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ASIA PACIFIC NEWSLETTER

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Relevant Information for the Primerus™ Asia Pacific Region

LETTER FROM THE CHAIR

Written by: Caroline Berube
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(Singapore & Guangzhou, China)

Caroline Berube is the Managing Partner of HJM Asia Law, a boutique law firm with offices in China and Singapore. She is admitted to practice in New York and Singapore, holds a BCL (civil law) and an LL.B. (common law) from McGill University (Montreal, Canada) and studied at the National University of Singapore with a focus on Chinese law in the mid 1990's. Caroline worked in Singapore, Bangkok and China for UK and Chinese firms prior to establishing her own firm more than 16 years ago.

Written by: Caroline Berube – HJM Asia Law & Co LLC (Singapore & Guangzhou, China)

It is a pleasure to invite you all to the second volume of the Primerus™ APAC newsletter for 2023!

This second newsletter follows the well-received first volume published earlier this year on January 2023.

I wish to extend a big thanks to all Primerus™ APAC Member firms who have again contributed to this second volume and to our new Primerus™ APAC Member Bross & Partners from Hanoi Vietnam who have submitted their first contribution for this year!

I'm sure all Primerus™ APAC Members will join me in welcoming a new Primerus™ APAC Member to our organisation.

For this newsletter, we have again lined up a number of interesting and wide-reaching articles, updates as well as introductions to some new lawyers for everybody to get to know more personally, including:

Australia

1. **Are data breaches the new normal? An Australian perspective,** by Selwyn Black (Partner), Lucy Han (Associate), Sophie Lee and Tracey Ren of Carroll & O'Dea Lawyers, who consider and explore recent Australian legislative reactions on recent high profile data breaches

China (including Hong Kong, Singapore and Taiwan)

2. **Draft Administration Measures on Generative Artificial Intelligence Services,** by Ralf Ho (of Counsel) of HJM Asia Law & Co LLC, who outlines the recent draft proposed amended measures promulgated by the Cyberspace Administration of China on Generative Artificial Intelligence Services

3. **Singapore Employment Law Updates Following Passing of Budget 2023,** by Matthew Boyd Associate at HJM Asia Law & Co LLC, who provides an overview of key takeaways in the employment law sector following Singapore's recently announced budget of February 14th, 2023

4. **Will the court grant a springboard injunction to assist an ex-employer where there is no restrictive covenant in the employment contract?,** by Michael Szeto Partner of ONC Lawyers, who explains the concept of a 'springboard' injunction and circumstances where such injunctions can be ordered by the Hong Kong courts against ex-employees

5. **Would the Court wind up a foreign company which has already been wound up in its place of incorporation?,** by Ludwig Ng (Senior Partner) and Eric Woo (Partner) of ONC Lawyers who outline the current law in Hong Kong concerning winding up of foreign corporations registered in Hong Kong

6. **Preparing for Communist Party of China Cells Being Required Inside Your Private Company,** by Nicholas Chen, Managing Partner, and Song Qing, Foreign Investment Consultant, of Pamir Law Group who explain the concept of Communist Part of China cells in China private companies

7. **How to Strategically Respond to Climate Change, Crisis and Collapse by Applying Sustainable Rule of Law and Compliance Systems,** by Nicholas Chen (Managing Partner) and Jose Mario Ponce of Pamir Law Group, who explore the current state of companies sustainability vs profit-making activities in a global context

8. **Malicious Trademark Litigation and Defendant's Counterclaims against Malicious Litigation,** by Yizhou Liu (Partner) of Watson & Band, who explores the practice of malicious / vexatious litigation by parties in trademark disputes and what can be done to deal with clients who may be faced with this situation

India

9. **Liberalisation of India's Legal Market,** by Mani Gupta (Partner) and Anil Khanna (Associate) of Sarthak Advocates & Solicitors, who provide a commentary on India's recently approved Registration and Regulation of Foreign Lawyers and Foreign Law Firms in India Rules 2022 on what this may mean for investment and other opportunities for foreign law firms clients in the India market

Indonesia

10. **Deceit as Grounds to Cancel an Arbitration Award**, by Eddy Leks of Leks & Co Lawyers

Vietnam

11. **Initial Coin Offering in Vietnam: Current Legal Framework and Legal Implications**, by Tran Anh Hung (Manging Partner) and Dinh Cao Thanh (Senior Associate) of Bross & Partners (Vietnam) LLC who summarise the current legal landscape in Vietnam in relation to cryptocurrency offerings and related matters

New Members

12. **Discover Some of Our New Members Section for Apoorva Chandra, Partner of Sarthak Advocates & Solicitors, who shares amongst other things his reasons for practising law as well as funny experience/ moments whilst in legal practice!**

13. **New firm member and former public prosecutor Nobuhiro Matsuo who joined GI&T Law in their Japan office recently in April of this year.**

14. **Discover Some of Our New Members Section for Tran Anh Hung, Managing Partner of Bross & Partners (Vietnam) LLC, who shares his life and memorable past cases as a lawyer practising in Vietnam as well as his passion for teaching and exceling others around him in day-to-day legal practice.**

Firm Updates

15. **Latest news from ONC Lawyers including:**
    i. **Ms. Angel Wong and Mr. Eric Woo's qualification to practice as Greater Bay Area lawyers; and**
    ii. **ONC Lawyers recent advising on the listing of Zhongtian Construction (Hunan) Group Limited**
16. **Latest news from Leks & Co Lawyers on Eddy Leks' recent registration as an Arbitrator at the Badan Arbitrase Nasional Indonesia (BANI) Arbitration Centre.**

We hope Primerus™ APAC Members will enjoy this second volume newsletter as well as continue to make best use of the Primerus™ group platform for continual networking and business building opportunities!

ARE DATA BREACHES THE NEW NORMAL? AN AUSTRALIAN PERSPECTIVE

Considerations of recent Australian legislative reactions on recent high profile data breaches.

Introduction

After the significant data breaches which occurred in recent months, there has been increased scrutiny of Australia's privacy and data protection regime. Legislative amendment and recommendations for future reform have quickly followed, most notably affecting the Australian Privacy Act 1988 (Cth) which governs the collection and use of personal data within the Australian jurisdiction. This article outlines the recent major breaches and examines whether the legislative reform response is adequate in preventing similar incidents in the future.

Recent breach cases

Optus

The exposure of 9.8 million Optus customers' data is the second largest data breach in Australian history. On 22 September 2022, personal information of Optus customers was compromised by a cyber attack on the telecommunications company. Sensitive data including dates of birth, driver's licenses, passports and addresses were exposed to hackers due to technical vulnerabilities in the storage of the information. Critically, Optus used a public application programming interface (API) to facilitate the sharing of data between applications and organizations. The public API supported Optus' system for loading customer information via the Optus app or website, and therefore involved the handling of highly sensitive personal data. Furthermore, Optus had consecutive numbers to identify its customers. This made it easier for hackers to predict customer identifiers once one number had been obtained.

Medibank

Less than a month after Optus, Medibank Private was alerted to the fact that hackers had obtained Medibank Private and AHM customer data. Like

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Selwyn Black leads the Business Lawyers Group at Carroll & O'Dea, Australian lawyers. His practice includes advising on a variety of issues for businesses including IP, acquisitions and disposals, joint ventures, contracts and employment arrangements, international supply and distributorship arrangements and associated disputes and regulatory issues.

Lucy Han works in Business Practice. She has a wide range of

other breaches, this data included the names, addresses, phone numbers, dates of birth and healthcare-related information of Medibank customers. It is estimated that about 9.7 million people were impacted by this breach, including international students. The mechanism for the theft is suspected to be the use of false or stolen credentials to gain access to the internal system and to write a script for data exfiltration.

Latitude

Just last month in March 2023, customer data of Latitude Financial was stolen, in the largest known financial institution data breach in Australia. Up to 7.9 million Australian and New Zealand customers have been affected, with driver's license numbers and passport numbers being the main targeted information. In another 6.1 million cases, records dating up to several decades back were stolen in the attack. The scale of this breach means that it appears to be the most damaging breach since the Optus and Medibank breaches. It is similar to the Medibank breach, in that stolen credentials and third-party vendors provided an opportunity for the breach to occur.

Meriton

Meriton claims staff personal information and guest contact information may have been exposed in an attack in January 2023. Like the Latitude breach, driver's licenses and passport details were obtained. The breach is regarded to be a result of data being duplicated and shared with third parties, rather than being contained in one place. Nevertheless, the estimated impact is lower than the above three breaches, with around 1,900 people being contacted about the breach.

Legislative reform

Whilst there has been a spate of Australian legislative amendments in response to the recent breaches such as the Telecommunications Regulations Act 2021 and the Security of Critical Infrastructure Act 2018, the main legislative reform has been to the Privacy Act 1988. The Privacy Legislation

experience working on matters across commercial advisory and dispute resolution. Lucy has been involved in commercial negotiations and transactions in the start-up innovation space, cross-border M&A, privacy compliance projects, intellectual property disputes and strata disputes.

Sophie Lee is a law clerk at Carroll & O'Dea Lawkers.

Tracey Ren is a law clerk at Carroll & O'Dea Lawyers, working in its Sydney Business Law practice. She is currently completing a Bachelor of Laws and Bachelor of Commerce at the University of New South Wales.

Amendment (Enforcement and Other Measures) Act 2022 introduced significant changes to Australian privacy law and regulatory landscape. In summary, the amendments are:

a. Extended extra-territorial scope of the Privacy Act

b. Increased maximum penalties for serious breaches

c. Strengthening the Notifiable Data Breaches scheme

d. Information sharing powers for the OAIC and ACMA

e. Enhanced enforcement powers of the OAIC

Generally, it appears that the recent amendments to the Privacy Act are now more aligned with the European Union's General Data Protection Regulation (GDPR).

Alignment with the GDPR

The GDPR is one of the most comprehensive and wide-reaching legal frameworks addressing the retention and use of consumers' personal information. It is generally broader in scope than the Australian Privacy Act, applying to more entities and more situations involving data handling.

