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LegCo’s Newly Elected Lawyer-Members

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Popular culture has a disproportionately strong impact on community perspectives. Law school admission boards creak beneath piles of rejected applications from eager students, misled by shows such as *Suits* into thinking the profession is more glamorous than it is. Similarly, the ‘90s drama, *The Files of Justice* (*壹號皇庭*), may have influenced local citizens' views of Hong Kong courtrooms. So when mass media triggers popular discourse on the law or its practice or administration, many professionals, rightly, take note. Especially so, when that discourse is negative.

Speaking on this topic, the Secretary-General expresses concern in her letter this month (p. 10) that the depiction of the work of a Hong Kong law firm in a recent local television soap opera could, if taken at face value, damage the public's perception of the local profession. However, she also seized upon this opportunity to remind readers of the profession's core ethical values. In doing so, she illustrates how lawyers can proactively use different media sources in tandem to distinguish fiction from reality and positively influence public perception of their work and professional obligations.

For decades, lawyers have played it safe when using media to disseminate information to the public about the law and their work. Scholarly articles have been written, serious-faced advocates and judges have trooped onto television or radio talk shows to be interviewed, and some brave souls have dipped a toe in to the internet with professional blogs or online client alerts. All this is good and a sign of a healthy profession. Yet for a growing cohort of innovative lawyers and creative types, there is a better way: developing new content that not only informs, but that also appeals to our desire to be entertained, while remaining firmly based in reality.

For instance, the wildly popular American podcast known as *Serial* discussed a case involving the murder of a young Korean American girl Hae Min Lee by her Pakistani American ex-boyfriend Adnan. The reasons for *Serial*'s success are debatable: sequential storytelling, compelling subject-matter and an engaging narrator surely all played their part. Yet the more interesting and powerful aspect of *Serial* was its ability to engage both lawyers and non-lawyers in a prolonged discourse over proper courtroom procedure and the issue of race and the legal justice system in America, all without resorting to contrived fictional plots or cinematic glitz and glam. It distilled thousands of pages of real court transcripts, real witness testimony, and the like, in a language that was comprehensible and engaging to the general public. To many legal professionals, it also highlighted weaknesses in the legal justice system that required immediate attention. After it aired, it also had a real world impact: Adnan's case was reopened to ensure he received a fair trial.

Many discussion of popular culture and the media focuses on its potential to cause harm through disseminating misinformation. Yet *Serial*, and its growing number of imitators, offers a tantalising new possibility: using media to spark inclusive and engaging discussions among culturally and professionally diverse groups about the law and the profession that are based in reality. We can only hope that more lawyers and creative types join forces in the years to come.

**Cynthia G. Claytor**  
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Asian Legal Business is proud to bring you our second annual Hong Kong Competition Ordinance. This forum will highlight the importance of the competition ordinance and how it is impacting business today in Hong Kong. Join us as we delve into the key issues and concerns for legal/ compliance professionals should know about the ordinance to successfully safeguard your business.

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Arbitration: A Growing Practice Area

In his 2016 Policy Address, the Chief Executive reported that professional services accounted for 4.8 percent of GDP in 2013 and provided around 200,000 jobs. Of these services, he specifically highlighted dispute resolution services as having room for development to enhance Hong Kong’s competitiveness as a global financial, trade and business centre.

Pursuant to this policy direction, the Department of Justice (“DoJ”) has been actively pursuing a number of initiatives to promote arbitration services. Since June 2011, the arbitration regime in Hong Kong has been modernised to accord with widely accepted international arbitration practice by the enactment of the new Arbitration Ordinance (Cap. 609). Further, to promote Hong Kong as an intellectual property (“IP”) trading hub, the DoJ is taking steps to amend the Arbitration Ordinance with a view to making it clear that disputes over IP rights are capable of resolution by arbitration and that it would not be contrary to public policy to enforce an arbitral award solely because the award is in respect of a dispute or matter which relates to IP rights. The Law Society is supportive of this initiative.

The robust government policy in promoting Hong Kong’s arbitration services has attracted arbitration institutions at both international and regional levels to set up offices or arbitration centres in Hong Kong. They include the International Court of Arbitration of the International Chamber of Commerce (“ICC”), the China International Economic and Trade Arbitration Commission (“CEITAC”), the Hague Conference on Private International Law and the China Maritime Arbitration Commission. Pursuant to this policy direction, the Department of Justice (“DoJ”) has been actively pursuing a number of initiatives to promote arbitration services. Since June 2011, the arbitration regime in Hong Kong has been modernised to accord with widely accepted international arbitration practice by the enactment of the new Arbitration Ordinance (Cap. 609). Further, to promote Hong Kong as an intellectual property (“IP”) trading hub, the DoJ is taking steps to amend the Arbitration Ordinance with a view to making it clear that disputes over IP rights are capable of resolution by arbitration and that it would not be contrary to public policy to enforce an arbitral award solely because the award is in respect of a dispute or matter which relates to IP rights. The Law Society is supportive of this initiative.

The public statistics posted by various arbitration institutions in Asia demonstrates an upward trend in the number of arbitration cases. The Hong Kong International Arbitration Centre (“HKIAC”) reported a record high of 271 new arbitration cases in 2015, compared to 242 in 2014. Coincidentally, the Singapore International Arbitration Centre also recorded 271 new arbitration cases in 2015, compared to 232 in 2014. The annual overall caseload of CEITAC in 2015 was 1,968 out of which 437 cases were foreign related, compared to 1,610 cases in 2014 out of which 387 were foreign related. 801 requests were filed with ICC worldwide in 2015, compared to 791 in 2014.

Arbitration is a growing practice area and the Law Society is actively promoting our members’ capabilities in this area. Through the efforts of our representatives, we speak on international arbitration in Hong Kong whenever a good opportunity arises. Our message is clear and simple:

- choose Hong Kong as the dispute resolution venue – Hong Kong is a neutral dispute resolution venue with world class arbitration institutions and professionals that are capable of providing efficient and reliable dispute resolution services;

- choose Hong Kong law as the governing law – Hong Kong law is clear, certain and accessible and ideal to be the governing law in the relevant commercial and investment agreements.

In the past year, our voice promoting arbitration was heard in different places, for example, in Jakarta in September 2015 (during “In Style – Hong Kong” by the HKTDC), in Cuiyang and Xian in February 2016 (during “Belt and Road – Hong Kong Legal and Arbitration Seminars” by the DoJ), in Peru in February 2016 (during the APEC Workshop by the DoJ), in Kuala Lumpur in April 2016 (during the IPBA Annual Conference), in Chengdu in May 2016 (during SmartHK by the HKTDC) and in Tokyo in July 2016 (during the Joint Seminar with Tokyo Bar Association).

To maintain a central database for promotion of our members’ arbitration services, the Council has recently approved the establishment of a Law Society Panel of Solicitor Arbitrators. Work is being done on the final draft. Based on the current draft framework, those who satisfy the following eligibility requirements may apply to the Law Society for admission onto the Panel:

(a) are currently a member of the Law Society and hold a current practising certificate;
(b) have at least 8 years of post-qualification experience as a solicitor on a full time basis or equivalent;
(c) have at least 5 years of experience in arbitration practice; and
(d) are currently a Fellow or above with the Hong Kong Institute of Arbitrators or the Chartered Institute of Arbitrators.

Much has been said about the opportunities for solicitors arising from the Belt and Road Initiative. This national strategy acts as a catalyst for the vision of Mainland enterprises going global and stimulates an increasing demand for cross-jurisdictional legal and dispute resolution services. The establishment of a Panel of Solicitor Arbitrators focuses attention on the strength of experienced Solicitor Arbitrators available in Hong Kong and makes it easier for referrals by potential users of arbitration services. The Law Society will soon issue an Information Package detailing the application requirements and procedures for admission to the Panel.
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Kate Hodson advises a large number of sponsors and fund managers as well as their onshore counsel on the establishment and structuring of private equity funds, hedge funds and other closed ended and open ended fund structures, with particular expertise in respect of partnership and unit trust structures. She also advises LPs, managers, trustees, family offices, HNWIs, administrators and other service providers on fund related issues and other corporate matters, including downstream investment transactions.

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Fiction or Reality

Fictional television programmes may exert a powerful influence on community attitudes towards a subject matter or a class of people because of their broad reach and appeal. The viewers may get so carried away by the charming actors (who do their best to realistically portray the characters that they play) and the intriguing plot that they forget where the line of fiction ends and reality begins.

It may still be possible to stay “unconfused” with respect to non-local television programmes so that the experiences of, for example, Harvey Specter in *Suits* and Annalise Keating in *How to Get Away with Murder* are remembered as fictional scenes. However, it becomes more difficult to draw the line if the fictional characters and plots share the same local background as the viewers’ and speak the same language.

A recent local television soap opera portraying the work of a Hong Kong law firm has caused concerns in the profession, precisely because of the potential adverse impact it can have on the community if the fictional portrayal is taken as reality. There is no intention to repeat the outrageously unprofessional conduct displayed by the fictional characters in the programme. Suffice it to say, the abundance of professional misconduct in the soap opera will make it perfect teaching materials for testing law students as to which professional ethical standards have been breached.

Going back to reality, we must never forget that our society is founded on respect for the Rule of Law. Lawyers who are professionally trained to uphold the Rule of Law have a special role to fulfill in society. The public expectation in lawyers performing this special role is met by the requirement on lawyers’ strict adherence to the core principles of professional conduct that guide the practice of lawyers. These core principles are universal, save for slight variations in different jurisdictions.

They include essentially:

(a) **Independence**: the independence of the lawyer, and the freedom of the lawyer to pursue the client’s case without any undue pressure from anyone;

(b) **Confidentiality**: the right and duty of the lawyer to keep clients’ matters confidential, which is essential to the creation of a relationship of trust between the lawyer and his clients;

(c) **Conflicts of interest**: avoiding conflicts of interest, whether between different clients or between the client and the lawyer;

(d) **Clients’ interests**: the fiduciary duty of the lawyer to act loyally, openly and fairly towards his clients and in the best interests of his clients;

(e) **Fiduciary**

虚構或現實

虛構的電視節目接觸面廣又具吸引力，或會令社會對一件事或一類人的態度構成強大影響。觀眾可能被演員的魅力(演員盡力把扮演的角色逼真地呈現出來)和引人入勝的劇情迷住，忘記虛構與現實的分界線。

觀看非本地電視節目時，仍有可能保持「頭腦清晰」，例如人們仍記得《金裝律師》(Suits)的Harvey Specter和《法網危情》(How to Get Away with Murder)的Annalise Keating是虛構人物。然而，假如虛構角色和劇情與觀眾背景、語言相同，真假的界線就較難釐定。

最近一齣本地電視肥皂劇描繪香港律師行的工作，引起業界的關注，因為若虛構的人物被當作現實，便可能對社會構成不良影響。劇中虛構人物演釋駭人的不專業行為，無意在此複述，只可說劇中大量的專業失當行為，可成為法律學生的完美教材，測驗他們劇中人違反了哪些專業道德標準。

回到現實，我們決不能忘記，社會建立在尊重法治的基礎之上。律師受過專業訓練以維護法治，在社會上發揮特殊作用。公眾對律師發揮此特殊作用有所期望，因此要求律師嚴格遵守指導執業的專業操守核心原則。這些核心原則普世適用，僅在不同司法管轄區稍有變化。它們主要包括：

(a) **獨立**：律師的獨立性，及律師在不受任何人的任何不當壓力下，處理客戶個案的自由；

(b) **保密**：律師對客戶事務保密的權利和義務，這對社會構成不良影響，劇中虛構人物演繹駭人的不專業行為，無意在此複述，只可說劇中大量的專業失當行為，可成為法律學生的完美教材，測驗他們劇中人違反了哪些專業道德標準。

客戶利益：律師對客戶行事忠誠、公開和公平，並為客戶的最大利益著想的受信責任；

能力：就任何所承擔的服務，律師有責任確保他有能力代表客戶提供該服務；
### Monthly Statistics on the Profession
(updated as of 30 September 2016):

<table>
<thead>
<tr>
<th>Category</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Members (with or without practising certificate)</td>
<td>10,203</td>
</tr>
<tr>
<td>Members with practising certificate</td>
<td>8,932</td>
</tr>
<tr>
<td>(out of whom, 6,657 (75%) are in private practice)</td>
<td></td>
</tr>
<tr>
<td>Trainee Solicitors</td>
<td>773</td>
</tr>
<tr>
<td>Registered foreign lawyers</td>
<td>1,331</td>
</tr>
<tr>
<td>(from 32 jurisdictions)</td>
<td></td>
</tr>
<tr>
<td>Hong Kong law firms</td>
<td>872</td>
</tr>
<tr>
<td>(49% are sole proprietorships and 40% are firms with 2 to 5 partners, 10 are limited liability partnerships formed pursuant to the Legal Practitioners Ordinance)</td>
<td></td>
</tr>
<tr>
<td>Registered foreign law firms</td>
<td>78</td>
</tr>
<tr>
<td>(8 are limited liability partnerships formed pursuant to the Legal Practitioners Ordinance)</td>
<td></td>
</tr>
<tr>
<td>Civil Celebrants</td>
<td>2,065</td>
</tr>
<tr>
<td>Reverse Mortgage Counsellors</td>
<td>445</td>
</tr>
<tr>
<td>Solicitor Advocates</td>
<td>48</td>
</tr>
<tr>
<td>(43 in civil proceedings, 5 in criminal proceedings)</td>
<td></td>
</tr>
<tr>
<td>Student Members</td>
<td>267</td>
</tr>
<tr>
<td>Registered Associations between Hong Kong law firms and registered foreign law firms (including Mainland law firms)</td>
<td>34</td>
</tr>
</tbody>
</table>

### Upcoming Deadlines

The application for a practising certificate commencing 1 January 2017 must be submitted on or before 30 November 2016.

截止日期將至

2017年1月1日開始生效的執業證書之申請必須於2016年11月30日或之前遞交。
David Michael Layard Horsfall (the “Respondent”), a Solicitor

- Rule 2(a) and (d) of the Solicitors’ Practice Rules (the “SPR”)
- Principle 1.02 of The Hong Kong Solicitors’ Guide to Professional Conduct (Volume 1–2nd Edition) (the “Guide”)

Hearing Date
6 June 2016

Findings and Order
6 September 2016

On 6 June 2016, the Solicitors Disciplinary Tribunal found the following complaints against the Respondent proved on his own admissions:

Breaches of r. 2(a) and (d) of the SPR and principle 1.02 of the Guide, in that the Respondent on 13 February 2013 was ordered by the Solicitors Disciplinary Tribunal in England to be struck off the Roll of Solicitors in England & Wales upon his conviction by Southwark Crown Court on 5 October 2011 on his own plea of guilty for fraud by false representation contrary to s. 1(2) of the Fraud Act 2006.

Having considered the written submissions made by the Respondent and the Applicant, the Tribunal ordered that the Respondent:

1. be struck off the Roll of Solicitors; and
2. to pay the costs of the proceedings, including the costs of the Clerk, the costs of the Applicant in the investigation of the matter and the reserved costs, such costs to be taxed on a party and party basis if not agreed.

Mr. Paulus Lau, In-House Prosecutor of The Law Society of Hong Kong, for the Applicant

The Respondent, in person, not present, lodged an affidavit, written submissions in mitigation and a skeleton argument

Mr. Patrick M K Hui, Clerk to the Tribunal

Tribunal Members:
Mr. Ng Man Kin (Chairman)
Mr. Henry Fung
Ms. Yau Lai-ping
An Analysis on <Interim Measures for Filing Administration of Establishment and Change of Foreign Invested Enterprises>

On September 3rd, 2016, the National People’s Congress (“NPC”) Standing Committee adopted by voting Decision of NPC Standing Committee on Revision of Four Laws such as Law of PRC on Foreign Invested Enterprises (hereinafter “Decision”), which amended articles relating to administrative examination and approval requirements in PRC foreign investment related laws and replaced administration and approval regime with a new filing regime for the foreign invested enterprises and enterprises invested by Taiwan enterprises provided that they are not subject to national market access restrictions. In addition, Ministry of Commerce published Interim Measures for Filing Administration of Establishment and Change of Foreign Invested Enterprises (hereinafter “Interim Measures”), which was implemented and took effective on October 8th, 2016.

Background of the Interim Measures

The issuance of the Interim Measures is mainly based on the success of preferential policies for foreign invested enterprises in four free trade zones in China.

In the past three years, the implementation of negative list management system for foreign investment in four pilot free trade zones substantially enhanced the convenience and standardization of foreign investment in the free trade zones. Considering the outstanding achievements of foreign investment management system in the free trade zones, NPC Standing Committee decided to promote the experience of free trade zone nationwide. The essential features of the Interim Measures is to replace the current examination and approval regime with a new filing regime for the establishment and changes of foreign invested companies.

Advantages of the New Filing Regime

The new filing regime has various advantages which are reflected in the following aspects compared with previous time-consuming examination and approval regime.

(1) Streamline the investment flow and improve the investment efficiency

In accordance with Article 7 (Online Submission) and Article 11 (Filing Procedures) of the Interim Measures, a simple and efficient investment flow is designed for foreign invested enterprises. For example, foreign invested enterprises or their investors can fill in and submit filing documents through online filing system. The competent commerce authority will complete filing within 3 working days and publish recording results through the recording system. Filing for a newly-established foreign invested enterprise shall be handled within 30 days before or after business license is issued, and filing amendments shall be dealt with within 30 days after the occurrence of amendments. In addition, filing is not a condition precedent for the registration of the enterprises. After filing is completed, enterprises can choose to obtain filing receipts. The filing regime can streamline the formalities flow and improve the convenience of the investment.

(2) Simplify the examination and approval procedures

Compared with original examination and approval regime, the new filing regime deleted burdensome pre-examination procedures. However, the Interim Measures stipulated comprehensive supervision and inspection provisions and provisions relating to relevant legal liability which provide legal basis and methods for the filing agencies to strengthen supervision and management of the foreign invested enterprises during and after filing. If the foreign invested enterprises or their shareholders who carry on investment and operation activities in restricted or prohibited investment fields or refuse to accept supervision or inspection from the relevant local government, the foreign invested enterprises shall take relevant legal liabilities and the integrity information of the enterprises with illegal behaviors will be recorded and published in the foreign investor integrity file system of Ministry of Commerce (“MOFCOM”). These flexible supervision mechanisms can encourage the enterprises to actively comply with various laws and regulations and substantially reduce the manpower and fund which will be spent by administrative departments during the pre-examination period.

(3) Increase information disclosure and establish synergistic supervision

The Interim Measures expressly stipulates that the governmental filing agencies of each level shall strengthen information sharing system with relevant government authorities such as administration for industry and commerce and foreign exchange control authority. According to Application Form for Establishment of Foreign Invested Enterprises attached to the Interim Measures, foreign invested enterprises and their shareholders must disclose the information of their ultimate shareholders and source of funding for the investment. The previous examination and approval regime did not have such kind of disclosure requirement. Therefore, the filing regime is more rigorous on the requirements of disclosure of basic information of foreign invested enterprises which plan to make an investment in China. In addition, the filing agency shall promptly notify competent government authorities of any illegal behaviors of foreign invested enterprises or their shareholders which are discovered during the investigation and inspection procedures beyond the management responsibilities of such filing agency.

Conclusion

The issuance of the Interim Measures is a significant move forward in the economic development of China. Proved by the past practice experience of the four free trade zones in China, foreign invested enterprises should be managed by a new filing regime and set up a supervision system which encourages the development of legally-binding foreign invested enterprises. The effective implementation of the Interim Measures in the future shall work with the negative list. Both of the negative list and the Interim Measures will work together to provide effective guidance to the foreign investment in the PRC. It is believed that after the Interim Measures was officially implemented on October 8th, 2016, it would encourage more international well-known enterprises to expand their foreign investment in China.

By Ms. Vivian Ji, Counsel
Watson Farley & Williams
In this question-and-answer series, LegCo’s five newly-elected lawyer-members discuss what prompted them to pursue a career in law, what motivated them to move into politics, and what they hope to accomplish during their first term.
Eunice Yung

1. What motivated you to pursue a career in law?
First of all, law is very much relevant to every aspect of our lives. For example, even if we stay at home, our matrimonial matters still relate to law. The public, in general, needs professionals who understand the law to help them through a variety of issues and difficulties that they encounter in their lives. I believe that being a lawyer gives me the necessary knowledge and skills to reach out to and help those in need; especially those people at different socioeconomic levels and stages of their lives, such as children, youth and minorities.

Also, I like reading law because it intellectually challenges me. I personally enjoy discussing legal issues with different people.

Law is multifaceted and so is a legal career. In short, my legal career has aligned my passion with my interests.

2. Can you tell me about your experience as a practitioner?
I have been practising law as a barrister since 2008. My work has mostly focused on matrimonial and civil matters. I'm also a general mediator and a family mediator. As a barrister, I usually spend a large amount of time conducting legal research and following legal developments, which I like.

I also act as a pro bono legal adviser for different people and corporations, by which I am able to give back to the community.

3. What prompted you to move into politics?
There are different voices in our community nowadays. Also, different political views and stances are tearing our community apart. In this turbulent time, our fellow Hong Kong citizens often regard politicians as only delivering empty or futile promises. In connection with this, I want to improve our social environment and change how politicians are perceived. This is one reason that inspired me to move into politics.

I treasure having a political platform that will allow me to publicly address our most pressing social issues and to help craft laws and policies that resolve public welfare issues. There are also some public policies that I hope to improve.

Most importantly, I want to make peoples’ voices matter.

4. How will you use your legal training/experience as a member of LegCo?
My legal background will help me to perform my duties as a member of LegCo, as LegCo deals with many different legal matters day in and day out. For instance, my legal background will definitely help me deal with LegCo’s rules and procedures.

I also plan to use my previous work experience in the IT field to encourage more young people to pursue their dreams of establishing their own businesses and support policies that promote the development of science and technologies in both the legal and IT fields.

5. What do you hope to accomplish during your term?
I want to be a role model for our youth: to show them how we, as local students, can get into the international field, gain different experiences and then come back to build a better Hong Kong.

In addition, I would like to encourage more young entrepreneurs to build their businesses, as well as encourage youth to contemplate their career development and life planning with a critical mind.

6. Do you plan to devote all of your time to LegCo work or do you intend to maintain your practice at the same time? If you plan to maintain your practice, how do you plan to strike a balance between practice and LegCo work?
I will maintain my practice, but I will devote adequate time to my LegCo work, because I have committed to do so.

My role in LegCo and my work as a legal practitioner function as a bridge that
1. **What motivated you to pursue a career in law?**

It used to be my dream when I was a kid. As I recall in those days, I loved taking part in school debate and imagined that someday I would stand in the court representing people. When I was in London reading my first degree at the London School of Economics and Political Science, I began to realise that a lot of reputable politicians across the world are also lawyers; the reason being that their legal expertise is very much conducive to their work as lawmakers. As my eagerness to take part in politics grew, I thought it would be advantageous for me to equip myself with legal knowledge and to pave my way for a future political career. So I finally decided to read law and eventually I was admitted as a solicitor in 2009.

2. **Can you tell me about your experience as a practitioner?**

One of the very interesting characteristics about legal practice is the wide range of common issues we come across in the course of our practice; for instance, personal injuries, family disputes, bankruptcy, drafting commercial agreements, among other things. All of the knowledge and experience I acquired while practising will be an invaluable lifelong asset.

3. **What prompted you to move into politics?**

I joined politics, in part, due to my patriotic sentiments which stem from my childhood, when I studied Chinese history. While I have never attended a patriotic school, my avid interest in learning Chinese history helped me build my sense of identity and of being Chinese. Studying at Uppingham School in the UK also inspired me a lot. It is a very traditional British boarding school, where I was taught discipline and responsibility to society.

I enjoyed watching parliament debate in the UK; it was interesting and its members always had a good sense of humour. More importantly, it was fascinating to see members debating policies and in doing so, bring about changes to the society.

4. **How will you use your legal training/experience as a member of LegCo?**

In my election platform, I pledged to urge the government to modify the Competition Ordinance, including but

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**Holden Chow**

connects our community – both my work in LegCo and in legal practice have a public interest element. This is why I will maintain my practice.

Moreover, if I stop practising now, I feel I would lose one of my repertoires to help those in need.

As for how I will strike a balance between my practice and LegCo work, I shall devote a significant amount of my time to my LegCo work at the beginning of my term. As you know, I am a newly sworn-in LegCo member, so I will need time to familiarise myself with the new procedures and adjust the time table. This will be something I will learn and achieve as my term progresses.

7. **What one piece of advice would you give to someone thinking of pursuing a career in law?**

I would advise any inspired lawyer-to-be to think outside the box and to paint their career planning more broadly. This is because there are so many routes of legal training they can pursue. For example, they can pursue an LL.B. or a JD program or even go abroad to study law. Once they have finished their legal studies, no matter domestically or internationally, they can take the Hong Kong Bar exam (PCLL) and then pursue their legal career in Hong Kong by taking up a traineeship contract or becoming a pupil.

There are so many opportunities and choices for new ambitious lawyers. I wish more youth would get involved with the legal profession.

8. **What is your motto in life?**

My motto is to first believe, and then achieve. We need to safeguard our dreams and then envisage what we can do with our resources. Then we must employ all our efforts and energies to achieve our dreams regardless of the obstacles and difficulties ahead of us.
not limited to introducing the right of direct private litigation against those that have engaged in anti-competitive conduct, whereby damages may be claimed. I will also push for a sufficient level of legal aid to be provided by the government in this connection, which will save claimants a lot of time by eliminating the need to go through the Competition Commission in the first place. Offering alternatives to claimants to commence legal proceedings should help us clamp down on anti-competitive behaviour.

5. What do you hope to accomplish during your term?
Apart from modifying the Competition Ordinance, there are quite a lot of issues that I am very eager to tackle in this LegCo term, including transport and future town planning of Tung Chung and Lantau Island and enhancing the interests of ethnic minorities, namely facilitating them to integrate into our society.

6. Do you plan to devote all of your time to LegCo work or do you intend to maintain your practice at the same time? If you plan to maintain your practice, how do you plan to strike a balance between practice and LegCo work?
I think I shall maintain my legal practice but I shall be very cautious in striking a balance between my practice and Legco work. Namely most of my time and effort will be spent on LegCo work and limited time will be dedicated to my practice.

7. What one piece of advice would you give to someone thinking of pursuing a career in law?
It is a fascinating and highly rewarding career, but it is all about hard work.

8. What is your motto in life?
You do your best, and God will do the rest!

Junius Ho

1. What motivated you to pursue a career in law?
My uncle was an influential factor. He was born and raised in the rural area of Tuen Mun. His success in becoming a lawyer in the early 1960s really encouraged many members of my family, as well as the entire village and clan. We all looked up to him as a role model and in a way, idolised him, seeing him as a beacon that lit the path ahead for us. When I reached the age of about 10 in the early 1970s, I realised that becoming a lawyer could be a pathway to success. I also realised that one’s choice of career also mattered a lot to one’s subsequent development. That helped me, even though I was still very young, to set my mind on becoming a lawyer. My mindset motivated me to work hard along the way and throw myself into studying and practicing law.

2. Can you tell me about your experience as a practitioner?
Since my admission in 1988, I have primarily focused on civil litigation; however, I occasionally take on corporate work. While my main strength is in administrative law, I have also handled winding-up cases and other company disputes. In disputes-related work, I usually act for the underdog or for the minority interest or for those who are underprivileged. I take pride in fighting for their rights and speaking out on their behalf to try to help them achieve a fair and appropriate solution or arrangement.

3. What prompted you to move into politics?

4. How will you use your legal training/experience as a member of LegCo?
As LegCo is primarily concerned with making laws, my legal training will help me in vetting bills; likely more so than those who come from different trades or professions. Also, my experience working with underprivileged segments of society should be very useful in my work to help behalf of the underdogs and the underprivileged. That is, to use my legal skills in a different way to effect positive change for these individuals.
shape future policies. That is, to work to ensure policies are not lopsided in favour of commercial interests only. I have the mindset to take into account those who are in need and may not be in the same bargaining positions as those who come from the commercial world and are armed with heavy resources.

5. What do you hope to accomplish during your term?

There are three issues that I plan to focus on during my term. The first is upholding the rule of law. The core value of upholding the law and justice is essential in Hong Kong, so I will put significant emphasis on this point. The second is to push for more environmental protection policies. The government is currently advocating for measures that will reduce domestic and solid waste. I fully support this proposal, but the measures need to be carefully reviewed to ensure they will be carried out in an effective and efficient manner. My third aim is to focus on policies that will improve the economy. At the moment, there is an overemphasis on the services industry. If we are going to achieve long-term, sustainable economic growth, we need to diversify a little bit more.

6. Do you plan to devote all of your time to LegCo work or do you intend to maintain your practice at the same time? If you plan to maintain your practice, how do you plan to strike a balance between practice and LegCo work?

Yes, but I will try to strike a balance. At the moment, I have this formula – the four-quarters rule. I allocate one quarter of my day, or six hours, for rest, to ensure I have sufficient time for sleep. Then six hours for my family. My remaining twelve hours will be devoted to work – half to my legal practice and half to my LegCo work. In theory, this is how I will structure and spend my time. In reality, some sort of adjustments will need to be made.

7. What one piece of advice would you give to someone thinking of pursuing a career in law?

You have to accept the reality that a legal career is no longer a guaranteed golden rice bowl in Hong Kong. In the good old days, you were guaranteed a very comfortable living standard by choosing a professional career. Today, it is different. You cannot just stick with the old school way of thinking. While you will still have to work hard, you will also need to build up personal relationships in order to make your professional career a success. Neglecting to build relationships is similar to owning a computer without network access. However technologically advanced the computer is, without access to the outside world or networks, like the internet, your ability to succeed is limited.

8. What is your motto in life?

Try to trust people and get people to trust you. If you do not work hard and demonstrate your ability, you will be down and out. If you demonstrate your good work and your good intentions, people will be willing to accept you. But to earn the trust of others, you must be persistent. You have to be a trust-worthy person, but not just for one day. You have to do it as a life-time practice. You have to learn how to trust and show that you are trustworthy.

Horace Cheung

1. What motivated you to pursue a career in law?

Law is related to almost every aspect of our lives and legal knowledge is essential to resolving our daily problems. Legal training also equipped me with the ability to deal with matters in a logical and objective way. From the perspective of the common good, the legal practice allows me to help the needy and make contributions to Hong Kong, especially via the safeguard of the rule of law.

2. Can you tell me about your experience as a practitioner?

After completing my legal training at one of the oldest local firm Messrs. Wilkinson & Grist, I was admitted as a solicitor in Hong Kong in 2000, with my practice mainly focusing on civil and commercial litigation. I commenced my own practice in partnership in 2012 and my law firm is located just next to the Legislative Council Complex for the sake of convenience. In addition to the partnership, I am a civil celebrant of marriages, China-appointed Attesting Officer and Arbitrator of South China International Economic and Trade Arbitration Commission.

3. What prompted you to move into politics?

We have personal views to different policies affecting our lives, be it housing, education, environmental protection or political reform. I have always heard people talking about different policies in cafés or bars, but such casual talk does not bring about change within the society. Politics is the way to convert our aspirations into policies and make our lives better.
4. How will you use your legal training/experience as a member of LegCo?
One of the main tasks of LegCo members is to pass bills in the Legislative Council. There is no doubt that my legal training and experience will help me read the bills and find any loopholes.

5. What do you hope to accomplish during your term?
My policy focus will be on education and housing problems, as these issues are closely related to almost every resident in Hong Kong. Such problems, if not fixed, will substantially hinder the social and economic development of Hong Kong. Meanwhile, more importantly, I intend to play an active role in reducing the confrontation between the divided camps in the Legislative Council.

6. Do you plan to devote all of your time to LegCo work or do you intend to maintain your practice at the same time? If you plan to maintain your practice, how do you plan to strike a balance between practice and LegCo work?
I love my legal practice. As a practicing solicitor, I plan to maintain my practice during my LegCo term. However, I plan to delegate the management and administration work to my partner and my current files to my team members.

