

2016

AN OFFSHORE VIEW

THE OFFSHORE LEGAL INDUSTRY LOOKS BACK ON SOME OF THE KEY LEGAL AND BUSINESS TRENDS OF 2015, AND HOW THESE WILL SHAPE AND INFLUENCE THE YEAR TO COME. BY **CHRIS HORTON**



"THERE IS A LOT OF INTEREST IN THE OFFSHORE FIRMS ESTABLISHING OFFICES IN HONG KONG AND SINGAPORE IN ADDITION TO THE ESTABLISHED PLAYERS BECAUSE OF THE VOLUME OF OFFSHORE WORK BEING GENERATED IN THIS REGION. IT IS A VERY INTERESTING TIME AND OF COURSE THE COMPETITION IS INCREASING."

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If you're working in offshore legal in Asia, you should be forgiven for feeling that 2016 has snuck up on you – it has been a busy year, to say the least.

As the Asian market's allure shifts from quantity to quality, the spoils are becoming significantly larger, which has spurred both new entrants and expansion by established firms. While short-term growth may seem all but assured, there are, as always, clouds on the horizon that may introduce or amplify risk.

The challenges and opportunities awaiting individual firms and the entire industry next year will have their roots in the events of this year. This is an opportune time to look back on the year that was in order to better understand what lies ahead in 2016.

TAKING STOCK OF 2015

There were several notable developments in offshore legal counsel in Asia this year, says Matt Roberts, a partner at Harneys' Hong Kong office.

"In terms of offshore trends, apart from Harneys, we saw a number of offshore firms look to Asia in terms of developing their expansion plans," says Roberts. "Certainly, there is a lot of interest in the offshore firms establishing offices in Hong Kong and Singapore in addition to the established players because of the volume of offshore work being generated in this region. It is a very interesting time and of course the competition is increasing, which is always great news for consumers of offshore services."

Harneys itself has continued to place importance on the Asia market, where it now has a bigger-than-ever presence in Hong Kong, as well as a new office in Singapore and representative offices in Shanghai and Tokyo.

With expansion comes new hires, and Harneys has made several important additions to its Hong Kong office, including counsels Marc Parrott, Junko Shiokawa, Bronwyn King and Raymond Ng, as well as senior associate Ellie Crespi-McCarthy. The Shanghai office is now led by Kristy Calvert, while the new Bermuda office is led by Sarah-Jane Hurrion and Mike Burns.

"We have had some fantastic lawyers join the firm, and that is indicative of the trend in the market for offshore law firms to attract some of the best and most talented lawyers from the premium U.S., UK and Asian law firms," Roberts says.

Rising compe- CONTINUED ON PAGE 22



A trader walks inside the trading hall during afternoon trading at the Hong Kong Stock Exchange. REUTERS/Bobby Yip



"JAPAN'S FIRST CORPORATE GOVERNANCE CODE CAME INTO EFFECT ON JUNE 1, 2015. WHILST THESE REGULATIONS DO NOT APPLY TO THE REGULATION OF NON-LISTED INVESTMENT FUNDS, THEY PROVIDE A FRAMEWORK FOR SOME OF THE STANDARDS THAT MIGHT BE ADOPTED BY THE INDUSTRY." **Nicholas Plowman, Ogier**

Continued from page 20. tion aside, he says other big issues this year included an increase in offshore regulatory work, specifically in connection with FATCA/CRS automatic information exchange and reporting requirements, plus a downturn in debt capital markets work, particularly from China.

On a more positive note, equity capital markets work and M&A activity have been steady. Harneys has observed a continued interest in the use of offshore fund vehicles, especially Cayman PE vehicles, to facilitate Asia-based outbound investments, particularly from China, Roberts says, as investors there become worried about the performance of their investments and look overseas for more stable investment opportunities.

Nicholas Plowman, a partner at Ogier's Hong Kong office, notes an increasing focus on compliance and regulation both onshore and offshore, with an emphasis on corporate governance, and cited Japan as an example.

"Japan's first corporate governance code

came into effect on June 1, 2015," Plowman says. "Whilst these regulations do not apply to the regulation of non-listed investment funds, they provide a framework for some of the standards that might be adopted by the industry."

Leon Santos, group partner at Collas Crill's Singapore office, says much of this year's activity has been in response to the shifting risk landscape.

"Slowing growth rates, political uncertainty, regulatory and tax changes were front and centre for many regional clients," Santos says. "These factors have driven restructuring and new structuring plans as people sought to mitigate risk."

For example, he says, many businesses are expanding across the ASEAN region.

"Singapore is one of the fastest-growing markets for financial services, and we have seen many new players looking for capital from, or to invest in, different markets setting up offshore structures for funds and investments."

