



2015 Asia Forum—Beijing

Hot Issues Representing Clients in Asia

Legal Ethics/Compliance | Antitrust | Dispute Resolution
Intellectual Property | Outbound Investments



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November 16 – 17, 2015

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PROGRAM AGENDA

Monday, November 16, 2015

SESSION 1

Foundations of Privilege/Confidentiality: How to Practice Ethically Across Multiple Jurisdictions- the Ethics Minefields for Lawyers Practicing in Key Asian Jurisdictions

Today's is a world where companies increasingly do business in multiple jurisdictions, and at the same time, it is a world filled with increasingly active regulatory enforcement, both local and national. Attorney-client privilege is an important consideration for companies in obtaining legal advice regarding its regulatory compliance and operations around the globe. Where a company is headquartered in the United States or a Commonwealth jurisdiction, it may simply assume that lawyers everywhere all have a duty to keep the private communications with the company in confidence and this equates to privilege. Yet, privilege is not in fact a unitary concept applied across all jurisdictions and in certain countries, it may not in fact exist. This session is the first of two panels that will explore the differences in key jurisdictions regarding privilege and lawyer confidentiality and the implications for clients in structuring engagements by in-house or external counsel. This first session will provide the foundations for the ethical issues that can create tensions in terms of counsel's ability to protect client confidences for matters involving multiple jurisdictions. The jurisdictions covered will be the United States, Hong Kong SAR, the PRC and Japan. At the conclusion of the session, attendees will have a keen understanding of just how different the rules are and the potentially high hurdles to be addressed in crafting representations that can promote the presence of privilege in jurisdictions recognizing the same, when the matter also involves a jurisdiction that doesn't recognize privilege.

Panel Chairs:

Ruixue Ran, Covington & Burling, Beijing, China
Amy Sommers, KL Gates, Shanghai, China

Moderator:

Ruixue Ran, Covington & Burling, Beijing, China

Speakers:

Wang Yan, Fangda Partners, Beijing China
Sarah Barclay, Simmons & Simmons, Hong Kong SAR
Takeo Kosugi, Matsuo & Kosugi, Tokyo, Japan (Invited)
Amy Sommers, K & L Gates, Shanghai, China

**Ethics Credit Requested*

TEA AND COFFEE BREAK

SESSION 2A
Hot Topics about Standards and FRAND Commitments

Panelists from the government, courts, in-house, and private practice around the world will discuss developments on the antitrust and IP interface regarding standards and FRAND commitments. Topics will include cases on FRAND rates, government investigations on abuse of dominance in IP and patent assertion entity (PAE) activity, and availability of injunctive relief on FRAND-encumbered SEPs.

Panel Chairs:

George Cary, Cleary Gottlieb, Washington, D.C., USA
Elizabeth Wang, CRA, Boston, MA, USA

Moderator:

George Cary, Cleary Gottlieb Steen & Hamilton, Washington, DC, USA

Speakers:

Joshua Wright, U.S. Federal Trade Commission, Washington, DC, USA
Yong Huang, University of International Business and Economics Law School, Beijing, China
Ingrid Vandenborre, Skadden, Arps, Slate, Meagher & Flom, Brussels
Yang Jie, State Administration for Industry and Commerce, Beijing, China

SESSION 2B
Extraterritorial Reach of US Law: Perspectives from the US and from China

Gift giving customs in many countries have led to prosecutions under the Foreign Corrupt Practices Act. Business practices followed under government guidance have resulted in antitrust lawsuits, raising issues of foreign sovereign compulsion and the application of the Foreign Trade Antitrust Improvements Act. Investigations into the financial records of Asian affiliates of U.S. public companies have led to confrontations between conflicting accounting standards and disclosure requirements. This session will survey the latest developments in the extraterritorial reach of U.S. laws and the changing business ethics rules in China and other Asian countries, discussing the issues from the perspectives of (1) a U.S. or European multi-national and (2) a company headquartered in China.

Panel Chairs:

Susan Guo, AllBright, Beijing, China
Darrell Prescott, Baker & McKenzie, New York, NY, USA

Speakers:

Susan Guo, AllBright, Beijing, China
Darrell Prescott, Baker & McKenzie, New York, NY, USA
Speaker, FenXun
Speaker, Anti-Monopoly Bureau of MOFCOM
Greg Leonard or Fei Deng, Edgeworth Economics

LUNCHEON

SESSION 3A
IP Issues in M&A Transactions

The IP component of a transaction is of particular importance for M&A activities in Asia. An extra layer of complexity is often imposed in cross-border transactions. This program brings together counsel, economists, regulators and leading academics in China and other parts of the world. Topics discussed will cover a wide variety of issues, including valuation of IP, due diligence, IP protection, antitrust review, and technology transfer with local partners.

