ASIA CHRONICLE

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PRIVACY AND CYBERSECURITY

How to Protect Against Personal Data Breaches of Your Organisation's Data

Since the Personal Data Protection Act 2012 (**PDPA**) came into full effect on 1 January 2014, the Personal Data Protection Commission (**PDPC**) has carried out numerous investigations into complaints of personal data breaches. In this article we analyse three notable cases that were published in 2017. In these cases a subcontractor or independent contractor was intimately linked to the cause of the data breaches and in two instances managed to avoid liability under the PDPA.

This provides an opportunity for organisations and their data protection officers to draw learning points from the contrasting fate of these organisations.

[2017] SGPDPC 4

The PDPC carried out investigations into alleged breaches by a telecommunications provider (**Telecom**) and its subcontractor (who was engaged to provide maintenance and support services for the Telecom's website) for failing to protect a customer's personal data.

The subcontractor had initially sought to address the affected customer's login difficulties on the Telecom's website. However, in running an update on the website the subcontractor inadvertently caused the affected customer's identification number and account number to appear on the login page of 2.78 million other customers.

The PDPC found that the Telecom was not in breach of its protection obligations under the PDPA because 1) its contract with the subcontractor required the subcontractor to comply with the Telecom's security policies, 2) it had a standard operating procedure (**SOP**) which required any updates to be tested before being uploaded to the website, and 3) it had conducted annual audits of the subcontractor's compliance with the SOP.

The subcontractor, as a data intermediary (an entity that processes personal data on behalf of an organisation), was found to have failed to follow the SOP and consequently breached its protection obligations under the PDPA.

[2017] SGPDPC 13

In this investigation, the organisation (an insurance provider) avoided liability under the PDPA arising from the improper disposal of customer policy documents by one of its financial consultants after he ceased being a financial consultant of the organisation.

The said financial consultant was engaged as an independent contractor and was found to have control and autonomy over the management of

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information obtained from customers serviced by him. The PDPC further found that the organisation had reasonable policies in place which dealt with the proper and secure disposal of customer policy documents. The organisation had also issued a letter specifically requiring the financial consultant to return all documents belonging to the organisation and other customer information to the organisation at the time he ceased being a financial consultant.

In the circumstances, the PDPC was of the view that the financial consultant was fully responsible for the breaches under the PDPA when he disposed of the customer policy documents by placing them in a trash bin in their original readable form.

[2017] SGPDPC 12

In this case, the complainant received unauthorised phishing emails purportedly sent by an organisation. Investigations by the PDPC revealed that an unknown perpetrator had gained unauthorised access to the organisation's "Loyalty Programme" server which contained a subscriber list, and had used an application to send unauthorised phishing emails to individuals on the subscriber list.

The organisation's "Loyalty Programme" server had two interconnected servers—one server stored customer information on a subscriber list which would be transferred daily to the second server that would disseminate emails to the customers on the subscriber list. After the emails were disseminated, the data from the subscriber list remained stored on the second server. The perpetrator had gained access to the second server and sent the unauthorised phishing emails from it.

The organisation was found to have breached the PDPA, and a financial penalty of $15,000 was imposed. The PDPC found that:

1) It was unnecessary for the organisation to have essentially duplicated the subscriber list on two servers. The first server, which was not directly connected to the internet, was intended to be the main repository of the subscriber list. Accordingly, the organisation should not have allowed the subscriber list to be stored on the second server once the emails were disseminated;
2) The organisation did not have any formal policy or practice for the management of admin account passwords. Further, the "Loyalty Programme" server had a single admin password, which was shared among four individuals and had not been changed since its inception. This led to the "Loyalty Programme" server being vulnerable to unauthorised access;
3) The organisation failed to carry out audit checks to see if there were any vulnerabilities in the "Loyalty Programme" server before rolling the programme out.

The PDPC also commented that the subcontractor, being involved in management of the "Loyalty Programme" server, may be liable for breaches

under the PDPA. However, the PDPC could not proceed against the subcontractor as it was based overseas.

Learning Points

These investigations demonstrate the importance of having a formal and written personal data protection policy *and* taking active steps to implement it. In the first two examples cited above, the relevant organisations avoided liability because, *inter alia*:

1) they had ensured that the organisations' personal data protection obligations were mirrored in their respective agreements and notices to their subcontractors and/or independent contractors;
2) they took steps to disseminate the organisations' personal data protection policies to the relevant individuals tasked to deal with personal data; and
3) they carried out regular audits to ensure that their personal data-protection policies were being complied with.

The PDPC's latest proposal seeks to introduce a mandatory data breach notification requirement under which an organisation has to:

1) notify affected individuals and the PDPC whenever a data breach poses any risk of impact or harm to the affected individuals (e.g. a data breach that involves identification numbers, health information, financial information or passwords); and
2) notify the PDPC where the scale of the data breach is significant (e.g. involving 500 or more individuals), even if the breach does not pose any risk of impact or harm to the affected individuals.