7. What one piece of advice would you give to someone thinking of pursuing a career in law?
It is an honour to become a member of the legal profession in Hong Kong. As a lawyer, you should treat it as a career instead of a job.

8. What is your motto in life?
“Yesterday is history, tomorrow is a mystery, today is a gift of God, which is why we call it the present.” - from Bil Keane

Jimmy Ng

1. What motivated you to pursue a career in law?
I believe the truth can be revealed gradually through debates. The law is the most important cornerstone of the maintenance of social order. Administration of justice is also based on the law. That is what interested me about the law since I was young. It is also the reason I decided to pursue a legal career.

2. Can you tell me about your experience as a practitioner?
When dealing with different cases, I have to work with clients from different sectors and businesses. So paying attention to updates and developments in different industries helps me to better understand clients’ needs.

3. What prompted you to move into politics?
My first experience working in the political sphere was in 1996 when I helped the former Supreme Court Chief Justice Yang Ti Liang run for the first term of the Chief Executive election. In 2010, I joined the Chinese Manufacturers’ Association of Hong Kong (“CMA”), where I served as Chairman of the Political and Economic Affairs Committee of CMA for six years. In this position, I interacted regularly with representatives from different political parties to better understand the views of different stakeholders in the community.

4. How will you use your legal training/experience as a member of LegCo?
As a lawyer, I researched and studied ordinances and cases, established good lines of communication with different parties, including clients, and had to prepare and study to effectively
complete my work. My undertakings as a lawyer are very similar to the work of LegCo members.

In the LegCo, members have to study policies. Before speaking in meetings or questioning government officials, members also need to prepare by reading documents and media reports and drafting their speeches. Their speeches need to be strong and persuasive in order to convince and monitor the Government’s policy execution. They also need to be informative and drafted in a way that the general public can understand.

5. **What do you hope to accomplish during your term?**

As a representative of the industrial sector, I am very concerned about its development in Hong Kong. Hong Kong is not without an industrial sector. Its production lines are simply located outside Hong Kong. Industrial companies still choose to have their headquarters and back offices in Hong Kong. They pay taxes in Hong Kong. Therefore, I hope that the government will re-formulate a long-term “industrial policy” to provide more support to the development of the industrial sector, and invest more resources to nurture young talents for the sector.

Upgrade and restructure of the industrial sector require innovation design and advanced technology. I have high hopes for the Innovation and Technology Bureau set up last year. I hope that the Bureau will launch more initiatives and invest more resources, in terms of capital, technology and talents, to help universities transform research output into technology that can be adopted by the industrial sector.

6. **Do you plan to devote all of your time to LegCo work or do you intend to maintain your practice at the same time? If you plan to maintain your practice, how do you plan to strike a balance between practice and LegCo work?**

I will maintain my practice during my term in the LegCo, but I will give top priority to LegCo work. I hope that I will be able to act as a bridge between the sector and the government, reflect to the government views of the industrial sector and promote communication between the two sides.

I have worked with the CMA for more than 13 years, and served as its Vice President for three terms. During this time, I have been engaged in the CMA’s work, while also serving in various Government advisory bodies, such as being the Chairman of the Hong Kong-Taiwan Business Co-operation Committee and a member of the Small and Medium Enterprises Committee.

Meanwhile, I run a business in the Mainland, constantly engage in exchanging views with other industrial and business leaders and maintain my legal practice. With the experience and training I have gained throughout the years, I am confident that I will be able to perform well at the same time in different positions – as a LegCo member and a lawyer.

7. **What one piece of advice would you give to someone thinking of pursuing a career in law?**

Lawyers are professionals. Legal practice is a very serious matter. I hope young people who want to join the legal profession act seriously and rationally, in order to maintain the professional image of lawyers.

8. **What is your motto in life?**

Never give up. Never stop improving yourself.
五位新當選的立法會律師議員回答問題，詳談什麼促使他們投身法律事業、什麼驅使他們從政，以及在任期內希望完成的目標等。
1. 什麼驅使你投身法律事業？
首先，法律與我們的生活息息相關。例如，在家中，婚姻問題與法律有很大關係。一般來說，公眾需要懂得法律的專業人士，幫助他們解決生活上遇到的各種問題和困難。我相信，作為律師令我擁有所需知識和技能，以接觸和幫助有需要的人士，尤是那些不同社會經濟階層和處於不同人生階段者，如兒童、青少年和少數族群。
此外，我喜歡研讀法律，因為它在智力思辯上具有挑戰性。我享受與不同的人討論法律問題。
法律是多方面的，法律事業亦然。總而言之，法律事業把我的熱情和興趣相結合。

2. 可告訴我們你作為法律執業者的經驗？
我於2008年成為執業大律師，主要專注於婚姻和民事問題。我也擔任綜合調解員及家庭調解員。作為大律師，我會花大量時間進行法律研究和跟進法律發展。我喜歡做這方面的工作。
我亦為不同人士和企業擔任義務法律顧問，藉此回饋社會。

3. 什麼促使你從政？
今時今日，社會上有很多不同的聲音，不同的政見和立場正一步步地撕裂我們的社會。在這個動盪的時期，香港市民常常認為政客只懂開空頭支票。有見及此，我希望改善社會環境，令大家對從政者改觀。這是促使我從政的基本原因。
我非常珍惜有一個政治平台讓我公開討論一些迫切的社會問題，協助制定法律和政策以解決公共福利問題，我希望能改善某些公共政策。
最重要的是，我希望將市民聲音帶入議會，使其得到應有的重視。

4. 作為立法會議員，你會如何利用你的法律訓練或經驗？
我的法律背景將有助我履行立法會議員的職責，因為在立法會經常都要處理很多有關法律和政策上的事務。我的法律背景對處理立法會的規則和程序肯定有所幫助。
我也計劃利用我在資科科技界的工作經驗鼓勵更多年輕人創業去實現他們的夢想，並推動有關法律和資科科技領域科學技術發展的政策。

5. 你希望在任期內達成什麼？
我想成為年輕人的榜樣，向他們展示我們身為本地學生如何邁向國際，累積各種不同的經驗，然後回來建立一個更美好的香港。
此外，我希望鼓勵更多青年企業家創業，以及鼓勵年輕人以批判性思維來考慮他們的事業發展和人生規劃。

6. 你打算把所有時間用於立法會的工作，還是同時繼續執業？如果你打算繼續執業，你計劃如何在執業和立法會工作之間取得平衡？
我將繼續提供法律服務，但會保證足夠時間去履行我身為立法會議員的職責，因為我已承諾為市民服務。
作為立法會議員和大律師，我希望能成為連接社會的橋樑，因兩者均以公眾利益為依歸。
我會繼續執業，否則我會失去一個幫助有需要人士的渠道。
至於如何在法律事務與立法會工作之間取得平衡，我計劃在任期之初把大量時間用於立法會工作上。由於我新加入立法會，需要時間熟習新程序，調整時間表。我將在任期內逐步學習和實現這一點。

7. 對想投身法律事業的人，你有什麼建議？
我會建議有志成為律師者跳出思維的框架，從更廣闊的層面上去規劃事業，因為他們可跟隨的法律訓練路線不少。例如，他們可修讀LLB或JD課程，甚至往海外修讀法律。完成學業後，不論在香港或外國修讀課程，他們均可考取法學專業證書課程(PCLL)，通過實習後在香港從事法律事務。
有志向的新律師面對的機遇和選擇很多，我希望更多年輕人投身法律界。

8. 你的人生座右銘是什麼？
我的座右銘是先相信，後實現。我們需要擁抱夢想，然後根據手上資源去達成夢想。無論面對多少障礙和困難，我們都應盡一切努力和精力去步步實現夢想。
1. 什麼驅使你投身法律事業？
這是兒時的夢想。我記得當時我喜歡參加學校的辯論，想像有一天我會在法庭上代表市民。在倫敦政治經濟學院修讀首個學位時，我開始意識到世界上很多著名的政治家也是律師，原因是法律專業知識非常有助於他們制訂法律的工作。隨著我越來越渴望從政，我認為以法律知識裝備自己，會對我有所幫助，為日後的政治事業鋪路。所以我決定修讀法律，並於2009年取得律師資格。

2. 可告訴我們你作為法律執業者的經驗？
法律執業其中一個十分有趣的特點，是我們在執業過程中遇到廣泛的常見問題，例如人身傷害、家庭糾紛、破產、商業協議起草等。我在執業中所獲的知識和經驗，將會令我終身受用。

3. 什麼促使你從政？
我從政部份是基於童年時學習中國歷史而產生的愛國情感。雖然我從沒入讀愛國學校，對學習中國歷史的濃烈興趣幫助我建立了中國人的身份認同。在英國Uppingham School讀書亦給予我很多啟發，那是一所很傳統的英國寄宿學校，在那裡我學習到紀律和對社會負責任。我喜歡看英國議會辯論，那很有趣，議員又總是充滿幽默感。更重要的是，看到議員辯論政策而為社會帶來變化，很有吸引力。

4. 作為立法會議員，你會如何利用你的法律訓練或經驗？
我在參選政綱中承諾促請政府修訂《競爭條例》，包括但不限於針對反競爭行為引入直接私人訴訟權，申索損害賠償。我亦會就此要求政府提供法律援助，申索人不必經過競爭事務委員會，便可節省不少時間。為申索人提供替代方案來啟動法律訴訟程序，應有助遏止反競爭行為。

5. 你希望在任期內達成什麼？
除了修訂《競爭條例》外，我在今屆立法會任期內我渴望處理不少議題，包括東涌及大嶼山的交通和未來城市規劃，促進少數族裔的權益，協助他們融入社會。

6. 你打算把所有時間用於立法會的工作，還是同時繼續執業？如你打算繼續執業，你計劃如何在執業和立法會工作之間取得平衡？
我想我會繼續法律執業，但會非常謹慎地平衡自己的執業與立法會的工作，大部分時間會用於立法會的工作，有限時間會用於我的法律執業。

7. 對想投身法律事業的人，你有何建議？
法律事業具吸引力和高度價值，但辛勤苦幹是必需的。

8. 你的人生座右銘是什麼？
盡人事，待天命！
何君堯

1. 什麼驅使你投身法律事業？
我叔叔是個影響因素。他在屯門鄉郊出生、長大，在60年代初成為律師。他的成功激勵了不少家人以至整個鄉族的成員。我們都以他為榜樣，在某種程度上崇拜他，把視作前路的燈塔。70年代初約10歲時，我意識到當律師可以是成功的途徑。我亦意識到，一個人的職業選擇對他後來的發展也很重要。雖然我當時還很年輕，但這已讓我決心成為律師。這種心態驅使我一路努力，修讀和從事法律執業。

2. 可告訴我們你作為法律執業者的經驗？
自1988年取得律師資格後，我主要專注於民事訴訟，但偶爾亦從事企業工作。雖然我專長行政法，但亦處理過清盤個案和公司之間的糾紛。爭議相關工作方面，我通常代表處於下風一方、少數或弱勢社群。為他們爭取權利，代表他們發聲，嘗試幫助他們達至公平而恰當的解決辦法或安排，我為此引以自豪。

3. 什麼促使你從政？
法律和政治有很多相似之處。法律影響每個階層、社會上的各行各業。政治亦然。有見及此，我立志把代表弱勢群體的努力推而廣之，以不同方式利用我的法律技能，為這些人士帶來正面改變。

4. 為了立法會議員，你會如何利用你的法律訓練或經驗？
立法會主要負責制訂法律，我的法律訓練將有助我審視法案，或許比那些來自不同行業或專業的同僚較優。此外，我與社會弱勢社群共事的經驗，應有助未來制訂政策的工作，確保政策不會一面倒偏袒商界利益。我顧及有需要的人士，他們的議價立場或許不來自商界、擁有大量資源者。

5. 你希望在任期內達成什麼？
在任期內，我計劃專注於三個議題。首先是維護法治。維護法律和公義的核心價值，對香港至關重要，故此我會特別重視這點，其次是推動更多環保政策。政府現時主張採取減少家居和固體廢物的措施，我完全支持這項建議，但需要更認真地審視這些措施，確保有效執行。第三個目標是關注於改善社會的政治。我認為現時太著重服務業，我們若要實現長期可持續經濟增長，必須多元化發展。

6. 你打算把所有時間用於立法會的工作，還是同時繼續執業？如你打算繼續執業，你計劃如何在執業和立法會工作之間取得平衡？
我會盡力取得平衡。現時我跟隨名叫四分之一的方程式，將一天四分之一時間（6個小時）用來休息，確保睡眠時間充足。然後有6個小時用來陪伴家人。餘下的12小時用於工作，其中一半用於我的法律執業，另一半用於立法會的工作。理論上我將這樣分配時間，但實際上需要進行某些調整。

7. 對想投身法律事業的人，你有什麼建議？
你必須接受法律事業在香港不再是金飯碗的現實。以往從事專業行業一定可享有非常舒適的生活標準。時移勢易，你不能堅持舊有的思維模式。除了努力工作，你亦必須建立人際關係，專業事業才能成功。忽略建立關係等於擁有電腦而不能上網，不論電腦的技術如何先進，不能接觸外面的世界或網絡（如互聯網），你成功的能力便有限。

8. 你的人生座右銘是什麼？
嘗試信任人，亦令人信任你。若不努力工作、展示才能，你將失意落泊。若你展示良好的工作表現和意願，人們將願意接受你。但要贏取別人的信任，你必須堅持不懈，當一個值得信任的人。不止一天，而是必須終身實踐。你必須學習如何信任，並展示你值得信任。
1. 什麼驅使你投身法律事業？
法律牽涉我們生活中幾乎每一方面，法律知識對解決日常問題至關重要。法律訓練也令我能夠邏輯而客觀地處事。從公眾利益的角度來看，法律執業讓我可幫助有需要的人，特別是通過維護法治，為香港作出貢獻。

2. 可告訴我們你作為法律執業者的經驗？
在香港其中一間歷史最悠久的律師行之一 – 高露雲律師行(Messrs. Wilkinson & Grist)完成法律訓練後，我在2000年取得香港律師資格，執業領域主要為民事和商業訴訟。我在2012年開始以合夥人執業，為方便起見，我的律師行就位於立法會大樓旁邊。除了律師行合夥人，我亦擔任婚姻監禮人、中國委托公證人及中國國際經濟貿易仲裁委員會仲裁員。

3. 什麼促使你從政？
不論房屋、教育、環保或政改，對影響生活的政策我們都各有個人看法。我常常在咖啡室或酒吧聽見人們談論不同政策，但這種閒聊並不能為社會帶來改變。政治是將我們的訴求轉化為政策、改善我們生活的方式。

4. 作為立法會議員，你會如何利用你的法律訓練或經驗？
立法會議員的主要工作之一，是在立法會通過法案。毫無疑問，我的法律訓練和經驗將幫助我審視法案，找出任何漏洞。

5. 你希望在任期內達成什麼？
我的政策重點是教育和房屋問題，因為這些問題與幾乎每一位香港市民息息相關。這些問題若不解決，香港的社會和經濟發展將大大受阻。同時，更重要的是我打算發揮積極作用，減少立法會內不同陣營之間的對抗。

6. 你打算把所有時間用於立法會的工作，還是同時繼續執業？如你打算繼續執業，你計劃如何在執業和立法會工作之間取得平衡？
我愛我的法律執業。作為執業律師，我計劃在立法會任期內繼續我的執業。不過，我打算將管理和行政工作交託予我的合夥人，並將手頭上的案子委託團隊處理。

7. 對想投身法律事業的人，你有什麼建議？
能夠成為香港法律專業的一員是種榮幸。作為律師，你應該把它視作一份事業，而不是一份工作。

8. 你的人生座右銘是什麼？
「昨天已成歷史，明天遙不可知，今天是上帝的恩賜，因此也稱為當下（present）。」— 比爾基恩
1. 什麼驅使你投身法律事業？
我相信真理是「越辯越明」，而法律是維持社會秩序最重要的基石，伸張公義亦要以法律為基礎，故此我自少已對法律充滿興趣，亦決定以此作為事業發展的其中一個方向。

2. 可告訴我們你作為法律執業者的經驗？
在處理不同的個案時，時不時要與來自不同範疇及經營不同業務的客人，因此要不時留意社會各行各業的動態，這亦有助於了解客戶的需要。

3. 什麼促使你從政？
1996年我曾協助前最高法院首席法官楊鐵樑參選首屆行政長官選舉，開始接觸政治。加入香港中華廠商聯合會（廠商會）後，於2010年擔任會內的政治及經濟事務委員會主席，長達6年之久，不時與不同的政黨代表交流，了解社會不同持份者的意見。

4. 作為立法會議員，你會如何利用你的法律訓練或經驗？
作為工業界代表，我非常關心香港工業發展，香港並非沒有工業，只是將生產線設於境外，但從事工業的公司其總部及後勤等業務均設於香港，亦在香港繳稅，故此我希望政府重新制定長遠「工業政策」，對工業發展多加支援，並投放更多資源培育年輕工業人才。

5. 你希望在任期內達成什麼？
作為工業界代表，我非常關心香港工業發展，香港並非沒有工業，只是將生產線設於境外，但從事工業的公司其總部及後勤等業務均設於香港，亦在香港繳稅，故此我希望政府重新制定長遠「工業政策」，對工業發展多加支援，並投放更多資源培育年輕工業人才。

6. 你打算把所有時間用於立法會的工作，還是同時繼續執業？如你打算繼續執業，你計劃如何在執業和立法會工作之間取得平衡？
在未來擔任立法會議員期間，雖然我願會繼續從事律師業務，但會把立法會事務放在首位，希望多向政府反映工業界的意见，並擔任業界與政府之間的橋樑，促進雙方溝通。

7. 對想投身法律事業的人，你有何建議？
我不放棄，自強不息。
Linklaters is proud to be celebrating our 40th anniversary in Hong Kong this year. Hong Kong is the cornerstone of our Greater China presence. Linklaters in Hong Kong reflects the entrepreneurial spirit and dynamism of the Hong Kong community. This enduring presence in Hong Kong is testament to the quality and commitment of our people. We thank our clients for their steadfast support.

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The Hong Kong Academy of Law

The Hong Kong Academy of Law (“Academy”) organised a total of 69 seminars in September.

A seminar entitled “Update on Legal Aid Schemes” was held on 6 September to provide an update on the legal aid schemes. 194 participants attended the seminar.

The Academy co-organised the seminar entitled “The Liberalisation and Cooperative Measures of CEPA for the Legal Service Sector in Hong Kong” with the Hong Kong Chinese Enterprises Association, Legal Affairs Steering Committee on 9 September to introduce the development of and the opportunities under the Hong Kong Closer Economic Partnership Arrangement (“CEPA”). 148 participants attended the seminar.

A seminar entitled “Property Fraud” was held on 6 September. Over 300 participants attended the seminar.

The speaker of the seminar entitled “Update on Legal Aid Schemes” was Mrs. Christina Hadiwibawa, Assistant Principal Legal Aid Counsel / Legal and Management Support, Policy and Administration Division of the Legal Aid Department.

The speakers of the seminar entitled “The Liberalisation and Cooperative Measures of CEPA for the Legal Service Sector in Hong Kong” were: Mr. Du Chun (second from left), General Manager of China Legal Service (H.K.) Ltd.; Mr. Sun Tong (second from right), Director-General of the Ministry of Commerce Department of Taiwan, Hong Kong & Macao Affairs. Mr. Zhang Xia Ling (first from right), Director of the Hong Kong Chinese Enterprises Association, was a representative of the co-organiser. Mr. Huen Wong (first from left), Chairman of the Academy, delivered an opening speech at the seminar.

The speakers of the seminar entitled “Property Fraud” were: Mr. Tang Shun-yan, Brian (right), Chief Inspector of the Commercial Crime Bureau of the Hong Kong Police Force; Mr. Eric Y. L. Yip (left), Senior Immigration Officer (Operational Research) of the Hong Kong Immigration Department.
IBA Annual Conference, Washington, DC

The IBA Annual Conference was held in Washington, DC (USA) from 18 to 23 September. Immediate Past President Stephen Hung, Council Member and Past President Huen Wong, Council Member Denis Brock and three young lawyers represented the Law Society in attending the conference.

With over 5,000 international lawyers gathering from around the world to attend this conference, the Law Society took the opportunity to organise a breakfast session entitled “Hong Kong: A Borderless Trade and Investment Environment for ‘Going Global’” on 20 September to promote Hong Kong legal services to overseas jurisdictions.

Immediate Past President Stephen Hung introduced the Belt and Road Initiative and how Hong Kong’s legal system plays a unique role in facilitating a seamless connection between the east and the west, while Council Member and Past President Huen Wong shared his insights with the audience on the advantages of doing business in Hong Kong. Council Member Denis Brock concluded the breakfast by explaining what Hong Kong can offer as an international centre for dispute resolution in the Asia Pacific region.

Representing the Law Society Council, Member Denis Brock spoke at two of the sessions during the conference, namely “Making Life Easier? Facilitating Temporary Entry for Lawyers: Why, How and Under What Circumstances?” and “Why Bother with Specialist Trial Advocates?” on 20 and 21 September, respectively.

Throughout the conference, the Law Society delegation also arranged meetings with the Estonian Bar Association, the Lithuanian Bar Association, the Netherlands Bar Association and the Young Barrister’s Committee of the Bar Council of England & Wales, respectively. Possible collaboration between the Law Society and these associations were discussed during the meetings.

The breakfast session was well attended by around 80 overseas delegates.

The Law Society arranged meetings with overseas bar associations to discuss future cooperation opportunities.
Panel Discussion on the Joint Venture between Hong Kong and Mainland Law Firms

On 19 September, the Practice Management Committee organised a panel discussion titled “The New Opportunity: A Look into the Joint Venture between Hong Kong and Mainland Law Firms”. Past President Ambrose Lam and Mr. Eric Lui, whose respective firms have entered into joint venture with Mainland partners, shared with the audience the challenges and benefits in the partnership, practical tips on relationship management and best practices with Mainland partners. The audience also had the opportunity to learn about the new revised measures of the “Pilot Implementation Measures on Cooperation between Hong Kong and Mainland Legal Profession”, which took effect on 1 September.

2016 Annual Conference of In-House Lawyers

The Annual Conference of In-House Lawyers is a signature event organised by The Law Society’s In-House Lawyers Committee. This year’s Conference, its fifth instalment, was successfully held on 21 September at the Hong Kong Convention and Exhibition Centre. The Conference brought together around 400 legal counsel, directors and presidents from various sectors and industries to discuss a variety of topics that are of interest to in-house lawyers (“IHLs”).

The Conference opened with the forward looking topic of the much talked about One Belt One Road Initiative (“OBOR”), with the opening keynote speech given by Mr. Gregory So, Secretary for Commerce and Economic Development. Mr. So very helpfully explained how OBOR will bring massive potential for the development of countries along the routes, and why it has the potential to become a powerful driver for the growth of the world’s economy. Mr. So also shared his thoughts on what Hong Kong can do to partner with other economies to capitalise on the opportunities presented by the initiative.

The keynote speech was followed by a panel discussion on OBOR. Vice President Amirali Nasir, was the moderator and he was joined by speakers Mr. Wong Kyin Pyu, Vice President, Executive Committee, Maritime Silk Road Society and Mr. Terence Yap, Chief Executive Officer, Guardforce Group. The panel discussion highlighted the unique advantages of Hong Kong as the key link for OBOR and the importance of the initiative to the legal profession, which cannot rest on its laurels and must prepare itself for the opportunities the initiative offers. The panelists also shared their views on how Hong Kong can take an active part in this national development strategy, with case studies of running projects in selected Belt and Road countries.

Continuing on the theme of national development, the last session before the lunch break was a panel discussion on the Latest Update on Reform in Foreign Investment Law in PRC. Joining the moderator Ms. Alice Kwok, Head of Legal, Asia (ex-Japan), Natixis Global Asset Management on the panel were Mr. Andrew Ning, Head of Legal, CCB International (Holdings) Limited, Mr. Yu-yuen Wong, Principal Legal Advisor – China and International Business, MTR Corporation Limited and Mr. Alan Xu, Partner, Zhong Lun Law Firm. The panel discussed in details the proposed overhaul of the current foreign investment law which would fundamentally change the way foreign investment flows into the PRC. The panel also explored the implications of the new regime, in particular how the proposal will unify
regulations and reduce restrictions which will be welcomed by foreign investors. After the lunch break the Conference turned to topics that were closer to home with the first afternoon session being a panel discussion on a Counsel’s Role in an Internal Investigation and Legal Advice Privilege. The discussion was moderated by Mr. Lief Thassim, Managing Director, Co-General Counsel, Asia Pacific, Deutsche Bank AG. Speakers included Mr. Aman Chee, Senior Director, Clutch Group, Mr. Warren Ganesh, Senior Consultant, Smyth & Co in association with RPC and Mr. Yong Kai Wong, Managing Director, Head of Legal and Compliance, CITIC Capital. It is important for in-house lawyers to know how to conduct efficient and effective investigations to protect their companies and clients, and themselves. Panelists shared their insights on strategies for protecting privilege during investigations in order to minimise liability while maximising impact, with particular focus on who should conduct the investigation, “best practices” to follow and certain pitfalls to avoid.

The penultimate session was an update on competition law given by Mr. Philip Monaghan, Executive Director (General Counsel), Competition Commission, HKSAR. Mr. Monaghan reviewed all key aspects of the Competition Ordinance (Cap. 619) (“CO”) which came into full effect on 14 December 2015. He also shared the Commission’s activities over the course of the last nine months including exclusions and exemptions from the CO, enforcement tools and remedies, compliance do’s and don’ts under the CO, and the Commission’s Guidelines and priorities.

The Conference concluded with a thought-provoking panel discussion on Corporate Social Responsibility (“CSR”) and Environmental, Social and Governance (“ESG”) Investing. The discussion was moderated by Ms. Michelle Chow, Consultant, Withers. Ms. Emily Chew, Managing Director, Global Head of ESG Research and Integration, Manulife Asset Management, gave an overview of the concept of ESG investing, which is a growing trend, its benefit for the market and how it linked to sustainable business practices, whereas Ms. Shalini Mahtani, Founder and Board Director, Community Business, shared her experiences on how to integrate CSR best practices into key business areas.

The In-House Lawyers Committee would like to thank all of our speakers, sponsors and delegates for their support, and the hard work of the Organising Committee and the Law Society Secretariat in contributing to the success of this year’s Conference. We look forward to welcoming you to the 2017 Annual Conference. If you have any feedback on the 2016 Conference, or have any suggestions, please do not hesitate to contact the In-House Lawyers Committee at robert@hklawsoc.org.hk.

Mr. Adamas Wong
Chairman, Organising Committee of the 2016 Annual Conference of In-House Lawyers

It was our pleasure to have Mr. Gregory So, Secretary for Commerce and Economic Development, to deliver the keynote speech for us at the Conference.

Mr. Philip Monaghan from the Competition Commission, HKSAR.

Mr. Grand Chan, IHLC Chairman, greeted the audience with his opening remarks.
2016企業律師年會

企業律師年會是律師會企業律師委員會舉辦的重點活動。第五屆年會於9月21日假香港會議展覽中心圓滿舉行。約400位來自不同界別及業界的法律顧問、主管和會長聚首一堂，討論企業律師關心的議題。

年會以具前瞻性的熱門議題「一帶一路」揭開序幕，由商務及經濟發展局局長蘇錦樑先生作主題演講。蘇局長詳細解說「一帶一路」將如何為沿線國家帶來巨大發展潛力，及「一帶一路」為何有可能成為世界經濟增長的強大動力。蘇局長亦就香港可如何與其他經濟體合作，掌握「一帶一路」帶來的機遇，分享見解。

主題演講後的小組討論亦以「一帶一路」為題，由副會長黎雅明律師擔任主持，海上絲綢之路協會執行董事會主席王錦彪先生及衞安集團首席執行官葉永嘉先生擔任講者。小組討論集中探討香港作為「一帶一路」關鍵聯繫人的獨特優勢，以及「一帶一路」對法律專業的重要性。法律界不能再故步自封，必須為「一帶一路」帶來的機遇作好準備。講者亦就香港可如何積極參與國家發展策略分享看法，及討論在「一帶一路」國家執行項目的個案研究。

午休前的最後一節會議繼續以國家發展為主題，小組討論《中華人民共和國外國投資法》改革的最新進展，由法儲銀環球資產管理集團亞洲區法律部總監(日本除外)郭雅思律師擔任主持，建銀國際法律主管、香港鐵路有限公司首席律師黃裕源律師及北京中倫律師事務所合夥人徐建輝律師擔任講者，詳細討論了現行外國投資法的擬議修訂，修訂的法例將徹底改變外國投資流入中國的方式。小組亦探討了新制度的影響，特別是統一法規和減少限制等措施，將受到外國投資者歡迎。

午休後，年會轉向更貼近本地的主題，下午首節為關於律師在內部調查的角色和諮詢保密權的小組討論，由德意志銀行Managing Director and Co-General Counsel, Asia Pacific泰利律師擔任主持，小組講者包括Clutch Group高級總監池銘軒先生、Smyth & Co in association with RPC資深顧問莊偉倫律師及中信資本董事總經理、法律及合規部主管黃榮凱律師。對企業律師來說，懂得切實有效地進行調查以保障公司、客戶和自己，至關重要。講者就如何透過於調查過程中保護特權，以達致減少責任及提高效益的策略分享見解，並集中探討應由誰來進行調查、須遵循的「最佳做法」和如何避免陷阱。

最後第二節會議由香港特別行政區競爭事務委員會行政總監(法律顧問)馬立恆律師講解競爭法的最新情況。馬立恆律師解釋了於2015年12月14日全面生效的《競爭條例》(第619章)之所有重點。他亦分享了競爭事務委員會在過去九個月的工作，包括《競爭條例》下個案的處理疾速度及委員會的指引和優先事項。

年會以關於企業社會責任(CSR)和環境、社會及管治(ESG)投資的小組討論作結，題目發人深省。小組討論由衛達仕律師事務所合夥人、宏利資產管理執行總監兼環境、社會及管治研究整合環球主管趙汝賢女士及社會責任投資區域總監實，將CSR最佳做法融入關鍵業務領域的經驗。企業律師會感謝所有講者、贊助商和與會代表的支持，並感謝籌委會和律師會秘書處的辛勞工作，令本屆年會得以圓滿成功。我們期待您參與2017年年會。如對2016年年會有任何意見或建議，歡迎致電律師會籌委會主席馬立恆律師，電郵地址：robert@hklawsoc.org.hk。

黃嘉晟律師
2016企業律師年會籌委會主席
YSG: Distinguished Speakers’ Luncheon

As part of our Distinguished Speakers’ Luncheon (“DSL”) series this year, the Young Solicitors’ Group (“YSG”) was honoured to have the Honourable Lam Woon Kwong GBS JP, Convenor of the Executive Council and formerly Chairperson of the Equal Opportunities Commission, as our guest speaker for the luncheon on 24 September. About 30 members attended the event.

During the luncheon, Mr. Lam began his talk titled “The Making of Hong Kong: A Long Winding Road” by highlighting important milestones in the history of Hong Kong which have shaped Hong Kong into what it is now – one of the most important financial centers in the world. In his speech, Mr. Lam also stressed the uniqueness of Hong Kong and reminded the audience to have confidence in ourselves and our home land. The talk was followed by an interactive and inspiring Q&A session, in which Mr. Lam shared with the audience his views on “One Country Two Systems” and the autonomy of Hong Kong.

The luncheon with Mr. Lam marked the end of the DSL series of 2016. YSG has received positive feedback on the luncheons from the attendees. We are grateful for all the support we have received from the speakers, the Secretariat and our members. Members who missed the luncheon may visit http://www.hklawsoc.org.hk/pub_e/news/video/20160924.asp for an audio-record of Mr. Lam’s presentation.

