



WINTER 2012 NEWSLETTER

Going Private and Going Dark: Considerations for U.S. Publicly Traded Chinese Companies

CBLA organized three panel discussions on Chinese companies going private and going dark in New York, Shanghai and Hong Kong during November 2012.

Leading experts in the field participated in the panel discussions, including **Catherine X. Pan-Giordano** and **Ted Farris** (Partners at Dorsey & Whitney New York office), **Dennis Galgano** (Vice Chairman of Morgan Joseph TriArtisan), **Helen Cheng** and **Daniel O'Donnell** (Director and Senior VP at HoulihanLokey), **Anthony Tomaro** (CPA and Partner at UHY Advisors) and **James O'Neill** (Managing Director at Jin Niu Investment). CBLA Director **Geoffrey Sant** moderated the New York panel.



The panel discussions focused on issues relating to the recent trend of U.S. publicly traded Chi-

nese-based companies going private or going dark in the United States. Many Chinese companies have utilized, or are considering utilizing, such mechanisms to exit the U.S. public reporting system and to reduce compliance costs and regulatory burdens.



“Chinese companies publicly traded in the U.S. face unprecedented challenges under current regulatory and market conditions. Increasingly, their U.S. public company status and U.S. stock exchange listings have become more of a burden than a benefit,” said Catherine. “The process of delisting, deregistering and going private is complex, and there are many business, legal and valuation issues for companies to consider.”

Our panelists brought additional perspectives based on their extensive company experience to the decision making process for Chinese companies considering going private or going dark.



China Copyright Law and Policy at Fordham Law School

On July 25, 2012, CBLA sponsored a conference on Chinese Copyright Law and Policy at the Intellectual Property Law Institute at **Fordham Law School** (a new institutional member of the CBLA). The conference was led by **Professors Mark Cohen** and **Hugh Hansen**, with speakers from the U.S. Chamber of Commerce, the National Basketball League, the Global IP Center, and from leading law firms. The discussion included developments in PRC law; IP issues relating to sports broadcasting and the Internet; and issues relating to copyright, design, and judicial and legislative trends. For example, Ayala Deutsch of the National Basketball League discussed the innovative strategies used by the NBA to strengthen and protect its IP abroad.

Professor Mark Cohen also led a spirited discussion over lunch regarding legislative developments in China, including forecasts of new legislation and policies. Attendees had the opportunity to network with IP-focused attorneys involved in China. To facilitate a broad audience, the conference was also broadcast live over the web and by phone.

International Practice - Career Panel II at NYU School of Law

On October 3, 2012, CBLA and NYU School of Law's Asian Law Society put on a career panel to a standing-room only crowd of approximately seventy individuals. The audience included students from a variety of law schools, current attorneys, and major media.

Panelists included **Alex Hao**, a partner at **Jun He**; **Kevin Pollack**, the Managing Director of Paragon Capital LP and a former attorney at **Sidley Austin**; **Shang Dai**, the Founder and Managing Partner of Dai & Associates; **Nicholas Sheets**, an associate at Cleary, Gottlieb, Steen & Hamilton; and **Efraim Chalamish**, Of Counsel at **Dorsey & Whitney**. In addition, **Jonathan Birenbaum**, a recruiter from Lateral Link and former government attorney, represented the perspectives of recruiters and government attorneys.



The panel featured a very lively discussion, with panelists expressing very divergent views on many issues. In response to an audience question on learning Chinese for legal purposes, Mr. Dai argued that anything less than native-level ability was of no use to a law firm, while others argued the opposite. Several questions from the audience focused on niche areas, with Alex Hao answering questions about which firms are handling Africa-China legal work, and Efraim Chalamish using his background as an Israeli individual handling cross-border PRC legal work to respond to a question about breaking into the China legal field when one has a background that is neither Chinese nor American. Other questions hit such varied topics as discrimination in the legal practice against individuals of Chinese ethnicity, and the challenges of advancing in a major firm. Kevin Pollack discussed networking issues, and Nicholas Sheets explained his perspectives on choosing a law firm and developing a career. Jonathan Birenbaum discussed transitioning from one firm to another, and Alex Hao stressed that

success at a firm requires commitment and dedication. **Geoffrey Sant** of Dorsey & Whitney acted as the moderator.