Greg Knowles, partner and head of corporate at Maples and Calder's Hong Kong office, says that 2015 saw continued strong activity in equity capital markets with Cayman Islands company listings on the Hong Kong Stock Exchange. Maples and Calder recently acted as Cayman Islands counsel to IMAX China Holding in connection with its initial public offering and listing on the HKSE, raising HK\$1.92 billion. IMAX China's listing is the first by a major global brand in Hong Kong since 2011. Other Chinese businesses that have listed on NYSE/NASDAQ utilising a Cayman Islands company as the listing vehicle include Baozun, eHi Car, iDreamSky, Momo, Xunlei and Wowo. Earlier this year, Maples and Calder also advised on the listing of CK Hutchison Holdings Limited on the HKSE. This transaction was followed in June by the spin-off and separate listing of Cheung Kong Property Holdings Limited.

"The increase in IPOs has led to an increase in interest in trusts for founders of listed companies" **CONTINUED ON PAGE 24**



People talk in front of a Baidu's company logo at Baidu's headquarters in Beijing. REUTERS/Jason Lee



"SLOWING GROWTH RATES, POLITICAL UNCERTAINTY, REGULATORY AND TAX CHANGES WERE FRONT AND CENTRE FOR MANY REGIONAL CLIENTS. THESE FACTORS HAVE DRIVEN RESTRUCTURING AND NEW STRUCTURING PLANS AS PEOPLE SOUGHT TO MITIGATE RISK."

Leon Santos, Collas Crill

CONTINUED FROM PAGE 22 and trusts for managers and employees of such businesses," says Maples partner and Head of Trusts for Asia Richard Grasby. "Cayman Islands and BVI trustees, including private trust companies, are very commonly used. PRC law firms are looking at offering private wealth services and we have also had interest from PRC financial institutions in establishing trust companies themselves."

Debt capital markets has also been active, Knowles added, with many listed Cayman Islands and BVI issuers raising substantial sums, including Baidu, China SCE Property Holdings, Ctrip.com, HNA Tourism Finance and Sino-Ocean Land, among others. Maples and Calder also saw plenty of M&A activity this year. The firm was involved in the Didi Dache merger with Kuaidi Dache, The Link Real Estate Investment Trust's acquisition of Corporate Avenue 1 and 2 in Shanghai, and the DianPing Holdings merger with Meituan.com.

There has also been a significant increase

in the number of litigation-related matters emerging from mainland China, observes John Trehey, partner and head of litigation at Maples and Calder's Hong Kong office.

"This marks a change in the traditional or cultural perception of litigation as destabilising or inharmonious and a move towards the use of the courts of the Cayman Islands and BVI to achieve business objectives on the basis of their now-widespread reputation as commercial, stable and predictable," says Trehey.

China isn't the only place where long-held attitudes are changing.

"We have seen a pronounced surge this year in fund formation projects for clients who are targeting fund raising from Japanese investors," says Anthony Webster, partner and head of private equity at Maples and Calder's Hong Kong office. "This appears to be driven by an increase in interest from Japanese investors wishing to gain exposure to international equities, bonds and alternative assets."

Webster adds, "A feature of many of these funds is that they are running increasingly complex strategies, designed to enhance returns, including but not limited to currency overlay and covered call strategies which generate additional income and which can be used to pay out a regular monthly distribution. These are now a staple feature of funds that are targeted at Japanese investors. In addition, we are also beginning to see some green shoots in the form of interest from Japanese pension funds that, in an attempt to gain higher yielding returns, are now similarly looking to increase their exposure to alternative assets."

David Lamb, partner and firm co-chairman at Conyers, Dill and Pearman's Hong Kong office, singles out two developments as being defining trends for the past year.

"We've seen increasing demand for dispute resolution services in the region," Lamb says. "Additionally, there has been an increase in shareholder activism, although that is not confined to the Far East."

WHICH TRENDS WILL HOLD?

Lamb says that he expects growing demand for litigation services in Asia to continue through 2016. He also says that the growing value of M&A activity involving Asian companies should also hold steady. In the first half of 2015, Asia-related M&A deals totaled \$590 billion, a 74 percent year-on-year increase, according to Mergermarket. A trend within this trend is China's growing appetite for deals abroad. In the first half of this year, China's outbound M&A activity reached a record \$23.8 billion, up 13.9 percent year on year. Geographically speaking, the top targets for M&A activity within Asia in the first six months of 2015 were China (\$151.1 billion, up 16.4 percent year on year), Hong Kong (\$106.5 billion, up 255.8 percent) and South Korea (\$62.9 billion, up 80.1 percent).

"We anticipate this trend will continue, although the rate may slow due to the recent depreciation of the Chinese renminbi," notes Lamb. "Offshore vehicles will continue to be used throughout Asia, both for structuring investments into and for investments outside

of the region. Outward bound M&A is likely to continue to increase over the next couple of years and it is expected that offshore vehicles will continue to have a part to play in these transactions."

