Cover Story
Face to Face with
Christina Cheung
Law Officer (Civil Law), Department of Justice

DISPUTE RESOLUTION
Litigate, Arbitrate, or Mediate? Putting It All on the Table at the Global Pound Conference in Hong Kong

INTERNET OF THINGS
Protecting Against Attacks from the Internet of Things

INTELLECTUAL PROPERTY
Trade Mark Infringement and Honest Concurrent Use in Keywords Advertising
Corporate Governance Roundtable
13 March 2017
Kowloon Shangri-La Hotel

Distinguished speakers

Keynote speakers:

Professor K C Chan, GBS, JP
Secretary for Financial Services and the Treasury

Mr Ashley Alder, JP
Chairman, International Organization of Securities Commissions

Mr Tim Moss, CBE
Registrar of Companies of England and Wales, United Kingdom

Mr Kenneth Yap
Chief Executive, Accounting and Corporate Regulatory Authority, Singapore

Mr Brian Ho
Executive Director of Corporate Finance, Securities & Futures Commission, Hong Kong

Mr William Lo Chi-chung
Executive Director, Finance, The Airport Authority, Hong Kong

Mr David Simmonds
Group General Counsel and Chief Administrative Officer, CLP Holdings Limited, Hong Kong

Mr Stephen Lowe
Registrar of Companies, Bermuda

Mr Leon Wheatley
Asia Representative, BVI Financial Services Commission

Ms Natalia Seng
Chief Executive Officer – China & Hong Kong, Tricor Group

Professor Say Goo
Faculty of Law, The University of Hong Kong

Mr Jamie Allen
Founding Secretary General, Asian Corporate Governance Association

Mr Mark McKeown
Group General Manager and Chief Risk Officer, Asia Pacific Region, HSBC

Mr David Graham
Chief Regulatory Officer and Head of Listing, Hong Kong Exchanges and Clearing Limited

Mr Kenneth Yap
Chief Executive, Accounting and Corporate Regulatory Authority, Singapore

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Mr Ashley Alder, JP
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Conference Highlights:

• Update on Corporate Governance Reforms
• Strategies in implementing corporate governance initiatives
• Panama Papers and corporate transparency
• Effective board leadership
• Managing risks in a changing environment

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On 21 October 2016, multiple denial of service attacks targeted at the Domain Name System provider Dyn, known formally as Dynamic Network Services Inc., prevented large swathes of users in Europe and North America from accessing major internet platforms such as Twitter, The New York Times and PayPal. As reported by The Wall Street Journal, this strike was one of the largest denial of service attacks known to date, knocking out more than 1,200 websites with tactics used in past years by gamers looking to slow their opponents.

Investigators have found that the attack was launched from a botnet that included large numbers of internet of things (“IoT”) devices and that a number of components embedded in the affected devices came from a single upstream manufacturer in China. As such, we have included an article (p. 42) in this issue that considers the potential liability of manufacturers in connection with IoT devices and offers some practical solutions to mitigate those risks.

Elsewhere in the January issue, the Intellectual Property feature (p. 47) examines Victoria Plum Ltd v Victorian Plumbing Ltd & Others [2016] EWHC 2911 (Ch), a recent UK case that provides a welcome exposition on the application of the honest concurrent use defence in the context of keywords advertising. The Practice Management article (p. 71) examines key issues that are driving firms to rethink their business models and common pitfalls firms face when attempting to make changes. The Leisure section (p. 79) includes a few words from the awardees of the distinguished pro bono and community service awards on what pro bono and community service work has meant to them.

Also of interest is the dispute resolution piece (p. 36) that discusses the upcoming Global Pound Conference in Hong Kong, an event that will give Hong Kong’s business and legal communities a chance to shape the future of dispute resolution. As the article highlights, attendees will be invited throughout the Conference’s four interactive sessions to express their views on a range of vital issues affecting how disputes are resolved. It is ultimately hoped that the data collected will contribute to enhancing the culture and methods of resolving conflicts in Hong Kong.

In 2016年10月21日，針對域名系統提供商Dyn（正式名稱為Dynamic Network Services Inc.）的多個「拒絕服務」攻擊阻止了歐洲和北美的大批用戶訪問主要的互聯網平台，包括Twitter，The New York Times及Paypal。據“華爾街日報”報導，這次攻擊是迄今為止已知的最大的「拒絕服務」攻擊之一，使用了過去幾年網絡遊戲玩家旨在減緩對手的速度的戰術，擊潰了超過1200個網站。

調查人員發現，這些攻擊是由包含大量物聯網（“IoT”）設備的殭屍網絡發起，並且在受影響的設備中，許多嵌入組件是來自中國的一個上游製造商。因此，我們在本期中加入一篇文章（第45頁），其中審視了與物聯網設備相關的製造商的潛在責任，並提供了一些實用的解決方案以減輕此等風險。

在1月號的其他地方，“知識產權”專欄（第50頁）審視了一個英國最近的案例Victoria Plum Ltd v Victorian Plumbing Ltd & Others [2016] EWHC 2911 (Ch)，就應用「誠實的同時使用」在關鍵字廣告語境中作為辯護理由，進行了詳細闡述。「執業管理」文章（第74頁）探討了一些關鍵問題，這些問題促使公司重新思考他們的企業模式以及企業在嘗試改變時面臨的常見陷阱。「律師閒情」部分（第79頁）記載了傑出的無償和社區服務獎項的獲獎者的說話，講述公益和社區服務工作對他們具有何種意義。

另一個令人感興趣的是有關「解決糾紛」的文章（第39頁），該文討論了即將在香港舉行的「全球龐德會議」，這將使香港的商業和法律界有機會塑造「解決糾紛」的未來。正如文章強調的，將邀請與會者參加大會的四次互動會議，以表達他們對影響如何解決糾紛的一系列重要問題的看法。最終希望所收集的數據有助加強解決香港的衝突之文化與方法。
To find out more, contact Amantha Chia at amantha.chia@thomsonreuters.com or (65) 6870 3917

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20th Anniversary of SHRs

The review of the obsolete solicitors’ hourly rates for party and party taxation in civil proceedings (“SHRs”) has been the topic of the “President’s Message” in previous issues. Since 2013, my predecessors have been reiterating our concerns about the widening gap resulting from the growing divergence between the SHRs and the market rates. The progress in addressing our concerns has been disappointing and I feel duty-bound to highlight the urgency of the matter yet again.

To examine the appropriateness of the SHRs, which have remained static since 1997, the Law Society commissioned an independent consultancy report in 2013 (“2013 Report”) to study the level of adjustments that should be made to SHRs to reflect changes in the market conditions. Based on the survey results, the 2013 Report concluded that the normal hourly rate reflecting the normal market conditions should on average be 55 percent above the existing SHRs. Further, it recommended that the revised SHRs should be adjusted annually according to an inflation-linked index and be subject to more substantial reviews on a periodic basis to realign it to the prevailing normal average hourly rates in the market.

High Court Rates

<table>
<thead>
<tr>
<th>No. of Years of Practice</th>
<th>Current SHRs (HK$)</th>
<th>Proposed Revised SHRs (HK$)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Over 15 Years</td>
<td>Not applicable</td>
<td>5,500 to 6,000</td>
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<tr>
<td>Over 10 Years (to become 9–14 years in the proposed revised SHRs)</td>
<td>3,200 to 4,000</td>
<td>4,900 to 5,700</td>
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<tr>
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<td>2,500 to 2,900</td>
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<tr>
<td>Trainee Solicitor</td>
<td>1,066 to 1,300</td>
<td>1,850 to 2,100</td>
</tr>
<tr>
<td>Litigation Clerk</td>
<td>800 to 1,000</td>
<td>1,400 to 1,600</td>
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District Court Rates

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<tr>
<td>Litigation Clerk</td>
<td>533 to 660</td>
<td>933 to 1,067</td>
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January 2017 • PRESIDENT’S MESSAGE

On the basis of the above findings of the 2013 Report, the Law Society urged the Judiciary to review and update the SHRs. The Judiciary responded by setting up a Working Party in January 2014. After nearly one and a half years in April 2015, the Judiciary reported to the Legislative Council (“LegCo”) that the Working Party had decided to conduct a consultancy study by a two-stage approach – the first stage by an independent consultant on the methodology to be used for the review and the second stage by another independent consultant on the calculation of the SHRs based on the approved methodology. The Judiciary advised LegCo that the first stage was expected to finish by mid 2015 and the second stage by the end of 2015 or early 2016. It is now 2017, but it is disappointing to note that not even the first stage of the consultancy has been completed.

As we have submitted time and again, the legal service market has undergone a lot of changes since 1997. The increasing competition from other providers in the market, the growing demand for quality and specialised legal services resulting from intensifying regulatory changes in different sectors, and the rising labour costs and overheads all operate to shape the cost of the legal services. The market thus already operates efficiently to reflect the costs of production with an appropriate margin to encourage participation in the market. The SHRs should be set as close to the actual prevailing average market rates as possible without seeking to use arbitrary ways to adjust SHRs downwards.

If legal costs recovery is artificially controlled to the extent that an unreasonably wide recoverability gap (ie, the difference between what a successful litigant has actually paid to his lawyer, and what he can recover from the other party under a costs order) is created, it will discourage victims from exercising their rights to seek justice by initiating legal proceedings. Some may be forced to settle on unfavourable terms even if they have a meritorious claim because they anticipate that they will not be able to recover their reasonable costs owing to the wide recoverability gap. This effectively results in a denial of access to justice.

Further, Hong Kong’s reputation as an international financial centre equipped with a robust, efficient and fair legal system will be adversely affected if there is not even an effective mechanism to enable parties in a dispute to recover reasonable costs on the success of a meritorious claim. If those who have faith in Hong Kong’s legal system and choose to initiate proceedings here end up being penalised by an “empty costs order” even when they succeed in their claims, Hong Kong can hardly remain competitive as a preferred venue choice for international dispute resolution.

Nearly four years have elapsed since the Law Society commissioned the 2013 Report. Further, it is already the 20th anniversary of the SHRs. I urge the Judiciary to expedite its review of the SHRs which is too long overdue!
### 高等法院收費率

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<tr>
<th>執業年資</th>
<th>現時的律師每小時收費率 (港幣)</th>
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### 區域法院收費率

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根據《2013年報告》中上述的調查結果，律師會促請司法機構檢討及更新律師每小時收費率。司法機構以2014年1月成立工作小組為回應。經過接近年半時間，司法機構於2015年4月向立法會報告，工作小組決定分兩階段進行顧問研究，首階段由獨立顧問研究檢討使用的計算方法，第二階段由另一獨立顧問以獲准的方法計算律師每小時收費率。首階段預計於2015年底或2016年年初完成。現在已踏入2017年，但第一階段的諮詢工作尚未完成，情況令人失望。

正如我們一再提出，法律服務市場自1997年以來經歷了重大變化。來自市場上其他服務提供者的競爭日益激烈，由於不同行業的監管變化加劇，對法律服務的質量和專業度的需求不斷提高，勞動成本和間接成本增加，影響法律服務的成本。因此，市場已有效運作，適當地反映成本同時保持適當的盈利，以鼓勵市場參與。律師每小時收費率應盡量貼近實際市場收費，而非任意向下滑調律師每小時收費率。

假如訴訟費的追回被人為控制，以至造成可追回的差額不合理地大（即勝訴人實際支付的律師費，與其根據訟費命令從對方追回的訴訟費之間的差額），這將阻礙受害者通過法律訴訟尋求公義的權利。有些人的申索即使具有理據，也可能被迫以不利的條件和解，因為他們預計由於可追回的差額過大，將無法收回合理的訴訟成本。這正正是導致尋求司法公正的障礙。

此外，如果沒有一個有效的機制，使爭議各方能夠就具理據的申索成功收回合理的費用，香港作為擁有健全、有效和公平法律制度的國際金融中心之聲譽將會受損。如果那些對香港法律制度有信心，並選擇在香港進行法律程序的人，即使勝訴最終也受到「空洞的訟費命令」的懲罰，香港將難以保持國際爭議解決首選地點的競爭力。

自律師會委託編制《2013年報告》以來，已過了近4年。此外，律師每小時收費率亦已訂立20年之久。我促請司法機構加快審議過時的律師每小時收費率！
Paul Connolly

*Global e-Discovery & Cyber Forensics, Duff & Phelps, LLC, Vice President*

Mr. Connolly is Vice President of the Global eDiscovery and Cyber Forensics practice at Duff & Phelps. As a computer forensic investigator and e-Discovery expert, he consults and provides end-to-end digital forensic services including data analytics, ESI consulting, and expert testimony for internal investigations, trade secret theft and cyber-crime cases worldwide. Previously, he spent six years as a Staff Attorney for Cleary Gottlieb in Hong Kong and New York, leading teams in document review and federal, state, and cross-border regulatory investigations.

Mr. Connolly received his J.D. from Boston College Law School and B.A. from the College of the Holy Cross.

Julian Copeman

*Herbert Smith Freehills, Managing Partner*

Mr. Copeman has over 20 years of dispute resolution experience in England, Hong Kong and elsewhere in all forms of international dispute resolution, particularly in major commercial disputes involving corporate and shareholder disputes, banking and financial matters, cross-border fraud litigation and technology disputes.

Julian Copeman

*史密夫斐爾律師事務所 執行合夥人*

Copeman先生是史密夫斐爾律師事務所大中華區的執行合夥人，以及全球龐德會議香港區籌組委員會的主席。

Copeman先生於英格蘭、香港及其他地方，擁有超過20年的爭議解決經驗，當中涉及各種形式的國際爭議解決，尤其是在公司與股東爭議、銀行及金融事務、跨境欺詐訴訟、科技爭議等重大商業糾紛方面。

Anita Phillips

*Herbert Smith Freehills, Professional Support Consultant*

Ms. Phillips supports the firm’s leading Alternative Dispute Resolution and Corporate Crime & Investigations practices and has developed a significant market profile for her work on legal support, cross-practice and cross-region projects for these practices.

Anita Phillips

*史密夫斐爾律師事務所 專業支援顧問*

Phillips女士為其律師事務所的「另類爭議解決程序」及「企業犯罪與調查」等重要業務提供支援，亦為其在法律支援、交叉實務、跨區域項目等方面的工作，建立了突出的市場形象。

Paul Connolly

*道衡環球電子資料披露與網絡取證 副總裁*

Connolly先生是道衡的全球電子透露及網絡法證業務副總裁。作為一位電腦法證調查員和電子透露專家，他提供諮詢和提供端到端數碼法證服務，包括數據分析、ESI諮詢，和專家證明。Connolly先生從Boston College Law School獲得法律博士及從College of the Holy Cross獲得法律學士。
**Alan Hodgart**

**Hodgart Associates Ltd, Managing Director**

Mr. Hodgart is recognised as a leading strategic change consultant to professional service firms globally. His client base includes leading firms in all major professions and a wide range of smaller to mid-market firms in many countries. The legal market is a particular area of focus. He works with clients throughout the world, including in the Asia Pacific.

Mr. Hodgart has written extensively on management issues facing professional firms. His two most recent books are *Organizational Culture in Law Firms* (Ark, 2012) and *Strategies and Practice in Law firm Mergers* (Legalease, 2005).

Prior to his career as a consultant, he had a successful career as a professional cyclist.

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**Rob Ashing**

**Hodgart Associates Ltd, Director**

Mr. Ashing has worked in legal services for over 15 years both as an external strategy consultant to professional services firms and in-house for a number of large international law firms. He has lived and worked in the UK, US and Africa. Prior to rejoining Hodgart Associates in 2016, Mr. Ashing spent nine years in the Asia Pacific, including four years in Hong Kong.

Mr. Ashing works with clients globally to help develop and support their growth strategies. He has particular expertise in business and organisational development. Previously, he served on the Board of Justice Centre Hong Kong.

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**William Tse**

**Andrew Liao SC’s Chambers, Barrister**

Mr. Tse was called to the Bar and joined Andrew Liao SC’s Chambers in 2015. He is developing a broad civil practice with a focus on intellectual property, particularly in trade marks registry disputes.

Mr. Tse has been instructed on areas such as intellectual property (trade marks and patent), competition law (advisory), general commercial, arbitration and interlocutory applications.
Consultation Paper on the 2016 Preliminary Draft Convention on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters

In October, the Department of Justice ("DoJ") released a consultation paper on the 2016 Preliminary Draft Convention on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters (the "Draft Convention") for public comment.

The Draft Convention focuses on recognition and enforcement of judgments between Contracting States. It seeks to set out the minimum requirements for the courts of one Contracting State to recognise and enforce a judgment rendered in another Contracting State. It is said that if the criteria set out in the future convention are met, the judgment must be recognised and enforced. However, if the criteria are not met, it would be open to the State addressed to decide whether the judgment should be recognised and enforced under its domestic law, except matters regarding intellectual property and immovable property.

The Draft Convention was prepared by the Special Commission of the Hague Conference on Private International Law ("Special Commission") at its meeting in June 2016 and will be further discussed at the second meeting of the Special Commission in February 2017.

According to the DoJ, comments received will be taken into account in formulating HKSAR's position on the various issues and may be reflected in the coordinated position of China in preparation of the second meeting of the Special Commission in February 2017. The HKSAR Government will consider the question of application of the Convention, if finalised, to the HKSAR.

The Council has reviewed the consultation paper with the assistance of various specialist committees. The Law Society takes notice of the rationale underlying the Draft Convention which embraces overarching and general principles relating to recognition and enforcement of foreign judgments; however, it wonders if it is premature to have a view on whether it is in the overall interest of the HKSAR to have the Convention, if finalised, extended to the HKSAR.

新血

「三三四」新高中學制於2009年實施。2012年，最後一批參加香港高級程度會考的中七學生及第一批參加香港中學文憑考試的中六學生，升讀高等教育。

時光飛逝，如何為新舊學制兩批學生提供PCLL（法學專業證書）課程的討論似乎仍言猶在耳，轉眼間他們還有幾個月便將畢業。

「兩批」似乎意味著人數增加雙倍。幸好，情況並沒有聽起來般令人卻步。比較2015/16與2016/17年度（新舊學制並存）的全日制PCLL入學人數，差距僅約17%(2015/16年度581人，2016/17年度680人)。2017年第三季度或將有額外100名PCLL畢業生進入就業市場。

香港的律師行業是一個相對年輕的行業。大約30%執業證書持有人於2010年至2015年取得資格，新舊學制兩批畢業生將把此組別的比例進一步提高。

一方面，新晉人才供應充足令人鼓舞。另一方面，希望人才供應能被法律服務市場吸收和有效利用。或會引起興趣的其中一方面，可能是實習律師的薪金。我們最近對實習律師的薪金進行了統計。實習律師首年的平均月薪為29,993港元，第二年為31,079港元，而第一及第二年的月薪中位數為25,000港元。

這個範圍大致上與一些海外司法管轄區相符，因為本地生活水平和其他因素也必須列入考慮。根據新加坡教育部在2015年11月進行的一項調查，當地畢業生完成一年實務法律課程/大律師實習後，平均月薪為4,866新加坡元（約合26,481港元）。在蘇格蘭，2016年6月實習律師的建議薪金是每年17,545英鎊（約合每月14,351港元），而第二年實習律師為21,012英鎊（約合每月17,187港元）。2016年11月，英格蘭和威爾斯律師會建議，作為良好的行事方式，倫敦的實習合約提供者應向實習律師支付年薪最少20,276英鎊（約合每月16,585港元），而倫敦以外地方者為18,183英鎊（約合每月14,873港元）。

薪酬當然不是唯一的因素，但可觀的薪酬對吸引新血入行十分重要。僱主向新入行者提供與工作要求相稱的合理薪酬，對促進行業健康發展扮演關鍵角色。根據數字，大部份僱主已履行了這一角色。
Remuneration is certainly not the only factor, but a respectable remuneration package is important in attracting new blood into the profession. Employers play a crucial role in facilitating the healthy development of the profession by offering to new entrants a decent package that is commensurate with the demands of the job. Based on the figures, most have fulfilled that role.

**Connectivity: Slovenia**

This section aims to provide information about the legal professions in less well known but emerging jurisdictions. In this instalment, we look at Slovenia that has the potential to be our business partner in a global context.

Slovenia is situated in the south of Central Europe, strategically between the Balkans and Western Europe and within the scope of the Belt and Road Initiative. It has one of the highest per capita GDPs in Central Europe and is a location of choice for many international companies.

Slovenia adopts a civil law system based on the German system and its legal profession is fused. There are currently over 260 law firms and around 1,700 attorneys and 350 trainee attorneys. With a population of around 2 million, the ratio is approximately one attorney for every 1,213 people.

To become an attorney in Slovenia, among other requirements, one must be a citizen of the Republic of Slovenia. One must have obtained the relevant academic qualifications in law, passed the state bar examination, then completed one year’s full-time employment with a law firm, or in court, or the office of the state prosecutor, public defender or notary, and have passed a test of knowledge of the law regulating the legal professional conduct with the Slovenian Bar Association. All legal proceedings are conducted in Slovene as the official language, but there are law firms which specialise in providing services to English speaking clients.

**Monthly Statistics on the Profession**

(updated as of 30 November 2016):

<table>
<thead>
<tr>
<th>Category</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Members (with or without practising certificate)</td>
<td>10,327</td>
</tr>
<tr>
<td>Members with practising certificate</td>
<td>9,061</td>
</tr>
<tr>
<td>(out of whom, 6,718 (74%) are in private practice)</td>
<td></td>
</tr>
<tr>
<td>Trainee Solicitors</td>
<td>985</td>
</tr>
<tr>
<td>Registered foreign lawyers</td>
<td>1,353</td>
</tr>
<tr>
<td>(from 32 jurisdictions)</td>
<td></td>
</tr>
<tr>
<td>Hong Kong law firms</td>
<td>869</td>
</tr>
<tr>
<td>(48% are sole proprietorships and 41% are firms with 2 to 5 partners, 10 are limited liability partnerships formed pursuant to the Legal Practitioners Ordinance)</td>
<td></td>
</tr>
<tr>
<td>Registered foreign law firms</td>
<td>80</td>
</tr>
<tr>
<td>(10 are limited liability partnerships formed pursuant to the Legal Practitioners Ordinance)</td>
<td></td>
</tr>
<tr>
<td>Civil Celebrants</td>
<td>2,086</td>
</tr>
<tr>
<td>Reverse Mortgage Counsellors</td>
<td>445</td>
</tr>
<tr>
<td>Solicitor Advocates</td>
<td>48</td>
</tr>
<tr>
<td>(43 in civil proceedings, 5 in criminal proceedings)</td>
<td></td>
</tr>
<tr>
<td>Student Members</td>
<td>322</td>
</tr>
<tr>
<td>Registered Associations between Hong Kong law firms and registered foreign law firms (including Mainland law firms)</td>
<td>35</td>
</tr>
</tbody>
</table>
Face to Face with

Christina Cheung

Law Officer (Civil Law), Department of Justice

By Cynthia G. Claytor

Christina Cheung, Law Officer of the Civil Division of the Department of Justice, speaks about the Division’s current work and its main priorities in 2017, which include taking a number of dispute resolution-related bills forward and continuing to maintain and uphold the rule of law in Hong Kong.

Can you briefly explain the Civil Division’s role within the Department of Justice?

We often ask those who wish to join the Department of Justice (“DoJ”) as trainees or Government counsel this same question, and the answers given, perhaps unsurprisingly, have almost invariably been “judicial review”.

But the work of the Civil Division (“CD”) is, in fact, diversified. It is closely intertwined with a variety of everyday issues, big and small, such as taking daily transport, enjoying a day at Disneyland or Ocean Park, watching TV, drinking water, paying salaries or profit tax, buying a property, paying electricity bills, operating a market stall managed by the Government, voting at an election or attending to burial matters, and the like.

The CD’s work interfaces with the public mainly through advising Government bureaux and departments on various legal issues arising from the work of the Government and, where necessary, representing the Government in civil proceedings. In recent times, for example, CD counsel have been involved in the drafting and tendering of contracts for major infrastructure projects, such as the Hong Kong-Zhuhai-Macao Bridge and the Central-Wan Chai Bypass. Recent court and other legal proceedings in which CD counsel have acted include: the Commission of Inquiry into Excess Lead Found in Drinking Water and cases concerning free TV licensing, immigration matters (including non-refoulement claims), the Legislative Council oath-taking cases, as well as the proposed legislation for a licensing scheme to regulate private columbaria.

Another important role of the CD is to provide legal support to the Secretary for Justice (“SJ”) in matters involving public interest. For instance, the SJ may in an appropriate case make application for judicial review to enforce public legal rights, or to intervene in a case involving the constitutionality of a legislative provision, or to join as a party in action to enforce charitable or public trusts, and bring alleged contempt of court to the notice of the courts.

Can you briefly explain the Civil Division’s role within the Department of Justice?

Can you briefly explain the Civil Division’s role within the Department of Justice?

An important facet of the work of the CD is handling judicial review cases. The surge of judicial review proceedings is a fact of life. Given the increasing public awareness of their legal rights, the number of challenges against Government policies and decisions, often involving constitutional issues, has constantly been on the rise. Judicial review has not just become a popular term but also something which warrants attention of any responsible public authority. The law is rapidly developing in these areas and has certainly presented new challenges.
What were your thoughts coming into your current role, given your predecessor’s legacy?

I took over from Mr. Benedict Lai as the head of the CD in February 2015. In his 12 years as a Law Officer (Civil Law), he was an inspiring leader, who made significant contributions to the development of law in Hong Kong. I certainly felt that I had big shoes to fill to meet the high benchmarks that had been set.

I also felt most fortunate when I joined because Mr. Lai and his predecessors left me with strong teams of government lawyers, who possess a wealth of experience in different specialised civil law areas, and with a variety of functioning systems that have enabled me to effectively manage the CD’s sizable office from my very first day. The solid foundations they laid unquestionably gave me a head start, particularly with managing over 190 professional and almost the same number of supporting staff.

What will the CD’s main priorities be in 2017?

Important initiatives for the new year include taking forward the Apology Bill. There is a need for legislation in Hong Kong to clearly define the meaning of “apology” and the legal consequences for persons making apologies, as well as clarify the effect of apologies, so as to promote and encourage the making of apologies in order to facilitate settlement of disputes. On 28 November 2016, the Steering Committee on Mediation published the “Enactment of Apology Legislation in Hong Kong: Final Report and Recommendations”. The Steering Committee on Mediation conducted two rounds of public consultations and the responses received were clearly supportive of the enactment of apology legislation in Hong Kong. The Administration of Justice and Legal Services Panel of the Legislative Council has been briefed on three occasions and there was support from members of the Panel. The DoJ will take forward and prepare the enactment of the legislation in the legislative year 2016/17. Hong Kong will become the first common law jurisdiction in Asia to have apology legislation enacted and this will help further enhance Hong Kong’s status as a centre for dispute resolution in the Asia Pacific region.

In addition, the work plan for 2017 also includes the introduction of Arbitration and Mediation Legislation (Third Party Funding) (Amendment) Bill 2016 (the “Bill”) into the Legislative Council in early 2017. The purpose of the Bill is to clarify that third party funding for arbitration and mediation is not prohibited by the common law doctrines of maintenance and champerty. The Bill provides for related measures and safeguards based on the recommendations made in the Report on Third Party Funding for Arbitration published in October 2016 by the Law Reform Commission of Hong Kong. It is likely that a party to an arbitration or mediation taking place in Hong Kong may wish to consider whether or not to seek third party funding of its participation in such an arbitration or mediation if it is clearly permitted by Hong Kong law to do so. We believe the amendments will enhance the competitiveness of Hong Kong as a leading centre for international legal and dispute resolution services in the Asia Pacific region. The Steering Committee on Mediation was consulted and supports the amendments to the Mediation Ordinance. It is envisaged that the Bill will be introduced into the Legislative Council in early 2017. The Mediation Team in the CD will continue to work closely with the Arbitration Unit in the Legal Policy Division of the DoJ in this respect.

We will also explore the different modes of mediation that can be used
to resolve different natures of disputes, for example, the use of evaluation mediation on top of facilitative mediation to resolve disputes such as those concerning intellectual property rights, so as to provide more choices to end-users of mediation. With the support of stakeholders, we will explore the features of evaluative mediation and study the need to enhance the regulatory framework and training to mediators to ensure that if evaluative mediation is adopted, it will be used properly.

In sum, in 2017, the CD will continue to discharge its role in maintaining and upholding the rule of law through providing legal advice and representation to Government bureaux and departments in their day-to-day work. Through its Mediation Team, the CD will continue to take forward the work required to sustain the further development of mediation in Hong Kong. This will complement the efforts of the DoJ in promoting Hong Kong as an international legal and dispute resolution centre in the Asia Pacific region.

As developments in the mediation sphere have been a hot topic of discussion in legal circles across the region, can you tell us more about the CD’s mediation team and their current work?

The CD’s Mediation Team has been providing support to the Steering Committee on Mediation chaired by the SJ to implement long-term policies that promote and develop mediation in Hong Kong as well as its three sub-committees, namely the Regulatory Framework Sub-committee; the Accreditation Sub-committee and the Public Education and Publicity Sub-committee. Since the establishment of the Steering Committee on Mediation in late 2012, the Mediation Team has implemented various major initiatives in support of the work of the Steering Committee.

These initiatives include the holding of the biennial Mediation Week in 2014 and 2016, which consisted of mediation seminars and talks on specific topics related to the promotion of mediation, and the Mediation Conference with overseas and local speakers. The theme of the latest Mediation Week held in May 2016 was “Mediate First – Advance with the times”. During the week, we organised a whole range of activities with the support of mediation stakeholders including the Hong Kong Bar Association, the Law Society of Hong Kong, the Hong Kong International Arbitration Centre, the Hong Kong Mediation Centre, Hong Kong Mediation Accreditation Association Limited, Hong Kong Joint Mediation Helpline Office, the Intellectual Property Department, the Hong Kong Society for Healthcare Mediation, Hong Kong Family Welfare Association, to name but a few. Seminars for specific sectors such as education, medical, commercial, community and intellectual property were held to further promote the healthy development of mediation in Hong Kong. The Mediation Conference which was the highlight of the Mediation Week was attended by leading international speakers from the United Kingdom, the United States, the Mainland, Australia, local experts and practitioners who shared with the audience their invaluable experience and expert views on the latest global developments in the mediation sphere. The Conference has produced much food for thought on the future development of mediation and highlighted global trends that make use of its full potential and flexibility. The Mediation Team is planning to organise another Mediation Week in 2018.

