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Relevant Information for the Primerus Asia Pacific Region

LETTER FROM THE CHAIR

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

Caroline Berube is the managing partner of HJM Asia Law & Co LLC, 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 1990s. Caroline worked in Singapore, Bangkok, and China for UK and Chinese firms prior to establishing her own firm more than 16 years ago.

Warm greetings and welcome everyone, to the first edition of our Primerus APAC Newsletter for 2025!

After closing out another busy year, filled with stable growth predicted by the Asian Development Bank of 4.8 percent in 2024, there is much to look forward to in the continuing months ahead. Indeed, according to Retail Banker International, M&A activity in the Asia Pacific region grew rose by 34 percent in Q2 2024 compared to the previous quarter's total.

Of separate note, the continual and rapidly growing influence of artificial intelligence (AI) on the law and in general shows no signs of slowing down.

We have, therefore, included a number of articles detailing the interplay and impact of AI in a variety of contexts which all law practices should be aware of.

Finally, I wish to extend my thanks to all Primerus APAC Member firms for once again taking time of out of their busy schedules to contribute wonderful articles for our Primerus worldwide membership base/audience.

Australia

The Regulation of Artificial Intelligence in Australia – Navigating the Future
Selwyn Black, Partner, and Yue Lucy Han, Senior Associate, at Carroll & O'Dea Lawyers, discuss the current AI landscape in Australia, "high risk" AI, and how the Australian government may consider implementing a suitable regulatory framework in relation to the same.

China

China Company Law Update: Explanatory Provisions for Registered Capital Requirements of Local and Foreign Owned China Companies Registered on or before June 30, 2024
Michelle Ye, Compliance Associate at HJM Asia Law & Co LLC, provides a summary as to the effects of the recently amended China Companies Act specifically in relation to the timeframe for payment of subscribed/unpaid registered capital for existing local and foreign owned companies and what such companies may need to be aware of.

Series on Capitalization of Data Assets in Financial Statements (Part I): An Overview

In this two-part article, Cathy Wu, Partner at Watson & Band, shares with us an overview of China's Interim Provisions on Accounting Treatment for Enterprise Data Resources concerning data assets in relation to inclusion within a company's financial statements.

Guidelines on Major Preferential Tax Policies for Enterprise M&A and Reorganizations

Ralf Ho, Of Counsel at HJM Asia Law & Co LLC, explores the China Ministry of Finance recently enacted guidelines – which consolidate a previous patchwork of guidelines/regulations – regarding the tax treatment for various types of company reorganizations.

Series on Capitalization of Data Assets in Financial Statements (Part II): Identification and Recognition of Data Assets

In the second part of Cathy Wu's article, a further in-depth overview/summary is provided as to China's Interim Provisions on Accounting Treatment for Enterprise Data Resources in relation to identification and recognition of data assets including data property ownership and registration.

China & Taiwan

Good News for the World: China Achieves Peak Carbon Emissions Goal Five Years Early

Nicholas Chen and Jose Mario Ponce of Pamir Law Group explore China's previously agreed upon carbon emission goals, how they have fared in those targets, and the impact of the results for the rest of the world.

Hong Kong

Safeguarding your Digital Footprint: How AI Impacts Data Privacy in Hong Kong

Dominic Wai, Partner at ONC Lawyers, reviews the Hong Kong Office of the Privacy Commissioner for Personal Data published 'Artificial Intelligence: Model Personal Data Protection Framework' and what local and foreign owned Hong Kong businesses need to know.

India

Transforming India's Financial Landscape: The Advent of Variable Capital Companies

Abhishek Nath Tripathi, Partner, and Anil Khanna, Senior Associate, at Sarthak Advocates & Solicitors comment on India's proposals to introduce the Variable Capital Company, a corporate vehicle predominantly used in the fund management sector, as well as discussing India's current and future fund management/pooling landscape.

Vietnam

Updates on Vietnam's Direct Power Purpose Mechanism under Decree No. 80/2024/ND-CP

Tran Anh Hung, Managing Partner, and Dinh Cao Thanh, Senior Associate, at BROSS & Partners review Vietnam's recently enacted Decree No. 80/2024/ND-CP relating to power purchase arrangements, grid and non-grid connected power purchase agreement (PPA) models, and other related matters concerning various players in the electricity supply chain.

Discover Our New Members

Utkarsh Mishra, Associate at Sarthak Advocates & Solicitors, shares with us his family's passion/background in law, as well as his most recent experiences in law and hobbies outside of the office;

Salim Hasan, Partner at Meer & Hasan Law Associates, introduces us to his inspirations for legal practice and more about his law firm; and

Yuka Yamada and Hiroko Miyazaki, Partners at GI&T Law Office, who recently joined the firm on January 1, 2024, share about their professional backgrounds and reasons for practicing law.

Firm Updates

Australia

Carroll & O'Dea Lawyers celebrates its 125th anniversary!

China

Watson & Band again recognized in 2024 IAM Patent 1000 Ranking, several professionals acclaimed as outstanding individuals.

Watson & Band receives multiple nominations for the "2024 ALB China Regional Law Awards: East China".

Watson & Band wins the CBLJ – 2024 China Business Law Award in the Insolvency and Restructuring Field.

Hong Kong

Dr. Lawrence Yeung and Mr. David Zhang of ONC Lawyers have obtained the qualification to practice as Greater Bay Area lawyers.

India

Ms. Mani Gupta, of Sarthak Advocates & Solicitors, appointed as sole arbitrator to adjudicate disputes arising out of a construction contract by the Hon'ble High Court of Delhi.

Japan

GI&T Law Office welcomes Yuka Yamada and Hiroko Miyazaki to its team.

Kengo Nishigaki of GI&T Law Office has been named among "The A-List: Top Japan Lawyers 2024" by Asia Business Law Journal.

GI&T Law Office has been selected as a finalist in four categories at the ALB Japan Law Awards 2024, including "Boutique Law Firm of the Year" and "Rising Law Firm of the Year".

THE REGULATION OF ARTIFICIAL INTELLIGENCE IN AUSTRALIA – NAVIGATING THE FUTURE

Australia continues to evaluate how to regulate "high risk" artificial intelligence (AI). As AI continues to permeate various sectors, from healthcare to finance and beyond, the Australian government appears to recognize the need for a regulatory framework to ensure its ethical, safe, and responsible use. This article explores key initiatives, challenges, and the potential impact on innovation.

AI systems

The OECD member countries endorse the following definition of an AI system:

> 'A machine-based system that, for explicit or implicit objectives, infers, from the input it receives, how to generate outputs such as predictions, content, recommendations or decisions that can influence physical or virtual environments. Different AI systems vary in their levels of autonomy and adaptiveness after deployment.'[1]

Current landscape of AI regulation in Australia

Currently, Australia does not have specific, standalone legislation dedicated solely to the regulation of AI. Instead, the legal framework governing AI in the country is comprised of a combination of existing laws and industry-specific regulations. Australia's existing laws, such as intellectual property, privacy protection, and directors duties, weave a web of regulation around the protection of the inputs received by AI and the impact of AI outputs.

In 2019, Australia released a set of eight AI ethics principles[2] which were modelled on the OECD's principles.[3] These principles highlight the importance of transparency, accountability, and fairness in AI systems. It is a voluntary framework seeking to mitigate risks involved for all parties. The government's Department of Industry, Science and Resources states the following intentions:

Written by: Selwyn Black and Yue Lucy Han – Carroll & O'Dea Lawyers (Sydney, Australia)

Selwyn Black leads the business lawyers group at Carroll & O'Dea Lawyers in Sydney, Australia. 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.

1 oecd.ai/en/ai-principles

2 www.industry.gov.au/publications/australias-artificial-intelligence-ethics-framework/australias-ai-ethics-principles

3 AI-Principles Overview – OECD.AI: oecd.ai/en/ai-principles

- achieve safer, more reliable, and fairer outcomes for all Australians.
- reduce the risk of negative impact on those affected by AI applications.
- businesses and governments to practice the highest ethical standards when designing, developing, and implementing AI.

