TLDs can self-select their domain name and operate as a registry. They can either use the names exclusively for their own purposes or open them for sale to third parties through registrars.

In a statement ICANN said: "It is expected that applicants will apply for targeted community strings such as (the existing) .travel for the travel industry and .cat for the Catalan community (as well as generic strings like .brand-name or .yournamehere). There are already interested consortiums wanting to establish city-based top level domain, like .nyc (for New York City), .berlin and .paris."

Phil Kingsland, director of marketing and communications at Nominet, the registry for .uk domain names, told

OUT-LAW.COM that the move would "present some interesting opportunities" but he stopped short of endorsing it. "We will wait and see how it pans out," said Kingsland, who attended the ICANN meeting in Paris. "We welcome that they've listened to the community and that they've reached a decision," he said.

Under ICANN's plans, a 'limited application period' will invite "any established entity from anywhere in the world" to submit an application. That application will go through an evaluation process, which is expected to last nine months. "It is anticipated that there will be additional rounds relatively soon after the close of the first application round," it said in its statement.

Trade marks will not be automatically reserved, though there will be an objection-based mechanism for trade mark owners where their arguments for protection will be considered, ICANN said. Offensive names will also be subject to an objection-based process 'based on public morality and order.'

Kingsland said that many details of the plan have still to be finalised. The main barrier to entry for would-be registries is likely to be the application fee. There has been speculation that the cost of an application will be \$100,000 to \$500,000 but when it was put to him, Kingsland doubted that that figure had come from ICANN.

"We don't know for sure what it [the cost] will be, but they've spent \$10 million over past three years in building this up and they said they're looking to do it on a cost recovery basis," he said. "Probably the bigger cost will come downstream, when you set up and run a registry. They'll want to make sure you're in it for the long haul."

John Mackenzie, a partner with Pinsent Masons, the

law firm behind OUT-LAW.COM, said the move is bad news for brand holders.

"This has the potential for utter chaos," he said. "The attraction for domainers and cybersquatters is not going to be setting up a registry that matches someone else's brand, it will be in the generic TLDs. All of a sudden, every brand will be forced to register their name at .shop, .buy and .london to stop anyone else getting it."

Nominet's Kingsland said brand owners will have a strategy to apply to registrations currently. "Either they defensively register all the names they can or just deal with them after the fact and use the UDRP [dispute resolution process]," he said.

But Mackenzie warned that the scale will make that exercise far more expensive.

"We saw this with the introduction of .eu," said Mackenzie, who advises on brand protection. "Our clients didn't want the .eu domain name but they felt they had no choice. They had to register their brands as .eu names. Before that it was .info and .biz and all the others. Each time a new TLD is introduced, large brands spend a fortune on defensive registrations to avoid the greater expense of recovering the names from cybersquatters further down the line. ICANN has just multiplied those costs. It's a brand owner's nightmare."

Upon approval of the implementation plan, it is planned that applications for new names will be available in the second quarter of 2009.

OUT-LAW.COM

Top level domain name registration expanded to include non-Latin scripts

ICANN has announced that it will in future allow top level domain names on the Internet to be registered in non-Latin scripts. This is a significant development for the Asian region. It means that, for the first time, it will be possible to have an Internet domain name comprised entirely of non-Latin characters.

Once adopted, the recommendations to support the use of non-Latin characters in both generic top-level and country code top-level domains is expected to lead to a significant increase in the number of registrations.

Michael Pattison, partner at Allens Arthur Robinson, advises "To get the most benefit from this change, companies should take action now to ensure that they have taken out trade mark registrations in each appropriate script and country where they may want a domain name. Those registrations could allow a company to take advantage of any priority periods implemented by registries, as well as possibly providing a basis for a claim in disputes over entitlements to particular domain names". **AC**



Looking for your next career move?
Asia's top legal recruiters list their prime positions in the Professional Opportunities section of the *Asian-Counsel Weekly Briefing* and at: www.pbpress.com

ONLINE HOME OF ASIAN-COUNSEL AND THE IN-HOUSE CONGRESS

A snapshot of recent transactions across the region



CHINA

Allens Arthur Robinson acted for **CB Richard Ellis** on the establishment of its property management consulting joint venture with China Vanke Co Ltd, the PRC's largest residential property developer.

Commerce & Finance Law Offices has advised **Credit Suisse** on the successful initial public offering (IPO) of Chongqing Machinery & Electric Co Ltd.

Fangda Partners advised **Hony Capital** in the successful structuring and closing of its first RMB fund, a limited partnership established under the amended PRC Partnership Law.

Fried, Frank, Harris, Shriver & Jacobson LLP represented **Merrill Lynch International, ING** and **BNP Paribas** in a dual tranche offering of US\$500 million of senior notes issued by a special purpose vehicle of China Merchants Holdings (International) Co Ltd.

Gide Loyrette Nouel A.A.R.P.I. (GLN) has advised **Air Liquide** regarding the establishment of a joint venture for the long term supply of industrial gases to Sinopec Tianjin Petroleum and Chemical Corporation (TPCC). The transaction represents a total investment of €45 million and includes the construction of new production units, transfer of existing units, partial employee transfer and the licensing of related technologies.

Guantao Law Firm served as legal counsel for the **Puyang Refractories Group Co, Ltd** in its IPO and listing on Shenzhen Stock Exchange. Puyang Refractories Group Co Ltd raised 287.4 million renminbi through the IPO, offering 60 million A shares.

Herbert Smith's Beijing office has advised **TCL Multimedia** on its placement of new shares to TCL Corporation, its A-share listed parent company, and also to private investors. The proceeds from the placement are estimated to be HK\$1.21 billion (US\$154 million). The subscription price equals to 15 percent discount to the average closing price per share for 10 trading days after the announcement of placement and is subject to a price range of HK\$0.315 and HK\$0.250.

Linklaters has advised **China Netcom Group Corp (Hong Kong) Ltd** on its US\$23.8 billion merger with China Unicom Ltd by way of a Scheme of Arrangement. The firm has also advised China Telecom Corp Ltd on its US\$15.8 billion acquisition of China Unicom's CDMA business. Both are landmark transactions as they are stage one of China's restructuring of its telecoms sector, designed to create a more level playing field between operators.

Lovells has advised on the listing of **Central China Real Estate**, the first Chinese real estate listing in Hong Kong this year, sponsored by Morgan Stanley. The Hong Kong IPO of Central China Real Estate Ltd, a leading residential developer in Henan Province in China, raised US\$176 million in the first Chinese real estate listing in Hong Kong for more than six months.

Paul, Weiss, Rifkind, Wharton & Garrison has represented **Morgan Stanley Real Estate Fund** and **Morgan Stanley Special Situations Group** in their approximate US\$770 million investment in Crown Golden Investments Ltd, the parent of a group of companies which engage in high-end resort and residential development projects in the PRC. The investment represents a 30 percent interest in Crown Golden.

Shearman & Sterling advised the underwriters, **Morgan Stanley** and **Credit Suisse**, in connection with the HK\$1.74 billion initial public offering and Rule 144A/Regulation S offering by China Shanshui Cement Group Ltd on the Hong Kong Stock Exchange.

Sidley Austin represented **Nine Dragons Paper (Holdings) Ltd** in connection with its offering of US\$300 million 7.875 percent Senior Notes due in 2013, pursuant to Regulation S and Rule 144A. The transaction marks the first debt capital markets transaction from a new issuer in Asia in 2008.

Troutman Sanders has successfully completed the US\$120 million refinancing of a 2.1 million square metre facility in Shanghai's Wai Gao Qiao Bonded Logistics Park Phase II. Troutman Sanders' client, real estate development group **New City Corp**, purchased the bonded logistics and warehousing facility for US\$200 million. The refinancing included the novation of a mortgage loan and a USD-RMB cross currency interest rate swap agreement.

We are hiring!

Due to increasing instructions, we are now seeking a further Associate with Technology experience to join our market-leading Communications, Media and Technology group in Hong Kong. The successful candidate will be involved in drafting, negotiating and advising on technology and commercial agreements in the TMT sector.

Ideal candidates will possess the following:

- 4+ years PQE gained in the TMT practice of a top tier law firm or as in-house counsel in a technology company
- Simplified Chinese language capabilities.
- Practice experience that includes drafting a variety of IT and commercial agreements including software development agreements, licensing, distribution and supply agreements, support, maintenance and service level agreements.
- Experience in advising on e-commerce, privacy, commercial IP and/or telecommunications issues would also be beneficial.

To apply for this position, please email your application to asiarecruitment@twobirds.com with reference: TMT/AC



We are delighted to be voted Asian-Counsel Firm of the Year 2008
for TMT in China

Contact: Marcus Vass (marcus.vass@twobirds.com) or Grace Chen (grace.chen@twobirds.com)

www.twobirds.com

DEALS

 **HONG KONG**

Allen & Overy has advised **GE Commercial Finance (Hong Kong) Ltd** and **ING Bank N.V.**, Tokyo Branch and Hong Kong Branch as mandated lead arrangers in a leveraged buyout of GST AutoLeather, Inc by funds serviced by Advantage Partners LLP, an Asia-based private equity firm. The financing was structured with a US\$172 million senior and mezzanine facility and included a warrant instrument for the mezzanine creditors. The firm also took on an independent role as advisor to the facility and security agent as well as provided a separate internal team to represent the interests of the mezzanine creditors.

Baker & McKenzie has advised **Champion Real Estate Investment Trust** (Champion REIT) on its HK\$12.9 billion (US\$1.65 billion) acquisition of the Langham Place Mall and Office Tower in Hong Kong's Mongkok district, and the related capital-raising exercise to finance the acquisition. The capital-raising involved a HK\$4.68 billion (US\$600 million) convertible bond issue offered internationally, a HK\$2.96 billion (US\$379 million) international equity placement, and a term loan of HK\$2.45 billion (US\$314 million).

Clifford Chance has advised founding shareholder **Wu Jieh Yee Co Ltd** on the joint sale of the Wu family's controlling stake in Wing Lung Bank to China Merchants Bank. Wing Lung Bank is valued at approximately US\$4 billion, or 3.1 times book value. The deal received keen interest from many Mainland financial institutions, and was agreed after a very competitive auction process. Upon completion, the deal will trigger a mandatory takeover offer. The deal is subject to approvals by the Hong Kong Monetary Authority, the China Banking Regulatory Commission and other PRC regulatory bodies.

Deacons has advised **Wing Lung Bank Ltd** on the proposed disposal of the 53.12 percent interest held by its substantial shareholders for HK\$19.3 billion and the possible mandatory general offer by China Merchants Bank Co, Ltd.

Mayer Brown JSM acted for the **Hong Kong Mortgage Corporation** on its first international transaction, which is the acquisition of South Korean residential mortgage assets worth US\$700 million from a Korean commercial bank. This deal was notable as the first-ever 'bilateral' cross-border RMBS securitisation out of Korea under Korea's ABS Act.

The Hong Kong Mortgage Corporation is triple-A rated and Hong Kong's biggest securitiser.

O'Melveny & Myers LLP represented **China International Capital Corp** as underwriter's counsel in a US\$242 million secondary offering of China Communications Services Corp Ltd (552.HK) (CCS) and listing of its H shares on the Hong Kong Stock Exchange. The state-owned CCS offered 359,365,600 H shares at HK\$5.25 each. The shares sold represent 20 percent of the company's enlarged H share capital. Part of the H shares were placed to institutional investors such as Blackstone Kailix Advisors LLC, Cisco Systems International B.V. and IBM WTC Asia Investments LLC.

Paul, Hastings, Janofsky & Walker LLP has advised **Poly (Hong Kong) Investments Ltd** on its acquisition of the entire equity interest in Shenzhen Poly Investments Co, Ltd from China Poly Southern Group Ltd, a wholly owned subsidiary of China Poly Group. The transaction is the first share swap deal approved by the Ministry of Commerce since the introduction of China's new M&A rules in 2006.

Paul, Weiss, Rifkind, Wharton & Garrison has represented **MIH India Global Internet Ltd**, in connection with its licensing and option transaction with Tencent Holdings Ltd, a Hong Kong listed, mainland based internet company.

 **INDIA**

Amarchand & Mangaldas & Suresh A Shroff & Co has acted for **Idea Cellular Ltd** and **Aditya Birla Telecom Ltd** (ABTL), a wholly-owned subsidiary of Idea engaged in the telecom sector, in connection with an investment of approximately US\$640 million by Providence Equity Partners in ABTL. The transaction is subject to regulatory approvals and is expected to close by August 2008.

Khaitan & Co has advised the book running lead managers in relation to **Bank of India's** qualified institutional placement of 3,77,72,600 equity shares of 10 rupees each for cash at a price of 360 rupees per equity share, including a share premium of 350 rupees per equity share. This is the first ever Qualified Institutional Placement of a Public Sector Undertaking Bank. The total amount of the placement is US\$340 million

Nishith Desai Associates acted as legal counsel to **Providence Equity Partners** in its US\$640 million investment

Compliance Counsel

Our client is a leading research based, multinational healthcare company with a brand that is recognised throughout the world. With positive expansion continuing throughout the Asia Pacific region, an exciting opportunity exists for an experienced and commercially astute individual to join the organisation.

Fortune 500 Company ♦ Regional Focus ♦ Hong Kong Based

Reporting to the Head of International Compliance based in the US, you will actively conduct and supervise the internal investigations and resolution of international compliance matters across the Asia Pacific region and possibly other locations. In addition, you will be responsible for the development and administration of ongoing or institutional compliance obligations, such as drafting policies and guidelines, developing and presenting training materials. You will work closely with other business units within the organisation to manage international compliance matters across Asia. Frequent travel may be required for this role.

The successful candidate will be a qualified lawyer with at least six years' post-qualification experience, preferably with previous experience gained across the Asia-Pacific region. Prior in-house and/or international law firm experience will be required and investigative experience in law enforcement or other legal capacities would be an advantage. You must also be a self-starter, able to work independently and demonstrate strong leadership and analytical skills to manage routine and critical situations and liaise effectively with senior management locally and globally. Fluency in English is a must with proficiency in an Asian language a distinct advantage.

To apply for this position, please go to www.michaelpage.com.hk/apply quoting reference number H263090 or call Natalie Wong on (+852) 2530 6100 for further details. Data collected will be used for recruitment purposes only.

149 offices in 25 countries worldwide
www.michaelpage.com.hk

Michael Page
LEGAL

General Counsel

Our client is a Hong Kong conglomerate with global business operations and interests in the oil and gas industry. A key management opportunity now exists for a senior lawyer with extensive mergers and acquisitions experience.

Newly Created Role ♦ Commercially Astute M&A Lawyer Sought

Reporting to the CEO, the General Counsel will provide legal support to the company on mergers and acquisitions transactions. In addition to advising the board on general in-house legal matters, you will co-ordinate and manage external legal advice obtained in multiple jurisdictions. This role will also be the named company secretary. In this respect, you will advise the board on governance and compliance areas as well as attend Board Meetings. Occasional worldwide travel will be required.

To qualify, you will be a lawyer with at least 10 years' post-qualification experience and admitted in either a common law jurisdiction and/or China qualified. Candidates with MBAs will also be well regarded. Cross-border mergers and acquisitions experience as well as familiarity with the Hong Kong Listing Rules is required. Energy industry experience is advantageous, although not essential. Fluency in English, Cantonese and Mandarin is mandatory. Whilst prior in-house experience is not compulsory, you need to be both commercially minded and a team player.

To apply for this position, please go to www.michaelpage.com.hk/apply quoting reference number H261240 or call Annie Tang on (+852) 2530 6100 for further details. Data collected will be used for recruitment purposes only.

149 offices in 25 countries worldwide
www.michaelpage.com.hk

Michael Page
LEGAL

Senior IP Attorney

Beijing

Lenovo (HKSE: 992) (ADR: LNVGY) develops, manufactures and markets high-quality, secure and easy-to-use technology products and services worldwide and is dedicated to building the world's best-engineered personal computers. Formed by Lenovo Group's acquisition of the former IBM Personal Computing Division, Lenovo's heritage in both emerging and developed markets has resulted in a New World Company business model where ideas, operations and resources are borderless and mobile. With four operational hubs in Beijing, Raleigh, Singapore and Paris, Lenovo has major research centers in Yamato, Japan; Beijing, Shanghai and Shenzhen, China; and Raleigh, North Carolina, as well as a marketing center in Bangalore, India.

The Role will provide IP support for the fast growing International Consumer PC division, including performing world wide patent clearances, assisting with software licensing issues and managing various forms of IP disputes relating to those products. The position will report to the Vice President of IP and Chief Patent Counsel, located in Raleigh, North Carolina, and will work closely with the General Counsel's office and the Chief Technology Officer's office in China.

You will need to possess a minimum of 5 years' experience as a licensed attorney (in the US, Hong Kong, England & Wales, Singapore or Australia) and already manage international IP issues. You will also need to be experienced in negotiating software license and development agreements, providing IP clearance reviews for new products, performing patent reviews of CN, US and JP patents, and rendering IP related litigation advice to local business managers. The ideal person for this role not only needs to be well versed in PRC laws and regulations but on international matters as well. Fluency in Mandarin and English is a prerequisite, including the ability to negotiate and draft agreements in both Mandarin and English. Whilst in house experience would be preferred it is not essential.

If you are a resourceful and hands on individual with a strong customer service orientation and are interested in joining a global leader in the PC market, please contact our exclusively retained consultant, Tara Brennan on (852) 2293 2364 or hk@laurencesimons.com

1805 Wheelock House 20 Pedder Street Central Hong Kong
Tel: +852 2293 2364 Fax: +852 2293 2365

Search for positions online at www.laurencesimons.com



Laurence Simons
Specialist Legal Recruitment



aibel®

We'll be there

Legal Counsel - Singapore

Aibel Group Limited ("Aibel Group") is a leading provider of upstream oil and gas production facilities, process systems, technology and products. From new build to decommission, we also maintain, modify and operate onshore and offshore facilities. Aibel Group is incorporated in the United Kingdom and headquartered in London, England. It has three Principal Subsidiaries in England, Norway and the United States that have over 6,000 professionals who operate on all continents, including Brazil, Thailand, Australia, Kazakhstan, Singapore and several countries in Africa.

Aibel Pte. Limited (the "Company") is a subsidiary of Aibel Holding Limited and is located in Singapore. The Company has significant technical, human and commercial resources that can engineer, construct, manage and deliver oil and gas developments.

The Company seeks a lawyer, to be based in Singapore (with regional oversight of Australia and Thailand), to work closely with operational management, including the general manager of the Company, and also maintain a close working relationship with finance and other functions, as well as the other lawyers in the Legal Department, and the Compliance Department. The candidate, who will hold the title of Legal Counsel, and will report directly to the Deputy General Counsel in London. The Legal Department currently consists of ten lawyers, based in London, Oslo, Houston and Rio de Janeiro.

The duties of the Legal Counsel will include, among other things:

- Negotiating, drafting and reviewing all contracts and agreements entered into by the Company.
- Providing legal advice to Company management regarding transactional, contract and other business matters, potential disciplinary action against employees, as well as regarding actual or threatened litigation.
- Providing advice to Company management on the applicability of the Code and Directives in business operations and on relevant anti-corruption and other regulatory and applicable legislation.
- Ensuring that agreements with all third parties, including prospective customers, agents, business partners and suppliers are in compliance with the Company's Compliance Code, Directives and Policies, and risk parameters.
- Conduct inquiries and investigations, under the direction of the General Counsel and the Compliance Committee of the Board concerning compliance matters reported to the Integrity line.
- Selecting outside counsel as needed, with the approval of the General Counsel, and managing their work.
- Overseeing the conduct of all disputes and litigation, and managing outside counsel selected to handle them.
- Such other duties as the Deputy General Counsel and General Counsel may direct.