The Mediation Team is also planning to organise a “Mediate First” Pledge Reception in 2017 following the last one in 2015 to promote the use of mediation by commercial and other organisations and associations. Mediation is most suitable for commercial entities and small and medium size enterprises in particular because of the flexibility of its procedures and the lower costs involved, relatively speaking. It has been very encouraging to see the pledges made by different organisations and associations to commit to first resorting to mediation as a means to resolve disputes that relate to their business dealings.

Do you have any advice for junior solicitors or those interested in pursuing a career in law?

Continuing education and training is an essential part of the learning process of every young lawyer whether they work for the Government or the private sector given the ever changing legal landscape. Over the years, the CD has placed a lot of emphasis on training. We regularly organise training courses, workshops or sharing sessions on legal topics. In 2016, for example, we organised training covering topics on judicial review, competition law, planning law, construction law and mediation. We have also provided training to
In February 2015, Ms. Cheung was appointed the third Law Officer (Civil Law) of the HKSAR, succeeding Mr. Benedict Lai. In that capacity, Ms. Cheung heads the Department of Justice’s Civil Division, which has a major role in advising on civil law issues and conducting civil proceedings involving the Government as well as providing support in promoting and developing the use of mediation in Hong Kong.

Ms. Cheung joined the Government in May 1995 as a Senior Crown Counsel. She was promoted to Deputy Principal Government Counsel in May 2001 and to Principal Government Counsel in August 2008. She has been an accredited mediator since 2010. Ms. Cheung is currently an ex-officio member of the Process Review Panel for the Securities and Futures Commission, member of the Steering Committee on Mediation and member of the Sub-committee for Civil Court Registry Users.

**Anything else you would like to share?**

I am often asked for “insider tips” from graduates who are interested in working with the DoJ as Government counsel. While there is no special recipe or shortcut to landing a position with the DoJ, I would like to stress that people are the DoJ’s most valuable asset. As such, the CD is keen to speak with candidates who are strongly committed, dedicated and have the long term potential to contribute to the DoJ’s work.

Can you tell us about how you developed your keen interest in English literature?

I have always taken a keen interest in reading English literature from which I have derived much inspiration throughout my legal career. I do not see the law as an abstract practice. Rather, each legal case has a human aspect that I believe is best conveyed through “storytelling”. More to the point, both literature and the law emphasise the importance of clear expression and a deep understanding of language. Whether you are talking about the law or about literature, the two disciplines offer much insight into myriad social and political values. Effectively employing logic and argumentation theories are also crucial to both a good piece of fiction, poem or play and well-presented legal advice and advocacy.

I would also like to add that the CD often participates in providing training to Government officials and civil servants in order to enhance their understanding of our constitutional make-up and the legal environment in which we all work. We upload selected judicial decisions in civil cases, including judicial review cases that involve important or significant legal principles or issues of public interest on the DoJ’s website.

Christina Cheung
Law Officer (Civil Law), Department of Justice

In February 2015, Ms. Cheung was appointed the third Law Officer (Civil Law) of the HKSAR, succeeding Mr. Benedict Lai. In that capacity, Ms. Cheung heads the Department of Justice’s Civil Division, which has a major role in advising on civil law issues and conducting civil proceedings involving the Government as well as providing support in promoting and developing the use of mediation in Hong Kong.

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民事法律專員張錦慧暢談民事法律科的工作和2017年的工作重點，包括推展多項有關爭議解決的法案，以及繼續致力維護香港的法治。

您能簡要解釋民事法律科在律政司內擔任的角色嗎？

我們也經常問有意加入律政司當見習人員或政府律師的朋友這問題，答案幾乎全部都提及「司法覆核」，也許並不令人意外。

但實際上，民事法律科的工作非常多元化，與市民日常的大小事務息息相關，包括日常交通、到迪士尼樂園或海洋公園遊玩一天、看電視、喝水、支付薪金或利得稅、置業、支付電費、經營由政府管理的街市檔位、在選舉中投票以至殯葬事宜等。

民事法律科與公眾的接觸主要透過向政府各政策局及部門提供各種工作上所需的法律意見，或在有需要時在民事訴訟中代表政府出席聆訊。近期的例子是參與港珠澳大橋及中環灣仔繞道等主要基建項目的合約草擬和招標工作。此外，民事法律科法律師也會參與法院和其他法律程序，例子包括食水含鉛超標調查委員會、涉及香港電力公司聲請及轉售牌照、入境事務（包括免遣返聲請）、立法院審議案件，以及規管私營骨灰安置所發牌制度的擬議法例工作。

民事法律科的另一重要角色，是就涉及公眾利益的事務向律政司司長提供法律支援。例如，律政司司長可在適當情況下申請司法覆核，以強制執行公法方面的權利，也會介入涉及法律條文的合憲性案件，或為使慈善信托或公眾信託得以執行而進行的訴訟中擔任與訟一方，及把涉嫌藐視法庭的個案通知法院。

這些不同範疇的工作由民事法律科轄下的四個組別負責，即法律意見組、民事訴訟組、商業組及規劃環境及市政房屋組。每個組別就其各自的專業領域，為政府提供法律支援。此外，民事法律科律師還為法律諮詢部（工務）提供支援，負責向政府的建築工程提供（爭議和非爭論事宜的）法律服務，包括建築合約和相關的申索和爭議。

民事法律科的另一重要工作是處理司法覆核案件。司法覆核案件數目激增是不爭的事實，隨著公眾對其法律權利的認識不斷提高，通過司法覆核對政府政策和決定提出挑戰，當中又經常涉及憲法的問題，個案一直持續增加。司法覆核不僅成為流行用語，也是作為負責任的當局值得關注的事情。這些領域的法律正在迅速發展，必定帶來了新挑戰。

繼任民事法律專員一職時，您有甚麼想法？

我於2015年2月接替賴應 hakk先生出任民事法律專員。賴先生擔任民事法律專員12年，是一位出色的領導者，對香港法律的發展作出重大貢獻。珠玉在前，我深
感任重道遠。

我同時感到很幸運，因為賴先生和前任專員留下了強大的政府律師團隊，他們在不同的民事法律專門領域經驗豐富，而各項行之有效的工作制度，亦令我甫上任便能順利管理規模不小的民事法律科。毫無疑問，他們奠定的基礎讓我開始工作時得心應手，尤其是在管理超過190位專業人士和數量相若的支援同事方面。

**民事法律科在2017年的工作重點是甚麼？**

新一年的工作包括推動《道歉條例草案》。我們認為有需要在香港立法以清楚界定「道歉」的涵義、作出道歉的法律後果，以及澄清道歉的效果，以提倡和鼓勵人們作出道歉，促進解決爭議。調解督導委員會在2016年11月28日發表《在香港制定道歉法例：最終報告及建議》，經過調解督導委員會的兩輪公開諮詢，收到清晰的回應支持在香港制定道歉法例。立法會司法及法律事務委員會亦已三度聽取相關簡報，委員也支持相關立法。律政司將在2016/17立法年度推展有關的立法工作。立法後香港將成為亞洲首個制定道歉法的普通法司法管轄區，這將有助進一步提高香港作為亞太區爭議解決中心的地位。

此外，2017年的工作計劃亦包括在年初向立法會提交《2016年仲裁及調解法例(第三者資助)(修訂)條例草案》（下稱「條例草案」）。條例草案旨在釐清第三者資助仲裁及調解不受針對助訟及包攬訴訟的普通法原則禁止，這是建基於香港法律改革委員會2016年10月發表的《第三方資助仲裁》報告書內的建議而提出的相關措施及保障。如香港法律明確准許第三者資助仲裁或調解，參與在香港進行仲裁或調解的當事方就可以考慮應否尋求第三者資助。我們相信有關修訂能進一步鞏固香港作為亞太區主要國際爭議解決服務中心的競爭力。調解小組將於2017年5月舉辦的「調解周」主題為「調解為先，與時並進」。

調解的發展已成為整個地區法律界的熱門討論話題，能談談更多關於民事法律科調解小組及其目前的工作嗎？

民事法律科調解小組一直為律政司司長擔任主席的調解督導委員會提供支援，以落實促進和發展香港調解服務的長遠政策。調解小組亦向其轄下三個小組委員會（規管架構小組委員會、評審資格小組委員會和公眾教育及宣傳小組委員會）提供支援。自調解督導委員會於2012年成立以來，調解小組已落實多項重要措施，及支援調解督導委員會的工作。

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張錦慧
律政司民事法律專員

張女士於2015年2月獲委任為香港特別行政區第三任民事法律專員,接替賴應虒先生主管律政司民事法律科,主要工作是向政府就民事法律事宜提供法律意見,也在涉及政府的民事程序中代表政府,以及在促進和發展在香港採用調解服務方面提供支援。

對資歷較淺的律師或有志從事法律專業者，您有什麼建議？

法律環境瞬息萬變，無論在政府或私營機構工作，持續進修和培訓是每位年輕律師學習過程的重要一環。多年來，民事法律科一直非常重視培訓。我們定期舉辦法律專題培訓課程、工作坊或研討會。例如，在2016年，我們舉辦涵蓋司法覆核、競爭法、規劃法、建築法和調解等專題的培訓。我們亦為訴訟律師提供訟辯培訓和參與海外大律師事務所工作的機會，以讓他們獲取相關領域的工作經驗，我們的年輕律師因而獲益良多。

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High Court Visit and Workshop on Rule of Law and the Criminal Justice System

In collaboration with the Education Bureau, the Working Group on Business-School Partnership Programme of the Pro Bono Committee organised two High Court Visits and Workshop on the Rule of Law and the Criminal Justice System on 18 October and 24 November 2016, with a total attendance of around 94 students and teachers from 11 secondary schools.

After the Visit, Immediate Past President Stephen Hung gave a talk on criminal law and procedure. In addition, His Honour Judge Tam, Mr. Desmond Cheung, Mr. Alex Lam and Mr. James Li introduced the legal profession to the students and shared their career experiences with them.

Sharing Session on Building Management

On 1 December 2016, the Working Group on Building Management of the Pro Bono Committee organised a sharing session for members who are serving as panel advisors for the Free Legal Advice Service on Building Management operated by the Home Affairs Department. Ms. Vega Wong, Assistant Director of Home Affairs, was the guest speaker who introduced the latest updates of the building management policy to panel advisors. Around 30 panel members attended the sharing session and exchanged their experience and knowledge with each other.
The In-House Lawyers Committee Wrapped up 2016 with Two Events

The In-House Lawyers Committee ("IHLC") organised two events in a row in November 2016.

Seminar on Limited Liability Partnership
On 15 November, Mr. Pius Chong, Managing Director, Head of Transaction Management, Global Banking, Asia Pacific, HSBC was joined by Vice President Amirali Nasir and Mr. David Smyth, Member of the Working Party on Limited Liability Partnerships ("LLP") in delivering a seminar titled "What an In-House Lawyer Needs to Know about Working with LLP Law Firms". The seminar was attended by over 40 members comprising in-house members from a variety of backgrounds. Panelists gave the audience an overview of LLPs and addressed some of the major issues of dealing with LLPs that might concern in-house lawyers.

Sweat & Glory Finale 2016
The Sweat & Glory Finale 2016 was held on the evening of the very next day. Unlike the finales IHLC organised in previous years, members were invited to join a discussion forum and share their views on the topic "Proposed Guidelines on Best Practice for In-House Lawyers". In-house legal professionals may encounter different issues regarding their daily practices including but not limited to legal privilege, holding practising certificates, confidentiality issues and conflict of interests. From the feedback of participants who were invited to complete a questionnaire when they signed up for the event, in-house lawyers were generally supportive of the idea of introducing a set of practical guidelines or handbook compiling information addressing these questions with legal privilege/liability and management tips being the areas that concern members the most.

We were graced by our speakers Mr. CM Chan, Ms. Serina Chan and Mr. Roden Tong, who are all Council Members working in-house. Council Member Ms. Bonita Chan also came to support us and shared her insights on the topic from a private practitioner’s point of view. The audience took part actively in the forum when the panelists opened discussion to the floor. The discussion forum was followed by a networking drink session where speakers and participants continued to exchange views in a more relaxing atmosphere.

This event wrapped up our IHLC events for the year. We look forward to meeting and serving our members in 2017, and will continue to host events to foster closer relationships between in-house lawyers and private practitioners.

Diana Hui
Member, In-House Lawyers Committee

企業律師委員會舉辦兩項活動為2016年劃上完美句號
企業律師委員會在2016年11月1日舉辦了兩項活動。

有限法律責任合夥專題講座
香港上海匯豐銀行有限公司董事總經理，亞太區債務交易管理部主管張耀炯律師聯同副會長黎雅明律師及有限法律責任合夥工作小組施偉德律師於11月15日擔任「與有限法律責任合夥律師行合作時企業律師須知」專題講座講者。超過40位會員出席了該專題講座，包括來自不同背景的企業律師會員。專家小組向與會者介紹了有限法律責任合夥的概況，並討論了與有限法律責任合夥律師行合作時，涉及企業律師的一些主要問題。

「企業律師的苦與樂」壓軸分享會2016
「企業律師的苦與樂」壓軸分享會2016於翌日晚上舉行。是次活動形式跟以往有所不同，會員獲邀參加論壇，分享他們對「企業律師最佳實踐的擬議指引」的看法。

企業律師在日常工作中可能會遇到不同的問題，包括但不限於法律專業保密權、持有執業證書、保密問題和利益衝突。參加者在報名活動時獲邀填寫問卷，從他們的回覆可見，企業律師普遍支持引入一套實務指引或守則，匯編資料應對法律特權/責任、管理技巧等會員最關注的問題。

理事會成員陳澤銘律師、陳潔心律師和湯文龍律師均為企業律師，他們當晚擔任講者。理事會成員陳寶怡律師亦出席，分享她從私人執業律師角度對這個議題的看法。參加者在論壇上踴躍發言，討論環節結束後，大會安排了酒會，讓講者及參加者繼續在更輕鬆的氣氛中交流意見。

今年企業律師委員會的活動到此圓滿結束。我們期待在2017年繼續透過舉辦活動，服務會員並促進企業律師與私人執業律師之間更緊密聯繫。

許慧玲律師
企業律師委員會成員
Law Society Annual Cocktail 2016
Over 480 guests and Law Society members gathered at the Law Society Cocktail Reception on 21 November 2016, which was held at the Hong Kong Club. Our Guests of Honour were the Chief Justice of the Court of Final Appeal the Hon. Geoffrey Ma and Secretary for Justice the Hon. Rimsky Yuen SC.

2016年律師會周年招待酒會
律師會周年招待酒會於2016年11月21日假香港會所舉行，逾480位嘉賓及會員應邀出席，包括終審法院首席法官馬道立先生及律政司司長袁國強資深大律師。
Ms. Anna Wu Meets the Law Society to Discuss Feasibility of Creating Human Rights Commission

Council Members and Members of the Constitutional Affairs and Human Rights Committee (“CAHRC”) of the Law Society had a meeting on 21 November 2016 with Executive Councillor Anna Wu Hung-yuk, to discuss her proposal to establish a human rights commission in Hong Kong.

At the meeting, Ms. Wu shared her experiences and views on the feasibility of creating an independent body to oversee human rights issues in Hong Kong. She exchanged views with members and offered suggestions on how to shore up human rights protection, such as law firm management, and discussed funding and insurance indemnity issues.

The Hong Kong Academy of Law

The Hong Kong Academy of Law (“Academy”) organised nine seminars and the Law Society organised one seminar in November 2016.

A seminar was held on 24 November to explain the relevant law relating to the Immigration Department’s recent clarification of “all applicable grounds” for non-refoulement protection in the Unified Screening Mechanism. 103 participants attended the seminar.

The speakers of the seminar were Professor James C. Hathaway, the James E. and Sarah A. Degan Professor of Law and Director of Program in Refugee and Asylum Law, University of Michigan, and Mr. Barry Chan, Chief Immigration Officer, Removal Assessment Session of the Immigration Department of the Hong Kong Government. Mr. Mark Daly, Council Member, was the moderator. President Thomas So delivered an opening speech.

A course entitled “Training Course on Parenting Coordination (‘PC’)” was held from 28 to 30 November. The three-day training course provided a basic understanding of the role of parenting coordinators, the structures and procedures of PC in high conflict custody cases. The speaker of the course was Dr. Matthew J. Sullivan, Clinical Psychologist in California (US). 39 participants attended the course.

香港法律專業學會

香港法律專業學會於2016年11月舉辦了9場專題講座，而律師會舉辦了1場專題講座。

11月24日舉行的專題講座解說入境處最近澄清「統一審核機制」免遣返保護中「有適用的理由」的相關法例。103名與會者出席了該專題講座。

為期三天的「親職協調培訓課程」課程於11月28日至30日舉行，就親職協調員的作用及高衝突監護權案件的結構和程序，提供基本認識。美國加州註冊臨床心理學家Matthew J. Sullivan博士擔任講者，39名學員參加了該課程。
Welcome Drinks for Trainee Solicitors

On 25 November 2016, over 70 trainees attended the annual flagship event “Welcome Drinks for Trainee Solicitors”, organised by the Young Solicitors’ Group (“YSG”). The new members were brimming with anticipation, as they were introduced to a variety of young lawyer-focused initiatives, international exchange programmes, recreation and sports activities, as well as the Law Society member benefits programmes. The trainees took all of this in while engaging in tête-à-têtes with senior legal practitioners, who so generously shared their time and their practical career advice on how trainees could get the most out of their training contracts which are necessary for a successful legal career.

The event would not be as successful without the presence of the officiating guests, including our Vice-President Melissa Pang, Immediate Past President Stephen Hung, Past Presidents Anthony Chow, Michael Lintern-Smith, Huen Wong, as well as Council Members Bonita Chan, Nick Chan, Serina Chan, Warren Ganesh and Roden Tong.

This eventful evening was also marked by the launch of the Law Society’s mobile app survey entitled the “Survey on Young Members’ Needs and Preferences” (the “Survey”), which was launched to solicit comments and suggestions from young members to gain a better understanding of their needs.

We would like to thank all members who downloaded the Law Society app via the QR Code below to access the Survey for their invaluable feedback to us. Ten lucky members who submitted their responses before 31 December 2016 were chosen at random to receive small prizes. While the deadline to win prizes has passed, we are always happy to receive feedback, whether by completing the Survey or by contacting YSG Committee Members directly. Your feedback is crucial and needed for us to ensure that our services are tailored and/or improved to effectively meet young members’ needs.

Finally, we would like to take this opportunity to once again welcome our new young members to the legal profession. We wish you all a joyous holiday season, with a New Year filled with peace, happiness and success as you embark on an exciting new chapter in your professional legal career. We look forward to meeting and seeing you again at our upcoming YSG events.

Louise K. F. Wong
Committee Member, YSG

實習律師歡迎酒會

年青律師組年度重點活動「實習律師歡迎酒會」於2016年11月25日在律師會會所舉行，吸引了超過70名實習律師參加。年青律師組向新會員介紹了一系列以年青律師為主的活動、國際交流計劃、康樂及體育活動，以及律師會會員福利計劃。年青會員更藉此機會與資深會員交流，資深會員抽空分享他們對事業的建議，向實習律師傳授如何能在見習期內獲益最多。

活動成功有賴一眾主禮嘉賓，包括副會長彭韻僖律師、前任會長熊運信律師、周永健律師、史密夫律師、周桂壎律師，以及理事會成員陳寶儀律師、陳曉峰律師、陳潔心律師、莊偉倫律師和湯文龍律師。

當晚盛事另一個重點於律師會應用程式平台上推出「年青會員的需求和偏好調查」，該調查旨在徵集年青會員的意見和建議，以了解他們的需求。

歡迎所有會員掃描下列的二維碼下載律師會應用程式及參與調查，給予我們寶貴意見。我們將從2016年12月31日前提交回覆者當中，隨機抽出十位幸運兒，贈送小禮物乙份。於調查截止日期之後，我們仍歡迎會員直接聯絡年青律師組委員會成員提供意見，對我們改進服務以有效滿足年青會員的需要，你的意見至關重要。

最後，我們藉此再次歡迎新會員加入法律專業。祝各位聖誕快樂，新年進步，在法律專業生涯百尺竿頭，更進一步。期待在年青律師組未來的活動中與大家再次見面。

黃金霏律師
年青律師組委員會成員

Our Council members, YSC Committee members and new members enjoying the drinks.

理事會成員、年青律師組委員會成員和新會員熱誠祝賀。

Our new members eagerly listening to the introduction of the variety of services offered by the Law Society.

新會員熱切聆聽律師會各種服務的介紹。
Visit by the Law Society of Singapore

A delegation of 18 practitioners from the Law Society of Singapore ("LSS"), headed by Ms. Kuah Boon Theng, Vice-President of the Council of LSS, visited the Law Society on 29 November 2016. President Thomas So, Vice President Melissa Pang, Immediate Past President Stephen Hung, chairpersons and members of various specialist committees together with the Secretariat received the delegation. They had a productive discussion on various legal practice and management issues.

The 6th Business of IP Asia Forum

The 6th Business of IP Asia Forum (jointly organised by the Hong Kong Government, the Hong Kong Trade Development Council and the Hong Kong Design Centre) was held on 1 and 2 December 2016 at the Hong Kong Convention and Exhibition Centre. Mr. Simon Chan (left), Ms. Anita Leung (middle) and Ms. Adelaide Yu (right), members of the Intellectual Property Committee, spoke at the seminar entitled “Social Media Law and IP Issues Relating to 3D printing” in one of the breakout sessions.

第六屆亞洲知識產權營商論壇

由香港政府、香港貿易發展局及香港設計中心合辦的「亞洲知識產權營商論壇」於2016年12月1至2日在香港會議展覽中心舉行。律師會知識產權委員會成員陳志沖律師（左）、梁丙焄律師（中）及俞海珉律師（右）在「社交媒體法律以及與3D打印技術相關的知識產權問題」的分組專題討論中擔任講者。
Cooking & Tasting Competition 2016

The 2016 Cooking and Tasting Competition organised by the Cookery, Food and Wine Appreciation Group took place on 29 October 2016 at a Japanese restaurant for a fresh tuna omakase feast!

The event kicked-off with a tuna slicing-ceremony. Without the need of travelling all the way to Tsukiji Market in Tokyo, we were able to taste the fresh Japanese tuna, which had just arrived in Hong Kong that same morning. It was particularly interesting and thrilling to see how a tuna of 100 kg was sliced into pieces in just 10 minutes. I was told that only chefs who have over 20 years of experience could host the ceremony.

After the tuna-slicing ceremony, around 30 of us joined an ‘omakase style’ dinner (ie, by the selection of the chef) whilst watching three teams of members and guests compete against each other in events ranging from sashimi-slicing to wagyu teppanyaki-cooking! The winners this year were: Alice Kwok and Mei Wong (Champion), Karen Lam, Charles To and Cecilia To (1st Runner Up), Betty Yeung and Camille Hui (2nd Runner Up).

Karen Lam
Member, Cookery, Food & Wine Appreciation Group

A Run/Walk in the Name of Crime Prevention!

On 6 November 2016, the Distance Running Team participated in a charity walk and run event. The outing was staged in the colourful and scenic hills of Pak Tam Chung, Sai Kung Country Park. Making the most of the wonderful Sunday morning weather, the team joined other weekend warriors in powering over undulating trails and technical terrain.

Combining elements of running and hiking prowess, the team successfully completed the approximately 13-kilometre route. Despite the rising humidity and temperatures, it was all smiles as members crossed the finish line wearing the distinctive Law Society team tops.

Our team consisted of Ms. Dora Chow, Ms. Winnie Tse, Ms. Chung Wai Yin and Distance Running Captain Mr. Lee Yuen Chuen. No doubt all enjoyed the outing and the beautiful scenery around the country park. We are grateful to the members for taking time out of their weekend schedules to power the Society at the event and to do their part to contribute to the community.

The Society of Rehabilitation and Crime Prevention, Hong Kong (“SRACP”) was the host of this charity event. Its mission is to provide quality rehabilitation and multifaceted services for the betterment of ex-offenders, for the prevention of crimes and the mental wellness of persons in need. With the collective efforts and sportsmanship of all participants and volunteers, it was a meaningful outing every step of the way. We thank the SRACP for giving us such a wonderful opportunity to help others have a chance to shine!

Our gratitude also goes to President Thomas So for supporting the event and giving a presentation at the opening ceremony.

John Lee
Captain, Distance Running Team
為預防犯罪而跑！
長跑隊於2016年11月6日在西貢郊野公園北潭涌風景秀麗的山丘上，參加了一項慈善步行暨跑山賽。當天週日早上天朗氣清，隊員與其他參賽者一起在起伏的小徑上跑山。

結合跑步和遠足的元素，長跑隊成功完成了約13公里的路線。儘管濕度和溫度不斷上升，但穿著律師會隊衫的隊員越過終點線時，都面帶微笑。

我們的隊員包括周慧文律師、謝慧玲律師、鍾慧賢律師和長跑隊隊長李遠傳律師。所有隊員均享受這次活動及欣賞郊野公園的美景。感謝會員在周末抽空代表律師會出席活動，並盡力為社會作出貢獻。

是次慈善活動由香港善導會主辦。該會的使命是提供優質康復及多元化的服務，以協助曾違法人士改過遷善、推展預防犯罪及匡助有需要人士的精神健康。有賴所有參加者和義工的共同努力和體育精神，每一步都饒富意義。我們感謝香港善導會給予機會，幫助別人發光發熱！

我們亦感謝會長蘇紹聰律師支持是次活動，並在開幕禮致辭。

李遠傳律師
律師會長跑隊隊長

Western Dining and Social Etiquette Workshop

On 10 November 2016, the Clubhouse Committee organised the “Western Dining and Social Etiquette Workshop” at the Law Society’s Clubhouse which comprised a lecture, activities and dining practices with a four-course dinner. 17 members participated in the Workshop.

Ms. Priscilla Chan, the certified etiquette instructor, explained and demonstrated how to refine western dining and social etiquette skills – from sending invitations to correctly using silverware, drinking glasses and napkins to placing food and beverage orders.

Whilst enjoying the dinner, participating members obtained useful tips for arranging and attending business meals in future.

The Distance Running Team took part in this meaningful running event on a sunny Sunday morning.
**“Legal Pioneer” Mentorship Programme: Phase 7 Closing and Phase 8 Opening Ceremony**

While graduation season is a time to joyfully celebrate the hard work of accomplished students, it is also an opportunity to shine a spotlight on the efforts of teachers/mentors. The “Legal Pioneer” Mentorship Programme Phase 7 Closing and Phase 8 Opening Ceremony was held in Chiang Chen Studio Theatre of the Polytechnic University on 12 November 2016. Since 2009, the Law Society’s Community Relations Committee (“CRC”) has organised this Ceremony, which has been a popular annual event.

Over 100 students from 13 secondary schools graduated from the programme, with the guidance of their mentors and Law Society members. Along the way, they created their own masterpieces and produced a 5-minute microfilm on one of four assigned legal topics (namely, Consumer Rights, Drug Abuse, Cyber Crime and Privacy).

Mr. Wesley Wong SC, Solicitor General of the Department of Justice, attended the event as the officiating guest. Council Member C.M. Chan, CRC Chairman Philip Wong represented the Law Society at the Opening Ceremony. Others included Council Member Serina Chan, CRC Vice-Chairlady Ann Yeung and “Legal Pioneer” Mentorship Programme Working Group Nathan Wong and Director Anthony Yan Pak-wing.

Before the participants of Phase 8 programme and guests, awardees of Phase 7 (including champion, first runner-up and second runner-up) shared their experiences on mastering the skills they need to be successful and the moments with teammates and mentors. All the participating teams for Phase 7 were given a certificate to recognise their work.

The highlight of the event was the micro-film workshop presented by Director Anthony Yan Pak-wing. Mr. Yan gave an insightful lesson on microfilm production to Phase 8 mentors and mentees. The event ended with a mentors/mentees discussion session, where mentees had the opportunity to learn about the law, video production and how to be an effective communicator. All participants thoroughly enjoyed the event.
Home Visit to the Elderly

On 19 November 2016, the Community Talks and Services Working Group ("WG") (a working group of Community Relations Committee), with the support of the Hong Kong Society for the Aged ("SAGE"), organised a home visit to the elderly in Sha Tin. More than 30 solicitor volunteers participated in this meaningful event.

Prior to the visit, the WG Vice-Chairlady Sauw Yim welcomed and prepared the volunteers for the visit by explaining what to expect. A SAGE’s social worker then offered a few tips to the volunteers on effective ways to start a conversation when visiting different households.

Our volunteers visited 26 households, to show their support, check the needs of the elderly and learn about new developments in their lives. During the visits, the volunteers identified some of their special needs and shared their observations with SAGE so that they could take appropriate follow up actions.

Member Benefit: Japanese-Style Flower Arrangement Class

The Member Benefit Committee of the Law Society organised a Japanese style flower arrangement class on 2 December 2016 at the Law Society Clubhouse. We were happy to have Ms. Kathy Lam, who is a member of Ikebana Hong Kong Chapter and currently an instructor of Ikenobo classes in Hong Kong, as the instructor. During the class, Ms. Lam introduced the flowers to be used and did a demonstration. Members also learned how to make use of “space” in the flower pot to create their masterpieces.
YSG’s CONNECTED Closing Event: Cocktail Workshop x Live Music by TLF x Trivia Quiz

On 26 November 2016, more than 60 mentors, buddies and mentees came together again for the third and the final events of the 2016 CONNECTED mentorship programme organised by the Young Solicitors’ Group (“YSG”). In order to cater to different interests, the CONNECTED Taskforce has introduced different elements into the 2016 programme. As you may recall, this year’s CONNECTED kicked off with “Moove City” where participants had a fun time teambuilding and taking part in “The Amazing Race” style challenges throughout Central. For the second event, “Soap Cycling”, participants spent an afternoon helping an NGO “recycle” soaps, which were later delivered to underprivileged children in the Philippines.