Widened geographic scope

The Privacy Act applies to foreign entities with an 'Australian link', as per s 5B. Whilst previously there were two criteria that needed to be fulfilled to establish an 'Australian link', namely that they carry business in Australian jurisdiction and that they collect information in Australia, the recent amendment repeals the second criteria. This means that the only criteria is that the entity carries business in Australia, effectively widening the extra-territorial grasp of the Act. As noted in the Explanatory Memorandum and Bill Digest, the amendment reflects the commercial realities where businesses may collect information from a digital platform with no servers in Australia.

Operationally, s 5B of the Privacy Act is similar to the GDPR stance on foreign entities, as Art 3 notes that effectively, the Reg applies to data controllers and processors both inside and outside the EU. However, for non-EU entities, the extent of processing of personal data of EU individuals is related to offering goods or services (paid or otherwise) or the monitoring of their behaviour taking place in the EU.

Increased data breach penalties

There are increased maximum penalties for 'serious and repeated interferences with privacy' under the amendment. Individuals may be fined up to $2.5 million, and for body corporates the greater of $50 million, 3 times the value of the benefit obtained, or 30% of the entity's adjusted turnover during the period of contravention. The GDPR provides in its 'Key Issues' section that more severe violations of the Regulations can attract fines up to €20 million or 4% of the prior fiscal year turnover of the entity. In this respect the Australian provisions have significantly heavier penalties.

Expanded powers of the OAIC

The Office of the Australian Information Commissioner (OAIC) has expanded powers to share information with other authorities, and publicly disclose information in the course of exercising its duties. The GDPR equivalent is a 'competent supervisory authority' which would be notified of a data breach. Both the OAIC and GDPR supervisory authorities have the power to obtain information and documents from the entity which holds the data, and can inform them of their alleged breach. Both can authorise entering premises to obtain access to data and to inspect the documents held by the entity. With the amendment to the OAIC powers, it is now more in line with the investigative and corrective powers of GDPR authorities.

Opposing the new norm

Although the amendments were brought forward to be in good timing with the aftermath of the breaches, they have been criticized for simply being a band aid solution. For example, for the increased penalties to have an actual effect in deterring entities, it was suggested in the Bill Digest that the penalties need to be supported with further enforcement provisions as well as more funding so that the OAIC may enforce such civil penalties While the GDPR penalties are now less than those under the Australian privacy regime, it is important to note that the Privacy Act and its supporting framework is still far from comprehensive.

Also, the legal and practical environment dealing with handling of personal data needs to be proactive, rather than reactive or retrospective. It has been argued in the Bill Digest that the increased penalties may not resolve the 'root' issues: namely 'data over-collection (APP 3)' and 'data retention (APP 11.2'). Instead, further reforms such as a 'right to erasure of personal information' are needed. Although the law tends to lag behind developments in technology, there is the potential to mitigate risks by anticipating them and learning from past incidents. The recent data breaches which have affected millions of Australians are lessons to be learnt for both businesses and the government. With increasing dependence on technology to facilitate everyday transactions, consumers are more exposed to breaches where their personal information is stolen and potentially sold without their knowledge. Although Australia has begun to fortify legal and practical changes to personal data storage regulation, there is still much to be done to prevent future breaches from occurring, so that this does not become the new normal.

CHINA'S DRAFT ADMINISTRATION MEASURES ON GENERATIVE ARTIFICIAL INTELLIGENCE SERVICES

Background

On April 11th, 2023, the Cyberspace Administration of China (the "CAC") issued draft Administration Measures on Generative Artificial Intelligence Service (the "Measures") and solicited public comments in order to promote the development and application of the Generative Artificial Intelligence (the "GAI") in accordance with the Cybersecurity Law of China.

What are being proposed under the Measures?

A. Application of the Measures

The Measures shall apply to those who develop and utilize GAI products to provide services to the public within the territory of China.

GAI refers to the technology of generating text, picture, sound, video, code and other contents based on algorithms, models and rules.

B. Requirements of the Measures

1. Requirements on the Contents of the GAI

    a. Contents generated by GAI shall not violate the laws and regulations.

    b. Take measures to prevent discrimination on the race, ethnicity, belief, nationality, region, gender, age, occupation, and so forth in the process of algorithm design, training data selection, model generation and optimization, and provision of services.

    c. Respect the intellectual property rights and business ethics, and shall not use advantages such as algorithms, data, and platforms to carry out unfair competition.

Written by: Ralf Ho - HJM Asia Law & Co LLC (Singapore & Guangzhou, China)

Ralf is a China-qualified attorney whose practice focuses on labor dispute and civil cases. Prior to joining HJM, Ralf was an associate at a Chinese law firm specializing in corporate compliance and employment law. In addition to his corporate practice, Ralf has assisted clients on a variety of litigation and arbitration matters, including the resolution of redundancy and class action labor disputes before various courts and arbitration commissions in China.

d. Content generated by GAI shall be truthful and accurate, and measures shall be taken to prevent the generation of false information.

e. Respect the legitimate interests of individuals. It is prohibited to illegally acquire, disclose, and use personal information, privacy, and trade secrets.

2. Requirements on the Service Provider of the GAI

The Service Provider of the GAI shall bear the responsibility of producers of content generated by GAI; Where personal information is involved, the Service Provider of the GAI shall bear the legal responsibilities of the personal information processor.

The GAI service provider shall be responsible for the legality of pre-training data and optimized training data sources of GAI products. And the pre-training and optimized training data used for GAI products shall meet the following requirements:

a. Meeting the requirements of the Cybersecurity Law and other laws and regulations;

b. Contents that do not infringe intellectual property rights;

c. If the data contains personal information, the consent of the owner of the personal information shall be obtained or other circumstances in accordance with the provisions of laws and administrative regulations;

d. To ensure the authenticity, accuracy, objectivity and diversity of data;

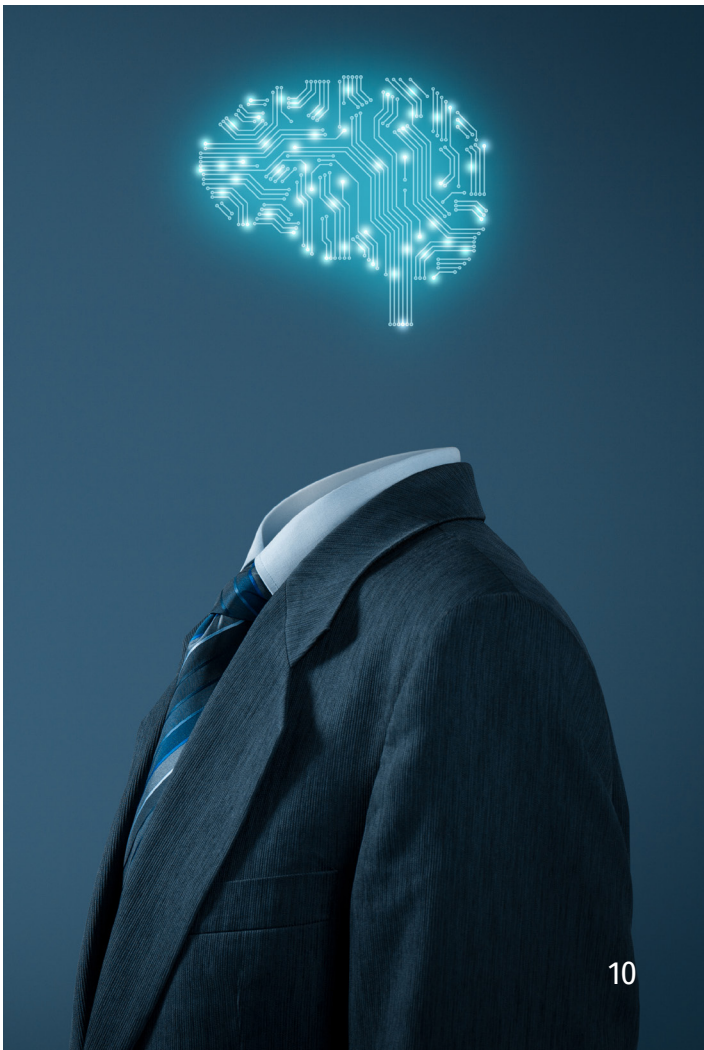
In addition, the contents generated by GAI shall bear a mark as GAI products.

C. Prerequisites for the provision of the GAI service and the relevant legal responsibilities

1. Prior to the provision of the GAI service to the public, the GAI service provider shall file security assessment with the CAC.

2. Should the GAI service provider violate the Measures, the CAC and competent authorities have the right to fine such GAI service provider in accordance with the Cybersecurity Law, Data Security Law, Personal Information Protection law.

3. Should there be no relevant provisions of the laws and regulations, the CAC and the competent authorities shall have the right to issue a warning, circulate a notice of criticism and order correction within a time limit; If the offender refuses to make corrections or the circumstances are serious, the offender shall be ordered to suspend or terminate the use of GAI to provide services and be fined not less than RMB 10,000 yuan but not more than RMB 100,000 yuan. If the case constitutes an act violating the administration of public security, administrative penalties shall be imposed accordingly; If the case constitutes a crime, criminal responsibility shall be investigated according to the Criminal Law.



SINGAPORE EMPLOYMENT LAW UPDATES FOLLOWING PASSING OF BUDGET 2023

Background

On February 14th, 2023, the Minister of Finance for Singapore delivered the budget for financial year 2023.

Among the various provisions contained within the budget 2023 will be a number of changes affecting both employers and employees under Singapore's current Employment Act 1968, Central Provident Fund Act 1953 and related legislation and regulations.

This article will summarise the key changes announced in the budget 2023.

Increase in Central Provident Fund Monthly Ceiling

All Singapore Citizen and Permanent Resident employees and their Singapore employers are required to make monthly contributions to the central provident fund account.

At present, employees are required to pay 20% of their monthly salary and employers are required to pay 17% up to a designated monthly salary ceiling.

The current ceiling for Singapore Citizen and Permanent Resident employees is **SGD 6,000**.