The successful candidate may be a qualified attorney practicing in Australia, England, Singapore, Canada or the United States, who has practiced in a highly regarded law firm, and with excellent academic credentials. The candidate should have a minimum of 7 years experience. The candidate should have business and transactional experience as well as an understanding of compliance and corporate governance standards, and experience evaluating business and legal risks associated with a transaction or project.

Candidates must be able to advise, counsel and interact effectively with Company management and the Compliance Department, as well as coordinate effectively with other attorneys in the Legal Department. The candidate must understand business transactions and be able to exercise good judgment in a dynamic environment.

The Company is prepared to offer a competitive remuneration package with a base salary and incentive bonuses.

If you are looking for an opportunity to work for an innovative and market leading global organisation, please forward your CV including details of current remuneration and availability to our exclusively retained consultants Rebecca Collins and Rob Baron of Laurence Simons.

+852 2293 2364 or rebecca@laurencesimons.com (Asia-Pacific)
+44(0)20 7645 8512 or rob@laurencesimons.com (London)

All third party and direct applications will be forwarded to Laurence Simons

1805 Wheelock House 20 Pedder Street Central Hong Kong Tel: +852 2293 2364 Fax: +852 2293 2365

Search for positions online at www.laurencesimons.com

 Laurence Simons
Specialist Legal Recruitment

LONDON AMSTERDAM BOSTON BRUSSELS CHICAGO DUBAI DUBLIN FRANKFURT GENEVA HONG KONG PARIS SAN FRANCISCO SYDNEY

DEALS

in Aditya Birla Telecom Ltd, a wireless telecommunications company and a wholly-owned subsidiary of Idea Cellular for a 20 percent stake.

Norton Rose (Asia) LLP has advised **TM International Berhad** on one of the biggest Indian telecoms deals to date, involving Idea Cellular Ltd, the Aditya Birla Group and Spice Communications Ltd.

Majmudar & Co acted as Indian legal counsel to **GTECH Global Services Corp Ltd**, in its recent acquisition of the Hyderabad-headquartered software development services company, Springboard Technologies Private Ltd.

JAPAN

Azmi & Associates has advised the **Bank of Tokyo-Mitsubishi UFJ, Ltd** as facility agent and security trustee in the provision of Malaysian law legal opinion on charter party arrangements entered into by a Malaysian global shipping company with Yemen LNG Co Ltd. The advice is part of the requirements of a syndicated financing facility provided for the construction of a LNG plant in Yemen by a consortium of banks.

Freshfields Bruckhaus Deringer has advised **Citi** as sole bookrunner of a US\$380 million equity placement and a US\$600 million convertible bond placement in connection with the acquisition by Champion Real Estate Investment Trust's of Langham Place, a retail and office complex in Hong Kong's Mongkok district. This is the largest convertible bond ever issued by an Asian REIT.

MALAYSIA

Appleby has acted for **Media Chinese Investment Ltd**, a company listed on the Stock Exchange of Hong Kong, as Bermuda counsel in respect of its additional primary listing on the Main Board of the Malaysian stock exchange. The company is listed on the Hong Kong Stock Exchange and after its Malaysia listing, has become the first company with dual primary listings in both Hong Kong and Malaysia as well as the first offshore company listed in Malaysia.

Zul Rafique & Partners advised **Binariang GSM Sdn Bhd**, in relation to a refinancing of bridging facility to finance the acquisition and privatisation of Maxis Communications Bhd. The advice comprises the issuance of Sukuk instru-

ments under the Shariah principle of Musyarakah of up to 19 billion ringgit Senior Sukuk and up to RM equivalent of US\$900 million Junior Sukuk.

QATAR

Simmons & Simmons has advised the **Commercial Bank of Qatar (CBQ)** in relation to a US\$900 million capital raising. The three stage transaction comprised a private placement of shares amounting to US\$33 million; a pre-emptive rights issue amounting to US\$175 million; and a rights issue by way of convertible global depositary receipts (GDRs) amounting to US\$691 million.

UNITED ARAB EMIRATES

Watson, Farley & Williams LLP has advised **United Arab Shipping Co** in relation to the signing of a US\$1.5 billion contract for nine 13,100 teu vessels with Samsung Heavy Industries, the largest containership order to be placed by a Gulf Co-operation Council company.

SINGAPORE

KhattarWong acted for **China Fibretech Ltd** in its initial public offering (IPO). The company was listed on the main board of the Singapore Exchange Securities Trading Ltd (the SGX-ST) and raised approximately S\$28 million in the IPO.

Latham & Watkins advised **Vedanta Resources** in its US\$1.25 billion dual-tranche bond offering on the Singapore Exchange Securities Trading Ltd. Consisting of two tranches – a US\$500 million offering of 8.75 percent bonds due 2014 and a US\$750 million offering of 9.5 percent bonds due 2018, the offering was made under Regulation S and 144A.

White & Case, together with **Venture Law***, advised Yantai Raffles Shipyard Ltd (YRSL) as the borrower under a US\$125 million unsecured facility arranged by ABN Amro Bank NV. Subject to the satisfaction of certain conditions, the facility may be upsized up to an aggregate principal amount of US\$185 million. YRSL is the largest rig builder in China and is traded on the Oslo OTC.

VIETNAM

Baker & McKenzie's corporate team in Vietnam recently advised **Rohm and Haas** on the planned construction of a US\$10 million acrylic emulsion facility in Nhon Trach city, within the Dong Nai province of Vietnam. **AC**

Your career is not a game.



In-house

Senior Counsel (10+ yrs pqe) Tokyo Superb opportunity to join this famous multinational in a broad reaching, senior-level role covering Asia-Pacific. The role will support a variety of complex global transactions, HR matters, commercial issues and will negotiate global contracts. Candidates should have at least 10 years experience preferably with major law firm training. Those who are US qualified, with experience working in a Japanese firm or as in-house counsel with a multinational corporation, will be given preference. Excellent English and Japanese language skills are required, as well as superior communication and interpersonal skills. Ref: 7496/AC

Asian General Counsel Shanghai Our client, a global market leader in its field, seeks a dynamic senior counsel to work closely with the Group's executive team, supporting their business operations in China and Asia Pacific. The recruit will help resolve broad and complex legal issues, participate in negotiations and set up joint ventures and mergers & acquisitions. Reporting to the Group General Counsel in US head office, you will be decisive, confident and possess excellent interpersonal and communication skills. This is a great opportunity for someone with excellent English and Mandarin language skills and wishes to be a part of fast expanding operations in Asia. Ref: 7273/AC

PRC Counsel Beijing This worldwide financial institution with a reputation for excellence is looking for a senior-level lawyer based in Beijing to cover legal business across China. Only stellar candidates with excellent international law credentials and bi-lingual fluency in Mandarin and English will be considered. You must have significant PRC experience gained in an international corporation with excellent academics. Ref: 7458/AC

Private Equity (6+ yrs pqe) Hong Kong This famous, global financial institution needs a lawyer with substantial China private equity experience. The preferred candidate will be an adept problem solver and have the strength and integrity to operate in a fast-paced environment. Skills required include: risk management, regulatory matters and deal negotiations. Previous experience in banking, lending or debt will be helpful. Fluency in Mandarin is essential. Ref: 6854/AC

Assistant Counsel (3-5 yrs pqe) Hong Kong Reporting to the Associate General Counsel, the incumbent will provide legal advice on business regulations, perform contract negotiation, claims review, policy vetting, etc. Experience in drafting and reviewing contracts/commercial agreements is required, as well as knowledge of corporate law and compliance issues. A high degree of professional integrity and confidence to deal with different management levels is needed. Language skill requirements include: fluent written and spoken English and full fluency in Chinese. Ref: 7696/AC

Legal & Commercial Manager (3-5 yrs pqe) Hong Kong This role, working for a major international corporation, has regional coverage including China, Malaysia and Singapore. The work consists of contracts management and also includes providing general legal advice on a variety of matters. Experience gained from a good, local firm with strong commercial contract experience is desired. The ideal candidate should be fluent in English and Mandarin; Cantonese is an asset. Ref: 7642/AC

Legal Counsel (2-4 yrs pqe) Hong Kong Very unique position to learn the business of this rapidly expanding technology company. The position needs someone with an entrepreneurial spirit willing to manage the large learning curve. Candidates should have international firm training with a general M&A background, excellent drafting skills and acquisition support. Training in IP, IT, licensing and US securities on offer for the right candidate. Spoken Mandarin is essential. Ref: 7687/AC

Private Practice

Senior Associate Hong Kong Top Wall Street firm is seeking a Senior Associate with a proven track record and solid experience. With the support of a friendly team and industry leading partners, grab this opportunity to move into a top firm. In this role, you will cover mergers & acquisitions and private equity. Ideally, you will be HK qualified and have international training and experience. Excellent written and spoken English and Mandarin language skills are required. Ref: 7234/AC

Mid-level Litigator (3-6 yrs pqe) Hong Kong Do you have litigation experience from a top-tier firm? Our client, a UK based, international firm, needs a general commercial litigator with significant hands on transactional experience; arbitration experience would be advantageous. You should be able to communicate with individuals at all levels and work well with diverse clients. Fluent written and spoken English is required, ideally with Cantonese proficiency. Knowledge of Mandarin will be a plus. Ref: 7504/AC

IT/Communications Lawyer (3-5 yrs pqe) Hong Kong If you have trained in Australia, UK or Hong Kong and have TMT experience, gained at a top-tier law firm, then this is an ideal opportunity for you to join this reputable firm. The successful candidate has experience drafting a variety of IT and commercial agreements. Experience advising on e-commerce, privacy, commercial IP and/or telecommunications is an asset. Chinese language skills would be helpful but are not essential. Ref: 7190/AC

Corporate Lawyer (1-5 yrs pqe) Hong Kong Magic Circle firm seeks a corporate lawyer with solid experience in regulatory, M&A and corporate finance transactions. Previous experience with the corporate division of SFC in Hong Kong is highly advantageous. You should be HK or foreign qualified with top-tier firm training. Excellent written and spoken English is required. Chinese would be an advantage but is not essential. Ref: 7308/AC

Paralegal (2 yrs exp) Hong Kong This well-known, US based investment company seeks a competent paralegal with experience dealing with corporate, regulatory and compliance matters. The role will cover the Asia-Pacific region and requires someone with the desire and ability to work on matters relating to multiple jurisdictions. Previous experience in M&A is a plus. The right candidate will be an analytical and detail-minded, self-motivated team player who is able to work independently with minimum supervision. The role requires excellent command of spoken and written English and Mandarin. Ref: 7502/AC

HONG KONG

Tel: (852) 2520 1168 Fax: (852) 2865 0925 Email: hughes@hughes-castell.com.hk

SINGAPORE

Tel: (65) 6220 2722 Fax: (65) 6220 7112 Email: hughes@hughes-castell.com.sg

BEIJING (Consultancy Office)

Tel: (86) 10 6581 1781 Fax: (86) 10 6581 1773 Email: beijing@hughes-castell.com.hk

Hughes-Castell



www.hughescastell.com

Sean Maguire, Of Counsel for *Allbright Law Offices*, Shanghai discusses the forces shaping the structure of small and medium indigenous firms in China.

The notion of *tie fun won* – or the iron rice bowl – is coming to play an increasingly important negative role within the legal profession in China. The term originates from the old ‘work unit’, or state-owned company, that housed, fed and educated their employees from cradle to grave. It is used to refer to an occupation with guaranteed job security, as well as steady income and benefits. The metaphor of the rice bowl refers to the fact whatever one’s performance at work may be, these benefits will keep rolling in.

This desire to avoid the iron rice bowl mentality has played a significant role in determining the growth of the legal profession in China. It has precipitated the emergence of a proliferation of small market players and an associated fragmentation of local service provision, much to the delight of the major foreign law firms. Most Chinese law firms operate on a small scale, typically consisting of between 10 to 30 partners and these rarely have the scale, experience or expertise to take-on the larger deals.

There are four types of law firm allowed under Chinese law: state-funded law firms, co-operative law firms, partnerships and (with the adoption of the new lawyers law in June of this year) sole-practitioners. Yet within the biggest of the local partnership law firms there is a lack of the formal structural cohesion that one sees with international law firms. It is rare to find equity or salaried partners within a Chinese firm. The business model used by local law firms has more in common with that found in UK Barrister’s cham-

bers which is not without irony given that UK barristers are, as yet, not allowed to form partnerships.

Even though, on the face of it, a partnership model is adopted by the larger local firms, the reality is that most local lawyers are effectively self-employed though without being in independent practice. They are responsible for developing their own client base, employing their own support staff and, though they are required to pay a fixed sum to the firm every year, they retain all fees. One interesting

The more sophisticated of the larger local law firms are fully aware of the structural inefficiencies inherent in their nascent profession

aspect of this is that the partners in the larger firms tend to spend less time on the nuts and bolts of legal work – which is delegated to their support staff – and more on marketing their individual practices.

This atomisation of legal service provision within the firm generates a couple of unwelcome side effects: firstly, client bases tend to be disparate; some lawyers have an exclusively foreign client base, some exclusively local and yet others have a mixed bag which lends the firm a heterogeneity of focus. Secondly, because each lawyer has his or her own legal support team there tends to be considerable skills duplication – supporting professionals cluster around individual partners rather than around particular

practice areas and this can have an adverse impact on the overall efficiency of the firm.

Since the devastation wreaked upon the professional by the cultural revolution, there have been major strides in the rationalisation and strengthening of the legal structure and a concerted effort towards institution building. Wedded to this has been particular focus on improving the professionalism of the legislature, judiciary and the legal profession.

The China legal market is in a transitional phase and the pace of this change is increasing, but domestic growth is focused on the small and medium sized legal service providers. Hardly a month passes without news of merger talks between mid-sized firms breaking down or larger firms splintering as the tenuous links that hold niche groups of partners together taughten and snap under the weight of competing commercial priorities.

The more sophisticated of the larger local law firms are fully aware of the structural inefficiencies inherent in their nascent profession and are taking steps to remedy them. This process of internal reform is expedited by the experience and insight of those local lawyers who have worked for the international players either at home or overseas. The indigenous profession is still comparatively young and though it has certainly learned to stand on its own two feet and walk, perhaps it is yet to learn how to run with the pack of more established international players.

sbmaguire@allbrightlaw.sina.net
www.allbrightlaw.com

Representing corporate Asia



The Survey: Our most comprehensive findings to date on what makes or breaks in-house counsel's choice of external counsel 20

Asian-Counsel Firms of the Year: A full list of the firms that Asian-Counsel readers selected as their preferred external counsel 32

Clients and their preferred advisors: Firm of the Year winners discuss why they believe they were the firms of choice for regional in-house counsel 37

What issues surround the working relationship between in-house counsel and private practitioners in Asia and the Middle East? *Asian-Counsel* investigates

In June 2008, *Asian-Counsel* conducted its annual survey of in-house counsel in Asia and the Middle East. The *Representing corporate Asia* questionnaire was sent to thousands of counsel across both regions, and was designed to highlight issues surrounding the working relationship between corporate and private practitioners across a wide range of practice groups, industries and jurisdictions.

The response rates were the highest ever, with a diverse group of counsel providing key insight into the issues that matter most such as the deciding factors which influence their choice of private practitioner, which factors might jeopardise their decision to use particular firms, and how they source new in-house attorneys.

In the survey, respondents were given a range of issues commonly cited as matters of concern when dealing with outside counsel, and ranked their responses according to what they considered the most pressing issue in their jurisdiction. As a result of this comprehensive approach, the findings present a broad view of the factors facing Asian and Middle-Eastern markets with respect to relationships between in-house attorneys and their external counsel of choice.

Representing corporate Asia also names *Asian-Counsel's Firms of the Year*, the firms selected by our readers and delegates as their preferred local or international outfits in specific practice areas across the region. A complete list of winning firms on a practice and jurisdiction basis follows the overview of the survey results, beginning on page 32.

Their submissions also form the basis of the special report which follows the survey results. In '*Clients and their preferred advisors*', we'll hear directly from the firms about what makes their winning practice group stand out in the crowd, and how they ensure their practitioners are well equipped to service the needs of in-house counsel clients.

Survey methodology

The multiple choice survey was conducted in an anonymous online fashion. Respondents were provided with

seven main questions, with each question then subdivided into multiple response categories, of which several options might be chosen by the survey participant. The questions were:

- What industry classification best describes your company?
- How many lawyers work in your company's in-house legal department in Asia?
- What is the most common way your company locates and hires its in-house lawyers?
- What three factors most influence your choice of outside counsel?
- Which law firms did your company use from May 2007-April 2008?
- Which law firm do you prefer to use for the business issues listed below and why?
- Which issues have you found to be of concern when dealing with outside counsel?

The results provide an in depth picture of the challenges and concerns facing internal/external relationships and relationship building across eleven jurisdictions, which we consolidate below in two parts: a pan-jurisdictional overview and a country by country analysis.

ACROSS ASIA AND THE MIDDLE EAST

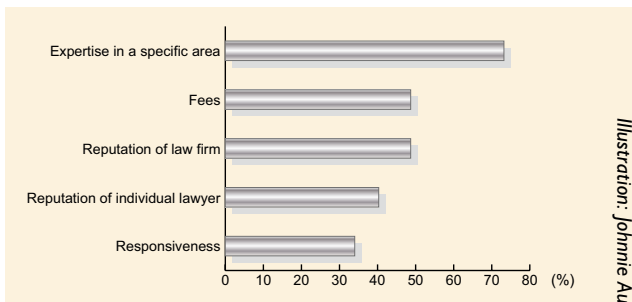
What is the most common way your company locates and hires its in-house lawyers?



The use of legal recruiters is up across the region, and in jurisdictions such as China and Japan around 70 percent of all in-house positions are filled through the use

of professional employment agencies. The increased use of recruitment agencies is likely linked to two factors: the overall increase in numbers of in-house practitioners across Asia and in particular the Middle East, and the trend towards greater mobility that lawyers with strong in-house/corporate backgrounds in these regions enjoy. Stand outs in this regard however, Malaysia and the Philippines, buck this trend, with Malaysia favouring advertisements to locate new lawyers and corporations in the Philippines relying on referrals from within the company.

What three factors most influence your choice of outside counsel?

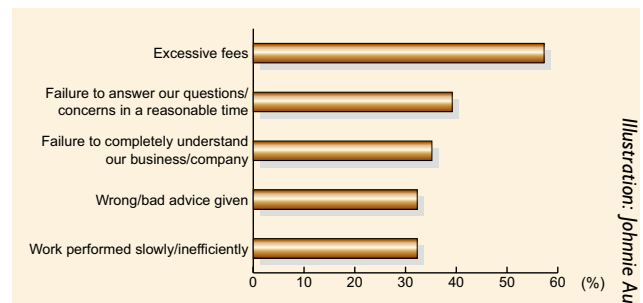


Eight of eleven jurisdictions cited expertise in a specific area as the key issue in deciding on their external counsel of choice. When examined in relation to the high scores given to reputations and the low scores criticisms of professional capabilities such as responsiveness garnered, an interesting possibility comes to light. Firms in these jurisdictions are likely well established, trusted and enjoy strong professional reputations; the job of the in-house practitioner might simply be to source the firm with the strongest reputation in the particular practice area of current requirements. This might in turn have an effect on notions of firm-loyalty, since corporate counsel will source the firms with the best reputations rather than building strong alliances with firms familiar with their business and legal needs.

