IR GLOBAL

MEET THE MEMBERS

ASIA-PACIFIC AND THE MIDDLE EAST & AFRICA

In the following pages you will hear from 19 of our members throughout the Asia-Pacific region and the Middle East & Africa, discussing the important updates and opportunities available in their jurisdictions. Our member firms featured retain a global support network across 165+ jurisdictions via their IR Global membership, sharing a common vision of working collaboratively to achieve unrivalled results for their clients. **Read more here** www.irglobal.com/publications

IR Global – **Going Beyond Expectations**

IR Global was founded in 2010 and has since grown to become the **largest practice area exclusive network of advisors in the world.** This incredible success story has seen the network awarded Band 1 status by Chamber & Partners, and featured in Legal 500 and in publications such as The Financial Times, Lawyer 360 and Practical Law, among many others.

The group's founding philosophy is based on bringing the best of the advisory community into a sharing economy; a system that is ethical, sustainable and provides significant added value to the client.

Businesses today require more than just a traditional lawyer or accountant. IR Global is at the forefront of this transition, with members providing strategic support and working closely alongside management teams to help realise their vision. We believe the archaic 'professional service firm' model is dying due to it being insular, expensive and slow. In IR Global, forward-thinking clients now have a credible alternative, which is open, cost-effective and flexible.

Our Founding Philosophies

- **Multi-Disciplinary**

We work alongside legal, accountancy, financial, corporate finance, transaction support and business intelligence firms, ensuring we can offer complete solutions tailored to the client's requirements.

- **Niche Expertise**

In today's marketplace, both local knowledge and specific practice area/sector expertise is needed. We select just one firm, per jurisdiction, per practice area, ensuring the very best experts are on hand to assist.

- **Vetting Process**

Criteria are based on both the quality of the firm and the character of the individuals within it. It's key that all of our members share a common vision towards mutual success.

- **Personal Contact**

The best relationships are built on trust and we take great efforts to bring our members together via regular events and networking activities. The friendships formed are highly valuable to the members and ensure client referrals are handled with great care.

- **Co-Operative Leadership**

In contrast to authoritarian or directive leadership, our group puts teamwork and self-organisation in the centre. The group has steering committees for 12 practice area and regional working groups that focus on network development, quality controls and increasing client value.

- **Ethical Approach**

It is our responsibility to utilise our business network and influence to instigate positive social change. IR Global founded Sinchi, a non-profit that focuses on the preservation of indigenous culture and knowledge and works with different indigenous communities/tribes around the world.

- **Trusted Partners**

Strength comes via our extended network. If we feel a client's need is better handled by someone else, we are able to call on the assistance of our partners. Our first priority is to always ensure the client has the right representation whether that be with a member of IR Global or someone else.

For further information, please contact:

Rachel Finch

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FOREWORD

APAC and Africa: **'bright spots' in the global economy**

APAC and Africa are diverse and multifaceted regions. APAC is set to contribute 70% of global growth whilst Africa is showing remarkable resilience in many sectors. We'll learn from our members what this means for those looking to do business in these regions.

APAC

APAC has recently been described by the IMF as a "bright spot in a slowing global economy". It is forecast to be the fastest-growing region in the world economy in 2023, with the IMF estimating that it will contribute 70% of global growth throughout the course of the year. China and India alone are set to contribute more than half of overall global growth, while the likes of Cambodia, Malaysia and the Philippines are returning to robust pre-pandemic growth.

It's an area of great opportunities, but it's also one of significant disparity. Divergence between its most advanced economies and developing markets continues to deepen, fuelled by a combination of unequal post-pandemic recovery and the ongoing impact of global geopolitical issues.

Governments across the region are taking action to further strengthen economic growth through cross-border trade, with accommodative policies and reforms emerging to fuel growth. M&A across the area slowed during and immediately following the pandemic, but as businesses across the region look to new opportunities to expand, cross-border M&A is back on the rise, with analysts expecting a noticeable increase in deal-making in the latter half of 2023 and beyond. India has overtaken both Japan and South Korea to become the second-largest investment destination in terms of deal value and has been reforming its laws to facilitate further investment.

APAC's economic strength is closely linked to technology, with the likes of South Korea, Singapore and the Taiwan Province of China representing major players in the global technology manufacturing market. While export of technology products has been dampened by slow international trade and raw materials shortages, manufacturing remains a core growth factor for the region, and is expected to see an uplift as external demand improves.

APAC is also the fastest-growing AI market in the world, with countries including China, Japan, South Korea, India and Singapore all announcing multi-million-dollar AI strategies to both drive AI and regulate its deployment – an area where many other established economies continue to lag behind. Singapore's Personal Data Protection Commission (PDPC), for example, is a government agency tasked solely with enforcing the city state's data privacy laws.

In Australia, Thailand and Indonesia, policy makers are in the process of creating initiatives to boost the adoption of AI in certain sectors. For businesses, this incoming regulation and focussed growth could present interesting commercial opportunities in this area, particularly for those looking to adopt AI as part of their global business strategy.

Within this technological landscape, data protection and privacy are naturally vital concerns. The APEC Cross Border Privacy Rules (CBPR) System was established to ensure that data privacy is protected across borders, with member states committing to comply with internationally-recognised standards, especially in the case of large cross-border data transactions. It's a step towards creating a robust multi-national digital landscape in which to do business, which also ensures that regulatory differences between jurisdictions don't block commercial opportunities between countries.

Africa

Despite an expected slowdown in economic growth this year, Africa is predicted to rebound strongly in 2024. Digging deeper, however, we can see a picture of a remarkably more resilient Africa.

While resource exports still account for significant proportions of GDP growth south of the Sahara, service sector growth is, at least in part, a reflection of an increasingly business-friendly legal landscape, particularly in the territories concerned in this publication. Whether it's shareholders' pacts being recognised in multiple territories under OHADA law, or South Africa inspiring commercial confidence with its robust arbitration sector, harmonisation of legal frameworks with globally-familiar standards is enabling investors to conduct transnational activity more easily than ever.

With so much cross-border trade into and flowing from these regions, understanding litigation and arbitration differences between these countries, and how they impact both digital and physical trade, is essential to successfully doing business here. In this publication, IR Global members across APAC and Africa share their expertise and insight into these complex regions that carry vast potential. With topics ranging from how foreign arbitration is recognised in certain jurisdictions to ensuring effective governance when doing business, members cover a broad range of topics on both commercial and personal issues, providing unique first-hand insight into the multifaceted commercial landscape of these regions.

Editor

Charlotte Delaney

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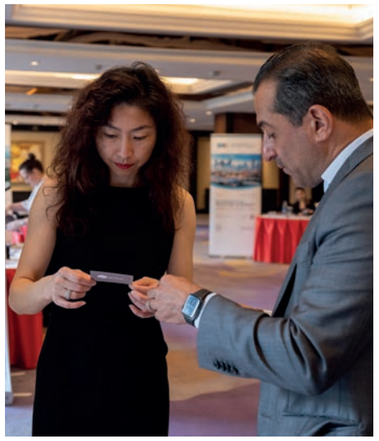
IR Global members have a passion for knowledge sharing and developing professional relationships to support their clients' requirements. They not only network via our global conferences but they also take part in our virtual sessions to keep their presence up and continue to create and build on existing relationships.



MEET THE MEMBERS

ASIA-PACIFIC
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AFRICA

IR Global members from across the Asia-Pacific, the Middle East & Africa represent the world's leading legal, accountancy and financial advisers. These members are recommended exclusively by jurisdiction and practice area and use the network to support any client requirements.

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Attacking Phoenix transactions

What is a Phoenix Company?
A 'Phoenix' is a mythical bird that could live for five or six centuries in the Arabian desert. After this time, it would burn itself on a funeral pyre and rise from the ashes with renewed youth to live through another cycle.

Like the bird, a 'Phoenix Company' is the name given to an entity that is formed to continue the business of an existing company.

This occurs when an existing company goes through the process of insolvency with assets transferred to the new company for little or no cost. When carried out illegally, the existing company is stripped of its assets and liquidated to avoid paying most, if not all, of its outstanding debts, such as tax debts, employee entitlements and other creditors.

The current challenges being faced by businesses in Australia may lead to actions involving illegal 'Phoenix' activity.

The economic impact of illegal Phoenix activity
It has been suggested that "illegal Phoenix activity costs employees between $31 million and $298 million in unpaid entitlements and costs the Government around $1,660 million in unpaid taxes and compliance".

Illegal Phoenix activity directly impacts creditors, employees and subcontractors, as they are left unpaid and out of pocket. It also indirectly impacts the broader community because the company avoids having to pay tax, while at the same time, the Government often has to subsidise outstanding employee entitlements of liquidated companies.

What has been done to address the issue?
A Phoenix Taskforce was established in 2014 to detect, deter and disrupt illegal Phoenix activity. Phoenix Taskforce agencies share information and use sophisticated data-matching tools to identify those promoting or engaging in illegal Phoenix activity.

Up until 31 December 2022, the Australian Taxation Office had raised more than $1.89 billion in liabilities from audits and reviews of illegal Phoenix activities and had returned more than $901 million to the community.

What has the Government done to address illegal Phoenix activity
In recent years, the Government introduced a series of changes to address illegal Phoenix activity including:

- Introducing a Director Identification Number
- Laying out specific Phoenix offences
- Extending the penalties to include advisors who assist Phoenix operators.

What legislation ensued?
"Creditor-defeating disposition" provisions were introduced into the Corporations Act 2001 in 2019. A creditor-defeating disposition is a new category of voidable transaction that can potentially be set aside upon the liquidation of a Company.

It is defined in section 588FDB(1), which provides:

- a disposition of property of a company is a creditor-defeating disposition if:
  a. the consideration payable to the company for the disposition was less than the lesser of the following at the time the relevant agreement (as defined in section 9) for the disposition was made or, if there was no such agreement, at the time of the disposition:
     i. the market value of the property; or
     ii. the best price that was reasonably obtainable for the property, having regard to the circumstances existing at that time; and

  b. the disposition had the effect of:
     i. preventing the property from becoming available for the benefit of the company's creditors in the winding-up of the company; or
     ii. hindering, or significantly delaying, the process of making the property available for the benefit of the company's creditors in the winding-up of the company.

Where a court is satisfied that a transaction is voidable, it can make a variety of orders with the intent of setting the transaction aside, subject to "good faith" and other possible defences.

One of the critical changes, unlike other voidable transactions, is that the regulator has the power to make an order setting aside a transaction without a Court order.

The amendments also contain prohibitions (and related offences) in respect of:

- An officer of a company engaging in conduct that results in the company making a creditor-defeating disposition; and
- A person engaged in procuring, inciting, inducing or encouraging the making of a creditor-defeating disposition.

This is despite the potentially broad application of the creditor-defeating disposition provisions.

What have the Australian Courts said?
The amendments received Royal Assent on 17 February 2020, before the onset of the COVID Pandemic, which saw a reduction in insolvency appointments in Australia, which we suspect naturally slowed the application of these new provisions.

One case has considered the provisions, although it was a blatant (and probably bad) example of a clear Phoenix transaction: this was IntelliComms Pty Ltd (In Liquidation) [2022] VSC 228.

The case concerned a transaction involving a business sale agreement that took place minutes before the company was placed into liquidation.

The sale was to an entity controlled by the sister of the company's director and was for approximately $20,000, which was significantly less than its true value. The Court described the transaction as featuring "all the hallmarks of a classic Phoenix transaction", and set aside the transaction as a "creditor-defeating disposition".

Whilst the case is helpful, we will need to wait to see further cases where transactions are attacked, particularly transactions where the situation is less clear.

One of the most interesting aspects of the new legislation is the option of requesting that ASIC make orders to that effect without a court decision potentially, which will provide liquidators with a simpler and potentially less expensive way to challenge these transactions.

It remains to be seen what approach ASIC will take to requests by liquidators to make orders setting aside a transaction as a "creditor-defeating disposition".

Takeaways
The key takeaways are that:

- The regulator has the power to take direct action
- The focus is a transfer for less than the value in all of the circumstances
- Advisors are in the firing line
- There are civil and criminal consequences, including for advisors.

"It has been suggested that illegal Phoenix activity costs employees between $31 million and $298 million in unpaid entitlements."

Jim is JCL's managing partner. With more than 30 years experience, Jim leads JCL's strategic direction, which has always focused on effective, efficient problem resolution.

He is a recognised leader in commercial litigation and insolvency law and has garnered a widely-respected reputation within Queensland's legal community.

The firm was established because Jim is passionate about achieving positive outcomes for clients and providing value for money. Since JCL's inception, Jim has consistently adopted a pragmatic, direct and confident approach to help his clients navigate complex legal matters, with unwavering commercial results.

Jim's career has seen him serve as the Queensland State Chair of the Insolvency and Reconstruction Committee of the Business Law Section of the Law Council of Australia, Queensland State Chair of the Insolvency and Reconstruction Committee of the Queensland Law Society and the National Chair of the Insolvency and Reconstruction Committee of the Business Law Section of the Council of Australia.

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James Conomos Lawyers (est. 1992) is a boutique legal firm offering specialist expertise in commercial litigation and insolvency. From humble beginnings, it has today established itself as one of Australia's leading boutique law firms.

Based in modern offices in Brisbane's central business hub, James Conomos Lawyers is a team of high-calibre, professional staff who take an active role in the legal community to ensure their expertise is at the leading edge of their profession.

The philosophy of James Conomos Lawyers is a commitment to consistently provide their clients with prompt, personal service, coupled with high-quality, cost-effective solutions.

As a boutique firm, their clients notice a level of service that is often difficult to find in other practices. The team at James Conomos Lawyers take the time with clients to understand what their needs are and provide the best solution overall, rather than merely seeking to represent them as lawyers.

China: the ideal market for small businesses

China is much friendlier to small businesses than it once was – here's what has changed:

No minimum capital requirement
China cancelled the minimum capital requirement for setting up an entity some years ago, eliminating a major hurdle for start-ups.

Theoretically, a foreign investor can set up a company in China with USD 1.00 in capital, but in practice, foreign investors typically choose to inject more capital into their Chinese subsidiary due to foreign exchange controls.

Streamlined set-up
Procedures for setting up a business have also been greatly simplified. Generally, the business license, the official document evidencing the legal establishment of an entity, will be granted in 3 to 5 working days after the setup application is provided to the local government. Previously, several other certificates such as a project approval certificate and a tax registration certificate had to be obtained before the entity could operate. Now, none of these certificates are required.

