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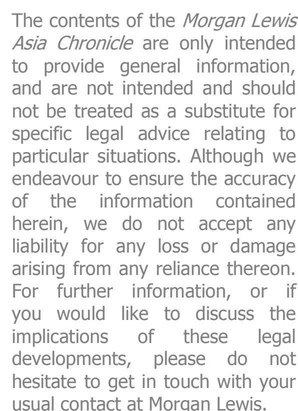


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**Morgan, Lewis & Bockius LLP**
Beijing Kerry Centre South Tower, Ste. 823
No. 1 Guang Hua Rd., Chaoyang District
Beijing 100020, China
T: +86.10.5876.3500 F: +86.10.5876.3501

**Morgan Lewis Stamford LLC**
10 Collyer Quay #27-00
Ocean Financial Centre
Singapore 049315
T: +65 6389 3000 F: +65 6389 3099

**Morgan, Lewis & Bockius LLP**
Roppongi Hills Mori Tower 24th Fl.
6-10-1, Roppongi
Minato-ku, Tokyo 106-6124, Japan
T: +81.3.4578.2500 F: +81.3.4578.2501

**www.morganlewis.com**

**TAX**

# Singapore Court's Guidance on International Tax Assistance in the Form of Exchange of Information

*"It is an age-old and universally recognized principle that one sovereign does not assist another in the collection of their taxes . . . but the political sentiment in many countries has changed radically over the years in the light of increasing tax evasion, "* so declared the Singapore High Court in the seminal decision of ***AXY & Ors v. Comptroller of Income Tax*** [2015] SGHC 291 (***AXY***).

In ***AXY***, the Singapore High Court was faced with the question of whether the subject(s) of tax investigations could obtain discovery from the Singapore tax authority—the Comptroller of Income Tax (the **Comptroller**)—in order to view the evidence amassed against it. In particular, the applicants sought documents that had been shared with the Comptroller by the National Tax Service of the Republic of Korea (**NTS**), including the original request for information from NTS, various correspondence between the Comptroller and NTS, and internal documents of the Comptroller, as well as various tax returns filed by the companies in question.

The High Court took the opportunity to succinctly trace the changing nature of Singapore's compliance with various Exchange of Information provisions (**EOIs**) in Double Taxation Agreements (**DTAs**) and recognized how international exchange of information to prevent tax evasion was increasingly becoming the norm. In particular, the High Court noted that prior to the current version of the Income Tax Act (Cap 134. 2014 Rev Ed) (the **2014 Act**) the previous tax regime did not give the Comptroller untrammeled and wide powers to obtain information. Then, the Comptroller was required to cross two hurdles: (i) showing there was a "domestic interest"; and (ii) that such foreign request did not fall afoul of the requisite banking confidentiality provisions. Further, under the previous regime, the Comptroller was required to apply to the High Court for an order of production and access to information, further draining executive time and resources.

The 2014 Act does away with these requirements and the Comptroller can now proceed by simply issuing notices to the relevant financial institutions. The onus is now on applicants to challenge the Comptroller's actions or decisions through judicial and administrative review.

An issue which therefore arises is whether applicants or affected companies can see the initial request sent by the foreign tax authority. Although ***AXY*** held that the answer to that question is 'yes', Singapore legislators have since passed a new section 105HA of the 2014 Act, which now states that a court will not grant leave for discovery of the request issued by the foreign tax authority and related documents if the court is satisfied that the foreign tax authority has requested that the Comptroller not disclose said documents.

CONTACT
**Daniel Chia**, **Partner, Singapore**
DID: +65.6389.3053
daniel.chia@morganlewis.com

The implications of these moves by the Singapore government should not be underestimated. The amendments and the present regime showcase Singapore's willingness to cooperate fully with foreign tax authorities in a speedy and expedient manner. The open question – which has yet to be answered – is how individuals or companies resisting such EOI requests may challenge the Comptroller's decision. No doubt, a document like the request from the foreign tax authority would be key to such a challenge. Without the document, the ability to mount a credible judicial/administrative review action may be severely compromised.

There are no easy answers to that question and one may need to await future decisions from the Singapore courts to determine whether it is right, constitutional or otherwise, for the Singapore government to suppress key documents in support of a challenge to the Comptroller's increasingly wide powers.

# FINANCIAL SERVICES

## Online Payment Systems Technology in China: Trojan Horse or Forbidden Fruit?

*Powerful new computational technology pioneered in e-commerce presents Chinese regulators with potential concerns and solutions to the perennial problem of information, pricing, and settlement capacity.*

Online payment systems,[1] which harness speed-of-light telecommunications with powerful algorithmic and encryption technologies, have the power to bring trustworthiness (or make trustworthiness irrelevant) to whole classes of human transactions that previously required the intermediation of various types of agents (such as financial intermediaries) to overcome trust issues in anonymous interactions arising from distance or scale factors. In the United States (and Western Europe), pioneers of this technology have been, up until now, the beneficiaries of a central government approach that has declined to reflexively or precipitously impose extensive central regulation over a budding technological disruption absent clear and present systemic risk of (a) fraud or unfairness to the market, (b) operational disruption to settlements, or (c) threats to national security (**Core Risks**). The presumptive first approach is dialogue between the regulatory and business communities and the pragmatism to give disintermediation a chance to overcome malevolent gaming or inadvertent error risks. The main obstacle, instead, is often entrenched technology interests.[2]