International Practice – A Career Panel at Fordham Law School

On October 1, 2012, **CBLA** and Fordham Law School's Asian Law Society presented a panel on international careers to an audience of approximately seventy individuals. The audience included both law students and attorneys interested in making career changes, as well as representatives from major international media.

Panelists included partners **Lanier Saperstein** and **Catherine Pan-Giordano** of **Dorsey & Whitney**, as well as **Ko-Yung Tung**, Senior Counselor at **Morrison & Foerster** and former General Counsel of the World Bank. In addition, **Jonathan Birenbaum**, a recruiter from **Lateral Link** and former government attorney, and **Kevin Kong**, a former general counsel to two US-listed Chinese companies as well as the current Managing Director of the Renaissance Economic Development Corporation, provided insights from their vantage points in the worlds of non-profits, government, in-house, and recruitment.

Catherine Pan-Giordano gave strategic advice on networking, commenting that networking is more effective when the networker is able to offer something of value to the individual being contacted. As an example, Catherine spoke of a student who had contacted her to invite her to attend events at Columbia University. By doing so, the student stood out from the many individuals who would send her resumes and introductory emails. Ko-Yung Tung urged students joining a firm to seek out a partner or other senior attorney to be a mentor and a protector. Lanier Saperstein discussed the ways in which young attorneys can gain a positive reputation, and discussed his own experiences as a junior associate and as a midlevel and senior associate. Kevin Kong provided insights into how attorneys can bounce back from difficulties, and provided an example of how a persistent job applicant was able to capture his attention. Jonathan Birenbaum commented on

the steps students should take to strengthen their positions prior to making a lateral move.

Members of the audience had many additional questions, including how to get a foothold in fields that are not currently hiring; what international litigation work entails; and career opportunities in China versus the United States. **Geoffrey Sant** of Dorsey & Whitney served as the moderator.

Fireside Chat

On December 17, 2012, **Nestor Gounaris**, Managing Director of China Solutions, led a fireside chat with CBLA members about how to successfully prepare a commercial contract between Chinese and non-Chinese counterparts. China Solutions is a Shanghai-based advisory firm that designs and implements effective legal and operational solutions for foreign direct investment projects in China and cross-border transactions involving Chinese counterparts. Through case studies, he shared with audience his experience of handling transactions between Chinese and non-Chinese counterparts and provided insight on what went wrong and how to minimize risks and disagreements from the legal and practical perspectives.

On October 14, 2012, partners **Zhou Yun**, **Victor Yang**, and **Peter Chen** from Zhong Lun Law Firm led a fireside chat with CBLA members at Radiance Tea House in Manhattan. Peter Chen spoke about joining Zhong Lun Law Firm, while Victor Yang spoke about his experiences as an attorney in Canada and Hong Kong. Zhou Yun spoke about making the leap from a US law firm to a PRC one. Approximately one dozen CBLA members attended the chat, including practicing attorneys and law school students. All of the attendees enjoyed a free lunch of dumplings and tea. The conversation was so engrossing that Mr. Zhou Yun continued speaking with attendees for several hours after the fireside chat formally ended. **Geoffrey Sant**, a Director of the CBLA, introduced the Zhong Lun partners and served as the moderator.

