



ASEAN Focus | ASEAN Presence

The ASEAN Legal Alliance (ALA) Newsletter is a quarterly newsletter offering updates on legal and business issues within the ASEAN Economic Community.

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Please email us at editorial@aseanlegalalliance.net if you would not like to continue to receive future editions of the newsletter.

2nd ASEAN Legal Alliance Conference 2015

“Building and Protecting Our Wealth”

14th and 15th September 2015

St. Giles The Gardens Hotel Midvalley, Kuala Lumpur, Malaysia

ALA organizes an annual Conference for associates and business partners to network and interact as well as to present to the business and legal communities the latest developments in the ASEAN region.

This year’s theme will be “Building and Protecting Our Wealth”. The contents of this conference will focus on private wealth, the investment strategies of high net worth individuals across ASEAN, and the protection of their assets through various vehicles.

The attendees are expected to be from the ASEAN region, China and East Asia, comprising of:

- high net worth individuals;
- fund managers;
- investment advisors;
- business leaders;
- diplomatic corps;
- entrepreneurs; and
- professional advisors.

At the time of writing, we are proud to be presenting this Conference with Henley & Partners, i-Global Trusts, and media partner Asian Property Review.

Please click [here](#) to be directed to the Participant’s Response Form for more information. Kindly contact us at events@aseanlegalalliance.net should you have any queries.

Upcoming Events

**National Estate Planning
Conference
Singapore
25-27 November 2015**

The Inaugural National Estate Planning Conference 2015 will be organized by the Estate Planning Standard Board, where topics on trust, wills and estate planning will be discussed. ALA is proud to be supporting the event. *More details will be released at a later date.*

**ASEAN – Taipei
Lawyers’ Exchange
Taipei, Taiwan
5-6 November 2015**

ALA will be presenting a seminar with the Taipei Bar Association on 5 and 6 November 2015. The seminar, titled “Doing Business in the ASEAN Economic Community (AEC)”, will explore topics such as Arbitration and Intellectual Property within the ASEAN region and Taiwan. Representatives from ALA will be attending and presenting at the seminar.

Regional Updates

Myanmar: Foreign Banks Open in Yangon

In October 2014, the Central Bank of Myanmar (CBM) awarded banking licenses to nine foreign banks. At the time of writing, Japan's Bank of Tokyo-Mitsubishi UFJ (BTMU) and Sumitomo Mitsui Banking Corp. (SMBC), and Singapore's Oversea-Chinese Banking Corp. (OCBC) and United Overseas Bank Limited (UOB) have assumed operation in Yangon.

These foreign banks will primarily focus on providing corporate loans, trade and project financing and cash management solutions to regional and global companies expanding into Myanmar, supporting clients who are investing in industries that will help the long-term economic growth of the country; and play an advisory role to the local financial market. BTMU for example, had made a commitment to CBM that they will help to grow the local talent pool by hiring staff with no banking experience and training them from scratch.

Vietnam: Foreigners allowed to purchase property

Revisions made to the Housing Law removed prior restrictions on foreigners from buying property in the country.

Following the amendment, all foreigners granted visa into Vietnam are allowed to purchase property in the country, this includes also foreign-invested enterprises, foreign organizations investing in housing projects in Vietnam, branches/representative offices of foreign enterprises, foreign investment funds and branches of foreign banks operating in Vietnam.

They will be allowed to purchase property of any kind that is categorized under commercial housing development programmes. There is no limit on the number of houses that a foreigner may purchase, but the total number of units owned by foreigners must not exceed 30% of the total units in one building, or not exceed 250 houses in one particular administrative area.

Vietnam: MOU signed between VN, S.E. Asia

Singapore's United Overseas Bank (UOB) and the Foreign Investment Agency (FIA) of Vietnam signed a Memorandum of Understanding (MOU) in April 2015, aimed at increasing foreign direct investment (FDI) and trade between the country and Southeast Asia.

FIA and UOB will jointly host trade delegations, provide business referrals and organize key industry events for companies interested in expanding into Vietnam.