During the closing party, participants spent quality time socialising with their groupmates, whilst learning the basics of cocktail mixology, listening to amazing beats by the Law Society’s band “The Learned Friends” ("TLF") and competing for prizes. Highlights of the day included the invention of the prize-winning cocktail “res ipsa loquitur”, mentors sharing tips on how to relieve stress and how to strike a work-life balance, TLF leading participants on a music journey from the ‘70s to the 21st century, and the amusing and exciting song guessing game, “Music to My Ears”.

The recent closing event would not have been so successful without the participation of our mentors, buddies and mentees, the amazing performance by TLF, and the support of the Immediate Past President Stephen Hung and Council members Cecilia Wong, Nick Chan and Serina Chan.

This year’s CONNECTED programme has come to a conclusion, but I hope our friendship will never end! We would also like to invite current participants and other Law Society members to join the CONNECTED programme in 2017. Registration will start in late January or early February 2017, so please check the weekly circulars and/or like the YSG Facebook page to receive updates on upcoming YSG events.

Felix Yuen
Committee Member, YSG
Cross Team Collaboration Shining in Triathlon Races

There are altogether 23 teams and interest groups under the Recreation and Sports Committee. They do not only excel in their own areas of expertise but also join hands in taking up different challenges which promotes bonding between team members with different interests and strengths. The most recent collaboration was the Cycling, Distance Running and Swimming Team’s participation in the Garden Sisisic Hong Kong Triathlon Challenge.

The event took place on 18 September 2016 where the teams sent representatives to form four teams of three comprising one cyclist, one runner and one swimmer in each team to complete the Mixed Sprint Challenge Relay in Tai Mei Tuk.

The swimmers kicked off the relay in Plover Cove for a 750 m swim and a 100 m sprint. They then passed the baton to the cyclists who embarked on a renowned 30 km route, known to be challenging, along Bride’s Pool Road. Serving as the last legs of the race, the runners sprinted 8 km along the dam of Plover Cove Reservoir before they arrived at the finishing point.

Fitness of the athletes is important in a physically-demanding challenge as such but collaboration among teammates is also a critical factor as smooth transitions could make a big difference to the team’s overall result. With excellent rapports amongst team members, our four teams completed the challenge in second, ninth, 12th and 13th place among the 20 teams.

Let’s share the sweat and tears of some of our team members.

Tony Leung (Team A cyclist): I am extremely pleased with our team’s second place finish, as this was the first time we ever raced together. Agnes was one of the first swimmers out of the water in a highly competitive field, putting the team in good position. I held off other competitors in the 30 km bike course, and Catherine completed the race with an impressive run. I am very proud of our team and look forward to the next race.

Eugene Lam (Team B cyclist): Nice weather, great teammates and wholehearted support from the Captains and Convenors of the Swimming, Cycling and Distance Running teams. I cannot ask for more for my first Garden Sisisic HK Triathlon Challenge Race. I must thank Vicky (swimming) and Wai Yin (running) for the seamless teamwork at the transition zones and for the great race. I look forward to our next triathlon relay event!

Vicky Man (Team B swimmer): I thoroughly enjoyed the race – it was very well organised and the weather was just perfect for a swim. Special thanks to Hayson and Agnes who were in charge of coordinating the event and my teammates Eugene and Wai Yin!

Frederick Tai (Team C runner): I attended the Monday training sessions with professional coaches arranged by the Law Society throughout the year which definitely enhanced the quality of my whole running experience and helped me to build up my discipline of regular training. It’s also fun working together with many fellow members, meeting new friends who share the same passion in running. I had a great time running in the Triathlon Challenge. To best prepare myself for different team events and races, I would also squeeze in some extra training sessions.
miles as well as do some swimming exercises to further develop my cardio fitness.

Helen Ho (Team C swimmer): How could getting up at 4 am on a Sunday morning be fun? 18 September was an exception. Triumph went to Agnes, Tony and Catherine who put together their strongest sprint and won the first runner up in Mixed Relay at a stunning record of 2 hours and 42 seconds! Well done indeed.

Eliza Chang (Team D swimmer): Triathlon is about endurance, fitness and sportsmanship. It is also about encountering challenges and overcoming them. It was great fun to form a relay team with the fellow Law Society members and take part in the Triathlon. I was the first swimming leg in the relay. Mr. Andrew Hart did the cycling leg and Mr. John Lee did running. We made a perfect team which demonstrated good team spirit and sportsmanship.

Hayson Yuen, Captain, Cycling Team
Catherine Lau, Convenor, Distance Running Team
Agnes Chan, Convenor, Swimming Team
Quick glance at the marvellous achievements of RSC teams in the last quarter of 2016!

<table>
<thead>
<tr>
<th>TEAM</th>
<th>ACHIEVEMENT</th>
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<tbody>
<tr>
<td>Badminton</td>
<td>Champion of Men’s Doubles in the Chinese Manufacturer’s Association (“CMA”) Invitational Match</td>
</tr>
<tr>
<td>Bridge</td>
<td>Third place in joint professional friendly match</td>
</tr>
<tr>
<td>Football</td>
<td>Champions in friendly match organised by the Correctional Services Department playing against various disciplined units and Joint-U Invitational Soccer Match</td>
</tr>
<tr>
<td>Hiking</td>
<td>Super Team completed the 100km walk in Oxfam Trailwalker in just below 18 hours</td>
</tr>
<tr>
<td>Swimming</td>
<td>Third place in Invitational Relay organised by the Hong Kong Medical Association</td>
</tr>
<tr>
<td>Table Tennis</td>
<td>Champions of Men’s and Women’s Doubles in the CMA Invitational Match</td>
</tr>
<tr>
<td>Volleyball</td>
<td>Second place in Volleyball Tripartite playing against strong rivals from the Malaysian Bar and the Law Society of Singapore</td>
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</tbody>
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The Recreation and Sports Programme 2017 is now open for enrollment. We need you to strengthen our teams! Please refer to our weekly circulars for enrollment details.
Litigate, Arbitrate, or Mediate? Putting It All on the Table at the Global Pound Conference in Hong Kong

By Julian Copeman, Managing Partner
Anita Phillips, Professional Support Consultant

Herbert Smith Freehills
Forty years on from the original Pound Conference – the seminal event that led to the birth of mediation – dispute resolution has reached an impasse.

In Hong Kong, mediation remains underutilised, despite being widely supported and recognised as having the potential to resolve disputes in a quick, cheap and confidential way. It has failed to flourish in Asia like arbitration, despite earlier market predictions to that effect. And it is often regarded as a “tick-box” exercise in the context of litigation. Court and arbitral claims in Hong Kong are at record highs and disputes themselves are becoming more complex, costly and time consuming.

At the stakeholder level, research suggests that there is significant disparity between what end-users – in-house counsel and business executives on the disputes front line – want and need from their advisors and providers; and what those advisors and providers think their clients need.

Enter Global Pound Conference, an ambitious global conference series backed by governments, international organisations and leading multinationals, which is coming to Hong Kong on 23 February.

At 40 conferences in 31 countries in 2016 and 2017, Global Pound Conference is considering how disputants select and access appropriate dispute resolution processes to best respond to their needs. This includes assessing what is proportionate in terms of costs, time, possible outcomes and enforceability, as well as impact on reputation, relationships and cultural issues.

Through canvassing the views of over 5,000 stakeholders from five groups (users, advisors, adjudicative providers, non-adjudicative providers and influencers), Global Pound Conference will address how we can improve the resolution of commercial disputes in the 21st century. All dispute resolution processes are in scope: litigation, arbitration, as well as the range of alternative dispute resolution (“ADR”) processes, particularly mediation.

**Format**

Structured around four interactive sessions where core Global Pound Conference questions are voted upon anonymously via a smartphone app, participants express their views on a range of vital issues affecting how disputes are resolved. Results are projected and debated instantly, comparing priorities by stakeholder category.

This will result in a unique set of worldwide standardised dispute resolution data collected across the span of stakeholders. The results will be collated into a report and white paper, which will be published globally in 2017.

**What has Global Pound Conference highlighted to date?**

So far, Global Pound Conference events have taken place in Singapore, Lagos, Mexico City, New York, Geneva, Toronto and Madrid. 34 more events will take place in 2017.

The data and results have already provided striking information about local gaps between demand and supply of commercial dispute resolution needs and perspectives. Each event has concluded by identifying some clear local opportunities for change, and it is expected that the Hong Kong event will do the same.

From the data analysed to date, disputing parties, perhaps unsurprisingly, prioritise efficiency when selecting dispute resolution processes. Advisors, however, think that clients want advice first and foremost.

When lawyers are advising clients, the choice of process is primarily driven by the outcomes desired or the familiarity with the process; costs are relatively unimportant. Lawyers think that parties want them to advocate. Parties say that they want lawyers to collaborate.

Lawyers think that the outcomes should be driven by the rule of law. Parties and non-adjudicative providers such as mediators think it’s all about collaboration. Parties think that prevention is the most effective commercial dispute resolution process.

The keys areas flagged for immediate improvement are technology – litigation/arbitration dispute management tools and online dispute resolution (“ODR”) – and enforcement.

Enforcement is the other key area identified for reform. The UNICITRAL Working Party’s proposal for a New York style-convention on the enforcement of mediated settlements is a priority in this regard.

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*A survey undertaken by Herbert Smith Freehills in Hong Kong in 2015 highlighted this gap, reinforcing research spearheaded by Herbert Smith Freehills in London in 2014.*
Ultimately, enforceable decisions and a greater emphasis on collaborative instead of adversarial processes are emerging as the most important factors for the future of commercial dispute resolution.

**Singapore Event**

Always a barometer for Hong Kong, the inaugural Global Pound Conference event took place in Singapore in March 2016. Over 400 people from 25 countries participated. Interestingly, despite the range of nationalities involved, little difference between local and foreign participant results were observed. As with subsequent Global Pound Conference events, there were clear gaps between stakeholder groups; in particular, needs on the supply (advisor/provider) side and demand (user) side were not aligned. The greatest gaps were observed between users (clients) and advisors (lawyers). Differences of opinion were smaller between advisors and adjudicators (judges, arbitrators and mediators).

In terms of user experience and needs, the Singapore data highlighted that less experienced parties can be unrealistic and inflexible about their prospects of success, the processes and time involved. As such, they require more help from other stakeholders, particularly advisors. Experienced users more often want bespoke processes tailored to financial and non-financial interests.

Several other themes emerged:

- The courts and arbitral institutions continue to play a vital role in the development of dispute management and resolution. End users want them to promote efficient case management and, wherever possible, ADR. Parties had a preference for hybrid dispute resolution processes (mediation combined with arbitration or litigation), something that is evolving but remains relatively ‘green’. Singapore’s arb-med-arb procedure is an obvious example of the development of the hybrid process (primarily to promote the enforceability of mediated settlements as arbitral consent awards).
- Technology was judged to be another important factor, particularly in the delivery of dispute management processes. The conference highlighted the growing popularity of ODR, which is being deployed in increasingly complex, multi-party disputes.

- Finally, lawyers play a critical role in educating their clients (and themselves) about how best to deploy less frequently used processes such as mediation. In-house counsel often regard ADR as a strategic imperative, but this is sometimes at odds with the approach of external lawyers, who may see mileage in a longer dispute.

**Hong Kong Event – What’s Likely to be Debated?**

With the backing of leading corporates, institutions and the Department of Justice, the one-day Global Pound Conference at the Hong Kong Convention and Exhibition Centre will take place on 23 February 2017. It includes a keynote address from Secretary for Justice Rimsky Yuen SC, a closing address from Chief Justice Geoffrey Ma and Solicitor General Wesley Wong SC will appear, to debate what needs to change to improve dispute resolution in Hong Kong.

General counsel, regional heads and senior executives from leading corporates will also appear as panellists to share their views, alongside leading international judges, arbitrators, mediators, lawyers, funders, technology experts, professional advisors and academics.

Regarding litigation, there is a strong view among litigators that the court docket is too long and case management must be further improved to meet the expectations of the Civil Justice Reform 2009 (“CJR”). In particular, cases should be brought to trial more quickly, meaning cases must be set down for trial earlier. Currently, trial dates tend to be set very late in the cycle, meaning that some cases continue to run for significant periods awaiting trial, with little substantive work remaining to be done.

Similarly, there is a clear view that more judges are needed to help deal with the backlog of cases and speed up the litigation process. The issue is being partly dealt with by retired judges returning for short term appointments and the drive to encourage barristers and solicitors to sit as judges on a short-term basis. These are stop-gaps, however, which do not fully deal with the paucity of judges available to hear cases.

Arbitration in Hong Kong is poised for reform in 2017 by way of allowing for third party funding, which would open up the process to a wider market. This is to be applauded. However, this does not necessarily address the fact that something that was intended to be a simple, cheap and private alternative to litigation is now arguably more complex and costly. Even enforcement – often cited as the clear benefit to arbitration thanks to the New York Convention – faces increasing challenges. Long, costly and public set aside and enforcement actions in Hong Kong have become relatively common and a better mechanism may need to be developed to resolve this.

Mediation has existed in Hong Kong since the mid-1980s, where it was trialled and later standardised in certain public sector construction contracts. By 2009, 21 mediation service providers existed in Hong Kong. The CJR catapulted mediation to the main stage by effectively introducing a mediation step to cases litigated in Hong Kong. There are now over 2,000 accredited mediators in Hong Kong. Yet it remains underutilised. What has gone wrong and what needs to change? Greater awareness of the various quality mediation services available in Hong Kong (of which there are many) is required, partnered with improved awareness amongst users and advisors of the benefits of mediation and how best to deploy it. It is not for want of government or institutional backing that mediation remains underutilised and we will see more steps by the government and institutions to advance mediation in 2017.

**Why attend?**

The day is highly interactive, adopting a format that has been described as the blueprint for future conferences. The voting app allows delegates to contribute their views frankly and anonymously and
hear and see the results debated in real time by experts.

Delegates will hear first-hand what their peers and competitors are doing: how they save money, time and maintain relationships and service clients using appropriate dispute resolution tools.

Finally, the project will ultimately contribute to enhancing the culture and methods of resolving conflict.

To register and for more information including the full programme, visit http://hongkong2017.globalpoundconference.org/.

**Conclusion**

Global Pound Conference Hong Kong is a timely opportunity for all stakeholders (users, lawyers, advisors, experts, judges, arbitrators, mediators, academics, government bodies and dispute resolution institutions) to reflect on what is working and what needs to change.

With third-party funding of arbitration and the promotion of mediation (including through apology legislation) high on the Hong Kong legislature’s agenda, the time is ripe for a conversation that covers all dispute resolution processes and provides a clear framework for quantitative and qualitative outputs.

At the provider level, the Financial Dispute Resolution Centre’s recent consultation to expand its mediation offering to more consumers in the context of banking disputes, shows that there is appetite to make mediation more accessible.

It is clear that parties defer in large part to their external lawyers when it comes to considering mediation, when and how to deploy it, and who to appoint as a mediator. This places considerable responsibility on the legal advisor as a stakeholder to mediation success.

As such, lawyers should attend Global Pound Conference Hong Kong to hear the views of their clients and peers, and share their own approaches to resolving conflict.

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Herbert Smith Freehills’ earlier article summarising their mediation survey 2015 can be found here: http://www.hk-lawyer.org/content/client-perspectives-mediation-hong-kong-five-years.
紀的商業爭議解決方法。所有的爭議解決程序，均涵蓋訴訟、仲裁、另類爭議解決程序 (“ADR”) （尤其是調解）等程序所涉及的範圍。

形式

該會議的結構包括四個互動環節，而當中的核心是“全球龐德會議”問題，將會通過智能手機應用程式，以匿名方法進行投票，而參與者將就一系列對解決爭議構成影響的重要議題，發表其個人意見。會上將會對所得出的結果進行即時的評估及討論。根據不同持份者的類別來比較其優先次序。

此舉將有助向所有持份者收集一套獨有的全球標準化爭議解決數據，而相關結果將會整理成為一份報告書和白皮書，並於2017年向全球發布。

在新加坡舉行的會議

「全球龐德會議」的開幕式暨新加坡站（其可作為香港站的一個氣壓計），已於2016年3月在新加坡舉行，並有來自25個國家的400多名人士出席。有趣的是，儘管該會議涉及許多國家，但根據我們的觀察，當地與外國參與者的結果之間的差異並不大。正如其後舉行的「全球龐德會議」一樣，各持份者群體之間存在明顯差距；尤其是，供應方（顧問／提供者）與需求方（使用者）之間有著不一致的要求。但值得注意的是，使用者（當事人）與顧問（律師）、顧問與審裁員（法官、仲裁員及調解員）之間的意見分歧則較小。

就使用者的經驗及需要而言，新加坡的數據顯示，經驗較少的當事方對其成功機會、所涉及的程序和時間等，會有不符現實和不靈活的想法。因此，他們需要其他持份者（特別是顧問）提供更多協助。經驗豐富的使用者則較為希望有關程序能為他們帶來特定的經濟及非經濟利益。

在香港舉行的會議 — 可能討論什麼內容？

在領先企業、機構及律政司的支持下，為期一天的「全球龐德會議」，將於2017年2月23日在香港會議展覽中心舉行，日的內容包括律政司司長袁國強資深大律師的主題演講，以及終審法院首席法官馬道立致閉幕詞。此外，法律政策專員黃惠沖資深大律師也將會出席，並需要作出什麼改革以促進香港的爭議解決程序進行專題討論。

來自領先企業的總法律顧問、地區主管及高級行政人員，連同資深的國際法官、仲裁員、調解員、律師、出資者、科技專家、專業顧問及學者等一起出席，擔任專題研討會的講者並分享他們的看法。

就訴訟而言，訴訟律師強烈地認為，法院待審的案件過多，而案件管理也必須加以進一步改善，以符合2009年所實施的「
民事司法制度改革的期望。尤其是，案件開審的速度應當加快；這意謂，法院應當更早排期審理案件。目前，在整個的案件週期中，審理案件的日期往往排得很遲，這意味着，有些案件需要等待很久才開審，而在這期間可以做的實質性工作並不多。

同樣地，我們顯然需要更多法官來幫助處理積壓的案件，從而訴訟程序加快。解決這問題的方法之一，是以短期任命方式，邀請已退休的法官回來協助審理案件，並鼓勵大律師及律師以短期性質出任法官。然而，此等舉措只是權宜之計，並不能完全解決審理案件的法官不足的問題。

香港的仲裁制度將於2017年實施改革，允許由第三方資助仲裁，而此舉將可以讓香港的仲裁服務邁向一個更廣闊的市場，因此是值得推許的。然而，這項舉措亦並非必然能夠解決原因是簡單、低廉、不公開、用以取代訴訟的爭議解決程序。現在卻被認為是更繁複和費用更高昂的情況。即使是裁決的強制執行（因著《紐約公約》，它常被形容是仲裁程序的明顯好處），也正面對越來越多的挑戰。普遍而言，香港的強制執行程序冗長、費用高昂及公開，因此需要有一個更好的機制來解決有關問題。

自20世紀80年代中期以來，香港已經開始實施調解，並首先在與公共建築工程有關的合約方面進行試驗，稍後再對其加以標準化。截至2009年，香港共有21位調解服務提供者。「民事司法制度改革」為在香港提起訴訟的案件引入調解機制，調解亦因此在香港開始受到關注。香港目前共有超過2,000名資格獲認可的調解員，但調解機制在香港仍然未被充分利用，問題究竟出於何處？需要實行一些什麼補救措施？香港需要讓更多人認識其優質調解服務（事實上香港有許多此等服務），並同時加強使用者和顧問對調解效用的認識，以及如何使它達至最佳的效用。香港的調解服務並未得到充分利用，這並非因為缺乏政府或機構的支持。我們將會見到政府和個機構將於2017年採取更多措施，以推動調解服務的發展。

為何要出席？

這個會議的互動性極高，它所採用的方式，可以作為未來大型會議的範本。這會議將會使用供投票用的應用程式，讓各出席代表能夠坦誠地及以匿名方式表達他們的意見，和聆聽及觀看專家們的實時討論結果。

各出席代表將可以直接聽到其業界同行與競爭對手現時正在採取的各項舉措，包括：他們如何運用適當的爭議解決工具來節省金錢、時間；維持與客戶的關係；以及為客戶提供服務。

最後，該會議所給予我們的，將會是有力推廣解決衝突的文化及方法。

讀者如欲登記及取得更多相關資料（包括整個計劃），請瀏覽以下網站：http://hongkong2017.globalpoundconference.org/。

結論

在香港舉行的「全球龐德會議」，將會是一個適切時機，讓所有持份者（包括使用者、律師、顧問、專家、法官、仲裁員、調解員、學者、政府機構及爭議解決機構）講述他們正在實行一些什麼舉措，以及他們認為需要進行一些什麼改革。

隨著第三方資助仲裁及調解服務的推廣（包括藉著道歉法）已經排在香港立法機構的優先議程上，因此，涵蓋所有爭議解決程序，並為數量與質量成果提供一個明確框架的對話時機已經成熟。

從提供者的層面來說，「金融糾紛調解中心」近期就擴大調解服務範圍，向涉及銀行服務爭議的消費者推廣調解服務所進行的諮詢，表明香港有許多可供開拓調解服務的途徑。

很明顯，當事方在考慮使用調解服務、何時使用、如何使用、委任誰人擔任調解員等各項問題，在很大程度上，會聽取其所聘用的律師的意見。因此，調解能否成功進行，其法律顧問將會承擔重大責任，並且會成為其中的一個持份者。

故此，律師應當出席是次在香港舉行的「全球龐德會議」，以聆聽其客戶及同業的看法，並分享他們自身的解決衝突方法。
Protecting Against Attacks from the Internet of Things

By Paul Connolly, Vice President, Global e-Discovery & Cyber Forensics, Duff & Phelps, LLC
On 21 October 2016, a massive distributed denial of service attack targeting Dyn, an American provider of underlying internet name services, caused internet outages across the Eastern United States. Prior attacks using the same techniques targeted journalists and French hosting provider OVH. In these attacks, millions of internet of things (“IoT”) devices were subverted, unbeknownst to their owners, and used in attacks across the internet. These attacks are just the beginning, and we expect more attacks in the coming months as more and more bad actors begin to exploit these weaknesses.

A New Strain of Evil: Mirai

These attacks are driven by an attack vector known as the Mirai botnet, which exploits default, hard-coded passwords in many common IoT devices, such as network attached video devices and network cameras. Of note, contrary to many media reports on this issue, these attacks are not at all sophisticated; they simply make use of widely-known default passwords for these devices. Once an IoT device is infected, Mirai sets to work infecting neighboring devices. When the attacker is ready, a network of these devices is directed to attack a larger target, leveraging the combined resources from thousands of internet connections to launch a “denial of service” attack, flooding a target with so much traffic that it is unable to respond to legitimate requests.

To explore the scope of Mirai, the Cyber Forensics group at Duff & Phelps created a “honeypot” by placing a decoy computer on the internet designed to appear to be a vulnerable IoT device. In less than 10 minutes, our computer received over 350 connections from 174 unique IP addresses. These connections came from Brazil, Turkey, China, Eastern Europe and many other countries around the world. Some estimates indicate that a typical IoT device will be infected by Mirai within five minutes of being placed on the internet. Removing Mirai is as simple as rebooting a device; however, the device will almost certainly be re-infected within minutes if turned back on.

These attacks have sparked debate on the need for manufacturers of IoT devices to prioritise security in the design of their products. Almost by definition, IoT devices are designed to be accessible over the internet, and not simply from a user’s home network. This makes security easy to overlook but essential, as attacks can come from anywhere in the world. Many of the devices include an administrative console (command shell) accessible over Telnet, a communication protocol that dates back to the 1960s. Telnet has been superseded by more secure protocols such as secure shell (“SSH”), but it remains in the background in many contexts because it demands low network resources and is very easy to deploy. Attackers are continuously scanning the internet for devices listening on particular ports, because certain applications using these ports have known vulnerabilities. In the case of Mirai, attackers targeted devices listening on transmission control protocol (“TCP”) port 23, and cycled through various default passwords, hoping to compromise a vulnerable device. Port 23 is a well-known port used by Telnet.

As mentioned above, Mirai is exploiting default passwords which are hard-coded into the device. To make matters worse, the default password on many of these devices cannot be changed easily by the consumer because the software needed to reset the password is not included. Although the consumer devices do not require Telnet to operate normally, some manufacturers have left Telnet administration capabilities enabled, presumably for debugging purposes and maintenance operations.

Containing the Outbreak

In the wake of the attack on Dyn, Chinese manufacturer Hangzhou XiongMai, which produces components for many of the affected devices, issued a limited recall. XiongMai’s market size is difficult to quantify, because not only does it manufacture a line of network security cameras, it also sells control boards to literally hundreds of other security camera manufacturers.

The scope of the Dyn attack has triggered renewed interest in government regulations on device security for IoT devices on the market. Some in the information security community are calling on regulators to mandate minimum security standards for...
devices. The effects of such policies are difficult to predict, especially as the attacks take place across jurisdictional boundaries.

A variety of measures have already been proposed within the information security community to combat Mirai and other attacks served from botnets. One proposed measure calls upon internet service providers to block traffic to consumer connections on TCP port 23. Right now, most consumer ISP’s block inbound traffic to, and outbound traffic from, customers over port 25, which is used to send email. This policy dates back to the 1990s, and has been highly effective in preventing spam email. It would be relatively trivial for an ISP to extend this policy and block port 23 as well. ISP’s could make policies re-enabling it only at the request of the ISP customer. This change would only minimally impact consumers, while effectively mitigating much of the risk posed by Mirai; however, this solution works only for Mirai and the logical question is how many ports ISP’s should block as new vulnerabilities come to light.

Some commentators are calling for a shift in regulatory posture, and are suggesting specific legal changes to make manufacturers liable for damage caused by their devices. Right now these devices operate under an end-user license agreement that assigns all liability to the user or owner. If laws were enacted to assign liability to the manufacturer in case of negligence with regards to cybersecurity, manufacturers would be forced to build more secure products.

Others are suggesting that some sort of standards body be established to test and certify networked devices. Software and hardware would be sent to this lab and tested by experts, and would only be available for sale if its security was validated by an outside lab. Others have contended that such legislation is ineffective against attacks from around the world; devices in a county without such regulations could attack one with such protections.

On 5 December 2016, the United States Federal Communications Commission (“FCC”) released a letter to Virginia Senator Mark Warren, which included a “risk reduction” work plan addressing the security of IoT devices. The risk reduction proposal was placed on hold by the FCC pending the transition of the new presidential administration in late January. This is noteworthy, as it is the first time the FCC has entered in to potentially regulating IoT devices, which it proposes to do subject to its existing legal authorities, and such action may prove controversial.

Elements of the agency’s proposed rulemaking include “cybersecurity certification (possibly self-certification)“ and a labeling requirement to educate and to allow consumers to evaluate cybersecurity risks of products or services.

Some in the United States are even calling on the government, through the National Security Agency, to simply “brick”, or remotely destroy, all devices that are infected. The approach here is akin to the public health arguments used when sick individuals are quarantined, or when a dilapidated house creates a hazard to surrounding structures and is demolished. These infected devices pose a public health risk to the internet, and many believe that it is appropriate for authorities to take drastic action to maintain this key infrastructure.

It is worth noting that we are already seeing counter-Mirai malware, which logs into these devices and secures them against further attacks, before deleting itself. This protects the devices from further exploitation without causing undue disruption. At this time, it is unknown who is behind these attacks, but this well-meaning, legally questionable repair effort illustrates that many avenues exist to retroactively secure the network from compromised devices.

A New Threat Requires a New Approach

Manufacturers throughout China and beyond will be impacted by both judicial, legislative and regulatory intervention as well as increased consumer awareness as to the dangers of internet connected devices. As new regulations are enacted, manufacturers will need to adapt their designs and processes to accommodate the new laws, as well as deal with the cost of obtaining certification. Similarly, increased consumer awareness will drive the marketplace towards more transparency and stricter guarantees of product quality. The cost and efficacy of such changes remain unknown, but will undoubtedly reveal themselves in the coming year.

Lastly, it is worth considering that a single company, Dyn, was relied upon by hundreds of very large players, including PayPal, Twitter, Reddit, Spotify and The New York Times. When Dyn was under attack, these companies, and their users, were as well. Businesses and institutions are increasingly outsourcing core operations to third parties. While this carries with it significant cost and efficiency improvements, it also makes those businesses wholly dependent on outside infrastructure. Adding a secondary DNS service provider is an easy way to mitigate attacks such as the one on Dyn. Designing distributed systems that are resilient to other attack outages remains a difficult problem for computer scientists, and a highly important area of current information security research.

