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FIRMS THINKING OUTSIDE THE BOX

TOP 15 INNOVATIVE LAW FIRMS

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WHAT TO EXPECT IN 2023
NORTH ASIA'S BEST LITIGATORS
INDONESIA'S RISING STARS

Although the COVID-19 pandemic appeared to be drawing to a close after three years, law firms in Asia looking for a boom in 2023 are confronted with a moderate global economic outlook that could continue to affect legal demands. Lawyers from different Asian jurisdictions share with ALB how they expect their market to develop, and what in-house counsel should be looking out for. **BY SARAH WONG**

MAINLAND CHINA

WU GANG, management committee director, Commerce & Finance Law Offices

In 2023, with the optimisation and adjustment of pandemic prevention and control policies and the functioning of the new administration, it is expected that the national and local governments will introduce a series of measures to promote economic development. The vitality of investing and financing transactions in the fields of health care, large consumption, hard technology, new energy, etc. will be significantly improved compared with the previous year, and the domestic and foreign capital markets are expected to usher in a new round of development.

With the revision of a series of laws and policies such as the Company Law of the PRC and the full implementation of the registration-based IPO system, regulatory authorities will put more emphasis on the compliance and effectiveness of the operation and corporate governance of companies and will intensify fight against violations of laws and regulations in the capital market. The requirements for the code of conduct of companies, major shareholders, key persons, and responsible persons will be substantially strengthened, and the responsibilities of corporate legal counsels in the operation and management of companies will also increase accordingly.

HAN KUN LAW OFFICES

In 2023, China is expected to continue relaxing its macroeconomic policies to advance the country's economic recovery.

We expect capital markets in China to register a stable performance with a positive momentum for growth. Specifically, A-share IPOs should continue steadily, with investments in high-tech industries ramping up at a higher pace.

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K:2023

The HKEX has indicated it will adjust its listing rules to accommodate and attract hard technology enterprise listings, and H-shares are showing greater potential for recovery in terms of valuation. While celebrating these favourable trends, investors need to beware of China's increasingly tightened regulatory environment for offshore securities investment, and fully consider key legal issues involved when choosing transaction channels and methods.

In 2023, ESG funds will be subject to stricter regulation, and China will continue its support for emerging industry sectors via unremitting industrial optimisation and favourable policies for high-tech manufacturers. Meanwhile, more innovative companies are showing increased focus on ESG to attain sustainable growth, which has paved the way for accelerated investments, particularly in new energy. The growing number of businesses embracing ESG entails greater integrity, transparency, and ethics in ESG-related schemes, compliance, and reporting systems.

IP protection continues to gain importance. It is essential for companies engaging in telecommunications, automotive, smart manufacturing, and other industries to adopt comprehensive and coordinated IP strategies to secure advantages in the global market. In the automotive industry, while Chinese car brands are registering a greater share of the global market - thanks to their standout performance in fields such as new energy cars and intelligent connected vehicles - SEP-related litigation in China may become more active at the same time. Meanwhile, in the context of data as a factor of production and the central government issuing guiding opinions to establish a fundamental regime for data regulation, the active flow of data assets is expected to increase the need for legal services that can tackle challenges arising from data asset development, licensing, and related disputes. ALB

HONG KONG

WILLY CHENG, senior partner, Stevenson, Wong & Co.

Hong Kong has suffered from a long period of closure and slow re-opening to the outside world in the past two to three years. Business sectors and the Hong Kong government are acutely aware of this and are making efforts to catch up with our trade competitors. 2023 should be a much better year.

We expect more investors coming to Hong Kong to explore opportunities with all the advantages that Hong Kong can offer from its strategic connection and geographical proximity with China. With the efforts of all, Hong Kong can prove to the world that it is still an important and very attractive world financial centre with low taxes and a strong rule of law. There should be more fund-raising activities and IPOs with more PRC players coming to Hong Kong which will undoubtedly, create more opportunities for professional services. Along with the increase in business activities, trade and business disputes will increase. Litigation practices including arbitration and mediation will likely flourish. In fact, our Disputes Resolution Practice did very well in 2022.