Knowles of Maples and Calder sees four trends maintaining momentum into 2016: the internationalisation and sophistication of mainland Chinese firms, growing Chinese wealth, increasing Asian interest in Ireland as an offshore destination and a growing number of IPOs.

Not surprisingly, the PRC, which includes mainland China, Hong Kong and Macau, is the main thread running through these four trends.

"PRC firms are not yet at the stage where they match U.S. or UK firms in terms of sophistication or size," Knowles says. "But we are seeing them becoming more sophisticated year on year, with mergers happening between PRC and international firms, most notably the case of King & Wood Mallesons and Dacheng/Dentons, and as leading PRC firms continue to expand their bench of partners and associates who are

comfortable working in the international arena. They are also supported by an ever-increasing number of domestic clients, many of whom are looking to do deals outside of the PRC. We would not be surprised to see more tie-ups and mergers between PRC and U.S. or UK law firms."

There is also increased interest in trusts within the PRC, Maples' Grasby adds. This is linked to the increasing levels of wealth in the PRC and also interest in emigration by a significant number of wealthy individuals.

"According to the Hurun Rich List, China has more U.S. dollar billionaires than the U.S.," says Grasby. "The vast majority of these are self-created and potentially in need of advice and structuring. This has led to increased interaction between our firm and the PRC advisers. There will also be more trust and private wealth litigation arising from structures which may not have been properly set up or which may not meet with other family members' expectations."

China is among several Asian markets with growing interest in Ireland as a jurisdiction of choice for the establishment of



OFFSHORE SPECIALISTS IN SINGAPORE

Collas Crill is an offshore law firm that never stands still. We were the first law firm with offices in Singapore, the Cayman Islands, London and each of the Channel Islands and, thanks to our forward-thinking approach, we've built a strong global presence and reputation.

We serve an Asian client base with global legal needs including leading financial institutions, high net worth individuals, international businesses

and asset managers. Flexible, responsive and easy to do business with, our team takes a commercial response to achieving client objectives.

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WE ARE OFFSHORE LAW



A police officer stands near national flags of ASEAN countries flags. REUTERS/Soe Zeya Tun



"THE INCREASE IN IPOs HAS LED TO AN INCREASE IN INTEREST IN TRUSTS FOR FOUNDERS OF LISTED COMPANIES AND TRUSTS FOR MANAGERS AND EMPLOYEES OF SUCH BUSINESSES. CAYMAN ISLANDS AND BVI TRUSTEES, INCLUDING PRIVATE TRUST COMPANIES, ARE VERY COMMONLY USED."

Richard Grasby, Maples and Calder

investment funds by Asia-based managers. Maples and Calder's Dublin office has established a business development presence in Hong Kong in response to this growing demand. Maples advises clients on all aspects of the establishment of Undertakings for Collective Investment in Transferable Securities (UCITS), AIFMD funds and special purpose vehicles for tax structuring.

Maples' Knowles says the firm foresees significant listings of PRC-based businesses on the HKSE, the NYSE, NASDAQ and other exchanges utilising Cayman vehicles, buoyed by the Alibaba listing and also further debt capital market activity. "We also foresee further significant M&A activity in the TMT sector which will likely also involve major Cayman-listed companies," says Grasby.

The formation of the 10-member ASEAN Economic Community at the end of 2015 is expected to spur cross-border investment and new approaches to investment in the world's newest single market, which is home to 600 million people and \$2.4 trillion in

GDP in 2013. With Singapore far and away the financial centre of gravity for ASEAN, it is expected to continue to draw interest as a gateway to the AEC.

"We expect Singapore to continue to attract financial services and other businesses, as well as private wealth," says Santos of Collas Crill in Singapore. "This should drive demand for offshore structuring services."

Plowman at Ogier's Hong Kong office says he sees sustained activity in several areas of the Asian market.

"We expect to our contentious disputes service line to pick up in Asia," Plowman says. "We also expect to see more restructuring and insolvency work out of China as it continues to restructure and begin to let some of the bad businesses go."

Ogier also expects to see continued strong demand for offshore investment funds, particularly Cayman Islands-domiciled vehicles, Plowman adds.

With respect to Asian funds industry, as noted we are seeing an increasing focus

on corporate governance particularly with respect to independent boards.

"It is now common to see at least one independent director sitting on the fund's board and increasingly a majority of independent directors," Plowman says. "Without a doubt, boards comprised of entirely or a majority of investment manager representatives is no longer the norm."

Competition in the asset management environment has forced managers to react to the demands of investors and these demands, at the most basic level, are looking for independent directors to sit on fund boards who will challenge decisions and seek to uphold fiduciary duties and, ultimately, the interests of the shareholders, Plowman says.

"The rise in demand for truly independent, professional, skilled and non-apatetic directors has clearly risen in the region and will most likely continue to rise," he says.

Plowman also notes that questions surrounding mixed-

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