Pursuant to the budget 2023 announcements, the current salary ceiling will be increased incrementally from the current SGD 6,000 ceiling up to SGD 8,000 between now and January 1st, 2026:

Written by: Matthew Boyd and Ralf Ho - HJM Asia Law & Co LLC (Singapore & Guangzhou, China)

Ralf is a China-qualified attorney whose practice focuses on labor dispute and civil cases. Prior to joining HJM, Ralf was an associate at a Chinese law firm specializing in corporate compliance and employment law. In addition to his corporate practice, Ralf has assisted clients on a variety of litigation and arbitration matters, including the resolution of redundancy and class action labor disputes before various courts and arbitration commissions in China.

UPDATED CENTRAL PROVIDENT FUND SALARY CEILINGS		
No.	**Date**	**Salary Ceiling (SGD)**
1.	Current	SGD 6,000
2.	September 1st, 2023	SGD 6,300
3.	September 1st, 2024	SGD 6,800
4.	September 1st, 2025	SGD 7,400
5.	September 1st, 2026	SGD 8,000

Increased Paternity Leave and Unpaid Infant Care Leave

The current government paid paternity leave will be increased from the current two (2) weeks to four (4) weeks[1].

Individuals eligible for paid paternity leave must meet the current qualifying criteria:

- The child is a Singapore citizen;
- The father is married to the mother of the child between conception and birth; and
- The father has served a Singapore employer for at least three (3) months before the birth date of the child.

Currently, in addition to paternity leave, parents of eligible children up to two (2) years of age are entitled to unpaid infant care leave of six (6) days per year. From January 1st, 2024, unpaid infant care leave will be increased from six (6) days per year to twelve (12) days per year.

Other Changes

Among the other changes being introduced or extended under the budget 2023, include:

» Introducing of a jobs skill integrator body which will analyse and find skills gaps in the labour market and implement needed training programs; and

» An increase in seniors central provident fund contributions rates and government subsidising of certain level of central provident contribution rates for Platform Workers .

Conclusion

The Singapore budget 2023 was described by Deputy Prime Minister Lawrence Wong as a “resilience” which aims, amongst other things, to on the one hand train and upskill/re upskill workers and, on the other hand, protect workers in an ever changing and dynamic world economy.

Matthew has been an Associate at HJM Asia Law since 2019. Based in HJM Asia’s Singapore office, Matthew advises clients in the fields of M&A, private equity, joint ventures, contractual/transactional negotiation and general corporate matters. Prior to joining HJM Asia Law, Matthew worked for a German law firm in Singapore.

WILL THE COURT GRANT A SPRINGBOARD INJUNCTION TO ASSIST AN EX-EMPLOYER WHERE THERE IS NO RESTRICTIVE COVENANT IN THE EMPLOYMENT CONTRACT?

What is a "springboard" injunction?

A "springboard" injunction is a type of injunction designed to remove or limit the unlawful advantage or unfair competitive head-start that a former employee has gained through unlawful activities such as misuse of ex-employer's confidential information. It ensures the wrongdoer does not get an unfair start and restores a level playing field between the ex-employer and the wrongdoers (including the former employee and any other third parties such as the new employer or the competitor).

Will the court grant a springboard injunction to assist an ex-employer where there is no restrictive covenant in the employment contract?

An employer may make use of a restrictive covenant to protect his legitimate interests such as trade secrets and his trade connections. But what if there is no (or no enforceable) restrictive covenant in the employment contract, will the court grant a springboard injunction to assist an ex-employer?

In the recent case of *DCL Communication Limited v Lam Yim Chi Julia and Reach Technology Solutions Limited* [2023] HKCFI 98, the plaintiff ex-employer ("**Employer**") applied for a springboard injunction to restrain the 2nd defendant competitor company (which has hired the plaintiff's former employee) from using or disclosing certain confidential information of the Employer including its clientele list. In the absence of a restrictive covenant in

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Michael Szeto is a litigation partner of ONC Lawyers and heads the firm's Employment practice. Prior to joining the firm, he had practiced with various prominent law firms in Hong Kong. He has many years of experience in handling complex commercial dispute resolution, shareholders' and joint venture disputes, bankruptcy and insolvency

the former employee's employment contract, the Court of First Instance ("**CFI**") refused to grant a springboard injunction.

Background

The Employer is in the business of providing IT and Electrical & Mechanical infrastructure services to client companies in respect of their server rooms and data centres, including the design and installation of their facilities and subsequent maintenance. These maintenance contracts are subject to annual renewal.

The 1st defendant employee ("**Employee**") joined the Employer in November 2012. During her employment with the Employer, she was responsible for dealing with the Employer's clients. Her last position was Customer Care Sales Manager when she left in September 2019.

The Employee joined the 2nd defendant company, her new employer ("**Competitor**"), as Sales Manager in April 2021 (i.e. 1 year and 7 months later). The Competitor is an IT infrastructure solution provider that was set up by another former employee of the Employer. The Competitor's principal business is more or the less the same as the Employer's.

In December 2021, the Employer lost its maintenance contract with a long-standing client, Gold Coast Yacht Club ("**Yacht Club**"), which was previously handled by the Employee. Another client told the Employer that the Employee had (on behalf of the Competitor) approached them to sell similar services that the Employer offered. The Employer therefore considered it was likely that the Employee was the reason why it lost Yacht Club as a client. The Employer suspected that the Employee had contacted its clients "at the right time" (i.e. around the time when the clients' maintenance contracts with the Employer were due to be renewed) so as to entice those clients away.

The Employer applied to the CFI for a springboard injunction against the Competitor from using or disclosing any of the Employer's clientele list, the date and time when the Employer's contracts with its clients expire, the profit margins for each contract, and the time when the Employer will commence negotiation with its clients for the purpose of renewing the contract ("**Confidential Information**"). The Employer initially sought a similar injunction against the Employee, that injunction was disposed of by consent by the Employee giving an undertaking to the Court. The CFI needed to deal with the injunction application against the Competitor.

Legal principle

Generally for interlocutory injunction, the court has to consider:

1. whether there are serious issues to be tried; and
2. whether damages would be an adequate remedy for either side and where the balance of convenience lies.

In considering whether a springboard injunction should be granted, *QBE Management Services (UK) Ltd v Dymoke & Others* [2012] IRLR 458 remains the leading case. The relevant legal principles are:

matters, debt recovery and mortgagee actions. He also routinely deals with regulatory actions and compliance matters under the Securities and Futures Ordinance, the Hong Kong listing rules and anti-money laundering laws and guidelines.

On the employment side, Michael often advises on various contentious and non-contentious employment matters, covering contract reviews, termination disputes, injunctive relief, discrimination and harassment claims, data privacy matters, as well as advice on matters relating to team moves, remuneration packages and employee incentive schemes. He is a frequent author of employment articles in industry publications and presenter to legal and human resource professionals.

Michael's broad clientele includes listed companies, directors, shareholders, local and overseas banks, financial institutions, local and international corporations as well as statutory bodies.

1. there has been unlawful conduct by the former employee;
2. the former employee has gained an unfair competitive advantage over the employer as a result of that unlawful conduct;
3. the nature and period of the unfair competitive advantage are more than "ephemeral" or "short-term";
4. the unfair competitive advantage exists at the date the springboard injunction is sought and will continue unless the springboard injunction is granted; and
5. a springboard injunction would be a proportionate and appropriate remedy.

(Please click here for our article "*Protection for employers against team move (Part II): Springboard Injunction*" for a detailed discussion on *QBE* case.)

Applying the relevant legal principles, the CFI has to consider the following questions in the Employer's application:

1. Whether there has been any unlawful behavior by the Employee and the Competitor?
2. If so, whether an unfair competitive advantage over the Employer as a result of the unlawful behavior has been obtained?
3. If so, whether the nature and period of the competitive advantage is more than "ephemeral" and "short term", and whether the Employee and the Competitor are still enjoying and will continue to enjoy unless injunction sought is granted?
4. Whether monetary award would have provided an adequate remedy to the Employer?

The CFI's decision

The CFI considered that even if the Employee did have access to the Confidential Information, the Court still has to decide whether there has been any unlawful behaviour on the part of the Employee and the Competitor. If not, that would be the end of the matter. The burden of establishing such unlawful behaviour is on the Employer, and the Employer failed to do so.

The Employee's employment contract with the Employer provided, among other things, that:

> *"You shall not at any time, during and after your employment by the Company, directly or indirectly divulge to third parties any details of the Company business (pricing information and database), finance transactions, affairs or dealings confidential to the Company without the prior express written permission of the Management. The disclosure of such information will expose you to disciplinary action, which may include summary dismissal and may give rise to criminal prosecution."*

There was no restrictive covenant in the Employment Contract. The Employee was entitled to approach the Employer's clients and offered to provide maintenance services.

The Employee joined the Competitor more than one and a half years after she had left the Employer. All of the Employer's maintenance contracts would have been renewed once or even twice by the time the Employee joined the Competitor. The Employer had not made out any case that the Confidential Information could still be useful for the Competitor to poach its clients. In such circumstances, there was no serious issue to be tried that the Competitor had made any unlawful use of the Confidential Information.

The CFI found that the Employer's case was built on suspicion and speculation without concrete evidence and dismissed the Employer's application.

Takeaways

The DCL case serves as a reminder to employers that where there is no enforceable restrictive covenant in the employment contract, the court will not grant a springboard injunction as a substitute to assist them.

If employers want to protect their trade secrets, trade connections or other confidential information from being misused by employees after they leave, employers must ensure their employment contracts are properly drafted with enforceable restrictive covenants. Employers should bear in mind that the court will not enforce a restrictive covenant that is unreasonably wide and is designed to protect an ex-employer against competition by the former employee. The court will only enforce a restrictive covenant that is reasonable for the purpose of protecting the legitimate interests of the ex-employer.

If there is no restrictive covenant in the employment contracts, employers should consider incorporating them. If there are restrictive covenants in the employment contracts, employers should consider having them reviewed to ensure they are enforceable. If in doubt, employers should seek assistance from their legal advisers to draft or review such clauses.

WOULD THE COURT WIND UP A FOREIGN COMPANY WHICH HAS ALREADY BEEN WOUND UP IN ITS PLACE OF INCORPORATION?