The reputation of the firm continues to maintain the position of the primary consideration influencing choice of external counsel in India, Indonesia and the UAE. While the nature of India and Indonesia as emerging legal systems and markets might explain the importance of reputation in those jurisdictions, it is more difficult to explain why UAE respondents gave equal consideration (at 33.3 percent each) to reputation of firm, reputation of individual counsel and

expertise in a specific area. Off the record, however, counsel in the region pointed out that the phenomenal growth in the region has resulted in the opening of numerous overseas offices by the big firms, many of whom are not fully equipped to deal with the peculiarities of practicing in the region, such as having sufficient Shari'ah law experts in their ranks.

Which issues have you found to be of concern when dealing with outside counsel?



Unsurprisingly in the current global economic climate, excessive fees were the most commonly cited issue in-house counsel expressed concern over in their dealings with external counsel. As the employment of in-house counsel has become more engrained in Asian business practices, and indeed as appreciation of the expanding nature of their roles within corporations has grown, complaints over lack of business acumen on the part of firms have declined. Firms are increasingly aware of the need to approach discussions with corporate counsel from both a business and legal point of view, and as a result, complaints of lack of understanding of the company have dropped to third place this year.

Worryingly, nine of eleven jurisdictions listed wrong advice and/or failure to reply to concerns in a timely fashion as issues which might jeopardise their decision to use a particular firm again. This might be linked to the criticisms levied at excessive fees, in that corporations are watching their dollars more closely in the current market conditions, are expecting better value for their money and are thus more openly critical of the quality of services.

COUNTRY BY COUNTRY

China

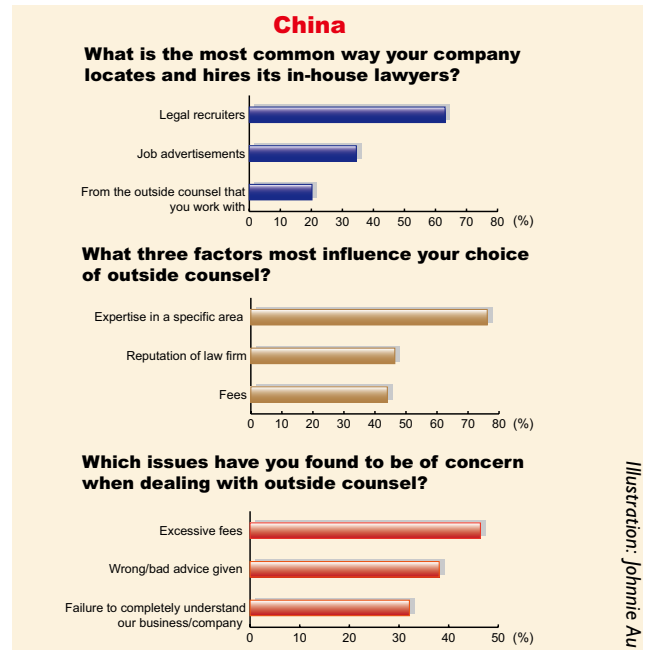
The response rate from China was as exceptional as ever, with strong results garnered from the manufac-

turing/construction industry (21.4 percent) and the financial services sector (14.3 percent). The IT/internet/Telecommunications sector garnered the third strongest results, with 15.5 percent of total respondents coming from within this group.

Expertise in a specific area was cited as the main factor which influenced choice of external counsel in the PRC (76.2 percent). Meanwhile 46.4 percent of respondents considered the reputation of the law firm in question as critical, with 44 percent citing fees as the primary area of consideration.

Issues of concern in China when dealing with outside counsel include excessive fees (the number one issue, with 46.4 percent of respondents pointing to this factor as key); wrong or bad advice (38.1 percent) and finally, failure to completely understand the business/company of the client (32.1 percent). Interestingly, last year's main concern, incorrect or bad advice, was cited by 67 percent of respondents, while this year the concerns appear to be evenly split.

Finally, legal recruiters were cited by 63.1 percent of survey participants as the method of choice for locat-



ing and hiring in-house personnel. Advertisements (34.5 percent) and recommendations from outside counsel (20.2 percent) were the other two most popular methods.



ANGARA ABELLO CONCEPCION REGALA & CRUZ
LAW OFFICES
(ACCRALAW®)

Setting The Pace In Excellence In The Practice Of Law

Angara Abello Concepcion Regala & Cruz Law Offices (ACCRALAW®) is a cohesive multi-disciplinary team of legal professionals who possess in-depth knowledge of specialized fields of law backed by extensive experience earned over thirty-six years in the practice of law in the Philippines. From a core group of six lawyers at inception in 1972, the Firm has grown to a prestigious service organization of over 100 lawyers and over 100 non-legal personnel. ACCRALAW is a top-tier institutional law firm in the Philippines with head offices in Makati City, Metro Manila, and branches in the thriving business commercial centers of Cebu City and Davao City to the south of Metro Manila. The Firm is linked to a global network of correspondent lawyers, law firms, and bar associations.

ACCRALAW is a member of MERITAS Law Firms Worldwide based in the USA and TERRALEX.

The Firm has a track record in handling diverse significant and complex business projects and joint ventures involving multinational clients, and has likewise handled a great number of landmark litigation cases.

ACCRALAW's clientele represents the full spectrum of business and industry, as well as professional organizations, foreign embassies, and individuals. Servicing the Firm's clients are seven practice departments offering timely, creative and strategic legal solutions matched with cost-efficient administration and expert handling of clients' requirements.

- EUSEBIO V. TAN**
Managing Partner
- TERESITA J. HERBOSA**
Co-Managing Partner
- ANATESS ARNALDO-ORACION**
BRIGIDA S. ALDEGUER
Retainer Department
- ALEX FERDINAND S. FIDER**
VICTOR N. DE LEON
Intellectual Property Department
- TADEO F. HILADO**
JUDY HAO
Corporate & Special Projects Department
- EMERICO O. DE GUZMAN**
CLARENCE DARROW C. VALDECANTOS
Labor & Employment Department
- RAMON G. SAMSON**
PATRICIA-ANN T. PRODIGALIDAD
Litigation and Dispute Resolution Department
- RUBY ROSE J. YUSI**
ROWENA GARCIA-FLORES
Tax Department
- REGINA PADILLA GERALDEZ**
Immigration Department

- JEFFERSON M. MARQUEZ**
MA. IOLANDA B. ABELLA
Cebu City Branch Office
- ENRIQUE M.O. DIOLA**
GLENN C. AQUINO
Davao City Branch Office

HEAD OFFICE
ACCRA Building, 122 Gamboa St.
Legaspi Village, 0770 Makati City
PHILIPPINES
Tel. No.: [632] 830-8000
Fax Nos.: [632] 816-0119; 812-4897
E-mail: accra@accralaw.com
Website: www.accralaw.com

CEBU CITY BRANCH OFFICE
6/F Cebu Holdings Center Bldg.
Cebu Business Park (Ayala)
6000 Cebu City, PHILIPPINES
Tel. Nos.: [6332] 231-1449; 231-4223
Fax No.: [6332] 231-3614
E-mail: accralawcebu@pildsl.net

DAVAO CITY BRANCH OFFICE
11/F Pryce Tower, Pryce Business Park
J.P. Laurel Avenue,
8000 Davao City PHILIPPINES
Tel. Nos.: [6382] 224-0996; 224-0997
Fax No.: [6382] 224-0983
E-mail: accradav@mazcom.com



Award Winning

Straight Talking

International Expertise

AL TAMIMI & COMPANY
المتميمي وشاركوه
Advocates & Legal Consultants
المحاماة والاستشارات القانونية

The Gulf Region's Premier Law Firm

Al Tamimi & Company, originally established in 1989, is the leading law firm in the Arabian Gulf region. The firm is ideally positioned to support the complex legal requirements of clients both regional and international as they continue to set-up, grow and expand throughout the Middle East and the wider Gulf region.

Al Tamimi & Company specialises in Intellectual Property & Information Technology, Media, Banking & Finance, Construction & Engineering, Corporate/Commercial, Family Business & Private Client work, Telecommunications, Litigation, Alternative Dispute Resolution, Arbitration, Maritime, Trade & Insurance and Property Law.

www.tamimi.com

Abu Dhabi | Baghdad | Doha | Dubai | Riyadh | Sharjah

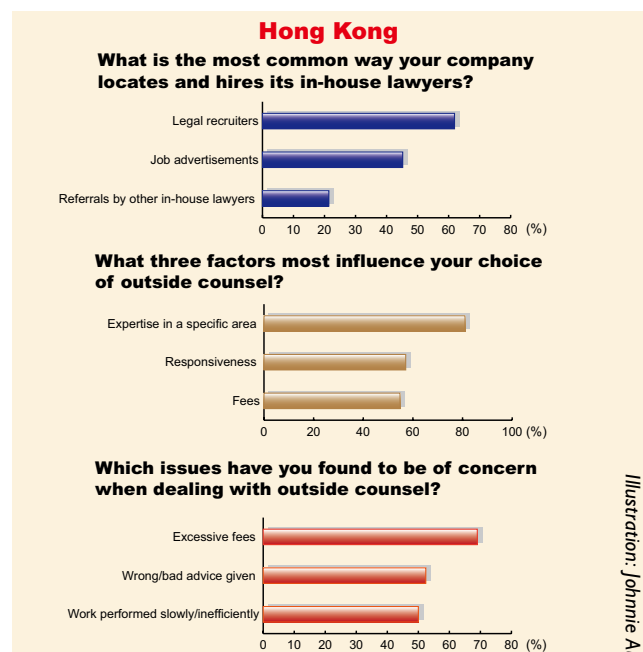
Hong Kong

Not surprisingly, the financial services sector provided the bulk of the responses from Hong Kong, with a 40.5 percent showing. The IT/internet/telecommunications group was next with 14.3 percent, while respondents from the manufacturing/construction industry provided 11.9 percent of total respondents surveyed.

Excessive fees once again topped the list of issues of concern when dealing with outside counsel in Hong Kong, 69 percent of participants cited this factor, with 52.4 percent claiming wrong or bad advice given and 50 percent slow or inefficient work as areas they pay attention to in their choice of firm.

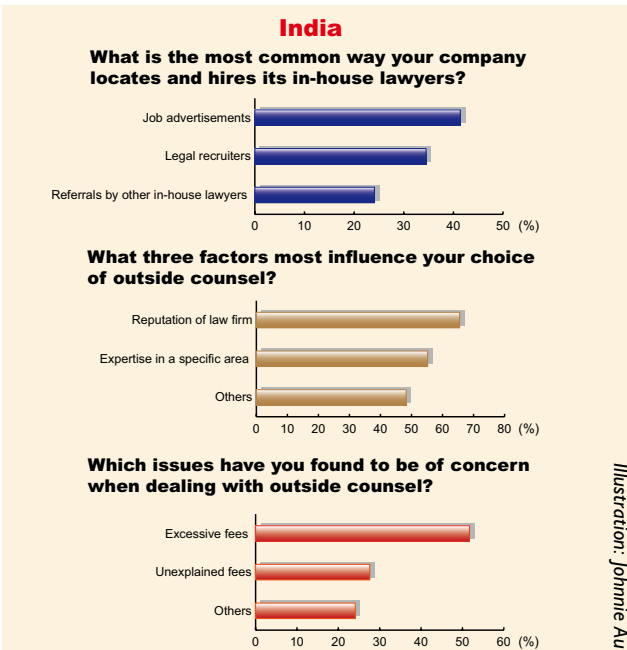
Despite concerns over fees, respondents overwhelmingly looked for expertise in a specific area when choosing external counsel in the region, 81 percent of respondents named this factor as the number one influence on their choice of firm. Responsiveness was cited by 57 percent of respondents as a concern, with fees bringing up the third most influential factor in-house practitioners consider.

The use of legal recruiters was the number one method to recruit internal counsel (61.9 percent), with job advertisements (34.5 percent) and referrals by other in-house lawyers (21.4 percent) bringing up second and third.



India

In a similar vein to respondents from China and Hong Kong, the bulk of respondents from India came from three sectors: manufacturing/construction and



IT/internet/telecommunications (tied at 24.1 percent each) and financial services (10.3 percent).

The list of contributing factors that most seriously jeopardised a respondent’s decision to use a firm was lengthier in the overall findings from India. Five areas of concern garnered impressive results: excessive fees (51.7 percent); unexplained fees (27.6 percent); lack of involvement by partners (24.1 percent); failure to understand the company (24.1 percent); and failure to answer concerns in a timely fashion (24.1 percent).

Four factors were cited as influencing choice of counsel: reputation of law firm (65.5 percent); expertise in a specific area (55.2 percent); relationship between the company and firm (48.3 percent) and reputation of individual lawyer (also 48.3 percent).

Another revealing feature of the jurisdiction’s responses was the use of advertisements (41.4 percent) above legal recruiters (34.5 percent) and referrals (24.1 percent) to source suitable candidates.

Indonesia

Response rates from Indonesia were up this year, with the



amarchand mangaldas

GOOD WISHES FROM

AMARCHAND & MANGALDAS & SURESH A. SHROFF & Co.

THE RECIPIENT OF THE **PACIFIC BUSINESS PRESS**
ASIAN-COUNSEL “FIRM OF THE YEAR 2008”

for *Restructuring Practice and Securities/Finance Practice*
in the India Jurisdiction

Amarchand Towers
216 Okhla Industrial Estate – Phase III
New Delhi 110020

Tel: 91(0)11 2692 0500
Fax: 91(0)11 2692 4900
Email: shardul.shroff@amarchand.com





Atsumi & Partners is one of Japan's leading law firms, with a reputation for innovation and strategic thinking. We are the only independent Tokyo law firm with foreign Partners, and in addition to our core Japanese law practice, we are able to advise on New York, English and German law.

With nearly 80 lawyers (including 2 foreign Partners and 7 other foreign attorneys) we have the capacity to handle the largest of transactions and can provide our clients with both strength-in-depth of local expertise and real international experience. Building from our recognized market-leading position in securitization & structured finance transactions, the Firm now advises international and domestic companies and financial institutions on all aspects of finance and business law, including:

Securitization & Structured Finance
Real Estate Acquisition & Finance
Insolvency & Restructuring
Syndicated Lending

Securities Offerings & Placements
Fund Formation & Investments
Intellectual Property
Asset Finance

Capital Markets & Derivatives
Mergers And Acquisitions
Dispute Resolution
Private Equity

For further information on how we can help you, please contact one of the following Partners, or visit our website at www.apap.gr.jp

Hiroo Atsumi
h.atsumi@apap.gr.jp 03-5501-2120

Bonnie L. Dixon
b.dixon@apap.gr.jp 03-5501-1166

Daniel C. Hounslow
d.hounslow@apap.gr.jp 03-5501-2118

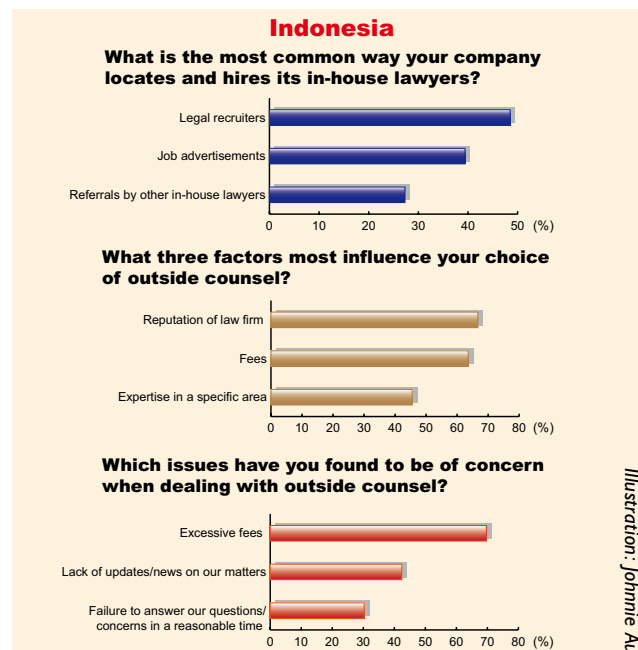
Fukoku Seimei Bldg., 12F, 2-2-2 Uchisaiwai-cho, Chiyoda-ku, Tokyo 100-0011 Tel: 03-5501-2111 Fax: 03-5501-2211

www.apap.gr.jp

majority of responses coming from five industries: manufacturing/construction (21.2 percent); financial services (18.2 percent); IT/internet/telecommunications (18.2 percent); natural resources (12.1 percent); and mass media/entertainment (9.1 percent).

Tellingly, the main factor influencing choice of outside counsel in the region was the reputation attached to the individual law firm (cited by 66.7 percent of respondents). And while fees were the number two concern (cited by 63.6 percent of respondents) and expertise in a specific area garnered strong support (45.5 percent), strong results in other possible response areas tell another important story. The relationship between the company and the firm was cited by 42.4 percent of respondents as critical, moreover the reputation of the individual lawyer (36.4 percent) and the personal relationship between in-house counsel and the external counsel also showed strong results, with 30.3 percent of participants acknowledging its importance.

Recruiters were once again the most popular method of finding in-house practitioners (48.5 percent), job advertisements (39.4 percent) and referrals (27.3 percent) were also well-utilised approaches.



Japan

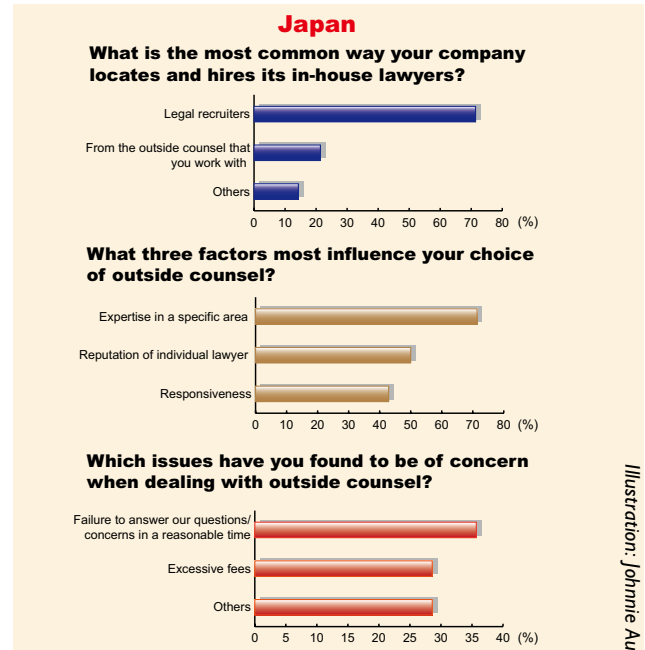
Respondents from Japan overwhelmingly came from the financial services sector (42.9 percent), with

health and medical companies (14.3 percent) and real estate and transport (tied at 7.1 percent) rounding out the top participants.

Perhaps a result of the uncertain economic times which have marked the previous financial year, the number one issue of concern facing in-house in their choice of external counsel was the failure to answer questions and concerns in a reasonable timeframe. Other counsel however, noted that the legal framework with regard to foreign counsel might deserve more of the blame in this regard. It is often said that firms merely quote the law and offer only conservative advice in an effort to avoid running afoul of the restrictions on overseas qualified practitioners.

Alongside the difficulty in finding lawyers willing to interpret laws and offer practical advice, excessive fees, poor advice and failure to understand the company's business were all equally cited by counsel as areas of concern (28.6 percent of respondents indicated these three matters in their responses).

Another interesting facet of the Japanese market is the strong attachment to the professional reputation of



the individual lawyer when selecting outside counsel. Fifty percent of participants in the survey in Japan checked individual reputation as a deciding factor, second only to the UAE where 53.8 percent of respond-



BAE, KIM & LEE LLC

A full service law firm with over 250 professionals in Seoul and Beijing, using global standards and local knowledge, to provide quality work efficiently and discreetly to our clients.





