Bingham Guide to M&A in Asia

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Note: This Guide does not constitute legal advice. In particular, the sections entitled “Key Issues for M&A Transactions” should not be relied upon. Legal advice should be sought from Bingham and/or local counsel at the time of the transaction.
Bingham’s Capabilities in Asia

In the past year alone, Bingham has been involved in representations for Asian investments in Cambodia, China, Hong Kong, India, Indonesia, Japan, Malaysia, Myanmar, the Philippines, Singapore, South Korea, Sri Lanka, Taiwan, Thailand and Vietnam in addition to our broader emerging markets representations in Latin America, the Middle East and Africa. We excel not only at the initial investment stage, but also where our clients face crises or major disputes regarding their key investments.

Bingham’s capabilities and experience in Asia have been carefully shaped to meet the complex needs of the most sophisticated clients. Our real-world experience in the region provides a competitive edge in solving critical legal problems and helps us to efficiently navigate through business, political and policy matters across multiple countries and jurisdictions. In addition, Bingham’s thoroughly integrated approach provides immediate access to lawyers who are qualified across a range of legal disciplines and continents. This year, Bingham has been at the forefront of a wide range of high-profile matters with top-level clients, including:

**Olympus: Crisis Management:** We represented Olympus Corporation in one of the largest Japanese public company crises. Teams of Bingham lawyers in Tokyo, New York, London and Hong Kong advised on potential delisting and financial, public relations, litigation and corporate governance issues.

**Mitsui: BP Deepwater Horizon:** Following the well-known BP Deepwater Horizon oil spill caused by an explosion in the Gulf Coast, Bingham’s litigation, environmental and corporate lawyers represented and advised a Mitsui subsidiary in dealing with complex high-risk issues and the settlement of claims.

**Bondholders of Suntech, Takefuji and Elpida: Asia’s Largest Work-Outs:** In representing the bondholders of distressed companies such as Suntech, Takefuji and Elpida, Bingham has developed a reputation as one of the most experienced global insolvency firms in Asia and has been at the center of numerous complex restructurings, M&As and spin-offs.

**Global Government Investigations:** Bingham has been a leader in advising confidential clients on the largest global investigations, including LIBOR/TIBOR, automotive parts and the air cargo industry.

Bingham’s leading role in Asia is anchored by the firm’s extensive practice in Tokyo. Our Tokyo office is one of the three largest international law offices in Japan providing a full range of business law services, including cross-border financial restructuring, mergers and acquisitions, finance, financial regulatory, investment funds, securities, antitrust and trade regulation, intellectual property, employment, energy, infrastructure, mining, real estate, and commercial litigation.
The globalization of financial and corporate markets led Bingham to Hong Kong. Our lawyers in our Hong Kong office (who are qualified in five jurisdictions, including Hong Kong, England and Wales, the United States, Australia, and Ireland) have extensive experience in financial restructuring and distressed debt, corporate mergers and acquisitions, investment funds, structured finance, securities listings, litigation, and international arbitration matters. Demonstrating Bingham’s commitment to sustained growth in the world's most dynamic market, Bingham opened its third Asian location in Beijing staffed by Chinese and U.S. lawyers together with consultants in our affiliated strategic consulting business, Bingham Consulting. Our lawyers in Beijing focus on mergers, acquisitions and joint ventures, investment funds, cross-border financial restructuring, and complex IP and commercial technology transactions, including life science matters.

Operating from our integrated Asian platform, our lawyers regularly advise clients on transactions throughout the Asia-Pacific region, including Bangladesh, Cambodia, China, Hong Kong, India, Indonesia, Japan, Laos, Malaysia, Myanmar (Burma), the Philippines, Singapore, South Korea, Sri Lanka, Taiwan, Thailand and Vietnam. Our corporate/M&A practice principally advises corporations, trading firms, hedge funds, investment funds, banks, technology ventures and insurance companies. Beyond Asia, Bingham assists clients with transactions and investments in North and South America, Africa, and Europe. Bingham helps connect clients and their businesses to opportunities that span cultures and continents. From planning to execution, we anticipate clients’ needs and respond creatively as we define the key issues and develop practical solutions to the most challenging matters.

Our teams consists of Asian nationals who are fluent in Chinese (including Mandarin and Cantonese) and Japanese and who are familiar with the law, culture and institutions of the region. Many clients turn to Bingham for advice regarding prevailing business practices and cultural norms in negotiations with Asian companies.

To better serve the needs of our clients, we also understand the importance of organizing and cultivating the firm’s relationships with the top regional law firms in Asia (in many cases, these relationships go back decades). We are continually developing new relationships as the dynamic legal landscape in the region undergoes change.

This guide begins by providing an overview of Bingham’s Asia M&A leadership team followed by a profile of each country in the region where we represent clients. Each profile contains a short descriptive history of the country with a briefing on political and economic issues, together with a summary of Bingham’s work in the country, both recent and historical.

The breadth of the firm’s experience in Asia and the depth of our contacts there are extensive. This guide provides a catalog of our firm’s experience, and we hope it will be useful in highlighting our capabilities across the region.

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July 2013
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For centuries China stood as a leading civilization, outpacing the rest of the world in the arts and sciences, but in the 19th and early 20th centuries, the country was beset by civil unrest, major famines, military defeats and foreign occupation. After World War II, the Communist Party under Mao Zedong established a centralized socialist system that, while ensuring China's sovereignty, imposed strict controls over everyday life and economic activity. After 1978, Mao's successor, Deng Xiaoping, and other leaders focused on market-oriented economic development, and by 2000 China's output had quadrupled. For much of the population, living standards have improved dramatically, and the room for entrepreneurial activity has expanded, yet political controls remain tight. Since the early 1990s, China has increased its global outreach and participation in international organizations. China has implemented reforms in a gradualist fashion. Reforms began with the phasing out of collectivized agriculture and expanded to include the gradual liberalization of prices, fiscal decentralization, increased autonomy for state enterprises, creation of a diversified banking system, development of stock markets, rapid growth of the private sector, and opening to foreign trade and investment. In recent years, China has renewed its support for state-owned enterprises in sectors it considers important to “economic security,” explicitly looking to foster globally competitive national champions. After keeping its currency tightly linked to the U.S. dollar for years, in July 2005, China revalued its currency by 2.1 percent against the U.S. dollar and moved to an exchange rate system that references a basket of currencies. From mid-2005 to late 2008, cumulative appreciation of the renminbi against the U.S. dollar was more than 20 percent, but the exchange rate remained virtually pegged to the dollar from the onset of the global financial crisis until June 2010, when Beijing allowed resumption of a gradual appreciation.

The restructuring of the economy and resulting efficiency gains have contributed to a more than tenfold increase in GDP since 1978. Measured on a purchasing power parity
(PPP) basis that adjusts for price differences, China in 2010 stood as the second-largest economy in the world after the U.S. The dollar values of China’s agricultural and industrial output each exceed those of the U.S. China is second to the U.S. in the value of services it produces. However, per capita income is below the world average.

The Chinese government faces numerous economic challenges, including: (a) reducing its high domestic savings rate and correspondingly low domestic demand; (b) sustaining adequate job growth for tens of millions of internal migrants and new entrants to the workforce; (c) reducing corruption and other economic crimes; (d) a rapidly aging population; and (e) containing environmental damage and social strife related to the economy’s rapid transformation. Economic development has progressed further in coastal provinces than in the interior, and by 2011, more than 250 million migrant workers and their dependents had relocated to urban areas to find work. The Chinese government is seeking to add energy production capacity from sources other than coal and oil, focusing on nuclear and alternative energy development. In 2010–2011, China faced high inflation resulting largely from its credit-fueled stimulus program. Some tightening measures appear to have controlled inflation, but GDP growth consequently slowed to near 9 percent for 2011 and near 8 percent for 2012. Debt overhang from the stimulus program, particularly among local governments, and a property price bubble challenge policy makers. The government’s 12th Five-Year Plan, adopted in March 2011, emphasizes continued economic reforms and the need to increase domestic consumption in order to make the economy less dependent on exports in the future. To date, China has made only marginal progress toward these rebalancing goals. With its new leadership only just taking the reins of government, and while hopes for continued reform run high, the pace of change remains unclear.

**KEY ISSUES FOR M&A TRANSACTIONS IN CHINA**

**Foreign Ownership of Companies:** China’s Foreign Investment Catalogue sets out “Encouraged,” “Restricted” and “Prohibited” industry sectors. Any industry sector not listed in the Catalogue is deemed to be a “Permitted” sector. The Catalogue also specifies whether 100 percent foreign ownership is allowed in each sector, but the permitted ownership percentage for particular industries may be further regulated or modified by other laws and governmental regulations. In general, 100 percent foreign ownership is allowed in most of the Encouraged sectors and all Permitted sectors, while a Chinese partner will be required in a significant portion of the Restricted sectors, and no foreign investment is allowed in any Prohibited sector. An English version of the Catalogue may be found at: http://www.izvoznookno.si/Dokumenti/AKTUALNO/2012/InvestmentCatalogue2012UnofficialEnglishVersion.pdf

In addition to these restrictions, all foreign investments in China are subject to approval and filing procedures typically with the Ministry of Commerce (or its local offices), the National Development and Reform Commission (or its local office), the State Administration for Industry and Commerce (or its local office), and the competent local office of State Administration of Foreign Exchange (“SAFE”). Foreign investments in some industries are subject to additional restrictions, special approval and registration requirements mainly aiming to protect local businesses or national security.

China also implements a foreign exchange control system where SAFE is responsible for management and supervision of foreign exchange-related issues. In general, any cross-
border cash flow in respect of capital accounts (as opposed to cash flow for cross-border trade, services or other similar transactions) is subject to approval or registration with the competent local offices of SAFE.

Land: In China all land is owned by the state and collective economic organizations (i.e., villages), and a private corporation can only obtain a land use right (“LUR”). Foreign invested enterprises wishing to use lands can obtain LURs by grant from the government owner or by transfer of LURs from current LURs owner.

A term will be designated for each specific LUR, typically between 40 to 70 years mainly depending on the purpose of the LUR (e.g., industrial purpose, residential purpose, etc.). Technically, upon expiration of the term for a LUR, the government owner is entitled to take back the LUR for free. However, how to deal with expired LURs is a fundamental political issue, and the Chinese government’s attitude is not clear. We are not aware that any LUR owned by a foreign invested enterprise has been taken back by the Chinese government solely because the LUR’s term expired.

There are other requirements and conditions for obtaining and using LURs. In practice, it may take between six and 18 months for a private corporation (including a foreign invested enterprise) to obtain a LUR from the local authorities.

Security Package: Subject to certain exceptions, the security package in China can cover almost all properties (other than land) that can typically be granted as collateral under Western law, including buildings, machines, transportation vehicles, products, securities, IP rights, equity interests and shares. LURs can also be used as collateral. For certain types of collateral, registration is necessary to create the security interest (e.g., a mortgage over LURs or buildings) or to perfect the priority of the security interest (e.g., mortgage over transportation vehicles).

If a foreign invested enterprise is involved in a secured transaction, additional requirements and approvals or registration procedures may apply, mainly depending on the nationality of the parties to the transaction (e.g., lender, borrower, security provider, etc.).

Foreign Arbitration/Court Judgments: In general, China recognizes that a contract involving a foreign entity or with other foreign elements can be governed by non-PRC law. Only limited types of contracts (notably, Sino-foreign joint venture contracts) must be governed by PRC law. Local authorities, sometimes (but not frequently), “recommend” that contracting parties choose a PRC court or a PRC arbitration organization (e.g., CIETAC) to resolve disputes arising from or related to such special contracts.

In the event that a PRC entity (including a foreign invested enterprise) fails to perform its obligation under a contract and the counterparty intends to enforce the contract or seek damages within China, the counterparty must obtain a court judgment or an arbitral award and then apply to a PRC court to enforce the judgment or award. Optimistically, it can take approximately six months to obtain a judgment from a PRC court and an additional six months to go through the court enforcement procedure.

It is very difficult to enforce a foreign judgment within China if the country of the foreign judgment has not executed a treaty on mutual legal assistance in civil or commercial matters with China. Neither Japan nor the U.S. has signed such a treaty with China.
On the other hand, a foreign arbitral award rendered in a foreign jurisdiction that has acceded to the *Convention on the Recognition and Enforcement of Foreign Arbitral Awards* (the “New York Convention”) is enforceable in China. Japan and the U.S. have both acceded to the New York Convention.

**Government Issues:** Foreign investors need to seek approvals from relevant PRC authorities for their investments in China, regardless of whether they make greenfield investments or engage in M&A. Certain types of businesses are subject to additional permits and licenses.

It takes time to complete the relevant procedures in practice, and the timing may vary significantly, primarily depending on the location, industry and size of the investment project. Optimistically, it may take two to three months to complete relevant approvals and filing procedures for establishment of a small- or-mid-sized foreign invested enterprise to be engaged in encouraged or permitted industries in Beijing.

China has also recently enacted a national security review law and process that can be relevant to investments by foreign investors. MOFCOM will take the lead in a national security review. To our knowledge, as of December 2012, no actual case has been subject to review by MOFCOM under this new national security review regime.

**Antitrust: MOFCOM:** Under the PRC Anti-Monopoly Law, mergers and acquisitions are supervised by MOFCOM, and relevant enterprises must seek pre-acquisition approvals from MOFCOM if the turnover of the parties to the anticipated transaction exceeds certain thresholds. Under the PRC Anti-Monopoly Law, an acquisition outside China may also be subject to anti-monopoly review by MOFCOM if the transaction is deemed to have the effect of eliminating or restricting competition in the domestic market of China.

MOFCOM’s review process is currently taking at least six months. Through November 2012, approximately 400 deals had been filed with MOFCOM for their antimonopoly review, and fewer than 20 deals had been rejected or approved with conditions.

Agreements among (or between) enterprises (including foreign invested enterprises) or other organizations to eliminate or restrict competition are prohibited. The State Administration for Industry and Commerce (and its local office) is responsible for supervising and managing issues related to monopolistic agreements.

Overseas clients are experiencing long delays in receiving required antitrust approvals. Although technically the review periods are similar to other overseas antitrust authorities, they are being extended by MOFCOM in two ways. First, MOFCOM is refusing to accept applications until it considers all documentation to be complete, and now there is an unofficial “Pre-Acceptance Period.” Second, all applications are being pushed into the Phase 2 Review (with almost no Phase 1 Review approvals being issued). As of December 2012, the position was as follows:

- **Pre-Acceptance Period:** 8 weeks (but sometimes as much as 12 weeks)
- **Phase 1 Review:** 30 days
- **Phase 2 Review:** 90 days
- **Extra Time for Phase 2 Review:** 60 days

There are two key reasons for the delays. First, MOFCOM is understaffed. Second, the Phase 2 review requires MOFCOM to seek opinions from other government agencies,
and this is a very time-consuming process. In practice, all cases are going through to a Phase 2 Review. Consequently, clients should be advised that the MOFCOM process is currently taking at least six months and that there is very little chance of the process being concluded more quickly.

