Global Investigations Review

The Guide to Monitorships

Editors
Anthony S Barkow, Neil M Barofsky and Thomas J Perrelli

Second Edition

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This article was first published in June 2020
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Published in the United Kingdom
by Law Business Research Ltd, London
Meridian House, 34-35 Farringdon Street, London, EC4A 4HL, UK

www.globalinvestigationsreview.com

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david.samuels@lbresearch.com

ISBN 978-1-83862-270-1

Printed in Great Britain by
Encompass Print Solutions, Derbyshire
Tel: 0844 2480 112

Acknowledgements

The publisher acknowledges and thanks the following for their assistance throughout the preparation of this book:

ALIXPARTNERS

BDO USA LLP

BROWN RUDNICK LLP

CADWALADER, WICKERSHAM & TAFT LLP

CROWELL & MORING LLP

DEBEVOISE & PLIMPTON LLP

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Publisher's Note

The Guide to Monitorships is published by Global Investigations Review – the online home for everyone who specialises in investigating and resolving suspected corporate wrongdoing.

It flowed from the observation that there was yet no book available that systematically covered all aspects of the institution known as the 'monitorship' – a situation known to be delicate and challenging for all concerned: the company, the monitor, the appointing government agency and all the professionals helping those players.

This guide aims to fill that gap. It does so by addressing all the most common questions and concerns from all the key perspectives. We have been lucky to attract authors who have lived through the challenges they deconstruct and explain.

The guide is a companion to a larger reference work – GIR's *The Practitioner's Guide to Global Investigations* (now in its fourth edition), which walks readers through the issues raised, and the risks to consider, at every stage in the life cycle of a corporate investigation, from discovery to resolution. You should have both books in your library: *The Practitioner's Guide* for the whole picture and *The Guide to Monitorships* for the close-up.

The Guide to Monitorships is supplied in hard copy to all GIR subscribers as part of their subscription. Non-subscribers can read an e-version at www.globalinvestigationsreview.com.

Finally, I would like to thank the editors of this guide for their energy and vision, and the authors and my colleagues for the elan with which they have brought that vision to life.

We collectively welcome any comments or suggestions on how to improve it. Please write to us at insight@globalinvestigationsreview.com.

Preface

Corporate monitorships are an increasingly important tool in the arsenal of law enforcement authorities and, given their widespread use, they appear to have staying power. This guide will help both the experienced and the uninitiated to understand this increasingly important area of legal practice. It is organised into five parts, each of which contains chapters on a particular theme, category or issue.

Part I offers an overview of monitorships. First, Neil M Barofsky – former Assistant US Attorney and Special Inspector General for the Troubled Asset Relief Program, who has served as an independent monitor and runs the monitorship practice at Jenner & Block LLP – and his co-authors Matthew D Cipolla and Erin R Schrantz of Jenner & Block LLP explain how a monitor can approach and remedy a broken corporate culture. They consider several critical questions, such as how a monitor can discover a broken culture; how a monitor can apply 'carrot and stick' and other approaches to address a culture of non-compliance; and the sorts of internal partnership and external pressures that can be brought to bear. Next, former Associate Attorney General Tom Perrelli, independent monitor for Citigroup Inc and the Education Management Corporation, walks through the life cycle of a monitorship, including the process of formulating a monitorship agreement and engagement letter, developing a work plan, building a monitorship team, and creating and publishing interim and final reports.

Nicholas Goldin and Mark Stein of Simpson Thacher & Bartlett – both former prosecutors with extensive experience in conducting investigations across the globe – examine the unique challenges of monitorships arising under the US Foreign Corrupt Practices Act (FCPA). FCPA monitorships, by their nature, involve US laws regulating conduct carried out abroad, and so Goldin and Stein examine the difficulties that may arise from this situation, including potential cultural differences that may affect the relationship between the monitor and the company. Additionally, Alex Lipman, a former federal prosecutor and branch chief in the Enforcement Division of the Securities and Exchange Commission (SEC), and Ashley Baynham, fellow partner at Brown Rudnick LLP, explore how monitorships are used in resolutions with the SEC. Further, Bart M Schwartz of Guidepost Solutions LLC – former chief of the Criminal Division in the Southern District of New York, who later served as independent monitor for General Motors – explores how enforcement agencies decide whether to appoint a monitor and how that monitor is selected. Schwartz provides an overview of different types of monitorships, the various agencies that have appointed monitors in the

past, and the various considerations that go into reaching the decisions to use and select a monitor.