This mandatory data breach notification requirement extends to an organisation's data intermediaries. The data intermediaries must immediately inform the organisation of all breaches regardless of the harm or scale so that the organisation may make its own assessment as to whether notification to affected individuals and/or the PDPC is necessary. Accordingly, organisations should ensure that agreements with their data intermediaries are updated at the appropriate junction if or when the PDPC's latest proposal is adopted.

In today's digital economy, organisations often outsource the functions of collecting, processing and/or disclosing of personal data. If they do so, it is critical for the organisation to make sure that adequate measures are in place to ensure that commensurate safeguards are implemented by their service providers.

HEALTHCARE

CFDA Issues New Classification Catalogue for Medical Devices in China

The new catalogue, which becomes effective on August 1, 2018, is likely to have a significant impact on the registration, manufacturing, operation, and distribution of medical devices in China.

On September 4, the China Food and Drug Administration (**CFDA**) published an amendment to the Medical Device Classification Catalogue (**New MD List**) that simplifies the existing classification of medical devices in China.

Characteristics of the New MD List

As compared to the 2002 Medical Device Classification Catalogue (**Existing MD List**), the architecture of the New MD List is more scientific, comprehensive, and user-friendly. The New MD List does the following:

- **Reduces the number of device categories from 43 to 22 based on the medical devices' functions and clinical uses.** It also reclassifies the current 260 device types into 206 primary types and further subdivides the 206 primary types into 1,157 sub-types.
- **Provides clearer guidance and product examples that enable companies to determine the level of regulatory control.** For example, each catalogue of the New MD List contains a primary type, a sub-type, a device description, the intended use, device examples, and classifications for Classes I, II, and III. It also includes 6,609 devices in the device example column, while the Existing MD List offers only 1,008 example devices.
- **Downgrades the classification of 40 devices to Class II** (e.g. infusion pumps for surgical instruments) or Class I (e.g. plate washers).
- **Upgrades the classification of certain types of devices to Class III** (e.g. alcohol swabs and active breathing coordinators).
- **Includes 86 categories of clinical testing devices in Section 22**. More importantly, the explanatory notes in Section 22 state that if a device is related to clinical testing but itself does not function as a medical device, the product is not considered a medical device. This article also lists some examples—such as transfer pipettes, common sampling tubes, common sampling cups, and common sample collection devices.

The New MD List does not, however, cover classification categories for in-vitro diagnostic (IVD) reagents. The classification of IVD reagents remains subject to the existing specialized IVD sub-catalogue issued by the CFDA in 2013, as well as other relevant CFDA notices.

Implications of the New MD List

We recommend that manufacturers, importers, and users of medical devices

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pay close attention to the New MD List because it will affect the registration and import of medical devices. Below is a list of considerations.

Initial Medical Device Registration or Filing

- Applications approved by the CFDA before August 1, 2018 will not be affected by the New MD List. However, if a Class I medical device filed with the CFDA under the Existing MD List has been upgraded to Class II or Class III under the New MD List, this product must be registered with the CFDA, rather than being filed, before a statutory deadline of August 31, 2019. We recommend that companies that own Class I medical devices review whether their products have been upgraded under the New MD List. If so, preparations should be made well in advance of the deadline, given that CFDA registration of Class II and Class III medical devices is time-consuming, as in-country testing and clinical trials generally are required.
- Applications submitted before August 1, 2018 but not yet approved by the CFDA will be reviewed based on the Existing MD List. Upon approval of the application, if the classification remains the same under the New MD List, the CFDA will issue a registration/filing certificate that states the product code under the New MD List. However, if the product classification has changed under the New MD List, a certificate will be issued that states the product code under the Existing MD List along with a note that includes the code under the New MD List.
- The New MD List will be used for all applications submitted to the CFDA on or after August 1, 2018.

Extensions of Existing Registrations or Filings

- Extension applications approved by the CFDA before August 1, 2018 will not be affected by the New MD List. The CFDA will issue a renewal certificate in accordance with the Existing MD List.
- Extension applications submitted before August 1, 2018 but not yet approved, as well as extension applications submitted on or after August 1, 2018, will use the New MD List. The CFDA will review the application and issue a renewal certificate in accordance with the New MD List.
- If an extension application for a product that has been downgraded under the New MD List is made on or after August 1, 2018, the registrant must apply with the CFDA for a registration extension or a Class I filing (if applicable) six months prior to expiration.
- If an extension application has been made for a product that is upgraded under the New MD List while the existing registration or filing certificate remains valid, the registrant may apply with the CFDA for an extension. Such an extension could be granted up to August 31, 2019. After August 31, 2019, or at an earlier expiration date approved by the CFDA, the registrant must reregister the product in accordance with the New MD List.

