SLAUGHTER AND MAY/

HORIZON SCANNING ASIA EDITION

2025 PROGRAMME

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NAVIGATING THE ASIA M&A LANDSCAPE

Strategic shifts and emerging opportunities

2024 has been a relatively subdued year for dealmaking in Asia, overall. The activity levels broadly reflect pressures on M&A seen in most parts of the globe – higher inflation, higher interest rates and increased regulatory challenges – and there have also been Asia-specific factors at play: in particular affecting China M&A, both inbound and outbound. For us, valuation and execution risk have been the biggest challenges in putting deals together in Asia this year. While innovative deal structures – such as earn-outs, tranche deals and bespoke price adjustments – can mitigate and share risk to facilitate deal-doing, lower investor confidence and valuation issues have continued to hold back activity levels. Further, concerns about whether, in what timeframe, and at what cost regulatory clearances might be obtained have continued to stop parties agreeing deals (Chinese investment in the US being an obvious example), with Boards' fears in this regard being fanned by some high profile deals being blocked post-announcement, including the Singapore government taking issue with Allianz's bid for Income Insurance on public interest grounds.

That being said, there was a notable uptick in M&A activity in the third quarter of 2024, which we feel continued into the final part of the year. This momentum, combined with expectations of improvement in the macroeconomic environment, makes us optimistic we will see higher deal levels in 2025.

THE BRIGHT SPOTS: JAPAN, INDIA, SOUTHEAST ASIA

Starting with the good news, there have been some bright spots of intense activity in the region.

Japanese outbound and inbound M&A have each been strong in 2024. Despite the weakened yen, Japanese buyers have continued to go outside their borders, in particular into the US and Europe, in a search for future growth in light of challenging domestic demographics. Japanese businesses have continued to be targets for both global PE and overseas corporates, with M&A activity being supported by factors including corporate governance reforms and the weak yen, added to which Japan is a natural beneficiary of slumping inbound M&A into China. This is reflected in some of the more notable deals seen this year, with KKR and Bain Capital locked in a bidding war for Japanese software provider Fujisoft and Canadian convenience store chain Alimentation Couche-Tard Inc. having launched a series of offers for Japanese retailer Seven & i Holdings.

India has also been a major beneficiary of foreign investment shifting away from China. With the Indian economy running hot, investor confidence has been high. Continued inbound investment from financial sponsors wishing to be a part of India's strong growth trajectory, as well as a growing appetite from Indian corporates to participate in domestic M&A, have driven increases in M&A activity for 2024. India's buoyant capital markets – on track for a record-breaking year for capital raised in IPOs – have contributed to a virtuous cycle as multinationals have sought to tap into public markets for capital by listing Indian subsidiaries, PE investors have been provided with additional exit options and strong equities valuations have helped narrow M&A valuation gaps.

Southeast Asia is also rapidly becoming a global trade hub and attracting foreign investment focus due to its strong economic integration, population growth, and strategic location; while its proximity to China makes it ideal for multinational corporations (MNCs) that are looking to diversify their supply chains. Alongside growth in manufacturing, including high-tech areas such as electric vehicles, data centres and the digital sector more widely are driving overseas investment growth. In 2024, Microsoft and Amazon Web Services separately committed to multi-billion US dollar digital infrastructure investments in Malaysia and Google has said it will invest in a data centre and cloud region in Thailand. We are also seeing a lot of activity in the insurance sector, with insurers, especially in life and health, competing to capture slices of the growing demand for insurance being driven by demographic trends and the region's rapid development.

CHINA

The world's second largest economy continues to grapple with an economic downturn, increased US-led investment and export restrictions, and ongoing geopolitical tensions. Unsurprisingly, against this backdrop, China's year-to-date M&A deal volume and value have both fallen compared to 2023, and remain significantly lower than the high watermark years in the middle of the last decade.

China's response has been mixed. While making efforts to encourage foreign investment, it has simultaneously been working to rebalance its economy to be less dependent on exports and external factors. In a bid to boost economic activity, foreign investment and M&A, Beijing has rolled out waves of economic stimulus and other wide-ranging measures. It has lifted merger control thresholds, introduced measures to encourage M&A for qualified listed companies, and further reduced the number of sectors off limits to foreign investors – meaning there are now more sectors open to foreign investment than ever before. China is also looking to its strengths in sectors such as renewable energy technology and high-end manufacturing to fuel economic growth.

A key trend for MNCs operating in China has been the strategic re-alignment of investments in the region, driven by macroeconomic headwinds and increasing competition from domestic market participants. It is projected that 2024 could be the first year of annual net outflow from China since comparable records began in 1990. This outflow illustrates the continued impact of "de-risking" and "China +1" strategies, but it is also partly attributable to significant outbound Chinese investment, in particular to Southeast Asia. MNCs' responses to the current conditions have ranged from strategic divestments and "de-risking" efforts, to doubling down on existing investment, the formation of new strategic partnerships with leading Chinese players, and new investments into growth sectors. Despite the more dire predictions around "decoupling" and capital flight that peaked in the early COVID period, relatively few MNCs with established businesses have sought to exit China entirely at this point. AstraZeneca, though rumoured in 2023 to have drawn up plans to spin-off its China business, instead made further China investment – including a planned USD450m factory – and towards the end of 2024 its CEO reaffirmed the company's commitment to China. Where we have seen withdrawals, they have typically been in the private equity space and driven by specific sectoral investment restrictions – in 2023, Sequoia Capital announced it was splitting off its China business from its Europe and US partnership, citing an "increasingly complex" dynamic. On balance, while there has been a reduction in the amount of new inward investment, in our experience most MNCs operating in China who saw China as a key market before the last few years' difficulties – whether for manufacturing, R&D or consumers – continue to do so.

LOOKING AHEAD

Under the incoming Trump administration, US policy towards China will continue to play an important part in the Asian business landscape. Donald Trump has pledged to make widespread use of tariffs, with targeted measures against China including a proposed levy of 60% (or more) on Chinese-made products (although, as at the date of this publication, a levy of only 10% has been implemented). This is leading international and Chinese businesses to re-assess their supply chains and is already driving some M&A and investment activity around the region (albeit tempered by the fact that the detail of the tariffs and how they would operate in practice is not clear at this stage). It is also possible that Trump's "America First" approach will strain the western alignment seen during the Biden administration around directing trade and national security restrictions against China. This may open up possibilities for the UK and the EU to take a position that creates more advantageous economic parameters for UK and EU businesses active, or looking to become active, in China.

Asia remains the growth engine of the world, and, as we look ahead in 2025, we expect M&A activity across the region to increase, notwithstanding the significant complexities attached.

Given that backdrop, those buying or selling assets in Asia will more than ever need the best advisers in the region to help to navigate through the complex and evolving landscape.

PRIVATE CAPITAL'S YEAR OF BUILDING MOMENTUM

Is the stage set for 2025?

2024 remained a challenging year for private equity fundraisings, investments and exits. Assets purchased in the era of cheap leverage and high multiples remained locked, with many auction processes failing to take off or being interrupted, while macro-economic factors, high borrowing costs and uncertainty in advance of key elections across the world reduced appetite for deal making. This was evident particularly in the first half of the year, with sponsors turning to alternative paths to liquidity such as continuation fund transactions (at record levels), use of NAV financings, dividend recapitalisations or secondaries transactions.