We look forward to offering even better DSLs to our members in 2017. Stay tuned!

Hilda Lam
Committee Member, YSG

“Think Asia, Think Hong Kong”, Germany

Organised by the Hong Kong Trade Development Council, “Think Asia, Think Hong Kong” was held in Dusseldorf, Frankfurt, Hamburg and Munich from 27 to 29 September. The Law Society was a supporting organisation of this mega event promoting Hong Kong services to potential German clients intending to develop their business in Asia, particularly Mainland China.

President Thomas So was invited to be one of the speakers at the session entitled “Success in Asia”. He explained to the local audience how Hong Kong, being equipped with top quality local and international legal capability, is able to provide one-stop legal services to meet different clients’ needs. The Law Society also set up an on-site consultation booth in the Dusseldorf and Hamburg stops to promote the work of the Law Society and the Hong Kong legal service industry as a whole.

Mr. Lam Woon Kwong giving his speech during the luncheon.

Lin Woon Kwong先生業界精英午餐講座演講。

President Thomas So answering enquiries from one of the participants.

會長蘇紹聰律師解答參會者的疑問。

年青律師組：業界精英午餐講座

作為今年業界精英午餐講座系列之一，年青律師組有幸邀得行政會議召集人兼平等機會委員會前主席林煥光GBS JP於9月24日擔任嘉賓講者約30位會員出席了是次活動。

在午餐講座上，林先生以「建立香港發展而曲折的路」為題發表演講，闡述香港歷史上將香港打造成當今世界上最重要的金融中心之一的重要里程碑。林先生強調香港的獨特性，並提醒出席者必須對自己和祖國有信心。演講後進行互動而具啟發性的問答環節，林先生分享了他對「一國兩制」及香港自治的看法。


我們期待在2017年為會員提供更精彩的業界精英午餐講座。敬請留意！

Hilda Lam
Committee Member, YSG

Ms. Serina Chan, Council member and Chairlady of YSG, and Mr. Sebastian Ko, Vice-Chair of YSG presenting souvenir to Mr. Lam on behalf of YSG.

理事會成員及年青律師組主席陳潔心律師及年青律師組副主席高一峰律師代表年青律師組致送紀念品予林先生。

「邁向亞洲 首選香港」在德國舉行

香港貿易發展局於9月27日至29日於杜塞爾多夫、法蘭克福、漢堡及慕尼黑四個德國城市舉辦「邁向亞洲 首選香港」大型推廣活動。律師會為是次活動的支持機構，向希望在亞洲特別是中國大陸開展業務的德國客戶推廣香港服務。

會長蘇紹聰律師獲邀擔任講者，就「成功在亞洲」這個題目發言。他向當地與會者解釋，香港擁有最優質的本地及國際法律人才，能夠提供一站式法律服務，滿足客戶的不同需要。

律師會亦在杜塞爾多夫和漢堡的會場設立了諮詢展位，推廣律師會的工作及整體香港法律服務業。

President Thomas So shared his insight with the audience on how German companies can leverage Hong Kong service excellence to expand their business in Asia.
**Visit to Children at Po Leung Kuk Home**

The Law Society organised a visit to Po Leung Kuk (“PLK”) Children’s Home with the assistance of PLK’s Child Sponsorship Programme on 6 August.

About 90 solicitor volunteers and their families and kids participated in this meaningful event bringing happiness and showing care for the young and the needy in society. Their families had a wonderful time reading stories, playing games and doing handicrafts together with 24 PLK children.

Our volunteers were moved by this visit to the PLK Children’s Home.

**Annual Swimming Gala 2016**

Summer vacation is prime time for water sports and quality family time before school reopens. On 28 August, the Annual Swimming Gala was held in Aberdeen for members and their children aged two to 18.

There were around 60 events for children of different ages. The individual events showcased the aquatic talents of members’ children while the 4 x 25m family events fostered the parent-child bond. Four members’ children with a total age of not more than 35 formed a mixed team to take part in the Children’s Relay which aimed at fostering friendships amongst the next generation.

All participants were presented with certificates, and the top three swimmers of each event were presented with medals. The overall champion of each gender and age group received a trophy for their outstanding athletic performance.

We had the greatest honour to invite President Thomas So, Past President Ambrose Lam, Mr. Nick Chan, Council Member and Chairman of the Recreation and Sports Committee (“RSC”), Mr. Roden Tong, Council Member and RSC Vice Chairman, Ms. Serina Chan, Council Member, and Ms. Eliza Chang, Vice Chairlady of the Standing Committee on Members Services.
and Honorary Swimming Team Captain, who all spared their Sunday afternoon to support the event at the poolside and present prizes to the winners. We would also like to express our sincere gratitude to the 200 plus participants and the professional helpers from The University of Hong Kong Swimming Team.

If you are a parent and missed this year’s event, please stay tuned for next year’s Annual Swimming Gala. We look forward to seeing you and your family at the pool!

Agnes Chan  
Convenor, Law Society Swimming Team  
Member, Recreation & Sports Committee

Parents showed support all the way while children were striving to complete the 25m kickboard event, the most popular event designed for members’ children aged between two and eight.

小朋友努力完成25米踢板比賽, 家長一直在旁支持。這項比賽專為會員年齡界乎2至8歲的子女而設, 深受參賽者歡迎。

Join us in this photo next year!  
希望明年見到你!

2016年水運會

暑期是進行水上運動、享受家庭樂的黃金檔期。律師會週年水運會於8月28日在香港仔圓滿舉行, 供會員及其年齡界乎2至18歲的子女參加。

水運會設有60多個項目, 讓不同年齡的兒童一展泳術。個人賽展示會員子女的游泳天賦, 而4 x 25米親子接力賽則旨在促進親子關係。四名年齡合共不超過35歲的會員子女組成混合小隊, 參加兒童接力賽, 這項比賽讓下一代建立友誼。

所有參賽者均獲發證書, 而每項賽事前三名選手會獲頒獎牌。每個性別和年齡組別的總冠軍都會獲頒獎盃, 表揚他們傑出的表現。

感謝會長蘇紹聰律師、前會長林新強律師、理事會成員兼康樂及體育委員會主席陳曉峰律師、理事會成員兼康樂及體育委員會副主席湯文龍律師、理事會成員陳潔心律師及會員服務常務委員會副主席兼游泳隊榮譽隊長鄭麗珊律師, 於星期日下午撥冗出席活動並為活動頒獎。我們亦謹此感謝200多位參賽者和香港大學游泳隊的協助。

身為家長的你, 如錯過今年的活動, 請密切留意明年的水運會。明年見！

陳潔心律師  
律師會游泳隊召集人  
康樂及體育委員會成員

Cooperation between parents and their children was a key element to winning the family relay. When the first leg touches the poolside, the next swimmer should be ready to dive into the water!

親子合拍是勝出親子接力賽的關鍵。第一棒泳手觸池的一剎那, 下一位泳手就應準備好跳入水中!

Happy winners of Family Relay  
親子接力賽的得獎者

Mixed aged swimmers of the Children Relay  
兒童接力賽的混合年齡泳手
“Lawesome” Community Fun Day

Encouraged by the overwhelmingly positive response to last year’s “Lawesome” Fun Day, the Community Relations Committee (“CRC”), a sub-committee under the Standing Committee on External Affairs, hosted this year’s event on 11 September in Diamond Hill. Past President and Council member Huen Wong, Chairman of CRC Philip Wong, Council Members Nick Chan and Serina Chan and members of Community Talks and Services Working Group (“WG”), a sub-committee of CRC, together with representatives of five non-governmental organisations (“NGO”) gathered at Fung Tak Shopping Mall in Diamond Hill, to officiate the opening ceremony of the “Lawesome” Community Fun Day. The event aimed at reaching out to our community while promoting legal knowledge.

The event began with remarks from our officiating guest, Mr. Stephen Sui, Under Secretary for Labour & Welfare, Labour and Welfare Bureau, followed by a sign-language song performance by volunteers from Hong Kong Rehabilitation Power, and experience sharing on the Family Status Discrimination Ordinance from Mr. Nick Chan.

The highlight of the event was the booth games co-organised with five NGOs, namely Caritas Family Crisis Support Centre, Hong Kong Federations of Women’s Centres, Hong Kong Rehabilitation Power, New Home Association and The Society of Rehabilitation and Crime Prevention. WG also extends its gratitude to Link Management Limited for venue sponsorship.

The Fun Day was tremendously successful with over 200 visitors spending the afternoon learning about the law from a fresh perspective.

法治同心嘉年華

由對外事務常務委員會轄下社區關係委員會舉辦的「法治同心嘉年華」，於去年獲得參與人士熱烈支持，今年9月11日在鑽石山載譽而歸，為市民帶來歡樂。前會長兼理事會成員王桂壎律師、理事會成員陳曉峰律師、社區關係委員會主席黃永昌律師、社區關係委員會主席黃永昌律師、社區關係委員會主席黃永昌律師、及社區關係委員會轄下

社區講座及服務工作小組成員，連同五個非政府機構的代表，齊集鑽石山鳳德商場，主持「法治同心嘉年華」的開幕儀式。活動旨在接觸社群及推廣法律知識。

當日由勞工及福利局副局長蕭偉強先生為活動揭開序幕，及後由香港復康力量的義工表演手語歌曲，並有陳曉峰律師分享處理《家庭崗位歧視條例》的法律知識。

由五個非政府機構，包括明愛向晴軒、香港婦女中心協會、香港復康力量、新家園協會和香港善導會主理的攤位遊戲是活動的亮點。另外，工作小組感謝領展資產管理有限公司贊助場地。活動吸引了超過200位市民參與並透過嶄新角度學習法律知識，渡過了一個愉快的下午。
**Young Solicitors’ Group: “Lawyers x Lawyers-to-be Drinks Evening” with Law Students**

The Law Society’s Young Solicitors’ Group (“YSG”) held a “Lawyers x Lawyers-to-be Drinks Evening” on 22 September where over 90 law students from the three Hong Kong law schools mingled with practitioners in iBakery Gallery Café, a social enterprise operated by the Tung Wah Group of Hospitals.

Representatives from the Law Society included President Thomas So; Vice-President Amirali Nasir; Council Members Cecilia Wong, Nick Chan, Warren Ganesh, Serina Chan, as well as YSG committee members.

At the event, practitioners shared interesting experiences in their legal career and gave advice to the students on how to prepare themselves to become a solicitor. It was a meaningful and relaxing evening filled with fun and laughter.

We express our heartfelt gratitude towards our honourable guests, members and the Secretariat who made this a successful event!

Karen Wong  
Committee member, YSG

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**Programme for Members’ Children: Visit to Hong Kong Yakult Co. Ltd**

On 24 September, around 40 members and children attended a guided visit to Hong Kong Yakult Co. Ltd at Tai Po Industrial Estate organised by the Member Benefit Committee. After attending a briefing session of the background of Yakult’s products, the participants had the eye-opening experience of watching the manufacturing of health drinks and lactic acid dairy products in action. The visit concluded with a complimentary serving of the signature drinks by Yakult.
Cayman Islands: Fund Financing and Taking Security over Capital Call Rights

By Kate Hodson, Partner
James Heinicke, Partner

Ogier

November 2016
In recent years, the subscription facility market has increased significantly in size as more private equity funds use these lines of credit attracted by the flexibility and liquidity that such facilities can offer. Lenders are also moving into the space attracted by the product’s strong credit profile and historically low delinquency rates.

The key feature of a subscription facility is the security package. It will typically include security over the unfunded capital commitments of the fund’s investors including: (i) the right to make capital calls on investors in respect of their unfunded capital commitments together with rights to enforce payments thereof, and (ii) the right to receive the proceeds of such capital calls. It will generally also include security over the bank account into which investors are required to deposit their capital contributions. The Cayman Islands exempted limited partnership (“ELP”) is a common vehicle used for structuring private equity funds and therefore, where so structured, the security package will include an assignment of these rights as provided for in the fund’s Cayman Islands law governed limited partnership agreement (“LPA”).

Subscription line facilities were traditionally used for short term bridging purposes, namely to provide the fund with access to credit pending the receipt of capital contributions from investors. This enables a fund to finance investments quickly – a drawdown on a subscription credit facility can take only a matter of a few days, whereas a fund’s LPA will often allow limited partners’ 10–15 business days to make payment after a capital call has been made. A subscription credit facility can also be used as an effective cash management tool to pay costs and expenses of the fund and thereby reduce the frequency of capital calls and the corresponding administrative burden.

The popularity of subscription credit lines and the development of the market can be demonstrated by looking at how fund documentation has changed over recent years. It is now very common for the fund’s LPA to include provisions tailored to address the requirements of subscription facility lenders. We have also seen recent examples of fund documents that specifically prohibit the fund from obtaining subscription facilities, which demonstrates how increasingly aware investors are of the popularity of these facilities.

This article looks at the various legal considerations (from a Cayman Islands perspective) for lenders and borrowers where subscription facilities are being made available to private equity funds structured as ELPs.

Cayman ELP Law

The Cayman Islands has been extremely responsive to the demands of the private equity industry, most recently revising the Exempted Limited Partnership Law in 2014 (the “ELP Law”). The ELP Law makes clear that the right to make capital calls and the right to receive the proceeds of such calls constitutes partnership property which is held by the general partner on trust for the partners in accordance with the terms of the LPA. Therefore, it is the exempted limited partnerships rather than the general partner in its own capacity that grants the security over the unfunded capital commitments and the rights to make capital calls. That said, the general partner will still typically be required to enter into the security assignment agreement in its own right to give certain representations, undertakings, covenants and a power of attorney.

It is worth noting that an exempted limited partnership is not required to maintain a register of security interests over partnership property. However, as a practical matter, it is usual for the general partner to record security interests over partnership property in its own register as discussed below.

Key Points to Note when Acting for a Lender

The structure of the fund is clearly going to impact how the facility documentation is drafted. Whilst most Cayman domiciled private equity funds are structured as exempted limited partnerships, the structure (ie, type of entity and domicile) of the general partner can vary. This will need to be considered at the outset.

Documentation and Due Diligence

The fund documentation will need to be reviewed. Although it is now typical to find
that LPAs include provisions for the fund to enter into subscription facilities, the LPA may contain restrictions around incurring debt, including as to the amount of any indebtedness (which is often expressed as a percentage of the aggregate capital commitments) and the term of that debt.

It will be important to examine the terms surrounding the ability to make capital calls, for example when the commitment period expires and the right to make capital calls ceases. There should clearly be no restrictions on the rights of the general partner to assign its rights to make capital contributions. In fact, it is increasingly typical to see an express right in the LPA allowing for the assignment of such rights by way of security in favour of a finance party under a subscription facility.

Lenders will look at other provisions in the LPA that might undermine the value of the security package such as the general partner’s right to set up parallel funds and alternative investment vehicles. These provisions allow the fund to re-direct capital commitments from its investors to another vehicle outside the fund. Lenders will also generally insist on restrictions around the fund’s ability to amend its fund documentation without lender consent.

The finance parties will be concerned with the credit quality of the fund’s investors and situations that might remove such investors from the borrowing base. So for example the facility might require mandatory repayments if “exclusion events” are triggered absolving one or more limited partners from being required to make a capital contribution. The LPA’s transfer provisions will also naturally have an impact and so lenders may seek a veto right in respect of transfers by limited partners (or a certain group of limited partners).

A lender should also review any side letters that have been entered into with investors to determine whether these contain any provisions that might affect the security package.

In addition, the general partner may have delegated powers to make capital calls to an investment manager and so the terms of any such delegation and the investment management agreement should also be reviewed.

**Notice to Investors**

Priority of the security over unfunded capital contributions is achieved by giving written notice of the creation of the security interest to the investors (this is the so-called rule in *Deare v Hall*).

Sending the notice to investors can be a sensitive issue and something that is often subject to negotiation. Quite often general partners are reluctant to send specific notices to the fund’s investors, the fund will likely be concerned about maintaining good relations with its investors and may not want to concern them with such details.

How the notice requirement is dealt with will often be determined by the relationship and bargaining power of the lender and the fund, as well as practicalities (such as the number and sophistication of the limited partners in the fund).

The notice should include: (i) the description of the security document; (ii) its date; (iii) the parties to the security document; and (iv) that the security comprises security over capital contributions and rights to call capital from investors.

It is very common for the entire charging clause to be included within the notice, but this is not strictly required.

Notices should be delivered in accordance with the section of the LPA governing service of notices on the limited partners.

Ideally notice should be given immediately upon execution of the security documents, or within a few days, to avoid a situation in which a secured party’s priority may be compromised, however the timing of delivery is often subject to negotiation. The notice is only effective upon receipt of the notice by the investor (not upon it being sent by the fund).

Lenders may ask that investors provide acknowledgements of the security notice but these are not a requirement for the purpose of obtaining perfection or priority. What is key is that notice has been given and so lenders will commonly require some sort of evidence that the notices have been sent.

**Updating the Register of Mortgages and Charges**

Where the general partner granting the security over unfunded capital contributions and rights to make capital calls is a Cayman Islands exempted company, it should be required to enter the details of the security into its register of mortgages and charges in accordance with the Companies Law (Revised). Although the property being charged is the property of the ELP rather than the property of the general partner, the general partner holds that property on statutory trust for the partnership and so lenders will wish to see this entry made to provide notice to other creditors of the ELP.

**Key Points to Note when Acting for the Fund**

At the time of the establishment of the fund, general partners should consider their potential need for a subscription credit facility and whether the fund documentation should be drafted in a way that supports such facilities. The intention being that the general partner is not required to go back to investors at a later date to amend the fund documentation for the purpose of entering into a subscription facility and the associated security package.

When considering the undertaking by the general partner to make capital calls, it may be asserted that the general partner cannot agree to make calls when required to do so by the lender on the basis that it would be an unlawful fetter
開曼群島：基金融資與出資請求權利的抵押

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開曼群島的「豁免有限合夥企業」（“ELP”），是一項常用來構建私募股權基金的工具，而在進行如此構建後，該抵押組合將包括該基金受開曼群島法例所規管的「有限合夥經營協議」（“LPA”）中的權利的轉讓。

開曼群島的規模在近年大幅擴展，究其原因，是此等融資具有高度的靈活性與流動性，因而吸引許多私募股權基金採用該等信用額度。另一方面，由於這項產品具有穩健的信用結構，拖欠比率亦向來偏低，因而也吸引貸款機構紛紛開拓這一市場。

認繳融通的一項主要特徵是其抵押組合，當中包含對基金投資者的未兌現資金承諾的抵押，並包括以下各項權利：(i) 就投資者的未兌現資金承諾向投資者提出出資請求的權利，以及強制執行有關付款的權利；及(ii) 收取出資請求的款額的權利。一般而言，該組合亦包括投資者須依規定，將出資金額存入其中的該銀行帳戶的抵押。開曼群島的「豁免有限合夥企業」（“ELP”），是一項常用來構建私募股權基金的工具，而在進行如此構建後，該抵押組合將包括該基金受開曼群島法例所規管的「有限合夥經營協議」（“LPA”）中的權利的轉讓。

基本上，認繳額度融通是一種用作過渡安排的短期性質貸款。這意謂，在有關的基金等待收取投資者的出資金額期間，貸款機構可先行向其提供貸款（作為一項快捷的融資渠道），以協助該基金進行某些投資。基金的「有限合夥經營協議」規定，在基金提出出資請求後，有

by the general partner on its discretion. Here we would draw the distinction between the situation where the general partner has agreed to make calls when necessary to meet liabilities to a lender and a situation where it has agreed to make capital calls if and when directed by the general partner. In the latter situation it would most likely be fettering its discretion and so the borrower should insist on drafting the undertaking as per the former example.

The fund will be concerned to ensure that the undertakings and restrictions contained in the facility agreement do not go further than is necessary to protect the lender. General partners will also need to be mindful that the effect of such undertakings and restrictions will not interfere with the day-to-day operation and administration of the fund. For example, borrowers would typically insist that any consent right granted to a lender in respect of the fund's ability to amend its fund documentation only extends to amendments that could have an adverse effect on the lender and its collateral.
限責任合夥人須在10-15個營業日內付款，但認繳信貸融通的貸款，一般只需數天便可以到位。認繳信貸融通也可以是一項有效的現金管理工具，用作協助基金的費用和開支，從而讓基金得以減少向有限責任合夥人提出出資請求的次數，並減輕常中所涉及的行政負擔。

我們可以透過觀察基金文件在近年所起的變化，以明瞭認繳信用額度在今天的普及程度以及這一市場的發展。現時的十分普遍情況是，基金的「有限合夥經營協議」中載有專門制定的條款，以符合認繳融通貸款機構的規定。此外，我們也觀察到近期有一些基金文件，明明禁止其有關基金取得認繳融通，這顯示，投資者正在關注認繳融通的日益普及程度。

本文探討以「豁免有限合夥企業」方式建構的私募股權基金取得認繳融通，貸款機構與借款人在這方面的各種考慮(特別是就開曼群島而言)。

### 開曼群島的「豁免有限合夥企業法」

開曼群島一向都背負著私募股權基金行業的需要，並在2014年對其《豁免有限合夥企業法》進行了最近期的修訂。該法例明確規定，基金的有限合夥經營協議中，通常載有容許基金取得認繳融通的條文，但等協議可能載有招致債務方面的限制，包括債務的數量(通常是依資金承諾額總額的某一百分比來表示)及債務期限。

此外，我們也需仔細研究與提出出資請求的權利有關的條款。例如：有關的承諾期將於何時屆滿；提出出資請求的權利將於何時終止等。很明顯，一般合夥人在轉讓其提出出資請求的權利方面，應當不受任何限制。事實上，現時日益普遍的情況是，「有限合夥經營協議」中載有明確的條文，規定一般合夥人有權將該等權利以抵押方式轉讓，從而讓融資機構根據某項認繳融通而受益。

貸款機構將會檢視在「有限合夥經營協議」中，是否存在其他可能會對相關抵押組合的價值造成損害的條文。例如：一般合夥人是否有權設立平行基金和替投資工具。該等條文可以讓基金將投資者的資金承諾，轉移到在該基金以外的另一項投資工具上。基金可在未獲貸款機構同意的情況下，對有關的基金文件作出修訂，在一般情況下，貸款機構將會堅持對此等權利作出限制。

要如何處理該等通知要求，這經常須取決於貸款機構與基金之間的關係，及相關之間的議價能力，和當中的切實可行性(例如基金的有限責任合夥人的數目，以及他們在投資方面的熟練程度)。

### 給予投資者通知

一般合夥人要對未兌現出資的抵押享有優先權，便需要給予投資者關於設定該抵押權益的書面通知(此即所謂的Dearie v Hall原則)。

然而，向投資者發出通知，有時候可能會是一件相當敏感的事情，並且經常需要透過協商來解決。一般合夥人很多時候都不大願意向基金投資者發出特定通知，因為基金需要與投資者維持良好關係，因此他們也許不願向投資者詳細提及有關情況。

該項通知應包括：(i)對有關的抵押文件的描述；(ii)通知的日期；(iii)抵押文件所涉各方；及(iv)該項抵押包括對出資，以及基金提出出資請求的權利等方面的抵押。

將整項抵押條款載入通知中，是相當普
遍的做法，但並非必須如此嚴格實行。
通知的交付，應當以「有限合夥經營協議」中所載的，向有限責任合夥人送達通知的條款為依據。
較為可取的做法是，在簽立抵押文件的那一刻又或是在數天之內給予通知，從而避免接受抵押一方的優先權有可能受損的情況出現；然而，適當的交付時間，經常需要透過商議來確定，而該通知的效力，是在投資者收到它的那一刻（而並非基金將它寄出的那一刻）開始發生。
按揭與押記登記冊的資料更新
倘若對未兌現出資及對提出出資請求的權利作出抵押的一般合夥人，是開曼群島的一家豁免公司，那麼該公司必須根據《公司法(修訂)》的規定，在其按揭及押記登記冊中，記錄有關抵押的詳情。盡管該抵押財產屬於「豁免有限合夥企業」的一項財產，而並非一般合夥人的財產，但一般合夥人仍將以法定信託方式，為有關的合夥企業持有該財產。因此，貸款機構將要求查看該等記錄，以便向「豁免有限合夥企業」的其他債權人提供有關通知。
為基金行事時須關注的要點
一般合夥人在成立基金之時，應考慮其是否需要申請任何認繳信貸融通，以及有關的基金文件，是否應該以需要取得該等融通的方式來草擬。其用意是，一般合夥人可以無需在日後為了獲取有關的認繳融通及抵押組合，而須就該等基金文件的修訂，尋求投資者的同意。
在對一般合夥人提出出資請求的承諾作出考慮時，可能有人會認為，貸款機構若要求一般合夥人提出出資請求，一般合夥人不應作出答應，因為此舉會令一般合夥人不合法地限制其自身的酌情決定權。在這裡，我們會就以下的情況作出區分：一種情況是，一般合夥人在需要履行其對貸款機構的法律責任的情況下，同意提出出資請求；而另一種情況是，一般合夥人在貸款機構作出有關指示時，同意提出出資請求。在後一種情況中，一般合夥人相當可能限制了自身對基金的酌情決定權，因此借款人應堅持根據前述例子草擬有關的承諾。
基金所須關注的問題是，它需要確保載於融通協議中的承諾和限制，不會超過為貸款機構提供保障所需要的；而一般合夥人也需留意，該等承諾及限制所產生的影響，不會對基金的日常運作與管理形成任何干預。例如，借款人通常會堅持，貸款機構對基金在修訂其基金文件方面所享有的任何同意權，是只有當該等修訂會對該貸款機構及其抵押品產生不利影響時，貸款機構才可加以行使。
Reality and Valuing Expectations

By Clemence Yeung, Barrister

Fortune Chambers
Before Disneyland, Penny Bay was slated for the construction of Container Terminals 10 and 11. They never got built, and reclamation of the bay did not take place until many years later, when the building of the theme park began. But the statutory notice issued under the Foreshore and Sea-Bed (Reclamations) Ordinance (Cap. 127) in May 1995 (“the Ordinance”) had the immediate effect of extinguishing the marine rights of the claimant landowner, whose land adjoined the sea.

The ensuing litigation between the landowner and the Government concerning compensation has lasted over 10 years. It provided the occasion for an important decision of the Court of Final Appeal ((2010) 13 HKCFAR 287), which held that the measure of compensation for the loss of the marine access was the difference between the values of land with and without access to the sea on the date of valuation.

The Lands Tribunal has since decided on the amount of the compensation payable on the basis of the decision of the Court of Final Appeal. Its decision was the subject of appeal in Penny’s Bay Investment Co. Ltd v Director of Lands (Unreported, CACV 115/2015, 19 May 2016).

The landowner’s claim was brought under s. 12 of the Ordinance. The Court of Final Appeal found in s. 12 an assumption to the effect that as at the date of valuation, reclamation of the marine access had taken place. This assumption is necessary in construing s. 12 to avoid unjustly depriving landowners of compensation. Section 12 provides for claims for compensation to be made within 12 months of the government notice extinguishing, in law, the marine rights of landowners. But reclamation may not have started before the end of the 12-month period, and rights to compensation would lapse while reclamation remains pending – unless s. 12, on its true construction, treats reclamation as having taken place on the date of valuation, and compensation is assessed accordingly.

Valuing Expectations

The Lands Tribunal considered three possible valuations of the land with the sea access. Both valuations A (HK$214,206,000) and B (HK$551,157,000) assumed use of the land as a shipyard as well as a midstream site, but while valuation A postulated that the two new container terminals would never be built, valuation B assumed the opposite and envisioned the successful implementation of the project.

Valuation C (HK$391,309,077) contemplated an industrial development of the land. It assumed that a purchaser of the land would surrender the marine rights voluntarily to the Government to facilitate the implementation of the Container Terminal project. This concession would be expedient, as development of the land was impracticable without the construction of the new road associated with the project. Having arrived at the land value based on industrial use, the Tribunal made a substantial downward adjustment to reflect its finding that there was a 50 percent possibility that the Container Terminal project would not to come to fruition after all, a risk which obviously would factor into the reckoning of potential purchasers.

The Lands Tribunal found that the sum arrived at in valuation B, being the highest of the three valuations, would be the minimum price sought by the owner – and payable by interested market players – in a hypothetical sale of the land.

The Lands Tribunal then proceeded to find the maximum price which market players would be ready to pay for the land, on the basis that the Container Terminal project was certain to be implemented. It found that the highest land value was to be achieved in an industrial development. The valuation method employed is similar to valuation C, but no discount to the value of the development was made on account of the risk of the Government abandoning the project.

The figure thus arrived at was HK$841,828,000, “representing the best use of [the land] with the benefit of the Container Terminal Scheme being materialized” (Unreported, LDMR 23/1999, 15 October 2014, at para. 389).

The Tribunal was now in a position to work out the market value of the expected economic benefit which the Container Terminal project
would bring to the land. The difference between HK$841,828,000 (the highest market bid) and HK$551,157,000 (the minimum price which the seller would demand) would represent this market value, if the project was certain to materialize. But the project might not be implemented. The Tribunal took the view that a 50 percent adjustment on account of the uncertainty surrounding the project would be justified. That multiplier was then applied to the difference between HK$841,828,000 and HK$551,157,000, to give the market valuation of the expectations attributable to the prospect of the construction of the Container Terminals (HK$145,335,500).

The value of the land with sea access is the addition of HK$145,335,500 (0.5 x HK$290,671,000) and the HK$551,157,000, namely HK$696,492,500.

**Compensation**

The finding of the value of the land, on 5 May 1995, without sea access is more straightforward. Use of the land for industrial development, the Tribunal found, would continue to give the highest land value (HK$685,540,000). No discount needed be made on account of uncertainty as, importantly, the Tribunal held that after the sea access had been removed, it would be certain that the project would be proceeded with.

Accordingly, the compensation in the sum of HK$10,952,500 (HK$696,492,500–HK$685,540,000) was payable to the claimant.

**The Decision of the Court of Appeal**

Before the Court of Appeal, there were appeals and cross-appeals, raising a number of valuation issues. A key question concerns how far the Court should restrain the effect of a legal assumption, lest the valuation becomes detached from reality.

In *Penny’s Bay*, the Court of Final Appeal has held that there was to be determined the values of the land with and without access to the sea. It has held also that at the date of valuation reclamation should be assumed to have taken place. Does it follow that when valuing the land without the sea access, it is legitimate to take into account the increased market expectations that the Government would implement the Container Terminal project? An affirmative answer would reduce the compensation to the landowner, as the project included substantial investment in road infrastructure which would greatly increase the value of the land without the sea access.

The Court of Appeal answered the question in the negative. It was a legal assumption, but no more, that at the date of valuation the reclamation of the marine access was assumed to have taken place. “It does not follow that this legal assumption would affect the expectation in the hypothetical sales” (para. 73). Whether the valuation concerned the value of the land with or without the marine access, there was only one prevailing set of expectations. It is not permissible to assume an increased likelihood (and an enhanced market expectation to the same effect) that the Container Terminal project would take place, on account of the assumption that reclamation of the marine access had occurred.

In *Penny’s Bay*, the view that the same market expectations governed the valuations both with and without the sea access would have been based on the reality that, on the date of valuation, the sea access was extant and there had been no reclamation; it was therefore wrong to value the land, as the Lands Tribunal did when determining the “After Value”, on the basis that there had been a reclamation, and so an increased likelihood of the Container Terminal project being proceeded with.

The approach of the Court of Appeal minimises the effect of legal assumptions on the valuation. A valuation which carries its assumptions to their logical conclusions is liable to be both complex and uncertain. The following observations in para. 75 of the judgment of the Court of Appeal might have been directed against that vice:—

“[the land] is to be valued by reference to the same prevailing market conditions (instead of market conditions at 2 different points in time, one “Before” and the other “After” the reclamation). The only difference... is that one valuation must proceed on the basis that the land has marine rights whilst the other valuation shall proceed on the basis that the land does not have any marine rights…. The adoption of an approach other than this would not be an accurate measure of the value of the marine rights as further variables will be introduced into the equation.”