VAT reductions and exemptions
The standard rates of value-added tax (VAT) are 13% on sales of goods, and 6% on provision of services. But, if an entity qualifies as a small-scale VAT payer, the standard rate is 3%.

Newly-established entities typically have low revenue and small profit. To support startups, China grants VAT exemption if an entity's monthly turnover is no more than RMB 100,000 or quarterly revenue is no more than RMB 300,000.

Moreover, VAT is levied at the reduced rate of 1% if the monthly or quarterly revenue crosses over the exemption threshold but the annual revenue does not exceed RMB 5,000,000.

It is important to know that exporting eligible services qualifies a business for VAT exemption regardless of the business' size. For example, most supply chain and sales services provided to an overseas entity are VAT-free.

Further tax benefits
The standard rate of corporate income tax is 25%. The corporate income tax rate for small-and-thin profit businesses (STPBs) is currently 5%.

STBPs refer to those with annual taxable income of no more than RMB 3 million, up to 300 staff and total assets of no more than RMB 50 million.

In addition to tax exemptions and reductions, further tax benefits are available, usually in the form of tax rebates. The most common tax rebates are those provided by local governments, usually ranging from 30% to 80% of a taxpayer's contribution to the local government's treasury.

It should be noted here that larger entities can obtain more rebates if they are in a better position to bargain with local governments.

Liquidation and divestment
Similar to the significant easing-up of market entry, leaving the country is not a difficult process anymore. It used to be the case that Foreign investors didn't feel confident enough to divest and leave the Chinese market because of prolonged exit tax audits or tax investigations.

Now the standard procedure is that tax officials will accept the application of tax liquidation of an entity based on the entity's own assessment of its tax compliance. Nowadays, tax liquidation can be completed in a few days

In short, China is becoming a very attractive jurisdiction for small businesses, because of its special tax regime for small businesses, as well as how easy it is to set up a business, and equally, to leave.

> "Theoretically, a foreign investor can set up a company in China with USD 1.00 in capital."

> "To support startups, China grants VAT exemption if an entity's monthly turnover is no more than RMB 100,000."

Foreign-sourced income exemption regime in Hong Kong
On 14 December 2022, a foreign-sourced income exemption (FSIE) regime in the Hong Kong SAR (Hong Kong) government was passed by the Legislative Council.

From 1 January 2023, income from a foreign source derived by a member of a multinational enterprise (MNE) group trading in Hong Kong is subject to a tax on profits when such income is received in Hong Kong.

For the purposes of the new law, income derived from a foreign source includes:

- Interest
- Dividends
- Disposal gains
- IP income.

The tax on profits on non-IP foreign-sourced income (i.e. interest, dividends or disposal gains) may be exempt as long as a taxpayer can conduct substantial economic activities.

For dividends and disposal gains, a taxpayer is considered a pure equity holding company and cannot meet economic substance requirements. However, if the taxpayer can satisfy the conditions of participation exemption, the Profits Tax on dividends or disposal gains is exempted.

In the case that the tax on foreign-sourced income is paid in other jurisdictions with a Comprehensive Double Taxation Agreement with Hong Kong or not, the bilateral or unilateral tax credit on that foreign-sourced income will be granted to the taxpayers accordingly, in order to avoid double taxation.

Alex joined Sino Corporate Services Limited as CEO in 2016, providing a full range of services to corporate clients, private clients, fund managers and business advisory services to business owners from different jurisdictions.

Alex worked for Intertrust Group for 25 years from 1990 to 2015 and was the Managing Director of Hong Kong and China offices.

Alex has been invited by HKTDC, InvestHK, and CCPIT to speak on topics such as cross-border investment structuring, setting up a business in China, outbound investments, setting up investment holding companies and regional headquarters in Hong Kong, and using trust structures as wealth planning mechanisms in Hong Kong, China, Asia and various countries in Europe.

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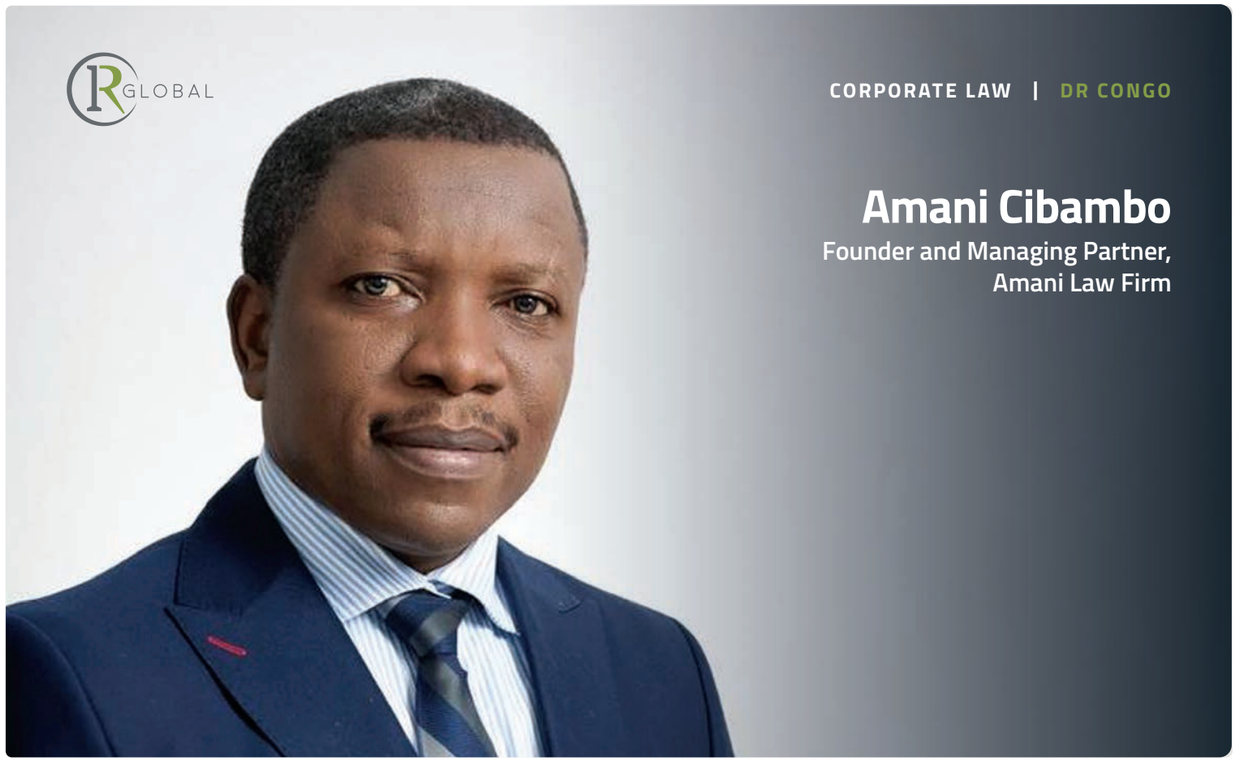
SINO is now part of TMF Group

Sino Corporate Services Limited (TMF-group company) is a high-quality provider of advisory services, legal administration, financial administration, fund administration and private client services located in Hong Kong, China and Singapore.

The team has over 30 years' experience and provides services to clients operating throughout the region. Their expertise and focus are the Greater China market, and they have been advising clients on business matters since the early 1990s.

Sino Corporate Services Limited is a limited liability company incorporated in Hong Kong, which holds Trust or Company Service Provider Licenses under section 53G of the Anti-Money Laundering and Counter-Terrorist Financing Ordinance, Cap. 615 in Hong Kong.



CORPORATE LAW | DR CONGO

Amani Cibambo
Founder and Managing Partner,
Amani Law Firm

Explaining the partners' pact in OHADA law

How successful companies are at being established, and how successfully they operate, can be a good indicator of how open a territory is to investment.

Companies are the main players because it's through them that people (investors) pool resources and make the effort to achieve shareable profits. Hence, the legal and judicial security of corporate activities is of considerable value to investors looking to safeguard their interests.

The relationships between a company and its investors are defined in the company's articles of association and in the Uniform Act. The statutes make up the company's contract, in which the partners or shareholders express their consent to the creation of the company.

With the revision of the Uniform Act in 2014, a major innovation took place in the formal recognition of extra-statutory agreements - in other words, associates' or shareholders' pacts.

We'll analyse the rules applicable to the Pact (i) and to its Limitations (ii).

i. Pact

Shareholders or partners (investors) in the same company do not necessarily have the same needs or the same interests on certain issues.

This fact explains why partners arrange extra-statutory contracts to govern and organise the management of the company, to meet the expectations of certain shareholders, including:

- Majority shareholders who wish to keep control of the company;
- Minority shareholders wishing to strengthen their rights;
- Financial partners seeking to protect themselves against any situation that puts their capital at risk.

While complying with the Uniform Act, the partners may still enter into extra-statutory agreements (the terms of which they have willingly agreed to) to organise:

- Relationships between partners
- The structure of corporate bodies
- How the company does business
- Access to social capital
- Transmission of corporate securities.

The Uniform Act expressly grants Investors the right to establish agreements in addition to the articles of association to define their relationships as well as the organisation of the company.

The scope of the pact is not limited exclusively to the 5 matters mentioned above, either.

Unlike the articles of association, which must be published to fulfil a requirement for opposability, this is not the case for the pact. Its contents remain known only to the investors.

Generally, the parties include a confidentiality clause in the pact. In a complex investment context where investors wish to maintain some secrecy about how their business operates, the pact proves to be a decisive tool for them to safeguard their interests.

ii. Limitations of the pact

a. The pact vis-à-vis statutes and the Uniform Act

The Uniform Act introduces the concept of the pact by limiting the freedom

> "Shareholders or partners (investors) in the same company do not necessarily have the same needs or the same interests on certain issues."

> "The Uniform Act expressly grants Investors the right to establish agreements in addition to the articles of association."

of shareholders, respecting the provisions of the Uniform Act and the articles of association as follows: "subject to compliance with the provisions of this Uniform Act which cannot infringe upon statutory clauses [...] »

Indeed, the Uniform Act recognises in the statutes a hierarchical value superior to the pact. Thus, investors must look at the articles of association when drafting their pact in order not to include provisions that are contrary to the articles of association. The Pact cannot infringe upon statutory clauses.

b. Opposability of the pact

The opposability of the pact must be assessed at four levels, which involve:

1. Signatory partners
2. Non-signatory partners
3. The Company
4. Other third parties.

For signatory partners, the pact is binding on them like any other contract. Thus, a creditor partner would be entitled to seek damages against the debtor partner if they had failed in their obligation under the Agreement.

For non-signatory partners, the pact as a contract is governed by the principle of relativity. This means that the agreements only bind the contracting parties: they do not affect third parties, and they only benefit them in the case provided for in Article 21. Thus, the shareholders' agreement is, in principle, never enforceable against shareholders who do not take part in it, whether they are shareholders at the time of the signing of the agreement or whether they have become so after the fact.

However, the partners may provide an express membership clause to the Agreement for any partner who may eventually hold a stake in the company.

For the company, the shareholders' agreement is only binding on the company when the latter takes part in it (in the case where the shareholders' agreement is concluded between all the partners of the company) and only when the obligations imposed on the company do not contravene the mandatory provisions of the Uniform Act.

Lastly, for **third parties**, the Agreement is not binding on them following the principle of the relativity of the contract stated above.

Amani CIBAMBO is the founder and managing partner of Amani Law Firm (ALF). He has been a lawyer with the Kinshasa/Gombe bar since March 29, 2005.

After his secondary studies in literature (Latin and philosophy) at Alfajiri College in Bukavu, a Jesuit college in South Kivu, in the Democratic Republic of Congo, he studied law at the Catholic University of Bukavu and the University of Kinshasa.

Amani started his legal career in the KAHASA cabinet. In 2010, he decided to leave this firm to start his own venture, creating ALF, where he specialises in corporate law.

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Amani Law Firm (ALF) is a law firm based in Kinshasa operating since January 5, 2010.

The firm is a specialist in corporate law, assisting its clients (generally commercial enterprises) from their creation until their dissolution.

ALF helps its clients to do business in the Democratic Republic of Congo and even outside the DRC where necessary.

ALF also assists and represents its clients in matters of civil law, criminal law, and labour law.

To learn more about ALF legal services, visit www.amanilf.cd

DEBT & ASSET RECOVERY | HONG KONG

Gwynn Hopkins
Managing Director, Perun Consultants

Debt and asset recovery in Hong Kong

In Hong Kong, it is usually advisable for a creditor to retain a law firm as a first step to establishing contact with (and formally demanding payment from) a debtor. Although debt collection agencies often threaten legal proceedings when dealing with creditors, such agencies cannot follow through on these threats and, as a result, such threats often fail. For this reason, formal requests for payment issued by a law firm are typically taken more seriously by debtors than requests from creditors or debt collection agencies.

Law firms can escalate unanswered demands for payment by pursuing insolvency proceedings on behalf of creditors via statutory demand. A statutory demand is a demand prescribed by law that holds a debtor to be unable to pay their debts if the demand is not satisfied or set aside. If the debtor fails to satisfy the demand by payment or some other form of compromise within 21 days, the creditor can petition in the Court either for:

- Bankruptcy of the debtor if the debtor is an individual person
- Liquidation of the debtor if the debtor is a company

Statutory demands in Hong Kong are particularly effective because, if not met, they may result in the commencement of bankruptcy or liquidation proceedings, which, in turn, can immediately result in the debtor's bank accounts and credit facilities being frozen. As a result, debtors face enormous pressure to pay when confronted with these consequences.

Corporate insolvency

In Hong Kong, corporate insolvency proceedings can be voluntary or compulsory. Often, in the case where a debtor has failed to meet its obligations to its creditors, insolvency will be compulsory as one or more of the creditors will have petitioned the court for a winding-up order, frequently on the basis that the debtor has failed to meet a statutory demand. However, the debt must not be validly disputed. The winding-up petition may be dismissed if there are reasonable doubts as to the existence of the debt or where the debtor has a set-off or crossclaim. In a compulsory winding-up of an insolvent company, the court appoints a liquidator. The role of the liquidator is to, inter alia, recover the assets of the debtor company for the benefit of creditors. The liquidator adjudicates the creditor claims and, from the assets remaining after the settlement of claims by secured and preferential creditors, distributes the assets to the unsecured creditors.

