

2019

ALB CHINA

Top 15 TMT Lawyers

十五佳 TMT 律师

Driven by the rapid development of the new economy, a number of Chinese TMT lawyers have emerged to help enterprises with scientific and technological innovation. They undoubtedly have more opportunities than ever before to take advantage of the trend and make great achievements.

By Ines Yang

新经济发展风起云涌，也催生出一批助力企业科技创新的中国TMT律师。他们无疑面临非常好的历史机遇，我们也期待他们顺势而为、大展宏图。

Methodology

Candidates are reviewed comprehensively based on the following criteria:

- 1) Representative deals handled throughout practice experience;
- 2) Major transactions performed in the past 12 months;
- 3) Key clients;
- 4) Awards and accolades won; and
- 5) Client review.

Winners are listed below by their surnames in the alphabetical order.

评选方法

ALB综合分析了各位申报律师在以下方面的成绩：

- 1) 申报律师执业经历中的代表性交易；
- 2) 申报律师过去12个月参与的重大交易；
- 3) 申报律师的主要客户；
- 4) 申报律师所获得的相关奖项；
- 5) 客户的评价。

以下获奖名单按照按姓氏字母顺序排列。

Winners are listed below in alphabetical order by their last names. 以下获奖名单按姓氏字母顺序。

Top 15 TMT Lawyers 十五佳TMT律师	LAW FIRM 所在律所
Chen Jihong 陈际红	Zhong Lun Law Firm 中伦律师事务所
Hu Zhengzheng 胡铮铮	Jingtian & Gongcheng 竞天公诚律师事务所
Jiang Huifang 姜慧芳	Shihui Partners 北京世辉律师事务所
Li Chenliang 李辰亮	JunHe LLP 君合律师事务所
Qian Dali 钱大立	Llinks Law Offices 通力律师事务所
Sun Jianhong 孙建红	Beijing Tiantai Law Firm 北京天驰君泰律师事务所
Sun Liqing 孙黎卿	Ronly & Tenwen Partners 上海融力天闻律师事务所
Tim Wang 王彦峰	Clifford Chance LLP 高伟绅律师事务所
Victor Wu 吴卫明	AllBright Law Offices 锦天城律师事务所
Xia Zhihua 夏智华	Tian Yuan Law Firm 天元律师事务所
Yang Ying 杨莹	Han Kun Law Offices 汉坤律师事务所
Yu Lei 郁雷	Global Law Office 环球律师事务所
Zhang Xinyang (Andrew) 张新阳	Commerce & Finance Law Offices 通商律师事务所
Zhong Xin 钟鑫	King & Wood Mallesons 金杜律师事务所

With the acceleration of a new round of scientific and technological revolutions and industrial changes around the world and with the rise and take-off of China's new economy, there are a growing number of excellent TMT (Technology, Media and Telecom) lawyers in China. They help enterprises take the lead in the waves of technological innovations around the world and provide forward-looking and creative solutions, gaining insights into the future together with their enterprises.

In a sense, the biggest feature of TMT lawyers is "living in the future." They constantly learn about new things: new technologies, new business logic, new social forms, new industrial patterns, new trends in the Chinese entities' accelerated innovation, and the new drivers of global economic development.

The world we are in is changing at a faster pace, bringing forth tremendous opportunities as well as huge uncertainties. In this context, how TMT lawyers can help enterprises fully participate in the technological innovation of the times and gain a dominant position in the global competition for technological innovation? It is a test of the TMT lawyers concerning whether they could precisely understand the essence of complex business forms in the background of new economy and accurately identify the legal relationship behind them. In the areas where laws lag behind, it requires TMT lawyers to have better judgment based

伴 随全球新一轮科技革命与产业革命的提速，伴随中国新经济的崛起与腾飞，中国正成长起一批业界顶尖的TMT律师。他们助力企业在全球科技创新浪潮中拔得头筹，他们提供前瞻性和创造性解决方案，与企业一道洞见未来。

或许，TMT律师这个群体的最大特点就是“活在未来”：他们不断了解新技术、新的商业逻辑、新的社会形态、新的产业格局、中国群体加速创新的新趋势、乃至全球经济发展的新驱动。

当我们身处的这个世界在加速变化，孕育巨大机遇的同时也饱含巨大的不确定性。在此过程中，TMT律师如何助力企业全面参与时代的科技创新、从而在全球科技创新的竞争中取得优势地位，十分考验TMT律师对新经济下复杂商业形态的本质理解、以及背后法律关系的准确认定；而在那些法律具有一定滞后性的领域，更需要TMT律师依照对法律政策的合理预判，创造性地提出解决方案从而助力和护航新经济的有序发展，这或许是TMT律师的最大价值与机会所在。

基于此，ALB今年首次推出中国十五佳TMT律师的评选——我们对新经济的未来充满憧憬，

on good knowledge and understanding of laws and policies, thus proposing creative solutions to facilitate and ensure the orderly development of the new economy. This may be where the greatest value of TMT lawyers lies, and meanwhile poses a great opportunity for them.

In this context, Asian Legal Business (ALB) launched the first selection of China Top 15 TMT Lawyers this year. We are full of expectations for the future of the new economy and we believe in the great potential of China's TMT lawyers.

Due to space limitations, we only interviewed with five of the winners of the 2019 ALB China Top 15 TMT Lawyers. They shared with us their observations and ideas about what makes a top TMT lawyer and the unique value of TMT lawyers in transactions.

WU WEIMING (VICTOR), SENIOR PARTNER AT ALLBRIGHT LAW OFFICES

Q1: What's your idea about the relationship between Chinese TMT lawyers and China's new economy?

There are great differences between the new economy and the traditional economy in terms of the development model. New technologies have brought huge changes in social and economic model and the ways of social communication, resulting in that laws lag behind in some areas. But norms need to be observed in order to maintain the society and conduct transactions in an orderly manner. Lawyers are important participants of civil autonomy in the economic field, who are familiar with the high-tech industry and have good judgment based on their knowledge and understanding of laws and policies. Therefore, lawyers are able to help with the orderly development of the new economy by arranging the suitable transaction structure, processing the transaction documents carefully and preparing appropriate dispute resolution clauses.

At this stage, China's national economy has made great achievements in the implementation of the "Forging Ahead Strategy" in terms of the quantity. The next stage will focus on improving the quality of economic development, in which the core objective is scientific and technological innovation. With the application of 5G communication technology, cloud computing, big data, artificial intelligence and blockchain technology will see rapid development, which will all bring tremendous opportunities for TMT lawyers.

Q2: What makes a top TMT lawyer?

In my opinion, a top TMT lawyer needs to have a compound thinking mode as well as compound knowledge structure. The "compound thinking mode" means that a lawyer needs not only to think like a lawyer but also to think like an engineer, and is able to switch between the "two roles" freely. Changes in the high-tech sector, in a sense, will bring about changes in business models, which will pose new challenges to the implementation of the laws and rules that are formulated based on traditional business models. Lawyers must have the ability to "see the essence through phenomena," and this ability in fact comes from the engineer's thinking logic. The "compound knowledge structure" is the foundation. Lawyers must have the basic knowledge of high-tech industry before they can understand the essence of the transactions in the industry and apply laws correctly. Furthermore, having sound legal knowledge also enables lawyers to cope with the changes in new technologies more easily.

