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John Poon BBS JP
Chairman of the Financial Reporting Council

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CORPORATE 企業
Legal Strategies for Smooth Family Business Succession
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The Magna Carta enshrined the right for a man to be punished only pursuant to the “lawful judgement of his equals”. However, in recent years, jurisdictions across the world are grappling with jurors’ misuse of the internet during court proceedings, with the Internet ultimately posing a threat to the integrity of the jury system. The Criminal Law article (p. 30) in this issue examines HKSAR v Chan Huandai, which highlights problems of running jury trials in the internet age and proposes possible solutions.

Elsewhere in our July issue, the Regulatory feature (p. 36) explores a host of issues lawyers face when preparing to list a company with a previous Securities and Futures Commission (“SFC”) investigation record, specifically addressing how lawyers can balance their duty to conduct proper due diligence (which requires a certain amount of disclosure) with their secrecy obligations under the Securities and Futures Ordinance. The Corporate Law piece (p. 42) discusses major challenges of succession that family business leaders face and then proposes governance structures that lawyers can devise for them to better ensure the succession process goes smoothly.

Our Practice Management article (p. 82) offers an appraisal of the UK’s Alternative Business Structure (“ABS”) regime since it was introduced in 2007. While its impact thus far has been more muted than initially feared, the author encourages lawyers not to be complacent, as many ABS, especially the Big 4, could have a significant impact over the next five years, as they challenge traditional business models and offer new services to clients.

Also, for readers wishing to add trust law to your practice or those in need of a trust law reference manual, we have included a Book Review (p. 80) of James Kessler QC, Thelma Kwan and Philip Munro’s new book Drafting Trusts and Will Trusts in Hong Kong, which is the first book published that is entirely devoted to explaining the ins and outs of drafting Hong Kong trusts.
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PRESIDENT’S MESSAGE

Promoting Our Brand as a World Class Legal Service Provider

I am greatly honored and privileged to have the opportunity to serve the profession as President of the Law Society. The dedication and hard work of my predecessors is a hard act to follow, but I will do my best to continue their good efforts in promoting the interests of the profession.

I joined the Council in 2005. Back then, there were about 6,100 members. I am pleased to note that we have just passed the 10,000 mark, with our membership reaching 10,032 in May 2016. Admission to the solicitors’ branch of the profession has maintained an average annual growth rate of about 5.8 percent in the past 11 years.

Over the years, the combined effect of the policy trend to reduce national barriers to international economic transactions and the rapid advancement in technology has driven global economic integration. The advent of technology removes barriers in time and space and reduces the cost of moving information, people, goods and capital around the world. This phenomenon has resulted in the liberalization of international trade and the massive expansion of the economic market, as well as the range of goods and services that support it.

An open market, coupled with a mobile workforce, has created a highly competitive business environment. To ensure the continued development of our profession against this backdrop, it is important to strengthen our capability and standards to keep up with society’s changing demands. This must include maintaining high professional standards and ensuring practitioners adopt quality risk management practices. This in turn will ensure clients get the best service possible and the public interest is protected. It will also ensure our legal industry remains competitive in the region.

During my term in the coming months, I will focus on leading efforts to strengthen our Hong Kong brand as a world class legal service provider. This will encompass work on various fronts, including maintaining professional standards through relevant and effective training, offering professional legal training to our Mainland counterparts, and promoting the quality services Hong Kong solicitors can offer to emerging markets.

To enable members to maintain high standards, the Law Society implemented the Continuing Professional Development (“CPD”) Scheme in 1998 and the Risk Management Education (“RME”) Programme in 2004. We conducted nearly 500 CPD and RME courses for practitioners in 2015. The key to these training programmes is their relevance to the profession. There must be a sufficiently wide range of CPD and RME topics to suit the profession’s diversified training needs. There should also be a constant review of common mistakes and breaches, which should be communicated through the training programmes to alert members to the pitfalls in their practice.

It has always been jokingly said that running a legal practice is a “risky business”. Managing risks is no doubt an intrinsic part of legal practice management. The Law Society was the pioneer in introducing a mandatory RME Programme. Our RME Programme has successfully raised risk awareness in the profession and equipped practitioners with the necessary risk management tools. Having accumulated the RME experience for over 10 years, the Law Society is well positioned to share our expertise with others across the region, particularly with our counterparts in Mainland China. I introduced our RME Programme to practitioners in Chengdu in May 2016 and in Beijing when I last visited the Beijing Lawyers Association in June 2016. As the President, I fully intend to continue leading these efforts.

Legal practitioners in Hong Kong have many unique capabilities; however, foreign clients in cross boundary transactions may not be aware of them. As such, I will also focus on making certain that all potential clients are aware of the high quality services that Hong Kong solicitors can offer. The Belt and Road Initiative has brought about immense opportunities for an expansion of our legal service market into various
July 2016 • PRESIDENT’S MESSAGE 会長的話

Thomas So, President

The Law Society to coordinate efforts in opening up these markets for our members. In the maze of around 70 countries covered by the Belt and Road Initiative, the policy direction of the Central Government points to the ASEAN countries, which include Indonesia, the Philippines, Thailand, Vietnam, Laos, Myanmar, Brunei, Singapore, Malaysia and Cambodia. As an active member of LAWASIA, the Law Society has good connections with the legal professional bodies in these ASEAN countries. Taking advantage of the network that the Law Society has built, I will work on extending it further for the benefit of the profession. I look forward to bringing our brand as a world class legal service provider to a higher level.

I am humbled at being chosen to lead the Law Society and tackle the challenges that lie ahead, and thankful for the unfailing support of the Council and the Secretariat. As a team, we pledge to do our best for the benefit of our members and the profession as a whole.

推廣香港享譽全球的法律服務

能夠以律師會會長的身份為法律界人士服務，對我來說，是一次難得的機會，更是一種莫大的光榮。律師會歷屆會長勞心勞力，克盡己任，我必定以他們為榜樣，全力以赴，繼續給業界造就更強的優勢。

我在2005年加入理事會。那一年，律師會約有6,100名會員。今年5月我們的會員人數剛剛突破一萬，人數達到10,032名，實在叫人欣慰。過去11年我認識許多律師而投身法律界的人數，平均每年增長大約5.8%。

香港法律執業者在多方面具有獨特的辦事能力，但對外國客戶來說，卻未必認識他們。因此，我亦會在這方面多做工夫，確保香港律師能夠得到最好的服務。公民利益也得到保障，也為港資保險、法律服務貿易等帶來各種各樣的貿易和服務。

勞動力流動，開放市場就會創造競爭劇烈的營商環境。要在這背書中確保法律專業人員持續發展，就得提升我們的能力和水平，跟上社會需求的變化，提升能力和水平相當重要，而就此必須要做的，包括保持高專業水平，確保法律執業者採用質量風險管理。這樣做更可確保客戶能夠得到最好的服務，公眾利益也得到保障。同時亦有助香港法律行業維持在區內的競爭力。

我會在任期之內專心做好領導工作，努力鞏固香港作為全球一級法律服務提供者的美譽。這方面的工作涵蓋多方面，包括透過合適及有效的訓練維持專業水平、向內地業界提供專業法律訓練，以及在新興市場推廣香港律師的優質服務。

為使會員能夠保持高專業水平，律師會1998年推行持續專業發展計劃，又在2004年推出風險管理教育計劃。我們在2015年開辦了差不多500個適用法律執業者的報讀的持續專業發展課程及風險管理課程。這些訓練課程的關鍵是課程對法律專業人員具有實用性。我們一定要開辦眾多主題不同的持續專業發展課程及風險管理課程，配合法律界人士的需要，為他們提供多元化訓練。我們還應不斷檢視常見的錯誤及違規的行為，進行訓練計劃中提醒會員小心墮入陷阱。

常聽見有人打趣說，法律界業務是一門「冒險的生意」。風險管理無疑是法律執業管理不可分割的一部分。律師會開創先河，率先引入強制性風險管理教育計劃。我們的風險管理教育計劃成功提高了法律專業人員的風險意識，並且為法律執業者裝備必要的風險管理工具。律師會的風險管理教育計劃能為律師會的風險管理教育計劃，下次2016年5月造訪北京市律師協會的時候，亦在北京作同一介紹。作為會長，我會走在最前面，全力帶領律師會繼續這方面的工作。

推動香港享譽全球的法律服務

能夠以律師會會長的身份為法律界人士服務，對我來說，是一次難得的機會，更是一種莫大的光榮。律師會歷屆會長勞心勞力，克盡己任，我必定以他們為榜樣，全力以赴，繼續給業界造就更強的優勢。

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過去幾年，各國傾向削減國際經濟交易壁壘的政策和發展一日千里的科技，雙雙推動全球經濟一體化。科技的出現消除時間和空間的阻隔，並且減省信息、人、貨、資金在全球流動的成本。這現象引致國際貿易走向自由化，經濟市場大幅擴展，也為市場帶來各種各樣的貨品和服務。

勞動力流動，開放市場就會創造競爭劇烈的營商環境。要在這背書中確保法律專業人員持續發展，就得提升我們的能力和水平，跟上社會需求的變化，提升能力和水平相當重要，而就此必須要做的，包括保持高專業水平，確保法律執業者採用質量風險管理。這樣做更可確保客戶能夠得到最好的服務，公眾利益也得到保障。同時亦有助香港法律行業維持在區內的競爭力。

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Xin Fang  
*Mayer Brown JSM, Associate*

Xin Fang joined Mayer Brown JSM in 2010, after completing her legal studies at the University of Hong Kong. She focuses on international mergers and acquisitions, joint ventures and private equity transactions. Ms. Fang also holds a First-Class Honours Master’s Degree in Corporate Law from the University of Cambridge. She has an in-depth understanding of the interaction between law and economics, and extensive experience in this area.

Prisca Cheung  
*Sir Oswald Cheung’s Chambers, Barrister-at-Law*

Ms. Cheung completed her legal studies at the University of Oxford, and was a recipient of the Middle Temple Advocacy Scholarship. As a barrister, Ms. Cheung’s practice covers a wide range of civil and commercial cases, with an emphasis on commercial and market misconduct matters. She has worked and advised on areas including company, the Securities and Futures Ordinance (Cap. 571), judicial review, insurance, land, probate and matrimonial. She is a contributing editor to the *Hong Kong Civil Procedure* (Part H: Companies and Winding-up), and is a committee member of both the Greater China Affairs Committee and the Special Committee on Young Barristers of the Hong Kong Bar Association.

方心  
孖士打律師行 律師

方心於2010年香港大學法學院畢業即加入孖士打律師行，從事國際併購、企業合資、私募股權投資等商業法律服務。方心亦持有英國劍橋大學商業法一級榮譽碩士學位，在法律與商業互動方面具有深入的研究和豐富的工作經驗。

張信靈  
張奧偉爵士大律師事務所 大律師

張小姐於牛津大學修畢法律課程，並獲中殿大律師學院獎學金。作為大律師，張小姐的執業範圍涵蓋廣泛的民事及商業案件，專長商業及市場失當行為事宜。她曾涉獵及提供意見的領域包括企業、《證券及期貨條例》(第571章)、司法覆核、保險、土地、遺囑認證及婚姻。她為《Hong Kong Civil Procedure》(H部份: 公司及清盤)的特約編輯，並擔任香港大律師公會大中華事務委員會及年青大律師特別委員會成員。
Tony Williams
Jomati Consultants LLP, Principal

Tony Williams is the principal of Jomati Consultants LLP, the leading UK based international management consultancy specialising in the legal profession. Jomati’s services are designed to support law firms, barristers chambers and in-house legal departments on a range of strategic issues. Prior to establishing Jomati Consultants, Mr. Williams had almost 20 years’ experience at Clifford Chance as a corporate lawyer, his last role as Worldwide Managing Partner. In 2000, he became Worldwide Managing Partner of Andersen Legal. He established Jomati Consultants in October 2002. In 2012 Jomati was awarded the Queen’s Award for Enterprise in International Trade.

Tony Williams
Jomati Consultants LLP 負責人

Arbitrability of Intellectual Property Rights: Consultation on Arbitration (Amendment) Bill 2016

The Department of Justice in December 2015 issued a consultation paper on the arbitrability of intellectual property rights, with a proposed Arbitration (Amendment) Bill 2016 (“Bill”).

At present, there is no specific legislative provision addressing the arbitrability of intellectual property rights in Hong Kong. The Government thus intends to introduce legislative amendments to the Arbitration Ordinance (Cap. 609) to make it clear that intellectual property disputes can be made the subject matter of arbitration and that it will not be contrary to public policy to enforce an award solely because the award is in respect of a dispute or matter which relates to intellectual property rights. The effect is that enforcement of an award under Part 10 of the Arbitration Ordinance would not be refused in Hong Kong under either the arbitrability ground or the public policy ground merely because the award involves intellectual property rights.

The proposed amendments to the Arbitration Ordinance would help (i) clarify the ambiguity in relation to the “arbitrability of intellectual property disputes” in a case where Hong Kong has been chosen as the seat of arbitration or Hong Kong has been chosen as the governing law of the arbitration; (ii) make Hong Kong more appealing than other jurisdictions for conducting arbitration involving intellectual property disputes; and (iii) demonstrate to the international community that Hong Kong is committed to developing itself as an international centre for alternative dispute resolution involving IP matters as well as an IP trading hub in the region.

The Law Society supports the initiative to offer and boost Hong Kong’s arbitration services over intellectual property disputes to assist in the promotion of Hong Kong as an intellectual property trading hub. However, it also expressed concerns over certain aspects of arbitrability of intellectual property disputes, especially validity and infringement, which are not universally recognised. The full submission can be found on the Law Society’s website (http://www.hklawsoc.org.hk/pub_e/news/submissions/20160525.pdf).

知識產權的可仲裁性：
《2016年仲裁(修訂)條例草案》諮詢

律政司於2015年12月就知識產權的可仲裁性發表諮詢文件，提出《2016年仲裁(修訂)條例草案》（「條例草案」）。

現時，香港並無針對知識產權爭議是否可仲裁的具體法律條文。因此，政府打算修訂《仲裁條例》（第609章），以便釐清知識產權爭議可藉仲裁解決，以及釐清強制執行任何仲裁裁決，不會僅因該裁決是關乎知識產權的爭議或事宜而違反公共政策。屆時，在處理根據《仲裁條例》第10部強制執行仲裁裁決時，有關申請將不會僅因該裁決涉及知識產權而基於可仲裁性理由或公共政策理由而在香港遭拒絕。

修訂《仲裁條例》的建議可：(i) 就香港是仲裁中所選的仲裁地點或香港法律是仲裁依據的法律而言，有助釐清仲裁中關乎「知識產權爭議是否可仲裁」的含糊之處；(ii) 就進行涉及知識產權爭議的仲裁而言，有助提升香港相對於其他司法管轄區的吸引力；以及(iii)有助向國際社會顯示香港有決心發展成為國際知識產權的解決爭議中心及區內知識產權貿易中心。

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New Solicitors’ Accounts Rules

The amendments to the Solicitors’ Accounts Rules (Cap. 159, Sub. Leg. F) (the “Rules”) came into effect on 1 July 2016.

The changes to the Rules were publicised over one year ago. During the past year, regular monthly training courses have been organised to enable practitioners to familiarise themselves with the new provisions and to modify the accounting procedures where appropriate to ensure compliance.

The Secretariat has been dealing with enquiries on the Rules and below are clarifications on some common queries.

What does a solicitor have to do upon receipt of a cheque from a client partly to settle a bill that has been issued for work done and partly to pay for costs on account for future work?

(a) One of the major principles underpinning the Rules is that a solicitor must “keep other people’s money separate from money belonging to the solicitor or the practice of the solicitor” (r. 1A(b)).

(b) Money paid to a solicitor expressly to settle his bill for work done is money belonging to the solicitor or his practice and should be paid into the office account (r. 9(2)(c)).

(c) Money paid as costs on account for future work belongs to the client and should be paid into the client account (r. 3(1)).

(d) The solicitor may ask for the cheque to be split. If he does, then the relevant amounts can be paid, as appropriate, into the office account and the client account (r. 5(a)).

(e) If the solicitor does not split the cheque, he can pay the entire amount into the client account (r. 4(d)), but to adhere to the principle that the client money and the office money should be clearly separated, he must transfer the office money (as explained in (b) above) out of the client account into the office account within a specified period, namely, within 14 days of receipt (r. 5(b)).

How should clients’ payments for settlement of disbursements be handled?

(a) “Disbursements” is defined as “any sum spent or to be spent by a solicitor on behalf of the client or trust” in the Rules (r. 2). All disbursements incurred by a solicitor should be expressly or impliedly authorised by his client and all disbursements should be shown separately from a solicitor’s profit costs (Commentaries respectively of Principle 4.03 and Principle 4.10 of the Hong Kong Solicitors Guide to Professional Conduct, Volume 1).

(b) Whether the amount has yet been spent or not, the nature of the

•

新《律師帳目規則》

對《律師帳目規則》(第159章，附屬法例F)（下稱「《規則》」）的修訂已於2016年7月1日生效。

《規則》的修訂於一年多前公佈。在過去一年，律師會每月定期舉辦培訓課程，讓執業者熟悉新的條文，並對會計程序作出適當修改，以確保一切符合規定。

秘書處一直處理有關《規則》的查詢，以下是對一些常見查詢的澄清：

律師從當事人處收到支票，該支票部份是就已完成工作繳付已發出的事務費單，部份是用以支付往後工作的先存律師費。律師應該怎樣做？

(a) 《規則》的其中一個主要原則是律師「須將其他人的款項，與屬於該律師或其執業業務的款項分開」(r. 1A(b))。

(b) 支付予律師的款項指明用以繳付已完成工作的事務費單，則該款項屬於律師或其執業業務，應存入律師行帳戶(r. 9(2)(c))。

(c) 用以支付往後工作的先存律師費的款項，則屬於當事人，應存入當事人帳戶(r. 3(1))。

(d) 律師可要求將支票分拆。如他要求將支票分拆，則相關款項應適當地分別存入律師行帳戶及當事人帳戶(r. 5(a))。

(e) 如律師不將支票分拆，他應將整筆款項存入當事人帳戶(r. 4(d))，但遵照律師行款項與當事人款項必須明確分開的原則，他必須在收取該支票後指定時間內(即14日內)，將該筆律師行款項(如上述(b)解釋)從該當事人帳戶轉移至律師行帳戶(r. 5(b))。

當事人支付代墊付費用應如何處理？

(a) 在《規則》中，「代墊付費用」(disbursements) 指「由律師或將會由律師代當事人或信託而花費的任何款項」(r. 2)。律師招致的所有代墊付費用應獲當事人明文或暗示授權，所有代墊付費用應與律師的利潤成本分開顯示(《香港律師專業守則指引》第一冊，原則4.03及原則4.10評註)。

(b) 根據《規則》，無論金額是否已經花費，付款款項的性質必須為律師代表當事人或信託已支付或將會支付的實際金額，才獲視作「代墊付費用」。

(c) 當事人支付一筆款項，用以支付代墊付費用，律師
payment must represent the actual amount paid or to be paid by the solicitor on behalf of the client or trust to qualify as “disbursements” under the Rules.

(c) When a client pays in a sum for the settlement of disbursements, the solicitor may pay the entire sum into the client account provided that:

(i) with respect to the amount that has already been paid by the solicitor (which is office money (r. 7(a)(ii)), the solicitor transfers this amount into his office account within 14 days of receipt (r. 5(b));

(ii) with respect to the amount that is anticipated but not yet incurred by the solicitor (which is client money – r. 9(2A)(b)), the solicitor keeps this amount in the client account;

(iii) with respect to the amount that has been incurred but not yet paid by the solicitor (which is client money – r. 9(2A)(c)(i)), the solicitor keeps this amount in the client account until its settlement from the client account directly (r. 7(a)(i)) or pays the amount to the office account for settlement from the office account within four (4) working days (r. 9(2A)(c)(ii)).

Can a non-solicitor be the sole authorised signatory of a client account?

(a) No, money can only be withdrawn from a client account with the specific authorisation of the solicitor in whose name the client account is kept or where the client account is kept in the name of a firm, of any solicitor, partner, consultant or foreign lawyer in the firm (r. 7A(1)(a)).

(b) Any authorisation given by a certified public accountant (practising) or a person approved by the Council must still be countersigned by a person falling within (a) above (r. 7A(1)(b) and (c)).

Account for interest on client account

Rule 6A requires a solicitor to account to a client for any interest earned on the money held by him in the client account for the client in relation to a particular matter. However, in view of the prevailing low interest rate and the costs associated with the administration of this rule, pursuant to the power granted to it under the Rules, the Council has resolved to waive the operation of r. 6A with effect from 1 July 2016.

Apart from organising training courses on the Rules, if members have enquiries on the Rules, you are most welcome to direct them to the Regulation and Guidance Section of the Secretariat (Tel: 2846 0523) for assistance.

Monthly Statistics on the Profession

(updated as of 31 May 2016):

<table>
<thead>
<tr>
<th>Category</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Members (with or without practising certificate)</td>
<td>10,032</td>
</tr>
<tr>
<td>Members with practising certificate</td>
<td>8,734</td>
</tr>
<tr>
<td>(out of whom, 6,615 (76%) are in private practice)</td>
<td></td>
</tr>
<tr>
<td>Trainee Solicitors</td>
<td>1,003</td>
</tr>
<tr>
<td>Registered foreign lawyers</td>
<td>1,341</td>
</tr>
<tr>
<td>(from 32 jurisdictions)</td>
<td></td>
</tr>
<tr>
<td>Hong Kong law firms</td>
<td>862</td>
</tr>
<tr>
<td>(48% are sole proprietorships and 41% are firms with 2 to 5 partners)</td>
<td></td>
</tr>
<tr>
<td>Registered foreign law firms</td>
<td>76</td>
</tr>
<tr>
<td>Civil Celebrants</td>
<td>2,105</td>
</tr>
<tr>
<td>Reverse Mortgage Counsellors</td>
<td>445</td>
</tr>
<tr>
<td>Solicitor Advocates</td>
<td>39</td>
</tr>
<tr>
<td>(34 in civil proceedings, 5 in criminal proceedings)</td>
<td></td>
</tr>
<tr>
<td>Student Members</td>
<td>231</td>
</tr>
<tr>
<td>Registered Associations between Hong Kong law firms and registered foreign law firms (including Mainland law firms)</td>
<td>32</td>
</tr>
</tbody>
</table>
Pang Pui Lam (the “Respondent”)  

• Disgraceful, dishonourable and discreditable conduct  
• Section 2(2) of the Legal Practitioners Ordinance (Cap. 159) (the “LPO”)  

Hearing Date  
7 March 2016  

Findings and Order handed down  
22 April 2016  

On 7 March 2016, the Solicitors Disciplinary Tribunal (the “Tribunal”) heard the Complaint of the Law Society (the “Applicant”) against the Respondent who was absent. The Tribunal found the Complaint proved against the Respondent as follows:  

Complaint  
The Respondent, at the material time an employee of a solicitors’ firm, committed disgraceful, dishonourable and discreditable conduct within the meaning of s. 2(2) of the LPO, in that he was convicted of one count of theft in the Eastern Magistracy, sentenced to six weeks’ imprisonment and ordered to make amends / restitution of the stolen sum of HK$4,000.  

The Tribunal’s Order:  
(a) The Respondent be prohibited from employment with any solicitor or foreign lawyer for a period of two years from the date of the Order; and  
(b) The Respondent to pay the Applicant’s costs and disbursements in the sum of HK$42,293.50 and the Clerk’s costs and disbursements in the sum of HK$33,914.  

Mr. Paulus Lau, In-House Prosecutor of The Law Society of Hong Kong, for the Applicant  
The Respondent in person, absent  
Ms. Au Siu Fan Frances, Clerk to the Tribunal  

Tribunal Members:  
Mr. Fung Chi Man Henry (Chairman)  
Mr. Mui Ho Chow Eddie  
Mr. Wong Wing Cheung Dennis
SWIMMING GALA 2016
Enjoy a Splash before Summer ends!

28 August 2016, Sunday
South Island School
1pm to 6pm

- Members’ children aged 2 to 18 welcomed
- Events include baby kickboard, family relay, children relay & more
- Trophies & medals for winners, & certificates for all participants completing the events
- Instant photo service
- Free coach service to & from event venue (first-come, first-served)
- Flat entrance fee of $100 (participants will only be charged once even if they enter multiple events)

For enquiries, please contact Mr. Robert Chan on 2846 0570 or robert@hklawsoc.org.hk

*The Swimming Team reserves the right to alter any arrangements or otherwise cancel the event.
“It’s not about meeting minimum standards that are prescribed by the law or the listing rules. It’s about having integrity. It’s about being transparent. It’s about treating stakeholders, including minority shareholders, fairly.”
Face to Face with

John Poon BBS JP

Chairman of the Financial Reporting Council

By Cynthia G. Claytor

John Poon BBS JP, Chairman of the Financial Reporting Council, discusses his multifaceted career, offering insights and advice on how to thrive as a lawyer across different industries and jurisdictions, and then delves into his current undertakings, including overhauling the oversight arrangements of the auditing profession for publicly listed entities in Hong Kong.

“Nothing ventured, nothing gained,” has been Dr. Poon’s credo throughout his career, which cuts across a variety of industries and jurisdictions. From his start as a social worker to a labour relations practitioner to his decision to practice law in Canada to his transition into corporate finance and then into the public sector in Hong Kong, he has taken risks and embraced change. Both of which, he explains, have been crucial to his success and professional satisfaction.

During transitional periods, Dr. Poon has let his passion be his guide, leveraging his legal training and acquiring new skills to take on any role that interests him. “I hope the next generation of lawyers will be equally enthusiastic in taking on new challenges in this ever changing global and local environment and dare to step outside of their comfort zone.” Legal skills are “portable skills”; and there’s no reason to adhere to convention for convention’s sake. Success follows passion, dedication and hard work, irrespective of the industry or discipline, he explained.

His versatility has also enabled him to steward many organisations and government bodies through a variety of structural changes and reform initiatives; currently his efforts have been focused on reforms advocated by the Financial Reporting Council (“FRC”) and the Mandatory Provident Fund Schemes Authority (“MPFA”).

Hong Kong Calling

Dr. Poon started his legal career in Edmonton, a city of approximately 1 million, at a firm where he developed a general corporate practice. While he found working with private companies and local corporate commercial matters to be interesting, by 1987 he longed for more challenging and dynamic work in the international sphere.

Intermittent trips to Hong Kong, where he was born and raised, prompted him to consider returning to his roots. Every time he returned, he immediately felt connected to the city’s energy, its kaleidoscope of life and culture, fusing east and west. He explained that the international metropolis seemed to be the perfect place to apply what he had learned in Edmonton in a more commercial and global context. While uprooting his life in Alberta and returning to Hong Kong was not an easy decision, or transition, as he had been away from Hong Kong for 18 years, he felt it was an opportunity worth pursuing vigorously.

With Canada, the UK and Hong Kong all being Commonwealths, he gained admission as a solicitor in England & Wales in 1988 and in Hong Kong the following year.

Navigating Unchartered Territories

In 1990, Dr. Poon joined Century City Group, a group of Hong Kong companies whose core businesses encompass investment holding, property development and investment, hotel ownership and management. He started as Group General Counsel and within one year was promoted to be the Corporate Director of the Group.

While the work was engaging, he was immediately plunged into areas outside of his expertise. The learning curve was “quite steep”, he said, as his experience in Canada did not directly translate. He lacked substantial local knowledge of the real estate and hotel industries and
had no prior experience dealing with the Hong Kong Listing Rules. Upon his executive promotion, he was thrust to the helm to assist in corporate finance and mergers and acquisitions; therefore dealing with investment bankers and finance professionals became routine.

“I had to find workable legal and commercial solutions to major issues the Group faced. Being a risk-averse lawyer, it was difficult, at first, to deal with commercial issues that were ‘uncertain’ or ‘could not be specifically dealt with in the agreements,’” he said. What he learned during this time is that it is not only essential to be open minded in the face of uncertainty, but also to ask questions and be humble about what you do and do not know. “Half of the battle is asking questions; and if you can ask the right questions, someone will eventually give you the right answers. But, then again, getting the right answer is not the end of the story. There is often more than one right answer; the art lies in taking those answers and adopting the one that is commercially workable for all interested parties.”

In spite of the challenges, Dr. Poon believes he was able to succeed because he pursued work that he was passionate about and fully committed himself to learning on the job, particularly the ins and outs of the new industries.

The Sky is the Limit

In 1999, Dr. Poon joined Esprit Holdings Limited as an Executive Director and the Group Chief Financial Officer and by 2004 was appointed Deputy Chairman of the Board of Directors. While he enjoyed his work at Century City Group, the opportunity to work at a company whose brand and culture were international seemed too good to pass up. This role also offered him the opportunity to influence the strategic direction of the company; in this role, he was regarded as the resident corporate finance expert.

During his nine year tenure, Esprit’s profit after tax rose over 11-fold, while the multinational apparel company’s market capitalisation expanded from approximately US$1 billion to a high in excess of US$20 billion. Esprit was also repeatedly recognised as one of the best-managed companies and best performing stocks on Hong Kong’s Hang Seng Index.

Dr. Poon believes the company’s success during this period started with its reunification of the brand. The global brand was, at the time he joined, owned by Esprit Holdings except for the US piece which was separately owned by two investment funds. “So my first strategic initiative was to acquire the missing piece of the global brand. An earnings accretive deal was completed in 2002 which allowed us to pursue a ‘sky is the limit’ growth story thereafter.”

The next strategic move he pursued was elevating Esprit’s successful product brand into an international corporate brand. To achieve this, the company had to enlarge its shareholder base; particularly with institutional investors across the world. Dr. Poon spearheaded investor relations initiatives, launching two around-the-world road shows per year. “It is essential to explain what you’re trying to achieve in a simple and succinct way. It’s not as easy as just showing up; you have to talk about brand strategy and execution plans in a way that resonates with target investors.” Esprit was admitted as a constituent stock of HSI by the end of 2002.

Dr. Poon said that his training in law and advocacy helped him to craft and communicate a credible growth story. He was also able to gain investor confidence by being transparent about the company’s results and challenges. He made it a general practice of only placing shares in major blocks soon after the company made public announcements about their current state of affairs – about their financials, their strategic direction and some of the risks and challenges that they were currently facing. “I wanted to be able to look the investors in the eye and say, your information base and ours are relatively the same. I wanted to ensure them that we were not trying to take advantage of any sort of insider information.”

He explained that all of this was aligned with his firm beliefs about sound corporate governance. “It’s not about meeting minimum standards that are prescribed by the law or the listing rules. It’s about having integrity. It’s about being transparent. It’s about treating stakeholders, including minority shareholders, fairly.” While there were many factors that contributed to the company’s price/earnings multiple expansion during his time at Esprit, Dr. Poon believes that their corporate governance practice (ie, “Substance Over Form”) was one of the most influential.