HEALTHCARE

Import and Use of Medical Devices

The New MD List becomes effective on August 1, 2018. Until that time, the Existing MD List will remain effective. However, many entities such as hospitals, pharmacological research and development institutions, and medical testing labs may import and use medical devices in China before August 1, 2018. The law is silent on whether the CFDA and its local counterparts would refer to the New MD List before the effective date, especially for products whose classifications are unclear under the Existing MD List but clear under the New MD List.

Although the New MD List is not yet effective from a legal perspective, it could represent the CFDA's attitude towards the classification of medical devices in general. At this stage, the CFDA may use the New MD List as a reference when the classification of a particular product is not clear under the Existing MD List. We believe that this is a positive development—especially for products whose classifications are unclear under the Existing MD List but clear under the New MD List. That said, local CFDA staff are now being trained on the New MD List, and the agency's position regarding the use of the New MD List prior to its effective date has not been finalized.

We will continue to closely monitor developments in this area.

EMPLOYMENT

Employee Use of Social Media

Understanding your options if an employee uses a social media account to the employer's detriment in the People's Republic of China.

With the prevalence of the Internet and smartphones in the PRC, social media has become ingrained in our daily lives, for both personal and professional activities. For companies, the explosion in social media is used to increase public awareness of companies' activities, with many now maintaining a social media account to promote their brands. To gain traction, many employers are open to the use of social media by employees inside and outside the workplace. Some employers even encourage their employees to do business via social media apps such as WeChat.

However, in doing so, are employers prepared to cope with the legal issues related to the use of social media by employees? Many questions remain unanswered, as the law is still undeveloped in this area. For example, will an employer be held accountable for an inappropriate or offensive post on an employee's personal social media account? Can an employer discipline an employee for an inappropriate or offensive post on a personal social media account? How easy is it to collect this evidence to support a unilateral termination for an employee's disclosure of sensitive or confidential company information through social media? Is it permissible and lawful to monitor the use of social media by employees during and after work hours?

Given these uncertainties and because PRC law is employee friendly, employers should consider adopting comprehensive policies on the use of social media by employees in their personal capacities but related to the company's business and for those who operate social media accounts to promote the company. Adopting such policies should provide employees with clear guidance on what is and is not acceptable, and proper disciplinary actions may then be supported if an employee crosses the line into the latter category. In the absence of properly adopted policies, an employer will have difficulty disciplining an employee for his/her activities in the social media space.

A case decided in Beijing in favour of an employee is instructive. A Beijing-based software developer maintained a company microblog account. The software developer assigned one of its marketing specialists to manage the company microblog account on its behalf. In early 2014, the company microblog account posted an update which accused its management of laying off employees "by force". In March 2014, the software developer terminated the employment of this marketing specialist on the grounds, among others, that the marketing specialist posted the microblog that disparaged the company. The marketing specialist lodged a claim for wrongful termination. Eventually, the labour dispute arbitration committee and trial and appellate courts ruled in favour of the marketing specialist because the software developer failed to prove (i) how the company microblog account was

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managed; and (ii) it was the marketing specialist who posted the disparaging comment.

Indeed, in the PRC a comment made by an employee may be extrapolated and interpreted to represent the company—rightly or wrongly. In another reported case, an employee made negative comments, which went viral, and the employer decided it had to respond to the netizens to protect its reputation. Whether it could sustain the termination of the employee's employment if a claim of wrongful termination were lodged is unclear.

In this case, in January 2012, the marketing director of a Chinese consumer electronics company posted a microblog in which he expressed fury and contempt towards the Wuhanese just because he heard a Wuhan teenager use abusive words against his parents in the airport. The marketing director concluded that Wuhan was the "biggest woodlice (i.e. uncivilized) city in China". This post was forwarded more than 200 times and many netizens criticized the marketing director for his comment. The next day, the president of the company posted in response that it was wrong for the marketing director to hurt the feelings of and disrespect Wuhan residents merely because of his opinion of an individual. The president indicated that the marketing director should apologize to the Wuhanese, or the company would have no choice but to dismiss him. The president's post drew more public attention and more criticism of the marketing director. Subsequently, the marketing director posted an apology, but netizens rejected it. The same evening, the president announced via a microblog post that the company decided to dismiss the marketing director for cause. In the absence of existing work rules at that time which prohibited employees from posting offensive or discriminatory comments on a personal social media account, a court would likely have ruled in favour of the marketing director if he lodged a wrongful termination claim. At the same time, publishing that the employee would be summarily terminated could have exposed the company to a libel claim, particularly if there was a finding for the employee.

This case illustrates a common fact pattern—an increasing number of employees are using social media to conduct business, but few realize that the obligations of loyalty and confidentiality towards the employer continue to apply even when writing a personal post. A reckless comment on social media may lead to the unauthorized disclosure of sensitive business information, which in turn might result in unintended but irreparable damage to the employer.

