

ASIAN LEGAL BUSINESS



AUGUST 2013
NORTH ASIA EDITION



RANKINGS 2013

BRANCHING OUT

Macau's junket operators are targeting diverse industries

PAGE 20

VEHICLE CHOICES

We compare and contrast various offshore legal structures

PAGE 26

JAPAN'S FINEST

The full list of winners at the Japan Law Awards 2013

PAGE 44

INSIDE

■ DEALS SPOTLIGHT	04
■ FINANCIAL GRAPHIC	06
■ APPOINTMENTS	08
■ EVENTS	12

ALB



RANKINGS 2013

A

Asian M&A activity over the last 12 months has been marred somewhat by unfavourable market conditions and low investor confidence. However, this uncertainty has opened a new door of opportunity for Asian investors in the form of low-valued European assets. In addition, quiet IPO markets across several Asian countries may prompt private equity investors to turn to M&A instead of capital markets as a means to exit their investments. Furthermore, the opening up of new markets in Southeast Asia, coupled with steady growth rates and rising consumer demand, is likely to stimulate future deal flow. Asian companies, armed with

healthy balance sheets and an abundance of cash reserves, are on the lookout for new growth opportunities.

China's GDP growth slowed in the second quarter from 7.7 percent to 7.5 percent year-on-year, as weak overseas demand, capital flight, rising costs, and banking and other regulatory issues continue to weigh the economy down. However, outbound M&A - especially in the energy and resources sectors - has held firm, while lawyers also note an increasing number of inbound transactions. Take-private transactions involving Chinese companies are also keeping practitioners busy. Accusations of fraud and tough market conditions have prompted many Chinese companies to

delist from stock exchanges in the United States. However, lawyers note that most of the questionable - and largest - U.S.-listed Chinese companies have already completed or announced their plans to go private. As a result, such transactions are likely to account for a smaller share of China's M&A market in years to come.

In addition, ALB reported last year that the run-up to China's leadership change in November 2012 created some market uncertainty. It has now been the better part of a year since the transition, and the new government has cast a positive outlook for M&A in China, publicly voicing its support for economic reform and market liberalisation.

Much like China, both Japan and South Korea are likely to see an uptick in M&A activity. Facing unfavourable demographics and limited growth potential at home, Japan and South Korea's cash-rich conglomerates are seeking greener pastures overseas. Buoyed by strengthening brand images, healthy balance sheets and cheap valuations abroad, these companies are increasingly looking towards Southeast Asia and Europe. At the forefront of outbound M&A activity are the Japanese and South Korean technology giants, whose overseas expansion ambitions are as aggressive as the industry in which they operate.

For Japan, it's not just its conglomerates that are looking abroad. Its Big Four law firms are also growing their physical presence overseas, with a particular focus on Southeast Asia. Both Mori Hamada & Matsumoto and Nishimura & Asahi opened offices in Singapore in 2012 to better service Japanese companies on their investments abroad, as well as to assist regional companies looking to do business in Japan. Nagashima Ohno & Tsunematsu opened a Singapore office in January this year, while Anderson Mori & Tomotsune plans to open offices in Singapore and Shanghai later this year. Nishimura & Asahi remains the only Japanese Big Four law firm with offices elsewhere in Southeast Asia, having set up shop in Ho Chi Minh City in October 2010, in Hanoi in August 2011, and most recently in Yangon and Bangkok this year.

Southeast Asia's vibrant growth rates, attractively low costs and burgeoning middle class have sculpted the region into an attractive destination for M&A. However, Thomson Reuters data shows that deal value in Southeast Asia during the first half of 2013 fell 29.8 percent to \$38.5 billion from the first half of 2012. However, lawyers believe that the region will see a pickup in deal flow over the coming years. Countries like Thailand, Malaysia, the Philippines and Indonesia con-



tinue to attract a steady flow of deals with their steady growth rates, rising consumer wealth and demand, and rich natural resources reserves.