Solicitors and in-house counsel representing clients in the device manufacturing industries should pay close attention to the potential for regulations in light of this new threat. Clients should also be cognizant of the potential shift of liability risks from the hacking of IoT devices to the manufacturers in a number of circumstances. When hiring outside vendors, law firms and legal departments should also be aware that the network and hardware vulnerabilities of their third-party providers could affect their operations and their clients.
2016年10月21日，網絡攻擊者向Dyn（美國的一個基礎互聯網域名服務提供商）發動一次大規模的「分散式拒絕服務攻擊」，導致美國東部的整個互聯網服務中斷。在此之前，另一個運用相同技術來發動的攻擊，則是以新聞從業者及法國的託管服務提供商OVH為目標。該等攻擊，導致數以百萬計的物聯網裝置在其擁有者不知情的情況下，遭受干擾和破壞，並且被利用來在互聯網發動攻擊。然而，目前的這種亂象只是一個開始，因為有越來越多的惡意攻擊者開始懂得利用這方面的漏洞。因此，我們預期未來數月將會有更多此類的攻擊出現。

新威脅的形成：Mirai

該等攻擊，是由一個稱為「Mirai殭屍網絡」的攻擊向量所策動。它的運作，是以常見的物聯網設備（例如：連接於網絡的視頻裝置和網絡攝像機）中的默認「硬編碼密碼」作為工具。然而，我們必須知道，此等攻擊的發動，事實上並非如許多媒體報導所言般複雜，而是僅僅利用該等裝置中所設定的一些為人熟知的默認密碼。一旦有物聯網設備受到感染，Mirai便會乘機大肆感染附近其他裝置，攻擊者準備就緒後，便會向一個涵蓋所有這些裝置的網絡發出指示，命令它們向一些更大型的目標進行攻擊，並將由數千個網絡連接合併而成的資產，齊集向互聯網發動「拒絕服務」攻擊，使得受攻擊的目標被龐大網絡流量所淹沒，從而無法對合法請求作出回應。

Duff & Phelps的網絡取證組運用「蜜罐技術」，在互聯網安放一個作誘餌之用的電腦（其被設計成一個看似存在漏洞、容易被入侵的物聯網設備），以察看Mirai所可能造成的破壞程度。不到10分鐘，我們的電腦便從174個獨立IP位址，接收到超過350個連接。它們有來自巴西、土耳其、中國、東歐，和全球許多其他國家的。而根據估計，一個典型的物聯網設備，在放到互聯網上不到五分鐘，便會受到感染。如果我們要將Mirai刪除，其實也並不困難，過程就好像是將一個裝置重新啟動那麼簡單；但問題是，當有關裝置被重新啟動後，不到數分鐘，它幾乎必然會再度受到感染。

正如上文所述，Mirai利用該些被硬編碼（hard-coded）到此等裝置的默認密碼（default passwords）來施行破壞。更糟的情況是，由於許多此等裝置並不包含提供重置密碼用的軟件，因此用戶並不能輕易地對該等默認密碼作出修改。雖然要該等裝置能正常運作，Telnet並非其必要條件，但也許是為了調試和維護操作之目的，仍然會有一些生產商將Telnet的管理功能啟用。
控制其蔓延

Dyn遭受攻擊後，「杭州雄邁信息技術有限公司」(一家專門為許多該等受影響的裝置生產所需組件的中國生產商)有限度地召回其產品。雄邁公司除了生產一系列的網絡安全攝像機外，也向數百家安全攝像機生產商出售控制面板，因此，它的市場規模實在難以量化。

Dyn所遭受攻擊的範圍，引發了人們重新關注到：政府是否應當對市場上的物聯網設備之安全性能作出監管，而在信息安全界中，也有一些人呼籲監管機構為物聯網設備訂立最低安全標準。該等政策所產生的影響，目前仍然難以估計，尤其是當所發動的攻擊，乃跨越了有關的司法管轄區的邊界時。

現時在信息安全界內，有人提出各種方法，以期對抗由Mirai及其他殭屍網絡所發動的攻擊。當中有一項建議是，互聯網服務提供商應當封閉前往TCP Port 23的用戶接口的通道。在目前，大多數的消費者互聯網服務提供商都會封閉「入埠流量」與「離埠流量」通過Port 25(一個用於傳送電子郵件的端口)傳送至客戶的網絡，或是從客戶的網絡傳出去。這項政策的實施，始自20世紀90年代，而它在堵截垃圾郵件方面，確是卓有成效。然而，要求互聯網服務提供商將這項政策伸延至Port 23，做法會較為繁複;因此，互聯網服務提供商可以訂立政策，規定只有當客戶提出相關請求時，互聯網服務提供商才會將它們重新啟動。此等舉措，只會為消費者帶來十分輕微的影響，但卻能有效移除Mirai所產生的許多風險。但問題是，這一解決方案是專門用來對付Mirai所造成的新威脅，那麼，馬上便有人會問：倘若出現了新的漏洞，互聯網服務提供商是否又要封閉另一些端口呢?

有評論者認為應當改變目前的監管方式，並提議進行具體的法律修訂，規定生產商必須就其裝置所導致的損害承擔法律責任。該等裝置目前是根據一份「最終用戶許可協議」而受到規管，但該份協議是將所有法律責任歸到用戶或擁有者身上。倘若訂立法例，規定生產商在網絡安全方面如果犯有疏忽，便必須承擔相應的法律責任。有鑒於此，相信生產商必會盡力生產一些性能較為安全的產品。

此外，也有人建議成立標準訂制機構，專門負責對網絡裝置進行測試和認證。生產商必須將相關的軟硬件一併送到該些實驗室，由那兒的專家進行測試，在其安全性能通過驗證後，才可以進行發售;然而，也有一些人認為，此等法例未必能有效遏止在全球各地所發動的攻擊;假如其中有許多一個縣市並未受到此類監控，攻擊者便可以運用在該處的裝置，趁機對設有上述防護措施的地方發動攻擊。

2016年12月5日，美國聯邦通信委員會致函弗吉尼亞州參議員Mark Warren，提醒一項針對物聯網設備之安全性能的「降低風險」工作計劃。然而，由於美國的新總統及其政府將在下年一月下旬就任，該委員會因此將這一建議暫時懸置，以待日後再作考慮。這是美國聯邦通信委員會首度介入物聯網設備可能面對的監管(這項建議是由該委員會自行提出，並以必須符合現行法律規定為前提)，而此等舉措可能具有一定爭議性，故此情況是值得注意的。該委員會所建議制訂的法規，其重要項目包括：「網絡安全認證(可能是進行自我認證)」，具有教育作用的標籤規定，以及容許消費者對產品或服務的網絡安全風險作出評估。

美國更有一些人要求其政府透過國家安全局、「網絡和基礎設施安全局」(NCC)及國土安全部，為國家設立一個新的數據機密部門，負責監控和管理物聯網設備的運作。這項政策的實施，始自20世紀90年代，而它在堵截垃圾郵件方面，確是卓有成效。然而，要求互聯網服務提供商將這項政策伸延至Port 23，做法會較為繁複;因此，互聯網服務提供商可以訂立政策，規定只有當客戶提出相關請求時，互聯網服務提供商才會將它們重新啟動。此等舉措，只會為消費者帶來十分輕微的影響，但卻能有效移除Mirai所產生的許多風險。但問題是，這一解決方案是專門用來對付Mirai所造成的新威脅，那麼，馬上便有人會問：倘若出現了新的漏洞，互聯網服務提供商是否又要封閉另一些端口呢?

值得注意的是，我們發現目前已有惡意軟件可以破解Mirai所造成的危害。當這些軟件登入有關裝置後，在自行刪除自己之先，它會保護該等裝置免受進一步的攻擊，從而保障其不被進一步的操控和利用。此等軟件在保護裝置免受攻擊時，只會為消費者帶來十分輕微的影響，但卻能有效移除Mirai所產生的許多風險。但問題是，這一解決方案是專門用來對付Mirai所造成的新威脅，那麼，馬上便有人會問：倘若出現了新的漏洞，互聯網服務提供商是否又要封閉另一些端口呢?

以新方法應付新威脅

中國及其他國家的生產商除了會受到司法、立法和監管干預的影響外，也會受到消費者對互聯網基礎設施的風險意識提高所影響。隨着新規例的實施，生產商需要對其產品設計和生產流程作出調整，以符合新規例之規定，和應付在取得認證方面的成本問題。同樣地，消費者意識的提高，將有助推動市場朝向更透明化的方向發展，並對產品的質量帶來更嚴格的保證。此等改革將帶來多少的成本和效益，其具體情況，目前雖仍難以估計，但可以肯定的是，在未來的一年，它們將會陸續呈現出來。

面對此等新威脅，律師和企業法律顧問作為生產該等裝置的企業的法律代表，當然對當局可能實施的監管予以密切關注。此外，客戶也應當注意，在若干情況下，物聯網設備被入侵而產生的法律責任風險，可能會轉而由生產商承擔。律師事務所和企業法律部門亦應當注意，在聘用外間的服務提供者時，該等第三方供應商在網絡和硬件方面倘若出現漏洞，可能會對其業務運作及對其客戶構成影響。

最後，有一點值得我們關注的是，Dyn以單獨一家企業，為數百家規模極龐大的企業提供服務，並為它們所依賴，這當中包括PayPal、Twitter、Reddit、Spotify及紐約時報。當Dyn遭受攻擊時，此等企業及其用戶也同樣地在遭受攻擊。現時有越來越多的企業和機構，將其核心業務的運營外判給第三方。雖然此舉可以為它們帶來成本與效益上的重大改善，但也會導致它們需要完全依賴外界的基礎設施。物色更多次級域名伺服器(DNS)的服務提供商，將會是Dyn這類機構遭受黑客攻擊時，一個最直接的應變方法。對於電腦科學家來說，要設計一個在面對中斷網絡的攻擊時，能夠作出靈活而堅強的反應的系統，目前仍然存在一定的難度。事實上，這一套系統也一直是當前十分重要的信息安全研究課題。
Trade Mark Infringement and Honest Concurrent Use in Keywords Advertising
Keywords Advertising

Online advertising has become an indispensable marketing strategy for businesses nowadays.

One of the most popular services for online advertising is Google AdWords, which allows businesses to display brief advertisements to internet users based on the search engine terms (otherwise known as “keywords”) pre-selected and bid by the businesses.

Whilst keywords advertising is not inherently objectionable, concerns may arise when an advertiser uses and bids for a competitor’s trade mark as a keyword in order to cause its advertisement to appear on the Google search results page when a consumer searches for the competitor’s trade mark.

This is particularly so, and trade mark infringement might be found, if such bidding of a third party’s trade mark as a keyword would cause the average internet user to wrongly perceive the origin of the goods or services so advertised as originating from the trade mark proprietor.

Trade Mark Infringement in Keywords Advertising

In Hong Kong, it has been held that there is a serious question to be tried for use of a trade mark as a Google Adword on the basis that such use would adversely affect the origin and investment functions of the mark in question (see Pandora A/S & Others v Clamulet International Ltd & Others HCA 2941/2015, unrep., dated 26 July 2016 at para. 117 per DH CJ Sakhrani).

Insofar as UK and EU case law is concerned, the early case of Reed Executive Plc v Reed Business Information Ltd [2004] RPC 40 concerned the use of the word REED as a keyword for generating advertising online and as a metatag on the website. Based on the particular evidence before the Court, the trade mark infringement claims and the passing off claim were rejected. Jacob LJ raised the questions as to whether the use of a trade mark as a metatag or as an advertising keyword would constitute use and whether such use would be capable of affecting the functions of a trade mark since consumers would not be aware of such use by the defendant.

Jacob LJ’s questions were addressed in Google v Louis Vuitton C-236/08, C-237/08 and C-238/08 [2010] RPC 19 where the Court of Justice of the European Union (“CJEU”) held that bidding on a mark identical with another’s trade mark as a keyword would constitute use in the context of commercial activity. The CJEU further held that the use of a third party’s mark as an advertising keyword would affect the origin or other function of the mark “where that advertisement did not enable an average internet user, or enabled that user only with difficulty, to ascertain whether the goods or services referred to therein originated from the proprietor of the trade mark or an undertaking economically connected to it or, on the contrary, originate from a third party.” (see H30).

After Google v Louis Vuitton, the case of Cosmetic Warriors v Amazon.co.uk Ltd [2014] FSR 31 examined whether the trade mark “Lush” was infringed when Amazon bid on certain keywords including “Lush” within the Google AdWords service so that Amazon’s advertisement would appear on the Google search engine results page when internet users google “Lush”. John Baldwin QC, sitting as Deputy Judge, held that Lush’s trade mark had been infringed on the basis that the average consumer, looking for Lush soap on the Amazon site, would be unable to ascertain that the goods referred to by the ad were not the goods of or connected with Lush.

Honest Concurrent Use in Keywords Advertising

In Victoria Plum Limited, the Claimant and the First Defendant are bathroom retailers which have been operating exclusively or primarily online. Both had been trading under similar names since 2001.

- The Claimant traded under the name “Victoria Plum”, for which it obtained a trade mark registration.
- The Claimant later changed its name to “Victoria Plumb” in July 2015. For the purposes of this case, both parties accepted that nothing turned on the omission of the letter “b” from “Plumb”.
- The First Defendant traded under the name “Victorian Plumbing”.

The co-existence of both parties came to a head in late 2012 when the First Defendant substantially increased its bidding on the Claimant’s name Victoria Plumb and minor variations of that name as keywords.

The Claimant’s allegations of infringement were based on two categories of search engine advertisements displayed as a result of the First Defendant’s bidding activity:

- Advertisements that include the Claimant’s trade mark “Victoria Plumb” as a result of Google’s “dynamic keyword insertion” service. This service automatically uploads the consumer’s search term into the advertisement posted by the advertiser if the said term has been purchased.
- Advertisements that contain the terms “Victoria Plumbing” and/or “Victorian Plumb” and/or “Victorian Plumbing”. The Claimant did not seek to restrain the First Defendant’s use of the name “Victorian Plumbing”.

In relation to the first set of advertisements, the First Defendant conceded that those advertisements constituted trade mark infringement and submitted to judgment and an injunction against further infringement.

However, with respect of the second set of advertisements, while the Defendants admitted that the signs “Victorian Plumbing”, “Victorian Plumb” and “Victorian Plumbing” are confusingly similar to the Claimant’s marks, they sought to rely on the defence of honest concurrent use.

The Use Complained Of

In this case, Carr J found that the signs complained of, that is the signs that the
First Defendant bid on as keywords, are identical to, or immaterially different from the Victoria Plum(b) marks. Applying Google v Louis Vuitton, Carr J held that the First Defendant’s bidding activity constituted use of the Claimant’s trade mark in the course of trade.

Whether Use Adversely Affect the Origin Function of the Trade Mark

The next issue Carr J examined was whether such use is likely to affect the origin function of the Claimant’s trade marks.

The Judge considered the test set down by the CJEU in Google v Louis Vuitton, namely whether the second set of advertisements enable normally informed and reasonably attentive internet users, or enable them only with difficulty, to ascertain whether the goods or services referred to by the advertisement originate from Victoria Plum(b) or an undertaking economically connected to it or, on the contrary, originate from a third party.

It was found that the First Defendant’s bidding activity which led to the display of the second set of advertisements constituted trade mark infringement on the basis that those advertisements did not allow the normal internet user to make such determination without difficulty.

Honest Concurrent Use

Carr J also noted that the CJEU in the Budweiser case (see Budějovický Budvar Narodní Podnik v Anheuser-Busch Inc. C-482/09; [2012] RPC 11) held that, in the context of an invalidity application, where there has been a long period of honest concurrent use of two trade marks and that use neither has nor is liable to have an adverse effect on the essential function of the earlier trade mark, then the proprietor of an earlier trade mark cannot obtain the cancellation of an identical later trade mark.

Upon further reference to the Court of Appeal’s consideration of the Budweiser case, Carr J stated that confusion arising from two undertakings honestly using the same or closely similar marks for a long period of time may have to be tolerated.

However, it was ultimately found that the defence of honest concurrent use could not apply to the First Defendant’s bidding of the Claimant’s trade marks (or minor variation thereof) as keywords for the following reasons:

• The defence can only entitle a defendant to continue to use its own name or mark but does not allow for the use of the Claimant’s mark.

• Since the First Defendant has never used the Victoria Plum(b) marks other than bidding on them as keywords, it cannot claim honest concurrent use of those marks because it cannot be said that the marks in question have become the exclusive guarantee of origin of both the Claimant and the First Defendant.

Carr J went on to consider whether the acts complained of by the First Defendant were “honest”. He concluded that such use could not be said to be “honest” because the First Defendant’s acts were inconsistent with its “duty to act fairly in relation to the legitimate interests of the trade mark proprietor” since the decision to increase spending on bidding on the Victoria Plum(b) keywords exacerbated the level of consumer confusion and encroached upon the Claimant’s goodwill.

In the premises, the First Defendant is liable for infringement of the Claimant’s “Victoria Plum(b)” trade marks.

Counterclaim: Passing Off

The Defendants counterclaimed for passing off. They contended that the Claimant’s bidding on the name “Victorian Plumbing” as a keyword which caused advertisements containing the text “Victoria Plum(b)” to be displayed must constitute passing off.

The Counterclaim was held to be successful. Carr J found that the First Defendant had sufficient goodwill in the name “Victorian Plumbing” to enable it to bring a passing off action against the use of that name by the Claimant.

Notwithstanding the fact that the Claimant’s bidding activity was much smaller than the First Defendant’s and the finding of a lower likelihood of confusion amongst internet users searching for “Victorian Plumbing” than those looking for “Victoria Plum(b)”, Carr J found that there is a propensity for confusion when internet users looking for “Victorian Plumbing” are presented with the Claimant’s advertisements for a business that is unconnected with the First Defendant.

Carr J then held that there was misrepresentation by the Claimant since a substantial proportion of the relevant public are likely to have been misled into believing that the Claimant is, or is connected with, the First Defendant. In the premises, a likelihood of damage was found.

This holding is significant, as it appears to be the first UK case where passing off has succeeded in the context of keywords advertising dispute.

Conclusion

Carr J’s judgment provides welcome exposition on the application of the honest concurrent use defence in the context of keywords advertising.

One noteworthy take-away from this judgment is that where two undertakings have co-existed and traded under same or similar names for a long period of time, it is important for both undertakings to maintain the status quo and not to carry out activities which would potentially further the level of consumer confusion and encroach on each other’s goodwill.

More importantly, when engaging in keywords advertising, businesses should ensure that their advertisements are clear so as to avoid the average internet users from having difficulties ascertaining the origin of the goods or services in question.
商標侵權及在關鍵字廣告中的誠實的同時使用

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文章所討論的，是Mr. Justice Carr於近期(2016年11月18日)就Victoria Plum Ltd v Victorian Plumbing Ltd & Others [2016] EWHC 2911 (Ch)一案所下述的判決。法庭在該案所審理的主要爭議點，關乎在涉及關鍵字廣告的訴訟中，辯方以「誠實的同時使用」作為辯護理由。

關鍵字廣告

網上廣告已成為當今企業一項不可或缺的營銷策略。

Google AdWords是其中一種最廣為人知的網上廣告服務。它讓企業可根據其預先選擇和進行競價的搜索引擎字詞(亦稱為「關鍵字」)，向互聯網用戶展示簡短的宣傳廣告。

儘管人們基本上對關鍵字廣告並無反感，但令人關注的是，假如刊登廣告的人以其競爭對手的商標作為廣告關鍵字，並參與競價，而其目的，是為了使消費者在搜尋其競爭對手的商標時，它自己所刊登的廣告，將會出現在Google搜索結果的頁面上。

尤其需要關注的一點是，廣告客戶如果以第三方的商標作為關鍵字並進行競價，這將會導致一般的互聯網用戶誤以為，該廣告客戶所宣傳推廣的商品或服務，是來自商標擁有者。事實上，它的此舉有可能會被視作商標侵權。

關鍵字廣告中的商標侵權

香港的法庭曾經明確表示，將某一個商標用於Google Adword的廣告宣傳上，是一個需要嚴格審視的問題，原因是此舉會導致該商標的商品源辨識功能和投資功能蒙受不利的影響(參見Pandora A/S & Other v Glamulet International Ltd & Others HCA 2941/2015, unrep., dated 26 July 2016 at para. 117 per DHCJ Sakhrani一案)。

在Google v Louis Vuitton一案之後，Cosmetic Warriors v Amazon.co.uk Ltd [2014] FSR 31一案亦審視了亞馬遜(Amazon)運用Google AdWords的廣告服務而對某些關鍵字(包括“Lush”一字詞)進行競價時，是否對“Lush”這一商標造成了侵害(情形是當人們在互聯網上google “Lush”一字詞時，亞馬遜的廣告便會展示在Google搜索結果的頁面上)。該案的暫委法官John Baldwin QC裁定被告對Lush這商標造成了侵害，原因是當一般消費者在亞馬遜的網站上搜尋「露詩」(Lush)沐浴皂時，他們無法確定該廣告所提述的商品是否屬於Lush或是與Lush有關。

關鍵字廣告中的誠實的同時使用

在Victoria Plum Limited一案中，申索人和第一被告人皆為專門或主要在網上進行營銷的浴室設備零售商。自2001年以來，這兩家公司都一直以與對方近似的名稱營業。

在Google v Louis Vuitton一案之後，Cosmetic Warriors v Amazon.co.uk Ltd [2014] FSR 31一案亦審視了亞馬遜(Amazon)運用Google AdWords的廣告服務而對某些關鍵字(包括“Lush”一字詞)進行競價時，是否對“Lush”這一商標造成了侵害(情形是當人們在互聯網上google “Lush”一字詞時，亞馬遜的廣告便會展示在Google搜索結果的頁面上)。該案的暫委法官John Baldwin QC裁定被告對Lush這商標造成了侵害，原因是當一般消費者在亞馬遜的網站上搜尋「露詩」(Lush)沐浴皂時，他們無法確定該廣告所提述的商品是否屬於Lush或是與Lush有關。

在Victoria Plum Limited一案中，申索人和第一被告人皆為專門或主要在網上進行營銷的浴室設備零售商。自2001年以來，這兩家公司都一直以與對方近似的名稱營業。

在Google v Louis Vuitton一案之後，Cosmetic Warriors v Amazon.co.uk Ltd [2014] FSR 31一案亦審視了亞馬遜(Amazon)運用Google AdWords的廣告服務而對某些關鍵字(包括“Lush”一字詞)進行競價時，是否對“Lush”這一商標造成了侵害(情形是當人們在互聯網上google “Lush”一字詞時，亞馬遜的廣告便會展示在Google搜索結果的頁面上)。該案的暫委法官John Baldwin QC裁定被告對Lush這商標造成了侵害，原因是當一般消費者在亞馬遜的網站上搜尋「露詩」(Lush)沐浴皂時，他們無法確定該廣告所提述的商品是否屬於Lush或是與Lush有關。
申索人對第一被告人所作出的侵權指控，是基於第一被告人所采取的競價行動而導致出現的兩類搜索引擎廣告：

- 第一類是因著Google所提供的「關鍵字動態插入」服務，而將申索人的商標“Victoria Plumb”包含在內。如果廣告客戶已將相關的字詞購入，那麼該項服務便會將消費者此等搜尋字詞，自動上載至該廣告客戶所刊登的廣告中。


就第一類廣告而言，第一被告人承認該等廣告構成商標侵權，並接受法庭所作的裁決，及願意遵守該項禁止其進一步侵犯商標權的禁制令。

被投訴的標誌使用

在該案中，Carr J裁定被投訴的標誌，亦即第一被告人以其作為關鍵字而進行競價的標誌，事實上與Victoria Plum(b)這一標誌相同，又或二者之間並無實質區別。Carr J援引Google v Louis Vuitton一案中所作的考量時指出，倘若兩家企業長期而誠實地使用相同或十分近似的商標，那麼即使當中會出現令人混淆的情況，申索人亦許也並無以此加以容忍。

然而，法庭最後亦裁定，以“誠實的同時使用”情況作為辯護理由，並適用於第一被告人以申索人之商標(或其輕微變更)作為其辯護理由。

該等使用是否對該商標的商品來源識別功能造成不利影響

Carr J審視第一被告人被投訴的該等作為是否屬於“誠實”，而他最後的結論是：該等使用不能被認為是“誠實”，因為第一被告人用以攻擊申索人之商標(或其輕微變更)作為其辯護理由，原因是：

- 該項辯護理由只適用於被告人繼續使用其自身的商標或標誌的情況，而不適用於使用申請人商標的情況。
- 由於第一被告人從未使用Victoria Plum(b)這一標誌(以作為關鍵字而進行競價者除外)，因此它不能聲稱自己是“誠實的同時使用”該標誌，因為如果說該標誌同時成為了申索人與第一被告人所用於識別商品來源方面的獨家保證，這說法是不能成立的。

Carr J繼而審視第一被告人被投訴的該等作為是否屬於“誠實”，而他最後的結論是：該等使用不能被認為是“誠實”，因為第一被告人用以攻擊申索人之商標(或其輕微變更)作為其辯護理由，原因是：

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- 由於第一被告人從未使用Victoria Plum(b)這一標誌(以作為關鍵字而進行競價者除外)，因此它不能聲稱自己是“誠實的同時使用”該標誌，因為如果說該標誌同時成為了申索人與第一被告人所用於識別商品來源方面的獨家保證，這說法是不能成立的。

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- 由於第一被告人從未使用Victoria Plum(b)這一標誌(以作為關鍵字而進行競價者除外)，因此它不能聲稱自己是“誠實的同時使用”該標誌，因為如果說該標誌同時成為了申索人與第一被告人所用於識別商品來源方面的獨家保證，這說法是不能成立的。

另外，法庭在審視消費者在搜尋“Victoria Plum(b)”這一字詞時出現混淆的可能性，以及互聯網用戶在搜尋“Victorian Plumbing”這一商標時出現混淆的可能性，結果是：

- 消費者會錯誤認為申索人與第一被告人有關聯，而且可能會誤以為申索人就是第一被告人。
- 在這情況下，消費者有可能會因此蒙受損害。

上述裁決是至關重要的，因為它是英國首宗就關鍵字廣告之爭議而提起假冒訴訟並獲得勝訴的案件。

結論

毫無疑問，Carr J對該案所作的裁決是具深具意義，因為他闡述了在關鍵字廣告的爭議方面，如何以“誠實的同時使用”作為辯護理由。

該案的判決有一點相當值得我們關注的是，如果有兩家企業長期共存，並同時以大家相同或相近的名稱營運，那麼不可忽略的一點，就是這兩家企業必須盡量維持現狀，而不應進行任何令消費者更感混淆，並且損害彼此商譽的活動。

更重要的，就是企業在運用關鍵字廣告時，應確保其廣告內容清晰明確，以免一般互聯網用戶在識別該等商品或服務的來源方面感到困惑。
CIVIL PROCEDURE
CFA Confirms Relief in Aid of Overseas Proceedings

In an important judgment in Compania Sud Americana De Vapores S.A. v Hin-Pro Logistics International Ltd [2016] HKEC 2463, FACV 1/2016 (to be reported), the CFA has confirmed that the grant of interim relief by a Hong Kong court to assist with the enforcement of an unimpeachable foreign judgment in Hong Kong does not breach judicial comity.

In so doing, the CFA allowed the plaintiff’s appeal against a judgment of the Court of Appeal. In the CFA’s opinion the Court of Appeal had mistakenly treated the plaintiff’s application for interim relief as being equivalent to an application to enforce an anti-suit injunction (granted by the English courts) against the defendant in Hong Kong, with respect to court proceedings commenced in Mainland China in breach of an English exclusive jurisdiction clause. The Court of Appeal appears to have mistakenly considered that the plaintiff’s application required the Hong Kong courts to show a preference between the English and Mainland courts and, therefore, it (in effect) declined to get involved on the basis that to do so would involve a breach of comity.

The CFA’s judgment is also important in the development of the Hong Kong courts’ ancillary jurisdiction pursuant to s. 21M of the Ordinance. That jurisdiction has existed since April 2009 (as part of the civil justice reforms in Hong Kong). The CFA’s judgment is, of course, declaratory.

Lawyers in Hong Kong involved in the business of “cross-border” disputes (particularly, as between common law jurisdictions) should take note. The CFA’s judgment enhances the attraction of Hong Kong as a forum for cross-border disputes.

- Steven Wise, Partner, Smyth & Co in association with RPC

The CFA’s judgment is of significant practical value in demonstrating (among other things):

• the general principles that underpin the grant of interim (and, in particular, Mareva) relief pursuant to s. 21M of the Ordinance and the exercise of the court’s discretion with respect to this ancillary jurisdiction; and

• that concerns about judicial comity are, in principle, no reason to deny a judgment of a foreign court, that is otherwise unobjectionable, protection by way of interim relief pursuant to s. 21M of the High Court Ordinance (Cap. 4).

Interim relief in the absence of substantive proceedings

* "Interim relief in the absence of substantive proceedings" (colloquially known as "injunctions in aid of overseas court proceedings").
CRIMINAL
Silence is Golden

The right to remain silent is a powerful weapon in the hands of criminal defence lawyers in Hong Kong as affirmed in the recent case of HKSAR v ATA ASAF [2016] HKCFA 31. Here, the Court of Final Appeal (“CFA”) overturned a defendant’s conviction for trafficking dangerous drugs on the grounds that the prejudicial effect of inadmissible evidence that the jury heard during trial had not been remedied by the trial judge’s standard direction.

The Facts
The appellant was searched by police who observed a suspected theft on the streets of Jordan and was found to have stolen goods and dangerous drugs. On arrest and after being cautioned for possession of dangerous drugs, he exercised his right to silence. He also remained silent while being interviewed at the police station. He was subsequently charged with one count of theft (Count 1) and one count of trafficking in dangerous drugs (Count 2). The appellant pleaded guilty to Count 1 for theft and not guilty to Count 2 for trafficking. Instead, he plead guilty to possession, which was not accepted by the prosecution.

During cross-examination at trial, prosecuting counsel sought to undermine the appellant’s credibility by showing he did not have the equipment to consume the drugs in his house as he had claimed, and thus must have been trafficking them, rather than being merely in possession. The prosecution also sought to use the appellant’s failure to indicate where the equipment was located in his house when being questioned by police officers to establish that the appellant was dishonest. However, the defendant was exercising his right to silence. The appellant was convicted on both counts, receiving a total sentence of 7 years’ imprisonment.

The appellant appealed his conviction on Count 2 on the grounds that this was a case of possession, not trafficking. While the Court of Appeal (“CoA”) unanimously rejected this ground of appeal, it questioned during argumentation whether the appellant’s cross-examination at trial constituted an error of law or an irregularity in the trial and, if so, whether it was material, a point eventually taken by counsel.

It was common ground in the CoA that the evidence was inadmissible and infringed the appellant’s right to silence. However, after concluding that it did not render the conviction unsafe, the CoA dismissed this ground of appeal by a majority. The CoA allowed an appeal against sentencing and reduced the sentence to 6 years and 9 months. Subsequently, the Appeal Committee granted the appellant’s appeal to the CFA on the basis that it was reasonably arguable there had been substantial and grave injustice in the circumstances after the jury had heard the inadmissible evidence.