Part II contains three chapters that offer experts' perspectives on monitorships: those of an academic, an in-house attorney and forensic professionals. Professor Mihailis E Diamantis of the University of Iowa provides an academic perspective, describing the unique criminal justice advantages and vulnerabilities of monitorships, and the implications that the appointment of a monitor could have for other types of criminal sanctions. Jeffrey A Taylor, a former US Attorney for the District of Columbia and chief compliance officer of General Motors, who is now executive vice president and chief litigation counsel of Fox Corporation, provides an in-house perspective, examining what issues a company must confront when faced with a monitor, and suggesting strategies that corporations can follow to navigate a monitorship. Finally, Loren Friedman, Thomas Cooper and Nicole Sliger of BDO USA provide insights as forensic professionals by exploring the testing methodologies and metrics used by monitorship teams.

The four chapters in Part III examine the issues that arise in the context of cross-border monitorships and the unique characteristics of monitorships in different areas of the world. Litigator Shaun Wu, who served as a monitor to a large Chinese state-owed enterprise, and his co-authors at Kobre & Kim examine the treatment of monitorships in the East Asia region. Switzerland-based investigators Daniel Bühr and Simone Nadelhofer of LALIVE SA explore the Swiss financial regulatory body's use of monitors. Judith Seddon, an experienced white-collar solicitor in the United Kingdom, and her co-authors at Ropes & Gray International LLP explore how UK monitorships differ from those in the United States. And Gil Soffer, former Associate Deputy Attorney General, former federal prosecutor and a principal drafter of the Morford Memorandum, and his co-authors at Katten Muchin Rosenman LLP consider the myriad issues that arise when a US regulator imposes a cross-border monitorship, examining issues of conflicting privacy and banking laws, the potential for culture clashes, and various other diplomatic and policy issues that corporations and monitors must face in an international context.

Part IV has eight chapters that provide subject-matter and sector-specific analyses of different kinds of monitorships. With their co-authors at Wilmer Cutler Pickering Hale and Dorr LLP, former Deputy Attorney General David Ogden and former US Attorney for the District of Columbia Ron Machen, co-monitors in a healthcare fraud monitorship led by the US Department of Justice (US DOJ), explore the appointment of monitors in cases alleging violations of healthcare law. Günter Degitz and Richard Kando of AlixPartners, both former monitors in the financial services industry, examine the use of monitorships in that field. With his co-authors at Kirkland & Ellis LLP, former US District Court Judge, Deputy Attorney General and Acting Attorney General Mark Filip, who returned to private practice and represented BP in the aftermath of the Deepwater Horizon explosion and the company's subsequent monitorship, explores issues unique to environmental and energy monitorships. Glen McGorty, a former federal prosecutor who now serves as the monitor of the New York City District Council of Carpenters and related Taft-Hartley benefit funds, and Joanne Oleksyk of Crowell & Moring LLP lend their perspectives to an examination of union monitorships. Michael J Bresnick of Venable LLP, who served as independent monitor of the residential mortgage-backed securities consumer relief settlement with Deutsche Bank AG, examines consumer-relief fund monitorships. Ellen S Zimiles, Patrick J McArdle and their

co-authors at Guidehouse explore the legal and historical context of sanctions monitorships. Jodi Avergun, a former chief of the Narcotic and Dangerous Drug Section of the US DOJ and former Chief of Staff for the US Drug Enforcement Administration, and her co-authors, former federal prosecutor Todd Blanche and Christian Larson of Cadwalader Wickersham & Taft LLP, discuss the complexities of monitorships within the pharmaceutical industry. And Frances McLeod and her co-authors at Forensic Risk Alliance explore the role of forensic firms in monitorships, examining how these firms can use data analytics and transaction testing to identify relevant issues and risk in a monitored financial institution.