Mentorship Program

On January 11, 2013, CBLA hosted in conjunction with Fordham Asia Law Society an event to mentor current law school students. The occasion provided an intimate setting over lunch for students to gain insight from practicing attorneys on preparing for a career in international law. Participation was excellent, with standing room only among the attendees. The mentors included **Alex Hao** (Partner, Jun He Law Offices), **Rongguo Dong** (VP/Head of Compliance Dept., Bank of Communications), **Nicholas Sheets** (Associate, Cleary Gottlieb Steen & Hamilton), **Sabrina He** (Associate, McLaughlin & Stern), **Esther Chiang** (Associate, Shearman & Sterling, and Director, CBLA), **Jiayi Jiang** (Lloyds Bank), and **Geoffrey Sant** (Special Counsel, Dorsey & Whitney / Director, CBLA).

The students gained a deeper understanding of the opportunities and challenges in practicing law relating to China. The mentors answered questions on domestic and international practices. Many students were interested in tips on how to succeed in a crowded and competitive job market. Others asked questions about how to go about gaining work experience considering that LLM programs last just one year. The panel discussed methods of obtaining job opportunities, and how to package oneself and leverage specific skills and abilities. The panel also discussed how to network effectively and build long-term relationships.

After the group discussion, the students had the opportunity to talk with attorneys one-on-one. The mentoring lunch provides a more intimate and interactive setting, and supplements the larger International Career Panel also hosted by CBLA and Fordham Asia Law Society this past October, as well as a second career panel scheduled for the Spring. Based on the feedback and demand from students, CBLA and the Fordham Asia Law Society are planning to hold mentoring events monthly.

Arts, Culture & Wine: A Social Event

On October 18, 2012, the Chinese Business Lawyers Association co-sponsored a social event "Arts, Culture & Wine" with the New York Chinese Cultural Center. The New York Chinese Cultural Center is a four-decade-old non-profit

organization devoted to deepening understanding of Chinese culture. The New York Chinese Cultural Center, which will be performing at the CBLA's Chinese New Year banquet, can be visited at: <http://www.chinesedance.org/>.

"Arts, Culture & Wine" attracted an intimate mixture of attorneys, artists, and other professionals to the Chambers Fine Art gallery to view works of art by Guo Hongwei. Guo Hongwei has been featured in "ArtSlant" for his "coy and masterful minimalism" and his "comfort with experimental techniques and radical interiority – not to mention a keen sense of humor." "Connoisseur Contemporary" has described Guo Hongwei's "international recognition in the contemporary art world for his unconventional treatment of his chosen medium and the simplicity with which he renders his subject matter," adding that his work is exemplary for "his technique of building and blurring his images, achieved from applying and diluting each layer of paint; which is meant to mimic the way memories get eroded, replaced and deleted." "The Jealous Curator" writes: "I love these beautiful, washy, everyday things by Chinese artist Guo Hongwei."

Attendees enjoyed snacks, music, and conversation.

Lateral Link 2013 Q1 Market Update

Last year brought a slowdown in China's growth, and with it, significant questions about the future of the legal market in Greater China. With lateral hiring more sporadic than 2011, the question on everyone's mind in 2012 was whether China's market would ever return to its buoyant ways, and if so, when? Beijing's response, outlined in its 12th Five-Year Plan, has been embraced by many as a pragmatic and effective answer to this question, and while it's still early, the significant uptick in lateral activity we have seen in the first quarter signals a clear indication that the markets are responding positively.

M&A Continues to Thrive

On a recent trip to Beijing, I sat down with the managing partners of several top AmLaw firms,

all of whom agreed that outbound M&A will continue to be a driving economic force for China's growth over the next decade. Hiring initiatives by these and other clients so far this year have supported this prediction.

This is no coincidence. Since 2005, China has invested over \$327 billion in outbound M&A, while its share of global outbound M&A grew from .8% in 2005 to 5.5% in 2011. In its most recent five-year plan, the government announced intentions to redirect its vast foreign exchange reserves from Western government bonds into real overseas asset investments, signaling a clear intent to continue expanding through outbound acquisitions.

The legal market has already taken notice, as numerous firms are looking to add high caliber M&A talent. Significantly, these openings are not limited to elite M&A shops with short-listed SOE clients. Indeed, a range of firms are positioning themselves across the board to capitalize on a growing list of outbound mid-market deals.