CFA Decision
The CFA agreed that the cross-examination evidence was inadmissible and had infringed the appellant’s right to silence, citing HKSAR v Lee Fuk Hing (2004) 7 HKCFAR 600. However, it disagreed with the CoA’s assessment of the impact of the trial judge’s standard direction to the jury. It found that by failing to tell the jury to wholly ignore the impermissible evidence or to specifically identify the portion of the prosecution’s cross-examination that was impermissible in the directions, the jury may have been confused as to whether this evidence was admissible. The CFA found that the trial judge should have given a “clear, unequivocal legal direction that the jury must ignore [the inadmissible evidence], were not permitted to rely on it and [provide] an explanation for why this legal direction was being given.”

It also noted that it was immaterial that the defence counsel did not raise the matter of the inadmissible evidence with the trial judge at any stage, because in the circumstances the counsel would have not been aware of the seriously prejudicial effect of the evidence at the time. Accordingly, the court quashed the conviction for trafficking and replaced it with a conviction for possession.

Take-Aways
It is important for solicitors to raise objections to impermissible lines of questioning, infringing their clients’ right to silence during cross-examination by the prosecution as well as ensure a judge gives proper directions to the jury. It is important for defense counsel to make those objections and be vigilant in doing so because the CoA may not take the lead in identifying these types of irregularities. Trial judges should expressly direct the jury as to what line of questioning is inadmissible and to wholly disregard that evidence.

- David A. Southern, Barrister-at-law and Solicitor (non-practising)
沉默是金

在最近的HKSAR v ATA ASAF [2016] HKCFA 31一案所重申，保持緘默的權利是香港刑事辯護律師手中的厲害武器。案中被告人被裁定「販運危險藥物」罪名成立，其後獲終審法院（「終院」）撤銷定罪，理由是陪審團有聆聽過不得被接納的證據，上訴人可合理地辯證當時存在實質及嚴重的不公平情況。

終審法院的裁決

終院援引HKSAR v Lee Fuk Hing (2004) 7 HKCFAR 600一案，贊同控方大律師盤問所得的是不得被接納的證據，這些證據侵犯上訴人的緘默權。然而，終院在評估目標證據所評估的影響。終院裁斷，原審法官沒有指示陪審團理會那些不可被接納的證據，也沒有在指示中明確指出控方的盤問不可被接納的部分，由能令陪審團理會這項證據是否可被接納。終院裁斷，原審法官本應「清晰、毫不含糊地指示陪審團，切勿理會不得被法庭接納的證據，也不可以此為依據，並且應向陪審團解釋為何給予這項法律指示。」

終院亦提到，辯方大律師從來沒有向原審法官提出證據不得被法庭接納，不過這不打緊，因為大律師當時不會一早知道這項證據有嚴重的損害效果。據此，法庭撤銷上訴人「販運危險藥物」罪的定罪，取而代之的是「管有危險藥物」罪的定罪。

粹言

除了確保法官給予陪審團恰當的指示外，凡控方在盤問期間循不為法律所容許的方向提出問題，侵犯當事人的緘默權，該名當事人的事務律師務必要提出反對。上訴庭不一定帶頭指出這些不當之處，辯方大律師必須打醒精神，主動提出反對。原審法官應當明確指出陪審團何時不得被接納的問題方向，並清楚指示他們切勿理會有關證據。

FAMILY LAW

A Look at the Recent Court of Appeal case of CWG v MH in the Context of Prest v Petrodel

In 2013, the case of Prest v Petrodel [2013] UKSC 34 left the family law fraternity debating and divided. At issue was whether the family courts can pierce the corporate veil when assets are owned beneficially by a company, but controlled by one of the spouses. In this case, the husband had effectively purchased a number of properties in England which he had put into the names of offshore companies.

The Court of Appeal held that the family court should not allow the properties to be taken into account in the division of assets because the companies were the beneficial owners of the properties and upheld the company law principle that there is nothing special about family law and the courts cannot pierce the corporate veil. A company cannot be deemed to be the alter ego of a party to the marriage, even if that party clearly operated the company, unless there had been some impropriety. However, the Supreme Court found that based on the facts, it was possible to infer a resulting trust in favour of the husband as he had provided all the funds for the companies to purchase the properties and made orders in favour of the wife.

As the legislation is so similar, Hong Kong courts often look for guidance in England. Supreme Court decisions thus have considerable influence here. For instance, in June 2016, the Hong Kong Court of Appeal in CWG v MH (Interest in off-shore companies) CACV 80-83/2013 considered a case involving the disputed ownership of shares in a number of offshore companies. Here, the husband alleged that he had no beneficial interest in the legal title to shares held in the companies, which, again, held assets which were located onshore but held in offshore companies.

In CWG v MH, some of the offshore provision was made prior to the handover of Hong Kong as asset protection in 1997.
As with *Prest*, the court looked specifically at whether the husband had been able to use, had control over, and had an interest in the Hong Kong companies, the shares of which were placed offshore, pre allotment and post allotment. The court found that he had access to the underlying assets of their subsidiaries and his personal connection with one of the companies in particular was manifest – the company held the property which housed his children rent free, the office where he kept his collection of classic cars and provided all the family expenses including his mother-in-law's credit card expenses. The Court of Appeal agreed with the trial judge that these underlying assets could be taken into account in the division of the marital assets and looked at the reality of the situation from past conduct. The disclosure by the husband was found to be incomplete and adverse inferences were made against him.

This case can also be seen as a reminder that the court can take into account a party's access to wealth and assets whether acquired through gifts if enjoyed habitually as an established way of life. Here, the evidence showed that the husband not only received an allowance from his mother, but also was actively involved in his mother's business affairs.

The issue of beneficial ownership often comes before the courts in Hong Kong for cases where assets are held on behalf of other family members or through corporate or trust structures. It is important to bear in mind the principles in *Prest* when considering the complexities of offshore corporate investments in divorce settlements.

- **Philippa Hewitt**, Professional Support Lawyer, and **Anisha Ramanathan**, Associate, Withers

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**CAC Issues Live Streaming Provisions**

On 4 November 2016, the Cyberspace Administration of China (“CAC”) issued the Administrative Provisions on Internet Live-streaming Services 2016, which took effect 1 December 2016.

The provisions apply to providers and users of internet services in China involving the continuous public release of real time information through videos, while the companies in particular was manifest – the company held the property which housed his children rent free, the office where he kept his collection of classic cars and provided all the family expenses including his mother-in-law's credit card expenses. The Court of Appeal agreed with the trial judge that these underlying assets could be taken into account in the division of the marital assets and looked at the reality of the situation from past conduct. The disclosure by the husband was found to be incomplete and adverse inferences were made against him.

This case can also be seen as a reminder that the court can take into account a party's access to wealth and assets whether acquired through gifts if enjoyed habitually as an established way of life. Here, the evidence showed that the husband not only received an allowance from his mother, but also was actively involved in his mother's business affairs.

The issue of beneficial ownership often comes before the courts in Hong Kong for cases where assets are held on behalf of other family members or through corporate or trust structures. It is important to bear in mind the principles in *Prest* when considering the complexities of offshore corporate investments in divorce settlements.

- **Philippa Hewitt**, Professional Support Lawyer, and **Anisha Ramanathan**, Associate, Withers
audios, images, text and other formats. The provisions require internet live streaming service providers to:

- Have sound content verification, information security, on-duty inspection, emergency response, technical support and related systems.
- Possess the ability to immediately cut off live streaming services, and conform their related technical solutions to national standards.
- Refrain, along with users, from producing, duplicating and providing prohibited content and engaging in other activities prohibited by law.
- Authenticate the identity of users and refrain from disclosing, tampering with, destroying or illegally providing others with such information.
- Verify the identity of content releasers and submit this information to the local office of the CAC.
- Enter into service agreements which require users to follow the law.
- Take measures against users that violate the law, delete illegal content, maintain records of illegal conduct, and report illegal conduct to the local office of the CAC.
- Maintain and enforce blacklists of users who violate the law, and file black lists with the local CAC office.
- Archive users’ published content records and information logs for 60 days.

The provisions also require internet live streaming content publishers to ensure that the source of news information is traceable and that the content is truthful, accurate, objective, impartial and complete.

**Market Reaction**

*Paul McKenzie, Partner, Morrison & Foerster, Beijing and Shanghai*

“The CAC once again demonstrates its responsiveness to new types of internet service with its issuance of the new live streaming provisions. They need to be read together with regulations applicable to online news service providers and providers of online audio-visual programmes. But they impose additional compliance obligations on operators of live streaming services in order to seek to control what is otherwise a free-wheeling online medium.”

**Action Items**

Though the provisions do not expressly prohibit foreign investment in the live streaming sector (where the business is a for-profit internet content service), the regulations governing providers of related services such as online news information and audio-visual services do expressly prohibit foreign investment. Counsel for domestic live streaming services should take immediate steps to put in place mechanisms to ensure compliance with the provisions, including required technical measures as well as changes to user agreements (if applicable).

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**法律顧問備忘錄**

國家互聯網信息辦公室發布直播服務的規定

2016年11月4日，國家互聯網信息辦公室發布《互聯網直播服務管理規定》（「《規定》」），自2016年12月1日起施行。

《規定》適用於在中國透過視頻、音頻、影像、文字等形式向公眾持續發布實時信息的互聯網服務提供者和用戶。

《規定》要求互聯網直播服務提供者符合下列條件：
- 設立健全的信息審核、信息安全管理、值班巡查、應急處置技術保障等制度。
- 具備即時阻斷互聯網直播的技術能力，技術方案符合國家相關標準。
- 不得製作、複製、發布、傳播法律法規禁止的內容，不得參與其他被法律法規禁止的活動(使用者亦不得如此)。
- 稱審核信息內容發布者的身份，向所在地的互聯網信息辦公室提交審核信息。
- 簽訂服務協議，要求使用者遵守法律法規。
- 採取措施處罰違法違規的使用者、消除違法違規的信息內容、保存記錄違法違規行為，並向所在地互聯網信息辦公室報告違法違規行為。
- 建立黑名單管理制度，把違法違規的使用者納入黑名單，並向所在地互聯網信息辦公室提交黑名單存檔。
- 記錄使用者發佈內容和日誌信息，保存60日。

《規定》亦要求，互聯網直播內容發佈者確保新聞信息來源可追溯，信息內容真實準確，客觀公正並且完整無缺。

市場回應

麥保羅合夥人，美富律師事務所北京及上海辦事處

「互聯網信息辦公室發布新的直播規定，針對互聯網新型服務作出規範，再次證明當局觸覺敏銳，因時制宜。新規定必須連同適用於網絡新聞報道服務提供者及網絡視聽節目提供者的規定一併理解。新規定對直播服務運營者施加額外的遵規義務，為的是想控制原本不受約束的網絡傳媒。」

跟進事項

雖然新規定沒有明文禁止外商投資直播行業(直播行業透過互聯網提供信息內容，是牟利服務)，但是對網絡新聞信息和視聽服務等相關服務的提供者作出監管，的確明擺着是禁止外商投資。國內專長直播服務的法律顧問應即時採取措施，設立機制確保直播服務遵守規定，包括推出規定的技術措施以及修訂使用者協議(如果適用的話)。

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* Practical Law China
GC AGENDA

China Passes Network Security Law

On 7 November 2016, the National People’s Congress (“NPC”) Standing Committee enacted the Network Security Law of the People’s Republic of China 2016, which will take effect 1 June 2017.

The law was first circulated in draft form on 6 July 2015. A revised draft was released on 5 July 2016.

The final version of the law includes some changes, but the core principles in the drafts remain:

• **Network operators.** This is broadly defined as “network owners, managers and network service providers” and could include any person in China from an internet service provider to the owner of a commercial website operated through a domestic network. Network operators are subject to a series of obligations designed to protect networks from disturbance, damage or unauthorised access and prevent network data from being divulged, stolen or tampered with.

• **Critical information infrastructure (“CII”).** These include public communication and information services, energy, transportation, water conservation, finance, public services, e-government and other important industries and sectors that could threaten national security, people’s livelihood and the public interest in case of damage, loss of functionality or data leakage. CII operators are subject to the obligations imposed on network operators and to a set of additional obligations, including data localisation requirements, national security review for procurement and annual safety and risk assessment and reporting.

• **Critical network equipment and dedicated network security products.** These must conform to relevant national standards and undergo safety certification or safety testing by qualified institutions before sale or use.

• **Personal information.** The law imposes obligations in relation to personal information gathered by network operators. This refers to information that by itself or in combination with other information can be used to identify an individual, including name, date of birth, ID card number, biological identification information, address, and telephone number.

**Market Reaction**

*Paul McKenzie, Partner, Morrison & Foerster, Beijing and Shanghai*

“The Network Security Law has potentially far-reaching consequences for CII operators as well as suppliers of network equipment and technology. But the devil is in the details, and, in relation to a number of the more key provisions of the law, the legislators have pushed key decisions to the State Council rather than making decisions themselves. Leaving the State Council to determine the precise meaning of CII is just one example.”

**Action Items**

The meaning and actual impact of many of these broad concepts and terms will be fleshed out in implementing rules to be formulated by the State Council, presumably before the law takes effect next June. In the meantime, General Counsel for companies that own, operate or administer a computer information network or website in China should closely examine the data privacy requirements to begin assessing the potential impact on its business, network infrastructure and policies on data collection and storage. General Counsel for companies that could be regarded as CII should also study the additional data localisation and other requirements as part of the impact assessment. Counsel for companies that manufacture and distribute network equipment and network security products should work with government relations colleagues in an effort to have these products included in the pending catalogue of qualified products.

- Practical Law China

法律顧問備忘錄

中國通過《網絡安全法》

2016年11月7日，全國人民代表大會（「全國人大」）常務委員會通過《中華人民共和國網絡安全法》（「《網絡安全法》」），自2017年6月1日起施行。

《網絡安全法》最初以草案形式在2015年7月6日公布。草案經修訂後於2016年7月5日發布。

《網絡安全法》最終版本包含一些修訂，但草案的核心原則維持不變：

• 網絡運營者。這個用語廣泛定義為「網絡的所有者、管理者和網絡服務提供者」，任何在中國的人士，從互聯網服務提供者到透過內地網絡運營的商業網站擁有人，都可以包括在內。網絡運營者必須履行一系列特定的義務，以保護網絡免受干擾、破壞

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可能對公司業務、網絡基礎設施，以及對數據收集和存儲政策帶來的影響。法律顧問，凡為可以被視為關鍵信息基礎設施的公司工作的，亦需要研究在中國境內存儲數據等其他額外規定，以作為影響評估工作的一部分。法律顧問，凡為生產、分銷網絡設備和網絡安全產品的公司工作的，都應當與負責政府關係的同事合作，努力把這些產品納入尚未決定的合資格產品目錄。

- Practical Law China

OFFSHORE

Looking Back at one of the Most Significant Legislative Changes this Year in the Cayman Islands

One of the most significant pieces of legislation introduced in the Cayman Islands this year was the Limited Liability Companies Law, 2016 which was enacted in June 2016 and commenced on 8 July 2016. In Asia, the limited liability company (“LLC”) hasn’t been flying off the shelves just yet but gradually we are seeing more and more interest. Practitioners would be well placed to understand some of the advantages of the LLC so as to be able to present this option to clients when appropriate to do so.

In a nutshell, an LLC is a hybrid entity incorporating characteristics of a partnership and a company. Unlike a partnership, it has separate legal personality. The members of an LLC, like the shareholders of an exempted company, will have limited liability and will not be required to make any contribution to the LLC exceeding the amount such member has undertaken to contribute pursuant to the LLC Agreement constituting the LLC. It is similar, but not the same, as its Delaware counterpart. Given its hybrid nature it has far greater flexibility than a company, particularly in two key areas: in respect of its management and organisation and in the manner in which it can allocate profits and losses.

Unlike an exempted company, an LLC will not have a share capital. Instead, members will be issued interests or classes of interests. This will allow for flexible internal accounting and record keeping whereby an LLC member may have a capital account and make capital contributions in accordance with the LLC Agreement (in a manner similar to a partnership).

The members of an LLC may agree amongst themselves how the profits and losses of the LLC are to be allocated and how and when distributions are to be made, which may be on a non-pro rata basis. This might be useful where, for example, the LLC Agreement provides for tax distributions which would be on a non-pro rata basis given that distributions are made at different times to meet tax liabilities of the members. This is difficult to mirror in a corporate structure where distributions on shares of the same class would need to be made pro rata.

The agreement by which an LLC is governed, the “LLC Agreement”, can provide for classes or groups of managers with differing rights, powers and duties and managers may be permitted to act in...
the best interests of a particular member. Therefore the LLC can be extremely useful for joint venture arrangements and might prove a favourable choice when establishing the manager or general partner of a fund.

Whether a Cayman LLC will be tax transparent or tax opaque will be a matter for the relevant onshore jurisdiction. There may be a degree of flexibility under the onshore jurisdiction’s tax law to treat a Cayman LLC as either depending on the drafting of the LLC Agreement. It will be necessary to check with relevant tax advisors that the desired tax treatment will apply.

The introduction of the law demonstrates the continued ability of the Cayman Islands to be flexible and responsive to market needs and should reinforce the Cayman Islands’ position as a domicile of choice for offshore investment funds and structuring vehicles.

- Kate Hodson, Partner, Ogier

PROFESSION

**Inter Partes Correspondence and the Courts**

Many local practitioners who conduct litigation on behalf of clients involving litigants in person will probably at some time have experienced similar frustrations. In particular, a tendency on the part of some litigants in person to push time limits, make applications (or submissions) by letter to the court or the judiciary administration and generally to test the parameters of good case management practice.

This phenomenon is, of course, not unique to litigants in person or to Hong Kong.

Therefore, the Court of Appeal judgment in *Axa China Region Insurance Co. Ltd v Leong Fong Cheng* [2016] HKEC 2327, CACV 113/2016, is to be welcomed. The judgment (among other things) seeks to correct a tendency on the part of the courts in the past to overindulge litigants in person by (for example) entertaining informal requests or court applications by correspondence. As the judgment makes clear, the proper way to make a court application is by a summons supported (where appropriate) by an affidavit or affirmation. This procedural discipline and good practice is expected of all parties, including litigants in person.

Also welcome in the judgment is a timely and firm reminder that *inter partes* correspondence should not (in the normal course of events) be copied to the court. Where such correspondence is relevant to a court application it should form part of an exhibit to an affidavit or affirmation.

While the judgment of the Court of Appeal is primarily aimed at litigants in person it is also a reminder of the convention that a practitioner should not write to a judge. Where parties and their legal representatives need to communicate by correspondence with the court, in respect of administrative or clerical matters involving an *inter partes* court hearing, the convention is to write to the Registrar or the judge’s court clerk (as appropriate) while “copying-in” the other side.

The Court of Appeal judgment was circulated to Law Society members under cover of Circular 16-1067 (PA), dated 5 December 2016. It is understood that the judgment has also been brought to the attention of all Masters of the High Court and the High Court Registry.

There is no reason why the sentiments expressed in the judgment should not apply to parties in the District Court, even if there has been a higher incidence of litigants in person there for a long time.

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Finally, it is to be hoped that court clerks will also play their part. For example, as another senior practitioner wryly observed, some court clerks in the past may have unwittingly encouraged *inter partes* correspondence by writing too often by fax to the parties’ legal representatives only to be surprised when they write back.

- David Smyth, Partner, Smyth & Co in association with RPC

* For example, see the judgment of English Court of Appeal in Agarwala v Agarwala ([2016] EWCA Civ 1252, 8 December 2016 and The Law Society Gazette (England & Wales), 9 December 2016 (“Judge calls for LiP powers after court ‘bombarded’ with emails”). The problem with emails for some litigants is that they are too easy to send.

SETTLEMENT

FDR and Confidentiality: “Nothing to Fear?”

As noted in previous editions of “Industry Insights” (eg, August and September 2016), disputes regarding without prejudice communications are not uncommon in Hong Kong – a jurisdiction that has traditionally taken a commendably expansive view of the “privilege” (in line with common law privileges generally), while accepting that the protection is not without limits. The strong public policy reasons that underpin the protection of without prejudice privilege should also apply to communications made in good faith during or as part of a court or tribunal facilitated dispute resolution process. Such communications are not (in the main) covered by the protection given to “mediation communications” in the Mediation Ordinance (Cap. 620).

In the recent case of A8 v MAW [2016] HKEC 2597, CACV 147/2016, an issue arose as to whether a Family Court judge (and, in this case, an experienced specialist at that) who had presided over a financial dispute resolution (“FDR”) hearing (pursuant to Practice Direction 15.11**) was entitled to deal with a reserved costs order arising out of an interlocutory application that she had heard before the FDR hearing.

While the Practice Direction makes it clear (at para. 8(b)) that a judge conducting a FDR hearing “shall have no further involvement with the Application, other than to conduct any further FDR hearing”, the judge in this case still saw fit to propose that she deal with the reserved costs after the unsuccessful FDR hearing.

Given the important point of principle involved, the judge granted the husband permission to appeal. In its judgment the Court of Appeal emphatically decided that, in addition to para. 8(b) of the Practice Direction**, the protection of without prejudice privilege and confidentiality prevented a judge who presided over a FDR hearing from having further involvement with any contested application in the proceedings, including costs disputes. The Court of Appeal’s reasoning applies equally if the judge is unable to recollect what had passed during the FDR hearing.

While one can see some merit in a judge in such circumstances presiding over an issue of reserved costs after a FDR hearing, the judgment of the Court of Appeal is underpinned by good policy reasons that go to the heart of the wide protection of the without prejudice rule (which is more a rule of evidence).
The Court of Appeal’s reasoning also has a wider general application to contested interlocutory applications and, in this respect, is not fact dependent. For example, a party who asserts without prejudice protection should not have to demonstrate how the admission in evidence of a without prejudice statement might be detrimental to his or her interests.

As we enter a new year, common law privileges are in a good place in Hong Kong and the hope (and resolution) is that things stay this way.

- Warren Ganesh, Senior Consultant, Smyth & Co in association with RPC

* Also see Schedule 1 of the Ordinance.
** “Financial Dispute Resolution Pilot Scheme”.

和解

排解財務糾紛和保密：「沒有甚麼要憂心的事？」

正如在過往幾期「業界透視」（例如2016年8月和9月）提到，關於無損權利的通訊特權在香港並不罕見；香港司法管轄區向來寬鬆看待「保密權」（整體上與普通法的保密權一致），不過在這值得讚賞的態度背後，也承認「保密權」不是無止境地受到保護。

公共政策理由是保護無損權利特權的基礎，有力的公共政策理由亦應適用於在法庭或審裁處促成的排解糾紛程序進行期間（或程序一部分）真誠進行的通訊。這種通訊（基本上）不在《調解條例》（第620章）的「調解通訊」所受保護的保護範圍內。

在最近的AB v MAW [2016] HKEC 2597（CACV 147/2016）產生的爭議點是（根據《實務指示》第8(b)段），主持排解財務糾紛聆訊的法官「除了進行任何進一步的排解財務糾紛聆訊外，不得再牽涉在該申請內」。但這宗案的法官認為，在排解財務糾紛失敗之後提出由她處理保留訟費的要求是合宜的。由於牽涉到重要的原則性論點，法官准許案中之太夫提出上訴。

上訴法庭在判決中特別強調，除《實務指示》第8(b)段之外，無損權利特權的保護和資料保密同樣禁止主持排解財務糾紛聆訊的法官進一步牽涉任何在法律程序中受爭議的申請內，包括訟費爭議。上訴法庭的推論同等適用，即使法官記不起在排解財務糾紛聆訊期間發生過的事。

人人都看得出，排解財務糾紛聆訊進行後，由主持聆訊的法官處理保留訟費的爭議是有些好處的，不過，上訴法庭有充份的政策理由鞏固判決的基礎，而政策理由正是無損權利規則（即是資料規則）會更為確切地得到廣泛保護的核心理由。

上訴法庭的推論可以更廣泛、更普遍地應用到受爭議的非正審申請，但應用與否並不取決於事實。例如，如果以無損權利的聲明作為證據，主張無損權利保護的一方不應該要證明，他或她在聲明中承認的事怎樣有可能損及其利益。

普通法保密權在香港受到很好的保護，踏入新的一年，一切維持不變是一個希望（也是解決方法）。

- 莊偉倫資深顧問，Smyth & Co與RPC聯營

* 見《調解條例》附表1。
** 「解決財務糾紛試驗計劃」。

Feel free to write in to us with more short contributions on latest industry developments and trends. Simply contact the editor at: cynthia.claytor@thomsonreuters.com

本刊歡迎各位提交短篇文章，廣大讀者分享業界的最新發展和動態，請與本刊編輯聯絡。

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BANKRUPTCY

Wan Po Jun Mary Pauline v Au Yeung Yee Man
[2016] HKEC 2454
Court of Appeal
Civil Appeal No. 141 of 2016
Lam V-P, Yuen and Kwan JJA
11 November 2016

Proceedings by bankrupt – claim by bankrupt to right to occupy property base on constructive trust – whether right personal or whether vested in trustees under s. 58(1)

X, the deceased, bequeathed his estate including a flat (the “Property”) to his children, including D, his personal representative. P was X’s cohabitee whose action challenging X’s will was unsuccessful. When P failed to pay D’s costs in that action, she was made bankrupt in April 2011. However, before her bankruptcy, P commenced the present action claiming a half share of X’s estate, including an entitlement to occupy the Property. On P’s bankruptcy, her proprietary interests vested in the trustees in bankruptcy (“Ts”) and Ts declined to continue the claim. P appealed.

Held, dismissing the appeal, that:

• The right of occupation relied on by P was a right immediately referable to her interest as the beneficial owner of the Property. P’s claim was a present chose in action and, as such, vested in Ts under s. 58(1) of the Ordinance.

• The issue was whether P had a defence, not whether she had locus standi. The right to defend could not be segregated from the beneficial interest in the Property and separately assigned by Ts to P. Here, as P did not plead any right to possession other than beneficial ownership arising from a constructive trust, the right to possession was merely incidental to the property right. There was no question of any personal right being engaged.

• Further, given Ts’ refusal to proceed with P’s claim for beneficial ownership based on a constructive trust, it was not inequitable to disallow her achieving by the backdoor what she had failed to achieve in bankruptcy proceedings. P was bound by Ts’ view that her claim was unmeritorious. P had no right to assert the claim herself and had failed to advance any viable claim independent of Ts’ legal title to resist D’s claim for possession in the counterclaim.

破產

Wan Po Jun Mary Pauline v Au Yeung Yee Man
[2016] HKEC 2454
上訴法庭
民事上訴案件2016年第141號
上訴法庭副庭長林文瀚
上訴法庭法官袁家寧
上訴法庭法官關淑馨
2016年11月11日

破產人提起法律程序 – 破產人以法律構定信託為依據申索物業佔用權 – 是個人權利還是第58(1)條下歸屬受託人的權利

被告人已過身的父親將包括一個單位(「該物業」)在內的遺產遺贈給子女，包括被告人。被告人是父親的遺產代理人。原告訴被告人父親的同居伴侶，提出訴訟質疑被告人父親的遺囑但敗訴。原告訴被告人未能支付被告人在該訴訟產生的訟費，2011年4月被宣布破產。不過，原告訴人在破產前展開了這宗訴訟，申索被告人父親的一半遺產，包括佔用該物業的權利。由於原告訴人已經破產，她所有的權利益歸屬破產受託人(「受託人」)，受託人拒絕繼續申索。被告人事後向法庭取得向原告訴人反申索該物業管有權的許可，原告訴人事後遞交答覆及反申索抗辯書，以雙方共同意向而產生的法律構定信託為基礎，聲稱享有被告人父親包括該物業在內的資產的實益
In these consolidated actions tried in the District Court, the claim brought by P (the “Agent”) against each of two defendants (the “Vendors”) was for agreed damages of HK$60,000 pursuant to a provisional sale and purchase agreement between the Agent as estate agent procuring the sale of a property and the Vendor concerned as vendor of the property. Each Vendor (a) defended the claim against it on the ground of fraudulent misrepresentation by the Agent as to the identity of the purchaser; and (b) counterclaimed for damages for misrepresentation, breach of agreement and breach of statutory duty under the Code of Ethics promulgated by the Estate Agents Authority. L was the sole shareholder and director of each Vendor. L’s daughter, C, was responsible for supplying information to the Agent’s employee. Both properties were in the same building. Together they amounted to 40 percent of the building. The purchaser already owned 40 percent of the building. If the sales were completed, the purchaser would own 80 percent of the building and be in a position to apply for the compulsory sale of the building for the purpose of redevelopment. Each Vendor rescinded the agreement to which it was party and paid the purchaser HK$150,000 by way of liquidated damages. The Trial Judge held that (a) the Agent had falsely represented to each Vendor the identity of the purchaser, but that (b) each Vendor had known the purchaser’s identity before entering into its provisional sale and purchase agreement (signed by L on its behalf) so that neither Vendor had acted in reliance on such misrepresentation in entering into such agreement. He therefore entered judgment for the Agent against each Vendor and dismissed each Vendor’s counterclaim. Each Vendor appealed.

Held, allowing the appeals, setting aside the judgment, dismissing the Agent’s claims and entering judgment for each Vendor for HK$150,000 on its claim against the Agent, that:

- One of the situations in which the Court of Appeal would be justified in feeling satisfied that a trial judge’s findings of primary fact were plainly wrong and would therefore be justified in interfering with such findings was where the trial judge had misdirected himself as to the effect of certain evidence which he understood to support his conclusions. That was the situation here with regard to the Trial Judge’s finding that each Vendor had known the purchaser’s identity before entering into the provisional sale and purchase agreement to which it was a party so that neither Vendor had acted in reliance on such evidence which he understood to support his conclusions. That was the situation here with regard to the Trial Judge’s finding that each Vendor had known the purchaser’s identity before entering into the provisional sale and purchase agreement to which it was a party so that neither Vendor had acted in reliance on such evidence which he understood to support his conclusions. That was the situation here with regard to the Trial Judge’s finding that each Vendor had known the purchaser’s identity before entering into the provisional sale and purchase agreement to which it was a party so that neither Vendor had acted in reliance on such evidence which he understood to support his conclusions.