The FIA will assist UOB clients who are seeking to expand into key investment cities in Vietnam such as HCM City and Hanoi, as well as the fast-developing cities of Da Nang and Phu Quoc.

ALA Happenings



1st Arbitration and Cross Border Dispute Resolution Practice Group Meeting

The ALA Arbitration and Cross Border Dispute Resolution practice group held its first meeting at Novotel Bangkok Ploenchit Sukhumvit on 2 March 2015. Led by practice group Chairperson Professor Steve Ngo, the meeting saw partners and associates from the 10 ALA member firms in discussion about business strategies, opportunities, challenges, grounds for cooperation, pursuing leads and better serving our clientele base.



1st Private Clients, Wealth Management and International Real Estate Practice Group Meeting

On 5 June 2015, the Private Clients, Wealth Management and International Real Estate practice group held its first meeting at SEDA Bonifacio Global City Hotel, Manila. With the formation of AEC 2015 in sight, partners and associates from ALA member firms came together to explore and discuss the road map for ALA's development in this practice area, especially recognizing a growing clientele need for wealth management and asset protection.

Practice group Chairperson Mr. Matthew Yeoh, who is also Managing Partner at ALA Malaysia member firm – Yeoh Mazlina & Partners, shared his insights on the regional progress of this practice area, highlighting legal and regulatory updates, private clientele management etc.

Ms. Judy Ang ^{TEP}, Trust Consultant with ALA Singapore member firm – Dacheng Wong Alliance LLP, also presented on the use of trust structures for wealth and asset protection.

Cross Border Challenges in ASEAN on Infrastructure Projects

Aloysius Wee, Managing Principal, Dacheng Wong Alliance LLP, ALA Singapore

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Introduction to the ASEAN Economic Community

The ASEAN Economic Community ("AEC") will be formed by the end of 2015. With its formation, the AEC will boast a population of approximately 620 million people, with some 60% of the total population of ASEAN under the age of 35, creating a region with a young and growing labour population and correspondingly a young and growing consumer market. The ASEAN economy is the seventh largest in the world with a combined gross domestic product (GDP) of US\$2.4 trillion in 2013. It is projected that ASEAN will likely hit the US\$3 trillion mark in 2015 and could double its combined GDP by 2025.

The establishment of the AEC will transform ASEAN into a region with free movement of goods, services, investment, skilled labour, and freer flow of capital. A single market and production base will potentially make ASEAN more dynamic and competitive by supplementing the implementation of existing economic initiatives with new policies and mechanisms. Whilst these may be the ideals, we must be prepared for practical problems and realities that may exist on the ground.

One key obstacle is that whilst the AEC is positioned as a single economic entity, the ten member countries are largely different in terms of legal, economic and cultural backgrounds. It is by virtue of this diversity that offer opportunities for investment and growth.

Unity and Diversity

As part of preparing to be a single economic entity there is a fundamental need to link the member countries together by land, sea and air. This is where there are opportunities for investors to invest in the various infrastructure projects. There are many types of infrastructure projects that AEC needs, ranging from power to roads to rail to telecommunications, but I would like to highlight just one – railway and intra city transport systems.

The linkage of member countries is driven by economic factors and challenged by political and geographical challenges. It is widely acknowledged that if the member nations are linked up by rail and that in turn connects to the economic giant China, there are huge benefits in terms of trade, tourism and commerce for the AEC.

Currently China is ASEAN's biggest trading partner since 2009 and ASEAN is China's third largest trading partner since 2011. Both parties hope to achieve a two-way trade goal of US\$500 billion by 2015 and US\$1 trillion by 2020 as well as a two-way investment of \$150 billion by 2020.

Connecting ASEAN by Rail

Supplementing these goals would be the Singapore – Kunming Rail Link ("SKRL"), which is a network of railways under planning and construction that would form a crucial linkage by connecting Singapore, Malaysia, Thailand, Cambodia, Vietnam and China.