Public Appointments

While strategically leading Esprit through structural changes, Dr. Poon was appointed in 2003 to be a member of the Standing Committee on Company Law Reform. “This was the first time I held public office,” he said. “What I learned from being a member on this committee is that reform takes time as it affects public interest. It’s evolutionary, not revolutionary.”
In 2004, he was appointed to the Board of Review (Inland Revenue Ordinance) and in 2005, to the Council of the Hong Kong Institute of Certified Public Accountants ("HKICPA"), where he chaired various committees including the Professional Qualifications Accountability Board and the Governance Review Task Force. “It was through these appointments that I gained most of my knowledge about the accounting and auditing profession in Hong Kong,” he said. “While my work with the HKICPA was as a lay member, I used my knowledge and experience to assist them with the current challenges and issues that they were facing.”

**Less Is More**

In 2011, Dr. Poon accepted appointment as a Non-Executive Director of the MPFA. He recalls being told upon his appointment that the policies and direction of the MPFA would affect 2.5 million workers in Hong Kong and roughly 250,000 employers.

As such, Dr. Poon took the widespread concern amongst members over the high fees and low returns seriously. He suggested a study be conducted on the cost associated with running MPF schemes. With the findings of the MPF cost study in 2012 and the outcome of a subsequent public consultation, there was general consensus that a new investment product with a capped fee could be offered to the public. “Logically, if you reduce your fees and expenses in the funds, you will automatically enhance your returns,” he said.

In addition to looking at how to reduce members’ fees, Dr. Poon and his colleagues also examined the investment landscape upon learning many workers found it difficult to make a decision about where to put their hard earned money, as there were over 400 MPF funds on the market. “So the workers’ difficulty in making a choice came as no surprise. To address these concerns, I advocated a simplified investment option be introduced that would meet the overall objective of retirement savings for the average worker,” he added.

In late May, the Legislative Council passed the Mandatory Provident Fund Schemes (Amendment) Bill 2015, which incorporates the reforms Dr. Poon advocated for by providing for the introduction of a Default Investment Strategy ("DIS") that each MPF scheme must provide to all members. The DIS imposes a management fee cap of 0.75 percent of the net asset value of its constituent funds. There is a separate cap on recurrent expenses of not exceeding 0.2 percent. The DIS will also adopt global diversified and de-risking investment principles, requiring trustees to gradually reduce a scheme member’s exposure to relatively higher risk investments as the member approaches retirement age (ie, 65).

This is a major milestone in the progressive development of the MPF System since its launch in 2000. Dr. Poon hopes the DIS constituent funds will provide a good investment alternative for workers to place their MPF contributions.

**FRC & Auditor Regulatory Reform**

In 2011, Dr. Poon also accepted appointment as a member of the FRC, an organisation formed in 2006 under the Financial Reporting Council Ordinance following the Enron and Worldcom saga in the US. In 2012, Dr. Poon was appointed Chairman. The FRC’s remit is currently limited to investigating irregularities committed by listed entity auditors in Hong Kong and it does not undertake inspections and disciplinary functions. Dr. Poon has advocated for reform initiatives to enhance the auditor regulatory regime in Hong Kong with an aim to improve audit quality and the quality of financial reporting.

In 2013, the FRC published a detailed comparative study of international best practice in auditor regulation. It reveals that audit regulators of major jurisdictions, including the US, UK, Canada, Australia and Singapore, are independent of the profession with authority over auditors of listed entities as a minimum. All relevant regulators covered in the report, amongst a total of 40 jurisdictions around the world including China, currently meet the regulatory or equivalence requirements of the European Commission ("EC") and/or are members of International Forum of Independent Audit Regulators ("IFIAR").

With reference to the FRC’s study, the Government launched a consultation paper on the auditor regulatory reform
in 2014. Dr. Poon explained that it was “broadly concluded” that any future auditor regulatory regime should be independent of the profession, and that it should be benchmarked against international standards and practices.

In 2015, the Government, taking into account the FRC’s submission from a public interest perspective, proposed to vest the FRC with powers to carry out direct inspections and investigations of auditors of listed entities, as well as to take disciplinary action against them as required. The FRC would also be vested with oversight powers in relation to registration, the setting of standards in professional ethics, auditing and assurance, and continuing professional development for auditors of listed entities. These are the requirements for Hong Kong, being an international financial centre, to be recognised by IFIAR and the EC.

Under Dr. Poon’s leadership, the FRC has been unwavering in its commitment to taking the reform process forward. The FRC is updating its 2013 comparative study to facilitate discussions by all stakeholders particularly as the legislative process evolves, and the report will be made available later in 2016.

“I very much look forward to bringing the reform to its successful fruition which is in the best interest of the investing public. A key aim is to transform the FRC from an ‘investigator’ into a fully-fledged ‘independent auditor regulator’, so as to enable Hong Kong to be eligible for membership of IFIAR and be recognised as having regulatory equivalence with the EC.”

Apart from the auditor regulatory reform, the FRC has had positive discussions with Mainland authorities to overcome difficulties experienced by regulators in gaining access to audit working papers under current Mainland regulations. “The discussions have been very promising and we expect to agree this year on a suitable mechanism to enable FRC to discharge its statutory functions,” said Dr. Poon.

His Oath

Despite being a self-proclaimed “unconventional lawyer”, Dr. Poon emphasised that throughout his career his core values have remained tethered to those that undergird the legal profession: integrity, diligence, transparency and fairness. “I can still vividly recall when I was admitted some 30 years ago as a barrister and solicitor before the Court of Appeal in Alberta, Canada. After I had taken the oath, the presiding Justice reminded me to review it on an annual basis and reflect on my obligations to the court, to the legal profession and to society, in general. I have adhered to his advice, and it has done me a lot of good over the years.”

Dr. Poon is the Chairman of the Financial Reporting Council and a Non-executive Director of the Mandatory Provident Fund Schemes Authority. He is also an Adjunct Professor of the School of Business, University of Alberta, Canada. He is the former Deputy Chairman & Group Chief Financial Officer of Esprit Holdings Limited and the former Executive Director & Group General Counsel of Century City International Holdings Limited. He has received a number of accolades, including the “Best Chief Financial Officer in Retail Sector 2005” and “Directors of the Year Awards 2002 (Listed Company Executive Directors)”. Dr. Poon received his Bachelor of Arts Degree in Economics, a Bachelor of Laws Degree and an Honorary Doctor of Laws Degree from the University of Alberta, Canada. He is a Solicitor of Hong Kong.
潘祖明 BBS JP
財務匯報局主席

作者 Cynthia G. Claytor

「這不是關乎符合法律或上市規則規定的最低標準。這是關乎誠信，關乎透明，關乎公平對待持份者，包括小股東。」

潘博士的法律事業在愛民頓展開，該市人口約100萬，他在一間律師行執業，主力從事一般企業事務。雖然他覺得處理私營公司及當地商業事務的工作很有趣味，但到了1987年，他渴望在國際領域投身更具挑戰性、更有活力的工作。他在香港出生長大，間中回港，促使他考慮回流。每次回港，這個城市的活力、多姿多彩的生活、中西融匯的文化，都令他立即找到歸屬感。他解釋，如果想將在愛民頓所學到的，應用於更商業化、更全球化的環境，這個國際大都市似乎是理想之地。雖然離開阿爾伯塔省的生活回流香港不是一個容易的決定，因為他已離開香港18年之久，但他覺得這是個值得把握的大好機會。

加拿大、英國和香港均屬英聯邦，他於1988年取得英格蘭及威爾斯律師資格，翌年取得香港律師資格。

探索未知領域
1990年，潘博士加入香港公司世紀城市集團，其核心業務包括投資控股、物業發展和投資、酒店經營及管理。起初他擔任集團法律顧問，未到一年便獲晉升為集團公司董事。雖然工作很充實，但他必須立即投身本身專長以外的領域。他說，學習曲線「相當陡峭」，因為他在加拿大的經驗無用武之地。他對本地地產和酒店業所知不多，之前又未曾處理過香港上市規則。晉升後，他負責協助企業財務、融資和併購，因此與投資銀行家和金融專業人士打交道成為了常規。

他說：「我要為集團面對的主要問題尋找可行的法律和商業解決方案。作為一個規避風險的律師，初時處理『不確定』或『不能用協議具體解決』的商業問題頗有難度。」在這段時間，他學習到面對不確定情況時，必須保持開放

財務匯報局主席潘祖明BBS JP暢談他多方面的職業生涯，作為一個律師，就如何在不同行業和司法管轄地區的成功發展分享見解和建議，並談及他現時的任務，包括徹底檢討香港上市實體審計專業的監管安排。

「不入虎穴，焉得虎子」一直是潘博士職業生涯的信條。曾在多個不同行業和地區工作的他，由最初在社工至勞工關係代表，後來決定在加拿大擔任執業律師，然後轉型至企業財務，再投身香港公共機構。他冒過不少風險，迎合過不少改變。對他來說，這兩者是他取得成功和專業滿足感的關鍵。

在轉型期間，潘博士隨心而行，利用他的法律背景，學習新技巧，出任感興趣的職位。「全球和本地環境瞬息萬變，我希望下一代律師會一樣樂於接受新挑戰，勇於舍棄安逸踏出原有的框框。」法律技能是「可攜帶技能」，沒有理由為了慣例而墨守成規。他解釋，不論行業或學科，只要有熱誠、投入和努力不懈，成功便會隨之而來。

擁有多方面的才能，令他能夠管理多個組織和政府機構，帶領它們進行各種架構轉變和改革措施。目前，他致力於財務匯報局（「財匯局」）及強制性公積金計劃管理局（「積金局」）提倡的改革。

回流香港
潘博士的法律事業在愛民頓展開，該市人口約100萬，他在一間律師行執業，主力從事一般企業事務。雖然他覺得處理私營公司及當地商業事務的工作很有趣味，但到了1987年，他渴望在國際領域投身更具挑戰性、更有活力的工作。他在香港出生長大，間中回港，促使他考慮回流。每次回港，這個城市的活力、多姿多彩的生活、中西融匯的文化，都令他立即找到歸屬感。他解釋，如想將在愛民頓所學到的，應用於更商業化、更全球化的環境，這個國際大都市似乎是理想之地。雖然離開阿爾伯塔省的生活回流香港不是一個容易的決定，因為他已離開香港18年之久，但他覺得這是個值得把握的大好機會。

加拿大、英國和香港均屬英聯邦，他於1988年取得英格蘭及威爾斯律師資格，翌年取得香港律師資格。
態度，而且亦應保持謙卑，不恥下問。因為懂得問問題是成功的一半。若能夠問正確的問題，最終會有人給你正確的答案。不過，話說回來，得到正確的答案也未算功德圓滿。正確的答案經常多於一個，能夠從商業角度上找出和採納對各方最可行的答案才是一門藝術。」

儘管面對挑戰，潘博士相信他能夠成功，是因為他對工作充滿熱誠，亦致力在工作中學習，尤其是學習新行業的來龍去脈。

### 天際無極限

1999年，潘博士加盟思捷環球控股有限公司，擔任執行董事兼集團財務總裁，並於2004年獲任命為董事局副主席。雖然他享受在世紀城市集團的工作，但在一間品牌和文化均國際化的公司工作，機會似乎不容錯過。這個職位亦令他有機會影響公司的策略方向。擔任此職，他被視為常駐的企業財務專家。

他任職九年期間，跨國服裝公司思捷的稅後利潤增長超過11倍，公司市值由約10億美元增長至超過200億美元。思捷亦多番被視為最佳管理公司之一及香港恒生指數表現最佳的成份股之一。

潘博士相信，公司此段時間的成功由統一品牌開始。當他加盟時，除了美國區塊，思捷的全球品牌是由思捷控股擁有，唯獨該美國區塊則由另外兩間投資基金持有。

「所以，我的首個策略性舉措是收購全球品牌欠缺的一塊。該盈利增值的交易於2002年完成，令我們之後能夠追求『天際無極限』的增長。」

他的下一個策略性行動，是將思捷這個成功產品品牌提升為國際企業品牌。為了實現這一目標，公司必須擴大其股東基礎，尤其是世界各地的機構投資者。潘博士統領投資者關係項目，每年進行環球路演兩次。「將你想實現的簡明地解釋清楚，這點至關重要。並非單單現身一下這麼簡單，而是要以令投資者產生共鳴的方式講解品牌策略和執行方案。」思捷於2002年底被納入為恆生指數成份股。

潘博士說，他在法律和提倡方面的訓練，有助他打造和傳達可信的營利增長故事。他亦能夠透過將公司的業績和挑戰保持透明，贏取投資者的信心。他認為，這個職位能夠幫助高端企業吸引更多的投資者。

出任公職

策略領導思捷進行結構轉變的同時，潘博士於2003年獲委任為公司法改革常務委員會成員。他說：「那是我首次出任公職。作為委員會的成員，我學到改革需時，因為它影響公眾利益。那是進化，而不是革命。」

2004年，他獲委任加入稅務上訴委員會，2005年加入香港會計師公會理事會，並擔任多個委員會主席，包括專業資格專責委員會及管治檢討專責小組。他說：「通過出任這些職務，我獲得不少有關香港會計及審計專業的知識。雖然我在香港會計師公會是業外理事成員，但我仍利用我的知識和經驗，協助他們應對當前的挑戰和問題。」

### 少即是多

2011年，潘博士接受委任為積金局非執行董事。他回憶當時獲告知，積金局的政策和方向將影響香港250萬僱員和約25萬僱主。

因此，潘博士對廣受成員關注的高收費、低回報問題十分重視。他建議就強積金計劃運作的相關成本進行研究。據2012年的強積金成本研究報告和隨後的公眾諮詢結果顯示，普遍共識是可向公眾提供一個設有收費上限的新投資產品。他說：「邏輯上來說，減低基金的收費和支出，回報就會自動提高。」

除了尋求減低成員的費用外，潘博士和他的同事發現，因為市場上有超過400個強積金基金，很多僱員感到難以選擇將辛苦賺來的錢投資於哪隻基金，於是他們也檢視了投資環境。他補充說：「這也難怪僱員難於選擇。為了解決這些問題，我主张引入一個簡化的投資選項，以滿足一般僱員退休儲蓄的整體目標。」
潘祖明BBS JP
財務匯報局主席
潘博士是財務匯報局主席兼強制性公積金計劃管理局非執行董事。他亦擔任加拿大阿爾伯塔大學商學院兼職教授。他曾任思捷環球控股有限公司副主席及集團財務總裁、世紀城市國際控股有限公司執行董事及集團法律顧問。他先後獲得多項榮譽，包括「2005年零售行業最佳財務總監」和「2002年度傑出董事獎(上市公司執行董事類別)」。
潘博士於加拿大阿爾伯塔大學取得經濟學文學士學位、法律學士學位和法律名譽博士學位。他在香港擁有律師資格。

今年5月底，立法會通過《2015年強制性公積金計劃(修訂)條例草案》，結合潘博士的主張，引入預設投資策略，並規定每個強積金計劃必須提供預設投資策略。預設投資策略的基金管理費不可高於相關基金淨資產值的0.75%，亦規定經常性實付開支不可多於基金淨資產值的0.2%。預設投資策略將採用環球分散及隨年齡降低風險的投資原則，受託人須隨着計劃成員步向退休年齡(即65歲)相應減低其較高風險資產的投資比例。

這是強積金計劃自2000年推出以來，逐步發展的一個重要里程碑。潘博士希望預設投資策略的基金會為僱員的強積金供款提供另一個良好的投資選擇。

財務匯報局與核數師監管改革

2011年，潘博士也接受委任為財匯局成員。因應美國Enron 和 Worldcom 事件，財匯局於2006年根據《財務匯報局條例》成立。2012年，潘博士獲委任為主席。財匯局的職權範圍現局限於就香港上市實體核數師在審計或匯報方面的不當行為展開調查，但並不具備查核和紀律處分的職能。潘博士致力提倡改革香港核數師監管制度，目標是改善審計和財務報告的質素。

2015年，考慮到財匯局從公眾利益角度出發的意見書，政府建議賦予該局對上市實體核數師進行直接查核及調查，以及於有需要時對他們進行紀律處分的權力。此外，財匯局亦會獲賦予有關上市實體核數師的註冊、專業道德標準、審計和核證準則及專業進修規定的制訂的監察權力。這是讓香港 - 作為國際金融中心 - 符合獨立審計監管機構國際論壇的成員資格，以及歐洲委員會的監管等效地位的要求。

在潘博士領導下，財匯局堅定不移地推進改革過程。為了促進所有持份者的討論，尤其是在立法過程中，財匯局正在更新2013年的比較研究，預期將於2016年稍後公佈。

「我期望見證改革取得圓滿成果，以符合投資者的最佳利益。改革的主要目標之一，是使財務匯報局由一個『調查機構』，轉型成為更完善的『獨立核數師監管機構』，從而讓香港符合獨立審計監管機構國際論壇的成員資格，以及獲得歐洲委員會的監管等效地位。」

除了核數師監管改革，財匯局與內地當局進行具建設性的討論，以解決現時監管機構在現行內地法規下，就取得審計工作底稿所遇到的困難。潘博士說：「討論已見成效，我們預計今年會就適當的機制達成共識，使財匯局能履行其法定職能。」

他的誓言

自稱為「非傳統的律師」，潘博士強調，在整個職業生涯中，他的核心價值仍與支撐法律專業的價值密不可分：誠信、勤奮、透明、公平。「30年前我在加拿大阿爾伯塔省上訴法院獲得大律師及律師資格時的情景，至今仍歷歷在目。我宣誓後，當值法官提醒我要每年回顧誓詞及反思我對法院、法律專業和社會的義務。我一直遵從他的意見，多年來對我大有裨益。」

潘祖明 BBS JP
財務匯報局主席

潘博士是財務匯報局主席兼強制性公積金計劃管理非執行董事。他亦擔任加拿大阿爾伯塔大學商學院兼職教授。他曾任思捷環球控股有限公司副主席及集團財務總裁、世紀城市國際控股有限公司執行董事及集團法律顧問。他先後獲得多項榮譽，包括「2005年零售行業最佳財務總監」和「2002年度傑出董事獎(上市公司執行董事類別)」。

潘博士於加拿大阿爾伯塔大學取得經濟學文學士學位、法律學士學位和法律名譽博士學位。他在香港擁有律師資格。
Exploring the Russian Market

The Law Society has been actively promoting Hong Kong legal services to our Russian counterparts. To facilitate further collaboration for the benefit of our members, the Law Society entered into a Memorandum of Understanding with the Federal Chambers of Lawyers of the Russian Federation (“RFCL”) in May 2015.

At the invitation of RFCL, then-President Stephen Hung led a delegation of seven members of the Council to visit Russia for the first time on 16 May. A meeting with the Council of RFCL was organised to discuss legal developments in both jurisdictions. The delegation also took the opportunity to visit the Supreme Court of the Russian Federation in Moscow to understand the court structure in Russia.

From 18–20 May, the Law Society delegation attended the 6th St. Petersburg International Legal Forum in St. Petersburg. Riding on this opportunity, the Law Society organised an afternoon session on 18 May to promote Hong Kong legal services and to explain how Russian enterprises could set up their regional headquarters or local offices in Hong Kong to oversee their expanding business in Asia.

On 19 May, then-President Hung spoke at a session entitled “Current Challenges for the Legal Profession in Russia and in the World”. He explained how the opening up of Hong Kong’s legal market to foreign lawyers had enriched our legal profession and enhanced our role as the bridge between the East and the West. Council member Huen Wong also spoke at a session entitled “Russia and China: The Right to Invest”. He highlighted our connecting role for capital flowing in and out of China and our ability to assist Russian companies to explore opportunities in Asia, especially in the Chinese market.

The delegation also had a chance to meet with the Advocatura of the Kyrgyz Republic delegation, who expressed interest in signing a friendship agreement with the Law Society, with a view to exploring future opportunities to collaborate with us.

Faced with ever-increasing Sino-Russian trade, Hong Kong solicitors are well placed to assist Russian companies to take advantage of Hong Kong as a springboard to the Chinese market.
探索俄羅斯市場
律師會一直積極向俄羅斯同業推廣香港法律服務。為便利合作及為雙方會員謀求福利，律師會於2015年5月與Federal Chambers of Lawyers of the Russian Federation（“RFCL”）簽署了諒解備忘錄。

應RFCL邀請，時任會長熊運信律師於5月16日率領理會七人代表團首次訪問俄羅斯。代表團與RFCL理事會舉行會議，討論兩個司法管轄區的法律發展，並藉此機會參觀莫斯科俄羅斯聯邦最高法院，了解俄羅斯的法院架構。

律師會代表團亦出席了5月18日至20日舉行的第六屆St. Petersburg International Legal Forum，並於5月18日下午的論壇舉辦了一個環節推廣香港法律服務，解釋俄羅斯企業可如何利用香港作為地區總部，或在香港設立辦事處管理在亞洲拓展的業務。

時任會長熊運信律師與其他海外協會的會長，於5月19日一同就「法律界在俄羅斯和全世界當前面對的挑戰」發表演說。熊律師解釋，香港法律市場開放予外地律師，豐富了我們的法律專業，並增強了我們作為東、西方橋樑的作用。理事會成員王桂壎律師亦以「俄羅斯與中國：投資的權利」為題發言。他強調香港作為資金進出中國的接口，以及香港有能力協助俄羅斯企業在亞洲探索商機，尤其是在中國市場。

代表團亦有機會與Advocatura of the Kyrgyz Republic代表團會面，該會表示有興趣與律師會簽署友好協議，以探索未來合作機會。

隨著中俄貿易不斷增加，香港律師處於有利位置，協助俄羅斯企業利用香港作為進入中國市場的跳板。

Memorandum of Understanding (“MoU”) with the German Federal Bar

While attending the 6th St. Petersburg International Legal Forum held from 18–20 May in St. Petersburg, Russia, the Law Society and the German Federal Bar signed a MoU to foster a closer working relationship to advance the interests of the legal profession in Hong Kong and Germany.

與German Federal Bar簽署諒解備忘錄

適逢5月18日至20日舉行的第六屆St. Petersburg International Legal Forum，律師會與German Federal Bar於5月19日簽署諒解備忘錄，以促進更密切的合作關係，推進香港和德國法律界的發展，為雙方的會員謀求福利。
**SmartHK, Chengdu**

SmartHK, organised annually by the Hong Kong Trade Development Council and held this year from 12 to 13 May in Chengdu, attracted more than 11,000 visitors. As a supporting organisation, the Law Society set up exhibition booths and promoted the capability of Hong Kong lawyers to assist Mainland enterprises in expanding their overseas business. Three Hong Kong law firms also participated as exhibitors.

Large-scale seminars promoting Hong Kong’s service industry were organised for the event. During the seminar “Belt and Road: Opportunities for Sichuan and Hong Kong”, Mr. Fred Kan, Chairman of the Belt and Road Committee, shared his views on the role and function Hong Kong’s legal profession can play in the Belt and Road initiative. Ms. Betty Tam spoke on behalf of the Law Society during the seminar “Chinese Enterprises’ Overseas Investments” on the topic of “New Technologies: Exploring Investment Opportunities in North America”.

**創新升級·香港博覽**

由香港貿易發展局舉辦、一年一度的「創新升級·香港博覽」於5月12至13日在四川成都舉行，吸引超過11,000人參觀。香港律師會作為博覽的支持機構之一，於會場內設置攤位，向參觀人士介紹香港律師如何幫助內地企業拓展海外業務。除了律師會外，三間香港律師事務所亦有參展。

展覽安排了多個推廣香港服務業的大型講座。香港律師會一帶一路委員會主席簡家駿律師在「一帶一路·川港機遇」論壇上，分享香港法律界在一帶一路倡議中發揮的角色和功能。譚鳳筠律師代表香港律師會出席「中國企業海外投資」研討會，就「高新技術－北美投資機遇探討」演講。

**Briefing Session on Risk Management Education Course in Chengdu**

On 13 May, during the SmartHK Forum, the Law Society organised a briefing session on its Risk Management Education (“RME”) Course, which was attended by around 60 lawyers from Sichuan and Chongqing. During the session then-Vice President Thomas So explained what risk management entailed and why it was important. He also explained the structure of the Law Society’s RME course and encouraged attendees to enroll. Several members of the Greater China Legal Affairs Committee and Hong Kong lawyers also attended and interacted with other attendees during the exchange session.

Then-Vice President Thomas So and Ms. Emily Lam, Vice Chairperson of the Greater China Legal Affairs Committee and Mr. Eric Lui, member of the Committee also met with representatives of the Sichuan Province Lawyers Association and Chengdu Lawyers Association to discuss how to further cooperation between the two jurisdictions.
Home Visit to the Elderly

More than 40 Law Society members, alongside their families and friends, participated in a home visit to the elderly event in Tsing Yi on 16 April. The event was organised by the Community Talks and Services Working Group ("WG"), a working group comprising Community Relations Committee members and supported by Cheung Shan Developing Horizon of the Hong Kong Society of the Aged ("SAGE").

Volunteers visited 50 households, bringing each a goodie bag with staple food items and daily necessities. During the visit, volunteers were able to identify some of the special needs of the elderly and share their observations with SAGE for follow-up action. WG would like to thank the volunteers on their devotion and dedication to community service. We look forward to seeing more new faces soon.

LawSociety-Lexis Anniversary Cocktail Reception

To celebrate the anniversary of the launch of the members’ exclusive online research platform LawSociety-Lexis, the Law Society and LexisNexis jointly hosted a cocktail reception on 3 June. Then-President Stephen Hung delivered a welcome speech and encouraged members and law firms to sign up for the service. Mr. Tyson Wienker, Managing Director of LexisNexis Greater China, also gave a presentation on how the legal industry was changing and its implications on small to medium sized law firms in Hong Kong. At the cocktail, participating members were given demonstrations in person of how to use the online platform.
Law Society Swimming Team: MOVEathon Swimming Competition

On 17 April, the Law Society Swimming Team participated in the team race in the MOVEathon open water swimming competition, held in Repulse Bay. MOVEathon is a campaign that encourages participation in sporting activities and adoption of healthy lifestyle habits through multiple sporting competitions, activity booths, educational and motivational workshops, with the aim of gathering a number of organisations to rally around shared values. The cold water in mid-April did not dampen our enthusiasm for swimming and our commitment as a team. The team race was divided into different age groups and our members were enrolled in the Masters Group and Adult Group races, respectively. We are pleased to announce that our team members finished in the top six positions in all races with excellent performances.

Ms. Eliza Chang, Past Chairlady of the Recreation & Sports Committee ("RSC") and Honorary Captain of the Swimming Team, won first place in the Masters Group. Ms. Agnes Chan, RSC member and Convenor of the Swimming Team, clinched the 2nd runner-up title in the Adult Group. The summer has begun. It is prime time for swimming. We sincerely hope you will consider joining us at our Swimming Training and Swimming Class!

Agnes Chan
Convenor, Law Society Swimming Team

Mr. Nick Chan (front row, first from left), Council Member and Chairman of the Recreation & Sports Committee, was invited as the Guest of Honour in the Opening Ceremony of MOVEathon carnival and open water swimming competition in the morning. We thank Ms. Gigi Pang (back row, seventh from right), Chairlady of MOVEathon organising committee, for organising the event.
Young Solicitors’ Group: 
Joint Professional 
Architectural Tour in Central 
and Networking Drinks

One of the focuses of the Young Solicitors’ Group (“YSG”) is to provide a platform for our young members to meet people from other professions through various activities. After the joint-professional Nam Sang Wai eco-tour last November, this year on 28 May, YSG partnered with the young groups of Hong Kong Dental Association, Hong Kong Institute of Architects (“HKIA”), Hong Kong Institute of Planners, Hong Kong Institute of Surveyors, The Chartered Institute of Arbitrators (East Asia Branch), The Hong Kong Institute of Landscape Architects and The Hong Kong Medical Association to organise an architectural tour followed by a networking event in Central.

The three-hour tour was led by architects under HKIA who offered their insights into the architectural styles, aesthetic features and history of the monuments and buildings in the Central District of Hong Kong where the new flourishes and the old stands. Highlights of the tour included climbing up to the observation deck on the 43rd floor of the Bank of China Tower overlooking the Victoria Harbour and the Central harbourfront, appreciating the details of the religious decorations of Hong Kong Catholic Cathedral of the Immaculate Conception, discovering the modest building style of the Central Government Offices and understanding the colonial history and the significance of the old Central Police Station Compound.

After the tour, the participants gathered at a cozy bar conveniently located near the old Central Police Station Compound and had great time casually mingling and chatting, and making new friends!

YSG organises a wide variety of events, many of which are in collaboration with other societies and organisations. Stay tuned for our upcoming events!

Felix Yuen
Committee Member, Young Solicitors’ Group
The Jury and the Internet

By Morley Chow Seto
The decision in *HKSAR v Chan Huandai* highlighted the problems of running jury trials in the Internet age. In this article, Morley Chow Seto examines the decision and the possible solutions.

In *HKSAR v Chan Huandai* (CACC 114/2014), the Appellant had been previously convicted in the High Court of trafficking in dangerous drugs. Her conviction was appealed and a retrial was ordered. At the re-trial, the jury found her guilty by a 5–2 majority. The Judge discharged the jury and adjourned sentencing for eight days. Three days before the sentencing hearing, a juror telephoned the Judge’s clerk informing him that after commencement of the trial, but before the verdict, that juror and other jurors had searched the Internet and through their searches had come to know that the case was a re-trial. The juror was concerned that some members of the jury might have a pre-conceived idea about the case to the prejudice of the Appellant. The clerk reported the matter to the Judge. At the sentencing three days later, the Appellant was sentenced to 20 years and eight months imprisonment. The Judge then informed the parties of the telephone call from the juror, pointing out that after the jury’s verdict he was functus officio and could not do anything but inform the parties.

The Court of Appeal, through the Registrar, conducted an investigation by questionnaire sent to the jurors. According to the answers provided (one questionnaire was returned unclaimed) all of them knew that the case was a re-trial; five of them knew of this during the trial; one did not say when; two jurors learned of it through their own internet search; and two from other jurors. In allowing the appeal, the Court of Appeal found that the conduct of the jurors rendered the trial unfair to the prejudice of the Appellant, rendering the verdict unsafe.

This decision brings into focus the threat the Internet poses to the integrity of the jury system. Courts in jurisdictions across the world are increasingly grappling with jury misuse of the Internet during court proceedings. Jurors take an oath when they assume duty. They must act impartially and in good faith, follow the directions of the trial judge, base their deliberations and return their verdict on the evidence alone. The Court of Appeal in *Chan Huandai* (citing *R v Mirza* [2004] 1 AC 1118, *Montgomery v H.M. Advocate* [2003] 1 AC 641, *HKSAR v Lee Ming Tee* [2001] 4 HKCFAR 133, and *HKSAR v Kissel* [2014] 1HLRD 460) said that it is axiomatic that the integrity of jury trials depends on the jury acting in accordance with these judicial attributes. If it does not, the very foundation of our criminal justice system is jeopardized.