Practice Areas

- Administration & Tax | Antitrust & Competition Law |
- Corporate/M&A | Construction Law |
- Corporate Restructuring and Bankruptcy |
- Finance and Real Estate |
- Information Technology and Telecommunications |
- Intellectual Property & Patent |
- International Arbitration and Litigation |
- International Trade & Anti-Dumping |
- Labor, Employment & Employee Benefits |
- Litigation and Arbitration |
- Securities, Banking and Finance |
- Transportation and Insurance | White Collar Crime |

647-15 Yoksam-dong, Kangnam-gu, Seoul 135-723, Korea E bkl@bkl.co.kr T 82.2.3404.0000 F 82.2.3404.0001 www.bkl.co.kr
 Beijing Office: Unit 06, 17F, Tower 2, China Central Place, No.79, Jianguo Road, Chaoyang District, Beijing, 100025, China E jgk@bkl.co.kr T 86.10.5903.3500

LLC notice per Article 58(11) of the Attorney Act: In the event a client incurs loss due to negligence or willful misconduct of an attorney of the firm, joint and several liability for that loss will be borne by that attorney and the firm, together with any member of the firm who was at fault in supervising that attorney.





Drew & Napier is proud to be the
Asian-Counsel Firm of the Year for

Anti-Trust
Litigation
Taxation

DREW & NAPIER LLC
Advocates & Solicitors • Trademark & Patent Agents

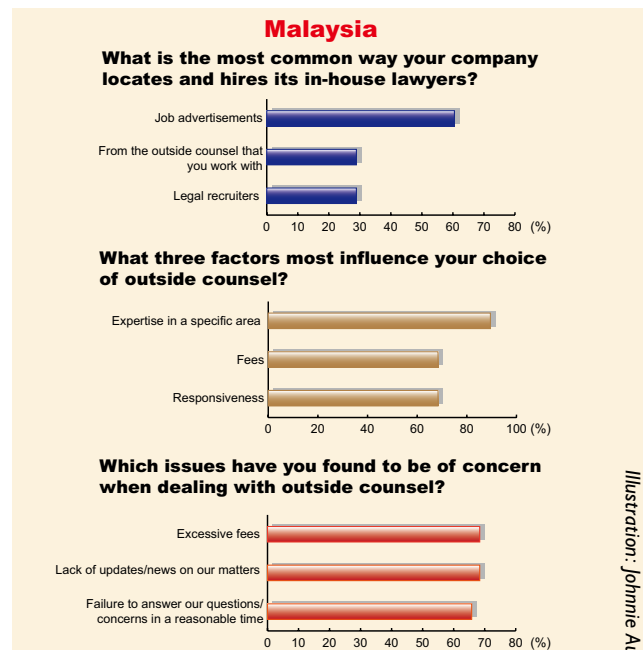
Singapore Office: 20 Raffles Place, #17-00 Ocean Towers, Singapore 048620
T: (65) 6535 0733 F: (65) 6535 4864 E: mail@drewnapier.com W: www.drewnapier.com

ents indicated that individual practitioner reputation strongly influenced their choice of external.

Malaysia

The respondents from Malaysia represented the most comprehensive and divided group of participants within the survey. Strong levels of response were obtained across the board, ranging from: financial services (23.7 percent); real estate (18.4 percent); IT/internet/telecommunications (15.8 percent); manufacturing/construction (13.2 percent); transportation (10.5 percent) and agriculture, utilities and health and medical services, where 7.9 percent of respondents were employed.

Perhaps a result of the diverse industry backgrounds of respondents, participants were quick and united in proclaiming expertise in a specific area (89.5 percent) as the most influential factor in their decision to use a particular firm. And while fees and responsiveness were also cited by a large number of respondents (i.e. by 68.4 percent of counsel), the reputation of the law firm was also a strong factor, as indicated by 50 percent of counsel.



Also bucking trends in this jurisdiction was the use of advertisements as the primary manner in which firms recruit new in-house attorneys. Nearly 60.5 percent of survey respondents in Malaysia use adverts to fill their

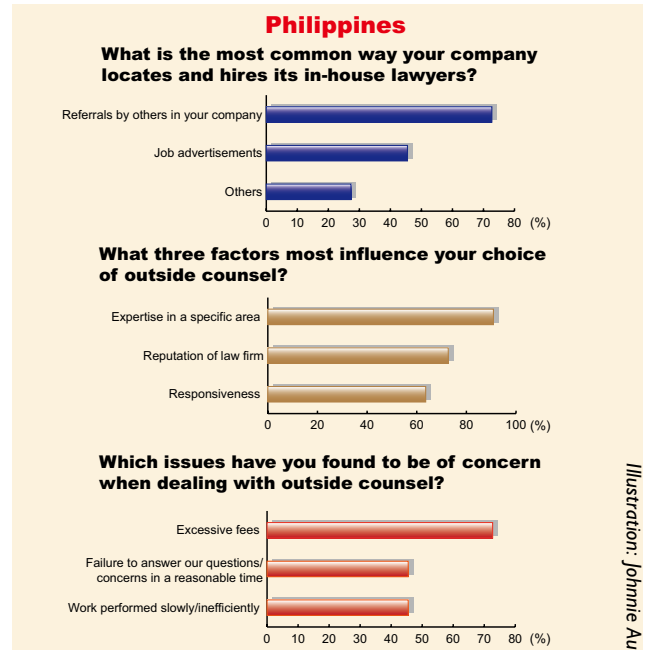
ranks, with only 28.9 percent relying on the expertise of legal recruiters.

Philippines

This was the first year to include the jurisdiction of the Philippines in our survey, a move made in response to demand for more comprehensive coverage in the region, and respondents from the IT/internet/telecommunications sector dominated. Nearly 37 percent of participants came from this sector, with an additional 19 percent each coming from financial services or transportation based companies and corporations.

Expertise in specific areas reigned again as the central factor influencing choice of firm (90.9 percent), but the reputation of law firm itself also showed strong influence, with 72.7 percent of participants acknowledging the sway factor associated with a good firm reputation. Interestingly, the Philippines was one of only 4 jurisdictions (the others being Japan, the UAE and India) where fees were not cited as a factor which would influence ones choice of external counsel.

Fees were cited however as an issue of concern once the decision to commit to a particular firm was made. In fact



excessive fees were cited by 72.7 percent of the Philippine in-house counsel community as a source of concern, alongside delays in response time and slow/inefficient work (both indicated by 45.5 percent of participants as troublesome).



君合律師事務所
JUN HE LAW OFFICES



Jun He Law Offices has been named Pacific Business Press Asian-Counsel "Firm of the Year 2008" for:

**Commercial Transactions Practice
Litigation Practice
Restructuring Practice in the PRC Jurisdiction**

We would like to take this opportunity to express our gratitude to all of our clients and friends for their trust and support to this firm.

China Resources Building, 20th Floor,
8 Jianguomenbei Avenue, Beijing 100005, PRC
Tel: + 86 10 8519 1300 Fax: + 86 10 8519 1350
Website: www.junhe.com Email: junhebj@junhe.com

Shanghai
(21) 5298 5488

Shenzhen
(755) 2587 0765

Dalian
(411) 8250 7578

Haikou
(898) 6851 2544

New York
(1-212) 703 8702

Hong Kong
(852) 2167 0000



Makarim & Taira S.



SUMMITMAS 1
16TH & 17TH FLOORS
JL. JEND. SUDIRMAN KAV. 61-62
JAKARTA 12190 – INDONESIA

Phone: +62 21 252 1272/520 0001
Fax: +62 21 252 2750/2751
Email: makarim&tairas@makarim.com
Website: www.makarim.com
Contact Person: Rahayuningsih Hoed
(Managing Partner)
Rahayu.Hoed@makarim.com

Makarim & Taira S. is one of Indonesia's leading corporate and finance law firms. It was founded in 1980 and has since grown to become a multi-disciplinary practice. Today the firm comprises of 5 partners, 5 foreign legal consultants and 34 Indonesian lawyers and paralegals.

Makarim & Taira S. represents both domestic and foreign (particularly multinational) clients doing business in Indonesia.

CATEGORIES OF WORK

Banking and finance

Ratna Iskandar, Gregory Ranslam

Debt and corporate restructuring

Tasdikiah Siregar, Ratna Iskandar

Capital markets and securities

Ratna Iskandar, Tasdikiah Siregar

Litigation and dispute resolution

Rahayuningsih Hoed, Guy Des Rosiers

Mergers and acquisitions

Gregory Ranslam, Guy Des Rosiers

Foreign Investment

Galinar Kartakusuma,
Tasdikiah Siregar

Mining

Pudji Purbo, Gregory Ranslam

General corporate

Galinar Kartakusuma,
Richard Cornwallis

Intellectual property

Galinar Kartakusuma,

Telecommunications

Richard Cornwallis, Garth McEvoy

Property development

Rahayuningsih Hoed, Pudji Purbo

Employment

Rahayuningsih Hoed,
Richard Cornwallis

Energy and natural resources

Pudji Purbo, Garth McEvoy

Construction

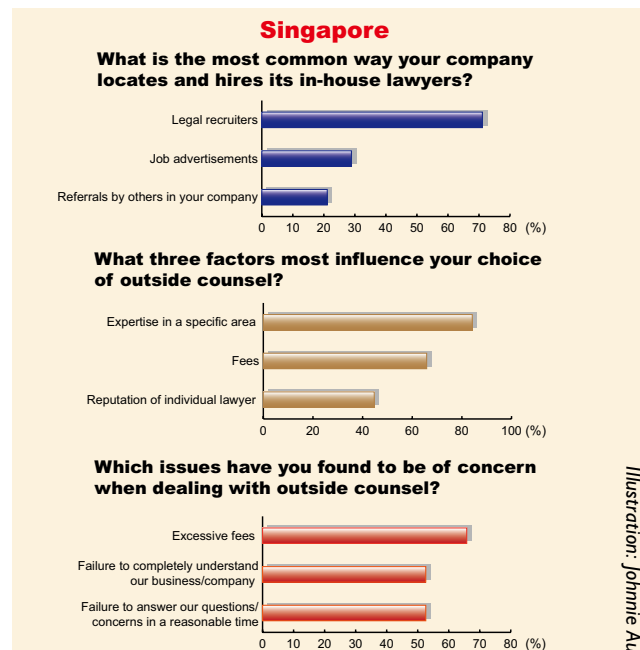
Guy Des Rosiers, Garth McEvoy

Another interesting feature of the Philippines market is the manner in which companies source and recruit new counsel. Referrals from within were the manner favoured by 72.7 percent of respondents. Counsel noted that it was not unusual for referrals to come from senior management or even government officials in some cases.

Singapore

Responses from Singapore came from three key industries: financial services (21.1 percent); manufacturing/construction (21.1 percent) and IT/internet/telecommunications (18.4 percent). This year, respondents from the transportation sector also made a significant contribution, with 7.9 percent of participants stemming from this sector.

While responsiveness was a key concern in the previous year's survey, this year the main issues influencing choice of firm were expertise in a specific area (84.2 percent), fees (65.8 percent) and the reputation of the individual lawyer (44.7 percent). Singaporean respondents were also keen to emphasise service quality and value added services as deciding factors. Still others cited the attitude of counsel as part and parcel of the notion of service, pointing to the need



to temper arrogance in some cases.

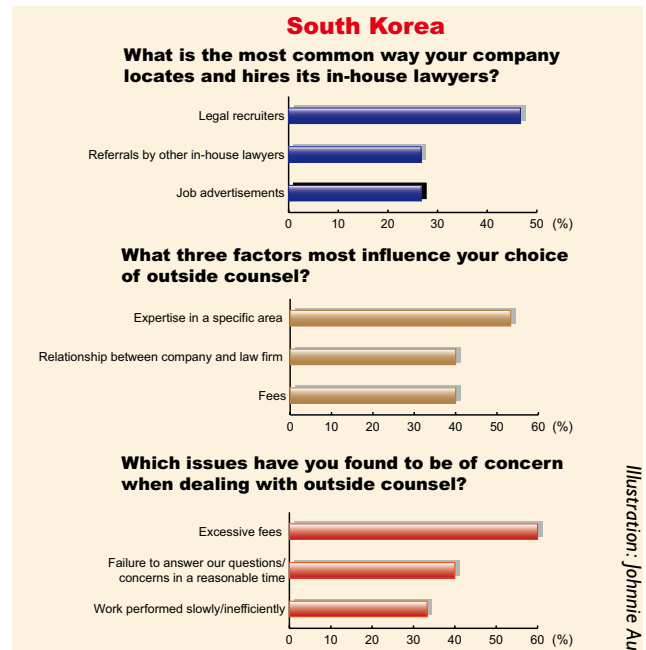
Excessive fees garnered their usual strong rate of concern (65.8 percent of respondents expressed concern with the level of fees in Singapore), and 52.6 percent of participants noted

failure to understand the business or failure to respond to concerns in a timely fashion as influencing choice of firm.

South Korea

Respondents from South Korea came mainly from the manufacturing/construction industry (33.3 percent), with financial services (20 percent) and government/public and IT/internet/telecommunications (at 13.3 percent each) rounding out the bulk of the participants.

The factors that would most seriously influence their choice of counsel were: expertise in a particular area (53.3 percent), the relationship between the company and the firm (40 percent) and fees (40 percent). The reputation of the individual lawyer and/or the firm itself remained a strong factor for South Koreans, with 33.3 percent of respondents admitting that these connections were of note. Possible connections with courts and government officials were also mentioned by practitioners as sway factors. Perhaps a result of the predominance of the Chaebol, the conglomerate-style mega corporations which dominate the Korean economy, government connections are often overplayed, since they are seen as effective mechanisms for avoiding stricter application of the laws.



This year the top three concerns of South Korean in-house counsel with relation to their choice of external counsel were excessive fees (cited by 60 percent of respondents), failure to answer concerns in a reasonable timeframe (40 percent) and



Firm Profile: Established in 1971, in the early stage of modernisation of Indonesia's laws, MKK is one of Indonesia's oldest and largest law firms. We bring to bear over 35 years of experience and insight for our practice of the law. From the outset our focus has been on quality and commercially sensible legal services delivered in a timely and cost effective manner. A substantial number of our lawyers have studied abroad, and many have advanced degrees from leading universities in the United States, Great Britain, the Netherlands, Australia and Japan.

Main Practice Areas

- Investment – Mergers & Acquisitions
- Banking and Finance
- Aircraft and shipping finance
- Cross border finance
- Infrastructure Development & Project Finance
- Securitizations
- Structured Finance
- Tax Law
- Capital Markets
- Oil & Gas
- Mining & Natural Resources
- Restructuring and Bankruptcy
- Marketing and Trade Regulation
- Telecommunications & Information Technology
- Labour Law
- Litigation Support and Alternative Dispute Resolution

Wisma Metropolitan II, 13th and 14th Floors
 Jl. Jend. Sudirman, Kav. 31
 Jakarta 12920 Indonesia
 P.O. Box 2844 Jakarta 10001

Tel: (62) 21 571 1130
 Fax: (62) 21 571 1162 or 570 1686

Fee earners: 41

Email: mail@mkklaw.net
 Website: www.mkklaw.net

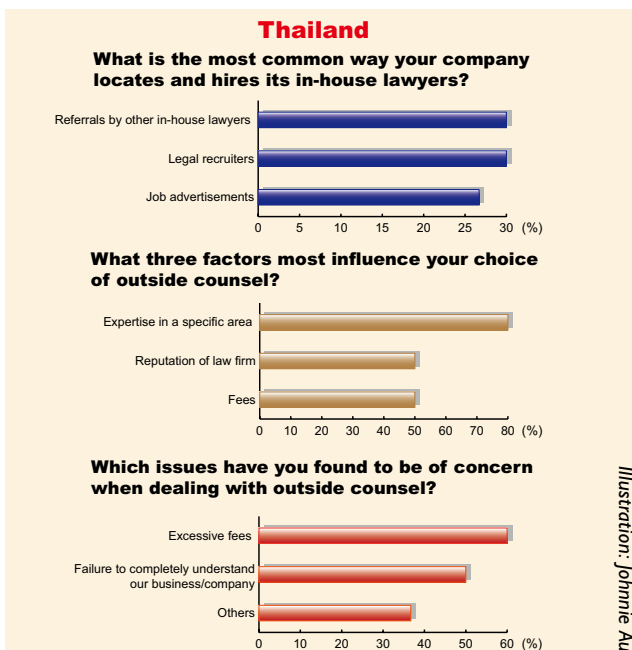


slow or inefficient work (33.3 percent). It is too early to tell what effect the proposed opening of the legal system to foreign firms will have on the level of fees in the nation, some respondents feared significant undercutting by small and medium sized firms, while others indicated little hope that the move would alleviate current concerns over pay.

Thailand

The majority of respondents within the Thailand group were once again in the financial services sector. But while 26.7 percent of respondents came from this area, this year's results also included participants from the food and beverage industry (16.7 percent), the health and medical industries (13.3 percent), IT/internet/telecommunications and manufacturing and construction (each with 10 percent).

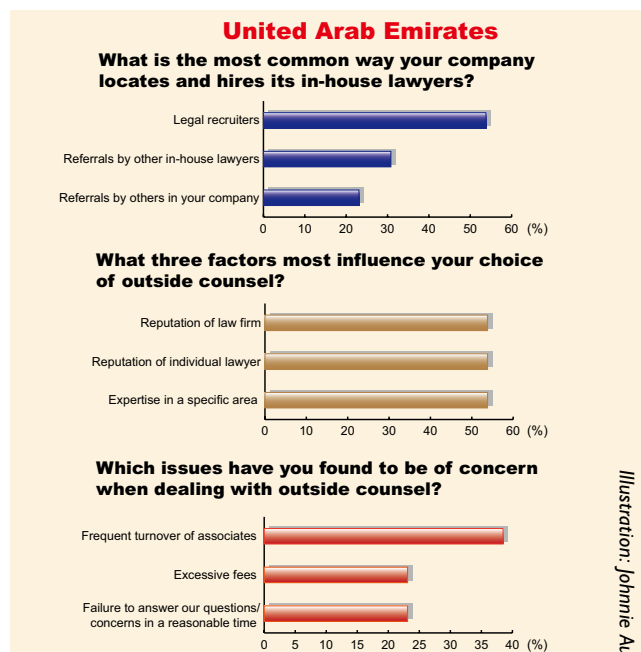
In a huge shift, expertise overtook reputation as the deciding factor in choice of external counsel, with 80 percent of respondents stating that exhibiting knowledge in a specific area was a quality their firm of choice must exhibit. Expertise did not even make the top three issues last year, which were dominated by individual, firm and brand reputation.



Significantly, the criticisms counsel had for external counsel spanned five major areas of concern. Excessive fees were cited by 60 percent of respondents; failure to understand the business or company by 50 percent, while lack of involvement and input by partners, failure to respond to concerns in a reasonable timeframe and slow or inefficient work each earned nods by 36.7 percent of survey participants.

United Arab Emirates

The breadth of response base from the UAE was significantly enhanced this year. Last year, over fifty percent of respondents came from the financial services sector, while the latest findings clearly indicate the region's rapidly expanding in-house legal community across all industries. Financial services remained strong participants (23.1 percent of respondents), but the real estate sector (at 15.4 percent), and government and public industries sectors (15.4 percent) were also involved in large numbers.