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**CHINA-RELATED TRANSACTIONS BY BINGHAM LAWYERS**

**M&A**

**Azores Corporation:** Advised in connection with a joint venture in the PRC.

**Bell Net Corporation:** Acted as the bankruptcy trustee of a Japanese parent company in selling its PRC subsidiary and negotiating with its employees.

**China Central Properties/Shui On Group:** Advised China Central Properties/Shui On Group, an AIM-quoted Chinese real estate business, on the privatization by way of takeover offer and bond restructuring.

**China Investment Fund:** Advised in connection with a joint venture with a U.S. fund to organize offshore funds to make investments in Asia.

**China M&A:** Advised a listed Hong Kong company on its sale of real estate in Shanghai to a Korean-based fund.

**China Private Equity:** Advised investors on private equity matters in China, including offshore structuring and tax advice.

**Elcoteq SE:** Advised Finnish contract manufacturer in a potential US$100 million acquisition of a PRC and U.S.-based mobile telephone design company.

**Emergent Biosolutions, Inc:** Advised a NYSE-listed biopharmaceutical company in a joint venture with a PRC biopharmaceutical company.

**Japanese Public Company:** Represented a client in connection with the acquisition of a medical device manufacturer in the PRC and its holding company in Hong Kong.

**Japanese Trading Company:** Advised in relation to a joint venture for the production of automotive parts in the PRC.

**Japanese Trading Company:** Advised on our client’s bid for several upstream oil and gas assets in mainland China.

PRC Venture Partners: Represented a client in their formation of a joint venture to invest in the PRC.

Private Equity Fund: Represented a private equity fund with investors from Japan, China, the Philippines and the U.S. in making investments in Pacific-Rim countries.

Sumitomo Precision Products: Advised on our client's acquisition of Aviza Technology Inc, which has offices in China, Malaysia, Singapore and Taiwan.

Telecoms Company: Advised on a tender for a strategic alliance with China Mobile to include a US$1.5 billion subscription.

ZTE Corporation: Advised on our client's bid to build the Sprint 4G network.

Non-M&A


China Construction Bank: Advised the third largest bank in China on the Japanese aspects of its reorganization and HK$71.5 billion (US$9.2 billion) H Share listing on the Hong Kong Stock Exchange, the largest IPO worldwide in four years and the largest ever in Hong Kong at the date of listing. The transaction was also innovative as all the shares are tradeable, including those that are state-owned. With this listing, CCB became the third-largest bank in Asia by market capitalization.

China State-Owned Enterprise: Advised the investor making a minority investment in a U.S. infrastructure company servicing the telecom sector.

Chinese Food Processing Group: Advised the investor in a proposed convertible bond issue.

Chinese Food Manufacturer: Advised a major investment bank in its capacity as a shareholder of a distressed PRC food manufacturer.

Creat Group: Advised the Nomad and broker on the equity refinancing of Creat Resources Holdings and its related acquisition of a significant stake in Galaxy Resources in Australia.

Danone Asia: Advised Groupe Danone in a major suit against parties affiliated with its PRC joint venture partner alleging misuse of Danone proprietary information and other commercial wrongdoing.

DLB Capital: Represented the lead investor in Series B Preferred Share financing of PRC Rick Finance, a credit card service provider in the PRC. This transaction was named Private Equity International (PEI) Asia Venture Deal of the Year.
**DLB Capital:** Represented the lead investor in Series A Preferred Share financing of Shanghai Harvest Network Technology Co. Ltd., a leading distributor of prepaid mobile phone cards in the PRC.

**Global Hedge Fund:** Advised a global hedge fund in respect of PRC credit investment transactions.

**Golden Meditech:** Advised an investor on a convertible bond issued by a leading healthcare company in the PRC.

**Guangdong Food Industry Institute:** Acted for a client in patent infringement lawsuits brought by Tate & Lyle.

**Hong Kong-Listed Company:** Advised a Hong Kong-listed company in respect of the sale of real estate in Shanghai to a Korean-based fund.

**International Hedge Fund:** Advised the private equity investment/set up of business in the PRC, including issues in relation to the offshore business structure and tax.

**International Private Equity/Hedge Funds:** Advised investors on private equity matters in China, including offshore structuring and tax advice and advising on investments in distressed Chinese firms.

**Legend Group:** Advised in connection with US$160 million of senior notes issued by an investment company with interests in computer manufacturing, Internet services and startup companies in China.

**Lenovo:** Advised Lenovo, the largest PC company in the PRC, in a U.S. preference action arising out of Lenovo’s acquisition of ChinaWeal, another PRC company.

**Major International Fund:** Advised an investor on its debt and equity-like financings of significant PRC real estate development projects.

**Owl Creek Funds:** Advised in the acquisition of an equity interest in a confidential Mainland Chinese group.

**Pacific Life:** Advised Pacific Life in connection with its trading agreements with a series of companies in the PRC.

**Ring Back Tone Holdings:** Advised on a PRC mobile telephone technology license agreement.

**SimDesk Technologies, Inc.:** Advised this U.S. technology startup in relation to the protection of its IP and IT know-how and investment in China.

**State-Owned Enterprise:** Advised a state-owned enterprise regarding U.S. securities regulatory matters.

**TMNG:** Advised a U.S. public company on entering the PRC and Hong Kong markets.
Occupied by the U.K. in 1841, Hong Kong was formally ceded by China the following year; various adjacent lands were added later in the 19th century. Pursuant to an agreement signed by China and the U.K. on Dec. 19 1984, Hong Kong became the Hong Kong Special Administrative Region (SAR) of the People's Republic of China on July 1, 1997. In this agreement, China promised that, under its “one country, two systems” formula, China’s socialist economic system would not be imposed on Hong Kong and that Hong Kong would enjoy a high degree of autonomy in all matters except foreign and defense affairs for the next 50 years.

Hong Kong has a free market economy, highly dependent on international trade and finance — the value of goods and services trade, including the sizable share of re-exports, is about four times GDP. Hong Kong’s open economy left it exposed to the global economic slowdown that began in 2008. Although increasing integration with China through trade, tourism and financial links helped it to make an initial recovery more quickly than many observers anticipated, it again faces a possible slowdown as exports to the Euro zone and U.S. slump. The Hong Kong government is promoting the Special Administrative Region (SAR) as the site for Chinese renminbi (RMB) internationalization. Hong Kong residents are allowed to establish RMB-denominated savings accounts; RMB-denominated corporate and Chinese government bonds have been issued in Hong Kong; and RMB trade settlement is allowed. The territory far exceeded the RMB conversion quota set by Beijing for trade settlements in 2010 due to the growth of earnings from exports to the mainland. RMB deposits grew to roughly 7.8 percent of total system deposits in Hong Kong by the end of 2011, an increase of more than 59 percent since the beginning of the year. The government is pursuing efforts to introduce additional use of RMB in Hong Kong financial markets and is seeking to expand the RMB quota. The mainland has long been Hong Kong’s largest trading partner, accounting for about half of Hong Kong’s exports by value. Hong Kong’s natural
resources are limited, and food and raw materials must be imported. As a result of China’s easing of travel restrictions, the number of mainland tourists to the territory has surged from 4.5 million in 2001 to 28 million in 2011, outnumbering visitors from all other countries combined. Hong Kong has also established itself as the premier stock market for Chinese firms seeking to list abroad. In 2011, mainland Chinese companies constituted about 43 percent of the firms listed on the Hong Kong Stock Exchange and accounted for about 56 percent of the Exchange’s market capitalization. During the past decade, as Hong Kong’s manufacturing industry moved to the mainland, its service industry has grown rapidly. Growth slowed to 5 percent in 2011. Credit expansion and tight housing supply conditions caused Hong Kong property prices to rise rapidly in 2010 and inflation to rise 5.3 percent in 2011. Lower and middle income segments of the population are increasingly unable to afford adequate housing. Hong Kong continues to link its currency closely to the U.S. dollar, maintaining an arrangement established in 1983.

**KEY ISSUES FOR M&A TRANSACTIONS IN HONG KONG**

**Foreign Ownership of Companies:** In general, there are no restrictions on foreign ownership of shares and/or assets of Hong Kong companies. However, regulatory approval may be required for a change of control in a Hong Kong company in certain industries. For example:

- Approval from the Securities and Futures Commission is required for a person/entity to become a “substantial shareholder” of a licensed corporation.

- Approval from the Monetary Authority is required for a person/entity to become a “majority shareholder controller” or a “minority shareholder controller” of an authorized financial institution.

- Approval from the Insurance Authority is required for a person/entity to become a “shareholder controller” of an authorized insurer.

- It is common (but not required) to obtain the consent from the Communications Authority prior to a change of control of a telecommunications network carrier licensee.

- Approval from the Broadcasting Authority is required for a person/entity that is not ordinarily resident in Hong Kong to control the voting rights of a television licensee.

**Land:** All land in Hong Kong is held from the government under leases for terms up to a maximum of 999 years. In general, there are no restrictions on the ownership of land by individuals or corporations, whether domestic or foreign.

**Security Package:** In Hong Kong, security interests can be taken in respect of all forms of assets and interests, whether tangible or not. Security created by a Hong Kong company over its assets must be registered at the Companies Registry, otherwise the security will be rendered void against other creditors and any appointed liquidator.

**Foreign Arbitration/Court Judgments:** Foreign court judgments are enforceable in Hong Kong under (i) the Foreign Judgments (Reciprocal Enforcement) Ordinance (“FJREO”), which mandatorily applies to judgments given by the courts in a small number of
countries, and (ii) common law, which applies to judgments given by the courts in all other jurisdictions to which the FJREO does not apply. Under the Arbitration Ordinance, foreign arbitral awards will be enforceable in the same manner as a Hong Kong court order, and Hong Kong courts have limited grounds to refuse enforcement of a foreign arbitral award.

**Government Issues:** There is minimal regulation of M&A activities in Hong Kong, especially in relation to private companies. Where listed companies are involved, there is usually greater regulatory interference, most notably through the Securities & Futures Commission and the Hong Kong Stock Exchange, pursuant to The Code on Takeovers and Mergers and Share Repurchases and the Rules of the Stock Exchange of Hong Kong Limited.

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**TRANSACTIONS BY BINGHAM LAWYERS IN HONG KONG**

**M&A**

**Gottex Fund Management:** Advised on the acquisition of Penching Asset Management in Hong Kong.

**Grandtop International Holdings:** Advised Grandtop International Holdings, a Hong Kong-listed company investor, as it gained control by way of a public takeover of U.K.-based Birmingham City Plc, the parent company of the Birmingham City Football Club.

**HKSE-Listed Companies:** Advised the active investors in respect of announced M&A transactions to facilitate their active trading strategies.

**Hong Kong M&A:** Advised a fund manager in Hong Kong in respect of the acquisition of a SFC-registered fund of funds.

**Hong Kong-Based Majority Stockholder:** Represented our client in the sale of shares to a U.S.-based optical retail chain. The sale process was an auction between a U.S. company and an Italian company, with the U.S.-based company ultimately being the successful bidder.
Medical Device Sector: Advised a Hong Kong-based fund on its pre-IPO equity investment.

Pacific Alliance China Land Limited: Advised the Nomad and broker on the US$400 million equity fundraising and flotation on the AIM of Pacific Alliance China Land Limited.

Television Network: Advised a U.S. company investing in a joint venture to develop sports leagues in China, Taiwan, Hong Kong and Macau.

Non-M&A

Asian Citrus Holdings: Advised Asian Citrus Holdings, a HKSE and AIM dual-listed company, on the English law aspects of its US$200 million equity financing.

Barclays Bank: Advised on the offering and obtaining from the SFC the approval of a multi-currency denominated Hong Kong retail structured global fund.

BFAM Partners (Hong Kong) Ltd. and BFAM Asia Opportunities Fund Limited: Advised on the establishment of a number of funds and managed account. BFAM is expected to be one of the largest fund launches in Asia in 2012.

Chuo Mitsui Capital Company Limited: Advised on the preparation of a charge over accounts and a Hong Kong legal opinion.

CEC International Holdings Limited: Advised on the issue of scrip dividends to a Japanese shareholder by a Hong Kong listed company.

Greenpower Health Food: Acted for a client in a Hong Kong interference case before the PTO.

Hedge Fund: Advised a hedge fund in respect of the disposal of convertible and straight equity positions in an AIM-quoted Hong Kong/PRC business.

Hong Kong Financings: Advised various major U.S. financial institutions with respect to taking debt financing security from Asian groups based in Hong Kong.

International Hedge Fund: Advised in respect of convertible and straight equity positions in an AIM-quoted Hong Kong/PRC business.

ISDA: Advised an international investment fund on the Asia ISDA legal subcommittees dealing with determinations of Succession Event matters.

Japan Electronics & Information Technology Industries Association (JEITA): Advised a Japanese electronics body on registration of its members’ company names and trademarks, assisting JEITA in negotiations with the Japanese and Hong Kong SAR governments (including members such as Sanyo Electric, Toshiba, Hitachi, Mitsubishi Electric and Sharp).
Lehman Brothers Asia: Advised distressed debt investors in relation to due diligence services in connection with the acquisition of the debt of certain Lehman Brothers Hong Kong entities.

NGK Insulators Limited: Advised in relation to suspension insulator contracts with a Hong Kong counterparty.

Subscriber to China Gas Convertible Bonds: Advised the subscriber on the issuance of convertible bonds by China Gas to be listed in Hong Kong.

The Bank of New York Mellon: Acted as agent under the pre-IPO RMB100 million (US$15.76 million) convertible bonds issued by a Hong Kong company, the first-ever issuance of convertible bonds in the offshore RMB market.

Yorkville Advisors: Advised an international investment fund in structuring an equity line facility with Zhongda International Holdings Ltd., a HKSE Main Board-listed company specializing in automobile manufacturing and distribution in the PRC and across Asia from India.
The Indus Valley civilization, one of the world’s oldest, flourished during the 3rd and 2nd millennia B.C. and extended into northwestern India. The Maurya Empire of the 4th and 3rd centuries B.C. — which reached its zenith under ASHOKA — united much of South Asia. The Golden Age ushered in by the Gupta dynasty (4th to 6th centuries A.D.) saw a flowering of Indian science, art and culture. Islam spread across the subcontinent over a period of 700 years. In the early 16th century, the Emperor BABUR established the Mughal Dynasty, which ruled India for more than three centuries. European explorers began establishing footholds in India during the 16th century. By the 19th century, Great Britain had become the dominant political power on the subcontinent. Nonviolent resistance to British rule, led by Mohandas GANDHI and Jawaharlal NEHRU, eventually brought about independence in 1947. Communal violence led to the subcontinent’s bloody partition, which resulted in the creation of two separate states, India and Pakistan. The two countries have fought three wars since independence, the last of which in 1971 resulted in East Pakistan becoming the separate nation of Bangladesh. In January 2011, India assumed a nonpermanent seat in the UN Security Council for the 2011–2012 term. Despite pressing problems such as significant overpopulation, environmental degradation, extensive poverty and widespread corruption, rapid economic development is fueling India’s rise on the world stage.