Over the course of 2024, we saw the outlook for private markets steadily improve, giving us cause for optimism as we enter 2025. Inflation and interest rates stabilised, and banks gradually returned to the leveraged financing market alongside credit funds, reducing yields and the overall cost of capital. As momentum builds on the deal side, sponsors appear primed to return to sale processes to realise assets, potentially unlocking further investment activity.

PRIVATE EQUITY

A number of positive trends are expected to continue in 2025 as market sentiment improves:

- **Focus on exits:** The aggregate value of global deals increased in 2024 compared to 2023, although deal volume is down. Sponsors are focusing on fewer but larger transactions, mirroring the trend of LPs investing in fewer but larger funds (leading to greater consolidation among managers). At the same time, fundraising continues to outpace dealmaking, resulting in multi-year lows in capital deployment relative to dry powder. For many sponsors, the focus in 2025 is therefore likely to be on exiting assets that have been on their books for longer periods.
- **Competition from strategics:** Cash-rich corporates increased strategic M&A activity, a trend that is likely to remain as macro- and market-based tailwinds continue. The increased competition should support M&A market fundamentals, further narrowing the valuation gaps that saw deal processes stall in the past. At the same time, attractive, stable assets may achieve higher multiples from strategics than sponsors are prepared to pay, save where they can acquire through existing portfolio companies or platforms.
- **P2Ps and carve outs:** In key markets, depressed stock market valuations have led to acquisition opportunities for sponsors, and carve outs from listed companies have also increased, with sponsors often prepared to purchase a division for a price representing a premium to the listed seller's market cap.
- **Regulatory scrutiny:** The private capital industry remains high on the regulatory agenda in many important markets, with the increased scrutiny by anti-trust and other regulators leading to longer timetables and higher costs.

PRIVATE CREDIT

Private credit has experienced remarkable growth in recent years, with global assets under management rising from USD1 trillion in 2020 to approximately USD1.7 trillion by the third quarter of 2024. While this expansion was partly driven by the retrenchment of banks, it also reflects the structural flexibility and efficiency inherent in the private credit asset class – characteristics that are increasingly relevant across other areas of financing. Key trends include:

- **The return of the banks:** Banks resumed lending to the leveraged finance market in 2024, encouraged by a more stable economic backdrop and falling interest rates. The return of banks led to tighter spreads and reduced borrowing costs, as well as some harmonisation of terms, with direct lenders softening documentation to compete with the distributed market. Benefiting borrowers, these developments triggered a wave of refinancings last year, a number of which were conducted as dual-track processes designed to test the market and secure the most favourable terms. A brighter outlook and the emergence of a more competitive financing market also drove an increase in leveraged buyouts in 2024, a trend we expect to continue this year, supported by a stable funding platform that increasingly favours borrowers.
- **Collaboration and hybrid structures:** While competition between private credit funds and banks has, in some cases, produced positive outcomes for borrowers, there is also a growing trend of collaboration among financing providers, with private credit and the broadly syndicated market starting to work together, offering tailored solutions to meet the diverse requirements of borrowers within the context of the interest rate and market risk cycle. We saw an increase in the use of hybrid structures last year, with banks providing the first lien senior-secured portion of the financing on certain deals, and direct lenders providing the junior tranches. This structure benefits both sides, as it allows private credit funds to participate in a wider range of deals and put capital to work, while banks can transfer the riskier elements of the financing to their less regulated counterparts.
- **Regulatory impact:** With implementation of the final Basel III rules on the horizon, we may see banks increasingly seek to avail themselves of such hybrid structures in the coming year. In the extreme, the stricter capital requirements may hasten the move towards private credit. Regulation of the private credit market is, however, also one to watch in the coming years, with concerns being raised with increasing frequency about leverage levels and resulting systemic risk to the wider market.
- **New asset classes:** Beyond the M&A and corporate finance markets, private credit is expanding into other asset classes, most notably asset-based financing, and infrastructure and project financing, a trend that looks set to continue into 2025. In this space, there has been a notable increase in private credit funds with mandates focused on energy transition or infrastructure. These markets are particularly compelling for private credit due to their higher risk-return profile, tighter covenants, and long investment horizons. In particular, project finance aligns well with the needs of key investors in these funds, such as life insurers with long-term liabilities and asset-liability matching policies.

LOOKING AHEAD

Momentum is building in private markets, and the outlook for 2025 is positive. As pressures to exit assets continue to mount, and strategic interest in acquiring operationally stable, high quality assets increases, sponsors who have been able to deliver operational improvements and other “alpha generating” initiatives in their portfolio companies should reap the rewards of this discipline. This in turn should begin to unlock investment and fundraising activity, as market conditions stabilise and become more predictable, although that is likely to take more time in the face of geopolitical risks and changing regulation. The market is likely to favour those sponsors who can spot opportunities amid recent market dislocations or can provide innovative capital solutions to a range of market participants.

PRIVATE EQUITY

The evolution of an industry

Since the advent of the modern private equity industry in the early 1980s, private equity houses have traditionally adopted the classic model of a buyout fund, raising capital from a club of large institutional investors to fund acquisitions and drive growth. This model has endured, notwithstanding the global expansion of the industry to accommodate a diverse range of firms and strategies.

However, the playbook is now changing. Against the backdrop of continued geopolitical and economic turbulence – and pressure from LPs to transact – two trends which demonstrate that PE firms are searching for innovative ways to generate value have emerged.

First, sponsors have been looking for ways to tap into the enormous pool of individual investor capital. GPs are raising "evergreen" (or perpetual) funds, alongside traditional (close-ended) vehicles, to facilitate access to the private wealth market.

Second, sponsors are seeking to expand their fee-bearing assets under management (AUM) through consolidations and acquisitions.

WHAT ARE SOME OF THE KEY DRIVERS OF THESE TRENDS?

- **Tough exit markets; the denominator effect:** While some exit channels started to open up, market conditions in 2024 remained challenging – sponsors were reluctant to sell at low prices (this depresses fund performance) and recovery in the IPO markets was slow (with some notable exceptions, such as in India where equities markets have been buoyant). Fewer exits meant that less money was being returned to institutional investors. Additionally, the denominator effect – driven by weak public market valuations – also caused institutional investors to become overallocated to PE. Both of these trends, in turn, restricted sponsors from relying on institutions as the primary source of capital for new funds.
- **Individual investor source and appetite:** Individual investors represent around half of global AUM, but only 16% of the AUM in alternative asset funds (Bain, 2023). They have plenty of appetite to invest in the PE market, which provides a means to diversify and – against the backdrop of public market volatility – generate comparatively (and significantly) higher returns.
- **Regulatory encouragement:** Regulatory encouragement to unlock latent growth potential has contributed to positive market trends in some of Asia's bright spots. For instance, continued efforts to improve corporate governance frameworks in Japan are helping bring fresh dynamism and a greater focus on shareholder returns.
- **The rise of the mega-fund:** With both less money and less flexibility to deploy further capital into the PE asset class, institutional investors have become increasingly selective about whom they choose to back. There is an increasing preference for a small group of well-established mega-funds, who can offer a broader range of investment options and services. This leaves smaller players – who have struggled to raise capital – ripe for acquisition by these mega-funds, who themselves see an opportunity for AUM growth.
- **AUM as a measure of success:** the flight to a smaller group of larger funds has, in turn, resulted in an increasing focus on fee-bearing AUM as a key performance indicator, especially for publicly listed asset managers, further driving consolidation in the industry.