Counsel were evenly divided over the most influential issues contributing to choice of firm. The reputation of the law firm, the reputation of the individual lawyer and the expertise of a firm in a specific area all tied for primary position in the list of concerns. Local knowledge and experience, a strong influence in the previous year was all but negligible in this year's findings. Similarly, there were minimal concerns voiced over excessive fees as was the case previously.

One notable issue not cited in other jurisdictions as a jeopardising factor was the high turnover rates of counsel associated with the region. The region tends to have a preference for more senior associates in terms of in-house recruitment strategies, and being largely insulated from global economic concerns can offer extremely attractive packages to this narrow selection of individuals.

AC

ASIAN-COUNSEL Firms of the Year 2008

The selection of *Asian-Counsel's* Firms of the Year 2008 was based on votes and testimonials by close to 400 senior in-house counsel across Asia and the UAE. We asked the participants to tell us which law firms were their *preferred* external partners for each area of practice.



China

ANTI-TRUST
Eversheds

COMMERCIAL TRANSACTIONS
Jun He

EMPLOYMENT
King & Wood

ENVIRONMENTAL
JSM

INTELLECTUAL PROPERTY
King & Wood

LITIGATION
Jun He

MERGERS & ACQUISITIONS
King & Wood

REAL ESTATE
Zhong Lun

REGULATORY/COMPLIANCE
Freshfields Bruckhaus
Deringer

RESTRUCTURING
Jun He

SECURITIES/FINANCE
O'Melveny & Myers

TAX
PricewaterhouseCoopers

TELECOMMUNICATIONS, MEDIA & TECHNOLOGY
Bird & Bird

Hong Kong

ANTI-TRUST
Herbert Smith

COMMERCIAL TRANSACTIONS
Richards Butler

EMPLOYMENT
Minter Ellison

ENVIRONMENTAL
Mallesons Stephen Jaques

INTELLECTUAL PROPERTY
Wilkinson & Grist

LITIGATION
Clifford Chance

MERGERS & ACQUISITIONS
Richards Butler

REAL ESTATE
Woo, Kwan, Lee & Lo

REGULATORY/COMPLIANCE
Freshfields Bruckhaus
Deringer

RESTRUCTURING
Clifford Chance

SECURITIES/FINANCE
Allen & Overy

TAX
White & Case

TELECOMMUNICATIONS, MEDIA & TECHNOLOGY
Lovells

India

ANTI-TRUST
AZB & Partners

COMMERCIAL TRANSACTIONS
Economic Laws Practice

EMPLOYMENT
Crawford Bayley & Co

ENVIRONMENTAL
Crawford Bayley & Co

INTELLECTUAL PROPERTY
Advani & Co

LITIGATION
Khaitan & Co

MERGERS & ACQUISITIONS
J. Sagar Associates

REAL ESTATE
Federal & Rashmikant

REGULATORY/COMPLIANCE
Crawford Bayley & Co

RESTRUCTURING
Amarchand & Mangaldas &
Suresh A. Shroff & Co

SECURITIES/FINANCE
Amarchand & Mangaldas &
Suresh A Shroff & Co

TAX
Ernst & Young

Indonesia

ANTI-TRUST
Hiswara Bunjamin &
Tandjung

COMMERCIAL TRANSACTIONS
Hadiputranto Hadinoto &
Partners

EMPLOYMENT
Soemadipradja & Taher

ENERGY
Soewito Suhardiman
Eddymurthy Kardono

ENVIRONMENTAL
Mochtar Karuwin Komar

INTELLECTUAL PROPERTY
Hadiputranto Hadinoto &
Partners

LITIGATION
Hiswara Bunjamin &
Tandjung

MERGERS & ACQUISITIONS
Hadiputranto Hadinoto &
Partners

Continued on page 34

NATIONAL LAW FIRM OF THE YEAR- IFLR ASIAN AWARDS, EVERY YEAR SINCE 2002

KIM & CHANG

Seyang Building, 223 Naeja-dong, Jongno-gu, Seoul 110-720, Korea
Tel. +82-2-3703-1114 Fax. +82-2-737-9091 E-mail. lawkim@kimchang.com www.kimchang.com



- | Year Established : 1973
- | Number of Professionals : Approximately 650
- | Languages Spoken : Korean, English, German, French, Japanese, Chinese and Swedish

Corporate

- Anti-Corruption and Regulatory Compliance
- Antitrust and Competition
- Broadcasting & Telecommunication
- Construction
- Corporate Governance
- Customs and International Trade
- Energy
- Entertainment
- Environment
- Foreign Direct Investment
- Health
- Insolvency and Restructuring
- Labor and Employment
- Mergers & Acquisitions
- Overseas Investment
- Private Equity and Venture Capital
- Real Estate

Criminal Defense

- White Collar Criminal Defense

Finance

- Acquisition Finance
- Banking
- Derivatives
- Financial Institutions
- Insolvency and Restructuring
- Insurance
- Investment Management
- Lease and Transportation Finance
- Private Equity and Venture Capital
- Project Finance
- Securities
- Structured Finance

Industry

- Banking
- Broadcasting & Telecommunication
- Construction
- Energy
- Entertainment
- Financial Institutions
- Health
- Insurance
- Investment Management
- Private Equity and Venture Capital
- Securities

Intellectual Property

- Intellectual Property

International

- Chinese Practice
- European Practice
- Japanese Practice

Litigation

- Construction
- Insolvency and Restructuring
- International Arbitration & Cross-Border Litigation
- Litigation & Arbitration
- Product Liability / Consumer Claims
- Shipping

Tax

- Finance Tax
- General Tax Consulting
- Tax Audit and Dispute Resolution
- Transfer Pricing

ASIAN-COUNSEL

Firms of the Year 2008



... Indonesia continued

REAL ESTATE

Ali Budiardjo Nugroho & Reksodiputro

REGULATORY/COMPLIANCE

Mochtar Karuwin Komar

RESTRUCTURING

Hadiputranto Hadinoto & Partners

SECURITIES/FINANCE

Hadiputranto Hadinoto & Partners

TAX

Ernst & Young

TELECOMMUNICATIONS, MEDIA & TECHNOLOGY

Makarim & Taira S.

Japan

ANTI-TRUST

Nagashima Ohno & Tsunematsu

COMMERCIAL TRANSACTIONS

Atsumi & Partners

EMPLOYMENT

White & Case

ENVIRONMENTAL

Nagashima Ohno & Tsunematsu

INTELLECTUAL PROPERTY

TMI Associates

LITIGATION

Nagashima Ohno & Tsunematsu

MERGERS & ACQUISITIONS

Nagashima Ohno & Tsunematsu

REAL ESTATE

Nagashima Ohno & Tsunematsu

REGULATORY/COMPLIANCE

Anderson Mori & Tomostune

RESTRUCTURING

Nishimura & Asahi

SECURITIES/FINANCE

Ashurst

TAX

White & Case

TELECOMMUNICATIONS, MEDIA & TECHNOLOGY

Nagashima Ohno & Tsunematsu

Malaysia

ANTI-TRUST

Norton Rose

COMMERCIAL TRANSACTIONS

Shearn Delamore

EMPLOYMENT

Skrine

ENVIRONMENTAL

Azmi & Associates

INTELLECTUAL PROPERTY

Shearn Delamore

LITIGATION

Shearn Delamore

MERGERS & ACQUISITIONS

Shearn Delamore

REAL ESTATE

Shook Lin Bok

REGULATORY/COMPLIANCE

Zul Rafique & Partners

RESTRUCTURING

Shook Lin Bok

SECURITIES/FINANCE

Wong & Partners

Philippines

ANTI-TRUST

Sycip Salazar Hernandez & Gatmaitan

COMMERCIAL TRANSACTIONS

Ponce Enrile Reyes & Manalastas

EMPLOYMENT

Angara Abello Concepcion Regala & Cruz (ACCRA)

INTELLECTUAL PROPERTY

Quisumbing Torres

LITIGATION

Siguion Reyna Montecillo & Ongsiako

MERGERS & ACQUISITIONS

Romulo Mabanta
Buenaventura Sayoc & De Los Angeles

REGULATORY/COMPLIANCE

Sycip Salazar Hernandez & Gatmaitan

RESTRUCTURING

Romulo Mabanta
Buenaventura Sayoc & De Los Angeles

SECURITIES/FINANCE

Romulo Mabanta
Buenaventura Sayoc & De Los Angeles

TAX

Salvador & Associates

Singapore

ANTI-TRUST

Drew & Napier

COMMERCIAL TRANSACTIONS

Allen & Gledhill

EMPLOYMENT

JTJB Partnership

Continued on page 36

Our Firm

- One of the oldest law firms in Malaysia, that has evolved over the last century into one of the largest with extensive global legal network links. Committed to expeditiously meeting the swiftly changing challenges of the business world today without compromising on integrity and quality. Our aim – understanding our client's business and individual needs and providing innovative, practical and effective solutions.

- Domestic and international financial institutions, multinational conglomerates, public listed companies, institutional bodies, multi-lateral agencies, industrial and commercial corporations, professional firms and organisations, government and local institutions and individuals.

Our Clients

Our Practice Groups

The **Corporate & Commercial Practice Group**, one of the most established corporate practices in Malaysia, has experience in all areas of corporate and commercial law including mergers and acquisitions, takeovers, securities dealings, capital and fund raising, restructurings, cross-border transactions, joint ventures, regulatory issues and corporate governance. *Head of Practice Group:* Ms. Grace C. G. Yeoh

The **Dispute Resolution Practice Group**, one of the oldest and largest dispute resolution practices in Malaysia, handles arbitration and ADR in addition to civil litigation. This Practice undertakes a broad spectrum of contentious work including shareholders and joint venture disputes, matters involving company administration and directors' duties and liabilities, commodities and futures claims, white collar crimes, defamation claims and professional negligence matters. *Head of Practice Group:* Mr. Robert Lazar

The **Employment & Administrative Law Practice Group** offers a full range of employment-related services to employers across a broad spectrum of contentious work and have been involved in many large restructuring exercises. *Head of Practice Group:* Mr. N. Sivabalah

The **Financial Services Practice Group** advises a wide range of Malaysian and international financial institutions and corporations on various areas of law including bank financing, Islamic debt instruments and financing, capital market transactions and securitization. *Head of Practice Group:* Ms. Christina Kow

The **Intellectual Property and Technology Practice Group** deals with a wide spectrum of intellectual property and technology matters, both contentious and non-contentious. The Practice Group undertakes acquisition, protection and enforcement of various intellectual property rights. *Heads of Practice Group:* Mr. Wong Sai Fong and Ms. Karen Abraham

The **Real Estate Practice Group** advises on all aspects of property transactions including acquisitions, divestments, and property-linked financial transactions. *Head of Practice Group:* Ms. Sar Sau Yee

The **Tax and Revenue Practice Group** undertakes all areas of tax planning, advice and dispute resolution covering the full spectrum of commercial activities. *Head of Practice Group:* Ms. Goh Ka Im

Shearn Delamore & Co. Managing Partner: Mr. Wong Sai Fong

Kuala Lumpur Head Office
7th Floor
Wisma Hamzah-Kwong Hing
No.1 Leboh Ampang
50100 Kuala Lumpur
Malaysia
Tel : 603 2070 0644
Fax: 603 2078 5625/ 2078 2376
Email: info@shearndelamore.com

Penang Branch Office
6th Floor
Wisma Penang Garden
42, Jalan Sultan Ahmad Shah
10050 Penang
Malaysia
Tel : 604 226 7062
Fax: 604 227 5166
Email: shearnd@po.jaring.my

ASIAN-COUNSEL

Firms of the Year 2008



... Singapore continued

ENVIRONMENTAL

Allens Arthur Robinson

INTELLECTUAL PROPERTY

Alban Tay Mahtani & De Silva

LITIGATION

Drew & Napier

MERGERS & ACQUISITIONS

Wong Partnership

REAL ESTATE

Harry Elias Partnership

REGULATORY/COMPLIANCE

Allen & Gledhill

RESTRUCTURING

Rajah & Tann

SECURITIES/FINANCE

Allen & Gledhill

TAX

Drew & Napier

**TELECOMMUNICATIONS,
MEDIA & TECHNOLOGY**

Allen Arthur Robinson

South Korea

ANTI-TRUST

Kim & Chang

**COMMERCIAL
TRANSACTIONS**

Lee & Ko

EMPLOYMENT

Shin & Kim

ENERGY

Allen & Overy

ENVIRONMENTAL

Kim & Chang

INTELLECTUAL PROPERTY

Kim & Chang

LITIGATION

Bae Kim & Lee

MERGERS & ACQUISITIONS

Yulchon

REAL ESTATE

Kim & Chang

REGULATORY/COMPLIANCE

Kim & Chang

RESTRUCTURING

Kim & Chang

SECURITIES/FINANCE

Kim & Chang

TAX

Yulchon

Thailand

ANTI-TRUST

Siam Premier

**COMMERCIAL
TRANSACTIONS**

Siam Premier

EMPLOYMENT

Tilleke & Gibbins

ENVIRONMENTAL

Tilleke & Gibbins

INTELLECTUAL PROPERTY

Domnern Somgiat
& Boonma

LITIGATION

Baker & McKenzie

MERGERS & ACQUISITIONS

Siam Premier

REAL ESTATE

Tilleke & Gibbins

REGULATORY/COMPLIANCE

Baker & McKenzie

RESTRUCTURING

Baker & McKenzie

SECURITIES/FINANCE

Tilleke & Gibbins

TAX

PricewaterhouseCoopers

**TELECOMMUNICATIONS,
MEDIA & TECHNOLOGY**

Tilleke & Gibbins

United Arab Emirates

ANTI-TRUST

Al Tamimi & Company

COMMERCIAL

TRANSACTIONS

Hadef Al Dhahiri &
Associates

EMPLOYMENT

Simmons & Simmons

ENERGY

Pillsbury

ENVIRONMENTAL

Hadef Al Dhahiri &
Associates

INTELLECTUAL PROPERTY

Al Tamimi & Company

LITIGATION

Habib Al Mulla & Company

MERGERS & ACQUISITIONS

Linklaters

REAL ESTATE

Hadef Al Dhahiri &
Associates

REGULATORY/COMPLIANCE

Ashurst

RESTRUCTURING

Clyde & Co

SECURITIES/FINANCE

Clifford Chance

**TELECOMMUNICATIONS,
MEDIA & TECHNOLOGY**

DLA Piper

Clients and their preferred advisors

Counsel from some of our winning teams discuss what makes their practice group stand out in the crowd.

ANTI-TRUST

Singapore

As the first Singapore law firm to establish a dedicated competition law practice in 1999, Drew & Napier's winning team for anti-trust matters in Singapore has been at the forefront of the practice from the very beginning.

The firm's multi-disciplinary team includes several well-rounded competition law specialists, former competition committee members and former competition investigators. Lim Chong Kin, co-head of the competition law practice group sees the firm's regional competition knowledge as important strength. The firm, he points out "recently concluded an extensive multi-jurisdiction study to recommend best practices and policies for competition law implementation by ASEAN member countries."

Providing a full service team approach also helps solidify the firm's reputation. "Unlike other competition law outfit, we are truly well rounded in all areas – drafting of competition legislation, merger filing, audit compliance, transaction advice, policy studies and competition litigation," Lim says.

UAE

The UAE government confirmed its intention to enact competition laws in 2007, but has yet to promulgate legislation to



Lim Chong Kin

such an effect. However, as Samir Kantaria partner in the corporate and commercial department of Al Tamimi explains, the territory's Consumer Protection Law (CPL) provides that "in the event that a crisis or extraordinary circumstances in the market cause an abnormal price hike, the Minister of Economy shall...take measures to curb the hike and protect consumers against violation of their rights and interests. There is also a prohibition to the effect that no supplier may manipulate its supply of, or price charged for, goods in order to control the general market price of the goods."

Al Tamimi regularly renders legal opinions on aspects of the CPL and on the UAE's Commercial Transactions Law, which also attempts to address anti-trust issues "by primarily addressing issues of unfair competition and focus on inducing breach of employment, use of trade names, fraud and misrepresentation."

Another firm strength, according to Kantaria is that the firm is "frequently asked to confer with the relevant local authorities prior to the formulation of policy and the drafting of legislation." With anti-trust legislation impending in the region, clients will no doubt benefit from the firm's role in this regard.

COMMERCIAL TRANSACTIONS

Japan

In the aftermath of the substantial reforms made to Japan's Company law in 2006, revisions to the corporate structures available significantly expanded types of commercial transactions and structures available and created new opportunities for FDI in the nation. "We handle many unique cross-

border transactions,” notes Hiroo Atsumi of Atsumi & Partners winning commercial law practice group. The team won nods across the region for its practical approach to unusual situations, and thorough understanding of the legal needs of foreign entities.



Hiroo Atsumi

With the increased flexibility in the companies laws, the firm saw a good opportunity to expand its ranks in both size and scope of expertise. “We are the only domestic Japanese law firm with non-Japanese partners,” says Atsumi. “Our team of local lawyers includes many with unusual backgrounds, including former bankers, former staff of government authorities such as

the FSA, and former judges and prosecutors.”

The Japanese commercial system is known to be more relationship oriented than Western economies, another factor the firm plays to its favour. “Much of our business comes to us

by word of mouth, which confirms that our clients are generally happy with us. Our attorneys are enthusiastic about their work, and we expect that this enthusiasm is reflected in the quality of work offered to our clients.” Says Atsumi.

EMPLOYMENT

Hong Kong

Minter Ellison’s Pattie Walsh was the name on the minds of many in-house counsel responding to our survey when it came to the firm and practitioner of choice for employment matters in Hong Kong.

Walsh explains the strengths of her firm’s employment practice as stemming from a combination of regional knowledge and practical application. “Clients take it as a given that their legal advisors know the law and are legally competent. We believe that to distinguish ourselves in our market, we have to show that we can



Pattie Walsh

MAYER · BROWN
JSM

Pride 

“Mayer Brown JSM is proud to have won the “Environmental Law Firm of the Year for the PRC Award” at the Asian-Counsel Firm of the Year Awards 2008.

We have the resources and knowledge to pool together lawyers specialising in environmental issues. Special thanks to our clients for their continued support in reinforcing our leading position in the market.

For further information, please visit our website:
www.mayerbrownjism.com

Hong Kong
10th - 19th Floors, Prince’s Building, 10 Chater Road, Central, Hong Kong
T: +852 2843 2211 F: +852 2845 9121 E: hongkong.office@mayerbrownjism.com

Mayer Brown is a global legal services organisation comprising legal practices that are separate entities (“Mayer Brown Practices”). The Mayer Brown Practices are: Mayer Brown LLP, a limited liability partnership established in the United States; Mayer Brown International LLP, a limited liability partnership incorporated in England and Wales; and JSM, a Hong Kong partnership, and its associated entities in Asia. The Mayer Brown Practices are known as Mayer Brown JSM in Asia.

Bangkok Beijing Guangzhou Hanoi Ho Chi Minh City Hong Kong Shanghai



Tilleke & Gibbins

LAWYERS SINCE 1890

**Leading multi-service law firm in Thailand
committed to providing clients with high
quality legal advice and services**

- ❑ Banking & Finance
- ❑ Commercial & International Trade
- ❑ Corporate
- ❑ Dispute Resolution & Litigation
- ❑ Food & Drug, Agricultural and Health Product Registration
- ❑ Intellectual Property & Enforcement
- ❑ Labor & Employment
- ❑ Property & Construction
- ❑ Taxation
- ❑ Transportation & Insurance
- ❑ Private Client Services

www.tillekeandgibbins.com

Bangkok Office:

Tilleke & Gibbins Building
64/1 Soi Tonson, Ploenchit Road
Bangkok 10330
Thailand
Tel: +66 2263 7700 +66 2254 2640
Fax: +66 2263 7710 +66 2401 0034/5
E-mail: bangkok@tillekeandgibbins.com

Other Offices:

Phuket Office

E-mail: phuket@tillekeandgibbins.com

Hanoi Office

E-mail: vietnam@tillekeandgibbins.com

Ho Chi Minh City Office

E-mail: vietnam@tillekeandgibbins.com



- Employment
- Environmental
- Real Estate
- Securities/Finance
- Technology/Media/Telecommunications

apply that legal knowledge and deliver solution-focused advice that assists our clients in achieving their commercial objectives. Clients do not want an intellectual debate about the intricacies of employment law but they want us to understand their business and to work with them in assessing and managing risk.”