India is developing into an open-market economy, yet traces of its past autarkic policies remain. Economic liberalization, including industrial deregulation, privatization of state-owned enterprises, and reduced controls on foreign trade and investment, began in the early 1990s and has served to accelerate the country’s growth, which has
averaged more than 7 percent per year since 1997. India’s diverse economy encompasses traditional village farming, modern agriculture, handicrafts, a wide range of modern industries and a multitude of services. Slightly more than half of the workforce is in agriculture, but services are the major source of economic growth, accounting for more than half of India’s output, with only one-third of its labor force. India has capitalized on its large educated English-speaking population to become a major exporter of information technology services and software workers. In 2010, the Indian economy rebounded robustly from the global financial crisis — in large part because of strong domestic demand — and growth exceeded 8 percent year-on-year in real terms. However, India’s economic growth in 2011 slowed because of persistently high inflation and interest rates and little progress on economic reforms. High international crude prices have exacerbated the government’s fuel subsidy expenditures contributing to a higher fiscal deficit and a worsening current account deficit. Little economic reform took place in 2011 largely due to corruption scandals that have slowed legislative work. India’s medium-term growth outlook is positive due to a young population and corresponding low dependency ratio, healthy savings and investment rates, and increasing integration into the global economy. India has many long-term challenges that it has not yet fully addressed, including widespread poverty, inadequate physical and social infrastructure, limited non-agricultural employment opportunities, scarce access to quality basic and higher education, and accommodating rural-to-urban migration.

KEY ISSUES FOR M&A TRANSACTIONS IN INDIA

Foreign Ownership of Companies: This varies from sector to sector, and so the Indian Foreign Direct Investment Policy should be checked at the time of the proposed investment. Manufacturing is the major exception where 100 percent is allowed.

Tax Structuring: It is often beneficial to make an investment in India by using a Singaporean company due to the benefits of the India: Singapore Tax Treaty, which exempts capital gains tax at the time of sale of shares in an Indian company (provided that the Singaporean entity is operative and has expenses of US$200,000 per year). Tax structuring should also be carefully considered when an Indian company issues preference shares or debentures as Indian tax law provides that the return on such investments is treated differently from equity shares.

Government Issues: India has a federal structure, and so laws on employment, land acquisition and tax vary from state to state.

Court Process: The court process in India is very slow. It is preferable for agreements to be subject to arbitration outside of India. The SIAC Arbitration Rules are a popular choice, and Singapore is often chosen as the seat of the arbitration.

Antitrust: Competition Act 2002: Merger filing is mandatory when “asset value” or “sales value” thresholds are triggered at enterprise or group level.

Joint Venture Partners: It is very important to investigate and verify the history of joint venture partners (including their political affiliations).
TRANSACTIONS IN INDIA BY BINGHAM LAWYERS

Bingham has many lawyers fluent in Hindi and of Indian background who provide strategic business advice based on their knowledge of the complex business environment.

**M&A**

*Acme Telepower:* Advised on its acquisition of assets in the U.S. and Canada.

*Harris Stratex Networks, Inc.:* Advised in its acquisition of Telsima Corporation, a leading developer and provider of WiMAX Forum Certified(TM) products, for use in next-generation broadband wireless networks.

*Indian Entertainment Company:* Advised on its investment in and restructuring of a Korean gaming company, including the creation of a new distribution company for the Japan market and related advice.

*Japanese Trading Company:* Advised on the acquisition of shares in a company holding a stake in a listed Indian company.

*Pre-Petition Agent:* Advised in their Chapter 11 involving asset dispositions by a liquidating debtor of Allied Digital, a major multimedia software products company in India.

*Tata Communications:* Advised India's leading provider of international telecommunications and Internet services on the Japanese aspects of its US$239 million acquisition of Teleglobe International Holdings, an international telecommunications provider listed on the NASDAQ.

*The Investors on Submissions to SEBI:* Advised in connection with a mandatory takeover of an Indian company.

**Non-M&A**

*CX Capital Partners:* Acted as lead counsel to a market-leading Indian private equity team in the launching of a fund. The fund was one of the largest closed private fund closings in India in 2010.

*CX Capital Partners Fund I Ltd.:* Advised on the formation of an Indian private equity fund managed by the former head of Indian private equity for Citi Venture Capital, Inc.
Hong Kong-Based International Hedge Fund: Advised in the restructuring of US$180 million of FCCBs issued by an Indian-based company and involved negotiations with relevant Indian regulators, including the Reserve Bank of India.

ICICI: Assisted the asset management division of one of India’s largest financial institutions in the launch of one of the first U.S. mutual funds to invest in India and to be managed by an Indian adviser in India. Bingham represented the adviser, drawing on the resources of our lawyers with registered fund and private fund experience.

India Capital Fund Ltd/India Institutional Fund Ltd: Served as U.S. counsel to the fund and investment manager for this special situations Indian fund managed by India Capital Management Ltd.

India Optima Fund: Advised on different investment strategies by issuing different classes of shares to take account of liquidity, fees and other terms of the fund.

India 2020 Fund I Limited: Assisted Lighthouse Funds, a private equity boutique in launching a fund to invest in small and midsized enterprises in India.

India 2020 Fund II Limited: Organized a second fund managed by Lighthouse Funds, a private equity boutique.

Indivision India Partners: Advised on the formation of an Indian private equity fund to invest in consumer sectors.

IndoSpace Logistics Parks Limited: Advised on a Mauritius-based private equity fund that focuses on warehouse and related facilities in India; the fund is one on the first to focus on a market niche that is expected to play a critical role in India’s growth.

Indus Hotel Ventures LLC: Advised on a fund jointly sponsored by Och Ziff and Future Capital, an Indian financial firm affiliated with Pantaloon Retail India Ltd. The fund invests in hotels and other hospitality-related projects in India.

Investors on Submissions to SEBI: Advised in connection with a mandatory takeover of an Indian company.

Japanese Trading Company: Advised in relation to taking security interests over trademarks to be taken in Thailand, Indonesia, Vietnam and India.

Lead investor: Advised on restructuring solutions for distressed foreign currency convertible bonds of Indian distressed bonds.

MBIA and Assured Guaranty: Advised on the multibillion-dollar financial restructuring of a major US-based, Indian-owned gaming facility.

Samara Capital Partners Fund I Limited: Advised on a Mauritius-based private equity fund that invests in small Indian companies. The fund is managed by a former manager of Indian venture investments for Citi Venture Capital, Inc. and invests in companies that have the potential to undergo quick transformation in terms of earnings growth.
**Toshiba**: Advised on its renegotiation of a supply contract with a Tata Group company for the 4000MW Ultra Mega Power Project in India (one of the first of its kind).
The Dutch began to colonize Indonesia in the early 17th century; Japan occupied the islands from 1942 to 1945. Indonesia declared its independence after Japan’s surrender, but it required four years of intermittent negotiations, recurring hostilities and UN mediation before the Netherlands agreed to transfer sovereignty in 1949. After decades of repressive rule, free and fair legislative elections took place in 1999. Indonesia is now the world’s third most populous democracy, the world’s largest archipelagic state and home to the world’s largest Muslim population. Current issues include: alleviating poverty, improving education, preventing terrorism, consolidating democracy after four decades of authoritarianism, implementing economic and financial reforms, stemming corruption, reforming the criminal justice system, holding the military and police accountable for human rights violations, addressing climate change, and controlling infectious diseases, particularly those of global and regional importance. In 2005, Indonesia reached a historic peace agreement with armed separatists in Aceh, which led to democratic elections in Aceh in December 2006. Indonesia continues to face low intensity armed resistance by the separatist Free Papua Movement.

Indonesia, a vast polyglot nation, grew an estimated 6.1 percent and 6.4 percent in 2010 and 2011, respectively. The government made economic advances under the first administration of President YUDHOYONO (2004–2009), introducing significant reforms in the financial sector, including tax and customs reforms, the use of Treasury bills, and capital market development and supervision. During the global financial crisis, Indonesia outperformed its regional neighbors and joined China and India as the only G20 members posting growth in 2009. The government has promoted fiscally conservative policies, resulting in a debt-to-GDP ratio of less than 25 percent, a small current account surplus, a fiscal deficit below 2 percent, and historically low rates of inflation. Fitch and Moody’s upgraded Indonesia’s credit rating to investment grade in
December 2011. Indonesia still struggles with poverty and unemployment, inadequate infrastructure, corruption, a complex regulatory environment, and unequal resource distribution among regions. The government in 2012 faces the ongoing challenge of improving Indonesia’s insufficient infrastructure to remove impediments to economic growth, labor unrest over wages and reducing its fuel subsidy program in the face of rising oil prices.

**KEY ISSUES FOR M&A TRANSACTIONS IN INDONESIA**

**Foreign Ownership of Companies:** The Indonesian Investment Coordination Board (“BKPM”) publishes a Negative List, which sets out the industry sectors where there are restrictions on the foreign ownership of companies. Following the signing of the Cooperation Agreement between Japan and Indonesia in 2008, BKPM now has an office in Tokyo.

**Land:** Foreign ownership of land is restricted. Foreigners can take leases of land in certain areas.

**Foreign Arbitration/Court Judgments:** Enforcement of contracts is unreliable whether in arbitration or litigation. This is a major challenge for Indonesia as it seeks to progress from G16 status to G10 status.

**Government Issues:** Since 1998, a regional autonomy law gave more power to regional government, which can be frustrating to foreign investors in negotiations for government approvals. This can delay transactions and also add execution risk after signing the contract (but before closing).

- Unreliability of contract enforcement (whether in litigation or arbitration) remains a key one. This is a major challenge for Indonesia’s progression to G10 status in the coming decade. It is now G16.
- Lack of sophistication in the company law system means that structuring possibilities are limited.
- Old fashioned bureaucrats who do not try to facilitate business, and the need for many government approvals can often be a problem, delaying transactions and adding execution risk.

**TOP M&A LAW FIRMS IN INDONESIA**

*Ali Budiardjo, Nugroho, Reksodiputro*

*Hiswara Bunjamin & Tandjung*

*Hadjiputra, Hadinoto & Partners*

**TRANSACTIONS IN INDONESIA BY BINGHAM LAWYERS**

*Asia Pulp and Paper:* Advising an international bondholders committee on the financial restructuring of this Pan-Asian paper company.
Bakrieland: Advising a significant purchaser of convertible bonds issued by and guaranteed by certain members of Bakrieland Group.

Indonesian-Based Issuers: Advising a trustee on two secured bond issues by Indonesian-based issuers.

Indonesian Commodities Group: Advising the investor in distressed debt and due diligence advice in respect to the purchase of mezzanine debt of an Indian Commodities Group.

International Hedge Fund: Advising an international hedge fund in deal structuring advice and due diligence services in respect of its proposed debt financing and acquisition of Indonesian commodity assets held by a Singapore-listed group.

Japanese Oil & Gas Company: Advising in connection with the proposed acquisition of an Indonesian oil company.


Japanese Trading Company: Advising in relation to taking security interests over trademarks to be taken in Thailand, Indonesia, Vietnam and India.
Japan opened its ports after signing the Treaty of Kanagawa with the U.S. in 1854. After World War II, Japan became an economic power and an ally of the U.S. Following three decades of unprecedented growth, Japan's economy experienced a major slowdown that started in the 1990s. In March 2011, Japan's strongest-ever earthquake, and an accompanying tsunami, devastated the northeast part of Honshu island, hobbling the country's economy and its energy infrastructure.

In the years following World War II, government-industry cooperation, a strong work ethic, mastery of high technology and a comparatively small defense allocation (1 percent of GDP) helped Japan develop a technologically advanced economy. The close interlocking structures of manufacturers, suppliers and distributors and the guarantee of lifetime employment for a substantial portion of the urban labor force — once notable characteristics of the post-war economy — are now eroding under the dual pressures of global competition and domestic demographic change. Japan's industrial sector is heavily dependent on imported raw materials and fuels. A tiny agricultural sector is highly subsidized and protected. Japan imports about 60 percent of its food on a caloric basis, but maintains one of the world's largest fishing fleets, which accounts for nearly 15 percent of the global catch. For three decades, Japan's overall real economic growth had been spectacular — a 10 percent average in the '60s, a 5 percent average in the '70s, and a 4 percent average in the '80s. Growth slowed markedly in the 1990s, averaging just 1.7 percent, largely because of the after effects of inefficient investment and an asset price bubble in the late 1980s that required a protracted period of time for firms to reduce excess debt, capital and labor. Measured on a purchasing power parity basis that adjusts for price differences, in 2011, Japan stood as the fourth-largest economy in the world after China and India. Government stimulus spending helped the economy recover in late 2009 and 2010, but the economy contracted again in 2011 as the massive 9.0 magnitude earthquake in March disrupted manufacturing. Electricity supplies remain tight because Japan has temporarily shut down almost all of its nuclear
power plants after the Fukushima Daiichi nuclear reactors were crippled by the earthquake and resulting tsunami. Estimates of the direct costs of the damage range from US$235 billion to US$310 billion, and GDP declined almost 0.5 percent in 2011. In 2012, Shinzo ABE was elected as the Prime Minister following the Liberal Democratic Party’s victory in the general election.

KEY ISSUES FOR M&A TRANSACTIONS IN JAPAN

Foreign Ownership of Companies: Generally, Japan’s foreign investment policy is quite open. Except for certain sectors, 100 percent foreign ownership is allowed in most industries. A notable restriction is in the media and TV sectors. Under the Radio Act and Broadcasting Act, foreign ownership is restricted to less than 20 percent of a broadcasting company using wireless facilities. A similar restriction applies to Nippon Telegraph and Telephone Corporation (“NTT”). Although NTT is a public company, a foreign company is only allowed to acquire less than one-third of the outstanding shares. There are certain restrictions in the airline industry. Foreign ownership of aircraft in domestic use cannot be registered in Japan. However, a foreign airline such as Air Asia can offer domestic flights with low airfares. No foreign ownership is allowed in the mining industry, which may be the most restrictive sector in Japan. Note that the Foreign Exchange Law may require a foreign owner to submit a prior notification to the Ministry of Finance for the acquisition of more than 10 percent of the shares in a listed company if such acquisition will have an adverse effect on the national security of Japan.

Land: One-hundred percent foreign ownership of land and buildings is allowed. However, the Japanese Land Registry treats land and buildings separately so that different persons can own the land and the building built on the land. It is, therefore, important to review the ownership of land and buildings by checking the real property registry at the Legal Affairs Bureau. There is a post-acquisition notification requirement after the acquisition of land by a foreigner. There are also certain ongoing debates about the acquisition of forest land by Chinese entities in northern Japan, including Hokkaido. Note, however, that ownership of farmland, including by foreigners, is prohibited.