Written by: Ludwig Ng & Eric Woo - ONC Lawyers (Hong Kong)

Ludwig Ng's major area of practice is insolvency and corporate restructuring. Under his leadership, the firm has a thriving practice advising and representing insolvency practitioners in Hong Kong and overseas in all aspects of their practice, particularly on investigation of corporate fraud, assets tracing and recovery, actions against former company officers, cross-border insolvency and corporate restructuring. The firm also represents

Introduction

The statutory jurisdiction of Hong Kong Courts to wind up a foreign-incorporated company in Hong Kong is subject to self-imposed restraints that have been articulated as the "three core requirements" which must be satisfied before the court would exercise that jurisdiction.

In the recent case of *Re Guoan International Ltd* [2023] HKCU 939, the Court of First Instance ("**CFI**") considered whether to wind up a foreign-incorporated company which has already been wound up by the court in its place of incorporation.

Facts

Road Shine Developments Limited ("**Petitioner**"), a creditor of Guoan International Ltd ("**Company**"), presented a petition on 2 December 2022 seeking an ancillary winding up order against the Company. The Company, which was incorporated in the Cayman Islands, was wound up by the Grand Court of the Cayman Islands on 28 February 2022 and Mr. Yuen Tsz Chun and Mr. Martin Trott were appointed as its liquidators on the same day ("**JLs**"). Mr. Chong Chin and Ms. Yao Sze Ling, the opposing creditors (together "**OCs**"), opposed the petition on 2 main grounds:

1. the benefit pleaded in the petition does not amount to a legitimate benefit which makes it appropriate to wind up the Company in Hong Kong; and

2. substantial costs, time, and resources may be incurred (or even wasted) if the insolvency regime in Hong Kong is triggered, and the Petitioner has not explained why that is justified or desirable to do so. The potential wastage of substantial costs will be prejudicial to the creditors in particular the OCs.

On 30 March 2022, the JLs obtained an order recognising the liquidation of the Company and the appointment of the JLs with, amongst others, powers to take all necessary steps to prevent any disposal of the Company's assets and, in particular, to secure any bank balances in any bank accounts in the name or under the control of the Company in Hong Kong ("**Recognition Order**").

It is not in dispute that the Company has very substantial connections with Hong Kong.

Legal principles

The CFI cited the three "core requirements" governing the exercise of the discretionary jurisdiction to wind up a foreign company as stated by the Court of Final Appeal in the case of *Shandong Chenming Paper Holdings Ltd v Arjowiggins HKK 2 Ltd* (2022) 25 HKCFAR 98:

1. there must be a sufficient connection with Hong Kong, but this did not necessarily have to consist in the presence of assets within the jurisdiction (the "**First Core Requirement**");

2. there must be a reasonable possibility that the winding-up order would benefit those applying for it (the "**Second Core Requirement**"); and

3. the Court must be able to exercise jurisdiction over one or more persons in the distribution of the company's assets (the "**Third Core Requirement**").

In this case, there is no dispute that the First and Third Core Requirements are satisfied. The OCs, however, contend that the benefit pleaded in the petition does not satisfy the Second Core Requirement.

So far as the Second Core Requirement is concerned, the test is whether "*there is a reasonable prospect that the petitioner will derive a sufficient benefit from the making of a winding-up order, whether by the distribution of its assets or otherwise*" (*Kam Leung Sui Kwan v Kam Kwan Lai* (2015) 18 HKCFAR 501, §24).

In respect of a foreign company which has already been wound up at the place of incorporation and is carrying on business "only for the purpose of winding up its affairs", the Court may make a winding up order against it under s.327(3)(a) of the Companies (Winding up and Miscellaneous Provisions) Ordinance (Cap 32) ("**CWUO**"). The winding up order made by the domestic jurisdiction is regarded as ancillary to the winding up order made by the Court of the place of incorporation.

banks, financial institutions and substantial creditors in protecting their rights in the insolvency of their customers. Apart from insolvency, Ludwig is also experienced in the whole spectrum of civil and criminal matters, particularly shareholder disputes, corporate fraud, media law and intellectual properties.

Outside the firm, Ludwig is an examiner of the Overseas Lawyers Qualification Examinations.

Ludwig is one of the few solicitors in Hong Kong awarded the Higher Rights of Audience, which entitles him to appear as an advocate in all courts up to the Court of Final Appeal.

Ludwig is selected by AsiaLaw Profiles and Chambers and Partners as a leading lawyer in the fields of Dispute Resolution and Restructuring & Insolvency.

Eric Woo is a dispute resolution lawyer. Prior to joining ONC Lawyers, he had worked for several reputable international law firms.

Eric specialises in international arbitration and civil and commercial litigation including contractual and tortious claims, commercial disputes, shareholders disputes and liquidation, cyber fraud, defamation, restitutionary, and employment disputes. He is also

Decision and reasoning

The CFI ruled that the Second Core Requirement is plainly satisfied for the following reasons:

1. The making of a winding up order against the Company is the *only* way to bring into operation the statutory scheme of winding up under the CWUO. The Company or the JLs would not be able to rely on or benefit from the use of any of the provisions under the CWUO in the absence of a winding up order made by the Hong Kong Court;

2. The OCs proceeded on the wrong assumption that the Recognition Order confers power on the JLs to deal with and dispose the assets of the Company within the jurisdiction:

    a. The domestic Court (i.e. Hong Kong Court) does not have a common law power to assist the foreign Court by doing whatever it could have done in a domestic insolvency. It is by no means clear that the Recognition Order is one which the Court has the power to make or that it will not be challenged by any party in future; and

    b. In any event, the Recognition Order does not in fact confer any power on the JLs to deal with or dispose any assets of the Company.

    As the JLs do not have power to deal with or dispose any assets of the Company within the jurisdiction, it is plainly necessary and certainly in the interest of the creditors for the Company to be wound up so that provisional liquidator / liquidator can take steps to deal with and, if necessary, dispose the assets of the Company.

3. Given that almost all the business and affairs of the Company were conducted by the former directors and management in Hong Kong, it must be in the interest of the creditors that liquidators are appointed in Hong Kong so that they can conduct the liquidation under the supervision of the Hong Kong Court. It is indisputable that the Hong Kong Court is best placed to consider and, if necessary, decide what steps the liquidators should take when dealing with the affairs and assets of the Company within the jurisdiction.

For the above reasons, the Court is satisfied that there are substantial benefits to the Petitioner (and, indeed, the creditors as a whole) if a winding up order is made against the Company in Hong Kong.

Takeaway

The Court adopts a pragmatic approach in assessing whether it would be useful to make a winding up order against the foreign company, instead of any hard-and-fast doctrinal rule regarding the relevant benefit. It is also notable that given a majority of the listed companies in Hong Kong are foreign incorporated companies (as in the case of *Re Guoan International Ltd*), it is anticipated that the Hong Kong Courts as the domestic jurisdiction would make ancillary winding up orders against listed companies in Hong Kong, although the exercise of the Court's jurisdiction is discretionary and to be determined on a case-by-case basis.

experienced in both wet and dry shipping matters, including charterparties, shipbuilding, shipping casualties, sale and purchase of vessels, ship arrest and release, international sale of goods, ship financing, cargo claims, bills of lading, letters of credit, marine insurance and other cross-border transport disputes.

Eric covers the litigation, investigation and compliance aspects of competition law in relation to shipping and logistics industry and has given presentations to financial institutions and listed companies on competition law.

Currently, Eric is a fellow or panel arbitrator of a number of professional local and foreign arbitration organisations. He has also been appointed as a member or chairman in appeal tribunal panels on building, housing and passport related matters, appointed as a member of the Estate Agents Authority and Board of Review (Inland Revenue Ordinance), and serves as a member in various committees of the Law Society of Hong Kong such as arbitration, transportation and logistics and practitioners affairs.

Eric has been admitted as a lawyer in the Greater Bay Area.

PREPARING FOR COMMUNIST PARTY OF CHINA ("CPC") CELLS BEING REQUIRED INSIDE YOUR PRIVATE COMPANY

Written by: Nicholas Chen & Song Qing - Pamir Law Group (Shanghai, China)

Nick Chen has been traveling and working in China since 1973. He is the managing partner of Pamir Law Group, an international law and business consulting firm with offices in Shanghai and Taipei. Nick has a long track record of successfully closing transactions in a broad range of industries in China and Taiwan. He is a practical, street-smart client resource who provides an integrated business and legal approach focused on

CPC's Increasing Role/Control in Society

In the fall of 2022, the 20th National Congress of CPC reelected Xi Jinping as the general secretary of CPC Central Committee and emphasized upholding and strengthening the CPC's overall leadership in China. Xi Jingping reported at the 20th National Congress that *"We must resolutely uphold the Party (CPC) Central Committee's authority and its centralized, unified leadership and see that Party leadership is exercised in all aspects and every stage of the endeavors of the Party and the country."* This signals a trend for more control and centralized role of the CPC in society.

CPC Cells Established in Private Companies

In accordance with the Constitution of the CPC ("CPC Constitution"), primary-level CPC organizations shall be established in enterprises where there are three or more official Party members. Article 19 of the Company Law of People's Republic of China ("PRC") states that the CPC may, according to the CPC Constitution, establish CPC cells in companies to carry out CPC activities. The company shall provide necessary conditions to facilitate CPC activities.

CPC Organization Activities

In accordance with CPC Constitution and CPC regulations, a CPC cell shall organize CPC members in a company to attend regular Party meetings, group meetings and Party classes, and hold regular meetings of the organization committee if any (together called Three Meetings and One Class) and shall organize a theme Party day on a relatively fixed day every month to organize Party members to study intensively, live organizational life, carry out democratic discussions and volunteer services.

Choices and Decisions to be Made/Implemented

Well-informed decision-makers make better decisions. Few international companies have experience with this development. Gathering the right information and perspective to adapt to this situation is very important in order to know how to adapt to this developing trend. In the changing business environment, business executives need to make decisions on how to act in order to adapt to this changing environment. Establishing a CPC cell may significantly affect company operations and may affect traditional functions of each department/executive officer. Therefore, it is important to get the company and CXOs prepared in advance of CPC building inside the company.