An employer that implements policies and provides guidance in this area can reduce the risk of negative public exposure caused by an employee's inappropriate social media posts and can provide grounds for disciplinary actions. However, employers cannot just sit back after adopting such policies. While they need not monitor the daily use of social media by their employees, it is advisable that they reserve the right to monitor an employee's social media posts and obtain employee consent to such policies because they delve out of the professional realm and into the personal. Along these lines, the trial and

appellate courts upheld the termination of a senior employee by a Shanghai accounting firm because the firm was able to present the employee's microblog posts which showed that the employee went to Ocean Park in Hong Kong with her family while she was purportedly on sick leave.

The published case of a European airline also provides a good example for other companies to follow. In February 2012, the airline posted in a microblog that it had decided to reform and improve its business-class meal service for flights departing from Shanghai. Two airhostesses commented via their personal microblog accounts that these efforts were in vain because the airline was only going to improve the dinnerware, when the food itself tasted bad. After an internal investigation in April 2012, the airline dismissed both employees for violating the airline's work rules, including the social media policy. Both employees lodged wrongful-termination claims, defending their personal microblog activities as having no impact on the airline and not justifying summary dismissal. They asserted that (i) their personal microblog activities fell outside business hours and should not be governed by the airline's work rules; (ii) they neither used their real names on the microblog nor identified themselves as employees of the airline; and (iii) their comments were not untrue and were deleted after the airline suspended them.

To justify the termination, the airline presented evidence to prove that the airhostesses (i) indicated that they worked for the airline in their microblog profiles; (ii) admitted that they made the inappropriate comments; (iii) acknowledged in writing their receipt of the airline's relevant work rules; (iv) the airline's work rules provided that "making, sending or forwarding offensive or indecent content on the Internet will be deemed as a serious violation of work rules" and that an employee "shall always act professionally and responsibly during and after work . . . and shall not engage in any activities that damage or might damage the reputation of the airline or its staff. Failure to follow the policy will subject the offender to disciplinary action, up to and including dismissal"; and (v) knew that the social media policy explicitly provided, in relevant part, that employees were "not allowed to discuss anything related to work on a social media website," and needed to keep their "social media activities . . . in line with the airline's branding and image, its value and policies."

Based on the evidence submitted by the airline, the labour dispute arbitration commission and the trial and appellate courts sustained the termination as lawful. The court ruled that an employee has a duty of loyalty towards his/her employer which provides that the employee is prohibited from making any negative comments against the employer even outside business hours. The court further held that when an employee makes a comment on social media that adversely impacts or poses a material threat to the operation of the employer, the employer may take disciplinary action against the employee based on its work rules. Although it appears that the airline

did not submit direct evidence showing damages, the public comments arguably threatened the airline's reputation, which influenced the dismissal of the employees' claims.

In sum, these cases are instructive and show that employers can mitigate the risk to their reputations and branding by adopting detailed policies addressing the proper use of social media by employees both within and outside the workplace and to obtain employees' written consent to the potential monitoring of their social media activities.

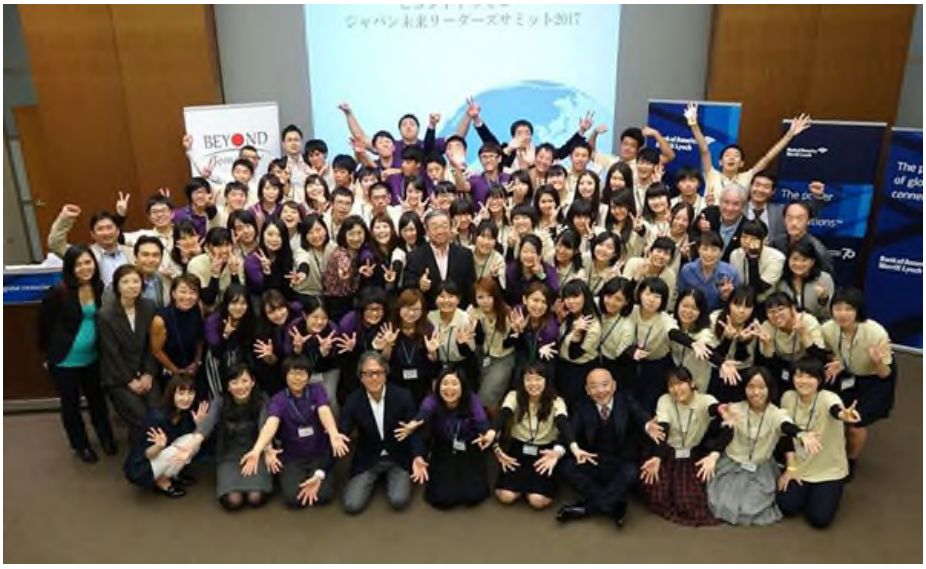
The article was extracted from The Journal of the American Chamber of Commerce in Shanghai.