THE RISE OF THE EVERGREEN FUND

Semi-liquid, or evergreen funds, are now increasingly being used by GPs to draw in professional and retail investors. Investors can, on day one, fully deploy their capital into a vehicle which already has a significant portfolio of assets (without having to reserve funds for capital calls). Subscriptions and redemptions can be made on a periodic basis (often monthly or quarterly), with minimum commitments set at relatively low levels (contrast this with long lock-ups and high buy-in costs of traditional buyout funds).

The main advantage of evergreen funds for GPs is their unlimited lifespan: this provides GPs with more flexibility to sell assets when market conditions are favourable, and removes some of the pressures on them to carry out new, lengthy fundraising processes. By the same token, the move away from the traditional close-ended buyout fund structure also presents new challenges. The administration of an evergreen fund often requires a significant step-up in operational capacity (given ongoing subscriptions and redemptions, as well as more frequent valuations and fee calculations) and generates additional compliance costs. The flexibilities afforded to investors also put additional pressures on GPs to both deploy funds quickly (to start earning fees and avoid a drag on returns) and manage the liquidity requirements of investors.

Despite these difficulties, there are plenty of examples of sponsors who have (or are looking to) launch evergreen products. In January 2024, Blackstone launched Blackstone Private Equity Strategies Fund (BXPE), its largest ever fund for wealthy individuals, which has since attracted inflows of around USD6 billion, and currently holds over USD650 million in assets. Others are following suit – Carlyle subsequently launched evergreen private credit and private equity funds for retail investors and Apollo launched its evergreen S3 Private Market Fund to give high net worth individuals access to the secondaries market.

CONSOLIDATIONS AND ALLIANCES

Consolidation in the PE industry has been rife in recent years, with 2024 seeing the largest wave of GP acquisitions in a decade. Fuelled by an increasing regulatory burden, higher compliance and other costs, and investor preferences for established and diversified managers, sponsors have pursued consolidation opportunities to expand into new asset classes or geographies and grow AUM (without having to build a presence organically). BlackRock's acquisition of Global Infrastructure Partners and its recent announcement to acquire HPS Investment Partners are notable examples. The rise in public listings and GP stake sales has helped to provide PE firms with the financial firepower and (for listed managers) the ability to use stock to fund these strategic acquisitions (see, for example, Bridgepoint's acquisition of ECP or CVC's acquisitions of stakes in DIF and Glendower shortly after CVC's listing in 2024).

Sponsors are also reacting to competitive pressures by becoming more innovative in how they look to grow and retain AUM, with firms searching for new sources of permanent capital, increasingly open to GP stake sales and looking to team up with other sponsors on liquidity solutions. Moonfare and iCapital are now offering stakes in PE and venture capital allocations to retail investors, while asset managers such as Fidelity Investments and Lexington Partners have partnered with these platforms to make their funds available to a broader range of investors. BlackRock and Partners Group recently launched a joint investment product for retail investors, whilst Apollo and State Street have proposed an ETF (yet to be approved by the SEC) invested in public and private credit.

OUTLOOK

In a challenging fundraising environment and turbulent market, and with political pressures helping to dismantle the traditional barriers to private markets, PE firms looking to grow and retain AUM are gearing up to become full-service providers across a range of strategies, asset classes and investor types. The consolidation trend is widely expected to continue, with sponsors such as EQT and Partners Group predicting a drastic decrease in the number of fund managers from >10,000 currently to just over 100 mega-funds in the next decade. This may lead to a market where fewer, larger houses (increasingly resembling traditional, multi-strategy asset managers) compete for institutional funds, while smaller players are forced to join forces, unless they can show real ability to generate alpha in specialised sectors or niches.

Retail offerings, consolidations and alliances show that, rather than relying solely on the traditional buyout fund model which has served the PE industry well over the years, sponsors are now focusing on the next stage of the industry's evolution and coming up with innovative ways to achieve it.

CAPITAL MARKETS IN 2025

Can the Hong Kong IPO market maintain momentum in the Year of the Snake?

Against the backdrop of geopolitical tensions and a rising interest rate environment, the Hong Kong IPO market has weathered a challenging four years, with IPO proceeds raised on the Hong Kong Stock Exchange (HKEX) dropping from US$51 billion in 2020 to a twenty-year low of US$6 billion in 2023 before rebounding to US$11 billion in 2024. The Hong Kong IPO market ended 2024 with positive momentum amid a series of co-ordinated efforts from the China Securities Regulatory Commission (CSRC), the Hong Kong Securities and Futures Commission (SFC) and the HKEX to boost Hong Kong's appeal and attract and retain listings, with more reform on the agenda in 2025. We look at the key issues and steps being taken to strengthen Hong Kong's capital markets and the extent to which they will improve Hong Kong's ability to compete going forward.

LAYING THE GROUNDWORK

In 2024, regulators in both Mainland China and Hong Kong continued laying the groundwork to bolster the Hong Kong IPO market. In April, the CSRC announced a series of measures to strengthen Hong Kong's status as an international financial centre, including by providing support for Hong Kong listings by leading Chinese firms, as well as enhancing stock trading links between Mainland exchanges and the HKEX.

Attracting overseas listings, and in particular listings by Middle Eastern and Southeast Asian companies, has continued to be a focus of the HKEX. In July, the HKEX added the Abu Dhabi Securities Exchange and the Dubai Financial Market to its list of recognised stock exchanges (RSEs), enabling issuers with a primary listing on those exchanges to apply for a secondary listing in Hong Kong. The HKEX had previously added Saudi Tadawul Group and the Indonesia Stock Exchange to the list of RSEs in 2023.

In a bid to attract more listings of fast-growing technology companies and address changes in market conditions, the HKEX and the SFC announced temporary modifications, which apply from 1 September 2024 to 31 August 2027, to reduce the initial market capitalisation threshold for listings of Specialist Technology Companies (STCs) under Chapter 18C and a reduction of the minimum independent third-party investment required for de-SPAC transactions under Chapter 18B. To date, three companies have listed under the STC listing regime, which came into effect in March 2023, and one SPAC has successfully brought its target company public in Hong Kong since the HKEX's SPAC rules came into effect in January 2022. While these modifications are temporary, the HKEX indicated it will keep the requirements under review.

In October, the HKEX and the SFC took steps to enhance the efficiency and predictability of the IPO vetting process. An enhanced timeframe for new listing applications was introduced under which the review period for identifying major issues was streamlined to 40 business days after a maximum of two rounds of regulatory comments for straightforward cases where the application materials meet applicable requirements. An accelerated timeframe also applies to eligible A-share listed companies satisfying certain criteria, whereby new listing applications submitted by such companies will be subject to only one round of regulatory comments, with the HKEX and the SFC taking no more than 30 business days to provide comments.