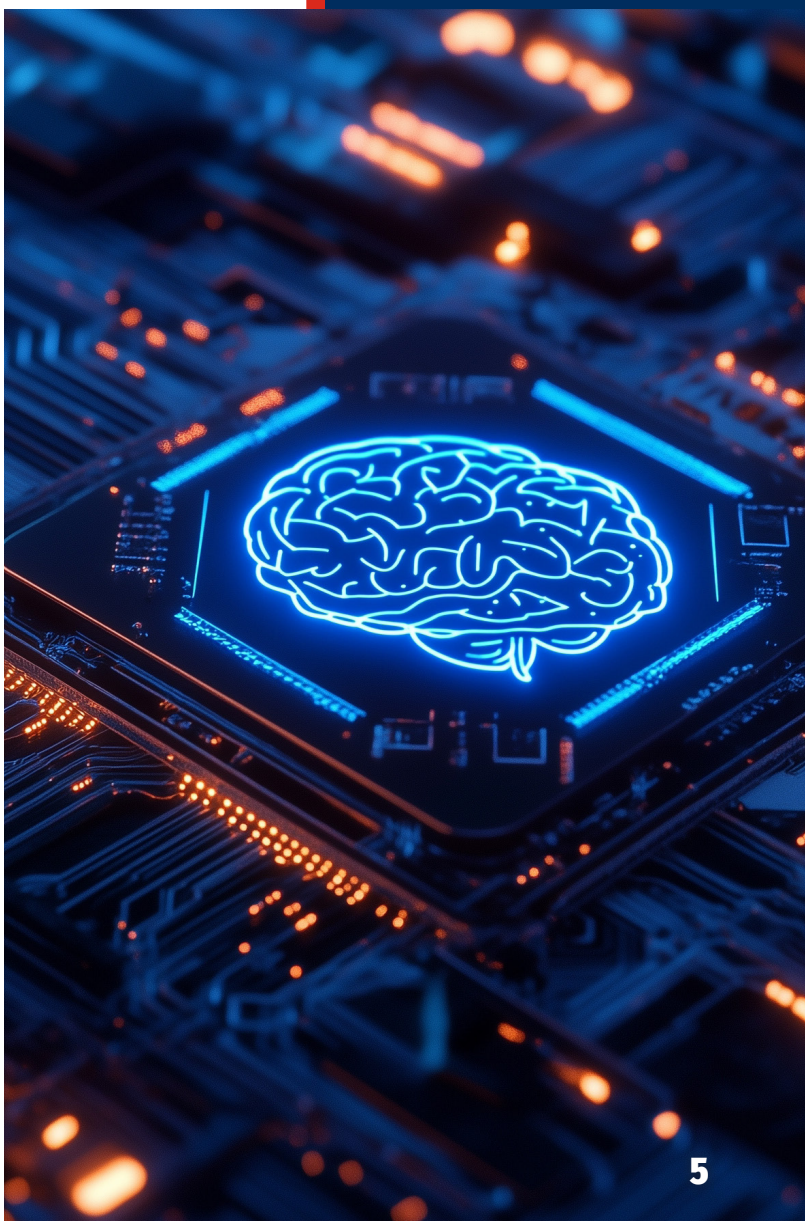
On January 17, 2024, the Australian government published its interim response[4] to the Safe and Responsible AI in Australia Discussion paper which was a 2023 public consultation on AI.[5]

The government says it plans to work with industry to develop voluntary AI Safety Standards. These guidelines outline the principles of fairness, transparency, and explainability that it says should be embedded in AI systems to ensure responsible innovation. There is also a plan to develop options for voluntary labelling and watermarking of AI-generated material and finally, the government says it will set up a temporary expert advisory body to support the development of options for mandatory AI guardrails.

The government has committed to five principles guiding its interim response including:

- Using a risk-based framework to support the safe use of AI and prevent harm occurring from AI;
- avoiding unnecessary or disproportionate burdens for businesses, the community, and regulators;
- being open in its engagement and working with experts from across Australia in developing its approach;
- consistency with the Bletchley Declaration[6] to support global action to address AI risks;
- placing people and communities at the center when developing and implementing its regulatory approaches.

Yue Lucy Han works in tje business practice group at Carroll & O'Dea Lawyers. She has a wide range of 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.



4 Safe and responsible AI in Australia consultation: Australian Government's interim response: storage.googleapis.com/converlens-au-industry/industry/p/prj2452c8e24d7a400c72429/public_assets/safe-and-responsible-ai-in-australia-governments-interim-response.pdf

5 Safe and responsible AI in Australia: storage.googleapis.com/converlens-au-industry/industry/p/prj2452c8e24d7a400c72429/public_assets/Safe-and-responsible-AI-in-Australia-discussion-paper.pdf

6 The Bletchley Declaration by Countries Attending the AI Safety Summit, 1–2 November 2023 | Department of Industry, Science and Resources: www.industry.gov.au/publications/bletchley-declaration-countries-attending-ai-safety-summit-1-2-november-2023

Many of the AI risks outlined in the over 500 submissions received were well-known before recent advances in generative AI and include things such as:

- inaccuracies in model inputs and outputs;
- biased or poor-quality model training data;
- model slippage over time;
- discriminatory or biased outputs; and
- a lack of transparency about how and when AI systems are being used.

On June 21, 2024, the Australian state and territory governments jointly released the 'National Framework for the Assurance of Artificial Intelligence in Government'.[7] This Framework was informed by the Australian AI Ethics Principles and it is likely to become the bedrock for AI regulation across Australia.

The definition of "high risk" AI

Focusing on high risk areas with a temporary advisory body obviously raises questions such as how "high risk" areas will be defined and what will happen in the regulation of "low risk" AI applications.

As AI technologies become more sophisticated, there is also a risk that regulatory frameworks may lag which will lead to potential gaps in oversight.

Another concern is the balance between fostering innovation and ensuring ethical use. Striking the right balance is crucial to prevent overly restrictive regulations that may stifle technological progress while still safeguarding against the risks associated with unchecked AI development.

The Australian Human Rights Commission (AHRC) has voiced its concern of four emerging harms of AI including privacy, algorithmic discrimination, automation bias, and misinformation and disinformation.[8]

The AHRC is calling on the federal government to identify and address gaps in Australia's existing legislation to specifically safeguard against the emerging harms and novel risks arising from our use of AI. They support the appointment of an AI Commissioner.

Potential impact on innovation

Effective regulation is essential for building public trust in AI technologies, which, in turn, can drive innovation. A well-regulated environment provides a level playing field for businesses, promotes responsible practices, and encourages investment in AI research and development. By establishing clear guidelines and standards, the government can create an ecosystem that supports ethical innovation and ensures the long-term sustainability of AI technologies in Australia. This is still a work in progress, but it is a start.

Note: This article does not constitute legal advice. If you are seeking professional advice on any legal matters, you can contact Carroll & O'Dea Lawyers at (+61)1800 059 278 or via our Contact Page and one of our lawyers will be able to assist you. For inquiries please contact sblack@codea.com.au or yhan@codea.com.au.

7 www.finance.gov.au/sites/default/files/2024-06/National-framework-for-the-assurance-of-AI-in-government.pdf

8 Australia Needs AI Regulation: humanrights.gov.au/about/news/australia-needs-ai-regulation

CHINA COMPANY LAW UPDATE: EXPLANATORY PROVISIONS FOR REGISTERED CAPITAL REQUIREMENTS OF LOCAL AND FOREIGN OWNED CHINA COMPANIES REGISTERED ON OR BEFORE JUNE 30, 2024

Background

China's amended Company Law came into legal effect on July 1, 2024 (the "Company Law").

Among the Articles contained within the Company Law are those concerned with the registered capital requirements for newly registered China limited liability companies from July 1, 2024 onwards.

One of the significant amendments to the registered capital requirements for China companies is the requirement that shareholders of a China limited liability company must pay up their agreed subscribed registered capital within the timeframe stipulated by the articles of association of the China company (which must in any event not exceed a period of five (5) years from the registration date of the China limited liability company).

However, for China registered limited liability companies with a registration date on or before June 30, 2024, there was some ambiguity as to how this five (5) year deadline for payment of subscribed but unpaid registered capital would apply.

To this end, on July 1, 2024 the Chinese authorities enacted the 'Provisions on the Management System of Registered Capital Registration in the Company Law of the PRC' to clarify the above position in relation to Chinese registered limited liability companies and joint stock companies with a registration date on or before June 30, 2024 (the "Provisions").

The Provisions apply to local and foreign-owned Chinese registered limited liability companies and joint stock companies.

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

Michelle Ye worked for seven years in a state-owned enterprise where she liaised with the Chinese authorities and assisted with the legal aspects of developing distribution channels nationwide before joining HJM. Michelle is very experienced in negotiating with Chinese counterparts andthe Chinese government authorities and assists clients in all aspects of governmental compliance and formalities, business immigration in China, as well as intellectual property registrations and dealings.

Adjusted timeframe for payment of subscribed registered capital

For Chinese limited liability companies registered and incorporated on or before **June 30, 2024** which have a subscribed registered capital payment term exceeding five (5) years from **June 30, 2027**, such companies will have until **June 30, 2027** to adjust their existing subscribed registered capital payment timetable to be within five (5) years from **June 30, 2027** (i.e., for the shareholders subscribed registered capital payment to be paid no later than **June 30, 2032**).

For Chinese joint stock companies registered and incorporated on or before **June 30, 2024**, such companies shareholders must pay up all unpaid subscribed registered capital no later than **June 30, 2027** (i.e., a three (3) year period).

Where a Chinese limited liability or joint stock company fails to comply with the above requirements of the Provisions, the company registration authority shall order it to make corrections. If it is not corrected within the time limit, the company registration authority shall make official special remarks in the national enterprise credit information publicity system and publicize it to the public.

In addition, if the shareholders of the company fail to pay the subscribed capital contribution or share payment in accordance with the above requirements, or the company fails to publicize relevant information in accordance with the relevant law, the company may receive corresponding penalties.

Disclosure requirements

If the company adjusts the amount of capital subscribed and paid by the shareholders, the method of capital contribution, the period of capital contribution, or adjusts the number of shares subscribed by the shareholders, it must publicize the information through the national enterprise credit information publicity system within twenty (20) working days from such change.[1] Where a company fails to adjust the term of contribution and registered capital in accordance with these Provisions, the company registration authority shall order it to make corrections. If it is not corrected within the time limit, the company registration authority shall make special marks in the national enterprise credit information publicity system and publicize it to the public.[2]

Inspections by authorities

The company registration authority and other relevant Chinese authorities shall conduct supervision and inspection of Chinese companies' public subscription and actual payment by means of random inspections.[3]

1 Article 4 of the Provisions of the Registered Capital Registration Management System in the Company Law of the People's Republic of China.