Chinese regulation of online payment systems—and the response of innovators, especially in the e-commerce space—starts from a different philosophical premise. In China, there is little analogue to US-style "federalism" (where federal agencies such as the Consumer Financial Protection Bureau and the Federal Trade Commission share oversight responsibilities with state bodies, such as the state attorneys general and state banking authorities). Equally significant, with few exceptions (most notably the banks that some of the e-commerce providers have themselves set up), the banks comprising the Chinese banking/payment ecosystem are all controlled by the government (notwithstanding that all the major banks are also publicly traded). Relative to their US peers, these innovators are required to be yet more intrepid. Thus, "it is better to ask for forgiveness than permission." Ultimately, the conflicts of interest among regulators, banks, and privately owned payment systems may resolve by means of profit and fee allocation (rent and tax), but the balance will be necessarily tilted in favor of the banks.

Online payment systems have as their chief potential policy benefits—aside from customer satisfaction—(a) the reduction of settlement times and therefore risk, (b) increased transparency of information regarding pricing and participant identity and fraud detection, and (c) greater security. The Chinese policy ambition is to patiently and under a watchful regulatory eye spur these admirable aspirations. This is to be accomplished under the control of banking institutions administered by the China Banking Regulatory Commission (**CBRC**)

CONTACT
**Frederick Chang**, **Partner, Beijing**
DID: +86.10.5876.3669
fred.chang@morganlewis.com

and payment systems administered by the People's Bank of China (**PBOC**) and nonbank financial institution "paying institutions" (also administered by the CBRC)—the chief commercial interest of which is customer satisfaction—play an important instrumental but subordinate (controlled) role. The entry fee into this market is a willingness to be controllable, which presents a paradox to foreign competitors and, to some extent, even to "domestic" companies that operate and/or have listed abroad.

Substantive regulation and licensing requirements imposed by the Chinese government permeate the entire ecosystem composed of the Internet, information technology infrastructure, retail and related logistics and distribution, and media. In practice, these areas (and, in particular, online payment systems) are not clearly open to foreign investment or operation. Also in practice, foreign competitors in the online payment space have resorted either to the "variable interest entity" (**VIE**) structure[3] to participate or to self-curtail the scope of their activities in China. Famously, a leading e-commerce business (to the chagrin of its major foreign shareholders) terminated its own VIE arrangement with its online payment affiliate in 2011—notwithstanding many companies' continuing VIE arrangements in other industries—because of the conventional wisdom that the payment system as it fell under PBOC jurisdiction was even more sensitive in matters of foreign investment than other telecommunications, media, and technology sectors.

**Safety and Soundness**

The safety and soundness of the payment system in China is regulated principally by the PBOC, which promulgated the Administrative Measures of the PBOC on Payment Services Provided by Non-Financial Institutions (September 1, 2010). These measures forbid entities that are not CBRC regulated from engaging in online payment, issuance or acceptance of prepaid cards, or bank card acceptance, unless they obtain a Payment Business License from the PBOC. In any such case, a nonfinancial institution must entrust custodial functions over money to banks, and comply with anti-money laundering laws, as well as know-your-customer and business continuity requirements. Although these nonfinancial institutions cannot hold or use customer excess reserves, their paid-in-cash capital cannot fall below 10% of the aggregate of such reserves.

Since 2014, the CBRC has been embroiled in controversial rulemaking about the subject of bank network security, "informationization" of banking, and bank technology.[4] As supervisor over the safety and soundness of the members of the payment system, the CBRC is responsible for the integrity of the data and source codes used, stored, and employed by banks, and the Edward Snowden revelations instilled fear that reliance on foreign technology and its embedded source codes could undermine the CBRC's ability to exercise control in this area. The dilemma, which caused CBRC to temporarily withdraw its proposal to require foreign bank technology providers to submit source codes and encryption keys to the authorities in China, is that only foreign technology is currently capable of performing critical banking operations (whether for domestic or for foreign-owned banks).

# FINANCIAL SERVICES

### Consumer Protection and Data Security

Under the PRC Consumer Rights Protection Law, as amended, e-commerce platforms can be held to joint and several liability with the seller and/or manufacturer of the goods/services sold on such platforms. This liability, grounded in tort, imposes a duty of care on such platforms in terms of knowing their vendors and knowing their products, which at a minimum requires platforms to provide authentic contact details of such providers and establishes liability when platforms knowingly or negligently allow the sale of defective or fake goods or other infringements of consumers' rights. This law also restricts the ability of such platforms to use customer data, except with the explicit, informed consent of the customer. Other sources of law that buttress customer rights over personal data provided online to such platforms include the 2012 Decision on Reinforcing the Protection of Internet Information of the Standing Committee of the National People's Congress and the 2013 Provisions on Protecting the Personal Information of Telecommunications and Internet Users of the Ministry of Industry and Information Technology (**MIIT**).

The PBOC has proposed further draft rules (Administrative Rules on Online Payment Business of Non-Bank Payment Firms, July 31, 2015) with regard to customer documentation, account opening, settlement limits, and customer data for payment firms.