Finally, the HKEX ended 2024 by publishing a consultation paper in December seeking market feedback on proposals to optimise the IPO price discovery process and open market requirements for Hong Kong listings, with responses due by March 2025. The proposals are intended to enhance Hong Kong's competitiveness by refining its IPO mechanisms to better align with international standards, boosting liquidity and improving transparency.

The proposals regarding the IPO price discovery process would increase the participation of "price setting" investors, thereby reducing the likelihood of the final offer price being set at a large disparity to the actual trading price when dealings in those shares commence. This includes a proposal that issuers allocate at least half of their offer shares to the bookbuilding placing tranche (i.e., making more shares available to institutional investors) and an enhanced pricing flexibility mechanism that would allow issuers to set their final IPO price up to 10% above the top of the indicative offer price range without delaying their IPO timetables. The HKEX is also seeking views on either retaining the current six-month lock-up period for cornerstone investors or implementing a "staggered release" of cornerstone shares (with 50% released three months after listing and the remainder released six months after listing).

The proposals regarding open market requirements would recalibrate Hong Kong's public float requirements by ensuring that issuers will have sufficient shares in public hands that are available for trading at listing, while relaxing certain of the existing percentage thresholds that may be too high in terms of absolute dollar value. The open market proposals include a tiered approach to initial public float requirements ranging from 5% to 25% (depending on market capitalisation), new free float requirements to ensure that a portion of shares in public hands are also free from disposal restrictions at listing and the potential creation of an over-the-counter market in Hong Kong. The proposals would also introduce greater flexibility for A-share listed companies in Mainland China seeking a Hong Kong listing (i.e., A+H issuers) by reducing the minimum threshold of H shares that such companies must list in Hong Kong to (i) 10% of the total number of issued shares in the same class (from the current 15%) or (ii) represent an expected market value of at least HK$3 billion at listing, which must also be held by the public.

SIGNS OF LIFE – A+H AND THE RETURN OF JUMBO LISTINGS

The second half of 2024 saw signs of life in the Hong Kong IPO market with notable listings by Midea Group, SF Holding and Horizon Robotics, highlighting the return of substantial listings in Hong Kong, with Midea raising US$4.6 billion in proceeds and each of SF Holding and Horizon Robotics raising more than US$750 million. These notable IPOs contributed to the HKEX's return as one of the top global venues for IPOs, ranking fourth worldwide in 2024 with total funds raised surging to approximately US$11 billion, an increase of almost 90% compared to 2023. Consumer markets, TMT and transport and logistics were the key sectors represented in Hong Kong's IPO market in 2024.

Moving into 2025, we are cautiously optimistic that the Hong Kong IPO market is set to continue its upward trajectory, with forecasts suggesting a potential rise in IPO funds raised by up to 70% to approximately US$19 billion. Our 2025 outlook stems from the HKEX's package of forthcoming reforms detailed above. This package of reforms has been designed to encourage A+H share listings and facilitate the return of jumbo listings by addressing concerns of companies already listed in Shanghai or Shenzhen. In addition, relaxing the lock-up requirements on cornerstone investors may improve post-listing liquidity and dampen share price volatility on lock-up expiry dates, while increasing the number of shares available to institutional investors may reduce the likelihood that final offering prices result in large disparities to actual trading prices.

Coupled with the measures to significantly streamline the listing process and increase transparency and efficiency, the expedited vetting targeted to A-share listed companies should expand the A+H shares line-up and attract such companies to list in Hong Kong. We are hopeful that these reforms will also attract more international institutional investors to Hong Kong and further elevate Hong Kong's position as a leading financial centre.

THE DRAW OF THE US

While the US markets have also been a popular listing venue for Chinese companies, we do not foresee a significant increase in Chinese companies seeking US listings in 2025 due in large part to continuing geopolitical tensions between the US and China. US listings by Chinese companies recently peaked in 2021 when over US$15 billion was raised by 42 Chinese companies. Since then, the market for US listings by Chinese companies has declined considerably following the high-profile delisting of Didi Chuxing in 2022 after its US$4.4 billion New York Stock Exchange listing and US$1.2 billion fine for breaching China's cybersecurity laws. In 2024, US listings by Chinese companies raised US$1.8 billion, with two companies, Zeekr Holdings and Pony.AI, raising US$441 million and US$260 million, respectively. However, much smaller listing sizes were more common, and the total proceeds raised by most Chinese companies in US listings in 2024 was less than US$10 million each.

If the current US administration intensifies scrutiny on Chinese firms by imposing sanctions or enforcing stricter compliance with US auditing standards or other regulatory requirements, Chinese companies intending to list in the US may face significant challenges, prompting them to consider Hong Kong as a more viable alternative. In addition, Chinese companies currently listed in the US will likely continue to view secondary listings in Hong Kong as a way to build resilience against potential sanctions, delisting threats or other punitive measures that could arise from US policies. Against this backdrop, Chinese companies may view a Hong Kong listing as a strategic necessity, thereby strengthening Hong Kong's appeal in 2025.

2025 FORECAST

The rebound of Hong Kong's IPO market in the second half of 2024 sets a promising stage for continued growth in 2025. The co-ordinated efforts from the CSRC, the SFC and the HKEX, the first three listings under Chapter 18C and the successful listings of Midea and SF Holding all bode well for Hong Kong's position as a resilient and attractive financial hub. While geopolitical tensions create some uncertainty, we remain optimistic that Hong Kong is poised for success in this Year of the Snake.

NAVIGATING DIGITAL TRANSFORMATION

Lessons from the AT&T vs. Broadcom Dispute

Digital transformation is continuing at pace, with organisations starting to deploy new transformative technologies like AI and fully embrace cloud and other service based solutions. However, as we become more reliant on our digital service providers, it is increasingly important to ensure that our contracts with them provide sufficient stability and certainty. Suppliers are facing increased costs, both to supply their services and to comply with an increasingly complex web of digital regulation, and they may therefore be looking to fully enforce their contracts where there are financial incentives to do so. Last year's (now settled) dispute between Broadcom and AT&T is an example of this. So what lessons can we take from this dispute when negotiating new digital arrangements in 2025?

AT&T V BROADCOM: THE FACTS

When Broadcom took over VMware, it announced (in December 2023) that it would restructure VMware's software licensing model, moving from a perpetual licence model to subscription licensing products (with such products sometimes being "bundled" with other products).

AT&T, the Fortune 500 telco giant, had a perpetual licence of VMware virtualisation software and did not want to move to the new subscription model, which would result in a substantial price increase. It argued its existing licence included a two year extension for support and maintenance services (such as security patching) which Broadcom refused to honour. It therefore sought a mandatory injunction from the court which would force Broadcom to accept AT&T's exercise of its renewal rights. Without such services, AT&T claimed it would not be able to guarantee stable and secure services for its customers (including critical national infrastructure). The parties subsequently reached a settlement in principle and the judge issued Broadcom with a temporary restraining order to continue providing VMware support services to AT&T pending a decision.

DO YOU HAVE ALL THE RELEVANT T&CS?

VMware and AT&T had executed a number of relevant agreements over the course of decades working together – the claim references an older End User License Agreement (EULA) and a newer Enterprise License Agreement (ELA), along with more than 10 contract amendments. It can be hard to keep track of all changes to live contracts, and a contract audit may be needed to uncover all amendments over time.