The Return of Capital Markets

It's no secret that capital markets activity in Greater China slowed down significantly in 2012, following its peak in 2011. Indeed, perhaps no question was asked more by candidates over the past year than "when will capital markets return?" We are pleased to report that the return may already be underway.

Several prominent capital markets platforms are seeking to deepen their bench with top talent, including both US firms looking to add support to their securities groups in Asia and UK firms seeking additions for their US securities teams, particularly in Hong Kong. While this may come as a surprise to some, a closer look at recent developments explains the trend.

From 2002 to 2011, companies from China drove cross-border IPO activity worldwide, accounting for the largest number of completed international listings (30% of all cross-border IPOs). While the influx of Chinese companies listing in the US slowed significantly toward the end of the decade, as reverse takeover regulations tightened, recent steps by Chinese regulators to

allow American oversight of audits for US-bound companies based in China, along with a loosening of capital in the mainland in Q1, has contributed to a clear increase in Chinese IPO candidates who are once again looking to list.

The return of a modicum of market confidence – and a 25% rise in the Hang Seng Index since last May – has boosted Hong Kong IPOs, as companies looking to develop their businesses in Asia are once again listing in Hong Kong to demonstrate their regional commitment.

Litigation Opportunities Abound

In a recent article (see: http://www.laterallink.com/career_tips/76), I noted that litigation, while traditionally reserved for locally qualified lawyers, is increasingly becoming an option for US educated lawyers in Greater China and Singapore, due in large part to a wave of FCPA and internal investigations openings across the region. While these openings continue to surface, and we have a number of clients (both in-house and in private practice) still seeking candidates to meet this demand, a new frontier of litigation for AmLaw firms is beginning to emerge.

In January, new legislation was implemented in Hong Kong giving advocacy rights to Hong Kong solicitors, an area of responsibility traditionally reserved for barristers. The loosening of this restriction- coupled with the advent of HK-admitted US firms – has opened the door for additional revenue streams for Hong Kong qualified lawyers, which has caught the attention of many US firms.

While many current searches are focused on the partner level, it is safe to assume a number of high-end disputes associate openings will follow in the coming year, as these firms continue to invest in developing full service Hong Kong law practices.

If you'd like to learn more about developments in China's legal market or would like to discuss any of these specific trends in further detail, please contact Nick at NGoseland@Laterallink.com, or feel free to visit our website at www.LateralLink.com.

Our Institutional Members



Through our global network of offices, **Akin Gump** advises leading enterprises in a wide variety of industries on matters involving policy, trade, dispute resolution, transactions and project development activities. We have a long history of advising an array of clients doing business in China. In 1977, founding partner Robert Strauss took a temporary leave from the firm to head the Office of the Special Trade Representative (STR) for President Jimmy Carter, where he negotiated the first trade agreement in history between the U.S. and China. Today, the firm's Beijing office is home to a multidisciplinary team comprising U.S. lawyers, U.S.-trained Chinese lawyers and Chinese legal counsel. We frequently advise Chinese companies in a variety of transactional activities, including global investments and business combinations, as well as companies and investment vehicles doing business in China.



Dorsey & Whitney is an international firm with 19 offices worldwide. The firm has over 60 practice areas, which include a full spectrum of business law services. This multi-faceted platform gives our clients in China, and clients with interests in China, access to the expertise necessary to conduct sophisticated international business. Dorsey has a top ranked M&A practice with extensive experience in cross-border transactions that touch jurisdictions throughout the world. The firm's Asian practice is led from offices in Shanghai and Hong Kong, but the scope of the China practice extends to Dorsey's entire platform.