Winding-up is a "class remedy" in that unsecured creditors rank equally with each other and share equally any available assets in proportion to the debts owed to each creditor. If the assets are insufficient to meet all the liabilities of the unsecured creditors, the distribution is made pro rata. Since the winding-up petition is advertised publicly, this may lead to other creditor enforcement actions, which consequentially makes negotiations with the debtor impossible or unlikely to succeed.

Personal bankruptcy

In personal bankruptcy, the court appoints a trustee. In the eyes of creditors, the role of the bankruptcy trustee is similar in substance to the role of the company liquidator and, similar to corporate insolvency, the costs of the administration are normally paid out of the assets recovered. A creditor does not have to invest time and resources trying to determine what assets the debtor owns that could potentially be realised to satisfy their debt once the winding-up process has begun. Investigations of this nature are undertaken by the liquidator or trustee, although any information that the creditor(s) already hold regarding the debtor's asset position can be helpful to the investigation process.

> "Statutory demands in Hong Kong are particularly effective because, if not met, they may result in the commencement of bankruptcy or liquidation proceedings."

> "Information about the debtor and their assets may be obtained through these ancillary orders, which may also be used to freeze assets."

Ancillary orders and enforcement

The liquidator or trustee may ask the court for ancillary orders to aid in the debt collection and investigation processes. Information about the debtor and their assets may be obtained through these ancillary orders, which may also be used to freeze assets to stop a debtor from dissipating them. In Hong Kong, several public sources of information about assets are available, including the Land Registry, the Companies Registry, the Business Register, the Trademarks Registry, and the Vehicle Registry. In addition to the above, there are also several other enforcement options and interim measures in Hong Kong, including:

- Receivers: who are often appointed by a secured creditor over charged assets pursuant to a security document
- Provisional Liquidators: who are often appointed if there is a sound case for a winding-up order and there is a risk of dissipation of assets
- Injunctions: which compel a person to do something (or refrain from doing something) commonly used to freeze and disclose assets
- Disclosure Orders: which, once proceedings have commenced, may be made against a debtor or, in appropriate circumstances, against third parties believed to hold relevant information, to obtain information on the debtor's assets.

Each of the above processes has its own unique procedural requirements, scale of expected costs, advantages, and limitations, which are beyond the scope of this article.

The purpose of this article is to briefly summarise existing avenues for debt and asset recovery in Hong Kong. The information and opinions contained in this article are for general information purposes only, and should not be construed or relied on as legal advice or opinion on any specific facts or circumstances. None of the information and opinions contained herein should be relied on without taking independent legal or other professional advice.

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Gwynn has worked as an insolvency practitioner and forensic accountant on a wide range of local and cross-border engagements concerning international financial services companies.

Having led teams for many years as a partner in the Caribbean and Hong Kong, Gwynn has a thorough understanding of both the onshore and offshore aspects of appointments.

In addition, Gwynn has extensive experience in forensic accounting assignments including asset-tracing and recovery engagements, due diligence investigations, and the preparation of loss of profits and asset valuation reports. Gwynn also takes roles such as acting as a consultant or an appointed independent director or trustee to assist distressed entities.

Gwynn has been recognised by Who's Who Legal: Consulting Experts in the fields of both forensic accounting and quantum of damages.

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Perun Consultants is a boutique firm with offices in Hong Kong and Singapore specialising in providing high-quality services in the areas of forensic accounting, corporate advisory, restructuring, turnaround and liquidation appointments.

Dominic Wai
Partner, ONC Lawyers

An overview of white-collar crime in Hong Kong

Hong Kong is known as one of the world's most vibrant and dynamic financial centres. However, with the rise of the city's economy and the free flow of money, data and people, there has been an increase in white-collar crime.

Fraud

One of the most common forms of white-collar crime in Hong Kong is fraud. Fraud occurs when an individual or organisation uses deception to gain a financial advantage. This can include:

- Embezzlement
- Investment fraud
- Insider trading
- "Ramp-and-dump"
- Ponzi schemes.

Many of the cases involve online or instant messaging scams that are international and anonymous.

According to the Hong Kong Police, Hong Kong saw a 45% uptick in fraud cases in 2022 compared to 2021. Deception accounted for almost 40% of all crimes reported. The almost 28,000 fraud cases recorded in 2022 included online shopping, employment, investment and phone scams.

In terms of recovery for victims of fraud, they can file a complaint with the Hong Kong Police and pursue civil action to claim against the fraudsters or anyone that has received or kept the scammed funds.

In Hong Kong, there is an indirect asset freezing regime where the Police could issue a letter of no consent to banks that have accounts with scammed funds in them. The banks that have received such letters would most likely not allow the bank account to be operated (for fear of being accused of money laundering or assisting the crime) thereby "freezing" the funds in the bank accounts. With such a "freeze", victims could then instruct lawyers to commence a civil action against the bank account holders for a refund to enter judgment and then apply to the Courts to enforce the judgment to recover the scammed funds back.

A victim could also apply to the Court for an asset freezing order (injunction) but with a Police "freeze", it may not be necessary to apply for an injunction.

For the recovery of funds by civil legal means, for a straightforward case, it might still take 6 to 9 months. The victim has to fund their own costs as the Police will not help to recover the funds apart from conducting a criminal investigation to pursue the culprits and to "freeze" the accounts.

There is no centralised regime for helping victims to recover funds. Sometimes there is a risk that multiple victims might pursue the "frozen" funds in a bank account and with that, the fastest application might receive the funds if the claim is so big that it would take up the whole of the "frozen" funds. Hence, fraud victims need to take swift action.

Money laundering

Another form of white-collar crime that is prevalent in Hong Kong is money laundering. Money laundering is the process of disguising the proceeds of illegal or criminal activities as legitimate funds. This is typically done by transferring the money through a series of complex financial transactions. Hong Kong's status as a major financial centre, with no foreign exchange control and fast movement of funds by digital means makes it an attractive location for money launderers.

"According to the Hong Kong Police, Hong Kong saw a 45% uptick in fraud cases in 2022 compared to 2021."

"A lot of the fraud and crime cases take place across borders, boundaries and involve multiple jurisdictions."

In Hong Kong, there are banks and licenced Financial Service Operators that offer remittance and money transfer services. In mainland China, with its foreign exchange controls, many people turn to "underground" money changers for foreign exchange services.

Sometimes these so-called money changers are money laundering syndicates that help fraudsters to launder the scammed funds by pretending to provide foreign exchange services. In reality, these "underground" money changers would arrange foreign currency funds from the fraudsters to pay the party that requires the foreign currency. This would cause the person who thought they had "bought" the foreign currency to be the money laundering suspect, as the scammed funds went to that person's account.

Bribery and corruption

Bribery and corruption are also forms of white-collar crime that aren't uncommon in Hong Kong. Bribery is a serious issue, and those found guilty can face significant fines and imprisonment.

Challenges and methods of dealing with white-collar crime

One of the challenges of combating white-collar crime in Hong Kong is that it can be difficult to detect. Unlike traditional crimes, white-collar crimes often involve complex financial transactions and can take months or even years to unravel.

Another challenge is that a lot of the fraud and crime cases take place across borders, boundaries and involve multiple jurisdictions. For such cases, Hong Kong's law enforcement agencies and regulators might not have jurisdiction in terms of investigation and enforcement. In gathering information and evidence, time and effort are required as overseas law enforcement and regulators would be needed to assist.

In recent years, there has been greater cooperation between law enforcement agencies and regulators in Hong Kong to combat white-collar crime. For example, the Independent Commission Against Corruption (ICAC) and the Securities and Futures Commission (SFC), which regulates Listed companies and licensed intermediaries such as stock brokers, have signed a Memorandum of understanding and carried out joint investigation operations for cases that have elements of bribery, stock market manipulation and money laundering.

The ICAC has criminal investigation powers including the power of arrest that the SFC does not have, while the SFC has powers that have abrogated the right to silence to compel an interviewee to answer questions. The combination of such powers has highly enhanced the investigative process.

In conclusion, white-collar crime is a serious issue in Hong Kong. While the city has taken steps to combat this problem, more needs to be done to protect the victims, many of whom are senior citizens and might suffer huge losses, even including their entire life savings.

Dominic Wai, before joining the legal profession, has worked in the banking sector and as well as in the Independent Commission Against Corruption (ICAC).

Dominic's practice focuses on advising clients on anti-corruption, white-collar crime, law enforcement, regulatory and compliance matters in Hong Kong, including advice on anti-money laundering.

He also handles cases involving corporate litigation, shareholders' disputes and insolvency matters, defamation cases, domestic and international arbitration cases, cybersecurity, data security and privacy law issues, competition law matters, e-discovery and forensic investigation issues as well as property litigation.

His clients include Hong Kong-listed companies, international companies, liquidators and a broadcasting company.

Dominic is currently a board member of a charity that provides a home service for sick children and their families. He is supportive and actively participates in the activities of the charity.

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ONC Lawyers is a professional and dynamic legal practice based in Hong Kong. With continuous growth since its establishment in 1992, they have become one of the largest domestic law firms with more than 130 members of legal and support staff.

ONC Lawyers is a member of the International Society of Primerus Law Firms, an international network of the world's finest law firms. With the support of 200 member firms in more than 40 countries, they can assist their clients and serve their needs in major jurisdictions all over the world.

ONC Lawyers has been recognised by AsiaLaw Profiles as a "Highly Recommended Law Firm" in Hong Kong. They are also recognised by Chambers and Partners as a "Leading Firm". The firm received the "Debt Market Deal of the Year" Award in the Macallan ALB Hong Kong Law Awards 2018.

Commercial litigation in Hong Kong: what you need to know

As an international financial centre, Hong Kong sees a large volume of cross-border transactions, and as a result, cross-border commercial disputes inevitably occur. Given Hong Kong's proximity to (and close connection with) mainland China, the Courts of the HKSAR and legal professionals have significant experience in resolving cross-border commercial disputes involving mainland elements.

Hong Kong has therefore been supported by the Central Government to establish itself as a centre for international legal and dispute resolution services in the Asia Pacific Region.

Unique features of Hong Kong's legal system

Hong Kong is a common law jurisdiction. For historical reasons, English precedents before 1997 still have a binding effect in Hong Kong, unless they have been overruled by other decisions in the Courts of the HKSAR.

Article 85 of the Basic Law also permits the Courts of the HKSAR to refer to precedents in other common law jurisdictions.

Chinese and English are the official languages in Hong Kong. Although parties can choose to litigate in either language, bilingual judges are nevertheless limited. Given the increase in cases involving evidence in Chinese, parties may have to pay translation costs in order to avoid the waiting time by requesting a bilingual judge.

Also akin to the English system, the profession is still divided into solicitors and barristers who have different skill sets and roles to play in litigation. There are also Hong Kong lawyers qualified to practise PRC law for a limited scope of work in the Greater Bay Area.

> "Hong Kong is a common law jurisdiction. For historical reasons, English precedents before 1997 still have a binding effect in Hong Kong."

Stages in civil proceedings

Like most other common law jurisdictions, civil litigation in Hong Kong typically involves the following stages:

- Pleadings
- Discovery
- Exchange of Witness Statements
- Trial.

Jury trials are also available for defamation cases. During the discovery phase, parties to the litigation must disclose all relevant documents in their possession, power, or custody, regardless of whether the documents may prejudice their case or not.

Given this obligation, parties are subject to an implied undertaking not to use the documents disclosed for purposes other than legal action.

Common tools in commercial litigations in aid of foreign proceedings

Under Hong Kong law, courts have the power to grant stand-alone interim measures to assist foreign litigation or arbitration, before or after foreign proceedings have commenced.

> "Normally, foreign plaintiffs or corporate plaintiffs without assets in Hong Kong are ordered to provide security for defendants' costs ."

Common tools include:

(a) Injunctions prohibiting the intended defendants from dealing with, or disposing of, assets up to the claimed amount, or specific assets over which the plaintiffs allege to have a proprietary claim, in Hong Kong or worldwide; and

(b) Norwich Pharmacal Orders, which compel a third party to disclose information and documents.

Insolvency and bankruptcy

Insolvency and bankruptcy proceedings are collective proceedings. Unlike other civil disputes, these proceedings not only involve parties in the proceedings, but also other stakeholders who are interested in the estate of the bankrupt, or insolvent companies. They have their own procedural rules, and civil procedural rules do not directly apply.

The principle of modified universalism, which aims to have unitary bankruptcy proceedings in the court of the domicile of the bankrupt or insolvent entities receive worldwide recognition at the same time as taking into consideration local law and public policy, has been recognised and applied in Hong Kong.

While the law is still developing, the Hong Kong Courts are, in general, willing to provide assistance and recognise the appointment of liquidators in other jurisdictions, but would also look into the effect on local creditors if such appointment is recognised or assistance is provided.

The mainland and the HKSAR have signed an arrangement for mutual recognition and assistance to bankruptcy (insolvency) proceedings between the Courts of the mainland and the HKSAR, which demonstrates the efficiency and power of "One Country, Two Systems", making it even more convenient for the two jurisdictions to work together and achieve modified universalism in insolvency proceedings.

Arbitration-friendly attitude

Hong Kong supports arbitration, and the UNCITRAL Model Laws have been adopted and formed part of the Arbitration Ordinance.

If the courts find an arbitration agreement governing the disputes of the parties, the legal action will likely be stayed at the request of any party.

In terms of enforcement of arbitral awards, a simple and easy regime has been developed, and there are only very limited circumstances for parties to set aside arbitral awards.

Legal costs

In general, the losing party has to pay the costs incurred by the winning party. There are different scales for the court to assess the amount to be recovered, but these don't involve full reimbursement.

Contingency fee arrangements are generally prohibited in Hong Kong, though this isn't universal.

Normally, foreign plaintiffs or corporate plaintiffs without assets in Hong Kong are ordered to provide security for defendants' costs by way of making a payment to the court. Counterclaiming plaintiffs may in certain circumstances be required to provide security as well.

To encourage out-of-court settlements, various measures have been implanted into the civil procedural rules which may lead to costs consequences. For instance, while mediation isn't compulsory, the court has the power to impose adverse costs consequences if the parties unreasonably fail to attempt mediation.

