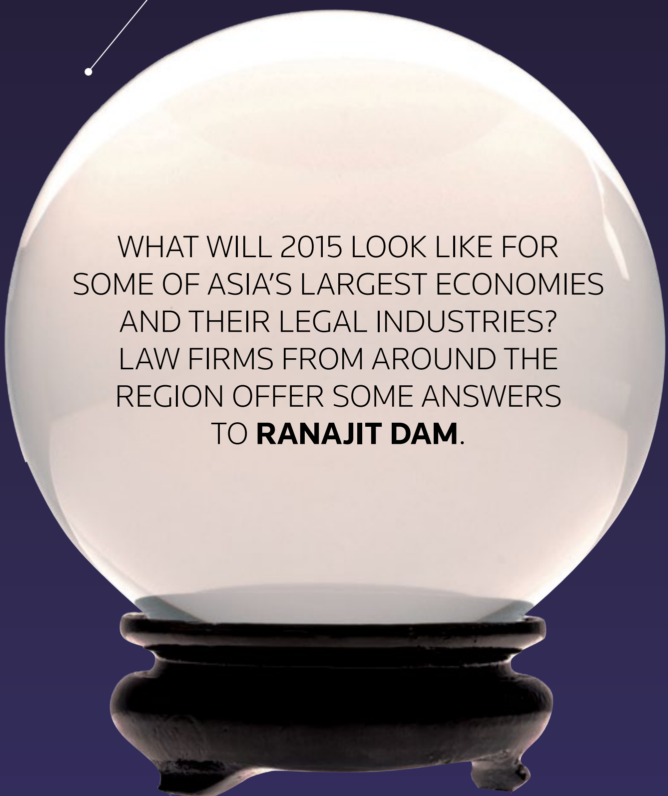
The Year in 2015



WHAT WILL 2015 LOOK LIKE FOR SOME OF ASIA'S LARGEST ECONOMIES AND THEIR LEGAL INDUSTRIES? LAW FIRMS FROM AROUND THE REGION OFFER SOME ANSWERS TO **RANAJIT DAM**.

Crystal ball gazing is always a fun exercise; aside from attempting to predict the future (not always the most exact science), it is interesting to return and see how accurate those predictions ended up becoming. As with every new year, business publications around the world have provided their forecasts on how the coming year will pan out. According to the Economist Intelligence Unit, the world economy will grow by 2.9 percent in 2015, although emerging markets will see slower growth. China will see expansion slow to 7 percent in 2015, and Macau's GDP will shrink thanks to a slump in gambling revenues. However, the good news is that excluding Japan, Asia and Australasia will be the world's fastest-growing region in 2015, with Papua New Guinea (set to expand by almost 15 percent), Laos, Sri Lanka and Cambodia the stars.

The year 2015 also promises the launch of the ASEAN Economic Community, and other notable trends. Here we look at what the year holds in terms of legal and regulatory developments in some of Asia's largest economies, as well as how the legal industry in these countries is expected to develop. ALB

China

The year 2014 saw the Chinese government place a great deal of focus on the promotion of the rule of law, and Wang Ling, managing partner of King & Wood Mallesons, says that she anticipates that "at a very high level, this will influence the development of the rule of law in China. It is, of course, a development which we wholly welcome." Additionally, her firm expects to see an increase in compliance-related issues faced by its clients across a range of issues, including anti-corruption, employment and intellectual property (IP). "The internationalisation of the RMB and the pilot programmes of the Shanghai Free-Trade Zone as well as those of the Tianjin, Guangdong and Fujian FTZs are throwing up fresh challenges for the legal services market in China," she says. "We would also highlight the launch of the Shanghai-Hong Kong Stock Connect which allows the greater integration of capital markets across Greater China."

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Wang says that clients last year showed increasing interest in cross-border business opportunities including M&A, with investment flowing into a very wide range of countries and regions. "Equally, Chinese investors are focusing on an ever-widening range of industries for investment, including new energy, TMT, entertainment, agribusiness, real estate, infrastructure and healthcare," she adds. "We expect these trends to continue and intensify in 2015." Additionally, she notes that there has been an increased tendency in China to litigate to resolve disputes. Finally, the IPO market in Greater China was strong last year, with 252 IPOs raising a combined $42.2 billion, up 95 percent by deal number and 89 percent by proceeds from 2013, with industrials and TMT being two of the key sectors for IPOs, and Wang expects to continue to see strong performances in these sectors and generally. It is no surprise KWM had a busy year particularly in IPOs, compliance, litigation and outbound investment. "We would anticipate that these trends will continue in 2015," says Wang.