Allocation of transaction fees within the online payment ecosystem among banks, Unionpay (which is the utility that currently holds a monopoly on all RMB card settlements in China as the sole domestic bankcard association approved by the PBOC for this purpose[5]), and the payment channel are regulated by the National Development and Reform Commission (**NDRC**). The NDRC has stipulated that these fees should stand in a ratio of 7:1:2.

### National Security

Given the political sensitivities of the integrity of the payments system and consumer rights combined with the current dependency on foreign technology of banking organizations in China with respect to the clearance and settlement of RMB-denominated transactions (let alone cross-currency transactions), there is an inherent national security element to the regulation of online payment systems and their content. Various administrative bodies play a role in such regulation, including the MIIT, the newly established Cyberspace Administration of China, the Ministry of Public Security, and the Ministry of National Security.

Although the present leadership is committed to reducing the role of government in the market in general, its attitude toward Core Risks is that "it is better to be safe than sorry" and that the government and its instruments, such as banks, through the notion of control, is best placed to ensure safety and avoid sorrow. Online payment systems and their

# FINANCIAL SERVICES

cutting-edge coding and encryption technology are, to the Chinese, as alluring as a Trojan Horse or forbidden fruit, at once (at least in the case of the most cutting-edge technology) an affront to Chinese vulnerability and a potential answer to the Chinese quest to be master-maker of markets instead of perennially dependent on technology and prices made abroad. But the leading US and European banks will not lightly cede their traditional mastery in this area.

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[1] As used herein, "online payment systems" refers generally to the chain of transaction processes from pricing to purchasing to settlement done in an electronic, automated, real-time manner over the Internet or a subset thereof, including but not limited to business-to-customer retail commerce and business-to-business interbank transactions.

[2] Leading banks are recognizing that central clearing and exchange-based trading, brought on by the Dodd-Frank Act, and online payment systems, if seen to address Core Risks better than traditional banking, could undermine the raison d'etre of traditional banking. For example, the US banking sector, in part spurred by competitive considerations, increasingly is agitating in favor of greater regulation of online nonbank payment systems and services. A spirit of creative destruction is spurring other (mostly non-US) banks directly to participate (by ownership and operation) in radical technologies such as distributed ledger technology (BlockChain, which harnesses, and rewards, massive computing power around the globe to solve encryption problems to render secure a cascading chain of market-making, clearance, and settlement across a variety of asset classes). Aside from making customers and counterparties happier, such technology might lead to reduced regulatory capital costs that would otherwise arise from the myriad of risks that accompany longer settlement times, potentially across a wide range of asset classes.

[3] Under a VIE structure, typically used to provide foreign investors with exposure to industries restricted to foreign investment by Chinese law, a licensed and regulated Chinese operating company (the VIE) enters into a series of contracts with the wholly owned subsidiary of a foreign company. Pursuant to these contracts, various economic rights flow to such subsidiary, allowing the parent to financially consolidate the economics of such VIE without having any ownership interest therein. Various legal and commercial considerations, including common ownership interests (of Chinese residents) in the VIE and the foreign parent and collateral arrangements, may (but do not necessarily always do) provide sufficient incentive for the VIE to comply with its contractual obligations.

[4] *See* Guiding Opinions of CBRC on Strengthening the Banking Network Security and Informationization Development Through Application of Secure and Controllable Information Technologies (September 3, 2014); Notice of the General Offices of the CBRC and MIIT on the 2014-15 Guidelines for Secure and Controllable Information Technology in the Banking Industry (December 26, 2014); and CBRC Explanation Relating to the Banking IT Guidelines (February 12, 2015).

[5] In a long-awaited response to World Trade Organization (**WTO**) requirements, the State Council issued Decision of the State Council on Implementing Access Administration of Bank Card Clearing Institutions (June 1, 2015) as a first step in opening up bankcard clearance and settlement to the qualifying Chinese subsidiaries of qualifying applicants from WTO member states.

# INVESTMENT MANAGEMENT

## Marketing and Fund-Raising in the Japanese Market

The financial regulations in Japan have been the subject of significant reforms over the last few years. In line with increased regulatory scrutiny experienced across numerous global financial markets, the Japanese regulatory environment has been evolving. In the area of securities distribution, this trend is not only in response to general global movements, but also to a number of significant sanctions cases that have pressured the regulators to impose greater controls and regulations. In particular, the regulators have been focusing on illegal marketing and fund-raising activities in Japan.

There have been two particularly prominent cases in Japan where the Securities and Exchange Surveillance Commission (**SESC**) has found firms to have engaged in unregistered fund-raising and fraudulent marketing practices.

### MRI International Case

In the first case, sanctions were issued by the SESC in April 2013 against MRI International Inc. (**MRI**), a foreign firm registered in Japan as a Type II Financial Instruments Business Operator (a **Type II registrant**). MRI solicited and sold interests in fund vehicles that were to purchase medical accounts receivables in the United States and pay its interest holders distributions out of profits earned from collecting on such receivables. Although MRI claimed that investments would be separately managed through trusts and other accounts, the SESC found that funds were commingled and the greater portion of the funds that should have been used to acquire new accounts receivables were instead used to pay dividends to prior investors, in a classic Ponzi scheme reminiscent of the Madoff scandal in the United States.