Finally, Part V contains two chapters discussing key issues that arise in connection with monitorships. McKool Smith's Daniel W Levy, a former federal prosecutor who has been appointed to monitor an international financial institution, and Doreen Klein, a former New York County District Attorney, consider the complex issues of privilege and confidentiality surrounding monitorships. Among other things, Levy and Klein examine case law that balances the recognised interests in monitorship confidentiality against other considerations, such as the First Amendment. And former US District Court Judge John Gleeson, now of Debevoise & Plimpton LLP, provides incisive commentary on judicial scrutiny of deferred prosecution agreements (DPAs) and monitorships. Gleeson surveys the law surrounding DPAs and monitorships, including the role and authority of judges in those respects, and separation-of-powers issues.

Acknowledgements

The editors gratefully acknowledge Jenner & Block LLP for its support of this publication, and Jessica Ring Amunson, co-chair of Jenner's appellate and Supreme Court practice, and Jenner associates Jessica Martinez, Ravi Ramanathan and Tessa J G Roberts for their important assistance.

Anthony S Barkow, Neil M Barofsky and Thomas J Perrelli
April 2020
New York and Washington, DC

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Monitorships in East Asia

Jason J Kang, Daniel S Lee, Nan Wang, Ryan Middlemas and Hangil Lee[1]

Monitorships are common in the United States and elsewhere but this is not yet the case in East Asia. Generally, monitorships are initiated by a regulator or prosecutor, or out of a court's express order. Otherwise, they can be the result of internal corporate compliance needs. Regardless of the types or origins of monitorships, a growing global emphasis on legal and ethical compliance has led to their proliferation.

In the United States, monitorships are routinely imposed as a condition of certain orders or negotiated terms, such as deferred or non-prosecution agreements, and appointing a monitor has become increasingly popular in other jurisdictions, notably the United Kingdom. In East Asia, there is not a historical practice of monitorships. However, in an increasingly globalised market, East Asian businesses and organisations are not immune to monitorships and the issues they raise.

This chapter considers the application of monitorships in an East Asian context and their effects on East Asian organisations. We also consider some recent examples of the first monitorships imposed by government authorities in the region, in what may be the start of an emerging trend.

Domestic monitorships: growing compliance emphasis

As demonstrated by the increase in prosecutions and enforcement cases since the 2007–2008 financial crisis, there is a growing emphasis on legal and ethical compliance in East Asia and companies have struggled to meet the constantly evolving regulatory compliance requirements in the region. However, it is extremely rare for East Asian regulators and prosecutors to reach out to independent private parties to evaluate and monitor the subject organisation's level of compliance. There are numerous reasons why East Asia has not traditionally adopted this mechanism.

1 Jason J Kang, Daniel S Lee, Nan Wang, Ryan Middlemas and Hangil Lee are lawyers at Kobre & Kim.

The primary reason is that the legal regime in most East Asian jurisdictions does not provide for the appointment of a monitor. Often, there is no procedure for the regulator or enforcer to settle a case; the government can simply decide to exercise its powers, bring a prosecution before a court or drop the investigation. At the cultural level, government authorities are reluctant to have a private party conduct an oversight role to ensure compliance and many view this as the government's responsibility. Also, there are various mechanisms in place that effectively achieve – or strive to achieve – the same goals as monitorships in the United States.

For example, in South Korea, the Financial Supervisory Service (FSS) monitors financial institutions pursuant to its four-part examination process:

- *Off-site monitoring*: FSS examiners analyse financial and operational reporting from financial institutions, evaluate quantitative safety and soundness measures, and work to identify areas of weaknesses and risks in need of supervision or action.
- *Pre-examination preparation*: FSS examiners make quarterly and annual examination plans for examination of financial institutions. The examination plans set the financial institutions (and branches) to be selected, the types of examinations to be carried out (full-scope and targeted), the tentative dates, the number of examiners to be assigned and the scope of the examination activities.
- *On-site examination*: FSS examiners perform full-scope and targeted examinations of financial institutions. A full-scope examination will evaluate a financial institution's overall financial, management, operational and compliance performance. A targeted examination is limited in scope and is intended to address a narrow range of supervision matters and concerns, such as incidents of irregularity and unsound business activity.
- *Post-examination action*: As a result of the FSS examiners' examination, administrative sanctions may be imposed on the subject financial institution and individuals involved in serious violations of laws and regulations.