Relevant terms may also be incorporated into the contract by reference – e.g., hyperlinks to a website or vendor portal with standard-form terms or policies. AT&T noted that Broadcom were relying on "*VMware support policies, which permit the end of availability of the product offerings*".

It is important for customers to understand what is tucked away in the small print, and to have a clear understanding of the basis on which these terms can be amended (including whether a software vendor has the right to change these unilaterally).

ARE YOUR RENEWAL RIGHTS CLEAR?

Broadcom appeared to be relying on ambiguity in the AT&T renewal provisions (along with the "End of Availability" provisions discussed below) to deny renewal of the support and maintenance services for the current software products.

In this case, a question arose over whether AT&T had to give notice for three annual renewals in 2023 (at which point AT&T only renewed for one year), or if it could give three consecutive annual renewals on successive years.

To stress-test your renewal rights, customers should put themselves in the shoes of their counterparty – if they were the vendor, where in the terms could they create doubt? Even if it's not a slam dunk, any ambiguity can give ammunition to a vendor in this position.

HOW DO YOU RESOLVE INCONSISTENCIES?

A large part of Broadcom's argument in the AT&T case appeared to revolve around an "End of Availability" clause in the (older) EULA document. Broadcom described this clause as "unambiguous" and claims it clearly allowed VMware to pull support for certain products. As such, it argued that VMware was not required to honour the renewal right (which is referenced in a later amendment to the ELA) for support and maintenance services for those products.

While AT&T argued in its original claim that the later renewal right implicitly overrides the older "End of Availability" clause, Broadcom in its reply has pointed to some express provisions which appear to provide for the EULA (and "End of Availability" clause) to take precedence over at least some other contractual documentation.

The case settled, meaning we never got the court's verdict on this, but it is still a useful reminder to ensure that your suite of contract documents has a clear "order of precedence" clause which clarifies which document or provisions should prevail in the case of conflicts or inconsistencies. These clauses become even more important if your vendor relationship is governed by a significant number of contractual documents (as was the case here).

CAN IMPLIED TERMS HELP YOU?

AT&T also sought to rely on breach by Broadcom of an implied duty of good faith and fair dealing (under New York law) – the availability of this kind of implied term will vary from jurisdiction to jurisdiction, but may be able to assist if particularly aggressive tactics are being employed.

PERPETUAL LICENCES MAY NOT ALWAYS BE FOREVER

As AT&T (and many other VMware customers) are finding, having a licence which is theoretically "perpetual" is only useful for as long as the vendor is willing to provide support and maintenance services. We have long seen vendors limit support services after a period of time, in part (some would argue) to "encourage" customers to enter into new arrangements.

AT&T clearly foresaw this risk, and tried to mitigate by negotiating extension rights before the sale to Broadcom completed, to give a runway to migrate off the software. As Broadcom said in its reply, "*AT&T also could have spent the last several months or even years "migrating away" from VMware software, which it has admitted it intends to do*".

However, this case shows that even foresight and bargaining power may not fully protect a customer in circumstances where their vendor is looking to change software licensing models. Whatever the contract says, lock-in risk is compounded where the expected cost and complexity of migrating to a rival software provider is significant. It is therefore important for customers to monitor the market and, wherever possible, to understand what alternate services may be available.

2025 ACTIVISM PLAYBOOK

Trends, expectations, and corporate preparedness

WHAT WERE THE KEY TRENDS AND HOT TOPICS IN 2024?

Globally, shareholder activism in 2024 continued to rebound from the pandemic downturn, with campaign activity nearly at the record levels reached in 2018.

The US and APAC remained the focus for global activism, representing 44% and 29% respectively based on campaigns initiated, while the level of activity in Europe slightly declined compared to the highs of 2023, from 28% to 21% (Barclays Shareholder Advisory Group, 2024). Within Europe, the UK continues to be the most popular jurisdiction for activism, accounting for 39% of European campaigns. In APAC, Japan has been a particular hotbed of activism this year, with a significant increase in activist activity targeting Japanese companies compared to last year.

We have also seen a number of developments, including a change in activists' demands, tactics and identity. The trend of targeting large and mega-cap companies has intensified, as more activists move away from their traditional mid-cap "sweet spot". There have been notable examples of this both in the US (Starbucks, Texas Instruments, BlackRock) and in Asia (Sumitomo and SoftBank). It is a trend that is particularly prevalent in Europe, with 21% of campaigns in Europe related to companies with a market cap over $25bn, compared to 15% in the US.

Though M&A has remained a primary demand of activist campaigns, there has been a greater focus on businesses' strategy and operations than in 2023, featuring in almost a third of global campaigns. Board and management changes also remain a popular activist demand. Additionally, there have been a significant number of ESG campaigns, led by climate activists such as Follow This and ClientEarth, in relation to climate targets and greenwashing. Alongside campaigns to try to tackle climate change, we have seen pressure in the other direction from purely financial activists: for example, in July 2024 Bluebell published a letter to BP attacking "wasteful" spending on UK solar capacity and urging management to refocus on oil and gas.

We are also seeing increasing public engagement with boards and voicing of concerns that are more in line with US-style activism. Many traditional investors who have historically been reluctant to publicly criticise management are more readily backing activist campaigns or adopting activist tactics themselves. We are seeing activists use ever more innovative tactics in their campaigns, including social media. For example, Elliott Investment Management created a podcast as part of its bitter boardroom feud with Southwest Airlines.

WHAT CAN COMPANIES EXPECT FOR 2025?

Looking ahead, we expect levels of global activism to remain high. We also expect to see the recent upturn in M&A activity continue. This may lead to a return of "bumpitrage" tactics - where activists take stakes to try and sweeten announced deals - and more active calls for major spin-offs and break-ups in 2025. The Trump election may accelerate this trend in the US, as promises of deregulation and tax cuts for businesses provide a boost in the M&A market. However, the promise of protectionist policies could also dampen inbound and outbound M&A. The evergreen themes of governance change and strategy will remain high on the activist agenda.

The spectrum of activists has broadened in recent years, with new players entering the fray and institutional investors lending increased support to activist agendas. Alongside this, we have seen increased engagement from occasional activists and the growing prevalence of activist "swarms", where multiple activists target a company over a particular issue, either as a coordinated group or separately. This can exacerbate the complexity of adopting effective defensive strategies where activists' demands are not aligned.

In relation to ESG, we expect companies will continue to face pressure from both climate-focussed and traditional activists, calls which may pull in different directions. We have seen that the increasing rules around ESG reporting are having a stimulating effect on ESG-driven activism, and this will likely continue. As companies navigate the journey to net zero, they will need to devise long-term strategies that balance the economic demands of shareholders with their societal and regulatory responsibilities.

As established activists continue innovating their playbook, and there are more campaigns by first-time and occasional activists, activist tactics are becoming increasingly unpredictable. We expect mainstream institutional investors will continue to take an increasingly "activist" position with investee companies. However, we anticipate this will continue to be largely via private engagement and off-record briefings to the press.

WHAT SHOULD COMPANIES DO TO PREPARE?

The old adage that companies should be their own activist remains true. Activists are generally looking for a short- to medium-term return and will push for an actionable corporate event that can deliver that. Thinking like an activist, boards should consider possible lines of attack. Assessing what kind of changes an activist could seek, how it can rebut those challenges and defend its strategy. It should also use this exercise to stress-test strategy and see if changes should be made.