In English case law, there have been very forceful *obiter dicta* against attempts, where the well-known *Pointe Gourde* principle calls for the identification of a no scheme world, to delve into what might or might not have happened in the hypothetical past. Lord Denning's suggestion in this context that the valuer must let his imagination “take the flight to the clouds” (*Myers v Milton Keynes DC* [1974] 1 WLR 696, at 704) is probably no longer sound. Where planning assumptions are concerned, “[n]o assumption has to be made as to what may or may not have happened in the past... The further back in time one goes, the more likely it is that one assumption as to what would have happened must follow on another and the more difficult it is likely to be to reach a conclusion in which anybody can have confidence” (see *Fletcher Estates (Harlescott) Ltd v Secretary of State for the Environment* [2002] 1 WLR 438).

As it was in *Penny’s Bay*, the *Pointe Gourde* principle was not in play. But valuations based on assumptions, whether as to what development potential there would have been in the no
scheme world or how the market would react given a legal (but factually unreal) assumption, are prone to becoming speculative.

Nonetheless, the view in Penny’s Bay that the same market expectations governed the valuation with and without the marine access could well be wrong. That reclamation of the sea access would have signalled to the market an increased likelihood of the Container Terminal project being proceeded with appears reasonable, and does not seem to offend a principle which requires the valuer to align his valuation as closely as possible with the real world. Yet in Penny’s Bay, the valuer was enjoined from taking one step further and valuing the land on that basis.

The Court of Appeal takes the view that some of the observations of Lord Hoffmann in the judgment of the Court of Final Appeal justified its approach. But his Lordship was, it is respectfully submitted, simply pointing out (in paras. 45 and 46) that if both the valuations for the land with and without sea access contemplated new uses which would be served by the anticipated road access (so that whether or not the site was served by the sea access became unimportant), the difference in land values might not be very large. None of his Lordship’s observations to the above effect touch on the valuer’s potential remit to consider the implications which an assumption has on his valuation.

The decision of the Court of Appeal in Penny’s Bay has an important implication for the valuer. It appears that he has to draw a line at making inferences based on legal assumptions. That line will have to be drawn, even if the inference in question appears to him straightforward and to follow readily from the assumption he is required by law to make (and so is not to be castigated as contrived or artificial).

The strictness of this approach may well be tested in later cases.
可能會在等待填海工程進行的期間失去效力——除非第12條的真確解釋是，有關的填海工程須被視作在進行估值當天已開始進行，並據此評定所應當給予的補償。

對土地估值的預期

土地審裁處考慮了三種該土地倘若設有海上通道時的「估價方法」。「估價方法A」（港幣214,206,000元）及「估價方法B」（港幣551,157,000元）假設，該幅土地將會作為船塢及中游作業場地之用，但「估價方法A」假設該幅新貨櫃碼頭將不會興建，而「估價方法B」則剛好相反，它假設有關的工程項目將會順利完成。

「估價方法C」（港幣391,309,077元）預期該幅土地將會作為工業發展用途。此外，它亦假設該幅土地的買方會自願將有關的海岸權利交回政府，以便進行貨櫃碼頭的建造工程。這項讓步可被視為一項權宜之計，因為假如該工程項目未能興建，該幅土地的發展亦將無法進行。土地審裁處以工業用途為基礎，計算出該幅土地的價值後，作出了重大的下調以反映其所作的裁斷，就是，改進貨櫃碼頭的建造前景而產生的市場估值（港幣145,335,500元）。

該幅有海上通道的土地之價值，是港幣551,157,000元（另外再加上港幣145,335,500元，0.5 x 港幣290,671,000元），即等於港幣696,492,500元。

補償

對於並沒設有海上通道之土地，要裁斷其在1995年5月5日所具的價值則較為直接。土地審裁處裁斷，將該土地撥作工業發展用途，會持續讓該土地享有其最高價值（港幣685,540,000元）。我們並不需要因其不確定性，而對其具備的價值進行打折；因為很重要的一點是，土地審裁處裁定的土地價值是需要藉著該工程項目所作的預期構成影響（第73段）。

該項估值，是否關乎該等設有或並沒設有海岸通道之土地的價值，我們只有同一的預期。基於該項與海岸通道有關的填海工程已經展開的假設，我們不能假定，該貨櫃碼頭工程項目將付諸實行的可能性會有所增加（而具有相同含義的市場預期亦會有所提升）。

在Penny's Bay一案中，關於「相同的市場預期，規限了設有或並沒設有海上通道之土地的價值」的這一觀點，是以在進行估值當天，該海上通道仍然存在，並沒有任何填海工程展開為事實基礎；所以，以當時已經有填海工程展開，該貨櫃碼頭項目所作行為的可行性亦因而有所增加作為基礎，來對該土地進行估價（有如土地審裁處在確定該「其後價值」時所作的一般），這做法顯然有助於該案的裁決。
上訴法庭的處理方法，將該項與估值有關的法律上假設所產生的影響減至最低。一項估值方法假如是將其假設推演成為該等假設的邏輯性結論，那麼它必然是既複雜，又不具確定性。上訴法庭的判決第75段所作出的以下評論，也許是針對有關缺陷而作出的:-

[該幅土地]需要在參考了相同的當前市場狀況後(而並非參考兩個不同時點的市場狀況，一個是在填海工程進行「之前」，而另一個則是在填海工程進行「之後」)才會進行估值，而唯一分別是……一項估值的進行，是以該土地附有海岸權利作為基礎；而另一項估值的進行，則是以該土地並沒附有海岸權利作為基礎……。倘若採納其他的處理方式，便會有更多變數納入該項方程式中，以致無法對該海岸權利的價值作出準確衡量。

在英國的判例法中，有非常強烈的，反對試圖(該項有名的Pointe Gourde原則，建議識別一個並無發展計劃的領域(no scheme world))在假設性的過去中，對可能會或不會發生的事情作出假設……倘若我們將時間一直往後推移，便會發現，將會有甚麼情況發生的假設，必然是一項接一項而來，從而難以達至一個令人信服的結論」（參見Fletcher Estates (Harlescott) Ltd v Secretary of State for the Environment [2002] 1 WLR 438一案）。正如Penny’s Bay一案的情況般，Pointe Gourde原則並沒有被援引。然而，該等以假設為依據的估值方法，不論是關於一個並無發展計劃的領域將會有甚麼發展潛力，又或是依據一項法律上(但並非真實)的假設，市場將會作出如何的反應，這一切其實都只屬臆測。

然而，Penny’s Bay一案認為，相同市場預期，會對設有或並沒設有海岸通道之土地的估值作出規限，這一看法可能有錯。該海上通道所進行的填海工程，應當會使市場發放出一個訊息，就是認為該貨櫃碼頭的建設工程很可能會開始的說法，似乎是言之成理，而且也沒有與該要求估值師所作的估值，須盡可能與社會的實際情況接近的原則有所抵觸。然而，在Penny’s Bay一案中，估值師被禁止採取下一步行動，根據該項原則來對該幅土地進行估值。

上訴法庭認為，Lord Hoffmann在終審法院的判決中所作出的一些評論，為該庭的處理方法提供了依據。但個人認為，Lord Hoffmann只是指出(在第45及46段)，假如對設有海上通道及並沒設有海上通道之土地所進行的估值，均包含了會有陸上通道興建，從而獲得提供新交通設施(使該幅土地究竟是否設有海上通道，都已經變得無關重要)等方面的預期，那麼，兩者之間在土地價值方面的差距，也許並不會太大。Lord Hoffmann就上述作用所作出的評論，完全沒有觸及估值師可能會重新考慮某項假設會對其估值所構成的影響。

上訴法庭在Penny’s Bay一案中的裁決，對估值師具有重要的含義。根據該案，他必須為該等根據法律上假設而作出的推論設下底線。即使有關的推論對他而言是清晰明確，並符合他根據法律規定所須作出的假設(因而不會被視作假裝或虛飾)，但是這條底線依然必須設定。這一處理方法是否會被嚴格依從，未來的案件將會对其加以驗證。
Arbitration in Hong Kong: Chan J Rules on Jurisdiction and Set Aside

By Damien McDonald, Partner
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In two recent judgments of the Hong Kong courts, Judge Mimmie Chan has (i) stayed court proceedings in favour of arbitration in a matter involving an “escalation clause”; and (ii) rejected an application to set aside an arbitral award on the basis of alleged errors of law.

**William Lim & anor v Hung Ka Hai Clement**

In this decision ([2016] HKCFI 1439; HCA 1282/2016), the Hong Kong Court of First Instance stayed litigation proceedings in favour of a reference to arbitration, in the process rejecting the plaintiff’s argument that they were entitled to maintain the court proceedings by virtue of the operation of an “escalation clause” in the relevant dispute resolution provisions.

(An escalation clause is a dispute resolution provision which provides for one or more methods for resolving disputes before a party initiates an arbitration. These clauses are also commonly referred to as “multi-tiered dispute resolution clauses”.)

Section 20(1) of the Arbitration Ordinance (Cap. 609) (“Ordinance”) gives effect to Art. 8 of the UNCITRAL Model Law. It sets out the basic principle that a court before which an action is brought in a matter subject to an arbitration agreement shall, if a party so requests, stay the proceedings and refer the parties to arbitration.

However, under s. 20(1) a referral will only be made if certain conditions are met, including that the court does not find that “the agreement is null and void, inoperative or incapable of being performed”. As other recent decisions of the Hong Kong courts have confirmed, an applicant seeking a stay of proceedings to arbitration need only demonstrate that there is a *prima facie* case that the parties are bound by an arbitration clause. The test is not an onerous one. Unless it is clear that no clause exists, the court should not attempt to resolve the issue and the matter should be stayed in favour of arbitration. In *William Lim*, the Plaintiffs, partners of a multinational professional services firm were parties to the the firm’s Shareholders’ Agreement (“Agreement”). The Agreement in turn contained escalation provisions allowing for any dispute arising thereunder to be referred first to the Chairman and then to the Governing Board, further providing that “if such dispute shall not be resolved within twenty one (21) clear Business Days of being referred to the Governing Board, any party to the dispute may refer the matter for final resolution to arbitration” (the “Escalation Procedure”).

In this case, two partners of the firm challenged certain financial and other penalties imposed by the firm’s Governing Board for alleged breaches of the confidentiality obligations contained in the Agreement. Despite the fact that the Governing Board review comprised only the “second tier” of the Escalation Procedure before arbitration, the Plaintiffs commenced court proceedings challenging the Board’s decisions.

The Defendants applied to stay the proceedings to arbitration, pursuant to the arbitration clause contained in the Agreement.

In her judgment, Mimmie Chan J granted the stay. She rejected the Plaintiff’s contention that they were entitled to maintain the proceedings, on the basis that the dispute resolution mechanism in the arbitration clause had been exhausted and was therefore not capable of being performed. The sanctions granted by the Governing Board were “clearly not to the satisfaction of the Plaintiffs, who are manifestly disputing the validity of the Sanctions and the decisions made by the Board – as evidenced by the claims made in these proceedings and as set out in the SOC” (see para. 19).

Accordingly, “there is a dispute in existence between the parties, and such dispute falls within the ambit of the arbitration clause in the Agreement, as one which relates to a matter under the Agreement.” (Id.)

Further, on a wider point, Chan J noted that “even in the course of one reference to arbitration, more than one dispute may arise, and unless all these disputes are resolved and decided by the tribunal, the arbitration cannot be said to have been terminated”. Further, “one or more disputes may arise under the arbitration agreement between the same parties” and “[t]he fact that one dispute has been referred to arbitration cannot mean that the arbitration agreement has been performed, and cannot be further implemented.” (see para. 21).

Hence, the court granted the stay sought by the Defendants, with costs to be paid by the Plaintiffs on an indemnity basis.

**American International Group and AIG Capital Corporation v X Company**

In this decision (HCCT 60/2015), Chan J refused to set aside an arbitral award which the Plaintiff alleged had been wrongly decided on the basis of the Board’s decisions.

Section 81 of the Ordinance (incorporating Art. 34 of the Model Law) allows a court to set aside an arbitration award if the applicant party provides proof that one of a number of limited grounds exists. These include grounds that:

1. “the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or contains decisions on matters beyond the scope of the submission to arbitration” (Art. 34(2)(a)(iii)); or
2. “the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties” (Art. 34(2) (a)(iv)).

Further, under s. 64, which applies Art. 28 of the Model Law, an arbitral tribunal is required to decide the dispute in accordance with such rules of law as are chosen by the parties as applicable to the substance of the dispute. Article 28(3) provides that the tribunal shall dispense with this principle and decide the matter on the basis of fairness and equity only (as opposed to on a strict application of the law) where the parties have authorised it to do so.

In the present case, the arbitral tribunal, in its award, found that the Plaintiff was not entitled to recover a deposit which it had paid into an escrow account pursuant to a failed M&A transaction. The plaintiffs subsequently commenced set-aside proceedings in the Hong Kong court, on the basis of alleged breaches of Art. 34 of the Model Law.

Both the Share Purchase Agreement (“SPA”) and the Escrow Agreement were governed by the laws of the State of New York. However, the Plaintiff complained that the tribunal had disregarded basic principles of New York law in order to arrive at what it considered the fair or equitable result. This, in turn, was alleged to have the effect that the tribunal decided the dispute on the basis of fairness and equity rather than, as it was required to do, on the strict application of New York law.

In her decision, Chan J confirmed that the setting aside remedy under Art. 34 of the Model Law is not an appeal on the law. On the contrary, “the Court is concerned only with the structural integrity of the arbitration process” (see para. 15). Accordingly, a set-aside application would not be granted only upon a finding that an arbitrator had incorrectly applied the applicable law – instead it must be shown to have “consciously disregarded” that law.

In the present case, Chan J found that there was no evidence to support an inference that the Tribunal had “consciously ignored New York law and deliberately failed to apply the principles set out in the cases decided by the US courts which are binding on them, with the intent to arrive at their conclusions which contradict the legal authorities” (see para. 22).

Indeed, upon a review of the Award, Chan J said that “it can be seen that the Tribunal had considered and referred to a host of authorities, including decisions of the Court of Appeals of New York (New York’s highest court), and of the Supreme Court. It cannot be said that it is plain from the Award itself, that the Tribunal or the Majority had totally disregarded or ignored the governing law.” (see para. 13).

The court rejected the Plaintiffs’ application to set aside the Award and awarded costs on an indemnity basis.

Comment
The decision in William Lim, confirms the low threshold that an applicant must meet to secure a stay of court proceedings in favour of arbitration – namely that there is a prima facie case that the parties are bound by an arbitration clause.

As for the decision in American International Group, this reconfirms that in Hong Kong, an error of law made by the arbitral tribunal, no matter how serious, will not constitute grounds for setting aside an award.

It is notable also that, in both instances, the court awarded costs on an indemnity basis, reflecting a typical practice in dealing with unsuccessful challenges to the arbitral process. ■

We would also like to thank Eliza Jiang for her contributions in drafting this article.
仲裁在香港：陳美蘭法官對司法管轄權及仲裁裁決作廢之裁定

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近期的兩宗香港法院判決中，主審法官—原訟法庭法官陳美蘭(i)將與一宗涉及「階梯條款」的訟案有關的法院程序擱置，以利訴諸仲裁；及(ii)駁回一項指仲裁庭在法律上犯錯，要求將有關的仲裁裁決作廢的申請。

在William Lim and another v Hung Ka Hai Clement一案中，香港原訟法庭裁定應當把有關的訴訟程序擱置，將案件提交仲裁。此外，對於原告人聲稱，他們應可根據相關爭議解決條文中的「階梯條款」，繼續進行有關的法院程序，原訟法庭也拒絕接納。

(階梯條款是指一項爭議解決條文，當中訂明當事方在提起仲裁程序前，可以採取的一項或多項解決爭議方法。這條款也稱作「多層爭議解決條款」。)

《仲裁條例》(第609章)第20(1)條的施行，是落實《貿法委示範法》第8條的規定。該條文載有一項基本原則，也就是，倘若一方對方向法院提起訴訟，而該訴訟所涉及的事宜，是受制於一項仲裁協議，那麼假如另一方要求將有關的法律程序擱置，以便雙方就有關爭議進行仲裁，法院應當答應其要求。

然而，根據《仲裁條例》第20(1)條的規定，只有在符合某些條件的情況下，法院才會作出如此的轉介，而其中包括：法院並不認為「該仲裁協議乃屬無效、不能實行或不能履行」。正如香港法院在其他近期裁決中所確認的，申請人如果要求將仲裁程序擱置，那麼他只需要證明存在某些「表面」證據，顯示當事方正受著某項仲裁條款的約束。該項驗證並不屬於一項嚴苛的驗證，因此，除非法院明確知悉當事方之間並不存在任何此等仲裁條款，否則法院不應試圖對有關爭議作出裁決，而應當將有關的法律程序擱置，讓當事方訴諸仲裁。在William Lim一案中，各原告人(一家跨國專業服務公司的合夥人)是其公司的《股東協議》的立約一方。該協議載有階梯條款，訂明任何因該協議而產生的爭議，必須先行提交該公司的主席，然後再提交其董事會處理。此外，該協議也進一步規定，「有關爭議在提交董事會後，倘若未能在21個完整營業日內獲得解決，則該爭議的任何一方可以將有關事宜提交仲裁，以便獲得最後的裁決結果」(以下簡稱「階梯程序」)。

在該案中，該公司的兩名合夥人就他們被指違反《股東協議》中的保密責任，被公司的董事會作出某些經及其他方面的懲處，而他們就該等懲處的合法性
提出挑戰。儘管該公司的董事會所進行的審查，只屬於提起仲裁程序之前所須依循的階梯程序的「第二個層次」，但兩名原告訴展開法院程序來挑戰董事會所作的決定。

被告人根據《股東協議》的仲裁條款，申請擱置有關法律程序，而以仲裁程序取而代之。

陳美蘭法官在其判決中，批准擱置有關的法律程序。此外，兩名原訴人聲稱，由於仲裁條款所載的爭議解決補救方法已經用盡，但仍無法解決有關爭議，因此他們應有權提起相關法律程序，但其這一爭辯亦被陳美蘭法官否決。董事會所施加的懲處，「顯然引起原訴人的不滿，而他們亦對董事會所施加的懲處和所作的決定的有效性，提出強烈的質疑，正如在本法律程序中所提出的申索，以及在相關申索陳述書中所顯示的情況一般。」

故此，「雙方之間的確存在著爭議，而由於該爭議是與《股東協議》下的某些事宜有關，所以它是在《股東協議》的仲裁條款所規管的範圍內。」

此外，陳美蘭法官亦從一個較廣泛的角度指出，「即使當事方只是提交了一項事宜進行仲裁，但當中亦有可能產生多於一項爭議，而除非所有等等爭議都獲得解決，並經由仲裁庭作出裁定，否則我們不能說該等仲裁程序已告終結。」

《仲裁條例》第81條(將《貿法委示範法》第34條納入)規定，如果提出申請的一方，能夠證明存在各項限制理由的其中一項，則法庭有權將有關的仲裁裁決作廢。該等限制理由包括：

有關的仲裁裁決所處理的爭議，不是提交仲裁意圖裁定的事項，或不在提交仲裁的範圍之列，或者裁決書中內含對提交仲裁的範圍以外事項的決定(第34(2)(a)(ii)條)。

仲裁庭的組成或仲裁程序與當事方的約定不一致(第34(2)(a)(iv)條)。

此外，《仲裁條例》第64條(當中適用《貿法委示範法》第28條)規定，仲裁庭應當依照當事方所選擇的，適用於爭議實體的法律規則來對爭議作出決定。然而，《貿法委示範法》第28(3)條亦規定，如果獲得當事方的授權，仲裁庭可以摒棄上述原則，而只按公平公正的基礎來對有關事宜作出裁定(從而沒有嚴格適用相關法律)。

仲裁庭在該案中裁定，原告人無權取回它根據一項失敗的併購交易，而存進一個代管帳戶中的款項。原告人其後以有關的仲裁裁決違反《貿法委示範法》第34條為由，在香港法院展開要求將有關裁決作廢的法律程序。

該案的買賣協議與代管協議均受美國紐約州的法律所管轄。然而，原告人聲稱，仲裁庭刻意忽視紐約州的法律中的基本原則，從而達致它認為公平公正的結果。這導致有如原告人所指稱的，仲裁庭是按公平公正的基礎來對有關事宜作出裁定(從而沒有嚴格適用相關法律)。

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陳美蘭法官在裁決中確認，根據《貿法委示範法》第34條而作出的仲裁裁決作廢補救，並非就所適用的法律而提出的上訴。相反，「法庭只是關注有關的仲裁裁決程序之結構完整性。」因此，如果提出申請的理由，純粹是因為仲裁員錯誤地運用所適用的法律的話，那麼法庭將不會批准將有關的仲裁裁決作廢。因此，申請人若要其申請獲得法庭批准，便必須證明仲裁庭是「有意識地忽視」相關法律規定。

陳美蘭法官亦裁定，該案並沒有任何證據支持如此的推論稱，仲裁庭是「有意識地忽視紐約州的法律，並蓄意放棄運用該等由美國法院在若干案例中訂立的，對其具有約束力的原則，從而違法與該等法律典據相左的結論」。

在審視了該項仲裁裁決後，陳美蘭法官指出：「可以肯定的是，仲裁庭確曾察看和參考了一系列的典據，當中包括紐約州上訴法院(紐約州的最高層級法院)及美國最高法院的判決。因此我們難以指稱，該項仲裁裁決明確顯示仲裁庭或其大多數成員完全不理或忽視該等對其具有管轄權的法律。」

最後法庭裁定，原告人要求將有關的仲裁裁決作廢的申請不被接納，他們便需要按彌償基準承擔該案訟費。

**評論**

William Lim一案的裁決，確認了申請人只需要符合一個頗低門檻，便可以要求法院擱置相關法律程序，而以仲裁程序取而代之。這一個低門檻就是：有表面證據顯示，當事方正受著某項仲裁條款的約束。

至於American International Group一案，它的裁決重新確認了即使仲裁庭在法律的適用上犯錯(不論是多麼嚴重)，這將不會導致香港法院下令將有關的仲裁裁決作廢。

此外，我們需要注意的是，法庭在上述兩個案例中，都是判給按彌償基準計算的訟費。這顯示當事方對仲裁程序提出挑戰一旦敗訴，法庭將會對其實施的一般舉措。
ANTI-MONEY LAUNDERING

“Dealing Offence”: Overseas Conduct

Organized and Serious Crimes Ordinance (Cap. 455), s. 25(4) –
“In this section and section 25A, references to an indictable offence include a reference to conduct which would constitute an indictable offence if it had occurred in Hong Kong.”

In HKSAR v Yang Sigai [2016] HKEC 2068, FACV No. 8 of 2015, the appellant argued that in order to prove a money laundering offence (contrary to s. 25(1) of OSCO) in cases where the relevant property originated overseas the prosecution had to identify the underlying conduct and prove that the defendant was aware of the criminal nature of that conduct. This argument was stated to be based on s. 25(4) of OSCO but (not surprisingly) was emphatically rejected by the Court of Final Appeal.

The appellant had been convicted in the lower courts of dealing with property having a reasonable belief that it represented the proceeds of an indictable offence. The appellant appears to have operated an “underground banking operation”, whereby monies were received from places in Asia and Africa, deposited into bank accounts in Hong Kong (controlled through him) and remitted to places such as Mainland China. The purpose of these arrangements may have been to circumvent certain exchange control restrictions.

The appellant’s formal grounds of appeal were the same as those that were rejected in HKSAR v Yeung Ka Sing Carson, FACC Nos. 5 and 6 of 2015; including, the CFA’s ruling that in order to prove a money laundering offence based on a defendant’s “belief” (the alternative mens rea to “knowledge”) it was not necessary for the prosecution to prove a predicate offence for the purposes of s. 25(1) of OSCO.

In light of the CFA’s judgment in HKSAR v Yeung Ka Sing Carson, the appellant’s challenge appears to have changed tack and the focus of the appeal became s. 25(4) of OSCO. In short, the appellant was seeking to argue that with respect to “overseas conduct” it was necessary for the prosecution to prove (as part of the mens rea) that he was aware of the nature of the activity that produced the property with which he dealt.

The judgment in HKSAR v Yang Sigai confirms that where the property in question is derived from an identifiable act committed overseas it is caught by s. 25(1) of OSCO if such conduct constitutes an indictable offence in Hong Kong, regardless of the legal position in the jurisdiction where the conduct took place. As the Chief Justice states, in giving the unanimous judgment of the CFA (at para. 15):

“As the provision itself clearly implies, the focus is on the position under Hong Kong law, not on the legality of such conduct under any foreign law.”

The judgment in HKSAR v Yang Sigai is underpinned by strong policy reasons. The purpose of s. 25 of OSCO is to deter individuals from using Hong Kong to launder the proceeds of crime, irrespective of where the conduct occurs. The question is not whether the conduct is an offence in the foreign country where it took place, but rather whether the overseas conduct amounts to an indictable offence if it was committed in Hong Kong.

- Jason Carmichael, Smyth & Co in association with RPC
**CIVIL JUSTICE REFORM**

**Dismissing of “Stale” Claims Five Years On**

At the time of writing, *Bank of China (Hong Kong) Ltd v Ho Chi Lui & Ors* [2016] HKEC 1877, HCA No. 10239/1999 (note the year), is the latest reported case that applies the test for strike out (dismissal) for abuse of process; in particular, using more familiar terminology, strike out for “want of prosecution” or “delay”. Some readers may recall that the applicable principles are set out in the Chief Justice’s leading judgment in *Re Wing Fai Construction Co. Ltd* [2011] 14 HKCFAR 935; a landmark decision of the Court of Final Appeal, approaching its fifth anniversary and still a leading judgment on the courts’ and parties’ case management responsibilities since the introduction of CJR in Hong Kong in April 2009.

In *Bank of China (Hong Kong) Ltd v Ho Chi Lui*, the judge allowed the defendants’ application to dismiss the action. In short, over the course of some 14 years, the bank had failed to apply to enter final judgment (for the balance of its claim) and had taken no significant steps in the proceedings. During these years of procedural inactivity (so-called “warehousing”) the parties had conducted various negotiations with respect to payment of the first and second defendants’ liability under a guarantee given to the bank. At the time of the defendants’ strike out application (in April 2015) the last procedural step in the case had been at the bank’s option (in 2000–2001); therefore, there had been little for the defendants to case manage. In the intervening years, the defendants had not been represented by lawyers. The outcome in the case reflects a robust application of the principles set out in *Wing Fai* and confirms that dismissal for abuse of process is ultimately an exercise of judicial discretion.

Five years on from *Wing Fai* some reflections can be made.

- **Jason Carmichael**, Smyth & Co with RPC联营

- **Warren Ganesh**, Smyth & Co in association with RPC

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**Editorial Note:** A Notice of Appeal was filed in September 2016. For more on dismissal of “stale” claims, use the search function of the Hong Kong Lawyer online.
民事司法改革
撤銷「過時」申索的反思

筆者執筆撰文時，Bank of China (Hong Kong) Ltd v Ho Chi Lui & Ors [2016] HKEC 1877(HCA10239/1999)是最近一宗因為有人濫用法律程序而應用剔除(撤銷)訴訟驗證標準的已彙報案件(留意年份)；用我們更熟悉的術語去說，尤指因為「訴訟程序中無人作出行動」或「延誤」而撤除訴訟的情況。可能有讀者會記得，終審法院首席法官在Re Wing Fai Construction Co. Ltd (2011) 14 HKCFAR 935作出具啓導作用的判決，列明適用的原則；這是終審法院具有里程碑意義的決定，踏入第五年，自香港2009年4月推行民事司法改革以來，仍然是對法庭及訴訟各方的案件管理責任具有啓導作用的判決。

在Bank of China (Hong Kong) Ltd v Ho Chi Lui案，法官批准眾被告人撤銷訴訟的申請。簡單而言，在過往前後14年裡，銀行不曾申請登錄最終判決(因為其申索款項的餘額)，也沒有在法律程序中踏出極其重要的一步。第一及第二被告人因為向銀行作出擔保而承擔債務，訴訟各方多年來沒有就此提起過任何程序(warehousing)，但期間有多次就二人償付相關債務的安排進行商議。被告人申請剔除訴訟的時候(2015年4月)，案件的最後一個程序步驟是隨銀行所選(2000-2001年)；因此一來，眾被告人沒有什麽有關案件管理的事可做。這些年間，被告人一直沒有代表律師。


原告人多年沒有在法律程序上作出任何行動，選擇「喚醒睡著了的狗」的被告人通常最多預計結果是「庭外和解，訟費自負」，討回訟費的機會不大，甚或完全無可能(即使假定能夠找到原告人)。

因為有人濫用法律程序而申請撤銷訴訟的被告人，應備有證明原告人有缺失及沒有作出任何行動的「文件記錄」。被告人亦應向法庭提出任何支持撤銷訴訟的特別之處；例如，Bank of China (Hong Kong) Ltd v Ho Chi Lui案是一宗純粹拖延時間的案件，我們不能指望眾被告人一定會提醒銀行登錄最終判決。

如果申請成功，法庭應連隨作出訟費令，判申請人兼得「訴訟的」費用。但是，如果申請失敗，申請人應考慮要求法庭「不就訟費作出命令」，或者原告人喪失部分非正審的費用(視乎拖延的時間長短及原告人在訴訟中的整體表現)。

莊偉倫，Smyth & Co與RPC聯營

CIVIL PROCEDURE
Post-judgment Interest

If, subject to the discretion of the court, prime rate plus 1 percent is the starting point for awarding pre-judgment interest on debts and damages (Industry Insights, August 2016), then the starting point for awarding interest on unsatisfied judgment debts is the rate as determined by the Chief Justice from time to time; currently, eight percent per annum (“judgment rate”).

Both these principles have been confirmed in recent judgments of the Court of Appeal in Hong Kong. In high-value commercial litigation it is not uncommon to see disputes concerning awards of pre-judgment and post-judgment interest.

In Li Xiao Yun v China Gas Holdings Ltd, [2016] HKEC 1806, CACV No. 215 of 2013, the plaintiffs obtained judgment for a substantial sum against the defendant. Having paid the judgment debt into court pursuant to a court order (as a condition for a stay of execution of the judgment), the defendant applied for an order that interest on the judgment debt from the date of the payment into court be awarded for a lesser sum; for example, in the form of the accrued interest in the judicial account while the money was paid into court or prime rate until payment out of the judgment sum. Given the millions of Hong Kong dollars in dispute (both principal and interest) the defendant’s attempt to limit its liability for interest was understandable and a nice try. However, it was rejected by the Court of Appeal.

In short, the Court of Appeal saw no reason to depart from the starting point that a judgment debt attracts interest at eight percent judgment rate. In particular, the Court of Appeal did not accept the argument that the defendant’s attempt to limit its liability for interest was understandable and a nice try. However, it was rejected by the Court of Appeal.

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once the judgment creditor actually received the money.

Pre-judgment interest (pursuant to s. 48 of the Ordinance) is primarily awarded to compensate the judgment creditor for being out of pocket and notionally being taken to have borrowed at commercial rates to fund any shortfall pending judgment. However, as the judgment in Li Xiao Yun confirms, judgment rate interest is much more than that; it is intended to encourage the judgment debtor to pay a money judgment quickly.

- Samuel Hung, Associate, Smyth & Co in association with RPC


Editorial Note: For the CFA’s refusal to grant permission to appeal the Court of Appeal’s substantive judgment, see [2016] HKEC 1818, FAMV No. 15 of 2016.