Panel Chairs:

He Jing, Anjie, Beijing, China
Ingrid Vandenborre, Skadden, Arps, Slate, Meagher & Flom, Brussels, Belgium

Moderator:

James Brelsford, Skadden, Arps, Slate, Meagher & Flom, Hong King

Speakers:

Brent Irvin, Tencent, Shenzhen, Guangdong, China
Fu Tong, Qihoo 360
Howard Morse, Cooley, Washington, DC
He Jing, Anjie Law, Beijing, China
Xin Lin, Ministry of Commerce, Beijing, China

SESSION 3B
Arbitration in Asia: Soup to Nuts Alternative to U.S. Litigation

Arbitration has varying levels of acceptance across Asia. This session would survey from the practical, legal and cultural perspectives arbitration in various Asian jurisdictions, from the drafting of the arbitration clause, through arbitration to enforcement. The discussion might be in the context of an outbound investment, from the perspectives of (1) a U.S. or European multi-national and (2) a company headquartered in China. Possible speakers from China include the chairperson of CIETAC and BAC, and possibly a judge from one of the courts that focuses on enforcement of arbitral awards.

Panel Chairs:

James Zimmerman, Sheppard Mullin, Beijing, China
Nikolaus Pitkowitz, Graf & Pitkowitz, Vienna, Austria

Moderator:

James Zimmerman, Sheppard Mullin, Beijing

Speakers:

Brenda Horrigan, Herbert Smith Freehills, Shanghai
Susan Munro, Steptoe & Johnson, Beijing
Nikolaus Pitkowitz, Graf & Pitkowitz, Vienna
Yu Jianlong, CIETAC

TEA AND COFFEE BREAK

SESSION 4A
In-house Issues in IP Licensing in China

This panel will focus on the experiences of in-house counsel in licensing negotiations and transactions in a Chinese context. Across all forms of intellectual property, the legal and regulatory landscape shapes IP issues for companies and their legal strategies for both Chinese and international firms.

Panel Chairs:

Greg Slater, Intel China, Beijing, China
Danny Sokol, University of Florida / Wilson Sonsini, Gainesville, FL, USA

Moderator:

Scott Sher, Wilson Sonsini, Washington, DC, USA

Speakers:

Hongbin Wang, Intel, Beijing, China
Munesh Mahtani, Google, London, United Kingdom
Nancy Yu, Huawei Technologies Co., Guangdong, China
Xuehong Zhang, Datang Group, Beijing, China

SESSION 4B
Litigating from Here to There

Most complex commercial disputes in today's global economy involve more than one jurisdiction, and can even cross multiple borders with differing legal standards and systems. One challenge is knowing how to act when what is required in one jurisdiction is prohibited in the other. Other challenges include determining whether and when public disclosure of the dispute is appropriate, and managing cross-border publicity implications without making matters worse. This session would explore these and other challenges facing parties involved in cross-border – and cross-cultural – disputes, from the perspectives of (1) a U.S. or European multinational and (2) a company headquartered in China. Hear from a distinguished panel of lawyers and consultants with decades of experience advising clients on these thorny issues.

Panel Chairs:

Brian Burke, Shearman & Sterling, Beijing, Hong Kong
Yee Wah Chin, Ingram Yuzek Gainen Carroll & Bertolotti, New York, NY, USA

Moderator:

Brian Burke, Shearman & Sterling, Beijing, Hong Kong

Speakers:

Yee Wah Chin, Yuzek Gainen Carroll & Bertolotti, New York, NY, USA
Gabrielle Liu, Kobre & Kim, Hong Kong
Jiangtao Ma, Dacheng Law Offices, Beijing
David Schlesinger, Tripod Advisors, Hong Kong

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Tuesday, November 17, 2015

SESSION 5A
Hard Core Crackdown: Anti-Cartel Enforcement in High Gear in Asia

Recent enforcement action against cartels illustrates that competition authorities in Asia are aggressively pursuing cartel cases and in some cases (e.g., Hong Kong) adopting new rules. This session will focus on recent cases in Asia and will also address issues such as the risks of prosecution in different countries, multi-jurisdictional investigations and cooperation across the region, dawn raids, rights of defence, powers of search and seizure, representation, leniency strategies, and criminal sanctions including extradition, border watches and Interpol Red Notices. In addition, the panel will compare follow-on private actions in a number of jurisdictions including the US and EU.