This will enable companies to be well advised to engage with major shareholders, ensure that their views are heard, and that the agreed strategy is communicated to and understood by them. Getting buy-in from institutional investors is vital and ensures that they do not use a live public situation as a chance to voice broader discontentment with management on strategy. It is also important for the board and management to show a united front on strategy, as activists will often exploit signs of division.

Day-to-day, companies should continuously monitor the share register for any signs of "stakebuilding" and should have a plan in place for dealing with initial contact from an activist.

As the landscape of activism continues to evolve with new players, tactics and demands, companies must remain vigilant and proactive in their strategies. By anticipating activist approaches and fostering strong relationships with shareholders, businesses can better navigate the challenges of activism and maintain resilience in an increasingly demanding environment.

M&A DISPUTES

A reminder on high risk areas for disputes and the latest on managing them

Following a period of geopolitical instability and economic uncertainty, while M&A activity has come back, it has brought with it an uptick in disputes between parties looking to get out of bad deals or, at the less extreme end of the spectrum, parties seeking to use litigation to redress mismatches between their expectations and the financial reality of the deals they have done. In addition to the resurgence in traditional M&A disputes, we anticipate disagreements crystallising in disputes in frontier areas such as the treatment and valuation of AI and digital assets, the impact of ESG commitments, targets or disclaimers on contractual obligations, the consequences of unwelcome intervention of shareholder activism, and the impact of regulatory action.

To better anticipate what the year could bring, corporates should proactively assess what risks their portfolios carry (or could carry). This is a timely reminder of the key principles that apply to such disputes – in particular, when they are most likely to arise, and if they do, how you can quickly get to the bottom of what the contract says (expressly or by implication).

HEIGHTENED RISK?

The stage of the transaction plays a critical role in the nature and likelihood of a dispute.

- **Are you storing up problems?** Deals done quickly with high materiality thresholds applied for due diligence can present significant challenges during the life of the contract. Are the warranties, representations and indemnities fit for purpose? Is the risk appropriately calibrated in any limitation of liability framework?
- **Mischief between signing and completion:** What are the brakes to completion? Disputes on the satisfaction of conditions precedent, endeavours clauses and material adverse changes or effects are on the rise. Have deteriorating financial health of a target or material changes to the business (including from litigation risk or regulatory intervention) or changes of control been sufficiently catered for?
- **Recovery to compensate for bad deals:** Claims for misrepresentation, warranty and indemnity claims, early termination or earn-out and completion account skirmishes could present value opportunities to businesses under significant financial strain. Litigation funding and alternative fee structures are likely to continue to facilitate the threat and commencement of claims, as up-front legal costs and/or costs exposure can be offset by potential claimants.

WHAT DOES THE CONTRACT SAY?

Clear and unambiguous drafting which reflects the bargain of the parties mitigates litigation risk. When drafting the contract or considering the prospects of a potential dispute, it is worth bearing in mind how a court or tribunal will approach any dispute on contractual interpretation. It is an objective exercise of how a reasonable person would interpret the meaning of the contract (looking at the factors below), rather than what the parties subjectively intended.

- The natural and ordinary meaning of the clause (which is the starting point and is usually given primacy).
- Any other relevant provisions of the contract.
- The overall purpose of the clause and the contract.
- The facts and circumstances known or assumed by the parties at the time of entry into the contract.
- Commercial common sense.

When an ambiguity arises, corporates should consider whether this presents a risk or, on the flipside, an opportunity. For example, is there "factual matrix" evidence (i.e. contemporaneous material which shows the surrounding circumstances or commercial purpose of the agreement) which helps to steer the interpretation in your favour? There is often, however, a tension between admissible factual matrix evidence on the one hand, and inadmissible evidence of the parties' subjective intentions and aspirations, or of what was said or agreed in pre-contractual negotiations, on the other.

In the recent UK Supreme Court case of *RTI Ltd (Respondent) v MUR Shipping BV (Appellant) [2024] UKSC 18* (concerning the suspension of performance under a force majeure clause), the Supreme Court followed long-established principles of contractual interpretation, placing emphasis on the importance of the parties' freedom of contract, the need for certainty, and the importance of using clear language to ensure that the boundaries of performance are well stated and easily understood. In other words, what the words actually say is critical.

WHAT ADDITIONAL DUTIES MIGHT BE OWED?

To avoid any unpleasant surprises, it is worth considering whether additional duties should be expressly provided for or carved out.

- What would a duty of good faith add to the express provisions of the contract?
- Conversely, should express provision be made to exclude or limit any duty to act in good faith?
- Even if there is no express good faith term in the contract, a court or tribunal might imply such a duty in certain circumstances – such as:
  - Where the so-called "Braganza" duty applies (i.e. where there is a genuine discretion under a contract, that discretion must be exercised in good faith).
  - Where the contract is "relational" (i.e. involves a long-term relationship and a considerable degree of commitment from both parties). This is particularly relevant for certain types of arrangements such as joint ventures, franchising and distribution agreements, and Private Finance Initiative (PFI) contracts.

These considerations arose recently in the English case of *Phones 4U Ltd v EE Ltd* [2023] EWHC 2826 (Ch). In this case, the judge held that the relevant agreement (whilst having some features of a relational contract) was not relational, and in any event, this did not matter because no general duty of good faith was to be implied and there was no breach of good faith by EE on the facts of the case. This case is persuasive in other common law jurisdictions, including Hong Kong.

Depending on your position and the dispute you are facing, the duty might be used as either a sword (for example, to force your counterparty to do something or to build a claim against them) or a shield (for example, to justify your own conduct). When drafting the contract and agreeing the terms, it is important to think about the ways in which a duty of good faith (whether express or implied) might play out in future and be used either by you or against you.

OTHER RISK AREAS

Some other important considerations include:

- ensuring that the dispute resolution clauses are clear and consistent across the suite of contracts, to avoid disputes on the applicable law, dispute resolution mechanism or any escalation steps;
- giving careful consideration to clauses relating to damages, including liquidated damages and limitation of liability clauses (remembering that liquidated damages must be set at a reasonable level and must not be punitive);
- keeping in mind that tortious liability (for example, negligence, fraud and economic torts such as inducing or procuring breach of contract) can also arise instead of or in parallel to contractual claims;
- recognising that a dispute may not solely arise between the buyer and seller (for example, directors and shareholders may threaten claims against directors and officers, lenders may seek to challenge the deal on various bases including misrepresentation, and in public M&A class actions may arise from the contents of offering documents); and
- ensuring that indemnification clauses for ESG liability accurately reflect the agreed allocation of risk (particularly in view of the potential duty of care owed by parent companies in relation to environmental damage caused by their subsidiaries).

LOOKING FORWARD

If you are looking to bring a claim against, or are facing a claim from, a counterparty, there are several practical considerations to work through:

- [ ] Does the claim meet any contractual threshold requirements?
- [ ] Have you (or your counterparty) complied with any contractually mandated dispute resolution steps?
- [ ] If you are looking to serve notice of the claim on your counterparty, have you complied with all requirements under the contract (including with respect to form, service details and time limits)?
- [ ] Do you need to implement document holds and consider broader document preservation policies?
- [ ] Are you ensuring that discussions (and any related document preparations) are limited and covered by legal privilege?
- [ ] If you are looking to start court proceedings, have you complied with any applicable pre-action requirements?
- [ ] Can you take the wind out of the sails of a potential dispute by relying on the limitation of liability provisions in the contract?