Kenix Yuen joined Gall in 2013 and specialises in cross-border commercial litigation and international arbitrations (in particular, involving elements of the People's Republic of China (PRC)) spanning contractual disputes, shareholders' disputes, directors' duties, fraud and asset tracing, misrepresentation and mis-selling claims.

She is also experienced in advising on regulatory investigations conducted by the Securities and Futures Commission and Regulatory Enquiries from the Insurance Agents Registration Board.

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Gall is a leading independent Hong Kong law firm focusing primarily on dispute resolution. The firm specialises in handling highly complex disputes, many of which involve multi-jurisdictional litigation.

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Cross-border mergers: an Indian tax perspective

Recent times have seen many domestically-grown companies transcend geographies to expand their customer and product base, gain access to financial markets, achieve business synergy and unlock strategic value for investor exit.

The dynamics of today's fast-evolving corporate world have propelled businesses to structure themselves in a manner which enables them to seamlessly work across borders and take advantage of new business opportunities, supported by legislative reforms taking place the world over.

Businesses look at cross-border mergers as one way to gain easy access to a new market. Recognising this fact, Indian law has been undergoing reforms that facilitate them, which include:

- Inbound mergers: mergers of a foreign entity with an Indian entity; and
- Outbound mergers: mergers of an Indian entity with a foreign entity.

Under Exchange Control Regulations (FEMA), cross-border mergers have deemed approval from the Reserve Bank of India, provided all the conditions, including valuation norms and existing regulations, are satisfied.

While the Companies Act, 2013 (CA Act) permits inbound mergers without any jurisdictional restriction, outbound mergers can be executed with only those foreign entities which are incorporated in specified jurisdictions.

The tax implication on such transactions however remains ambiguous. We'll explain some of the tax issues you need to consider before undertaking a cross-border merger.

Tax issues for consideration

1. Tax neutrality

For a merger transaction to be tax-neutral in the hands of the shareholder of a transferor entity, the law requires that the resulting entity be a company incorporated in India.

As a result, outbound mergers aren't considered tax-neutral in the hands of the shareholder as the resulting entity would be a foreign entity.

Similarly, there is no tax neutrality in the hands of shareholders where:

- A foreign entity holding investments in an Indian entity merges with another foreign entity; and
- A foreign entity holding investments in another foreign entity, which derives substantial value from assets located in India, merges with another foreign entity.

2. Capital gains exemption

Specific capital gain exemption is provided in the hands of the transferor entity which transfers its asset to the transferee entity under a merger, provided the resulting entity is an Indian entity.

This exemption can apply to the foreign transferor entity in case of an inbound merger as the resulting entity would be an Indian entity.

However, no such exemption is provided in the case of an outbound merger where the resulting entity is a foreign entity.

3. The Companies Act

The CA Act provides the flexibility of discharging consideration to shareholders of the transferor entity in cash as well as depository receipts.

However, the tax provisions provide for exemption to the shareholder of the transferor entity only if the consideration is discharged by way of allotment of shares.

4. Shifting losses

In the case of an inbound merger, where the foreign entity has incurred losses, there is no provision enabling losses to be carried forward and offset by the resulting Indian entity.

Similarly, the feasibility of shifting losses of the Indian entity to the resulting foreign entity also needs to be analysed.

"A branch office in India is subject to a higher tax rate of 40%, plus surcharge and Cess."

5. Fair market value of shares

Recent amendments to tax law have proposed to amend tax consideration received from non-residents which is greater than the fair market value (FMV) of shares issued by an Indian entity in exchange for such consideration received.

As a result, in the case of an inbound merger, if the value of assets of the foreign entity exceeds the FMV of the shares issued by the resulting Indian entity, then such excess value could be subject to tax.

- In this context, it is to be noted that according to tax law, book value is construed as the FMV of shares.
- However, according to FEMA, shares need to be valued by a methodology that is internationally accepted.
- Therefore, the value of shares has to be determined in a manner which is both tax and FEMA-compliant.

6. 'Branch office' status

The status of the transferor entity following a merger is generally considered to be non-existent.

As a result, in the case of an inbound merger, activities carried out by the foreign entity after merging could be deemed as the branch office of the resultant Indian entity.

Similarly, in the case of an outbound merger, activities carried out by the Indian entity after merging could be deemed as the branch office of the resulting foreign entity, which creates a risk of establishing a permanent establishment of the foreign entity in India.

A branch office in India is subject to a higher tax rate of 40 per cent, plus surcharge and Cess.

7. Payroll

The employees of the transferor entity would be shifted to the payroll of the resulting entity following the merger. The salary earned by them could be subject to tax both in India as well as the foreign jurisdiction. The taxes levied can however be reduced in case any foreign tax credit can be used.

8. GAAR

Another aspect to consider is the applicability of general anti-avoidance rules (GAAR). As per GAAR, no transaction should be undertaken with the primary objective of avoiding taxes.

All merger proposals, including cross-border mergers, would require the approval of the National Company Law Tribunal (NCLT) under the CA Act.

The NCLT has the power to reject a merger proposal that it finds to be primarily structured for avoiding taxes.

Parting thoughts

Cross-border transactions are one of the key drivers for the Indian economy to attract foreign investors. Most of the changes in the legislative framework over the past few years have been brought in to make India a business hub.

While the regulatory changes have helped make India an attractive jurisdiction for cross-border transactions, it hasn't been supported by appropriate tax incentives.

Tax is a major consideration while undertaking any M&A transaction, so it is imperative that all relevant laws, especially tax laws, be aligned for hassle-free implementation of cross-border mergers.

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With offices in Bangalore, Chennai, Bombay and Delhi, the boutique firm is a go-to for start-ups, providing comprehensive services on corporate and international tax, mergers and acquisitions, private equity and assurance services.

Samuel Mani
Founding Partner,
Mani Chengappa & Mathur

Evolution of Data Protection Law in India

"An Act to provide legal recognition for transactions carried out using electronic data interchange and other means of electronic communication, commonly referred to as "electronic commerce", which involve the use of alternatives to paper-based methods of communication and storage of information, to facilitate electronic filing of documents with the Government agencies... and for matters connected therewith or incidental thereto." Preamble, Information Technology Act of 2000

The Information Technology Act of 2000 (IT Act), which was enacted in the context set out above, forms the current statutory basis for India's data protection and privacy law.

Data protection and privacy

Over the years, as various types of technology emerged, numerous changes were introduced to the IT Act to deal with the challenges that these technologies brought forth.

One such change was the enactment of the Information Technology (Reasonable security practices and procedures and sensitive personal data or information) Rules, 2011. Although the Rules provide a certain amount of protection to personal information, the majority of the Rules were focused on providing guidelines for enhanced protection of sensitive personal information, a narrower subset of personal data/information.

Additionally, since the Rules were enacted under the broader ambit of the IT Act, the protection of personal information, including sensitive personal information, is restricted to such data collected electronically. Also note that the Rules, for the most part, apply to bodies (including firms, sole proprietorships or other associations of individuals) engaging in commercial or professional activities.

By extension, the Rules would not apply to entities such as government or philanthropic entities, which may handle personal information (including sensitive personal information). These factors in turn acutely limit their application.

However, despite these drawbacks, the Rules, along with the IT Act, continue to remain the primary regulation governing personal information.

A landmark ruling

The development of Indian data protection and privacy laws was accelerated due to the Supreme Court's judgement in the case of Justice K.S. Puttaswamy (Retd.) & Ors. v. Union of India. This case was first filed in 2012 by Justice K.S. Puttaswamy (Retd.) and others who contended that the Indian Government's proposed scheme for a biometric-based identity card to access governmental benefits and services was a violation of a citizen's right to privacy. Through this judgement, the Supreme Court held the right to privacy as a fundamental right under Article 21 of the Constitution of India and laid down a test to determine whether an act of the government would violate this right.

This judgement was a watershed moment in the evolution of personal data protection and privacy jurisprudence in India and kickstarted a movement for the introduction of a more robust and comprehensive data protection regulation in India.

"The Rules, for the most part, apply to bodies (including firms, sole proprietorships or other associations of individuals) engaging in commercial or professional activities."

"Organisations must gear up for the possible enactment of a more robust framework for the protection of personal information and prepare for newer compliance requirements that they may be subject to under such a framework."

Following this judgement, several initiatives have been undertaken to provide a statutory framework for the fundamental right to privacy and enhance data protection through legislative means. In the course of the last six years, the Indian Government has introduced and withdrawn two draft bills covering data protection and privacy, as well as tabled a report of the Joint Parliamentary Committee on the Personal Data Protection Bill, 2019 to examine the issues relating to data protection in India. Most recently, the Indian Government released the Draft Digital Personal Data Protection Bill, 2022, for public feedback. The Bill is due to be tabled in the Indian Parliament for discussion.

The Bill applies to digitised personal data and imposes obligations on data fiduciaries to ensure the confidentiality, integrity, and security of personal data and provides for the right of individuals to access, correct, and erase their personal data. The Bill also proposes the establishment of a Data Protection Authority of India, which will be responsible for implementing and enforcing the provisions of the Bill. Additionally, the Bill allows for the transfer of personal data outside India.

Data security

Through an amendment to the IT Act in 2008, the Indian Computer Emergency Response Team (CERT-In) was designated as the national agency for performing certain functions in the area of cyber security.

CERT-In is responsible for collecting, analysing, and disseminating information on cyber security incidents, as well as forecasting and alerting on potential incidents of this nature. CERT-In is authorised to take emergency measures to handle cyber security incidents and coordinate response activities. The agency also issues guidelines, advisories, vulnerability notes, and white papers on information security practices, procedures, prevention, response, and reporting of cyber incidents. Overall, CERT-In's role is to ensure the security of information systems and to minimise the impact of any cyber security incidents that may occur.

Looking ahead

The Indian personal data protection and privacy regulatory framework is currently evolving. It is expected that the Indian Government will replace the Rules with a more comprehensive framework for the protection of personal information and, in our view, new statutes and rules for the protection of personal data and privacy will mature to meet the standards of the right to privacy as encapsulated in the case of Justice K.S. Puttaswamy (Retd.) & Ors. v. Union of India.

Organisations must gear up for the possible enactment of a more robust framework for the protection of personal information and prepare for newer compliance requirements that they may be subject to under such a framework.

Samuel Mani is a founding partner of Mani Chengappa & Mathur. A graduate of the National Law School of India University, Samuel specialises in advising clients on technology and outsourcing transactions, privacy and data protection matters, general commercial transactions, early stage/growth capital (and other start-up-related matters), mergers and acquisitions, insurance, and dispute resolution. He has extensive experience in running complex, high-stakes matters but is equally comfortable assisting an entrepreneur in putting a business together. His advice draws extensively on his many years of experience as a business leader.

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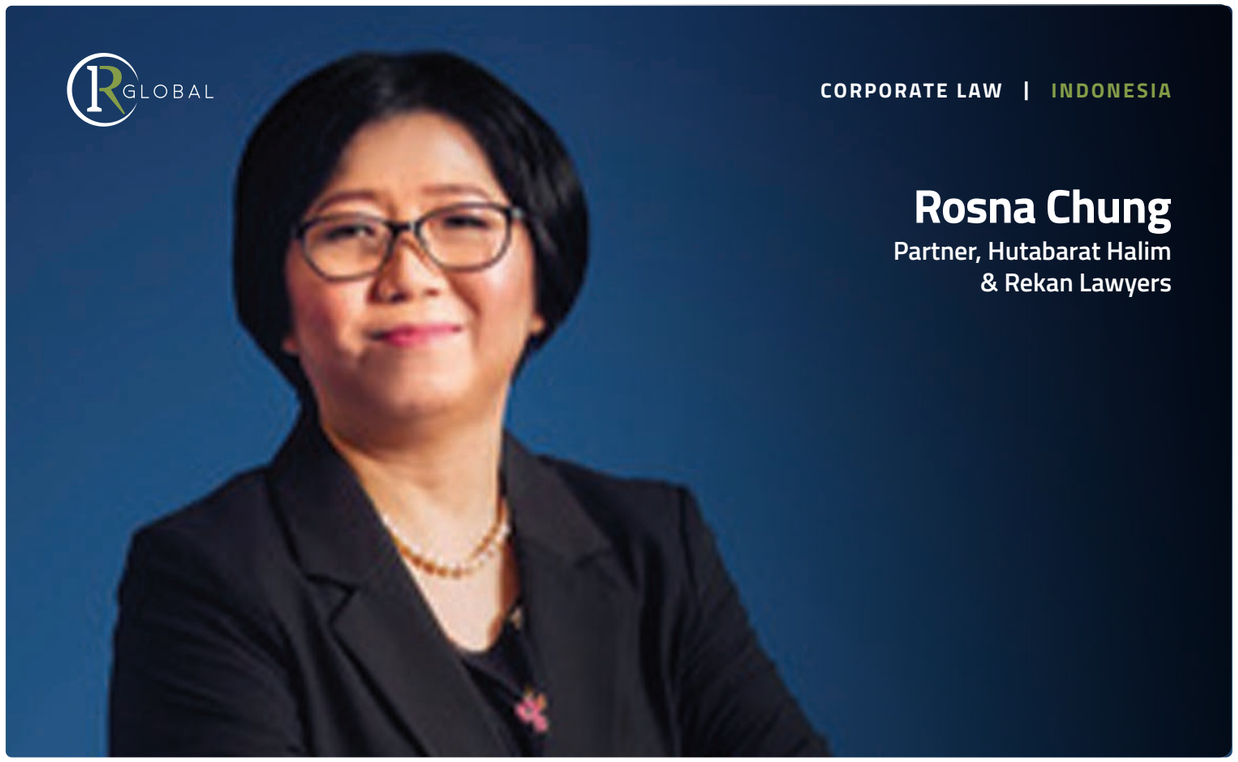
Mani Chengappa & Mathur is a boutique law firm specialising in advising businesses of all sizes on technology and outsourcing transactions, data protection, commercial transactions, employment law, intellectual property protection, commercialisation, licensing, and dispute resolution.

They blend legal skills with deep knowledge of business operations and risk management frameworks to provide clients with advice and representation that is practical and tailored to their unique needs.

The firm being has been regularly ranked over the last 7 years in the leading international legal directories, such as Chambers and Partners and the Legal 500 listing, for its capabilities in the TMT sector.

They are regularly instructed by international law firms and corporations to assist with aspects of privacy and data protection in India. Their experience in working with companies and in jurisdictions that treat privacy very seriously allows them to advise clients across the spectrum of privacy, data protection and information security.