NEWS

Chiho Zen Serves as Mentor at Pro bono Client's Future Leaders Summit

IM associate Chiho Zen (TO) recently served as a mentor for a group of students as part of pro bono client Beyond Tomorrow's Japan Future Leaders Summit 2017 in Tokyo. Seventy-two high school and college students from all over Japan spent three days together, debating and formulating proposals to create more opportunities for youth to take leadership roles in Japanese society. The winning proposal is expected to be presented to representatives of the Japanese government.

CBT partner Satoru Murase (NY) serves as a board member for Beyond Tomorrow, a Japanese nonprofit/charity organization providing mentorship programs and scholarship support to students who have experienced major life and family challenges. Guest speakers at the summit included Heizo Takenaka, a well-known economist who served as a cabinet minister in former Japan Prime Minister Junichiro Koizumi's administration; Naoko Yamazaki, a Japanese astronaut who was on the Discovery space shuttle in 2010; and Yoshiharu Habu, a well-known professional shogi player who holds numerous titles in Japan. Also in attendance were CBT partner Tsugumichi Watanabe (TO); IM international partner Tadao Horibe (TO); and Hiroshi Minoura, chairman and representative director of Merrill Lynch Japan Securities Co. Ltd.



The group of students and participants at the summit in Tokyo.

NEWS

Firm Receives Approval to Operate in Shanghai

Morgan Lewis has received formal approval from China's Ministry of Justice to operate in Shanghai. This development further solidifies our presence in Greater China and comes about a month after our firm celebrated the first anniversary of our Shanghai office, which has become an increasingly important linchpin of our work for clients doing business in Asia. In just one year, the office has grown from five partners to eight and nearly 30 other lawyers, opening more than 200 new matters and bringing in 55 new clients. The office's collaboration in nearly 60 matters with colleagues in the United States, London, Moscow, Frankfurt, Beijing, Hong Kong, Singapore, and Tokyo demonstrates our truly global reach and ability to tackle the cross-border challenges and opportunities facing our clients every day.

Shaobin Zhu Participates in Seattle Biz-Tech Summit

IP partner Shaobin Zhu (SH) recently participated in a panel discussion about foreign investment–related laws at the fifth annual Seattle Biz-Tech Summit. The global business and technology conference, held in the Pacific Northwest, hosts influential industry leaders, investors, developers, and start-ups. It is the largest Seattle-area conference dedicated to global innovation and collaboration among cross-border companies. This year, the summit theme was "Innovation Meets Connection," which continued the summit's focus on technology innovation and business exchange between the Pacific Northwest and Asia. During the conference, Shaobin met with representatives from current and potential clients, including ZTE, Baidu, and Inspur.

Adrian Tan Re-Elected to Council of the Law Society of Singapore

Litigation partner Adrian Tan (SI) was recently re-elected to the Council of the Law Society of Singapore, the representative body for all lawyers in the country. With about 5,500 members, the law society carries out various statutory functions, including maintaining and improving the standards of conduct and learning in the legal profession in Singapore, and protecting and assisting the public in all matters ancillary or incidental to the law. It is the fourth consecutive time that Adrian has been elected by the law society's members to the council.

Suet-Fern Lee Receives Lifetime Achievement Award from Euromoney LMG

CBT partner Suet-Fern Lee (SI) was honoured by Euromoney Legal Media Group on November 9 at the Asia Women in Business Law Awards with the prestigious 2017 Lifetime Achievement Award for her dedication to the legal profession in Asia. The judges recognized Fern's ground-breaking effort in spearheading the combination between Morgan Lewis and Stamford Law Corporation, which she founded and chaired. Fern was also recognized for her professional experience in the areas of banking and finance, capital markets, competition/antitrust, compliance and regulatory, and M&A and private equity in Asia.

NEWS

Partners Present at Third-Party Funding Seminar

Litigation partner Justyn Jagger (SI) and international partner Stephen Cheong (SI) recently presented a seminar, "Third-Party Funding and the Insurance Industry," in our Singapore office, co-hosting with Tom Glasgow, investment manager at IMF Bentham. Stephen provided an analysis of the legislative framework that now permits funding of arbitrations seated in Singapore and the rise of arbitration as the favoured dispute resolution procedure in Asia. Tom explained how third-party funding was considered, determined, and applied with examples of successfully funded actions, and Justyn explored the impact of funding on the insurance industry in Asia—through its products, policy wordings, claims management, and subrogated recovery actions—and how coverholders, brokers, and insurers should respond.

Litigation international partner Stephen Cheong, left, and partner Justyn Jagger, centre, present a seminar on third-party funding with Tom Glasgow, investment manager at IMF Bentham, in the Singapore office.