Security Package: In Japan, security interests can be taken in respect to all forms of assets and interests, whether tangible or not, including buildings, land, machines, products, securities, bank account deposits, IP rights, equity interests and shares.

For certain types of collateral, registration is necessary to perfect the priority of the security interest. For example, in real estate transactions in Japan, a mortgage (teitouken) over a property is the most important form of security, and a mortgage must be registered in order to be perfected against third parties.

Also, pledges (shichiken) or assignments for security purposes (jyoto-tanpo) are used as forms of security over shares of a Japanese corporation. In both cases of pledges and assignments for security purposes over shares, if a share certificate is issued, possession of such share certificate must also be transferred to the pledgee/assignee to create and perfect the security interest against the company and third parties.

Foreign Arbitration/Court Judgments: A party seeking enforcement of a foreign arbitration award needs to apply to a Japanese court having jurisdiction over the
respondent, the object of the award or the location of the assets to be attached in Japan. An arbitration award rendered abroad can be recognized and enforced if such Japanese court issues a recognition and enforcement order. The applying party must supply to the court a duly certified copy of the award and a Japanese translation thereof.

A party that has obtained a final and conclusive judgment abroad can have such judgment recognized and enforced in Japan if the conditions of Article 118 of the Civil Procedure Code are satisfied regarding (i) the jurisdiction of the foreign court, (ii) proper service to the defendant (excluding service by publication or equivalent method) or the defendant defended itself in court, (iii) the contents or the procedure of the judgment does not violate the public order or good morals of Japan, and (iv) reciprocity of recognition applies and the foreign court would recognize the judgments of Japanese courts. The Japanese court will not re-examine the merits of the case and will only consider the foregoing issues.

In the past, judgments awarding punitive damages to a claimant rendered in the U.S. have been set aside since Japanese law does not recognize punitive damages, and such foreign judgments were held to be against the public order or good morals of Japan.

**Government Issues:** There is minimal regulation of M&A activities in Japan, especially in relation to private company deals. Where listed companies are involved, there is normally greater regulatory influence, in particular by the Financial Services Agency and stock exchanges, through the Financial Instruments and Exchange Act and stock exchange rules.

Also, the Anti-Monopoly Act provides notification requirements on certain business combinations; the Foreign Exchange and Foreign Trade Law relates to transactions involving foreign companies, government guidelines or judicial precedents may be relevant (particularly in hostile takeovers or management buy-outs); and there are other laws that regulate specific businesses (such as banking, insurance, securities or telecommunications). When those laws are applicable to the transaction, the specific government body, which administers each law, will be involved (such as the Financial Services Agency administering the Banking Law or the Japan Fair Trade Commission administering the Anti-Monopoly Act).

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JAPAN-RELATED TRANSACTIONS BY BINGHAM LAWYERS

M&A

Major Insurance Companies: Representation in sales of some of Japan’s largest life insurance companies, including Chiyoda Life to AIG and Kyoel Life to Prudential Insurance.

Calpis: Advised on the acquisition by Ajinomoto of beverage-maker Calpis, making Calpis a wholly owned unit in a US$680 million share swap deal.

Nisca Corporation: Advised on the tender offer of Nisca Corporation, an optical equipment, printer, copier and motor-maker, by Canon-Finetech to make the target company a wholly owned subsidiary.

Tokyu Department Store Co.: Advised on the sale of 6,000 shares of bakery chain Saint-German Co., a subsidiary of Tokyu Department Store Co., to Japan Tobacco. The sale was valued at approximately ¥3.7 billion.

Major Indian Conglomerate: Representation of an Indian electronic gaming company in the creation of a Japanese subsidiary and investment in a Korean game development joint venture, along with ongoing corporate, financing and commercial work.


American multinational banking and financial services corporation: Represented a major American bank in the acquisition of all the equity stake of a Japanese company, which was subject to the Chapter 11 proceeding in the United States.


Mebiopharm Co., Ltd.: Represented the Japanese biotech firm specializing in new drug development for cancer treatment in the first-ever listing on the Tokyo AIM market in July 2011. Advised Mebiopharm on all of its listing process, including legal due diligence, drafting disclosure statements, establishing internal control system and preparing for internal resolutions, etc.


Restructuring

GE Capital/Spansion: Represented the secured creditors committee of Spansion, one of the world’s largest manufacturers of flash memory chips for mobile phones and other
devices. Formulated the first-known secured lender committee in a Japanese corporate reorganization proceeding. Achieved a rare full recovery of principal and post-petition interest, totaling more than US$340 million, and was awarded ¥500 million for the committee’s legal fees and other expenses by the court.

Litigation

Olympus Corporation: A multi-office international Bingham team is representing Olympus Corporation, a leading camera and medical-device maker, as lead counsel on issues relating to the company’s high-profile matter involving US$1.7 billion in accounting irregularities. Advising this client on its overall strategies relating to crisis management, key independent committees, corporate governance, potential further investigations, internal controls, claims litigation, securities and financial regulatory issues, as well as labor issues. In the initial months of engagement, played a key role in preserving the company’s listing on the Tokyo Stock Exchange.

Qualcomm Incorporated: Advising Qualcomm Incorporated in a Japan Fair Trade Commission investigation of its licensing practices.

A major Japanese financial institution: Representation in connection with DOJ, CFTC and SEC investigations of alleged manipulation of LIBOR rates.

Mitsui & Co.: Following the well-known BP Deepwater Horizon oil spill caused by an explosion in the Gulf Coast, represented and advised a Mitsui & Co. subsidiary in dealing with complex high-risk issues and the settlement of claims.

Sumitomo Mitsui Banking Corporation: Advising on the review of regulatory regimes governing the issue of Samurai Bonds in certain overseas jurisdictions.

Hitachi: Advised Hitachi in an infringement suit on a patent relating to information technology.

Major construction material manufacturer: Advising on a cease and desist order and a surcharge payment order by the Japan Fair Trade Commission (JFTC) in relation to a price fixing cartel and the allocation of customers with other shutter manufacturers in Japan, in challenging these orders in a JFTC’s hearing procedure.
During the late 18th and 19th centuries, Great Britain established colonies and protectorates in the area of current Malaysia; these were occupied by Japan from 1942 to 1945. In 1948, the British-ruled territories on the Malay Peninsula, except Singapore, formed the Federation of Malaya, which became independent in 1957. Malaysia was formed in 1963 when the former British colonies of Singapore as well as Sabah and Sarawak on the northern coast of Borneo joined the Federation. The first several years of the country’s independence were marred by a Communist insurgency, Indonesian confrontation with Malaysia, Philippine claims to Sabah and Singapore’s departure from the Federation in 1965. During the 22-year term of Prime Minister MAHATHIR bin Mohamad (1981–2003), Malaysia was successful in diversifying its economy from dependence on exports of raw materials to the development of manufacturing, services and tourism. Prime Minister Mohamed NAJIB bin Abdul Razak (in office since April 2009) has continued these pro-business policies.

Malaysia, a middle-income country, has transformed itself since the 1970s from a producer of raw materials into an emerging multi-sector economy. Under current Prime Minister NAJIB, Malaysia is attempting to achieve high-income status by 2020 and to move farther up the value-added production chain by attracting investments in Islamic finance, high technology industries, biotechnology and services. The NAJIB administration also is continuing efforts to boost domestic demand and reduce the economy’s dependence on exports. Nevertheless, exports — particularly of electronics, oil and gas, palm oil, and rubber — remain a significant driver of the economy. As an oil and gas exporter, Malaysia has profited from higher world energy prices, although the rising cost of domestic gasoline and diesel fuel, combined with strained government finances, has forced Kuala Lumpur to begin to reduce government subsidies. The government is also trying to lessen its dependence on state oil producer Petronas. The oil and gas sector supplies more than 40 percent of government revenue. The central bank maintains healthy foreign exchange reserves, and a well-developed regulatory
regime has limited Malaysia’s exposure to riskier financial instruments and the global financial crisis. Nevertheless, Malaysia could be vulnerable to a fall in commodity prices or a general slowdown in global economic activity because exports are a major component of GDP. In order to attract increased investment, NAJIB has raised possible revisions to the special economic and social preferences accorded to ethnic Malays under the New Economic Policy of 1970, but he has encountered significant opposition, especially from Malay nationalists and other vested interests.

KEY ISSUES FOR M&A TRANSACTIONS IN MALAYSIA

Foreign Ownership of Companies Restricted in Certain Industries: For certain industries, foreign investors are required to allocate a percentage of the shares to local Malaysian nationals (Bumi and Msian). This applies to a diverse range of industries, including insurance, banking, supermarkets and recruitment agencies. In the wholesale and retail industries, it may be necessary to appoint at least one local Malaysian national (Bumi) to the board of directors.

Land: Land often has restrictions on use or a condition requiring prior approval from the local government authority for a change of use or control. In such cases, the approval can take several months to obtain. This will be particularly relevant where the investor purchases a “business” as opposed to a “company.”

Government Issues: Many companies/businesses are subject to license conditions. Foreign investors may require prior approvals from regulatory authorities for M&A transaction depending upon the terms of those license conditions.

Application of the Takeover Code: The Takeover Code will apply to any public company (even if it is unlisted).

Antitrust: There is a Competition Act in force in Malaysia. As of December 2012, no pre-merger approvals are required. However, any anti-competitive vertical/horizontal agreements will be subject to the Competition Act and will require review and amendment.

- Local equity requirements: Bumi and Msian requirements are still applicable to a limited number of industries such as carrier A transporters, hypermarkets, recruitment agencies, etc. It is diverse, so best for the client to find out from the target what license conditions need to be complied with. Also will apply to insurance and banking businesses and certain limitations on new licenses apply in these sectors.

- In wholesale and retail trade: approval is required although 100 percent is required, and the guidelines still say they may require a minimum of one Bumi director.

- In public companies, even if unlisted the Takeover Code applies.

- Prior approvals of regulatory authorities for acquisitions: may be required depending on license conditions.

- Existing anti-competitive vertical and horizontal agreements require review and amendment.
• In acquiring businesses, take care to find out if the land on which business is operated has restrictions in interest or conditions requiring prior state authority approval as these could take a few months.

TOP M&A LAW FIRMS IN MALAYSIA

Kadir, Andri & Partners
Shearn Delamore & Co
Skrine
Wong & Partners

TRANSACTIONS IN MALAYSIA BY BINGHAM LAWYERS

Activist Equity Investor: Advising in relation to a KL Stock Exchange listed group.

Noteholders: Advised on the restructuring of a Malaysian company’s indebtedness.
Emergent BioSolutions: Advising in a proposed joint venture in Malaysia.

Malaysian and Singapore Real Estate Investment Funds: Advising in relation to real estate investments in Malaysia and Singapore.

Marubeni Corporation: Advising in relation to a joint venture with Rexit, a Malaysian listed company and leading provider of software, to the Malaysian insurance industry to market and sell Rexit software internationally. This involved in-depth analysis of the applicability of the Malaysian listing rules and obtaining the approval of the Central Bank of Malaysia.

Sumitomo Precision Products: Advising on its acquisition of Aviza Technology Inc, which has offices in Malaysia, Singapore, the PRC and Taiwan.

The Lender Group: Advising in the infrastructure project of Malaysia’s Renong Group.

The Rohatyn Group: Acquisition of a private equity manager in SE Asia and a joint venture with CIMB Bank of Malaysia.

TRG Management LP: Advising in its pending acquisitions of Malaysian-based CIMB Strategic Assets Sdn Bhd and CIMB Bank (L) Limited, from CIMB Group Holdings Bhd, to acquire a 60 percent stake in CapAsia as well as a 60 percent general partner/limited partner interest in two of the funds managed by CapAsia.
Various ethnic Burmese and ethnic minority city-states or kingdoms occupied the present borders through the 19th century. Over a period of 62 years (1824–1886), Britain conquered Burma and incorporated the country into its Indian Empire. Burma was administered as a province of India until 1937 when it became a separate, self-governing colony; in 1948, Burma attained independence from the Commonwealth. Gen. NE WIN dominated the government from 1962 to 1988, first as military ruler, then as self-appointed president, and later as political kingpin. In September 1988, the military deposed NE WIN and established a new ruling junta. Multiparty legislative elections in 1990 resulted in the main opposition party — the National League for Democracy (NLD) — winning a landslide victory. Instead of handing over power, the junta placed NLD leader (and Nobel Peace Prize recipient) AUNG SAN SUU KYI (ASSK) under house arrest from 1989 to 1995, 2000 to 2002, and from May 2003 to November 2010. In late September 2007, the ruling junta brutally suppressed protests over increased fuel prices led by prodemocracy activists and Buddhist monks, killing at least 13 people and arresting thousands for participating in the demonstrations. In early May 2008, Burma was struck by Cyclone Nargis, which left more than 138,000 dead and tens of thousands injured and homeless. Despite this tragedy, the junta proceeded with its May constitutional referendum, the first vote in Burma since 1990. Parliamentary elections held in November 2010, considered flawed by many in the international community, saw the ruling Union Solidarity and Development Party garnering more than 75 percent of the seats. Parliament convened in January 2011 and selected former Prime Minister THEIN SEIN as president. Although the vast majority of national-level appointees named by THEIN SEIN are former or current military officers, the government has initiated a series of political and economic reforms leading to a substantial opening of the long-isolated country. These reforms have included a senior-level dialogue with ASSK, re-registering the NLD as a political party, enabling party members, including ASSK, to contest parliamentary by-elections on April 1, 2012, the release of many (but
not all political prisoners, preliminary peace agreements with some armed ethnic groups, a reduction in media censorship and an increasingly open debate in the Parliament.

Burma, a resource-rich country, suffers from pervasive government controls, inefficient economic policies, corruption and rural poverty. Despite Burma’s emergence as a natural gas exporter, socioeconomic conditions have deteriorated under the mismanagement of the previous regime. Approximately 32 percent of the population lives in poverty, and Burma is the poorest country in Southeast Asia. The business climate is widely perceived as opaque, corrupt and highly inefficient. Wealth from the country’s ample natural resources is concentrated in the hands of an elite group of military leaders and business associates. In 2010–2011, the transfer of state assets — especially real estate — to military families under the guise of a privatization policy further widened the gap between the economic elite and the public. The economy suffers from serious macroeconomic imbalances, including multiple official exchange rates that overvalue the Burmese kyat, fiscal deficits, lack of commercial credit further distorted by a non-market interest rate regime, unpredictable inflation, unreliable economic data and an inability to reconcile national accounts. Burma’s poor investment climate — including weak rule of law — hampers the inflow of foreign investment; in recent years, foreign investors have shied away from nearly every sector except for natural gas, power generation, timber and mining. The exploitation of natural resources does not benefit the population at large. The most productive sectors will continue to be in extractive industries — especially oil and gas, mining, and timber — with the latter two causing significant environmental degradation. Other areas, such as manufacturing, tourism and services, struggle in the face of poor infrastructure, unpredictable trade policies, undeveloped human resources (the result of neglected health and education systems), endemic corruption and inadequate access to capital for investment. Private banks still operate under tight domestic and international restrictions, limiting the private sector’s access to credit. The United States, the European Union and Canada have imposed financial and economic sanctions on Burma. U.S. sanctions, prohibiting most financial transactions with Burmese entities, impose travel bans on senior Burmese military and civilian leaders and others connected to the ruling regime, and ban imports of Burmese products. These sanctions affect the country’s fledgling garment industry, isolate the struggling banking sector and raise the costs of doing business with Burmese companies, particularly firms tied to Burmese regime leaders. Remittances from overseas Burmese workers — who had provided significant financial support for their families — have driven the Ministry of Finance to license domestic banks to carry out overseas operations. In 2011, the government took initial steps toward reforming and opening up the economy by lowering export taxes, easing restrictions on its financial sector and reaching out to international organizations for assistance. Although the Burmese government has good economic relations with its neighbours, significant improvements in economic governance, the business climate and the political situation are needed to promote serious foreign investment.