South Korea's legal regulations demand that listed companies with total assets of more than 500 billion won and financial institutions should have one or more compliance officers responsible for duties relating to abiding by the above compliance guidelines. Even if compliance officers are not appointed by government, the mandatory compliance system helps to achieve the same goals as monitorships.

Foreign monitorships in an East Asian context

With these systemic cultural differences, it remains unclear whether East Asia will consider adopting the monitorship mechanism in the near future. Meanwhile, foreign government-imposed monitorships affecting parties based in the region are becoming increasingly common.

Monitorships in the United States tend to be driven by three key areas: financial sector compliance; public protection, such as consumer safety or environmental standards; and criminal law compliance (e.g., corruption, sanctions or money laundering). In East Asia, US-ordered monitorships tend to be driven by the latter. This is a natural trend, given that almost all US-ordered enforcement actions in East Asia have been criminal in nature.

ZTE Corporation

Despite the frequency of criminal enforcement actions from the United States, there were few notable cases of monitorships in the region until 2017, when the United States imposed a monitorship on Chinese telecommunications giant ZTE Corporation, one of the first examples of a high-profile monitorship imposed in East Asia. The following is a sequence of events surrounding this monitorship.

ZTE relied on US-produced components for its smartphones and computer networking equipment. By exporting its technology to Iran and North Korea, ZTE was found to be in violation of US sanction agreements. As a result, the United States forbade American companies from selling components to ZTE and its subsidiary, cutting off the company's supply to critical parts for its networking equipment and smartphones from US companies such as San Diego-based chipmaker Qualcomm.

ZTE settled with the United States in March 2017, agreeing to pay fines of US$890 million and accepting a monitor appointed by the District Court. A denial of US companies' export privileges was suspended based on ZTE's promise to implement the agreement. However, in April 2018, the United States alleged ZTE was failing to comply with the agreement and once again cut off American exports to the Chinese company. ZTE's ability to be supplied key products from US companies was shut off for three months, putting the company at risk of bankruptcy. In June 2018, ZTE agreed to pay additional fines of US$1 billion and allowed the US Department of Commerce to send a monitor to oversee its business practice.

Subsequently, the monitorship term was extended from 2020 to 2022 and the powers of the monitor were expanded to police ZTE to the same degree as that of a second monitor appointed by the US Department of Commerce. Other conditions of the monitorship included replacing ZTE's entire board of directors and senior leadership team.

From China's perspective, the appointment of a monitor and the imposition of the other strict measures in the *ZTE* case were a major intrusion into a key business. This reaction shows how countries should consider the symbolic significance of a foreign-appointed monitor when applied in a different cultural context. As an example, consider the reverse situation: if China were to appoint a Chinese citizen as a monitor to oversee all compliance activities of a major listed company in the United States, the decision would probably face stiff opposition from a number of different American stakeholders. While there is no suggestion that China will introduce such a mechanism, this is the context in which the monitor's role must be carried out when appointed to oversee an East Asian party.

Other issues in monitorships over Chinese companies could include Chinese state secrets. The current China–US trade war may result in an increased focus on the conduct of Chinese parties, with greater enforcement activity being conducted under US sanctions law, the Foreign Corrupt Practices Act (FCPA), among others. *ZTE* may become a model for further monitorships to come.

Panasonic Avionics Corporation

Panasonic is another example of a monitorship imposed in the East Asian context. In 2007, a US-based subsidiary of Panasonic that produces in-flight media systems, Panasonic Avionics Corporation (PAC), hired a foreign official as a consultant, paying him more than US$875,000 during a period of six years, during which time the consultant did little work for PAC. The payments were then accounted for in Panasonic's books and records as legitimate

consulting expenses. Further, PAC employees concealed the use of certain sales agents, who did not pass internal diligence requirements, by formally terminating the relationships with these agents but secretly continuing to use them by rehiring them as sub-agents of another company. In this way, more than US$7 million in payments to at least 13 agents was concealed.