Pros and Cons of Having a CPC Cells in the Company

We have listed some pros and cons of establishing a CPC cell in your company for your reference:

Pros:

- Maintain good relationship with local government;
- Establish special connections with local government;
- Build up a special company image in the Chinese market;
- Explore new channels for business development/marketing through CPC activities;
- A resource to find new talents and may be an attraction to some talents (CPC organizations are well developed in Chinese universities and they would like to recruit talents in the campus as CPC members)

Cons:

- Interaction with local government/different levels of CPC organizations may require extra public relationship resources for the company
- Bring political elements to company and company culture
- May increase burdens for different departments for coordination with the CPC organization (e.g. management and legal department (interaction with CPC organization and upper level CPC organization and company manual updates), HR (on boarding SOPs may change, personal information management, CPC organization activities coordination, CPC members archives organization and maintenance), finance (funding/budgeting for CPC organization activities), operation (interruption by CPC activities) , IT (data protection issues, IT support for CPC activities), public relationship (interaction with CPC organizations and local government))
- Create conflict of interests between political beliefs and company needs and may affect company culture if there is difference
- Uncertainty for future operation/management when the CPC organization grows
- Potential for split loyalties and conflicts of interest

client growth. He is focused on results, cost effectiveness and effective communication.

Nick has successfully completed hundreds of foreign investments into Greater China in all coastal and many interior provinces for Fortune 100 multinational corporations, privately held and family group companies and private equity groups from the US, Europe and Japan. He has closed over USD5 billion in deals in the region, assisting companies and investors to develop and implement practical cross-border strategies and programs to achieve safer business operations and growth. He attended Yale College and NYU School of Law. He is admitted to practice in the District of Columbia.

Qing Song is a Foreign Investment Consultant for Pamir Law Group. She has earned a B.A. from East China University of Political Science and Law in 2010. Qing is a foreign investment consultant based in our Shanghai office. She assists foreign companies to establish legal entities in China and advises on all aspects of corporate governance and compliance matters.

How to Get Prepared for CPC Cells in Your Company

Set Your Attitudes towards Forming a CPC Cell in the Company

With the new trend /requirement of CPC organization development and popularization in private companies, companies will face more and more pressure to form CPC cells when there are three official CPC members in the company. We see the following two attitudes from the companies toward CPC cell formation before the company meets the requisition:

1. Welcome – Green Light
2. Conservative – Yellow Light

Make Preparations for Different Attitude

We suggest making the following preparations for CPC cells in your company:

1. Understand (i) current, and (ii) future CPC member employees within the company
2. Understand potential future CPC member structure and feasibility in the company
3. Understand the potential future structure and compliance with CPC cell within the company
    - If Welcome – Green Light
        - Connect and communicate with upper level of CPC organization for guidance and support on CPC cell establishment in the company;
        - Prepare short term and long term plan for development of CPC cell in the company;
        - Prepare relevant corporate policies and update company manual;
        - Internal training for each department/executive officer on CPC cell formation and operation/activities in the company
    - If Conservative – Yellow Light
        - Actively monitor CPC member status of new hiring or implement no CPC member hiring policy for certain period for observation
        - Internal determination on how CPC members are allocated in different departments (some department may be welcome and some department may have considerations)
        - Prepare short term and long term plan for development of CPC cell in the company;
        - Prepare relevant corporate policies and update company manual
        - Internal training for each department/executive officer on CPC cell formation and operation/activities in the company;

For more information on how CPC cell work in the private company and suggested adjustments to different departments/officers, please contact Pamir Law Group at info@pamirlaw.com.

HOW TO STRATEGICALLY RESPOND TO CLIMATE CHANGE, CRISIS AND COLLAPSE BY APPLYING SUSTAINABLE RULE OF LAW AND COMPLIANCE SYSTEMS

Written by: Nicholas Chen and Jose Mario Ponce - Pamir Law Group (Shanghai, China)

Nick Chen has been traveling and working in China since 1973. He is the managing partner of Pamir Law Group, an international law and business consulting firm with offices in Shanghai and Taipei. Nick has a long track record of successfully closing transactions in a broad range of industries in China

Post WW2 Bretton Woods Mentality of Maximizing Profits is Causing the Climate Catastrophe

For 80 years since WW2, the world economic system has focused solely on maximizing shareholder profit based on using fossil fuels; this mentality has created laws and compliance systems that cause the current climate catastrophe. Regulators, banks, institutional investors and companies have neglected the environment and all other stakeholder interests for 80 years in order to maximize profits. The world continues to apply these old laws and systems that prevent the sustainable transformation of all stakeholders. Greed, lust and old laissez-faire mentality cause the climate catastrophe by continuing business-as-usual practices. Lack of regulatory intervention have placed financial gain over long-term sustainability. Therefore, regulations that mandate prioritizing sustainability are almost non-existent and unenforceable.

The World has Failed to Transform the Maximize Profit Mentality to Balancing All Stakeholder Needs Mentality

The world's leaders have concluded their COP 27 meeting. The government regulators, banks, institutional investors and companies of the world have put on display their inability to decarbonize and implement energy transition. Their failure to decarbonize is the root cause of climate change and climate

catastrophe that now threatens life on earth. After so many failures, the dysfunctionality and collective culpability of government regulators, banks, institutional investors and companies continues unabated.

The World Needs a Unified Criteria to implement New Laws and Compliance Systems for Monitoring, Measuring and Reporting on Sustainability

Currently, there is no unified world standard to monitor, measure, report progress or benchmark sustainability. Negligence from regulators has left banks, institutional investors and companies rudderless. Existing laws do not mandate or enforce sustainable legal frameworks or guardrails that drive international best practice SOPs and global standards to push decarbonization or energy transition (replacing fossil fuels with zero-carbon sources of energy). Regulators have therefore allowed self-serving, incomplete or outdated criteria and conflicts of interest to be abused and greenwashing (paying to pollute, rather than decarbonizing) is widely practiced by lenders, investors and company stakeholders. The old laws are not built to solve these modern problems; they use different criteria and outdated methods and benchmarks for measuring sustainability and are abused by stakeholders; business as usual does not drive energy or ecological transformation.

The World Needs to Transform and Implement New Sustainable Rule of Law and Best Practice Compliance Standards and SOPs

In order to properly face all existential threats, each stakeholder (and the general counsel of each regulator, bank, institutional investor and company) must seek assistance to:

- Transform behavior and operations from maximizing profits to balancing all stakeholder interests
- Create sustainable standards, legal frameworks and guardrails that meet international best practice SOPs and global standards
- Train and transform your organization/business to be consistent with new mentality standards
- Implement systems to monitor, measure and report compliance with all new sustainable standards and criteria
- Require comprehensive transformation and training of regulator and regulated entities/borrowers/invested companies/supply chain
- Ensure full compliance with new sustainable rule of law and best practice compliance standards and SOPs
- Properly monitor, measure and report on new sustainable rule of law and best practice compliance standards

In order to Achieve Successful Benefits and Results, General Counsels Must Implement Actionable Strategic Plans and Advanced Processes to Facilitate Transformation

Only organizations with pro-active general counsels and management teams that fully transform their mentality and implement new sustainability

and Taiwan. He is a practical, street-smart client resource who provides an integrated business and legal approach focused on client growth. He is focused on results, cost effectiveness and effective communication.

Nick has successfully completed hundreds of foreign investments into Greater China in all coastal and many interior provinces for Fortune 100 multinational corporations, privately held and family group companies and private equity groups from the US, Europe and Japan. He has closed over USD5 billion in deals in the region, assisting companies and investors to develop and implement practical cross-border strategies and programs to achieve safer business operations and growth. He attended Yale College and NYU School of Law. He is admitted to practice in the District of Columbia.

Jose Mario Ponce holds a degree in Bioenvironmental Systems Engineering from National Taiwan University and has a strong background in climate sustainability and energy transition. With a keen interest in addressing the global challenge of climate change, Jose Mario has been involved in various research projects related to climate change, renewable energy, and green financing. As part of the Climate Sustainability, Energy Transition,

systems and best practice SOPs will survive and achieve their full societal and organizational potential including:

- Actionable concepts and insights
- Digestible knowledge
- Accelerate implementation
- Enable your business and your people
- Build competitive capacity and sustainability
- Transform concepts into actionable pathways/solutions
- Implement international best practices, SOP's and compliance with global standards to achieve operational excellence

Furthermore, those pro-active stakeholders in the ecosystem will achieve the following benefits and results brought with full transformation.

- Regulators: deliver a results-driven whole of government and a whole of society effort to develop, plan and implement a concrete "dharma codex " compliance market-shaping result to implement energy transition and decarbonization.
- Banks: aggregate and deploy loans effectively through green finance mechanisms consistent with "dharma codex" criteria and find more and better borrowers and promote decarbonization and energy transition.
- Institutional investors: invest effectively with mechanisms consistent with "dharma codex" criteria find more and better investments and invested companies and promote decarbonization and energy transition.
- Companies: maximize access and successfully compete for financing from banks and investors with mechanisms consistent with "dharma codex" criteria and promote decarbonization and energy transition.

For more information please contact Pamir Law Group at info@pamirlaw.com.

and Green Financing Research Project, Jose has been actively involved in conducting research, co-developing presentations, drafting reports and advising clients on key sustainability issues in Taiwan.

MALICIOUS TRADEMARK LITIGATION AND DEFENDANT'S COUNTERCLAIMS AGAINST MALICIOUS LITIGATION

Part I

<u>Trademark hoarding belongs to malicious trademark registration and the act of gaining illegitimate profits by utilizing the trademark registered in malice is not protected by law.</u>

Guangzhou Compass Co., Ltd. (hereinafter "Compass Company") filed a total of 42 trademark infringement lawsuits in Beijing, Shanghai, Guangdong and Zhejiang against our client (hereinafter "the Client") for its use of the trademark "ULTRA LIGHT DOWN"based on their registered trademark "UL". The first instance judgments made by the courts for the 42 cases are divided into three categories: (1) the Client does not infringe; (2) the Client is infringing but is not required to make compensation; and (3) the Client is infringing and is required to make compensation.