In any event, when a dispute arises, it is important for corporates and their advisers to get on top of the key facts and allegations quickly. On the plaintiff side, you will want to be confident in your story from the get-go and apply as much pressure as possible. On the defendant side, you will want to look for deficiencies and weaknesses in your counterparty's claim (looking at both substantive defences and any procedural mechanisms which may be used to undermine or stall the claim).

THE ASIA DISPUTE RESOLUTION AND REGULATORY LANDSCAPE

In this briefing, we explore a selection of developments over the past year in litigation, arbitration, and regulatory enforcement matters in Hong Kong and the Asia region, and consider what may lie on the horizon.

HONG KONG'S COURT OF APPEAL DIVERGES FROM PRIVY COUNCIL IN APPROACH TO STAYING WINDING-UP PETITIONS IN FAVOUR OF ARBITRATION

Where a debt instrument is subject to an agreement to arbitrate, should a creditor's winding-up petition be dismissed or stayed pending arbitration?

This question has come up in several jurisdictions, including in the Hong Kong Court of Appeal case of *Re Simplicity & Vogue Retailing (HK) Co Limited* [2024] HKCA 299 *(Re Simplicity)*. In following the established approach consonant with the 2014 English decision in *Salford Estates, Re Simplicity* held that in exercising its discretion as to whether to stay a winding-up petition in favour of arbitration, the Court should take a *"multifactorial approach"* taking into account factors such as (1) whether the relevant debt is disputed; (2) the public policy to hold parties to their agreements, including their choice of forum; and (3) whether a genuine intention to arbitrate is demonstrated. For instance, the Court could lean towards dismissing a petition where there is no evidence of a creditor community at risk, whereas the insolvency regime would hold more sway if the grounds for disputing the debt are obviously insubstantial.

Shortly after *Re Simplicity*, the issue was considered again in the widely publicised Privy Council case of *Re Sian Participation Corporation* [2024] UKPC 16 (*Re Sian Participation*) which, in overturning *Salford Estates*, decided that the general objectives of arbitration legislation (efficiency, party autonomy, *pacta sunt servanda* and non-interference by the courts) are not offended by allowing a winding up to be ordered where the creditor's unpaid debt is not genuinely disputed on substantial grounds. This has been received as a more creditor-friendly position than *Salford Estates*.

After the decision in *Re Sian Participation*, the High Court of Hong Kong had the opportunity to revisit the question in *Re Mega Gold Holdings* [2024] HKCFI 2286. Prior to giving judgment, the court invited the parties to make further submissions in light of *Re Sian Participation*, but nonetheless followed *Re Simplicity* as a matter of *stare decisis* (i.e. followed binding precedent). However, the issue is open for re-examination by the Hong Kong appellate courts, and it remains to be seen whether *Re Sian Participation* will affect the position in Hong Kong in the future. For now, Hong Kong law is as set out above in *Re Simplicity*, which can be seen as occupying the middle ground between *Salford Estates* and *Re Sian Participation*.

THE RISE OF MED-ARB IN HONG KONG

Med-Arb (the practice of conducting a mediation within an arbitral process) has been on the rise in Asia (and, in particular, Mainland China) in recent years. For example, Med-Arbs are frequently administered by the relatively newly established South China International Arbitration Center, particularly in the context of lower-value disputes.

The perceived advantage of the Med-Arb process is flexibility and speed in which the process can be tailored to suit the parties' needs, including:

- The parties could decide that the arbitrator should "swap hats" and play the role of the mediator; the advantage being that the mediator-arbitrator may already be familiar with the facts and the issues in dispute. Should the mediator then revert to the role of arbitrator, guardrails exist under various arbitral rules to ensure that the integrity of the arbitral process is maintained.
- Alternatively, the parties may decide that an independent mediator should be appointed and the arbitrators are shielded from any without prejudice discussions or admissions made during a mediation. If no settlement is reached, the arbitration is resumed.

- The key advantage to a Med-Arb in the context of an international dispute is that, if a settlement is reached in a Med-Arb, the terms of any settlement may be recorded in a consent award, which facilitates cross-border enforcement whereas a settlement agreement recorded as a contract needs to be proved and enforced like any other contract. The formality of having a settlement "endorsed" by an independent tribunal has other attractions to Asian parties, particularly where there is a continuing commercial relationship.

TRACTION OF THIRD-PARTY FUNDING IN HONG KONG?

The Arbitration Ordinance (Cap. 609) was amended in 2019 to abolish the offences of maintenance and champerty in relation to arbitration, allowing parties to turn to third parties for arbitration funding. However, **statistics** published by the Hong Kong International Arbitration Centre (HKIAC) suggest that third-party funding remains underdeveloped in Hong Kong-based arbitration: out of the 500 cases submitted to the HKIAC in 2023, there was only one case in which the parties disclosed use of third-party funding, which was a decrease from 73 cases in 2022.

SFC AND HKMA ENFORCEMENT ACTIONS AND REGULATORY DEVELOPMENTS

Over the past year, the enforcement division of the Securities and Futures Commission (SFC) continued to focus on combatting market misconduct of all forms, including market manipulation and insider trading. In May 2024, the SFC commenced criminal prosecution against Segantii Capital Management and certain members of its senior management for alleged insider dealing in connection with block trade activity. In 2024, prosecutions were brought in respect of three large-scale and highly sophisticated social media ramp-and-dump cases. The cases are now progressing in the District Court, with the 19 defendants being charged with common law and statutory conspiracy and money laundering offences. These cases highlight the SFC's increased willingness to bring criminal prosecutions in relation to more serious cases of alleged misconduct involving listed securities, notwithstanding the higher burden of proof compared to equivalent civil actions in the Market Misconduct Tribunal.

In response to concerns around misconduct in secondary placements (in particular, block trades), in November 2024 the SFC published the Guidelines for Market Soundings. The Guidelines set out the applicable principles and requirements when communicating information with potential investors to gauge their interest in a transaction to assist in the price discovery process. For further details, please refer to our **previous briefing**.

For some years, data security has been a rising priority for the SFC and that focus appears likely to continue. In February 2025, the SFC issued its **Report on the 2023/24 Thematic Cybersecurity Review of Licensed Corporations**, following a review of selected internet brokers' and licenced corporations' compliance with the cybersecurity requirements in the SFC's "Cybersecurity Guidelines" and "Code of Conduct". In addition to identifying some common control deficiencies and security loopholes, the Report also discussed emerging cybersecurity threats and sets out some practical guidance to licensed corporations on the management of cybersecurity risk, particularly in relation to phishing detection and prevention, end-of-life software management, remote access, third-party IT service providers management and cloud security. The SFC also confirmed plans to review the existing requirements and standards under the "Cybersecurity Guidelines" and develop an industry-wide cybersecurity framework applicable to all licensed corporations.