The Omnibus Law: The latest amendment and its impact

In 2020, the Indonesian Government enacted Law No. 11 of 2020 on Job Creation, known as the Omnibus Law, which went into effect on 2nd November 2020. The Job Creation Law is enacted with the intention to resolve the overlapping regulations issues by way of amending several laws in a single legal instrument.

The Job Creation Law amends 78 existing laws, including the main Foreign Direct Investment regulations (i.e., the Investment Law and Company Law), and introduces the new concept of the Positive List (which was previously known as the Negative List).

On 25th November 2021, the Constitutional Court of the Republic of Indonesia issued Decision No. 91/PUU-XVIII/2020 declaring, among others, that the formulation of the Job Creation Law 2020 contradicted the Constitutional Law of 1945 from a procedural perspective and the Job Creation Law 2020 is "conditionally unconstitutional" with the Constitutional Law of 1945. In addition, the court decision also orders the postponement of all strategic and broad impact actions or policies and the prohibition of enacting any new implementing regulations to the Job Creation Law 2020. However, based on the court decision, the Job Creation Law 2020 will remain in full force and effect during the period of two years from the issuance of such decision (the Corrective Period). During the Corrective Period, the Job Creation Law 2020 remains valid and will not impact the investment regulation in Indonesia.

On 30th December 2022, the Indonesian Government promulgated Government Regulation in Lieu of Law No. 2 of 2022 on Job Creation (Perppu 2/2022). Perppu 2/2022 revoked and replaced the Job Creation Law on the same date. Perppu 2/2022 has been made as a permanent Law effective on 31st March 2023 by Law No. 6 of 2023 on the Stipulation of the Government Regulation in Lieu of Law No. 2 of 2022 on Job Creation into a Law (Job Creation Law 2023). The major amendments by the Job Creation Law 2023 are related to employment, water resources and halal certification.

Employment

On Employment issues, the following amendments to the previous law have been implemented:

1. Outsourcing

Pursuant to the Job Creation Law 2023, a company may outsource a part of its work to another company by written contract. The government will determine the type of work that can be outsourced through a government regulation.

The outsourcing company can employ its employees based on either an employment contract for a definite period, or an indefinite period employment contract. The protection, welfare, employment terms and disputes of outsourcing employees will be the responsibilities of the outsourcing company and must be conducted based on the prevailing laws and regulations.

One issue that must be complied with by an outsourcing company that employs its employees based on a definite period employment contract is the requirement for the company to regulate the assignment

"During the Corrective Period, the Job Creation Law 2020 remains valid and will not impact the investment regulation in Indonesia."

"The governor may also determine regional minimum wages if the calculation of regional minimum wage shows that it is higher than the provincial minimum wage."

of the provision on protection of employees' rights to the new outsourcing company in the event that there is a change of the outsourcing company, and subject to the availability of the job at the same employer. In the occurrence of a change of outsourcing company, the new outsourcing company is required to provide employment protection rights at least similar to the rights provided by the previous outsourcing company.

2. Perfection and adjustment of the calculation of minimum wage

Basically, every employee is entitled to enjoy decent living conditions. To achieve such a goal, the central government shall determine the wage policy, which will consist of the following:

- Minimum wages
- The scale and structure of wages
- Overtime wages
- Wages payable during employee absence and/or in the event that the employee is unable to work due to a specific reason
- Form and method on the payment of wages
- Determine minimum wages as a basis to calculate the payment of other rights and obligations.

The minimum wage is calculated by considering economic growth, inflation, and certain index. The formulation of the minimum wage calculation including such certain index will be regulated in a government regulation.

In the Job Creation Law 2023 it is regulated that the provincial minimum wages are determined by the governor, however the governor may also determine the regional minimum wage if the calculation of regional minimum wage shows that it is higher than the provincial minimum wage.

3. Implementation of salary structure and scale

The company is required to prepare salary structure and scale by taking into account its ability and productivity. The salary structure and scale will be used as guidance by the company to determine the salary for employees who have been employed for 1 year or more.

Water resource management

On the management of water resources, the Job Creation Law 2023 has introduced a new provision on the approval that needs to be obtained from the government if any government institutions, state-owned companies, cooperatives, or private entities wish to divert the direction of a river flow for a national strategic project. Approval must be obtained from the central government or regional government, depending on the location of the river.

Halal certification

The Job Creation Law 2023 has expanded that halal certification can be issued by the Halal Product Assurance Organising Agency based on written halal fatwa by the Indonesia Council of Ulama, provincial or regional Indonesia Council of Ulama, Consultative Assembly Acehnese cleric, or Halal Product Fatwa Committee.

A Halal certificate is a document that confirms a product or service has been prepared and manufactured in accordance with Islamic law and is therefore permissible for consumption or use by Muslims.

Rosna Chung is a Senior Partner of Hutabarat Halim & Rekan, whose areas of specialisation encompass: Corporate Investment, Capital Market, Banking and Finance; Trade and Competition and Intellectual Property.

Her extensive experience preparing transaction documents within the areas of practice mentioned above has enabled her to handle various types of projects on corporate investment, banking and finance as well as capital markets within the Indonesian legal market as well as for offshore clients intending to do business in Indonesia.

She has been acknowledged by IFLR 1000 as Highly Regarded Lawyers in Restructuring, Insolvency and Banking. She is licenced as: (i) a Capital Market Legal Consultant (HKHPM); (ii) to practice general law and litigation in Indonesia as an advocate; and (iii) a Receiver and Administrator.

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HUTABARAT HALIM & REKAN
LAWYERS

Hutabarat Halim & Rekan (HHR Lawyers) is a top-tier Indonesian commercial law firm with an eminent professional reputation. Since it was established in 1996, HHR Lawyers has evolved and demonstrated its ability to provide superior legal works and client services, thus sustaining its ability to be one of the most reputable and leading commercial law firms in Indonesia with a global reach.

With more than 26 years of experience and its many years of practice, HHR Lawyers is fully supported by a number of experienced Indonesian lawyers and foreign legal consultants, with skills across a broad range of commercial, corporate, finance and commercial dispute matters.

The principal goals of HHR Lawyers are to provide quality legal services to clients through its ability to understand clients' needs, to be an instrumental part of each client's success plan, and to provide the solutions to the clients' legal needs.

Copyright as collateral: a dream come true in Indonesia

For years, the Indonesian Government has endeavoured to make Intellectual Property-Based Financing (IP-based Financing) a reality. The Indonesian Government recently enacted Government Regulation No. 24 of 2022 on Implementing Regulation of Law No. 24 of 2019 on Creative Economy (GR 24/2022), which regulates the creative economy industry infrastructure. Specifically, it further regulates IP-based Financing that allows right owners to utilise their intellectual Property (IP) asset as collateral.

IP-based Financing is no stranger to Indonesia's legal framework as it has been touched upon in several previous regulations, including Law No. 28 of 2014 on Copyright (Law 28/2014), which stipulates that copyright can be used as an object of fiduciary guarantee. Theoretically, works protected under copyright can be used as a guarantee to settle debts or obtain financing while remaining in possession of the author or copyright holder. In this case, despite applying the work as collateral, the author or copyright holder can still use the works commercially. Practically, use of this provision has been scarce due to the lack of guidelines which causes hesitancy from the bank and non-bank financial institutions to be creditors.

Under GR 24/2022, prior to applying for IP Based Financing, four conditions must be met:

1) A financing proposal must be made to demonstrate value in the IP;
2) The business must be in the creative economy - usually, banks and non-bank financial institutions will conduct a due diligence check into the business of the debtor;
3) There is an obligation related to the IP – e.g., a license arrangement; and
4) There exists an IP recordation and/or registration certificates with the Ministry of Law and Human Rights – valuation of the collateral can be conducted to confirm appraisal.

> "In order to be used as collateral, it is inherently important for the IP asset to be of value."

IP appraisal method

GR 24/2022 regulates that appraisal will be conducted by an IP appraiser and/or appraisal panel of the financial institution based on several approaches, including cost, market, revenue, and other approaches permitted under the applicable laws and regulations.

For copyright, it is important to understand the value of the copyrighted asset is a function of the specific circumstances. Under Law 28/2014, a copyright is valid for the author's lifetime or 50 years since its announcement and continues for 70 or 25 years after the author dies, depending on the type of works. In the case of music works, a performing musician who is also the song's author could bolster the value of their copyright by performing live and releasing new songs to complement their existing catalogue of recordings. However, the value of the copyright may decline if the musician passes away without any further promotional efforts to commercialise the songs, especially if the heirs cannot manage the copyright. In addition, royalty is also an essential aspect of assessing the value of copyrighted works. In practice, royalties can be seen in a license agreement or other obligations to the IP.

Reversion rights

In providing IP-based Financing to a copyright holder, financial institutions must consider the duration of the loan structure as the copyrighted asset may cease to be owned by the copyright holder, especially when the author and the copyright holder are two different persons or entities. For instance, the copyright of a book work that is transferred in an outright sale agreement (sold flat), which entirely transferred the economic rights of the works to the purchaser, will return to the author after 25 years. Consequently, terminating the copyright holder's (purchaser) right to monetise the copyrighted asset.

> "As with most new regimes and exciting new developments, the "first-movers" will experience some challenges, but great opportunities are often associated with new risks."

Execution of a copyrighted asset

As copyright is an intangible good, execution will be more challenging. GR 24/2022 only stipulates that bank and non-bank financial institutions must conduct verifications of registration or recordation certificates. However, creditors will be entering uncharted territory in the event of a dispute with the debtor (copyright owner).

GR 24/2022 comes into effect on 12 July 2023. We are confident that this is moving the commercialisation of IP in Indonesia in a positive direction. As with most new regimes and exciting new developments, the "first movers" will experience some challenges, but great opportunities are often associated with new risks. We at K&K Advocates stand ready to work with copyright owners and financial institutions to realise the intended benefits of this new regulation. This is indeed a dream come true!

Risti is the co-founder of K&K Advocates and has over 20 years' experience in IP.

She has aided both Indonesian and foreign clients in a variety of IP projects. She leads the IP Prosecution Team and oversees the Commercial IP practice group.

Risti handles a wide range of prosecution works, involving trademarks and geographical indications, industrial designs, copyright and patent. She is also involved in the enforcement of IP rights as well as leading commercial projects, including advisory services in franchising, licensing, distributorship, consumer protection and anti-monopoly, as well as media and data protection/privacy issues.

She has advised clients across different industries and was responsible for the winning exemption for a multinational ready-to-assemble furniture manufacturer and distributor. She also advised the world's largest software manufacturer on a landmark copyright case.

Risti has been published in Bloomberg Law, Asia IP and Franchise Law Review, and actively speaks at various seminars on IP.

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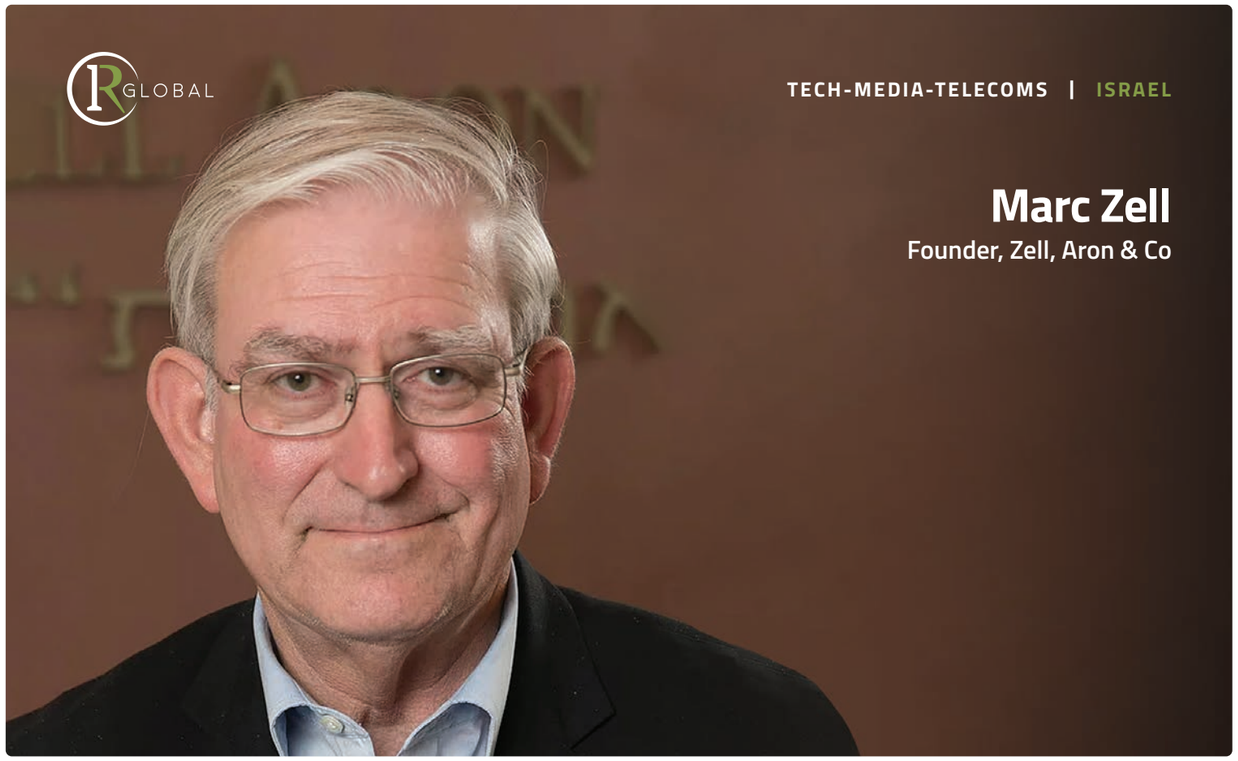
K&K Advocates is an Indonesian firm with practices that cover Intellectual Property (IP), Corporate & Technology, and Dispute Resolution. Over the years, they have expanded our services from IP to other practice areas.
Their growing corporate practice covers investments, government procurement, and transactions in many commercial sectors, including Technology, Media, and Telecommunication (TMT). As part of their dispute resolution practice, their dedicated lawyers have represented clients in various general litigation, arbitration, bankruptcy, and IP litigation and enforcement cases.