Although the actions of MRI can be attributed to a bad player acting in a fraudulent fashion, the regulators did recognize that the relatively lower degree of oversight exercised over Type II registrants contributed to these frauds. One regulatory consequence arising from the MRI case was that, as of this last summer, each Type II registrant going forward will be required to join the new self-regulating Type II Financial Instruments Firms Association (**Type II Association**) or establish its own, extensive internal rules and policies that are equivalent to the Type II Association rules (typically a very expensive exercise). Moreover, the Type II Association registration process is onerous and relatively expensive and unprecedented for Type II registrants. This change has led to certain Type II registrants re-evaluating their business models and, in some instances, electing to surrender their Type II registrations altogether.

Another informal development arising out of the MRI case is that there appears now to be greater scrutiny of compliance officers for Type II registrants who are not native Japanese speakers. In the past, a fairly

CONTACTS
**Carol Tsuchida**, **Of Counsel, Tokyo**
DID: +81.3.4578.2611
carol.tsuchida@morganlewis.com

common approach to fulfilling the compliance function was to appoint a group Asia compliance officer as a Type II registrant's compliance officer. The theory had been that for Japan law–specific matters, the compliance officer would rely on the assistance of local Japan counsel for guidance. Going forward, however, it appears that regulators will scrutinize the compliance officer's concrete knowledge of Japanese regulations and practices and review specific steps taken to educate, and maintain the capability of, the compliance officer.

**Abraham Private Bank Case**

The second case, with far-reaching ramifications, is the Abraham Private Banking (**APB**) case for which sanctions were issued in October 2013. APB held the Investment Advisory and Agency Business registration, which allowed APB to provide non-discretionary investment recommendations based on the value of securities to its clients. However, rather than simply providing investment advice, APB provided explanations, descriptions, and application documents for specific foreign investment securities. The information provided included specific details such as investment terms, prices, and benefits and risks of the foreign investment securities. The documents discussed with investors included actual subscription forms and agreements. In addition, APB's fund-raising activities were conducted on a mass level, targeting retail level investors and advertising widely through magazines, TV commercials, Internet advertisements, and advertisements on trains. Through these tactics, over the course of a few years APB rapidly increased its number of clients into the thousands.

Although APB did not directly receive commissions from the foreign investment securities issuers whose securities it marketed to its retail clients, compensation was paid by either the foreign investment fund itself or an investment manager (of the foreign fund) to a "shell company" in the British Virgin Islands named Sagacious Trend International (**STI**). STI was founded and owned by the board of directors of APB. The amount paid by the foreign investment securities issuers to STI correlated to the purchase price paid by the APB clients. The SESC rightly found that this arrangement amounted to APB receiving commissions for its marketing activities.

In addition to unregistered marketing and fundraising activities, the manner of APB's advertising was also highly problematic with numerous false or misleading claims. One instance of this was that APB placed advertisements in magazines, advertising its advisory services and compared results of products it handled against other products offered by domestic securities companies and domestic investment trust companies over the last five years. The APB serviced products showed the highest average annual yield of 15.34%. However, upon examination, the reality was that although it may have been possible for an investment product available to APB's clients to realize an annual yield of 15.34% over the past years, there was no record of any APB client actually having received any such recommendation to invest in such product.

Beyond these unregistered and problematic activities, the APB case was aggravated further by the fact that APB had marketed investment products to thousands of retail clients. While marketing activities by independent financial

advisors (including registered investment advisors) without securities licenses may have occurred on a limited basis in the past and not attracted much notice, the APB case has forced the Japanese regulators to address these types of programs.

As a result of the APB case, the Japanese regulators have placed increased scrutiny on unregistered solicitations and sales, both with respect to the issuers of the foreign financial products involved and on the distributors of these products. The Japanese regulators are also taking a much more proactive approach towards ex-Japan participants who deal with Japanese investors. For offshore issuers, even if not intending to offer its products in Japan, it should be noted that if there are greater than 50 Japan offerees, and there is some organized offering program, the issuer can be deemed to have conducted an illegal public offering in Japan. Simply claiming that the issuer was approached outside of Japan by Japanese investors is unlikely to be accepted by Japanese regulators when there are thousands of Japanese retail investors involved.

We believe that APB is a particularly significant case, as it demonstrates that unregistered offering and solicitation activities will be sanctioned in Japan. Although there have been various schemes for participants in the past to fund raise in Japan without adequate registrations or registered distributors involved, with these recent cases, such actions run very significant supervisory and reputational risks. The SESC rejected the use of the investment advisor registration to provide support service to subscribe for offshore securities (i.e., it is an intermediation for securities distribution) and found that APB was marketing offshore securities interests requiring that APB possess a Type I or Type II Financial Instruments Business registration. So for market participants seeking to raise funds from investors in Japan, it is now clear that such participants need to either obtain a Type I or Type II registration themselves or engage a Type I or Type II registrant.

It should also be noted that the SESC is scrutinizing a number of non-traditional securities, such as savings products and insurance products. While the sale of insurance products is heavily regulated under Japanese insurance laws, recently various insurance-like products have also been coming under greater scrutiny. In particular, it should be noted that some products may be characterized as securities by the Japanese regulators, even though they may not be characterized as securities in their home jurisdictions. For market participants dealing in these types of products, if there are Japanese investors involved great care must be taken prior to any such issuances in Japan to ensure that the participants are not found to have engaged, albeit unintentionally, in an illegal securities offering in Japan.