The newest prospect for investors in the Southeast Asian market is Myanmar, whose new civilian government is opening the country's economy after five decades of rule by the military junta. There have been notable investments by Japanese and South Korean companies into the country. However, the government is still reworking its legal system after having passed new foreign direct investment laws last year. Many foreign companies are waiting to see the result of the reform process before deciding whether to invest.

Hopping over to Singapore, Thomson Reuters data shows that the value of announced M&A involving Singaporean companies totalled \$18.6 billion, 24.4 percent down from the first half of 2012. Completed M&A activity however, increased 47.9 percent from the first half of 2012.

One highly publicised deal that was noted for its scale, complexity and fierce competition between bidders was Heineken's \$4.6 billion acquisition of Singaporean conglomerate Fraser and Neave's (F&N) direct stake in Asia Pacific Breweries. The Dutch brewer emerged victorious after finding itself embroiled in a

OUR RANKINGS

Our rankings are based on the following metrics:

- Volume/complexity/size of work
- Firm's visibility and profile in the marketplace
- Presence in Asia
- Key existing clients and new client wins

ALB drew results from firm submissions, Thomson Reuters financial data, editorial resources and market suggestions.

bidding war with Thai billionaire Charoen Sirivadhanabhakdi which lasted several months. The battle led to Heineken raising its initial offer by 6 percent to \$4.6 billion. Then in January 2013, Charoen won control of F&N after his offer of \$11.2 billion bested a proposal from rival Overseas Union Enterprise Ltd. The Heineken and F&N deals were two of several recent big-ticket transactions in Singapore, and many lawyers predict M&A activity to increase over the next 12 months.

Meanwhile, in India, the number and value of deals dropped in the first half of 2013 com-

pared to the same period last year. The country's sluggish economic growth and slow pace of financial reform have contributed to this dip. Despite a quieter first half of 2013, there have been several notable deals including ONGC Videsh and Oil India's \$2.48 billion acquisition of a 10 percent stake in a Mozambique gas field from India's Videocon Group, Apollo Tyres' \$2.5 billion purchase of U.S.-based Cooper Tire & Rubber Co, and Unilever's \$3.16 billion acquisition of a little more than two-thirds of Indian unit Hindustan Unilever. Market observers predict more robust M&A activity over the next 12 months, with the IT, telecom, pharmaceuticals, manufacturing and financial service sectors offering the most lucrative opportunities for investors.

Despite a recent dip in M&A activity, market observers believe the next 12 months will see a pickup in both the value and number of deals. For developing Asian economies, it will be important for governments to sustain steady growth, keep abreast of macroeconomic conditions, and enact regular financial and regulatory reforms to stimulate M&A activity. While many companies possess large cash reserves and a hunger for expansion, a majority are adopting a cautious investment approach. Nonetheless, the mood remains optimistic going into 2014. [ALB](#)

● CHINA DOMESTIC

TIER 1

- Fangda Partners
- Jun He Law Offices
- King & Wood Mallesons
- Zhong Lun Law Firm

TIER 2

- Commerce & Finance Law Offices
- Global Law Office
- Guantao Law Firm
- Haiwen & Partners
- Jia Yuan Law Offices
- Jingtian & Gongcheng

FIRMS TO WATCH

- AllBright Law Offices
- Grandall Law Firm
- Han Kun Law Offices
- Llinks Law Offices
- Shanghai Shimin Law Offices
- Tian Yuan Law Firm

● CHINA INTERNATIONAL

TIER 1

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

TIER 2

- Allen & Overy
- Baker & McKenzie
- Cleary Gottlieb Steen & Hamilton
- Davis Polk & Wardwell
- Herbert Smith Freehills
- Hogan Lovells
- Kirkland & Ellis
- Latham & Watkins
- Paul Hastings
- Paul, Weiss, Rifkind, Wharton & Garrison
- Shearman & Sterling