2 Article 6 of the Provisions of the Registered Capital Registration Management System in the Company Law of the People's Republic of China.

3 Article 5 of the Provisions of the Registered Capital Registration Management System in the Company Law of the People's Republic of China.

Conclusion

Owners for existing Chinese limited liability companies and joint stock companies registered in China on or before June 30, 2024 should be aware of the impact that the Provisions may have in relation to their prevailing registered capital structure.

For example, in the case of limited liability companies, if there are unpaid amounts of subscribed and registered capital with a due date/payment date beyond June 30, 2032, such limited liability companies will be required to amend their articles of association to adjust the payment date to no later than June 30, 2032.

For joint stock companies, if there are unpaid amounts of subscribed and registered capital with a due date/payment date beyond June 30, 2027, such limited liability companies will be required to amend their articles of association to adjust the payment date to no later than June 30, 2027.

SERIES ON CAPITALIZATION OF DATA ASSETS IN FINANCIAL STATEMENTS (PART I): AN OVERVIEW

Concept and background of the capitalization of data assets in financial statements

Effective January 1, 2024, China implemented the *Interim Provisions on the Accounting Treatment for Enterprise Data Resource*, allowing data assets to be recognized on financial statements when certain criteria are met. This process, referred to as the capitalization of data assets in financial statements, involves recording qualifying data resources criteria on the balance sheet, thereby recognizing them as corporate assets.

As the digital economy advances, the strategic importance of data as a key economic resource has grown significantly. Data is now seen as a cornerstone of digital economic development. As early as October 2019, during the Fourth Plenary Session of the 19th Central Committee of the Communist Party of China, data was formally recognized as a factor of production, joining labor, capital, land, knowledge, technology, and management as an essential production factor. In April 2020, the *Opinions on Improving the Market-Oriented Allocation of Factors* introduced the concept of fostering a data market. This was followed by a series of policies, including the *14th Five-Year Plan for the Development of the Big Data Industry*, the *Comprehensive Reform Pilot Plan for Market-Based Allocation of Factors*, and the *Opinions on Establishing a Fundamental System for Data to Enhance the Role of Data as a Production Factor* (known as the "Twenty Guidelines on Data"). These policies laid the groundwork for China's initial exploration of pathways to data capitalization, establishing basic systems and standards for data property rights, circulation and transaction, income distribution, and governance of data factors. In August 2023, the Ministry of Finance issued the *Interim Provisions on the Accounting Treatment for Enterprise Data Resources* to address issues related to the accounting treatment and disclosure of data assets. In September, the China Appraisal Society released the *Guidelines for Data Asset Valuation*, providing standardized approaches to the valuation and disclosure of data assets. These developments mark the beginning of practical implementation in the area of capitalizing data assets in financial statements in China.

Written by: Cathy Wu – Watson & Band (Shanghai, China)

Cathy Wu graduated from the National University of Singapore with distinction. In 2002, she joined Watson & Band and has been working in Shanghai headquartered office since then.

Cathy practices in data, intellectual property, and compliance, and has been consistently providing comprehensive strategic advice for the PRC governmental authorities, industry associations, and a multitude of domestic and foreign clients. Her expertise spans various sectors, including TMT, finance, healthcare, automobile, mechanics, engineering, and FMCG. Cathy leads a team that handles numerous complex projects and cases involving data compliance, cross-border data transfer and data localization, data assets,

The importance of capitalizing data assets

1. Assessing data resources and enhancing data management

The process of capitalizing data assets requires enterprises to conduct a thorough assessment of their data resources. This helps companies not only to understand the scope and variety of their data but also to establish a structured management system for continuous and systematic data oversight. With a solid foundation of high-quality data, businesses can significantly improve their operational efficiency and management practices, thereby advancing their digital transformation efforts.

2. Expanding asset base and strengthening investor confidence

Capitalizing data assets also benefits a company's external standing by increasing its asset base, which can, in turn, enhance its credit rating and improve its access to financing. This is particularly crucial for data-driven enterprises. When the value of data assets is recognized on financial statements, the company's competitiveness in the capital markets is likely to increase, opening up more opportunities for financing under more favorable terms.

3. Creating data products and innovating business models

By leveraging high-quality data, companies can develop new data products or services, leading to innovative business models and additional revenue streams. For instance, beyond traditional over-the-counter transactions, companies can offer data products like APIs, cloud services, and industry-specific solutions such as data analysis reports, custom data services, data packages, or data collection software through data trading platforms. Currently, the Chinese data market is predominantly focused on industry solutions, with platforms like the East China Jiangsu Big Data Trading Center offering services such as brand marketing and e-commerce risk management solutions.

4. Exploring financial derivatives and broadening financing options

Once data assets are evaluated and capitalized, companies can engage in a variety of financial activities, including equity and debt financing, data trusts, pledge financing, data asset insurance, guarantees, and even data asset securitization. These avenues significantly broaden a company's financing options. The *Beijing Digital Economy Promotion Ordinance* explicitly supports such activities, including data credit, data trusts, and data asset securitization. These initiatives are expected to greatly enhance the circulation and application of data assets in financial markets, thereby fueling the growth of the digital economy. Numerous examples of data asset financialization have already emerged across China. For example, Southern Finance Omnimedia Corporation's financial terminal "Information Access" was able to secure a five-million RMB credit line from the Nansha Branch of the Industrial and Commercial Bank of China in Guangdong Free Trade Zone, facilitated by financing services provided by the Guangzhou Data Exchange after the data asset was capitalized in their financial statements.

network and data security incident management, personal information protection, and compliance issues related to AIGC. She offers robust support to clients in compliance, risk prevention, regulatory response, cooperation with investigations, and litigation disputes.

International trends in the capitalization of data assets

Globally, the movement toward capitalizing data assets in financial statements is still largely in the exploratory phase, with discussions remaining theoretical and limited to specific case studies. No universally – accepted standards or guidelines for the capitalization of data assets have been established. However, organizations like the Financial Accounting Standards Board (FASB), the Securities and Exchange Commission (SEC) in the United States, and the International Accounting Standards Board (IASB) are actively examining the issue. For instance, on April 23, 2024, the IASB launched a comprehensive review of *International Accounting Standard 38 – Intangible Assets* (IAS 38) as part of a new research project on intangible assets. Additionally, several large tech companies are voluntarily disclosing and assessing their data assets as part of this evolving landscape.

In conclusion, capitalizing data assets not only boosts a company's management efficiency and competitive edge, but also opens up new business opportunities and revenue streams. As the global push towards digitalization intensifies, the value of data assets is becoming increasingly evident. Companies should seize this opportunity to actively capitalize data assets into their financial statements, thereby maximizing the potential and monetization of their data resources.

GUIDELINES ON MAJOR PREFERENTIAL TAX POLICIES FOR ENTERPRISE M&A AND REORGANIZATIONS

Background

On July 24, 2024, the Ministry of Finance (MOF) issued the Guidelines on Major Preferential Tax Policies for Enterprise M&A and Reorganizations (Guidelines), which outlined the currently effective major preferential tax policies and tax collection and administration documents supporting China enterprise mergers and reorganizations. It also clarified the applicable conditions, implementation requirements, and policy basis.

For the purposes of this article, we shall outline both the tax treatment and required documentary requirements for a number of restructuring scenarios.

Equity and asset acquistions

As per the Guidelines, the tax treatment for equity or asset acquisitions are as follows:

a. the acquired/selling entity shall recognize the gains or losses from the equity or asset transfer;

b. the tax basis of the acquiring party's equity/asset shall be determined on the basis of fair value; and

c. the tax matters of the acquired enterprise remain unchanged.

In terms of documentation to be prepared and retained for record-keeping purposes/inspection by the appropriate Chinese authorities, these should include:

a. the share/asset transfer agreement; and

b. evidence of the fair value of the relevant equity or asset interest acquired.

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

Ralf Ho 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.

Enterprise merger

For the purposes of this article, we provide this illustration of a merger:

Enterprise A + Enterprise B = A (merged enterprise)

As per the Guidelines, the tax treatments for such a merger are as follows:

a. the tax basis of Enterprise B's assets and liabilities shall be determined on the basis of fair value;

b. Enterprise B shall be deemed as liquidated while its losses cannot be transferred to Enterprise A; and

c. the shareholder(s) of Enterprise B shall handle the enterprise income tax in accordance with the liquidation requirements.

In terms of documentation to be prepared and retained for record-keeping purposes/inspection by the appropriate Chinese authorities, these should include:

a. Enterprise B shall submit the Form of Enterprise Liquidation Income Tax Return;

b. approval documents issued by the Administration for Market Regulation or other governmental department;

c. the tax basis of all the assets and liabilities of Enterprise B and the relevant Asset Evaluation Report issued by the qualified evaluation agency;

d. description of the disposal or attribution of the liabilities of Enterprise B and

e. others which may be required by the tax department.

Enterprise division

A (Divided Enterprise) = A + B (New Enterprise)

As per the Guidelines, the tax treatments for such a division are as follows:

a. the assets transferred from the Divided Enterprise to the New Enterprise shall be recognized as gains or tosses on the basis of fair value by the Divided Enterprise;

b. the New Enterprise shall confirm the tax basis of the assets of item a on the basis of fair value;

c. the consideration gained by the shareholder(s) of the New Enterprise shall be deemed to be distribution of profits from the Divided Enterprise; and

d. the losses of the Divided Enterprise and the New Enterprise cannot be transferred to each other.