As TMT lawyers, we must have the ability to learn. Learning seems simple,

更对中国TMT律师的大有可为充满期待。

因篇幅有限，我们邀请了五位TMT获奖律师进行快问快答，从五个维度了解他们作为TMT律师的观察与思考，他们眼中TMT律师在交易中的特有价值。

对话锦天城律师事务所高级合伙人 吴卫明律师

Q1：中国TMT律师与中国新经济的关系

新经济与传统经济发展模式有着巨大的差异，新技术带来的社会经济模式、社会交流方式的变革，使得法律具有一定滞后性，但社会交易秩序仍需要维持和运转，律师作为经济生活领域民间自治的重要参与者，在熟悉高科技行业以及对法律政策合理预判的基础上，通过对交易结构的安排、对交易文件的梳理、对纠纷解决条款的设置，从而助力新经济的有序发展。

现阶段，中国的国民经济数量赶超阶段已取得重大成果，下一阶段是提升经济发展质量，其中的核心目标是科技创新。伴随5G通信技术的应用，云计算、大数据、人工智能、区块链技术等都将取得突飞猛进的发展，这些都给TMT律师带来了巨大发展机遇。

Q2：成为顶尖TMT律师的“高门槛”

“高门槛”主要体现在思维方式、知识结构的复合性方面。所谓思维方式，即要求律师不仅要具有法律思维，还要具有工程师思维，且能不断地在两种思维中任意切换。高科技领域的变革，某种意义上会带来商业模式的变革，从而对构筑在传统商业模式基础上的法律规则的执行带来新挑战，律师必须具备“透过现象看本质”的能力，这种能力来自于工程师思维。知识结构的复合化是基础，律师必须对高科技行业的基本知识有所掌握，然后才能理解其交易的实质，从而正确运用法律。而法律功底之精深，也能够让律师从容应对新技术的变革。

对TMT律师来说，一定要具备学习新知识的能力。学习貌似简单，但对于一个长期接受法律教育、形式逻辑能力极强的人来说，学习工科知识并不容易，犹如不同的操作系统，能够兼容的应用软件类型也各不相同。TMT律师应当具备开放的思维能力，从而更容易学习和接受新的知识。

Q3：“四大”或法律科技公司，会是TMT律师的直接竞争对手吗

“四大”或法律科技公司比较容易在高科技的行业知识领域形成优势，从而对TMT律师形成竞争。但同时律师行业也在逐渐反思，也通过组建科技法律部门、构建自身的科技咨询或技术服务团队，来应对这种挑战。

but sometimes it may not be that easy – as legal professionals, we received long-time legal education and training and have built strong formal logic ability, so it is not easy for us to learn engineering knowledge. Just imagine, it is like different operating systems, not all application software programs are compatible to them. Therefore, TMT lawyers need to have an open mind in order to receive and learn new things more easily.

Q3: Will the “Big Four” or legal technology companies become direct competitors of TMT lawyers?

The “Big Four” or legal technology companies can easily gain an advantage in the high-tech sector in term of industry knowledge, and then compete with TMT lawyers based on that advantage. But the legal profession is responding to this challenge by forming legal technology departments or building their own technological consulting or technical service teams.

Q4: How could TMT lawyers and in-house counsels optimize their performance through division of work and collaboration?

The relationship between TMT lawyers and in-house counsels can be illustrated by two pairs of relationships: one is horizontal and vertical, and the other is balance and focus. The “horizontal and vertical” relationship means that in-house counsels pay more attention to the whole-process legal risk management within enterprises, which requires taking into consideration of comprehensive aspects of enterprises, including R&D, production, operation, sales, logistics, after-sales and so forth. A good in-house counsel is firstly a

Q4：TMT律师与企业法务的分工协作如何能实现效能最大化

TMT律师与企业法务之间的关系可用两对关系来说明：一是横向与纵向的关系，二是平衡与专注的关系。横向与纵向是指，企业法务更加注重企业内部全流程的法律风险管理，需要从企业的研发、生产、运营、销售、物流、售后等各个环节综合考虑，一个好的法务首先是一个流程控制者，应当具有对企业法律风险管理进行纵向和纵深管理的能力。TMT律师更多时候是在企业全流程风险管理的某些重点交易或管理环节、运用自身更为丰富的经验和综合服务能力，为法务的全流程管理提供解决重点问题的能力。平衡与专注是指，企业法务除考虑法律与合规问题外，还需将这些问题与企业的商业利益、不同部门的流程管理结合起来考虑，甚至需要将律师工作与企业管理进行协同、平衡各方诉求。律师工作则更专注于法律及合规问题的解决。两者的配合，能为企业的商业成功提供既符合法律要求、又兼顾商业利益的全方位法律保障。

Q5：结合案例来谈作为TMT律师的最深体悟

律师要具备与专业技术人士沟通的能力。这种



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process controller, having the ability to manage the enterprise's legal risk vertically and profoundly. TMT lawyers are more often involved in certain key management or transaction links in the overall risk management process of enterprises, using their rich experience and comprehensive service capabilities to help in-house counsels solve key problems in the whole process management. The "balance and focus" relationship means that in addition to considering legal and compliance issues, in-house counsels need to combine these issues with business interests of enterprises and the process management of different departments, and even need to coordinate the work of lawyers with enterprise management thus balancing the demands of all parties. However, TMT lawyers focus more on solving legal and compliance issues. In-house counsels and TMT lawyers work together to provide an all-round legal guarantee for the business success of enterprises, so that legal requirements are met and commercial interests are achieved.

Q5: What impressed you the most about being a TMT lawyer? Could you share with us a real case?

TMT lawyers need to have the ability to communicate with technical professionals. It does not mean that lawyers need to become engineers in order to have this ability; rather it requires lawyers to have engineer's thinking logic and be able to translate engineer's language into legal language.

In the process of sorting out the overall compliance issues for a big data marketing company, we came to realize that lawyers need to develop strong business acumen. The business model of the company is to build a consumer behavior model through big data analysis, and to use several major characteristics indicators of consumers to provide its business users with product development and marketing services. Since the company mainly conducts accurate pushes through some traffic platforms, the company and the traffic platforms carry out the unified settlement of costs, and then the company and advertisers carry out the settlement of costs according to the advertising effect. The company's technical staff described the model as "traffic distribution" or "traffic procurement", which made the counterparty think that the company's main business model was the citizen's personal information transaction. After analysis, we believe that it is difficult to give a legal definition for such a description, and the description may easily lead to confusion. The actual legal relationship is the entrusted publishing of advertisements. In this way, we helped straighten out the legal logic of the entire company's business.

ZHANG XINYANG (ANDREW), PARTNER AT COMMERCE & FINANCE LAW OFFICES

Q1: What's your idea about the relationship between Chinese TMT lawyers and China's new economy?

The relationship between China's new economy and TMT lawyers is like the relationship between water and fish. TMT lawyers are growing and on the rise with the takeoff and development of China's new economy. As the new economy is increasing in terms of the proportion and status in China's economy, TMT lawyer's position in the legal community has gradually improved.

China's TMT lawyers are faced with historic opportunities – the increase of the proportion and status of the new economy in China poses tremendous opportunities in industries related to the new generation information technology. We can reasonably expect China's new economy to continuously maintain a high-speed growth and leading position for a long time.

能力不是要求律师成为工程师，而是需要律师具有工程师思维，并且能够把工程师的语言翻译成法律语言。

我们在为某大数据营销企业进行整体合规梳理过程中，深刻地感受到了律师需要具备对商业模式精准把握的能力。该企业的商业模式为通过大数据分析、构建消费者特征模型，并采取多个较为显著的特征指标，为商业用户的产品开发、市场营销提供服务。由于该公司主要通过一些流量平台进行精准推送，公司与流量平台之间进行费用的统一结算，公司与广告主之间再根据广告效果进行费用结算。公司的技术人员对该种模式的描述为“流量分发”与“流量采购”，这一描述使得交易对手方认为公司业务模式中不存在公民个人信息交易问题。我们进行分析后，认为这样的表述在法律上很难定性，且容易产生歧义。其实质的法律关系应该是广告的委托发布行为，从而理顺了整个公司业务的法律逻辑。

对话通商律师事务所合伙人张新阳律师

Q1：中国TMT律师与中国新经济的关系

中国新经济和TMT律师是水和鱼的关系，TMT律师正是随着中国新经济的起飞和发展而逐渐成长和崛起，水大则鱼大。随着中国新经济在中国经济中所占比例和地位的提升，TMT律师在律师行业中的地位也逐渐提升，发展逐步壮大。

中国TMT律师目前面临非常好的历史机遇。正如上述的TMT律师和中国新经济的关系，目前中国新经济在中国经济中所占的比例在提升。我们可以合理预期，在很长一段时间内，中国新经济会继续保持高速增长和领先地位。因此，TMT律师可以在很长一段时间后随着中国新经济的持续增长而继续扩大。此外，中国新经济领域的很多企业已走在了世界前





预见互联网产业重要趋势，提前布局新类型法律服务—— 专访锦天城高级合伙人吴卫明律师



吴卫明
锦天城律师事务所高级合伙人
Victor Wu
Partner of Allbright Law Offices

预见互联网产业重要趋势，提前布局
新类型法律服务——专访锦天城高级合
伙人吴卫明律师

锦天城律师事务所的高级合伙人吴卫明律师是国内比较早专门研究电子商务学的专业人员之一。吴律师在法律、金融以及电子商务领域的复合化专业背景，以及长期对于经济学理论的深入研究，使他对互联网行业的法律发展，包括制度变革，有着极强的预见性。