It is estimated that there are 5.75 million internet users in Hong Kong, representing 80.5 percent of the population. According to the Office of the Communications Authority, the household broadband penetration rate stood at 83.8 percent as at November 2015. The combination of fast Internet speeds, smartphone penetration, extensive wi-fi, Internet usage and awareness make Hong Kong the most Internet connected place in Asia.

In Hong Kong, juries are segregated during each day’s hearings. Yet, juries go home at the end of the day, making their behaviour outside the court room difficult to monitor. And smartphones can be used almost anywhere in Hong Kong (including the courts). In *Chan Huandai*, the Court of Appeal referred to the Judgment of Lord Judge CJ in *R v Thompson* [2011] 2 All ER 85:

“Jurors need to understand that although the internet is part of their daily lives, the case must not be researched there, or discussed there (for example, on social networking sites), any more than it can be researched with, or discussed amongst friends or family, and for the same reason. The reason is easy for jurors to understand. Research of this kind may affect their decision, whether consciously or unconsciously, yet at the same time, neither side at trial will know what consideration might be entering into their deliberations and will therefore not be able to address arguments about it. This would represent a departure from the basic principle which requires that the defendant be tried on the evidence admitted and heard by them in court.”

**England & Wales**

In England & Wales similar problems have arisen. In *R v Karakaya* [2005] EWCA Crim 346, a jury had found Karakaya guilty of rape and indecent assault on his 17 year old daughter. After the verdict, a jury bailiff had found internet printouts in the jury room including several concerning the difficulty of obtaining rape convictions. In *Attorney General v Dallas* [2012] 1 WLR 991, Dallas, a university lecturer, was jailed for six months for telling fellow jurors at Luton Crown Court that a defendant accused of assault had been previously charged with rape. Similarly, in *Attorney General v Beard* [2013] All ER (D) 391, Beard was jailed for two months for using Google to find out further information about the number of investors affected in a fraud trial where he was performing jury service. Research in England has also found evidence of jurors using sites such as Google Earth to visit crime scenes.

**Directions**

Many judges explain the reason for the prohibition but this is typically done at the outset when jurors are familiarising themselves with an unusual and perhaps daunting court process. It may be more effective to continuously remind jurors throughout the trial. In *Chan Huandai*, the Court of Appeal set out suggested
directions to the jury after empanelment. The directions emphasise that the verdict must be based on the evidence in Court; remind the jury of their oath; direct the jury to disregard extraneous material from the press or television; and not to communicate about the case on the phone, by email, by text or Twitter. Specifically, they state:

“You should not conduct research about the case or about any person or issue connected with the case. That includes keeping away from the Internet (for example Google) to find out something which you think might assist you in coming to a decision.”

It is also recommended that the directions be re-iterated in the summing-up with a warning of prosecution for contempt for failure to follow the direction. The Court of Appeal also endorsed Lord Judge’s recommendation (in Thompson) that the principle not be explained as a polite request but as an order necessary for the fair conduct of the trial. In 2013, the Law Commission of England & Wales examined the problem of “orders” as opposed to “directions”, making recommendations for legislation, noting that many judges have adopted the practice not only of warning the jury but also of handing the jury a notice setting out what they must and must not do and the penal consequences of any breach. They have done this so that no juror can subsequently claim that he or she did not understand what they should not do and what the consequences might be.

Contempt

In Chan Huandai, the trial judge had given express instructions to the jurors regarding conducting their own research. The Court of Appeal did not pursue the matter further because this was the first case where jury conduct of this kind had been brought to the attention of the Court. However the Court of Appeal warned that if, in future, jurors did not heed the judge’s directions, the Court will refer the matter to the Department of Justice for consideration of prosecution for contempt.

In Dallas, Lord Judge CJ set out four elements which would establish the elements of contempt in cases where there had been deliberate disobedience to a judge’s direction/order:

- the juror knew that the judge had directed that the jury should not do a certain act;
- the juror appreciated that that was an order;
- the juror deliberately disobeyed the order; and
- by doing so the juror risked prejudicing the due administration of justice.

Accordingly, the scope of the criminal contempt that could be prosecuted depends on the exact wording that each judge adopts in warning the jurors at the start of the trial. In consequence, the scope of the contempt varies from court to court and from case to case. The message may be clearer for jurors if they could be told that such conduct is a crime – a matter which is likely to have resonance for those who may have limited understanding of legal terminology.

Court Orders or Legislation?

Some judges in England & Wales have said that it puts them in a difficult position to issue orders at the start of a trial. The determination of whether a juror has committed contempt depends on the precise form of words used by the judge in directing the jury. It is unusual to characterise a judicial direction to the jury as a “court order”. The consequence of doing so is that it places a significant burden on trial judges to set out in full the precise boundaries of legitimate juror conduct in their opening words to the jury. The Law Commission of England & Wales recommended legislation to tackle the problem for a number of reasons, including:

- A prohibition on searching for extraneous material explained to jurors as forbidden as “a contempt of court” is difficult to explain.
- Judges with whom they met explained that their main focus on empaneling a jury is attempting to develop a rapport with the new jurors. Many judges were aware that the early moments when a jury is empanelled can be crucial to establishing the relationship between them and the court. Establishing that rapport does not sit easily with judges issuing “orders” about what jurors can and cannot do, and threatening to imprison them for breaching the order.

The introduction of a statutory criminal offence in Hong Kong may help judges avoid these conflicting tensions. Instead of having to issue an order to jurors, with sanctions of imprisonment for contempt, judges will be able to explain that it is LegCo that has made this conduct criminal.

As against that, there could be concerns that creating such an offence would make jurors more reluctant to admit their misconduct – questionnaires such as those sent to the jurors in Chan Huandai would raise issues of the right to silence. Fellow jurors may be more reluctant to report concerns, which would actively work against uncovering cases of miscarriages of justice. In Hong Kong, it can be problematic to empanel a jury willing to sit for long periods of time away from their employment, unable to discuss their day’s activities with family and friends. A threat of jeopardy for their actions as jurors would surely add to their concerns and lead to increased juror reluctance.

Notice to Jurors

In England & Wales, many judges have adopted the practice not only of warning the jury in terms similar to those recommended in Chan Huandai, but also handing the jury a notice setting out
what they must and must not do and the penal consequences of any breach. They have done this so that no juror can subsequently claim that he or she did not understand what they should not do and what the consequences might be. Recent research from University College London has also suggested that jurors’ ability to understand the judge’s legal directions increased markedly when written instructions were provided.

**Pledge**

In the United States, some judges require jurors to sign a pledge stating that they will refrain from conducting outside research on the case before them. This has the effect of solemnising the oath by jurors.

**Sequestration and Surveillance**

Sequestration would dramatically increase costs; is impractical for trials lasting longer than a day; could put pressure on jurors to reach a decision in undue haste in order to return home; and is likely to discourage potential jurors from their duty to sit on a jury. Likewise, surveillance is expensive, intrusive, offends the principle that a jury should confer and consider the evidence privately and can never be 100 percent effective.

**Conclusion**

Magna Carta enshrined the right for a man to be punished only pursuant to the “lawful judgement of his equals”. The problems posed by the Internet to the administration of justice are cogent, contemporary, and concerning and may need to be addressed further in future.

据估计，香港的互联网使用人数达575万人，占总人口的百分之八十点五。根据«通讯事务管理局»所发放的资料，截至2015年11月为止，本地家居宽带的普及率为百分之八十三点八。上网速度的提高、智能手机的普及、w-fi的广泛应用、互联网的使用及其意识的加强，使香港成为亚洲区互联网连繫密度最高的地方。

香港陪审员在每天所出席的聆讯中，虽然不可与外界接触，但一天的聆讯终了后，他们各人回到了自己的居所，这时法庭便很难对其在法院以外的作为实施监控。香港几乎每一处的地方(包括法院)，都可以使用智能手机。上訴法庭在 Chan Huandai一案中，引述了Lord Judge CJ在R v Thompson [2011] 2 All ER 85一案中的判词如下：

«陪审员必须明白，互联网虽然已经成为他们日常生活的不可或缺部分，但他们不可以在网上（例如透过社交网站），对具有份参与的案件进行探究或讨论。这种情况，其实与他们不可和自己的朋友或家人一起，对案件进行探究或讨论一样。然而，原因，陪审员应当不难理解。倘若陪审员进行了有关探究，这可能会对他们所作的决定构成影响（无论是否自觉或不自觉）；与此时，由於诉讼方无法知道陪审员在商议有关案件时，会将什么东西纳入其考虑范围之内，因此无法反驳有关的辩论。法庭审讯被告，必须以法庭上所接納的供證为依据，而陪审团亦必须根据该等证据来作出裁决。此乃一项基本原则，倘陪审团自行作出有关探究，这显然是偏離了该项基本原则。»

英格兰及威尔士


指示

大多数法官都曾向陪审员解释为何他们不可自行探究案件，但法官作出解释的时问，通常都是在陪审员需要理解有关法律的法院程序的起始阶段。假如法官能够在整个审讯过程中，对陪审员作出持续的提醒，那么相信成效必然更大。在Chan Huandai一案中，上訴法庭就指任了陪审员后，须向他们作出的各項指示提供了一些建言，当中強调：陪审團所達成的裁決，必須以審訊過程中向法庭提出的證據為依歸；提醒陪審團他們已經進行了宣誓；指示陪審團切勿理會報章或電視所作的報導；以及，不要透過手機、電郵、短讯或Twitter等通讯形式討論有关案件。此外，該等指示亦特别规定：

「陪审员不得对有关案件，或是对与该宗案件有关的任何人或争议点进行探究。其中包括，陪审員不得透過互聯網（例如Google），搜尋任何他們認為能有助其作出相關決定的資料。」

筆者建議，法官在进行案件总结时，应当重申此等指示，并向陪审员作出警告，提醒他们若违反该等指示，将会被控以藐视法庭罪名。此外，上訴法庭亦赞同Lord Judge的建議，即是：不要将有关原則解释为一项礼貌的请求，而是应将之视为达致公正审讯而必须作出的一项命令。2013年，英格兰及威尔士法律委员会(Law Commission of England & Wales)对「命令」(相對於「指示」而言)這議題進行了研究，及建议进行立法，并指出许多法官不仅會向陪審團作出警告，而且也會向他们發出一份通告，说明有哪些事情是他們必須做及不可以做，以及違反有關規定將會招致的刑事後果。法庭的此舉，可以避免陪審員日後聲稱，他們對有關的規定和所可能招致的後果一無所知。

藐视法庭

Chan Huandai一案的法官就陪审员对案情作出自行探究，向他们作出了明确的指示。由於這是陪審團作出此類行為而提請法院關注的首宗個案，上訴法庭因此并没有对他们的行为作出进一步追究，而只是给予警告，指出今后若有违反法官所作的指示，法庭將會有關事宜轉交律政司處理，以考慮是否就其藐视法庭提出检控。

至于陪審員故意不服從法官所发出的指示或命令，是否會構成藐視法庭罪？Lord Judge CJ在Dallas一案中，列出了四項要素：

· 陪審員對於法官所給予的，提醒他們不能作某些行為的指示，是否已經

該陪審員是否明白那是一項命令；
該陪審員是否故意不服從該項命令；
及
該陪審員的如此行為，是否會令司法
公義不張。

因此可以看出，陪審員在什麼情況下會被
控以藐視法庭罪，須取決於主審法官在聆
訊的開首階段，他向陪審員作出警告時的
確切用語。故此，藐視法庭罪所涉及的範
圍，須視乎個別法庭和個別案件而定。法
庭若明確告知陪審員有關行為會構成刑事
罪行，這將有助於發出一個更為明確的訊
息，使該等對法律用語所知有限的人能夠
提高警惕。

藉法庭命令還是立法？

一些英格蘭及威爾士的法官指出，如果他
們在審訊一開始時便向陪審員發出命令，
這會令他們陷入難於處理的局面。陪審員
是否觸犯了藐視法庭罪，須視乎法官向陪
審團作出指示時的確切用語而定。法官向
陪審團所作出的司法指示視作「法庭命
令」，這並非一般的慣常做法，而這種做
法所帶來的後果是，法官需要承擔一項重
大責任，就是在聆訊一開始時，他便需要
向陪審團作出指示，充分說明陪審員的合
法行為之確切界限。英格蘭及威爾士法律
委員會基於各種原因，建議通過立法來處
理這一問題。這各種原因包括：

- 僅陪審員為何不可搜尋外界資料，否
  則將被視作「藐視法庭」一事，難以
  向陪審員作出解釋。

- 陪審員與法官會面時，法官都會向他
  們解釋，法庭十分注重與新任陪審
  員建立良好的關係。許多法官都明白
  到，陪審員獲選任的初期，是法庭與
  其建立良好關係的關鍵時刻。但假如
  法官必須向陪審員發出「命令」，指示
  他們必須做什麼和不可以在做什麼，並
  須對他們作出警告，提醒他們若有違
  反該命令，便會有被判監之虞。在這
  種局面下，實在難以讓雙方建立良好
  關係。

倘若香港透過立法來確立該項刑事罪
行，這將會有助法官免於對上述的衝
突局面。法官不需為向陪審員發出因藐
視法庭而處以監禁刑罰的命令；取而代
之的是，他只須向陪審員解釋，立法會
已經通過了相關法例，將該等行為列為
刑事罪行。

另一方面，一個也許需要注意的問題
是，該項罪行的訂立，將會導致陪審員
更不情願承認自己的任何不當行為 — 例
如，法庭若派發問卷給陪審員作答（就好像
Chan Huandai—案中的情況），陪審
員將有可能為此而提出誠懇便提出的問
題。此外，其他陪審員亦可能會不願意
舉報任何他認為需要關注的情況，從而
大大違背揭露司法不公情況這一理念。

陪審員需要長時間開開工作崗位，出席
法庭聆訊，並且在一天的聆訊終結後，
不可向家人或朋友提及任何有關該案件
的內容。因此，香港法院要選任一個陪
審團，事實上絕非輕易的事。市民在出任
陪審員後，假如有可能須為自己
的行為負上刑責，這勢必會加深他們
的顧慮，從而導致更多市民不願意履行
陪審員義務。

隔離與監視

將陪審員與外界隔離，會大大增加審訊
的開支；對於耗時逾一天的審訊，這是
不切實際的做法；陪審員由於歸家心
切，可能在壓力下會作出操之過急的決
定；並且，這可能會導致市民不願意履
行其義務，擔任陪審員工作。同樣地，
監視的所需費用高昂、具有入侵性，並
且與陪審團私下進行商議和審視證據的
原則有所抵觸，而且它永遠不會達致百
分百的成效。

結論

《大憲章》規定，任何人皆享有權利，
只可在「與其具同等地位的人所進行的
合法審判」下受到懲處。互聯網對司
法公正的施行所帶來的衝擊，是強而有
力、具當代意義、及受人關注的，未來
極有可能需要就這一問題作出進一步的
應對。
The Applicability of the Secrecy Obligation under the Securities and Futures Ordinance to a Listing Applicant

By Prisca Cheung, Barrister-at-Law

Sir Oswald Cheung’s Chambers
When preparing to list a company with a previous Securities and Futures Commission (“SFC”) investigation record, lawyers, on the one hand, owe a duty to the Stock Exchange of Hong Kong (“SEHK”) and the public to conduct proper due diligence before recommending a company for listing; to this end, a certain degree of disclosure of previous investigations may be necessary. On the other hand, lawyers also owe a duty of secrecy to the SFC and are bound by the secrecy obligations under the Securities and Futures Ordinance (Cap. 571) (“SFO”). This article explores how lawyers can balance these competing obligations when preparing to list a client with previous SFC investigation history or record.

Public interest dictates that thorough and proper due diligence be conducted by a sponsor to an applicant proposing to be listed in the SEHK. During this process, a sponsor often requires disclosure by the prospective listing applicant of all information, correspondences, records and notices relating to any investigations conducted by the SFC on the company. This article explores the applicability of the secrecy provisions under S. 378 of the SFO to such circumstances. In particular, with reference to the legislative intent and background of s. 378 of the SFO, this article will first analyse whether a listing applicant can disclose any investigation documents to its sponsor under the exception in s. 378(2)(c), and then whether that sponsor can subsequently disclose any such documents to its legal advisors and the SEHK under the exception in s. 378(7).

The Applicability of s. 378 to a Listing Applicant

The duty of preserving secrecy under s. 378 applies to “a specified person”, the definition of which is found in subsection (15) to mean:

(a) the Commission; (b) any person who is or was a member, an employee, or a consultant, agent or adviser, of the Commission; or (c) any person who is or was – (i) a person appointed under any of the relevant provisions; (ii) a person performing any function under or carrying into effect any of the relevant provisions; or (iii) a person assisting any other person in the performance of any function under or in carrying into effect any of the relevant provisions.

“Relevant provisions” is defined in Schedule 1 of the SFO to mean the provisions of, inter alia, the SFO or Parts II and XII of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) insofar as those Parts relate, directly or indirectly, to the performance of functions relating to prospectuses.

Is the listing applicant considered a “specified person” under s. 378? The starting position is that a company is a legal person in the eyes of the law. Moreover, in complying with an SFC notice relating to any investigation, the listing applicant has performed an act as a “specified person” by “assisting any other person in the performance of any function under or in carrying into effect any of the relevant provisions”. The secrecy obligation under SFO s. 378 is thus prima facie applicable to a listing applicant.

Disclosure to the Sponsor

The next issue then is the applicability of any exceptions under s. 378(2). Notably, s. 378(2)(c) provides that s. 378(1) does not apply to “the disclosure of information for the purpose of seeking advice from, or giving advice by, counsel or a solicitor or other professional adviser acting or proposing to act in a professional capacity in connection with any matter arising under any of the relevant provisions” (emphasis added).

In short, the exception in s. 378(2)(c) only applies if the following three conditions are met:

1. a professional adviser is acting in a professional capacity;
2. disclosure is for the purpose of seeking advice from the professional adviser or the giving of advice by that professional adviser; and
3. the advice concerns a matter arising under the relevant provisions.

Prior to analysing the foregoing conditions, a preliminary consideration is whether s. 378(2)(c) even applies to circumstances as the present, where disclosure is for the purposes of seeking advice for commercial ends and not for legal proceedings/litigation.

According to Li CJ in HKSAR v Cheung Kwun Yin (2009) 12 HKCFAR 568 at [12]–[13], this is a matter that requires statutory interpretation. The SFC has clarified the
policy intent behind s. 378 in two LegCo papers (eg, CB(1)531/06-07(01) at p. 3 and CB(1)1476/06-07(04)), in which it stated that the secrecy obligation under s. 378 exists as a safeguard: (i) of the public interest that the SFC should not be compromised in its operations and the pursuit of its regulatory objectives by the leakage of confidential information; (ii) of the right of all persons; (iii) of the integrity of the market; among others.

In light of the foregoing purpose, it would appear that in cases of ambiguity, the exceptions to s. 378 (then s. 366 of the SFO) are to be “carefully guarded” and interpreted narrowly, so that “the exceptions should be restricted to those persons who have a clear reason to know” (see “Areas of concern raised by members during discussions on Securities and Futures Bill and Banking (Amendment) Bill 2000” (29 May 2001)).

Specifically, as regards s. 378(2)(c), this exception was added as an amendment in the Securities and Futures (Amendment) Bill 2000 to fill a gap in the original provision, which “[did] not adequately address the needs of the persons prescribed in clause 366(1) to disclose information for exercising their legitimate rights, such as to seek legal or other professional advice or to utilize the information in a related legal proceedings” (see Paper No. 14/01 (25 May 2001) by the Bills Committee on the Securities and Futures Bill and Banking (Amendment) Bill 2000, Part XVI Miscellaneous). In particular, “this amendment reflects our proposals ... that a person should not be prohibited from disclosing information for the purpose of exercising legitimate rights. Paragraph (ba) makes explicit that the secrecy provisions would not prevent any person from seeking professional advice, whether from lawyers or others” (see Paper No. CSA14/01 at n. 2).

Although exceptions to what is now s. 378 were intended to be construed narrowly in cases of ambiguity, it would appear from the above that the legislative intent of s. 378(2)(c) was not for it to be confined to legal proceedings only, but was intended to include all situations where a person sought to exercise his/her legitimate rights by seeking professional advice, “whether from lawyers or others”. Indeed, this interpretation does not go against the overriding objectives of s. 378, one of which is to safeguard the rights of all individuals (to seek professional advice) and the integrity of the financial market in Hong Kong (which can only be safeguarded if the professional advisor has access to relevant materials).

By reason of the foregoing conclusion, whether the listing applicant can disclose any investigation documents to its sponsor would thus turn on its fulfilment of the three conditions pertaining to s. 378(2)(c), as identified earlier.

The first condition depends on whether the sponsor can be construed as a “professional adviser” acting in a professional capacity. This condition is evidently met in light of s. 17.2 and s. 17(b) of the Code of Conduct for Persons Licensed by or Registered with the SFC (the “Code of Conduct”), which provide that “a sponsor also advises and guides the listing applicant as to the Listing Rules and other relevant regulatory requirements” (emphasis added).

As to the second and third conditions, (ie, whether the disclosure of investigation documents can be said to be for the purpose of seeking advice from the sponsor), this will necessarily depend on the individual facts of each case. That said, a listing applicant should only disclose investigation documents if such disclosure enables the sponsor to render advice within the scope delineated in s. 17.3 to s. 17.4 of the Code of Conduct. Notably, the sponsor owes the listing applicant, the SEHK and the public:

- A duty to do reasonable due diligence to gain a sound understanding of the (i) history and background, business and performance, financial condition and prospects, operations and structure, procedures and systems of the listing applicant; and (ii) the personal and business backgrounds of the directors, key senior managers and (where applicable) controlling shareholders of the listing applicant.

- A duty to resolve fundamental compliance issues by ensuring that the directors of the listing applicant collectively have the experience, qualifications and competence to manage the listing applicant’s business and comply with the Listing Rules, and individually have the experience, qualifications and competence to perform their individual roles, including an understanding of their obligations and those of the listing applicant as an issuer under the Listing Rules and other legal and regulatory requirements relevant to their role.

- A duty to ensure that the listing applicant is suitable for listing and that its listing is not contrary to the interest of the investing public or to the public interest.

For the sake of completeness, it should be added that if a listing applicant decides to disclose certain documents relating to SFC investigations to its sponsor, the sponsor can subsequently disclose such documents to its legal advisors pursuant to the exception under s. 378(7). However, any such disclosure must be for the purpose of seeking advice from the lawyers in a professional capacity in connection with the matter arising under the relevant provisions (ie, in relation to the IPO of the listing applicant).

**Disclosure to the SEHK**

As to whether s. 378(7) also permits the sponsor to subsequently disclose to SEHK the documents disclosed to it by a listing applicant, a relevant question is whether the SEHK could be regarded as acting in the capacity as a “professional adviser” such that s. 378(7)(iii) can apply. By reason of the following, it would appear that the SEHK cannot be so construed.

It is noteworthy that the SEHK’s role is regulatory rather than advisory. The SEHK describes its functions as (a) establishing and promulgating rules (the “Listing Rules”) prescribing listing requirements for listing applicants and listed issuers; and (b) fairly and impartially administering the Listing
Rules (see SEHK, “Outline of the current roles of the Exchange and the SFC in Listing Regulation” (31 March 2005), at https://www.hkex.com.hk/eng/rulesreg/regdoc/hkexrole.htm). In particular, the SEHK has distinctly referred to itself as being the “primary point of contact for all listing applicants and their advisers”.

In this regard, using listing in the SEHK Growth Enterprise Market (“GEM”) as an example, the SEHK states that “prospective issuers, and in particular new applicants, are encouraged (through their Sponsors, where applicable) to contact the Listing Division to seek informal and confidential guidance as to the eligibility of a proposed application for listing at the earliest possible opportunity” (see GEM Listing Rules s. 3.08). Such “informal and confidential guidance” cannot in any way be construed to be “professional”, and more importantly, provides a stark contrast to the clear provisions on the advice a Sponsor is expected to give, as stipulated in the SFC Code of Conduct.

Further, it is also apparent from the Listing Rules that the SEHK takes no responsibility for the contents of any documents published by the listing applicant (see GEM Listing Rules s. 2.19).

Accordingly, it seems evident that the SEHK’s functions are regulatory and cannot be construed to be a professional adviser acting in professional capacity under SFO s. 378(7)(iii) or any other provisions in s. 378. Any disclosure to the SEHK would thus require consent from the SFC.

Conclusion

By reason of the above, a listing applicant may be able to disclose certain SFC investigation documents to its sponsor under s. 378(2)(c) of the SFO if those documents relate to the scope of professional advice the sponsor has a duty to give. Section 378(7) then allows the sponsor to subsequently disclose any such documents to its lawyers pursuant to s. 378(7). However, as the SEHK cannot be construed as a “professional advisor” under s. 378(7), any disclosure to it by the sponsor would require the consent of the SFC.

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第378條對上市申請人的適用性

第378條下的保密責任適用於「指明人士」(specified person)，而該條第(15)款述明「指明人士」的含義是指：

(a) 證監會;(b) 現時或曾經是證監會成員、僱員、顧問或代理人的人;或
(c) 現時或曾經—(i) 根據任何有關條文獲委任的人;(ii) 執行任何有關條文授予的職能或施行任何有關條文的人;或(iii) 協助他人執行任何有關條文授予的職能或施行任何有關條文的人。

在《證券及期貨條例》附表1中，「有關條文」(relevant provisions)的含義是指(除其他外)《證券及期貨條例》的條文，或《公司(清盤及雜項條文)條例》(第32章)第II及XII部的條文，但只限於該兩部中，直接或間接關於執行與招股章程有關的職能的範疇。

上市申請人是否可被視為第378條所指的「指明人士」呢？首先，從法律的角度來說，一家公司是一名法人。此外，上市申請人在遵從任何與證監會所作的調查有關的通知時，它是藉著「協助他人執行任何有關條文授予的職能或施行任何有關條文」，而實施了一名「指明人士」的行為。因此，《證券及期貨條例》第378條中的保密責任，表面看來是適用於上市申請人。

向保薦人作出披露

接下來的問題就是，在第378(2)條下的任何例外情況是否可予適用？值得注意的是，第378(2)(c)條規定，第378(1)條並不適用於「為行以專業身份行事或擬以專業身份行事的大律師、律師或其他專業顧問就根據任何有關條文引起的任何事宜徵詢意見而披露資料」(斜體字標示為本文所加)。

簡而言之，只有在符合下列三項條件的情況下，第378(2)(c)條所述的例外情況才可予適用：

1. 一名專業顧問以專業身份行事；
2. 為向該專業顧問徵詢意見，又或是該專業顧問為了給予意見而將有關資料披露；及
3. 該等意見與根據任何有關條文引起的有關事宜有關。

在對上述條件進行分析前，我們必須首先考慮：當作出有關的保密披露，其目的並非為了進行任何法律程序 / 訴訟，而是基於商業目的而須尋求專家意見時，第378(2)(c)條是否仍適用於有如目前的情況般？

終審法院首席法官李國能在 HKSAR v Cheung Kwun Yin (2009) 12 HKCFAR 568 at [12]–[13] 一案中評論稱，這是一項需要作出法定詮釋的事宜。證監會在兩份立法會文件(例如 CB(1)531/06-07(01)第 3頁, 及CB(1)1476/06-07(04))中, 澄清了第378條背後的政策意圖, 其中並指出, 第378條下的保密責任, 其訂立是為了保障: (i) 公眾利益, 而證監會不應因機密資料外泄而導致其執行及實現監管目標的工作受到損害; (ii) 所有人的權利; (iii) 市場的廉潔穩健;等等。

基於上述目的，當出現歧義情況時，必須對第378條(當時為《證券及期貨條例》第366條)所述的例外情況予以「切實保障」，並須以狹義的方式來對其進行詮釋，從而讓「例外情況應限於有清楚理由知道有關權益的人士」（參見「在討論《證券及期貨條例草案》及《2000年銀行業(修訂)條例草案》時提出的重要事項」(2001年5月29日)）。

尤其是，就第378(2)(c)條而言，此等例外情況在《2000年證券及期貨條例草案》中被增補作爲一項修訂，以堵塞原來條文中的漏洞；也就是說，它「未有充分顧及受制於草案第366(11)條人士須披露資料以行使其合理權利的需要，例如徵詢法律意見或其他專業顧問的意見，或在有關的法律程序中使用有關資料」(參見「第14/01號文件」(2001年5月25日)，《證券及期貨條例草案》委員會及《2000年銀行業(修訂)條例草案》，第XVI部一雜項條文)。

具體而言，「該項修訂反映了我們的建議……，任何人倘若為了行使其合法權利而披露資料，他的此等做法毋需被禁止。第(9a)段表明，保密規定不會阻止任何人尋求專業意見(無論是向律師還是向其他人士)」（參見文件第CSA14/01號附2）。

雖然現時載於第378條的例外情況，是預計當有歧義情況出現時，便會將以狹義的方式來進行詮釋。但從上文觀察，第378(2)(c)條的立法意圖，並非是要將它局限於法律程序的範圍，而是有意圖包括任何人藉尋求專業意見(無論是向律師還是向其他人士)而行使其合法權利的情況。事實上，此項詮釋並不違背第378條的首要目標，而其中一項，就是必須保障所有個人權利(尋求專業意見)，以及維持香港金融市場的廉潔穩健(但只有在專業顧問能夠取得有關資料的情況下，才能令此等權利與廉潔穩健獲得保障)。

基於上文所作的總結，上市申請人是否可以向保薦人披露任何調查文件，這取決於它是否符合第378(2)(c)條所述的三項條件(正如上文所指出的)

第一項條件取決於保薦人是否可以被理解為是以專業身份行事。根據《證券及期貨事務監察委員會持牌人或註冊人操守準則》(以下簡稱《操守準則》)第17.2條及第17(b)條，很明顯該項條件能夠符合有關要求，而當中規定，「保薦人亦會就《上市規則》及其他相關監管規定向上市申請人提供意見及指引」(斜體字標示為本文所加)。
每宗個案的具體情況而定。話雖如此，只有當該等調查文件的披露，能夠使保薦人在《操守準則》第17.3-17.4條所述的範圍內提供意見時，上市申請人才應當對其作出披露。值得注意的是，保薦人須對上市申請人、聯交所及公眾人士履行下列責任：

- 依據合理的盡職審查，對以下事項有充分瞭解：(i) 上市申請人的歷史及背景、業務及表現、財務狀況及前景、運作及架構、程序及系統；及(ii) 上市申請人的董事、主要高級管理人員及(如適用)控股股東的個人和業務背景。
- 以確保上市申請人董事整體的經驗、資歷及勝任能力足以讓他們共同管理該上市申請人的業務和遵從《上市規則》，而每名董事各自的經驗、資歷及勝任能力亦可讓他們履行本身的個別職責，包括了解他們個人的責任，以及該上市申請人作為發行人根據《上市規則》以至與他們角色有關的其他法律及監管規定所須負的責任。
- 確保上市申請人適合上市，而其上市並沒有違反投資大眾的利益或公眾利益。

除此以外，作者亦希望補充一點，就是如果上市申請人決定向其保薦人披露某些與證監會的調查有關的文件，保薦人其後亦可以根據第378(7)條所述的例外情況，向其法律顧問披露該等文件。然而，任何該等文件的披露，其目的必須是為了向以專業身份行事的律師，就根據任何有關條文引起的任何事宜徵詢意見(即是與上市申請人的首次公開招股有關)。

向聯交所作出披露

至於第378(7)條，它是否也允許保薦人於其後，向聯交所披露上市申請人向其披露的那些文件？當中的問題是：聯交所是否可以被視為「專業顧問」的主體？但基於上述理由，似乎我們不能以此來理解聯交所的身份。

值得指出的是，聯交所肩負的是監管職責，而並非提供顧問服務。聯交所於《上市規則》(a)制定及發布規則(《上市規則》)以及上市申請人及上市發行人訂明上市規定；及(b)公正無私地執行《上市規則》(參見聯交所出版的「聯交所與證監會目前於上市規管所擔當的角色概況」(2005年3月31日)。網址：https://www.hkex.com.hk/eng/rulesreg/reg-doc/hkexrole.htm)。尤其是，聯交所將自己形容為「所有上市申請人及其顧問的主要聯繫點」。

關於這方面，我們謹以在聯交所創業板(「創業板」)上市作為一個例子。聯交所訂明：「預期發行人(特別是新申請人)應透過其保薦人(如適用)向上市科尋求非正式及保密的指引，以便能及早得知上市申請建議是否符合要求」(參見《創業板上市規則》第3.08條)。該等「非正式及保密的指引」在任何情況下，都不能被理解為是屬於「專業」，而更重要的是，它與保薦人被預期提供的意見有關的該些明確條文(正如《證監會操守準則》中所規定的)存在明顯的差距。

此外，《上市規則》也明確規定，聯交所對於上市申請人所刊發的任何文件的內容，概不承擔任何責任(參見《創業板上市規則》第2.19條)。

因此，顯而易見的是，聯交所的職能是屬於監管性質，所以我們不能將聯交所理解為是一個「專業顧問」，根據第378(7)條( iii)條下，又或是在第378條中的任何其他規定下，一個以專業身份行事的專業顧問。因此，任何向聯交所作出的披露，都必須獲得證監會的同意。

結論

基於上述理由，上市申請人也許可以根據《證券及期貨條例》第378(2)(c)條，向保薦人披露證監會的某些調查文件(前提是該等文件必須與保薦人提供其專業意見的責任範疇有關)，而第378(7)條亦因而將會允許保薦人於其後根據第378(7)條的規定，向其律師披露任何該等文件。然而，由於我們並不能根據第378(7)條將聯交所理解為是一個「專業顧問」，因此保薦人向其作出任何文件披露，都必須獲得證監會的同意。
Legal Strategies for Smooth Family Business Succession

By Xin Fang, Associate Mayer Brown JSM
"What keeps these patriarchs awake at night is succession to the next generation", said Kevin Herbert, HSBC’s co-head for private banking in north Asia, as he spoke to the Financial Times in March this year about Asian tycoons and family businesses. Family business leaders have good reason to worry. Only a third of all family businesses survive the transition from one generation to the next. Indeed, the number of businesses that have been in the same family for more than 200 years could be as few as 46 worldwide.