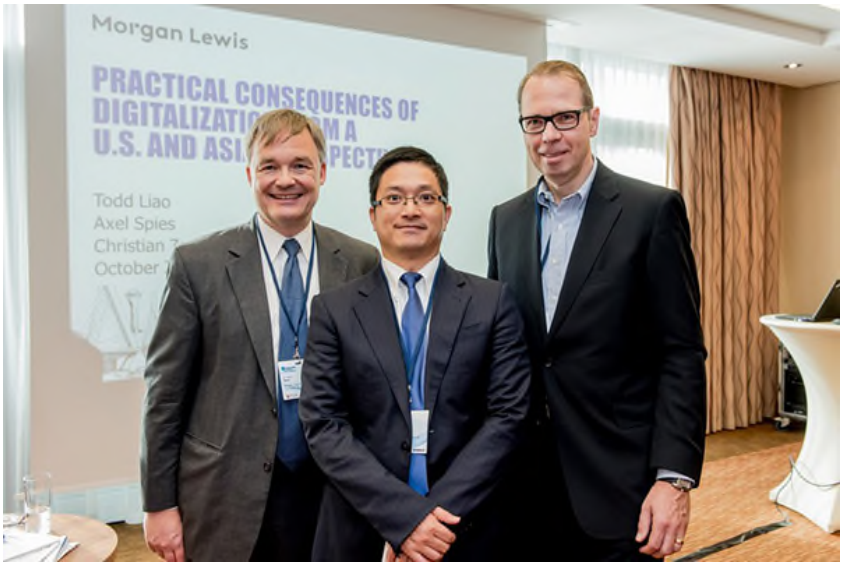
Rahul Kapoor, Parikhit Sarma Honoured by Indian Corporate Counsel

CBT partner Rahul Kapoor (SV) and associate Parikhit Sarma (SI) were named among India's Most Trusted Corporate Lawyers by the Indian Corporate Counsel Association (ICCA) on October 5. The award is presented to forward-thinkers who have demonstrated integrity in the practice of law internationally and those who are recognized as thought leaders in their respective industries. Rahul and Parikhit received their awards at the Seventh Annual ICCA International Summit in New Delhi.

NEWS

Partners Participate in AmCham Transatlantic Business Conference

CBT partner Todd Liao (SH) and TMT of counsel Axel Spies (WA) spoke to a packed house at the 11th annual AmCham Transatlantic Business Conference on October 26 in Frankfurt. Todd and Axel presented on the panel "Practical Consequences of Digitalization from a US and Asian Perspective" with CBT partner Christian Zschocke (FR) as moderator. The discussion focused on data transfer issues generally and more specifically on cybersecurity in China, the Privacy Shield, US sanctions, and the impending EU General Data Protection Regulation. In attendance were representatives from clients BASF, BMW, Deloitte, GE, Google, HP, IBM, and Oracle, among others.



From left are TMT of counsel Axel Spies, CBT partner Todd Liao, and CBT partner Christian Zschocke at the 11th annual AmCham Transatlantic Business Conference in Frankfurt.

Singapore Office Hosts Pro Bono Roundtable

Our Singapore office hosted a meeting on October 25 of the Singapore Pro Bono Roundtable, which aims to bring together law firms and not-for-profit organizations to explore opportunities to collaborate in the pro bono space. Attendees included representatives from five law firms, the Law Society of Singapore's (LSS's) Pro Bono Services and Criminal Legal Aid Scheme, and Singapore Management University's Law Outreach Club.

Speakers from three organizations were invited to talk about the excellent work they do: Gerard Vinluan from the World Justice Project (WJP) outlined the work that WJP does to uphold the rule of law, and the growth of WJP in Asia; Stephanie Chok from the Humanitarian

Organization for Migration Economics (HOME) outlined the urgent need for legal advice and representation required by low-wage migrant and domestic workers in Singapore; and the LSS presented its dispute-resolution schemes aimed at cost-efficient and expeditious resolution: Chong Yee Leong of Allen & Gledhill presented on the Law Society Arbitration Scheme, and Aziz Tayabali of Aziz Tayabali & Associates presented on the Law Society Mediation Scheme. WJP and LSS are existing pro bono clients of the firm.

Participating in the roundtable meeting are, far side and from left, Stephanie Chok of HOME, litigation associate Amarjit Kaur (SI), and Gerard Vinluan of WJP. Near side, from left, are Aziz Tayabali of Aziz Tayabali & Associates, Chong Yee Leong of Allen & Gledhill, and litigation associate Thenuga Vijakumar (SI).