The Shanghai No.2 Intermediate People's Court ruled that the Client is infringing without the need of compensation; the first instance judgment was upheld in the appeal of the case by the Shanghai Higher People's Court. Both the plaintiff and the defendant filed a petition for retrial with the Supreme People's Court.

The Supreme People's Court, after the retrial proceedings, reversed the trial and the appellate judgments and dismissed all claims of Compass Company. The Supreme People's Court ruled that (i) Compass Company acquired the disputed trademark through improper means and clearly targeted at the Client et al for assignment of the trademark at a high price; (ii) failing to assign the trademark to the said company, Compass Company initiated a

Written by: Yizhou (Joe) Liu - Watson & Band (Shanghai, China)

Mr. Yizhou Liu graduated from the Shanghai University of International Business and Economics in 2005 and has worked for Watson & Band Law Offices ever since. He is presently the partner of Watson & Band as well as the head of the copyright and trademark litigation department.

Mr. Liu is particularly adept in litigation cases for trademark infringement, copyright infringement and unfair

series of lawsuits against the Client as well as its stores across the country, alleging infringement of their exclusive rights to use the registered trademark; their malice in such conduct was more than clear and they had obviously violated the principle of good faith. Its abuse of judicial resources and utilization of the trademark for unjustifiable profits should not be protected by law.

Part II

Where the right holder suffers from any losses due to the bad-faith litigation based on trademarks registered with malice, such right holder is entitled to hold the plaintiff liable for compensation. This IPR counter-claim action for damages is a referential precedent relating to trademark where the counter-claim for damages is supported by the court.

In response to such lawsuits filed in bad faith, the Client suffered huge losses, including incurred legal fees, plummeting sales amount due to voluntary cease of sale of the accused products to reasonably avoid infringement, etc. Therefore, the Client filed a counter-claim action against the plaintiffs of the bad-faith litigation, requesting them to bear all enforcement costs and operational losses incurred to the Client therefrom.

At that time there was no trademark counter-claim for damages precedent available in China for reference. The dispute focus in this case is whether the subjective status of "bad-faith registration" identified in the later judicial proceeding is retrospective to the time of registration, since the improper trademark registration was judicially identified afterwards, and before that the trademark right was legitimate and valid in the external form.

The first instance court held that the acts of the Defendant were conducted with malicious intentions from the very beginning and the disputed trademark was registered in bad faith lacking substantial legitimacy as of the registration date.

Therefore, the first instance court supported our claims in full amount and held the other Party liable for compensation in the amount of more than 600,000 US Dollar. The appeal court upheld the first instance judgment.

competition. Since the start of his legal practice, he has provided legal services for many famous brands. Mr. Liu has used his expertise to safeguard the legal rights and interests of his clients. In 2019, with his service and assistance, Giorgio Armani was identified as a well-known trademark for the first time in civil litigation in China. In addition, Mr. Liu has conducted continuous and in-depth research on IP infringement on the Internet and has provided a large number of analysis opinions to clients.

Also, Mr. Liu is committed to promoting establishment of industrial rules and even legislation through individual cases. He used to represent Nike in an athlete sponsorship dispute case against Adidas. After the judgment for this case was made, the principle that number of athletes attending a commercial activity on behalf of the national team must be more than 3 has become industry practices in China's sports sponsorship field.

The aforesaid case was also represented by Mr. Liu. After the issuance of the judgments, the Trademark Law was revised in 2019, adding an article preventing trademark applications filed in bad faith and without the intention for use from being approved (Article 4.1), as well as an article setting forth punishment on the act of malicious case filing (Article 68.4). The case was subsequently picked out by the Supreme Court from hundreds of thousands of cases across the country that year and marked as one of the 10 typical IP cases of the year in China.

LIBERALISATION OF INDIA'S LEGAL MARKET

Written by: Mani Gupta & Anil Khanna - Sarthak Advocates & Solicitors (New Delhi, India)

Mani Gupta is a Partner and heads the Firm's litigation practice and insolvency litigation practice, as well as manages the Firm's practice in education sector and policy intervention. Mani advises clients in financial distress in managing their litigation and the Corporate Debt Restructuring and Strategic Debt Restructuring process of the Reserve Bank of India. Mani also has an expertise in handling commercial arbitrations in construction contracts, and power and infrastructure projects. Mani also has had significant experience as a corporate transactional lawyer, and she has been involved in setting up of managed funds including offshore funds and venture capital funds.

Approximately five years after India's highest court – the Supreme Court of India requested the Bar Council of India ("**BCI**") or the Government of India to frame policy for the entry and regulation of foreign lawyers and foreign law firms in India, the BCI the Rules for Registration and Regulation of Foreign Lawyers and Foreign Law Firms in India, 2022 ("**Rules**") in March this year. This is a significant move and may bolster the confidence of international investors who have thus far shied away from using India as a seat for international arbitration, unlike other Asian seats like Singapore or Hong Kong.

The Rules permit foreign lawyers and law firms to establish offices and practice foreign law in India, subject to the principle of reciprocity. The principle of reciprocity means that Indian advocates enrolled under the Advocates Act, 1961 should be permitted to practice law in the country of such a foreign lawyer or law firm in a manner comparable to the permissible activities allowed under the Rules.

Foreign lawyers seeking to practice law in India must register with the BCI and possess the right to practice law in their home country. However, an exception is made for those who provide legal advice to Indian clients on a 'fly in and fly out basis' regarding foreign law and international legal issues, for a maximum period of 60 days in a 12-month period. The nature of advice or legal services that may be rendered by the foreign lawyers and/or law firms has been circumscribed under the Rules. While foreign lawyers/ foreign law firms registered with the BCI may engage in non-litigious legal work, such as corporate matters, intellectual property rights, and contract drafting; they are not allowed to represent clients before courts, tribunals, or regulatory authorities. The BCI has provided a list of permitted and prohibited activities for foreign lawyers practicing in India.

After the issue of the Rules, there was some uncertainty concerning the work that foreign lawyers are authorized to do. Accordingly, to allay the concerns raised the BCI issued a press release on March 19, 2023 ("**Press Release**"), to clarify the scope of foreign lawyers' work.

The Press Release stipulates that foreign lawyers may only provide advice to clients on foreign and international laws and may not appear before any court, tribunal, board, regulatory authority, or other legally authorized forum that can administer oaths or act as a court. Foreign lawyers may only practice in non-litigation areas. Foreign lawyers are permitted to represent their clients in international commercial arbitration proceedings.

The Rules provide the incidental matters in connection with the practice of

law India by foreign lawyers/ foreign law firms. AS stated previously, foreign lawyers/ law firms are permitted to open law offices in India for providing advice as provided under the Rules. However, a perusal of Rule 9 throws up interesting issues. On first brush, it appears that a foreign lawyer/ foreign law firm cannot enter into a partnership or joint-venture with an Indian law firm/ lawyer. This is a significant departure from the path of legal sector reform and liberalisation as witnessed in other countries like Singapore. It remains to be seen whether foreign law firms would actually be willing to register under the Rules given the restricted scope of operations and opportunities for partnering for advise on Indian law.

Upon receipt of an application for registration under the Rules, the BCI shall scrutinise the same and grant / refuse to grant registration. One of the factors that BCI may consider for refusing registration is if it believes that an excessive number of foreign lawyers or law firms from a specific country will cause an imbalance in the Indian legal industry.

The Rules also prescribe the period of registration, and the fee for making an application under the Rules. Besides these, the Rules also lay down penal provisions in case the registration is procured by misrepresentation.

Based on media reports, it is learnt that some of the largest law firms in India are opposed to the BCI's move of slowly opening up of the legal market as envisaged in these Rules. The authors do not believe that all concerns raised are without merit. Whether the Rules will find takers or not in the international market remains to be seen. This development is the step in the right direction as it will not only open up greater opportunities for India's legal professionals but marks the coming-of-age of this profession in India.

Anil Khanna is a corporate lawyer and a part of the corporate team. He focuses on general corporate and regulatory matters, mergers & acquisitions, joint ventures, and commercial contracts. He assists in corporate advisory pertaining to the private equity investments areas of company law, foreign exchange law, etc. He has considerable experience in drafting and reviewing transactional documents, legal notices, commercial contracts, and company policies. He has also conducted due diligence for clients. Anil extensively advises clients on Start-ups and MSME registration and filling with other regulatory authorities. He also conducts research and writes articles on miscellaneous legal topics.

DECEIT AS GROUNDS TO CANCEL AN ARBITRATION AWARD

Written by: Eddy Leks - Leks&Co (Jakarta, Indonesia)

An arbitration award is final and binding. But there are three reasons causing the arbitration award be cancelled under the Arbitration and ADR Law. First, when there is a submitted letter or document acknowledged or declared as fake after the award has been determined. Second, a decisive document is found after an award has been determined that was hidden by the counter party. Or, thirdly, an award was derived from a deceit by one of the parties in an arbitration proceeding. This article will discuss the third reason, namely a deceit as ground to cancel an arbitration award through a public court.

A deceit is not explained by the Arbitration and ADR Law. Hence, one must look into jurisprudence. There is one consideration from Judex Juris which is interesting and important to observe such subject matter under the Decision Number 807 B/Pdt.Sus-Arbt/2016:

> "...the basis of lies and deception in the elucidation of the article [article 70 of the Arbitration Law and APS] can no longer be absolutely interpreted as a form of criminal act, but must be interpreted as a form of action that must be proven civilly, namely declaring an evidence as valid or invalid or declaring [an evidence] as not having any legal force whether it was made in writing or formally;

Thus, the element of a series of false words and/or deception which is a form of element in a criminal case cannot be used as the basis for a lawsuit in the a quo case, moreover, the dispute in the a quo case is based on an act of default due to a violation of the cooperation agreement between the the Applicant and Co-Respondent...;"

The phrase "can no longer be absolutely interpreted" may be interpreted that a deception as a criminal act can still occur and become the basis for cancelletion of an arbitral award. Nevertheless, since the elucidation of Article 70 of the Arbitration and ADR Law has been declared to have no binding force by the Constitutional Court, then the emphasis on a "deceit" should be seen as a civil act, namely, related to the submission of evidence in the arbitration proceeding. A "deceit" may occur if there has been invalid or illegitimate evidence submitted to the tribunal during the arbitration proceeding.