In recent years, American business school professors have been studying family businesses. The case studies on family business successions published by Professor John L. Ward of Northwestern University and Professor William T. O’Hara of Bryant University are particularly instructive. Based on an analysis of these case studies, this article discusses the major challenges of succession and the governance structures that lawyers could devise for family businesses to smooth the succession process.

The Three Stages of Succession
Succession is a long-term process that starts before, and stretches beyond, the actual handover of the business. It is also one of the most emotionally-charged business decisions for any family business. Having a good governance structure goes a long way towards managing this lengthy and emotional process.

Succession can be divided into the following three stages:
1. selecting an heir;
2. handing over the business; and
3. keeping the peace within the family after the handover.

Each stage brings its own challenges, which are outlined below.

Selecting the Heir
It seems only natural that an incumbent CEO would want to pass the family business to his or her children, but selecting one child over another to manage the company can be difficult. This is why the selection process is likely to be the most emotional and sensitive aspect of the succession process. Actual or apparent favouritism leads to family disputes that may ultimately shatter the family and the family business.

Fairness is key to the selection process. From its early days, a family business should establish an employment policy that sets out the qualifications expected of its CEO. The qualifications should be as objective as possible, for example formal education requirements, language requirements, and experience requirements both outside and within the family business (eg, having held a senior executive position for a certain duration). The employment policy should also specify performance targets and subject candidates to regular performance reviews.

By setting out the qualifications and performance targets in an employment policy, the selection process becomes more transparent. Transparency promotes fairness and meritocracy, both of which are important values for any successful business. The successor chosen in accordance with the employment policy is likely to command more respect from others, which in turn, helps to maintain stability during the later stages of the succession process.

Having an employment policy also helps the business to nurture talent within the family. The policy provides clear goals for ambitious family members, thereby encouraging them to develop the necessary competency from an early age.

However, family businesses should prepare for the worst. Unexpected events can create a vacuum in the line of succession. Family companies should prepare themselves for this risk by retaining external talent. In addition to bringing new ideas, external talent can ensure the continued success of the company where there is a lack of interest or talent within the family. They can also help the company to survive unexpected events such as the sudden illness or death of an heir or family member, who holds a senior position. In order to retain external talent, the company should consciously create promotion opportunities for them, such as setting a limit to the number of top positions held by family members so that outside talent can aspire to rise to the highest ranks.

The Handover
Many aging CEOs are reluctant to retire. Since they have invested so much time, effort and capital in their businesses, they may be unwilling to hand their businesses over to their successors. This reluctance to retire creates risks for the business. First, it causes tension between the two generations, which may adversely affect the management of the company. Secondly, talented next generation family members may be deterred from joining the family business if they know that one day they might need to wrestle control from their parents. Thirdly, a reluctant CEO is less likely to plan well for the transition between the two generations. The successor may, therefore, find himself ill-prepared and hastily ushered into the commander seat only when the incumbent CEO is unable to manage the business any further.

The obvious response to this challenge is to impose a mandatory retirement age in the CEO’s employment contract and the firm-wide employment policy. The retirement age should be agreed upon at an early stage (ie, before retirement
becomes an imminent and emotional issue).

It is equally important to address the emotional aspect of retirement. The retiring CEO should be reassured that retirement does not necessarily mean that he or she is cut off from the family business. He or she may still be a member of the board or be retained as a consultant of the company. These arrangements can help the retiring CEO ease into retirement, smooth the transition process and also benefit the company as the retiring CEO continues to contribute his or her knowledge and experience to the business.

Keeping the Peace

Family companies are strengthened by family solidarity and weakened, if not wrecked, by family feuds. Therefore, managing the “family” aspect of the company is just as important as managing its “corporate” aspect.

Family feuds are most likely to occur during the succession process, but their risk of occurring does not end with the handover. As the business is passed on through the generations, the ownership of the business may be dispersed across an increasingly large number of family members, which increases the risk of family disputes regarding the management of the company.

It is inevitable for family members, at some point, to have diverging interests and needs. While some members may wish to hold on to their shares in the company, others may wish to sell their shares and pursue other interests. It is in the company’s interest to concentrate ownership in the hands of shareholders who share common interests and goals; otherwise the company may be embroiled in negative publicity and court proceedings by disgruntled family shareholders. Therefore, the company should establish a mechanism by which family members can easily trade their shares within the family. For example, family members could enter into an agreement whereby they give one another a pre-emptive right if one member sells his shares; if no family member wishes to purchase those shares, the shares will then be repurchased by the company. To truly facilitate exit of ownership, the shares must also be valued at a fair price.

Another common area of tension is between managing and non-managing family members. In most cases, only a handful of family members will hold senior positions in the company. The non-managing family members (who may or may not be shareholders of the company) may suspect that they are not being fairly treated by the managing family members, or that the managing family members are diverting value from the company to themselves. Such suspicion provides fertile ground for breeding distrust and disputes.

There are three approaches to solving this problem. The first focuses on objectivity and due process. The family business should develop policies to govern sensitive areas, such as the employment, remuneration and dismissal of family members as employees of the company. These policies should set out the decision-making process and the factors that the decision-maker should and should not take into consideration, thereby establishing a more rational structure for determining potentially emotional issues. Ideally, all family members should be involved in formulating the policies, so that the policies have more legitimacy. Mechanisms should be put in place to allow for periodic review of the policies so that they reflect changes in the family’s needs and concerns. The company could also establish independent committees to consider and decide upon these sensitive matters.

The second approach focuses on communication and transparency. Successful family companies put in place structures that facilitate information sharing and communication between family members. For example, the company could mandate disclosures relating to key areas where managing family members are in positions or situations that create conflicts of interest, such as compensation, perks and benefits, and external business opportunities. Families may also organise regular family meetings to strengthen family ties and to identify concerns before they escalate into problems.

The third approach focuses on dispute resolution. The company could establish procedures that facilitate rational and structured discussions of contentious or sensitive matters. Further, if the company has a board of directors, the majority of which are independent professionals not affiliated with any family member, then the board could have a crucial role as a mediator between the family members who are merely shareholders and those who are also senior executives. In case of a deadlock, the board may be empowered to end the stalemate by deciding the matter once and for all.

Conclusion

Succession can be a bumpy ride for family businesses, mainly because it is fraught with emotional tensions. Such emotional tensions can be eased by governance mechanisms that facilitate objectivity, transparency and communication, thereby providing a rational structure to the succession process. The mechanisms considered in this article not only have the potential to smooth the succession process, but also may enable family businesses to emerge stronger from the process.
律師應如何協助家族企業平穩傳承？

「企業傳承的問題令家族企業的掌舵人輾轉難眠！」匯豐銀行北亞私人業務的聯席主管赫伯特先生向《金融時報》點出了亞洲家族企業面臨的最大挑戰。這並非危言聳聽。縱觀全球，由同一個家族持續掌控兩百年以上的企業不到50家。實際上，只有三分之一的家族企業可以成功傳到第二代，但能傳到第三代、第四代的家族企業則是鳳毛麟角。

近年來，美國學者對家族企業的傳承問題進行了深入的研究。美國西北大學的沃德教授和布萊恩特大學的歐哈拉教授收集了許多有關家族企業傳承的案例。本文通過對這些案例的分析，歸納出家族企業在傳承過程中經常遇到的一些問題，並提出應對方式。本文提到的應對方式有助律師為企業建立適當的管理架構，以便使傳承過程更加順利。

傳承三部曲
傳承通常是一個漫長的過程，在很大程度上決定企業的成敗盛衰。傳承既是一個生死攸關的商業決定，也是一個敏感的家庭決定。如何才能在保持家庭和諧的前提下，理性地處理這個問題？這就視乎企業是否有適當的管理架構以應對傳承過程中的挑戰。

一般來說，傳承可以分為以下三個階段：
1. 選拔接班人；
2. 移交領導權；
3. 維持家庭和睦。

選拔接班人
企業家自然希望將辛苦建立起來的商業王國傳給自己的後代，但他應該傳給哪位子女呢？這個決定很容易從「誰是最適合的接班人」演變成「誰是父母最疼愛的子女」。若處理不好，這會導致子女之間相互嫉妒和排擠，危及家庭和企業的凝聚力。

首先，選拔過程必須公平透明。如果每個孩子都知道接班人是根據個人能力公平地選拔出來的，那麼伴隨這個過程的惡性競爭和緊張程度就會明顯減少。從一個企業管理的角度來說，家族企業應及早擬定一份選拔政策，清楚地列明企業的首席執行官應具備的客觀資格，例如教育水平、語言能力，在家族企業和其他大企業裏擔任管理層職位的經歷等等。選拔政策也應該設定業績指標，定期評估候選人表現的機制以及選拔程序。

公平透明的選拔過程會促進企業內公平和擇優錄取的風氣，使企業的管理文化更加健康和成熟。在公平和透明制度下產生的接班人，較容易得到大家的認可和尊重，有助於接班人在父輩卸任後維持大局。
此外，公平透明的選拔過程也可以為有志投身於家族企業的家族成員提供明確的奮鬥目標，有利於企業從家族內培養人才。

其次，要未雨綢繆。一個突發事件可能會令企業瞬間失去領導人，若其他家族成員因年齡、健康或能力問題無法接班，則會出現家族傳承青黃不接的危機。因此，企業應該事先有所準備，通過積極培養家族以外的人才來減少此類事件對企業的衝擊。非家族人才不僅能為企業帶來新思想，還能在關鍵時刻延續家族企業的壽命。比如說，當家族成員因缺乏管理企業的興趣和能力而無法接班時，這些熟悉家族企業運作的非家族人士可以暫時接替管理工作，避免企業癱瘓。

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解決這個問題最直接的方法自然是規定一個退休年齡。除此以外，企業也應該設立一個獨立的委員會，由委員會全權處理退休事宜。當股東越來越多，分歧自然也會越來越多。有些股東想留著他們的股份，有些股東則想把股份賣掉，發展自己的事業。有些股東認為企業應該拓展新領域，有些卻認為企業應該專注核心業務。

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第一，通過制度化的決策程序，以股權交易的方式解決家族紛爭。若別的家族成員不願或無法收購退出股東的股份，企業應按公平的價格回購有關股份。

第二，加強溝通和增加透明度。成功的家族企業大多具備一些促進家族成員溝通和共享信息的平台。例如，可以要求管理層家族成員定期披露其薪酬、津貼和福利、外部商業機會等容易產生利益衝突的事宜。家族成員也可以經常舉辦家庭聚會，增強凝聚力和認同感。

第三，建立爭議解決機制。企業可以通過設定議事程序和規則，引導家族成員理性地協商解決問題。此外，企業的董事會也可以在家族內部出現分歧時，發揮緩衝、協商和仲裁的作用。如果大部分的董事都是與家族成員無任何利益關係的專業人士，那麼當身居管理層的家族成員和僅僅作為股東的家族成員之間發生爭執時，董事會作為一個中立的機構可以從中斡旋。倘若雙方僵持不下，董事會應該打破僵局，決定有關事宜，以免家族爭議導致企業癱瘓。

維持家庭和睦

俗話說得好：「家和萬事興」。家族企業的核心是家庭的和睦。家族企業的優勢在於成員們團結融洽，對企業有很強的歸屬感和熱忱。倘若家族成員之間爭奪權力，反目成仇，家族企業必然會遭到沉重的，甚至毀滅性的打擊。因此，若想企業平穩發展，必須堅持家庭和睦。

首先，公平透明的選拔過程也可以為有志投身於家族企業的家族成員提供明確的奮鬥目標，有利於企業從家族內培養人才。其次，要未雨綢繆。一個突發事件可能會令企業瞬間失去領導人，若其他家族成員因年齡、健康或能力問題無法接班，則會出現家族傳承青黃不接的危機。因此，企業應該事先有所準備，通過積極培養家族以外的人才來減少此類事件對企業的衝擊。非家族人才不僅能為企業帶來新思想，還能在關鍵時刻延續家族企業的壽命。比如說，當家族成員因缺乏管理企業的興趣和能力而無法接班時，這些熟悉家族企業運作的非家族人士可以暫時接替管理工作，避免企業癱瘓。

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結語

傳承是家族企業成敗興衰的轉折點。然而，家族企業的掌舵人因受感情左右，往往不能對此作出理性的判斷。通過適當的企業管理架構來建立正規、透明的決策制度，可以使決策不易受感情支配，有利於掌舵人做出一個更加理性的決定。文中提到的管理機制不僅有助家族企業的傳承平穩渡過，降低風險，更能提升企業的管理水平，為企業未來的發展奠下扎實的基礎。
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As we reported in the March 2016 edition of the *Hong Kong Lawyer* ("Anti-suit Injunctions and Delay"), in *Re Sea Powerful II* [2016] 1 HKLRD 1032 the first instance court refused to grant an injunction to restrain a party from continuing with court proceedings commenced in mainland China in breach of an arbitration clause favouring Hong Kong. That refusal was based on the plaintiff ship owner’s delay of approximately one year in seeking anti-suit injunctive relief, during which time the plaintiff appears to have adopted a strategy of “wait and see” with respect to the progress of the Mainland proceedings and the limitation period provided for in the arbitration clause had expired.

On a recent appeal, the plaintiff challenged the court’s decision on the basis that delay and comity considerations were not grounds to refuse an application for the grant of an injunction to enforce a contractually agreed arbitration clause (as opposed to, for example, the grant of an anti-suit injunction in the context of a *forum non conveniens* case). This argument did not succeed in the Court of Appeal, which declined to find that the lower court had exercised its discretion erroneously.

The outcome of the appeal primarily turns on the Court of Appeal’s approach to the lower court’s exercise of a discretion. However, the case raises an interesting issue; namely, delay as a standalone objection to the grant of an anti-suit injunction in the context of a contractually agreed jurisdiction clause, in circumstances where the plaintiff in the Mainland action (the holder of a bill of lading) could have protected its rights by making a claim within the limitation period provided for in the arbitration clause.

It will be interesting to see whether the plaintiff’s lawyers (and their leading marine counsel) are instructed to seek permission to appeal to the CFA and, if so, whether they can prepare grounds for an appeal that raise an issue of great general or public importance. The issue is interesting; particularly, in this context, the difference between contractual anti-suit injunctions and *forum non conveniens* anti-suit injunctions. However, while a final appeal may be of considerable interest that (presumably) needs to be balanced against the fact that ultimately the outcome in the case turned on the exercise of a judge’s discretion.

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

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CIVIL PROCEDURE

Form 16C Admissions and Scale Costs*

In previous editions of this journal we have referred readers to efforts by some defendants to test the parameters of the regime for sanctioned offers in the court rules (RHC/RDC O. 22). As we have noted, where these efforts may have fallen short they have at times resulted in judicial creativity as regards the use to which old-style Calderbank offers (without prejudice save as to costs) can be put.

Not to be outdone, some plaintiffs are looking to test the court’s discretion to award more than just fixed costs where a plaintiff obtains judgment pursuant to RHC/RDC O. 13A (“Admissions in claims for payments of money”). RHC/RDC O. 62, r. 32(4) provides for a “scale of costs” in certain situations; including, where a plaintiff obtains judgment under O. 13A without a hearing.

A common scenario in routine personal injury cases (such as “slip and fall” cases or non-serious road traffic incidents) is for a defendant to make an admission of liability in their Form 16C (Admission – unliquidated amount) in the expectation that their liability for the plaintiff’s costs is limited. Scale costs are not generous when (for example) the pre-action protocol requirements of Practice Direction 18.1 (Personal Injuries List) are taken into account.

Like many other costs-related issues, scale costs are causing consternation among some plaintiff solicitors in Hong Kong, even in the most routine of personal injury actions. It is difficult for plaintiff solicitors (often acting for legally aided clients) to do the work required under the pre-action protocol for the amounts specified in the scale of costs.

While the court does have discretion under O. 62, r. 32(4) to order more than provided for by way of scale costs, that discretion is usually limited to exceptional circumstances. As with costs disputes generally, it is difficult to discern much guidance from the relevant first instance decisions given that they are so fact specific. Certainly, the pre-action work required in medical negligence claims should merit more than scale costs.

Plaintiff solicitors seeking more than scale costs in cases where there is an O. 13A admission of liability should consider putting defendants on notice of this and seeking the protection of suitable pre-action and post-action without prejudice offers (perhaps, arguing that the latter offer should “relate back” to the former). In the meantime, the issue of scale costs is another one waiting to be looked at by (among others) the relevant High Court and District Court rules committees.

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

* Editorial Note: For more on this issue, readers are referred to Hong Kong Civil Procedure News (Issue 2/2016 – February 2016: “Order 13A and the costs paradox”, by Amirali B. Nasir). As an aside, the outcome of the Judiciary Administration’s review of inter partes costs recovery rates is still awaited (those rates not having changed since 1997).

一般的人身傷害案件(例如「滑倒」案或者不嚴重的交通事故)有一種常見情況，就是被告人因為期望就原告人訴訟費承擔不多的法律責任而填寫表格16C(承認 — 未經算定款額)承認法律責任。當考慮到(比方說)要遵從實務指示18.1(人身傷亡案件審訊表)的訴訟前守則，依照訴訟費表判給訴訟費就不算慷慨了。

在香港，就像許多其他與訴訟費有關的問題一樣，訴訟費表的訴訟費對一些代表原告人的律師驚愕不已，即使是最高普通的人身傷害訴訟中的原告人律師也有同感。只靠訴訟費收費表內訂明的訴訟費，原告人律師(通常代表獲得法律援助的當事人行事的律師)難以去做那些根據訴訟費守則所必須要做的事。

雖然根據第62號命令第32(4)條規則，法庭的確有酌情權發出命令，下令訴訟一方支付比訴訟費表訴訟費更高的訴費，但那種酌情權通常只限在特殊情況下才使用。正如一般的訴費爭議一樣，因為相關的初審判決的案情獨特性是那麼的高，要從決判中得出什麼指示是挺困難的。當然，在醫療疏忽賠償申索中去做必須要做的訴訟前工作，所得的訴費理應比訴訟費表的訴費更高。

如果被告按按照第13A號命令的規定承認法律責任，代表原告人要求比較訴訟費表訴訟費更高的訴費的律師，就應考慮提醒被告這種情況，並考慮尋求以無損權利的方式在訴訟前及訴訟後提出合適的提議作為保護(也許爭辯說，提出的後一個提議應是「返回講述」前一個提議)。在此期間，有關訴費表訴費的問題是另一個有待(其中包括)相關的高等法院及區域法院規則委員會考慮的問題。

- 施德偉高級合夥人，Smyth & Co與RPC聯營
COMPETITION LAW

Market Study Reveals Suspected Bid-Rigging

The Competition Commission has released the results of its market study into the building renovation and maintenance market, revealing that bid-rigging may be widespread in the industry.

The Commission found patterns consistent with bid-rigging after analysing records from about 500 tenders issued by the Urban Renewal Authority and the Hong Kong Housing Society. The tenders were for the appointment of consultants to plan and oversee renovation and maintenance projects and the appointment of contractors to carry out the renovation works.

The suspected bid-rigging occurred prior to the Competition Ordinance coming into effect in December 2015, and as such would not have breached competition law. However, the Commission is likely to investigate further if it detects bid-rigging going forward.

The Commission has launched a campaign aimed at raising awareness of bid-rigging. As part of the campaign, the Commission has published a brochure for procurement professionals on preventing and detecting bid-rigging. The “Getting the most from your tender” brochure includes tips on structuring the tender process to encourage competition and lessen the risk of bid-rigging.

Businesses and individuals that are found to have engaged in bid-rigging may be exposed to severe penalties.

Newspaper Association Withdraws Price Recommendations amid Antitrust Concerns

The Hong Kong Newspaper Hawker Association has withdrawn a notice to members recommending a retail price for branded cigarettes after the Commission raised concerns. The notice advised members to increase prices, and a number of newspaper hawkers followed the advice. The Association agreed to withdraw the notice after meeting with the Commission in May 2016.

Treasury Markets Association Changes Method for Setting FX Spot Benchmarks

The Treasury Markets Association (“TMA”) has announced that two FX spot benchmarks administered by the TMA will adopt a transaction-based determination mechanism with effect from 1 August 2016. The move comes after global financial markets have been hit by benchmark manipulation scandals in recent years.

The new system will anchor the benchmarks by observable, bona fide, arm’s length transactions, the TMA said. Under the current system, the benchmarks are calculated from submissions of contributors. The relevant benchmarks are the TMA USD/HKD and USD/CNY(HK) 11am Spot Rates.

- Neil Carabine and James Wilkinson, King & Wood Mallesons

競爭法

市場研究顯示有懷疑圍標的情況

競爭事務委員會（「競委會」）發表一份報告，概述其研究樓宇翻新及維修市場的結果。報告顯示，圍標可能在翻新及維修行業是十分普遍之事。

競委會分析近500個由市區重建局及香港房屋協會提供的招標記錄之後，發現投標模式與圍標情況相吻合。
July 2016  •  INDUSTRY INSIGHTS  業界透視

DUST, the Finance Market Council changed its method of determining the benchmark exchange rate after rumors spread.

The Finance Market Council stated that the new system is based on observable, real, fair transactions. Under the current system, each benchmark is based on the报价者’报价. Relevant benchmarks are the US dollar to Hong Kong dollar exchange rate and the US dollar to Renminbi (Hong Kong) exchange rate.

- Neil Carabine and James Wilkinson, King & Wood Mallesons

DATA PRIVACY

Data, Competition and Privacy: Strange Bedfellows

For the longest time, businesses have used information to design and implement their strategy. In recent years though, new technologies have enabled companies to rely increasingly on "data," another way to refer to any kind of information which is represented, stored, processed and exploited in unprecedented volumes, varieties and degrees of sophistication. As such, "data" has indisputably emerged as a new, highly valuable, asset class capable of providing significant competitive advantage. Data fosters innovation, creates new business opportunities, and contributes to developing target-oriented business models which are the way of the future.

As a result, antitrust authorities are increasingly factoring in data in their competitive analysis of business practices. This is the case for businesses which have data as their core business (eg, search, social networking) but also, traditional industries for whom efficient data collection and processing can give a clear advantage (eg, healthcare, financial institutions). First, data can be a source of market power, particularly in sectors where access to large volumes of data, scale and network effects create entry barriers. Second, data can increase transparency in certain sectors (price comparators; online market places); the impact on competition resulting from expanded data collection and sharing in the price discovery process is still unclear. Finally, as businesses seek ever greater access to data, they may engage in data-driven strategies that could be analysed as anti-competitive. By way of example, they may refuse access to their data to third parties; use data to implement price discrimination; leverage their data-based power to gain access to new markets; enter into exclusive contracts foreclosing rivals from access to key data; agree not to compete on privacy settings, knowing these are an increasing differentiating factor for consumers.

The issue is further complicated by the fact that data, when it contains personal information, also touches on individual rights and freedom. To safeguard these rights, regulators around the world have adopted often far reaching data privacy laws; data use and handling now exposes businesses to significant risks. In Hong Kong, the notion of personal data encompasses any information which is capable of identifying directly or indirectly a living individual, and the improper use, transfer or loss of such data can expose a company to substantial fines and serious reputational damage.

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In this new order, direct conflicts can arise between these laws. For instance, an antitrust authority may request information which the company is not allowed to transfer under applicable privacy laws in the same, or another jurisdiction; this could include employee personal data or financial data, subject to privacy laws or blocking statutes. In the current situation, global businesses lack sufficient legal certainty. It is time for regulators and policy-makers to cooperate more, across specialties and internationally.

- Clara Ingen-Housz, Antitrust Partner, Linklaters (Hong Kong)
能直接互相抵觸。举例说，在不抵触私隐法及对抗性法例规定的情况下，反垄断机构要求移转的资料，可以是同一或其他司法管辖区适用的私隐法所禁止企业移转的资料，包括雇员的个人资料或财务资料。监管机构和政策制定者现在该加强国际间的跨专业合作了。

- Clara Ingen-Housz合夥人(擅长处理反垄断事宜)，年利达律师事务所(香港)

GC AGENDA

SPC Issues Interpretation on Consumer Public Interest Litigation

On 24 April 2016, the Supreme People’s Court issued the Interpretation concerning Several Issues on the Application of Law in Hearing Consumer Related Civil Public Interest Lawsuits, which took effect on 1 May 2016. The interpretation addresses a type of public interest lawsuit where designated organisations that have not been harmed have a statutory right to bring a lawsuit on behalf of an uncertain number of consumers that have been or could be harmed by a product or service. Furthermore, these lawsuits will also help consumers to bring their own lawsuits more easily since certain facts (such as product defects) found by a court in a public interest case may be recognised by courts in later cases brought by consumers.”

Action Items
General Counsel for companies engaged in the manufacture, distribution or retail of consumer goods or services should prepare for a potential rush of public interest litigation in China, as well as follow-on direct claims by consumers, in part by studying the types of permitted plaintiffs, the conditions for filing suit, court jurisdiction and available relief under the interpretation.

- Practical Law China

法律顾问备忘录
最高人民法院公布關於消費公 益訴訟的法律解释

2016年4月24日，最高人民法院公布《最高人民法院關於審理消費民事公益訴訟案件適用法律若干問題的解釋》，自2016年5月1日起施行。有關解釋規定了提起消費公益訴訟的起訴權，給國內有關消費權利的訴訟領域帶來深遠影響。消費公益機關過往並沒有代表消費者提起訴訟的法定權利，因此在保護消費者方面的作用相當有限。我們可能會見到這些機關變得更加主動，特別是在消費者沒有多大能力針對大商家提起訴訟的時候。此外，因為公益案件中某些經法院判定的事實(例如產品有瑕疵)，可能在後來由消費者提起的案件中獲得法院認同，所以相關訴訟亦幫助消費者更容易为自己提起訴訟。”

跟進事項
法律顧問，在從事消費品的製造、分銷或零售，或者從事服務行業的企業工作的，應當有心理準備可能會見到大量公益訴訟案在中國湧現，以及準備跟進由消費者直接提出的申索。準備工夫之一，是研究有關解釋之下，獲法院批准的原告人的種類、提起訴訟的情形、法院的管轄權及可以得到的濟助。

- Practical Law China

GC AGENDA

SPC and SPP Issue Interpretation on Criminal Bribery and Corruption Cases

On 18 April 2016, the Supreme People’s Court and the Supreme People’s Procuratorate jointly issued the Interpretation on Certain Issues concerning the Application of Law in Handling Criminal Cases Involving Embezzlement and Bribery (the "Interpretation"), with
immediate effect.
The Criminal Law of the People’s Republic of China 1997 (“1997 Criminal Law”), as amended for the ninth time in November 2015, prescribes various punishments for, among other offences, the crimes of embezzlement, accepting a bribe and offering a bribe, whether in a commercial context or involving state personnel or persons with influence over state personnel. These punishments, which include fixed prison terms and concurrent fines, are expressed in general terms that are tiered in accordance with the severity of the crime. The interpretation fleshes out the meaning of these general terms and in many cases raises the monetary thresholds that trigger criminal prosecution.