In terms of China's legal industry, Wang notes that the Chinese legal services market is becoming more and more competitive and is changing fast. "One change we have noticed is the increasing trend of leading lawyers at international law firms in a given field in China to return to the foremost Chinese firms," she says. "Chinese clients are becoming more and more sophisticated in selecting law firms for particular types of legal service. At KWM, we welcome these developments."

A floor trader walks out of the trading hall during morning trading at the Hong Kong Stock Exchange. REUTERS/Bobby Yip

Hong Kong

Even as Hong Kong reeled under the impact of the Occupy Central movement in 2014, there was much reason to cheer, particularly in the capital markets space. "Corporate financing was active in 2014, with keen demands for cross-border loans and acquisition financing. The surge of the fund-raising markets continued, with 115 IPOs making Hong Kong Stock Exchange the second-largest fundraising centre globally," says Stephen Hung, a partner with Li & Partners. "We expect this trend to continue in 2015 as Chinese corporates continue to seek overseas capital via Hong Kong. This in turn will bring more work to the banking and corporate departments of law firms."

As noted above, the Shanghai-Hong Kong Stock Connect was one of the most important regulatory developments in Hong Kong last year. "It came as a surprise to the market and the much-anticipated mutual fund recognition between Hong Kong and mainland China had to give way to the Stock Connect," says Alwyn Li, a partner at Deacons. "Whilst at the initial stage, the Stock Connect is mainly used by fund management companies based in Hong Kong, there is strong interest from overseas fund management companies in Europe and the U.S. The use of the Stock Connect will continue to expand in 2015."

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Hung says the launch of the Stock Connect and the liberalisation of the renminbi will give the Chinese currency further means to flow overseas through Hong Kong. "Some ambitious issuers may seek dual-share-dual-currency listing in Hong Kong and Shanghai," he notes. "Practitioners with experience in both local and PRC law will have a distinctive advantage in these exercises. Meanwhile, the Qianhai Shenzhen-Hong Kong Modern Service Industry Cooperation Zone will enable practitioners from Hong Kong and China to provided legal services to clients under one roof."

Additionally, Hung notes two areas of work that will keep lawyers in Hong Kong busy in 2015. As the government aims to form a world-class ADR hub in the SAR, local lawyers will be able to compete for arbitrations and mediations on a level playing field. "Litigators should be prepared to gear up with mediation and arbitration skills in order to provide comprehensive legal services to clients," he says. Hung adds that while Chinese money will remain the most important income source for the legal industry, practitioners might need to diversify their client base. "Given the unwavering support by the Hong Kong government on infrastructure projects in Hong Kong, requirements for legal services in the construction space are expected to grow steadily."

Li sees an increase in regulatory/compliance work. "For 2015 and 2016, a number of new regulations are in the pipeline, for example, the new Professional Investors Regime, OTC derivatives-related regulations and SFC licences," he notes. "With all the new policies and regulations, it is important for clients and in-house counsel to be familiar with the changes to ensure compliance with the new standards and new requirements."

India

India is still feeling the euphoria from the election of Narendra Modi, and this is expected to continue into 2015. "The post-election scenario in India has induced far greater confidence for the economy, and this is expressed at the stock exchanges," says Shardul Shroff,

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managing partner of Amarchand Mangaldas. "The new government has demonstrated a decisive reforms-oriented vision, and we expect that the new reforms which are being called the 'third-generation reforms' will continue in 2015. The reworking of the Land Acquisition Act, which is a major stumbling block for new investments, will be seen in 2015 and this will encourage greater investment into India."

Among highlights of the coming year, according to Shroff, are the passage of the GST bill and the constitutional amendments for the same purpose, which will be a "game changer" for India. "The government, in December, has promulgated Ordinances for the auction of coal and for insurance and pension laws," he says. "These will be some of the most important bills which will be taken up in the budget session of parliament." Meanwhile, there has been a spurt in private equity and mergers and acquisitions and great interest in insurance reforms, and Shroff sees "greater traction in 2015" in these areas. "We expect that M&A and private equity and other transactional work will receive a significant boost and correspondingly, there will be enhanced dispute resolution work of a higher value and consequence," he says.

Indonesia

Another Asian country that elected a reformist candidate last year was Indonesia, and law firms are eager to see Jokowi back up his promises and implement even more reforms this year. "As the new president is known as a doer, we can expect to see the issuance of implementing regulations for the current laws as well as reformation of the bureaucracy," says Constant Ponggawa, managing partner of Hanafiah Ponggawa & Partners (HPRP). "We have about 112 draft laws in the national legislation programme for the period 2015–2019. Priority will be given to laws that support economic growth, and to the adoption of international conventions. We hope that these improvements will attract foreign investors to invest or to expand their businesses in Indonesia, which in turn will support Indonesia's economic growth."