The APB and MRI cases have demonstrated to the Japanese regulators the necessity of looking beyond Japan to ensure that Japanese investors are appropriately protected, and we expect this trend to continue. As such, we would recommend to institutions currently involved or considering involvement with Japanese market participants to examine closely their structures and ensure that their activities fall within the scope of permitted registered activities.

# CORPORATE AND BUSINESS TRANSACTIONS

## Russia's New Advanced Development Territories Law: Far East Focus

Amid the ongoing loud noise surrounding the situation in Ukraine (and in Syria) and the related sanctions and counter-sanctions, a new Russian development initiative seems to have slipped under the radar. But it is worthy of note—particularly for potential investors in Russia's Far East. This has all the more potential importance in the context of Russia's recent pronounced political and economic pivot toward Asia. The Law on Advanced Development Territories (the **ADT Law**, or **the Law**), enacted in December 2014 and entered into force in spring 2015 (and the related simultaneously adopted acts that make corresponding amendments to the Tax Code and some 20 other laws), sets out the rules of the road for these ADTs.

Russian President Vladimir Putin and other top officials at the Eastern Economic Forum in Vladivostok in September spotlighted this ADT program prominently. A number of new projects were announced at that forum or earlier, and most recently at an international forum in Harbin, China.

In a separate related development, in July a so-called Free Port of Vladivostok was established within Vladivostok and a few neighboring municipalities that provides benefits and incentives to investors similar to the ADT Law, and with an enhanced exemption regime for customs clearance and immigration. The fiscal benefits of the Vladivostok free port come into force in January 2016, but a major Korean conglomerate is reported to be eyeing this opportunity.

### Background

The ADT regime is somewhat similar to Russia's existing Special Economic Zones (**SEZ**s), which came into being under the 2005 Law on SEZs and some earlier regulations. These programs have had only mixed success. But the central focus of the new ADT regime is different: while SEZs have been aimed primarily at spearheading various industries (such as innovative technologies, ports, or recreational complexes), the ADTs are to address the general unevenness in development across Russia's vast territory by incentivizing investment in more depressed areas—starting with the underpopulated and relatively neglected Far East.

As initially drafted, the ADT Law was to be confined to the Far Eastern Federal District alone. This geographical limit no longer applies so generally under the Law as enacted. But for the first three years, under special transitional provisions, it will apply only in the Far East and in certain sole-core-employer cities "where the social and economic situation is particularly drastic."[1]

The Law further directs the government to appoint a special authorized body (**AB**) charged with various ADT supervisory and planning functions. So far only the new Ministry of Eastern Development (established in 2012) has been appointed as such an AB—for the Far Eastern Federal District. For

CONTACTS
**Jonathan Hines, Partner, Moscow**
DID: +7.495.212.2552
jhhines@morganlewis.com

**Alexander Marchenko, Of Counsel, Moscow**
DID: +7.495.212.2534
amarchenko@morganlewis.com

all practical purposes the Law will apply essentially in the Far East, at least initially. The Ministry has already adopted various implementing regulations envisaged under the Law. Further, Deputy Prime Minister Yury Trutnev, who is also the president's plenipotentiary in the Far Eastern Federal District, has pledged strong support for the ADT program alongside other measures for development of Russia's Far East.[2]

As of September, the government has already approved the establishment of nine ADTs, including Komsomolsk (in the Khabarovsky Krai), Khabarovsk (covering several districts within Khabarovsk City and elsewhere), Nadezhdinskaya (in the Primorsky Krai), and some others in Kamchatka, Yakutia, and Amurskaya Oblast. The first specific ADT projects announced at the Vladivostok Forum and on other occasions (taking into account the most recent Harbin EXPO) include the following:

- Construction of a bitumen plant by a Chinese-owned Singapore company together with Russia's Independent Petroleum Co. (**NNK**) in the Khabarovsk ADT
- An Australian coal company's proposed investment into the transport infrastructure of the Beringovsky ADT in Chukotka
- Recreational infrastructure facilities (including a golf club) to be financed and constructed by a Japanese company in Vladivostok
- A proposed major agricultural enterprise investment by Russian interests at the Mikhailovsky ADT in Primorsky Krai (the precise location is not yet identified)
- German investors' readiness to provide some 20 billion rubles to the Kamchatka ADT
- A planned 50-billion-ruble investment for infrastructure development in the Primorsky ADT
- A coal-loading terminal to be constructed by Sakhatrans in Khabarovsky Krai (estimated investment of 30 billion rubles)
- A truck-building plant (and dealership and service centres) project to be undertaken together by Chinese Sinotruk and the Far-Eastern Road and Construction Company in the Komsomolsk ADT

**Government Decree**

Under the Law, an ADT is created by a government decree for a term of 70 years. Such decrees are based on a proposal by the AB . This proposal, in turn, is supposed to be based on preliminary agreements with one or more prospective investors into the planned ADT. A special federal government commission will also play a role in ADT selection and formation.

The relevant government decree will set out the main ADT parameters, including its territorial limits (no overlap with an SEZ is allowed), types of commercial activities eligible for benefits to ADT residents (in contrast to SEZs, there are no economic sector limits for such activities are established in the Law), minimum investment and technology requirements, and a few other aspects. These decrees presumably will take into account the preliminary agreements with prospective investors mentioned above.