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KAYE SCHOLER LLP

Kaye Scholer provides strategic counsel and legal services to Fortune 500, middle-market companies and government entities on a full range of U.S. and international matters. In 1998, we became the first New York law firm to obtain approval to establish an office in Shanghai. Today, our China practice is distinguished by our unparalleled ability to provide excellent around-the-clock, China-focused advice and counseling to clients from our offices in China and the United States. We counsel major U.S., Asian, European and Latin American companies, financial institutions and individuals on inbound China matters, representing clients in mergers and acquisitions, corporate, operations and compliance, foreign direct investment, technology and outsourcing, renewable and alternative energy, intellectual property and other litigation issues. In addition, we advise a number of Chinese companies with respect to their outbound investments and activities.



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Lateral Link is a full-service legal recruitment firm devoted to assisting our network of top attorney candidates and employer clients in making the right choices. Our diverse and talented team includes former practicing attorneys, recruiting directors and legal search professionals who share a commitment to high-quality, efficient service. Because our recruiting consultants have been in the shoes of our candidates and clients, Lateral Link understands the issues that attorneys and recruiting personnel face when making employment decisions. Lateral Link has successfully placed hundreds of attorneys throughout the United States, Europe and Asia. We leverage our status as one of a very few true “go-to” recruiting firms for non-public positions with major U.S.-based and international firms and companies with the localized on-the-ground connections necessary to get our candidate members expedited attention during their job search.

SHEARMAN & STERLING LLP

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Founded in 1873, **Shearman & Sterling** is one of the world’s leading global law firms with approximately 900 lawyers based in 20 major financial and commercial centers in Asia, Europe, Latin America and North America. In China, Shearman has offices in Beijing, Hong Kong and Shanghai. We have been on the forefront of the region’s most dynamic and innovative transactions for over 30 years. Many of our attorneys in China are from the region, or are long-time practitioners in China, and speak Mandarin and various Chinese dialects. Attorneys in Shearman’s China practice are qualified in U.S., UK and Hong Kong law and have expertise in a wide range of practice areas. In 2010, Shearman expanded our pan-Asia capabilities further with the launch of a dedicated Hong Kong law practice.



Sidley Austin has an established presence in the Greater China region and with offices and professionals in Beijing, Hong Kong and Shanghai, we are well placed to offer a full range of services to all those involved in doing business in China. Sidley's professionals in China are capable of handling a broad range of corporate, finance, litigation, regulatory and industry-specific matters and are qualified to advise on U.S., Hong Kong and English law. The firm represents global, U.S. and European companies, financial institutions, funds, life science companies and others establishing business operations in China, as well as many Chinese companies establishing operations and dealing with regulatory schemes in the EU, the U.S. and elsewhere. The firm's Asia-Pacific practice has received numerous honors, including "Most Innovative U.S. Law Firm" by IFLR earlier this year.

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Sullivan & Cromwell has been committed to clients and transactions in Asia since the 1920s. We are a recognized leader in the region's capital markets, M&A, private equity, privatization and project finance work. With more than 35 lawyers in our Hong Kong, Beijing and Tokyo offices, we provide the highest quality legal services to a wide spectrum of clients, including many of the world's largest financial institutions, multinational companies, governmental and sovereign entities and private equity firms. We have consistently been cited by regional and international publications for our service to clients in Asia, including "M&A Law Firm of the Year in Asia" by IFLR and "Capital Markets Law Firm of the Year in Asia" by AsiaLaw. On November 1, 2011, S&C expanded its dedication to the Asian market by launching its Hong Kong law practice.

About CBLA

Chinese Business Lawyers Association, Inc. (www.cblalaw.org) is a New York non-profit organization founded in early 2009. CBLA is a unique global forum of professional and social exchanges for legal, finance and other professionals with an interest in law and business in U.S. and China, without regard to location, ethnicity and language. If you have information to contribute to our newsletters, including the "Movers and Shakers" and "Community Bulletin Board" sections, please email media@cblalaw.org. Please note that CBLA has not verified and cannot be responsible for third-party statements contained in this newsletter.