Panel Chairs:

Ninette Dodoo, Freshfields Bruckhaus Deringer, Beijing, China
Willard Tom, Morgan Lewis, Washington, D.C., USA

Moderator:

Willard Tom, Morgan Lewis, Washington, D.C., USA

Speakers:

Yong Seok Ahn, Lee & Ko, Seoul, Korea
Ninette Dodoo, Freshfields Bruckhaus Deringer, Beijing, China
Speaker, NDRC
Speaker, JFTC

SESSION 5B
Challenges and Issues in Asian M&A and Investment

Asia is becoming a key focal point for global M&A and investment activity, offering some of the most attractive opportunities, yet at the same time presenting some of the greatest challenges to strategic acquirers and financial investors alike.

This panel will discuss current issues in M&A and investment in “emerging” Asia, with a particular emphasis on the big three economies: China, India and a newly resurgent Japan. All three jurisdictions present incredible opportunity for investment and growth, but also tend to be some of the more difficult places for multinational corporations and financial investors to invest and do business. Particular emphasis will be placed on regulatory issues and the typical obstacles to getting a deal done as well as practical solutions and strategies for overcoming such issues. The discussion will draw upon the specific experiences of panel members, both from the view of seasoned law firm practitioners and in-house counsel as well as from a business perspective. Issues common to all three jurisdictions to be discussed include the familiar litany of complaints: language and cultural barriers; the difficulties in conducting effective due diligence (legal, business, financial); the art of selecting and working with local counsel; restrictions on foreign ownership; ever changing regulatory landscapes as well as perceived differences in regulatory interpretation and enforcement for domestic and foreign entities; FCPA risk; [burdensome] labor laws and regulations; different accounting practices; and differences in the regulation of the acquisition process.

Panel Chairs:

Victor Sun, Cisco, Beijing, China
Miguel Torres, Torres, Martin & Zaragoza, Barcelona, Spain

Moderator:

Clara Ingen-Housz, Linklaters, Hong Kong

Speakers:

Motoyasu Hirose, Uryi & Itoga, Tokyo, Japan
Niren Patel, India
Lin Zhong, Chen & Co., Shanghai, China
Piyasena C. Perera, Anderson Mori & Tomotsune, Tokyo, Japan

TEA AND COFFEE BREAK

SESSION 6A**Antitrust Scrutiny beyond Cartels: Vertical and Unilateral Pricing Enforcement in Asia**

Apart from cartel enforcement, authorities in Asia have been very active in investigating and prosecuting unilateral conduct cases including abuse of dominant position, conditional pricing, resale price maintenance (RPM), most-favored-nation (MFN) clauses, licensing conduct, bundling and pricing of SEPs. This session will also analyze the procedural aspects of RPM and unilateral conduct such as how these investigations are conducted, how authorities in different jurisdictions cooperate and the role of economic analysis.

Panel Chairs:

François Renard, Allen & Overy, Beijing, China
Elizabeth Avery, Gilbert & Tobin, Sydney, Australia

Moderator:

Francois Renard, Allen & Overy, Beijing, China

Speakers:

John Ren, T&D Associates, Beijing, China
Elizabeth Avery, Gilbert & Tobin, Sydney, Australia
Su Sun, Economists Inc., Washington, DC

SESSION 6B**615 million people, a U.S. \$2.3 trillion economy and 10 legal systems: The Opportunities and Challenges of Investing into ASEAN**

The Association of South East Asian Nations (ASEAN), a bloc of 10 member nations with a young and growing population of more than 615 million people and a combined GDP of US\$2.3 trillion, has been working towards the goal of regional economic integration in the form of the ASEAN Economic Community (AEC) since the ASEAN Economic Blueprint was adopted in 2007. The AEC aims to achieve a single market and production base similar to the European Union, but the vast inequality, heterogeneous cultures and history, and diverse legal systems and laws of ASEAN's member nations mean that success as an economic union may prove elusive and the investment opportunities remain mainly national.

This panel will discuss the legal, regulatory and practical challenges of investing into ASEAN, sharing real-life examples of common issues relating to investments into this group of extraordinary and diverse economies. The panel will discuss how these challenges are overcome, as well as some offbeat issues and solutions.

The discussion will touch on such issues from the perspective of Asian investors, particularly Japan and China, and attempt to predict what the legal and regulatory environment for the region may look like in 10 years, as well as make some suggestions on how lawyers can prepare themselves for this changing landscape.