民事訴訟程序

判決後利息

除法庭行使酌情決定權另作規定外，如果就債項和損害賠償判給的判決前利息所適用的起息點是最優惠利率加一厘(2016年8月業界透視)，就未清償的判定債項判給利息所適用的起息點會是終審法院首席法官不時決定的利率;目前是判決日期起計每年8% (「判定利率」)*。

上述準則在近期香港上訴法庭的判決中得到肯定。在涉及高昂價值的商業訴訟中，訴訟各方就判決前和判決後利息的判給發生爭議並非鮮見之事。

在Li Xiao Yun v China Gas Holdings Ltd [2016] HKEC 1806(上訴法庭民事雜項案件2016年第15號), 被告人按照法庭命令向法庭繳存判定債項（作為擱置執行判決的條件）之後，向法庭申請命令，要求法庭就判定債項判給較低利息，自被告人向法庭繳存款項的日期開始計算;例如，已向法庭繳存款項的，按法院賬戶的累計利息判給利息，或者發放裁決款項之前按最優惠利率計息。鑒於爭議的(本金和利息)是數百萬港元，被告人嘗試局限其利息責任是人之常情，試試也是好事。但是，上訴法庭拒絕批准申請。

簡單而言，判定債項現時按判定利率8% 計息，上訴法庭認為無理由偏離這個起息點。特別一提的是，上訴法庭不接納被告人的論點，不認為被告人向法庭繳付款項表示判定債項已獲清償。就《高等法院條例》(第49條)而言，判決在判定債權人真正收到款項之後立即獲履行。

判決前利息(按照《高等法院條例》第48條)的主要目的是賠償判決債權人所花的錢，以及理論上得按商業利率借款以資助待定判決的不足之數。然而，正如Li Xiao Yun案的判決所確定，按判定利率計算的利息高出很多;這條條例旨在鼓勵判定債務人趕快支付判決款項。

- 孔允祈助理律師， Smyth & Co與 RPC聯營

* 見http://www.judiciary.gov.hk/en/crt_services/interest_rate.htm。

編者按：有關終審法院拒絕批給就上訴法庭的實質判決提出上訴的許可，見[2016]HKEC 1818(終院民事雜項案件2016年第15號)。

CRIMINAL

Friends and Relatives in Prison

In HKSAR v Wan Thomas & Ors (HCMA 700/2013), the first defendant had set up a company to “assist the family and friends of persons in custody so that mutual communication can be enhanced and (they) can know how the persons in custody are getting along in” Lai Chi Kok Reception Centre (“LCRKC”). As part of this service the company offered to make visits on behalf of prisoners’ friends and hand over daily necessities and food to persons in custody as requested. A charge was levied for the service. Staff of the Correctional Services Department (“CSD”) became aware of this service and later published a news report about the service. The defendants (who worked for the company) were charged with conspiracy to defraud, convicted in the Magistracy and sentenced to varying hours of Community Service. The defendants appealed their convictions and at the Court of First Instance, the High Court Judge ordered the case to be transferred to the Court of Appeal on the ground that it involved major issues of law.

At the appeal, the Court of Appeal examined r. 48 and r. 203 of the Prison Rules (Cap. 234A), specifically the meaning of “friends” in the context of r. 203, and the constitutionality of Rule 203. Rule 48 reads:

“No persons, other than the relatives and friends of a prisoner, shall be allowed to visit him except by special authority. Such visits by relatives and friends shall, subject to such restrictions as may be imposed for the maintenance of discipline and order in the prison and for the prevention of crime, be allowed in the manner following …”

“Relatives” and “friends” is not defined in the Prisons Ordinance or in the Prison Rules.

Rule 203 reads:

“(1) Every prisoner awaiting trial shall, subject to the order of the Superintendent [of LCRKC], be permitted to be visited by one visitor, or if the circumstances permit, by two at the same time, for a quarter of an hour on any week day, during such hour as may from time to time be appointed.

(2) The Superintendent may, in special cases, permit the visitor to be prolonged, and allow more than 2 visitors to visit such prisoner at one time”

At trial, it had been argued that as all the prisoners visited were remand prisoners (awaiting trial) they fell within the definition of r. 203 which imposed no restriction on visitors to “relatives” or “friends” as imposed by r. 48. The Court
of Appeal upheld the Magistrate’s finding that on its proper construction, the restrictions on categories of visitors in r. 48 applied to r. 203, holding that if the legislature intended “visitors” in the context of r. 203 to bear a different meaning to that in r. 48, it would have expressly said so. The Court of Appeal also upheld the Magistrate’s finding that “friends” for the purposes of the Prison Rules meant “people who know and are acquainted with one another” that is “personal friends”. The Court of Appeal further rejected arguments that r. 203 was incompatible with the Hong Kong Bill of Rights Ordinance.

There had been an agreement (or conspiracy) by those in the company to misrepresent to the CSD that they were friends of the prisoners visited. By that misrepresentation the CSD officers had been induced into granting the company employees with access to LCKRC to visit the prisoners. The misrepresentation was dishonest, both objectively and subjectively. Accordingly, the charge was made out on the evidence and the appeal dismissed.

Comment

The meaning of “friends” for the purposes of the Prison Rules has not been previously judicially examined. The service offered by the first defendant’s company was promoted publicly. The defendants had all carried out their visits openly, wearing green company uniforms. It appears that they may not have known that they were doing anything wrong. One of the defendants worked for the company voluntarily. The sentences imposed (Community Service Orders) may be considered lenient for convictions on conspiracy to defraud and reflect the particular circumstances of this case. Practitioners and their employees who frequently visit CSD facilities may take note of this decision and take care not to provide anything to prisoners which can only be provided by friends and relatives.

- Morley Chow Seto
詐罪罪名成立的人來說算是寬宏，但也反映這宗案件的情況特別。律師及他們經常出入懲教處中心的僱員，也許注意到這宗案件的判決，因此會當心不向囚犯提供任何只有朋友和親戚才能提供的物品。

- 麥樂賢周綽瑩司徒悅律師行

**GC AGENDA**

**Four Agencies Issue Final Version of P2P Agency Measures**

On 17 August 2016, the China Banking Regulatory Commission (“CBRC”), Ministry of Industry and Information Technology (“MiIT”), Ministry of Public Security (“MPS”) and the Cyberspace Administration of China (“CAC”) jointly issued the Interim Measures for Administration of the Business Activities of Network-based Lending Information Intermediary Agencies 2016, with immediate effect.

The interim measures, which were first circulated in draft form in December 2015, regulate direct lending activities between natural persons, legal persons and other organisations through an internet platform (that is, a “network loan information agency”).

Under the interim measures, network loan information agencies must:
- Make a record-filing with the competent local office of CBRC and obtain relevant licences from the central or competent local office of MiIT before commencement of business.
- Conduct due diligence on lenders and impose related restrictions on loan amounts and loan targets.
- Appoint qualified custodians and segregate the funds of lenders and borrowers.
- Specify “P2P lending information intermediary” in their business scope.

Network loan information agencies are prohibited from:
- Lending, or offering financial products or brokerage or management services.
- Tying or bundling assets, or otherwise acting as a proxy (except as permitted under other rules).
- Engaging in crowdfunding and related activities.

Individuals may not borrow more than RMB200,000 from a single network loan information agency or RMB1,000,000 from all network loan information agencies. Legal persons and other organisations may not borrow more than five times these amounts. Network loan information agencies formed before the issuance of the interim measures must comply with the provisions of the interim measures within 12 months.

**Market Reaction**

**Harvey Lau, Partner, Baker & McKenzie, Shanghai**

“Certain clarifications and additions have been included in the final official version. For example, now every P2P platform is required to specify “P2P lending information intermediary” in its business scope, which is more reasonable than the approach taken in the draft version, where a P2P platform was required to include this wording in its company name. In the final version, P2P platforms are prohibited from engaging in quasi-securitisation activities, and ceilings on the amount that a single lender may lend through a P2P platform and the aggregate amount that a single lender may lend through all P2P platforms are imposed. Further, local regulators will play an important role in the registration and supervision of P2P platforms. This approach is consistent with the general position that, while enhancing risk control, the regulators would allow certain flexibility to facilitate financial innovation.”

**Action Items**

General Counsel for companies operating as a P2P lender, borrower, network loan information agency or custodian bank should inquire into the qualifications requirements and record-filing procedures for network loan information agencies, as well as the list of prohibited activities. This is to ensure compliance with the rules applicable to a P2P finance project, including the rules governing custodian banks, fund segregation and restrictions on borrowing. General Counsel for companies already operating in this space will want to take steps to implement strict compliance no later than August 2017.

- Practical Law China
業界透視

在同一網絡借貸信息中介機構平台的借款餘額上限不可超過人民幣20萬元，在不同網絡借貸信息中介機構平台的借款總餘額不可超過人民幣100萬元。法人或其他組織的借款餘額不可超過前述兩筆金額五倍。在暫行辦法公布前設立的網絡借貸信息中介機構，必須在12個月內符合暫行辦法的規定。

市場回應
劉哈維合夥人，貝克·麥堅時律師事務所上海代表處
「最終官方版本釐清了某些規定，也增添了一些規定。例如，現時所有個人對個人平台(P2P平台)必須在其營業範圍中實質明確『網絡借貸信息中介』，草稿則規定P2P平台的公司名稱必須包含『網絡借貸信息中介』字樣，最終版本的做法更為合理。最終版本規定P2P平台不得從事近乎資產證券化的業務，但給同一貸款人可通過單一P2P平台借出資金的上限，以及同一貸款人可通過所有P2P平台借出資金的總金額設置上限。此外，地方監管機構將會在登記和監管P2P平台的工作上擔當重要角色。這種方法符合整體情況，監管機構加強控制風險的同時，也容許一定程度的靈活性，以促進金融業改革創新。」

跟進事項
法律顧問，凡為P2P貸款人、P2P借款人、網絡借貸信息中介機構或保管銀行工作的，除了多項被禁止的活動之外，也應查探網絡借貸信息中介機構的資格規定和存量備案程序，以確保公司符合適用於P2P融資項目的規定，包括監管保管銀行、資金分隔及借款限制的規定。如果公司早已在這個領域經營業務，法律顧問一定想採取步驟，以求最遲在2017年8月實施嚴格的遵規措施。

Market Reaction

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

“The draft Network Security Law is an important component of a broader programme among various arms of the Chinese government to increase network security, parts of which threaten market access for international IT companies and which potentially present challenges to international companies in banking and other sectors, who may find their domestic IT infrastructure regulated as “critical information infrastructure”. We had hoped the second draft would clarify the scope of the term “critical information infrastructure” so companies could have a clearer sense of the scope of the related data localisation requirement. No such luck. In fact, the NPC Standing Committee has kicked the can further down the road by delegating to the State Council not only the job of defining the term but also of stipulating the specific security measures other than the data localisation requirement that will apply to key information infrastructure. So uncertainty remains, both for operators of IT infrastructure and for suppliers of IT products and services.”

Action Items
General Counsel for companies that may be regarded as operating critical information infrastructures.

Practical Law China
information infrastructures should work with business colleagues to formulate contingency plans in case the companies are required to relocate servers to China. General Counsel for network operators should ensure compliance with the obligations on retaining network logs and co-operating with government authorities. General Counsel for all companies with China operations should take steps to ensure that personal information is kept strictly confidential.

- Practical Law China

法律顧問備忘錄

全國人大常委會發布《網絡安全法》草案二次審議稿

2016年7月5日，全國人大常委會發布《中華人民共和國網絡安全法(草案)》二次審議稿，徵詢公眾意見。二審稿包括以下重要修訂：

初審稿要求網絡運營者留存網絡日誌並與政府部門合作。二審稿加強懲罰不與政府部門合作的運營者。

初審稿舉出一連串例子闡明「關鍵信息基礎設施」的定義。二審稿刪除該等例子，擴濶定義，似乎想把所有網絡和系統納入「關鍵信息基礎設施」範圍之內，如網絡或系統被破壞或違反，就有可能嚴重危害國家安全、國家利益、公眾利益。

初審稿准許公司在完成安全評估後，在境外存儲數據。二審稿准許公司向境外提供資料，但同時要求在境內存儲有關數據。

市場回應

麥保羅管理合夥人，美富律師事務所北京及上海代表處

「加強網絡安全的計劃涉及中國政府多個部門，涵蓋範圍更為廣泛，《網絡安全法(草案)》是其中重要的一環，包含對國際信息科技企業進軍市場造成威脅的規定，也有有可能給銀行業或其他行業的國際企業帶來挑戰的規定，國際企業或許覺得企業在境內的網絡基礎設施受到『關鍵信息基礎設施』所受的監管。曾幾何時，我們希望二審稿闡明『關鍵信息基礎設施』範圍，使企業更加清楚數據本地化要求的範圍，可惜事與願違。事實上，全國人大常委會一拖再拖，不單把界定術語的工作轉授國務院，還交由國務院在數據本地化要求之外，具體訂定適用於重要信息基礎設施的安全措施。不確定因素因此依然存在，對於信息科技基礎設施運營者如是，對於信息科技產品及服務提供者亦如是。

跟進事項

法律顧問，凡可為被視為經營關鍵信息基礎設施的公司工作的，應與業務部同事合作制定應變計劃，以防公司有需要將伺服器重新安置到中國。網絡運營者的法律顧問應當確保公司履行責任，留存網絡日誌並與政府部門合作。如果公司在中國經營業務，法律顧問應當採取步驟確保個人資料絕對保密。

- Practical Law China

PRC

Chinese Outbound Investment

As the Chinese economy transitions from its traditional exporting base, we are beginning to see a rapid change towards much greater Chinese outbound investment.

This trend is underpinned by several factors, including the desire of Chinese firms to diversify their assets with strategic offshore investments. It’s also a manifestation of government policy, with One Belt One Road steering Chinese economic development towards its neighbours and regional partners. Additionally, it is a core feature of economic policy to steer surplus Chinese capacity offshore, as the domestic economy moderates.

Chinese investment is occurring in countries as diverse as Indonesia, Pakistan and Mongolia under the banner of One Belt One Road. In the same way we have seen the internationalisation of the yuan, we are seeing the internationalisation of Chinese commerce and industry itself. It marks the transition of China as an exporter of goods, to an exporter of talent, culture and enterprise.

However, for Chinese firms with an appetite for foreign investment, their ambitions are often tempered by the significant regulatory, cultural and political hurdles they need to clear.

There is good reason to think the trend towards outbound investment will only grow further. Unlike in Western economies, government policy in China remains paramount and its capacity to steer economic activity through state-owned enterprises ("SOEs") remains enormous. Significant SOEs in many sectors are steering their over-capacity towards foreign markets to diversify their assets and grow their investments. As well as traditional markets, Chinese firms are taking on tougher markets where the regulatory regime is less developed.

In the financial sector, we are seeing continuing ambitions by Chinese investors and financial institutions to expand into Hong Kong and neighbouring markets by acquiring, whether greenfield or by way of acquisition, licences to operate different types of financial business. This trend goes hand in hand with the growing interconnections between the Hong Kong and Chinese financial markets. This creates immense opportunities for the financial market, but at the same time challenges for Chinese institutions to understand the Hong Kong regulatory landscape as well as for Hong Kong regulators to understand how these new entrants operate and what issues may arise.

As the Chinese economy transitions to the lower growth levels associated with developed economies, we can expect to see both private firms and SOEs continue their global expansion in search of growth markets across Africa, Asia, Eurasia, Eastern Europe and elsewhere. By directing their investments into...
growth markets, they are often venturing into countries with less developed legal systems, government and civil institutions. These factors bring both greater risk and the potential for greater reward to those companies.

In the charge towards outbound M&A, we have noted a marked shift in the way Chinese firms work with their businesses on the ground. One of the trends is towards incentivisation of local management, rather than the use of Chinese management. This is both practical and commercially astute. It allows local management to continue working within the business they know well, but also enables those managers to feel they have an ongoing stake in the business and an interest in driving higher performance.

The outbound M&A trend also speaks to the broader issue of China's greater convergence to international norms, creating potential for more integration with international financial markets. As Chinese firms continue to invest offshore, the yuan is becoming indispensable in facilitating these transactions. The centrality of the yuan in international commerce will only grow alongside the outbound M&A boom we are currently seeing. This convergence will enable China to adopt a greater leadership role in financial markets. The yuan is a key pillar to the global economic order and will increasingly be used around the world.

- Annabella Fu van Bijnen, Partner, Linklaters

中國內地

中國境外投資

中國傳統以出口為基礎的經濟體正在轉型，現在企業開始急速轉向，紛紛大幅增加境外投資活動。

這種趨勢背後有好幾個支持因素，包括中國大陸投資增加資產種類，增加境外投資也是政府政策的一種表現形式，支持「一帶一路」帶領中國經濟朝向鄰近國家和地區夥伴的方向發展。另外，在中國經濟放緩之際，引導國內過剩產能流出境外是經濟政策的核心部分。

在「一帶一路」的旗幟下，中國投資活動遍佈全球多個國家，包括印尼、巴基斯坦、蒙古。我們已經見到人民幣國際化，在中國工商業界自行走入國際化進程，標誌中國已進入過渡期，由商品出口國轉為人才、文化、產業出口國。然而，投資外國市場先要消除當地監管、文化、政治上的重重障礙，對於有興趣涉足外國投資的中國企業來說，這往往消磨他們的雄心壯志。

我們有充份理由認為，轉向境外投資的趨勢只會繼續延伸下去。與西方經濟體不同，在中國，政府政策至高無上的地位仍然不變，國內通過國有企業（「國企」）帶領經濟活動轉向的產量仍然驚人。很多行業的大型國企正把過剩產能引到國外市場，藉以增加資產種類，擴大投資範圍，中國企業不但投資傳統市場，還投資在監管制度欠發達並投資環境較為艱難的市場。

中國經濟體過渡到發達經濟體，增長水平必然放緩，我們可預計私人企業和國企會繼續向全球各地擴展，在非洲、亞洲、陸亞大陸、東歐，以及其他地方，四出尋找成長市場。企業通常冒險轉向法律制度、政府和民事機構都不成熟的國家，把投資引至當地成長型市場。這些因素帶給企業更大風險，也為企業製造更高回報潛力。

在一窩蜂的境外併購活動之中，我們留意到中國企業明顯改變駐海外業務辦事處的經營方式。其中一種傾向鼓勵由當地管理人員而不是中國管理人員擔任管理工作。這種方式切合實際需要，而且在商業上是明智之舉，不但可以令管理人員熟悉自己了解的事務範圍工作，也使他們覺得自己是與企業共同進退，多勞多得。

境外併購的趨勢亦說出中國進一步與國際規範融合的問題，這個問題涵蓋範圍更為廣泛。為中國創造更多與國際金融市場一體化的可能性。中國企業繼續投資海外市場，人民幣也同時逐漸成為促進交易必
Funds may well find themselves losing prepared to invest appropriate effort and market, developers who are not discerned attention to how they spend in China for better quality and more tourists visiting foreign destinations currently large numbers of Chinese well. It would not be too surprising if Chinese tourists will naturally go up as expectations of increasingly wealthy As China grows economically, the period.

diminish dramatically over a very short information age, gate numbers can live up to expectations then, in this regular basis. If the venue does not or shows need to be introduced on a first-rate (eg, regular maintenance and protection of health and safety are paramount) and new attractions or shows need to be introduced on a regular basis. If the venue does not live up to expectations then, in this information age, gate numbers can diminish dramatically over a very short period.

As China grows economically, the expectations of increasingly wealthy Chinese tourists will naturally go up as well. It would not be too surprising if the current large numbers of Chinese tourists visiting foreign destinations led to increased demand domestically in China for better quality and more discerned attention to how they spend their entertainment budget. In the battle for China’s domestic entertainment market, developers who are not prepared to invest appropriate effort and funds may well find themselves losing business very quickly.

The Chinese theme park market is growing rapidly. It is estimated that China is on track to surpass the US and become the world’s largest market by 2020. Naturally, this makes China very attractive to the major US industry players. Disney and many of its peers have already made substantial investments in China. Universal is expected to open its largest overseas theme park in Beijing in the next four to five years, and other operators such as Six Flags and Merlin have also indicated their interest in opening theme parks in China. This is indicative of what we are seeing in TMT mergers and acquisitions more broadly, with a substantial increase in US entertainment and media companies’ interest in accessing the Chinese market. China represents a massive and growing market of consumers who have more money to spend on entertainment and media products than ever before. Western brands and culture are gaining popularity alongside the growing domestic market. US movie studios, games producers, and other content creators view China as a huge market for their premium content.

Simultaneously, we are also seeing increased Chinese interest in Western entertainment and media assets, frequently as a means of gaining access to intellectual property and assets that can be further exploited in China. Chinese media and related companies are increasingly realising the importance of “global brands” as a means to grow their presence internationally, and their status at home. The major influence is always going to be the desire to grow domestic demand, although the slower than expected economic growth in China is almost certainly a factor in the increase we are seeing in investments abroad as well. A growing number of Chinese companies are looking to gain access to globally recognised content and make it available to Chinese consumers. As China grows more prosperous, the demand for high-quality content using foreign-owned intellectual property will continue to grow.

One of the key concerns during times such as these, when property developers have significant financial resources available for deployment, is that the licensors of intellectual property might be lured by the opportunity to charge substantial fees. This could mean selecting a developer that, while currently successful financially, is not going to provide the long-term support necessary for a project to continue to be successful for a sustained period. Conversely, potential developers, when faced with the prospect of having to pay large upfront fees, are having to make decisions without having the information available to determine whether such fees will cut into the amount that should be held aside for capital expenditure and maintenance.

From the outside, developing location-based entertainment venues and attractions can seem like a glamorous and lucrative industry, but, as with any investment that has the promise of significant financial rewards, the potential risks are similarly substantial. For both developers and licensors, an in-depth analysis of the risks of the project, appropriate due diligence of what the parties are bringing to the table, and realistic expectations of revenues and expenses are essential. Combining property development, operations management, intellectual property, financing and numerous other issues, these kinds of transactions pose many complex legal challenges for everyone involved. Ultimately, even the most spectacular venue requires paying guests for the “magic” to become reality.

- Tim Mackey, Of Counsel, Paul Hastings
中國主題公園：需求增長，品味提升

西方有句老話「你建造了，自然有人會來（if you build it they will come）」；這句話起初對主題公園是適用的，但適用多久呢？答案取決於許多因素。通常來說，基於地理位置布局的娛樂項目，只有那些讓遊客感受到世界級體驗，使他們留下深刻回憶的，才僅僅可以賺得期望的投資回報。這是我們經常從主題公園經營者聽到的經驗之談。意在弦外，公園需要達到一級水平的營運標準（例如日常維修、衛生防護、遊客安全均極為重要），並且要定期開發新景點及推出新表演。在這個信息爆炸的時代，主題公園如果未能達到預期的標準，入場人數可能在短時間內大幅下跌。

中國經濟正在增強，中國人的身家越來越豐厚，中國遊客的要求也自然越來越高。現在很多中國人都走到國外增廣見聞，不難想像，他們對國內娛樂的質素會有更高期望，也在意要怎麼花錢消費才更划算。在爭奪中國內地娛樂市場的大環境下，開發商如果還未準備好投放人力和資金，很有可能轉瞬間就輸掉了市場。

中國主題公園現在正急速增長。中國正在超越美國，估計到了2020年，中國會成為全世界最大的主題公園市場。順理成章，大部分美國同業商家對中國市場趨之若鶩，迪士尼（Disney）和很多迪士尼的同業對手已經大舉投資中國市場。環球（Universal）未來四至五年有望在北京開設其海外最大型的主題公園，六旗（Six Flags）和默林（Merlin）等也表明有興趣在中國開設主題公園。

這是我們看見的科技、媒體、電信產業更廣泛併購的好例子，說明了美國娛樂和媒體資產的高質產品的龐大市場，以及其他製作者都視中國為其高質產品的龐大市場。

與此同時，我們也看到中國在西方娛樂和媒體資產的興趣日漸濃厚，而且通常是為了得到可以在中國進一步拓展的知識產權和資產。中國的媒體和相關公司逐漸知道「全球品牌」對於提高國際知名度和國內地位的重要性。雖然幾乎敢肯定說中國難於預期的經濟增長是海外投資增加的原因之一，但拉動內需永遠是最大的動力。現在有越來越多中國公司物色全球知名作品，希望供應給中國消費者。中國日漸繁榮興盛，對外國知識產權的高質內容的需求將會繼續增長。

在這期間，即當地產發展商財力雄厚，有充裕資金供調度使用的時候，其中一個主要的問題是，知識產權特許人有可能忍不住收取巨額費用。這可能意味特許人選擇的是沒有打算長期支持項目在穩定時期內持續取得成功的開發商——雖然他們現時資金充裕。反過來說，潛在的開發商當面對有機會要預付一大筆費用時，有必要在缺乏資料的情況下，決定是否要將這筆預付的費用留作資本開支和作維修之用。

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這是我們看見的科技、媒體、電信產業更廣泛併購的好例子，說明了美國娛樂和媒體資產的高質產品的龐大市場，以及其他製作者都視中國為其高質產品的龐大市場。

當然，開發商和特許人來說，深入分析項目的風險，恰當的盡職查閱雙方願意提供的資源，以及對收益和開支抱有現實期望，都是有必要的。在地產發展、業務管理、知識產權，加上融資和許許多多其他的問題之下，這類交易給每一個牽涉其中的人帶來很多複雜的法律難題。最終，甚至最矚目的主題公園也需要向遊客施展「魔法」才能成真。

- Tim Mackey顧問律師，
  普衡律師事務所
Commissioner of Correctional Services – decision dismissing applicant without retirement benefits following disciplinary proceedings – whether erred in treating previous cases of disciplinary proceedings as precedents for decision

X, an assistant officer in the Correctional Services Department (the “CSD”), was convicted of introducing 19 unauthorised articles into a prison (the “Articles”) and fined HK$1,000. In disciplinary proceedings against X, the CSD adopted its standing practice of considering preceding cases within the past 10 years in order to ensure that the level of punishment would be broadly consistent with the service-wide norm, while ”having regard to all relevant factors”. The CSD’s main concern was the potential security hazard if the articles had fallen into the hands of prisoners. The Judge took a perfectly sensible view of the increased security risk in light of the greater number of unauthorised articles and the regularity with which X brought them into prison.

 Held, dismissing the application, that:
• There was no merit in the Precedents Ground. The CSD’s stated reason for the standard practice of looking to other penalties in similar cases was entirely in accordance with the proper use of precedents in this context. The emphasis was on the appropriate level of punishment. The fact the precedent cases were not wholly or largely comparable to X’s case was beside the point, given the clear recognition by the decision-maker that such cases were not binding, but merely for comparison and reference.
• Further, whether the unauthorised articles in the precedent cases were for the officers’ self-use was irrelevant. The CSD’s main concern was the potential security hazard if the articles had fallen into the hands of prisoners. The Judge took a perfectly sensible view of the increased security risk in light of the greater number of unauthorised articles and the regularity with which X brought them into prison.
過往相類案件的罰則的慣常做法提供理由，而該等理由完全符合在此情況下正確運用先例的原則。重點在於處罰的輕重是否恰當。至於過往案例是否可完全或大致上與申請人的案件相比，這並非要點所在，因為決策者已清楚意識到該等案例不具約束力，而只是供決策者比較和參考。

再者，在過往案例中，涉案違例物品是否供主任自用，與懲教署的決定無關宏旨。懲教署的主要考慮是涉案物品一旦落入囚犯手中可能對安全造成危害。原審法官十分明智地認為，考慮到涉案物品的數量以及申請人定期將涉案物品帶進監獄，申請人的行為帶來了更大的安全風險。

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**行政法**

**Law Hau Yu v Master J Wong**

[2016] HKEC 1763

原訟法庭

高院憲法及行政法列表2016年

第46號

原訟法庭法官鍾安德內庭聆訊

2016年8月12日

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司法覆核 — 下級審裁處的角色 — 應否參與司法覆核申請 — 採取「中立」立場是否恰當

本案原告人提起法律程序追討在涉案死者銀行戶口貸方結餘上的權益，並聲稱指死者生前與原告人同居，而死者去世前既沒有立遺囑，也沒有親人。原告人針對遺囑認證聆案官的一項指示 — 即

死者的遺產加入為被告人(下稱「涉案指示」) — 申請許可提出司法覆核申請，理由為死者的遺產並非法人實體，故不能加入為被告人。在各方之間的聆訊中，律政司代表身為指認答辯人的上述聆案官出席，但採取中立的立場。原告人表示她會根據《無爭議遺囑認證規則》(第10章，附屬法例A)第62(1)條繼續進行程序（該條文訂明「任何人因司法常務官的決定而感到受屈，可以傳票方式向法官提出上訴」），但尋求法庭准許無限期押後上述申請和隨時恢復該申請。

裁決 — 駁回申請：

• 是項申請並不恰當。原告人並無投訴上述聆案官有不公平、偏頗、程序上不公正等問題，因此理應根據第62(1)條提出上訴而非申請司法覆核。此外，該上訴將能徹底處理原告人的投訴，而不論上訴結果如何，原告人都沒有必要提出是項申請。

• 至於律政司的角色，法律並無硬性規定下級審裁處不能參與司法覆核申請。如此行是否適當，則須視乎情況而定。就本案而言，這些情況包括：(a)是項申請雖以司法覆核方式展開，但實際性質屬於上訴；(b)根據呈堂資料，現時沒有任何其他人須獲送
The Court had jurisdiction to order the OR to pay the HK$3 million to P under the first limb of s. 38(5B) of the Ordinance (ie, assets recovered under indemnity for costs of litigation given by creditor). Assets had been recovered from HF in the Avoidance Proceedings under an indemnity for costs of the litigation in the Funding Agreement provided by P.  

There was also jurisdiction to order the OR to pay the HK$452,000 to P under the second limb of s. 38(5B) (ie, assets protected or preserved by creditor). The OR had a potential claim to recover the Shares. The asset was a chose in action and vested in the OR under s. 58 of the Ordinance. If the OR did not institute the Avoidance Proceedings, no one else could. Thus, the legal costs paid by P in those proceedings to reverse the Decision were moneys paid to “preserve” B’s asset.  

P had assumed considerable risk under the Funding Agreement. There was apparently no monetary limit to the indemnity to the OR. Nine proofs of debt of about HK$149 million were admitted. P’s debt of HK$5.18 million was relatively small, but its potential liability for costs was substantial. Given the primary objective of s. 38(5B) was to encourage creditors to assist trustees/liquidators in the recovery of assets, with a view to giving P an advantage over others for the risk run by it, the Court would exercise its discretion in granting the application.  

Finally, the HK$1.2 million deposit should be returned to P. The OR faced no adverse costs orders and there was no justification for the OR to hold on to it.