By providing false representations of the payments made to these consultants and agents to Panasonic, PAC led its parent company to falsify its books, records and accounts. Subsequently, the US Department of Justice (DOJ) charged PAC for violating the accounting provisions of the FCPA with respect to retaining consultants for improper purposes and concealing payments to third-party agents.

PAC entered into a deferred prosecution agreement with the DOJ on 30 April 2018 for this violation, agreeing to pay criminal penalties of US$137 million and to retain an independent corporate compliance monitor for at least two years. Further, in a related proceeding, the US Securities and Exchange Commission filed a cease-and-desist order against Panasonic, and the latter entered into an administrative agreement with the former to disgorge US$143 million as part of the resolution.

East Asian monitorships in an international development bank context

A further field in which monitorships have been seen in an East Asian context is through quasi-governmental organisations, particularly international development banks such as the World Bank. As China continues to implement its One Belt, One Road initiative to finance a network of infrastructure in numerous jurisdictions in the region, the East Asian Infrastructure Investment Bank – developed by China to partly finance this initiative – will grow to ever-increasing levels of financing activity. It remains to be seen whether the East Asian Infrastructure Investment Bank will follow the World Bank and other development banks in adopting a compliance guideline framework, including a provision for a compliance monitor when there are compliance concerns.

Monitorships in a development bank context arise when the recipient of funding from an international development bank or the participant in a project funded by an international development bank is found to be, or suspected of having been, involved in breach of a law, compliance failure or inadequate standards of integrity. A development bank may subject the party to oversight by a monitor for a specified period as a condition of continued access to funding. This differs substantially from a monitorship in a prosecution context, in which the monitorship may be imposed conditionally as part of a deferred prosecution agreement.

The clearest example of monitorships of this kind are those imposed by the World Bank. All parties involved in a World Bank investment project are subject to the World Bank Procurement Regulations for Borrowers. These Regulations outline standards required of borrowers and prohibit fraud, corruption, collusion, coercion and obstructive practices. A breach of any of these provisions may result in a sanction imposed by the World Bank. The default sentence, and the most commonly imposed, is 'debarment with conditional release'.

A debarment with conditional release prohibits a subject from access to World Bank loans for a specified period, with access to loans to be restored at the conclusion of the period, if certain requirements are met. These requirements commonly include the introduction of a more robust compliance framework, to be verified by an independent monitor before the entity's debarment can be lifted.

Disbarment from access to World Bank financing and the remedies imposed by, for example, the appointment of an independent compliance monitor, are recognised and enforced by certain other multinational development banks through what is known as an Agreement for Mutual Enforcement of Debarment Decisions. Whether through this mutual recognition procedure or under its own integrity regime, some other multinational development banks impose a similar integrity regime, which may include the appointment of an independent monitor. In East Asia, these institutions include the Asian Development Bank.

Two further development banks in the region that broadly follow the World Bank model in their policy objectives are the China Development Bank (CDB) and the Asian Infrastructure Investment Bank (AIIB). To date, the CDB has not adopted a sanctions regime that allows debarment of a potential borrower, with provision for the appointment of a monitor to allow a borrower to regain borrowing privileges. This may be because the CDB's mandate is purely domestic.

By contrast, the AIIB's mandate is significantly more international. Founded in 2016, it has authority to fund projects throughout the Asia-Pacific region and receives funding from member nations throughout the world. As a result of the AIIB's multilateral structure, it is perhaps not surprising that it adopts a sanctions and debarment regime broadly based on the World Bank model, including maintaining an extensive list of entities debarred from accessing AIIB funding as a result of a compliance failing.

What we have not yet seen emerge in relation to the AIIB is a mechanism for debarred entities to be rehabilitated and subsequently regain their borrowing privileges. As the AIIB has only been in operation since 2016, it may be that the bank has not yet had an opportunity to develop an arrangement of this kind. As the AIIB continues to build its institutional structure in the coming years, it will be interesting to observe whether it continues to follow the World Bank model by imposing independent monitorships as a condition of a party being removed from the bank's list of debarred entities.

East Asia-imposed monitorships: an emerging trend?

While monitorships mandated by government authorities have not traditionally been a feature of legal and regulatory regimes in the region, there are some signs of East Asian authorities adopting the concept of monitorships. It is perhaps not unexpected that this trend has been seen in Singapore and Hong Kong, which are international financial centres with common law legal systems that maintain particularly close links with key Western economies such as the United States. There is also an emerging trend of quasi-monitorships from South Korea.