The SKRL will also be part of the ambitious Trans-Asian Railway ("TAR") initiative. Upon completion, the TAR network will involve a continuous 14,000 km railway track, connecting Singapore to Turkey, with the possibility of further links into Africa and Europe in future. It is anticipated that when the main project is completed, it will further facilitate the movement of goods, services, investment and skilled labour across the ASEAN region and beyond.

The first part of this extensive rail network is the Kuala Lumpur – Singapore High-Speed Rail ("HSR") project with a proposed railway track of 320km to 340km estimated to be completed by 2020. However, both countries have pushed back the deadline, noting that the design process of the new rail link will likely take one year, the tender process another year, and construction itself about five years.

Singaporean PM Lee Hsien Loong and Malaysian PM Najib Razak however, re-affirmed both countries' full commitment to the success of the project, which will cut travel time for commuters between Singapore and KL to 90 minutes. It is expected that other nations would also be considering similar projects for their own countries, boosting passenger transportation and communication greatly.

Challenges for Infrastructure Projects

Taking the HSR as an example, the challenges that it faces will be typical of other similar infrastructure projects in ASEAN. Firstly there must be the political will and commitment of the respective member nation governments to agree on the project and to see it through. Next would be financing of such large scale projects. Governments who can afford can invest in such projects directly but not all ASEAN member governments will have such deep pockets and even if they did, such resources may be better deployed towards attending to healthcare and education needs of their own citizens. The third challenge would be in this case, the acquisition of land for the project. The HSR involves both countries' government to acquire land which they may not themselves own that are in the hands of private land owners. Depending on the countries' legislation in place, such compulsory acquisition of land may or may not be possible or economically viable. Further there may be political repercussions if such land acquisitions are not handled properly.

Countries relying on rail transport would likely be looking to upgrade and integrate their rail networks. Internally many member countries are also investing in their internal intra city rail or mass rapid transit (MRT) systems. Singapore has an extensive MRT network and will spend S\$70 to S\$100 billion more to expand the current 178km of line to 360km by 2030.

Other countries with MRT systems are Indonesia, where the Jakarta MRT System is under construction and due to begin operation by the first quarter of 2018; Malaysia, where the 3-line Klang Valley MRT system is estimated to begin operation in 2017, integrating existing rail networks and alleviating severe traffic congestion in the Greater KL metropolitan area; Philippines, with the Manila Light Rail Transit System

running since the 1980s and the Manila Metro Rail Transit System (MRT Line 3) since 1999; Thailand, where the Metropolitan Rapid Transit (MRT), Bangkok Mass Transit System (BTS) and Airport Rail Link (ARL) together form Bangkok's rail transportation infrastructure and expansion plans for extension of lines have been proposed for the MRT and the BTS; Vietnam, where the country's first metro project – the Hanoi Metro is scheduled to be completed by 2015, and the Ho Chi Minh City Metro in 2020.

These internal rail and transport systems will face challenges that I have highlighted above, namely political will, land acquisition and funding, but in addition, there will be further challenges in the operations of such transport systems. Will it be deemed to be a public good and hence the government is obligated to provide it and subsidize its users or should it be a private good where the private sector bids for the project and operates in a free market economy? Each of the member countries will have to see how to resolve this issue. This issue is also tied to the current economic structure of the member country. Where the country is one where there is a communist government and a history of state intervention, then it is likely that a state owned enterprise will be tasked with the funding and operations of such a system. Whereas in a member state where the economy is based more on open market principles, then it is likely that the private sector will participate in such projects as parties who are operators of the transport system with the government maintaining a regulatory role only. An example of such a system is in Singapore where the different lines of the MRT system are operated by two different operators and they are governed by a transport authority as the industry watchdog.

Models of Operations

The impact for such infrastructure projects will depend on the models of operations and whether the sector is opened to foreign participation. Again if the model allows for a private-public-partnership ("PPP") collaboration, then funding for such projects may be procured from the private sector. If the industry is opened to foreign participation, then there is a further advantage in having the possibility of attracting the best technology available in the market to be married with the most experienced operator and to have it all financed by the most developed financial institutions in the world. Each member state will have to assess what is best for their economies and the structuring for such project participation. There could be a need for change in legislation for example to open up certain sectors for foreign participation and laws relating to the use and repatriation of foreign capital.