Since their establishment, K&K Advocates has gained a reputation as a leading IP expert in Indonesia. They have assisted multinational and local clients on several landmark cases related to copyright, patent, and trademark, from registration and enforcement to dispute resolution.
In technology, they have helped leading e-commerce and technology companies navigate the country's evolving TMT regulatory framework.

With a growing team of experienced attorneys covering a wide range of expertise, K&K Advocates will continue with its well-rounded approach to advising leading companies in the country.



Israel's current judicial reform crisis and the future of constitutional democracy in the Jewish state

The airwaves and social media have been abuzz in recent weeks about the Israeli government's program to reform the Israeli judiciary. Tens of thousands of protesters have crammed the Jewish State's highways and bi-ways in an attempt to shut down the newly elected government's premier legislative agenda, claiming that the proposed reforms would spell the end of Israeli democracy and the institution of a dictatorship. Nothing could be farther from the truth.

It is no exaggeration to say that the Israeli Supreme Court is probably the most powerful court in the world. Filling a vacuum created by the paralysis of the country's political branches, a Supreme Court President named Aharon Barak, single-handedly reconfigured the constitutional balance of power in the mid-1990s through a judicial sleight of hand. First, Barak interpreted the Basic Law: Human Dignity and Liberty, 5792-1992, which passed the Knesset by a vote of 31-21 (there are 120 members of Knesset), to grant the Supreme Court the right to overturn Knesset legislation and Government action based on fundamental principles even though Israel has never adopted a constitution. In other words, any judge in any court can invalidate laws that in his/her opinion contradict the fundamental values or the fundamental laws. Who determines those fundamental laws and values? The judges themselves.

Second, Barak's Supreme Court abolished virtually all principles of justiciability, which in other democratic systems act as a brake on judicial intervention. Thus, there is no requirement that High Court petitioners demonstrate standing to challenge legislation or executive action. A petitioner need not have any personal or concrete interest in the case or controversy. In fact, there need not be a case or controversy of the sort required by Article III of the U.S. Constitution for example. This means that anyone seeking to contest the "constitutionality" of a statute, regulation or executive action can bring a petition in the Supreme Court sitting as a High Court of Justice to obtain a judicial ruling.

Third, Barak's Supreme Court applying judicially created principles of democracy and good government began interfering with the collective will of the electorate, by disqualifying ministers and other government officials without any statutory authority to do so. This meant that frequently the Supreme Court had as much or more to say who could sit in the Government than the voters themselves.

Fourth, decisions of the High Court of Justice are not based on a record developed by lower tribunals based on probative testimony and other competent evidence tested by the rules of evidence and cross-examination. Rather the High Court rules based on affidavit evidence supplied by the parties without the benefit of the adversary procedures needed to vet and validate the evidentiary record.

Finally, under Israel's highly controversial system of selecting judges on the Supreme Court and inferior tribunals, Barak's judges effectively could determine those who were appointed to the Supreme Court thereby perpetuating Barak's judicial revolution.

The net effect of Barak's judicial revolution has been to allow the judiciary to amass extraordinary powers. It was the judiciary that initiated this transformation and developed it over the years. An expression of this attitude, which is clearly anti-democratic, is manifested in the intensive implementation of the pretensions to engage the court in "judicial legislation" and "judicial statesmanship".

Ironically, the current Government's attempts to curtail judicial overreach and restore balance among the collateral branches of government has been demonised as "anti-democratic" and even fascist. This is pure demagoguery. However, because the current centre-right government was elected by the greatest majority in recent election cycles, the campaign against judicial reform has become a vehicle for the defeated centre-left parties to overturn the results of the election.

To add to the confusion, Israel's Attorney General operates to oversee the Government's role in the judicial process, but the Attorney General is not subservient to the Government. The Attorney General is arguably the most powerful official in the entire world. His cluster of roles has no historical or modern equivalent in the democratic world. He serves as a consultant whose advice is final and binding, as the representative of the executive authority before the judicial authority, as the supervisor of the criminal prosecution and as someone who is authorised to represent the "public interest". In addition to the disqualification of laws by the courts, hundreds of bills have already been stopped in the various government ministries due to the binding decision of legal advisors who believed that the proposals would not pass the "test in the High Court of Justice".

The Supreme Court and the Attorney General work symbiotically. The Supreme Court has held that the Attorney General's decisions do not allow the government to act contrary to his opinion or to use alternative legal representation, unless the Attorney General has given his consent to this. The symbiosis between the Attorney General and the judiciary is evidenced by the extraordinarily high criminal conviction rate that exists in Israel.

This state of affairs, which borders on real madness and chaos, has prompted a counter-reaction by those advocating judicial reform that is much more extreme than what is necessary to restore the system to the proper balance among the executive, legislative and judicial branches. This counter-reaction has fuelled the fury of the "democracy" protesters to the point that threatens the functioning of Israel's government institutions, including the security forces.

The Government's reform proposals can be summarised as follows:

- The proposals will formally acknowledge for the first time the Supreme Court's power to invalidate legislation.
- The composition of the committee for the appointment of judges will also change. In the vast majority of democratic countries judges are appointed by those who hold a majority in the parliament, the coalition or the government supported by the parliamentary majority. The government's proposals support both the representation of the judiciary and the representation of the opposition in the committee.
- A third proposal involves the institution of justiciability principles in order to restrict the right of petition to those who have a personal and concrete interest in the controversy.
- A fourth major issue is the regulation of the functions of the Attorney General: the separation of functions, headed by presidents of the Supreme Court. In this area, the intention is to also deal with arrangements for auditing the Attorney General and the State Attorney's Office and the unlimited power that the ombudsmen currently have in the government ministries.
- The fifth main issue is the use of the standard of reasonableness in the judges' decisions. Today judges can invalidate the intentions of the executive authority even when they are legal and meet the requirements of common administrative law. "Reasonableness" is largely a subjective matter. From the beginning, the Minister of Justice declared a total cancellation of the use of the reasonableness standard, but now it is clear that the coalition is willing to compromise on this matter.

> "In fact, there need not be a case or controversy of the sort required by Article III of the U.S. Constitution for example."

Marc Zell, founder, regularly assists clients in cross-border mergers and acquisitions, asset protection and corporate finance, commercial transactions, technology transfer, project finance and investment and technology development enterprises. He is also an experienced transnational litigator, successfully representing business clients in complex litigations and arbitrations around the globe. Marc is a graduate of Princeton University and University of Maryland School of Law and is a member of bars of the State of Maryland, District of Columbia, Virginia, United States Supreme Court, Israel as well as various United States appellate, district and bankruptcy courts.

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TAX (ACCOUNTANTS) | LEBANON

Wissam Abousleiman

Managing Director, Abousleiman & Co

Engineering effective governance and management solutions

Nothing is what it seems when you only look in front of you. The obvious is just that, the obvious. Yet there is always a bigger picture. Only when you start looking from the top down, towards the smallest detail, then you have the perspective that lets you make appropriate, responsible and effective decisions.

Others would say that there are layers too, or there are many underlying factors in play, or there is a long-standing history to consider.

Keep in mind, however, that in our understanding of things: 'there is the way it is, the way you see it, and the way it should be."

Applying this rationale successfully in work is something you can only gain outside of academia: it is, in fact, a learning experience accumulated over years of trial and error, communication and miscommunication, hits and misses, failures and successes, owning up to mistakes and implementing corrective measures.

Within companies today, there is no doubt a dire need for specialist support on the different levels of management towards:

1. Realising organisational strategic goals beyond the administration of day-to-day operations
2. Rising to challenges against uncalculated risks. Addressing this need requires a broad understanding of governance.

The four layers of governance

"If management is about running the business ... governance is about seeing that it is run properly. All companies need governing as well as managing." Visualising this statement, a company or organisation is composed of multiple structural levels, each needing attention and care in different capacities.

At the very top, there are the owners or high net-worth individuals. These look to effectively and strategically manage:

- Ownership structures
- Assets and wealth
- Tax impact

Management in most cases is delegated, on a second tier, to specialised persons in the role of board members.

At this second level, these boards, along with their committees, seek advice on matters such as compliance and best practices, audits, data security and privacy, environmental and social issues (ESG), etc...

On the third level, the executives charged with the day-to-day management of the company, use necessary tools, systems, processes, and business solutions to ensure smooth operations within a solid and supportive infrastructure.

While on the fourth and last level, staff and personnel look for support, guidance, and assurance on the quality of their work apart from the need to review controls and processes to address, improve on, or resolve inherent control risks.

So, wherever the organisation's ultimate need lies, whether it be structural, governance, risk mitigation, or elsewhere, then keep in mind the answer is just as much about leading, not leadership; communicating and taking action, not just decision-making; sustaining and not just planning; accountability and good governance in the long run; and not short-term solutions or quick fixes. So, the questions are:

- How can long-standing businesses stay ahead of the curve & implement solutions for growth?
- How can startups seek financing to expand?
- How can businesses adapt to technological developments or regulatory changes?
- How can owners and shareholders then protect their investments and wealth?

As useful examples, (1) tax continues to grow in complexity as authorities introduce new taxes or rates, enforce new regulations in connection with cross-border transactions, require transfer pricing guides, and demand ultimate beneficial ownership disclosure. (2) Without proper communication channels and succession plans, management teams face countless problems as undocumented practices weaken the quality of reporting, ultimately disrupting decision-making processes and missing potential opportunities. (3) Poor budgeting often leads to cash flow shortages; inadequate financial literacy complicates fundraising; weak controls leave room for acts of fraud... the list can go on. Needless to say, there is no magic fix here.

However, there are reliable specialists with not only the experience and know-how to provide the necessary and adequate technical support at all organisational levels and functions but also to challenge existing practices to adapt towards new ones. All of is regardless of the business' size.

The first step is to know the client & their needs

Knowing the client means gathering enough information on their history, current situation, and their aspirations.

This all starts with asking the right questions and following methodological processes accompanied, preferably, by conducting a health check, followed by the next step of using the information we have to identify the areas of weaknesses, gaps, non-compliances, and risks.

The third is to design a plan, determine the tools to use, and define the processes or actions necessary to take the business from point A to point B while continuously weighing up the risks and deliberating alternative options.

The fourth is to implement the change, not simply by using customised tools or processes but by involving, supporting, and more importantly, coaching staff towards these goals to take ownership.

The task isn't complete yet: review, follow-up, and tweaks are necessary to ensure that all the bases have been covered and that the ship isn't just safe to sail, but that it is also able to do so and get there on time with all the cargo intact.

When all this is said & done, at some point in time, all, or some of these steps, need to be revisited or some areas polished to perform better.

From my own experience, the areas that need the most attention are:

1. Clear and transparent communications and reporting channels
2. Sustainable planning
3. Good governance practices
4. Data accuracy, privacy, and security
5. Consistent & reliable accounts, budgets, and finance
6. Efficient internal controls with respect towards the regulatory environment.

In the end, we do what we can with the time we have. I suggest that we give it our best.

"Keep in mind, however, that in our understanding of things: there is the way it is, the way you see it, and the way it should be"

Wissam is driven towards creating value and finding solutions for clients looking for sustainable growth opportunities and addressing business concerns. He pursues assignments diligently with a risk-based approach, giving great attention to compliance, the application of professional standards, transparent reporting, and good governance.

For 22+ years, Wissam has gathered a wide range of experience in assurance, financial management & reporting, tax, risk management, and board advisory services having worked on assignments in Lebanon, Denmark, the UK, Sweden, Switzerland, USA, Iraq, UAE, Oman, etc... separately and with fellow IR GLOBAL colleagues.

He has lectured at university level & has spoken at several international forums on Islamic finance, budgets, VAT, tax and compliance developments, data security and protection.

He is a Lebanese-certified public accountant & member of the Institute of Internal Auditors with an MBA from the Lebanese American University and a 3rd-degree black belt in Shotokan Karate-Do.

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Abousleiman & Co's guiding principles for over 50 years have been professional integrity and creating added value for their clients. As a trusted assurance & advisory firm, they have worked with HNWIs, private companies, public agencies, non-profits, and multinationals operating in the EMEA region.

Abousleiman & Co. have conducted valuations of assets (> 2B USD), standard audits (turnover ~ 500M US$), tax claims (~ 10M USD), risk assessments and medical audits (savings > 5M USD), M&A due diligences (~100M USD). Besides these, **Abousleiman & Co.** have successfully established internal audit functions (+9 persons) providing further coaching and training as well as designing and integrating ERP systems (+100K beneficiaries' records).

Nowadays, they focus on actively engaging in outsourcing assignments, dealmaking, and strategic comprehensive business solutions within the EMEA region.

TAX (ACCOUNTANTS) | NEW ZEALAND

Richard Ashby
Partner, Gilligan Sheppard

Sit back and relax – New Zealand's transitional tax residents regime

Packing up and moving to another country will often involve multiple decisions needing to be made, some of which can have material consequences for you if you make the wrong choice. The process is often made harder, by the numerous emotions that will usually accompany the shift – leaving family and friends, new cultures and customs to learn, and the ability to navigate the new location upon your arrival there.

One decision, obviously, is what to do with your various investments, particularly if the destination jurisdiction has a less favourable tax regime than the one you presently experience.

If your destination is New Zealand (NZ), and you have not been an NZ tax resident for at least the past ten years, then as the title to this article suggests, you can essentially sit back and relax, wait until all the emotions of the move have passed, and then take time to make some key decisions. The ability to take this approach is all due to NZ's transitional tax residents regime (TTR) which was first introduced in 2006, essentially as a carrot to attract more skilled talent to NZ.

Under TTR, once you have triggered an NZ tax resident status, essentially for the next 48 months the only foreign sourced income subject to NZ taxation is that which you derive either from employment or from the supply of personal services. So, take for example a case where you need to sell your home. The market is somewhat depressed, so you decide to rent the house out for 18 months hoping the market will improve. During TTR, this foreign-sourced rental income is exempt from NZ taxation. So are dividends from shares held in foreign companies and interest earned from those foreign bank account deposits.

Should you still derive foreign-sourced employment or personal services income post your arrival in NZ, while it may still be exposed to NZ taxation, usually you will receive a credit against the NZ tax payable, for any foreign income taxes you have already paid.

TTR is essentially an opt-out regime, which in other words means that unless you elect for TTR to not apply to you (which you might do, for example, if you wish to claim family assistance benefits in NZ), it automatically applies to you for the four-year period, once you are considered an NZ tax resident. The benefits of TTR can only ever be claimed once, so once the regime has applied to you, if you go away from NZ for more than 10 years and then return, you do not qualify for TTR again.