- Simpson Thacher & Bartlett
- Slaughter and May
- Sullivan & Cromwell

TIER 3

- Akin, Gump, Strauss, Hauer & Feld
- Debevoise & Plimpton
- Mayer Brown JSM
- Milbank, Tweed, Hadley & McCloy
- Morrison & Foerster
- Norton Rose Fulbright
- O'Melveny & Myers
- Orrick, Herrington & Sutcliffe
- Ropes & Gray
- Sidley Austin
- Vinson & Elkins

FIRMS TO WATCH

- Bingham McCutchen
- Deacons
- Dentons
- Kaye Scholer
- King & Wood Mallesons
- Reed Smith Richards Butler
- Stephenson Harwood

● HONG KONG

TIER 1

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

TIER 2

- Akin, Gump, Strauss, Hauer & Feld
- Allen & Overy
- Baker & McKenzie
- Davis Polk & Wardwell
- Herbert Smith Freehills
- Hogan Lovells
- Kirkland & Ellis
- Latham & Watkins
- O'Melveny & Myers
- Paul Hastings
- Paul, Weiss, Rifkind, Wharton & Garrison
- Shearman & Sterling
- Simpson Thacher & Bartlett

- Slaughter and May
- Sullivan & Cromwell

TIER 3

- Cleary Gottlieb Steen & Hamilton
- Deacons
- Debevoise & Plimpton
- Fried, Frank, Harris, Shriver & Jacobson
- King & Wood Mallesons
- Mayer Brown JSM
- Milbank, Tweed, Hadley & McCloy
- Morrison & Foerster
- Norton Rose Fulbright
- Orrick, Herrington & Sutcliffe
- Ropes & Gray
- Sidley Austin

FIRMS TO WATCH

- Bingham McCutchen
- Reed Smith Richards Butler
- Stephenson Harwood
- Vinson & Elkins
- Vivien Chan & Co

● INDIA

TIER 1

- Amarchand & Mangaldas & Suresh A. Shroff & Co
- AZB & Partners
- J. Sagar Associates
- Khaitan & Co
- Luthra & Luthra

TIER 2

- Kochhar & Co
- Nishith Desai Associates
- S&R Associates
- Talwar, Thakore & Associates
- Trilegal
- Wadia Ghandy & Co

FIRMS TO WATCH

- Clasis Law
- Dhir & Dhir Associates
- DSK Legal
- Economic Laws Practice
- Fox Mandal
- HSA Advocates

BIRD & BIRD



John Koh
Partner, Transactions Group
Bird & Bird
(852) 2248 6059
john.koh@twobirds.com

DOES GOOD FAITH GET YOU THERE?

In Hong Kong, it is not unusual to encounter drafting in agreements requiring the parties to negotiate in “good faith” on future matters, especially if the agreement is being negotiated with parties from the PRC.

The doctrine of good faith has historically received little favour from the common law courts.

In Hong Kong, in *Hyundai Engineering & Construction Co Ltd v Vigour Ltd*¹, Rogers V-P (citing *Walford v Miles*²) expressed the view that an agreement to negotiate “in good faith” was not enforceable. The doctrine is viewed as too broad and overarching and goes against an individual’s free will to contract however he sees fit. The courts are concerned that recognising such a doctrine would create uncertainty in contractual terms.

However, the courts have in recent times started to recognise the duty of good faith in certain situations. Earlier this year, the English High Court took a step forward in recognising an implied duty upon contracting parties to act in good faith in performance of their contractual obligations.

Mr Justice Leggatt, giving the ruling in *Yam Seng Pte Ltd v International Trade Corp Ltd*,³ recognised certain situations

where a duty of good faith may be implied in a contract. In long-term agreements, especially where commitments can only be performed over an extended period of time, a duty of good faith could be implied and be enforceable in such contracts.

In his judgment, Mr Justice Leggatt expressed the view that the duty of good faith is a contextual one and reflects a cultural expectation or norm that contracting parties should act honestly in their dealings. He describes the traditional hostility of the English courts towards a doctrine of good faith as “misplaced”. In his view, the doctrine is consistent with the intention of the courts to protect the reasonable expectations of the contracting parties.