**KEY ISSUES FOR M&A TRANSACTIONS IN MYANMAR (BURMA)**

100 percent Foreign Ownership of Companies: 100 percent foreign ownership of investments is allowed in nearly all sectors, except for small scale agriculture, certain small scale services, distribution and land ownership.
**Land Can Be Leased Only:** Land can be leased only from the government or from individuals over a 30-year (new leases: 50 year) period that can be prolonged.

**Security Package:** The security package can cover buildings, shares and possibly bank accounts, but not land.

**Foreign Arbitration/Court Judgments:** Foreign arbitration is now permitted under the new investment law, but has not yet been tested in practice. U.K. court decisions may be enforceable, but this is rarely tested.

**Government Issues:** Most projects require intensive consultations and sometimes MOUs with the Government Ministries. Infrastructure and power projects are usually in a BOT structure.

**Import Licenses:** Importation of all goods is subject to individual import licenses, also for investors, which is difficult to deal with.

**Tax:** Extensive tax holidays of five years for all investment projects, but the carry forward of losses is very limited. Taxes are often misunderstood by advisers with little experience on the ground. Tax issues require extra attention.

**TOP M&A LAW FIRMS IN MYANMAR (BURMA)**

*Kelvin Chia Yangon*
*Myanmar Legal Services Limited*
*VDB Loi Myanmar*

**TRANSACTIONS IN MYANMAR (BURMA) BY BINGHAM LAWYERS**

Over the years, Bingham has advised on global sanction issues, which still affect current investment strategies.

**Global Investment Fund:** Advising the manager on the establishment of a Myanmar-focused fund.

**Merger of a Myanmar-focused Fund:** Advising a global investment fund on the investment restrictions with regard to the energy and resources sectors in Myanmar.
The Philippine Islands became a Spanish colony during the 16th century; they were ceded to the U.S. in 1898 following the Spanish-American War. In 1935, the Philippines became a self-governing commonwealth. In 1942, the islands fell under Japanese occupation during World War II, and U.S. forces and Filipinos fought together during 1944–1945 to regain control. On July 4, 1946, the Republic of the Philippines attained its independence. Corazon AQUINO’s presidency was hampered by several coup attempts that prevented a return to full political stability and economic development. Fidel RAMOS was elected president in 1992. His administration was marked by increased stability and by progress on economic reforms. In 1992, the U.S. closed its last military bases on the islands. MACAPAGAL-ARROYO was elected to a six-year term as president in May 2004. Her presidency was marred by several corruption allegations, but the Philippine economy was one of the few to avoid contraction following the 2008 global financial crisis, expanding each year of her administration. Benigno AQUINO III was elected to a six-year term as president in May 2010. Philippine GDP grew 7.6 percent in 2010, spurred by consumer demand, a rebound in exports and investments, and election-related spending, before cooling to 3.7 percent in 2011. The economy weathered the 2008–2009 global recession better than its regional peers due to minimal exposure to troubled international securities, lower dependence on exports, relatively resilient domestic consumption, large remittances from 4 million to 5 million overseas Filipino workers, and a growing business process outsourcing industry. Economic growth in the Philippines averaged 4.5 percent during the MACAPAGAL-ARROYO administration (January 2001 – June 2010). Despite this growth, however, poverty worsened during her presidency. The AQUINO administration is working to reduce the government deficit from 3.9 percent of GDP, when it took office, to 2 percent of GDP by 2013. The government has had little difficulty issuing debt, both locally and internationally, to finance the deficits. The AQUINO Administration reduced public debt to below 50 percent of GDP and obtained several ratings upgrades on sovereign debt so
that the Philippines is now close to investment grade. However, the lack of government spending, especially on infrastructure, was one of several factors which slowed GDP growth in the second half of 2011, leading the government to announce a stimulus effort and increased public spending on infrastructure in 2012. AQUINO’s first budget emphasized education, health, conditional cash transfers for the poor and other social spending programs, relying mostly on the private sector to finance important infrastructure projects. Weak tax collection, exacerbated by new tax breaks and incentives, has limited the government’s ability to address major challenges. The AQUINO administration has vowed to focus on improving tax collection efficiency, rather than imposing new taxes, as a part of its good governance platform. The economy still faces several long-term challenges, including reliance on energy imports and foreign demand for overseas Filipino workers.

KEY ISSUES FOR M&A TRANSACTIONS IN PHILIPPINES

Foreign Ownership of Companies is Restricted in Certain Industries: In certain industries, the Philippine target will be subject to nationality restrictions. The recent Supreme Court Case of Gamboa v Teves sets out a more stringent test of what constitutes compliance with Filipino Ownership requirements. The focus of this case is that beneficial ownership and control must remain with Filipino nationals.

Land: The Philippine Constitution limits the ownership of land in the Philippines to: (1) Philippine citizens; (2) corporations and associations at least 60 percent of whose capital is owned by Philippine citizens; and (3) foreigners by hereditary succession.

Foreign Arbitration/Court Judgments: Philippine courts may set aside foreign judgments by evidence of a want of jurisdiction, want of notice to the party, collusion, fraud, or clear mistake of law or fact. Hence, the recognition and enforcement of foreign judgments in the Philippines is subject to possible delays of the Philippine judicial system and is also subject to potential revocation by Philippine courts.

The Rules on ADR specifically provide that in resolving petitions for recognition and enforcement of a foreign arbitral award, Philippine courts shall not disturb the arbitral tribunal’s determination of facts and/or interpretation of law. Thus, unlike the rule for foreign judgments, which allows Philippine courts to repel foreign judgments on the basis of a mistake of law or fact, Philippine courts do not have the power to disturb the findings of fact and law of the arbitral tribunal. In addition, another benefit of foreign arbitral awards as compared to foreign judgments is that decisions of a Philippine court recognizing and enforcing a foreign arbitral award are immediately executory.

On the other hand, decisions of a Philippine court recognizing and/or enforcing foreign judgments are subject to the general rules on execution (i.e., execution shall only take place upon the expiration of the period to appeal).

Government Issues: Obtaining information and approvals from government agencies takes time and effort as they are not business-friendly. This will increase the time period for the due diligence process. In addition, it takes time to implement transfers of shares and real estate as Government Agencies administer the relevant registries.
• Obtaining information and clearance from government agencies in connection with a due diligence process and for transfers of shares and properties, e.g., Bureau of Internal Revenue.

• Nationality restrictions if the Philippine target is in specified industry sectors; there has been a recent Supreme Court Case Gamboa v. Teves, which makes the determination of what constitutes compliance with Filipino ownership requirements more stringent. Focus is that the beneficial ownership and control must lie with Filipinos.

**TOP M&A LAW FIRMS IN PHILIPPINES**

*CVC Law (Villaraza Cruz Marcelo & Angangco)*

*Picazo Buyco Tan Fider & Santos*

*Romulo*

*Angara Abello Concepcion Regala & Cruz Law Offices*

*SyCip Salazar Hernandez & Gatmaitan*

**TRANSACTIONS IN THE PHILIPPINES BY BINGHAM LAWYERS**

**NTT DoCoMo:** Advised on its 6.64 percent increased stake in the Philippine Long Distance Telephone Company (PLDT) for US$760 million.

**NTT DoCoMo:** Advised in relation to its interest in a listed Philippine company (Philippines Long Distance Telecom), its obligations pursuant to certain shareholder agreements and cooperation agreements in respect of such company and DoCoMo’s stake building obligations under both Philippine and the U.S. law.

**NTT DoCoMo:** Advised in relation to a Pledge Agreement entered into by First Pacific Company Limited and certain of its subsidiary companies with Calyon and other undisclosed lenders in relation to First Pacific Company Limited’s shareholding in Philippine Long Distance Telephone Company.

**Philippines Infrastructure Project:** Advising the investors as debt and equity holders in respect of a successful financial restructuring and investment in securities of a major Philippines infrastructure project.

**Noteholders in the Philippines:** Advising noteholders on the successful restructuring of a major infrastructure project in the Philippines.

**Philippines Natural Resources:** Advising an investor in respect of a debt and equity financing in the Philippines, including potential exit routes.
Singapore was founded as a British trading colony in 1819. It joined the Malaysian Federation in 1963, but separated two years later and became independent. Singapore subsequently became one of the world’s most prosperous countries with strong international trading links (its port is one of the world’s busiest in terms of tonnage handled) and with per capita GDP equal to that of the leading nations of Western Europe.

Singapore has a highly developed and successful free-market economy. It enjoys a remarkably open and corruption-free environment, stable prices and a per capita GDP higher than that of most developed countries. The economy depends heavily on exports, particularly in consumer electronics, information technology products, pharmaceuticals and on a growing financial services sector. Real GDP growth averaged 8.6 percent between 2004 and 2007. The economy contracted 1.0 percent in 2009 as a result of the global financial crisis, but rebounded 14.8 percent in 2010 and 4.9 percent in 2011, on the strength of renewed exports. Over the longer term, the government hopes to establish a new growth path that focuses on raising productivity, which has sunk to a compound annual growth rate of just 1.8 percent in the last decade. Singapore has attracted major investments in pharmaceuticals and medical technology production and will continue efforts to establish Singapore as Southeast Asia’s financial and high-tech hub.

**KEY ISSUES FOR M&A TRANSACTIONS IN SINGAPORE**

**Foreign Ownership of Companies:** Save for regulatory approvals for share ownership in companies engaged in certain sectors (such as telecommunications, broadcasting, financial services, legal and other professional services, and property ownership),
which are perceived to be critical to national interests, there are no restrictions on foreign ownership or investment in Singapore.

**Restrictions on Foreign Land Ownership**: The restrictions on foreign land ownership in Singapore are dependent on the category of land or property in question. Foreigners are not allowed to purchase public housing (HDB) in Singapore, except for those with Singapore permanent resident status. Foreigners are allowed to purchase private sector housing such as condominiums or any unit within a building. However, foreigners are not allowed to acquire all of the apartments within a building or all of the units in an approved condominium development without the prior approval of the Minister for Law. For landed properties and vacant residential land, the prior approval of the Minister for Law is required. There are no restrictions on foreign ownership of industrial and commercial real estate in Singapore.

**Security Package**: There are no restrictions on the grant of security over one's assets in Singapore. This, however, should not contravene the existing laws in Singapore (e.g., restrictions on foreign land ownership or prohibitions against provision of financial assistance).

**Foreign Arbitration/Court Judgments**: As Singapore is a party to the 1958 New York Convention on the Recognition of Foreign Arbitral Awards, foreign arbitral awards made in the New York Convention country may be recognized and enforced in Singapore, by leave of the Singapore High Court. Foreign judgments can be enforced in Singapore in two ways: (1) by registration under the Reciprocal Enforcement of Commonwealth Judgments Act (RECJA) or the Reciprocal Enforcement of Foreign Judgments Act (REFJA), on the basis of reciprocity; and (2) by suing on the judgment under common law (i.e., by commencing an action by writ in the Singapore High Court).

**TOP M&A LAW FIRMS IN SINGAPORE**

*Allen & Gledhill LLP*
*Stamford Law Corporation*
*Wong Partnership LLP*

**TRANSACTIONS IN SINGAPORE BY BINGHAM LAWYERS**

**Effissimo Capital Management Pte Ltd**: Advised on a prime brokerage agreement, subject to English law, in the context of a takeover bid.

**Informal Ad Hoc Bondholder Group**: Advised on the financial restructuring of Rubicon Offshore Holdings Limited, a Singapore-based offshore oilfield services company.

**Mizuho Corporate Bank Ltd**: Advised on the review of a syndicated term-loan agreement and on share collateral arrangements in Hong Kong, Singapore and Australia.

**Singapore and Malaysian Real Estate Investment Funds**: Advising investors in relation to real estate investments in Singapore and Malaysia.

**Sumitomo Precision Products**: Advised on its acquisition of Aviza Technology Inc, which has offices in Malaysia, Singapore, the PRC and Taiwan.
The Bank of New York Mellon: Advised on its issuance of JPY15 billion 2.72 percent guaranteed notes, which were English-law governed, by RH International (Singapore) Corporation PTE Ltd.

Non-M&A

China Investment Fund, L.P. I: Advised a private equity fund making investments in Pacific Rim countries and including investors from Japan, China and the Philippines as well as the U.S. and other countries.

China Investment Fund, L.P. II: Advised a US$250 million private equity fund that focuses on investing in growth-oriented enterprises in Pacific Rim countries and has investors from France, Singapore and the U.S. Investors include both private and governmental institutional investors from around the globe.

UOB Global Capital: Advised a majority-owned affiliate of the United Overseas Bank Group (UOB) on a variety of issues involving the formation of private investment funds.

UOB Hermes Asia Technology Fund: Advised on a fund co-sponsored by a Singapore bank and a U.K. asset manager and organized in the Cayman Islands, with an Asian private equity focus and investors from the Pacific Rim as well as countries in Europe and North America.
In 1895, military defeat forced China to cede Taiwan to Japan. Taiwan reverted to Chinese control after World War II. Following the Communist victory on the mainland in 1949, 2 million Nationalists fled to Taiwan and established a government using the 1947 constitution drawn up for all of China. Over the next five decades, the ruling authorities gradually democratized and incorporated the local population within the governing structure. In 2000, Taiwan underwent its first peaceful transfer of power from the Nationalist to the Democratic Progressive Party. Throughout this period, the island prospered and became one of East Asia’s economic “Tigers.” The dominant political issues continue to be the relationship between Taiwan and China — specifically the question of Taiwan’s eventual status — as well as domestic political and economic reform.