I believe the following sectors will have growth and enjoy a better year: Corporate finance in particular, debts issuance, IPOs in Hong Kong and overseas listings, tourism along with retail, hotel business, conferences and exhibitions, import and export including re-export trade, financial services including wealth management. As to the growth areas in our business, I would bet on corporate finance, disputes resolution, data protection, corporate and regulatory compliance.

In-house counsel should be prepared for more issues arising on data security, employment disputes, equal opportunities, corporate governance, and regulatory compliance.

We expect to see increased demand for talent in the practice areas that will do well in 2023. This will push up salary costs. On the other hand, clients are becoming more cost-conscious and often more ready to ask for a reduction in fees. Profitability may decrease due to the increasing competition in the supply of legal services. People are now accustomed to "working from home" which helps contain, if not reduce, the demand for physical office space. Landlords are generally more prepared to offer lower rents. Indirectly that helps drive down office rental costs.

JOSHUA COLE, partner, Ashurst

M&A activity has continued through the pandemic, although it has been less predictable over the last 12 to 18 months. I expect M&A activity in Hong Kong to continue to increase as Asia opens up and Hong Kong will start to reassert its position as a reginal hub for these activities. We are also seeing a rise in interest in capital raisings, and I expect capital market activity to increase slowly over the course of 2023.

The digital economy sector has remained an area of strong throughout the pandemic and I expect that it will continue to be a busy area. In particular, we are continuing to see strong interest in digital infrastructure (such as domestic and international network infrastructure) and FinTech.

As China and other parts of the region continue to open up, I am expecting to see more China outbound investment – especially into continental Europe and Southeast Asia.

INDIA

RABINDRA JHUNJHUNWALA, partner, Khaitan & Co

From a bold new policy for foreign investments into the country's promising space sector to ambitious laws to cover dynamic new areas such as metaverse, blockchain and non-fungible tokens - India is taking significant steps to usher in the next era of advancements, scale investment activity and provide a springboard to the economy.

Several sectors are looking forward to green shoots around the corner despite concerns of a slowdown carrying through from 2022 into 2023. India's insurance sector is prepared to see a flurry of activity after relaxation in foreign direct investment rules and may see more licenses being granted to insurers. Public mergers and acquisitions are looking up with recent regulatory moves supporting large and complex deals. Sustainability is a crucial focus area, and the renewable energy space is likely to see a tremendous boost on the back of several government initiatives like the green hydrogen mission. Production-linked incentive schemes are expected to be rolled out to green hydrogen and electrolyser players as well, which bodes well for the industry.

Revamped regulations in data privacy, information technology, cybersecurity, insolvency and bankruptcy, transfer pricing etc. are also on the anvil, and will provide much-needed clarity to encourage ease of doing business in India. Active oversight and enforcement action from regulatory watchdogs will continue in 2023 as well. SEBI has introduced several measures in a bid to enhance regulatory compliance and improve disclosures; while the Competition Commission of India may further crack down on companies to minimise anti-competitive practices by imposing heavy penalties.

INDONESIA

FITRIANA MAHIDDIN, managing partner, SSEK

We see the outlook for Indonesia in 2023 as being generally positive. General elections are scheduled for February 2024, so there will be a lot of focus in 2023 on politics and the country's next leadership. Traditionally, the period leading up to elections has been one of wait and see, but we would expect Indonesia to continue to consolidate its democratic gains. At the same time, as Indonesia and the rest of the world continue to move into the post-pandemic period, we anticipate an increase in cross-border M&A transactions and foreign investment into Indonesia, as companies pick up opportunities that were put on hold during the pandemic.

We expect Indonesia's transition to renewable energy to continue apace this year, following the issuance in late 2022 of a Presidential Regulation on the acceleration of renewable energy development for electricity supply, which sets in stone the energy transition strategy for Indonesia and contains provisions on tendering for renewable projects, tariff mechanisms, and incentives provided for renewable energy projects. Other sectors with momentum are ESG and carbon capture/trading, with a new law just issued that addresses the establishment of a Carbon Exchange that will serve as a platform for parties to conduct carbon trading in Indonesia.

On the regulatory side, Indonesia issued its long-anticipated Personal Data Protection Law last year and 2023 could see issuance of implementing regulations that should clarify a lot of the details and requirements for companies here. In December, Indonesia passed the Financial Sector Reform Law, which will revise almost 20 regulations related to the financial sector. We will see how that plays out in 2023 and the adjustments that companies might have to make in response to these changes.