Should the New Enterprise not continue to operate, it shall be deemed as liquidated and submit the following documents:

a. the New Enterprise shall submit the Form of Enterprise Liquidation Income Tax Return;

b. approval documents issued by the Administration for Market Regulation or other governmental department;

c. the tax basis of all the assets of the New Enterprise and the relevant Asset Evaluation Report issued by the qualified evaluation agency;

d. description of the disposal or attribution of the liabilities of the New Enterprise; and

e. others which may be required by the tax department.

Investment with non-monetary assets

For example, where a resident enterprise invests in another resident enterprise or establishes a new resident enterprise with non-monetary assets (excluding cash, bank deposits, accounts receivable, notes receivable, and bonds to be held until maturity).

The tax treatment (tax-deferred for investor) is as follows:

a. the investor shall recognize the gains of the transfer of the non-monetary assets. The gain may be evenly calculated into five consecutive tax years upon the year of the recognition of the gains. Hence, the investor may pay the enterprise income tax for such transfer evenly in five years. For example, the tax basis of the non-monetary asset is RMB 300,000 yuan. The investor invests such in exchange for equity which is of the value of RMB 500,000. The investor gains RMB 200,000 yuan that such gain may be evenly divided into five consecutive tax years (RMB 40,000 yuan per year). In this regard, the investor shall pay the enterprise income tax of such RMB 40,000 each year for five consecutive years.

b. the tax basis of the equity shall be adjusted each year upon the relevant enterprise income tax is paid. For example (in the case of item a), the tax basis of the equity is RMB 340,000 yuan at the end of first year, RMB 380,000 yuan at the end of second year, RMB 420,000 yuan at the end of third year, RMB 460,000 yuan at the end of fourth year and RMB 500,000 at the end of fifth year upon the corresponding enterprise income tax is paid.

c. the invested enterprise shall directly recognize the tax basis of the non-monetary asset at fair value (namely RMB 500,000 yuan in the case of item a). and

d. should the investor transfer the equity or stop operations within five years of the equity transfer, it shall recognize the rest of the gain and settle all the relevant enterprise income tax. Accordingly, the tax basis of the said equity will be adjusted to RMB 500,000 yuan (in the case of item a).

In terms of documentation to be prepared and retained for record-keeping purposes/inspection by the appropriate Chinese authorities, these should include:

a. equity transfer agreements;

b. fair value report of the non-monetary assets;

c. statement of the tax basis of the non-monetary assets;

d. the certificate of establishment or amendment of the invested enterprise; and

e. calculation of the difference of value of non-monetary assets between the tax law and the accounting.

Exemption of value-added tax

In the process of an asset restructuring (in the form of a merger, division, sale, or replacement), where the taxpayer transfers all or part of the assets and associated liabilities, right of credit and labor force to the acquiring party; the goods, real estate, land use right involved in such transfer will not be subject to value-added tax. It should be noted however that in order for the taxpayer to avail itself of this value-added tax exemption, all such assets/liabilities/labor force must be transferred simultaneously otherwise value-added tax will be imposed.

Conclusion

Prior to the issuance of the Guidelines, the MOF issued many formal notices of preferential tax policies on M&A and restructuring. For example, Notice of the Ministry of Finance and the State Administration of Taxation on Several Issues Concerning the Enterprise Income Tax Treatment on Enterprise Reorganization took effect on April 30, 2009, but some articles were amended by Notice of the Ministry of Finance and the State Administration of Taxation on Issues concerning the Enterprise Income Tax Treatment for Promoting Enterprise Restructuring, which took effect on January 1, 2014. Nevertheless, the former Notice is still valid (with comments that were amended by the latter), resulting in a requirement to refer and compare the two Notices side-by-side to figure out new policies.

The Guidelines provide a welcome consolidation of the various notices in one core document outlining the major preferential tax policies, tax collection, administration documents, and corresponding legal references which shall provide enterprises with a sole reference point to understand all applicable policies and relevant requirements when concluding relevant restructuring transactions in China.

SERIES ON CAPITALIZATION OF DATA ASSETS IN FINANCIAL STATEMENTS (PART II): IDENTIFICATION AND RECOGNITION OF DATA ASSETS

Written by: Cathy Wu – Watson & Band (Shanghai, China

Cathy Wu graduated from the National University of Singapore with distinction. In 2002, she joined Watson & Band and has been working in Shanghai Headquartered Office since then.

Cathy practices in data, intellectual property, and compliance, and has been consistently providing comprehensive strategic advice for the PRC governmental authorities, industry associations, and a multitude of domestic and foreign clients. Her expertise spans various sectors, including TMT, finance, healthcare, automobile, mechanics, engineering, and FMCG. Cathy leads a team that handles numerous complex projects and cases involving data compliance, cross-border data transfer and data localization, data assets, network and data security

Introduction

In August 2023, the Ministry of Finance issued the Interim Provisions on Accounting Treatment for Enterprise Data Resources" (Interim Provisions). Subsequently, in September 2023, the China Appraisal Society released the Guidelines for Data Asset Valuation. These developments mark China's formal move into the practical implementation phase of capitalizing data assets in financial statements. The process of identifying and recognizing data assets is essential for their capitalization and for facilitating data transactions. But how can we determine whether a company possesses data assets?

Identification and recognition of data assets

According to the Interim Provisions, along with Articles 20 and 21 of the Basic Standards for Enterprise Accounting, data assets must meet both the definition of an asset and the criteria for recognition. Specifically, the following conditions must be satisfied:

a. the asset is the result of past transactions or events;

b. the asset is owned or controlled by the enterprise;

c. the asset is expected to bring economic benefits to the enterprise; and

d. the cost can be reliably measured.

1. Result of past transactions or events

As stipulated in Article 20 of the Basic Standards for Enterprise Accounting, past transactions or events include activities such as purchasing, producing, constructing, or other similar transactions. In practice, data resources that are acquired externally, or accumulated through production and operational activities, typically satisfy the criterion of being the result of past transactions or events.

2. Owned or controlled by the enterprise

When we say an enterprise owns data resources, we mean that it has ownership rights over these resources. However, given the intangible nature, replicability, and modifiability of data, determining ownership can be challenging. Furthermore, in light of the "Twenty Guidelines on Data" that advocate for separating the rights of data ownership, data processing and usage, and data product management, pinpointing ownership may not always be necessary. Instead, the focus should be on whether the enterprise has control over the data resources, meaning whether it holds any of the rights related to data possession, data processing and usage, or data product management.

In practice, data property registration serves as a key basis for determining whether an enterprise holds the three data-related rights. However, as of now, only a few regions – including Beijing, Shanghai, Jiangsu, Zhejiang, and Shenzhen – have launched pilot programs for data intellectual property registration with two distinct approaches. The first approach, used in places like Beijing, relies on existing intellectual property protection systems to register data. The second approach, seen in areas like Shenzhen, registers data under a property rights framework that separates the three rights. As of right now, a unified national system for data property registration has yet to be established.

Moreover, in some regions, data property registration may only serve the purpose of public disclosure or provide preliminary evidence of ownership. A comprehensive assessment, including the legality and compliance of the data asset's source, is still required. Therefore, while data property registration is an important method for determining whether an enterprise controls data resources, it is not an absolute requirement. The legitimacy and compliance of the data asset's origin must also be considered.

incident management, personal information protection, and compliance issues related to AIGC. She offers robust support to clients in compliance, risk prevention, regulatory response, cooperation with investigations, and litigation disputes.

3. Expected economic benefits to the enterprise

How can we determine if an enterprise is likely to benefit economically from its data resources? The potential inflow of economic benefits can be evaluated from two angles: internal empowerment and external revenue generation. Internally, data resources can enhance the enterprise's production efficiency, reduce operational costs, and improve marketing capabilities. Externally, data resources can be monetized through licensing, transfer, or data services. To assess the likelihood of economic benefits, one should consider whether the enterprise engages in external business activities, whether there is a demand for such activities, and whether the resulting economic benefits can be measured.

4. Cost can be reliably measured

While the costs of externally purchased data resources are usually straightforward to measure, internally generated data often presents challenges. This is due to the inherent nature of data, which is typically produced as a byproduct of the enterprise's ongoing operations. As a result, it may be difficult to separate the costs associated with data resources from the overall production and operational expenses. This challenge largely depends on the enterprise's management and operational practices. Regardless of whether data resources are purchased externally or generated internally, their formation generally involves key steps such as data collection/purchase, storage, processing, analysis, and visualization. Enterprises can break down these steps and account for the direct and indirect costs associated with each stage, including the purchase price and related taxes for external data, processing and development costs, storage costs, and data security management costs.

GOOD NEWS FOR THE WORLD: CHINA ACHIEVES PEAK CARBON EMISSIONS GOAL FIVE YEARS EARLY

China's Climate Goals (Dual Carbon Goals)

In 2020, China set two ambitious climate targets known as its "Dual Carbon Goals."[1]

The first goal is to peak carbon emissions by 2030 and to reduce the country's carbon intensity (its emissions per unit of GDP) by over 65 percent from 2005 levels.

The second goal is to reach carbon neutrality by 2060.

International climate experts' analysis recently concluded that China will significantly overachieve the first goal because China's economy has been driven by substantial investments in renewable energy and energy efficiency measures.

According to a report by Carbon Brief[2], a UK-based organization dedicated to providing comprehensive coverage of climate science, climate policy, and energy policy, China is on track to significantly overachieve its climate targets for 2030, with the possibility of reaching its peak emissions goal five years ahead of schedule.