吴律师拥有法律学士和硕士学位，并在2007于西安交通大学获得电子商务学博士学位。2006年，吴律师更是发表了国内关于中国互联网法院结构设想的首篇论文。

“电子商务实际上是产业经济学的一个分支，我主要是研究电子商务的立法和电子政务的立法，以及相关的规则”，他说道。“当时的学习为我在电子商务、电子政务、互联网金融、大数据，包括现代通信技术在金融和其他各行业的应用等领域，打下了非常好的基础认知。”

在加入锦天城律师事务所之前，吴律师也有着在检察院及法院工作的经历。这样的复合化专业背景和知识结构，令吴律师在中国律师行业中脱颖而出。

“前几年互联网金融比较风靡的时候，我们就提出了互联网金融最终会以

银行、证券、保险公司这样的持牌金融机构来作为它的主体”，吴律师说道。“这两年我们也看到信息技术在金融机构的应用已经逐步地普及了，这个也是领先行业的一个预判。”

基于这样的预判，吴律师对自己的业务也进行了提前布局。例如，他较早地认识到，有电子商务的场景，就一定会衍生出金融需求和金融服务，“所以电子商务达到一定量之后，围绕电子商务交易场景的金融服务一定会爆发式增长，这也是我们在金融科技领域布局的一个重要理由”。

另外，4G时代后，移动互联的实现，会使得所有社会主体自身的数据量成几何式激增，从而带来原有商业模式的变革。

“原有商业模式的变革，必然带来法律关系的重大的变更，这个里面就会产生各种新类型的法律服务”，吴律师说道。“所以我们在大数据这个领域的布局是比较早，所以也就有机会去服务一些顶级客户。”

吴律师认为，虽然律师们学习专业知识的难度在下降，行业的壁垒却还是在提高。

“人工智能的检索系统，以及一些各种各样的专家辅助系统，会为我们提供很多支持，尤其是对于一些新入行的律师”，吴律师解释道。“所以说学习专业法律知识本身的难度在下降。”

但与此同时，新兴行业也突破了传统，物联网时代在带来新知识的同时也带来了交易模式与环节的变更。伴随知识迭代的速度、信息汇集的速度和数据量的激增，可能会出现的全新商业模式会给人们的认知带来巨大的障碍。

“如果不能深刻地理解这种新的商业模式所带来的社会环境变化，甚至连新的商业模式本身都无法看懂的话，那么即便对法律知识掌握得再好，无法运用在新商业模式上，律师也是很难找到解决方案的。”

“结合这两者，我对高新技术领域法律服务的理解是：好的律师一定要先在高新技术领域，成为一个行业专家，或者至少具备和行业专家对话的能力”，吴律师继续道。“同时，他必须是一个对法律的理解非常精准的人，可能正确的适用法律，给客户降低风险的方案。”

谈到新技术的发展会为律师带来的价值与新业务机会，吴律师总结了五点。

第一，新模式面前，律师相当于民间的规则制定者。“人们了解一种新业态是需要时间学习的，社会需要时间学习，立法机关也需要时间学习，在大家无从下手的时候，律师的价值是非常高的”，他说道。

第二，新的模式下，商业流程趋于隐蔽，带来新的风险。“如果律师不懂行业，就无法看到背后所隐藏的这些东西，就可能会给客户一个非常有风险的建议，或者无法涵盖全部的风险”，吴律师说。

第三，信息技术和高科技会令社会活动和交易自动化。“自动化流程所产生的责任，或造成的损害，由谁来承担？法律人士必须用自己的智慧为客户提供一个解决方案。”

第四，怎么去理解新法律法规。“律师必须具备很强的法律解释能力，在没有成熟的法律体系时，解释给司法机关，哪一种方案是更合理的。”

第五，新的经济环境下，监管的深度和广度都是存在不确定性的。“这个时候律师如何为客户提供一个好的解决方案就变得很重要”，吴律师最后说道。

So TMT lawyers will continue to develop along with the growth of China's new economy. In addition, many enterprises in China's new economy industries are at the forefront in the world, and there are already many large Chinese Internet companies with great influence and a leading position in the world, such as Tencent, Alibaba, Baidu, Xiaomi and Toutiao. I believe that China's TMT lawyers will establish their presence and have greater influence in the world along with the expansion of these Internet companies in the global market.

Q2: What makes a top TMT lawyer?

Many enterprises in the TMT sector already saw rapid business development from the start-up stage, and their business models show big varieties. And these enterprises are often faced with regulatory uncertainty and regulatory blank areas. In this context, TMT lawyers need to have an in-depth understanding of the business models of their clients, and meanwhile have rich hands-on experience in handling laws and regulations related matters and dealing with regulatory institutions and industry organizations. They also need to have creative and forward-looking thinking, be able to predict various possible legal risks and come up with measures to deal with those risks, and provide their clients with practical and future-oriented business solutions.

Q3: Will the "Big Four" or legal technology companies become direct competitors of TMT lawyers?

In terms of some basic legal work in the TMT sector, such as drafting legal contract documents, customer intellectual property declarations and due diligence, the "Big Four" or legal technology companies have become de facto competitors of TMT lawyers because of their lower cost and higher efficiency. However, within a predictable period of time, professional TMT lawyers are still needed for high-end legal services that require forward-thinking, high customization, rich hands-on legal experience and good judgment, such as mergers and acquisitions, listing and litigation. The "Big Four" or legal technology companies will not become competitors of TMT lawyers in these areas in the short term.

Q4: How could TMT lawyers and in-house counsels optimize their performance through division of work and collaboration?

TMT lawyers and in-house counsels need to work together closely and meanwhile have good division of work. Before a new economy enterprise needs to implement a new business model and enter a new business area, TMT lawyers will need to work closely with in-house counsels to discuss about possible legal issues and propose compliance solutions. In other areas, the relationship between lawyers and in-house counsels is for the most of the time when there is a specific project need in the enterprise, the two parties (TMT lawyers and in-house counsels) would get together and start to find the solution to a specific issue. But in the new economy sector, TMT lawyers need to keep abreast of the trends in enterprises and industries and provide their clients with forward-looking insights. The key role of TMT lawyers is to help navigate business through changes and risks.

Q5: What impressed you the most about being a TMT lawyer? Could you share with us a real case?

What impressed me the most about being a TMT lawyer is that we need to be very creative. We need to be able to creatively solve problems based on the business needs of our clients. Huaxing Capital, a leading financial institution serving China's new economy, is our client. In the process of list-

列, 目前已经存在诸多在世界范围内具有影响力和领先地位的大型互联网公司, 如腾讯、阿里巴巴、百度、小米和今日头条等, 中国的TMT律师也必将随着这些互联网公司的脚步而迈向世界范围, 未来会在世界范围内具有更高的影响力和地位。

Q2: 成为顶尖TMT律师的“高门槛”

TMT领域的很多企业从创业阶段开始, 其业务发展非常迅速, 商业模式变化也层出不穷, 企业经常面临的是监管不确定性以及监管空白领域。在这种情况下, TMT律师需要深刻了解并结合客户的商业模式, 同时对监管机构和行业的既有法律法规具有丰富的实操经验, 以创造性的思路和前瞻性的思考, 预判各种可能的法律风险以及对策, 给予客户符合实际和未来的商业解决方案。

Q3: “四大”或法律科技公司, 会是TMT律师的直接竞争对手吗

对于TMT领域一些基础性法律工作, 比如法律合同文件起草、客户知识产权声明和法律尽职调查等, “四大”或者法律科技公司已经成为了事实上的竞争对手, 因其具有更低的成本以及更高的效率优势。但在可预测的期限内, 对于具有前瞻性、高度个性需求、以及需要丰富法律实际操作经验和判断的高端法律服务领域, 比如并购、上市和诉讼业务, 还是需要专业的TMT律师。“四大”或者法律科技公司在这些领域, 短期内不会是TMT律师的竞争对手。

Q4: TMT律师与企业法务的分工协作如何能实现效能最大化

TMT律师尤其需要和企业法务之间进行紧密分工协作。在新经济企业需要开展新的商业模式和进入新业务领域之前, TMT律师就会提前介入, 与企业法务一起沟通各种法律问题并提供各种合规解决方案, 二者之间是极其紧密的互动体。而其他领域很多律师和企业法务之间的关系是在企业存在一个具体项目需求时, 才开始探讨如何解决问题。但在新经济领域, TMT律师需随时关注企业和行业动态, 前瞻性地为客户提供最好的洞见。TMT律师发挥的关键作用是保驾护航, 如同巡洋舰护航航空母舰。

Q5: 结合案例来谈作为TMT律师的最深体悟

最深的体悟是要具备高度创造性, 结合客户的商业需求, 总能以创造性方式解决客户问题。服务中国新经济的领先金融机构华兴资本是我们的客户, 在其香港上市过程中, 面临其人民币基金业务如何搭建协议控制架构的法律难题。该案例是香港联交所历史上第一家人民币基金业务搭建协议控制架构的案例, 存在如何符合香港联交所协议控制架构企业上市监管指引要求的、未曾遇到过的各种新问题, 也无过往案例可供借鉴。对此, 我们充分结合客户的人民币基金业务的商业模式特点, 根据我们

What does the new economy mean to legal professionals? – An interview with Commerce & Finance Law Offices Partner Andrew Zhang

新经济发展为法律人带来的机遇及挑战-专访通商律师事务所合伙人张新阳律师



张新阳 通商律师事务所合伙人
Andrew Zhang,
Partner of Commerce & Finance Law Offices

Industries of the new economy is thriving in China. ALB and Commerce & Finance Law Offices' Partner Andrew Zhang discuss the opportunities and challenges the new economy has brought to legal professionals in this interview.