In addition, the Interpretation:
• expands the definition of “money and property”, that is, the material benefit that induces the exchange of an “improper benefit”, which constitutes a crime, to include benefits that:
  ° can be converted into a monetary amount such as decorating a residence or discharging a debt; or
  ° require the payment of money such as membership services and travel;
• clarifies that accepting money and property after the provision of an improper benefit is still regarded as an inducement and therefore constitutes the offence of accepting a bribe;
• explains the circumstances under which punishment may be mitigated or exempted by voluntarily disclosing the crime of offering a bribe before prosecution and investigation; and
• establishes the monetary ranges of the fines imposed for the crimes of embezzlement or accepting a bribe.

Market Reaction

Wang Jing, Partner, PwC Legal China, Beijing

“Coming on the heels of the hotly debated draft amendment to the Anti-Unfair Competition Law, the interpretation sends a clear signal to China’s business community on the continued strengthening of China’s anti-bribery policies. Despite raising the thresholds for criminal liability, the new interpretation maintains high pressure on certain bribery practices that have relatively serious circumstances. It raises the bar for bribers of state functionaries who apply for mitigated penalties or exoneration. In addition, the new rules make clear the principles for setting criminal penalties in cases where the party accepting a bribe has influence over a state functionary.”

Action Items

Though to this point criminal bribery actions in China have been far less common than related administrative actions, General Counsel for any commercial operation in China must become familiar with both the administrative prohibitions on bribery and the more complicated criminal sanctions addressed by the interpretation. Many commentators expect a substantial number of compliance actions will flow from the interpretation, and it is critical for counsel to improve awareness and amend specific compliance mechanisms at an early date. These efforts should include an internal comprehensive risk assessment, a review of compliance policies, procedures and disciplinary measures, and the development of vigorous training and monitoring systems.

- Practical Law China

法律顧問備忘錄

最高院及最高檢公佈關於貪污賄賂刑事案件的解釋

2016年4月18日，最高人民法院及最高人民檢察院聯合公布《最高人民法院、最高人民檢察院關於辦理貪污賄賂刑事案件適用法律若干問題的解釋》 (「《法律解釋》」)，即日生效。

在2015年11月經第九次修訂的1997年《中華人民共和國刑法》除了訂明別的罪行適用的懲罰以外，還訂明貪污、受賄及行賄罪適用的刑罰，不論有關案件是否商業案件，或者是否涉及國家工作人員或對國家具有影響力的人員。這些都是一般的刑罰，包括有期徒刑並處罰金，罪行越嚴重，刑罰越重。《法律解釋》充實這些一般刑罰的意思，很多時還提高觸發刑事檢控的金錢門檻。

此外，《法律解釋》：
• 擴濶「財物」的定義，「財物」是指促使謀取「不正當利益」的物質利益 (此舉構成犯罪)，包括：
  ° 可以折算為貨幣的利益如房屋装修、債務免除等；或
  ° 需要支付貨幣的利益如會員服務、旅遊等；
• 闡明在提供不正當利益之後收受的財物，仍會被視為賄款，因而構成受賄罪；
• 解釋在提出控訴及進行調查之前，主動交待行賄罪行而可獲減刑或豁免的情況；及

Wang Jing, Partner, PwC Legal China, Beijing

“Coming on the heels of the hotly debated draft amendment to the Anti-Unfair Competition Law, the interpretation sends a clear signal to
市場回應

Wang Jing 合夥人，普華永道中國法律服務北京辦事處

《法律解釋》緊接《反不當競爭法》（修訂草案送審稿）之後發布，送審稿引起熱烈討論，《法律解釋》也向中國大小企業發出明確訊號，表明中國會繼續強化反貪腐政策。雖然刑事法律責任的下限給提高了，但新的解釋維持平以高壓手段對付某些犯罪情節相對嚴重的賄賂手法。《法律解釋》給行賄國家工作人員的提高申請減輕懲罰或者免除責任的門檻。此外，新規則清楚說明一些原則，適用於受賄一方對國家工作人員具有影響力的案件。

跟進工作

雖然現時中國境內屬刑事罪行的賄賂行為遠不及相關的行政罪行那麼普通，但在中國為商業企業工作的法律顧問，一定要熟悉與賄賂有關的行政禁令，以及由《法律解釋》處理並且複雜得多的刑事制裁。很多評論員預計《法律解釋》會引發大量遵規行動，法律顧問需要提高意識，盡早修訂具體遵規機制，刻不容緩。所做的工夫應包括全面評估內部風險；檢討遵規政策、程序及紀律措施，以及開發嚴格的培訓及監控系統。

- Practical Law China

INSURANCE

CFA rules on Insurance Agents’ Industry Duties to their Tech Reps

In an interesting judgment in Gill Gurbux Singh v Dah Sing Insurance Services Ltd [2016] HKEC 752, the Court of Final Appeal recently confirmed that insurance agents owe a duty of care to their technical representatives (“TRs”) to comply with the mandatory requirements in the insurance industry’s code of practice and guidelines.

Insurance agents and TRs are regulated by the Code of Practice for the Administration of Insurance Agents (the “Code”). The Code is issued by the Hong Kong Federation of Insurers (“HKFI”) and administered by the Insurance Agents Registration Board (“IARB”). The IARB also issues guidance notes on how agents and TRs exercise their powers and fulfil their obligations under the Code.

The appellant (Mr. Singh) was appointed as a TR by the respondent company (an insurance agent). The case at first instance turned on whether the respondent company had breached a statutory duty by: (a) failing to inform the IARB of the cessation of the appellant’s appointment as its TR (a reporting requirement of insurance agents prescribed under the Code), resulting in the appellant being unable to work as a TR; and (b) failing to report the appellant’s CPD credits to the IARB (a further reporting requirement of insurance agents under the relevant guidance notes), resulting in a three-month compulsory de-registration.

The judge at first instance found in favour of the appellant and awarded damages. The respondent company appealed. A new point was taken on appeal; namely, whether the appellant suffered any actual loss because he could work as an insurance agent (albeit not as a TR). The Code provides that a TR can act for no more than one insurance agent at any given time, while an insurance agent can act for up to four insurers (provided he or she has the consent of the principal).

The Court of Appeal reversed the first instance decision, holding that there had been no breach of statutory duty and the respondent company did not owe the appellant a common law duty of care.

The appellant appealed to the CFA, which held that the respondent company did owe the appellant a common law duty of care. According to the judgment, there was a clear foreseeability of loss to the appellant in the respondent company’s failure to report the cessation of appointment and CPD credits to the IARB. Since the respondent company was required under the Code to report these matters (and the appellant had naturally relied on it to do so) the company was taken to have assumed a responsibility to comply with the requirements set out in the Code and guidelines. The CFA also commented that the Court of Appeal may have incorrectly considered the appellant to be an insurance agent (possibly, because of mistaken evidence) when in fact he was a TR according to his employment and his registration with the IARB.

This case reiterates the importance for insurance agents to have a clear understanding of the rules and regulations which govern their conduct; in particular, their responsibilities towards their TRs. A simple oversight could lead to possible breaches of their duty and a corresponding liability for damages.

- Davina Turnbull, Senior Associate, Smyth & Co in association with RPC
保險
終院就保險代理人對其業務代表負有的行業責任作出裁決

終審法院最近在Gill Gurbux Singh v Dah Sing Insurance Services Ltd [2016] HKEC 752的判決中確定，根據保險業守則及指引的強制性規定，保險代理人對其業務代表負有謹慎責任；這個判決挺有意思。

現時規管保險代理人及業務代表的是《保險代理管理守則》(「《守則》」)。《守則》是由香港保險業聯會(「保聯」)發出，由保險代理登記委員會(「登記委員會」)執行。登記委員會亦發出指引，指導代理人及業務代表如何行使《守則》賦予的權力及履行《守則》授予的責任。

上訴人(Singh先生)獲答辯人公司(保險代理人)委任為業務代表。初審時的論據取決於答辯人公司是否: (a) 未有通知登記委員會, 答辯人公司已經停止委任上訴人為其業務代表(《守則》訂明保險代理人必須遵從的申報規定), 以致上訴人無法以業務代表的身分工作, 因而(答辯人公司)違反了法定責任; 及(b) 未有向登記委員會申報上訴人的專業培訓學分(相關指引訂明保險代理人必須遵從的另一申報規定), 以致上訴人被強制取消登記三個月, 因而(答辯人公司)違反了法定責任。

原審法官裁定上訴人勝訴, 判給上訴人損害賠償。答辯人公司上訴。上訴時採用的是一個新論點, 那就是, 上訴人有否蒙受任何實際損失, 因為他原本能夠以業務代理人的身分(雖然不能以業務代表的身分)工作。《守則》訂明不管什麽時候, 業務代表不可替多於一名保險代理人行事, 而保險代理人則可替最多四名保險人行事(但他或她要取得主事人的同意)。

上訴法庭推翻原審判決, 裁定案中沒有任何法定責任被違反, 答辯人公司對上訴人不負有普通法下的謹慎責任。

上訴人上訴至終審法院，終審法院裁定，答辯人公司的確對上訴人負有普通法下的謹慎責任。根據判決，答辯人公司未有向登記委員會申報有關的終止委任及專業培訓學分，上訴人因而會蒙受損失是清楚可預見之事。由於《守則》規定答辯人公司必須申報有關事宜(上訴人也就自然會倚賴答辯人這樣做)，該公司被視作已承擔違從《守則》及指引所載規定的責任。終審法院亦認為，上訴法庭可能是錯把上訴人當作保險代理人(可能是證據引起的誤會)，但根據上訴人的受僱工作及向登記委員會登記的身分，他的確是一名業務代表。

保險代理人要對規管他們操守的規則和規例有清晰的了解，這宗案件就重申了保險代理人清晰理解有關規則和規例的重要性，尤其提到他們對業務代表所負有的責任。稍一疏忽就有可能違責，違了責，就須對造成的損害承擔相應的法律責任。

Davina Turnbull高級律師，Smyth & Co與RPC聯營

MARKET REACTION

E-Discovery – Predictive Coding Given Another Boost

As noted in several pages of the April 2016 edition of the Hong Kong Lawyer, the use of predictive coding software as part of an e-discovery exercise was approved for the first time in civil proceedings by the courts in England & Wales. The English court's judgment in Pyrrho Investments Ltd gives useful guidance on the use of predictive coding and essentially endorses the parties' agreed approach. Soon after, news of the first English decision arising out of a dispute as to the use of predictive coding in an e-discovery exercise hit the headlines; at the time of writing, a judgment in BCA Trading is yet to be released.

That said, the use of predictive coding software is now an accepted feature in the process of identifying electronic documents that are potentially relevant in large-scale document-heavy commercial disputes. The general principles that hold true for good practice in the English courts apply in Hong Kong (for which see the Feature article and Industry Insights in the April 2016 edition).

Commenting on the use of e-discovery tools and recent developments in his practice, Gary Yin (Partner at Smyth & Co in association with RPC) notes that:

"In my experience of electronic discovery exercises in Hong Kong, parties tend to be sensible in agreeing protocols between themselves and these recent English cases should assist parties in those endeavours".

Richard Keady (Head of Disputes at Bird & Bird in Hong Kong) observes that:

"On the back of their experiences with electronic disclosure exercises, many law firms are now developing their own in-house capability, in order to save costs and build on their full service provider status. These recent English cases should assist with the Pilot Scheme and Practice Direction in Hong Kong".

Patrick Rattigan (Partner at Haldanes) adds:

"A search for electronic documents in regulatory or contentious proceedings can be a challenging and time-consuming exercise for a client. Predictive coding (underpinned by judicial approval) assists. A law firm is also better off for having tech savvy paralegals or trainees to assist in the review process, once relevant documents have been identified by the client".

Thomson Reuters, Hong Kong

* For example, search – http://www.bailii.org/databases.html. It has been widely reported that the decision approves of the use of predictive coding.
市場回應

c市民事程序中批准在電子文件披露的過程使用預測編碼，有關文章共佔了好幾頁篇幅。在 Pyrrho Investments Ltd 案, 英國法庭的判決提供了有用的預測編碼軟件使用指引，實質地支持由訴訟各方協定的方式。不久，英國法庭第一次就一宗有關在電子文件披露過程中使用預測編碼的爭議作出判決,判決消息成了新聞頭條; 筆者撰寫本文時，BCA Trading 案的判決尚待公布*。

雖然如此，現時在文件浩繁的大規模商業爭議中識別有可能相關的電子文件, 常會用上預測編碼軟件，而這軟件也成了識別過程的一個特色。英國法庭的良好實務所適用的一般原則, 在香港同樣適用(詳情請參閱2016年4月出版的專欄文章及業界透視)。

饒詩傑律師(Smyth & Co 與RPC聯營合夥人)在執業期間累積了這方面的經驗, 他評論電子文件披露工具的使用及最新發展時表示：

「我在香港參與過電子文件披露的過程，依我的經驗, 訴訟各方往往有一種明智的做法，就是彼此訂立守則，而英國近年的相關案例，應該對訴訟各方在這方面的作為起了幫助。」

顧禮德律師(香港鴻鵠律師事務所爭訟事務部主管)留意到:

「現在有很多律師行在電子披露過程中汲取了經驗後, 開始發展律師行本身的內部能力, 以求減省成本, 同時建立律師行作為全方位服務提供者的地位。英國近年的相關案例, 應該對訴訟各方在這方面的工作起了幫助。」

顧禮德律師稱, 此外，一旦相關的文件已由客戶識別出來, 聘用了精通技術的法律輔助人員或實習律師的律師行，便會在檢視過程中因為有他們提供協助而更為順利」。

REGULATORY

Are Companies Winning the Fight Against Corruption?

Bribery and corruption have never been more topical issues. The fight against corruption is top of the agenda in jurisdictions as diverse as the US, Brazil, Guatemala, Malaysia, the PRC, Nigeria, Tanzania and the UK. The Panama Papers and LuxLeaks have increased public awareness of how high-secrecy jurisdictions can be abused for tax avoidance and money laundering. Against this backdrop, Eversheds spoke to 500 business leaders across 12 jurisdictions to discuss their experiences of dealing with bribery risks.

Risky Business

A recently released report by Eversheds, Beneath the Surface: The Business Response to Bribery and Corruption 2016 has identified a number of positive developments in the fight against corruption. For example, 95 percent of companies regard corruption as an important issue and 90 percent would reject future business opportunities if the associated bribery risk was too high.

However, the survey also highlighted some alarming trends: while 90 percent of respondents would reject tainted business opportunities, 10 percent of senior management were unconcerned by corruption risk. In mainland China, 28 percent of respondents neither agreed nor disagreed on this point which suggests that President Xi Jinping’s anti-corruption campaign is not yet having the desired impact.

Of more concern was the fact that only 32 percent of business leaders understood their organisations’ anti-bribery policy. The “tone from the top” is critical in setting the standard for how an organisation will treat corrupt, or potentially corrupt, activity.

Another issue noted in the report was knowledge gaps. In Hong Kong, Singapore and China, around a third of respondents admitted that they did not undertake anti-corruption due diligence as part of an M&A transaction. This suggests that many organisations across the region are exposed to regulatory risks and costs that can arise from acquiring another organisation that is potentially tainted by corruption.

Ninety-nine percent of all respondents said they would self-report a bribery issue. While at first glance, this is encouraging; it raises concerns because few respondents understand how self-reporting works. A failure to seek professional advice before self-reporting could have serious results, specifically when a self-reported activity could span multiple jurisdictions. The report identifies a lack of education as one of the key factors underpinning this trend, with only 12 percent of respondents confirming they had received adequate training on escalation and reporting procedures.

The Business Case for Fighting Bribery

The main reason respondents cited for taking bribery seriously was the risk to their business rather than a fear of prosecution. This finding is supported by the results of a Harvard Business School study. The researchers found that organisations operating in high risk markets with strong anti-bribery controls grew 11.5 percent more than companies with weaker systems. In the past, many in-house counsel have struggled to convince senior management of the business need for implementing and enforcing a robust anti-bribery programme. This research indicates that investment in anti-bribery programmes will recoup the costs.
The information provided here is intended to give general information only. It is not a complete statement of the law. It is not intended to be relied upon or to be a substitute for legal advice in relation to particular circumstances.

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

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CIVIL PROCEDURE

Group Leader Ltd v Hui Sun Fat
[2016] 2 HKLRD 625
Court of Appeal
Civil Appeal Nos. 61 & 110 of 2015
Lam V-P, Barma JA and Godfrey Lam J
16 March 2016

Parties – locus standi – compulsory sale for redevelopment – whether Director of Lands had locus in proceedings – whether covenant prohibiting disposal of shares in land without government approval gave rise to proprietary interest

The Government assigned eight of the 364 undivided shares of a land lot in respect of the Roofs and the Exterior Wall of a building (the “Eight Shares”) without charging any premium, to the incorporated owners (the “IO”), who covenanted not to dispose of the Eight Shares without the Government’s approval (the “Covenant”). Subsequently, X1 acquired all the interest in the lot and Xs applied for the compulsory sale of all the undivided shares for redevelopment. By consent, the Director of Lands (the “Director”) was joined as a party to the proceedings (the “Consent Order”) on the issue of the existing use value of the Roofs and the Exterior Wall (the “EUV”). Although the Director was no longer an owner of the lot, she claimed an interest in the proceedings based on her right to charge the IO a premium to dispose of the Eight Shares under the Covenant. The Lands Tribunal ruled that it had no jurisdiction to determine the Director’s entitlement to charge a premium, since it was a contractual right which did not fall within s. 8 of the Land (Compulsory Sale for Redevelopment) Ordinance (Cap. 545) (the “L(CSR)O”). Notwithstanding, the Tribunal, pursuant to O. 15 r. 4 of the Rules of the High Court (Cap. 4A, Sub. Leg.) (the “RHC”), allowed the Director to adduce expert evidence concerning the EUV, which it assessed as nil. The Tribunal granted the order sought by Xs and the Director appealed.

Held, dismissing the appeal, that:

• The Director had no locus standi in these proceedings. Prima facie, persons who were neither the majority nor minority owners did not have locus in an application for an order under the L(CSR)O or the determination by the Tribunal. As such, the Consent Order could not confer locus on the Director as a matter of law.

• The Director did not have locus by reason of s. 8 of the L(CSR)O. By the assignment to the IO, the Government relinquished its interest in the lot in return for a personal covenant as the only means to exercise its control. Thus, the Covenant could not be regarded as a right “in or over the lot or any part thereof” since it did not run with the land. Nor was the Covenant a right affecting the lot. The Covenant could only be enforced by contract and did not give rise to any proprietary interest, much less an incumbrance on the land.

• Given the Director’s non-proprietary interest, until she obtained judgment and a charging order, she could not enforce her claims to the land. She was a potential judgment creditor only and should not be permitted to intervene in the application.

• There was no dispute between the majority and minority owners on the EUV. The Tribunal had no jurisdiction under the L(CSR)O to adjudicate issues relating to the enforcement of the Covenant. Order 15 r. 4 of the RHC could not be relied on to permit the Director to adduce evidence and submissions on the valuation of the EUV. Once the Tribunal had concluded that issues relating to the Covenant between the Director and the IO should not be litigated in compulsory sale proceedings, it should have exercised its power under O. 15 r. 6(2) to order that the Director cease to be a party.

民事訴訟程序

Group Leader Ltd v Hui Sun Fat
[2016] 2 HKLRD 625

訴訟各方 - 陳述權 - 為重新發展而強制售賣 - 地政總署署長在法律程序中沒有地位 - 禁止在未經政府批准的情況下處置在土地所佔份數的契諾可產生所有權權益

政府把某幢樓宇的天台及外牆的相關地段的8/364份不分割份數的契諾轉讓給業主立案法團（「法團」），免收地價；法團立下契諾，不會未經政府批准就
處置該八份份數（「契諾」）。其後，第一申請人購得該地段的所有權益，眾申請人申請強制售賣全部不分割份數作重新發展之用。按地政總署署長（「署長」）所同意，署長被加入成為有關天台及外牆現有使用價值（「現用值」）問題的法律程序中的一方（「同意令」）。儘管署長不再是該地段的擁有人，但她根據契諾，以自己有利所有權權益不屬《土地（為重新發展而強制售賣）條例》（第545章）（「《條例》」）第8條的範圍之內，土地審裁處判定，因為收取地價的權利是合約訂明的權利，而合約權利不屬《土地（為重新發展而強制售賣）條例》（第545章）（「《條例》」）第8條的範圍之內，土地審裁處沒有管轄權就署長收取地價的權利作出裁定。審裁處以《高等法院規則》（第4A章，附屬條例）第15號命令第4條規則為依據，准許署長援引與現用值有關的專家證據；專家估算現用值為「零」。審裁處作出眾申請人所申請的命令，署長不服，提出上訴。

CIVIL PROCEDURE

Universal Capital Bank v Hongkong Heya Co Ltd [2016] 2 HKLRD 757
Court of First Instance
High Court Action No. 1211 of 2015
Deputy Judge Burrell in Chambers 14 March 2016

Summary judgment – fraud exception under O. 14 r. 1(2)(b) – action for unjust enrichment – no underlying allegation of fraud against defendant – fraud exception not engaged – whether defence not credible

P, a bank in Montenegro, was deceived by a fraudulent e-mail into transferring €410,650.14 to a company in Hong Kong, which then transferred HK$2 million to D, a paper company. D’s “manager”, X, effected a currency exchange and onward transfer to a third party in the PRC. X claimed he was acting as D’s agent as a favour to a friend and in good faith when he used D’s account, which resulted in a change of position and detriment to D (“D’s Defence”). P brought proceedings for unjust enrichment against D and sought summary judgment. D argued the exception under O. 14 r. 1(2)(b) of the Rules of the High Court (Cap. 4A, Sub. Leg.) (the “RHC”) applied, since the action included a claim based on an allegation of fraud.

Held, granting leave conditional on payment of HK$2 million into court, that:

• Order 14 r. 1(2)(b) of the RHC was not engaged here. P was prepared to confine its claim against D for unjust enrichment, so whether or not X was a party to the fraud was irrelevant. There was no underlying allegation of dishonesty or fraud against D or X.

• The underlying reason for the fraud exception was to prevent summary judgment in a case where serious allegations of dishonesty were made or implied against a party, so that such a party might have an opportunity to answer the allegations. Here, D had no need for such protection. While the movement of the money was a plain and obvious scam, the legal route taken by P to recover its money did not necessarily involve any party to that fraud.

• The fraud exception should not be applied automatically merely because there were allegations of fraud or dishonesty in the bigger picture. The critical question was whether the underlying allegation of fraud, on which the claim was based, constituted an allegation of fraud against the defendant.

• Here, while D’s Defence was of minimal substance and suspicious, summary judgment should only be granted in the clearest of cases and this was not one of them. D’s Defence could not be dismissed as “incredible” at this stage. Accordingly, the proper and fair order was to grant D conditional leave to defend.
民事訴訟程序

Universal Capital Bank v Hongkong Heya Co Ltd [2016] 2 HKLRD 757
原訟法庭
高院民事訴訟案2015年第1211號
原訟法庭暫委法官貝偉和內庭聆訊
2016年3月14日

簡易判決 — 第14號命令第1(2)(b)條規則下屬詐騙而予以除外的情況 — 就不正當利益提出訴訟 — 無相關指控是針對被告人詐騙的 — 不涉及屬詐騙而予以除外的情況 — 答辯理由是否不可信

原告人,黑山共和國( Montenegro )一間銀行,被詐騙電郵欺騙,把 410,650.14 歐元轉賬到香港一間公司,該公司其後轉賬200萬港元給被告人,一間紙品公司。被告人的「經理」(「該經理」)把該筆款項兌換為人民幣之後,再轉賬給一名在香港的第三方。該經理聲稱,他當時是幫朋友忙,以被告人的代理人身份代被告人行事,並且是善意使用被告人的賬戶。該經理所聲稱的,導致被告人的處境及對被告人不利的原素改變(「被告人的答辯理由」)。原告人針對被告人得到不正當利益,提出法律程序,並且要求法庭作出簡易判決。被告人辯稱,由於有關訴訟包括基於詐騙指稱而提出的申索,《高等法院規則》(第 4A章,附屬條例)第 14號命令第1(2)(b)條規則下的例外情況適用。

裁決
– 有條件給予許可,條件是被告人要向法庭繳存200萬港元:
  • 這案不涉及《高等法院規則》第14號命令第1(2)(b)條規則。原告人願意只限於針對被告人得到不正當利益而提出申索,因此,該經理是否詐騙的一方並不相干。沒有相關指控是針對被告人或該經理不誠實或詐騙而提出。
  • 訂明「屬詐騙而予以除外的情況」(fraud exception)的根本原因,是要在一方被針對作出或暗示嚴重的「不誠實」指控的案件之中,防止法庭作出簡易判決,以便該方可以有機會就指控答辯。在這宗案件,被告人不需要這種保護。雖然調動款項很明顯是不折不扣的騙局,但原告人循法律途徑討回其款項,不一定需要有份詐騙的人成為其中一方。

– 不應純粹因為在更大的問題中存在詐騙或不誠實的指控,就自動應用「屬詐騙而予以除外的情況」。關鍵問題是,申索是基於詐騙而提出的,相關的詐騙指控是否就是針對被告人而提出的詐騙指控。

– 在這案,雖然被告人的答辯理由的實質內容少之又少,並且存在疑點,但簡易判決只在極度明顯的案件中作出,這案的情況不是這樣。在這個階段,被告人的答辯理由不能因為「不可信」而被駁回。因此,恰當和公平的命令就是有條件批准被告人答辯。

法院及司法制度

Tsang Wai Bong v Langham Hotels (LPHK) Ltd [2016] 2 HKLRD 567
原訟法庭
高院小額薪酬上訴案2015年第3號
原訟法庭法官周家明內庭聆訊
2016年3月9日

小額薪酬索償仲裁處 — 仲裁官 — 沒有責任就命令提供書面理由

申索人入稟小額薪酬索償仲裁處(下稱「仲裁處」)提出申索。仲裁官在聆訊上以口頭方式作出命令和提供理由,正式書面命令則於同日送達申索人。申索人申請仲裁處就該命令提供書面理由,但遭拒絕。申索人不服,申請許可提出上訴。

裁決 — 駁回申請：
申索人未能就仲裁處拒絕提供書面理由的決定提出可予爭辯的法律論點,以支持法庭給予上訴許可。根據《小額薪酬索償仲裁處條例》(第453章)第21(2)條,仲裁官可按其認為適當與否而以口頭或書面說明作出某項裁定或命令的理由,因此仲裁官沒有責任就其命令提供書面理由。此外,不提供書面理由並無對申索人造成不公,因為案中沒有證據顯示申索人不明白仲裁官所給予的口頭理由。
CRIMINAL PROCEDURE

_HKSAR v Abdallah Tatu Said_

[2016] 2 HKLRD 615
Court of Appeal
Criminal Appeal No. 218 of 2015
Lunn V-P and Pang JA
15 March 2016

Dangerous drugs – forfeiture of money under s. 56 – whether judge erred in refusing defendant’s request to reopen matter on ground of being functus officio

In the morning of 11 March 2015, D pleaded guilty to trafficking in dangerous drugs. The Deputy Judge granted the prosecution’s application under s. 56 of the Dangerous Drugs Ordinance (Cap. 134) to dispose of an exhibit of US$5,300 cash (the “Order”). Shortly after the hearing, D’s solicitor, S, realised that he had mistakenly confirmed in court that D had no objection to the Order. The Deputy Judge declined S’s request to be heard on “a matter that [he] had overlooked” as she considered herself functus officio. Later that afternoon, S clarified by fax that the matter concerned the Order (“S’s Letter”). The following day, the Order was signed by a Customs Officer. D applied for leave to appeal out of time against the Order.

Held, granting the application, treating the hearing as the appeal and allowing the appeal by setting aside the Order and remitting the matter to the Judge for fresh determination, that the perfection of a confiscation order occurred when the Clerk of Court filed the yellow paper copy of the form in the court records. Accordingly here, the Deputy Judge was not functus at any time before that point, at the earliest in the afternoon of 12 March 2015, and therefore erred in refusing to hear S on his return to court and also a rehearing on receipt of S’s Letter. Without the benefit of argument, the question of the forfeiture of the US$5,300 was not judicially determined.

CRIMINAL SENTENCING

_HKSAR v Tam Ling Yuen_

[2016] 2 HKLRD 572
Court of Appeal
Criminal Appeal No. 159 of 2015
Lunn V-P and McWalters JA
11 March 2016

Dangerous drugs – trafficking – mitigating factors – self-consumption of part of drugs – whether discount of 6.45 percent fell outside usual range for own consumption

D pleaded guilty to trafficking in dangerous drugs, namely 18.49 g of methamphetamine hydrochloride (“ice”), 11.87 g of cocaine and 3.23 g of ketamine. The Deputy Judge accepted D’s mitigation that she was a drug addict and part of the drugs was for her own use. Adopting a combined approach, he took a starting point of seven years and nine months, reduced it by six months for the portion of drugs intended for self-consumption and then further for plea to four years and 10 months’ imprisonment.

D appealed against sentence.

Held, allowing the appeal by substituting a total sentence of four years and six months’ imprisonment, that the discount of 6.45 percent afforded to D fell outside the broad range of 10 percent to
25 percent that was appropriate where all or, as here, a significant proportion of the drugs being unlawfully trafficked was intended for self-use. There were no particular circumstances to justify that departure from this range. Accordingly, D was entitled to a discount of 13 percent, that is, 12 months from the starting point stipulated to reflect the element of self-consumption of the dangerous drugs.

**DISPUTE RESOLUTION**

*China Resources Snow Brewery (Liaoning) Company Limited v William Coam / Germanium Inc.*  
HK-1600857 <snowbeer.com>  
Asian Domain Name Dispute Resolution Centre (Hong Kong Office)  
Debrett G. LYONS (Panelist)  
20 May 2016

**Intellectual Property – ICANN Uniform Dispute Resolution Policy (“UDRP”) – intention to use a domain name without taking action does not demonstrate rights or legitimate interests – attracting visits to the website for commercial gain by creating likelihood of confusion with a third party’s mark constitutes registration and use of a domain name in bad faith**

Complainant, (hereinafter “C”), owner of registered trademark of “SNOW” (“Trademark”) in China for its beverage products since 1997, filed a Complaint against the Respondent (hereinafter “R”) regarding its domain name <snowbeer.com> (“Disputed Domain Name”) registered in 2003.

C sought the transfer of the Disputed Domain Name, based on the three elements under Para. 4(a) of UDRP, by alleging:

- the Disputed Domain Name was identical or confusingly similar to C’s Trademark;
- R had no rights or legitimate interests in respect of the Disputed Domain Name; and
- the Disputed Domain Name had been registered and was being used in bad faith.