> **"Current policies imply China's emissions reaching a peak around 2025 before falling gradually."[2]**
>
> **– Swithin Lui, China Lead at Climate Action Tracker and Climate Policy Analyst at New Climate Institute.**

China is also expected to achieve a 67 percent reduction in carbon intensity below 2005 levels by 2030.

In addition, regarding China's second goal, climate experts have concluded that due to China's impressive growth rate in renewable energy installation, it is on track to reach its carbon neutrality target by 2060[2]. Other climate

1 The Carbon Brief Profile: China interactive.carbonbrief.org/the-carbon-brief-profile-china/

2 Swithin Lui. Carbon Brief: Why China is set to significantly overachieve its 2030 climate goals www.carbonbrief.org/guest-post-why-china-is-set-to-significantly-overachieve-its-2030-climate-goals/

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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 five billion USD in

researchers believe China could be able to achieve carbon neutrality as early as 2056, reaching its goal four years ahead of schedule.[3]

China Designed and Implemented a Set of Laws and Regulations to Achieve A Whole of Government and Whole of Society Coordinated Effort to Drive Best Practices, Decarbonization and Energy Transition to Achieve their Climate Goals. This May Be a Reference for Other Jurisdictions to Adapt to Their Own Reality to Achieve Their Own Climate Goals.

China's commitment to achieving its Dual Carbon Goals is supported by the framework of laws and regulations that facilitate China's transition towards a zero-carbon economy.

China's top-to-bottom integrated governance and rulemaking system allows for swift policy implementation across all levels of government and society and is enforced using both incentives and penalties. This way China can deploy private and government capital (loans, investment, and insurance) and resources to deliver decarbonization and energy transition on a national scale.

To achieve its climate goals, China implemented the following laws, policies, and mechanisms:

1. "1+N" Climate Policy

This is the central guiding policy for decarbonization and energy transition developed by the National Development and Reform Commission (NDRC). This framework ensures all levels of government and industries coordinate to achieve China's climate goals.[4]

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3 Achieving China's carbon neutrality goal by economic growth rate adjustment and low-carbon energy structure: www.sciencedirect.com/science/article/abs/pii/S0301421523004020?via%3Dihub

4 The Carbon Brief Profile: China interactive.carbonbrief.org/the-carbon-brief-profile-china/#climate-policies-and-laws

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, 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.

2. Emissions Trading Scheme (ETS)

Established in 2021, it is the world's largest ETS and its expectations for reducing emissions have been largely met according to the Chinese Ministry of Ecology and Environment (MEE). Li Gao Director-General of the MEE's Department of Climate Change said the "ETS is stable and has met government expectations... with a compliance rate of 99.5 [percent]".[5] This has forced Chinese enterprises to lower their emissions.

3. Dual control

In 2023, the Central Committee for Comprehensively Deepening Reform passed the Opinions on Promoting Dual Control of Energy Consumption and Gradually Shifting to Dual Control of Carbon Emissions. The dual control laws shifted China's focuses to controlling overall emissions rather than energy consumption.[6] This promotes industry growth through the use of zero-carbon energy.

4. Electricity market reform

China introduced electricity market reform in the early 2000s, introducing competition and improved efficiency. Key reforms include separating power generation from transmission and distribution, allowing market-based pricing for electricity, and establishing electricity spot markets. The goal is to create a unified national power market by 2030, which will better reflect supply and demand dynamics and facilitate the integration of renewable energy sources.[4]

China's laws and policies have created a robust governance structure that both incentivizes compliance and also imposes heavy fines and penalties for non-compliance, ensuring that stakeholders are held accountable for their emissions. Serious violators will be prohibited from continuing to engage in business activities.[7]

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5 As China's carbon market turns two, how has it performed? dialogue.earth/en/climate/china-carbon-market-turns-two-how-has-it-performed/

6 China's Pivot from Energy Consumption to Carbon Emission Controls. www.china-briefing.com/news/china-carbon-emissions-reduction-dual-control-explained/

7 China implements interim regulations on carbon emission trading, targets false data fabrication: www.globaltimes.cn/page/202402/1307711.shtml

China is leading in achieving climate goals and is ahead of the West

China's proactive approach to climate change has positioned it ahead of many Western nations in terms of implementing effective climate policies.

> **"The amount of wind and solar power under construction in China is now nearly twice as much as the rest of the world combined."[8]**
>
> **– Amy Hawkins Senior China correspondent, *The Guardian***

By the first quarter of 2024, China had 339 gigawatts (GW) of utility-scale solar and wind projects under construction, which represents a staggering one-third of all proposed capacity globally. In contrast, the United States is building only 40 GW of similar projects. China is expected to maintain its 80 to 95 percent share of global PV supply chains.

This growth trajectory positions China to reach a total of 1,200 GW of installed wind and solar capacity by the end of 2024 – six years ahead of its original target[5]. The International Energy Agency notes that China accounts for almost 60 percent of the new renewable capacity expected to come online globally by 2028.[9] This shows China is the actual global leader in decarbonization and energy transition.

In contrast, the IEA indicates that despite Western nation's policies, they are lagging behind China in terms of the pace and scale of renewable installed capacity. This lag raises questions about the effectiveness of Western approaches to energy transition and highlights the need for more aggressive actions to match China.[6] China is already setting a benchmark for other nations to follow.

China is creating huge benefits for herself and for the world and becoming a global reference model for other nations to consider

China is on track to achieve both of its Dual Carbon Goals earlier than expected. China, as the world's largest emitter and second largest economy, is taking the legal and technological steps necessary to decarbonize and transition into a zero-carbon economy. This is good news for a planet suffering from all the effects of the climate catastrophe.

China is seizing its opportunity to become a global reference model for best practices, decarbonization, and energy transition. Other nations can use the China reference model and adapt it to their own reality. As China transitions to a green economy, it opens up new opportunities for international cooperation in clean technology and sustainable development.

8 China building two-thirds of world's wind and solar projects: www.theguardian.com/world/article/2024/jul/11/china-building-twice-as-much-wind-and-solar-power-as-rest-of-world-report

9 IEA 2023 Renewables Report: iea.blob.core.windows.net/assets/96d66a8b-d502-476b-ba94-54ffda84cf72/Renewables_2023.pdf

SAFEGUARDING YOUR DIGITAL FOOTPRINT: HOW AI IMPACTS DATA PRIVACY IN HONG KONG

Introduction

When one speaks about artificial intelligence (AI), one thinks of the risks associated as much as one does about its range of applications and the abundance of business opportunities it opens up to. Inevitably, the new risks arising from the innovative applications of AI present regulatory challenges in the area of personal data protection. Taking the initiative to provide guidance for Hong Kong enterprises, the Office of the Privacy Commissioner for Personal Data published the *Artificial Intelligence: Model Personal Data Protection Framework* (Model Framework) on June 11, 2024.

Recommended measures

The use of AI shall embrace data stewardship values and ethical principles. For example, the use of AI shall be respectful, beneficial, and fair, bearing in mind accountability, human oversight, data privacy, etc. To achieve the same, the Model Framework recommends appropriate policies, practices and procedures for organizations to adopt when they procure, implement, and use AI solutions. The Model Framework focuses on four main areas:

1. AI strategy and governance;
2. risk assessment and human oversight;
3. customization of AI models and implementation and management of AI systems; and
4. communication and engagement with stakeholders.

This article aims to give an overview for each of the main areas noted above.

AI strategy and governance

Organizations should have an internal AI governance strategy, which generally includes an AI strategy, governance considerations for procuring AI solutions, and an AI governance committee (or similar body) to steer the process.

The AI strategy shall provide directions on the purposes for which AI solutions may be procured and how AI systems can be implemented. On one hand, such strategy provides internal guidance and AI-related training internally to staff members and personnel within the organizations, such that they are familiar with the "dos and don'ts" and are equipped with the skills to work in an environment using AI systems. On the other hand, as the

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procurement of AI solutions often engages third parties who customize AI systems, the Model Framework also proposes procurement practices that embody governance considerations in relation to dealing with external AI procurement parties, say, whether the potential AI suppliers have followed international technical and governance standards.

At the same time, an AI governance committee – which should report to the board – shall be established to oversee the procurement, implementation, and use of the AI system; and cultivate effective internal reporting mechanisms for reporting system failure or raising any data protection or ethical concerns to facilitate proper monitoring by the AI governance committee.

Conduct risk assessment and human oversight

A risk-based approach should be adopted in the procurement, use, and management of AI systems. Comprehensive risk assessments shall systematically identify, analyze and evaluate the risks that are involved in the process. Factors that should be considered in a risk assessment include requirements of the Personal Data [Privacy] Ordinance, Cap 486 (PDPO), such as the volume, sensitivity, and quality of data, security of data, the probability of privacy risks, and the potential severity of the harm that might result.

The rationale behind such risk management measures is proportionality, meaning that the types and extent of risk mitigation measures should correspond with and be proportionate to the levels of the identified risks. For example, an AI system might be used for decision making or assist in decision-making process. If there might be algorithmic bias and discrimination in the AI system and the decision to be made is very important or has a critical impact on the company, then a higher level of human oversight would be needed than an AI system with a lower risk profile. In such circumstances, humans shall retain control in the decision-making process to prevent and mitigate errors by AI, otherwise known as the human-in-the-loop strategies.