The appointment of an independent monitor to oversee rectification efforts following a compliance breach is standard practice in many Western financial regulatory regimes. Now that the monitorship concept has been employed in Singapore, the practice will form part of the repertoire employed by Singapore regulatory authorities in future cases.

A further example of the adoption of the independent monitor concept in Singapore is in the competition or antitrust context. The Competition and Consumer Commission of Singapore (CCCS) has the power to issue an interim measures direction, imposing conditions on the grant of approval for a transaction such as a merger. As a condition of approving a recent acquisition of ride-hailing app Uber's Southeast Asia business by competitor Grab, the CCCS imposed a requirement for an independent monitoring trustee to be appointed.

The monitor's role is to supervise the newly merged business's compliance with a number of operational and legal restrictions imposed by the CCCS. In the *Uber/Grab* transaction, these conditions included maintaining certain pre-merger pricing, terminating some pre-existing exclusivity agreements and restricting access to operational data held by Uber. Monitorships in this context differ somewhat from the traditional format in that here the monitorship is forward-looking – the monitor's role is to ensure compliance with transaction approval conditions pre-emptively, rather than following a breach.

The concept of monitorship is also gaining ground in Hong Kong. There are no explicit legislative provisions permitting Hong Kong regulators to enter into deferred prosecution agreements (which would commonly require the appointment of a monitor). Nevertheless, despite the lack of a specific statutory footing, Hong Kong regulators have regularly found a means of replicating the effect and requiring the appointment of an independent consultant akin to a monitor.

While deferred and non-prosecution agreements are not statutorily available options in South Korea, there is some statutory footing relating to the form of quasi-monitorships and certain courts' practices in requesting a similar type of traditional monitorship.

For example, the Korean Commercial Code requires that listed companies with total assets valued at 500 billion won or more to designate one or more compliance officers. In the antitrust context, compliance programmes are recognised and have been recommended by the Korean Fair Trade Commission (KFTC) since 2001. Prior to the amendment of compliance programme operation rules in 2016, the KFTC reduced the administrative surcharge required of companies if the company in question had adopted a compliance programme and received a qualifying rating in its evaluation by the KFTC. Although this particular incentive was discarded, there are others still in existence, such as adjustment to the extent, or exemption of the company's public disclosure obligation, of its violation. In October 2019, the KFTC amended the guidelines to better accommodate the incentives for companies with the highest rating and even introduced a reward programme. These programmes also share forward-looking characteristics, and compliance programmes provide some incentives as mitigation in sanctions following a future breach.

Furthermore, Seoul High Court directed a measure to ensure compliance in a high-profile criminal case involving a Samsung executive in December 2019. Against this backdrop, Samsung established a compliance monitoring committee comprised of six external members and one Samsung executive. Seoul High Court expressed that it would consider these measures as a positive sentencing factor only if the committee could substantially and effectively ensure compliance. While it is too soon to predict the Court's stance, this case could have significant implications in future (quasi-)monitorship practices in South Korea.

Conclusion

Unlike the United States, East Asian jurisdictions have not traditionally adopted the concept or practice of monitorships to provide independent oversight and verification of compliance with obligations. This may well be a result of a lack of a procedural mechanism in many East Asian legal systems equivalent to a deferred prosecution agreement, and a relative cultural reluctance to entrust a traditional government oversight role to a private party. Nevertheless, monitorships imposed by authorities outside the region – yet affecting East Asia-based parties – have become increasingly common. Monitorships imposed by quasi-governmental

authorities, particularly international development banks, are a further avenue by which the concept of monitorship in the region has become more widely adopted. Both categories are likely to see further growth and additional instances of the imposition of monitorships in East Asia.

Although at a relatively nascent stage, monitorship regimes organically developed in the region are beginning to spread their wings, particularly in East Asian jurisdictions that maintain a common law legal system and strong links with jurisdictions, such as the United States, where monitorship is more common. Overall, we are at an interesting point in time as the monitorship concept slowly emerges in East Asia.