R rebutted C’s Complaint and submitted:

- C had no trademark right since C had no trademark registration where R was domiciled. R argued that C would not enjoy “a monopoly in all contexts” even if the trademark registration existed.
- R had a business operation in reselling domain name with generic, descriptive and “brandable” terms. R intended to use the Disputed Domain Name to sell beer, soda and tea.
- The preparation to use the Disputed Domain Name to sell beverage items created rights and legitimate interests although R had not yet been able to devote the time and resources to doing so.

**Held,** granting the relief sought, that:

- The Panel found that C’s Trademark had been registered in the PRC and elsewhere. There was no requirement under UDRP for C to hold a trademark registration in R’s domicile. The Disputed Domain Name was held to be confusingly similar to C’s Trademark.
- The Panel found that C had made a prima facie case that R had no rights or legitimate interests in the Disputed Domain Name, and R had the onus to prove otherwise. R had not made any submission to provide evidence that R had made preparation to use the Disputed Domain Name since the registration 13 years ago. The Panel also noticed that the Disputed Domain Name was offered for sale.
- The Panel found that the Disputed Domain Name was used to intentionally attract visits for commercial gain by creating a likelihood of confusion with C’s Trademark as to the source, sponsorship, affiliation, or endorsement of website. Registration and use of the Disputed Domain Name were regarded as a source of making commercial gain with bad faith.

The Panel was of the view that all the three elements under Para. 4(a) were established, and ordered that the Disputed Domain Name be
July 2016 • CASES IN BRIEF 案例摘要

The case had been appealed to the court.

(The full decision can be downloaded at the ADNDRC website, at http://www.adndrc.org/diymodule/docUDRP/HK-1600857_Decision.pdf.)

解決糾紛

China Resources Snow Brewery (Liaoning) Company Limited v William Coam / Germanium Inc.
HK-1600857 <snowbeer.com>
亞洲域名爭議解決中心(香港秘書處)
Debrett G. LYONS(專家組成員)
2016年5月20日

知識產權 — 互聯網名稱與數字地址分配機構的《統一域名爭議解決政策》(「《政策》」) — 有意使用域名但沒有採取行動並不證明享有權利或合法權益 — 創建容易與第三方的標記造成混淆的網站，藉此吸引網站瀏覽，賺取商業利益，已經構成惡意註冊及使用域名

投訴人1997年在中國把「SNOW」註冊為其飲料產品的商標(「商標」)，自此一直是商標的擁有人。投訴人提交投訴書投訴被投訴人，投訴內容與被投訴人在2003年註冊的域名<snowbeer.com> (「爭議域名」)有關。

投訴人聲稱：
• 爭議域名與投訴人的商標相同或混淆性相似；
• 被投訴人對爭議域名不享有權利或合法權益；及
• 爭議域名當時已被惡意註冊以及正被惡意使用。

被投訴人反駁投訴人的投訴，主張：
• 投訴人沒有在被投訴人的居住地登記商標，所以不具有商標權。被投訴人辯稱，即使投訴人有登記商標，也不可能在「所有情況獨佔商標」 (a monopoly in all contexts)。
• 被投訴人經營域名轉售業務，轉售的域名包含通用詞、形容詞或「頗具特色的」 (brandable)詞彙。被投訴人使用域名是為了銷售啤酒、汽水及茶。
• 雖然被投訴人還未能投放時間和資源以使用爭議域名銷售飲料，但之前做的準備工夫，已經產生權利和合法權益。

裁決 — 批給要求的濟助：
• 專家組認定，投訴人已經在中國註冊商標，也在其他地方進行登記。《政策》沒有規定投訴人必須在被投訴人的居住地登記商標。爭議域名被裁定與投訴人的商標混淆性相似。
• 專家組認定，投訴人提出了表面證據證明被投訴人對爭議域名不享有權利或合法權益，因此被投訴人有責任舉證證明自己享有權利或合法權益。
• 被投訴人沒有提交任何證據證明自從13年前註冊爭議域名之後，已經做好使用爭議域名的準備工夫。專家小組亦留意到被投訴人要約出售爭議域名。

專家組認定，被投訴人企圖故意吸引互聯網用戶訪問爭議域名或其他在線網址以獲得商業利益，使爭議域名或者其網站或網址上的產品或服務的來源、贊助商、從屬關係或認可與投訴人的標記具有相似性從而使人產生混淆。被投訴人被視為惡意註冊和使用爭議域名，從中賺取商業利益。專家小組認為，第4(a) 段規定的三項條件已獲證明，因此頒令被投訴人把爭議域名轉移給投訴人。

被投訴人向法庭提出了上訴。

亞洲域名爭議解決中心網站備有裁決全文可供下載：http://www.adndrc.org/diymodule/docUDRP/HK-1600857_Decision.pdf。
Employees’ compensation – whether applicant an employee or an independent contractor – public policy considerations on that question

In an action for employees’ compensation, the applicant contended that he was entitled to employees’ compensation from the respondent because he was either in its employ or else in the employ of its subcontractor. But the respondent denied liability to pay him employees’ compensation, contending that he was an independent contractor. The applicant was driving a truck. There came a time when the respondent’s subcontractor offered the applicant – and the applicant accepted – an opportunity to earn more money by taking on the duties of a delivery worker, as well. Under this arrangement, the applicant was treated as if he was a subcontractor of the respondent’s subcontractor.

Held, awarding the applicant employees’ compensation against R that:

• The relevant indicia pointed to the applicant being in the employ of the respondent’s subcontractor. (This is dealt with in parts of the judgment not relevant to the “public policy” point for which this case is reported).
• It would be contrary to the purpose of the compulsory employees’ compensation insurance scheme under the Employees’ Compensation Ordinance (Cap. 282) and contrary to public policy to allow the treating of a worker as an independent contractor as the worker in this case purportedly was.

Dependant visa – “spouse” under dependant policy taken to mean one whose marriage is a heterosexual and monogamous marriage – refusal to grant dependent visa to applicant as dependent of same-sex civil partner working in Hong Kong under an employment visa not Wednesbury unreasonable or discriminatory

The applicant, a national of the United Kingdom, sought a dependant visa to enter and stay in Hong Kong as a dependant of her same-sex civil partner. Pursuant to his dependant policy (the “Policy”) under which a “spouse” is taken to refer only to one whose marriage is a heterosexual and monogamous one, being understood to be the only kind of marriage recognised under Hong Kong law, the Director of Immigration refused to grant the applicant the visa which she sought. The applicant sought judicial review of this refusal (the “Refusal”). It was argued on the applicant’s behalf that: (a) the Refusal was Wednesbury unreasonable; (b) the Director erred in law in construing “spouse” in the Policy to mean a husband or wife but not a party to a same-sex marriage-like relationship; and (c) such a construction of “spouse” infringed the applicant’s constitutional rights under Arts. 1, 14 and 22 of the Bill of Rights and Arts. 25, 39 and 41 of the Basic Law.

The Director said that the Policy drew a line based on marital status to achieve the aim of striking a balance between,
on the one hand, maintaining Hong Kong’s continued ability to attract people with the right talent and skills to come to Hong Kong to work (by giving them the choice of bringing their closest dependants to live with them in Hong Kong and to care for and support them here) and, on the other hand, the need for a system of effective, strict and stringent immigration control.

Held, dismissing the application for judicial review, that:

• In the context of immigration control, the Director was entitled to draw a line between married and unmarried persons; that these two categories of persons were sufficiently different to justify the difference of treatment under the policy; and that neither the Policy nor the Refusal discriminated on the basis of sexual orientation.

• Hong Kong’s relevant legislation shows that the legislature did not intend to include foreign legally recognised civil partnerships or same-sex marriages within Hong Kong’s concept of marriage. So the Director was not wrong to treat “spouse” in the Policy as meaning a husband or wife but not party to a same-sex marriage-like relationship.

• No discrimination was involved. Accordingly, none of the constitutional rights invoked by the applicant were engaged.

依親簽證 — 受養人政策下的「配偶」被視為是指由男女結合的一夫一妻婚姻中的其中一方 — 拒絕向一名以其在香港持工作簽證工作的同性公民伴侶的受養人身分申請依親簽證的申請人發出依親簽證，此舉不是非常無理或者存在歧視

申請人是英國國民，她的同性公民伴侶持工作簽證在香港工作。申請人以其同性伴侶的受養人的身分，申請依親簽證來港居留。根據受養人政策(「該政策」)，「配偶」被視為是指由男女結合的一夫一妻婚姻中的其中一方，而這種婚姻被理解為唯一一種獲香港法律認可的婚姻；入境事務處處長(「處長」)以受養人政策為依據，拒絕發給申請人她所申請的簽證。申請人就申請被拒(「拒絕申請人的申請」)尋求司法覆核。申請人的代表大律師指出：(a) 拒絕申請人的申請的理由非常不合理(Wednesbury unreasonable)；(b)處

裁決 — 駁回司法覆核申請：

• 在出入境管制方面，處長有權在已婚和未婚人士之間劃定界限，以達到維持香港繼續吸引具有合適才能及技術的人來港工作的目的(方法是讓這些人可以選擇携同關係至親的受養人來港同住，在香港照顧及供養他們)，另方面亦顧及香港對於有效、周密及嚴格的出入境管制系統的需要。

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

就完整的摘要和判決書，請到 www.westlaw.com.hk 參閱Westlaw及《香港法律彙報與摘錄》。
NEWLY-ADMITTED MEMBERS

CHUI CHUN-KEAT
DARIAN
徐振傑

KAKU MUNENORI

LAI KAR WAH
RODERICK
黎家華
HOGAN LOVELLS
霍金路偉律師行

MCKENZIE JAMES
DAVID GILBERTSON

PANG HONG
MAN
彭康敏

SHA STEVEN
MARCUS
謝智海

SWAIN ANTHONY
DAVID
施健恆
DEACONS
的近律師行

SWIFT HANNAH
KATHRYN

TEOH YI-SHUN

WANG MALENE
MENGLIN
STEPHENSON
HARWOOD
羅夏信律師事務所

WELCH OLIVER
DAVID
GIBSON, DUNN & CRUTCHER
吉布森律師事務所

WONG CHUNG
PAN
黃重賓
WONG
CHRISTOPHER K.Y.
黃國恩律師行

ZHANG JUN
張俊
KING & WOOD
MALLESONS
金杜律師事務所

ZHANG YU
張煜
Partnerships and Firms
合夥人及律師行變動

• BULLOCK PETER CHARLES EDWARD ceased to be a partner of Pinsent Masons as from 01/06/2016 and joined King & Wood Mallesons as a partner on the same day.
模樂
於2016年6月1日不再出任品誠梅森律師事務所合夥人一職，並於同日加入金杜律師事務所為合夥人。

• CHAN YEE BIC EVA became a partner of Simmons & Simmons as from 01/05/2016.
陳宜碧
自2016年5月1日成為西盟斯律師行合夥人。

• CHAU CHI YING ROSA became a partner of Edmond Yeung & Co. as from 18/05/2016.
周芝螢
自2016年5月18日成為楊名遠律師行合夥人。

• CHE HAY WEN DENISE became a partner of Howse Williams Bowers as from 01/05/2016.
車曦芸
自2016年5月1日成為何韋鮑律師行合夥人。

• CHENG STEVEN JOHN ceased to be a partner of Siao, Wen and Leung as from 01/06/2016 and joined J. Chan & Lai as a partner on the same day.
莊善慶
自2016年6月1日不再出任蕭溫梁律師事務所合夥人一職，並於同日加入陳錦全, 黎永康律師事務所為合夥人。

• CHIK PUI HONG became a partner of Linklaters as from 01/05/2016.
植沛康
自2016年5月1日成為年利達律師事務所合夥人。
• HO WING HANG HOWARD became a partner of Ellen Au & Co. as from 26/05/2016. 何頴恒
自2016年5月26日成為區殿霞律師行合夥人。

• HUGHES CERAIN OWEN joined Clifford Chance as a partner as from 01/06/2016. 晓士
於2016年6月1日加入高偉紳律師行為合夥人。

• HUTCHINS ANDREW DEREK ceased to be a partner of Clifford Chance as from 01/06/2016. 夏啟思
自2016年6月1日不再出任高偉紳律師行合夥人一職。

• KWONG KIN LANG ALFONSO ceased to be a partner of Kwong & Lam as from 01/06/2016 and the firm closed on the same day. 鄺健能
自2016年6月1日不再出任邝林律師行合夥人一職，而該行亦於同日結業。

• LAM SIN WAH ceased to be a partner of Kwong & Lam as from 01/06/2016 and the firm closed on the same day. 林善華
自2016年6月1日不再出任邝林律師行合夥人一職，而該行亦於同日結業。

• LEE JAO JANG ALEX became a partner of Jun He Law Offices as from 01/06/2016. 李朝昌
自2016年6月1日成為君合律師事務所合夥人。

• LEE SUI HAR became a partner of Jun He Law Offices as from 01/06/2016. 李瑞霞
自2016年6月1日成為君合律師事務所合夥人。

• LEUNG HAU SIM became a partner of Clifford Chance as from 18/05/2016. 梁巧嬋
自2016年5月18日成為高偉紳律師行合夥人。

• LEUNG PAK KEUNG became a partner of Loong & Yeung as from 20/05/2016. 梁柏強
自2016年5月20日成為龍炳坤、楊永安律師行合夥人。

• LIU VINCENT ceased to be a partner of Holman Fenwick Willan as from 21/05/2016. 廖穎信
自2016年5月21日不再出任夏禮文律師行合夥人一職。

• LOONG PING KWAN commenced practice as the sole practitioner of Loong & Co as from 01/06/2016. 龍炳坤
自2016年6月1日獨資經營龍炳坤律師事務所。

• MASOOD SELMA ceased to be a partner of Tsui & Co. as from 01/05/2016 and commenced practice as the sole practitioner of SM & Co as from 09/05/2016. 馬秀雯
自2016年5月1日不再出任徐國森律師事務所合夥人一職，並於2016年5月9日獨資經營SM & Co。

• NG CHUNG WAI became a partner of Liu, Chan & Lam as from 05/05/2016. 吳松蔚
自2016年5月5日成為廖陳林律師事務所合夥人。

• NG KWOK WA joined Tsui & Co. as a partner as from 18/05/2016. 吳國華
自2016年5月18日加入徐國森律師事務所為合夥人。

• NG TIEN CHE MARGARET ceased to be the sole practitioner of M Ng & Co as from 31/05/2016 and the firm closed on the same day. 吳天智
自2016年5月31日不再出任吳氏律師事務所獨資經營者一職，而該行亦於同日結業。

• OUYANG DAN became a partner of Wilson Sonsini Goodrich & Rosati as from 01/06/2016. 欧陽丹
自2016年6月1日成為威爾遜·桑西尼·古奇·羅沙迪律師事務所合夥人。

• PANG MEI NGAN became a partner of Ford, Kwan & Company as from 01/06/2016. 彭美顏
自2016年6月1日成為梁錦濤、關學林律師事務所合夥人。

• QUEK EVANGELINE became a partner of Stephenson Harwood as from 16/05/2016. 郭鈺聆
自2016年5月16日成為羅夏信律師事務所合夥人。

• ROGERS JAMES ANTHONY ceased to be a partner of Norton Rose Fulbright Hong Kong as from 01/05/2016. 郭磐聰
自2016年5月1日不再出任諾頓羅氏富布萊特香港合夥人一職。
• SMITH BENJAMIN DOUGLAS HERIZ ceased to be a partner of Norton Rose Fulbright Hong Kong as from 01/05/2016.
史博文
自2016年5月1日不再出任諾頓羅氏富布萊特香港合夥人一職。

• SUN QIUNING ceased to be a partner of Kirkland & Ellis as from 14/05/2016 and joined Latham & Watkins as a consultant as from 16/05/2016. Mr. Sun became a partner of Latham & Watkins as from 01/06/2016.
孫秋宁
自2016年5月14日不再出任凱易律師事務所合夥人一職，並於2016年5月16日加入瑞生國際律師事務所為顧問。孫律師於2016年6月1日成為瑞生國際律師事務所合夥人。

• TAN TSUNG WAI OLIVER became a partner of Or & Partners as from 01/06/2016.
陳忠偉
自2016年6月1日成為柯廣輝律師事務所合夥人。

• TIN CHI HO HAROLD became a partner of Norton Rose Fulbright Hong Kong as from 01/05/2016.
田志豪
自2016年5月1日成為諾頓羅氏富布萊特香港合夥人。

• TITUS MICHAEL commenced practice as the sole practitioner of Titus & Co. as from 17/05/2016.
自2016年5月17日獨資經營Titus & Co.。

• TSANG HING SEE PANSY became a partner of Szwina Pang, Edward Li & Company as from 12/05/2016.
曾慶錦
自2016年5月12日成為李國強、彭書幗律師行合夥人。

• WAN CHI WAI ANTHONY ceased to be a partner of Vivien Teu & Co. as from 12/05/2016 and joined King & Wood Mallesons as a consultant on the same day. Mr. Wan became a partner of King & Wood Mallesons as from 17/05/2016.
尹智偉
自2016年5月12日不再出任張慧雯律師事務所合夥人一職，並於同日加入金杜律師事務所為顧問。尹律師於2016年5月17日成為金杜律師事務所合夥人。

• WOO KIN SHUN ANTHONY ceased to be a partner of Laracy & Co. as from 26/05/2016 and joined Clyde & Co. as a partner on the same day.
胡堅遜
於2016年5月26日不再出任戴偉誠律師事務所合夥人一職，並於同日加入其禮律師行為合夥人。

• YAN XIANMING commenced practice as the sole practitioner of Yan Lawyers as from 01/06/2016.
閆顯明
自2016年6月1日獨資經營閆顯明律師事務所。

• YIU WING MUN VIVIAN ceased to be a partner of Allen & Overy as from 06/05/2016 and joined Morrison & Foerster as a partner as from 09/05/2016.
姚穎敏
於2016年5月6日不再出任安理國際律師事務所合夥人一職，並於2016年5月9日加入美富律師事務所為合夥人。

• YUNG YICK LUNG ANTONY joined Howse Williams Bowers as a partner as from 23/05/2016.
翁奕龍
於2016年5月23日加入何韋鮑律師行為合夥人。

• ZIMMERMAN JOSHUA MORSE joined Proskauer Rose as a partner as from 06/05/2016.
於2016年5月6日加入普洛思律師事務所為合夥人。
We would like to congratulate Ronald Wan, Assistant Solicitor, Ince & Co, the winner of our Legal Quiz #26.

Hong Kong Lawyers’ legal trivia quiz questions, which principally focus on common law and Asian jurisdictions, have been prepared by Douglas Clark, Barrister. Suggestions for questions to appear in next month’s journal are most welcome.

1. At the end of 2014 how many licensed rickshaws were there in Hong Kong?
   A. None
   B. 3
   C. 10
   D. 27

2. What is the national language of Singapore?
   A. Malay
   B. English
   C. Mandarin
   D. Tamil

3. Which court was the immediate appellate court for the British Court for Siam?
   A. The Supreme Court of Hong Kong
   B. The British Supreme Court for China
   C. The Supreme Court of the Straits Settlements
   D. The Privy Council

4. Which of the following judges who sat on the Hong Kong Full Court had previously sat on the Siamese Court of Appeal?
   A. Sir Havilland de Sausmarez
   B. Sir Peter Grain
   C. Sir Skinner Turner
   D. Sir Allan Mossop

5. In Hong Kong, is an allegation that the judge is ugly a ground to recuse that judge?
   A. Yes
   B. No.
   C. It depends

6. When was corporal punishment of offenders as a judicial penalty abolished in Hong Kong.
   A. 1973
   B. 1990
   C. 1997
   D. 2005

7. How was corporal punishment of offenders as a judicial penalty carried out in Hong Kong in the 1960s?
   A. Cat o’nine tales
   B. Caning
   C. A single whip
   D. The cangue

8. Which of the following British judges who served in China or Hong Kong published a number of books on Japanese culture?
   A. Nicholas Hannen
   B. Hiram Shaw Wilkinson
   C. Francis Piggott
   D. Atholl MacGregor

9. Which of the following treaties is not in force in Hong Kong?
   A. Convention Relating to the Status of Refugees, 1951
   B. Universal Copyright Convention, 1952
   C. International Convention for the Suppression of White Slave Traffic, 1949
   D. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, New York, 1984

10. Which member of the Hong Kong legal community won a medal in the 1976 world rowing lightweight championship?
    A. Graeme Hall
    B. Henry Wheare
    C. Thomas Cook
    D. Bruce Stone

Answers to Legal Trivia Quiz #26

1. A. It is not legal for a person riding a bicycle on a road to carry another person on the bicycle. (Reg. 51(3) Road Traffic (Traffic Control) Regulations).
2. B. Ng Choy (aka Wu Tingfang) sat as acting police magistrate in 1880.
3. B. Herbert W. Looker was the name partner of Deacon, Looker and Deacon.
4. B. Percy Chen was the son of Eugene Chen, Chinese Foreign Minister from 1925 to 1927.
5. C. Mark Strachan and Charles Manzoni are Queen’s Counsel in England.
6. A. True: Simon Tam SC started his career as a prison officer.
7. B. One Court First Instance judge is a former partner of a solicitors’ firm. Mimmie Chan J was formerly a partner with Allen & Overy.
8. C. Norwood Allman was interned in Stanley Internment Camp. He was repatriated with other Americans in June 1942.
9. A. The United States Court for China was headquartered in Shanghai.
10. A. Spanish is the language used in the state courts in Puerto Rico. (English is an official language of Puerto Rico, but the state courts use Spanish.)
法律知識測驗 #27

1. 截至2014年年底，香港有多少輛持牌人力車？
   A. 沒有
   B. 3
   C. 10
   D. 27

2. 新加坡的國家語言是什麼？
   A. 馬來語
   B. 英語
   C. 華語
   D. 泰米爾語

3. 哪個法院是英國駐暹羅領事法院的上級上訴法院？
   A. 香港最高法院
   B. 英國在華最高法院
   C. 海峽殖民地最高法院(The Supreme Court of the Straits Settlements)
   D. 樞密院

4. 以下哪位香港合議庭法官曾任暹羅上訴法院法官？
   A. Havilland de Sausmarez爵士
   B. Peter Grain爵士
   C. Skinner Turner爵士
   D. Allan Mossop爵士

5. 在香港，指稱法官醜陋可作為撤換法官的理由嗎？
   A. 可以
   B. 不可以
   C. 視乎情況而定

6. 香港何時廢除體罰罪犯作為司法處罰？
   A. 1973
   B. 1990
   C. 1997
   D. 2005

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。

7. 在60年代的香港，體罰罪犯作為司法處罰是如何執行的？
   A. 九尾鞭
   B. 打藤
   C. 單鞭
   D. 首枷

8. 以下哪位曾在中國或香港服務的英國法官曾出版數本有關日本文化的著作？
   A. Nicholas Hannen
   B. Hiram Shaw Wilkinson
   C. Francis Piggott
   D. Atholl MacGregor

9. 以下哪項條約並不在香港生效？
   A. 《難民地位公約》(1951)
   B. 《世界版權公約》(1952)
   C. 《禁止販賣白奴國際公約》(1949)
   D. 《禁止酷刑和其他殘忍、不人道或有辱人格的待遇或處罰公約》(紐約，1984)

10. 香港法律界誰於1976年世界賽艇錦標賽（輕量級）取得獎牌？
    A. Graeme Hall
    B. Henry Wheare
    C. Thomas Cook
    D. Bruce Stone

法律知識測驗#26的答案

1. A. 在道路上騎車運載其他人不合法（《道路交通(交通管制)規例》第51(3)條）

2. 伍才（伍廷芳）於1880年曾擔任警察裁判司。

3. Herbert W. Looker是Deacon, Looker and Deacon合夥人的名字。

4. 陳丕士是1925年至1927年中國外交部長陳友仁的兒子。

5. 2位，Mark Strachan和Charles Manzoni是英國御用大律師。

6. 黎民輝資深大律師曾任獄警。

7. 訴法庭有一位法官曾為律師行合夥人。陳美蘭法官曾為安理國際律師事務所合夥人。

8. 是：覃民輝資深大律師曾任獄警。

9. 美國在華法院總部位於上海。

10. 波多黎各州法院使用西班牙語（英語是波多黎各官方語言，但州法院使用西班牙語）。

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The Third Legal Scholarship Workshop @ HKU

The Faculty of Law at The University of Hong Kong (“HKU”) held the Third Legal Scholarship Workshop @ HKU (“LSW@HKU”) on 26 and 27 May. The two-day workshop hosted eight current or recently graduated PhD candidates from the University of Stanford, the University of Michigan, University Oxford, University College London, the National University of Singapore, Peking University, the University of British Columbia and HKU. Presented papers covered a wide range of legal topics, with no restrictions on jurisdiction and methodology. Topics included were comparative corporate governance, the regulation of Chinese shadow banking, socio-legal studies of foreign lawyers in Myanmar, the role of “social license to operate” in mining law, alternative legal resolution of territorial dispute over the Diaoyu/Senkaku islands, the legal status of Air Defense Identification Zone, developments of common law constitutional rights, and the legal theory of authoritative agency in constitution-making.

Presenters, together with HKU law students and invited guests from Queen Mary University of London, the University of Wisconsin Law School and the Chinese University of Hong Kong, engaged in intensive, vibrant and earnest discussion on both substance and style of the papers and presentations. Participants learned a lot from the keynote speeches by Professors Johannes Chan and Fu Hualing, who shared their invaluable experience and insights into the academic job hiring process.

The LSW@HKU started in 2013. It offers a unique forum for current doctoral candidates in law to present their work in a focused workshop aiming to approach legal scholarship holistically. In addition to the traditional emphasis on the content and argumentation, the LSW@HKU is also oriented towards academic training in preparation for academic career development.

Dr. Chen Jianlin, Assistant Professor and Deputy Director, RPG Student Affairs organises and conducts the LSW@HKU annually. This year, Dr. Qiao Shitong, Assistant Professor & Deputy Director, LL.M. (Chinese Law), who was also an inaugural presenter of LSW@HKU, co-organised in the event and provided insightful questions to the presenters.
CityU Hosted the Fourth Cross-Strait Four-Regions Forum on Health Law and Bioethics

On 12 and 13 of May, CityU School of Law was honoured to host the Fourth Cross-Strait Four-Regions Forum on Health Law and Bioethics at its campus. The previous three forums were held at Southern Medical University of China, National Taipei University, and Macao University respectively, which made this Forum the conclusion of the first round of such forums. Over 50 leading scholars and legal practitioners from the mainland, Taiwan, Hong Kong and Macao gathered at CityU to exchange their opinions on alternative dispute resolution for medical disputes.

The Forum was co-organised by CityU School of Law, the China Health Law Society and the Southern Medical University of China. At the Opening Ceremony, Dr. Chen Lei, Associate Dean of CityU School of Law, welcomed all the attendants. After that, Mr. Du Chun (General Manager of China Legal Services (H.K.) Limited), Professor Jiang Hong (Vice President of China Health Law Society and Executive President of International Institute of Health Law) and Ms. Angela Lin (Chairwoman of LiFu Medical Research, Cultural, and Educational Foundation) each gave their best wishes to the success of the Forum.

The Forum was divided into six sessions, respectively covering the doctor-patient relationship and medical disputes; alternative dispute resolutions for medical disputes in the mainland, Taiwan and other jurisdictions; the management and distribution of medical liability and risk; and legal responsibilities of medical negligence. Ms. Angela Lin, Professor Lai Lai-kun (Director-General of the Chinese Society of Health Law and Policy), Dr. Ding Chunyan (Assistant Professor, CityU School of Law), Dr. O Heng-wa (Health Bureau of Macao), Professor Yan Jinhai (Acting Dean of the School of Humanities and Management, Southern Medical University), and Dr. John Ho Kong Shan (Associate Professor, CityU School of Law) served as moderators of panel discussions.

During the Forum, not only did the presentations explore specific aspects of medical dispute resolution, they also examined hot issues such as the recent vaccine scandal and medical disputes involving Chinese citizens who underwent plastic surgery in South Korea. Hopefully decision-makers and legislators will take the expert opinions expressed during the Forum into account when drafting relevant legislation and formulating mechanism to efficiently resolve medical disputes.

President of International Institute of Health Law, Professor He Shan, and Dean of CityU School of Law, Professor Geraint Howells gave speeches and brought an end to the Forum. Gathering talents across the strait and bridging academic communications among scholars of the four regions, the Forum helped advance the research on health law and bioethics.
CUHK Faculty of Law Organises High-Level Conferences on ‘Political Economy of Financial Regulation’ and ‘Teaching and Learning in Law’ to Celebrate Its 10th Anniversary

The Faculty of Law of The Chinese University of Hong Kong (“CUHK”) is celebrating its 10th anniversary. To mark its commitment to excellence in legal education, the Faculty organised two high-level conferences last week on ‘The Political Economy of Financial Regulation’ and ‘Teaching and Learning in Law – Directions in Legal Education’.

The Political Economy of Financial Regulation Conference

Recent events and trends, including the global financial crisis and the growth of the Chinese economy, have brought to light limitations of and problems in theories and methods of financial regulation. In the conference on The Political Economy of Financial Regulation held from 2–4 June 2016, nearly 50 speakers from the world’s leading universities presented papers on political economic problems arising from financial regulation. Topics included market power in globally linked financial markets, lobbying influence over policymakers and regulators, ideological bias in the formulation of legal frameworks and structural flaws inherent in the rule of law itself.

The conference consisted of eight plenary sessions and three presentations, and attracted over 80 people to attend. Prof. Christopher Gane, Dean, Faculty of Law, CUHK, delivered the opening remarks. There were three keynote speeches presented at the conference, which included:

- The Legal Hierarchy of Global Moneys by Prof. Katharina Pistor, Walter E. Meyer Research Professor in Law & Social Problems and Michael I. Sovern Professor of Law at Columbia Law School;
- Effective Demand and Financial Regulations by Prof. Ugo Pagano, Professor of Economic Policy at the University of Siena; and
- Monetary Policy, Financial Stability, and International Co-ordination: The Missing Part of Global Governance Jigsaw? by Prof. Emilios Avgouleas, Chair in International Banking Law and Finance at the University of Edinburgh and Member of the Stakeholder Group at the European Banking Authority.

For details about the conference and abstracts of the presentations, please visit http://webapp1.law.cuhk.edu.hk/2016conference/10th/conf/index.php.
Teaching and Learning in Law – Directions in Legal Education Conference

CUHK Faculty of Law also organised a 10th Anniversary celebratory conference on Teaching and Learning in Law – Directions in Legal Education from 3–4 June 2016. The conference provided a setting in which to think about the roles of the law teachers and the legal professions in promoting and implementing legal education.

Nearly 90 educators from law schools across the globe, alongside practitioners, students and other stakeholders, gathered to share their experience and discuss common challenges and best practices in the field of legal education.