Nevertheless, proving the element of "deceit" is not enough, since the third reason regulated under the Article 70 letter (c) of Arbitration and ADR Law stipulates other elements to be fulfilled, namely "an award was derived from

Eddy Leks is the founder and Managing Partner of Leks&Co. Having a legal career in mind, he started his experience in general corporate/commercial and general litigation practice area. Afterwards, he joined Hadiputranto, Hadinoto & Partners (HHP), an affiliated law office of Baker&McKenzie. There, he was working in capital market, general corporate/ commercial, taxation, foreign investment and customs practice area. He left his position in HHP to join PT Lippo Karawaci Tbk, one of the biggest property and real estate development and investment company in Indonesia, where he rose to become a legal senior manager. His main responsibility is to manage company's general corporate/commercial issues, build-operate-transfer project, and acquisition of shares and assets of property project. At

[a deceit]." This means, the existence of a "deceit" must be proven. This is the first element. The second element, that "the award was derived from [a deceit]" must also be proven. Both elements must be fulfilled, namely an "invalid" evidence was submitted during the arbitration proceeding and that "the award was derived from [that 'invalid' evidence]."

In another words, one can say that when a deceit is to be used as ground for cancelling an arbitration award, there are several elements to be fulfilled, namely (i) an award was made as a result of a deceit (ii) there exists a deceit by one of the parties and (iii) that deceit was made in an arbitration proceeding. Or, in another easier-to-read sequence, (a) there exists deceit made by one of the parties (b) that deceit was made in an arbitration proceeding and (c) that deceit influenced the tribunal in determining the award.

The first two elements (a) and (b) seems to coincide. The third element (c) is however a decisive element. Even if there exists (a) and (b) but if those (a) and (b) do not influence the tribunal in determining the award, and hence, the (c) is not fulfilled, it means that the provision of Article 70 letter (c) of Arbitration and ADR Law is not fulfilled. Without the fulfillment of all elements, the application to cancel an arbitration award must be entirely declined.

time of joining, he was one of the youngest legal managers of the company.

INITIAL COIN OFFERING IN VIETNAM: CURRENT LEGAL FRAMEWORK AND IMPLICATIONS

Written by: Tran Anh Hung & Dinh Cao Thanh - BROSS & Partners (Hanoi, Vietnam)

Investopedia provides a description of an Initial Coin Offering ("**ICO**") as follows: "*A company seeking to raise money to create a new coin, app, or service can launch an ICO as a way to raise funds. Interested investors can buy into an ICO to receive a new cryptocurrency token issued by the company. This token may have some utility related to the product or service that the company is offering or represent a stake in the company or project.*"[1] In this sense, in 2017, the State Bank of Vietnam ("**SBV**") explicitly stated that Cryptocurrency is not a legal tender in the territory of Vietnam and condemned the offering, supplying and using of Cryptocurrency **as a payment method** as serious offenses that are subject to both administrative and criminal sanctions.[2]

That being said, the written laws of Vietnam have not particularly addressed the Cryptocurrency as a main topic. All the contemporary regulations focus on the ineligibility of Cryptocurrency for being a payment method in Vietnam, either directly under Decree No. 88/2019/ND-CP[3], which provides for administrative sanctions for using illegal payment method, or indirectly under the Criminal Code 2015[4], which provides for punishment for money laundering and terrorism financing that Cryptocurrency is already notorious for. It follows that the crucial issue of what a Cryptocurrency is under the laws of Vietnam is still unresolved.

1. Available at: https://www.investopedia.com/terms/i/initial-coin-offering-ico.asp, accessed at 14:11 on 10 April 2023.
2. Official Letter No. 5747/NHNN-PC dated 21 July 2017 of the SBV sent to the Government Office.
3. Decree No. 88/2019/ND-CP, Article 26.6(d).
4. According to Criminal Code 2015, Article 324.1(a), any individual could be accused of committing money laundering if "directly or indirectly participating in finance transactions, banking transactions, or other transactions to conceal the illegal origin of the money or property obtained through his/her commission of a crime, or obtained through another person's commission of a crime to his/her knowledge"; According the Criminal Code 2015, Article 300, "any person who raises or provides money or property in any shape or form to a terrorist or terrorist organization shall face a penalty of 05 - 10 years' imprisonment", and the organization/legal entity committing this crime might be fined up to VND 5 billion or temporarily or permanently suspended. Because the funding is conducted by money or property, Cryptocurrency's legal character would determine if a funding by Cryptocurrency could be subject to this crime.

Mr. Tran Anh Hung is a co-founder and the Managing Partner of BROSS & Partners LLC. He has over 20 years of experience in practicing laws in Vietnam. His expertise encompasses Investment Projects, Corporate and M&A, Real estate & Construction, TMT, Energy, Securities & Capital markets, Litigation & Arbitration, Insurance & Banking.

Hung has gained great successes and been highly appreciated by his clients for his knowledge and pragmatic approach. Hung and his law firm are frequently ranked by Legal500, IFLR100, Chambers & Partners, Asialaw Profiles, Benchmark Litigation. Hung is ranked as Litigation

One explanation for this confusing situation is the fact that Cryptocurrency is hardly fit into any available legally defined objects under the laws of Vietnam. First, the Cryptocurrency is not recognized as a property under the Civil Code 2015[5] or goods under the Law on Commerce 2005[6] because it neither falls into the listed items provided for therein or satisfied criteria specified thereby. Second, the Cryptocurrency is also not a foreign currency[7]. It follows from this non-property and non-currency aspect that no one seemingly knows what regulations can be used to apply to the Cryptocurrency.

Nonetheless, in 2017, a local tax authority in Vietnam attempted to collect in relation to Cryptocurrency trading activities of an individual. The case goes to the provincial court that eventually ruled in favor of the trader due to non-recognition of Cryptocurrency as a good and collecting taxes on the trading of it could be construed as implicitly realizing the Cryptocurrency as a form of property.

At any rate, Cryptocurrency offering, mining and trading are not prohibited in Vietnam. Looking at the list of goods banned from imported into the territory of Vietnam provided for by Decree No. 69/2018/ND-CP, there is no such item as a mining machine. The list of prohibited business activities provided for by Decree No. 31/2021/ND-CP also does not include offering, mining or trading Cryptocurrency. One can only be found guilty administratively or criminally should the mining or trading of Cryptocurrency leads to using of illegal payment method or criminal acts. Thus, the offering, mining and trading of Cryptocurrency per se does not constitute any explicit violation. However, in the absence of a clear legal framework, Cryptocurrency investors and traders will not be protected by the laws in case of dispute in connection with their crypto assets.

To cope with this problematic issue, the Prime Minister has issued the Decision No. 1255/QD-TTg dated 21 August 2017 to approve an action plan to develop a legal framework on management of virtual assets, digital currencies, and virtual currencies. The Prime Minister also issued Directive No. 10/CT-TTg dated 11 April 2018 to tighten the management of the Cryptocurrency.

Following that, with the aim of tackling risks of money laundering, terrorism financing and tax evasion, the SBV, by the Directive No. 02/CT-NHNN dated

5. Civil Code 2015, Article 105.1: "Property comprises objects, money, valuable papers and property rights."
6. Law on Commerce 2005, Article 3.2: "Goods include: (a) All types of movables, including those to be formed in the future; (b) Things attached to land".
7. Ordinance on Foreign Exchange Control 2005, Article 4.1:" Foreign exchanges comprises:
(a) Currencies of other nations or the common European currency and other common currencies used in international and regional payments (hereinafter referred to as foreign currency);
(b) Foreign currency payment instruments, cheques, credit cards, bills of exchange, promissory notes and other payment instruments;
(c) All types of valuable papers denominated in foreign currencies including Government bonds, corporate bonds, term bonds, shares and other valuable papers;
(d) Gold belonging to the foreign exchange reserves of the State, gold in overseas' accounts of residents, and gold in the form of bullion, bars, granules and plate which is brought into or taken out of the territory of Vietnam;
(dd) The currency of the Socialist Republic of Vietnam in cases where it is remitted into or out of the territory of Vietnam or used as an instrument for international payments."

Star by Benchmark Litigation, Distinguished Practitioner by Asialaw Profiles, he is also on the A-List Vietnam's Top 100 Lawyers by Asia Business Law Journal.

Mr. Dinh Cao Thanh is a Senior Associate of BROSS & Partners LLC. Prior to joining the firm in 2022, Thanh had been working as a Legal Manager for one of the Big Four Accounting Firms for 5 years. He also authored multiple articles published by The People's Court Journal and the External Economics Review of the Foreign Trade University. Thanh focuses on Inbound Investment, M&A, Real Estates, Litigation and Arbitration and General Corporate.

13 April 2018, prohibits credit institutions and providers of intermediary payment services from providing domestic or cross-border payment services, card transactions, money transfer, and other cryptocurrency related transactions.

The State Bank of Vietnam also issued the Directive No. 02/CT-NHNN dated 7 January 2021 to direct the card issuers, card payment organizations and providers of intermediary payment services to, inter alia, cooperate with each other in order to prevent illegal card transactions relating to virtual currency or digital currency.

To date, the relevant authorities of Vietnam are on the process to make proposal on regulations on transaction of the Cryptocurrency. Particularly, a committee to be in charge of studying and proposing policies to manage virtual assets and crypto currencies has been set up. The group had nine members, led by Mr. Pham Hong Son, deputy chairman of the State Securities Commission ("**SSC**"). Other members are from the SSC, the General Department of Taxation, SBV's Department of Banking and Financial Institutions and Legal Department, Vietnam Customs and the National Institute for Vietnam Finance.