破產

根據第38(5B)條申請優先從破產人的產業獲付款項－資助為債權人的利益提起法律程序討回資產而產生的法律費用－是否第38(5B)條所指的藉付款而使資產得以討回或保存－ 行使酌情決定權

1998年，B將他在兩間公司價值約3億港元的股份（「該等股份」）轉讓給HF，據稱轉讓價遠低於該等股份的價值（「該轉讓」）。2001年，法庭應P的呈請判定B破產，因為B未有支付大約518萬港元的判決債項。破產管理署署長（「署長」），作為B產業的受託人，決定不提起法律程序向HF討回該等股份（「該項決定」）。P成功申請推翻該項決定兼得訟費，訟費由B的產業支付；P承諾彌償署長所有法律責任（「資金協議」），使署長能夠針對HF提起宣告股份轉讓無效並使該等股份歸屬於
破產人產業的法律程序（「該法律程序」）。其後，HF根據就該法律程序達成的和解協議，交給署長一張金額為518萬港元的支票，並以1,500萬港元銀行擔保和該等股份作為保證，承諾支付署長所有已獲證明的債項和利息。P現在：(a)根據《破產條例》（第6章）第38(5B)條，就P申請推翻署長該項決定而產生的大約452,000港元法律費用及P在該法律程序支付的300萬港元法律費用，向法庭申請命令；及(b)要求獲還根據資助協議支付給署長的120萬港元保證金，因為湯林命令擱置了所有法律程序，法庭下令HF向署長支付訟費。

裁決 — 申請批准：
• 根據《破產條例》第38(5B)條第一個重點（即根據債權人就訟費提供的彌償已獲討回的資產），法庭有管轄權命令署長向P支付300萬港元。資產根據P在資助協議中就訟費所提供的彌償而得以在該法律程序中從HF討回。
• 根據第38(5B)條第二個重點（即藉債權人付款或提供彌償而使資產得到保護或得以保存），法庭也有管轄權命令署長支付452,000港元給P。提出申索討回該等股份是署長的潛在申索。資產是據法權產，根據《破產條例》第58條是歸屬於署長的。要是署長不提起該法律程序，誰也不可以提起。因此，P為了推翻該項決定提起法律程序，而P在法律程序中支付的法律費用是為了「保存」B的資產而支付的款項。
• P在資助協議下承擔相當大的風險。向署長提供的彌償明顯沒有金錢限制。九項有關1億4,900萬港元的債項證明已獲接納。相對而言，P的518萬港元債項是一筆小數目，但潛在的訟費責任可不輕。鑑於第38(5B)條的主要目的是鼓勵債權人協助受託人／清盤人討回資產，法庭會行使酌情決定權批准申請，目的是使P因為冒險而較其他人佔優。
• P應最終獲還120萬港元保證金。署長不用面對不利的訟費令，因此沒有理由保留保證金不退還。

CIVIL PROCEDURE

Lam Chuen Lung v Tse Hou Wan [2016] HKEC 1817
Court of Appeal
Civil Appeal No. 7 of 2015
Cheung and Chu JJA and Anderson Chow J
23 August 2016

Appeals – findings of fact – trial judge misdirected himself as to effect of certain evidence to support his conclusion – judgment set aside – retrial of action

This litigation concerned the ownership of a flat. In the formal agreement and assignment, P, and his mother, D were described as joint tenants. P claimed a declaration that he was the sole beneficial owner of the flat. On the view which he took of the facts, the Trial Judge dismissed P’s claim. P appealed.

Held, allowing the appeal by setting aside the judgment but ordering a retrial, that:
• The Trial Judge’s judgment was wrong because he had, on relevant issues of fact, misdirected himself as to the effect of certain evidence which he understood to support his conclusion.
• But it was open to a fact-finding tribunal, properly directed on the evidence, to reach conclusions on those issues of fact in favour of either side. And the Court of Appeal, not having had the opportunity or advantage of receiving first-hand the evidence of the witnesses on those issues, felt unable to make their own findings on them. So the only proper course was to order a retrial of the action.

民事訴訟程序

Lam Chuen Lung v Tse Hou Wan [2016] HKEC 1817
上訴法庭
上訴法庭民事上訴案2015年第7號
上訴法庭法官張澤祐及朱芬齡，原訟法庭法官周家明
2016年8月23日

上訴 — 事實裁斷 — 原審法官就某些證據的效力向自己發出錯誤指示，並以此支持其結論 — 裁決被擱置 — 重審案件

本案訴訟涉及一個物業單位的擁有權。正式協議及轉讓契均把原告人及其母親（即被告人）描述為聯權共有人。原告人要求法庭宣告他是涉案單位的唯一實益擁有

者。原審法官根據其對涉案事實的看法，駁回原告人的申訴。原告人不服，提出上訴。

裁決 — 上訴得直，擱置原審裁決，但下

令重審：
• 原審法官的裁決錯誤，因為在相關的

事實爭議點上，他就某些證據的效力

向自己發出錯誤指示，並以此支持其

結論。
• 然而，對於該等事實爭議點，事實審

裁庭只要已經就證據發出恰當指示，

便大可作出對任何一方有利的結論。

此外，上訴法庭缺乏耳聞目睹證人作


www.hk-lawyer.org 69
Court of Appeal – appeal – respondent’s notice – extension of time to serve notice outside O. 59, r. 6(3) time limit – question of whether Hong Kong courts should adopt approach in English authorities to be left to another occasion

Xs’ applications for judicial review were dismissed on the sole basis that Rs’ decisions were not reviewable (the “Justiciability Issue”), without adjudicating on the merits of the substantive grounds (the “Substantive Grounds”). Xs served a notice of appeal. R1 failed to serve its respondent’s notice within 21 days thereafter as required under O. 59, r. 6(3)(b) of the Rules of the High Court (Cap. 4A, Sub. Leg.) and issued a summons seeking leave to serve it out of time. Xs opposed the summons, citing the English approach in Altomart Ltd v Salford Estates (No 2) [2015] 1 WLR 1825, R (Idira) v Secretary of State for the Home Department [2016] 1 WLR 1694, Denton v TH White Ltd [2014] 1 WLR 3926 on applications for an extension of time to file a respondent’s notice. Rs agreed that the English approach should govern the summons and contended that a reference in Xs’ notice of appeal seemed to raise an issue on the Substantive Grounds so that Rs’ respondent’s notice was necessary to advance arguments in response. At the present hearing dealing only with the summons, R1 invited the Court to consider Hong Kong authorities which suggested a slightly different approach from that of the English cases. Xs confirmed that they did not intend to argue the Substantive Grounds afresh and the only issue for determination was the Justiciability Issue.

Held, dismissing the application, that:
• Given the limited time and opportunity to develop arguments on the proper approach to an extension of time to file a respondent’s notice, the question of whether Hong Kong should adopt the approach in the English authorities would have to be left for another occasion.
• It was now clear that the Substantive Grounds would not be addressed at the appeal and the Court would not entertain any such arguments on them. Accordingly, the respondent’s notice was no longer necessary. If the Court of Appeal were to determine the Justiciability Issue in favour of Xs, the case would be remitted to the Court of First Instance.

裁定

裁决 一、駁回申請：

• 就恰當處理延展答辯人通知書存檔期限申請的方法構思論據，時間有限，機會不多，有鑑於此，香港應否採納英國案例處理方法的問題只有留待下次有機會時作決定。
• 現在清楚顯示，實質理據是不會在上訴中處理的，法庭不會受理任何與此有關的論據。因此答辯人再無必要提交答辯人通知書。如果上訴法庭就法
CONTEMPT OF COURT

Tiong King Sing v Sam Boon Peng Yee
[2016] HKEC 1749
Court of Appeal
Civil Appeal No. 268 of 2015
Cheung CJHC, Cheung and Poon JJA
12 August 2016

Civil contempt – committal proceedings for breach of court undertaking – construction of undertakings by defendant – would not be enforced by committal unless clear and unambiguous language – penal nature of contempt proceedings required strict proof of guilt beyond reasonable doubt – defendant deprived of opportunity to meet additional allegations as judge decided on amendment of originating summons only on giving judgment

P commenced proceedings against D1–2 for outstanding payment under an agreement for the sale of shares in C. P applied for a Mareva injunction against Ds or alternatively payment into court of RMB245 million. The Deputy Judge made an interim injunction order against Ds (the “Order”). At the substantive hearing of the Mareva application, the parties offered various cross-undertakings to the Court should the application be dismissed. The Mareva application was eventually dismissed, the Order discharged and the undertakings took effect. Both the Order and Ds’ undertakings provided for Ds, inter alia: (a) to maintain a deposit of RMB45 million at a designated bank as agreed by the parties (the “First Undertaking”); and (b) to provide P’s solicitors with weekly reports of the sale, disposal or creation of encumbrances on properties in a project held by C (the “Second Undertaking”). P commenced proceedings to commit D1 for contempt for breach of the First and Second Undertakings. In his judgment following the hearing, the Judge allowed P to amend the originating summons and the statement for instituting the contempt proceedings by adding further allegations of breach of the parts of the Order which predated the Second Undertaking. The Judge found that D1 was in breach of both Undertakings and of the Order, his conduct was intentional and contumacious and that he was in contempt. D1 appealed.

Held, allowing the appeal, that:
• D1 was not in contempt. When construing the First Undertaking, the Judge erred in focusing on the Order made in the interim instead of the context of the position taken by D1 at the substantive hearing and the dismissal of the Mareva application. As P’s alternative application for payment into court as security was dismissed, the Judge was wrong to consider that the purpose of that undertaking was to provide security for P’s claim. Further, P had not filed any evidence in relation to discussions by the parties to decide the requirement of an agreed account. This requirement should not be brushed aside as being insignificant. It was an elementary principle of justice and fairness that no order would be enforced by committal unless it was expressed in clear, certain and unambiguous language.

• The penal nature of contempt proceedings required strict proof of guilt beyond reasonable doubt. Fairness required the person cited for contempt to be informed at the outset of what he was being accused of. The statement in support of the application for leave to commence contempt proceedings was to be treated in a similar manner as an indictment in criminal proceedings. The same reasoning would apply to the originating summons which commenced the contempt proceedings. Here, the Judge erred in deferring the decision on the amendment of the originating summons and the statement until the giving of the judgment which deprived D1 of an opportunity to meet the additional allegations of breach.

• If the amendment was disallowed, then there was only one breach of the Second Undertaking. Once the cumulative effect of the other breaches was removed from consideration, on the standard of proof of beyond reasonable doubt, the Court had no doubt that the Judge would have found it more likely or at least equally likely that D1, in having already disclosed the intention to create the charge in question, made the unintentional slip, rather than intended not to comply with that undertaking by not disclosing it after its creation.

民事藐視法庭

Tiong King Sing v Sam Boon Peng Yee
[2016] HKEC 1749
上訴法庭
民事上訴案件2015年第268號
高等法院首席法官張舉能
高等法院上訴法庭法官張澤祐
高等法院上訴法庭法官潘兆初
2016年8月12日

民事藐視法庭罪 — 因為有人違反向法庭作出的承諾而展開交付羈留法律程序 — 解釋被告人的承諾 — 除非言詞清晰不含糊，否則不會藉交付羈留強制執行 — 藐視法庭法律程序是懲罰性程序，必須按嚴格的舉證標準，在無合理疑點的情況下證明有罪 — 法官在作出判決時才就修改原訴傳票的要求作出決定，被告人因而被剝奪反對其他指控的機會

原告人向第一及第二被告人口出事在某公司（「該公司」）的股份；他就相關協議之下被拖欠的款項向兩名被告人提起訴訟。原告人針對兩名被告人申請資產凍結令，
交替申請將人民幣2億4,500萬元繳存法院的命令。暫委法官向兩名被告人發出臨時禁制令(「禁制令」)。各方在資產凍結令申請的實質聆訊中，向法庭作出多項在申請被駁回時生效的交相承諾。資產凍結令的申請最終被駁回，禁制令被解除，承諾生效。禁制令和兩名被告人的承諾包括兩名被告人必須：(a)在訴訟各方一致指定的銀行存入人民幣4,500萬元(第一項承諾)；及(b)每週向原告人律師書面報告由該公司持有的項目之中，物業的銷售或處置，以及就該等物業設定的產權負擔(第二項承諾)。原告人因為第一被告人違反第一項承諾，藐視法庭，所以展開法律程序。原告人要求修改傳票及陳述書，在當中加稱第一被告人部分違反日期早於第二項承諾的禁制令；法官在聆訊後作出判決，准許原告人作出是項修訂。法官裁定第一被告人違反兩項承諾和禁制令，是蓄意抗令，藐視法庭。第一被告人提出上訴。

CRIMINAL EVIDENCE

HKSAR v Lau Chung Piu
[2016] HKEC 1615
Court of Appeal
Criminal Appeal No. 213 of 2015
Lunn V-P and Macrae and Pang JJA
26 July 2016

Rape – restrictions on cross-examination under s. 154 – whether unfair to defendant for trial judge to have refused leave to adduce evidence of, and ask questions about complainant’s sexual experience with persons other than defendant

D was an air-conditioning technician. At his trial for rape, of which the jury convicted him, it was an admitted fact that sexual intercourse had taken place between him and V, the complainant. The issue was whether or not she had consented to that. At the trial, defence counsel sought the Trial Judge’s leave to cross-examine V on a magazine article and a video-recorded interview, both of which were made eight months after the alleged rape. The image and impression given by the article and the interview was of a scantily clad woman, said to be V, who was promiscuous and consented to sexual intercourse with men she selected at nightclubs, and expressing disdain for men who were not rich or educated. Defence counsel submitted that the attitude depicted in the material on which he sought to cross-examine V was consistent with the defence of consent and therefore went far beyond V’s credibility so that cross-examination thereon would be very relevant. He also submitted that the giving of such an interview contradicted what V said about the psychological impact on her of the event in question, namely that she had nightmares every day for a month afterwards and continued to endure great pressure thereafter. The Trial Judge refused to permit cross-examination of V on the article and interview. With leave granted by a single Justice of Appeal, D appealed against his conviction on the ground that the Trial Judge’s refusal of permission to cross-examine V on the article and interview made his conviction for rape unsafe and unsatisfactory.

Held, dismissing the appeal, that:

- In a matter such as leave under s. 154 of the Crimes Ordinance (Cap. 200), the judge did not have a discretion, and had to make a judgment as to whether he was or was not satisfied in terms of the section.
- Having regard in particular to the fact that the article and interview were made eight months after the alleged rape and the very limited evidence in respect of the ongoing psychological impact of the alleged rape on V at the time, it was obviously not appropriate to allow cross-examination on the basis that the material was inconsistent with her testimony.
- Nor ought there to have been cross-examination on the basis that the material went to the issue of consent. First, such a proposition relied on the impermissible and impugned line of reasoning that promiscuity in V, to be inferred from that material, made it more likely that she consented to sexual intercourse with D. Second, in any event, the circumstances of promiscuity to be inferred from...
the material were wholly different from those of the sexual intercourse with D. The former set a scene in which, dressed seductively, V flirted with men, selecting and preying on rich, younger men in nightclubs. By contrast, at the time of sexual intercourse with D, V was drunk, dressed casually and had retired to sleep. Third, D did not fit at all the profile of the men that the female in the interview said she targeted.

**刑事證據**

HKSAR v Lau Chung Piu
[2016] HKEC 1615

上訴法庭
刑事上訴案件2015年第213號
上訴法庭副庭長倫明高
上訴法庭法官麥機智
上訴法庭法官彭偉昌
2016年7月26日

強姦 — 第154條有關盤問的限制 — 原審法官拒絕准許提出申訴人與被告人以外的其他人的性經驗的證據，也拒絕准許提出有關此事的問題，這樣會否對被告人不公平

被告人是冷氣技工。他因為被控強姦罪受審，被陪審團裁定罪名成立。被告人接受審訊時承認與受害人(申訴人)發生過性關係。爭論點是受害人有否同意與他發生性關係。在審訊中，辯方律師請求原審法官准許他就一篇雜誌文章和一段會面錄影盤問受害人，文章和錄像是在被告人被指強姦受害人之後8個月撰寫和拍攝的。文章所寫的和會面錄影所拍攝的是一個衣著暴露的女人，她是受害人；她給人的印象是放蕩，願意與自己在夜總會看中的男人發生性關係；她在文章和錄像表示自己鄙視無錢無學歷的男人。辯方律師要求就文章和錄像盤問受害人，指出受害人就在文章和錄像中表現的態度符合「同意」辯護論點，所關乎的遠遠不只於受害人的可信程度，因此盤問受害人是極為恰當的。他亦陳詞指，受害人稱本案所涉事件對她造成心理影響，即她在之後一個月每晚發惡夢，繼續承受巨大壓力，但她所指的錄影會面中受害人所表示的完全不相符。

原審法官拒絕批准辯方律師就文章和錄影會面盤問受害人，指出受害人放蕩的說法是從文章和錄影會面推斷出來的，所依靠的是不容許並受質疑的推理方法；這個說法更有可能使人認為受害人當時同意與被告人發生性關係。第二，不管怎樣，從文章和錄影會面推斷受害人放蕩涉及一種情況，受害人與被告人發生性關係涉及另一種情況，兩種情況截然不同。前者是衣著誘人的受害人與男人打情 usted俏，在夜總會物色年輕有錢的男子，視他們為獵物。相比之下，受害人與被告人發生關係時已經喝醉，輕鬆打扮的她已經就寢。第三，被告人根本沒有錄影會面那名女子所稱會看上眼的男子所具有的形象。

裁決 — 駁回上訴：

• 法官在諸如《刑事罪行條例》(第200章)第154條的許可等事情上，沒有酌情決定權，必須依照條例判斷是信納還是不信納。

• 上訴法庭法官考慮過所有情況，特別是文章和錄影會面是在被告人被指強姦受害人之後8個月撰寫和拍攝，以及那時證明受害人發生事發後持續承受心理影響的非常有限的證據之後，認為明顯不適宜基於文章和錄影會面內容與她的證供不相符而准許盤問。

• 同樣地，上訴法庭法官也不信納應當基於文章和錄影會面有助爭論同意的問題而准許盤問。首先，受害人放蕩的說法是從文章和錄影會面推斷出來的，所依靠的是不容許並受質疑的推理方法；這個說法更有可能使人認為受害人當時同意與被告人發生性關係。第二，不管怎樣，從文章和錄影會面推斷受害人放蕩涉及一種情況，受害人與被告人發生性關係涉及另一種情況，兩種情況截然不同。前者是衣著誘人的受害人與男人打情 usted俏，在夜總會物色年輕有錢的男子，視他們為獵物。相比之下，受害人與被告人發生關係時已經喝醉，輕鬆打扮的她已經就寢。第三，被告人根本沒有錄影會面那名女子所稱會看上眼的男子所具有的形象。

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》。
Developing Client Relationships in the New Age

By Tony Williams, Principal

Law firms are facing new challenges in seeking to maintain and develop client relationships. First, in many of the world’s leading legal markets growth in demand for legal services has slumped from the double digit growth seen in the 25 years up to 2007 to a few percent per year. Second, law firms have recognised that in such a low growth environment, if they are to grow they will need to take market share from others. Third, in-house legal teams are now more business-focused and selective as to the outside lawyers that they use. They are reducing the number of law firms that they instruct and expecting their law firms to be more proactive and efficient in the way in which they work. Fourth, many general counsel have used the slower legal market as an opportunity to reorganise their in-house legal team. They have recruited many able lawyers. They have examined the work they do and how they do it. They are using new methods, including enhanced technology, to deliver their services to the business. Fifth, as a result of all these pressures, law firms have been forced to become more competitive, to offer discounted rates or, increasingly, a fixed price even for larger and more complex matters. This is forcing law firms to continue to improve their operational efficiency and to invest in new ways of delivering the service to the client.

Against this background law firms need to appreciate that what the client wants, what the client will pay for and how much the client will pay has changed. Accordingly, law firms need to apply a measure of rigour and consistency to the development of their client relationships. Merely maintaining the status quo will result in long term decline.

How to Enhance Client Relationships

There are plenty of things that law firms can do to develop and enhance their client relationships. Highlighted below are some of the most important.

Get to Know the Client

This may seem obvious but regrettably few lawyers really do know and understand the objectives of their clients, whether individuals or major corporates. It is necessary to know as much as is possible about a client, its business, strategy, competitors and the market it operates in. The internet means that a lawyer has no excuse for going to a meeting unprepared. Information on the client, its business and the individuals you will be meeting is readily available. Indeed, to go to any meeting unprepared is not only discourteous, but also unprofessional.

Listen

As a young lawyer I was taught “you have two ears and one mouth so use them in that ratio”. Lawyers who talk at a client are unlikely to build a constructive relationship. By effectively listening you will learn about the client and its business and often become aware of additional areas where you or your colleagues can help the client. As I always tell young lawyers “you were a human being before you became a lawyer so remember that the client is human too”. Developing an understanding of and empathy with the client is key to building a long term relationship.

Understand the Reasons

A general counsel was instructing a firm and they raised a range of open questions such as “why are you doing this transaction”, “what do you want to get out of it”, “how does this fit your business strategy”, “will there be other transactions of this sort that may impact the business being bought” and “what worries you about this transaction”. The in-house lawyer was surprised but delighted. Never before had external lawyers asked these questions. But
armed with the answers the client was confident that they knew what to focus on. This law firm significantly increased its share of that client’s work.

**Under Promise and Over Deliver**

Lawyers often complain that clients set unreasonable deadlines but clients respond that they have to as lawyers are invariably late. If a document has been promised by 5 pm on Thursday and is delivered at 5 pm on Wednesday or noon on Thursday, the outside lawyer has performed and the client can relax. If the document does not arrive at 5 pm on Thursday and the client’s calls and emails are not returned even if the best ever document is delivered at 5 pm on Friday, the outside lawyer has not performed. The in-house lawyer may have promised it to a colleague by 9 am on Friday, so inside the business the client is seen to be incompetent.

**Make the Client look Good**

Inevitably any external lawyer must be prepared to tell a client that something cannot be done or cannot be done the way the client wants, if this is really the case. But, in everything an external lawyer does, he has to help make his client look good. Whether by meeting deadlines, sticking to agreed billing arrangements, including the client contact in discussions with others in the client’s company, anticipating issues that will arise and advising the client on the appropriate negotiating strategy, all of these interactions have an impact on how your contact is perceived in his organisation.

**The “No Surprises” Rule**

At the start of any matter, the external lawyer should discuss with the client the timeline, what action will need to be taken and when, what information will be needed from the client and what regulatory issues will arise and how they can be addressed. External lawyers who make last minute demands of a client or appear disorganised will lose the trust and respect of the client. Even on the issue of fees, regular discussions are necessary to confirm whether or not the law firm is on budget, whether there have been unanticipated extra costs and how these can be addressed. Radio silence until the matter completes and the delivering of a bill for far more than expected is unlikely to end well for the law firm.

**Deepen the Relationship**

For all but the smallest corporate clients and individuals, the client organisation is a complex web of individuals in a range of different roles, businesses and locations. However strong a relationship between one partner and an in-house lawyer may be, it is likely to be insufficient, of itself, to develop a sustainable and deep relationship. Not only is it desirable to include other partners in the relationship but associates too should be encouraged to develop connections with their peers across the business. This may be particularly important in younger IT and social media businesses where the main movers may be in their late 20s and 30s.

**Understand your Share of the Wallet**

Knowing how much of the client’s legal spend is used with your firm is a crucial piece of information. If you have a large share then growth may be limited but you will need to ensure that you are protecting the relationship and not seen as taking the client for granted. If your share is small you may be at risk in the next external law firm review especially if some other firms have a good quality full service offering. But, it may also be small because the client is not aware of the services your firm offers. This is not their fault but yours. Ask the client what other firms they use and for what, and ask about their legal spend and how you can help to manage it. It will be a good test as to the depth of your client relationship by how frank the client is in response.

**Invest in the Relationship**

If you know the client and know about their business you should be thinking of opportunities to help them. This is not hard selling but demonstrating to the client that you are always thinking of them. Discussing new market developments (without breaching client confidentiality), how you can work together differently to provide a better and cheaper service, offering access to precedents and know how, short term secondments and regular catch up meetings all help to build a deeper relationship.

**Review it Regularly**

Any relationship succeeds if both parties are committed to it and are determined to make it work. Regular discussions on the progress of matters, reviews of completed matters to discuss what worked well or less well and how things could be improved next time, and general discussions as to the issues facing the client all help to enhance the relationship. Arrogant behaviour and taking the client for granted endangers the relationship. From time to time it may also be appropriate to undertake a formal review of the relationship utilising partners or former partners not actively involved in the client relationship or an external facilitator. These can encourage a frank and constructive health check of the relationship and identify important areas to address. However, if you undertake such reviews, you must also ensure that you act on the results however challenging this may be.

**Key Take-Aways**

Our clients face a range of business and operational pressures. They want external lawyers who provide business-focused advice and practical solutions. They use external lawyers to help manage their workload and to make their lives easier. They have their own performance and budget pressures. Understanding this and delivering good service in all its aspects is not just desirable, in a more competitive legal market, it is essential if a law firm is to survive and thrive.
在新時代發展客戶關係

作者 Tony Williams 負責人 Jomati Consultants LLP

律師事務所在尋求維持和發展與客戶的關係方面，正面對著新的挑戰。

首先，在直至2007年為止的25年間，全球許多主要法律市場的法律服務需求增長，已從雙數位下降至每年只有數個百分點。第二，律師事務所明白到，在一個如此低增長水平的環境中，要達至增長目的，便需要奪取他人的市場份額。第三，企業內部法律團隊現時比外聘律師更加企業導向，對服務的選擇更加嚴格。目前他們正在減少對律師事務所的委託，並預期律師事務所能與之更積極有效的方法來為他們提供服務。第四，許多企業法律顧問意識到，法律服務市場增長的放緩，正是他們的企業內部法律團隊進行重整的時候。他們招聘了許多能幹律師，並察看他們所處理的工作，及處理該等工作的方式。他們現正運用新方法（包括增強技術）來為其所需機構提供服務。第五，基於各種業務壓力，律師事務所必須增加其競爭力，而即使是處理更為重大、更複雜的事項，他們都同樣向其客戶提供收費折扣，或為固定的價格。此舉促使律師事務所必須不斷提高其營運效率，並尋求新的客戶服務方式。

針對這一境況，律師事務所必須明瞭到：客戶的需要、客戶願意為哪些項目作出支付、準備付出多少等等，事實上都已有所改變。因此，律師事務所在發展客戶關係時，必須實行強而有力及一致的舉措。倘若它們只著眼於維持現狀，這終必會導致長期倒退的情況發生。

如何加強與客戶之間的關係

律師事務所要發展和加強與客戶之間的關係，實在需要下不少功夫，以下是其中一些為重要的事項。

真正認識你的客戶

這道理看來不難理解，但遺憾的是，很少律師真正認識及了解客戶的目標，無論那是個人還是大型企業客戶。律師必須盡量了解客戶、其業務、策略、競爭對手，以及它所處身的市場。律師事務所必須增加其競爭力，而即使是處理更為重大、更複雜的事項，他們都同樣向其客戶提供收費折扣，或為固定的價格。此舉促使律師事務所必須不斷提高其營運效率，並尋求新的客戶服務方式。

當我還是一位年青律師時，有前輩對我說：「你有兩隻耳朵、一個嘴巴，所以使用它們，應當合乎比例。」律師如果只懂得滔滔不絕地向當事人說話，他便無法與當事人建立具有助益的關係。有效的聆聽，可以令你更深入地了解客戶和它的業務，並且能有助你發掘一些可以由你個人，又或是由你的同事為該客戶提供服務的領域。正如我經常告誡年青律師般：「在你成為律師之前，你是一名普通人，所以你要記著，客戶也是一名普通人。」加深對客戶的了解，對客戶具有同理心，是與他們建立長期關係的不二法門。

了解因由

一家企業的總法律顧問委託一家律師事務所辦事。該律師事務所對這名總法律顧問提出了一連串的開放式問題，比如：「你們進行這宗交易的原因是甚麼」、「你們期望取得甚麼成果」、「這宗交易如何配合你們的業務經營策略」、「是否有其同類交易，會對正擬收購的業務構成影響」及「你們對這宗交易有哪些顧慮」。對於被問及這些問題，該名總法律顧問
對此感到很驚訝，但也很高興，因為從來沒有外聘律師曾經向他提出這樣的話。當這家律師事務所掌握了有關問題的答案後，它的客戶將會很有信心，該律師事務所知道事情的核心在哪裡，而後者從此亦會從該名客戶那裡爭取到更多服務機會。

承諾低於預期，兌現超過預期
律師經常埋怨客戶對所委託的事項設下不合理的限期，但客戶對此的辯解是，由於律師經常遲延處理他們所委託的事情，以致他們不得不在限期方面提出嚴格的要求。倘外聘律師答應客戶於星期四下午5時前交付有關文件，但在星期三下午5時或星期四的中午，他已經作出交付，這樣，他不但完成了自己的責任，也大可以令客戶安心。如果該文件到了星期四下午5時仍未送達，而客戶給律師發出的電話和電郵，也完全得不到回覆，那麼即使外聘律師答應於星期五上午9時備妥文件，但客戶未必會相信他們會在最後一刻才向客戶提出這樣的要求。

加深與客戶的關係
除非客戶是一家規模很小的企業或是一個由個體組成，包含各種不同角色、業務和處於不同地方的複雜網絡。也許律師事務所的合夥人已經與某家企業的內部法律顧問建立了良好關係，但這對於與該企業發展穩定及可持續的關係而言，還是有所不足。律師事務所要與該企業建立深入的關係，這不但需要有其他合夥人一同參與，也需要鼓勵他的助理人員與該企業的職級相若部門建立關係。對於較為年青的資訊科技與社交媒體企業而言(其主要的業務推動者的年齡，一般是在20多歲至30來歲之間)，此等關係的建立尤其重要。

了解你在客戶中的所得份額
你必須知道客戶所編列的法律服務費用，有多少是用在支付你們所提供的法律服務方面。如果在目前你已經佔有一個較大的份額，那麼這一份額的增長，可能會有限。然而，你必須確保你是不斷在維繫著雙方之間的關係，而沒有將它視作理所當然。如果你只佔有一個較小的份額，而其他一些律師事務所則為該客戶提供了全面而優質的服務，那麼下一次當你的律師事務所進行績效評估時，你的表現可能會受到質疑。然而，你所佔的份額較小的另一個原因，可能是客戶沒有留意到貴所提供的服務，而這並非貴所的錯，而是你的錯。你可以嘗試問問你的客戶：目前還有哪些律師事務所為他們提供服務，當中涉及甚麼範疇；你也可以嘗試問問客戶在法律服務方面的支出，以及你可以如何提供協助。你的客戶回答你的這些問題有多坦率，是量度它與你的關係有多深的有效指標。

投資於建立關係上
如果你已經相當然解你的客戶和它的業務，那麼你便應當尋求可以服務他們的機會。這並不是硬推銷，而是向客戶顯示你的誠意。與他們討論新市場發展，在並不違反客戶保密責任的情況下；研究如何通過不同合作方式，為他們提供更佳、更便宜的服務；提供讓他們取得範例和訣竅的途徑；實行短期借調；定期舉行會議以知悉最新發展情況等等，都有助建立雙方之間的更深入關係。

定期進行檢討
倘若雙方都重視此等關係，並竭力將其推展，那麼此等關係可以說是已得到成功建立。定期與客戶就各項事宜的進行進行商討；檢討已完成的項目；討論所取得的成果與仍未令人滿意之處，以及在未來可如何作出改進；就客戶所面對的問題，與其進行廣泛討論等等，都有助於加強律師事務所與客戶之間的關係。態度謹慎、將客戶視作無關緊要，此等行為將會危及雙方之間的關係。一個可取的做法是，不時通過沒有積極涉及相關客戶關係的合夥人或前合夥人，又或是透過外部輔助人員，就律師事務所與客戶之間的關係進行正式檢討。此等舉措，有助於律師事務所就客戶關係進行公開和具建設性的現況審查，從而識別各個需給予關注的重要範疇。然而，在完成上述審查之後，我們必須根據檢討結果而採取相應行動，不要因著畏難而躊躇不前。

關鍵要點
我們的客戶會面對許多在業務及經營方面的壓力，他們期望外聘律師能為他們分擔，提供與業務相關的意見和實用解決方案，從而減輕他們的負擔，使他們得以應付在業績及預算方面所面對的壓力。明乎此，在這競爭日趨激烈的法律服務市場中，律師事務所若要生存和業務蓬勃發展，便必須在各方面提供優質而良好的服務。這不僅是有此需要，更是必不可少。
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蘇龍律師事務所
Partnerships and Firms
合夥人及律師行變動

- **CHAN BOR CHI JOHN BAPTIST**
  joined King & Wood Mallesons as a consultant as from 05/09/2016 and became a partner of the firm as from 23/09/2016.
  陳博志
  自2016年9月5日加入金杜律師事務所為顧問，並於2016年9月23日成為該行合夥人。

- **CHAN HOI LUN**
  became a partner of Mason Ching & Associates as from 12/10/2016.
  陳海倫
  自2016年10月12日成為程彥祺律師樓合夥人。

- **CHAN YIN HANG HELEN**
  ceased to be a partner of T.S. Tong & Co. as from 19/09/2016 and joined Mayer Brown JSM as an assistant solicitors on the same day.
  陳彥蘅
  自2016年9月19日不再出任唐天燊律師行合夥人一職，並於同日加入孖士打律師行為助理律師。

- **CHENG CHUN CHUNG**
  ceased to be a partner of S. Cheng & Yeung as from 02/09/2016 due to the intervention in the practice of the firm by the Law Society on the same day.
  鄭振忠
  自2016年9月2日不再出任鄭振忠，楊嘉銘律師行合夥人一職，因該行於同日被律師會介入。

- **CHEONG KAI-TSE SIMON**
  ceased to be the sole practitioner of Kai Lawyers as from 29/09/2016 and the firm closed on the same day.
  陳開志
  自2016年9月29日不再出任Kai Lawyers獨資經營者一職，而該行於同日結業。

- **CUNNINGHAM JEREMY BRIAN**
  ceased to be a partner of Mayer Brown JSM as from 21/09/2016.
  自2016年9月21日不再出任孖士打律師行合夥人一職。

- **DAN BING KIN ALBERT**
  ceased to be a partner of Albert Dan and Company as from 01/10/2016 and the firm closed on the same day.
  鄧秉堅
  自2016年10月1日不再出任鄧秉堅律師行獨資經營者一職，而該行於同日結業。

- **FONG SIU KWONG**
  became a partner of Howell & Co. as from 01/10/2016.
  方兆光
  自2016年10月1日成為何和禮律師行合夥人。

- **FUNG HON CHEONG JOHNNIE**
  ceased to be a partner of Cheung & Yip as from 01/10/2016 and remains as a consultant of the firm.
  馮漢昌
  自2016年10月1日不再出任張達成葉祺智律師事務所合夥人一職，而轉任為該行顧問。

- **HO YEE LIN ELAINE**
  ceased to be the sole practitioner of He Qilian & Associates as from 01/10/2016 and the firm closed on the same day.
  Ms. Ho joined Pang & Associates as a consultant as from 01/10/2016.
  何綺蓮
  自2016年10月1日不再出任何綺蓮律師事務所獨資經營者一職，而該行於同日結業。
• KWONG KA YIN PHYLLIS
ceased to be the sole practitioner of
Phyllis K.Y. Kwong & Associates as from
01/10/2016 and the firm closed on the
same day.