In these consolidated actions tried in the District Court, the claim brought by P (the “Agent”) against each of two defendants (the “Vendors”) was for agreed damages of HK$60,000 pursuant to a provisional sale and purchase agreement between the Agent as estate agent procuring the sale of a property and the Vendor concerned as vendor of the property. Each Vendor (a) defended the claim against it on the ground of fraudulent misrepresentation by the Agent as to the identity of the purchaser; and (b) counterclaimed for damages for misrepresentation, breach of agreement and breach of statutory duty under the Code of Ethics promulgated by the Estate Agents Authority. L was the sole shareholder and director of each Vendor. L’s daughter, C, was responsible for supplying information to the Agent’s employee. Both properties were in the
unsustainable, it was unnecessary to
determine whether the Vendors were
right in their argument that even if
C had such knowledge, the same
could not be imputed to either Vendor
because L was the sole director
and shareholder of each Vendor.
(The Vendors based this argument
of theirs on Wells v Smith [1914] 3
KB 722 at p. 725 which the Agent
sought to distinguish by reference to
Strover v Harrington [1988] Ch 390
at pp. 407–409 on the basis that the
Vendors had authorised C to receive
all the relevant information).

民事訴訟程序

Greatland Property Consultants Ltd v
Charis Patria Ltd [2016] HKEC 2518
上訴法庭
民事上訴案件2015年第220號
上訴法庭副庭長林文瀚
上訴法庭法官關淑馨
上訴法庭法官朱芬齡
2016年11月18日

上訴 — 事實裁斷 — 原審法官就某
項可以支持他結論的證據的效果
誤導了自己 — 上訴法庭基於相信
法官對主要事實的裁斷明顯有錯
而有理由由干預裁斷 — 不用裁
斷關於認定知悉的論點

這是一宗合併訴訟，由兩宗在區域法院審
訊的合併而成。原告人(「代理人」)
以地產代理人身份促成兩宗物業買賣，兩
名被告是物業賣方(「兩名賣方」)。代
理人以臨時買賣協議為依據，分別向兩名
賣方申索損害賠償60,000港元。

這是一宗合併訴訟，由兩宗物業買賣，兩
名被告是物業賣方(「兩名賣方」)。代
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賣方申索損害賠償60,000港元。

這是一宗合併訴訟，由兩宗物業買賣，兩
名被告是物業賣方(「兩名賣方」)。代
理人以臨時買賣協議為依據，分別向兩名
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賣方申索損害賠償60,000港元。
January 2017 • CASES IN BRIEF 案例撮要

Held, granting the validation orders, but declining to order costs on an indemnity basis, that:

• Generally, the costs order on an application for a validation order should reflect the possibility that the petitioner’s complaints would be upheld and the petitioner could credibly argue that he should not be penalised in having to pay the legal costs incurred in dealing with such order. However, this was not a normal case. Thus, the costs of the application were ordered to be paid to C forthwith, but not on an indemnity basis.

• When an unfair prejudice petition contained a prayer for a winding-up order as alternative relief, it was incumbent on the petitioner to try and agree the terms of a validation order with the company if there was no sensible ground for disputing that the company was solvent and carrying on business. In future, the Court might be more inclined to make a costs order on an indemnity basis against an uncooperative petitioner.

COMPANY LAW

Joint Provisional Liquidators of BJB Career Education Co Ltd v Xu Zhendong [2016] HKEC 2516
Court of First Instance
Miscellaneous Proceedings No. 1139 of 2016
Harris J in Chambers
18 November 2016

Liquidation – foreign company – order could be made for oral examination of officer of foreign company or other persons of information which foreign liquidator required

C, a Cayman Islands company, which provided vocational technology education in mainland China, was wound up in Shanghai and Cayman and Ls were appointed joint provisional liquidators. Pursuant to a letter of request from the Cayman Islands Court seeking the Hong Kong Court’s assistance by exercising its common law powers to order C’s former chairman and director (“X”) to produce documents, answer interrogatories and attend court for oral examination (the “Orders”), Ls applied for recognition of their appointment and the Orders. The Court considered the Orders were necessary and made a recognition order. At issue was whether an order could be made for the oral examination of an officer of a foreign company or other persons of information which the foreign liquidator required for the proper investigation of the company’s affairs; and whether such an order infringed Art. 96 of the Basic Law, which provides that “With the assistance or authorisation of the Central People’s Government, the Government of the Hong Kong Special Administrative Region may make appropriate arrangements with foreign states for reciprocal juridical assistance.”

Held, granting the Orders, that:

• The common law power of assistance extended to ordering an oral examination if such a power existed (a) in the jurisdiction of liquidation and that was the jurisdiction of incorporation; and (b) in the assisting jurisdiction. This was the case here. Section 103 of the Companies Law in the Cayman Islands grants the court similar powers to order the production of documents by and an oral examination of a director of a company as in s. 221 of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32). Thus, exercising its common law powers, the Hong Kong Companies Court could order the oral examination of a director of a Cayman company in liquidation in the Cayman Islands if satisfied that it was necessary and it would not infringe the established limitations on the exercise of the power conferred by s. 221.

• Reciprocity was not a necessary component of recognition and assistance to foreign liquidators. Rather, the power to provide judicial assistance was founded firmly in the
清盤 — 外地公司 — 法庭可下令就外地清盤人要求取得的資料而對外地公司人員或其他人士進行口頭訊問

C是一家在開曼群島成立、專門在中國內地提供職業科技教育的公司。C在上海和開曼群島進行清盤,而Ls獲委任為共同臨時清盤人。開曼群島法院發出請求書，要求香港法院提供協助，即行使其普通法權力，下令C的前主席兼董事提供文件、回答質詢及出席受口頭訊問(下稱「涉案命令」)。Ls提出申請，要求法庭承認其委任及作出涉案命令。法庭認為有必要作出涉案命令，並作出承認委任令。當前的議題包括﹕法庭可否下令就外地清盤人要求取得的資料而對外地公司人員或其他人士進行口頭訊問，以便妥為調查該公司的事務；以及該種命令是否違反《基本法》第96條，其規定「在香港特別行政區政府可與外國就司法互助關係作出適當安排。」

裁決 — 作出涉案命令：

• 普通法下提供協助的權力可延伸至下令對有權人士進行口頭訊問，條件是該權力存在於(一)進行清盤的司法管轄區，亦即成立有關公司的司法管轄區，及(二)提供協助的司法管轄區。本案符合上述條件。開曼群島《公司法》第103條賦權當地法院下令公司董事提供文件及接受市場訊問，與香港《公司(清盤及雜項條文)條例》(第32章)第221條相似。因此，在行使其普通法權力下，香港公司法庭可下令在開曼群島進行清盤的當地公司的董事接受口頭訊問，條件是法庭信納該命令既有必要且不超過行使第221條所賦權力方面的既定限制。

C公司法

Joint Provisional Liquidators of BJB Career Education Co Ltd v Xu Zhendong [2016] HKEC 2516

原訟法庭

高院雜項案件2016年第1139號

原訟法庭法官夏利士內庭聆訊

2016年11月18日

CRIMINAL EVIDENCE

HK S AR v Cheung Kim Shing [2016] HKEC 2412

Court of Appeal

Criminal Appeal No. 439 of 2015

Lunn V-P, Macrae and McWalters JJA

8 November 2016

Evidence of uncharged acts – should not be admitted unless jury would have incomplete or incomprehensible account of events without such evidence – if nevertheless admitted, jury should be directed to ignore it – even if otherwise admissible, should be excluded if prejudicial effect outweighed probative value – where such evidence was properly received, jury should be directed that they must be sure of occurrence of uncharged acts and could not infer defendant had committed similar offences or had propensity to commit offence

D was convicted after trial of unlawfully trafficking in dangerous drugs, namely 1.45 kg of methamphetamine hydrochloride. Those dangerous drugs were brought from mainland China to Hong Kong by X to whose thighs and waist they were strapped. The prosecution’s case, supported by X’s evidence as a prosecution witness, was that she had unlawfully trafficked in those dangerous drugs by importing them into Hong Kong under D’s control and at his direction, so that he, too, had unlawfully trafficked in them. D gave evidence denying that. In the course of her evidence, X said that she had met D at a mahjong establishment operated by him and that he had supplied dangerous drugs to customers at that establishment. The Judge directed the jury that the fact that D had done that might be relevant to their consideration of whether it was in his interests to traffic in dangerous drugs. D applied for leave to appeal against his conviction.

Held, granting leave to appeal, treating the hearing of the leave application as that of the appeal, quashing the conviction and ordering a retrial, that:

• Unless the jury would have an incomplete or incomprehensible account of events without evidence of uncharged acts, such evidence should not be admitted. If such evidence had nevertheless been admitted, the jury should be directed to ignore it. Even if evidence of uncharged acts was otherwise admissible, it should be excluded if its prejudicial effect outweighed its probative value. Where such evidence was properly received, the jury should be directed that they had to be sure of the occurrence of the uncharged acts and that they might not infer from them that the defendant had committed similar offences or that he was the sort of person with a propensity to commit the offence.

• The evidence of uncharged acts in this case had very little, if any, probative value. Such probative value as it might have had was outweighed by its prejudicial effect.

• X’s evidence was perfectly understandable without any reference to D’s dealings at the mahjong establishment.

• The Judge erred in failing to direct the jury to ignore such dealings.

• The direction which the Judge did give (saying that the fact that D
had supplied dangerous drugs to customers at the mahjong establishment might be relevant to their consideration of whether it was in his interests to traffic in dangerous drugs) was a misdirection. There were non-directions in that the Judge omitted to direct the jury that they had to be sure of the occurrence of the uncharged acts and that they could not infer from the evidence of the uncharged acts that D had committed similar offences or that he was the sort of person with a propensity to commit the offence.

• It was not appropriate in the circumstances to apply the proviso.
• But it was appropriate to order a retrial.

CRIMINAL PROCEDURE

HKSAR v Silva Barba Alexander Alberto [2016] HKEC 2318
Court of Appeal
Criminal Appeal No. 12 of 2015
Lunn V-P, Macrae and McWalters JJA
2 September 2016

Trial – directions to jury – misdirections as to drawing of inferences and approach to prosecution witnesses – prejudicial effect capable of being redressed – stay of prosecution rightly refused – retrial ordered

D was convicted after trial of unlawfully trafficking in dangerous drugs, namely 5.03 kg of cocaine. D had been intercepted by a Customs officer on
arrival at Hong Kong Airport. According to the prosecution witnesses’ evidence, those dangerous drugs were found concealed in the lining of D’s computer bag and suitcase. Prior to that, a wipe test of the zips and handles of D’s luggage with a cloth had indicated the presence of cocaine, and an X-ray of that luggage had showed suspicious objects. Giving evidence, D said that the Customs officers had removed his possessions from his luggage and had placed them in the computer bag and suitcase in which they said the dangerous drugs were found. The cloth, X-ray images and needles were not preserved. Nor was any CCTV footage of the relevant area. Arguing that the unavailability of the cloth, X-ray images, needles and CCTV footage rendered a fair trial impossible, D sought a permanent stay of the prosecution. The Trial Judge refused a stay. Seeking leave to appeal against conviction, D: (a) contended that a stay should have been granted; (b) complained that prosecuting counsel had in his final speech invited the jury to conclude that Customs officers were more unlikely than others to fabricate evidence and were more likely than others to be credible; (c) contended that the Trial Judge had misdirected the jury on the drawing of inferences; and (d) contended that the Trial Judge had misdirected the jury as to why contact might not result in traces of DNA and/or fingerprints.

Held, granting leave to appeal, treating the hearing as the appeal, quashing the conviction and ordering a retrial, that:

- The Trial Judge’s direction had left it open to the jury, notwithstanding that they were wary of doing so, to draw an inference adverse to D even if other possibilities and scenarios giving rise to other reasonable inferences could not be excluded. But, as D’s counsel conceded, if the prosecution’s evidence were accepted, no reasonable inference other than that D knew that his luggage concealed dangerous drugs could be drawn. If the complaint against this misdirection were the only ground of appeal, the Court of Appeal would have been prepared to apply the proviso.
- There was no evidence as to why contact might not result in traces of D’s DNA and/or fingerprints on the computer bag and suitcase in which the prosecution said that the dangerous drugs were found. In the absence of evidence as to why contact might not result in traces of DNA and/or fingerprints, it was impermissible for a judge to direct the jury, as the Trial Judge had done here, that “there are many reasons why contact may not result in traces of DNA and/or fingerprints”, for to do so was, in effect, to endorse speculation as to what evidence there might have been. The present case was different from HKSAR v Law Wing Hong (unrep., CACC 169/1998, 11 November 1998) in which it was said at p.8 that “where there is no fingerprint evidence at all that proves nothing either way”.
- It was also different from HKSAR v Oswaldo (unrep., CACC 428/2012, [2013] HKEC 975), which concerned fingerprints and where there was evidence as to why contact might not result in fingerprints.
- Given the seriousness of the case and the strength of the evidence, it was appropriate to order a retrial.

刑事訴訟程序

HKSAR v Silva Barba Alexander Alberto [2016] HKEC 2318
上訴法庭
刑事上訴案件2015年第12號
上訴法庭副庭長倫明高
上訴法庭法官麥機智
上訴法庭法官麥偉德
2016年9月2日

審訊—給予陪審團指示—推斷方面的錯誤指示及對控方證人的看法—可以消除的不利影響—正確地拒絕攤置法律程序—命令重審

經審訊後，被告人被裁定非法販運危險藥物，即5.03公斤可卡因，罪名成立。被告人乘飛機抵達香港機場，出境後被一名關員截查。根據控方證人的供證，那些危險藥物被發現收藏在被告人的電腦袋和行李箱夾層。在此之前，被告人行李的拉鍊和手挽進行過擦拭測試，用來擦拭的布顯示行李有可疑異物，行李X光也顯示有可疑物品。被告人作供稱關員從那些行李取出他的個人財物，然後放進他們說找到危險藥物的電腦袋和行李箱。擦拭布和兩枝針被丟棄了，X光影像沒有存底，相關區域也沒有任何閉路電視拍攝的錄影片段。被告人申請永久攤置法律程序，爭辯指沒有擦拭布和兩枝針，X光影像沒有存底，也沒有任何閉路電視錄影片段，令法庭不可能進行公平審訊。原審法官拒絕批准申請。被告人：(a)辯稱法庭原本應該批准攤置法律程序；(b)投訴控方大律師在最終發言中要求陪審團推論關員較其他人更不可能捏造證據，但較其他人更為可信；(c)爭辯指原審法官在推論方面向陪審團作出錯誤指示；及(d)爭辯指原審法官在接觸也不一定留下微量DNA及／或指紋的解釋方面，向陪審團作出錯誤指示。被告人不服定罪，申請上訴許可。

裁決—批予上訴許可，將上訴申請的聆
訊視為上訴聆訊，將定罪判決撤銷並命令重審：

- 原審法官正確地拒絕永久擱置法律程序。沒有擦拭布和兩枝針，X光影像沒有存底，也沒有閉路電視錄影片段，會對被告人造成不利的影響，但盤問控方證人及向陪審團作出指示，可以抵消這種影響。
- 至於控方大律師要求陪審團推論證人較其他人更不可能捏造證據，但較其他人更為可信，原審法官指示陪審團在評估可信程度時平等看待所有證人，這個指示消除了任何不利於被告人的風險，並禁止採用任何不獲准許的推理方法。
- 即使不能排除任何得出其他合理推論的可能性和情況，並且雖然陪審團會小心謹慎地作出推論，但原審法官的指示等於任由陪審團作出不利被告人的推論。不過，正如被告人大律師所承認，控方接納控方證據，除了推論被告人知道他的行李藏有危險藥物之外，就不可能有其他合理的推論。如果對這個指示的投訴是唯一的上訴理由，上訴法庭就會使用但書。

LAND LAW

Re Leung Pui Pui [2016] HKEC 2435
Court of First Instance
Bankruptcy Proceedings No. 10465 of 2007
Peter Ng in Chambers
9 November 2016

Co-ownership – partition – application for order for sale of land under s. 6 – “very great hardship” shown

X was adjudicated bankrupt. Together with her father, Y, they held property as joint tenants. The trustees in bankruptcy applied for an order of sale of the property pursuant to s. 60 of the Bankruptcy Ordinance (Cap. 6) and s. 6 of the Partition Ordinance (Cap. 352). The property was valued at HK$2.9 million in the secondary market, and half of the net sale of proceeds would be more than enough to cover X's bankruptcy expenses, all unsecured debts and statutory interest, which amounted to approximately HK$894,244. Y was 68 years old and the sole breadwinner of his family working part-time at a construction site. He had lived in the property for 17 years and presently resided there with his current wife, who was on a two-way permit and thus unable to work, and their 8-year-old child. Y recently underwent an angioplasty. He opposed the application.

Held, dismissing the application, that:

- In an application under s. 6 of the Partition Ordinance, where an order for partition was impracticable, an order for sale should be made unless the court was persuaded by the opposing co-owner that such order would not be beneficial to all co-owners or that it would result in very great hardship to one co-owner. Whether an order for sale was or was not beneficial to all co-owners was to be determined on the basis of all the objective facts, balancing the interests of one against the other. Hardship included pecuniary as well as practical detriment.
- Here, the property was Y’s only significant asset and had been his only place of residence for 17 years. In view of his age and unstable
employment, it was certain he would not be able to obtain a mortgage to purchase alternative accommodation. Moreover, assuming he was eligible for public rental housing, he would not be allocated one until three to four years later, by which time he would be unable to work at a construction site. Objectively balancing the interests of the creditors and the interest of Y, granting an order for sale would cause very great hardship to Y and his family and the just result would be to decline to do so.

- Assuming “exceptional circumstances” had to be shown in order to resist an application under s. 6, Y’s personal and familial circumstances, including his medical condition, were circumstances that fell outside the usual “melancholy consequences of debt and improvidence” and an order for sale would still not be granted.

## Land Law

**Re Leung Pui Pui**

[2016] HKEC 2435

In re

High Court

Bankruptcy Judge W., 9 November 2016

**Joint Tenancy — Division of Property — Sale of Land under s. 6 — Proving ‘Great Hardship’**

A lady (‘the lady’) was adjudged bankrupt. She and her father (‘the father’) owned a flat unit as joint tenants. The bankruptcy trustee, under s. 60 of the *Bankruptcy Ordinance* (Cap. 6) and s. 6 of the *Division of Property Ordinance* (Cap. 352), applied for a sale of the property. The flat was valued at HK$2.9 million, and the net proceeds of sale would be sufficient to pay the lady’s bankruptcy costs, all unsecured creditors, and 894,244 HK dollars more. The father, 68 years old, worked as a construction worker, was the only income earner in the family, and had lived in the flat for 17 years with his current wife and 8-year-old son. His wife held a double passport and was unable to work. He had recently undergone a coronary angioplasty. He opposed the application.

**Decision** — Refused Application:

- In an application under s. 6, in the absence of proof that the sale would cause ‘great hardship’ to the father and his family, the court must not make a sale order. The court should balance the interests of the creditors against the interests of the father and the rest of his family.

- Assuming ‘exceptional circumstances’ had to be shown in order to resist an application under s. 6, the father’s personal and familial circumstances, including his medical condition, were circumstances that fell outside the usual ‘melancholy consequences of debt and improvidence’ and an order for sale would still not be granted.

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For full summaries and judgments, please refer to Westlaw and Hong Kong Law Reports & Digest at www.westlaw.com.hk.

就完整的摘要和判决书，请到 www.westlaw.com.hk 参阅Westlaw及《香港法律彙報与摘錄》。
Much ink has been spilled over law firm’s broken business models and the need for change.

While this issue is not new, law firms have been facing an increasing amount of pressure to improve their operations as of late, as competition and segmentation intensify (two phenomena that are also eroding firms’ profitability and even driving some to the point of closure).

While the issue of price pressure has been hotly debated in legal circles for a number of years, few firms have taken concrete action. This seems concerning given the clear long-term shift towards a demand-led market and the increasing adoption and creation of disruptive legal technology solutions.

Even for firms that acknowledge price pressure and that have addressed inadequacies in their existing business models, the level and rate of their responses have been slow. Typically, responses have involved developing short-term solutions rather than undertaking a more comprehensive and considered review of how to develop a new sustainable model.

Given the current state of affairs, we thought it would be useful to explore the following issues:

- how the law firm business model is defined;
- what key issues are driving firms to rethink their business models;
- what common pitfalls firms face when rethinking their business model; and
- what other changes may be required for firms to optimise their business models in any market.

**The ‘Business Model’ Defined**

The business model describes the way in which a law firm operates. It is the collection of processes and systems directed at making the firm competitive and profitable. In other words, it determines how a firm creates value from its work by generating revenue.

The business model is predicated on having a competitive strategy that defines where the firm seeks to compete (now and in the future) and what the competitive conditions are in that market position. This determines the design and functionality of the business model in order for the firm to succeed. Alignment between the two is critical.

In order for the firm to generate sustainable profit and therefore create value for itself, the business model must simultaneously create value for its clients. This requires the firm to understand what its clients value in the services it provides and determine how to deliver these services at the right price and within the appropriate cost structure.

**Value Creation**

The value that clients derive from legal services (and the price they are prepared to pay for them) differs from client to client and across different markets and practice areas. Changes in the client’s operating environment or its risk profile also impact this dynamic relationship. As such, the firm’s business model needs to be adaptable to these.

There are two series of related activities in this regard.

The first is a series of activities that supports client value creation. These include client targeting and business development processes (ie, who is being targeted and what the value proposition is), client management processes, delivery of services (including project management), as well as pricing and revenue flows.

The second is a series of activities that supports the way in which value is created for the firm. These include work processes (ie, how people go about doing the work), staffing structure, the level of skill required to complete different tasks, as well as work and performance management. Underlying these is a need to review recruitment, training and people management processes.

Both series of activities underpin the architecture of any law firm business model and are increasingly major targets for firms to optimise their business models.
Drivers of Change

Competitive conditions have long been a feature of the global legal market but the pace of change brought on by competition has been rising significantly in recent years. Much of this is being driven by clients’ demands for different pricing approaches and service delivery methods and their demands for lawyers to have a better commercial understanding of their businesses.

Varying responses to this have led to further segmentation of the legal market.

Downward price pressure particularly in highly competitive markets like Hong Kong has resulted in deeper discounting without fundamental changes in the ways in which services are sold, generated or delivered. Hence, the old (cost plus) model based on increasing hourly rates and therefore price as costs have risen, is under intensifying pressure as firms can no longer offset costs in the same way. The result is an erosion of profitability.

Changing the business model is not an exercise in cost reduction or containment per se. Efficiencies are a consequence of better processes. However, in the absence of systemic change, most firms continue to discount and seek to increase utilisation in order to offset increasing costs.

The Role of Technology

The technological developments in law firms are, to a large extent, a consequence of the client pressure on pricing. Absent this pressure, the adoption of new legal technology solutions would have likely taken much longer.

The growing intrusion of technology into the legal market place (particularly in the generation and delivery of services) is a fundamental driver of change as well as a key part of the solution.

Technology is now at a point where it can be applied in actual legal work processes, undertaking tasks that lawyers have traditionally performed. Artificial intelligence systems are also available and firms are starting to employ this technology to carry out due diligence

Rethinking the Business Model: Pricing Approach

1. Obtain feedback from clients as to their price expectations and what would change this (up or down)
2. Analyse how the work is done at present, who does what and the cost structure across all work types
3. Develop a template cost structure based on what has to be done for each target pricing model
4. Develop computer based template project plans for each work type specifying tasks, level of fee earner and time required
5. Implement a project management tool incorporating the template plans linked to the HR data base and time recording
6. Look at a three year resource plan to track any required changes in the staffing mix given the potential change in skill required
7. Provide training to all fee earners in the system

This has created the need to change the business model, including the firm’s approach to pricing.
in M&A work. These systems are based on cognitive computing that map human thought processes to a computer programme, which, in turn, learns over time as it processes a task and (crucially) eliminates errors. In addition, the use of predictive coding has been in wide use in e-discovery projects for some time, significantly reducing the processing time for these tasks. Adopting these forms of technology requires a significant investment cost, something law firms have not had to face previously.

These technological developments meet at least two of the key needs of clients. First, they lower the cost of legal work while retaining the quality and value inherent in it. Second, they enhance the service delivery process.

While technological developments provide part of the answer to client pressure on law firm performance, there are some serious implications that many firms are not yet tackling.

The implications for resourcing are significant. As technology intrudes into legal work processes, the number of fee earners required to produce each dollar of revenue will decline and the type of fee earner and the skills required will change.

**Pitfalls**

The pressure to adapt the business model can have unexpected consequences, particularly in cases where these are driven by clients’ needs and technology. Unless there is a clear alignment between the firm’s strategy (including its preferred future market position) and the business model, the firm can experience strategic drift. In other words, the business model can end up driving the firm’s market position rather than the other way round.

As the market continues to segment, particularly where firms are simultaneously competing in higher and lower value areas, the effect can be highly dilutive.

Few firms take a holistic approach to changing their business models. However, an optimal business model requires that a firm’s systems and processes (front, middle and back office) are fully integrated. This necessarily means reviewing all aspects of the business and creating an overarching plan that informs investment decisions, build and execution.

To respond successfully to client pressure on pricing and implement the proper technological solutions, firms should carefully consider their plans before implementing them. This reinforces the need to change the whole business model, not just components of it. For example, standardising work processes is essential. However, a standard way of doing work within the firm must be established for technology to effectively reduce the cost of providing legal services. Additionally, the work needs to be planned carefully and the time recording integrated with the plan to enable daily monitoring of the cost of the work to the plan.

This represents a huge shift inside most law firms and very few have gone this far.

One consequence of disruptive legal technology is increasing investment in different and potentially incompatible solutions across functional cost centres. Inevitably, firms (with some exceptions including in those markets where external funding including via private equity is available) are constrained by their inability to invest in the requisite solutions in one or more consecutive cycles.

The outcome is a series of buying decisions taken in isolation and without reference to an overall plan.

Working behaviours are at the heart of the business model and are invariably the hardest to change. For example, partners who struggle to delegate and assign sufficient time to managing clients and the work processes need support to alter their preferred ways of working. Any “system” must consider what behaviours are required to drive value creation (for the client and the firm) and address this as part of the work process review.

**Other Required Changes**

In addition to work processes, there are a number of other changes that firms should consider.

While many firms claim that they understand their clients’ businesses and industries, this is rarely if ever based in fact. A highly functioning key account management approach informs the firm’s strategic position and the business model required to create value.

Embracing workforce flexibility will enable firms to capitalise on changes in generational attitudes to the profession including approaches to recruitment, talent management, compensation and professional development.

To date, the role of the partner has remained relatively unchanged. Partners, for the most part, continue to be selected based on their technical skills. However, the expectation is that they will play a more active role as managers, client relationship managers and industry experts with implications for selection criteria and the economic structure of firms.

Firms should also consider adopting performance metrics that reflect and align with the new business model.

**Tying It All Together**

The changes required to meet the needs of clients will lead to a radical change in the whole way in which a law firm operates, which require firms to make fundamental changes to their business models.

This requires a reconfiguration of the recruitment, training, compensation systems and performance targets inside the firm. Every system and process in the firm will need to be examined to ensure they support the changes being made at the front end.