Specialisation is another key factor. “One of the reasons that we consider is key to our success is the fact that all our lawyers are employment specialists who practise nothing but employment law,” Walsh notes. “By being immersed in our area of practice day in and day out, we not only ensure that we are at the cutting edge technically but also that we understand the practical issues that our various clients are facing and the best way to help them deal with those challenges.”

Philippines

With GDP growth rates at their highest in 3 decades in 2007, many Philippine law firms enjoyed an increased demand for

services. But when it came to the preferred firm of choice for employments matters, ACCRALAW was the firm mentioned again and again.



Eusebio V Tan

As a command economy, the Philippine government takes an active role in setting and guiding commercial policy and practice, making counsel with experience or connections an invaluable firm asset. Senior partner Eusebio V Tan describes the firm’s previous head of employment as one such attorney, “[he] eventually became the country’s Secretary of Labor and Employment during the Administration of President Corazon Aquino.”

The team also prides itself on its involvement in the drafting and implementation of several landmark employment legislations. By involving themselves at the drafting stage, the firm’s lawyers gain invaluable insight and practical knowledge of how to apply new rules to the situations most commonly facing its clientele.

The firm’s full-service approach was also cited by participants as giving them a leading edge. “The depart-

NAGASHIMA OHNO & TSUNEMATSU



Year Established: 2000
Number of Lawyers: 303 (as of July 1, 2007)
Languages Spoken: Japanese, English, Chinese, French and German

Kioicho Building, 3-12, Kioicho, Chiyoda-ku, Tokyo 102-0094, Japan

Tel: +81 3 3288 7000 Web: <http://www.noandt.com/>
Fax: +81 3 5213 7800 Email: info@noandt.com

Contacts: Hisashi Hara, (Ms) Yuko Tamai (Dai-ichi-Tokyo Bar Association)

ASIAN-COUNSEL Firms of the Year 2008

JAPAN

Antitrust
Environmental
Litigation
Mergers & Acquisitions
Real Estate
Technology/Media/Telecommunication



YULCHON Attorneys at Law

COMMITMENT • INNOVATION • EXCELLENCE

Since its founding in 1997, Yulchon has increasingly set the standard for commitment, innovation, and excellence of legal service. *Chambers Global* declared Yulchon "one of the most respected and reliable practices in Korea," and the *Chosun Daily* found that Yulchon ranks first among top firms relative to size as the outside counsel of choice for Korea's 30 largest business groups. The firm's 170 professionals include many of Korea's most eminent business and trial lawyers, and their experienced, responsive, and effective service has attracted some of the world's most distinguished clients. This year Yulchon reached another milestone in client service with the opening of its first overseas office in Vietnam.

Practice Areas

► Corporate & Finance

Corporate General • M&A • Foreign Investment • Joint Ventures • Real Estate • International Trade • Antitrust • Government Relations • Labor and Employment • Telecommunications and Broadcasting • Energy • Entertainment and Sports Media • Environment • Insurance • Reorganization and Insolvency • Overseas Investment • International Capital Markets • Loan • Acquisition Finance • Real Estate Finance • Regulatory Advice • Derivatives • Structured Finance • ABS • Project Finance • Asset Finance • Fund Management and Indirect Investment

► Tax

Tax Planning • Tax Audit and Pre-audit Support • Joint Venture and Investment Funds • M&A • Transfer Pricing • Financial Products • Wealth Management Practice • Legislative and Administrative Practice • Tax Controversy • Real Estate • Customs

► Intellectual Property

Patents • Utility Models • Trademarks • Designs • Copyrights • Domain Names and Internet Issues • Trade Secrets and Unfair Competition

► Litigation and Arbitration

Securities • Banking • Insurance • M&A • Real Estate and Construction • Administrative Litigation • Labor and Employment • Corporate and White Collar Crime • Admiralty • IP • Arbitration

► Global

China • Japan • Russia • CIS • Vietnam • Cambodia

Representative Clients

AIG, Bayer, Carlyle Group, Coca-Cola, DaimlerChrysler, Deutsche Bank, GE Capital, Goldman Sachs, GS Caltex, Hyundai Motor Company, ING, Korea Fair Trade Commission, Korean Ministry of Finance and Economy, Korea Trade Investment Promotion Agency, LG Electronics, Merrill Lynch, Morgan Stanley, P&G, Samsung Electronics, Siemens.



Contact Information

- Korea: Textile Center 12th Floor; 944-31 Daechi 3-dong, Gangnam-gu; Seoul 135-713
Tel: +82 2 528 5200 Fax: +82 2 528 5300
- Vietnam: Unit 1611, 16th Floor, Saigon Trade Center, 37 Ton Duc Thang Street, District 1
Ho Chi Minh City
Tel: +84 8 911 0255 Fax: +84 8 911 0230
- Email: mail@yulchon.com Website: www.yulchon.com

Languages Spoken Korean • English • German • Chinese • Russian • Vietnamese • French • Japanese



Attorneys at Law
YULCHON



ment supports the active prevention of labour disputes by assisting clients in the formulation and review of their respective employee policies and codes of discipline; conducting regular seminars and conferences with clients on significant developments in labor and related laws; and constant monitoring of client employment practices.” Tan explains.

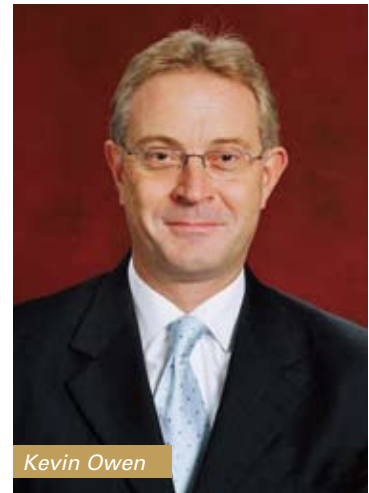
Another significant strength of ACCRALAW is the proactive membership and participation of lawyers in both international networks of firms and in relevant international and local legal and business organisations. These ties, “generate referrals of significant corporate and commercial transactions that enhance the firm’s practice.” Says Tan.

ENVIRONMENTAL

China

China’s forthcoming hosting of the Olympic Games has almost been overshadowed by events in the nation of late, among them concerns over the environment. The nation has not been known for any green initiatives in its rush to modernise and scandals over product quality control, corrupt enforcement officials and the destruction of traditional habitats in the name of technological advances have abounded.

The winning environmental practice group at Mayer Brown JSM deserves high praise for its strong efforts in a difficult practise area in China. “Over the years, we have undertaken a significant number of construction and development projects in Hong Kong and mainland China, almost all of which involved environmental aspects.” Kevin Owen, partner in the firm’s environmental group explains. “One of the key projects was an underwater pipeline that lies between Hong Kong and Shenzhen. We advised on all environmental aspects including water pollution and preservation of the ecological environment.”



Kevin Owen

Owen attributes the win in part to the large talent pool the firm draws from when advising clients. “[W]e work with a team of leading lawyers in the UK and US

ROMULO

ROMULO MABANTA BUENAVENTURA
SAYOC & DE LOS ANGELES

LEGAL EXPERTISE

Admiralty and Aviation
Alternative Dispute Resolution
Arbitration
Banking
Corporate and Commercial
Energy and Infrastructure
Environmental
Family Law
Finance
Foreign Investments
Immigration
Information Communication and Technology

Insurance
Intellectual Property
Labor
Litigation
Mergers and Acquisitions
Mining Law
Privatization
Restructuring
Real Estate
Securities
Taxation
Telecommunications

MANILA
30th Floor, Citibank Tower
8741 Paseo de Roxas, City of Makati, Philippines
Tel. (632) 848-0114 Fax (632) 810-3110 / 815-3172
M.C.P.O. Box 2089 Makati City 1260
E-mail: romulo@romulo.com Website: www.romulo.com

HONG KONG
2905 Lippo Centre, Tower One
89 Queensway, Hong Kong
Tel. (852) 2866-2292 Fax (852) 2866-1601
E-mail: romulo@romulohk.com



**SIGUIÓN REYNA, MONTECILLO & ONGSIAKO
LAW OFFICES**

4th and 6th Floors, Citibank Center
8741 Paseo de Roxas, Makati City 1200 Philippines
Tel. Nos. (632) 8100281 to 90 and (632) 8100409
Fax No. (632) 8191498 E-mail: general@srmo-law.com
Website: <http://www.srmo-law.com>



Contact Persons by Practice Groups

<u>Chairman</u>	Leonardo Siguión Reyna * general@srmo-law.com
<u>Executive Partner & Head - Labor</u>	Rolando Mario G. Villonco * rgv@srmo-law.com
<u>Banking & Litigation</u>	Victor N. Alimurung * vna@srmo-law.com
<u>Managing Partner/Corporate Litigation</u>	Cesar P. Manalaysay * cpm@srmo-law.com
<u>Arbitration, Dispute Resolution/Litigation</u>	Mario V. Andres * mva@srmo-law.com
<u>Taxation</u>	Jose Lis C. Leagogo * jcl@srmo-law.com
<u>Corporate-Mergers & Acquisition, Loan Syndication & Capital Markets</u>	Edgardo G. Balois * egb@srmo-law.com
<u>Labor & Immigration</u>	Luisito M. Lantin * lml@srmo-law.com
<u>Product Liability</u>	Jose P. Crisostomo, Jr. * jpcj@srmo-law.com
<u>Intellectual Property</u>	Celso L. Cruz * clc@srmo-law.com
<u>Deputy Managing Partner/Aviation & Maritime</u>	Carlos M. Natividad * cmn@srmo-law.com
<u>Labor & Telecommunications</u>	Antonio C. Pido * acp@srmo-law.com
<u>Real Estate & Natural Resources</u>	Nicanor N. Padilla * nnp@srmo-law.com

specialising in environmental issues which enables us to have the resources and knowledge to pool together lawyers to advise on issues in Asia.”

INTELLECTUAL PROPERTY

Hong Kong

The IP department at Wilkinson & Grist was chosen by respondents as the practice group of choice in Hong Kong. With a hundred-person strong team based in offices in Hong Kong and China, the team is well-equipped to handle the cross-border IP issues so prevalent in the region. Practice group head Anne



Anne Choi

Choi enjoys a strong reputation in the area, having spent 30 years committed to both her firm and her practice group.

The firm’s IP agency in Beijing was the first to be

approved by the State agencies to a foreign party, enabling the team to work seamlessly with the China Trade Mark Office to resolve client concerns. Choi is quick to point to communication with clients as a team strength. “[W]e believe what set our IP group apart from the others in the region is that we always have clients’ interests in priority. It is our policy to reply to clients’ ... within 48 hours and even if this cannot be done on occasions due to nature or complication of the matters, we nonetheless immediately acknowledge receipt so that our clients are assured that we have received their instructions and are looking into the matter.”

The firm is also not afraid to create precedents where a proactive approach is required. Choi explains, “One example of this is where we assisted one of our clients in successfully convicting through a criminal action in China for trademark infringement a landlord who rented his premises to those producing counterfeit products in full awareness of the infringing activities.”

Singapore

ATMD was singled out by our survey participants as the

preferred firm to work with in regard to IP matters in Singapore. The firm was praised for providing advice that is practical, commercial, and comes with a strong awareness of current employment practice in Singapore.



Sheena Jacob

Head of the IP and technology practice group, Sheena Jacob explains why she thinks clients turn to them for advice, “ATMD is a unique firm in Singapore in that that we have a diverse IP practice with specialist lawyers and patent attorneys and a dedicated IP litigation team. All IP lawyers handle both contentious and non-contentious work,

making them stronger overall IP advisors.”

Alban Kang, managing partner at ATMD pointed to the firm’s reputation for team-building as a core strength of the group adding, “Over the year, we have invested resources in building further our patent and trademark practice including IP litigation and enforcement work.”

REGULATORY/COMPLIANCE

Indonesia

Offering a thorough understanding of the country’s regulatory requirements, Mochtar Karuwin and Komar was the firm of choice for regulatory and compliance matters in Indonesia. The firm was lauded by clients for understanding the need to comply with existing laws and regulations in an environment where there are continual changes in the law.

Cylvie Isa, who is involved on a daily basis in compliance and regulatory matters, particularly in capital market issues, explains, “In addition to routine matters, reporting obligations need to be fulfilled for special transactions.” The firm concentrates equally on both daily operational compliance and with capital market reporting to ensure clients operating in the Indonesian busi-



Maulana Syarif

SYCIP SALAZAR & HERNANDEZ GATMAITAN

Makati • Cebu • Davao • Subic

We are the largest law firm in the Philippines.

Our areas of practice are diverse and we offer a broad and integrated range of legal services with a coverage that includes all aspects of commercial law practice, labor and employment, and litigation. Our firm represents leading domestic and international enterprises in many industries, as well as governmental agencies and multilateral organizations.

We have strong links with established law firms in Asia, Europe and the United States.

SSHG Law Centre, 105 Paseo de Roxas, Makati City, 1226 Philippines
Telephone: +632 817.9811; 817.2001 • Fax: +632 817 3145; 817 3896; 818.7562
Email: sshg@syCIPLAW.com; syCIPLAW@globenet.com.ph • Website: www.syCIPLAW.com
Contact: Managing Partner Llewellyn L. Llanillo, lllanillo@syCIPLAW.com



Wilkinson & Grist

高露粵律師行

A LEADING IP PRACTICE

Asian Counsel Firm of the Year for Hong Kong 2007 and 2008: Intellectual Property



Our Other Practice Groups:

China Trade, Company and Commercial, Conveyancing and Real Estate, Employment, Information Technology, Insolvency, Litigation, Private Client.

HONG KONG

6th Floor, Prince's Building,
10 Chater Road, Central, Hong Kong
Telephone : +852 2524 6011 Fax: +852 2520 2090
E-mail: partners@wilgrist.com Website: www.wilgrist.com

BEIJING

Suite 5, 10/F, Beijing Oriental Plaza, Office Tower W2
1 East Chang An Avenue,
Beijing 100738, China
Telephone: +8610 8518 1521 Fax: +8610 8518 1520

Top winners by jurisdiction

China: Jun He	3
Hong Kong: Clifford Chance/ Richards Butler	2
India: Crawford Bayley & Co	3
Indonesia: Hadiputranto Hadinoto & Partners	5
Japan: Nagashima Ohno & Tsunematsu	5
Malaysia: Shearn Delamore	4
Philippines: Romulo Mabanta Buenaventura Sayoc & De Los Angeles	3
Singapore: Allen & Gledhill/ Drew & Napier	3
South Korea: Kim & Chang	7
Thailand: Tilleke & Gibbins	5
UAE: Hadeef Al Dhahiri & Associates	3

ness environment do so with minimal risk.

General corporate practitioner Maulana Syarif, says the firm's success can also be explained as a result of their reputation for providing cutting-edge, comprehensive advise. "In addition to routine matters...MKK deals with both daily operational compliance and with capital market reporting to allow our clients to operate in the Indonesian business environment."

The firm was also recognised for its commitment to providing exceptional services to its expanding portfolio of clients. In 2008 five new associates were added to ensure the firm could continue to offer optimal services.

Korea

In a nation known for its zealous regulatory practices, attorneys at Kim and Chang stood out in the crowd. The regulatory group at the firm won best practice group in the field in 2008, contributing to the firm's sweep of 7 of 11 available categories for Korean firms.

From its humble beginnings with 3 attorneys in 1972, the firm was one of the first to focus growth efforts on specialising the expertise of practitioners. The strategy worked, and the



Hwa Soo Chung

number of special experts grew in tandem with the increasingly sophisticated needs of clients.

Group counsel Hwa Soo Chung pointed out another benefit to the approach, “Those attorneys who began specialising in what were relatively new areas in the 1980s and 1990s – competition law and environmental law

being just two examples – eventually helped draft legislation and are today the legal authorities in their areas.”

Now boasting over 700 professionals in the firm, Hwa reports, “We continue this tradition by having our entry-level attorneys specialise early in their careers and recruiting proven experts, both attorney and non-attorney area experts.”

Hwa also maintains that what sets the firm apart doesn't stop at expertise and experience. “With every assignment we undertake, we ask ourselves, ‘What is the client really asking,

what are their key concerns, and what do they hope to accomplish?’ Clients tell us that some firms are content advising the client what the applicable law is, but that we build on the applicable law as the starting point to craft creative solutions, make the difficult doable, really focus on what the client needs and wants. It's gratifying when clients recognise this.”

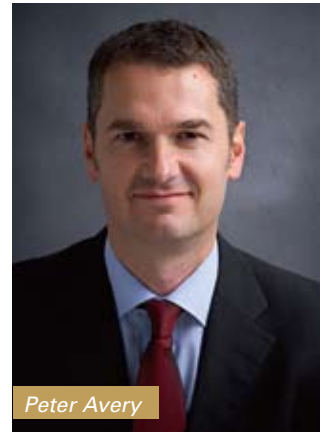
SECURITIES/ FINANCE

UAE

Many respondents in our survey picked Clifford Chance as the preferred firm to seek advice from when handling securities/finance transactions in the UAE. Given the increasing number of firms entering the region in the past

12 months, the firm faced even tougher competition than ever in securing its first accolade in the category.

Peter Avery, partner in the banking and finance team



Peter Avery

WONG & PARTNERS

MEMBER FIRM OF BAKER & MCKENZIE INTERNATIONAL



Managing Partner
Brian Chia

Partners:
Munir Abdul Aziz
Chew Kherk Ying
Brian Chia
Andre Gan
Christopher Lee
Adeline Wong
Wong Kien Keong
Yong Hsian Siong

Wong & Partners
Level 41, Suite A
Menara Maxis
Kuala Lumpur City Centre
50088 Kuala Lumpur, Malaysia
Tel: +603 2055 1888
Fax: +603 2161 2019
klinfo@wongpartners.com

A Malaysian Law Firm with an International Perspective

Wong & Partners is a Malaysian law firm that is dedicated to providing high quality solution-orientated legal services to its clients. Founded in 1998, the Firm combines the practice of law with a global outlook, the innovative use of technology and a proactive firm culture.

Wong & Partners is a member firm of Baker & McKenzie, and as such collaborates with the global network of Baker & McKenzie on matters relating to Malaysian law and cross-border issues. Wong & Partners is able to access Baker & McKenzie's global network of legal expertise and resources in multi-jurisdictional transactions.

Our Firm is committed to providing legal services to the standard of quality, professionalism and timeliness essential to supporting the business complexities of sophisticated clients both locally and internationally.

Our Firm's Principal Areas of Practice: Banking, Finance & Major Projects, Corporate & Commercial, Mergers & Acquisitions, Securities, Venture Capital/Private Equity, Real Estate, Insurance, Employment & Benefits, Competition/Antitrust & Trade, Tax, Customs, Customs Disputes, Entertainment & Media, Information Technology & Communications, Intellectual Property and Dispute Resolution

www.wongpartners.com

Wong & Partners is a member of Baker & McKenzie International, a Swiss Verein.



attributes the firm's competitive advantage to a number of factors, including their long-established presence in the region. "We have had offices in the Gulf for over 30 years and benefit hugely from the know-how and contacts that this brings."