"The concept of a new economy can be understood as a feature of the Internet or the term 'TMT' in our new era," Zhang says. Speaking of the new economy in China, he says: "China's new economy is developing at a very fast pace. China is actually the world's leader in a lot of areas, with the exception of some cutting-edge core technologies."

Zhang points out that the traditional legal service model is quite different from that of the new economy industries. Stable systems in the more traditional industries and relatively complex regulatory systems have enabled lawyers who have been rooted in this field for many years to familiarize themselves with and quickly apply relevant regulations.

"The traditional service model is more like a transfer of knowledge: years of experience has allowed lawyers to meet the clients' demand, they can provide corresponding services quickly. In essence, this is a passive service model," he says. "But in the new economy, lawyers are met with new problems that have not been solved before."

"In the new economy, the experience accumulated by a lawyer in the past is usually not helpful. At this point, he needs to completely quit the old way of thinking. It is also because every time he is faced with problems that cannot be solved by past experience, that he must go on to innovate and come up with novel solutions."

Zhang also requires himself to have a thorough understanding of his clients' business models and industry chains.

He says: "The understanding of a client's business model is, in a sense, even greater than the legal knowledge and experience." This knowledge and the innovative thinking of a lawyer are the key to helping him generate innovative solutions.

Although Zhang entered the Internet-related business a long time ago, he has devoted himself to the new economy field since 2010. He believes that to be a good TMT lawyer, "you need to put all your energy into it first, and then stick to it."

A large part of the messages in Zhang's inbox every day is subscriptions to various industry newsletters. He spends a certain amount of time each day to inform himself of the latest development in the industry. In addition, he often meets with clients and other industry leaders so "their wisdom and insights can inspire me," he says. "If you stick to all of this, you will only get better and better at your job."

Zhang believes that the new economy is still in its infancy, and will continue to grow in the next 10 to 15 years. "This is an era of the Internet of things. Under this general trend, I will continue to focus on the new economy."

Zhang tells ALB that he will also pay special attention to digital health care and ABC (artificial intelligence, big data, cloud computing) sub-segments. "But there is always something new in the market, which is unpredictable. We will adjust our legal services according to the state of the market."

中国的新经济产业蓬勃兴旺，ALB与通商律师事务所合伙人张新阳律师探讨了新经济发展为法律人带来的机遇及挑战。

"新概念的概念可以理解为互联网或者TMT这个术语在我们新时代下的一个特征表达",张律师说。谈起对中国新经济的感受,他说道:"中国的新经济发展速度非常快,除了一些核心的尖端技术,剩下的领域,中国其实已经是世界领先的了。"

张律师指出,传统的法律服务模式和新经济法律服务模式大不相同。传统领域稳定的系统和相对复杂的监管体系,使得在这个领域扎根多年的律师能够熟悉并快速运用相关法规。

"传统的服务模式就像知识的搬运:多年的经验积累已经让律师有了相关的知识储备,当客户提出需求时,律师可以提供相应的服务。在本质上讲,这是一种被动式的服务",他说道。"但是在新经济领域,律师每次遇到的都是此前无解的新问题。"

"在新经济领域,一位律师过往积累的经验通常是对他没有任何帮助的,这时他就需要完全抛离过往解决问题的方式。也是因为每次面临的都是过往经验解决不了的问题,律师就必须去不断创新。"

张律师还特别要求自己对客户商业模式和产业链细节有透彻的了解。

他说:"对客户商业模式的理解,在某种意义上,甚至大于法律知识经验。"律师背后深刻的知识积累和创新的思路,是帮助他们产生创新性的解决思路的关键。

虽然张律师很早就进入了互联网相关行业,但为了精益求精,他自2010年便全身心地投入到了新经济领域。他认为,想要做一个好的TMT律师,"第一点是要把所有的精力都投入到这里面,第二点则是要坚持。"

张律师的收件箱里,有很大一部分是各种行业资讯的订阅,他每日会花费固定的时间用来掌握实时产业资讯。另外,他也经常会与客户以及其他产业领导者聚会。"他们有智慧、有思想的见解,对我的启发非常大",他说道。"如果这些都坚持做下来,你就会门槛就会越来越高。"

展望未来,张律师认为,新经济方兴未艾,在未来至少10到15年之内会保持上升趋势。"现在是一个万物互联的时代,在这种大趋势下,我一定会继续专注于新经济。"

张律师告诉ALB,他也会特别关注互联网医疗和ABC(人工智能、大数据、云计算)这两个细分赛道。"但市场总是会有新兴的东西,这无法预测。我们会根据市场的状态,对法律服务进行调整。"



与时俱进始于观念上的改变——

专访北京天驰君泰律师事务所高级合伙人孙建红律师



孙建红
天驰君泰律师事务所高级合伙人
Jianhong Sun
Senior Partner of Tiantai Law firm

作为中国取得专业法律背景进而专注版权相关产业领域的第一人，天驰君泰律师事务所高级合伙人孙建红律师在文化创意产业的法律服务领域有着广泛的影响。他在国内影视业、音乐产业、新闻出版业、互联网相关产业等方面的法律服务市场中，具有着领先的地位，代理了众多有业界影响力的案件。

1985年毕业于北京大学法律学系的孙律师，加入了即将成立的中国国家版权局，开始了从事版权专业工作的职业生涯，后到英国及德国深造。

在中国国家版权局工作期间，孙律师参加了著作权法和配套法规的起草和修改工作，参加了中国恢复关贸总协定缔约国的谈判工作，参加中美、中欧、中日知识产权谈判，并参加了中国音乐著作权协会、中国版权保护中心、中国音像著作权集体管理协会、中国文字著作权协

会、中国电影著作权协会的创建工作。

1998年，孙律师开始以律师的身份在当时刚起步的中国TMT产业继续深耕。

“当时中国在相应的领域实际上没有完善的法律规定，我们要做的是从各个行业的角度帮助建立法律上的保护体系，从高端的平台上介入到相关的不同行业”，他告诉ALB。

除了律师这个身份，孙律师还积极投身行业发展与立法相关工作，不仅担任全国律协知识产权委员会委员、北京市律师协会第八届著作权法律专业委员会主任（现担任名誉主任），还曾担任国家新闻出版广电总局法律顾问、中国音像与数字出版协会首席法律顾问、中国音像集体管理协会理事、中国文字著作权协会理事、中国电影著作权协会理事，以及华谊兄弟传媒股份有限公司、中南文化、咪咕集团、人民文学出版社、人民音乐出版社、中国大百科全书出版社等众多企事业单位的常年法律顾问。

此外，孙律师还常年担任中国人民大学律师学院兼职教授、中国政法大学客座教授、中国新闻出版研究院客座研究员。

2012年6月，中国政府在北京承办了在全球知识产权界最具影响力的世界知识产权组织保护音像表演外交会议。该次会议成功签订了“视听表演北京条约”。孙律师应“老东家”国家版权局之邀，担任了组委会的法律顾问团团长。

从业20多年来，孙律师和他的团队在三个业务领域一直保持着绝对的行业地位：影视、新闻出版与音乐。

“在影视方面，我们应该是最为领先的，因为在各个方面——包括制定整个规章制度、行业规范，乃至中国 and 境外影视剧合拍的版权处理，我们都是最

早介入的”，他说道。“这也就给我们带来了最为独特的优势。”