Foreign Capital and Funding

One of the key features for any infrastructure project is funding and returns on investment. As infrastructure projects typically have a large investment amount followed by a long gestation period and in some cases, a very low return on investment, obtaining funding for such projects is difficult. Some countries see some infrastructure projects as public goods and hence fund these projects from public funds or tax payers' funds.

An example would be in Singapore where the building of roads is done with public funds, whilst other countries have carved out areas within the traditional public good for the private sector.

The Malaysia North-South Highway is an example of a Build Operate and Transfer ("BOT") project where the private sector funds the construction of the project and gets a license to operate and collect revenues from the project for a term and thereafter the project reverts back to the government. For such funding options to be available, the laws in the country must allow for such an arrangement to take place. Some areas where the law needs to be addressed would be on land use, operations of the project and collection of revenue.

Another popular funding model I briefly mentioned above is the PPP model where the government provides some basic resource and the private sector provides the funding for the construction of the project, and thereafter undertakes the operations of the project, collects the revenue from the project for a fixed duration.

Some popular projects adopting such a model are power generation projects where the government would provide a resource like land and the private sector will provide the funding for the construction and implementation followed by the operations. It then collects revenue from the power it generates. The government gets the power without investing in the infrastructure, the private sector gets a return on investment based on the tariff that the government fixes for the power and for which the private sector provides. This model depends on legislation allowing foreign participation in the industry concerned, legislation allowing for lending by foreign financial institutions and the repayment of their interest and loan but more importantly, the stability of the government to see the project through and that its obligations are complied with.

Apart from private sector funding, there is now a further option available. The Asian Infrastructure Investment Bank ("AIIB") is an international financial institution proposed by the Chinese government, who has pledged US\$50 billion of the US\$100 billion initial capital, with the purpose of providing finance to infrastructure projects in the Asian region. The AIIB will focus on the development of infrastructure and other productive sectors in Asia, including energy and power, transportation and telecommunications, rural infrastructure and agriculture development, water supply and sanitation, environmental protection, urban development and logistics, etc. As of April 2015, almost all Asian countries and most major countries outside Asia had joined the AIIB, except the US, Japan and Canada.

It now remains for us to see how the AIIB will operate and start the financing of the projects that it sets out to finance and whether there are any other considerations that will be called into question when projects are put up for consideration. The thought in everyone's mind is will there be a political agenda behind the AIIB? Be that as it may, it will be an alternative source of funding in ASEAN and is widely welcomed by ASEAN who sees China as an important economic and trading partner despite differing views on the South China Sea.

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Reflections on International Arbitration – A Tale of Two Roles

Professor Steve K. Ngo, Arbitration Consultant, Dacheng Wong Alliance LLP, ALA Singapore

Introduction

The rapid growth of arbitration today is certainly a question worth asking; what led to this sudden surge and popularity? Arguably, the fundamental needs of the commercial and tradesmen. What are the catalysts and stimulus for its growth? International trade, laws, conventions as well as the users. Actors of arbitration have experienced tremendous benefits from the unprecedented growth of international arbitration in this 'glorious era'. Users and disputants are also finding themselves able to resolve their cross border disputes more effectively with favourable outcome, through arbitration. Indeed the world is celebrating arbitration. Arbitration is aiding the growth and development of global trade, international law and international dispute resolution.

So, what actually takes place in arbitration? I have had the privilege of being involved as arbitrator, and agent/representative for parties. Here is what I have observed and can share with the readers.

As arbitrator

Entrants who have just completed a course or training in arbitration of some sort may not necessarily understand the many perils facing arbitrators. Whilst an arbitrator need not have legal background (in terms of education and/or professional experience) it is unlikely that one can act as an efficient arbitrator without education and training in laws and arbitration practice.