Clients are also drawn to the firm for its ability to practice local UAE law and to obtain local advice through its relationships with leading national firms. Their alliance with Al Jadaan & Partners in Saudi Arabia is one example. "We believe in having the ability to execute transactions locally if requested by our clients." Says Avery.

TELECOMMUNICATIONS/MEDIA/ TECHNOLOGY

UAE

DLA Piper was chosen by survey participants as the go-to firm for TMT matters in the Middle East. Established in 2006 in conjunction with rising demand for experienced TMT counsel in the region, the firm's 12 strong TMT practice team is so in demand that it plans to double in size by January 2009.

Partner Matt Glynn believes clients appreciate the leading commitment to the TMT space in the Middle East made by the firm. "We have 19 lawyers who practice exclusively in the TMT space. This kind of experience, expertise and capacity is simply not available any where else in the Middle East."

Glynn also point to the firm's ties to Asia as a strength which draws clients. "We have made a conscious effort to position our practice to support in-bound investment from

Asia. Many of our team members have worked extensively throughout Asia and can offer a unique understanding of our clients' needs and concerns." He remarks. And the regions



Matt Glynn

might also benefit from close cooperation on issues such as water supply projects. In December 2007, China's State Council indicated that even if steps to improve conservation are undertaken, the country's thirst for water is expected to approach the limit of the available resources by 2030. Perspective and experience with

structures in the Middle East designed to alleviate water supply concerns could prove invaluable.

Future cooperation aside, clients rely heavily on reputation in the Middle East as well as Asia. Glynn notes, "[O]ur practice has been built almost exclusively on client referrals within the TMT space. We believe this reflects our willingness to position ourselves as partners of our clients as opposed to external service providers. **AC**



With 10 year's international experience hosting and marketing events for professionals, including the In-House Congress circuit, Pacific Business Press is ideally placed to organise and promote your corporate bespoke event.



For more information email us at: seminars@pbpress.com

PACIFIC BUSINESS PRESS
www.pbpress.com

JAKARTA SEUL TOKYO NEW YORK BANGKOK BEIJING
MUMBAI UAE SINGAPORE MANILA SHANGHAI KUALA LUMPUR HONG KONG



Search and destroy: legal weapons of mass destruction



The Anton Piller order is a powerful weapon in any lawyers' arsenal. Darren FitzGerald and Luke Ryan of *Bird & Bird* discuss the ins and outs of this pre-emptive tool

It has been described as the legal equivalent of a nuclear weapon, perhaps nowadays better referred to as a legal WMD or even a pre-emptive strike. It hits without warning and with devastating effect, cutting through traditional safeguards of a party's right to be heard and the sanctity of private property.

A search order (also known as an Anton Piller Order after one of the first English cases in which it was deployed, *Anton Piller KG v Manufacturing Processes Ltd* [1976] Ch. 55) requires a defendant to allow the plaintiff's representatives/lawyers to enter its premises, search for documents/goods relevant to its claim, and to copy such documents and/or remove such goods from the premises (and retain them pending further order). Often there is an express authority for the plaintiff to also have computer experts search the defendant's computers and servers. The strike is pre-emptive in that the order is granted before the defendant becomes aware of the proceedings. During the search the premises are cordoned off. Security guards are posted. No-one comes or leaves without scrutiny. Business grinds to a halt.

Purpose

The primary purpose of a search order is to preserve evidence relevant to a plaintiff's claim where there is a real risk that the defendant may destroy such evidence upon being notified of the claim through service of a writ in the usual way. This is particularly relevant in common law jurisdictions where parties are under an obligation to disclose relevant evidence both for and against their respective cases through the discovery process.

Collateral damage

Apart from the initial chaos of the search and seizure of goods on site, disruption can be significant and ongoing. Search orders are typically accompanied by interim injunctions, preventing the defendant from dealing in goods which are the subject of the dispute. If trade in such items constitutes a significant part of a defendant's business, such injunctions, unless promptly discharged can bring a business to its knees. On top of this may also come a *mareva* injunction freezing bank accounts and assets.

Without notice application

Given the need for surprise, applications for search orders are made before a single judge without notice to, or the presence of, the defendant. A plaintiff must show that the 3 'essential pre-conditions' for grant of a search order are satisfied. There must be:

- an extremely strong *prima facie* case;
- the damage (potential or actual) must be very serious; and
- clear evidence that the defendant has in its possession incriminating documents or other evidence and there is a real possibility that the defendant may destroy such material if it were aware of the proceedings.

As the defendant is not present, the plaintiff must make full and frank disclosure of all matters which are material to be taken into account by the court in deciding whether or not to grant relief (including material matters in favour of the defendant).

Execution of the order

The search order (together with the writ, summons for a hearing with the defendant, search order and evidence filed in sup-

port of the search order) must be served on the defendant at its premises. Before allowing entry, the defendant may take urgent legal advice, but has only two hours to do so unless a longer period is agreed with the plaintiff's solicitors. Strictly speaking a defendant is not required to grant access, but, if it does not do so, it may be held to be in contempt of court.

As a search order is highly invasive, the terms of the order must be closely adhered to by the plaintiff. The terms of the order will contain strict parameters regarding such things as the classes of documents or material that the plaintiff is entitled to inspect/copy and also the type and number of persons who are entitled to enter the defendant's premises.

Intellectual property cases

Search orders are often sought in intellectual property (IP) cases. The ground is prepared by investigators making 'trap orders' or 'dummy purchases', where they buy allegedly infringing items. Trash searches are also common, where investigators sort through a target's refuse for receipts, invoices and shipment documents. Such documents/goods obtained through the investigators, together with evidence of the plaintiff's ownership of the relevant IP, are relied on to establish a prima facie case of infringement.

Once sale of allegedly infringing goods is shown, it is not a big step to establish that this is causing serious damage through loss of sales and/or damage to reputation.

Traditionally it has been less easy to satisfy the third essential pre-condition for grant of a search order: that the defendant has in its possession incriminating documents or items and there is a real possibility of destruction of this material. However, in recent cases in Hong Kong, plaintiffs have been able to establish this requirement on the basis of (seemingly) surreptitious business practices. Such practices include sale of allegedly infringing items from stalls that are packed up and moved upon suspicion that authorities are approaching and sale of infringing items through websites which can only be accessed through 'member' passwords.

The reality is that search orders are now relatively easy to obtain from Hong Kong courts in IP cases: a consequence of a move in government and judicial circles to strengthen Hong Kong's credentials in IP enforcement.

Surge tactics

The plaintiff and its solicitors typically prepare their assault months (even up to a year) in advance through placement of 'trap orders' and other investigations, with the effect that detailed evidence is compiled and dropped into the defendant's lap without warning. Thereafter, the defendant is usually on the back foot while the plaintiff often rushes to apply

Practical steps: how to respond to a search order

- don't panic!
- do not admit plaintiff's lawyers immediately
- request time to contact your senior management/in-house lawyer in the first instance to attend
- request time to contact lawyers and seek legal advice - 2 hours is permissible, (and further time may be agreed with plaintiff's solicitors if it is done in writing)
- alert staff and direct them not to tamper with/destroy any documents or items or delete any computer files
- generally best to allow the plaintiff's representatives to go ahead with search (subject to legal advice) under supervision of your legal advisors and to cooperate with their reasonable requests
- keep the fact of the search order/proceedings confidential (until further advice) – and, in particular, do not tip off customers/suppliers directly or indirectly

for summary judgment on the basis of the evidence obtained during execution of the search order.

For many defendants, it all proves too much. They cave in and settle on terms required by the plaintiff.

Only defendants sufficiently well-resourced can hope to offer any resistance, particularly against plaintiffs with deep pockets and a portfolio of wins in similar cases. But where defendants do offer real resistance, search orders can backfire. If the plaintiff picks the wrong defendant or does not prepare its case adequately in the push to summary judgment, it risks losing and having to start its case, in the standard way, all over again. Interim injunctions may also be discharged or varied in favour of the defendant. All this could deliver the defendant an important victory. And if this looks like happening, it can be the plaintiff who runs for cover, seeking a face-saving settlement before the matter goes to a summary judgment hearing.

darren.fitzgerald@twobirds.com
luke.ryan@twobirds.com
www.twobirds.com

Digital Copyright Law consultation: Round two!



The Hong Kong government has released its latest proposals on the Digital Copyright Law protection. Robin King of *Baker & McKenzie* discusses the recommendations.

The Government recently released its latest proposals on how it intends to strengthen digital copyright law protection in Hong Kong. This follows its receipt of over 600 submissions to its 2007 public consultation paper, which came mostly from individuals. The Government has made the following legislative proposals, which are now the subject of a further public consultation ahead of the Government proposing a legislative package either late 2008 or early 2009.

The Government has made clear that it has had to balance a number of competing interests and take into account on the one hand, the need to provide in Hong Kong a business environment conducive to creative industry, and on the other, the need to protect personal data privacy and encourage Hong Kong's development as an Internet service hub. Rather inevitably its actions won't please both camps.

The Government proposes the following:

1. Introducing an all-embracing right of communication for copyright owners covering all modes of electronic transmission, with related criminal sanctions against the breach of this right.

It is felt necessary to introduce this right to ensure that,

in today's converging technological world, the Copyright Ordinance (CO) properly recognises copyright owners' right to commercialise their works as they see fit, and using all available technology (including that now known and that created in the future).

The Government also proposes that criminal sanctions should be introduced against acts of making/initiating unauthorised communication to the public in defined circumstances, namely:

- where communication is made for the purpose, or in the course, of business; or
- where communication is made by 'streaming' to such an extent as to affect prejudicially the copyright owner.

The Government is concerned not to cast the net of criminality too widely and so only proposes criminal liability for streaming in a non-business context if it causes the copyright owner prejudice.

This proposal seems like a sensible compromise position with users arguing that the CO already offers sufficient protection to copyright owners, and the introduction of any new criminal sanction likely to affect use of the Internet for information dissemination. However combined with proposal 6. below copyright owners will probably still feel this doesn't go far enough to protect their works.

2. Introducing a copyright exemption for temporary reproduction of copyright works by online service providers (OSPs), which is technically required for (or enables) the transmission process to function efficiently.

It is widely known that the CO does not currently permit the caching (temporary storage) activities undertaken by many OSPs which enable them to shorten the download times of copyrighted works when a user requests them through the Internet. This is a critical issue since the way we use technology today requires electronic copies of works to be made.

The Government has accepted the need for an explicit permission for OSPs to do this but, to ensure it complies with the requirements of the World Trade Organizations' Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), it proposes that this exemption will be limited as follows:

- it will only apply to communication of works that are not infringing;
- it will be subject to any express prohibitions imposed by copyright owners in the form of any commonly available or adopted measures (i.e. the copyright owners could opt out); and
- the OSP will not be permitted to modify the content contained in the original version during the reproduction process.

The Government also makes clear that the exact drafting of the proposed exemption will have to be carefully crafted to guard against abuse with reference to similar exemptions that already exist in other jurisdictions such as the UK.

Once again this seems a sensible proposal, and such reproduction seems unlikely to have any prejudicial effect on copyright owners or their normal exploitation of their works. It may also reduce the need for setting up of proxy servers and help save bandwidth and facilitate information retrieval. The proposed limits on the right would seem to go some way to addressing copyright owner's concern that the exemption might be abused.

3. Facilitating the drawing up of a voluntary code of practice for OSPs in combating Internet infringements, the compliance with which or otherwise will be prescribed in law as a factor that the court shall take into account when determining

whether an OSP has authorised infringing activities committed on its service platform.

The Government has decided there is a need to avoid unnecessary regulation of OSPs but also considers that OSPs are well placed to combat digital piracy. The Government suggests establishing a tripartite forum comprising representatives from OSPs, copyright owners and users to consider implementation of this system. To provide incentives for OSPs to comply with the code of practice, the Government suggests amending the law such that compliance with the code of practice would be a factor that the court would take into account in determining whether or not an OSP has authorised an infringement committed on its service platform

The Government is concerned not to cast the net of criminality too widely and so only proposes criminal liability for streaming in a non-business context if it causes the copyright owner prejudice

OSPs may well feel this is a sensible approach. They had made clear they felt that it was unfair to make them liable for the infringing acts of others and that imposing obligations on them to screen, filter or otherwise censor the content or flow of information occurring on their platforms would be a cost which they and ultimately their users would have to bear. Some would also argue that this should be borne by copyright owners themselves. It would also clearly be difficult and costly for OSPs to actively monitor web content.

Copyright owners on the other hand will cite this as a missed opportunity to adopt a process similar to that which exists in the US under the Digital Millennium Copyright Act which exempts OSPs from liability for copyright infringement if they remove infringing items from their sites within a certain period of time of

receiving notice from the relevant copyright owner. Under that system OSPs are required to terminate repeat copyright infringing users and are exempted from civil liability if they comply.



4. Continuing to rely on ‘Norwich Pharmacal’ orders rather than introducing an alternative infringer identity disclosure mechanism that is not subject to scrutiny by the court.

If a copyright owner wants to obtain a Norwich Pharmacal order from the court (which will require an OSP to disclose the identity of a user who is believed to have committed a copyright infringement) it will need to show the court good grounds for it and the proceedings will be complicated, timely and costly. Copyright owners have long complained that the difficulties experienced in identifying online infringers has severely inhibited their incentive in taking legal actions against infringers; and such owners have advocated the introduction of a system similar to that in the US where a copyright owner can request a US district court clerk to issue a subpoena to an OSP requiring it to identify an alleged infringer without any court scrutiny and in a simple and relatively cheap way.

The Government, together with input from the Privacy Commissioner, has refused such calls on the basis that such systems may seriously invade users’ data privacy. They point out that while the present system has its drawbacks they are not sufficient to warrant an alternative mechanism which bypasses judicial scrutiny.

The Government remains open to alternative sug-

gestions which do retain the need for judicial scrutiny and has suggested the idea of requiring the relevant OSPs to retain records of the relevant infringing activities by the alleged infringer if and when Norwich Pharmacal proceedings have been triggered, as a line of conduct for inclusion in the code of practice for OSPs.

5. Legally prescribing a list of factors to assist the court in considering the award of additional damages, in lieu of introducing statutory damages for copyright infringement.

The Government is not prepared to introduce statutory damages for copyright infringement when similar concepts do not exist elsewhere in Hong Kong law. Their introduction could set a dangerous precedent when no such thing exists in similar jurisdictions such as the UK and Australia, and their introduction would clearly fetter a court’s discretion to award damages it felt appropriate in each case. They also point out that damages are compensatory in nature and so it is fair that copyright owners should have to show the loss they had suffered in each case.

The Government’s proposed list of factors which would help a court reach a fair assessment of the relevant damages to be awarded in any case include:

- the conduct of the defendant after the act constituting infringement. For example, attempts to hide or disguise infringements or to take other action prejudicial to the copyright owner;
- the possible widespread circulation of the infringing copy via digital transmission in the case of Internet piracy; and
- the need to deter similar infringements of copyright.

Copyright owners will argue that the Government’s position doesn’t adequately reflect the difficulties they face in showing the loss that they are likely to suffer given the nature of digital copyright infringements and Internet piracy, and the causation between the infringing action and their loss. For instance it is nearly impossible to show that one act of piracy has led to a particular reduction in sales. They would also point out that the damages awarded in civil cases are often too small to deter infringers in any case, which discourages copyright owners from instituting civil actions in the first place. The existence of statutory damages might also have a greater deterrent effect on potential infringers

who would know their likely liability, and also encourage them to settle at an earlier stage in proceedings.

6. Not introducing new criminal liability for unauthorised downloading and peer-to-peer (P2P) file-sharing activities.

Currently downloading infringing works in Hong Kong is not a criminal offence and its proposed introduction is controversial.

The Government feels that the CO already sufficiently protects copyright owners in both the digital and physical environments. Downloading of copyright works already incurs civil liability, and it is an offence for a person to distribute an infringing copy of a work in a business context to an extent which prejudicially affects the copyright owner. They therefore consider there is no need to introduce additional and specific criminal sanctions against unauthorised P2P file-sharing activities.

Users agree, feeling that criminalization would unnecessarily target innocent users rather than guilty distributors. They also point out that infringing materials on the Internet are difficult to distinguish from real ones and currently countries such as Australia, Canada and the UK do not make downloading a criminal offence.

However copyright owners will themselves be disappointed that there will not be criminal liability introduced for downloading and other file sharing activities even for strictly defined circumstances, such as where the infringements were willful and committed for the purpose of commercial advantage or private financial gain, and/or where they occur on a commercial scale.

Copyright owners have long complained that the difficulties experienced in identifying online infringers has severely inhibited their incentive in taking legal actions against infringers

7. Introducing an exception that allows limited copying of copyright works that consumers legally own for personal and private use only.

While this issue wasn't included in the original 2007 consultation paper the Government has, given the technological advances made recently in the world of personal media use (for instance MP3 players and digital media players), now decided to create this limited exception for personal use. The Government takes into account that copyright legislation in Australia now permits such use and a legislative proposal to allow is also being review by New Zealand's parliament. Similarly in the UK a consultation period on such an introduction has just ended.

The Government makes clear that any such exception would need to be TRIPS compliant and would not enable users to circumvent any technological measures used by copyright owners (since this would impact on their business models). They would also require that the use be subject to various pre-conditions, such as ownership of a legitimate copy, limits on permitted number of copies and restrictions against file-sharing.

While users will no doubt welcome this extra freedom copyright owner will surely see it as further erosion of their digital rights. It is also difficult to see how the right for owners to use anti-circumvention measures could be squared with such a right.



robin.king@bakernet.com
www.bakernet.com

**Join over 20,000
legal and business
professionals who
keep up-to-date via
Asian-Counsel's
free Weekly Briefing
e-newsletter**



“The **Asian-Counsel Weekly Briefing** is always a reliable and relevant source of information about the important deals taking place in Asia – it’s a **must read** for anyone in the legal industry who wants to stay up to date”

Melinda Finch Barwell, Head of Communications and Business Development (Asia), Gide Loyrette Nouel

**To subscribe, email us at:
thebriefing@pbpress.com
with free weekly briefing
in the subject line**

Dissolution and liquidation of FIEs in PRC

By Jenna Wang-Metzner



On 5 May 2008, the Ministry of Commerce of the People's Republic of China issued the Guiding Opinion on the Dissolution and Liquidation of Foreign Invested Enterprises (Dissolution Opinion). Meanwhile, on 20 May 2008, the Supreme Court of the PRC promulgated the Second Judicial Interpretation on the PRC Company Law.

Dissolution and liquidation of an FIE upon approval by the Examination and Approval Authority

The Dissolution Opinion states that an FIE dissolution or liquidation must follow the Company Law, but it also provides that aspects that are not covered in detail in the Company Law are subject to foreign investment laws and administrative regulations.

Based on this principle, the governing body of the FIE shall adopt a resolution on dissolution in case of termination of a FIE due to its inability to continue operations. The identified reasons are as follows: (1) heavy business losses, (2) heavy losses caused by force majeure events or the inability to obtain the desired objectives of the cooperation (in case of joint venture companies) and, at the same time, lack of prospects for future development; and (3) the occurrence of other reasons for dissolution as prescribed by the joint venture contract or the articles of association. The approval certificate and business license of the FIE shall be submitted to the authority together with the application for dissolution.