邝家賢
自2016年10月1日不再出任邝家賢律師
事務所獨資經營者一職，而該行於同日
結業。

• LEUNG KA YAU
joined K.Y. Leung & Carina Chen as a
partner as from 18/09/2016.

梁嘉祐
自2016年9月18日加入梁嘉祐、陳佩玉
律師行為合夥人。

• LEUNG MAN CHING
ceased to be a partner of Wong Poon
Chan Law & Co. as from 05/09/2016.

梁文正
自2016年9月5日不再出任黃潘陳羅律
師行合夥人一職。

• MCDONALD DAMIEN
joined Peter Yuen & Associates as a
partner as from 05/09/2016.

自2016年9月5日加入阮葆光律師事務
所為合夥人。

• MOK SHIU TONG
ceased to be a partner of Lee, Mok &
Wong as from 01/10/2016 and the firm
closed on the same day.

莫少堂
自2016年10月1日不再出任李莫黃律
師事務所合夥人一職，而該行於同日結
業。

• NG KA LAI
became a partner of Tam, Pun & Yipp as
from 28/09/2016.

吳家勵
自2016年9月28日成為譚潘葉律師行合
夥人。

• NORRIDGE RICHARD JAMES
ceased to be a partner of Herbert Smith
Freehills as from 01/10/2016 and
remains as a consultant of the firm.

於2016年10月1日不再出任史密夫斐爾
律師事務所合夥人一職，而轉任為該行
顧問。

• PANG SIU YIN
ceased to be a partner of Cheung, Tong &
Rosa as from 16/09/2016.

彭小燕
自2016年9月16日不再出任張秀儀，唐
滙棟，羅凱栢律師行合夥人一職。

• POON KA-WAI DEREK
became a partner of Kirkland & Ellis as
from 06/10/2016.

潘家偉
自2016年10月6日成為凱易律師事務所
合夥人。

• SANGER KATHRYN SARA HIPPOLYTE
joined Herbert Smith Freehills as a
partner as from 01/10/2016.

張清明
自2016年10月1日加入史密夫斐爾律師
事務所為合夥人。

• TANG HIN MING HENRY
ceased to be the sole practitioner of
Tang & Associates as from 28/09/2016
due to the intervention in the practice of the
firm by the Law Society on the same
day.

鄧衍明
自2016年9月28日不再出任鄧衍明律師
事務所合夥人一職，因該行於同日被律
師會介入。楊律師於2016年10月12
日加入張馮許律師行為助理律師。

• YUEN CHING PONG
closed to be a partner of Chan & Tsu
as from 20/09/2016 and joined CMK
Lawyers as an assistant solicitor on the
same day.

袁正邦
自2016年9月20日不再出任陳崔律師事
務所合夥人一職，並於同日加入陳曼琪
律師行為助理律師。
We would like to congratulate Joycelyn Ho, LLM student at the University of Hong Kong, the winner of our Legal Quiz #30.

This month our questions focus on the never-ending battle in Hong Kong against corruption and corporate malfeasance. The questions have been prepared by Douglas Clark, Barrister. Suggestions for questions to appear in next month’s journal are most welcome.

1. What year was the Independent Commission Against Corruption established?
   A. 1968
   B. 1974
   C. 1981
   D. 1997

2. Who was the first Commissioner of the ICAC?
   A. Bertrand de Speville
   B. Peter Williams
   C. David Jefferson
   D. Jack Cater

3. To which body is the ICAC accountable?
   A. Legco
   B. Exco
   C. The Chief Executive

4. Rafael Hui was convicted in 2014 for misconduct in public office and bribery, making him the highest ranking government official in Hong Kong to be convicted of corruption. What was his rank in the civil service?
   A. Colonial Secretary
   B. Chief Secretary of Administration
   C. Chief Executive

5. In the 1980s there was a major corporate scandal in Hong Kong involving numerous fake sales, the largest being the purported purchase and sale of Gammon House (now the Bank of America Tower). What was the name of the group at the centre of this scandal?
   A. Carrian Group
   B. Charrian Group
   C. Karrian Group

6. What was the result of the major trial of members of the group mentioned in Question 5?
   A. Acquittals
   B. Some were convicted; some acquitted
   C. No case to answer
   D. A permanent stay was granted

7. The trial judge in the case mentioned above died in a car crash four months after retiring early.
   A. True
   B. False

8. Which final appellate court ruled soon after the handover that extradition to Hong Kong could continue after the handover as the “one country, two systems” provided sufficient protection for accused persons in Hong Kong.
   A. The Supreme Court of Canada
   B. The House of Lords
   C. The High Court of Australia

9. How many times were prosecutions against members of the Allied Group permanently stayed by first instance judges with the stays later overturned by the Court of Final Appeal?
   A. 0
   B. 1
   C. 2
   D. 3

10. The head of the Hong Kong Stock Exchange was convicted in the 1990s for taking bribes for approving listings.
    A. True
    B. False

Answers to Legal Trivia Quiz #30

1. B. Melvin Wong, currently in practice as a barrister, starred in Two Fists Against the Law.
2. D. Julian Paunccefote, then British Ambassador to the United States, negotiated the Hay-Paunccefote Treaty that abrogated a previous treaty prohibiting the United States from building a canal in Panama by itself.
3. C. Peter Nguyen, appointed in 1994, was the first Asian DPP in Hong Kong.
4. B. Hannen Road (海南路), now Hainan Road (海南路), was named after Nicholas Hannen.
5. A. The possession of chewing gum is legal in Singapore. It is illegal to import or sell chewing gum except for medicinal purposes.
6. B. It is not legal to drink water on the MTR. By-Law 27 of the MTR By-laws prohibits the consumption of any food or beverage.
7. C. Eight out of 26, or 30 percent of Court of First Instance judges are female.
8. C. Two of the permanent judges of the Court of Final Appeal graduated from the University of Birmingham: Geoffrey Ma and Robert Tang.
9. B. The British Court for Japan was based in Yokohama.
10. C. British extraterritoriality formally came to an end in 1943 with the signing and ratification of the Sino-British Treaty for the Relinquishment of Extra-Territorial Rights in China.
法律知識測驗 #31

本月的問題圍繞香港對貪污和企業瀆職不息的鬥爭。
問題由馬錦德(Douglas Clark)大律師編製。歡迎建議下期問題。

1. 廉政公署於何年設立？
   A. 1968
   B. 1974
   C. 1981
   D. 1997

2. 誰是首任廉政專員？
   A. 施百偉
   B. 衛理欽
   C. 謝法新
   D. 姬達

3. 廉政公署向誰負責？
   A. 立法會
   B. 行政會議
   C. 行政長官

4. 許仕仁於2014年因公職人員行為失當及貪污被定罪，成為香港歷來貪污罪成的最高級官員。他任職公務員時的職位是什麼？
   A. 輔政司
   B. 政務司司長
   C. 行政長官

5. 在80年代，香港出現了一宗重大企業醜聞，涉及多宗虛假交易，其中最大一宗涉及金門大廈(現為美國銀行中)買賣。捲入這宗醜聞的主要公司叫什麼名字？
   A. 佳凌集團
   B. 皆零集團

6. 問題6涉案人士的主要審訊結果為何？
   A. 無罪釋放
   B. 部份人被定罪，部份人無罪釋放
   C. 態度答辯
   D. 永久擱置

7. 上述案件的主審法官在提早退休後4個月因車禍去世。
   A. 是
   B. 非

8. 哪個最高上訴法院在香港回歸後不久裁定，引渡至香港的協定在回歸後繼續，因為「一國兩制」為被告人在香港提供足夠的保護？
   A. 加拿大最高法院
   B. 英國上議院
   C. 澳洲高等法院

9. 對聯合集團成員的檢控，多少次被原訟法庭法官裁定永久擱置，後來被終審法院推翻？
   A. 0
   B. 1
   C. 2
   D. 3

10. 香港聯合交易所的負責人在90年代因審批上市權時受賄被定罪。
    A. 是
    B. 非

法律知識測驗#30的答案

1. B. 現任執業大律師黃錦燊曾主演電影《雙辣》。
2. D. Julian Pauncefote(時任英國駐美大使)負責協商《Hay-Pauncefote條約》，廢棄早前用來禁止美國自行在巴拿馬興建運河的條約。
3. C. 阮雲道1994年獲委任為刑事檢控專員，是香港第一位出任此項公職的華人。
4. B. 海能路(Hannen Road)，現稱海南路(Hainan Road)，是以Nicholas Hannen的名字命名的。
5. 按照新加坡法例，藏有香口膠是合法的。進口或銷售香口膠是不合法的，但作醫藥用途則屬例外。
6. B. 在港鐵車廂內飲水是違法行為。港鐵附例第27條禁止任何飲食。
7. C. 二十六份之八，即香港原訟法庭法官之中，有30%是女法官。
8. B. 東京在日法院設於橫濱。
9. C. 隨著中英兩國就取消英國在華治外法權簽訂並確認條約之後，英國的治外法權在1943年正式結束。
10. B. 香港大學LLM學生，法律知識測驗#30中勝出。
Roundtable Discussion Explores Consumer Credit, Debt and Insolvency

Leading commercial law specialists and scholars from Asia and Europe gathered at City University of Hong Kong for a roundtable discussion on “Consumer Credit, Debt and Insolvency” organised by the School of Law on 2 September 2016.

The Roundtable was chaired by Prof. Geraint Howells (Dean of the School of Law, City University of Hong Kong and Chair Professor, Commercial Law). Invited speakers for this Roundtable were Dr. Sarah Brown (Associate Professor, Leeds Law School, University of Leeds) and Ms. Vivian Tang (Research Assistant, School of Law, City University of Hong Kong) who both presented with Prof. Howells on the topic, “The Degrees of Responsible Lending in Comparative Perspective”; Prof. Toni Williams (Professor of Law and the Head of the Kent Law School, University of Kent) who spoke on a theme entitled, “Reflections on Responsibilization as a Regulatory Instrument: The Case of Credit”; Prof. Alexander Loke (Professor and Assistant Dean, School of Law, City University of Hong Kong) who discussed issues surrounding another hot topic, “Crowdfunding Regulation in Hong Kong: Late Mover Advantage”; and Prof. Iain Ramsay (Professor of Law, Kent Law School, University of Kent) who shared his thoughts on personal insolvency in the paper, “Reflections on Personal Insolvency in the 21st Century”.

The Roundtable attracted students, staff, legal scholars and practitioners who actively and enthusiastically engaged in thought-provoking discussions with the speakers during the question and answer section. The overwhelming feeling among the participants was that the seminar was a compelling addition to the current scholarship on key and contemporary global issues relating to the responsible use of credit and legal and non-legal regulation of markets for consumer financial products.

法律學院舉辦圓桌會議，探討消費者信貸，債務與破產等前沿問題

2016年9月2日，來自亞洲及歐洲的商法領域的相關知名專家學者雲集香港城市大學，參加法律學院舉辦的“消費者信貸，債務與破產”圓桌會議。

城大法律學院院長及商業法講座教授賀嘉倫教授(Prof. Geraint Howells)主持會議。同時獲邀在會議上與賀教授一起就“從比較視角看責任貸款的程度”主題發表演講的學者還有利茲大學法律學院副教授Sarah Brown博士以及城大法律學院研究助理鄧詩齊女士。肯特大學法學院院長Toni Williams教授則發表題為“責任轉移作為一種規管手段的反思：以信貸為例”的演講。另外，城大法律學院助理院長陸飛鴻教授圍繞另一個熱門話題“香港群眾募資的規管：一種後發優勢”進行了探討。最後，肯特大學法學院Iain Ramsay教授在題為“21世紀個人破產制度的思考”的論文報告中分享自己對個人破產制度的獨特見解。

此次會議吸引了諸多學生，學者與相關從業者前來參與。他們在提問環節積極踴躍，與講者有諸多互動及探討。此次會議進一步激發了人們對目前全球範圍內出現的信貸責任方面的相關問題以及消費者金融產品的法律及其他規制方面問題的研究興趣。
The University of Hong Kong to Host Inaugural HKU-Boase Cohen & Collins Lecture Series in Criminal Law

The Faculty of Law at The University of Hong Kong is delighted to announce the inaugural HKU-Boase Cohen & Collins Lecture Series in Criminal Law will be delivered by award-winning international barrister Clare Montgomery QC on Friday, 20 January 2017, at the HKU’s Centennial Campus.

It is envisaged the annual event – formally titled The University of Hong Kong and Boase Cohen & Collins Lecture Series in Criminal Law – will become a highlight of the legal calendar with VIP guests from the judiciary, government, education and business joining law students in attending.

Professor Michael Hor, Dean of the Faculty of Law, commented: “We are delighted to be hosting this Lecture Series in collaboration with Boase Cohen & Collins. It dovetails with the Faculty’s mission to be a domestic and international centre for research and knowledge exchange in the study and practice of criminal law.”

“We are thrilled that someone of the eminence of Clare Montgomery QC has agreed to deliver the inaugural lecture and are certain it will be a compelling and inspiring evening, as well as a great start to the Lecture Series.”

“We are honoured to be presenting this landmark lecture series in conjunction with the Faculty of Law,” said Boase Cohen & Collins Senior Partner Colin Cohen. “Starting in the academic year 2016–17 and for an initial term of three years, the Lecture Series will consist of an annual public lecture by a prominent criminal law scholar or practitioner of international repute.”

“It is envisaged the lecture will always be off-syllabus and the topic a ‘blank canvas’ depending on the speaker, so that it varies greatly from year to year. We have worked closely with the Faculty of Law to bring this Lecture Series to fruition and are confident it will be an outstanding success.”

While the Lecture Series will run for a minimum of three years, both parties are hopeful it will be a fixture in the University’s academic programme for many years to come.

Ms. Montgomery, of Matrix Chambers in London, is a barrister of international renown and, among the many accolades that have come her way, she has twice been named Crime Silk of the Year in the Chambers & Partners Bar Awards as well as Crime Silk of the Year in the inaugural Legal 500 Awards.

She will speak about “Joint Enterprise” – a topic which has been in the news due to a landmark ruling by the UK’s Supreme Court and Privy Council earlier this year and its historic connection with Hong Kong.
CUHK Faculty of Law Organises Mok Hing Yiu Visiting Professor Public Lecture on “Justice and the Misunderstood” by The Rt Hon. Dame Elish Angiolini

The Faculty of Law of The Chinese University of Hong Kong (“CUHK”) was honoured to welcome The Rt Hon. Dame Elish Angiolini, DBE QC, Principal of St Hugh’s College, University of Oxford, to present a distinguished public lecture on “Justice and the Misunderstood”, under the Mok Hing Yiu Visiting Professorship Scheme supported by Mok Hing Yiu Charitable Foundation. The public lecture was held on 29 September 2016 at the Lee Shau Kee Building of CUHK.

Coinciding with the Faculty’s 10th Anniversary celebrations, this high-profile lecture attracted a capacity audience with an attendance of over 200. Judges from Hong Kong Judiciary, representatives of Mok Hing Yiu Charitable Foundation, guests of St Hugh’s College, distinguished guests of legal community, alumni, staff, students and the general public, attended the event.

In her lecture, Dame Elish, drawing on her extensive experience as a front line prosecutor, and later as Lord Advocate and head of the public prosecution service in Scotland, explored the extent to which knowledge – or the lack of knowledge – of human behaviour influences the responses of systems of justice. The failure to appreciate and understand the way in which individuals affected by conditions such as epilepsy, autism or extreme stress can lead to assumptions about what is and is not expected behavior. Thus assumptions about how the victim of an assault – and especially a sexual assault – “should” respond when faced with aggression may lead police, prosecutors and, of especial importance, juries to reach incorrect conclusions about the attitude of the victim as to what has transpired. So, if a victim does not “resist” or show great distress, the assumption may be that claims that
what happened was non-consensual are false. An improved understanding of human psychology which, as Dame Elish pointed out, is not a required part of legal education in the United Kingdom or Hong Kong, is necessary to ensure that such assumptions are effectively challenged, and justice is properly delivered.

The Mok Hing Yiu Visiting Professorship Scheme was established by CUHK in memory of the late Dr. Mok Hing Yiu with a generous donation from the Mok family. The aim of the scheme is to advance teaching, research and academic development of CUHK. Under the scheme, one widely acclaimed scholar will be invited to Hong Kong on an annual basis, and will participate in teaching and scholastic exchange and will deliver a professorial lecture in a public forum to inspire staff and students of CUHK, alumni, professional groups and the general public. Previous Mok Hing Yiu Visiting Professors include Professor Dame Jessica Rawson, Professor of Chinese Art and Archaeology of University of Oxford, Professor Sir John Bell, FRS, Regius Professor of Medicine of University of Oxford, and Professor David Wang Der-wei, Edward C. Henderson Professor of Chinese and Comparative Literature of Harvard University.

About the speaker: Dame Elish Angiolini joined the Procurator Fiscal Service and served as a Procurator-Depute in Airdrie (1984–92). She was seconded to the Crown Office in Edinburgh before being appointed Senior Depute Procurator Fiscal, then Assistant Procurator Fiscal at Glasgow (1995–97). She returned to the Crown Office as Head of Policy. She then served as Regional Procurator Fiscal for Grampian, the Highland and Islands, based in Aberdeen (2000–01).

Appointed the first female Solicitor General for Scotland in 2001, she was also the first Procurator Fiscal and the first solicitor (as against advocate) to hold the post. In 2006, she was appointed Lord Advocate, the head of Scotland’s prosecution service, the first woman in the 500-year history of that post. She served in this role until 2011.

Dame Elish became Principal of St Hugh’s College, University of Oxford in 2012. She was listed as one of Scotland’s most powerful women in 2004 and made a DBE in 2011.

Dame Elish was appointed Honorary Professor in CUHK Faculty of Law in 2015 and was invited as the Mok Hing Yiu Visiting Professor in September 2016.

關於講者：Elish Angiolini, DBE QC於1984—92年於阿爾伯塔地方檢察官服務處擔任副檢察官。其後被調任到愛丁堡皇家檢察院，並於1995—97年先後被委任為格拉斯哥高級副地方檢察官及助理地方檢察官。及後，她重回皇家檢察院擔任政策首長。她於2000—01年間擔任蘇格蘭阿伯丁格蘭坪，以及蘇格蘭高地和群島的區域檢察官。

Elish Angiolini, DBE QC於2001年被委任為蘇格蘭首名女性首席檢察官。她亦是首位擔任此職位的地方檢察官和事務律師(相對於訴訟律師)。她於2006年被委任為蘇格蘭檢察長，成為蘇格蘭共同檢察機關的領導人物，以及500年來第一位女性檢察長。她出任蘇格蘭檢察長一職直至2011年。

Elish Angiolini, DBE QC於2012年出任英國牛津大學聖休學院校長。她於2004年被譽為蘇格蘭最具影響力的女性之一，及於2011年獲封英國爵級司令勳章。

中大法律學院於2015年委任 Elish Angiolini, DBE QC為榮譽教授。她於2016年9月成為莫慶堯訪問學人。
The Invitation

Two weeks ago, I was very fortunate to have been invited by the Law Society to join the second day of the third season of the FIA Formula E Championship held at the Central Harbourfront.

I wanted to make the most of the event because it would be my first time attending a live auto-racing event. As such, like any lawyer would do, I did a small-scale due diligence on the FIA Formula E prior to attending the event and below are some facts I gathered:

**What?** The FIA Formula E Championship is the world’s first auto-racing event that uses only electric-powered cars.

**Who?** The concept of electric-powered car racing was initiated by FIA President Jean Todt as a means “to demonstrate the potential of sustainable mobility”.

Current CEO of Formula E, Alejandro Agag, was inspired by this vision and created the global entertainment brand Formula E with a focus on auto-racing.

**When?** The inaugural championship started in Beijing in September 2014. The second season started in October 2015 and ended in early July 2016.

Hong Kong would kick off the third season of the championship with a two-day event on 8 and 9 October 2016. A pre-race carnival featuring a celebrity race would be held on 8 October while the non-qualifying and qualifying races leading up to the Hong Kong ePrix at 16:00 would be held the following day.

**Where?** The Hong Kong ePrix circuit would be approximately 2 km with 10 turns located in the Hong Kong Central Harbourfront area. It was estimated and reported that drivers could reach top speeds of 200km/h on the 555-metre main straight on Lung Wo Road.

**How?** The championship would be contested by 10 teams with 2 drivers each.

Formula E’s unique concept of “FanBoost” would also be supported at the Hong Kong ePrix. With the aim to get fans more involved with the championship, “FanBoost” allows fans to vote for their favourite driver through the FIA’s website (or its official accounts on Facebook, Twitter and Instagram). The top 3 drivers with the most votes would be given an additional boost in power totaling 100 kJ of energy.

On the Day

As mentioned in the above, the event was held at the Central Harbourfront, right next to the Central piers and the Hong Kong Observation Wheel. It was conveniently located with only a 15-minute walk from the Central MTR Station. It was a Sunday and I was really impressed by the seamless logistics the organiser arranged. There were very clear signs/maps and workers everywhere to help visitors find their way to the venue. Although it was crowded, there was no congestion or chaos and the queues all moved in an orderly fashion.

It was a pleasure to have Ray, another member of the Law Society, join the event with me. Ray and I keenly arrived at the entrance next to the Hong Kong Observation Wheel at 14:00, after which we decided to explore the eVillage before immersing ourselves into the Hong Kong ePrix.
**eVillage**

Away from the track, the eVillage was an information and entertainment area where visitors could get their hands on a range of electric-powered car-related displays and activities, including displays of the latest electric and hybrid cars and bikes and racing stimulators. Food and beverages and official Formula E merchandise were also sold in this area. The eVillage had a strong party atmosphere that showcased Formula E’s vision of innovation, technology, sustainability and wellbeing.

**Grandstand Seats**

After exploring the various activities and enjoying a few drinks and bites at the eVillage for 1.5+ hours, Ray and I decided to head to the Grandstand to secure two nice seats for the Hong Kong ePrix. We were assigned to seats in the Grandstand that were somewhat close to the end of the main straight at Lung Wo Road. From there overlooking the racetrack, we were able to catch a fleeting glimpse of the drivers overtaking their rivals around a tight corner.

The 45-lap race lasted for approximately 50 minutes. Sébastien Buemi was the defending drivers’ champion and Renault e.dams was the defending teams’ champion. Watching the championship from the Grandstand certainly heightened my excitement, as the cars were racing right beneath my feet.

**My Reflection**

For most dyed-in-the-wool fans, it is probably the aggressive adrenaline-stirring roar of the car combustion engine and the smell of gasoline that make an auto-racing match interesting and attractive. I certainly did not experience that with Formula E (but the cars were definitely not quiet; I personally think they sounded like boiling kettles!). Having said that, watching the electric cars racing past our landmarks in Hong Kong, including the Central Star Ferry Pier and City Hall, with the Victoria Harbour on one side and the Mid-Levels skyline on the other, I was impressed by the advances in our technology and felt very glad that cars at the event were not only fast, but also clean, sustainable and better for the environment.

Representing a vision for the future of the auto industry, Formula E serves as a platform to feature the electric vehicle and to drive awareness on clean energy and sustainability. Although noises at the Formula E may never send chills up my spine, I am ready to support the championship to excel and to succeed in winning over a brand new fan base.

Many thanks to the Law Society for giving me an educational, environmental friendly and a truly adrenaline filled (and less noisy!) Sunday!

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**A Spectacular First Attempt !**

**By Cheng Kai Cheong Ray, Consultant So, Lung & Associates**

For some years now, Singapore has hosted the Formula 1 race, a major motor racing event; so Hong Kong was long overdue to host a similar sporting event. In October 2016, the dream of many petrol heads (like myself) of having an international motor race in Hong Kong finally came true. In a city like Hong Kong, I can only imagine how difficult it was to persuade the Government to seal off roads across the Central Business District to host motor racing for one weekend. But I am glad that the organiser succeeded and was very impressed by its effort and stamina.
After some 3 years of effort particularly by Mr. Lawrence Yu, the immediate past president of the HK Automobile Association, we are pleased to witness the first ever Formula e-Prix on the streets of Hong Kong. We are grateful for the support which the SAR government has provided to make this historic event happen. Hong Kong needs more positive energy these days and we hope this is just the beginning!

Kenneth S Y Ng
Ex-Council Member of the HK Law Society Chairman of the Formula E Working Group President of the HK Automobile Association

Formula E is considered the future of motor sport. However, probably because Formula E is relatively new and not as well known as other forms of motor sport, like Formula 1 and Le Mans, its reception amongst Hongkongers, even for motor fans, seemed to be lukewarm. Many seemed to be more interested in how the Formula E can boost tourism. While there is nothing to be criticised for holding such pragmatic views, I think Formula E is more than a tourist attraction. It is a passion!

Despite the race track being located in the Central Business District, I was very impressed to see how little disturbance it caused to the normal course of traffic on Hong Kong Island. The streets of Central were still filled with people, who were enjoying themselves, picnicking and singing, free from any annoyance caused by the sound of petrol engines. Perhaps that is the beauty of electric racing cars!

The Formula E race took place on Sunday afternoon. While I was thrilled to watch the race, I was a bit disappointed that other spectators did not seem to share my enthusiasm. There was not much cheering when the cars passed before the spectators, who seemed calm and quiet. Probably given the noiseless engines, any cheering and applause may have been taken to have spoiled the tranquil atmosphere.

In spite of its tepid reception, I have no doubt that the event was an overall success. Having said that, I think there are a few areas where improvements could be made. First, there were not enough stands to accommodate spectators. It could have been because the tickets, which were more than HK$2,000 each, were too expensive for most to afford, and thus there was no need for more seats. For me, it seems a shame that so few had the privilege to participate. It also seemed to impact the carnival atmosphere. Second, better entertainment could be provided to the spectators. There was an E-Village next to the racing track, but this area only contained car shows and food stalls. With admission tickets being sold at HK$300 a pop, it did not seem to be value for money. Perhaps next year more entertainment options could be offered, like live music or a concert. Lastly, it would be great if more supporting events and races were in place.