Also in December, in another big move, the government issued Government Regulation in Lieu of Law No. 2 Year 2022 (Perppu No. 2) to revoke and replace the Job Creation Law, following the earlier Constitutional Court ruling ordering the government to amend parts of the law within two years. The Perppu adjusts certain provisions of the Job Creation Law that touch on fundamental issues such as business licensing and manpower, so we expect 2023 to be a busy time as companies eye these changes and adjust accordingly.

JAPAN

TARO NAKASHIMA, partner, Allen & Overy Tokyo

Although outbound deals have driven Japan's M&A for nearly a decade, we also see an increase in inbound investment into Japan – a trend which we expect to continue in 2023.

A key driver of this trend is the impetus upon many Japanese companies to realign portfolios with their business strategies, and to consider a more flexible approach to their decision-making in relation to their disposals of portfolios which no longer align with their business strategy. Japan's infrastructure is solid, its laws are reliable, it has few barriers to foreign investment, and the weak yen enhances their appeal. As the third largest economy globally, which offers an open investment regime, Japan is an increasingly attractive destination for foreign investors – particularly in the current regional geopolitical climate.

That said, we expect Japan's strong outbound investment to also continue, partly due to its continued shrinking population at home, forcing companies to consider growth by expanding overseas. Those Japanese companies disposing of portfolios will have new funds obtained through their business disposals for investments in growing sectors such as software and tech, renewables, and sustainable energy.

The global economic and political situation remains unpredictable, and many will continue to be faced with the pressure to achieve "more for less" while facing strong headwinds, including inflation concerns, international conflict, and potential changes to the Bank of Japan's monetary policies, with Governor Kuroda's term expiring in April 2023. As a market leader for legal services, we are committed to remaining agile, adapting to fluid conditions, delivering innovative solutions to our clients, and leveraging our resources and capabilities.

HIDEAKI ROY UMETSU, partner, Mori Hamada & Matsumoto

It seems safest to predict the continuation of somewhat longer-term trends. On that front, we see continued focus by our clients on issues related climate change, and we expect continued growth in our project finance practice related to renewable energy, carbon neutrality and decarbonisation. We also see ongoing attention by our clients to business and human rights issues.

In many jurisdictions, including Japan, there has been increasing regulatory attention to foreign direct investment focused on national security and cyber-security issues. It seems likely this trend will only accelerate in light of recent events, including the Russian invasion of Ukraine and the growing tensions between the U.S. and China.

M&A activity continues to be strong in Japan, with a recent trend toward unsolicited offers, which had long remained quite rare in Japan. Japanese regulators have clearly taken note of this trend and are still in the process developing a regulatory response. M&A is a key practice area of our firm, and we expect to remain keenly engaged in all developments in this field.

Lastly, it is hard to talk about trends without mentioning the major "black swan" event of recent times – the global COVID pandemic. It appears that Japan will end up being spared the harshest human and economic toll of the pandemic. But pandemic-related problems with global supply chains have resulted in some large corporate rehabilitation proceedings in Japan. Perhaps we should just say that the full fall-out from the pandemic remains to be seen.

KOREA

SKY YANG, partner, Bae, Kim & Lee

The overall 2023 Korean legal market outlook and trends can be summarised into the five following categories:

The first will be liquidity crisis, corporate restructuring, and asset sales. Market uncertainty will likely continue in 2023 for a considerable amount of time fuelled by the increase in interest rates and decrease of project financings in the real estate market. Therefore, companies are expected to be inclined towards risk management, and the demand will likely rise for legal advice and litigation related to asset sales and divestitures.

Following last year, demand for legal advice related to compliance on corporate crisis prevention and stabilisation of management and governance remains high. This trend will particularly affect areas with stricter regulations such as antitrust/fair trade and financial regulatory fields.

The M&A market is expected to show recovery this year as there is potential for increase in demand for undervalued properties and stabilisation of corporate value. BKL, which has led M&A legal advisory with the highest level of performance, is once again ready to excel in the cross-border M&A field.