Dissolution and liquidation through court procedures

According to Article 1 of the Second Judicial interpretation, any shareholders who separately or aggregately hold 10 percent or more of all the shareholders' voting rights of an FIE may file a dissolution case, and the People's Court shall accept such case, under any of the following circumstances:

- The company can not hold shareholders' meeting for two or

more consecutive years, and the company is encountering serious difficulty in its business management;

- Shareholder votes can not reach the statutory proportion or the proportion set down in the articles of association of the company, shareholders' meetings can not pass any valid resolutions for two or more consecutive years and the company is encountering serious difficulty in its business management;
- The directors of the company are in conflict for a long time, the shareholders' meeting can not form any resolutions to solve such conflict and the company is encountering serious difficulty in its business management;
- The company encounters any other kind of serious difficulties in its business management and the continued existence of the company would cause major damage the interests of the shareholders.

Article 5 of the Second Judicial Interpretation requests the People's Court to give priority to mediation when hearing a company dissolution case. If the parties can not maintain the company as a going concern through negotiation, the Court shall render a judgment in a timely manner.

If the FIE fails to form such liquidation committee within 15 days of the dissolution judgment or deliberately delays the liquidation, or if an illegal liquidation may seriously damage the interests of creditors or shareholders, the Court shall accept an application filed by a creditor to designate a liquidation committee.

If the People's Court organises liquidation of a FIE, the liquidation committee shall complete the liquidation within six months after its formation and shall apply for an extension if the liquidation can not be completed on time due to special circumstances. Deregistration of the dissolved company is the last step following liquidation.

BEITEN BURKHARDT

International Law Firm
Suite 3130, 31st Floor
South Office Tower, Beijing Kerry Centre
1 Guang Hua Road, Chao Yang District
Beijing 100020, China

Tel: (86) (10) 8529 8110

Fax: (86) (10) 8529 8123

Email: Jenna.Wang@bblaw.com

www.beitenburkhardt.com

HONG KONG

Allens Arthur Robinson

Clear Thinking

New reciprocal arrangements between Hong Kong and Australia



By **Matthew Barnard**
and **Angela Hui**

On 7 July 2008, the Hong Kong Securities and Futures Commission (SFC) and the Australian Securities and Investments Commission (ASIC) signed a Declaration on Mutual Recognition of Cross-Border Offering of Collective Investment Schemes (the Declaration) to expedite the public offering of collective investment schemes to retail investors in their respective markets.

Australia: All collective investment schemes authorised by the SFC, including mutual funds and unit trusts, will be exempt from the requirement to register in Australia under Chapter 5C of the Corporations Act 2001 (Cth).

However, under the Declaration, to be entitled to this relief:

- the scheme manager must be licensed by the SFC to operate schemes in Hong Kong and must not be entitled to regulatory concessions available because it is subject to equivalent regulation outside Hong Kong; and
- marketing of the scheme must not be directed primarily at Australian investors or no more than 30 percent of the value of interests in the scheme can be held by Australian members.

Licensing and disclosure relief will also be available.

The relevant Class Order relief has not yet been released by ASIC. However, if it is similar to that granted to Singaporean operators, the Hong Kong manager of the exempt CIS would need to actively seek the relevant exemption by:

- registering in Australia as a foreign company;
- lodging various documents with ASIC including:
 - evidence that it is authorised in Hong Kong to operate exempt CIS;
 - a deed poll covenanting to (among other things) comply with Hong Kong regulatory requirements;

- the scheme's constituent documents and the most recent prospectus and financial statements; and
- written consent to disclosures between ASIC and the SFC.
- agreeing to provide ongoing information to ASIC such as any significant changes to its approvals and registration.

It is likely that, to rely on the class order, the Hong Kong manager will need to comply with certain conditions relating to the prospectus, provision of information to investors and the maintenance of a register of Australian-based members.

Hong Kong: Previously, an Australian fund would not be authorised by the SFC for retail distribution in Hong Kong because it did not have distinct trustee and manager roles.

In contrast, for funds established in a 'recognised jurisdiction', the SFC would generally have their applications reviewed on the basis that the funds' structural and operational requirements and core investment restrictions already complied in substance with SFC codes.

Under the new arrangement, Australian funds (other than hedge funds and, it would appear, property funds) are now capable of being authorised in Hong Kong. The SFC will process the application of an Australian fund on the basis that it has substantially complied with the disclosure, operational and reporting requirements of the Code. What is vital to this recognition is that the Australian fund must be managed by a manager licensed by and registered with ASIC.

The new process for an Australian fund is different from that available for the existing recognised jurisdiction schemes, and it is too early to tell which route, in practice, will be easier. However, this is the first mutual agreement of its kind reached between the SFC and an overseas regulatory authority.

For a full report on this agreement, please visit: <http://www.aar.com.au/pubs/asia/fohkjul08.htm>

Allens Arthur Robinson

49/F One Exchange Square
8 Connaught Place, Central, Hong Kong
Tel: (852) 2903 6212 Fax: (852) 2840 0686

Email: Matthew.Barnard@aar.com.au

Angela.Hui@aar.com.au

www.aar.com.au



Issuance of sukuk al-ijarah



By Farhah Hayati

Sukuk al-ijarah is one of the products in Malaysian capital market which is rapidly growing as an alternative to Islamic private debt securities structured under the concepts of bai' bithaman ajil and murabahah. Sukuk al-ijarah has also gained acceptance among Shari'ah scholars, particularly from Middle East countries.

Definitions:

Sukuk (plural of sakk)

A sakk (singular) is usually referred to as an 'Islamic bond' sukuk (plural) are actually more akin to 'pass-through certificates', 'equipment trust certificates', or 'investment certificates', due to ownership attributes, with each sakk representing a proportional or undivided ownership interest in an asset or pool of assets.

Al-Ijarah (al-ajr) (sale of usufruct)

Literal meaning: To compensate.

Technical meaning: A contract of proposed and known usufruct (manfaat) with a specified and lawful return or compensation for the effort or work which has been expended.

Under the securitisation process, sukuk al-ijarah refers to an Islamic bond for the buying and leasing of assets by the investors to the issuer and such sukuk shall represent the undivided beneficial rights/ownership/interest in the asset held by the trustee on behalf of the investors.

Commonly adopted structure of sukuk al-ijarah

The common structure of sukuk al-ijarah duly adopted in Malaysian debt market may be summarised as follows:

Step 1 Under the ijarah structure, the seller will sell its assets to the issuer in consideration of a purchase price being

paid based on the value of the respective assets.

Step 2 To finance the purchase, the Issuer shall raise sukuk of equivalent amount and in combination of both senior sukuk and junior sukuk. The senior sukuk shall be subscribed by the investors whilst the junior sukuk shall be solely subscribed by the seller.

The sukuk shall represent the beneficial rights in the assets whereby the sukuk holders shall have an undivided proportionate beneficial interest in the assets.

The issuer shall declare a trust via a trust declaration over the assets for the benefit of the sukuk investors. The sukuk investors will therefore have a pro-rata undivided beneficial ownership of the assets.

Step 3 Subsequent to the purchase, the issuer shall lease the acquired assets to the lessee under ijarah agreement(s) for an ijarah term of up to, e.g. eight (8) years.

Step 4 The lessee, shall make ijarah rental payments to the Issuer from the income it will receive from the off-takers arising from the license agreement.

Step 5 The ijarah rental payments for the assets received by the Issuer from the lessor will then be distributed to the sukuk holders as periodic income distribution payment in proportion to their holdings in the sukuk.

Step 6 The seller, in its capacity as service agent, will enter into service agency agreement with the issuer to provide major maintenance services and maintaining insurances for the respective assets.

Sukuk al-ijarah is now accepted globally. In fact, the first global corporate sukuk issuance is introduced by Malaysia through the issuance of the Guthrie sukuk.

Azmi & Associates

Banking & Financial Services Group

14th Floor, Menara Keck Seng

203, Jalan Bukit Bintang

55100 Kuala Lumpur, Malaysia

Tel: (603) 2118 5055

Fax: (603) 2118 5111

Email: farhah@azmilaw.com

www.azmilaw.com

SINGAPORE



Singapore court's position on anti-suit injunctions

By Edward Lam



In the recent High Court judgment in *Regalindo Resources Pte Ltd v Seatrek Trans Pte Ltd* [2008] SGHC 74, Justice Andrew Ang considered the law governing anti-suit injunctions. Seatrek commenced arbitration proceedings in Singapore against Regalindo, seeking damages for an alleged breach of a time charter. Prior to the commencement of the arbitration, Seatrek commenced an action in the United States District Court for the Southern District of New York consisting of a complaint along with an *ex parte* application for the issuance of a Rule B Attachment to obtain security in the amount of US\$3,777,200. The Rule B Attachment was granted and subsequently served on 12 major banks in New York, including The Bank of New York.

Regalindo then sought to transfer a sum of US\$249,975 from a Singapore bank account to the bank account of one of its suppliers in Indonesia. The Bank of New York, which stood as intermediary bank for the transfer, attached the sum pursuant to the Rule B Attachment notice.

A week later, Seatrek relied on an arbitration clause in the disputed time charter and served a notice of commencement of arbitration on Regalindo. Subsequently, Regalindo applied to the Singapore High Court seeking an order to restrain Seatrek from continuing with the New York proceedings and to release all moneys attached pursuant to the Rule B Attachment.

On the law governing anti-suit injunctions, Justice Ang held that the case law in Singapore relating to the granting of anti-suit injunctions is well settled as follows:

- the jurisdiction is to be exercised when the 'ends of justice' require it;
- where the court decides to grant an injunction restraining proceedings in a foreign court, its order is directed not against the foreign court but against the parties so proceeding or threatening to proceed;
- it follows that an injunction will only be issued restraining a

party who is amenable to the jurisdiction of the court, against whom, an injunction will be an effective remedy;

- since such an order affects the foreign court, the jurisdiction is one which must be exercised with caution;
- the court may restrain foreign proceedings which are 'oppressive or vexatious' but it must be only in the clearest of circumstances before an injunction can be granted and justified.

On the issue of whether the New York proceedings were vexatious or oppressive, one of the points submitted by Regalindo was that the advantages offered by the Rule B Attachment were available only in New York which was not the natural forum and this was evidence of oppression. Seatrek on the other hand submitted that an anti-suit injunction, if granted, would deprive it of a legitimate juridical advantage.

Justice Ang's view was that the fact that remedies sought in the New York proceedings were not available in Singapore should not automatically mean that an anti-suit injunction ought to be granted. If a party should satisfy the court that there was good reason behind its institution of the foreign legal process, the court, in deciding whether to grant an anti-suit injunction, would have to balance the hardship caused to the plaintiff by the foreign proceedings against the defendants' need to invoke the foreign process.

Justice Ang concluded that notwithstanding the fact that Singapore is the natural and proper forum for the resolution of the dispute, an anti-suit injunction restraining the New York proceedings should not be granted. Serious doubts had been raised on Regalindo's willingness to satisfy an arbitral award. He went on to add that if the only complaint Seatrek had against Regalindo was the latter's poor financial standing, the end result might have been different.

Alban Tay Mahtani & de Silva LLP

Dispute Resolution Group

39 Robinson Road #07-01

Robinson Point, Singapore 068911

Tel: (65) 6534 5266

Direct: (65) 6428 9811

Fax: (65) 6225 5228

Email: edwardlam@atmdlaw.com.sg

www.atmdlaw.com.sg

The company secretary and good corporate governance



**By Paniti Junhasavasdikul
and Ratiya Lertsakulpat**

The position of company secretary is now required for each publicly listed company appointed in accordance with the new Amendment to the Securities and Exchange Act B.E. 2551 (2008) (Amendment to the SEC Act) which was published in the Royal Gazette on 4 March 2008 and will take effect on the 180th day therefrom.

The Board of Directors of each company must appoint a company secretary to carry out the following duties and functions: a) preparation and maintenance of a list and detailed information of the directors, notices of meetings and minutes of all meetings of the company, b) reports on any activities of interest or transactions of the directors and executives and c) perform other functions as required by the Capital Market Committee (who will also be appointed pursuant to this new Amendment to the SEC Act). It should be noted, however, as good corporate governance is to be seriously implemented and promoted by listed companies, company secretaries should think outside the box and do more than what they are required by the law. These tasks include the investor relations function liaising with the shareholders, the directors and management of the company. The company secretary serves as the key contact person or conduit of communication between the Board of Directors and the company management. He or she advises the Board of Directors and management of the legal, regulatory and corporate good governance matters. He or she also works closely with the public or investor relations section

of the company in disseminating company information.

The position of company secretary bears considerable responsibilities as one of the management positions. He or she must dispose the duties with care and loyalty in order to comply with the company's acts with laws, objectives, resolutions of the Board of Directors and shareholders. Many of the consequential liabilities or penalties for failure to duly dispense its duties resemble those of the directors such as (a) if the company secretary acts or omits to act in accordance with the laws giving rise to the undue interest or benefits to the directors, management or related persons of the company, the company may file a law suit claiming for damages and return

It should be noted, however, as good corporate governance is to be seriously implemented and promoted by listed companies, company secretaries should think outside the box and do more than what they are required by the law

of such unwarranted benefits. And if such an act of the company secretary is deemed fraud, the penalty is of this criminal act can lead to imprisonment terms and/or fines. A notable duty and its penalty for failure to comply with the SEC's requirements in a), b) and c) in the foregoing paragraph is subject to a fine not more than THB 100,000.

At the time of publishing this article the Amendment to the SEC Act shall have come into effect. Each company will be required to report its appointment of company secretary

within 14 days with a grace period extended to around mid of September 2008.

DFDL Mekong (Thailand) Ltd

9th Floor, The Dusit Thani Building,
946 Rama IV Road,
Bangkok 10500, Thailand.

Tel: (66) 2636 3282 Fax: (66) 2636 3290

Email: jpaniti@dfdlmekong.com
ratiya@dfdlmekong.com
www.dfdlmekong.com



Project brings hope to children in China

In April 2007 Paul, Hastings, Janofsky & Walker LLP announced its partnership with Project Hope, the leading foundation working to eliminate educational disparity in China, to build an elementary school in Longqiu village, a remote village in the mountains in Jing'an county, Jiangxi province in China.

Located in the middle of China, Jiangxi province's economy is relatively undeveloped and houses many school premises in need of renovation and upgrading.

Construction of the school, named the 'Paul Hastings Hope Elementary School' (Hope School) was completed early this year, and the firm was invited by the people's government of Jing'an County to attend a memorable ceremony to celebrate the completion of construction.

The Hope School replaces Longqiu village's previous school, expanding the enrollment from just over 200 to 300 students from the five surrounding villages. Its classrooms now hold desks and chairs for every student, and its dormitory will one day house the students, some that have to travel two to three hours on foot everyday or live as tenants with local families.

Attorneys from the firm regularly visited the site during the construction phase, including Greg Nitzkowski, Global Managing Partner., to encourage local students and assist in light construction work.

In early September 2007, a group of 26 Shanghai-based partners, associates and summer associates visited the previous school to distribute learning supplies to the 209 students, grades one through six, and organized a day of games and fun activities.

The day started with a speech from Lesli Ligorner, partner and chair of the pro bono committee for the Shanghai office, to the gathered students, local officials, and handful of onlookers from the village. The attorneys then handed



Laughter and happiness fill up the classroom,

The golden wind sends the guests to our village.

They give us books, bags, and clothes.

– translated letter from Hope School student Xuliang Luo

out backpacks which they had prepared for the students, each containing pencils, pens, rulers, erasers, a pocket dictionary and other schoolbooks. After the opening ceremony, the students and Paul Hastings team members broke up into several groups for separate activities. The fourth-graders were particularly enthusiastic, participating in a talent show where individual students

performed cartwheels, sang Chinese opera, and recited traditional poems from memory.

Additionally, in November 2007, a group of 25 partners and associates from the firm visited the construction site and personally painted the new classrooms. Although their painting skills were no match for their legal skills, they were proud of the work they did with their own hands.

With the new school operational, the colleagues from the firm's Shanghai office have sent their best wishes to the students there, hoping that they will enjoy the improved learning conditions and devote all their efforts in achieving their personal goals at the highest level.

HONG KONG SINGAPORE

SHANGHAI BEIJING

BANGKOK NEW YORK

TOKYO MUMBAI

KUALA LUMPUR

UAE MANILA

SEOUL JAKARTA

2008

IN-HOUSE Congress

Now in its tenth year, the Pacific Business Press In-House Congress is the largest circuit of events for in-house counsel and corporate decision makers in Asia. With presentations by the world's top law firms the Congress is now an annual fixture in the corporate counsel calendar in Hong Kong, Singapore, Shanghai, Beijing, Bangkok, Mumbai, Kuala Lumpur, Manila, Seoul, Jakarta, Tokyo, and the United Arab Emirates, bringing together more than 3,500 professionals throughout the region in the last twelve months.

"The In-House Congress is a key date in my yearly calendar. It is well-organised, keeps me up to date on the latest industry developments and consistently deals with the issues important to in-house counsel in Asia"

Widyaretna Buenastuti
Director-Legal Affairs
PT. Pfizer Indonesia



Graphic Design

From corporate identification and communications packs, business cards, letterheads and other stationary items, to advertisements, flyers and brochures which will give you a consistent identity in all your communications.

Multimedia Presentations

Get ahead with outstanding multimedia sound and animated presentations to get your message across. We also design animated web banners and interactive ads.

Website Solutions

Fresh and clean designs with easy-to-use navigation, to ensure your website professionally represents your company. Our Content Management System (CMS) will allow you to edit your own website content anytime, anywhere. Our websites are fast and user-friendly, with many add-on applications to transform you into an online business.

eMarketing Services

Our personalised mass email system allows you to send out custom emails in bulk, reliably and quickly with added graphic power. Using our tracking system, you can analyse who has read them and the links they visited. The system now includes an event registration tool ideal for seminars or training courses and even has an online survey, for real-time customer feedback.

Website and Email Secure Hosting

Reliability, security and speed are vital when it comes to corporate websites and especially email. Compelite provides professional corporate hosting expertise for corporate websites and email systems. This guarantees zero downtime and fast global access. Used by leading banks, hotels and law companies in Hong Kong.

SEM (Search Engine Marketing)

We can ensure that anyone trying to search for your products or services will find you in the top positions of the world's leading search engines. We guarantee positioning of your Website on multiple keyword phrases within the top 20 listings amongst the major Search Engines; Google, Yahoo and MSN LIVE. We also provide Pay Per Click Management.

Client Projects

- Lang Kwai Fong Group** This funky website informs people of what's happening in the LKF area. It features promotions, ads etc and has an easy to use CMS to allow bars, clubs and restaurant owners to update their own information and special promotions...
- QAS** When presenting their company and quality management techniques for the airline industry, QAS needed a multimedia presentation by Compelite to get them noticed...
- Kosmo Coffee** A wonderful lifestyle design website for the promotion of wellness and their leading organic coffee and cafe franchise. The website features an online shopping experience with loyalty points connected to their POS systems...
- Savills** When some of the more exclusive property projects are available on the market, Savills turns to Compelite to design their marketing brochures with added impact...
- Murava** Products website with interactive flash design to allow you to create your own bag, cap etc. Features our easy to use CMS for uploading new products, photos and information, with active links to the menu system...
- Intercontinental Grand Stanford** The Intercontinental Grand Stanford makes great use of our eMarketing solutions, keeping their clients up to date with the latest happenings each month...
- Saffron Cruises** Now one of the most popular charter boat companies in Hong Kong Saffron Cruises use our eMarketing and event booking system to get more people having fun on the water...
- Compelite** Even we use our own SEO and Pay Per Click Management techniques to remain at the top of Google, Yahoo and MSN LIVE for anyone looking for design, websites, and technology...