Some fellow arbitrators remarked that 'the more difficult the parties, the longer time it will take to complete the arbitration, which is good in terms of billing and fees.' But it is not merely about fees adding up, but the attorneys/agents can also be putting tremendous pressure on the arbitrators.

When the attorneys/agents are clueless and less than friendly, arbitrators may not necessarily have a great time ahead of them. Friendly agents may tell the tribunal that they are leaving it to them to decide, until such time things are not going their way! On the other hand, there are attorneys who are also experienced arbitrators. They may think that they would have done it differently and better IF they were the arbitrators in the case.

In my humble opinion, the academician, attorney or 'deft' arbitrators must always remember that his/her duties are not to be 'saviours'. Why do I say this? Let's take a look at Article V (1)(c) of the United Nations Convention 1958 on the Recognition and Enforcement of Foreign Arbitral Award regarding a ground for the refusal of recognition and enforcement, I quote:

"The award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration..."

In making their decisions or going through the submissions, some arbitrators may fall into the temptation of acting beyond their jurisdiction or "ultra vires". It has happened before and quite commonly; the arbitral tribunal could be awarding claims never asked by a party.

As arbitration attorney/agent

Attorneys are expected to claim and/or defend their clients in arbitration. The defence may involve a counter-claim. The assumption coming from seasoned litigators that arbitration is a piece of cake, could prove costly. I would attribute this to three main reasons.

Firstly, arguing on precedents and statutes alone would not win you in arbitration. Secondly, you may not know the arbitrators and it is highly unlikely to familiarize yourself with their personalities, habits, proclivities, etc. compared to what a regular and seasoned litigator could possibly do when arguing before a judge in state courts. The arbitrators could also come from a foreign country whereby cultural and language differences could be factors. Arbitrators unlike judges are selected based on their subject expertise, the entire experience will be very different compared to arguing before a national court judge. Be prepared to even argue before arbitrators who are not trained in the legal jurisdictions you come from and this is very common. Thirdly, in international arbitration you are likely to face a boundless talent of opponents in the form of intelligent international counsels, law specialists, subject experts, academics, seasoned arbitrators but usually a combination of all these. I would summarize this point by sharing an anecdote by a dear friend of mine - "A champion in a village goes to the county to find himself only mediocre".

To some extent, arbitrations have glittering attractions such as cross border nature therefore likelihood of the conduct of hearings in locales such as Geneva, Paris and maybe Acapulco! The amount claimed in a dispute is likely to be significant (due to the cross border nature of transactions) hence generates very decent professional fees. The truth is, it is very hard work getting such multi-million dollar cases and once engaged, even harder work to execute them to the satisfaction of clients and one's professional expectation. Clients can also be difficult therefore adding to the pressure of wanting to win, making arbitration all the more hard work.

Closing

Whilst arbitrators and attorneys are the actors in arbitration, both have marked roles, skills set and vocations. Increasingly arbitrators are also attorneys and vice versa; such overlap has given rise to debates these days of all sorts from ethics to suitability. With the proliferation of people going into arbitration, arguably the global arbitration industry is still short of really dedicated and able practitioners. In time to come, hopefully the arbitration industry may start to see a clear dichotomy of practitioners in each spectrums of the 'act'. Whilst some have argued this to be going against the purpose of arbitration, sceptics must understand now, that arbitration is not "ad-hoc dispute resolution" but mainstream international system for the resolution of economics, commerce and trade disputes.

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To compete more effectively in the ASEAN Economic Community (AEC) which will be formed in 2015, the ASEAN Legal Alliance (ALA) was formed to bring together law firms from each of the 10 member states to provide a truly ASEAN wide legal network. The AEC will make ASEAN a common market for business, trade and commerce. However, the legal market will remain separate and distinct, differentiated by different legal systems, languages, cultures and business practices.

The ALA brings together law firms in each of the member countries, with over 100 lawyers working in close cooperation to provide legal services across the whole of ASEAN. Each firm has the requisite experience to handle foreign investments and has the business knowledge to assist clients in navigating through the different business cultures that prevail in each ASEAN country.

ALA Member Firms

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