Meanwhile, given the new governmental administration, investigations and crackdowns on unfair practices are on the rise and prosecutors' investigative powers are expanding into various areas. With these changes, companies are likely to face investigations in a different form from last year's Serious Accidents Punishment Act.

KYE SUNG CHUNG, managing partner, Kim & Chang

Overall, we feel it may be difficult to see the same growth we experienced in 2022 as challenges such as high interest rates and global economic downturn caused by a variety of factors continue. Nevertheless, some areas such as ESG and digital transformation and supply chain restructuring are expected to become more important for the legal industry and law firms are getting prepared in this regard.

We are seeing a rise of clean energy projects in Korea, which is expected to continue given the growing emphasis on curbing carbon emissions. We are also anticipating that our ESG practice group will remain strong through 2023, and we anticipate growth in our disputes resolution practice including international arbitrations. Another area is our labour practice as we expect to see instability in the labour market stemming from the escalating conflicts between the government and the labour unions and labour management disputes.

PHILIPPINES

KRISTINE TORRES, junior partner, Gorriceta Africa Cauton & Saavedra

I'm cautiously optimistic that changes in the legal and regulatory landscape based on the collective effort of stakeholders will present opportunities for certain industries. I foresee that the continuous issuance of reforms and re-shaping of our regulatory issuances will boost M&A dealmaking and investment activities in the Philippines.

While infrastructure, real estate, banking, renewal energy and technology sectors continue to gain momentum, I foresee that the Philippine private equity and venture capital markets will gain traction this year as a result of recent laws and regulations passed by the Philippine Congress including the Retail Trade Liberalisation Law, amended Public Service Act, and the Foreign Investments Act. These new laws are designed to encourage foreign investment, positively impacting the Philippine economy.

The legal community must stay informed of the latest developments in order to remain compliant and competitive in the rapidly changing and evolving legal landscape. We have seen trends such as the adoption of ESG principles being incorporated by regulators such as the Bangko Sentral ng Pilipinas and the Securities and Exchange Commission in their regulations, with the issuance of sustainable finance and sustainable investments frameworks. This trend will continue this year and will become more prevalent in deal-making activities.

Due to the fast development of certain industries driven by digitalisation, the biggest challenge would be the timely shift in government regulations and maintaining a proper balance between regulation and innovation.

SINGAPORE

LOH KIA MENG, senior partner & chief operating officer, Dentons Rodyk

As the co-head of Dentons Rodyk's trust, estates and wealth preservation and family office practices, I expect momentum in both private equity and private wealth investments. With the large in-flows of private capital into Singapore at an estimated S$450 billion ($343 billion) in 2021 alone, we expected the trend to continue for 2022, and well into 2023. In-house counsels might require more detailed due diligence to be conducted on deals and transactions with these private investments.

In terms of regulatory compliance, more stringent regulatory supervision by the Monetary Authority of Singapore (MAS) and other government regulators will be expected. As a result, in-house counsels will likely have to devote greater attention in ensuring compliance.

In addition, the wave of online scams and cyber-attacks will likely continue. In-house counsel should do well to continue educating and training members of their organisations in defending against scams. IT security systems will also require constant vigilance to defend against said attacks.

With two-thirds of the developed world expected to enter a recession in 2023, operational costs will continue to increase. The major challenge will be to ensure that our clients continue to receive top-notch legal services while the firm keeps a close rein on operational costs.

The reopening of borders in China is a positive sign for Singapore. However, the adjustment of Japan's monetary policy in December last year rattled markets and had adverse impacts within the global economy. It remains to be seen how economies will balance these impacts out with policies, but these are some of the challenges that a small country like Singapore need to navigate carefully.

SHIRIN TANG, managing partner, Morrison Foerster

The past year continued to be defined by heightened levels of uncertainty and volatility faced by corporate leaders. Lingering macroeconomic upheaval, as well as a decisive shift toward greater regulatory protectionism and oversight in many jurisdictions, will continue to factor heavily into strategic decision making and drive the need for specialist regulatory advice in connection with a growing range of transactions. Coming into the new year we are relatively upbeat about the growing sense of renewed optimism toward transactions and investments across Asia Pacific.