AI models customizations and implementation and management of AI systems

Major customization and management process comprises of three steps: 1) data preparation and management; 2) customization and implementation; and 3) management and continuous monitoring. The primary goal of customization of AI models is to use the data to improve the AI solution's performance by providing more domain/context-specific information. Continuous review and user support are required after the adoption of an AI model to ensure that the AI systems remain effective, relevant, and reliable. Good data governance in the customization and operation of AI not only protects individuals' personal data privacy, but also ensures data quality, which is critical to the robustness and fairness of AI systems. In formulating the same, measures must be adopted to ensure compliance with the requirements under the PDPO.

Communication and engagement with stakeholders

Organizations should communicate and engage effectively and regularly with stakeholders, in particular internal staff, AI suppliers, individual customers, and regulators to enhance transparency and build trust. Very often, one is required to provide explanations for decisions made by and output generated by AI, disclose the use of the AI system, disclose the risks, and consider allowing opt-out. Communication with stakeholders, particularly consumers, should be in plain language that is clear and understandable to lay persons, and such communication should be drawn to the attention of stakeholders.

Conclusion

The Model Framework carries far more weight than a simple guide on data privacy. Instead, it provides practical recommendations and best practices to assist organizations to procure, implement and use AI in compliance with the relevant requirements of the PDPO, so that organizations can harness the benefits of AI while safeguarding personal data privacy. If you or your company is actively adopting AI in your daily business operations, you are strongly advised to consult the full Model Framework, and if in doubt, consult your legal representatives.

TRANSFORMING INDIA'S FINANCIAL LANDSCAPE: THE ADVENT OF VARIABLE CAPITAL COMPANIES

Introduction

The proposal to implement a Variable Capital Company (VCC) structure in India's Union Budget for the financial year 2024-25 aims to create a more flexible and efficient framework for fund management. This initiative is focused on enhancing operations within the Gujarat International Finance Tec-City (GIFT City), positioning it as a leading hub for international financial services. Upon implementation, the VCC structure is expected to further elevate GIFT City's appeal as a destination for global capital and investment activity.

The VCC structure and its inception

The VCC structure, first established in Singapore under the Variable Capital Companies Act, 2018, and later adopted by the United Kingdom and Ireland, provides a corporate entity with a flexible capital base. This structure allows a company to continuously issue and redeem shares with ease, similar to mutual fund units. A VCC can operate as a standalone entity with a single pool of capital and investments, or as an umbrella entity, with multiple segregated pools, each isolated from the others.

In the standalone model, the entity, and the investment pool are one and the same. In the umbrella model, each pool is distinct from the entity and from other pools within the same entity. Investor rights and interests, whether as shareholders or creditors, are confined to the specific pool in which they have invested. Creditors have no claims on the assets of other pools, and shareholders cannot benefit from the surpluses of other pools. Each pool, or sub-fund, is separate and distinct within the VCC.

The VCC structure functions as an umbrella entity that enables fund managers to oversee multiple funds under a single corporate framework. This differs from traditional investment vehicles, where separate funds must be created for various investment strategies or investor profiles. The VCC structure facilitates a more streamlined approach, accommodating diverse risk profiles and investment strategies within one entity.

Current fund pooling landscape in India

India's asset management sector has predominantly relied on trust structures for fund pooling. The SEBI (Alternative Investment Funds)

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Abhishek frequently engages with major Indian regulatory bodies such as the Reserve Bank of India and the Securities and Exchange Board of India. He is known for his sharp insights into political and regulatory matters, making him a trusted advisor for navigating India's evolving legal landscape.

He has substantial experience in cross-border transactions, including power projects in

Regulations, 2012, expanded permissible vehicles to include companies and limited liability partnerships (LLPs). However, trusts remain the preferred vehicle for significant fund pooling due to their unique benefits and flexibilities.

The International Financial Services Centres Authority (IFSCA) has been pivotal in developing financial products and services within IFSCs, positioning India as a global financial hub. In 2021, the Krishnan Committee examined the feasibility of adopting the VCC model within Indian IFSCs and recommended a flexible VCC framework aligned with global practices.

After the Krishnan Committee's recommendations, the IFSCA established the Sahoo Committee in 2022 to draft a legal framework for VCCs within Indian IFSCs. The Sahoo Committee advocated for a VCC framework specifically for IFSCs, proposing a streamlined legal regime tailored for efficient fund management while preserving the integrity of the Companies Act, 2013.

Need for VCCs

The IFSCA aims to create a globally competitive ecosystem for trading financial products and services, where asset management plays a critical role. A regulatory regime offering diverse options for setting up funds is essential for achieving this objective. The global asset management industry is highly developed, with countries vying to increase their market share.

A review of current Indian fund structures reveals that while India offers various options, such as trusts, companies, and LLPs, each has its limitations. The introduction of the VCC structure is vital for creating a competitive asset management ecosystem. Key benefits of the VCC model include:

a. providing a transparent investment framework, thereby enhancing investor confidence;

b. allowing for asset segregation within the VCC, thereby protecting investor interests;

c. facilitating dynamic capital structuring without extensive regulatory approvals;

d. enabling flexible capital returns to investors;

e. offering versatility in accounting practices; and

f. maintaining investor confidentiality and reducing costs.

India's financial landscape is set to benefit from the implementation of VCCs, particularly within the GIFT City IFSC. The government plans to introduce pooled private equity fund structures using VCCs, a system common in tax-friendly jurisdictions. The VCC regime aligns with global practices, aiming to elevate India's position as a premier financial hub.

Regulatory framework for VCCs in IFSCs

The Sahoo Committee explored various pathways for establishing the legal framework for VCCs. One option was to recommend a framework providing

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for VCCs as a generic form, primarily within the domestic context, which could be adapted for IFSCs with modifications. Another approach was to introduce a framework specifically tailored for VCCs in IFSCs, with the possibility of adapting it for the domestic market later, considering relevant regulatory considerations. The Sahoo Committee examined three options: recommending a stand-alone law, amending the Companies Act, 2013, or amending the IFSCA Act.

The IFSCA Act established the IFSCA as the unified regulator for financial products, services, and institutions within India's IFSCs. Under this regulatory framework, VCCs will be incorporated and governed by the IFSCA (Fund Management) Regulations, 2022. VCCs will function as companies, with sub-funds retaining their distinct assets and liabilities, ensuring bankruptcy remoteness.

Once enacted, VCCs will offer the option of establishing IFSC Alternative Investment Funds in an internationally recognized legal form, providing greater comfort to international investors.

The Sahoo Committee considered different approaches for administering the legal framework for VCCs. One approach suggested a single agency to register VCCs as corporate bodies and oversee their fund activities, while another proposed using two agencies – one for incorporating and supervising governance and another for overseeing operations, similar to the model used for banking companies in India. The Sahoo Committee noted that VCCs primarily serve as vehicles to house funds and observed that the IFSCA already regulates funds in IFSCs. To avoid regulatory overlaps and gaps, they recommended a single-agency model, with the IFSCA handling both entity and activity regulation. They argued that splitting responsibilities between two agencies could complicate compliance and reduce the VCC structure's appeal. Despite concerns that IFSCA may not typically handle tasks like incorporation and dissolution, which are usually managed by registrars of companies, the Sahoo Committee emphasized that integrating these functions with IFSCA's oversight would streamline the process. They proposed that functions such as incorporation, registration, and dissolution of VCCs should be managed by IFSCA, and the necessary capacity should be developed within IFSCA. This integrated approach aims to make VCC regulation more efficient and cohesive.

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.

Considerations on the applicability of IBC to VCCs

The Krishnan Committee opined that the Insolvency and Bankruptcy Code, 2016 (IBC), the prevailing legal framework for insolvency and bankruptcy, is not currently suitable for VCCs and their sub-funds due to legal exclusions and the IBC's focus on corporate entities rather than financial service providers. The IBC in its current form does not cover VCCs or their sub-funds, and its application could create inconsistencies with other fund vehicles and compromise investor protection. Instead, the existing IFSCA (Fund Management) Regulations, 2022, under the IFSCA, provide a mechanism for winding up funds, including at the direction of IFSCA.

The Sahoo Committee highlighted that a summary process for dissolving the corporate entity, such as that used for striking off under the Companies Act, 2013, should be provided. This process should ensure that IFSCA can verify that there are no pending liabilities to any participating members of the VCC and that sufficient provision has been made for the realization of all amounts due to the VCC and for the payment or discharge of any other liabilities and obligations within a reasonable time. The Sahoo Committee also proposed using these regulations to provide rescue mechanisms, such as mergers and restructurings, to maintain financial stability without requiring new tools. It remains to be seen how the IFSCA frames regulations around the winding up/ liquidation of VCCs.

Thoughts on VCCs

The introduction of the VCC structure signifies a paradigm shift in India's financial ecosystem, heralding a new era of sophistication in fund management. This innovative framework addresses the limitations of existing fund structures and aligns India with global best practices, enhancing its stature as a premier financial hub. By integrating the VCC structure within IFSCs, India is poised to create a controlled and iterative testing environment, ensuring a seamless transition before broader domestic implementation. This strategic, phased approach mitigates potential risks and fosters stability, positioning India's financial sector for sustained growth and elevated global integration.

Furthermore, the introduction of VCCs promises to revolutionize asset management by offering flexibility in capital structuring and investor protection. The framework's alignment with international standards is anticipated to attract global investors, thereby catalyzing India's evolution into a dynamic and competitive financial powerhouse.