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According to Abadi Abi Tisnadisastra, partner at AKSET, legal certainty and bureaucratic procedures have always been on top of the list of issues for investors. "At present, overlapping policies issued by different government institutions – both at the central and/or regional levels – result in a lack of clarity with respect to how, or even whether, investments can be implemented. We expect that this year, the reform push will begin in earnest and will immensely ease investors and stakeholders in establishing and operating their businesses.

In addition, he says the the Indonesian Financial Services Authority (OJK), the institution overseeing banks, finance companies and public companies, has been actively issuing

Indonesian presidential candidate Joko "Jokowi" Widodo gestures at a rally in Proklamasi Monument Park in Jakarta. REUTERS/Darren Whiteside new regulations in order to boost and strengthen the banking and financial services sectors. "We are also aware that the new parliament is considering focusing on long-awaited new legislation, including the new Banking Law to be passed in 2015,"says Tisnadisastra.

Speaking about the legal industry, Ponggawa says that as there have been many improvements in regulations and bureaucracy that attract investors to expand their businesses in Indonesia, there will be a lot of opportunities for law firms to be involved. "We also expect 2015 to be a very challenging time for Indonesian law firms since it will be the year AFTA and AEC are implemented. Only law firms with strong domestic capability and an international network support will survive and win the competition," he says.

In 2014, a few new law firms established in Indonesia, including some that are affiliated or have cooperation arrangements with top international firms, says Tisnadisastra. "We may see a few more Indonesian firms in 2015 entering into cooperation with international firms to internationalise their practices," he adds.

Japan

Among the regulatory developments set to be implemented in the country this year are amendments to the Companies Act of Japan which will require boards of directors to provide for several structures in order to control properly not only their own companies but their subsidiaries as well, says Yasuzo Takeno, managing partner of Mori Hamada & Matsumoto. "In particular, practice relating to the supervision of activities of subsidiaries is expected to be greatly affected by the new requirement," he says. "A new corporate governance code is also scheduled to be implemented, through the rules of the Tokyo Stock Exchange, in June this year and will also affect the way of corporate governance under the enhancement of 'comply or explain' rules."

Real estate in Japan was an attractive target for investments in 2014, particularly by Asian investors, according to Takeno. "We have been busy with setting up legal structures for investment in real estate, such as partnerships, J-REITs, and a trust listed on the Singapore Exchange," he says. "Infrastructure such as airports, through a PFI structure using the 'concession' method under the amended PFI Act of Japan promulgated in 2011, was also an attractive area of investment. These trends are expected to continue in 2015."

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Takeno says that the IPO boom that started under the Abe government is expected to continue in 2015. "The offering of shares by Japan Post Holdings and its subsidiaries which is scheduled to be made in 2015 is one good example," he notes. "There were a number of Japanese manufacturers acquiring Southeast Asian companies, and we have also observed a lot of activity in the retail, IT and logistics sectors. We expect to provide a wide range of advice including on how to abide by the new corporate governance regime under the amended Companies Act mentioned above, and also by the anti-corruption laws in each of the countries in which our clients have places of business."

REUTERS/Samsul Said

Korea

In 2015, the Korean government's plans to stimulate M&A will be among the most noteworthy trends, says Cecil Saehoon Chung, senior foreign counsel at Yulchon. "For example, Korea-based private equity funds may be able to acquire assets in addition to shares," he says. "The licence-based system for fund management companies will switch to a registration-based system. Investment banks can double the amount of credit they can provide to investors. Brokerage activities may now include commodity and derivative products."

A softening of financial regulations will continue in 2015, and with the entry of foreign financial entities such as Alipay, there will be an oversupply of abundant potential M&A targets as Korean conglomerates continue to unload non-core assets to improve their liquidity and refocus on core strengths, he says. "Private equity funds, rather than Korean conglomerates, will continue to be active as buyers in 2015," says Chung. "More Korean real estate investors will likely see investment potential in logistical facilities or retail spaces. They will continue to explore investment in Germany, Italy, Spain and Australia rather than landmark buildings in the U.S. or England. They will also continue their diversification strategy to invest in existing secured loans or mezzanine loans, or participation interests in loan facilities collateralised by real property."

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For cross-border M&A deals, further delays in securing antitrust clearance can be expected from Korea's Fair Trade Commission (KFTC) that has a small merger review office to begin with, notes Chung. "Global companies will continue to be mired in the KFTC's investigations for their local acquisition targets' past cartel activities," he says. "We counsel more attention to proper antitrust due diligence and indemnification clauses to help avoid unpleasant surprises."