The Morrison Foerster team focusing on South and Southeast Asia has seen sustained interest in these regions, not only from strategic investors but private equity GPs targeting the mid-market space. We expect to see strong investment momentum in the technology, healthcare, life sciences, real estate, and services (including financial services) sectors through 2023. In particular, as multinational corporations continue to diversify their supply chains to countries like Vietnam, Indonesia, and Bangladesh, private equity firms will keep related consumer, manufacturing, and industrial assets top of mind.

THAILAND

TIZIANA SUCHARITKUL, managing partner, Tilleke & Gibbins

We expect 2023 to be marked by a continuing surge in transactional matters - particularly in M&A, capital markets, and banking and finance. Although Southeast Asian economies have been relatively well insulated against the geopolitical turbulence of recent years, the steady reversal of legislative measures to protect against the financial impact of COVID-19 will also lead to an inevitable increase in restructuring and insolvency, labour and employment, and disputes matters. However, perhaps the most significant growth will be in data protection, as more and more countries follow the European model of implementing robust personal data privacy legislation.

Two sectors in which heavy activity is expected over the next 12 months are aviation and tourism, for obvious reasons. Global industrial trends will also be dominant in the region, and we expect to see continued expansion in renewable energy (and a corresponding decline in petrochemical activity), major growth in infrastructure projects, and a continued increase in activity by electric and hybrid vehicle manufacturers. Finally, real estate will bloom - particularly in Bangkok following a period of relative dormancy during COVID - and life sciences and technology, which have already been going from strength to strength, will continue to increase at pace. Although investment in all these sectors will come from the traditional sources of FDI into Southeast Asia - particularly the USA, Europe, Japan, and South Korea - steadily increasing investment from China will be the most defining feature.

JESSADA SAWATDIPONG, co-managing partner, Chandler MHM

In general, we expect continued steady growth in the legal market in 2023 with the continued "return to normal" after the Covid-19 pandemic.

In Thailand there has been a sharp rebound in international tourism which is having a positive impact on the hospitality and aviation sectors, among others. Investment in the manufacturing sector remains strong with Thailand increasing its popularity as a manufacturing hub compared with Vietnam and China. We therefore expect continued growth in inbound investment in 2023. The trend towards digital transformation will also continue driving M&A activity. We are seeing increasing regulation of the technology sector e.g., in relation to digital platforms and expect this to continue.

Increasing confidence in the economy is also supporting a growth in real estate transactions. We expect to see more activity in this sector in 2023.

Activity in the energy sector will remain strong with the transition to renewable energy. A new round of renewable energy procurement will take place in 2023. The retirement and decommissioning of 25,310 MW of existing installed capacity by 2037 is also significant. Other trends in the energy sector include the growth of reliance on LNG, market liberalisation and additional power trading with neighbouring countries.

We are increasingly advising on regulations and governmental policies related to the move towards compliance with Environmental Social Governance (ESG) principles. A recent example is the introduction of the Thailand Taxonomy which can be a challenge for investors in construction, the operation and financing of projects.

The outlook generally remains positive although an election later this year may create uncertainty for some investors.

VIETNAM

DUYEN HA VO, chairperson, VILAF

Considering the volatile capital markets in 2022, the relevant state authorities are considering draft regulations to improve the bond market performance in 2023. Other material changes in store may include further updates to the draft Power Master Plan VIII, tariff regimes and renewables investment policies, monetary policies, laws and regulations on offshore borrowings, data privacy, real estate business and housing project investments. There are also likely further new executive appointments in the government.

While the changes are all being considered with the key objective of improving market performance, such changes may be comprehensive and require much time and effort. The implication is probably that 2023 will continue to be a year of dynamics and uncertainty until decision-makers, rules and policies are more settled hopefully in 2024.

Against that background, in 2023, there may be more M&A transactions arising out of low valuations for market reasons, refinancing and restructuring. In day-to-day operations, the in-house communities may see more attention to issues of cybersecurity, data privacy and employment matters. The trend will likely continue for increasing focus on tax inspections and modifications to tax and customs practices as local tax and customs authorities see the pressure to increase state budget collections.

The good news is, as the schedule for implementing certain foreign investment market access commitments under the CPTPP is drawing near, there will likely be new regulations which set forth the scheme to open market access for foreign investment and increase M&A transactions in certain regulated sectors, especially in the banking, retail, and gaming business sectors.