The Hon. Mr. Justice Jeremy Poon, Judge of the Court of Appeal of the High Court of Hong Kong, delivered an inaugural address to mark the opening of the conference. Prof. Paul Maharg, Professor at ANU College of Law of the Australian National University, presented a speech on Disintermediation: The Art of Good Business and the Art of Learning Justice, and Dr. Mar Yee Khin, Head of the Department of Law at the University of Yangon, gave a presentation on Legal Education in Myanmar. There were 14 panel group discussions on various topics, exploring the shifting landscape of legal education and providing meaningful reflections on the roles of teachers and learners.

With the theme of Navigating the (Academic) Law Degree: Are We Reading the Map Upside Down?, the Big Debate held on 4 June attracted many luminaries from the legal community, including the Deans of the three law schools in Hong Kong, to discuss future directions in legal education. Participants included The Hon. Mr. Justice John L Saunders, SBS, Deputy-Judge of the High Court of Hong Kong; Prof. Emeritus Mike McConville, Founding Dean of the Faculty of Law of CUHK; Prof. Christopher Gane, Dean of the Faculty of Law at CUHK; Prof. Michael Hor, Dean of the Faculty of Law at The University of Hong Kong; Prof. Geraint Howells, Dean of the School of Law at City University of Hong Kong; and Mr. Jeremy Dein QC, Barrister at 25 Bedford Row Chambers in London. The insights from the discussions made an invaluable contribution to the future of legal education.

For details about the conference and abstracts of the presentations, please visit http://webapp1.law.cuhk.edu.hk/2016conference/0603/conf/index.php.

「法律的教與學 — 法律教育的方向」會議

中大法律學院於6月3至4日以「法律的教與學 — 法律教育的方向」為主題，舉辦十周年院慶會議，思考和討論法學教師及法律專業人員在促進和執行法律教育上的角色。

是次會議雲集了近90位來自全球法律學院的學者、法律從業者、學生及其他持份者，一起分享經驗、探討共同面對的挑戰及在法律教育上的最佳範例。

高等法院上訴法庭法官潘兆初法官為會議致開幕演辯。澳洲國立大學ANU法律學院教授Paul Maharg教授就「非中介化：優質商業及司法學習的藝術」發表主題演講;仰光大學法律學系系主任Mar Yee Khin教授亦發表題為「緬甸的法律教育」的主題演說。會議包括14節討論環節,就不同議題探討法律教育的變遷,以及為教師及學習者的角色提供有意義的反思。

6月4日，大會以「法律學位的導向：是否上下顛倒？」為主題舉行辯論會，吸引了多名法律界知名人士參與討論法律教育的未來方向，包括香港三家法律學院的院長。參與者包括：高等法院原訟法庭法官辛達誠法官SBS、中大法律學院創校院長暨榮休教授麥高偉教授、中大法律學院院長Christopher Gane教授、香港大學法律學院院長何耀明教授、香港城市大學法律學院院長Geraint Howells教授，以及倫敦25 Bedford Row大律師事務所Jeremy Dein御用大律師等。各嘉賓在辯論會提出眾多真知灼見,對法律教育的未來可產生重大的影響。

Surf’s Up in Hong Kong

At first glance, wakeboarding and wakesurfing appear to be difficult, advanced sports. But being firm believers that ‘life begins at the end of your comfort zone’, we eschewed popular opinion and embarked on a mission to find out for ourselves, compliments of Law Society.

To ensure we were thoroughly prepared before hitting the waves, we received instruction from coaches at Wakesurfection (wakesurfection.com), housed at the Hong Kong Wakesurf School. Wakesurfection has been offering wakeboarding, wakesurfing and scuba diving lessons for more than six years. It was actually one of the first schools to bring wakesurfing lessons to Hong Kong. With all of its coaches on staff being qualified to provide and teach marine rescue and CPR, we felt as if we were in competent hands.

At 11:30 AM sharp, we gathered at the Ap Lei Chau pier. The cloudy weather was a bit foreboding, but we boarded the wake boat – the Epic Wake 23V – intent to set out on what turned into a memorable adventure.

Our Wake Boat: the Epic Wake 23V

The Epic Wake 23V is a spacious 23-foot boat that is manufactured by Epic Boats, a US-based company that has been building marine boats tough enough to withstand tough salt water conditions for years.

From the perspective or a wakesurfer, it was great to see that the 23V’s features are specifically tailored for wakesurfing, as compared to boats designed for wakeboarding. Most notably, the 23V has a 4000-pound ballast system with 4000-pounds of ballast to produce a large wake to surf on or to jump off. The 23V’s ballast system is a fast fill system; rather than using pumps to fill the boat’s ballast tanks, it uses gate valves that allow water to rush in more quickly and fill up the tanks. When you are done and ready to empty the ballast tanks, just open the valves and drive the 23V at a moderate speed, gravity will take care of the rest of the work and empty the tanks quickly. For the serious wakesurfer, you can shape your wake with three surf trim tabs to ensure you have the best wake to surf on. These features provide a sizeable, never-ending wave that is perfect for the surfer to surf on even in calm waters.

Epic’s 23V is the first diesel engine boat of this class, providing greater fuel efficiency and torque for wakesurfing and wakeboarding compared with petrol engines. Diesel engines are known to be robust and lower maintenance. The V8 turbo diesel engine, is built by Mercury Marine, one of the largest global manufacturers of boat engines and parts; meaning you can get worldwide support and easy maintenance, as Mercury-qualified technicians are located throughout Asia.

The 23V’s hull is unique and is built using the resin infusion method. This unique method creates a vacuum over the hull skeleton; the vacuum sucks the resin onto the 23V’s skeleton, ensuring it is spread evenly and uniformly. This provides greater strength, reduced weight and greater fuel efficiency. As this method is extremely difficult to execute, only the best manufacturers use it.
This boat is also designed for the comfort and safety of the wakeboarder or wakesurfer. A fresh air exhaust will send any boat exhaust deep underwater so it doesn't blow into the rider's face. The 23V's transom mounted speakers mean that the rider can hear his or her favourite music while riding. They are also safer than tower mounted speakers since you can easily bump your head against them.

A unique dual rudder steering system gives this boat superb handling. Consequently, this makes this boat a pleasure to drive whether you are an experienced or a beginner driver. If you prefer someone else driving, Wakesurfection can help you secure a driver.

The engine is mounted in-board with soundproofing materials placed along the engine compartment, which make for a relatively quiet ride. We were able to chat with each other at ease on board. Even while surfing on the water, we could clearly hear our coach's instructions.

It also has a large swim platform making getting in and out of the water easy. A large bimini provides excellent sun protection but can easily be lowered by a single person.

Wakesurfing

Wakesurfing has become one of the newest and coolest crazes to hit Hong Kong's waters in recent years. While it is a relatively new water sport and an offshoot of wakeboarding, it is gaining popularity among novices and seasoned water-sport athletes alike.

Basically, it is a combination of wakeboarding and surfing, which allows you to enjoy two of the most amazing water sports in one go! Our coaches, along with others from Wakesurfection, work with pro wakesurfers in California, so they were well versed in all the latest wakesurfing tricks.

While wakesurfing is similar to surfing, it uses the waves mechanically created by a motorboat. Wakes from motorboats create waves similar to those found in oceans, plied by traditional surfers. However, in order to surf on a motorboat wave, the boat must be specially designed to create a wave that has sufficient force to carry an adult surfer. Epic boats with their fast fill ballast tanks and port, starboard and centre surf trim tabs create one of the best waves to surf on. Like ocean waves, there is a break and a curl, which wakesurfers can ride and use to perform tricks like dips, sharp turns and spins. So you can enjoy wakesurfing in almost any conditions.

Wakesurfers generally stand on a surfboard of about 1.5 meters long trailing behind a motorboat. After getting up on the wake, typically by use of a tow rope, the wakesurfers will then drop the rope, and ride the steep face below the wave's peak in a fashion reminiscent of surfing. There are no more tow ropes, no cables, no paddling out, just you, a boat and a never-ending wave!

After our instructor briefed us and provided brief demonstrations, we gave it a go. All of us being newbies, we initially struggled to maintain our balance on the surfboard. However, we gradually picked up the feeling and skills needed, and eventually had a number of successful runs!

Learning to wakeboard and surf was truly an amazing experience for us all, and we cannot wait to go again. If you haven't tried your hand at either, summer is the perfect time to give it a try! A special thanks from us all to the Law Society for organising the event and to our coaches at Wakesurfection, who successfully got us up and riding. The boat was fantastic and a real joy to surf off.
一嘗在香港進行
無繩衝浪的滋味

作者：韋頌翹 律師
曾陳胡律師行
陳世皓 見習律師
何敦 麥至理 鮑富律師行

眼看來，寬板滑水(wakeboarding)與無繩衝浪(wakesurfing)這兩項運動，難度似乎極高，技術不易掌握。然而，我們堅信：「真正的人生，是從你離開舒適的環境後開始」。因此我們力排眾議，踏出了這次尋回真我的旅程。在此，我們謹向香港律師會致意。

在進行這項逐浪活動前，為了確保我們事先做好充分準備，我們首先需要接受位於香港衝浪學院的Wakesurfection(wakesurfection.com)教練的培訓。Wakesurfection在香港開辦滑水、無繩衝浪、水肺潛水課程等已經超過六年。實際上，它亦是其中一所學校，最先將無繩衝浪這項運動引入到香港來。Wakesurfection所聘請的教練，都曾經接受正式的海上救援和心肺復甦方面的訓練，並具有教授此等技能的資格，因此我們對他們抱有極大信心。

當天上午十一時三十分，我們準時齊集鴨脷洲碼頭。雖然陰沉的天色帶給我們一些不祥預感，但最終我們都登上了那艘名為Epic Wake 23V的船隻，迎向一趟令人難以忘懷的精彩經歷。

乘載我們的衝浪快艇：
Epic Wake 23V

Epic Wake 23V是一艘長23呎的衝浪快艇，由總部設在美國的Epic Boats船廠製造。該船廠所建造的船隻，能夠抵禦許多年的嚴重海水侵蝕。

如果你是一名衝浪愛好者，你肯定會對23V所具備的各項獨特性能別具好感。與專門為滑水而建造的快艇相比，23V是專門為衝浪愛好者量身訂製的快艇。最值得注意的是，23V有一個4000磅壓載系統，內含一個可容4000磅海水的壓載水艙，足以產生巨大的尾浪作衝浪或翻跳之用。23V的壓載系統是一個快速加注系統，它並非依靠水泵來將水灌滿艇內的壓載艙，而是使用閥門，讓海水能夠更迅速地涌入和注滿壓載艙。在衝浪活動完結後，我們需要將壓載艙內的海水清空，而你只需要將閥門打開，並以中等的速度來開動23V，艙內的引擎便會發揮作用，將裡面的海水徹底和迅速地排放出來。對於有極高要求的衝浪者來說，23V可以透過三塊衝浪配平片控制浪花的大小和形狀，從而確保他們能夠獲得最佳的衝浪體驗。這些特別性能可產生規律相當然，永不靜止的波浪，使衝浪者即使處於波平如鏡的水面上，仍能享受美妙的衝浪樂趣。

Epic所生產的23V，是最早使用柴油引擎的同類型快艇。與汽油引擎相比，柴油引擎能為無繩衝浪及滑水等運動提供更佳的燃料效能和扭矩，因為柴油引擎素以動力強大及需要較少維修保養見稱。它的V8渦輪增壓柴油引擎，是由Mercury Marine負責建造，是全球其中一個規模最大的船艇引擎和零部件生產商。由於Mercury的專業技術人員遍布亞洲，因此這意味著，用家將可以獲得提供全球性的快捷維修支援服務。
23V的船體是用樹脂灌注方法來建造，是一種獨有的船體構造方式。這種建造方法，使船體的骨架形成真空狀態，而該真空狀態會將樹脂吸進23V的骨架中，從而確保其分布均勻；而此舉可以令它的強度提升，減小了重量，並提升了燃料效能。由於運用這種方法的難度十分高，因此只有最優良的生產商才會加以使用。

Epic的快艇是專為滑水或衝浪愛好者之舒適和安全而設計。它的新鮮空氣排氣口，能夠在深水下將空氣排出，因此不會令致衝浪者將其吸入。

此外，23V所設置的船尾板揚聲器，可使衝浪者在進行衝浪的同時，也能夠聽到他/她們所喜愛的音樂。而這種揚聲器也比在塔上架設的揚聲器安全，因為衝浪者的頭部往往會很容易碰到在塔上架設的揚聲器。

這艘快艇所具備的獨特雙舵轉向系統，使它能夠達至最理想的操控境地。因此，不論是經驗豐富還是初學的快艇駕駛者，他們都會感受到駕駛這艘快艇是一種樂趣。但假如你希望由別人來代為駕駛，Wakesurfection也可以協助你物色這類快艇的駕駛者。

這一快艇的引擎是內置於船體，並用隔音的物料加以覆蓋，因此在行進時並沒有產生太多嘈雜聲音，艇上的人因此可以輕鬆地聊天，而即使在海上進行衝浪時，他們仍然能夠清晰聽到教練所給予的指示。

無繩衝浪
無繩衝浪是香港近年最時尚的水上活動玩意。這項水上運動雖然相對較新，而且是從寬板滑浪活動衍生出來，但它卻同時獲得初學者及富經驗的水上項目運動員的喜愛。

基本上，無繩衝浪是滑水與衝浪這兩種運動的結合，讓人們可以一次過享受兩種刺激的水上運動玩意！教授我們無繩衝浪的教練，以及其他來自Wakesurfection的人員，都曾在美國加州為專業的無繩衝浪運動員服務，所以他們精通各種最新的相關技術。

無繩衝浪與海洋衝浪活動虽然相類似，但無繩衝浪是利用摩托快艇以機械方式產生的波浪來進行；而摩托快艇所產生的尾流，也與傳統的海洋衝浪活動中的海洋波浪相類似。然而，要利用摩托快艇所產生的尾流來進行衝浪，該艘快艇便必須是專門設計，而它所產生的波浪，必須足以承托一個成人衝浪者的重量。而Epic快艇及其快速填充壓載艙，能夠產生最合適的波浪以作衝浪之用。這些尾流就好像海洋波浪一樣，會散發和捲起，而運動員可利用它們，利用它們來作出驟降、急轉及旋轉等技巧性動作。因此，我們幾乎可以在任何條件下，進行無繩衝浪這項活動。

一般而言，無繩衝浪的運動員需要站在一塊約1.5米長的衝浪板上，並在一艘摩托快艇的後面行進。當運動員能夠從尾浪中站起來時（通常是藉著使用拖繩），他們便可以將繩子甩掉，並在波浪的峰頂下，以類似海洋衝浪的方式，揚長於陡峭的波面上。然而，不同的地方是，這兒並沒有拖繩、纜索，也不需要划水；有的，只是你本人、該艘快艇，以及永不靜止的波浪！

當教練完成講解，並為我們作出簡要的示範後，我們各人便開始一展身手。由於我們都是初學者，因此起初我們需要努力學習如何在衝浪板上保持平衡。後來，我們逐漸把握到正確的感覺和所需的技巧，最後終於數度成功「駕浪起航」！

對於我們所有人來說，學習滑水和衝浪是一種極佳的體驗，而我們都盼望重玩這精彩玩意的日子不會距我們太久。如果你仍未嘗試參與這其中任何一項活動，請好好把握這個夏天的大好時機！我們謹此對律師會舉辦是項活動表示謝意，亦感謝教導我們成功掌握當中技巧的Wakesurfection各位教練。
Drafting Trusts and Will Trusts in Hong Kong

by James Kessler QC, Thelma Kwan and Philip Munro

By Susan Collins, Director and Legal Counsel

Landgrove Private Office (Hong Kong)

While those in the industry hoped that the 2013 trust law reforms in Hong Kong could raise their profile, it is yet to be seen whether the use of trusts in Hong Kong will increase. However, for those wishing to add trust law to their practice or in need of a reference manual, this is certainly the book for you. At 474 pages, with the last 50 or so devoted to precedents, it contains a wealth of information on all aspects of trust law and the drafting of trusts.

The first six chapters of the book contain general information, starting with a short history of the origins of Hong Kong trust law and the use of trusts in Hong Kong. It then delves into the changes made by the Amendment Ordinance in 2013 before examining more esoteric issues, such as style in drafting and principles of construction and interpretation. There are useful references to Hong Kong case law, the use of the Chinese language in trusts and wills, as well as specific examples on how to draft Hong Kong trusts, making these chapters relevant for local practitioners.

The next 16 chapters, however, are the meat of the book. They include detailed, technical information on all aspects of trusts from issues surrounding beneficiaries, protectors and trustees to the drafting of overriding powers and settlor exclusion clauses, administrative provisions, restrictions on the rights of beneficiaries, indemnities, governing law and execution. It seems as if no issue has been left unaddressed.

Take, for example, the concerns of a client who is soon to be married and appeals to you to take such steps as possible to draft his new trust to prevent claims against the trust property in the event of divorce. The forms of ‘marriage settlements’ are discussed in great detail in the book. Or, you are tasked with determining how to deal with trusts over shares in family companies and the trustees’ duty to supervise. The authors have even included useful wording for drafting of deeds of appointment and other documents supplemental to existing trusts, although it comes with a warning to those new to trust drafting.

The technical detail chapters are, perhaps rather confusingly, interspersed with six chapters that examine particular types of trusts – starting with lifetime interest in possession trusts, discretionary and will trusts to bare trusts, charitable trust and trusts of life insurance policies. These chapters go into depth on the specifics of each. Although historically it was most common to see discretionary trusts used in Hong Kong, with the abolishment of estate duty and the modernisation of the trust law, more recently, Hong Kong draftsmen should be encouraged to diversify their repertoire and ensure that they are creating settlements to suit the needs of each particular client. This book can assist draftsmen in doing so.

The final portion of the book includes precedents for administrative provisions for use in all forms of trusts and will trusts, short form discretionary, charitable and interest in possession trusts and useful deeds for the appointment and retirement of trustees. The precedents exemplify the authors’ preference for a modern form of document, simplicity of style and avoidance of the use of legalese. They are in no way comprehensive, though; so if you are looking for a book solely devoted to precedents, this would not be the book for you. Although the detail contained in the previous chapters will allow you to manage the drafting yourself with little difficulty.

As the first book devoted to the drafting of Hong Kong trusts, Drafting Trust and Will Trusts in Hong Kong will be a useful addition to any trust law practitioner’s shelf.
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作者: James Kessler QC、
Thelma Kwan 與 Philip Munro

本書共有474頁，書末大約50頁全是先例，有關信託法及信託文件草擬方法的資料，內容豐富，涵蓋全面。

作者在第一至六章寫的是一般資料，先扼要追溯香港信託法的起源及信託在香港的用途，之後逐一細讀《2013年修訂條例》所涉及的相關修訂，然後探討幾個艱澀難懂的問題，例如草擬風格及釋義原則。作者除了用具體例子說明如何草擬符合香港信託法的信託文件之外，還引述有用的香港判例法及介紹中文信託和遺囑的用語；各個篇章都切合本地信託從業員的需要。

第七章開始是全書的主要部份，作者共用了十六章提供具實質價值的內容，包括詳述信託各個方面的技術性資料，由圍繞收益人、保護人、受託人的問題，以至凌駕性權力及信託創立人負責條款的草擬、信託的管理條文、受益人權利的限制、彌償、管轄法律及信託的執行，等等，包羅萬有，看起來像是所有問題都被作者解答了。

舉個例子，一名快要結婚的客戶來找你，想你盡一切可行辦法為他草擬新的信託文件，以防一旦離婚，妻子申請信託財產。這時，本書深入探討的「結婚財產信託安排」形式就有助你應付客戶的問題了。此外，作者還探討為家族企業股份安排信託的方法，以及受託人監管信託的責任。作者甚至列舉草擬委任契據及現有信託其他補充文件的恰當措詞，對沒有草擬過信託文件的人來說，有著手捧喝之效。

有關信託的技術性細節穿插於六個篇章之中，內容頗難理解；這六章詳述某幾類信託──先是管有中的終身權益信託、酌情信託及遺囑信託，之後還有被動信託、慈善信託及人壽保險信託，作者深入探討每類信託，逐一說明具體情況。雖然過去在香港最常見的是酌情信託，但隨著遺產稅被廢除，加上信託法近幾年進行了改革，草擬符合香港信託法的信託文件的，應獲鼓勵多元文化學習專業知識，確保設立的信託安排切合每名客戶的特別需要。這本書能夠幫助起草人這方面的工作。

這本書結尾部份是信託管理條文的先例，適用於所有形式的信託及遺囑信託、短期酌情信託、慈善信託及管有權益的信託，另外還有委任受託人及受託人辭退所適用的契據。從作者列舉的先例可見，他們偏好採用現代格式和簡約風格草擬信託文件，並且避免在文件中使用法律術語。但先例可不是無所不包的；如果你想要一本只有先例的書，這本書就不適合你了。儘管這樣，前幾章包含的細節，足讓你不費吹灰之力就能夠擬定信託文件。

Drafting Trust and Will Trusts in Hong Kong是第一本論述在香港草擬信託文件的專題書，想必會成為信託法領域從業員的書架上一本有用的新書。

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The Alternative Business Structure regime in the UK enables reserved legal services to be provided by bodies authorised by the relevant regulator and permits such providers to be wholly or partly owned by non-lawyers. Accordingly, it is possible for businesses owned in whole or in part by private equity firms or listed companies to provide reserved legal services. The first ABS licences were issued in Spring 2012. At the time of the passing of the Legal Services Act 2007, it was considered that this reform of the legal profession would be a catalyst for substantial change in the provision of legal services in the UK but as this article will demonstrate the impact has been more muted than initially feared.

Changes Limited in Scope
A wide range of law firms have adopted an ABS structure in order to admit non-lawyers to their partnership. In most cases this has included internal appointments such as the Chief Financial Officer (“CFO”), Chief Marketing Officer (“CMO”) and others to the partnership in order to recognise their role in the success of the business, to give them the same status as the lawyer partners, and to align their financial interests with those of the other partners. While these changes are significant, they are more evolutionary in nature and do not transform the business model or product offering of the firm concerned. In some cases, firms have added other non-lawyer professionals in order to broaden or deepen their offerings to clients. In some cases, this has been done in a separate business (thereby potentially avoiding the need for ABS authorisation, although some related business are an ABS) but in other cases professionals such as tax consultants have been admitted to the main partnership. Again, these changes are significant but relatively limited in their scope. The fact that a number of law firms are developing specialist consultancy businesses often focused on the financial and insurance sectors is of growing significance and it will be interesting to see how this trend develops and the extent to which it will significantly impact the services provided by law firms and their related businesses.

Private Equity Investors
Following the passing of the Legal Services Act, a range of private equity investors expressed interest in investing in law firms. They saw considerable opportunities to act as consolidators in a fragmented profession together with the ability to use technology to improve efficiency. They were also attracted to the apparently high profitability of law firms. However, the traditional private investment model looks for a return on investment of about 20 percent per annum and an exit in three to five years. These drivers combined with the relative conservatism of lawyers resulted in relatively few private equity deals being closed. The earliest and largest investment was by Duke Street in Parabis, a firm focused on personal injury claimant work. This ended badly when Parabis entered into administration at the end of 2015 and its assets were sold. Duke Street apparently lost most of its investment. Most other private equity investment has been at a relatively low level and the Duke Street/Parabis experience may deter other private equity firms who previously thought that the legal sector was an ideal candidate for their money and skill set.

ABS Joint Ventures
In a more specialist area, some law firms specialising in insurance work have formed ABS joint ventures with their insurance clients such as RSA and Ageas. How these joint ventures will develop is currently uncertain but they are probably a result of various regulatory changes which have specifically impacted the personal injury sector. Whether other clients such as retailers and utility companies will also form such ABS joint ventures to deal with their smaller personal injury claims work is also unclear although none have been announced to date.

Floated Firms
In the case of listed companies the position has been mixed. Quindell, which as a listed company also focused
on personal injury claimant work and related businesses, acquired a number of smaller law firms. Unfortunately, Quindell then ran into financial and regulatory difficulties and the bulk of its business was sold to the Australian listed firm Slater & Gordon. It is now perceived that Slater & Gordon overpaid for the Quindell business, its share price has fallen over 95 percent and it has had to renegotiate its banking arrangements with its creditors. Slater & Gordon is also rationalising its UK operations.

A happier example of a listed company is Gateley (Holdings) Plc which floated on the London AIM market in May 2015 and which has performed steadily since in a very turbulent stock market. It recently announced a small acquisition of a UK based specialist tax incentives advisory business which was funded part in cash and part by the issue of new shares. Gateley is a reasonably full service, upper mid tier business law firm. In the six months to 31 October 2015, Gateley achieved revenues of £29.6 million and profit before tax of £2.9 million. Most of the partners in the law firm became employees and shareholders in the listed company and the former partners hold a majority of the shares. At the time of the listing, Gateley put in place a range of mechanisms to retain the former partners in the business for at least between three and five years.

It was expected that a number of other law firms might plan to list on the stock market. However, the very volatile stock market over the last year, changes to the personal injury claims market and the relative complexity of structuring such transactions has meant that, to date, Gateley has been the only UK based firm to list. Its progress will be watched with interest by many in the legal sector and if it continues to be successful it is likely that other firms will follow its example.

**Limited Uptake among Retailers**

When the Legal Services Act was passed it was called by some “Tesco Law” suggesting that retailers would provide legal services in the same way as they sell cornflakes, with possibly a lawyer at the end of the supermarket aisle ready to dispense legal advice. In fact, with the exception of the Co-operative, no major retailer or indeed other retail brand has sought to enter the legal market. The Co-operative had major plans for its legal services offering including a range of products primarily aimed at the consumer market including conveyancing, probate (the Co-operative is a leading funeral provider in the UK) etc. These plans were overtaken by solvency problems at the Co-operative Bank and a scandal involving its Chairman, which resulted in private equity firms taking a major stake in the Co-operative Bank. The retail arm has, in common with most major UK retailers, also encountered difficulties. The combined impact has been to slow the development of the Co-operative’s legal business. Despite its recent difficulties, the Co-operative is still a well regarded retail brand and its legal services offering will be worth watching although currently its impact has been very limited.

**Big 4 Entrants**

An important new entrant into the legal arena is the Big 4 accountancy firms. EY, KPMG and PwC Legal have each obtained ABS licences (Deloitte has not done so in the UK, but it, too, is developing its legal arm internationally). The size, level of client contact and ability to invest in IT can potentially give these firms a significant advantage. The global revenues of the largest three of the Big 4 in 2015 exceeded the aggregate revenues of the 100 largest global law firms. Both EY and PwC have publicly stated that they intend to achieve US$1 billion of global legal related revenues by 2020. If they are able to develop as planned and particularly if they are able to provide “integrated solutions” in conjunction with other parts of their business they could become a potent force not just in the UK but in many of the world’s legal markets.

**Innovation & Competition**

One of the key objectives of the Legal Services Act was to encourage innovation, competition and new service delivery models for legal services. A number of new models have developed and obtained ABS licences. These include Legal Zoom, a US originated business which aims to provide a range of documentation and advice primarily online especially to smaller businesses, and Riverview, a more virtual provider of legal services. Other developments are emerging often enabled by IT and the internet. Some of these businesses are growing rapidly but from a relatively low base, so their direct impact on the legal sector has been relatively small. However, the existence of new models has caused many UK law firms to re-examine their business model. Some have developed lower cost centres elsewhere in the UK away from London or internationally, others have adopted project management tools to improve the efficiency of the work that they do. Intelligent drafting tools and online training modules have also been developed. Firms have developed more flexible employment models to utilise alumni and others often on an as needed basis for themselves or for secondment to their clients. These trends were considered in further detail in the Jomati report *Re-engineering Legal Services* published in February 2016 (available to law firms by contacting the author). Accordingly although the ABS may have had limited direct impact in the legal sector they have encouraged law firms to examine their business models and respond to the more competitive market for legal services.

Many of the new ABS models aimed to offer either price certainty to clients and/or a lower cost of service delivery. This has especially been the case in relation to more “virtual” providers of legal services that have a significantly lower and more flexible cost base. However, as mentioned above, law firms too have been experimenting and developing new delivery models. Accordingly, it appears that client pressure and the maturity of and overcapacity in the UK legal market has had a greater impact to date on pricing than the ABS models.
Appraisal

Many law firms may be relieved at the relatively low impact of the ABS to date. However, this is not a reason for complacency. Many ABS, especially the Big 4, could have a significant impact. Firms need to closely monitor the market as it develops and look at their own business model both to improve operational efficiency and to broaden and deepen their key client relationships.

It is clear that the original doom and gloom scenario for the legal profession following the passing of the Legal Services Act has not been realised. The global recession has also changed the buying patterns of the users of legal services. Law firms have responded to a lower growth legal market, greater competition and the development of new delivery models.