**Tripartite Agreement**

After the base government decree is adopted, the AB (again, for practical purposes, this is the Ministry of Eastern Development for now) and the relevant regional and municipal authorities are to enter into a tri-partite agreement to regulate various obligations and procedures for the ADT in question. This includes the regional and municipal authorities' obligations on transferring of land plots and facilities into ownership by or lease to the management company (see immediately below on this point) or granting the management company the authority to manage such land plots and facilities, financing and operation of the infrastructure facilities, the conditions for granting property and land tax holidays to ADT residents (see more on tax and other exemptions below), and other aspects.

**Management Company**

An important player in an ADT's actual functioning is its management company (**MC**). Under the Law, an MC is a 100% federally owned joint stock company that is designated as such by the government. An MC will have a broad range of powers, authority, and functions for its ADT(s). For example, an MC will (itself or by delegation to a subsidiary) do the following:

- Act as an infrastructure construction customer (in Russian, *zastroischik*)
- Ensure or organize the functioning of the ADT infrastructure
- Take ownership or lease of federally or municipally owned land plots, buildings, and various infrastructure facilities (on certain conditions)
- Facilitate connection into the utilities networks for ADT residents and service providers
- Draft proposals for relevant amendments to municipal and other zoning plans
- Organize the construction of roads and installation of infrastructure facilities
- Provide various services to ADT residents

The government has already appointed a joint stock company Korporatiya Razvitiya Dalnego Vostoka (in English, Far East Development Corp.) as such an MC—again, with respect to the whole Far East District.

**ADT 'Residents'**

To become an ADT resident, a commercial company (or an individual entrepreneur) needs to file an application with the MC that includes a business plan and proposal for the types of activities to be performed and the level of investments, and then enter into an activities performance agreement with the MC reflecting the investment obligations as well as the MC's obligations. The Ministry of Eastern Development in its capacity as AB has already approved a template of such agreement following the ADT Law guidelines. Per the Law, once an ADT is established and running, there are limits to the grounds for an MC to reject an application and refuse to enter into a contract with a potential resident. The main (and quite general) recognized ground is inconsistency between the applicant's proposal and the ADT's particular parameters. It remains to be seen how the activity agreements will be negotiated in practice as more experience is gathered for substantial new proposed investments.

ADT residents will be incentivized by an array of fiscal and administrative measures, including the following:

- Exemption from or reduction of taxes on corporate profit, mineral extraction, and property and land
- Customs free zone (if approved by the decree enacting the ADT)
- Reduction of Social Security payments
- A system of special protections and guarantees regarding state supervision (only "joint inspections" by various authorities, to be conducted per a schedule approved by the AB, etc.)
- Exemption from foreign employee quota (if approved by the ADT's supervisory council)
- Reduction of educational and medical care administrative burdens (including admission of foreign-trained doctors and use of best foreign educational methods)

Some of these incentives are fairly similar to those applied to SEZs, including tax and customs holidays and state-inspection limitations.

**Conclusion**

The new ADT Law appears to open real new investment opportunities, primarily in the Far East. Yet one should be mindful of various restrictions in using this Law's benefits—including that the potential resident has to be registered within the ADT territory and, if it is a commercial company, it may not have branches or other subdivisions outside of the ADT (sister companies are permitted). More preconditions apply to the associated tax benefits under the revised Tax Code. Time will tell how effective the ADT Law will be in attracting much-needed new investment to Russia's Far East.

[1] In October 2015 a government commission pre-approved the establishment of ADTs in four core employer cities outside of the Far East: Usolie-Sibirskoe, Siberia, Gukovo (Rostov Oblast), Yurga (Kemerovo Oblast), and Naberezhny Chelny (Tatarstan). But no formal government decree has been adopted on these ADTs yet.

[2] In another somewhat related matter, at Mr. Trutnev's initiative, the Ministry of Economic Development and Ministry of Eastern Development have put forward a draft law to allow any qualifying Russian citizen or family to receive and use for farming (and then take ownership of after five years) one or more hectares of undeveloped state-owned land located at certain designated distances outside of Far East population centres, free of charge. A *Kommersant Daily* article reporting this was headlined "The Wild West Is Opening Up in the Far East."

# NEWS

## *Singapore Office Celebrates Morgan Lewis Stamford Combination*

Our Singapore office celebrated the Morgan Lewis Stamford combination at a December 1 event at the Asian Civilisations Museum along the banks of the Singapore River. Firm Chair Jami McKeon and Singapore Office Managing Partner Suet-Fern Lee hosted the event, which was attended by more than 200 guests, including key business leaders from major banks and corporations, many of them clients, and representatives from international government bodies and several embassies.

The guests enjoyed the evening in the museum's newly opened gallery of Tang Dynasty (618-907) treasures and were treated to a traditional Asian drum performance with instruments from China, Japan, Malaysia, and India.