Panel Chairs:

Lisa Chung, Slaughter & May, Hong Kong
Christian Chin, Allen & Gledhill, Singapore

Moderator:

Lisa Chung, Slaughter & May, Hong Kong

Speakers:

Christian Chin, Allen & Gledhill, Singapore
Oene Marseille, ABNR, Jakarta/Singapore
Takeshi Komatsu, Mori Hamada & Matsumoto, Tokyo/Singapore
Zhang Ying, Jun He, Beijing, China

LUNCHEON**SESSION 7A****Let the Buyer Beware? Challenges in Merger Review in Asia**

This session will focus on significant recent merger review decisions in China and across Asia and will consider, among other things, merger remedies, the application of merger notification regimes and merger reviews to joint ventures, and reviews involving SOEs. Procedural aspects of merger review will also be explored, including: cooperation between agencies in Asia and beyond; the simplified procedure in China; the roles of economic analysis; the role of industrial policy considerations; and interventions from customers, competitors, trade associations and other governmental entities in the merger review process.

Panel Chairs:

Michael Han, Fangda, Beijing, China
Sandy Walker, Dentons, Toronto, Canada

Moderator:

Michael Han, Fangda, Beijing, China

Speakers:

Nathan Bush, O'Melveny, Singapore
Sebastien Evrard, Jones Day, Hong Kong
Janet Hui, Jun He, Beijing, China
Elizabeth Wang, Charles River Associates, Boston, MA, USA

SESSION 7B**Going to the Americas: Outbound Investment and What It Takes to Be Successful**

The People's Republic of China invested \$16 billion in Canada and a record \$14 billion in the U.S. in 2013, powered by the Chinese Government's economic reforms and regulatory change. Mexico has the highest number of investment projects of Chinese companies outside China. Currently, about 109 development plans are carried out throughout Mexico. China also promised to invest up to \$80 billion in Mexico between 2013 and 2018 in the realms of communications and transport infrastructure. Canada's recently ratified Foreign Investment Protection Agreement with China entered into force on 1 October 2014 and a US-China Bilateral Investment Treaty was finalized at the end of 2014. These investment treaties, coupled with access to cross-border trade through the Americas endorsed by NAFTA, makes investing in the Americas an appealing proposition for Chinese companies, particularly in the automotive, energy, resources and advanced manufacturing sectors. However, navigating the legal and regulatory frameworks for these industries can prove quite challenging. Our panel will focus on how to establish clear guidelines for companies and clients on what actually violates laws and regulations in the US, Mexico and Canada, as well as the opportunities for the three countries increasing cross-border regulatory cooperation and facilitating high performing multi-company investments in these countries.

Panel Chairs:

Janet Hui, Jun He Law Offices, Beijing, China
Selig Sacks, Foley & Lardner, Shanghai, New York

Moderator:

Selig Sacks, Foley & Lardner, Shanghai, New York

Speakers:

James Green, U.S. Embassy, Beijing, China
Mengyi Wu, Baidu Inc., Beijing, China
Sandy Walker, Dentons, Toronto, Canada
David Chen, De Heng, Beijing, China

TEA AND COFFEE BREAK

SESSION 8

Avoiding Legal Ethical Traps for the Unwary- Structuring Engagement of Legal Counsel in Multiple Jurisdictions to Avoid Legal Ethical Traps

Internal investigations are increasingly common these days and not infrequently, may later form the basis for defending in litigation or a government regulatory action. What happens when your counsel in China, who is admitted only in China, handles the investigation and in a later regulatory proceeding in the United States or Hong Kong, you are requested to deliver all records associated with the investigation to the regulator - will you be able to assert attorney-client privilege as a bar to releasing the information? What if the investigation covers multiple jurisdictions, including say, Korea? What if part of it was handled by in-house counsel and part by external counsel? Sounds like quicksand, but in many cases there may be a way around the potential morass if you structure your engagements with an eye toward maintaining privilege. This session will use a case study to explore the implications and nuances of the information gleaned in Session 1 to provide practical tools for understanding and dealing with privilege to mitigate some of the potential traps for the unwary.

Panel Chairs:

Russell Leu, Sheppard Mullin, Beijing, China
K. Lesli Ligorner, Simmons & Simmons, Shanghai, China

Moderator:

K. Lesli Ligorner, Simmons & Simmons, Shanghai, China

Speakers:

Meg Utterback, King & Wood Mallesons, Shanghai, China
Doug Clark, Barrister and Solicitor, Hong Kong SAR
Liz Kyo-Hwa Chung, Kim & Chang, Seoul, Korea
X. Shawn Zhao, Hewlett Packard, Beijing, China (invited)

**Ethics Credit Requested*