Appendix 1

About the Authors

Jason J Kang
Kobre & Kim

Jason Kang is a China-focused litigator who focuses on international judgment and award enforcement and other complex cross-border disputes. Mr Kang has acted in a wide range of China-related disputes involving governments, state-owned enterprises, multinational corporations and high net worth individuals, including litigations in Hong Kong, the United States, the United Kingdom, other offshore jurisdictions such as the British Virgin Islands and Cayman Islands, and arbitrations under the Hong Kong International Arbitration Center and International Chamber of Commerce.

Mr Kang is particularly experienced in creating and implementing global strategies for enforcement of high-stake judgments and awards. He has extensive experience of working with Asia-based clients in navigating complex international regulatory schemes, including matters involving allegations of fraud, US Foreign Corrupt Practices Act violations, corruption and other wrongdoings.

In addition, Mr Kang is also qualified in Mainland China. He is experienced in assisting clients with China-related disputes and investigations and providing information on the influences of the Chinese legal environment.

Daniel S Lee
Kobre & Kim

With significant experience as a US Department of Justice (DOJ) prosecutor, Daniel S Lee focuses his practice on representing multinational companies in US regulatory investigations and enforcement actions, with particular experience in matters involving Korea. Mr Lee regularly investigates fraud allegations, including those relating to financial fraud, government contracts fraud, money laundering and public corruption.

Before joining Kobre & Kim, Mr Lee was a DOJ prosecutor, as an Assistant US Attorney for the Western District of Texas and Special Assistant US Attorney for the District of Hawaii.

While serving in that capacity, Mr Lee focused on white-collar criminal cases involving investment fraud, healthcare fraud, defence contractor fraud, and multi-jurisdictional asset forfeiture and tracing. Earlier in his career, he was a trial attorney for the US Department of Defense, litigating major crimes for the Pacific region, including Korea, Japan, Hawaii and Guam.

Hangil Lee
Kobre & Kim

Hangil Lee is an international lawyer and experienced litigator that focuses on international arbitration, financial litigation and white-collar criminal defence matters related to Korea.

Before joining Kobre & Kim, Ms Lee practised at Bae, Kim & Lee LLC in Korea, where she represented both foreign and domestic clients in the areas of international arbitration, cross-border litigation and domestic litigation.

Ryan Middlemas
Kobre & Kim

Ryan Middlemas represents commercial clients and individuals in white-collar and US regulatory defence matters, internal investigations, and insolvency and debtor-creditor disputes, often with cross-border components.

His experience includes representing clients, particularly those in the financial services industry, in enforcement actions brought under the US Foreign Corrupt Practices Act and by Hong Kong regulatory authorities such as the Hong Kong Securities and Futures Commission, the Hong Kong Monetary Authority and the Hong Kong Independent Commission Against Corruption.

He has also acted for trustees, liquidators, creditors and debtors in contentious insolvency proceedings, restructurings and financial distress situations.

Before joining Kobre & Kim, Mr Middlemas practised at Allen & Overy in Hong Kong and London, and completed a secondment in Japan with Nissan Motor Co Ltd.

Nan Wang
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Nan Wang represents clients in cross-border disputes, especially in matters involving multinational companies and state-owned enterprises operating in the People's Republic of China. Ms Wang also counsels companies in internal investigations stemming from US Foreign Corrupt Practices Act allegations and regulatory violations.

Prior to joining Kobre & Kim, Ms Wang practised at a global law firm, where she concentrated on commercial litigation and government regulatory investigations. She also worked as a senior adviser on Asia markets at a global consulting firm, advocating on behalf of multinational companies in international trade matters.

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Since *WorldCom*, the United States Department of Justice and other agencies have imposed more than 80 monitorships on a variety of companies, including some of the world's best-known names. The terms of these monitorships and the industries in which they have been employed vary widely. Yet many of the legal issues they raise are the same. To date, there has been no in-depth work that examines them.

GIR's *The Guide to Monitorships* fills that gap. Written by contributors with first-hand experience of working with or as monitors, it discusses all the key issues, from every stakeholder's perspective, making it an invaluable resource for anyone interested in understanding or practising in the area.

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ISBN 978-1-83862-270-1