The Hong Kong Monetary Authority's enforcement priority in 2024 continued to focus on contravention of anti-money laundering law. Four banks were sanctioned for AML breaches such as failing to monitor business relationships through enhanced due diligence in high-risk situations, lacking effective internal control procedures and not keeping adequate records. Further, a leading payment service provider was fined for deficiencies in control systems for consumer due diligence. In sanctioning one bank, the HKMA reminded senior management of Authorised Institutions that *"The AMLO requires banks to put in place effective procedures for continuous monitoring of their business relationships with customers so that potential money laundering and terrorist financing activities are detected early. When changes are introduced to existing monitoring systems, bank management should ensure that the scope of surveillance covers all relevant transactions and any identified deficiencies are followed up promptly."*

Anti-money laundering has been a high-profile issue in Singapore, where 10 people were charged and convicted for a US$2.2 billion money laundering case, with prison terms ranging from 13 to 17 months. As a response, the Monetary Authority of Singapore has published its National Anti-Money Laundering Strategy to shore up its efforts in combatting financial crimes.

MAINLAND CHINA'S DATA PRIVACY LAW AND HONG KONG'S CYBERSECURITY BILL

Since the Personal Information Protection Law (PIPL) came into force in November 2021, the PRC government has issued several updates and guidance notes clarifying the law. This includes the *"Practical Guidance of Cybersecurity Standards - Classification Guidelines for Sensitive Personal Information"* in September 2024 and the *"Provisions on Promoting and Regulating Cross-Border Data Flows"* in March 2024, which clarified various aspects of the PIPL, including the definition of *"sensitive personal information"* and the necessary requirements when exporting data.

With regard to cross-border data transfer, in December 2023 Mainland China and the HKSAR implemented simplified compliance requirements on data transfer within the Greater Bay Area, including promulgating the Standard Contract for Cross-boundary Flow of Personal Information Within the Greater Bay Area (the GBA Standard Contract). The aim of the GBA Standard Contract (which can be adopted by the exporting and receiving parties registered or located within the GBA) is to streamline cross-boundary flows of personal information. In November 2024, The National Information Security Standardization Technical Committee published *"The Cybersecurity Standards Practice Guide - Requirements for Cross-Border Processing and Protection of Personal Information in the Guangdong-Hong Kong-Macao Greater Bay Area"*, which (amongst others) introduced a mutual recognition framework on security certification to facilitate the orderly transfer of data between Hong Kong and the Greater Bay Area. Further details are expected to be rolled out in the future.

In light of the evolving global data governance landscape and the United States' recent country-specific data restriction policies[1], in November 2024 the PRC government launched a *"Global Cross-Border Data Flow Cooperation Initiative"*, which aims to promote global cooperation on data security. The Initiative advocates countries to adopt non-discriminatory data policies to facilitate efficient, convenient, and safe cross-border data flow.

In Hong Kong, the Protection of Critical Infrastructures (Computer Systems) Bill was gazetted in December 2024 and is currently in its First and Second Reading. The Bill creates three categories of obligations on designated operators of critical infrastructure (CI Operators) in relation to the critical computer systems accessible in or from Hong Kong regardless of whether they are under control of the CI Operators. The three categories of obligations are as follows:

a. Organisational obligations (maintain an office in Hong Kong, report changes in ownership and operatorship, set up a computer system security management unit)
b. Prevention of threats and incidents obligations (for example implement a computer system security management plan, conduct regular computer system security risk assessment and security audit)
c. Incident reporting and response obligations (for example notify the Commissioner within 12 hours after becoming aware of serious computer-system security incidents and 48 hours for other security incidents)

A new Commissioner of Critical Infrastructure will be established under the Bill. The Commissioner will be required to inform any organisation by written notice that the organisation becomes a designated CI Operator and the relevant computer system becomes a designated critical computer system, such that organisations will aware when they fall under the scope of the Bill.

REGULATION OF ARTIFICIAL INTELLIGENCE

With the rapid advancement in artificial intelligence (AI), different approaches to regulating AI have emerged. Some jurisdictions have implemented a comprehensive framework regulating use of AI to offer protection on data privacy, copyrights, non-discrimination and so forth. For example, the EU AI Act came into force in August 2024 and the UK is making progress on its AI Bill with a consultation open for comment until 25 February 2025.

In contrast, Hong Kong has not implemented new legislation specifically regulating AI but there are several existing statutes and industry regulations that apply. The primary legislation that covers AI is the existing Personal Data (Privacy) Ordinance. In June 2024, the Privacy Commissioner for Personal Data published the *"Artificial Intelligence: Model Personal Data Protection Framework"*, setting out four areas of recommended measures for organisations to follow:

a. Establish AI Strategy and Governance
b. Conduct Risk Assessment and Human Oversight
c. Customisation of AI Models and Implementation and Management of AI Systems
d. Communication and Engagement with Stakeholders

These recommendations are not binding requirements, but nonetheless signal the expectations of the Commissioner and are a useful benchmark for ensuring compliance with the PDPO.

In relation to copyright-related issues in use of AI, the government concluded a two-month public consultation in September 2024 on the enhancement of the Copyright Ordinance (Cap. 528) regarding the following four key areas:

a. Copyright protection of AI-generated works;
b. Copyright infringement liability for AI-generated works;
c. Possible introduction of specific copyright exception for text and data mining activities; and
d. Other issues relating to generative AI such as deepfakes.

No consultation outcome or implementation timeline has been announced.

In addition, there are also sector-specific guidance issued by the relevant regulators. For example, the Hong Kong Monetary Authority has issued a series of guidance on use of AI in different scenarios. All these developments facilitate the build-up of AI ecosystem and governance in Hong Kong.

NOTABLE HONG KONG COURT CASES

The Hong Kong courts continue to be active in deciding complex commercial cases. Below is a selection of cases over the past year that are of relevance to businesses operating in Hong Kong:

- *In Tongcheng Travel Holdings Ltd v. OOO Securities (HK) Group Ltd* [2024] HKCFI 2710, the Court of First Instance granted an order to set aside a default judgment and stay proceedings in favour of arbitration due to the existence of the parties' valid arbitration agreement. This decision is consistent with the Hong Kong court's pro-arbitration stance.
- *In China Life Trustees v China Energy Reserve and Chemicals Group Overseas* [2024] HKCFA 15, the Court of Final Appeal considered whether the *Quistclose* trust principle (i.e. loan money shall be used solely for the specific purpose intended) arises in the context of intra-group transfers of funds (in particular, the proceeds of bond issues). The CFA found on the facts that the funds had not been used for the intended purpose and, therefore, were held on trust in favour of the bond issuer.
- *In Conpak Management Consultants Limited v. Luk Wai Ting* [2024] HKDC 1545, the District Court held that an employer's client contact details were not "confidential information" in the context of an ex-employee's post-termination duty of confidence on the basis that there was no evidence that such contact details were non-public information. The post-termination duty of confidence applies to trade secrets or *"confidential information of an equivalent status"*. The obvious takeaway from this case is that employers should review their standard employment contracts and ensure that appropriate post-termination provisions are included to prohibit misuse of client contact information.

1 E.g. Executive Order 14117 of February 28, 2024 - Preventing Access to Americans' Bulk Sensitive Personal Data and United States Government-Related Data by Countries of Concern.