The obvious question now is, how do you trigger an NZ tax residency status?

NZ tax residency rules contain three specific tests for determining whether or not a natural person may be deemed an NZ tax resident. Two of the tests are black and white – they are based purely on a person's physical presence in NZ. Under the first test, once you have physically spent more than 183 days in NZ in any rolling 12-month period, you will be considered an NZ tax resident from the first day of that presence. Once deemed an NZ tax resident, you then need to be physically absent from NZ for more than 325 days in any rolling 12-month period (the second test), to become a non-resident again – that status applying from the 1st day of absence.

The third test, however, is more grey and potentially complicates the issue, because the test also takes precedence over the other two tests. Under the third test, if you have established in NZ what is referred to as a permanent place of abode (PPOA), you will be deemed an NZ tax resident from the date you establish your NZ PPOA, and you will retain this status until the date you cease to have an NZ PPOA, regardless of any physical presence in NZ. The PPOA test essentially examines whether you have an NZ abode available to you, and if so, the closeness of your association to that abode (what is the permanency of your connection to the NZ abode). It should be noted that the greyness of the PPOA concept often requires a detailed analysis of the person's factual scenario to be undertaken, before a proper determination can be made.

Understanding your NZ tax status is important for many reasons, particularly when you appreciate that NZ has a worldwide taxation basis. Once considered to be an NZ tax resident, the Inland Revenue will consider that it has taxing rights over your worldwide income, as opposed to some jurisdictions which tax purely on a territorial basis:

- It is relevant to determining when your 4-year TTR period may commence;
- It is relevant for determining upon what date will you be deemed to dispose of all your assets and acquire them back for market value, for the purpose of bringing those assets within the NZ tax base;
- It is relevant to determining whether the tie-breaker provisions of a relevant double-tax treaty agreement may need to be considered, if you are also considered to have retained a tax residency status in another jurisdiction (you're therefore a dual tax resident); and,
- It may be relevant to determining the appropriate rate of tax to be paid on certain types of income deemed to be derived from an NZ source.

If NZ is a destination you or your clients are considering, please do not hesitate to contact me for some guidance surrounding triggering an NZ tax residency status, and the consequent implications or exposures that status could create accordingly.

> "TTR is essentially an opt-out regime, which in other words means that unless you elect for TTR to not apply to you, it automatically applies to you for the four-year period"

> "Once considered to be an NZ tax resident, the Inland Revenue will consider that it has taxing rights over your worldwide income, as opposed to some jurisdictions which tax purely on a territorial basis."

Richard Ashby was born and bred in Waipu, a country town about 30 minutes south of Whangarei. Leaving school at the age of 16 intending to study his accounting degree full-time at Northland Polytechnic, he instead took up a position with the IRD in Whangarei. Four years later he transferred to the Henderson office and remained there for another three and a half years before deciding it was time to change sides. He took an accounting position at a small CA firm, where he worked for 18 months before deciding he wanted more of a challenge, which brought him through the doors of Gilligan Sheppard. Having spent the majority of his time at the IRD in the investigations unit, Richard's passion for tax stuck and he eventually became Gilligan Sheppard's tax partner.

Richard has had over 30 years experience with NZ taxation and particularly enjoys dealing with land tax issues and the GST regime. He deals with clients of all types and sizes and provides tax opinions on the appropriate treatment of items of income and expenditure, assists clients with IRD risk reviews and audits and can assist clients who are having difficulties meeting their tax payment obligations to make suitable repayment arrangements with the IRD. Richard also provides cross-border tax advice, both to existing clients looking to expand their operations offshore and to offshore persons looking to either establish an NZ presence for their business or to relocate themselves personally to NZ more permanently. Richard strives to maintain a good work/life balance and outside of the office enjoys spending time cycling or playing squash, or just hanging out with the family: Lisa and his four children.

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Data privacy in artificial intelligence: decoding Singapore's AI governance framework

The advancement of artificial intelligence (AI) is transforming the landscape of data privacy and challenging the foundations of traditional data protection. This is likely to lead to a re-evaluation of the effectiveness of current data protection methods.

Harnessing AI's capability to analyse and process vast amounts of data should ideally lead to new data protection techniques using algorithms to detect data patterns and anomalies, and then identify potential breaches and vulnerabilities in real-time.

But, the rise of AI has also raised concerns about data privacy. AI algorithms can collect and analyse massive data samples, including personal and sensitive information, all of which have increased concerns over privacy violations.

The use of AI in targeted advertising, facial recognition, and other applications can compromise individuals' privacy, enhancing concerns over surveillance and profiling.

ChatGPT, developed by OpenAI, has leapfrogged other apps such as Instagram and TikTok to become the fastest-growing web platform.

Since its launch, the chatbot has over 100 million monthly active users. Its growth has led to discussions around the moral responsibility of the creators and administrators of such AI systems.

Specifically in data privacy and protection, pertinent questions include:

- Who is accountable for the data privacy and protection aspects of AI systems?
- How should we approach data privacy and protection issues concerning governance, risk management and compliance regulations when building and using AI applications?

As Singapore's digital economy continues to evolve, a trusted ecosystem where organisations can harness the power of technological innovations and where consumers have confidence in adopting AI is key. The goal is to strike a balance that encourages responsible and ethical AI adoption, fosters innovation, and promotes consumer protection.

The Framework

The Personal Data Protection Commission (PDPC) is the Singaporean government agency tasked with enforcing the Personal Data Protection Act (PDPA), a data privacy law in Singapore.

In January 2020, the PDPC released a Model AI Governance Framework to help organisations using AI technologies govern their use of personal data and ensure that their AI systems are transparent, accountable, and fair.

The framework is intended to be a voluntary guide for companies working with AI technologies, and it aims to encourage their responsible and ethical use. It is based on the PDPC's belief that AI can bring many benefits to individuals and organisations, but only if it is used in a way that respects privacy, security, and other fundamental values.

The framework is organised around four key principles:

1. **Responsibility:** Organisations using AI should be accountable for its development, deployment, and outcomes. They should have a clear understanding of the potential risks and benefits of their AI systems, and they should take steps to mitigate them.
2. **Explainability:** Organisations should be able to explain how their AI systems work and how they make decisions.
3. **Fairness:** Organisations should ensure that their AI systems are fair and do not discriminate against individuals or groups. They should take steps to identify and address any biases that may be present in the data or algorithms used by the systems.
4. **Ethics:** Organisations should consider the ethical implications of their AI systems. They should be transparent about their use of personal data and should respect individuals' privacy and autonomy.

Under each of these principles, the framework provides guidance on how organisations can implement them in practice. These cover issues such as data management, algorithmic transparency, and human oversight of AI systems.

For example, the framework suggests that organisations should establish clear governance structures for developing and using AI systems, and they should conduct regular risk assessments.

A.I. Verify

In May 2022, Singapore's Infocomm Media Development Authority (IMDA) and PDPC launched A.I. Verify - the world's first AI Governance Testing Framework and Toolkit for companies aiming to demonstrate responsible AI in an objective and verifiable way.

A.I. Verify – currently a Minimum Viable Product (MVP), aims to promote transparency between companies and their stakeholders. Software developers and owners can verify the claimed performance of their AI systems against a set of principles through standardised tests.

A.I. Verify packages a set of open-source testing solutions together, including a set of process checks, into a Toolkit for convenient self-assessment. The Toolkit will generate reports for developers and business partners, covering major areas affecting AI.

Commercial entities from different business sectors were invited to test A.I. Verify and provide feedback. IMDA and PDPC also invited organisations to pilot the MVP and have the opportunity to:

- Gain early access to the MVP and use it to conduct self-testing on their AI systems/models
- Use MVP-generated reports to demonstrate transparency and build trust with their stakeholders
- Help shape an internationally applicable MVP to contribute to international standards development.

ISAGO

A second offering, in the form of a companion guide to the Model Framework, the Implementation and Self-Assessment Guide for Organisations (ISAGO) aims to help organisations assess the alignment of their AI governance practices with the Model Framework.

ISAGO provides an extensive list of useful industry examples and practices to help organisations implement the Model Framework. ISAGO is the result of the collaboration with the World Economic Forum's Centre for the Fourth Industrial Revolution to drive further AI and data innovation. ISAGO was developed in close consultation with the industry, with contributions from over 60 organisations.

Summary

In conclusion, as AI continues to shape the landscape of data privacy and protection, Singapore's Model AI Governance Framework provides a valuable resource for organisations seeking to develop and deploy AI systems responsibly and ethically.

The framework emphasises the principles of responsibility, explainability, fairness, and ethics, and provides detailed guidance on how organisations can implement these principles.

With the recent launch of A.I. Verify and ISAGO, Singapore is taking steps to promote transparency, accountability, and trust in AI systems.

By striking a balance between technological innovation and consumer protection, Singapore is positioning itself as a leader in the global AI landscape, fostering a trusted ecosystem where AI can be harnessed for the benefit of society.

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AEQUITAS LAW LLP

Aequitas Law LLP is a boutique law practice based in Singapore with an established track record of advising organisations and individuals on all matters connected with the collection, use and disclosure of personal data by organisations.

The firm's deep expertise in data protection and privacy encompasses both technical expertise in the field of information privacy and privacy program management as well as legal expertise in contentious and non-contentious matters.

Recent work and representation in this field include consulting and representing a town council and commercial corporations, as well as residential and commercial developments.

Stephen Vivian

Advocate, Stephen Vivian SC

A guide to arbitration in South Africa

South Africa has a well-developed and vibrant arbitration sector, and it is common for commercial contracts to contain arbitration clauses. Even where commercial matters commence in the High Court, many are ultimately referred to arbitration.

The International Arbitration Act (Act 15 of 2017; known as the IAA) incorporated the Model Law into South African law. This statute applies to all international commercial disputes that the parties have agreed to submit to arbitration under an arbitration agreement. Domestic disputes are governed by the Arbitration Act (Act 42 of 1965; known as the AA).

South African courts are arbitration-friendly. Arbitration clauses in contracts are generally enforced, and the Courts will only in exceptional circumstances hear a matter where the parties have a written agreement to arbitrate. The general position is that the Court will stay its proceedings pending the arbitration.

There are several arbitration bodies in South Africa. For commercial disputes, the most common is the Arbitration Foundation of South Africa (AFSA). AFSA functions both as an appointing body and as an administrator of arbitrations. Allied to AFSA are AFSA International and the China Africa Joint Arbitration Centre (CAJAC).

The Association of Arbitrators (Southern Africa) is commonly used in construction disputes. It functions as an appointing body but does not administer arbitrations.

It is common in South Africa for parties to agree to a private arbitration, where they either agree on an arbitrator or have a third party appoint the arbitrator. Arbitrators in commercial matters are frequently practising Senior Counsel or retired Judges. In such circumstances, the parties generally agree on the applicable rules. There is no administering body.

“South African courts are arbitration-friendly. ”

The default position in South Africa is that a single arbitrator is appointed. This is provided for expressly in Article 10 of the Schedule to the IAA (one of the few alterations to the Model Law). It is a matter of practice in domestic arbitrations.

There is a general assumption amongst practitioners that arbitration proceedings are private and confidential. However, in terms of Section 11 of the IAA, if a public body is a party, the arbitration proceedings are held in public, unless the arbitral tribunal directs otherwise (for compelling reasons). The term ‘public body’ is widely defined.

There is no confidentiality provision in the domestic AA. The parties can and often do expressly include such a provision in their contract. There is High Court authority suggesting that even if such a term is not included, it may be implied. Confidentiality provisions can also be contained in the relevant rules – for example, AFSA’s Commercial Rules provide for the arbitration proceedings to be conducted in private and impose confidentiality obligations on its Secretariat and Registrar.

Parties need to be aware that the “implied undertaking” rule in English law (where a party to whom a document has been disclosed may use such a document only for the purposes of the proceedings in which it is disclosed) is not part of South African law. Further, a party who receives documents in arbitration may be ordered to discover those documents in other proceedings.

Should it become necessary to enforce the award in Court or should one of the parties seek to challenge the award, both the fact of the award and its contents will be in the public domain.

Accordingly, the assumption that arbitration proceedings are private and confidential should be approached with caution.

There is no automatic right of appeal against an arbitration award. Parties may agree in advance to an appeal. This is usually to a panel of three arbitrators. Again, this may be under the auspices of one of the arbitration bodies or be arranged by the parties privately.

Once an award has been made, South African courts have a strong pro-enforcement bias. Under both the IAA and the Domestic Arbitration Act, recognition and enforcement are done by way of an application to the High Court. Article 35 of the schedule to the IAA provides for the recognition and enforcement of awards in international arbitrations seated in South Africa. Section 16 of the IAA provides for the recognition and enforcement of foreign arbitral awards.

As is to be expected under a Model Law regime, there are very limited grounds upon which a South African court would refuse to recognise and enforce an award.

Section 31 of the Domestic Arbitration Act provides that an award may be made an order of court on the application to a court of competent jurisdiction by any party to the reference. Again, there are limited grounds upon which a Court would refuse to do so.

The Supreme Court of Appeal recently held that South African courts can, in appropriate circumstances, apply the kompetenz-kompetenze principle.

Whilst there is a pro-enforcement bias, an application for the recognition and enforcement of an arbitral award may, if opposed, take between six months and a year at the first instance. Once the Court has granted an enforcement order, the award is regarded as an order of the High Court and is enforced through the usual execution mechanisms for court orders.

“Once an award has been made, South African courts have a strong pro-enforcement bias.”

Stephen Vivian SC is a senior counsel and member of the Pretoria Society of Advocates in South Africa. Stephen was admitted to practice as an advocate in 1996 and was accorded the status of senior counsel by the President of South Africa in 2018.

He frequently appears as counsel in commercial and construction arbitrations in both domestic and international disputes. He has also been appointed as an arbitrator in several disputes.