Malaysia

With global oil prices dropping significantly in recent times, Malaysia, which is dependant on oil sales, is feeling the effects of it. "Calls for a contingency plan have been made and politicians have put forward a proposal to revise Malaysia's 2015 budget to combat declining global oil prices," says Dato' Azmi Mohd Ali, senior partner of Azmi & Associates. "If these propositions go unheeded, not only will the Budget 2015 deficit target of -3.0 percent of GDP not be met, Malaysia will be at risk of becoming enmeshed in an economical quagmire that deters foreign investment in Malaysia."

However, Dato' Azmi says that while people are predicting that 2015 will continue to be a difficult year due to the slump in oil prices, the drop in crude oil prices, the deficit in the government budget and the implementation of the goods and services tax, "Malaysia remains a good market for long-term investments, especially for cash-rich corporations."

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Brian Chia, head of the Corporate and Commercial Practice at Wong & Partners, notes three developments to look forward to in the next year. "One is the the Malaysian Companies Bill, which aims to introduce a modernised corporate legal framework and will impact all Malaysian companies and foreign branches alike on how they conduct business in the country, including how they are regulated," he says. "Then there is increased scrutiny and corporate governance driven by other regulators such as the Securities Commission and Bursa Malaysia, incrementally increasing minority protection rights and transparency and corporate governance standards generally. Finally, the continued liberalisation of the Malaysian regulatory environment will likely facilitate further foreign investment into Malaysia and hopefully, drive increased competition."

Chia also notes the increasing interest in the private equity space. "Private equity firms throughout the region are fully cashed and we expect continued investment into 2015," he says. "The soft consumer sentiment in the Malaysian market and lethargic consumer spending levels may close the expectation gaps between sellers and buyers, leading to further PE investment opportunities."

Philippines

The Asian Development Bank has predicted 6.4 percent growth from the Philippines in 2015, and this has been fueled primarily by robust private consumption, supplemented by growth in net exports and in the services sector, says Hector de Leon Jr, partner at SyCip Salazar Hernandez & Gatmaitan.

"Investor interest in these areas of activity in 2014 is expected to continue in 2015," he says, noting that Congress is expected to pass several economically significant laws in 2015. "These include the law reforming the tax system and rationalising fiscal incentives, the proposed Fair Competition Act, and the law strengthening the government's Public-Private Partnership (PPP) programme," says de Leon.

Agustin Montilla, a partner with Romulo Mabanta Buenaventura Sayoc & de los Angeles, says that while 2014 seeing the lifting of the most significant nationality restrictions on the banking sector, "the push for further liberalisation is expected to grow with ASEAN's integration plans for 2015, but formidable obstacles remain as the more stringent limits to foreign investment would require a constitutional amendment to be achieved." One key area to watch in the coming year, he says, is merger control. "The government has established a merger control office that is starting to review transactions but without a legal framework," says Montilla. "Several proposals have been filed that, if passed into law by Congress, would provide such a framework. Previous proposals have not made progress, but 2015 could be different."

de Leon says that in 2014, law firms saw significant amounts of M&A and projects work. "I also expect an increase in three types of work in 2015," he adds. "Energy-related work, given the looming power shortage in 2015; work related to the PPP programme, as the government is scheduled to roll out more PPP projects in 2015; and (c) work related to preparations made by clients in connection with the establishment of the ASEAN Economic Community, as the 2015 deadline for that draws near."

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Thailand's Prime Minister Prayut Chan-o-cha poses as he arrives for the Asia-Europe Meeting (ASEM) in Milan. REUTERS/Stefano Rellandini

Thailand

Since taking over in the coup last year, Thailand's military government has endeavoured to push through rapid reforms to revitalise the country's economy, says Tiziana Sucharitkul, co-managing partner of Tilleke & Gibbins. "As one of its preliminary steps in this direction, the government has collaborated with Thailand's Board of Investment to develop a seven-year investment promotion strategy (2015-2021). In 2015, we should expect to see legal and regulatory developments begin to take place to further these ends."

In particular, she says, such legal and regulatory developments will likely relate to encouraging research and development, innovation, value creation in the agricultural, industrial, and services sectors, SMEs, fair competition, inclusive growth, energy saving, use of alternative energy, strengthening value chains, promoting investment in Thailand's restive south, promoting special economic zones and promoting Thai overseas investment.

In November 2014, says Tiziana, talks were held to discuss the prospect of amending Thailand's Foreign Business Act. "The Ministry of Commerce raised the possibility of preventing foreign directors from controlling joint venture firms that are majority owned by Thai shareholders, stirring much consternation among foreign investors," she notes. "The proposed changes to restrict foreign ownership in joint ventures have, however, been rebuffed through the joint efforts of the foreign investment community, and for now, the status quo is being maintained. Thailand's military leaders are apparently inclined to foster a friendly, stable investment climate that is in line with ASEAN Economic Community integration."

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