Changes designed only to deliver services to clients at lower prices are not sustainable if these result in lower profitability. Over time, firms that resist making these changes will become less competitive and consequently, suffer market decline.
律師事務所經營模式的變化

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於「律師事務所的經營模式已經過時，必須進行改革」這一說法，確實已經被論述不少。

這一說法雖然已經不再新鮮，但隨著法律市場的競爭日益加劇，市場的進一步細分，律師事務所近年所面對的改善業務經營方面的壓力，已變得越來越沉重（而競爭的加劇與市場的細分，也損害了律師事務所的盈利能力，更將一些律師事務所推向瀕臨倒閉的邊緣）。

法律界雖然就價格壓力方面的問題，展開了多年的激烈爭論，但卻鮮有律師事務所對此採取任何實質行動。現時的情況很明顯，市場將會長期由買方所主導，而顛覆性法律技術解決方案的設立與採用，亦將會變得越來越普遍。對於此等情勢的發展，我們實在不可不察。

即使是承認自身面對著價格壓力，並在改善其現行經營模式的不足之處的律師事務所，其在作出反應的速度及速度方面仍然緩慢。在採取應對措施方面，它們通常僅涉及制訂短期的解決方案，而並非就如何開發新的可持續模式，進行更廣泛與審慎的考慮。

鑑於當前的狀況，我們認為應當仔細審視以下問題：

• 律師事務所的經營模式應如何界定；
• 經營模式可以如何為客戶和律師事務所創造價值；
• 有些什麼重要產品，促使律師事務所必須重新思考其經營模式；
• 律師事務所應重新思考其經營模式時，通常會面對一些什麼障礙；及
• 律師事務所在優化其於任何市場的經營模式方面，可能需要作出一些什麼其他改革。

「經營模式」如何界定

經營模式所指的，是律師事務所的運作方式。它是由各項流程與各個系統的結合，旨在使律師事務所成為更具有競爭力與盈利能力。換句話說，它決定了律師事務所必須如何藉創造收入來為其業務創造價值。

經營模式是以制定競爭性策略為基礎，而該策略界定了律師事務所應在什麼範疇進行競爭（包括現在及未來），以及其市場定位存在什麼競爭情況。它們明確了應當如何設訂適合的經營模式，以及它將具備什麼功能，從而讓律師事務所得以成功地經營下去。因此，將這兩者結合是至關重要的。

律師事務所要獲得可持續的盈利，從而為其自身創造價值，它所採用的經營模式，便必須能同時為其客戶創造價值。為此，律師事務所必須了解客戶重視它的哪些服務，並確定如何以適當價格及在適當的成本結構內為客戶提供該等服務。

創造價值

客戶從法律服務中所取得的價值（以及他們願意為此而付出的代價），會因客戶、市場及法律範疇之不同而各異。客戶所處身的運營環境或其風險狀況所產生的變化，也會對此等動態關係構成影響。因此，律師事務所的經營模式必須能適應上述情況。這方面的相關活動共包括兩個系列。

第一個系列所指的，是該等為創造客戶價值提供支持的活動。這包括目標客戶的定位及業務開發流程（亦即是：有什麼客戶已被瞄準；其相關的價值主張是什麼）、客戶管理流程、服務交付（包括項目管理），以至訂定價格和營收流量。

第二個系列所指的，是該等為律師事務所創造價值之方法提供支持的活動。這包括工作流程（即人們如何處理有關工作）、人員組成架構、不同業務所需的技能水平，以及工作和績效管理等。歸根結底，律師事務所就是需要對招聘、培訓及人員管理流程等方面進行審視。

這兩個系列的活動，使律師事務所的經營模式架構得以被貫穿，並且成為藉科技而提升效能的主要目標（參見下文的科技所扮演的角色）。

各項推動改革的因素

長期以來，競爭情況一直是全球法律市場的一個特性，但從競爭所帶來的改革步伐，在近年正迅速加快，而其中很大程度上，是受客戶要求獲得提供不同定價方式及服務交付方法，以及要求律師對其業務有更深的商業上了解所導致。

由於各方對此所作出的回應皆有所不同，因此亦導致法律市場被進一步劃分。

面對價格下調的壓力（特別是在香港此等競爭激烈的市場），導致律師事務所於服務銷售、產生或交付方面，在並無任何根本變化的情況下，需要提供更大的折扣。因此，以提高每小時的收費率及價格（基於成本上升）為本的舊（成本加成）模式，其所面對的壓力亦正不斷增加，因為律師事務所難再以同樣的方式來將其成本抵銷。其結果是，律師事務所的盈利能力因而受損。

經營模式的再思：定價方式

1. 取得客戶對價格預期的反饋，以及什麼會促使它發生改變（上升或下降）
2. 分析目前的工作是如何處理，誰人在負責什麼工作，以及所有工作類型的成本結構等等
3. 以必須完成什麼作為基礎，為每個目標定價模式的服務提供成本結構
4. 為每一系列工作類型，開發以電腦為基礎的模板項目計劃，當中將指定各項任務、費用賺取者的收費水平，以及所需的時間
5. 實施項目管理工具，納入與人力資源數據庫和時間記錄相對應的模板規劃
6. 基於所需的技能的潛在變化，因此應當查看為期三年的資源計劃，以追蹤在人員配置組合中的任何所需变更
7. 為系統中的所有賺取費用人員提供培訓
這導致律師事務所需要將其經營模式改革，包括定價的方式。

改變經營模式，並非單純降低成本或自我進行限制，效益的提升，是更有效的流程所衍生的結果。然而，如果未能實現系統性的改革，大多數律師事務所將仍然需要給予折扣，並尋求如何利用市場波動，從而抵消日益增長的成本。

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科技扮演的角色

律師事務所進行技術開發，在很大程度上，是基於客戶在定價方面施加的压力的結果。如果沒有此等壓力，律師事務所很可能會在較長的時間內，才會考慮使用新的法律技術解決方案。

法律市場使用科技的情況越來越普遍，尤其是服務的提供及交付方面，而這亦成為了改革的主要動力，並成為了技術應用的一個重要部分。

現時的科技發展已達到某一個程度，可以應用於實際的法律工作流程上，從而改變以往由律師負責處理的工作。此外，人工智能系統目前正被廣泛採用，而律師事務所現正開始將它們運用於併購交易的盡職審查工作上。該系統是以認知運算作為基礎，將人類的思維過程映射到電腦程序中，而電腦程序在處理相關工作及消除錯誤的過程中，會隨著時間的過去而積累學習能力。此外，在電子資料披露的項目中，預測編碼已被廣泛應用於一樣的長時間，而此舉亦大減少了處理有關資料的工作時間。運用全體員工的靈柔性，可以促使律師事務所充分利用其專業所正面臨的世代態度轉變，當中包括在聘用、人才管理、薪酬及專業發展等方面的處理方法。

工作行為是經營模式的核心，而且通常也是最難改變的東西。例如，合夥人奮力地進行工作委派和進行充足時間分配，以期妥善管理其客戶及工作流程；但如果要將他原來的工作方式改變，這需要向他提供支持。任何「系統」都必須考慮必須作出什麼行為來推動價值創造（為客戶，也是為律師事務所本身）及如何實行改變工作流程的一部分來處理。
Newly-Admitted Members

CHAN KWAN HO
BRIAN
陳君豪
EVERSHEDS
安睿國際律師事務所

CHAN YI LAM
IRINA
陳伊琳
DEACONS
的近律師行

CHAN KA-HAY
GARY
陳加希
DLA PIPER HONG
KONG
歐華律師事務所

CHAN SZE WING
陳思穎
SIDLEY AUSTIN
盛德律師事務所

CHAN WING TAK
WHITNEY
陳穎德
MAYER BROWN
JSM
孖士打律師行

CHAU HO KAN
周灝勤

CHENG PO YI
鄭寶宜
MORRISON &
FOERSTER
美富律師事務所

CHUI TAT MING
PHILIP
徐達銘
K&L GATES
高蓋茨律師事務所

KWOK SIN HANG
JANICE
郭倩蘅
WOO, KWAN, LEE &
LO
胡關李羅律師行

LAM PUI SHAN
林佩珊
WILKINSON &
GRIST
高露雲律師行

MA CHENG
JONATHAN
馬晟
MAYER BROWN
JSM
孖士打律師行

LAU MING WAI
劉銘慧
HALDANES
何敦, 威至理, 鮑富
律師行

LEE YUK YEE
李鈺儀
MAK WINNIE, CHAN &
YEUNG
麥陳楊律師事務所

LI LOK YAN
李樂恩
ZHONG LUN LAW
FIRM
中倫律師事務所

LI WILLIAM
李維宗
January 2017  •  PROFESSIONAL MOVES  會員動向

MOK HO LAM
莫皓霖
ONC LAWYERS
柯伍陳律師事務所

AU SUI WAN
區瑞雲
SHINEWING TAX AND BUSINESS ADVISORY LIMITED

CHAN SHUN-YUN ANGELINE
陳信忻
BOASE COHEN & COLLINS
布高江律師行

CHAN CHUNG TING
陳仲廷
KING & WOOD MALLESONS
金杜律師事務所

CHAN HO YAN
陳皓昕
LAM, LEE & LAI
林李黎律師事務所

CHAN LOK MAN
陳洛汶
RAVENSCROFT & CO., DAVID
李榮覺律師行

CHENG TSZ KWAN
鄭梓君
ZURICH INSURANCE COMPANY LIMITED

CHEUNG PAK LAAM
張柏嵐
CHAN & CHAN
陳、陳律師行

CHIA SIJING MATTHEW
謝思敬
MAYER BROWN JSM
孖士打律師行

CHO BETHIA
曹璧妍
KENNEDYS
肯尼狄律師行

LAM CARMAN
林芊淑
ONC LAWYERS
柯伍陳律師事務所

LAM KAI CHUNG
林啟聰
ONC LAWYERS
柯伍陳律師事務所

LEE CHI HIN JOHN
李智軒
CHEUNG VINCENT T.K., YAP & CO.
張葉司徒陳律師事務所

LEUNG LOK CHI
梁樂知
IU, LAI & LI
姚黎李律師行

LEUNG PUI SHAN
梁珮珊
CLY LAWYERS
陳林梁余律師行

LEUNG YEE YAN ELIZABETH
梁懿欣
DENTONS HONG KONG
德同國際律師事務所

LUI YING TUNG JENNIFER
呂映彤
CHEUNG & CHOW
張世文蔡敏律師事務所

LUI YING TUNG JENNIFER
呂映彤
CHAN & CO., LAWRENCE
陳振球律師事務所

NG KA IENG
吳家盈
CHEUNG & LIU, SOLICITORS
張廖律師事務所

PANG MAN KAU
彭敏求
ONC LAWYERS
柯伍陳律師事務所

SIN HIU YI
冼曉怡
PANG SZWINA, EDWARD LI & COMPANY
李國強 、彭書幗律師行

TAI WING SUM
戴穎芯
CHAN & CO., JOYCE
陳美莉律師事務所

TSANG YUEN MAN
曾苑雯
ROBERTSONS
羅拔臣律師事務所

WAI YUEN SZE
衛宛司
WONG J JANE

WALLER MA HUANG & YEUNG
華馬黃楊律師行

WONG LOK CHING
黃諾晴
BOASE COHEN & COLLINS
布高江律師行

WONG WAI YAN VIVIEN
黃瑋昕
OLDHAM, LI & NIE
高李嚴律師行

WONG OI TING
黃蘊羚
SO, LUNG & ASSOCIATES
麥家龍律師事務所

YAM LOK PING
任樂萍
CHEUNG VINCENT T.K., YAP & CO.
張葉司徒陳律師事務所

YIP TEEN SHING TOBY
葉天誠
INCE & CO.
英士律師行

YU PAK SAN PERCY
余柏燊

YUNG WAI KI
容偉祺
O'MELVENY & MYERS
美邁斯律師事務所
Partnerships and Firms
合夥人及律師行變動

changes received as from 1 November 2016
取自2016年11月1日起香港律師會所提供之最新資料

• CHEUNG YADDY
ceased to be the sole practitioner of Yaddy Cheung & Co. as from 21/11/2016 and the firm closed on the same day. Mr. Cheung joined Cheung & Liu, Solicitors as a consultant as from 21/11/2016.
張雅棣
自2016年11月21日不再出任張雅棣律師行獨資經營者一職，而該行於同日結束業務。張律師於2016年11月21日加入張廖律師事務所為顧問。

• CHUNG CHEUK SANG FRANCIS
c eased to be a partner of Chung and Associates as from 11/11/2016 and remains as a consultant of the firm.
鍾卓生
自2016年11月11日不再出任鍾卓生律師行合夥人一職，而轉任為該行顧問。

• CUNNINGHAM JEREMY BRIAN
joined Smyth & Co as a partner as from 05/12/2016.
自2016年12月5日加入Smyth & Co為合夥人。

• FOO PUI MAN
c eased to be the sole practitioner of Raymond Foo & Company, Solicitors as from 26/11/2016 and the firm closed on the same day. Mr. Foo joined Wong & Associates as a consultant as from 01/12/2016.
扶沛文
自2016年11月26日不再出任扶沛文律師行獨資經營者一職，而該行於同日結束業務。扶律師於2016年12月1日加入黃宇豪律師行為顧問。

• HO HING CHUNG STEPHEN
joined K.B. Chau & Co. as a partner as from 07/11/2016.
何慶聰
自2016年11月7日加入周啟邦律師事務所為合夥人。

• IP VINCENT WANG CHI
became a partner of Ropes & Gray as from 07/11/2016.
葉弘智
自2016年11月7日成為瑞格律師事務所合夥人。

• KOO ANNA-MAE MEI JONG
became a partner of Vivien Chan & Co. as from 08/11/2016.
顧曉楠
自2016年11月8日成為陳韻雲律師行合夥人。

• LAM SHUEN
became a partner Yip, Tse & Tang as from 01/12/2016.
林 璩
自2016年12月1日成為葉謝鄧律師行合夥人。

• LEUNG WAI PUI
became a partner of CLY Lawyers as from 14/11/2016.
梁偉培
自2016年11月14日成為陳林梁余律師行合夥人。

• LISTER MARTIN CHARLES VON MENGENSHAUSEN
c eased to be a partner of Simmons & Simmons as from 01/12/2016.
李兆德
自2016年12月1日不再出任西盟斯律師行合夥人一職。

• LO DICK WEI HENRY
c eased to be a partner of C & L Lawyers as from 24/11/2016.
羅迪威
自2016年11月24日不再出任C & L LAWYERS合夥人一職。

• MA JIE
became a partner of Paul Hastings as from 24/11/2016.
馬 捷
自2016年11月24日成為普衡律師事務所合夥人。

• MANN ZIAN HSIEH
c eased to be a partner of Yip, Tse & Tang as from 01/12/2016.
文尚行
自2016年12月1日成為葉謝鄧律師行合夥人。

• TAN VIN YEW ERIC
joined Peter Yuen & Associates as a partner as from 15/11/2016.
陳偉耀
自2016年11月15日加入阮葆光律師事務所合夥人。

• WONG WAI CHUNG
became a partner of Vincent T.K. Cheung, Yap & Co. as from 01/12/2016.
黃偉忠
於2016年12月1日成為張葉司徒陳律師事務所合夥人。

• YU HAU MAN ALICE
ceased to be a partner of Lau, Chan & Co. as from 30/11/2016 and remains as a consultant of the firm.
尤孝敏
自2016年11月30日不再出任劉陳高律師事務所合夥人一職，而轉任為該行顧問。

• YEUNG WAI BIRNEY
became a partner of Lau, Chan & Co as from 30/11/2016.
楊 威
自2016年11月30日成為劉陳高律師事務所合夥人。

• YU YUK WAH CHRISTIAN
ceased to be a partner of Yaddy Cheung & Co. as from 16/11/2016 and joined Augustine C.Y. Tong & Co. as an assistant solicitor as from 01/12/2016.
姚毓華
自2016年11月16日不再出任張雅棣律師行合夥人一職，並於2016年12月1日加入唐楚彥律師事務所為助理律師。

• YU CHUNG YIN
became a partner of CLY Lawyers as from 14/11/2016.
余仲賢
自2016年11月14日成為陳林梁余律師行合夥人。

• YUEN SZE LONG
became a partner of Yip, Tse & Tang as from 01/12/2016.
袁斯朗
自2016年12月1日成為葉謝鄧律師行合夥人。
It was my childhood goal to become a lawyer and use my legal knowledge and sound judgment to fight injustice and help those in need. Lawyers are great problem-solvers. It is important that we make time to help others in need, as their pressing problems should not have to remain unresolved until we have spare time. Together with my family and a team of passionate volunteers from all walks of life, we set aside time to make regular visits to primary schools in rural parts of China. It is our hope to help the next generation enrich their lives and broaden their international perspective by teaching them English, and sharing our life experiences, hobbies and knowledge with them. In the end, I think we learned more from them on how to be thankful and appreciate even little things we take for granted and how to better spend quality time with our love ones without modern day distractions. Through this experience, the seeds to grow life-long friendships have been planted.

I would also like to take this opportunity to thank the 800+ lawyers, trainees and law school volunteers who have served with me since the inception of the Law Society TeenTalk event to guide and encourage 9,000+ secondary school students from all 18 districts and from other walks of life to learn legal knowledge, improve their analytical skills, listening skills, presentation skills and morale and ethical standards; this year marks my third year as Chairman of the OC of TeenTalk, and I thank all of you for the honour to serve with you.

I thank the Agency for Volunteer Services for awarding me with their 3rd Leadership Bauhinia Volunteer Awardees in recognition of active volunteerism. I also thank the Hong Kong Government for awarding me with a Medal of Honour in recognition of my civic service. I thank the Law Society for bestowing me with the honour of the Distinguished Pro Bono Service Award.

To me, these awards recognise a truly team effort of a lot of good hearted lawyers and members of the Law Society. I hope these awards will unite and encourage others to provide more pro bono and community services. Let’s do good, and do well!
I have seen many Chinese orphans born with severe birth defects brought to health by doctors of MedArt, which significantly improves the children’s quality of life and frequently leads to them being adopted into loving families within a short period of time after recovering from surgery. The time and money that firms like Akin Gump, I and other supporters have contributed to MedArt has helped changed the lives of these forgotten children, many of whom were rescued from the “dying rooms” in orphanages. The orphanages have neither the medical expertise nor the funding to help these children, many are simply left to die. MedArt has brought new lives to hundreds of children, and the firm and I are very proud to partner with such a great organisation that makes such important contributions to our community.

I am most honoured to have received the Distinguished Community Service Award 2016 in recognition of the pro bono legal service provided through the Clinical Legal Education (“CLE”) Programme of the Faculty of Law, University of Hong Kong. The CLE Programme was first introduced in January 2010 as a credit bearing elective course for senior law students. Apart from equipping students with the essential lawyering skills through handling real cases under the close supervision of experienced lawyers, the CLE Programme also serves to provide valuable community service for unmet legal needs and to nurture students with a pro bono ethos and long-term commitment to public service. Through helping clients who feel distressed as a result of the daunting legal process, students see the important role that a conscientious and passionate lawyer can play.

During the Award Period from 1 July 2015 to 30 June 2016, 194 clients surveyed expressed very high level of satisfaction to the free legal advice given to them (with 96 percent positive or highly positive rating). We also received more than 60 letters from prison inmates to seek assistance for their appeals. In some of these cases, after studying the relevant documents with assistance from our law students, we took the view that there were meritorious grounds of appeal even though legal aid was earlier refused on the ground of a lack of merits, and after our explanations and liaison with the Legal Aid Department, legal aid was re-granted to them. In exceptional situations, we also provided pro bono legal representation through law firms to deserving clients in real need in order to help rectify miscarriages of justice. For example, in HKSAR v Law Yat Ting (2015) 18 HKCFAR 420, the defendant was convicted of the offence of tampering with a motor vehicle by his act of closing the door of a van and was sentenced to six-weeks’ imprisonment. I represented him with the assistance of our students, and succeeded in overturning his conviction before the Court of Final Appeal.

Please visit the Clinical Legal Education Programme website (http://www.law.hku.hk/cle/) for more information.

Eric TM Cheung, Principal Lecturer and Director of Clinical Legal Education

張達明首席講師暨臨床法律教育課程總監

Faculty of Law, The University of Hong Kong

港大法律學院
Becoming a volunteer

A Senior Counsel once said, it is not too late to serve the community after excelling in the profession. This statement is true but does not apply to me. I was not a student with outstanding grades. It was a pain to cope with professional examinations. At that time, I thought I should give back to the community if I pass. Luckily, I graduated. Over the years, I reminded myself, it is an honour to join this respectable profession and that I should do a little more.

Those who are more capable can help more people, just like those who are more wealthy can donate more money. The problem is that if you donate only when you become very wealthy, you may always think that you are not really wealthy enough to help others. It is understandable to cut one’s coat according to one’s cloth, but the poor helping each other is even more valuable. To turn volunteer work into a habit and a part of life is all about the mentality of regarding it as a matter of course and something that should be done.

Therefore, whether you consider yourself outstanding or not good enough, seniority does not count in volunteer work. I hope fellow professionals participate more in volunteer work and leverage their strengths to help others.

I am grateful that I am able to contribute to society in both a personal capacity as well as on a professional level. I greatly enjoy visiting community centres, raising funds for charities and participating in community events, as well as offering a legal perspective on matters to those in need.

My work has exposed me to individuals who have depended on drugs to their disadvantage, and I have always hoped to help these individuals by facilitating their treatment and rehabilitation. I regularly visit the Sister Aquinas Memorial Women’s Treatment Centre and Hei Ling Chau Addiction Treatment Centre to talk to the drug abusers, to provide motivation to overcome their addiction. As Honorary Legal Advisor of The Society of Aid and Rehabilitation of Drug Abusers, I advise on projects with the aim of helping to provide opportunities and support for drug abusers. SARDA’s aim to free drug abusers from the oppression and dependency on drugs is one that is commendable, and one that I fully support. I am honoured to be in a position where I could help effect such change, and it is indeed one of my most memorable pro bono works.

As Principal of my firm, I strongly encourage an attitude to help those in need, even if they do not have the means to provide for the services required. I believe pro bono is not just a professional duty, but a responsibility as one who’s gained so much from society, to give back to those less fortunate in any way that we can. Even the most minimal positive effect that I can have on one’s life is something that I treasure, and I am truly touched by this recognition from the Law Society; I can only hope that I can continue to help in the future.
**LEGAL TRIVIA #33**

This month we return to a mixture of legal history and trivia for our quiz questions. The questions have been prepared by Douglas Clark, Barrister. Suggestions for questions to appear in next month’s journal are most welcome.

1. **Which Chief Justice of Hong Kong was buried at sea?**
   
   A. John Hulme  
   B. James Russell  
   C. Atholl MacGregor  
   D. Denys Roberts

2. **The wife of which 19th Century Attorney General of Hong Kong is buried in Hong Kong?**
   
   A. Thomas Anstey  
   B. William Meigh Goodman  
   C. Julian Paunccefote  
   D. John Bramston

3. **How many times has the Basic Law been interpreted by the Standing Committee of the National People’s Congress?**
   
   A. 3  
   B. 4  
   C. 5  
   D. 6

4. **True or False: In 2007, a former judge of the High Court was convicted of fraud.**
   
   A. True  
   B. False

5. **What is the minimum number of judges that may hear a case in the Court of Final Appeal?**
   
   A. 5  
   B. 4  
   C. 3  
   D. 2

6. **Who holds the casting vote in the Court of Final Appeal?**
   
   A. The Chief Justice  
   B. The judge presiding over the hearing  
   C. No one

7. **Which of the following people may carry a firearm on the Star Ferry while on duty?**
   
   A. A police officer  
   B. A revenue officer  
   C. A member of the Chinese People’s Liberation Army  
   D. All of the above

8. **What is the maximum financial claim allowed in the Small Claims Tribunal?**
   
   A. $50,000  
   B. $60,000  
   C. $80,000  
   D. $100,000

9. **How many times per year must a swimming pool open to the public be emptied and cleaned in Hong Kong?**
   
   A. Never  
   B. Once  
   C. Twice  
   D. Every month

10. **Which of the following professionals may be registered as civil celebrants in Hong Kong?**
    
    A. Barristers  
    B. Solicitors  
    C. Notaries Public  
    D. Accountants

**Contest Rules:**
To be eligible to win a bottle of Ch. La Croizille 2007 from Global Vintage Wines Centre, please send your quiz question answers to cynthia.claytor@thomsonreuters.com. The first reader to respond with the most correct answers, with no more than 3 incorrect responses, will be deemed the winner. The decision of Thomson Reuters regarding the winner is final and conclusive.
法律知識測驗  #33

本月的測驗回歸到法律歷史和知識的問題。
問題由馬錦德(Douglas Clark)大律師編製。歡迎建議下期問題。

1. 哪位香港首席大法官死後採用海葬？
   A. 晓吾(John Hulme)
   B. 羅素(James Russell)
   C. 麥基利哥(Atholl MacGregor)
   D. 羅弼時(Denys Roberts)

2. 哪位19世紀律政司司長的妻子死後葬在香港？
   A. 安斯蒂(Thomas Anstey)
   B. 古德曼(William Meigh Goodman)
   C. 斯福德(Julian Pauncefote)
   D. 布蘭斯登(John Bramston)

3. 全國人民代表大會常務委員會曾多少次解釋《基本法》？
   A. 3
   B. 4
   C. 5
   D. 6

4. 是非題：在2007年，一位高等法院前任法官被判欺詐罪。
   A. 是
   B. 非

5. 終審法院聆訊案件的法官人數最少是幾人？
   A. 5
   B. 4
   C. 3
   D. 2

6. 在終審法院誰有權投決定票？
   A. 首席法官
   B. 主審法官
   C. 沒有人

7. 下列哪些人士在天星小輪上當值時可攜帶火器？
   A. 警務人員
   B. 繳私人員
   C. 中國人民解放軍成員
   D. 以上所有

8. 小額錢債審裁處可申索的最高索償額是多少？
   A. $50,000
   B. $60,000
   C. $80,000
   D. $100,000

9. 在香港，向公眾開放的游泳池每年必須抽乾清潔多少次？
   A. 從不
   B. 一次
   C. 兩次
   D. 每月

10. 以下哪些專業人士可在香港註冊為婚姻監禮人？
    A. 大律師
    B. 律師
    C. 公證人
    D. 會計師

競賽規則：
讀者如欲贏取一瓶由Global Vintage Wines Centre提供的2007年Ch. La Croizille葡萄酒，請將問題答案寄交cynthia.claytor@thomsonreuters.com。首位能提供最多正確答案(答錯的題目不得多於三題)的讀者將成為優勝者。湯森路透就得獎者所作的決定是最終及不可推翻的。

法律知識測驗 #32的答案

1. 粉嶺裁判法院  2. 香港高等法院  3. 西區裁判法院  4. 南九龍裁判法院  5. 英國在華最高法院
6. 最高人民法院  7. 北九龍裁判法院  8. 深圳市中級人民法院  9. 海參崴領事裁判所  10. 香港高等法院
Faculty of Law at The University of Hong Kong ("HKU") co-hosted the annual conference of the Law, Literature and the Humanities Association of Australasia ("LLHAA") this year with the Faculty of Arts, and the Emerging Strategic Research Theme in Law, Literature and Language on 8–10 December 2016. The conference invited researchers working at the intersection of law and humanities to explore the complex relations between law, theory, culture and visuality. Conference participants were invited to re-affirm the enduring capacity of interdisciplinary, creative and critical legal scholarship to allow people to see the law otherwise.

The theme “spectacular law” calls for reflection on the performance and dramaturgy of political and legal power, the affective lures of sovereignty and the technologies that reveal – and conceal – legality, dissent, (dis)obedience, and different modalities of regulation. The conference examined the various ways in which one could see, and be seen by, law, politics and power.

The relation between law and humanities is an inextricable one, and together their study is mutually rewarding. At the University of Hong Kong, Law and Humanities scholars and students carry out research, teaching and learning in ways that reflect the centrality of this relation to all our lives.

Three plenary sessions were held during the three-day conference which also included many parallel sessions exploring different issues, including:

- What are the techniques through which law’s operative power is made (in)visible today?
- How do the various methodologies of ‘law and humanities’ allow us to approach questions of speech, surveillance, censorship, and freedom?
- How are the spatial, aural, textual and haptic dimensions of law and power refracted through – or obscured by – a focus on the law’s visuality, its spectacles and spectaculars?
• In what ways might we think about the performance of law in a plurality of settings: on the stage, the screen, in literature or in the courtroom?

• Does the development of new technologies necessitate the re-examination of how justice is seen to be done?

Professor Laurent de Sutter, Professor of Legal Theory of Vrije Universiteit Brussels spoke at the first plenary on “The Poetics of Police: Legal Life Lessons from Inspecteur Jacques Clouseau”. Professor de Sutter inquired, with the adventures of Inspecteur Jacques Closeau in the movie, on the role played by law in the concept of order, and how interrogation or legal methodology forced one to throw away the certainties about which law, order and the seriousness that both require.

The Law and Film Roundtable served as the second plenary session in which the relationship between law and film from a variety of perspectives were investigated. Several topics such as legal philosophy, legal procedure and social justice were discussed. The award-winning director and producer Ms. Ann Hui On Wah shared her experience on producing material for the Independent Commission Against Corruption in the early part of her career, and also reflected on the multiple connections between film and the law from the perspective of a director. Other members at the Roundtable included Professor William MacNeil, Dean of Law, Head of School of Law and Justice, and Honourable John Dowd Chair in Law at Southern Cross University, Australia, Dr. Gina Marchetti, Associate Professor, HKU Comparative Literature, and Dr. Marco Wan, Associate Professor, HKU Faculty of Law, and Honorary Associate Profess, HKU School of English.

Dr. Christine Black, Griffith University, Australia, closed the conference with her wonderful speech in the third plenary session on “Pocket Sized Jurisprudence in Aboriginal Comics and A Mosaic of Writings”. Through an Australian Aboriginal lens, she explored how graphic justice, as argued by Giddens, has broadened “our understanding of law and justice as part of our human world, a world that is inhabited not simply by legal concepts and institutions alone, but also by narratives, stories, fantasies, images, and other cultural articulations of human meaning”, while referencing how lawful behaviour is represented in Aboriginal pocket sized comics for use amongst Aborigines living in remote and deprived areas of central Australia.

• 我們可以通過什麼方式考慮在多個環境中法律的表現：在舞台、在銀幕上、在文學或在法庭？及

• 新科技發展，是否需要重新審視如何看待公義？

布魯塞爾Vrije University Brussels法律理論教授Laurent de Sutter教授在首次全體會議上發表了題為「警察詩學：從Jacques Clouseau督察獲得的法律生活教訓」的演講。De Sutter教授通過電影中的督察Jacques Closeau的冒險，對法律在秩序概念中發揮的作用，以及審訊或法律方法迫使人們拋棄法律、秩序的確定性和兩者所需的嚴肅性，提出疑問。

法律與電影圓桌會議是第二次全體會議，從各種角度審視了法律和電影之間的關係，討論了法律哲學、法律程序和社會公義等若干主題。屢獲殊榮的導演兼製作人許鞍華女士分享了她在職業生涯早期為廉政公署製作宣傳資料的經驗，並從演員的角度，反思電影與法律之間的多重連繫。圓桌會議的其他成員包括澳洲Southern Cross University法學院院長兼法律和司法學院院長William MacNeil教授、法學教授John Dowd、香港大學比較文學副教授馬蘭清博士，及香港大學法學院副教授兼英格蘭學院榮譽副教授溫文瀟博士。

澳洲Griffith University Christine Black博士以在第三次全體會議上以「土著漫畫和文章的口袋法理」為題作精彩演講，結束了今屆會議。透過澳洲土著的鏡頭，她探索圖像公義，正如Giddens所說，如何擴闊了「我們對法律和公義作為人類世界一部份的理解，一個居住了不僅法律概念和體制，亦居住了敘述、故事、幻想，圖人弓日心人和其他人類意義文化表達的世界」，參考居住在澳洲中部偏遠貧困地區的土著，他們的口袋漫畫如何表達合法行為。
CUHK Faculty of Law Master’s Degree Graduation Ceremony

CUHK Faculty of Law held its Master’s Degree Graduation Ceremony on 19 November 2016 and was honoured to have Ms. Winnie Tam SC as the Guest of Honour to deliver a speech at the Ceremony. In 2015–16, over 500 students graduated from the Master’s Degree Programmes (the Juris Doctor (JD) Programme, the JD-MBA Double Degree Programme, the Master of Laws (LLM) Programmes), the Doctor of Philosophy in Laws (PhD) Programme or the Postgraduate Certificate in Laws (PCLL) Programme. A Faculty Reception was held after the Ceremony for law graduates to celebrate their successes and achievements with Ms. Winnie Tam SC, the Faculty Dean Professor Christopher Gane, Faculty members as well as their families and friends.