I am over the moon that Hong Kong finally hosted an international motor racing event. I really hope that it will come back again next year, and in the years to come. I am sure it will only get better as the sport grows in prominence and popularly. I will keep my fingers crossed for it!
邀請

兩星期前，我有幸獲律師會邀請出席在香港中環海濱區舉行的國際汽車聯會（FIA）第三季電動方程式賽車錦標賽（Formula E）。

這是我在FIA Formula E進行首次調查的機會。以下是我在賽前收集的資料：

什麼？
FIA Formula E錦標賽是世界上首個全電動賽車賽事。

何人？
電動車賽車的概念由FIA主席陶德（Jean Todt）提出，旨在「展現可持續發展的潛力」。

Formula E現任行政總裁Alejandro Agag受此願景啟發，創立了全球娛樂品牌Formula E，以賽車為重點。

何時？
首屆錦標賽於2014年9月在北京開始舉行。第二季於2015年10月開始，並於2016年7月初結束。

第三季錦標賽於2016年10月8日至9日在香港展開。10月8日舉行賽前嘉年華，包括名人賽。翌日舉行練習賽及排位賽，下午四時上演電動方程式香港站。

賽事當日

如上所述，活動在香港中環海濱區舉行，就在中環碼頭和香港摩天輪旁邊，距離中環地鐵站僅15分鐘路程，交通便利。當日是星期天，主辦單位安排暢順，令我留下深刻印象。清晰的指示∕地圖及工作人員到處可見，協助來賓進場。雖然入場者眾，但並沒有出現擁擠或混亂，人龍有序地排隊進入。

很高興能與另一位律師會會員Ray一起參加活動。Ray和我在下午二時到達香港摩天輪旁邊的入口，我們決定在在投入香港電動方程式前，先探索eVillage。

eVillage

eVillage遠離賽道，是一個信息和娛樂專區，來賓可參觀一系列與電動車相關的展示和活動，包括最新的電動及混能汽車和自行車、賽車模擬器等。

eVillage內的食品、飲品及Formula E官方商品出售。區內派對氣氛濃厚，展示了Formula E的創新、技術、可持續發展和效益。
主看台座位
在eVillage逗留了超過1.5小時，探索了各種活動，享用了幾杯飲料和小吃後，Ray和我決定移步主看台，找兩個理想位置欣賞香港電動方程式賽事。

經過三年的努力，特別有賴香港汽車會前任會長余錦基先生和蘇龍律師事務所的鄭啟昌顧問律師的貢獻，我們很高興見證了電動方程式賽車在香港的街道舉行。我們感謝特區政府的支持，令這項具歷史意義的活動得以實現。香港最近需要更多正能量，我們希望這只是個開始！

精彩的第一次！

作者 鄭啟昌 顧問律師
蘇龍律師事務所

加坡已主辦大型一級方程式賽事數年，香港早已該舉辦同類型體育比賽。2016年10月，包括我在內的車迷夢想成真，國際賽車比賽終於在香港舉行。在香港這樣的城市，可以想像要說服政府在香港商業區封路一個週末來舉行賽車有多麼困難。很高興主辦單位成功說服政府，其努力和耐力令人欽佩。

Formula E被視為賽車運動的未來。不過，可能因為Formula E相對較新，知名度不及其他形式的賽車，如一級方程式及Le Mans 24小時耐力賽，即使身為車迷的香港人，對Formula E的反應也似乎平淡。許多人似乎對Formula E如何推動旅遊更感興趣。雖然這種務實看法並無不妥，但我認為Formula E豈止一個旅遊景點。它是一鼓熱情！

儘管賽道位於中環商業區，賽事對港島區正常交通造成的干擾少之又少，這點令我印象深刻。為什麼這些汽車不僅快速，而且清潔、可持續和更環保，我感到欣喜。

Formula E代表汽車行業的未來願景，作為推廣電動汽車、提高清潔能源和可持續發展理念的平臺。雖然Formula E的車聲可能永遠不能令我血熱沸騰，但我願意支持這項賽事，希望它成功贏得新的支持者。

感謝律師會給我一個有教育意義、環保、刺激(又沒有那麼吵耳)的星期天！
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**Banking Associate**
- 1–5 PQE
- UK Firm

A prominent UK firm is looking for a Hong Kong qualified lawyer with 1–5 years’ post-qualification experience to join its leading Banking Team. This is a good opportunity for a junior banking lawyer to act for both major international banks and corporate borrowers in domestic, cross-border and international loan transactions working alongside a leading Partner within the Hong Kong Banking sector. The ideal candidate will have ample experience in drafting and negotiating loan agreements and security documents, as well as be familiar with local regulatory guidelines, with at least 1 year’s post-qualification experience. You will also possess excellent written and spoken English and Mandarin skills. Ref: H3659200

**Head of Legal**
- 15–20 PQE
- Established Hong Kong Listed Company

Our client is a reputable Hong Kong listed company with established businesses in Hong Kong and China. Currently seeking an outstanding senior lawyer to lead their legal team and to report to senior management team, you will work closely and will advise the senior management team as well as various business units regarding commercial legal issues and to provide strategic business legal advice. The ideal candidate will possess at least 15 year’s PQE, being a seasoned corporate commercial lawyer. Experience obtained with well-recognised companies is preferred, and exposure in the retail industry is sought after. You must speak and write fluent English and Chinese (Cantonese and Mandarin). Ref: H3291110

**US & PRC Associate/China Consultant**
- 3+ Years Experience
- Leading US Law Firm

A reputable firm is seeking a dual qualified lawyer being admitted in both US & PRC, to join their prominent corporate team. In this role you will focus on China related deals, cross-border mergers and acquisitions, joint ventures, private equity, and more. Candidates who have completed their training in international law firms with 3 - 6 years’ post-qualification experience in the area of corporate will be highly regarded. You will have experience in M&A projects, with strong drafting and communication skills in both English and Chinese, including native Mandarin. The ideal candidate will be a highly motivated team player. Candidate based overseas will also be considered. Ref: H3085610

**Regional Legal and Compliance Advisor**
- 5–10 PQE
- Leading Multinational Mechanical Engineering Business

Our client is a leading European multinational company, specializing in mechanical engineering products and services, with a strong presence in both Hong Kong and the South East Asia region. A great opportunity to gain diverse exposure and to work closely with senior management has arisen. Our client is seeking for a mid-level lawyer to join the HK team, to look after their regional contractual, commercial, contentious and compliance matters. You will be a 5–10 years’ PQE lawyer with experience gained with sizable companies, with strong in house commercial and related compliance experience. Regional exposure is a plus. Both English and Chinese is required. Ref: H3684900

**Trust Associate**
- 3+ PQE
- International Law Firm

Our client is a leading law firm within the area of wealth planning, specialised in advising domestic and international clients as well as their family offices in relation to trusts, tax, estate and succession matters. The team advises on all aspects of wealth structuring, using domestic and international trusts and foundations, private trust companies in local as well as offshore jurisdictions. You will be responsible for advising high net worth families and/or individuals on trust structuring and restructuring matters and tax implications. The ideal candidate will be a 3 PQE lawyer with experience in setting up and terminating trusts, and restructuring / domestication of tax matters. Strong local experience obtained with offshore or international law firm is a must. Ref: H3519520

**IN-HOUSE, CORPORATE**

**Legal Counsel**
- 5–10 PQE
- A well-regarded construction company with

Our client provides a variety of businesses including wealth management, asset management, securities, brokerage, investment bank, asset management, and professional services. Our client is a well-regarded construction company with over 50 years’ experience of working in the construction industry. They work with well-recognised companies and have a strong reputation for providing quality services. Ref: H3699620

**Regulatory BODIES’ LAWYER SALARY INFORMATION 2016**

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<td>840-1,080</td>
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<td>1,020-1,500</td>
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1 Rates are not inclusive of Directors/Vice-Presidents, for more detailed information, please contact us directly. Bonus is often discretionary/performance-based though we have observed most candidates receiving around 1 to 4 months depending on the role/organisation.
Senior Legal Manager
› 5–10 PQE
› Well-Known Logistics Business
Our client runs a fast growing logistic business and is continuing to expand their presence in Asia. They are now hiring a mid-level lawyer to cope with their rapid business development as well as to drive a variety of legal matters including corporate governance, tax, company secretarial and contracts management. The successful candidate will possess 5–10 years’ PQE with strong in house / general commercial experience. The ideal candidate will be a driven, adaptable and practical individual, with strong communication skills in liaising regularly with various business units and external counsel. Fluency in English and Chinese (Mandarin and Cantonese) is required. Ref: H3694370

Deputy Head of Legal
› 10+ PQE
› Chinese Investment Bank
A leading Chinese investment bank with established operations in Hong Kong and China, is seeking to take on a Deputy Head of Legal. The successful candidate will report to the Deputy CEO and work closely with senior management, looking after a small team of legal and compliance. You will support the Securities, Corporate Finance, Principal Investments and Asset Management businesses, overseeing a variety of transactions with the support of your team. The ideal candidate will possess at least 10 years’ PQE with strong corporate finance and M&A experience. Whilst prior financial institution experience is highly regarded, high caliber lawyers from international law firms will also be considered. Strong English and Chinese language skills are required, including conversational Mandarin. Ref: H3695450

DCM Lawyer
› 3+ PQE
› Reputable Bank
A well-established bank with over 2000 employees in HK is currently seeking to take up a new counsel to join the sizable legal team. Reporting to the Head of Legal, you will look after a variety of banking services and products, with a focus on debt capital markets and treasury matters including bonds and debt financing transactions. Working closely with various businesses in the bank, you will advise on ad hoc projects as well as provide legal advice on potential disputes or complaints. The ideal candidate will possess at least 3 years’ PQE with at least 1 years’ experience within the area of DCM. Strong working knowledge of banking matters and related agreements is useful. Fluency in English and Chinese is required. Ref: H3699520

Legal Counsel
› 3–8 PQE
› Hong Kong Listed Conglomerate
Our client is a Hong Kong listed company that is looking to hire a Hong Kong qualified lawyer to grow with their hospitality business. You will report to the Head of Legal and provide support on a variety of hospitality projects and transactions. You will also look after other general contractual and on-going Listing Rules compliance matters. The successful candidate will have 3–8 years’ PQE, obtained with established law firms or listed companies. You will be a keen learner with positive work attitude, with fluency in English and Chinese (Cantonese and Mandarin). Ref: H3693580

Managing Director of Legal, Compliance & Corporate Secretary
› 10+ Years of Experience
› Multi-Strategies Investment Group
Taking on a leadership role looking after Legal, Compliance & Corporate Secretary, you will look after a team of 5. Working closely with businesses including Structured Finance, Private Equity and Investment Banking, you will offer advice on investment transactions, structuring and setting up of funds as well as identify any potential risk arising out of transactions. You will review, draft and negotiate a variety of legal documents including term sheets, NDAs and commercial contracts. You will possess at least 10 years’ experience, with an understanding of fund management and be familiar with local regulatory guidelines (i.e.,SFO, FATCA). Strong English and Chinese language skills required. Ref: H3695810

Associate General Counsel
› 5–10+ PQE
› Leading Asset Manager
A leader in asset management is seeking to hire a standalone lawyer to be based in Hong Kong, reporting to the Head of Legal based in Singapore. There are 5 lawyers in the legal team across Asia. Looking after Hong Kong and China matters, you will advise on a variety of corporate matters such as acquisitions, structuring / re-structuring, mergers, legal vehicle governance or licensing / registration of entities. You will look after funds registration and distribution, as well as investment management and institutional matters. The ideal candidate will possess 5-10+ years’ PQE with asset management / SFC fund authorisation experience. You will be a self-starter who enjoys working independently, Chinese language skills is preferred. Ref: H3699510

Legal Counsel
› 3–8 PQE
› Reputable Construction Company
Our client is a well-regarded construction company with multiple on-going infrastructure projects in Hong Kong. Seeking to take on a construction legal specialist to join their established legal in-house team, the successful candidate will advise on potential legal risks on all active projects, to prepare and negotiate a variety of legal documents for the infrastructure projects, as well as to review and handle construction claims / disputes. The ideal candidate will be a seasoned construction lawyers with 3-8 years’ PQE, with experience gained with established law firms or companies. Excellent interpersonal and communications skills in both spoken and written English and Chinese are required. Ref: H3694910

Derivatives Lawyer
› All Levels
› Sizable Financial Institution
Our client is a sizable financial institution specialising in securities, brokerage, investment bank, asset management and financing. The legal team is seeking for a derivatives lawyer to look after a variety of fixed income and equity products including cash, GTC, structured notes and equity derivatives. You will look after both complex and innovative structures involving mainly HK regulations such as SFO, Listing Rules and PRC cross border regulations such as QFII, QDII and stock connect. You will possess at least 3-2 years’ experience in the area of derivatives and ISDA. For those who have interest to branch out and to gain wider exposure, there is an opportunity to pick up on other areas of work. Our client is open to hiring at all levels. Both English and Chinese is required. Ref: H3691350

Legal & Compliance Director
› 5–10+ PQE
› Financial Institution
Our client provides a variety of businesses including wealth management, asset management, securities, brokerage, investment banking and private equity, as well as with SFC License Types 1, 2, 4 and 9. Reporting to COO, you will take on an independent legal role working closely with senior management and key business heads, by providing legal and compliance advice and identifying potential risks of any new project / product / transaction. You will possess at least 5 years’ PQE with good experience in funds, or have worked in securities houses / asset managers. You will have a strong working knowledge of local regulatory guidelines and be comfortable to liaise with regulators on enquiries or otherwise. Strong English and Chinese language skills required. Ref: H3481840

To apply, visit www.michaelpage.com.hk/apply quoting the reference number or contact our consultants.
<table>
<thead>
<tr>
<th>Sector</th>
<th>Experience</th>
<th>Location</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>Capital Markets</td>
<td>3-5 PQE</td>
<td>Hong Kong</td>
<td>This eminent firm seeks a lawyer to join their capital markets team. You will work alongside a recognised partner on work including: initial public offerings; public offerings; and private placements of debt, equity and hybrid securities. PRC qualifications with an overseas LLM will also be considered. HKL3709</td>
</tr>
<tr>
<td>Construction Litigation</td>
<td>3-5 PQE</td>
<td>Hong Kong</td>
<td>This premier practice seeks a construction lawyer with experience gained with a leading practice. You will have Cantonese language skills - Mandarin a bonus. HKL4280</td>
</tr>
<tr>
<td>Law</td>
<td>NO-2 PQE</td>
<td>Hong Kong</td>
<td>A very exciting opportunity for a junior litigation associate to join this leading practice. You will work alongside a reputable partner, representing high profile clients on both commercial arbitrations &amp; complex commercial disputes. You will have excellent academics. Mandarin skills a plus. HKL4290</td>
</tr>
<tr>
<td>Banking &amp; Finance</td>
<td>1+ PQE</td>
<td>Hong Kong</td>
<td>Globally recognised firm seeks a lawyer to join their practice, assisting renowned partners and high profile clients. You will work on big ticket deals, including corporate lending, equity-backed financing, restructuring and mainstream syndicated lending. Common law qualification required, Mandarin essential. HKL4240</td>
</tr>
<tr>
<td>Capital Markets</td>
<td>3+ PQE</td>
<td>Hong Kong</td>
<td>This is a brilliant opportunity for an international arbitration partner with a portable book of business to join a top tier US law firm, known as a litigation powerhouse globally. You will work alongside notable individuals under a supportive management structure with international exposure from a leading peer law firm. HKL4235</td>
</tr>
<tr>
<td>Commercial Litigation</td>
<td>4-6 PQE</td>
<td>Hong Kong</td>
<td>Are you a commercial litigation lawyer looking for work/life balance? This global law firm with a leading regional practice is seeking a know how manager to provide training and knowledge management support to a leading team of lawyers. You will have solid experience in litigation matters; and be admitted in a common law jurisdiction. Mandarin preferred. HKL4235</td>
</tr>
<tr>
<td>Funds</td>
<td>1+ PQE</td>
<td>Hong Kong</td>
<td>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 <a href="mailto:sandra.godbold@atticus-legal.com">sandra.godbold@atticus-legal.com</a></td>
</tr>
</tbody>
</table>
City University of Hong Kong is a dynamic, fast-growing university that is pursuing excellence in research and professional education. As a publicly-funded institution, the University is committed to nurturing and developing students' talents and creating applicable knowledge to support social and economic advancement. The University has seven Colleges/Schools. As part of its pursuit of excellence, the University aims to recruit outstanding scholars from all over the world in various disciplines, including business, creative media, energy, engineering, environment, humanities, law, science, social sciences, veterinary sciences and other strategic growth areas.

The School of Law has three goals: becoming a world renowned centre for research and teaching of law; equipping students with global knowledge, skills and perspectives, and establishing a trusted relationship with local and international legal establishments. These goals are reflected in the composition of the faculty, the curriculum and enrichment activities. The School has also developed special programmes for judges from Mainland China, including LLM and JSD programmes. These appointments are part of a strategy to enhance the School's research performance. It has recruited excellent talents at all levels in recent years and these appointments represent a determined effort to increase the size of faculty by recruiting high calibre staff.

It is the School's goal to provide quality legal education for students and to broaden their horizons. The School offers a broad range of degree programmes: LLB, JD, LLM and PhD programmes. These appointments are part of a strategy to enhance the School's research performance. It has recruited excellent talents at all levels in recent years and these appointments represent a determined effort to increase the size of faculty by recruiting high calibre staff.

Applications and nominations are invited for candidates offering expertise in all areas of law. The University may appoint up to four Chair Professors/Professors, and a suitable appointee at the level of Chair Professor/Professor may be appointed as the Director of the Centre for Maritime and Transportation Law on a concurrent basis.

Chair Professor/Professor/Associate Professor/Assistant Professor
School of Law [Ref. B/097/05]

Requirements: A PhD or equivalent qualification is normally required. Candidates must have a superior academic record, with demonstrable evidence of, or a strong potential for, excellence in scholarly and teaching. They should in addition have the ability and willingness to contribute to the intellectual and scholarly life of the faculty community and to the University more generally.

Salary and Conditions of Service
Remuneration package will be driven by market competitiveness and individual performance. Excellent fringe benefits include gratuity, leave, medical and dental schemes, and relocation assistance (where applicable). Initial appointment will be made on a fixed-term contract.

Information and Application
Further information on the posts and the University is available at http://www.cityu.edu.hk or from the Human Resources Office, City University of Hong Kong, Tat Chee Avenue, Kowloon Tong, Hong Kong [Email: hrojob@cityu.edu.hk/Fax: 2768 1154 or 3442 0311].

To apply, please submit an online application at http://jobs.cityu.edu.hk, and include a current curriculum vitae. Applications and nominations received before 20 December 2016 will receive full consideration. Only shortlisted candidates will be contacted, and those shortlisted for the post of Assistant Professor will be requested to arrange for at least 3 reference reports sent directly by the referees to the Department, specifying the position applied for. The University's privacy policy is available on the homepage.

City University of Hong Kong is an equal opportunity employer and we are committed to the principle of diversity. Personal data provided by applicants will be used for recruitment and other employment-related purposes.

Worldwide recognition ranking 55th, and 4th among top 50 universities under age 50 (QS survey 2019); 1st in Engineering/Technology/Computer Sciences in Hong Kong (Shanghai Jiao Tong University survey 2016); and 2nd Business School in Asia-Pacific region (LT Dallas survey 2019).
In-house

HEAD OF LEGAL  HONG KONG  13+ PQE
Conglomerate based in Hong Kong seeks a lawyer with strong commercial, regulatory and contentious experience. You will manage a team of lawyers, and provide training to senior management on various legal developments. Cantonese required. (HKL 14379)

PRC CORPORATE LEGAL COUNSEL  HONG KONG  5-10 PQE
This MNC in the business of manufacturing major components seeks an experienced PRC qualified corporate lawyer. The work includes managing M&A transactions and JVs, and commercial matters. Strong experience gained from a leading Chinese law firm and/or in-house is required. (HKL 14438)

CORPORATE/COMMERCIAL  HONG KONG  8+ PQE
Leading commercial enterprise has a vacancy for a senior corporate/commercial lawyer to advise on a wide range of operational issues. This includes, but is not limited to e-commerce, franchising, marketing, competition law and HR matters. (HKL 14376)

LEGAL COUNSEL  HONG KONG  6+ PQE
We are acting for a well-known MNC that is looking for a general commercial lawyer to advise on a wide range of issues. You will be experienced advising senior management on a range of legal matters from Ecommerce to contract negotiating. Fluency in Chinese is important. (HKL 14378)

SENIOR LEGAL COUNSEL  SHANGHAI/SHENZHEN  4+ PQE
International tech company is looking for a Senior Legal Counsel in Shanghai and Shenzhen. This role will provide counseling on banking and financial activities and support both onshore and international investment and M&A deals. Fluency in Mandarin and English is essential. (HKL 14522)

LEGAL COUNSEL - ISDA/NAFMI NEGOTIATOR  HONG KONG  3-5+ PQE
Financial Institution looking to bring on and experienced DCM or banking associate in-house within OTC derivative transactions. You will need experience/understanding within derivatives hedging, preference in ISDA/NAFMI. Mandarin is essential. (HKL 14177)

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

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Email: c.park@alsrecruit.com

Georgeanna Mok  
Tel: +852 2920 9101  
Email: g.mok@alsrecruit.com

William Chan  
Tel: +852 2920 9105  
Email: w.chan@alsrecruit.com
Major, Lindsey & Africa, founded in 1982, is the world's largest and most experienced legal search firm, offering unparalleled service and strategic advice to candidates and clients looking to gain access to Asia Pacific, Australia, EMEA and the United States.

ASSOCIATE OPPORTUNITY: US Capital Markets, 2–6 years PQE, Mandarin language skills required (Hong Kong)
US Capital Markets team in Hong Kong seeks an ambitious and client-focused associate with the ability to lead deals. Fluent Mandarin is a must.

ASSOCIATE OPPORTUNITY: Corporate, US-qualified, 2–5 years PQE (Hong Kong)
US firm seeks a corporate M&A associate who is US-qualified (preferably New York-qualified) and has fluent Mandarin language skills. Candidates should have strong M&A experience, preferably in Asia.

MULTIPLE ASSOCIATE OPPORTUNITIES: Corporate or Funds, Commonwealth-qualified, 1–4 years PQE, Mandarin language skills preferred (Hong Kong)
Offshore firms seek junior to mid-level corporate or funds associates to join their teams. Corporate associates will be offered a wide spectrum of work. The firms are well-known for their collegiate environment and work quality.

MULTIPLE ASSOCIATE OPPORTUNITIES: Banking, 2+ years PQE, Mandarin language skills required (Hong Kong and Beijing)
Multiple law firms seek associates to join their banking and finance teams. Candidates should have lending and acquisition finance experience.

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

ASSOCIATE OPPORTUNITY: Corporate, Commonwealth-qualified, 3+ years of experience, Mandarin language skills required (Beijing)
Elite UK firm seeks a mid-level corporate associate for its team in Beijing. The incoming candidate is expected to get involved in M&A, PE and securities transactions. Relocation is welcome for the right candidate.

ASSOCIATE OPPORTUNITY: US Corporate, 3–6 years PQE, Fluent Japanese language skills are preferred but not essential (Tokyo)
Respected US law firm seeks a mid-level US corporate associate to join its Tokyo office. The ideal candidate needs to have M&A, joint ventures, public and private deal experience as well as a long-term interest in living and working in Japan.

ASSOCIATE OPPORTUNITY: Corporate, Commonwealth-qualified, 2–5 years PQE (Sydney)
Top tier law firm seeks an associate to join its corporate team in Sydney. Candidates should have excellent M&A experience at an international firm. Associates with strong international experience are highly preferred.
In-House

CORPORATE M&A  HONG KONG  5-10 YEARS
Exciting role in the hospitality sector for a corporate lawyer with an interest in the hotel industry. You will cover M&A, commercial contracts, risk and compliance matters across Asia. Excellent work environment & attractive benefits on offer. Chinese language skills preferred. HKL5992

IBD COMPLIANCE  HONG KONG  5-10 YEARS
Bulge bracket bank is looking to expand its compliance team. You will be working on both IBD & investment management compliance. Lawyers with experience in corporate finance, funds or regulatory will be considered. Chinese language skills are preferred but not essential. HKL6163

FINANCE/DERIVATIVES  HONG KONG  6-10 YEARS
Well-known international bank seeks a financial services lawyer with derivatives background & ISDA experience. You will focus on Greater China coverage and so fluent spoken & written Mandarin are essential. Great work life balance & a collegiate working environment on offer. HKL6182

TRANSACTION RISK MANAGER  HONG KONG  4-6 YEARS
Leading risk & insurance specialist is looking for a mid-level corporate/M&A lawyer to join its PE & M&A team. You will be involved in building relationships with PE & corporate clients as well as providing transactional risk advice. Fluent spoken Cantonese/Korean/Japanese preferred. HKL6177

CONTRACT FUNDS COUNSEL  HONG KONG  3-8 YEARS
US asset manager with impressive global AUM seeks a funds lawyer to join the legal team on a long term contract basis. You should have familiarity with funds formation work, ideally within the Asia region. Chinese skills would be an advantage but not essential. HKL6148

IBD LAWYER  HONG KONG  5-9 YEARS
European bank is seeking a corporate lawyer with excellent ECM and M&A experience who has gained the relevant experience from a reputable international law firm or financial institution. Fluent Cantonese & Mandarin are essential & HK qualification is preferred. HKL6155

ASSET MANAGEMENT  HONG KONG  0-2 YEARS
Asset management firm seeks a junior lawyer to join its legal & compliance department. You will have received training from an international firm & have some exposure to M&A work. Fluent English & Cantonese as well as the ability to work in a fast-paced environment are essential. HKL6078

Private Practice

M&A COUNSEL/PARTNER  HONG KONG  8+ YEARS
Exciting opportunity for a senior associate looking for a step up to Counsel/junior partner. This role will cover M&A, broad corporate transnational work & general commercial contracts. Regular travel to China & ability to manage teams required. Client following/client relationships preferred. HKL6103

LITIGATION COUNSEL/PARTNER  HONG KONG  7+ YEARS
Excellent opportunity for an experienced litigator to join a growing disputes team. A strong network of contacts, portable book of business & solid HK litigation experience from an international law firm required. Chinese language skills not essential. Cantonese is an advantage. HKL6090

LITIGATION  HONG KONG  4+ YEARS
One of HK’s largest litigation teams is looking for a commercial litigation lawyer to cover general commercial litigation & regulatory investigations. HK qualification & Chinese language skills are required. Training gained from reputable law firms are highly desirable. HKL6180

ASSET FINANCE  HONG KONG  3-5 YEARS
A UK law firm is seeking an experienced finance lawyer with HK or Commonwealth qualifications to join its asset finance practice. You will work on English law documents & have fluent English language & drafting skills. Overseas candidates are welcome. HKL5915

FUNDS / REGULATORY  HONG KONG  3-5 YEARS
This market-leading UK law firm is actively looking for a mid-level associate to join its funds practice in HK. You will have HK qualification & relevant experience in funds & insurance regulatory matters, gained from another reputable law firm. Chinese language skills are essential. HKL5132

FINANCE/DERIVATIVES  HONG KONG  6-10 YEARS
Well-known international bank seeks a financial services lawyer with derivatives background & ISDA experience. You will focus on Greater China coverage and so fluent spoken & written Mandarin are essential. Great work life balance & a collegiate working environment on offer. HKL6182

CORPORATE M&A  HONG KONG  5-10 YEARS
Exciting role in the hospitality sector for a corporate lawyer with an interest in the hotel industry. You will cover M&A, commercial contracts, risk and compliance matters across Asia. Excellent work environment & attractive benefits on offer. Chinese language skills preferred. HKL5992

IBD COMPLIANCE  HONG KONG  5-10 YEARS
Bulge bracket bank is looking to expand its compliance team. You will be working on both IBD & investment management compliance. Lawyers with experience in corporate finance, funds or regulatory will be considered. Chinese language skills are preferred but not essential. HKL6163

LITIGATION COUNSEL/PARTNER  HONG KONG  7+ YEARS
Excellent opportunity for an experienced litigator to join a growing disputes team. A strong network of contacts, portable book of business & solid HK litigation experience from an international law firm required. Chinese language skills not essential. Cantonese is an advantage. HKL6090

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One of HK’s largest litigation teams is looking for a commercial litigation lawyer to cover general commercial litigation & regulatory investigations. HK qualification & Chinese language skills are required. Training gained from reputable law firms are highly desirable. HKL6180

IBD LAWYER  HONG KONG  5-9 YEARS
European bank is seeking a corporate lawyer with excellent ECM and M&A experience who has gained the relevant experience from a reputable international law firm or financial institution. Fluent Cantonese & Mandarin are essential & HK qualification is preferred. HKL6155

M&A - OFFSHORE  HONG KONG  2-5 YEARS
An opportunity to join an offshore firm with a well-established team for a mid-level associate. You should be England & Wales qualified with solid M&A experience gained from an international law firm. Top quality work on offer and Chinese skills are not required. HKL6161

ASSET MANAGEMENT  HONG KONG  0-2 YEARS
Asset management firm seeks a junior lawyer to join its legal & compliance department. You will have received training from an international firm & have some exposure to M&A work. Fluent English & Cantonese as well as the ability to work in a fast-paced environment are essential. HKL6078

CONSTRUCTION DISPUTES  SHANGHAI  1+ YEARS
UK firm with leading construction practice is seeking a construction disputes lawyer in Shanghai with prior PRC/international arbitration experience. Exposure to construction contracts or construction litigation cases is advantageous. HK or Commonwealth qualification is preferred. HKL6176

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Head of Legal
Leading Listed Retailer, 10+ Years PQE
- Manage a small team advising on commercial matters
- Work closely with the company secretarial team
- Advise management and business units on legal and compliance matters
- Fluency in English and Chinese (both Cantonese and Mandarin)
- Law firm and in-house experience desired. Ref: AT.502618

Legal Director
Leading Garment Manufacturer, 10+ Years PQE
- Head up legal and compliance function to advise management and business units on their legal, risk and compliance matters
- Listed company experience is preferred
- General in-house and commercial/compliance experience is required
- Fluency in English, Cantonese and Mandarin. Ref: AT. 502769

Legal Counsel
Diverse Business Group, 3+ Years PQE
- Newly created global position reporting to management
- Advise the deputy CEO on transactional and commercial legal matters, support business units on legal matters
- Supervise the company secretarial team
- In-house legal experience essential
- Fluent English, Cantonese and Mandarin. Ref: MK.502504

Funds Associate
International Law Firm, 4-6 Years PQE
- Fast growing international practice, global client base
- Advise on establishment and operation of funds
- Provide financial regulatory and compliance advice
- HK, common law and US qualified funds lawyers considered
- Fluency in written and spoken Chinese and English required
- Top academic grades a must. Ref: CT.502780

Banking & Finance Associate
International Law Firm, 5+ Years PQE
- Award winning banking practice
- Cutting edge, multi-jurisdiction transactions (PRC, Asia)
- Take a lead on the full suite of complex banking deals
- Excellent written and spoken Chinese Mandarin and English
- HK or common law qualified lawyers
- Self starter, can work independently. Ref: CT.502785

Legal Counsel
International Financial Institution, 3+ Years PQE
- Reporting to the Head of Legal, you will be drafting and negotiating on a broad range of legal and commercial contracts
- Cover corporate, commercial, regulatory and contentious matters, with external counsel support where required
- HK or PRC qualified with in-house financial services experience
- English and Cantonese, Mandarin an advantage. Ref: MK.502759

For a confidential discussion regarding career opportunities, please contact:

Annie Tang on (852) 2810 9077
annie.tang@staranise.com.hk

Michael Kwan on (852) 3462 2745
michael.kwan@staranise.com.hk

Chris Tang on (852) 2810 9078
chris.tang@staranise.com.hk

Christy Ho on (852) 3708 9509
christy.ho@staranise.com.hk

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LEGAL PROFESSIONALS

FINANCIAL SERVICES

HEAD OF LEGAL / SENIOR COUNSEL
TOP ASSET MANAGER
OAA/507890
A global asset manager with substantial AUM is looking for a senior lawyer to take on the management of the APAC legal team. Reporting to the APAC CEO and the Global Head of Legal this is a senior role for an experienced funds lawyer. Products include ETFs, QDII, RQFII, etc.

Key Requirements:
- A qualified lawyer with a minimum of seven years PQE, trained in a top law firm and ideally with in-house experience
- Experience in funds law, including exposure to launching new products and initiatives and a wide variety of documentation (IMAs etc)
- Strong communication skills, independent and proactive
- Fluent English and Mandarin is essential for this role

LEGAL COUNSEL
APAC PRIVATE BANK
OAA/506340
The private banking arm of a global financial institution is looking to grow the Hong Kong legal team to two, reporting to the HK Head of Legal. The role will look at a variety of private banking products (lending as well as investment) as well as more general legal matters.

Key Requirements:
- A qualified lawyer with a minimum of three years PQE, trained in a top law firm
- A strong background in one of banking, derivatives or corporate law
- Strong communication skills, proactive and resourceful
- Fluent English and Mandarin is essential for this role
- Motivation to develop private banking product knowledge

HEAD OF COMPLIANCE
LEADING ASIAN BANKING GROUP
QPQD/509050
A prominent Asian banking group is looking for a seasoned compliance professional to join the team, who will oversee business management for both financial crime compliance and regulatory compliance. You will be leading a team of 10, with strong SFC and HKMA exposure.

Key Requirements:
- In depth regulatory knowledge related to HKMA and SFC
- Experience in senior compliance leadership position within a large scale bank
- Strong communication skills, independent and proactive
- Fluent English and Mandarin is essential for this role

AVP COMPLIANCE, TRADE SURVEILLANCE
EUROPEAN INVESTMENT BANK
QPQD/497380
Our client, a European investment bank, is continuing to grow their business as well as their top tier compliance team. This is an exciting opportunity to join a dynamic compliance team in their growth stage. The ideal candidate will have strong trade surveillance experience covering equities and structured products.

Key Requirements:
- Ability to supervise surveillance and guide a team across countries
- At least 5-7 years of relevant surveillance/monitoring/review/audit work experience
- Analytical, attention to details, be able to spot and document irregular trends and patterns
- Good equities product knowledge

VP OF COMPLIANCE
GLOBAL HEDGE FUND
WDM/490290
Global hedge fund with extensive diversified investments throughout the region is seeking a VP of Compliance. This person will own compliance for HKG and PRC and will either lead or be a peer to team members in Japan and SNG. They are going through a significant regional growth phase and this person will work closely with marketing/sales teams on distribution compliance initiatives.

Key Requirements:
- In depth regulatory knowledge surrounding the asset management industry in Asia
- Demonstrated experience in compliance function with a major global fund manager
- As firm is a registered QDLP participant, strong knowledge of such fund structures will be preferred
- Strong assertive personality will be essential
- Fluent English and Mandarin is essential for this role

AVP: REGULATORY COMPLIANCE
LEADING REGIONAL ($60B+) PRIVATE BANK
WDM/505580
Sitting in this globally renowned Private Bank, this role will work on the approval of new complex Private Banking products. The firm is expanding their product offerings to their many HNW customers – as such they are ramping up their compliance division. This role offers high exposure in a lead department and exceptional growth potential in a rapidly expanding firm with an excellent brand name.

Key Requirements:
- In depth regulatory knowledge of both HKMA and SFC requirements for the issues of complex products to private banking customers
- Strong knowledge of product risk rating frameworks, key initiative will be improving the existing model
- Strong poise, polish, and communication as person will be key contact for regulators and various senior internal stakeholders
- Fluent English and Mandarin is essential for this role

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