Given the regulatory framework for cryptocurrency business and investment remains in the pipeline, the Cryptocurrency investors and traders should seek legal advice before making any Cryptocurrency trading decision. At the moment, the issuance, supply, and use of the Cryptocurrency as means of payment could result in the following administrative and criminal penalties:

- A fine of up to VND 100,000,000 (approx. USD 4,300) for issuing, providing or using illegal payment instruments (Article 26.6(d) of Decree 88/2019/ND-CP).
- A fine of up to VND 300,000,000 (approx. USD 12,900) or imprisonment of up to 3 years for issuing, supplying, or using illegal means of payment, or forging or using forged means/vouchers of payment, thereby causing another person a loss from VND 100,000,000 to VND 300,000,000 (Article 206.1(h) of the Criminal Code 2015 (as amended)).

MEMBER PROFILE

Mr. Apoorva Chandra
Sarthak Advocates & Solicitors (New Delhi, India)

What was your motivation to become a lawyer?

To be honest, law is a (happy) accident that has happened to me. Sometime, before I was graduating from school, where at the time I was seriously pondering to either make a career out of accounts or take up business administration. However, as fate would have it and thanks to my parents' guidance, I stumbled upon law.

What now motivates me to continue being a lawyer, is the every-day challenges of the profession (i.e. in terms of juggling between different clients and their assignments, wide-range of projects that one takes, meeting deadlines, rising up to the client expectations and more importantly advising clients on plethora of legal issues concerning their day-to-day business requirements including but not limited to conducting negotiation with the opposing counsels and also discussing matters with a well-read client, who not only understands his business and but also the laws that are applicable to his business). The sheer excitement of doing the aforesaid, is what keeps me on my toes every single day, and I hope for others too, it's the same.

What are the most memorable experiences you have had thus far as a lawyer?

The list is long and I personally won't be doing justice if I mention only a few. In view thereof, I can categorise the most memorable experience in to the following two categories:

- having discussion with clients who are well versed with their business, applicable laws and are clear headed in terms of what they want; and
- negotiating with the opposing counsel, who is a hard nut to crack.

What are your interest and/or hobbies?

Music, abstract reading, cooking and swimming, are a few of interests that tops my mind. However, since last couple of years I have developed a hobby of running, which has helped me to think and clear my head.

Share with us something that Primerus™ members would be surprised to know about you.

That I can be a good listener.

Do you have any special messages for Primerus™ members?

I firmly believe that in order to give a good advice to a client, one needs to have a clarity on both fact and law, secondly one should have a zeal to learn and unlearn and lastly to have high work ethics.

NEW FIRM MEMBER AND FORMER PUBLIC PROSECUTOR NOBUHIRO MATSUO WHO JOINED GI&T LAW IN THEIR JAPAN OFFICE RECENTLY IN APRIL OF THIS YEAR.

GI&T Law Office, a Primerus™ member firm in Japan, welcomed Nobuhiro MATSUO, attorney-at-law, who used to be a public prosecutor, this April. This is to strengthen GI&T's capabilities in compliance and internal investigations. He worked as public prosecutor for 17.5 years. In his previous career, he dealt with investigations for a number of criminal cases including white color crimes such as organizational fraud, embezzlement, tax evasion, and also conducted criminal trials. He also worked as government attorney for the Ministry of Justice to support the governments of Asian countries such as Vietnam, Laos, Indonesia and Bangladesh. In one of the Japanese oversea assistance projects (JICA or Japan International Cooperation Agency), he was sent to Hanoi City in Vietnam as legal expert, which was "PHAP LUAT 2020", which stands for the "**P**roject for **Ha**rmonized, **P**ractical **L**egislation and **U**niform **A**pplication of Law **T**argeting Year 2020") from 2017 to 2019. During his tenure, he was awarded a decoration medal for the Contribution to Procuratorate Operations from Supreme People's Procuratorate of Vietnam in 2019. At GI&T Law, he will participate in internal investigation projects, and support the establishment of global international whistleblower systems, and other cross-border legal issues including South-East Asian countries, by utilizing his skills and knowledge as public prosecutor in scrutinizing evidence and finding facts, together with his diverse work experience in different countries.

MEMBER PROFILE

Tran Anh Hung
Bross & Partners (Hanoi, Vietnam)

What was your motivation to become a lawyer?

Becoming a lawyer is an enormous undertaking in terms of time commitment and financial investment. It is a career that will take years to improve but it offers me challenges and variety that will fulfil my personal aspirations and career development.

Lawyers are able to help clients with their legal problems and to further the public good. This career has been a hallmark of prestige for generations. Impressive reputation and a certain authority might help for the greater good of society and support those in need of legal assistance.

What are the most memorable experiences you have had thus far as a lawyer?

A case involving the enforcement of remedies against a shareholder of a listed company, during my first years of career, has taught me a lot about human nature. It was my first case as the team leader which was held in two level-courts in Vietnam. It took several months for our team to work on the case. The memorable experience to me is not about winning the case but the day after the last trial, I received a message from the client that said: "*I just want to thank you again for getting me out of all the difficulties. You are doing great. It is all because you believed in me and helped me in my worst situation*." Those words meaningfully inspired me to become a better lawyer in later years.

What are your interest and/or hobbies?

As well as typical interest and hobbies of a lawyer including reading and researching documents, writing memoranda, or work related to business development, my favourite activity in my firm is training and teaching. This is a core value activity that helps develop the firm in the long run as well as earns the respect of employees, from which they are willing to stick and dedicate to the firm. Currently I am also a part-time lecturer at some law schools and participate in examination process for Vietnam bar exam.

Share with us something that Primerus™ members would be surprised to know about you.

BROSS & Partners maximises the use of knowledge and experience integrated with business sense in our approach to clients' cases to work out legal advice and solutions most suitable to clients' business plans. In addition, business ethics is always the first priority in our practice. We are fully aware that business ethics is the essence for clients. Therefore, we always strive for prompt and timely communication with clients and successful solutions of their matters

Do you have any special messages for Primerus™ members?

Clients' best interests are always given the first priority in BROSS & Partners' practice. Sense of responsibility requires prudence, professionalism and the key values of the business ethics. We take the openness and opinion, knowledge and experience sharings an important factor for improving profession capacity as well as ensuring the harmony between quality and practicality of our legal services provided to clients. We hope to become an active member of Primerus™ and a trusted law firm in Vietnam, also have many opportunities to meet and work with all members of Primerus™.

MS. ANGEL WONG AND MR. ERIC WOO HAVE OBTAINED THE QUALIFICATION TO PRACTICE AS GREATER BAY AREA LAWYERS

We are pleased to announce that our Partners Ms. Angel Wong and Mr. Eric Woo have obtained the practice certificates to practise as Greater Bay Area lawyers. They are now able to advise and practice specified civil and commercial legal matters (including contentious and non-contentious matters) in the nine mainland cities of the Greater Bay Area.

Please join us to congratulate them!

Angel Wong is one of the members who built up our corporate finance practice. She specialises in initial public offerings (IPOs) and she has advised many listing applicants and sponsors in the listings on the Main Board and GEM of the Hong Kong Stock Exchange. Angel is experienced in a wide range of corporate and commercial matters, including pre-IPO restructuring and financing, IPO, secondary financing, overseas listing, merger and acquisition, loan and financing transactions, licensing and registration under the Securities and Futures Ordinance, corporate governance and general compliance for listed companies as well as private enterprises.

Angel has been admitted as a lawyer in the Greater Bay Area (license no. 14401202201551966).

Eric Woo is a dispute resolution lawyer. Eric specialises in international arbitration and civil and commercial litigation including contractual and tortious claims, commercial disputes, shareholders disputes and liquidation, cyber fraud, defamation, restitutionary, and employment disputes. He is also experienced in both wet and dry shipping matters, including charterparties, shipbuilding, shipping casualties, sale and purchase of vessels, ship arrest and release, international sale of goods, ship financing, cargo claims, bills of lading, letters of credit, marine insurance and other cross-border transport disputes. Eric covers the litigation, investigation and compliance aspects of competition law in relation to shipping and logistics industry and has given presentations to financial institutions and listed companies on competition law.

Eric has been admitted as a lawyer in the Greater Bay Area (license no. 14401202300586716).

ONC ADVISED ON THE LISTING OF ZHONGTIAN CONSTRUCTION (HUNAN) GROUP LIMITED

ONC has advised Zhongtian Construction (Hunan) Group Limited (Stock Code: 2433) on its global offering and listing of shares on the Main Board of The Stock Exchange of Hong Kong Limited. Zhongtian Construction (Hunan) Group Limited has a market capitalisation of HK$566,400,000 at the time of the listing based on 480,000,000 shares in issue and an offer price of HK$1.18 per share.

Zhongtian Construction (Hunan) Group Limited is a general contracting construction group in Hunan Province with over 40 years of operating history.

ONC team was led by Ms. Angel Wong (Partner) with the support from Ms. Wing Tang (Senior Associate) and Ms. Nicole Chu (Trainee Solicitor).

DR. EDDY M. LEKS REGISTERED AS ARBITRATOR AT BANI ARBITRATION CENTER

Leks&Co is pleased to announce that our founder and managing partner Dr. Eddy M. Leks has been registered as an arbitrator at BANI Arbitration Center commencing from March 2023. BANI Arbitration Center is an independent institution, providing a range of services in relation to arbitration, mediation, binding opinion, and other form of dispute resolutions. We are thankful for the support by all our clients, colleagues, and team members of Leks&Co who made this achievement possible. Mr. Leks would need your continuous support on his new role as an arbitrator.

Dr. Leks has been registered as Member of Chartered Institute of Arbitrators. He has experiences as counsel in national and international arbitration proceeding. He is regarded as Litigation Star by Benchmark Litigation.

If you have any queries, you may contact us through query@lekslawyer.com, visit our website www.lekslawyer.com or visit our real estate law blogs i.e., www.hukumproperti.com and www.indonesiarealestatelaw.com.

Written by: Eddy Leks - Leks&Co (Jakarta, Indonesia)

Eddy Leks is the founder and Managing Partner of Leks&Co. His main responsibility is to manage company's general corporate/commercial issues, build-operate-transfer project, and acquisition of shares and assets of property project. At time of joining, he was one of the youngest legal managers of the company.