***Below:*** *Guests enjoy drinks and canapés in the beautiful Khoo Teck Puat gallery at the Asian Civilisations Museum.*

***Above:*** *The event included a celebratory Asia drum performance with traditional Chinese, Japanese, Malay, and Indian drums.*

# NEWS

## *Holiday Wishes for Children's Home in Tokyo*

The Tokyo office, led by Makiko Hata, Tokyo BD and marketing manager, organized a pro bono holiday party December 6 at the St. Francis Children's Home in Ota-ku, Tokyo. This marks nine years that the Tokyo office has sponsored the party. Fifty children, ranging in age from 3 to 18 years, are at the home living away from their parents for various reasons. The children submit wishes to Santa, almost invariably for practical items (new boots, jackets, hair dryers, etc.), and the Tokyo office steps in to make it happen.

All 27 members of the Tokyo office, along with Lisa Valentovish and Satoru Murase of the New York office, donated money to purchase the holiday gifts and devoted one extended lunch hour to wrapping each and every gift. Carol Tsuchida and her daughters built fabulous gingerbread houses for children to decorate, associate Yasuyuki Shirabe (aka, "Santa") played with the kids, while Ben Lang and his family, Hirokazu Miyamoto and his family, Rie Nitta, Makiko, and Atsuko Suzuki and her family delivered gifts and helped the children decorate the gingerbread houses and enjoy the holiday merriment.

***Above:*** *Busy in the Tokyo office wrapping presents for 50 children!*

***Below:*** *"Santa" (Yasuyuki Shirabe, associate) and his elves distributing gifts at the St. Francis Children's Home.*

# NEWS

## *Singapore Seminar – Rendering unto Caesar: FATCA and US Tax Prosecutions Come to Singapore*

On Wednesday, 6 January 2016, the Singapore office will host a seminar about the implications of FATCA and US Tax Prosecutions in Singapore. The seminar will examine some of the current trends relating to US authorities' global prosecution of tax offenders, the implications on financial institutions and asset managers, and the practical issues on the various exchange of information mechanisms and requirements. We will be examining these issues from the US prosecution perspective, as well as risk exposure and liability under various Singapore legislations—including Singapore's Anti-Money Laundering Legislation. Speakers will include Nathan Hochman, a partner from our Santa Monica office and former Assistant Attorney General in charge of the US Department of Justice's Tax Division.

If you are interested in attending this seminar, please contact Tammy Baker.

## *3rd Sanjiang Intellectual Property International Forum 2015 – Zhenjiang China*

Robert Gaybrick, a partner from the Washington DC office, was invited as a special guest to speak at the 3rd Sanjiang Intellectual Property International Forum 2015 on 13 November 2015. The forum was supported by the Intellectual Property Office of Jiangsu Province, hosted by Jiangsu University (Intellectual Property Research Center of Jiangsu Province) and China Intellectual Property Industry Alliance, organized by Jiangsu Huizhi Intellectual Property Service Co. Ltd., and co-hosted by Jiangsu Sunyu Information Technology Co. Ltd. Fan "Alex" Liang, associate, and Meixian Li, director of business development and marketing, from the Beijing office attended the forum. The theme was Patent Transfer and Made in China 2025, with three sessions, including topics on CEO Dialogues on Patent Transfer; Patent Transfer and Industry Competitiveness; and Challenges and Opportunities of Intellectual Property Transfer in the Internet Era. More than 200 representatives of governments, enterprises, schools, and research institutes from World Intellectual Property Organization, the United States, Germany, Japan, South Korea, the Netherlands, China. and other countries attended the forum. Robert presented on Successful Patent Commercialization Helps Development of Innovative Companies and shared his Japan, Korea, and China experience.

***Above**: Robert Gaybrick, partner, speaking at the forum.*

# HEADLINE DEALS

### *Marco Polo Marine: $214M Rig Construction Contract Termination*

Morgan Lewis Stamford are advising Singapore Exchange-listed marine logistics group Marco Polo Marine Ltd. (**Marco Polo**) in a contractual dispute between subsidiary Marco Polo Drilling (MPD) and PPL Shipyard (**PPL**). Singapore Exchange–listed Sembcorp Marine owns 85% of PPL.

The case centers on a $214 million rig construction contract terminated by MPD on November 17 over PPL's alleged breach of material contractual obligations, including the disclosure that cracks were found on all three legs of the new rig during two rounds of tests, even though PPL performed repairs after the first round. MPD is seeking a refund of payments it made to PPL, including a 10% deposit. PPL challenged the termination and insisted on payment of the second 10% of the contract cost from MPD, as well as from Marco Polo under a parent company guarantee. Marco Polo and MPD consider the payment demand unwarranted and each has initiated the contractual dispute resolution process against PPL, which will end up in arbitration in Singapore unless resolved.

On December 1, PPL filed a lawsuit in Singapore against Marco Polo in relation to the guarantee. Marco Polo claims that the suit violates the contractual dispute resolution process. The ongoing legal tussle has attracted extensive media coverage in the region, highlighting the tough times faced by the oilfield services sector.

The team is led by Singapore partners Wendy Tan and Joo Khin Ng.

### *China Life Insurance: Invests $500M in US Warehouses*

We represented China Life Insurance, the largest insurance company in China, in connection with obtaining clearance from the Committee on Foreign Investment in the United States (**CFIUS**) regarding the client's $500 million investment in US warehouses. According to a *Wall Street Journal* article, this is China's largest overseas real estate purchase to date. We were selected for the deal in a competition with other large US firms. The deal was announced in November.