Inevitably in a period of innovation and experimentation there will be successes and failures. The failure of some of the early, and possibly overhyped, ABS models does not mean that the ABS regime has been a failure. Hopefully lessons will be learned and the next generation of ABS will be more disciplined and focused. There is now evidence of new ABS (including the Big 4) which could have a significant impact over the next five years as they challenge traditional business models and develop new offerings to clients. Traditional law firms will need to respond to these new entrants if they start to gain market share. What is clear is that innovation and change in both traditional law firms and ABS will be constant for the foreseeable future.
銀行融資安排重新進行商討，而Slater & Gordon也需要在英屬重組其業務。

一個較為愉快的上市公司收購例子，是2015年5月在「倫敦另類投資市場」（AIM）上市的Gateley（Holdings）Plc。一直以來，該公司都能夠在一個異常波動的證券市場環境中，維持穩健的表現。在近期，該公司公布了一項小規模收購，那是英國的一家專門稅務優惠政策顧問公司，其資金包含部分現金及部分新發行股份。Gateley是一家提供適度全面服務的中上層律師事務所，在截至2015年10月31日為止的6個月裡，Gateley共錄得2960萬英鎊的收入，其稅前利潤則為290萬英鎊。Gateley的大部分合夥人成為了該上市公司的員工和股東，而其前合夥人則持有多數股權。

當人們預期，其他一些律師事務所也可能會計劃申請上市。然而，在過去一年間，證券市場十分波動，人身傷害索賠的市場亦出現變化，而此類交易的構建又相當複雜。這種種情況均意味著，迄今為止，Gateley依然是英國唯一一家的上市律師事務所，而其他許多律師事務所都在注視著它的發展。如果它能夠繼續維持其出色的業績表現，其他律師事務所便有可能會爭相仿效。

零售商的有限參與

當《法律服務法》通過時，好些人戲稱它為「樂購法」﹔即是說，零售商將會以其售賣玉米片的方式來提供法律服務，並安排律師坐在超級市場的通道上，向顧客提供法律意見。事實上，除了Co-operative之外，現時並沒有任何其他大型零售商或零售品牌試圖在法律服務市場中分一杯羹。Co-operative為其法律服務提供，訂定了各項重大計劃，當中包括一系列以消費者市場為對象的產品，例如物業轉易、遺囑認證等（Co-operative是一個主要的英國葬禮服務提供者）。然而，該等計劃卻被Co-operative Bank的償債能力問題，以及其主席牽涉其中的一單醜聞所窒礙，以致Co-operative Bank的大部分股權落在私募股權公司手中，而它的零售業務部門也遭遇重大困難（與英國大多數主要零售商的情況一般）。在雙重打擊下，Co-operative的法律業務發展因此放緩。雖然Co-operative在近期遇到相當多的麻煩，但它依然是一個聲望歡迎的零售品牌，而即使它目前的影響力只是非常有限，但在法律服務提供方面，其實力依然不容忽視。

創新與競爭

制訂《法律服務法》的其中一個主要目的，是為了鼓勵在法律服務領域引入創新、競爭，以及新服務交付模式。現時已經有若干新模式面世，並獲發給「另類經營架構」執照，當中包括Legal Zoom（一家在美國成立的企業，而它主要是透過互聯網為其客戶—尤其是規模較小的企業—提供一系列法律文件和法律意見服務）及Riverview（一個虛擬法律服務提供者）。此外，其他透過資訊科技及互聯網來推展的發展項目也正在浮現。這些企業中，有若干正在迅速增長，但由於它們的基數較低，所以對法律領域所產生的直接影響較為有限。然而，新模式的存在，將促使更多英國律師事務所重新審視其自身的業務運作模式。一些英國律師事務所在倫敦以外的地方，又或是在其他國家設立成本較低的業務運作中心，而其他律師事務所則通過運用項目管理工具，以提升其自身的生產能力過剩等問題，其在目前對定價所構成的影響，實較「另類經營架構」模式所產生的影響為大。

評估

雖然迄今為止，「另類經營架構」所產生的影響並非太大，而許多律師事務所也因此得以解了一口氣，但它們絕不能掉以輕心。事實上，許多「另類經營架構」（尤其是四大會計師事務所）所產生的影響是不容忽視的。律師事務所需要密切留意市場的發展，並審視其自身的業務運作模式，從而提高營運效率，並擴大和深化與重要客戶之間的業務關係。

傳統的律師事務所若要取得市場份額，它們現時便需要制訂策略，以應付這批新加入的競爭者。但不管如何，有一點可以肯定的是：在可預見的將來，無論是傳統律師事務所還是「另類經營架構」，創新與變革對它們來說，都將會成為一項定律。
The Securities and Futures Commission (SFC) is an independent statutory body set up to regulate the securities and futures markets in Hong Kong. It derives a broad range of investigative, remedial and disciplinary powers from the Securities and Futures Ordinance and a subsidiary legislation. The SFC works to ensure orderly securities and futures market operations, to protect investors and help promote Hong Kong as an international financial centre and a key financial market in China.

Director – Enforcement (Investigation)
(Ref.: HKL/D/ENF/INV/160624)

The SFC’s enforcement program results in challenging and high profile civil and criminal litigation aimed at better protecting investors and keeping Hong Kong’s markets honest and competitive. Sitting at the intersection of securities, corporate, civil and criminal law, the SFC’s litigation is among the most interesting and varied in Hong Kong. We are seeking a senior litigator with excellent civil and ideally criminal litigation experience in Hong Kong or a comparable common law jurisdiction. Exposure to securities and corporate law is highly desirable. An understanding of the issues that arise in white collar crime investigations is an advantage. You should not only have excellent technical skills but understand and be able to communicate the critical strategic issues in litigation. You must understand the SFC’s enforcement priorities and how its litigation contributes to the SFC’s strategic goals. You will report to the SFC Enforcement Division’s senior management and cooperate with the SFC’s Legal Services Division and our investigators on supervising the SFC’s enforcement litigation, assist with instructing counsel and ensuring the quality of the SFC’s legal submissions to courts and tribunals.

Please quote the reference and apply by 15 July 2016 with details of qualifications, previous experience, current and expected salary to:

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Securities & Futures Commission  
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2 Queen’s Road Central, Hong Kong  
(E-mail address: enf_recruit@sfc.hk)
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<td>International firm with a growing practice is looking for a senior associate to join their finance team in Singapore. You will assist the partners in managing a broad range of finance transactions with a focus on asset finance work. (HKL 13666)</td>
<td>Lawyer with compliance experience gained with an investment manager is sought by leading international asset manager. Managing a small team you will be responsible for North Asia. Reporting directly to the CEO this role will require you to have good decision making skills. Fluent Mandarin is important. (HKL 13846)</td>
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<td><strong>4-8 PQE</strong></td>
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<td>Top-tier international law firm is looking for litigators to join their dispute resolution practice. You will be working with the firm’s leading clients on matters ranging from domestic/international commercial disputes, regulatory and finance litigation. Fluency in a Chinese is important (HKL 13854)</td>
<td>Exciting opportunity for a corporate/commercial lawyer to join this conglomerate where you will work with its head of legal and international general counsel on complex commercial issues, and advise on the company’s various business operations in the APAC region. Excellent drafting skills in English and Chinese is required. (HKL 14047)</td>
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<td><strong>7+ PQE</strong></td>
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<td>Top-tier firm seeks an outstanding corporate/commercial lawyer with aspirations for future leadership within the firm. You will need solid transactions experience in public and private M&amp;A, with experience in HK listing rules. No Chinese required. (HKL 13447)</td>
<td>International Hong Kong based corporation is looking to appoint an experienced antitrust/competition lawyer to join their legal department. This role will support its divisions across Asia and be responsible for other compliance matters too. In-house or private practice lawyers with an international private practice backgrounds plus European and Asia experience will be preferred. (HKL 12594)</td>
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<td>A leading international firm seeks an asset finance lawyer to join their well-established team. You should be qualified in a common law jurisdiction and possess solid experience in asset finance gained from a reputable firm. Aviation finance experience is an advantage. (HKL 13716)</td>
<td>This International financial institution needs to hire an experienced employment lawyer to join its legal department. This is a unique role to advise all its business divisions across Asia Pacific, covering contentious and non-contentious matters within the group. Open to private practice as well as in-house lawyers. (HKL 13903)</td>
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<td><strong>COMMERCIAL LITIGATION</strong></td>
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<td><strong>1-5 PQE</strong></td>
<td><strong>3-6 PQE</strong></td>
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<td>This reputable disputes team is looking to grow their practice and is seeking a lawyer with excellent training and passion for litigation work. You can expect to work with global institutions a variety of contentious matters including arbitration. Hong Kong qualification and Chinese language skills are mandatory. (HKL 14043)</td>
<td>One of the leading alternative investment fund houses seeks a lawyer to join their team to provide legal and regulatory advice to their business globally. The ideal candidate should be an experienced structured finance or banking lawyer. (HKL 13732)</td>
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<td><strong>INTELLECTUAL PROPERTY</strong></td>
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<td><strong>2-4 PQE</strong></td>
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<td>Well known international firm’s IP practice is looking for a mid level associate to support the group on a range of IP litigation matters. Work includes acting for some high profile clients on cross-border cases. IP training gained at a reputable firm is critical. (HKL 14028)</td>
<td>This conglomerate seeks an experienced legal executive to join their established and growing team, and focus on a range of commercial related legal matters. You will closely with internal and external stakeholders and counsel on review of commercial contracts. Ideal candidates will have at least 3 years’ experience working in a commercial environment or private practice, with strong English and Cantonese language skills. (HKL 14041)</td>
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<td><strong>BANKING AND FINANCE</strong></td>
<td><strong>TRANSACTION MANAGER</strong></td>
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<td><strong>NQ-4 PQE</strong></td>
<td><strong>4+ PQE</strong></td>
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<td>This leading practice of an international law firm is looking to grow their team. You will work with notable practitioners in the field and gain exposure to a range of finance transactions including structured, leverage, acquisition finance and general banking matters. Mandarin Chinese is essential. (HKL 11961)</td>
<td>This leading investment bank seeks a lawyer with strong experience in capital markets and/or finance transactions, to work closely with a team of investment bankers in identifying operational risks, compliance and legal issues arising from transactions. (HKL 14057)</td>
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<td>Georgeanna Mok</td>
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LEGAL PROFESSIONALS

COMMERCIAL & INDUSTRY

LEGAL EDITOR
LARGE MULTINATIONAL INTELLIGENCE CORPORATION
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This large multinational corporation provides intelligence, technology and human expertise to the top international companies across the globe, their diversified products and services connecting the global markets. They have a strong brand with an excellent reputation and are now seeking an Equity Capital Markets lawyer to become a Legal Editor. Reporting directly to the Head of Department you will be responsible to write new Capital Markets and HK IPOs content for online publications.

Key Requirements:
- Proficient in written and spoken English and Chinese (Mandarin and Cantonese)
- Strong training in either funds or corporate law
- Commonwealth qualified solicitor with a minimum of two years post qualified experience coming from an international law firm
- Experience advising clients in structuring complex commercial transactions agreements and responding to complex customer agreements
- Excellent writing and communication skills in English

FINANCIAL SERVICES

AVP, COMPLIANCE
LEADING US ASSET MANAGER
QPD/442300
This company is a leading American asset manager that continues to grow and expand globally, especially in Asia. They are looking to bring on board an accomplished Regulatory Asset Management Compliance Professional, reporting directly to the Head of Compliance. The ideal candidate is a proactive individual with strong regulatory experience as well as the capacity to build relationships and support a dynamic and emerging business.

Key Requirements:
- Proven solid work experience in compliance function with an asset manager
- Strong working knowledge of applicable regulatory requirements in HK and ideally across Asia
- Strong analytical, written communication, interpersonal and organisational skills
- Proficient in written and spoken English and Chinese (Mandarin and Cantonese)

PRIVATE PRACTICE

INVESTMENT FUNDS LAWYER
LEADING OFFSHORE LAW FIRM
OAA/638330
A leading offshore law firm that has undergone rapid growth in Hong Kong is hiring for its well known investment funds division. Reporting to the Managing Partner this role is joining a team of six associates and working for clients who represent some of the more sophisticated and respected fund managers in Asia. The work will vary from fund formation (both PE and hedge funds) to downstream work such as M&A and more general work such as shareholders agreements. The offshore structure allows a wide portfolio of work and promotes a work life balance culture.

Key Requirements:
- Commonwealth qualified solicitor with a minimum of two years post qualified experience coming from an international law firm
- Strong training in either funds or corporate law
- Proficient in written and spoken English and Chinese (Mandarin and Cantonese)

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Michael Page Legal services major corporates, international and leading local law firms, as well as financial services institutions on a global scale. Our consultants are strategically specialised in focusing on legal recruitment for different aspects of the job function and industry, diversifying and maximising our recruitment coverage as a team. We have successfully placed candidates across all levels from Associates and Junior Legal Counsels, to Partners and Heads of Legal.

Olga Yung, Regional Director, Financial Services
Olga has been specialising in legal recruitment for over nine years, with a focus on financial services clients. She has an outstanding proven track record in placing all levels of legal professionals, with a stronger focus on mid to senior level hires. Graduating with a Bachelor and Master degree in Law, Olga possesses experience gained from international law firms prior to joining Michael Page. Olga has extensive networks across the in house sector and with in-depth knowledge of legal talent available within the region. She has also successfully recruited within the private practice and in-house corporate space.

Marta Verderosa, Manager, Private Practice
Marta has over three years of legal recruitment experience, she covers all areas of practices for lawyers and legal support staff at entry to senior level for leading law firms in Hong Kong. She also oversees legal support hires for financial institution clients, and has recruited within the in house legal space. Marta is a LLB graduate and worked as a Paralegal in one of the top firms and a global insurance company before joining Michael Page.

James Choi, Senior Consultant, In-House Corporate
James is admitted as a Solicitor in Hong Kong, having practiced with a reputable international law firm prior to joining Michael Page and obtained his LLB degree with King's College, London. With his legal background and extensive network within the industry, James has quickly established himself within the legal market, with repeat success in recruiting junior to senior lawyers across major in-house commercial and regulatory clients. His background has allowed him to truly understand the legal recruitment market and uniquely positions him to offer commercial, consultative advice to both clients and candidates alike.

Kristel Wong, Consultant, Private Practice
Kristel specialises in recruiting lawyers across the private practice market. Kristel graduated with an LLB from the London School of Economics and Political Science and completed her LLM at Peking University prior to joining Michael Page. She has experience working with key decision makers across leading law firms in Hong Kong, including Partners and Human Resources professionals. In particular, her knowledge of the Greater China market has given her a great deal of success working with leading local and international firms. She is extremely well-informed about the legal market and is excellent in providing career advice to lawyers.

Jimmy Heng, Managing Consultant, In-House Corporate
Jimmy has over 4 years’ legal and finance recruitment experience, with a primary focus on in house commercial clients within Asia. Within the team, Jimmy’s remit extends across junior to mid level lawyers, and he has long standing work relationships with Head of Legal and Human Resources Professionals across a variety of industries with multinationals, state-owned enterprises, as well as domestic private and listed companies in Hong Kong. Jimmy’s in-depth market knowledge and extensive networks in the region allows him access to high-calibre candidates and clients.
MEET THE TEAM

**PRIVATE PRACTICE**

**Banking and Finance Associate**
- **NO – 3 PQE**
- **Leading International Law Firm**
  
  Our client is looking for a newly qualified up to 3 PQE lawyer to join their banking and finance practice. This Associate will work closely with the partners to act for lenders and borrowers on secured lending, as well as to advise on structuring, ongoing maintenance and transactional issues with high profile international banks and corporations. This is an exciting role with excellent career prospects within a Magic Circle firm. The ideal candidate will be admitted as a lawyer in Hong Kong, and will need to have solid training and/or post qualification experience in a diverse banking and finance practice from a reputable local or international law firm. The successful candidate must be fluent in English, Cantonese and Mandarin. Ref: H3456830

**Corporate Lawyer**
- **NO – 4 PQE**
- **Top-Tier International Firm**
  
  Our client is looking for a newly qualified up to 4 PQE lawyer to join their corporate practice. This candidate will work closely with the partners on corporate matters, including IPOs, mergers & acquisitions and other corporate commercial work. This is an excellent opportunity with promising career prospects. You should have solid training and/or post qualification experience in corporate transactions from leading international law firms. The ideal candidate must be organized, have excellent attention to detail and must be fluent in English, Cantonese and Mandarin. Ref: H3456850

**Professional Support Lawyer**
- **4 – 6 PQE**
- **Large International Law Firm**
  
  Our client is a leader amongst international law firms, providing legal advice to local and multi-national corporations, financial institutions and governments. Currently both the Dispute Resolution ad Asset Finance practice groups are seeking for Professional Support Lawyers to expand the team. The successful candidates will be responsible for delivering Knowledge Management strategies and analyzing developments in the relevant practices from external and internal sources. You will also meet with vendors and clients, work closely with the BD team, assist with the preparation of publications and new topics alerts to support BD activities. You will be a qualified lawyer with relevant experience, seeking for a career change with hope to strike better work life balance and flexibility. Ref: H3505160

**IN-HOUSE, CORPORATE**

**Head of Legal**
- **8 – 15 PQE**
- **Sizable Transportation Conglomerate**
  
  Our client is a rapidly growing organization within the transportation industry, seeking for an experienced lawyer to lead their legal team. Reporting to the Chief Operating Officer, you will oversee a wide range of legal matters across 30 different cities, with a focus on financing transactions. You will draft, negotiate and review commercial agreements, advise management on the handling of various disputes, and look after risk and compliance issues for the company. The successful candidate will work in a supportive team within a fast paced and challenging environment. You will possess at least 8 years’ PQE, with experience in corporate transactions and commercial matters. Fluent English and Chinese (Cantonese and Mandarin) is required. Ref: H3504889

**Legal Manager**
- **4 – 8 PQE**
- **Hong Kong Conglomerate**
  
  Our client is a well established Hong Kong conglomerate with a diversified business portfolio including property development investments, and other strategic business partnerships. Joining a sizable and experienced legal team with 5+ lawyers, you will be responsible for managing a variety of commercial contracts, providing legal advice to internal stakeholders, ensuring compliance with local regulatory guidelines, and supporting in corporate transactions. You will be a HK admitted solicitor with at least 4 years’ PQE, trained in a sizable local or international law firm, be well versed in company law and contracts management, and with experience in conveyancing and property transactions. Excellent English and fluency in Mandarin are required. Ref: H3503080

**Legal Counsel**
- **3 – 8 PQE**
- **Sizable Asia Conglomerate**
  
  One of the largest and most well established conglomerate groups in Asia that engages in businesses across a wide array of industries is currently looking for a new lawyer to expand its corporate legal team. The APAC regional legal team is relatively new but is headed by an extremely experienced Chief Legal Officer, who is a 30+ PQE Magic Circle corporate transactional lawyer. The Legal Counsel will work closely with the CLO in managing all transactions for the whole group, including M&A and financing transactions, conducting due diligence, advising on shareholding and deal structure, ensuring legal compliance, and more. You should be a corporate lawyer trained in an international law firm, with extensive exposure to cross-border M&A transactions, and experience in banking and financing matters. Excellent spoken and written English and Mandarin are required. Ref: H3497420

**Legal Director, Financing**
- **1 – 4 PQE**
- **Asset Management Player**
  
  Our client is a leading Chinese asset management player currently expanding in HK as well as being HK listed, and with a very large base in China. They are currently seeking for a new lawyer to join the established legal team of 6 lawyers. Reporting to the Head of Legal, you will look after a variety of corporate M&A and banking finance matters, occasionally helping out with funds matters. The successful candidate will be a young and bright lawyer with 1 to 4 years’ post-qualification obtained in the areas of either corporate or banking, with willingness to pick up new work. You will have worked with an international law firm, be keen to learn and to diversify your experience, as well as with passion to build on an in house career. Personality wise you will be a team player being self starter, being keen to strive for work life balance. Both English and Chinese language skills are required. Ref: H3494320

**FINANCIAL SERVICES**

**Legal Counsel & Compliance Officer**
- **6 – 12 PQE**
- **Leading Bilateral Private Equity Fund**
  
  One of the largest bilateral fund in the world is seeking to take on a standalone legal counsel. Working closely with senior management and legal counterparts within the region, you will advise and vet all transactions and investments, with a focus on private equity, fund investments and some M&A. You will provide legal advice to internal stakeholders, ensure full documentation and be a gatekeeper for the fund. You will be a seasoned private equity / funds lawyer with at least 6 years’ PQE, having worked with international law firms or financial services. You will be independent and be keen to take on an in house career, with strong English and Chinese language skills. Those who possess PRC exposure or PRC qualification is ideal though not mandatory. Ref: H3504390

**Legal Counsel**
- **3 – 8 PQE**
- **Reputable Private Bank**
  
  An exclusive private bank is currently seeking to take on a legal counsel for the team as a new headcount. Reporting to the Head of Legal & Compliance and joining a team of 3, you will review, draft and negotiate a variety of agreements including investment products, distribution documentation, credit documents or account opening related documents. You will provide legal support and advice to all businesses within the bank with a focus on credit related transactions. The successful candidate will be a corporate / funds lawyer with at least 3 years’ PQE, and those who have private bank experience will have a strong advantage. You will be a team player with strong communication and drafting skills. Both English and Chinese language skills are required. Ref: H3500270

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Capital Markets
1-3 PQE Hong Kong
This top-tier US law firm is seeking a junior associate with IPO experience gained within the international law firm arena to work with a highly regarded partner on blue-chip deals. You will be HK qualified and possess a good command of English & Mandarin. US listing experience is a plus. HKL4143

FCPA/Litigation
3-7 PQE Hong Kong
US law firm seeks a mid to senior level associate with a high level of litigation experience. You will be focusing on internal investigations, corporate compliance, securities enforcement, white-collar crimes and more. Chinese language skills preferred. HKL4137

Commercial Litigation
4+ PQE Hong Kong
This L500 rated law firm is providing an excellent opportunity for mid-level litigation lawyers. The firm takes pride in their high profile clientele where you will be given phenomenal exposure and autonomy. Candidates with fluency in Mandarin language skills highly valued. HKL4139

Corporate Counsel
4+ PQE Hong Kong
International tax & business advisory firm seeks a competent mandarin speaking corporate lawyer to take on a legal role working closely with the business. You will be HK qualified with international business exposure. Offshore tax planning experience would be a bonus. Proven marketing and BD skills required. HKL4057

Arbitration
2+ PQE Tokyo
A highly regarded partner seeks a junior associate to work on international arbitration, investigations and contentious regulatory matters for blue chip clients. You will ideally have gained multi-jurisdictional exposure (London / NY). Japanese language skills a bonus but not essential. HKL4124

ECM/DCM
3+ PQE Hong Kong
US law firms seeks an associate with corporate, debt, equity capital markets experience, securities, and SEC Registered and IPO experience. Ideally you will have prior experience managing M&A transactions, finance projects and general corporate work with supervision. HKL4157

Employment
3-6 PQE Hong Kong
This global law firm is seeking a mid-level employment lawyer to join their prestigious practice. You will possess solid experience in matters concerning recruitment and termination, benefits and compensation, discrimination and more. Chinese language skills are required. HKL4127

Competition
2-8 PQE Hong Kong
This White Shoe law firm is offering an opportunity to work closely with a highly regarded individual renowned for their expertise on global competition matters. You will be common law qualified with experience gained within a recognised competition practice. HKL4128

Banking & Finance PSL
4+ PQE Hong Kong
This is an excellent opportunity for experienced lawyers to step away from fee-earning and join a highly regarded global law firm’s B&F practice. You will work with a collegiate team and take on a full range of PSL duties including creating a solid precedent system, preparing noted on a legal issues and know-how documents. HKL4000

Banking & Finance
4-6 PQE Beijing
Top tier law firm with a history of global success is seeking for a talented PRC lawyers to join their finance practice in Beijing. You will be focusing on transactional matters with heavy involvement in project financing and asset financing. Leading PRC law school qualifications a bonus. HKL4129

IP Litigation
3-5 PQE Hong Kong
Global law firm with premier reputation in IP seeks an associate to work on cross-border litigation and enforcement for an eminent partner who has successfully litigated some of the leading IP landmark cases across the region. PRC qualified lawyers will also be considered for another office. HKL4158

Arbitration
7+ PQE Hong Kong
Outstanding opportunity for a senior associate/ counsel or junior partner looking to make the move a stronger platform and join a globally recognised arbitration practice. You will have a solid HK practice and be a career driven individual with proven marketing and business development skills. HKL4131

Funds
3-5 PQE Hong Kong/Beijing
Stellar opportunity for a fund formation or corporate M&A lawyer with a genuine interest in funds to join a market leading practice within a US law firm. You will work for a highly regarded individual on fund formation transactions to develop innovative investment fund structures and financial products. HKL4058

Corporate PSL
2+ PQE Hong Kong
A fantastic opportunity for a lawyer seeking a work/life balance to step away from fee earning and support a team of dynamic corporate lawyers in a collegiate environment. The ideal candidate will have solid corporate experience as well as mandarin language skills. HKL4120

Corporate
5+ PQE Shanghai
One of the largest global law firm is seeking for a senior associate to join their corporate practice. You will have solid HK listing and public company transactions experience. Excellent time for a career motivated individual to work alongside some of the biggest names in the market. HKL4133

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.godbolt@atticus-legal.com

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Major, Lindsey & Africa, established in 1982, is the world’s largest legal search firm focused exclusively on the legal industry and in representing top lawyers in finding new career opportunities across the globe. With APAC offices in Hong Kong, Tokyo and Sydney, and affiliates in Beijing and Seoul, we have assisted 16 International Law Firms establish their offices in Asia.

ASSOCIATE OPPORTUNITY: CORPORATE M&A, 4–8 years PQE (Hong Kong)
Join a growing US firm as it expands its M&A practice. Experience at a top US or top UK firm and strong M&A experience required. Mandarin language skills are preferred although not essential for this opportunity.

ASSOCIATE OPPORTUNITY: US CAPITAL MARKETS, US-qualified, 3–5 years PQE, No Mandarin language skills required (Hong Kong)
Top US firm seeks a US Capital markets lawyer to perform DCM work. Associates should have experience at an international firm. Mandarin language skills are not required.

ASSOCIATE OPPORTUNITY: BANKING, 2–6 years PQE (Singapore)
Magic Circle firm seeks a banking associate to be part of its successful, mixed practice in Singapore with a truly global focus. Associates should have experience at an international firm and excellent academics.

ASSOCIATE OPPORTUNITY: BANKING, Commonwealth-qualified, 4+ years PQE, Mandarin language skills required (Beijing)
Prestigious UK firm seeks mid- to senior-level banking associate for its team in Beijing. The incoming associate will work on a range of banking and finance transactions including structured finance, asset finance, acquisition finance, project finance and general lending. Client facing experience with PRC clients is preferred but not a must for this role.

PARTNER OPPORTUNITY: M&A, HK/UK/US-qualified, 12+ years PQE, Mandarin and English language skills required (Beijing)
Leading US law firm seeks an M&A partner for its Hong Kong and China corporate practice. The Hong Kong, China and other international offices of this law firm provide a strong regional and global M&A platform to cross-sell to clients in Hong Kong and China. The ideal candidate will have at least 12 years of M&A practice experience in Hong Kong and China with a leading international law firm. Some client following or portable business is preferred, but not required. An overseas qualification is required.

ASSOCIATE OPPORTUNITY: DISPUTES (INTERNATIONAL ARBITRATION/INVESTIGATIONS/CONTENTIOUS REGULATORY WORK), 4–7 years PQE (Tokyo)
Well-respected US law firm seeks a disputes associate to work in its Tokyo office. Associates who have London and New York training and strong credentials are preferred. Japanese language skills would be helpful but are not required.

MULTIPLE ASSOCIATE OPPORTUNITIES: CORPORATE M&A, Commonwealth-qualified, 2–6 years PQE (Sydney)
Prestigious US law firm seeks a Corporate M&A associate to join its Sydney team. With a national foothold in Australia, the firm is now looking to grow its globally recognised M&A practice in Sydney. Commonwealth-qualified candidates who have a background in broad corporate and M&A with some experience in public company, private equity and ECM are encouraged to contact us. Top-tier firm experience and excellent academics is highly regarded.

IN-HOUSE OPPORTUNITY: HEAD OF COMPLIANCE, 5+ years PQE (Hong Kong)
HK-headquartered fund seeks a Head of Compliance with a minimum of 5 years’ experience in compliance and regulation within a bank, fund, law firm or on the self-side (i.e., the creation, promotion, analysis and sale of securities). Experience liaising and working with Hong Kong regulators is required. Fluent English and Mandarin language skills are necessary.

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Nathan Peart, Consultant
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- Leading listed company with overseas business interests
- Advise on corporate transactional and commercial activities
- Listed company and/or multinational corporation experience sought and hospitality industry experience will be highly regarded
- Common law qualification is required and Chinese languages are preferred.
Ref: AT.502510

**Legal Counsel**
*Hospitality and Gaming, 1-2 Years PQE*
- Newly created role reporting to General Counsel in Hong Kong
- Advise on listing rules compliance and other general corporate matters
- Must be fully trilingual in English, Cantonese and Mandarin
- Occasional travel to Europe and Asia may be required
Ref: MK.502520

**Global Markets Lawyer**
*International Bank, 6+ Years PQE*
- Regional coverage, draft and negotiate ISDA and other types of product related agreements
- Advise on new product development and trading/lending activities
- Contract negotiations and ISDA/FX experience covering multiple jurisdictions is ideal.
Ref: AT.502334

**Dispute Resolution Associate**
*Law Firm, 4+ Years PQE*
- International law firm, friendly team
- Commonwealth qualified, Chinese language not mandatory
- Regulatory / financial disputes experience required
- Broad spectrum of litigation and arbitration work
Ref: RK.502550

**Legal Counsel**
*Consumer Goods MNC, 4-6 Years PQE*
- Newly created role assisting senior APAC counsel
- Review, draft and negotiate a wide range of commercial contracts including licensing, distribution, sales & purchase
- Advise on e-commerce, data privacy and social media usage
- Chinese reading skills required
- Prior in-house experience with a MNC essential.
Ref: MK.502483

**Corporate & Commercial Associate**
*Law Firm, 2+ Years PQE*
- Fast growing law firm
- Serving financial institutions, multinational banks
- HK qualified, trilingual (Cantonese, English, Mandarin)
- Non-IPO focused role
- Excellent exposure to high quality transactions and clients
Ref: RK.502458

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For a confidential discussion regarding career opportunities, please contact:

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LOOKING AT MAKING A MOVE?

Taylor Root’s Private Practice team is currently experiencing a high demand for mid-senior lawyers to join leading US and International Law firms in Hong Kong. We have new opportunities coming in on a weekly basis, with feature jobs such as:

**DCM ASSOCIATE - US & INTERNATIONAL FIRM**
We are working on two DCM associate roles for a US and international firm. Ideally looking for C/W or US qualified lawyers with experience in the DCM field from a reputable firm. Excellent academics and Mandarin language skills are required.
Ref: 203390 / NQ-5+ years’ PQE

**US TAX LAWYER - UK LAW FIRM**
This top UK firm are looking to introduce a US tax lawyer to its private wealth team. You will need to have experience in this field and be a C/W qualified lawyer. Mandarin language skills are not required and international applicants are encouraged to apply.
Ref: 207980 / 2-6+ years’ PQE

**TRUSTS LAWYER - OFFSHORE FIRM**
An offshore firm here in Hong Kong is looking for a senior trusts lawyer to join its expanding team. You will need a solid background in this area and be C/W qualified. Mandarin language skills are not required.
Ref: 202970 / 6-8+ years’ PQE

**US CAPITAL MARKETS - MAGIC CIRCLE**
The US team of this Magic Circle firm is looking for a new mid-level US associate to join them. You will be fluent in Mandarin, have a US JD and admitted to the New York Bar. Experience in DCM would be preferred.
Ref: 207480 / 4-7+ years’ PQE

**M&A/PRIVATE EQUITY - US LAW FIRM**
We are exclusively briefed by this leading US law firm in their search for an M&A and private equity lawyer. You must be fluent in Mandarin and have gained experience in an established corporate practice, ideally in Hong Kong.
Ref: 208630 / 4-6+ years’ PQE

**LITIGATION - INTERNATIONAL LAW FIRM**
Our client, arguably the best disputes team in Asia, is looking for an additional trilingual litigator to join the Hong Kong office. Your experience to date will have included general commercial litigation and some arbitration matters.
Ref: 207850 / 4-6+ years’ PQE

Your main contacts at Taylor Root: +852 2973 6333

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