Singapore Office Conducts Seminar on Flood Damage, Insurance Issues

Litigation partner Justyn Jagger (SI) and international partner Stephen Cheong (SI) presented a seminar, "Thailand to Texas: Wide-Area Flood Damage and the Critical Insurance Issues," on November 2 in the Singapore office. The event was co-hosted with Gregory Dickerson, president—Asia-Pacific valuation director, and Graham Copland, managing director, of John Foord; and Andreea Ilie, partner at MDD Forensic Accountants. The seminar discussed critical issues arising out of floods and other natural catastrophes, such as the recent Typhoon Hato in southern China, and how the insurance industry and its policyholders should respond. It provided an analysis of property damage and business-interruption policies that respond to weather events on a national scale and the challenges they present to policyholders, brokers, adjusters, insurers, and reinsurers.

HEADLINE MATTERS

Ezion Holdings: Refinancing of Multiple Series of Debt Securities

Morgan Lewis represented Ezion Holdings Ltd. in an exchange offer and consent solicitation launched on October 23 which involved six separate series of debt securities with a total outstanding principal amount of S$575 million ($420 million) issued by Ezion. The refinancing of the existing securities involves (1) choosing to receive either convertible or non-convertible new listed bonds; (2) if convertible bonds are chosen, issuing free warrants if the bonds are converted within six months of their issue; (3) amending the existing terms to allow for payment of existing accrued interest to be paid for in the form of shares in Ezion or new debt evidenced by unlisted note certificates; (4) deleting of financial covenants and amendments to the negative pledge; and (5) waiving any defaults or potential defaults.

The refinancing terms are the most complex and unprecedented in the Singapore-dollar debt capital markets to date. The exchange offer and consent solicitation are part of a wider refinancing exercise being undertaken by Ezion.

The team was led by CBT partner Bernard Lui (SI) and Finance international partner Sin Teck Lim (SI), and supported by Finance partner Justin Yip (SI), with assistance from CBT associates Jorina Chai (SI) and Gabriel Lee (SI).

PPP Clinic Chain Founder: Win in Singapore Court of Appeal

Our client Dr. S.H. Goh, founder of the Asian-based PPP clinic chain, recently won a landmark appeal in Singapore's highest court. A Chinese fund operating out of the Seychelles, Liberty Sky Investments, had sued Dr. Goh over its investment in his PPP clinic chain, alleging misrepresentation and claiming damages of about S$22.6 million. Liberty Sky initially won an unusual discovery order, called a "Bankers Trust order," where Dr. Goh's bank was ordered to disclose his personal financial data, purportedly to trace funds from Dr. Goh's account.

That order was overturned in Singapore's apex court, the Court of Appeal, which unanimously agreed with our arguments that Liberty Sky had failed to establish a prima facie case against Dr. Goh. The court also criticized the manner in which Liberty Sky sought the Bankers Trust order without first serving its application on Dr. Goh. Liberty Sky was ordered to pay S$60,000 in legal costs to Dr. Goh as a consequence. This marked the first time in Singapore that the Court of Appeal has ruled on a Bankers Trust order.

The team was led by litigation partner Adrian Tan (SI), with assistance from litigation associates Pei Ching Ong (SI), Jean Wern Yeoh (SI), Joel Goh (SI), Siok Khoon Lim (SI), and Hari Veluri (SI).

HEADLINE MATTERS

Genting Singapore: $176.4M Unsecured and Unsubordinated Bonds

Morgan Lewis recently served as Singapore counsel for Genting Singapore PLC (GENS) in its issuance, through its Japan branch, of 20 billion Japanese yen ($176.4 million) of its unsecured and unsubordinated Japanese yen-denominated bonds. The proceeds will be used as necessary by GENS's Japan branch for working capital and general corporate purposes. GENS is a leading integrated resorts development specialist listed on the Singapore Exchange, with many years of global gaming expertise and experience in developing, operating, and marketing globally acclaimed casinos and integrated resorts around the world, including in Australia, the Americas, Malaysia, the Philippines, and the United Kingdom. GENS owns the Resorts World at Sentosa, which includes one of only two licensed casinos in Singapore. The company is exploring the liberation of the gambling market in Japan, and this fundraising exercise aims to shore up its war chest in anticipation of an open bid for a casino license in the near future.

The team was led by CBT partner Wai Ming Yap (SI), with assistance from CBT associates Lisa Hui (SI) and Chin Hiang Wu (SI).

Sansiri: Investment in JustGroup Holdings and Hostmaker

Our firm recently represented new client Sansiri Public Company Limited in its "prop tech" investments into JustGroup and Hostmaker.

Sansiri invested $12 million in Singapore-based co-working space chain JustGroup Holdings Pte. Ltd. Proceeds from Sansiri's investment will be utilized for future working capital requirements and expansion of JustGroup's business. JustGroup recently entered into a merger agreement with Naked Hub, which has extensive co-working locations across China, Hong Kong, and Vietnam.