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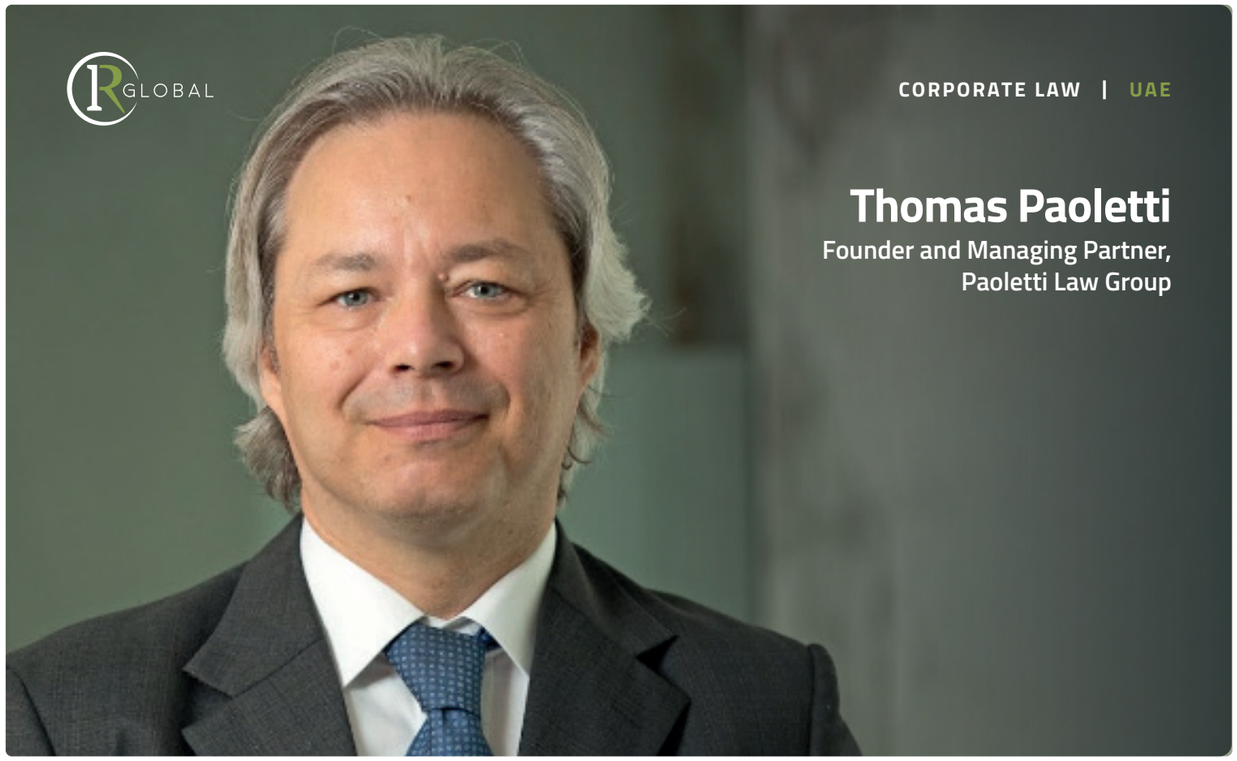
Stephen is experienced in both commercial and construction arbitrations, particularly international arbitrations in the Southern African region. He is briefed regularly both as arbitrator and as counsel. Stephen is a member of the International Council for Commercial Arbitration, as well as an associate member of the Association of Arbitrators of South Africa.

He also appears in commercial and other matters in the superior courts in South Africa, Botswana and Eswatini.



UAE: attracting investments while increasing compliance

The United Arab Emirates (UAE) has rapidly emerged as one of the most attractive business economies for investors in recent years. The country's strategic location, stable economy, and favourable business policies make it an ideal destination for investors looking to expand their operations. At the same time, the country is moving towards stricter compliance rules to curb illegal activities.

The United Arab Emirates, with its investor-friendly policies, is the third most global emerging economy in the world as per Foreign Direct Investment Confidence Index and has emerged as an economic leader in the middle east region. The UAE has grown by 7.6% in 2022, which showcases its economy's strong comeback after the economic slumber caused by Covid-19.

The country has excellent infrastructure, including world-class ports and airports, making it easy for investors to transport goods and services across the globe. In addition, the UAE has invested heavily in its transportation and logistics infrastructure, making it an important hub for global trade.

In 2020, UAE changed its company law by allowing 100% foreign investments in most business activities (except Activities of Strategic Effect). This removed a major block for the foreign investors legally bound to involve UAE nationals in their investments in the country. This measure will bring new players to the market previously dominated by UAE nationals.

The UAE has been actively pursuing bilateral trade agreements with countries worldwide recently. These agreements aim to boost trade and investment flows between the UAE and its trading partners while providing a platform for deeper economic cooperation. For example, the recent agreements signed with India, the UK, Israel, South Africa, and Turkey and the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) are expected to positively impact the UAE's economy by increasing trade and investment flows in a range of sectors.

For instance, a year after signing India-UAE Comprehensive Economic Partnership Agreement, bilateral trade between the two nations grew by 27.5%. The UAE's foreign trade hit 2.2 trillion dirhams ($599 billion) in 2022, up 17% yearly, and it has signed bilateral trade agreements with global partners spanning India, Israel and Indonesia.

In 2021, the United Arab Emirates, to celebrate the 50th anniversary of the nation, launched a series of programs to stimulate and diversify its economy, seeking to attract some $150 billion in new foreign investment in the coming decade. These fifty new projects and initiatives included easing visa regulations for attracting foreign workers, measures to boost technological development in the country, attracting software engineers and coders, and other measures to increase trade.

The rapidly changing regulatory environment is one of the biggest challenges businesses face in the UAE. The government constantly

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introduces new laws and regulations, and businesses must comply with these laws. This can be time-consuming and expensive, particularly for small and medium-sized enterprises (SMEs) with limited resources. Additionally, the legal system in the UAE can be complex and opaque, making it difficult for businesses to navigate.

These regulations have been implemented to ensure businesses operate transparently and responsibly while protecting stakeholders' interests, such as investors, customers, and employees.

The increased flow of money brings a risk of increased illegal activities like money laundering and terror financing. To mitigate these risks, the UAE has enacted several laws and regulations to combat them known as the Anti-Money Laundering (AML) and Combating Financing of Terrorism (CFT) laws. These measures include conducting customer due diligence, maintaining accurate records, and reporting suspicious transactions to the relevant authorities.

UAE has created a mechanism to recognise an entity's Ultimate Beneficiary Owners (UBOs), which requires the business entities to maintain adequate and up-to-date information about their shareholders and the ultimate beneficiary owners. In addition, the UAE has also established the Financial Intelligence Unit, which is responsible for collecting and analysing information on money laundering and terrorist financing activities in the country.

The UAE government 2021 also introduced massive changes to the labour laws, which aimed at curbing discrimination, forced labour, harassment, and bullying. The law fixes working hours and provides detailed provisions related to maternity benefits which women can avail of. The UAE has also established a Labor Market Regulatory Authority, which monitors and enforces labour laws in the country.

The nation is fast becoming a hub of startups and technology-driven businesses, making UAE a global leader in innovation in the coming years. As a result, it is moving away from the traditional energy-driven economic model and is becoming a top attractive investment site. However, businesses need regular guidance from experts to tackle the complex legal and compliance framework of each Emirate. To succeed in the UAE, businesses must understand these challenges and develop strategies to comply with the regulations while still achieving their business objectives. This may include investing in local expertise and careful planning and executing compliance strategies.

Thomas Paoletti has assisted clients in both domestic litigation cases and international cases including the United Kingdom, United Arab Emirates and Oman in his twenty years of legal practice.

In 2008 he joined Al Bahar Law Firm, concentrating his activities on drafting contracts and in particular commercial contracts and company-related contracts and advising clients on corporate and company law as well as commercial agreements advising both domestic and international clients.

He has acquired specific expertise in the Gulf States, assisting companies in terms of overseas investment and internationalisation in the Middle East, offering legal support throughout the planning stage and specialist assistance in the establishment and running of the overseas business. In 2014 he founded the Paoletti Legal Consultant and he is currently the owner and the managing partner.

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How foreign arbitration awards are recognised in the UAE

Recognition and Enforcement: are they bound to each other?
Although the NY Convention 1958 regulates the "recognition & enforcement" of foreign arbitration awards, the two institutions each have their own associated regulations. The successful party seeks recognition and enforcement for different purposes.

- **Recognition** of an award without subsequent enforcement is generally sought by the successful party by way of defence or set-off against a credit brought by the losing party against it in other proceedings.
- **Enforcement** of an award is sought when the losing party, despite the notification and recognition of the award, refuses to pay or fulfil the AT's order.

Therefore, the successful party may ask the Court to "recognise" or to "recognise and enforce" the award and request 'ratification' according to Article 24 of the DIFC Court Law (see below).

Definitions related to domestic and foreign arbitration awards.

- **Domestic award:** awards recognised and enforced in the state in which it was made.
- **Foreign award:** recognition and enforcement are sought in a state other than that in which it was made.
- **Place of arbitration:** this is a 'neutral forum' where both parties have no connection, usually chosen by the parties in the arbitration agreement.
- **"Lex Arbitri":** is the law of the seat of arbitration. It is applied at all stages, except during the enforcement of an award.

Onshore and offshore UAE.
Broadly speaking, in the UAE, "onshore" means the mainland. This is the territory of the UAE that excludes its "Free Zones". By contrast, "offshore" areas are those belonging to the Free Zones.
When we refer to judicial matters and arbitration, the concepts of onshore and offshore are quite different.

In the UAE there are two offshore jurisdictions each regulated by a different set of laws & rules. These are the DIFC and the ADGM. It should be noted that:

- Both of these are "Financial Free Zones"
- They are "common law" jurisdictions with an independent judiciary.
- The official language of the DIFC and the ADGM is English.

Recognition and enforcement of a foreign arbitration award onshore in the UAE.
Federal Law No. 6 of 2018 (the UAE Arbitration Law) does not apply to the recognition and enforcement of foreign arbitration awards in onshore UAE.

The law and procedure for the recognition and enforcement of foreign judgments and arbitration awards onshore in the UAE are set out in Articles 85 and 86 of the Cabinet Regulations No. 57 of 2018, concerning the UAE's Civil Procedure Law (the Executive Regulations).

A party seeking the recognition and enforcement of a foreign arbitration award onshore will need to submit either an application for recognition of the foreign arbitration award or file an ex-parte petition directly with the Execution Court following which the judge will render an order within three days.

For a foreign arbitration award to be recognised in the UAE, the

"Basically, in this context, DIFC Courts act as "conduit courts."

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conditions set out in Article 85 (2) of the Executive Regulations must be satisfied as these conditions can form the basis of any challenge.

Art. 85 of the Executive Regulations Enforceable Decision – Right of Challenge
The conditions in Article 85 (2) are the following:

- The UAE Courts do not have exclusive jurisdiction on the subject matter of the judgment.
- The judgment has been issued by a court that has jurisdiction, according to the law of the country in which it was issued and was duly attested.
- The opposing parties in the case have been summoned to appear and were represented before the court or tribunal (right to be heard).
- The judgment or order acquired the authority of res judicata under the law of the court where it was issued (however, proof may be required through a certificate or the judgment itself might prove such); and
- The judgment does not violate the public order or morals of the UAE.

Art. 86 of the Executive Regulations
According to Article 86 of the Executive Regulations, "The provisions of Article 85 shall apply to arbitration awards delivered in a foreign country".

Applicable Rules for recognition and enforcement offshore in Dubai
The DIFC has its own Arbitration Law (No.1 of 2008) as amended by the DIFC Law No. 6 of 2013.

Part 4 of the above-mentioned law (known as "The Recognition and Enforcement of Awards") in Articles 42 & 43 regulates the matter.

DIFC Courts as "conduit courts".
According to RDC 43.61, "Rules 43.62 to 43.74 apply to awards made in arbitration proceedings wherever the seat".

The DIFC courts have jurisdiction for recognition and enforcement wherever the seat of the arbitration is for the purposes of any subsequent application for enforcement in the courts of Dubai.

Once a DIFC Court ratifies a foreign judgment or arbitration award, the DIFC ratification order can then be taken to the Dubai Courts for enforcement in onshore Dubai or elsewhere in the United Arab Emirates.

Basically, in this context, DIFC Courts act as "conduit courts".

Under article 5(A)(1)(e) of the JAL (Judicial Authority Law) No. 12 of 2004, as amended by Dubai Law No. 16 of 2011, art. 1, the DIFC CFI has jurisdiction.

Article 24 of DIFC Courts Law, n. 10 of 2004 – Ratification of Judgements
Under Article 7(4) of the Judicial Authority Law, the Court of First Instance has the right to ratify any judgment, order, or award of any recognised:

- Foreign court.
- Courts of Dubai or the United Arab Emirates.
- Arbitration award.
- Foreign Arbitration award; or
- Orders for any subsequent application for enforcement in the courts of Dubai.

Antonio M. Varvaro has been practising law since 1990. Currently, he is a member of the Rome BAR Association and is included in the roll of advocates with rights of audience before the Court of Cassation and the highest Judiciaries in Italy. He is also a member of the CCBE (Conseil des Barreaux de la Communauté Européenne) with right of audience before the Tribunal of First Instance of the EU.

In Dubai, Antonio has been authorised by the Ruler's Court to practice law and is also registered in DIFC Courts with unrestricted rights of audience.

In 2007, Antonio became a Fellow of the Chartered Institute of Arbitrators (FCIArb), a prestigious Arbitral Institution based in London, and in 2010 qualified as a Chartered Arbitrator (CArb) there.

He speaks fluent Italian and English, as well as intermediate French.

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Antonio M. Varvaro Legal Consultants DMCC is licensed to practice law by the Ruler's Court of Dubai. It is registered with DIFC Courts, an Independent Common Law & English language jurisdiction, located in the heart of Dubai, which governs commercial and civil disputes, nationally and internationally.

The firm provides companies with legal assistance in arbitration cases as well as in litigation cases before the DIFC Courts.

The firm's expertise spans international commercial arbitration, litigation, dispute settlement, international contracts, corporate law, and intellectual property.
As an official agent for International Business Companies Formation and Foundation, registered with RAK International Corporate Centre (a UAE Governmental Corporate Registry), the firm is also specialised in company formation in the United Arab Emirates.

The firm provides clients with legal assistance in foreign direct investments (FDIs) both in the United Arab Emirates and abroad.

Antonio M. Varvaro Legal Consultants DMCC is included in the directory of the Consulate General of Italy in Dubai and the directory of the Italian Trade Agency (Dubai Office). The firm is also a legal advisor to the Italian Chamber of Commerce in the UAE.

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