It remains to be seen whether the higher courts in England or the courts in Hong Kong will follow *Yam Seng* in recognising or extending a doctrine of good faith in the future. In the absence of recognition of such a doctrine by the Hong Kong courts, provisions in contracts incorporating “good faith” will be of little comfort.

¹ [2005] 3 HKLRD 723 (CA)

² [1992] 2 AC 128 (HL)

³ [2013] WEHC 111 (QB)

Bird & Bird

LEE AND LI
ATTORNEYS-AT-LAW



ALB Taiwan Leading M&A Firm 2010 - 2013
ALB Taiwan Deal Firm of the Year 2009 - 2012
Bloomberg No. 1 M&A Firm in Taiwan 2010 - 2012
IFLR National Law Firm of the Year 2001 - 2012
China Law & Practice Taiwan Firm of the Year 2010 & 2012
CHAMBERS & PARTNERS Band 1 M&A Firm 2004 - 2013
The Asia Pacific Legal 500 Tier 1 M&A Firm 2006 - 2012
The Chambers Asia-Pacific Awards Taiwan Law Firm of the Year 2011 - 2012

M&A • Corporate • Banking • Intellectual Property • Dispute Resolution

Taipei • Hsinchu • Taichung • Southern Taiwan

<http://www.leeandli.com> General email: attorneys@leeandli.com Tel: 886-2-2715-3300

- IndusLaw
- Krishnamurthy & Co/K Law
- Majmudar & Partners
- Mundkur Law Partners
- Phoenix Legal
- Rajani Associates
- Singhania & Partners
- Vaish Associates

● INDONESIA

TIER 1

- Assegaf Hamzah & Partners
- Hadiputranto, Hadinoto & Partners
- Soemadipradja & Taher
- Soewito Suhardiman
- Eddyurthy Kardono

TIER 2

- Ali Budiardjo, Nugruho Reksodiputro
- Ginting & Reksodiputro
- Hiswara Bunjamin & Tandjung
- Melli Darsa & Co

FIRMS TO WATCH

- Budidjaja & Associates
- Hanafiah Ponggawa & Partners
- Lubis Ganie Surowidjojo
- Makarim & Taira S
- Makes & Partners
- Oentoeng Suria & Partners
- Roosdiono & Partners

● JAPAN DOMESTIC

TIER 1

- Mori Hamada & Matsumoto
- Nagashima Ohno & Tsunematsu
- Nishimura & Asahi

TIER 2

- Anderson Mori & Tomotsune
- Atsumi & Sakai



FIRMS TO WATCH

- Oh-Ebashi LPC & Partners
- TMI Associates

● JAPAN INTERNATIONAL

TIER 1

- Davis Polk & Wardwell
- Morrison & Foerster
- Shearman & Sterling
- Simpson Thacher & Bartlett

TIER 2

- Baker & McKenzie (Gaikokuho Joint Enterprise)
- Freshfields Bruckhaus Deringer
- Herbert Smith Freehills
- Skadden, Arps, Slate, Meagher & Flom
- Sullivan & Cromwell

FIRMS TO WATCH

- Allen & Overy
- Clifford Chance
- Hogan Lovells
- Jones Day

- Linklaters
- Norton Rose Fulbright
- Orrick, Herrington & Sutcliffe
- Paul Hastings
- Paul, Weiss, Rifkind, Wharton & Garrison
- Squire Sanders
- White & Case

● MALAYSIA

TIER 1

- Kadir, Andri & Partners
- Shearn Delamore & Co
- Skrine
- Wong & Partners/Baker & McKenzie

TIER 2

- Albar & Partners
- Rahmat Lim & Partners
- Shook Lin & Bok
- Zaid Ibrahim & Co
- Zul Rafique & Partners

FIRMS TO WATCH

- Abdullah Chan

- Azmi & Associates
- Chooi & Company
- Christopher Lee & Co
- Jeff Leong, Poon & Wong
- Lee Hishamuddin Allen & Gledhill
- Raja, Darryl & Loh
- Tay & Partners
- Zain & Co