Taiwan has a dynamic capitalist economy with gradually decreasing government guidance of investment and foreign trade. In keeping with this trend, some large, state-owned banks and industrial firms have been privatized. Exports, led by electronics, machinery and petrochemicals, have provided the primary impetus for economic development. This heavy dependence on exports exposes the economy to fluctuations in world demand. In 2009, Taiwan’s GDP contracted 1.9 percent, due primarily to a 20 percent year-on-year decline in exports. In 2010, GDP grew 10.9 percent, as exports returned to the level of previous years, and in 2011 grew 5.2 percent. However, 2012 growth will likely be less, according to most forecasters, because of softening global demand. Taiwan’s diplomatic isolation, low birth rate and rapidly aging population are major long-term challenges. Free trade agreements have proliferated in East Asia over the past several years, but so far Taiwan has been excluded from this greater economic integration largely because of its diplomatic status with the exception of the landmark Economic Cooperation Framework Agreement (ECFA) signed with China in June 2010. The MA administration has said that the ECFA will serve as a stepping stone toward
trade pacts with other regional partners, and negotiations on a deal with Singapore began this year. Follow-on components of ECFA, including deals on trade in goods, services and investment, have yet to be completed. Taiwan’s Total Fertility rate of just over one child per woman is among the lowest in the world, raising the prospect of future labor shortages, falling domestic demand and declining tax revenues. Taiwan’s population is aging quickly, with the number of people over 65 accounting for 10.9 percent of the island’s total population as of 2011. The island runs a large trade surplus, and its foreign reserves are the world’s fourth largest behind China, Japan and Russia. Since 2005 China has overtaken the U.S. to become Taiwan’s second-largest source of imports after Japan. China is also the island’s number one destination for foreign direct investment. Three financial memorandums of understanding, covering banking, securities and insurance, took effect in mid-January 2010, opening the island to greater investments from the mainland’s financial firms and institutional investors, and providing new opportunities for Taiwan financial firms to operate in China. Closer economic links with the mainland bring greater opportunities for the Taiwan economy, but also pose new challenges as the island becomes more economically dependent on China while political differences remain unresolved.

KEY ISSUES FOR M&A TRANSACTIONS IN TAIWAN

100 percent Foreign Ownership of Companies: In virtually all sectors, 100 percent foreign ownership is allowed. In cases where it is not allowed, it is usually possible to structure the transaction to work around the issue.

Land: Foreign ownership of land is acceptable. There are restrictions relating to zoning which apply to both foreigners and locals.

Foreign Arbitration/Court Judgments: For foreign court judgments, service of process should be done through judicial assistance if there is a risk that the counterparty will not appear in court.

Government Issues: Regarding transactions in financial services, media or other strategic industries, there can be a lot of government intervention at a high level which is not transparent or based on law.

TOP M&A LAW FIRMS IN TAIWAN

*Eiger Law Firm*
*LCS & Partners*
*Lee and Li*
*Tsar & Tsai*

TRANSACTIONS IN TAIWAN BY BINGHAM LAWYERS

**Fubon Bank and its Investment Management Arm:** Advising on a number of structured and non-structured privately placed funds, including providing financial regulatory advice.

**Japanese Trading Company:** Handled due diligence in relation to an acquisition of a Taiwan/PRC technology group.
**NTT DoCoMo:** Advised on licensing arrangements relating to the “i-mode” brand/trademarks and technology to leading mobile phone provider, KG Telecommunications, in Taiwan, the ROC. Advice included commercial, intellectual property, and data and privacy law considerations.

**Sumitomo Precision Products:** Advised on its acquisition of Aviza Technology Inc, which had offices in Malaysia, Singapore, the PRC and Taiwan.
THAILAND

A unified Thai kingdom was established in the mid-14th century. Known as Siam until 1939, Thailand is the only Southeast Asian country never to have been taken over by a European power. A bloodless revolution in 1932 led to a constitutional monarchy. In alliance with Japan during World War II, Thailand became a U.S. treaty ally in 1954 after sending troops to Korea and fighting alongside the US in Vietnam. A military coup in September 2006 ousted then Prime Minister THAKSIN Chinnawat. December 2007 elections saw the pro-THAKSIN People’s Power Party (PPP) emerge at the head of a coalition government that took office in February 2008. The anti-THAKSIN People’s Alliance for Democracy (PAD, aka yellow-shirts) in May 2008 began street demonstrations against the new government, eventually occupying the prime minister’s office in August and Bangkok’s two international airports in November. After an early December 2008 court ruling that dissolved the ruling PPP and two other coalition parties for election violations, the Democrat Party formed a new coalition government and ABHISIT Wetchachiwa became prime minister. In October 2008, THAKSIN fled abroad in advance of an abuse of power conviction and has agitated his followers from abroad since then. THAKSIN supporters under the banner of the United Front for Democracy Against Dictatorship (UDD, aka red-shirts) rioted in April 2009, shutting down an ASEAN meeting in Pattaya. Following a February 2010 court verdict confiscating half of THAKSIN’s frozen assets, the UDD staged large protests between March and May 2010, and occupied several blocks of downtown Bangkok. Clashes between security forces and protesters, elements of which were armed, resulted in at
least 92 deaths and an estimated US$1.5 billion in arson-related property losses. These protests exposed major cleavages in the Thai body politic that hampered the government and led to a general election in July 2011. THAKSIN’s youngest sister, YINGLAK, led the Puea Thai party to an electoral win and assumed control of the government in August. YINGLAK’s leadership was almost immediately challenged by historic flooding in late 2011 that had large swathes of the country underwater and threatened to inundate Bangkok itself. At the beginning of 2012, the Puea Thai-led government began fulfilling one of its main election promises, the pursuit of constitutional reform, which could lead to the nation’s 19th Constitution since 1932.

Since January 2004, thousands have been killed and wounded as separatists in Thailand’s southern ethnic Malay-Muslim provinces continued the campaign of violence associated with their cause.

With a well-developed infrastructure, a free-enterprise economy, generally pro-investment policies, and strong export industries, Thailand enjoyed solid growth from 2000 to 2007 — averaging more than 4 percent per year — as it recovered from the Asian financial crisis of 1997–1998. Thai exports — mostly machinery and electronic components, agricultural commodities, and jewelry — continue to drive the economy, accounting for more than half of GDP. The global financial crisis of 2008–2009 severely cut Thailand’s exports, with most sectors experiencing double-digit drops. In 2009, the economy contracted 2.3 percent. In 2010, Thailand’s economy expanded 7.8 percent, its fastest pace since 1995, as exports rebounded from their depressed 2009 level. Steady economic growth at just below 4 percent during the first three quarters of 2011 was interrupted by historic flooding in October and November in the industrial areas north of Bangkok, crippling the manufacturing sector and leading to a revised growth rate of only 0.1 percent for the year. The industrial sector is poised to recover from the second quarter of 2012 onward, however, and the government anticipates the economy will probably grow between 5.5 and 6.5 percent for 2012, while private sector forecasts range between 3.8 percent and 5.7 percent.

**KEY ISSUES FOR M&A TRANSACTIONS IN THAILAND**

49.99 percent Foreign Ownership of Companies: The 49.99 percent foreign share ownership limit under the Foreign Business Act applies to most sectors (manufacturing being the major exception where 100 percent is allowed). American citizens or corporates controlled by American citizens are exempted from this restriction in all but seven industry sectors as a result of the Thai US Treaty of Amnity & US Relations.

Restrictions on Foreign Land Ownership: There are substantial restrictions on foreign land ownership.

Security Package: No fixed and floating charges are possible. The scope of security is limited to mortgages over immovable assets, vessels, vehicles and equipment, or pledge of moveable assets. Structuring a security package is more time consuming.

Foreign Arbitration/Court Judgments: Foreign court judgments are not enforceable in Thailand, so investors need to consider arbitration when they prepare transaction documentation. Thailand is a signatory to the New York Convention, so foreign arbitral awards in a convention state will be enforceable in Thailand. SIAC is a popular choice and arbitration in Japan would also be viable.
Board of Investment: The Thai Board of Investment has the power to grant approval for 100 percent foreign share ownership and foreign ownership of land. It can also grant eight-year profit income tax holidays and concessions on import taxes for plant and machinery. Consequently, serious consideration should be given to making the appropriate applications to the Board of Investment.

TOP M&A LAW FIRMS IN THAILAND
Chandler & Thong-ek Law Offices Ltd
Legal Advisory Council Limited
Siam Premier
Watson, Farley & Williams (Thailand) Ltd
Weerawong, Chinnavat & Peangpanor Ltd

TRANSACTIONS IN THAILAND BY BINGHAM LAWYERS

Fuji Pharma: Advised on the acquisition of a Thai OEM's pharmaceutical manufacturer from a Swiss Holding company called DKSH Holdings AG.

Japanese Trading Company: Advised on its acquisition of an interest in a Thai company and two of its subsidiary companies in the automobile industry.

NTT DoCoMo: Advised in relation to the disposal of shares in Thailand.

Japanese Trading Company: Advised in relation to taking security interests over trademarks to be taken in Thailand, Indonesia, Vietnam and India.
The conquest of Vietnam by France began in 1858 and was completed by 1884. It became part of French Indochina in 1887. Vietnam declared independence after World War II, but France continued to rule until its 1954 defeat by Communist forces under Ho Chi Minh. Under the Geneva Accords of 1954, Vietnam was divided into the Communist North and anti-Communist South. U.S. economic and military aid to South Vietnam grew through the 1960s in an attempt to bolster the government, but U.S. Armed Forces were withdrawn following a cease-fire agreement in 1973. Two years later, North Vietnamese forces overran the South reuniting the country under Communist rule. Despite the return of peace, for over a decade the country experienced little economic growth because of conservative leadership policies, the persecution and mass exodus of individuals — many of them successful South Vietnamese merchants — and growing international isolation. However, since the enactment of Vietnam’s “doi moi” (renovation) policy in 1986, Vietnamese authorities have committed to increased economic liberalization and enacted structural reforms needed to modernize the economy and to produce more competitive, export-driven industries. The Communist leaders, however, maintain control on political expression and have resisted outside calls to improve human rights. The country continues to experience small-scale protests from various groups — the vast majority connected to land-use issues, calls for increased political space, and the lack of equitable mechanisms for resolving disputes. Various ethnic minorities, such as the Montagnards of the Central Highlands and the Khmer Krom in the southern delta region, have also held protests.
Vietnam is a densely populated developing country that in the last 30 years has had to recover from the ravages of war, the loss of financial support from the old Soviet Bloc and the rigidities of a centrally planned economy. While Vietnam’s economy remains dominated by state-owned enterprises, which still produce about 40 percent of GDP, Vietnamese authorities have reaffirmed their commitment to economic liberalization and international integration. They have moved to implement the structural reforms needed to modernize the economy and to produce more competitive export-driven industries. Vietnam joined the World Trade Organization in January 2007 following more than a decade-long negotiation process. Vietnam became an official negotiating partner in the developing Trans-Pacific Partnership trade agreement in 2010. Agriculture’s share of economic output has continued to shrink from about 25 percent in 2000 to about 22 percent in 2011, while industry’s share increased from 36 percent to 40 percent in the same period. Deep poverty has declined significantly, and Vietnam is working to create jobs to meet the challenge of a labor force that is growing by more than 1 million people every year. The global recession has hurt Vietnam’s export-oriented economy, with GDP in 2009–2011 growing less than the 7 percent per annum average achieved during the last decade. In 2011, exports increased by more than 33 percent, year-on-year, and the trade deficit, while reduced from 2010, remained high, prompting the government to maintain administrative trade measures to limit the trade deficit. Vietnam’s managed currency, the dong, continues to face downward pressure due to a persistent trade imbalance. Since 2008, the government devalued it in excess of 20 percent through a series of small devaluations. Foreign donors pledged nearly US$8 billion in new development assistance for 2011. However, the government’s strong growth-oriented economic policies have caused it to struggle to control one of the region’s highest inflation rates, which reached as high as 23 percent in August 2011 and averaged 18 percent for the year. In February 2011, Vietnam shifted its focus away from economic growth to stabilizing its economy and tightened fiscal and monetary policies. In early 2012, Vietnam unveiled a broad “three pillar” economic reform program, proposing the restructuring of public investment, state-owned enterprises and the banking sector. Vietnam’s economy continues to face challenges from low foreign exchange reserves, an undercapitalized banking sector and high borrowing costs. The near-bankruptcy and subsequent default of the state-owned-enterprise Vinashin, a leading shipbuilder, led to a ratings downgrade of Vietnam’s sovereign debt, exacerbating Vietnam’s borrowing difficulties.

In 2012, Japan became the biggest foreign investor in Vietnam, and Japanese business has been increasing since the outbreak of the Japan-China political tensions resulting from the Islands dispute.

**KEY ISSUES FOR M&A TRANSACTIONS IN VIETNAM**

**Foreign Ownership of Companies:** Foreign ownership restrictions are complex and vary depending upon whether the target is public/non-public and the sectors in which the target operates.

**Land:** Land belongs to the “people” and is managed by the State. Therefore, there is no concept of private ownership of land. However, land use rights can be obtained in one of the following forms:
A foreign owned enterprise (FOE) may only lease land from the State (or from an authorized infrastructure developer); the FOE may pay land rental up front for the entire lease term or annually;

A domestic owned enterprise (DOC) may be allocated with land for permanent use or for a fixed term, in consideration of payment of “Land use fees” in one lump sum, or may lease land from the State (or from an authorized infrastructure developer); the DOC may only pay land rental annually.

In each of the above form of land use rights, the “land user” is issued with an ownership certificate recognizing land use rights and ownership of assets on the land, usually referred to as “land use right certificate.”

Security Package: The mortgage/security package is more difficult to structure for the creditor’s benefit than in the US./U.K. Generally, for offshore loans, it is more common for foreign lenders to use a local security agent to hold the security to avoid enforcement complexities in the case that the beneficiary is foreign.

Foreign Arbitration/Court Judgments: A foreign judgment may be recognized and enforced in Vietnam via the Vietnamese court if the two countries have a bilateral judicial assistance agreement or grant each other mutual assistance treatment. Vietnam only has judicial assistance agreements with a few countries, mostly those in the Eastern Europe group. Vietnam also does not have a system to track which country is granting enforcement of judgments of Vietnamese courts. There are two more common alternatives: domestic arbitration or foreign arbitration.

TOP M&A LAW FIRMS IN VIETNAM
VILAF: Ho Chi Minh City and Hanoi
YKVN

TRANSACTIONS IN VIETNAM BY BINGHAM LAWYERS

Asia Pacific Land Limited: Advising on the review of documents relating to a Vietnamese real estate development joint venture agreement.

International Investment Fund: Advising an international investment fund in respect of debt and equity restructuring options for a public utility business and related litigation strategy.


Japanese Food and Beverage Company: Advising on the recovery of debts due from a Vietnamese counterparty and successfully recovering all monies due.

Japanese Trading Company: Advising in relation to taking security interests over trademarks to be taken in Thailand, Indonesia, Vietnam and India.