The team included partners Stephen Paul Mahinka (Washington, DC) and Xiaowei Ye (Beijing), with associates Ruoke Liu (Washington, DC) and Heather Dorsey (Washington, DC).

# HEADLINE DEALS

### *Genting Singapore: Sponsorship Agreement for Michelin Guide*

We recently advised a subsidiary of Genting Singapore PLC, a Singapore-based regional leisure, hospitality and integrated resorts development specialist listed on the main board of the Singapore Exchange, on its sponsorship agreement with Robert Parker Wine Advocate, which entered into a collaboration agreement with Michelin and the Singapore Tourism Board to launch a Singapore edition of the *Michelin Guide* in 2016. Under the terms of the agreement, Genting Singapore and Robert Park Wine Advocate will collaborate on the release and promotion of the guide as well as on various events to be held in connection with the guide, such as pop-up restaurants featuring Michelin-starred chefs.

The team was led by partner Wai Ming Yap (Singapore) with associate Gina Ng (Singapore).

### *DeClout Limited: Acquisition from Pacnet Internet*

Morgan Lewis Stamford advised DeClout Limited on its acquisition of certain internet service provider (**ISP**) and business assets in Singapore and Thailand from Pacnet Internet (S) Pte Ltd, a subsidiary of Telstra Corporation Limited. Pacnet is Australia's leading telecommunications company. The assets and business to be acquired represent Pacnet's ISP business in Singapore and Thailand, which posted approximately S$20 million ($14.2 million) in combined revenue for the financial year ended December 31, 2014. Following completion of the proposed acquisition, the assets and business will be merged into DeClout's existing ISP business, which will be rebranded as Pacific Internet. The proposed acquisition is expected to be earnings accretive and bring in more than 3,000 customers.

The team was led by partner Bernard Lui (Singapore) and associate Ryan Lin (Singapore), with team members including Jeremiah Huang (Singapore).

### *Astaka Holdings: Acquisition of E2-Capital Holdings*

Morgan Lewis Stamford has advised Astaka Padu Limited on the acquisition by E2-Capital Holdings Limited for the aggregate consideration of S$428 million ($305 million). E2-Capital Holdings Limited changed its name to Astaka Holdings Limited following the completion of the acquisition on November 23. Astaka is a Malaysia-based property developer focusing on high-end projects in Iskandar Malaysia, the main southern development corridor in Johor, Malaysia. Astaka is currently developing 1 Bukit Senyum, a major project comprised of eight mixed-use towers of serviced apartments, boutique offices, a five-star hotel, a shopping mall, and an entertainment and dining quarter, among other facilities. Following the acquisition, Astaka was listed on the Catalist board of the SGX-ST (Singapore Exchange).

The team was led by partner Wai Ming Yap (Singapore), and associates Gina Ng (Singapore), Jenny Wang (Singapore), and Chin Hiang Wu (Singapore).

# THE LAST WORD

The Last Word is a regular segment allowing you a tongue-in-cheek insight into the personalities in Morgan Lewis.

*"Democracy is blind.*

*For many years, I have been giving pro bono advice to the Singapore Association of the Visually Handicapped (**SAVH**). The SAVH is a voluntary welfare organisation that promotes the needs, interests, and aspirations of the visually handicapped community.*

*When I first starting working with them, I learnt that the visually handicapped (or the blind, as they frequently describe themselves) have a vastly different experience of life. I marvel at how mobile they are. I admire their skill with smartphones (even those with touchscreens). And I am amazed that they attend and participate in long meetings without referring to printed agenda papers, or written notes, or even PowerPoint presentations: they actually discuss matters the old fashioned way – by talking it out.*

*One of their bugbears was voting. In Singapore, voting is done by marking a cross on a piece of paper, and inserting the paper into a slit at the top of a box. For decades, the blind could not vote on their own. They had to tell an election officer the name of the candidate they wanted to vote for. The officer would then mark the paper for the blind. Some blind folks have told me they were uncomfortable with actually speaking to a government official (perhaps in the presence of strangers) to say out loud the name of the person they wanted to vote for. The blind were occasionally unsure if their choices were correctly reflected on the ballot paper.*

*In 2011, through lobbying and campaigning, the SAVH finally brought about change. Stencils were provided to blind voters. For the first time, blind citizens could mark their own ballot papers, in secret, and participate in the democratic process. They were overjoyed.*

*As the sole legal advisor for the SAVH, I was responsible for putting together the representations that the SAVH made to the government. When I saw how pleased the SAVH members were at voting in our nation's 2011 presidential elections, I experienced a rare feeling: I was proud to be a lawyer."*

**Adrian Tan**, Partner, Singapore

**If you have any queries, please do not hesitate to approach any member of our Editorial Team.**

**Beijing Office Editorial Team**
MEIXAN LI: meixan.li@morganlewis.com
XIAOWEI YE: xiaowei.ye@morganlewis.com

**Singapore Office Editorial Team**
TAMMY BAKER: tammy.baker@morganlewis.com
DANIEL YONG: daniel.yong@morganlewis.com
TIMOTHY COOKE: timothy.cooke@morganlewis.com

**Tokyo Office Editorial Team**
MAKIKO HATA: makiko.hata@morganlewis.com