电影《大腕》是孙律师介入的第一部中外合拍的电影。“相关的中英文合同文件摞起来有一尺厚，其中非常关键的内容就是版权”，他回忆道。“这部电影开启了后来较长时间内采用的中外合拍电影，境内投资方享有中国大陆地区版权，境外投资方享有境外版权的做法。”

不仅如此，孙律师还早在《大腕》这部电影剧本创作的过程中就进行了内容的法律审查，更在其网络传播中代理了相关的诉讼，影响了很多后续类似的国内影视作品网络维权案件。

电影《天地英雄》是美国哥伦比亚电影公司和国内投资方合资拍摄的一部大投资的电影。电影首映式的前三天，北京北方瑞年国际影视文化发展有限公司和《英雄如花》创作者周晨以《天地英雄》侵犯其著作权为由，向北京市第二中级人民法院提出诉前停止侵权的诉前禁令和证据保全申请，并要求法院禁止该片举行首映活动。

申请人认为，《天地英雄》剧本中有三分之一的内容剽窃了《英雄如花》的剧本。鉴于《天地英雄》首映式将于近期举行，故请求法院依法查封《天地英雄》电影的拷贝及影像资料、各稿剧本原本；制止被申请人在故宫端门举行首映式活动。

孙律师作为被申请人何平导演和华谊兄弟太合影视投资有限公司的代理人参加了诉讼，向法院提供导演的拍摄投资情况，以及电影剧本创作的证据，并提出申请人诉讼程序不符合法律规定，其诉前禁令的申请也未提供担保的重大瑕疵的意见。

法院经审理，最终依法驳回了申请

人的申请，电影《天地英雄》首映式正常举办。

“这个案件影响重大，不仅因为电影是中外合拍，投资额巨大，而且也是著作权法修改后设定诉前禁令制度最早的相关申请。在接到法院通知后的两天里，我和华谊兄弟王中磊、导演何平和演员姜文并肩作战，最后取得令人满意的结果，当时我们四人击掌相庆。”

再说一部家喻户晓的2007年贺岁档影片《集结号》，该片刷新多项国内大片的票房纪录，但该片在获票房、口碑双丰收的同时，也引发了一起奇特的涉嫌抄袭的“构思权”侵权案。

2008年春节后，当事人接到山东淄博中级人民法院的传票和起诉状，诉电影《集结号》涉嫌抄袭剽窃。原告张闻宇称，影片《集结号》虽然是根据杨金远的短篇小说《官司》改编，但其部分情节及构思已经脱离了原著，与自己8年前创作的一篇纪实性文章《老八路的神秘档案》十分相似。因此，他以自己作品的“构思权”受到了侵犯为由，将影片《集结号》的制片人王中磊、导演冯小刚、编剧刘恒以及放映电影的淄博全球通电影城起诉至法院。

孙律师作为被告方的代理人出庭应诉。在孙律师看来，著作权法所保护的是作者具有独创性的表达，而不保护作者的思想或者观点。原告诉称的构思不属于著作权法保护的表达，不属于著作权法保护的客体。

“判断两部作品是否抄袭要适用‘接触和实质性相似’的基本原则。而电影《集结号》及其剧本在创作和拍摄中既未接触原告作品，更没有在表达上的实质性相似。故请求法院依法驳回原告的诉讼请求。”

最终，法院经审理后，判决驳回原告的诉讼请求。

除此之外，孙律师在衔接电影与金融产业，以及著作权法涉及到的业务领域也有着丰富的实战经验。

在新闻出版领域，包括图书、报纸、杂志出版等，孙律师及团队的成绩也非常突出：“国内顶尖的图书出版社，超过一半是我们的客户。”

在音乐产业领域，孙律师参加创办的中国音乐著作权协会(Music Copyright Society of China)和中国音像著作权集体管理协会(China audio and video copyright collective administration)，与中国众多有影响力、有代表性的音乐人都广泛地建立了关系。

“这就使得我们和很多中国的音乐家和唱片公司形成了一种天然的近距离关系”，孙律师说道。

他认为，无论是中国还是国际的音乐产业，现在都正受到互联网的影响，所以对于互联网发展的学习与研究，以及适应新科技带来的改变，对于律师来说也就尤为重要。

孙律师说：“传统音乐产业受到的主要冲击有两个，一个是有载体的盗版，比如侵权盗版的影碟。但是随着互联网技术的应用和发展，音乐开始在网络上传播，另一个冲击就是大家没有形成愿意付费享受音乐的社会环境。”

但近几年，中国线上付费音乐产业有了长足的发展。据孙律师介绍，经过努力，中国网络付费音乐的正版率现已达到约90%。

“我觉得这个是一种趋势，音乐作品的使用、传播过程中产生的最大变化还是互联网的环境造成”。孙律师在谈到网络

发展为TMT律师带来的挑战时说：“从观念上来说，律师首先必须接受新技术带来的变化，在观念上要有所改变。其次是要牢记，如果一个律师现在还没有把工作重点放到网络和网络环境下文学艺术作品的使用上，那么这样的律师就很快会被淘汰。”

随着与网络相关的科技因素越来越多，孙律师强调，相应科技知识的学习，对于一个律师保持和提高其业务操作能力而言，至关重要。“不能够墨守成规，不能够把过去自己已经取得的一些成绩当作现时可以应对一切的能力。”

“无论是从观念，从意识上，乃至于自己的知识储备和法律的操作，我们的业务的这种能力操作能力的积累和提高，这都是最重要的”，孙律师总结道。

在孙律师的成功案例中，他本人的经历与经验固然起到了重要的作用，但在他身后，也有着一个个他悉心建设起来的、庞大的团队支持系统。

天驰君泰TMT专业团队的律师数量已经达到60位。借助天驰君泰事务所庞大的平台，不同的团队形成了一个整体的法律服务平台。

“作为高级合伙人，我在整个TMT团队里起到一个领导组织和协调的作用。当我们涉及到其他业务方面时，比如投融资、并购、上市等，我们都会与专门的团队有密切的合作”，他说道。

地址：北京市朝阳区北辰东路八号汇宾大厦
ADD: F6/A, North Star Huibin Plaza, No.8
Beichen East Road, ChaoYang
District, Beijing, China.
邮箱：sunjianhong@tiantailaw.com

ing in Hong Kong, it was faced with the legal problem of how to set up a VIE (Variable Interest Entities) framework for its RMB fund business. That was the first case in the history of the Stock Exchange of Hong Kong (SEHK) in which the VIE framework of RMB fund business has been established. In this case, there were many new problems that were not encountered before and there was no previous case can be used for reference in terms of how to meet the requirements of the supervision guidelines for listed companies of the VIE framework of the SEHK. In this regard, by taking into full consideration of the characteristics of our client's RMB fund business model and based on our rich hands-on experience related to the regulatory guidelines of the SEHK, we creatively solved many problems in building the VIE framework, and created a precedent for the subsequent listing of China's RMB fund business companies abroad.

XIA ZHIHUA, PARTNER AT TIAN YUAN LAW FIRM

Q1: What's your idea about the relationship between Chinese TMT lawyers and China's new economy?

On the one hand, the growth of TMT lawyers in China is driven by the rapid development of China's new economy, and Chinese TMT lawyers have become an influential force in the legal profession. On the other hand, through extensive exchanges with peers overseas, Chinese TMT lawyers have gradually accumulated a set of practicing techniques (including legal terminology and texts) that are forward-looking and suitable for China's existing legal system, and provide sound legal protection for the development of China's new economy. There is a saying that "The times produce their heroes". I think Chinese TMT lawyers are lucky to be in an information technology era of accelerated scientific and technological innovation. We should grasp this opportunity to make greater achievements.

Q2: What makes a top TMT lawyer?

I think there are roughly two points: one is to understand at least the background knowledge of various technologies in the TMT sector, and is familiar with various forms of the TMT industry; and the other is to be familiar with the laws in the TMT sector (laws in the broad sense), including both the laws written in textbooks and the laws applied in practice. An experienced Chinese TMT lawyer would warn the beginners in this sector that focusing only on the laws (in the narrow sense), administrative regulations, local regulations and departmental rules is far from enough for a TMT lawyer to provide correct legal advice or project solutions because there are still a large number of policies or non-normative opinions that restrict the activities of market participants in the TMT sector.