Vietnamese Real Estate Investments: Advising international investors on distressed real estate investments in Vietnam.
Vinashin: Advising an international hedge fund as the major lender on its rights and remedies as a US$60 million lender to a Vietnamese state-owned ship-building company, including advising on proceedings against the borrower and the guarantors and an enforcement strategy against the borrower’s vessel and other assets.
Europeans began to set up trading posts in the area of Bangladesh in the 16th century; eventually, the British came to dominate the region, and it became part of British India. In 1947, West Pakistan and East Bengal (both primarily Muslim) separated from India (largely Hindu) and jointly became the new country of Pakistan. East Bengal became East Pakistan in 1955, but the awkward arrangement of a two-part country with its territorial units separated by 1,600 km left the Bengalis marginalized and dissatisfied. East Pakistan seceded from its union with West Pakistan in 1971 and was renamed Bangladesh. A military-backed, emergency caretaker regime suspended parliamentary elections planned for January 2007 in an effort to reform the political system and root out corruption. In contrast to the strikes and violent street rallies that had marked Bangladeshi politics in previous years, the parliamentary elections finally held in late December 2008 were mostly peaceful and Sheikh HASINA Wajed was elected prime minister. About a third of this extremely poor country floods annually during the monsoon rainy season, hampering economic development.

The economy has grown between 5 percent and 6 percent per year since 1996 despite political instability, poor infrastructure, corruption, insufficient power supplies and slow implementation of economic reforms. Bangladesh remains a poor, overpopulated and inefficiently governed nation. Although more than half of GDP is generated through the service sector, 45 percent of Bangladeshis are employed in the agriculture sector with rice as the single-most-important product. Bangladesh’s growth was resilient during the 2008–2009 global financial crisis and recession. Garment exports, totaling US$12.3 billion in FY09 and remittances from overseas Bangladeshis, totaling US$11 billion in FY10, accounted for almost 12 percent of GDP.
TOP M&A LAW FIRMS IN BANGLADESH

Syed Ishtiaq Ahmed & Associates
Dr Kamal Hossain & Associates

TRANSACTIONS IN BANGLADESH BY BINGHAM LAWYERS

NTT DoCoMo: Advised on its US$380 million acquisition of a 30 percent stake in TM International (Bangladesh) Limited.
Most Cambodians consider themselves to be Khmers, descendants of the Angkor Empire that extended over much of Southeast Asia and reached its zenith between the 10th and 13th centuries. Attacks by the Thai and Cham (from present-day Vietnam) weakened the empire, ushering in a long period of decline. The king placed the country under French protection in 1863, and it became part of French Indochina in 1887. Following Japanese occupation in World War II, Cambodia gained full independence from France in 1953. In April 1975, after a five-year struggle, Communist Khmer Rouge forces captured Phnom Penh and evacuated all cities and towns. At least 1.5 million Cambodians died from execution, forced hardships or starvation during the Khmer Rouge regime under POL POT. A December 1978 Vietnamese invasion drove the Khmer Rouge into the countryside, began a 10-year Vietnamese occupation and touched off almost 13 years of civil war. The 1991 Paris Peace Accords mandated democratic elections and a ceasefire, which was not fully respected by the Khmer Rouge. UN-sponsored elections in 1993 helped restore some semblance of normalcy under a coalition government. Factional fighting in 1997 ended the first coalition government, but a second round of national elections in 1998 led to the formation of another coalition government and renewed political stability. The remaining elements of the Khmer Rouge surrendered in early 1999. Some of the surviving Khmer Rouge leaders have been tried or are awaiting trial for crimes against humanity by a hybrid UN-Cambodian tribunal supported by international assistance. Elections in July 2003 were relatively peaceful, but it took one year of negotiations between contending political parties before a coalition government was formed. In October 2004, King Norodom SIHANOUK abdicated the throne and his son, Prince Norodom SIHAMONI, was selected to succeed him. Local elections were held in Cambodia in April 2007, with little of the pre-election violence that preceded prior elections. National elections in July 2008 were relatively peaceful.
From 2004 to 2008, the economy grew about 10 percent per year, driven largely by an expansion in the garment sector, construction, agriculture and tourism. GDP contracted slightly in 2009 as a result of the global economic slowdown, but climbed more than 6 percent in 2010 and 6.7 percent in 2011, driven by tourism and renewed exports. With the January 2005 expiration of a WTO Agreement on Textiles and Clothing, Cambodian textile producers were forced to compete directly with lower-priced countries such as China, India, Vietnam and Bangladesh. The garment industry currently employs more than 300,000 people — about 5 percent of the workforce — and contributes more than 70 percent of Cambodia's exports. In 2005, exploitable oil deposits were found beneath Cambodia's territorial waters, representing a potential revenue stream for the government when commercial extraction begins. Mining also is attracting significant investor interest, particularly in the northern parts of the country. The government has said opportunities exist for mining bauxite, gold, iron and gems. In 2006, a U.S.-Cambodia bilateral Trade and Investment Framework Agreement (TIFA) was signed, and several rounds of discussions have been held since 2007. Rubber exports increased about 50 percent in 2011 due to continued demand for raw rubber, particularly from China, Malaysia and Vietnam. The tourism industry has continued to grow rapidly with foreign arrivals exceeding 2 million per year since 2007; economic troubles abroad dampened growth in 2009 but arrivals rebounded to over 2 million in 2010–2011. The global financial crisis is weakening demand for many Cambodian exports, and construction is declining due to a shortage of credit. The long-term development of the economy remains a daunting challenge. The Cambodian government is working with bilateral and multilateral donors, including the World Bank and IMF, to address the country’s many pressing needs. The major economic challenge for Cambodia over the next decade will be fashioning an economic environment in which the private sector can create enough jobs to handle Cambodia’s demographic imbalance. More than 50 percent of the population is less than 25 years old. The population lacks education and productive skills, particularly in the poverty-ridden countryside, which suffers from an almost total lack of basic infrastructure.

TOP M&A LAW FIRMS IN CAMBODIA

Bun & Associates
DFDL
Sciaroni and Associates

TRANSACTIONS IN CAMBODIA BY BINGHAM LAWYERS

Global Investment Fund: Advising on an investment in a strategic business sector in Cambodia.
Modern-day Laos has its roots in the ancient Lao kingdom of Lan Xang, established in the 14th Century under King Fa Ngum. For 300 years, Lan Xang had influence reaching into present-day Cambodia and Thailand, as well as over all of what is now Laos. After centuries of gradual decline, Laos came under the domination of Siam (Thailand) from the late 18th century until the late 19th century when it became part of French Indochina. The Franco-Siamese Treaty of 1907 defined the current Lao border with Thailand. In 1975, the Communist Pathet Lao took control of the government ending a six-century-old monarchy and instituting a strict socialist regime closely aligned to Vietnam. A gradual, limited return to private enterprise and the liberalization of foreign investment laws began in 1988. Laos became a member of ASEAN in 1997.

The government of Laos, one of the few remaining one-party communist states, began decentralizing control and encouraging private enterprise in 1986. The results, starting from an extremely low base, were striking — growth averaged 6 percent per year from 1988–2008 except during the short-lived drop caused by the Asian financial crisis that began in 1997. Laos’ growth exceeded 7 percent per year during 2008–2011. Despite this high growth rate, Laos remains a country with an underdeveloped infrastructure, particularly in rural areas. It has a rudimentary, but improving, road system and limited external and internal land-line telecommunications. Electricity is available in urban areas and in many rural districts. Subsistence agriculture, dominated by rice cultivation in lowland areas, accounts for about 30 percent of GDP and 75 percent of total employment. Economic growth has reduced official poverty rates from 46 percent in 1992 to 26 percent in 2010. The economy has benefited from high foreign investment in hydropower, mining and construction. Laos gained Normal Trade Relations status with the U.S. in 2004 and is taking steps required to join the World Trade Organization, such as reforming import licensing. Related trade policy reforms will improve the business environment. On the fiscal side, Laos initiated a VAT tax system in 2010. Simplified investment procedures and expanded bank credits for small farmers and small
entrepreneurs will improve Laos’ economic prospects. The government appears committed to raising the country’s profile among investors, opening the country’s first stock exchange in 2011. The World Bank has declared that Laos’ goal of graduating from the UN Development Program’s list of least-developed countries by 2020 is achievable. According Laotian officials, the 7th Socio-Economic Development Plan for 2011–2015 will outline efforts to achieve Millennium Development Goals.

**TOP M&A LAW FIRMS IN LAOS**

- DFDL
- LS Horizon (Lao) Limited
- McDonald Steed McGrath Lawyers

**TRANSACTIONS IN LAOS BY BINGHAM LAWYERS**

- **Japanese Trading Company**: Advising on the acquisition of a wood pulp business.
The first Sinhalese arrived in Sri Lanka late in the 6th century B.C., probably from northern India. Buddhism was introduced in about the mid-third century B.C., and a great civilization developed at the cities of Anuradhapura (kingdom from circa 200 B.C. to circa A.D. 1000) and Polonnaruwa (from about 1070 to 1200). In the 14th century, a south Indian dynasty established a Tamil kingdom in northern Sri Lanka. The coastal areas of the island were controlled by the Portuguese in the 16th century and by the Dutch in the 17th century. The island was ceded to the British in 1796, became a crown colony in 1802 and was formally united under British rule by 1815. As Ceylon, it became independent in 1948; its name was changed to Sri Lanka in 1972. Tensions between the Sinhalese majority and Tamil separatists erupted into war in 1983. After two decades of fighting, the government and Liberation Tigers of Tamil Eelam (LTTE) formalized a cease-fire in February 2002 with Norway brokering peace negotiations. Violence between the LTTE and government forces intensified in 2006, but the government regained control of the Eastern Province in 2007. By May 2009, the government announced that its military had defeated the remnants of the LTTE. Since the end of the conflict, the government has enacted an ambitious program of economic development projects, many of which are financed by loans from the government of China. In addition to efforts to reconstruct its economy, the government has resettled more than 95 percent of those civilians who were displaced during the final phase of the conflict and released the vast majority of former LTTE combatants captured by Government Security Forces. At the same time, there has been little progress on more contentious and politically difficult issues such as reaching a political settlement with Tamil elected representatives and holding accountable those alleged to have been involved in human rights violations at the end of the war.

Sri Lanka continues to experience strong economic growth, driven by large-scale reconstruction and development projects following the end of the 26-year conflict with the LTTE. Sri Lanka is pursuing a combination of government directed policies, private investment, both foreign and domestic, to spur growth in disadvantaged areas, develop
small and medium enterprises, and increase agricultural productivity. The government struggles with high debt interest payments, a bloated civil service and historically high budget deficits. However recent reforms to the tax code have resulted in higher revenue and lower budget deficits in recent years. The 2008–2009 global financial crisis and recession exposed Sri Lanka’s economic vulnerabilities and nearly caused a balance of payments crisis. Growth slowed to 3.5 percent in 2009. Economic activity rebounded strongly with the end of the war and an IMF agreement, resulting in two straight years of high growth in 2010 and 2011. Per capita income of US$5,600 on a purchasing power parity basis is among the highest in the region.

**TOP M&A LAW FIRMS IN SRI LANKA**

*F J & G De Saram*
*Julius & Creasy*
*Neelakandan & Neelakandan*
*Nithya Partners*

**TRANSACTIONS IN SRI LANKA BY BINGHAM LAWYERS**

*Japanese Trading Company:* Advising in relation to a Telecoms transaction.

*Global Investment Fund:* Advising on the investment restrictions with regard to key investment sectors in Sri Lanka.
<table>
<thead>
<tr>
<th>Country/City-State</th>
<th>2012 GDP ($US million)</th>
<th>FDI in 2011 ($US million)</th>
<th>Population</th>
<th>Area (Sq Km)</th>
<th>Capital</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bangladesh</td>
<td>113.855</td>
<td>6,166</td>
<td>150,039</td>
<td>143,998</td>
<td>Dhaka</td>
</tr>
<tr>
<td>China</td>
<td>7,298.147</td>
<td>711,802</td>
<td>1,353,821</td>
<td>9,596,961</td>
<td>Beijing</td>
</tr>
<tr>
<td>Cambodia</td>
<td>12.890</td>
<td>6,850</td>
<td>15.254</td>
<td>181,035</td>
<td>Phnom Penh</td>
</tr>
<tr>
<td>Hong Kong SAR</td>
<td>243.666</td>
<td>1,138,365</td>
<td>7,173</td>
<td>1,104</td>
<td>Hong Kong</td>
</tr>
<tr>
<td>India</td>
<td>1,826.811</td>
<td>201,724</td>
<td>1,223,170</td>
<td>3,287,263</td>
<td>New Delhi</td>
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<td>Indonesia</td>
<td>846.450</td>
<td>173,064</td>
<td>244,468</td>
<td>1,904,569</td>
<td>Jakarta</td>
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<tr>
<td>Japan</td>
<td>5,866.540</td>
<td>225,787</td>
<td>127,611</td>
<td>364,485</td>
<td>Tokyo</td>
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<tr>
<td>Laos</td>
<td>8.302</td>
<td>2,521</td>
<td>6.376</td>
<td>236,800</td>
<td>Vientiane</td>
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<tr>
<td>Malaysia</td>
<td>287.943</td>
<td>114,555</td>
<td>29.038</td>
<td>329,847</td>
<td>Kuala Lumpur</td>
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<tr>
<td>Myanmar (Burma)</td>
<td>51.444</td>
<td>9,123</td>
<td>63.672</td>
<td>676,578</td>
<td>Naypyidaw</td>
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<tr>
<td>Philippines</td>
<td>224.771</td>
<td>27,581</td>
<td>97.737</td>
<td>300,000</td>
<td>Manila</td>
</tr>
<tr>
<td>Singapore</td>
<td>259.849</td>
<td>518,625</td>
<td>5.366</td>
<td>697</td>
<td>Singapore</td>
</tr>
<tr>
<td>Sri Lanka</td>
<td>59.152</td>
<td>5,308</td>
<td>20.681</td>
<td>65,610</td>
<td>Kotte</td>
</tr>
<tr>
<td>Taiwan</td>
<td>466.424</td>
<td>56,154</td>
<td>23.434</td>
<td>35,980</td>
<td>Taipei</td>
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<tr>
<td>Thailand</td>
<td>345.672</td>
<td>139,735</td>
<td>64.460</td>
<td>513,120</td>
<td>Bangkok</td>
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<td>Vietnam</td>
<td>122.722</td>
<td>72,778</td>
<td>90.388</td>
<td>331,210</td>
<td>Hanoi</td>
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<tr>
<td>USA</td>
<td>15,075.675</td>
<td>3,509,359</td>
<td>314,311</td>
<td>9,826,675</td>
<td>Washington, DC</td>
</tr>
</tbody>
</table>

SOURCE: GDP FROM IMF, FDI FROM UNCTAD, POPULATION FROM IMD, AND AREA FROM CIA WORLD FACTBOOK.
APPENDIX 2
CROSS-BORDER M&A PRACTICE LEADERS AT BINGHAM TOKYO

Bingham’s Tokyo office, known as Bingham McCutchen Murase, Sakai Mimura Aizawa - Foreign Law Joint Enterprise, is one of the three largest international law offices in Japan, with more than 70 lawyers providing a full range of business law services, including mergers and acquisitions, finance, financial restructuring, financial regulatory, investment funds, securities, antitrust and trade regulation, intellectual property, crisis management, employment, energy, infrastructure, mining, real estate, and litigation.