At its 10th Anniversary in 2016, the CUHK Faculty of Law is proud to have 4,907 graduates from its undergraduate and postgraduate programmes.
CityU: Sir Oswald Cheung Memorial Fund PCLL Scholarship 2016–17 and PCLL Admission Scholarship 2016–17

The ceremony for the Sir Oswald Cheung Memorial Fund PCLL Scholarship 2016–17 and PCLL Admission Scholarship 2016–17 was held on 29 September 2016. Professor Geraint Howells, Dean of the School of Law, CityU gave a welcome speech in which he introduced Sir Oswald Cheung’s remarkable career history. Ms. Audrey Eu SC, Director of the Sir Oswald Cheung Memorial Fund, also gave her remarks as our guest speaker. She explained the background of the Sir Oswald Cheung Memorial Fund PCLL Scholarship, which was established last year, and used this occasion to present the scholarship to the first recipient. The generous character of Sir Oswald and his dedication to public service was well known in the legal profession and we are encouraged to follow in his footsteps as we pursue our own public service endeavours.

The scholarship recipient for the Sir Oswald Cheung Memorial Fund PCLL Scholarship 2016–17 is Ms Flora Lam. The scholarship recipients for the PCLL Admission Scholarship 2016–17 are Cao Chenyu, Daniel Herszberg, Lau Authony Chun Yin and Ng Fung.
**FINANCIAL SERVICES**

MICHAEL PAGE LEGAL

will find it challenging to secure a new role as the demand for Mandarin speakers is rising exponentially. However, global banks and multinational firms have slowed down recruiting due to the weaker economic climate and headcount issues. This may be a challenge for candidates License Types (in particular 1, 4, 6 and 9) are massively in demand.

LOOKING FORWARD TO 2017

A leading international law firm is seeking to take on a disputes lawyer at junior to mid-level. In this role you will be exposed to a broad range of dispute resolution matters, with a particular focus on international arbitration, cross border disputes (China-related) as well as on-going regulatory investigations. You will be faced with demanding yet intellectually stimulating work. The ideal candidate is a common law qualified solicitor with significant hands on experience on dispute resolution and arbitration matters, where experience gained with sizable law firms will be highly regarded. Newly qualified lawyers with outstanding academics and relevant experience during traineeship will also be considered. For this role bilingual fluency in English and Mandarin is a must. Ref: H3791070

Dispute Resolution Associate

IP/IT Senior Associate

A new associate role has arisen in a reputable Intellectual Property/Commercial practice group within an international law firm in Asia. Joining the team, you will advise clients on commercial and transactional projects, and contentious intellectual property matters. The variety of work within the role ranges from R&D collaborations, licensing and distributors’ supply arrangements to advising in the TMT space, including e-commerce, internet, media and e-health matters. You will also gain exposure in providing advice on data privacy and cyber security, advertising, labelling and consumer protection laws and regulations. The ideal candidate will possess at least 3 years’ PQE within the area of intellectual property, ideally with experience dealing with IT/Technology clients and industry. Overseas candidates with relevant experience will be considered. Mandarin language skills is a plus, not mandatory. Ref: H3791260

A new associate role has arisen in an international law firm, seeking to take on a senior in house senior regulatory litigation lawyer, focusing on regulatory matters, risk management and compliance with relevant regulatory requirements, firm policies, together with reputational and commercial conflict implications. You will be entrusted to work closely with the US and EU teams. The ideal candidate will be a qualified solicitor with experience managing conflicts and other compliance issues. You will be able to communicate persuasively and clearly with all members of the firm and show good problem solving skills. Chinese language skills is useful though not mandatory. Ref: H3791070

Senior Regulatory Litigation Associate

- 3–10 PQE
- UK Law Firm

Compliance Associate

- 3–10 PQE
- International Law Firm

A large UK firm is hiring a Compliance Associate. Joining the firm’s risk management function, you will take on a regional role reporting to the firm’s General Counsel. In this role you will be responsible for analysing and advising on conflicts as well as looking after other compliance issues for mandates to be undertaken by the firm. You will ensure the firm is in compliance with relevant regulatory requirements, firm policies, together with reputational and commercial conflict implications. You will be entrusted to work closely with the US and EU teams. The ideal candidate will be a qualified solicitor with experience managing conflicts and other compliance issues. You will be able to communicate persuasively and clearly with all members of the firm and show good problem solving skills. Chinese language skills is useful though not mandatory. Ref: H3791070

Dispute Resolution Associate

- 3+ PQE
- Well-established law firm

IP/IT Senior Associate

A new associate role has arisen in a reputable Intellectual Property/Commercial practice group within an international law firm in Asia. Joining the team, you will advise clients on commercial and transactional projects, and contentious intellectual property matters. The variety of work within the role ranges from R&D collaborations, licensing and distributors’ supply arrangements to advising in the TMT space, including e-commerce, internet, media and e-health matters. You will also gain exposure in providing advice on data privacy and cyber security, advertising, labelling and consumer protection laws and regulations. The ideal candidate will possess at least 3 years’ PQE within the area of intellectual property, ideally with experience dealing with IT/Technology clients and industry. Overseas candidates with relevant experience will be considered. Mandarin language skills is a plus, not mandatory. Ref: H3791260

Senior Regulatory Litigation Associate

- 7+ PQE
- US Law Firm

Our client is a well-established US Law firm, seeking to take on a senior regulatory litigator. In this role, you will primarily focus on white collar/regulatory defense matters, shareholders’ and directors’ disputes, internal and regulatory investigations, commercial litigation as well as handling enquires from a variety of regulatory bodies in Asia and overseas. The ideal candidate will possess at least 7 years’ PQE, being a senior litigator with strong experience on regulatory/financial services matters. Candidates who have been working within regulatory bodies though without recent contentious experience will also be considered. English and Chinese language skills are required. Competitive package in line with the New York rates upon offer. Ref: H3767010

Senior Regulatory Litigation Associate

- 7+ PQE
- US Law Firm

Our client is a well-established US Law firm, seeking to take on a senior regulatory litigator. In this role, you will primarily focus on white collar/regulatory defense matters, shareholders’ and directors’ disputes, internal and regulatory investigations, commercial litigation as well as handling enquires from a variety of regulatory bodies in Asia and overseas. The ideal candidate will possess at least 7 years’ PQE, being a senior litigator with strong experience on regulatory/financial services matters. Candidates who have been working within regulatory bodies though without recent contentious experience will also be considered. English and Chinese language skills are required. Competitive package in line with the New York rates upon offer. Ref: H3767010

Senior Regulatory Litigation Associate

- 7+ PQE
- US Law Firm

LOOKING FORWARD TO 2017

Hong Kong’s legal sector enjoyed a steady 2016, and elements of caution did exist as a result of various macroeconomic factors. 2017 is expected to trend similarly, with an increasing number of new based-in-Hong Kong Chinese financial services firms seeking legal talent. Buy side will continue to grow within the financial services sector and employers will typically seek talent with asset management, private equity and fund house experience. Given the rising trend of Chinese securities and other buy side houses slowly establishing themselves in Hong Kong, lawyers who are familiar with SFC (Securities and Futures Commission) License Types (in particular 1, 4, 6 and 9) are massively in demand. However, global banks and multinational firms have slowed down recruiting due to the weaker economic climate and headcount issues. This may be a challenge for candidates who are keen to explore only positions in global corporations as there will be fewer openings available.

Within the in-house commerce sector, we see strong and stable activity across the technology, digital, real estate, media, telecommunications sectors as well as mainland Chinese companies with bases in Hong Kong. The hiring trends in the private practice are similar to past years, although firms are now more cautious with hiring. Lawyers with experience in Banking Finance / M&A and Private Equity / Funds will continue to be sought after, though Chinese language skills is a key prerequisite. Increasingly, more employers, especially Chinese companies based in Hong Kong, are seeking professionals who have native Mandarin skills. Job seekers without this skill set will find it challenging to secure a new role as the demand for Mandarin speakers is rising exponentially.

Michael Page
Legal Counsel
› 3+ PQE
› Hong Kong listed conglomerate

Our client is a well-respected Hong Kong listed conglomerate with businesses in property, hospitality, retail, and energy. They are currently seeking a Head of Legal to join their team to strengthen the legal department and support the business. Reporting directly to the CEO, the successful candidate will have at least 5 years’ PQE gained within a corporate environment. The ideal candidate will possess at least 3 years’ PQE and have experience in property, corporate, and general commercial matters. Fluency in spoken and written English and Chinese (Mandarin and Cantonese) is required. Ref: H3785400

Private Equity Lawyer
› 3–5 PQE
› Asset Management House

A fast-growing asset management house is seeking to expand its legal team. The successful candidate will have at least 3 years’ PQE in private equity and M&A transactions. You will advise on legal issues and identify potential legal risks, and will be responsible for drafting and reviewing documentation. Fluency in spoken and written English and Chinese (Mandarin and Cantonese) is required. Ref: H3774070

M&A/Loans/Convertible Bonds Lawyer
› 3+ PQE
› Reputable Investment Group

A well-established investment group is seeking a Private Equity lawyer to join their team. The successful candidate will have at least 3 years’ PQE gained within a corporate environment. You will advise on legal issues and identify potential legal risks, and will be responsible for drafting and reviewing documentation. Fluency in spoken and written English and Chinese (Mandarin and Cantonese) is required. Ref: H3788120

Corporate Finance Lawyer
› 7+ PQE
› Investment Bank

A reputable corporate finance firm is seeking a Corporate Finance lawyer to join their team. The successful candidate will have at least 7 years’ PQE gained within a corporate environment. You will advise on legal issues and identify potential legal risks, and will be responsible for drafting and reviewing documentation. Fluency in spoken and written English and Chinese (Mandarin and Cantonese) is required. Ref: H3781710

Head of Legal
› 12+ PQE
› Private Equity House

Our client is a leading private equity firm and they are seeking a Head of Legal to join their team. The successful candidate will have at least 12 years’ PQE gained within a corporate environment. You will advise on legal issues and identify potential legal risks, and will be responsible for drafting and reviewing documentation. Fluency in spoken and written English and Chinese (Mandarin and Cantonese) is required. Ref: H3788280

Law Firm
› 5+ PQE
› Hong Kong listed company (Based in Macau)

Our client is a leading law firm in Macau with experience in property, corporate, and general commercial matters. They are currently seeking a Private Equity lawyer to join their team. The successful candidate will have at least 5 years’ PQE gained within a corporate environment. You will advise on legal issues and identify potential legal risks, and will be responsible for drafting and reviewing documentation. Fluency in spoken and written English and Chinese (Mandarin and Cantonese) is required. Ref: H3787920

Private Equity Lawyer
› 5-10 PQE
› Investment Bank

A leading investment bank is seeking a Private Equity lawyer to join their team. The successful candidate will have at least 5 years’ PQE gained within a corporate environment. You will advise on legal issues and identify potential legal risks, and will be responsible for drafting and reviewing documentation. Fluency in spoken and written English and Chinese (Mandarin and Cantonese) is required. Ref: H3787180

Banking Lawyer
› 3+ PQE
› Investment Bank

A reputable banking institution is seeking a Banking lawyer to join their team. The successful candidate will have at least 3 years’ PQE gained within a corporate environment. You will advise on legal issues and identify potential legal risks, and will be responsible for drafting and reviewing documentation. Fluency in spoken and written English and Chinese (Mandarin and Cantonese) is required. Ref: H3649150

To apply, visit www.michaelpage.com.hk/apply quoting the reference number or contact our team at 852 2530 6100.
### Private Practice

<table>
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<tr>
<th>Practice Area</th>
<th>Region</th>
<th>PQE Range</th>
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<tbody>
<tr>
<td><strong>CORPORATE FINANCE</strong></td>
<td>HONG KONG</td>
<td>5-8 PQE</td>
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<tr>
<td>City law firm expanding its corporate practice and looking to bring on a senior associate with future prospects of counsel/partnership. The lawyer will lead and manage IPO and public M&amp;A transactions and matters of Takeover Code. Mandarin required. (HKL 14526)</td>
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<tr>
<td><strong>CAPITAL MARKETS, INDIA</strong></td>
<td>HONG KONG</td>
<td>5-8 PQE</td>
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<tr>
<td>Law firm expanding its platform in India capital markets transactions. The lawyer will be India qualified and with extensive experience in capital markets transactions in India. Role will also cover cross border M&amp;A. (HKL 14693)</td>
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<tr>
<td><strong>FUNDS</strong></td>
<td>HONG KONG</td>
<td>3-7 PQE</td>
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<tr>
<td>Off-shore law firm seeks experienced funds associate to join their growing practice. Working with major financial institutions/corporations in the establishment and structuring of offshore investments. Mandarin is not required and the firm is open to relocation of lawyers from overseas. (HKL 14650)</td>
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<tr>
<td><strong>BANKING &amp; FINANCE</strong></td>
<td>HONG KONG</td>
<td>3-6 PQE</td>
</tr>
<tr>
<td>City firm seeks a banking finance lawyer to join their well-established tier 1 team. You should be qualified in a common law jurisdiction and possess solid experience in leveraged and acquisition finance gained from an international firm. (HKL 14740)</td>
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<tr>
<td><strong>CORPORATE FINANCE</strong></td>
<td>HONG KONG</td>
<td>2-6 PQE</td>
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<tr>
<td>International law firm with a growing practice seeks solid transactional lawyer working with a highly regarded partner. The team is known to represent household names across the region and internationally, and have a strong flow of deals. Mandarin language skills and HK qualification required. (HKL 14735)</td>
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<tr>
<td><strong>FCPA</strong></td>
<td>HONG KONG</td>
<td>3+ PQE</td>
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<tr>
<td>Leading US law firm seeks a lawyer with solid white collar crime and investigatory experience to join their growing team, working with a group of collegial lawyers. US qualification and international law firm experience is important, Mandarin language skills mandatory. (HKL 14707)</td>
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<tr>
<td><strong>COMPETITION</strong></td>
<td>HONG KONG</td>
<td>NQ-4 PQE</td>
</tr>
<tr>
<td>City law firm looking to hire an experienced antitrust/competition lawyer to join their leading tier 1 practice. Preference for lawyers with experience or keen interest in Asia related competition law, merger control, regulatory investigations. Mandarin required. (HKL 12954)</td>
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### In-house

<table>
<thead>
<tr>
<th>Practice Area</th>
<th>Region</th>
<th>PQE Range</th>
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</thead>
<tbody>
<tr>
<td><strong>COMPETITION LAWYER</strong></td>
<td>HONG KONG</td>
<td>10-15 PQE</td>
</tr>
<tr>
<td>Leading corporation seeks a commercially astute regulatory counsel to head up their compliance team and assist in compliance matters globally with a particular emphasis on competition law. The ideal candidate should be qualified in a commonwealth law jurisdiction. They are open to candidates from overseas. (HKL 14765)</td>
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<tr>
<td><strong>REGIONAL COUNSEL</strong></td>
<td>HONG KONG</td>
<td>6-12+ PQE</td>
</tr>
<tr>
<td>Well-regarded global company seeks a counsel to provide advice on legal, regulatory and risk matters across their various offices in Asia. Candidates will advise on legal commercial issues, business acceptance and compliance matters, implementing new policies related to risk and relevant procedures to all levels of staff. (HKL 14761)</td>
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<tr>
<td><strong>LEGAL COUNSEL</strong></td>
<td>HONG KONG</td>
<td>6-10PQE</td>
</tr>
<tr>
<td>Global business with its HQ in Hong Kong seeks a senior lawyer to support its various business units. Work involves advising the international business on general commercial work covering contracts, IP, HR issues. (HKL 14710)</td>
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<tr>
<td><strong>BANKING &amp; FINANCE</strong></td>
<td>HONG KONG</td>
<td>6-10 PQE</td>
</tr>
<tr>
<td>Our client is a well-known asset management business. Its Hong Kong legal team is looking to appoint a counsel with experience in structured lending work to support the business. Experience in handling banking and finance, restructuring and distressed deals would be helpful. This is a regional role. (HKL 14663)</td>
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<tr>
<td><strong>EMPLOYMENT LAWYER</strong></td>
<td>HONG KONG</td>
<td>4-8 PQE</td>
</tr>
<tr>
<td>A high profile conglomerate seeks a commercially astute lawyer to assist in a range of employment and commercial litigation matters. The employment advice will span both contentious and non-contentious matters, while the dispute issues will include contractual, suppliers, personal injuries, IP and discrimination claims. (HKL 14669)</td>
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<tr>
<td><strong>LEGAL – INSURANCE</strong></td>
<td>HONG KONG</td>
<td>3-7 PQE</td>
</tr>
<tr>
<td>Global insurance group is looking to expand their Hong Kong legal team. The position will advise on a wide range of business operational matters including policy, distribution and marketing. Fluency in Cantonese (written and spoken) is required. (HKL 14678)</td>
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<tr>
<td><strong>LEGAL COUNSEL</strong></td>
<td>HONG KONG</td>
<td>3-5 PQE</td>
</tr>
<tr>
<td>Opportunity to join a well-regarded financial institution, providing legal support across the Asia region to the brokerage and its investment banking business. Ideal candidate will be a HK-qualified lawyer with solid experience in advising financial services. This is a great opportunity that offers an excellent package and manageable hours. Mandarin is required. (HKL 14752)</td>
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</table>

To apply, please send your updated resume to als@alsrecruit.com, or contact one of our Legal Consultants in Hong Kong:

<table>
<thead>
<tr>
<th>Name</th>
<th>Contact Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>Claire Park</td>
<td>Tel: +852 2920 9134 Email: <a href="mailto:c.park@alsrecruit.com">c.park@alsrecruit.com</a></td>
</tr>
<tr>
<td>Georgeanna Mok</td>
<td>Tel: +852 2920 9101 Email: <a href="mailto:g.mok@alsrecruit.com">g.mok@alsrecruit.com</a></td>
</tr>
<tr>
<td>William Chan</td>
<td>Tel: +852 2920 9105 Email: <a href="mailto:w.chan@alsrecruit.com">w.chan@alsrecruit.com</a></td>
</tr>
</tbody>
</table>
Major, Lindsey & Africa, founded in 1982, is the world’s largest and most experienced legal search firm, offering unparalleled service and strategic advice to candidates and clients looking to gain access to Asia Pacific, Australia, EMEA and the United States.

ASSOCIATE OPPORTUNITY: Finance, 1–5 years PQE (Hong Kong)
Magic Circle firm seeks a finance associate to join its busy team in Hong Kong. This is a growth role in a well-established team that maintains a collegial environment and is an excellent opportunity for mentorship and development. Candidates must have excellent academic credentials and be at an international law firm.

ASSOCIATE OPPORTUNITY: M&A, Commonwealth-qualified, 4+ years of experience, Mandarin language skills required (Hong Kong)
US law firm seeks a mid-level M&A associate for its team in Hong Kong. The successful candidate will get exposure to high profile transactions with a growing team. Relocation is open to the right candidate.

ASSOCIATE OPPORTUNITY: Project Finance, 2–5 years PQE (Singapore)
US firm seeks to hire a project finance associate to join its hardworking team in Singapore. This role provides great client exposure, responsibility for client development and great work exposure across the region. This is a strong, global platform that will encourage progression and development.

ASSOCIATE OPPORTUNITY: Corporate, Singapore-qualified, 5+ years PQE, (Singapore)
UK firm seeks mid-level corporate associates to join its team. Corporate associates will be offered a wide spectrum of work. The firm is well-known for its collegial environment and work quality.

ASSOCIATE OPPORTUNITY: M&A, US-qualified, 4+ years of experience, Mandarin language skills required (Beijing)
Wall Street law firm seeks a mid-level M&A associate for its team in Beijing. The incoming candidate will work with an elite corporate team across the region and focus on outbound M&A transactions. JD from top US law school is required.

ASSOCIATE OPPORTUNITY: US Capital Markets, 1–4 years PQE (Beijing)
International law firm seeks an associate to join its capital markets team in Beijing. This firm offers excellent training and a collegial working environment. Native English speaker with Mandarin capability is preferred.

ASSOCIATE OPPORTUNITY: US Corporate, 3–5 years of experience, business level proficiency in Japanese language skills (Tokyo)
Well-respected US law firm seeks an associate for leading investment funds practice to join its Tokyo office. The ideal candidate will have at least two years of experience outside of Japan, strong interest in investment fund and asset management areas, some regulatory and transactional experience and a willingness to live in Japan on a long-term basis.

ASSOCIATE OPPORTUNITY: Corporate, Commonwealth-qualified, 2–5 years PQE (Sydney)
Top tier law firm seeks an associate to join its corporate team in Sydney. Candidates must have excellent M&A experience at an international firm. Associates with strong international experience are highly preferred.
Legal Counsel (Trilingual)
**Listed Property Developer, 5+ Years PQE**
- Provide legal support to the business units on cross-border M&A transactions
- Advise on corporate governance and listing compliance matters
- You should have M&A and general commercial experience gained in a leading law firm and/or in-house listed company
- Fluent English, Cantonese and Mandarin required. Ref: AT 502818

Legal Counsel (Bilingual)
**Leading Multinational Corporation, 6+ Years PQE**
- Handle general in-house legal matters covering Hong Kong and Macau
- Experience gained with international law firms and in-house with a fast moving consumer goods environment is necessary
- Hong Kong qualified and fluent English and Cantonese is required (both spoken and reading/writing skills). Ref: AT 502805

Commercial Litigation Partner
**International Law Firm, Competitive**
- Native Cantonese speaking litigation partners sought
- Any areas of disputes considered, large portable practice
- E.g. arbitration, construction, shipping
- Of counsels and consultants wanting career track also sought
- Hong Kong qualified
- Fluent Mandarin a bonus. Ref: CT 502878

Compliance Lawyer
**International Law Firm**
- Be a part of the firm’s global risk management function
- Analyse and assess conflicts, risk and compliance issues
- Ideally a qualified lawyer with relevant prior experience
- Excellent interpersonal skills to deal with Partners
- Non-fte earner position – good work life balance
- Chinese languages not required, ref: MK 502863

Legal Counsel
**Real Estate and Hospitality**
- Junior mid level HK qualified lawyer sought
- Negotiate and draft wide range of commercial contracts
- 2+ years’ PQE gained from a sizable law firm
- Solid knowledge of drafting commercial contracts essential
- Fluent English and Chinese language skills essential
- Ref: MK 502850

Capital Markets Lawyer
**Top PRC Financial Institution**
- Experienced capital markets lawyer sought
- Advise front line deal team (equity and debt financing)
- Gain exposure in other areas of the business
- Ideally HK or PRC qualified with at least 3 years’ PQE
- Fluent English and Putonghua essential
- Ref: MK 502809

For a confidential discussion regarding career opportunities, please contact:

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Hong Kong
SALES & TRADING DESK LAWYER
GLOBAL MARKETS START UP
OAA/528940
This subsidiary of a large retail bank is building out a brand new global markets function, focused on FICC including FX, commodities and energy. The project is now ready for the hire of a senior lawyer to sit on the trading floor, manage the legal function and report directly to the MD.

Key Requirements:
- Minimum five years of PQE, ideally Hong Kong qualified
- Strong experience in fixed income law, especially commodities and energy
- In-house experience working on a trading floor will be advantageous
- Excellent command of both English and Chinese languages (spoken and written)

FINTECH LAWYER
MOBILE FINANCING START UP
OAA/523180
An HK listed financial service that is a rolling out an innovative new mobile financing platform, providing HNW retail investors with mobile access to brokerage, wealth management and funds products. They now require an additional lawyer to develop the products further whilst also looking at corporate work as the business scales.

Key Requirements:
- Minimum three years of PQE, ideally Hong Kong qualified
- Strong experience in financial products, ideally from a retail, derivatives or asset management background. General corporate will also be considered
- Experience in FRC regulatory work also be of benefit
- Excellent command of both English and Chinese languages (spoken and written)

HEAD OF COMPLIANCE
GLOBAL SECURITIES BROKERAGE
WDM/528680
A global securities brokerage, recently opened in Hong Kong is searching for a Head of Compliance. Primary responsibility will be to manage the firm’s relationship with the SFC and educate sales and trading staff on HK regulation. This firm currently holds an SFC Type-1 license and trades primarily in equities products.

Key Requirements:
- 10+ years in Compliance with a SFC regulated financial firm
- Strong knowledge of equities products and international equities trading
- Excellent interpersonal skills and ability to interface with senior management and front office trading teams
- Fluent English language skills; other regional languages would be an asset

LEGAL & COMPLIANCE OFFICER
GLOBAL SECURITIES FIRM
WDM/505580
One of the premier regional financial conglomerates, rapidly growing in HK, is hiring a Legal & Compliance professional to join their team. This person will gain hands-on exposure to all aspects of regulatory compliance, documentation, compliance review and business assessments and will have exposure to senior leadership.

Key Requirements:
- Minimum two years of compliance experience within Investment Banking or Securities firm
- Strong knowledge of regulation around trading activity, SFC experience is highly preferred
- Legal background or training from either Masters level legal education or Paralegal work would be preferred
- Excellent command of both English and Chinese languages (spoken and written)

HEAD OF COMPLIANCE
LEADING ASIAN BANKING GROUP
QP/525380
One of the major Asian Banking Groups is looking for a Head of Compliance covering business line advisory and regulatory matters, reporting directly to the Greater China Head of Compliance. This business focuses on Corporate Banking with a more recent focus on flow-led businesses such as trade finance and cash management (known as transaction banking in the market). There are also growing desks in Global Markets and Private Wealth.

Key Requirements:
- 8 – 10 years relevant experience in corporate banking
- Excellent knowledge and understanding of regulations in Hong Kong, both HKMA and SFC
- Experience in Trade and cross border transactions and issues will be an advantage
- Demonstrated ability to create compliance strategies

SENIOR COMPLIANCE MANAGER / VP, CENTRAL COMPLIANCE
TOP GLOBAL BANK
QP/519950
A top global banking group is looking for a senior compliance manager to join their team looking after regulatory and central compliance functions. The role will provide compliance advisory to the wholesale banking business and will focus on core corporate banking products such as cash management, trade finance, loans, etc.

Key Requirements:
- Minimum 10 years of banking operations experience, with relevant exposure to anti-money laundering / compliance / trade finance/ banking regulatory bodies / risk management would be highly regarded
- Good knowledge of banking products/ trade/ finance/ factoring loans/ regulations and strong interest in Fraud investigation
- Familiar with Criminal Law and Judicial proceedings
- Excellent command of both English and Chinese languages (spoken and written)

TO FIND OUT MORE ABOUT THESE EXCITING LEGAL CAREER OPPORTUNITIES, PLEASE CONTACT:
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**Corporate Finance**

*2-4 PQE*  *Hong Kong*

This eminent firm seeks a lawyer to join their practice, working alongside a well established partner, and be exposed to a range of corporate finance, PE, and M&A matters. This is an excellent opportunity for a junior lawyer to take their career forward with a leading law firm. Mandarin skills an advantage. HKL4375

**Construction Litigation**

*3-5 PQE*  *Hong Kong*

This premier practice seeks a construction lawyer with exposure to litigation and arbitration matters. You will work alongside highly regarded partners in a close-knit team, representing parties in complex adjudications. You will be HK qualified with experience gained with a leading practice. Cantonese required. HKL4317

**Corporate PSL**

*3+ PQE*  *Hong Kong*

Excellent opportunity for experienced lawyers to step away from fee-earning and join a highly regarded law firm with a leading corporate practice. You will work with a collegiate team and take on a full range of PSL duties including creating a solid precedent system, preparing notes on legal issues and know-how documents, and more. HKL3730

**Corporate Finance**

*1-3 PQE*  *Hong Kong*

This is an excellent opportunity for a junior associate looking to join a well-established and collegiate team. You will focus on HK listing work with exposure to private equity and M&A transactions. You will be HK qualified and have gained experience within a leading local or international law firm. Mandarin preferred. HKL4371

**Shipping Litigation**

*2+ PQE*  *Hong Kong*

This is a fantastic opportunity with a globally recognised international law firm, seeking a junior shipping litigator to work for a highly regarded partner and act for household name clients including global insurers, P&I Clubs and commodity brokers. Mandarin skills a plus. HKL4313

**Private Wealth**

*NQ-2 PQE*  *Hong Kong*

This is an excellent opportunity for a junior individual to make the move into a truly prestigious corporate practice focusing on a range of general corporate finance and advisory work, including a mix of private equity and M&A work with a reputable partner in a collegiate environment. HKL4383

**Aviation Finance**

*3+ PQE*  *Hong Kong*

Our client is a UK law firm with a highly recognized practice within the aviation finance space. An individual, preferably with exposure to aircraft finance, is sought to join this market leading practice to work on leasing and financing transactions. Proficiency in either Cantonese or Mandarin a plus. HKL4223

**International Trade**

*4-6 PQE*  *Hong Kong*

An excellent opportunity for a finance associate with experience in International Trade to work alongside a highly regarded partner. You will be advising and preparing commodities and structured trade finance documents for various banks, as well as commercial and international sale contracts. Mandarin required. HKL4369

**Derivatives & Structured Finance**

*2-4 PQE*  *Hong Kong*

This top tier practice seeks a lawyer to join their market leading international practice. You will work with highly regarded partners and be exposed to a wide range of structured finance and derivatives transactions, including repackagings, total return swaps, CLOs, CDOs and also OTC derivatives. HKL4231

**Corporate Finance**

*5 PQE*  *Hong Kong*

This is an excellent opportunity for an associate looking to join a well-established and collegiate team. You will focus on HK listing work with exposure to some M&A transactions. The team is well structured and is able to offer the right candidate a career path. Mandarin skills preferred. HKL4316

**Corporate M&A**

*3+ PQE*  *Hong Kong*

A superb opportunity for a lawyer to work alongside reputable partners and a strong team in the field. You will advise blue-chip corporate clients and leading investment banks on a variety of work including M&A, joint ventures and capital markets across SEA. Common law qualification & Mandarin required. HKL3548

**Banking & Finance**

*3-6 PQE*  *Singapore*

Our client is a well known international firm. They are currently seeking a highly motivated mid level lawyer to join their Banking & Finance team to work on big ticket deals, including corporate lending, equity-backed financing, restructuring and mainstream syndicated lending. Mandarin skills a bonus. HKL4390

This is a selection of our current vacancies; for more information in complete confidence, please call the Hong Kong office on +852 2503 2500 or email us at sandra.godbold@atticus-legal.com
What’s on your horizon this year?
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