The functioning of the VCC structure in IFSCs would provide a template for considering the introduction of the VCC structure into the domestic Indian financial system at a later stage after taking into account the applicable regulatory considerations.

UPDATES ON VIETNAM'S DIRECT POWER PURPOSE MECHANISM UNDER DECREE NO. 80/2024/ND-CP

Since 2017, the Vietnamese government has been strongly promoting the development of renewable energy with the promulgation of the Prime Minister's Decision No. 11/2017/QD-TTg. After that, the mechanism for direct power purchase between generators and corporate consumers has been a hot topic for discussion among the regulators and the developers for several years. In an attempt to strive for a suitable model for Vietnam, the Vietnamese government has recently issued Decree No. 80/2024/ND-CP guiding the direct power purchase mechanism for renewable energy generators and large consumers effective as from July 3, 2024 (Decree 80). This article highlights the main contents of the new degree and some initial thoughts.

A wide range of players

Decree 80 addresses the power purchase arrangement between the following entities:

- Renewable Energy Generators (REG), including both independent power plants (wind, solar, hydropower, biomass, geothermal, tides, ocean wavel and currents) and rooftop solar power systems. The REG must have an electricity generation license or otherwise satisfy conditions for exemption.
- Large Consumers, comprised of electricity corporate end-users that use at least 200,000 kWh/month. The Large Consumers are further classified into service-providing Large Consumers or manufacturing Large Consumers.
- Authorized Electricity Retainers (AER), that operate in special zones (industrial parks, economic zones, and similar areas), purchase at least 200,000 kWh/month, have connection voltage of at least 22 kV, and are "authorized" by manufacturing Large Consumers. It is not clear under Decree 80 if the AER would enter power purchase agreement (PPA) with Vietnam Electricity (EVN) in its own capacity or as an agent of the manufacturing Large Consumers. It is more likely than not that the last requirement for an AER should not be interpreted purely as a legal norm, but more as an indication that an AER must have already had a portfolio of clients making up at least 200,000 kWh consumption per month before applying for a direct power purchase business and not the other way around.

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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 Legal 500, IFLR100, Chambers & Partners, Asialaw Profiles, and Benchmark Litigation. Hung is ranked as Litigation 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.

Grid and non-grid connected PPA models

Decree 80 essentially provides for two types of power purchase based on the involvement of the national transmission and distribution infrastructures (i.e., grid connected or non-grid connected).

For the private wire model, there is no statutory PPA template under Decree 80. The parties are free to negotiate their PPA based on mandatory components provided for by the Law on Electricity Power of Vietnam. The Large Consumers in this case must notify local authority and EVN of the PPA after signing and report to them annually on the performance of the PPA.

For the grid connected model, a blended mechanism of sleeved and synthetic (virtual) PPA is applied. Under this model, PPA is heavily regulated and subject to prior registration with EVN. For this to work, Decree 80 sets forth three statutory PPA templates:

- A PPA between REG and EVN so that REG can generate electricity to EVN's grid and receive spot price determined by Vietnam Wholesale Electricity Market (VWEM).
- A PPA between EVN and the Large Consumers or AER under which the later pay spot price plus auxiliary costs to EVN for the amount of electricity up to the amount generated by REG and pay EVN's normal retail price for any exceeding amount.
- A virtual PPA between REG and the Large Consumers or AER that provides for a forward price and a committed amount of power and a mechanism for settling the difference between such forward price and the spot price from the VWEM.

The first two PPAs are quite detailed and have been in place for a long time. Hence, they leave not so much room for further modifications, especially when it involves EVN. However, the last one only sets out principles and the involved parties should pay more attention to negotiation. For instance, Decree 80 makes it clear that Large Consumers and AER must pay EVN's normal retail price for any amount of power exceeding REG's generation but not clear how to reconcile the situation where the committed amount under the virtual PPA is different from the actual amount generated by REG or consumed by Large Consumers/AER.

Extensive scope of authority of the government over the performance of direct PPA

Among many situations where REG, Large Consumers, and AER can be suspended or terminated from participating into direct PPA regime, the Ministry of Industry and Trade can suspend or terminate any party if there is an "act of taking advantage of the mechanism, policy for making profit". The determination process involves EVN's recommendation and relevant agencies (if any). However, it is quite unclear about what time of act can lead to dire consequences like suspension and termination. This is probably a precaution of the Vietnamese government against doubtful impacts of the direct PPA on the retail market.

Dinh Cao Thanh is a senior associate of BROSS & Partners. Prior to joining the firm in 2022, Thanh worked as a legal manager for one of the Big Four Accounting Firms for five 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.

Note: The contents in this article are for informational purposes only and not for the purpose of providing legal advice. Please contact the author at hung@bross.vn or thanh.dc@bross.vn to obtain further advice in respect to any particular issue.

MEMBER PROFILE

Utkarsh Mishra

Sarthak Advocates & Solicitors (New Delhi, India)

What was your motivation to become a lawyer?

Growing up in a family where the law was not just a profession but a way of thinking profoundly influenced the path I chose for my career. My grandfather, a highly esteemed lawyer, remains the wisest person I've had the privilege of knowing, while my father, a close second, harnessed his legal acumen to advance his consulting practice. Their shared foundation in law made the decision to follow in their footsteps not only natural but inevitable.

During my time as a law student, I frequently engaged in discourses, whether through parliamentary debates or simulated negotiations and mediations. Pursuing law quickly evolved into a platform for refining my analytical and research capabilities while also fostering my interpersonal and communication skills. What truly strengthened my commitment was the realization that I could engage in this work daily, but on a significantly larger scale while making an actual difference. This idea thrilled me then and continues to excite me to this day.

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

I believe that lawyers serve as catalysts for change. Thus, in my still nascent career, the most rewarding and memorable experiences have been those where I was involved in advising clients on transformative transactions centered on sustainability, such as conversion of feedstock into compressed biogas or initiatives aimed at carbon emissions reduction for obtaining carbon credits, or collaborations to bolster education and skill training.

What are your interests and/or hobbies?

Beyond law, I'm a curious explorer of tech breakthroughs, political intricacies, and historical mysteries. On the sidelines, you'll find me cheering for Bayern Munich and immersing myself in the adrenaline rush of Formula 1 races. When it comes to TV shows, I'm a bit of a nomad, wandering through different genres, languages, and eras.

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

Most people know me as someone who enjoys watching sports, but few know that I'm also a black belt in Tae-Kwon-Do, a journey I began when I was very young and earned my black belt at just 12. Martial arts taught me discipline, resilience, and patience – lessons that have shaped not just my professional life but my personal outlook as well. It's a grounding force in a fast-paced world. Plus, it's pretty handy when I need to kick through a tough day!

Do you have any special messages for Primerus members?

Despite our mind-boggling diversity, we have survived historical odds and emerged as one of the strongest democracies in the region and the world. With a vast market, a young and English proficient population, India beckons with its potential for expansion in new-age sectors like fintech and renewable energy. On behalf of Sarthak Advocates & Solicitors, I would like to extend a warm invitation to you all to visit and explore opportunities for collaboration in this market.

MEMBER PROFILE

Salim Hasan

Meer & Hasan Law Associates (Lahore, Pakistan)

What was your motivation to become a lawyer?

The main reason of my draw to the legal profession was the desire to make a positive impact on society. Moreover, I find intellectual fulfillment in the complexities of legal analyzes and enjoy the challenges of researching case law and constructing persuasive arguments. The legal field offers a variety of career paths, from specializing in specific areas of law, to working in public service or private firms. I have gotten the opportunity to specialize in Intellectual property laws.

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

A multinational food company faced (MFC) a trademark dispute in Pakistan. A local company without knowledge of the MFC had registered a trademark identical to theirs (my firm was not representing MFC). When we came to know of this, I got myself involved in the matter and persuaded the local company that to avoid legal action, it should offer to sell their trademark to the MFC. The MFC agreed and purchased the trademark for a relatively very small price which could have been 100 times more, had I not been handling the negotiations.

What are your interests and/or hobbies?

Spend time with my family and read books.

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

While the Primerus members might not be surprised by the situation, other members might be intrigued to know that I initially wanted to become a medical doctor, but ultimately chose a career in law.

Do you have any special messages for Primerus members?

Always look for the positive aspect, even in a very negative situation.

MEMBER PROFILE

Yuka Yamada

GI&T Law Office (Chiyoda-ku, Japan)

What was your motivation to become a lawyer?

I used to think that I wanted the strength to live on my own without relying on anything, or anyone. My mother lost her husband (meaning, my father) in an accident when I was 11 years old, and after that, she worked numerous jobs to raise her four children. Seeing my mother like that made me want to become an independent working woman and support her, which is what inspired me to pursue a career as a lawyer. Considering my academic abilities at the time, the costs involved in obtaining the qualification, and the social status that comes with it, I believed becoming a lawyer was the best choice. So, I worked hard to study and obtain my law license.

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

While no specific case stands out, what left a lasting impression on me has been the opportunity to work with legal professionals from various countries through different cases. I've had the privilege of collaborating and discussing matters with lawyers from countries like Malaysia, China, the UK, Taiwan, and Thailand. I've really enjoyed that experience, as I love interacting with people from different countries, and I'm truly grateful that becoming a lawyer has allowed me to engage in such international work.

What are your interests and/or hobbies?