Our team of Japanese, U.S. and U.K. lawyers has experience in major domestic and cross-border transactions, insolvencies and litigation. We have nearly 20 lawyers who are admitted to practice in the U.S. or U.K.

Our clients, both Japanese and non-Japanese, benefit from innovative legal and strategic advice combined with commercial business insight covering matters inbound to Japan and outbound from Japan to Asia, North America, Latin America, Europe and the Middle East.

Steve Lewis, Partner — English National
Steve Lewis joins Bingham from Herbert Smith LLP, where he founded and spent 10 years as managing partner of that firm’s Tokyo office. Steve has advised clients in large mergers, acquisitions, investment and energy transactions across a wide variety of industry sectors in Japan. He has extensive outbound mergers & acquisitions experience, particularly in cross-border mergers & acquisitions in emerging markets. He has worked for many Japanese companies and with major U.K., EU, U.S. and Asian corporations in Japan.

Education: Cambridge University (1984)
Admissions: England and Wales
Key Clients: NTT DoCoMo, Sumitomo, INPEX, Idemitsu and Pearson
Types of Transactions: Cross-Border Transactions; Mergers & Acquisitions; Joint Ventures; Telecommunications, Media and Technology; Energy, Infrastructure and & Mining

Tsugu Watanabe, Partner — American National
Tsugu Watanabe advises both Japanese and non-Japanese clients in matters originating from inside and outside of Japan. He has substantial experience in mergers & acquisitions, general corporate matters involving Japanese affiliates of multinational companies, and in assisting Japanese clients in international arbitration proceedings and U.S. litigation as well as real estate. He focuses on financing matters, with a particular emphasis on project finance and infrastructure transactions, leveraged and ABL financings, loan trading and loan restructurings and refinancings. He is fluent in Japanese.

Education: Harvard Law School, Juris Doctor (1981); Harvard University, Master of Arts (1978); Harvard College, Bachelor of Arts (1976)
Admissions: New York and a Registered Foreign Lawyer, Gaikokuho-Jimu-Bengoshi, in Japan
Key Clients: Nippon Life Insurance, Sumitomo Metal Mining Co., Toshiba, Development Bank of Japan, Mitsui & Co. Plant Systems and Bank of Tokyo-Mitsubishi UFJ

Types of Transactions: Mergers & Acquisitions; Corporate; Cross-Border Transactions; Energy; Project Finance

Len Matsunaga, Partner — American National

Len Matsunaga advises on cross-border mergers and acquisitions, joint ventures, and business restructurings; business and finance transactions involving Japanese and Asian corporations with extensive experience in the representation of businesses on planning, financing and operational matters; and counseling on corporate governance and dispute resolution matters as well as on sales, distributorship, licensing, manufacturing and technology transfer arrangements.

Education: Georgetown University Law Center, Juris Doctor (1985); Tufts University, Bachelor of Arts (1981)

Admissions: New York and a Registered Foreign Lawyer, Gaikokuho-Jimu-Bengoshi, in Japan


Types of Transactions: Mergers & Acquisitions; Cross-Border Transactions; Corporate Finance Joint Ventures

Hiroyuki Kanae, Partner — Japanese National

Hiroyuki Kanae focuses on corporate law, including mergers and acquisitions (domestic and international), corporate reorganizations, joint ventures, labor and employment law (including dispute settlements), corporate governance, IP license agreements, and real estate transactions. He also advises on commercial litigation matters, including domestic and cross-border litigations involving major Japanese and foreign companies. He represents major Japanese manufacturing companies, foreign financial institutions and high tech companies, as well as private equity funds.

Education: University of Illinois College of Law, Master of Comparative Law (1987); The Legal Training and Research Institute of the Supreme Court of Japan (1979); Waseda University, Faculty of Law, Bachelor of Laws (1976)

Admissions: Admitted to practice in Japan (Bengoshi) and New York

Key Clients: Sumitomo Precision Products Co., Ltd., Yamato Transport Co., Ltd., Fuji Pharma Co., Ltd., Jastec Co., Ltd. and Sony Corporation

Types of Transactions: Mergers & Acquisitions; Corporate; Foreign Investments (Inbound and Outbound); Cross Border Transactions; Distribution; Joint Ventures; IP Licensing

Yoshihito Shibata, Partner — Japanese National

Yoshihito Shibata has represented companies in M&A, insolvency, restructuring and antitrust matters. He represents securities companies, life insurance companies, banks, investment funds, investment adviser companies, venture capital companies, medical equipment companies, mining companies, food and beverage companies, real estate credit guaranty companies, publishing companies, semiconductor
manufacturing companies, and market research companies. He has extensive finance background and has passed the U.S. Certified Public Accountant exam.

**Education:** Duke University School of Law, Master of Laws (2004); The Legal Training and Research Institute of the Supreme Court of Japan (1998); Keio University, Master of Arts (1993)

**Admissions:** Admitted to practice in Japan (Bengoshi) and New York

**Key Clients:** OBARA Group Inc., Ajinomoto Co., Inc., Olympus Corporation, Calpis Co., Ltd., Sumitomo Metal Mining Co., Ltd., Goldman Sachs Japan Co., Ltd., Speedfam Co., Ltd.

**Types of Transactions:** Mergers & Acquisitions; Joint Ventures; Insolvency and Restructuring

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**Kenji Hirooka, Partner — Japanese National**

Kenji Hirooka has particular experience in cross-border public and private mergers and acquisitions, equity investments, and corporate finance transactions. He also advises in the areas of structured finance transactions, fund formation and fund regulatory matters. Kenji has advised Japanese and non-Japanese public and private companies, investment banks, private equity funds, hedge funds, and venture capital funds and has also closed numerous deals. He joined the firm’s Tokyo office in 2008 from O’Melveny & Myers.

**Education:** Cambridge University, MBA (2006); University of Southern California Law School, Master of Laws (2004); University of Tokyo Faculty of Law, Bachelor of Laws (1997)

**Admissions:** Admitted to practice in Japan (Bengoshi) and New York

**Key Clients:** Phillip Securities, Bank of Tokyo-Mitsubishi UFJ, Reliance Big Entertainment and Le Cordon Bleu

**Types of Transactions:** Cross-Border Transactions; Mergers & Acquisitions; Joint Ventures; Corporate Finance; Securities Regulations; Energy; Life Sciences

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**Hiroshi Ishihara, Partner — Japanese National**

Hiroshi Ishihara advises on international transactions and general corporate law matters, including mergers and acquisitions, business reorganization, financial restructuring, antitrust law, real estate, and intellectual property law. Prior to joining Bingham, he served as a lawyer at Nishimura & Asahi (formerly Nishimura & Partners) and Kirkland & Ellis LLP, as well as a year at the Bank of Japan in the Payment and Settlement Systems Department.

**Education:** Columbia University School of Law, Master of Laws (2005); Keio Law School, Bachelor of Laws (2004); University of Tokyo, Bachelor of Economics (1997)

**Admissions:** Admitted to practice in Japan (Bengoshi), New York and California

**Key Clients:** Sumitomo Metal Mining Co., The Sumitomo Warehouse Co., Ltd., Mitsui &Co.

**Types of Transactions:** Mergers & Acquisitions; Cross-Border Transactions; Joint Ventures

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**Christopher Wells, Partner — American National**

Christopher Wells has one of the leading international investment funds and financial regulatory practices in Japan. He has been named one of the most influential people in Asian hedge funds by *AsianInvestor* magazine and a Band 1 leading individual for
foreign investment funds and banking and finance regulatory work by Chambers Asia.

**Education:** University of California at Los Angeles (UCLA) School of Law, Juris Doctor (1979); University of California, Los Angeles, Master of Business Administration (1979); University of Rochester, Bachelor of Arts (1975)

**Admissions:** Registered Foreign Lawyer, Gaikokuho Jimu Bengoshi, in Japan and California

**Types of Transactions:** Foreign Investment Funds; Banking and Finance; Cross-Border Transactions
Xiaowei Ye, Partner — Chinese National
Xiaowei Ye is the co-managing partner of our Beijing office and a principal in Bingham Consulting. Xiaowei has more than 15 years of experience working in Asia representing multinationals when they enter into the Chinese market as well as large Chinese companies, financial institutions and investment funds with respect to their overseas investment, mergers and acquisitions, project financing, and initial public listing and offerings. Xiaowei also leads a team focusing on government regulatory and compliance matters. Having grown up in China, Xiaowei is fluent in both Mandarin and English.

Education: Georgetown University, Bachelor of Arts (1983)
Admissions: District of Columbia

Brian Beglin, Partner — American National
Brian Beglin is co-managing partner of our Beijing office and a principal in Bingham Consulting. Brian practices general business and corporate law with an emphasis on mergers and acquisitions, licensing, corporate finance, and joint ventures. Working with his colleagues at Bingham Consulting, he also provides global companies strategic and public policy advice on cross-border and multijurisdictional matters.

Education: Princeton University, Woodrow Wilson School of Public and International Affairs, Master of Public Affairs (1978); New York University School of Law, Juris Doctor (1978)
Admissions: New York
APPENDIX 4

PARTNERS AT BINGHAM HONG KONG

Matthew Puhar, Partner — English National

Matthew Puhar focuses on public and private cross-border mergers and acquisitions, corporate finance, debt and equity investment, and restructuring transactions. He has particular experience in mergers and acquisitions, flotations, joint ventures, debt and equity investment deals, and investment funds. Qualified in both Hong Kong and England and Wales, Matthew has significant experience advising on sophisticated cross-border transactions in Asia.

Education: College of Law, Chester, Solicitor’s Final Course (1992); University College London, Bachelor of Laws (1989); College of Law, Chester, Solicitor’s Final Course (1992)

Admissions: Solicitor, England and Wales; and Solicitor, Hong Kong

Anne-Marie Godfrey, Partner — Irish National

Anne-Marie Godfrey has extensive experience advising investment managers in Asia on the establishment and regulation of hedge funds and mutual funds. She advises investment advisers, fund administrators, trustees and other fund service providers on investment fund-related issues.

Education: National University of Ireland, Bachelor of Laws (1997); National University of Ireland, Bachelor of Corporate Law and Legal French (1996)

Admissions: Solicitor, England and Wales; Solicitor, Hong Kong; and Solicitor, Ireland

Vincent Sum, Partner — Australian National

Vincent Sum focuses his practice on complex capital markets matters, including structured products, derivatives (including equity derivatives, credit derivatives, corporate derivatives and commodity derivatives), securitizations, retail and non-retail structured funds, and debt capital markets matters (including Rule 144A/Regulation S global bond offerings). He advises underwriters, arrangers, portfolio managers, issuers, trustees and institutional investors.

Education: New York University School of Law, Master of Laws (1995); University of Leeds, Bachelor of Laws (1993); University of Sydney, Bachelor of Economics (1990)

Admissions: Hong Kong, New York, and England and Wales

Naomi Moore, Partner — Australian National

Naomi Moore focuses her practice on cross-border restructurings, insolvencies and workouts. With considerable experience gained in Asia, Australia and London, Naomi has been involved in a number of complex and high-profile restructurings with a particular focus on solvent and insolvent schemes of arrangement.

Education: University of Technology Sydney, Bachelor of Laws (1999); The University of New South Wales; Bachelor of Arts (1995)
**Admissions:** New South Wales, Australia; Solicitor, England and Wales; and Solicitor, Hong Kong

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**F. Mark Fucci, Partner — American National**

Mark Fucci has substantial experience in restructurings, insolvencies and complex financial transactions. He was named as a key individual by the *Legal 500* when it awarded Bingham its highest ranking in the category of corporate restructuring advice to creditors and financial institutions.

**Education:** University of Connecticut School of Law, Juris Doctor (1977); Lafayette College, Artis Baccalaureate (1973)

**Admissions:** New York, Connecticut and Registered Foreign Lawyer in Hong Kong

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**Richard Hornshaw, Partner — English National**

Richard Hornshaw acts for a range of financial institutions on high-value, complex and cross-border disputes. Richard’s practice focuses on finance and securities law matters as well as insolvency and restructuring situations and contentious regulatory disputes. He has experience conducting and resolving disputes throughout the Asia-Pacific region (both in arbitration and litigation) as well as in the U.K. and the rest of Europe.

**Education:** College of Law, Postgraduate Diploma in Law (1997);
College of Law, Legal Practice Course (1996)

**Admissions:** England and Wales and Registered Foreign Lawyer in Hong Kong
Appendix 5
Regional Countries Where We Have Worked on M&A Transactions

- Australia
- Bangladesh
- Myanmar (Burma)
- Cambodia
- China
- Hong Kong
- India
- Indonesia
- Japan
- Laos
- Malaysia
- Philippines
- Singapore
- South Korea
- Sri Lanka
- Taiwan
- Thailand
- Vietnam
Complementing Bingham’s legal capabilities is Bingham Consulting, the firm’s affiliated business, which helps clients in Asia and Southeast Asia develop and execute business and investment strategies in complex global markets. Bingham Consulting combines hands-on experience at the highest levels of government, strategic perspective and tactical know-how to shape solutions that meet the increasingly complex needs of companies expanding the borders of their businesses.

When companies operate in multiple jurisdictions, they are likely to face conflicting requirements and regulations and exposure to inconsistent enforcement actions. Bingham Consulting provides clients with advice on the broader political and policy issues that overlay the legal and business challenges companies face across jurisdictions. Composed predominantly of former senior-level government officials who bring years of hands-on, experience-based knowledge and insights, Bingham Consulting helps businesses understand the challenges posed by multiple levels of government as well as the political background against which government decisions are often made. Our consultants include former U.S. congressmen, top-level White House officials, governors, and a chairman of the U.S. Securities and Exchange Commission.

Bingham Consulting is a wholly foreign-owned enterprise in Beijing offering clients guidance on the strategic and public policy aspects of cross-border trade, investment, and complex, multijurisdictional regulatory and enforcement matters involving the financial services, technology, healthcare, energy, manufacturing, environmental, telecommunications and transportation industries.
Circular 230 Disclosure: Internal Revenue Service regulations provide that, for the purpose of avoiding certain penalties under the Internal Revenue Code, taxpayers may rely only on opinions of counsel that meet specific requirements set forth in the regulations, including a requirement that such opinions contain extensive factual and legal discussion and analysis. Any tax advice that may be contained herein does not constitute an opinion that meets the requirements of the regulations. Any such tax advice therefore cannot be used, and was not intended or written to be used, for the purpose of avoiding any federal tax penalties that the Internal Revenue Service may attempt to impose.