Furthermore, to become a top TMT lawyer, you need to excel in other areas, such as having excellent English skills and the curiosity to explore new things. Just imagine this: How could someone who hates WeChat or Douyin become a good TMT lawyer? Also you need to maintain some connections in the investment community and the entrepreneurial circle. After all, lawyers can only demonstrate their value in the process of serving customers.

Q3: Will the "Big Four" or legal technology companies become direct competitors of TMT lawyers?

If there is no industry entry barrier, it is possible that the "Big Four" or legal technology companies will become direct competitors of TMT lawyers. But I don't think that would happen very quickly because the accumulation of professional knowledge requires a process – it usually takes at least

对于香港联交所协议控制上市监管指引要求的丰富实践经验，创造性解决了搭建协议控制架构的诸多问题，为人民币基金业务公司后续如何在境外上市创造了先例。

对话天元律师事务所合伙人夏智华律师

Q1：中国TMT律师与中国新经济的关系

一方面，是中国新经济催生了中国TMT律师，并将中国TMT律师锻造成几十万律师大军中一支颇具影响力的力量。另一方面，中国TMT律师通过与国外同行的广泛交流，逐渐积累了一套既适应中国现有法律体系又兼具一定前瞻性的执业技术（包括法律术语和文本），为中国新经济的发展提供了可靠的法律保障。“时势造英雄”，中国TMT律师赶上了一个科学技术加速革新的信息化时代，可谓生逢其时。

Q2：成为顶尖TMT律师的“高门槛”

横亘在TMT律师之前的“高门槛”大致有两个：一是至少了解TMT领域中各项技术的背景知识，并熟悉TMT领域的各种业态；二是熟悉TMT领域的法律（此处指广义的法律），既包括书本上的法律，也包括实践运作中的法律。一个经验丰富的中国TMT律师会告诫初学者：仅关注法律（此处是狭义的法律）、行政法规、地方性法规、部门规章远不足以确保TMT律师能提供正确的法律意见或项目解决方案，因为在该领域，还有大量的政策或非规范性意见在制约着市场主体的各项活动。

此外，成为顶尖TMT律师还需在别的方面胜人一筹，比如出色的英语能力，以及保有探究新生事物的好奇心，试想：一个厌恶微信或抖音的人，怎么可能会成为优秀的TMT律师？再有就是在投资界和创业公司圈子里保有一定的人脉资源，毕竟律师需要在服务客户的过程中方能体现出自身的价值。

Q3：“四大”或法律科技公司，会是TMT律师的直接竞争对手吗

如果没有行业准入壁垒，“四大”或法律技术公司有可能会成为TMT律师的直接竞争对手，但我觉得这一点不会很快发生，因为专业知识的积累需要一个过程的，少则三年、多则五年。

Q4：TMT律师与企业法务的分工协作如何能实现效能最大化

企业法务更偏重于从日常管理角度来承担企业的法律事务，随时与业务部门保持协同性；从终极意义上讲，企业法务是企业管理层实现本企业管理目标的重要环节之一。而借助TMT律师的专业优势，企业法务可把时间和精力更多地集中在内部事务管理上，提升企业的管理效率。因此，TMT律师必须

three years but no more than five years.

Q4: How could TMT lawyers and in-house counsels optimize their performance through division of work and collaboration?

In-house counsels focus more on dealing with legal matters from the perspective of day-to-day management of enterprises, and maintain coordination with business departments at all times. In the ultimate sense, in-house counsels are one of the important links for enterprise management to achieve its business management objectives. With the professional help of TMT lawyers, in-house counsels can concentrate more on internal management to improve the efficiency of enterprise management. Therefore, TMT lawyers should be the role that provides strong support for in-house counsels from the legal technology perspective, including the preparation and review of legal documents, the identification and prevention of major legal risks, the design and implementation of investment and financing programs, among others. To summarize, speaking about the functions at the enterprise level, TMT lawyers should play the supporting role and give way to in-house counsels playing the leading role; but when working together with in-house counsels, TMT lawyers should make it clear where their strength is.

Q5: What impressed you the most about being a TMT lawyer? Could you share with us a real case?

About 10 years ago, the TMT sector was still in an early stage in China.



要在法律技术方面成为企业法务的坚强后盾，包括法律文本的制作与审查、重大法律风险的识别与防范、投融资方案的设计与实施等等。一句话：在企业层面，TMT律师的功能要让位于企业法务，最好学会“隐”；而在企业法务那里，TMT律师必须彰显自己的存在感，要做到“显”。



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Back then most of the projects we received were VIE structured. I was impressed that an ordinary overseas financing project of an Internet company often involved lawyers from four or five law firms. In order to accommodate the time differences of overseas participants, the conference calls often lasted until late at night. And usually one conference call would involve over a dozen of lawyers. Due to the popularity of VIE structure, TMT projects must be operated in an international environment in order to succeed. It also makes Chinese TMT lawyers are of international style since they appeared in China. In the context of the implementation of the reform and opening up strategy and the Belt and Road initiative, TMT lawyers should have a broader view on the global picture and play a more active role in the world community.

SUN LIQING, SENIOR PARTNER AT RONLY & TENWEN PARTNERS

Q1: What's your idea about the relationship between Chinese TMT lawyers and China's new economy?

China now has entered the era of TMT Plus (TMT+) and China's economic development is actually centered on the development of the TMT industry. The integration of all-round terminals should be completed in the near future. By then, we should be able to obtain various value-added services through a portable terminal, such as music, film and television, live broadcasting, data management, identity information checking, travel management, and professional document retrieval. It will also be combined with mature VR technology. In addition, intelligent speech recognition technology will be further developed, through the popularity of small portable devices, there will no longer be a language gap. In light of such a tremendous upcoming industry change, there will be stricter requirements for TMT lawyers – excellent TMT lawyers should not only be proficient in intellectual property law, Internet civil law, Internet criminal law and other professional fields, but also have a profound understanding of basic network technology and Internet behavior culture. Since the TMT sector is a new momentum for the economic development, TMT lawyers should pay close attention to the development trend of the industry and meanwhile keep up with the trend of the times.

Q2: What makes a top TMT lawyer?

To be a good TMT lawyer, it involves at least two aspects. The first is about the legal aspect – a TMT lawyer must first be proficient in the relevant laws and regulations and have rich hands-on practicing experience. The second is that he or she needs to have good knowledge and understanding of the relevant industries and technologies, which is an implicit competitive advantage of a TMT lawyer.

Q3: Will the "Big Four" or legal technology companies become direct competitors of TMT lawyers?

In a sense, there is a competition between TMT lawyers and the "Big

Q5: 结合案例来谈作为TMT律师的最深体悟

约10年前，TMT业务在中国尚处起步阶段，当时我们接受委托的项目绝大多数为VIE架构。令我印象深刻的是，一个普通的互联网公司境外融资项目经常会牵涉四五家律所的律师。为迁就境外参会人员的时间差，电话会经常持续到深夜，一个电话会上动辄有十多名律师用英语轮番发言，好不热闹！由于VIE结构的流行，客观上使得TMT项目注定要在国际舞台上运作方能确保成功，这也使得中国TMT律师自诞生伊始具备了一定的国际范儿。在国家推行改革开放和“一带一路”倡议的背景下，TMT律师更应该放眼世界，以国际通行语言发出中国声音，在律师工作中努力扮演好中国信使的角色。

对话上海融力天闻律师事务所高级合伙人孙黎卿律师

Q1: 中国TMT律师与中国新经济的关系

目前已经进入到TMT+的时代，中国经济的发展实际上围绕着TMT行业的发展展开。在不久的将来，全能终端的整合应当已经完成，我们通过一个便携式终端就能获得音乐、影视、直播、资料管理、身份信息查验、出行管理、专业文件检索等各种增值服务，并会和成熟的VR技术相结合。此外，智能语音识别技术会进一步发达，通过小型便携装置的普及，语言的隔绝基本已不成为问题。在这样一场即将到来的声势浩大的行业变革中，对TMT律师的要求将更加严格。今后优秀的TMT律师不仅应精通知识产权法、互联网民法、互联网刑法等专业领域，对于基础网络技术和互联网行为文化也应具备高深的理解力，今后的时代必将是TMT的时代。TMT律师应密切关注行业领域发展趋势，紧跟时代潮流。

Q2: 成为顶尖TMT律师的“高门槛”