● PHILIPPINES

TIER 1

- Quisumbing Torres/Baker & McKenzie
- Romulo Mabanta
- Buenaventura Sayoc & De Los Angeles
- SyCip Salazar Hernandez & Gatmaitan

FIRMS TO WATCH

- ACCRA LAW
- Castillo Laman Tan Pantaleon & San Jose
- Picazo Buyco Tan Fider Santos

● SINGAPORE DOMESTIC

TIER 1

- Allen & Gledhill
- Rajah & Tann
- Stamford Law Corporation
- WongPartnership

TIER 2

- Baker & McKenzie.Wong & Leow
- Drew & Napier
- Rodyk & Davidson
- Shook Lin & Bok

FIRMS TO WATCH

- ATMD Bird & Bird
- Colin Ng & Partners
- Duane Morris & Selvam
- Lee & Lee
- RHT Law Taylor Wessing

LEE & KO

법무법인 광장



Korea's premier full-service law firm

Landmark results from our leading M&A and IP teams

Top-tier in all Korean practice areas

Anti-corruption
& Regulatory compliance

Antitrust and Competition

Aviation

Banking and Finance
(Acquisition Finance,
Asset Finance, Project Finance,
Corporate Finance)

Bankruptcy, Insolvency
and Corporate Restructuring

Capital Markets and Securities
(Equity Capital Market,
Debt Capital Market, Private
Equity Funds, Derivatives,
Asset Management)

Corporate

Corporate Governance

Energy

Entertainment

Environment

Foreign Direct Investment

Health Care

Labor & Employment

Insurance

Intellectual Property

International Trade

Litigation and International
Arbitration

Maritime and Shipping

M&A

Overseas Investment

Private Equity &
Venture Capital

Privatization

Product Liability

Real Estate and Construction

Tax and Customs

Technology, Media and
Telecommunications

Trade

White-Collar Crime

Marjin Mori Building, 180-190, P.O. Box 118, Bundang-dong 2-Ga, Sung-Gu, Seoul 110-770, Korea Tel: (82) 2-772-4000 Fax: (82) 2-772-4002

www.lee&ko.com

● SINGAPORE FOREIGN

TIER 1

- Allen & Overy
- Clifford Chance
- Latham & Watkins
- Linklaters

TIER 2

- Baker & McKenzie.Wong & Leow
- Herbert Smith Freehills
- Milbank, Tweed, Hadley & McCloy
- Norton Rose Fulbright
- Skadden, Arps, Slate, Meagher & Flom

FIRMS TO WATCH

- Berwin Leighton Paisner
- Duane Morris & Selvam
- Freshfields Bruckhaus Deringer
- Hogan Lovells Lee & Lee
- O'Melveny & Myers

- Shearman & Sterling
- Sidley Austin

● SOUTH KOREA

TIER 1

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

TIER 2

- Yoon & Yang
- Yulchon

FIRM TO WATCH

- Jipyong Jisung

● TAIWAN

TIER 1

- Baker & McKenzie
- Lee and Li

TIER 2

- Chen & Lin
- Formosan Brothers
- Formosa Transnational
- Jones Day
- LCS & Partners
- Tsar & Tsai

FIRM TO WATCH

- Eiger Law

● THAILAND

TIER 1

- Allen & Overy
- Baker & McKenzie
- Weerawong, Chinnavat & Peangpanor

TIER 2

- Clifford Chance
- Linklaters
- Siam Premier

FIRMS TO WATCH

- DFDL

- Norton Rose Fulbright
- Thanathip & Partners
- Tilleke & Gibbins

● VIETNAM

TIER 1

- Baker & McKenzie
- Freshfields Bruckhaus Deringer
- Vilaf

TIER 2

- Allens
- DFDL
- Mayer Brown JSM
- YKVN Lawyers

FIRMS TO WATCH

- Duane Morris
- Frasers Law Company
- Hogan Lovells
- Indochine Counsel
- Tilleke & Gibbins
- VDB Loi
- Vision & Associates