Sansiri was also one of the lead investors in a GBP 11.3 million Series B round into London-based Flying Jamon Ltd, more commonly known by its trade name, Hostmaker. Other investors included Gaw Capital, a Hong Kong –based global hospitality real estate investor, and existing investors DN Capital and Ventech. Hostmaker is an upmarket Airbnb management service and has operations in the United Kingdom, Spain, France, and Italy. Proceeds from the investment will be utilized for growth and expansion of Hostmaker's business.

Sansiri is one of the largest real estate developers in Thailand and, together with the Siam Commercial Bank, launched Thailand's first corporate venture capital fund in February 2017 aimed at investing in property technology start-ups.

The Singapore team comprised IM partner Daniel Yong, IM associate Teng Si Neng and CBT associate Melanie Hong. Support was provided by our colleagues in Shanghai, London, and Paris.

COFFEE WITH . . .

Ulrich Korth

Ulrich Korth is a Morgan Lewis corporate, finance, and investment management international partner.

I have been a partner in the Frankfurt office of Morgan Lewis since February. My main practice areas are private equity, private M&A, and public M&A. Before I joined Morgan Lewis, I worked for another international law firm and have advised on a number of deals for Asian clients, in particular for Chinese clients making acquisitions in Germany.

In my view, Asian investors are very disciplined and sophisticated. I admire their courage to invest in a country whose language they don't speak and whose culture is very different from theirs. For me, working with Asians has always been an exciting and inspiring experience.

In my view, the negotiation strategies of Asian investors are often calm and less direct. What this means for me as an advisor is that it is more important to make the client's points at the right moment. Knowing these differences is clearly an advantage because you will set up the process differently right from the start. Having Asian know-how already integrated in your team is another important factor. When advising Asian clients, I always see significant value in having a team with at least one Asian colleague to ensure a cultural match. Morgan Lewis has a very strong Asian base, which gives us the capability to work with truly international teams on cross-border transactions.

I draw inspiration from Hikaru Nakamura, a great chess player. Nakamura is an American chess grand master with Japanese roots. I admire his uncompromising and intuitive, but always thoughtful style. An M&A deal is always a combination of reason and intuition. My long-standing hobby has also taught me to think ahead, to see the matter from the opponent's point of view, and to keep as many options open for as long as possible. That's true for both chess and M&A deals.

THE LAST WORD

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

A wonderful life in Shanghai

In July 2013, I relocated from Silicon Valley to Shanghai, feeling like I had travelled back 20 years. When seeing and sharing sentiments with my old friends in Shanghai, I wondered where the time had gone. Nevertheless, the skyline of Shanghai looked totally different from the one I first saw in the 1990s. The rice field had become world famous Pudong with beautiful new skyscrapers and landmark buildings. Like many other Chinese cities, Shanghai made me believe that China had created unbelievable opportunities for innovation and intellectual property (IP) protection.

Over the last four years I have visited hundreds of Chinese companies and attended hundreds of conferences in China on e-Commerce, FinTech, telecommunications, social networking, 3D printing, wearable devices, semiconductors, virtual reality, sharing economy technologies, artificial intelligence, robotics, etc. The enthusiasm and inspiring ideas shared by the entrepreneurs and innovators made me feel like I was back in Silicon Valley, but on a much larger scale and more robust. With their unparalleled capacity for innovation and manufacturing, Chinese companies inevitably face many IP issues: how to protect their IP rights, how to minimize their IP risks, and how to resolve IP disputes in the United States.

Very often I would receive a call in the evening from a client thousands of miles away scheduling a meeting for the next morning. I hop on a flight, with simple and always-ready luggage, and arrive in the client's city the next morning to discuss an urgent IP matter. Due to clients' high demands, I have travelled and stayed in hotels for more than 100 nights in the last year. With my team's support and clients' trust, I have helped hundreds of Chinese companies on their IP protection, due diligence, opinions, licensing, and dispute resolution in the United States. It gives me great satisfaction to solve clients' problems.

As China becomes the world's largest manufacturing economy, air pollution has posed a severe challenge, especially during the festive season when thousands of Chinese factories operate 24/7 to make and deliver holiday goods for western consumers, including US consumers. The air quality in many Chinese cities deteriorates rapidly. Travel becomes a privilege — in the air, I can see the blue sky and be bathed in sunlight that I have missed for weeks. Being a US IP attorney in Shanghai is wonderful, isn't it? Luckily, through the Chinese government's regulation efforts, severely polluted days in Shanghai will soon be a distant memory.

It is most rewarding to find that there is an increasing number of Chinese clients that effectively use their IP as a vehicle to help expand their market share, compete in the global market, and neutralize their competitors' IP threats and litigation. I am thrilled to see this new momentum occurring, and am also proud of myself for contributing to that dramatic advance. What a wonderful life in Shanghai!

Shaobin Zhu, Partner, Shanghai

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