首先是法律层面的“门槛”，其次是对行业及技术了解的“门槛”，即需同时具备多个领域的知识。这种对多个领域皆有涉足的广阔视野，亦是TMT律师具备的一项隐性竞争力。

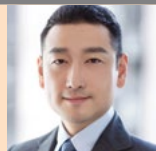
Q3: “四大”或法律科技公司，会是TMT律师的直接竞争对手吗

二者具有一定的竞争关系，但值得说明的是，“四大”和法律客户公司很多时候还是以律所的形式参与到竞争中来，也就是可能会自行设立律所或与其他律所建立紧密合作关系。从这个层面来说，TMT律师与“四大”或法律科技公司之间也可能产生合作关系。

Q4: TMT律师与企业法务的分工协作如何能实现效能最大化

TMT律师和企业法务是宏观与微观的关系：律师属于宏观层面，法务属于微观层面。只有内部法务才能明确公司当下的具体需求，并且对这些需求进

科创板创新焦点



杨科，
天元律师事务所合伙人，
yangke@tylaw.com.cn



谭清，
天元律师事务所合伙人，
tanqing@tylaw.com.cn



夏智华，
天元律师事务所合伙人，
xia@tylaw.com.cn

对于中国的资本市场而言，2019年注定要被载入史册，科创板的诞生和注册制的实行无疑将是最为浓墨重彩的一笔，诸多创新设计在业内外引起了广泛热议。天元作为资本市场的长期参与者，针对科创板带来的创新与改变，特别邀请专业律师从法律视角对科创板焦点问题进行简要分析和解读。

表决权差异安排的影响和挑战？

杨科律师：

影响1：促进科技创新企业融资

科技创新的巨大资本需求使得创业公司估值不断升高的同时，创始人的股权比例也不断被稀释，在同股同权的制度下，为了保证对公司的控制权，创始团队必须保证自身的持股比例，从而影响了资本的进入，表决权差异安排使得创始人（或运营团队）可以在持股比例相对较低（例如10%）的情况下通过表决权实现对公司的实际控制，有效促进了社会资本进入科技创新领域。

影响2：促进股权激励的实施

科技创新企业需要大量的人才，股权激励已经成为科技创新领域吸引人才的重要方式，很多大规模的科创企业都实施了股权激励，甚至实现了全员持股，那么表决权差异安排亦能够有效缓解员工持股对控制权的影响。

影响3：促进科技创新企业长期稳定发展

任何一家科创企业登陆资本市场均是里程碑式的事件，但成为一家上市公司本身也对实际控制人提出了更高的要求，差异化表决权安排，能够使得运营团队更好的维系对公司的控制，确保公司的经营策略在上市前后保持一致，促使其在相对较长的期间内稳定发展。

挑战1：门槛高可能导致无法适用或不愿适用

设置表决权差异化安排的拟上市公司，财务指标要求远远高于一般科创板上企业的基本财务指标；同时，持有特殊表决权股份的主体必须系公司董事（或其控制的主体），一旦丧失董事资格，相应的表决权优势相应丧失；虽然正式文件中删除了征求意见稿中关于稳定运行一年的要求，但现有的门槛仍可能将部分企业挡在特殊表决权股份的门外。

挑战2：与控制权挂钩可能导致接班难

按照现行规则，一旦控制权发生变更，全部特殊表决权股份将自动转换为普通股股份，这意味着如果上市公司的控制权是基于特别表决权股份而取得，那么其

控制权将无法通过股权的转让而转移，制度设计的初衷是为了保证上市公司控制权的稳定，但正常的控制权移交（例如原实际控制人由于年龄或身体原因希望将控制权移交给公司的其他核心人员）可能也会因此受阻。

科创板上市对同业竞争的要求有何变化？

谭清律师：

传统的上市板块（主板、中小板、创业板）对拟上市公司的独立性有严格规定，明确要求发行人与控股股东、实际控制人及其控制的其他企业间不存在同业竞争。传统上市板块的审核实践认为，“同业”是指竞争方与发行人从事相同或相似业务，发行人不得以细分市场、细分产品类别等方式来认定不构成同业竞争。若存在可能的相同或相似业务，一般而言，审核机关不太接受单纯的分析和解释，通常都会要求予以彻底清理，如：该等业务注入拟上市公司，竞争方向其他无关第三方出售该等业务，或者竞争方终止经营或注销。

科创板对同业竞争的审核有重大突破。

《科创板首次公开发行股票注册管理办法（试行）》发行条件规定：发行人与控股股东、实际控制人及其控制的其他企业间不存在对发行人构成重大不利影响的同业竞争。上交所不再对同业竞争一刀切，而是具体问题具体分析，在《科创板股票发行上市审核问答》专门列出是否构成“重大不利影响”的具体分析标准，允许发行人的相关关联方存在不构成重大不利影响的同业竞争，体现了注册制的审核理念。

科创板审核对IPO中员工股权激励有哪些创新内容？

谭清律师：

上交所发布的《科创板股票发行上市审核问答》对员工股权激励提出了创新内容：

1、员工股权计划的“闭环原则”，即员工持股计划不在首次公开发行股票时转让老股，并承诺自上市之日起至少36个月的锁定期。发行人上市前及上市后的锁定期内，员工所持相关权益拟转让退出的，只能向员工持股计划内员工或其他符合条件的员工转让。符合“闭环原则”的，在计算发行人股东人数时，员工持股计划视为发行人的一名股东，不需要穿透计算员工人数。

2、允许发行人存在首发申报前制定、上市后实施的期权激励计划，对期权计

划涉及的各项要素提出了具体要求：包括：激励对象、激励计划内容、行权价格、期权占总股本的比例、锁定期、信息披露等。

科创板对采用VIE架构的红筹企业面临哪些制度上的突破？

夏智华律师：

允许采用VIE架构的红筹企业直接登陆科创板，意味着这类外国公司无需再经历复杂的架构调整（也就是所谓“拆除VIE架构”）以实现回归A股。但一家外国公司通过在科创板IPO所募集的人民币资金如何被境内公司（“VIE公司”）使用，目前的各项制度并未提供令人满意的答案。回顾以往的实践，VIE架构下的特殊目的公司在境外通过私募方式获得的美元资金一般都是作为WFOE的增资款汇入境内的，但该资金如何被VIE公司使用，在实操中一直是个难题，究其原因，主要是因为WFOE和VIE公司之间无持股关系，WFOE资本项下的外汇资金不可以结汇给VIE公司使用，更不得直接结汇并支付给VIE的客户或相关第三方。在科创板的背景下，作为IPO主体的红筹企业（“发行方”）募集到的人民币资金，应该计入发行方的实收资本；发行方需通过购汇的方式，将其兑换成美元或其他国际流通货币，汇入发行方的境外外币银行账户；在向境内返程投资环节，该笔资金再按向WFOE增资的方式汇入中国境内。如果不对中国现行外汇管理制度进行大的调整，接下来的情形将与我们在前面所描述的境外私募股权投资项目中的遭遇一模一样：VIE公司仍无法自由使用WFOE资本项下的外汇资金。即便允许WFOE将外汇资本金结成人民币提供给VIE使用，这种迂回曲折的操作路径，也是极其缺乏效率的，属于典型的削足适履。因此，针对VIE架构下的红筹企业在科创板上市的情形，我国证券管理部门有必要会同外汇管理部门提供一种便捷高效的制度解决方案，允许发行方将所募集的人民币资金直接留存于发行方在中国境内开立的人民币专门账户中，并允许WFOE或VIE公司按一定的条件直接提取或使用。我们注意到国务院办公厅2018年3月22日转发的证监会《关于开展创新企业境内发行股票或存托凭证试点的若干意见》第四条中包含了这样的表述，“试点企业募集的资金可以人民币形式或购汇汇出境外，也可留存境内使用”，希望红筹企业科创板上市的细则能尽早出台，并在外汇管理方面提供更具灵活性和实操性的安排。

Four" or legal technology companies. But it is worth noting that the "Big Four" or legal technology companies often participate in the competition in the form of law firms, which means that they might set up their own law firms or establish close cooperation with other law firms. In this regard, TMT lawyers may also establish a cooperative relationship with the "Big Four" or legal technology companies.

Q4: How could TMT lawyers and in-house counsels optimize their performance through division of work and collaboration?

The relationship between TMT lawyers and in-house counsels includes two aspects: macro and micro. Lawyers take care of matters from the macro aspect while in-house counsels deal with matters from the micro aspect. In-house counsels are responsible for identifying the specific needs of the enterprises and sort them out; and meanwhile they could include the macro-suggestions proposed by TMT lawyers into the internal management system. TMT lawyers play a role of resource pooling. On the one hand, they are an important bridge for enterprises to communicate with other entities; on the other hand, they provide enterprises with solutions to their specific problems based on their rich practicing experience.