I have many hobbies, but I've come to realize that, surprisingly, studying is one of them. I noticed that not being able to study due to a busy work schedule was actually causing me stress. Of course, aside from studying, I also love traveling abroad! Last time, I finally got to visit Machu Picchu, which I had wanted to see for a long time. Next, I'd love to visit Ha Long Bay in Vietnam and Santorini in Greece.

Is there something Primerus members would be surprised to know about you?

I am actually a drift master. When I used to work as in-house counsel for an automotive company, I got the opportunity to take lessons in advanced driving techniques. These included time attacks, rapid acceleration, maneuvering around obstacles, drifting, and other driving skills you wouldn't normally use in everyday life. I passed the test, which had a 50 percent pass rate, on my first try. I felt like a bit of a Hollywood star.

Do you have any special messages for Primerus members?

I am truly honored to have become a member of Primerus and to be connected with all of you. Let's enjoy working together!

MEMBER PROFILE

Hiroko Miyazaki

GI&T Law Office (Chiyoda-ku, Japan)

What was your motivation to become a lawyer?

I fell in love with the study of law early on. There's something deeply satisfying about the structure and logic behind legal systems, and the way laws influence society. I knew that if I could make a career out of working with the law, it would be the perfect fit for me. The combination of intellectual challenge, practical problem-solving, and advocacy continues to inspire me every day.

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

One of my most memorable experiences came during my time as in-house counsel for a pharmaceutical company. We were involved in a challenging patent case, and after months of intense work, the regulatory authorities sided with our position. I still remember standing in the hallway, pumping my fist in celebration. It was an incredible feeling to know that our effort had paid off and made a real impact.

What are your interests and/or hobbies?

I'm a passionate baseball fan. Watching professional baseball games is one of my favorite pastimes – it's the perfect mix of strategy, excitement, and energy.

Is there something Primerus members would be surprised to know about you?

One thing that might be a surprise is that I'm part of a dragon boat racing team. On weekends, I row with my team, enjoying both the physical challenge and the team spirit. It's a unique and exhilarating way to stay active.

Do you have any special messages for Primerus members?

I'm looking forward to learning and growing alongside all of you. Let's continue to challenge and support each other in our legal journeys.

FIRM UPDATES

CARROLL & O'DEA LAWYERS

Carroll & O'Dea Lawyers celebrates its 125th Anniversary!

October 2024 marked the 125th anniversary of the founding of Carroll & O'Dea Lawyers. It is much more than a commemoration of longevity as a firm. It is a recognition of the enduring values that have underpinned the firm's success to date and which inspire its lawyers for the future.

The Carroll & O'Dea Lawyers journey began in 1899 when JJ Carroll set up his practice in Sydney, in the heart of the city's legal precinct. Access to justice inspired JJ Carroll and it has always been a fundamental value for the firm. By example, in 1952 the firm secured history-making compensation for the widows of workers killed in a major dam disaster. It was a win which foreshadowed modern day compensation law in Australia, whereby workers and their families are protected with access to justice and compensation.

Community and giving back through pro bono work has been an essential part of the Carroll & O'Dea Lawyers story through successive generations. The pro bono work has helped deliver outcomes to those who would never have been able to access justice and our support in volunteering and financial assistance to many organizations has helped change lives.

The firm's work with Australia's First Nations peoples underlines how lives have been changed, as well as legal practice in Australia. 1995 saw the firm secure the very first settlement in an Aboriginal death in custody case. Carroll & O'Dea Lawyers has also secured compensation and apologies for hundreds of members of the Stolen Generations.

Finally, one of our great achievements over 125 years has been to retain the strong family values at the firm's core, and today members of the Carroll & O'Dea Lawyers families still work in the firm. What has been incredible to witness is how that sense of family and 'caring for each other' has become such a part of the whole team at Carroll & O'Dea Lawyers. It's not just the descendants of the founders who feel this way, it is something everyone feels. We are a family firm in the truest and widest sense, and our clients across business, community and associations, personal and compensation law feel that today as much as they have over the last 125 years.

Written by: Hanaan Indari – Carroll & O'Dea Lawyers (Sydney, NSW, Australia)

Hanaan Indari is managing partner at Carroll & O'Dea Lawyers. She has successfully conducted many thousands of cases since joining Carroll and O'Dea, in 1997. Hanaan's strong people skills, compassion, and deep understanding of the issues clients face, coupled with her many years of experience, have led to her role as managing partner and her reputation as one of the leading lawyers in the areas of personal injury and estates litigation. Hanaan's expertise includes litigation, insurance disputes, motor accidents, public liability, medical negligence, workplace injuries, and estates litigation.

FIRM UPDATES CONT.

WATSON & BAND

Watson & Band again recognized in 2024 IAM Patent 1000 Ranking, several professionals acclaimed as outstanding individuals.

Recently, the internationally renowned intellectual property media outlet, Intellectual Asset Management (IAM), unveiled its 2024 "IAM Global Patent 1000" rankings (IAM Patent 1000 2024). Watson & Band's exceptional professional capabilities, outstanding achievements, and stellar reputation in the patent realm have once again been recognized, earning the firm listings on both the patent prosecution and patent litigation sectors for China.

Furthermore, Hua Xiao, General Manager and Yingcong Xu, Deputy General Manager of Watson & Band, have been recognized as Outstanding Individuals in the patent prosecution sector for another consecutive year. Additionally, Senior Partner Jianguo Huang and Partner Yue Zhang of Watson & Band have also been honored again as Outstanding Individuals in the patent litigation category.

Watson & Band receives multiple nominations for the "2024 ALB China Regional Law Awards: East China".

On July 4, Asian Legal Business (ALB), a Thomson Reuters publication, announced the finalists for the 2024 ALB China Regional Law Awards: East China. Watson & Band's professional services and good reputation were recognized by this award, and the firm was once again nominated for three awards: "Intellectual Property Law Firm of the Year: East China – Local", "Technology, Media and Telecommunications Law Firm of the Year: East China – Local," and "Wealth Management Law Firm of the Year: East China – Local".

Watson & Band wins the CBLJ – 2024 China Business Law Award in the Insolvency and Restructuring Field.

On July 24, China Business Law Journal announced the winners of its 2024 China Business Law Awards. Watson & Band has been recognized for its outstanding performance and reputation in the insolvency and restructuring field over the years, winning this year's award in this field.

In 2007, Watson & Band was selected into the first batch of bankruptcy administrators by the Shanghai High Court, and in 2014, was selected into the first-class bankruptcy administrators by the the same court. In 2022, with high scores, Watson & Band was selected into the first-class bankruptcy administrators by the court again, and Zhu Xiaosu, the lead partner of the team, was selected into the first batch of natural person administrators. The existing bankruptcy service team is composed of more than 30 full-time practicing lawyers, and the team members all have rich experience in bankruptcy and liquidation cases. Some of them have been elected to the bankruptcy service committee of the Shanghai Bar Association and the Shanghai Bankruptcy Administrators Association, and still some of them have the qualifications of financial, accounting, and/or tax agents.

FIRM UPDATES CONT.

ONC LAWYERS

Dr. Lawrence Yeung and Mr. David Zhang of ONC Lawyers have obtained the qualification to practice as Greater Bay Area lawyers.

ONC Lawyers is pleased to announce that our Partners Dr. Lawrence Yeung and Mr. David Zhang obtained the practice certificate to practice as a Greater Bay Area lawyer in June and July 2024, respectively. 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!

SARTHAK ADVOCATES & SOLICITORS

Ms. Mani Gupta, of Sarthak Advocates & Solicitors, appointed as sole arbitrator to adjudicate disputes arising out of a construction contract by the Hon'ble High Court of Delhi.

Sarthak Advocates & Solicitors dispute resolution partner, Ms. Mani Gupta, was recently appointed as a sole arbitrator to adjudicate disputes arising out of a construction contract by the Hon'ble High Court of Delhi.

Under the Indian law, the Supreme Court of India and/or the High Court of the respective state has the power to appoint arbitral tribunal in case of default in appointment of an arbitrator by a party/institution under the procedure agreed upon between the parties; or when there is non-compliance with the statutory procedure in cases where no bilateral procedure is pre-agreed.

Ms. Gupta has been acting as arbitrator since 2021 and has rendered awards in various domestic arbitrations.

FIRM UPDATES CONT.

GI&T LAW OFFICE

GI&T Law Office welcomes Yuka Yamada and Hiroko Miyazaki to its team.

Kengo Nishigaki of GI&T Law Office has been named among “The A-List: Top Japan Lawyers 2024” by Asia Business Law Journal.

GI&T Law Office has been selected as a finalist in four categories at the ALB Japan Law Awards 2024, including “Boutique Law Firm of the Year” and “Rising Law Firm of the Year”.

We are pleased to announce two significant developments at GI&T Law Office. This year, we welcomed two exceptional lawyers, **Yuka Yamada** and **Hiroko Miyazaki**, to our team. Yuka brings extensive experience in corporate legal affairs, M&A, and compliance from her time at Baker McKenzie and in the UK, while Hiroko, formerly president of 3M Japan, adds deep expertise in M&A and international transactions.

Our firm is also honored to receive several prestigious recognitions. Our representative partner, **Kengo Nishigaki**, has been named among “The A-List: Top Japan Lawyers 2024” by Asia Business Law Journal. Additionally, GI&T Law Office has been selected as a finalist in four categories at the **ALB Japan Law Awards 2024**, including Boutique Law Firm of the Year and Rising Law Firm of the Year.

These achievements reflect our commitment to excellence and the continued growth of our talented team.

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