Q5: What impressed you the most about being a TMT lawyer? Could you share with us a real case?

Nanjing Branch of Beijing Focus Interactive Information Co., Ltd. v. Baidu Netdisk is a case that impressed me greatly. The case is currently in the second instance. We represented Nanjing Branch of Beijing Focus Interactive Information Co., Ltd. in the case. In the past, both the industry and legal community believed that online storage providers were just Internet space providers and they worked rather passively. But with the development of the Internet economy, the role of online storage providers has changed quietly and without being noticed. In this case, Baidu NetDisk not only provides the Internet storage services, but also provides instant transmission, offline download, sharing and other functions to directly provide and disseminate film and television works to which Sohu Video has the exclusive right of information network dissemination; therefore Baidu NetDisk has the subjective initiative to certain extent. The change in the definition of the Internet space service providers will lead to the change in their service model, and the Internet space service providers will increase their duty of care, otherwise they will bear tort liability. If we win the case, it will bring billions of yuan in revenue growth for the rights holders. In fact, the change of the role of the Internet space storage providers in this case is closely related to technological innovation, and also is an important breakthrough in the old concept. As a TMT lawyer, I think it is very important to keep up with the technological innovation and be ready to embrace new things.

SUN JIANHONG, SENIOR PARTNER AT BEIJING TIAN TAI LAW FIRM

Q1: What's your idea about the relationship between Chinese TMT lawyers and China's new economy?

China's new economy is actually a new economic model which makes full use of high-tech means in the relevant economic sectors and forms a model different from the existing economic model. TMT lawyers are always closely connected to intellectual property right laws. In fact, the entire development of the copyright sector is highly related to the increase in technology penetration. To provide high quality legal services, TMT lawyers need to be familiar themselves with the development of the relevant industries and technologies. This is an era that poses challenges but more opportunities. With the rapid development of

行分类梳理，同时也可以将TMT律师所提的宏观建议整合为内部管理层所关注的事项。TMT律师发挥着资源汇聚的作用，一方面是企业对外沟通的重要桥梁，另一方面也通过律师自身服务于众多企业、拥有多家企业运营和管理实际经验的总结，为企业遇到的具体难题提供建议。

Q5：结合案例来谈作为TMT律师的最深体悟

目前正在二审阶段的代理北京焦点互动信息有限公司南京分公司诉百度网盘案是一个令我印象较深的案例。以往，业界和法律界往往认为网络储存提供商仅是被动的空间提供者，但随着互联网经济的发展，网络储存提供商的角色早已悄然发生了变化。在本案中，百度网盘不仅提供网络服务存储空间，更具备秒传、离线下载、分享等功能来直接提供、传播搜狐视频所享独家信息网络传播权的影视作品，具有一定的主观能动性。这一认知的改变，将改变网络空间服务提供商的服务模式，空间服务提供商将提高注意义务，否则将承担侵权责任。如该案能够成功，将为权利人阵营带来数以十亿的收入增长。该案中关于网络储存提供商角色认定的改变，实际上与技术的革新密切相关，是原有观念的重要突破。作为TMT律师，我认为把握技术的脉搏、不因循守旧，非常重要。

对话北京天驰君泰律师事务所高级合伙人孙建红律师

Q1：中国TMT律师与中国新经济的关系

中国的新经济，实际上是相关经济领域充分利用高科技手段、形成区别于既有经济模式的一种新经济模式。TMT律师和知识产权法律历来结合紧密，实际上版权的整个发展都与科技渗透的加重高度相关。行业如此，TMT律师如若提供优质法律服务，更要对行业和技术的发展熟稔于心。伴随中国新经济的迅猛发展，优秀的TMT律师还要与时俱进、加深对新经济的理解，这既是挑战但更多是机遇，能助力TMT律师在不断化挑战为机遇的过程中、成为驾驭新经济法律操作能力的行家里手。

Q2：成为顶尖TMT律师的“高门槛”

经验和业绩。



China's new economy, good TMT lawyers should keep up with the times and have in-depth understanding of the new economy. By doing so, TMT lawyers may become experts in laws and regulations for new economy and are able to turn challenges into opportunities.

Q2: What makes a top TMT lawyer??

Experiences and deals.

Q3: Will the "Big Four" or legal technology companies become the direct competitors of TMT lawyers?


The wider application of artificial intelligence technology has actually spread to the field of legal services. Based on big data, legal technology companies form corresponding models and service products through system model analysis, which plays a very important role in finding out customers' needs. However, on the other hand, with those technical solutions, the "Big Four" or legal technology companies can only compete with TMT lawyers in certain areas, but the skills, methods and connections accumulated by top TMT lawyers in their rich practicing experience are the things that the "Big Four" or legal technology companies cannot catch up with in a short time. The future trend might be like this: excellent TMT lawyers use legal technology to improve their service capabilities or seek strong cooperation with legal technology companies.

Q4: How could TMT lawyers and in-house counsels optimize their performance through division of work and collaboration?

TMT lawyers and in-house counsels form an organic unity through division of labor and cooperation. In-house counsels formulate the basic legal framework of internal management system according to the characteristics of the enterprises, while the role and value of TMT lawyers are to help enterprises form the best institutional arrangement and legal framework in a broader perspective. If an enterprise may engage highly competent and experienced external lawyers in the process of development, it will greatly benefit the healthy development of the enterprise and the implementation of the best development strategy of the enterprise.

Q5: What impressed you the most about being a TMT lawyer? Could you share with us a real case?

A few years ago, my client Huayi Brothers studio and Stephen Chow Sing-chi's Bingo Group were in dispute over the movie "Journey to the West: Conquering the Demons" profits. The two sides had a dispute over how the movie's net profits generated in the mainland film market. Bingo Group is an overseas listed company and does not have enough knowledge of the relevant system in Chinese mainland film market – there is a film industry development fund in the mainland, and a certain percentage of box office revenue should be deducted as the film industry development fund. But many countries and regions do not have such a system; even the judges who tried the case were not familiar with this system. In the end, the parties concerned chose to reach a settlement based on future cooperation and better development.

Through this case, I learnt that to be good TMT lawyers, we should not only provide the parties concerned with professional legal services, but also to have a profound understanding of the relevant fields, industry systems and related laws, regulations and policies, so we could provide our clients with satisfactory services. 

Q3：“四大”或法律科技公司，会是TMT律师的直接竞争对手吗

人工智能技术的广泛应用实际上已辐射到了法律服务领域。法律科技公司基于对大数据的掌握，通过系统模式分析形成相应的模型和服务产品，对客户的服务需求是有很大作用的。但另一方面看，这些技术解决方案只在一定程度上对TMT律师构成业务上的竞争关系，因为顶尖TMT律师在长期法律实践中积淀出的技能、方法、人脉等因素，是“四大”和法律科技公司短时间内不可比拟的。未来的趋势可能是，高端TMT律师借助法律科技手段增强既有服务能力，或寻求与法律科技公司进行强强合作。

Q4：TMT律师与企业法务的分工协作如何实现效能最大化

TMT律师与企业法务彼此既有分工又有协作，形成有机整体。企业法务根据企业自身特点能更有针对性地制定内部管理制度的基础法律框架，而TMT律师的作用与价值是在更广泛的视野中帮助企业形成最佳的制度安排与法律架构。企业在发展过程中能够聘请到能力卓绝、经验丰富的外部律师，将对企业的良好发展起到非常大的助力，确保在方案落实层面符合企业的最佳发展战略。

Q5：结合案例来谈作为TMT律师的最深体悟

几年前，我的客户华谊兄弟与周星驰的威盈公司就西游降魔影片的票房分配产生纠纷，该案的核心分歧是双方对于中国大陆电影市场票房所得如何分配产生不同认识。微影公司是一家境外上市公司，对中国电影市场的相应制度缺乏足够了解：中国大陆设有电影事业发展基金，即票房收入要扣除一定比例作为电影事业的发展基金，但这样的制度在许多国家和地区并不具备。该案在审理当中，面对这样的问题，包括法官在内，都是比较陌生的。该案最后审理结果是辨明了是非，双方当事人基于未来合作和更好的发展，也选择达成和解。

透过该案，我发现：作为一名TMT律师，不仅要为当事人提供专业化的法律服务，而且必须对相关领域、行业制度及相关法律法规政策都具备深刻的了解和理解，这样才能做好令当事人满意的TMT律师。 