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Lilian Chiang
Senior Partner, Deacons

Elaine Lo
Partner, Head of China Practice, Mayer Brown JSM

Upcoming Changes to Hong Kong’s Corporate Governance Framework for Insurers
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Overview of the Law Reform Commission’s Consultation Paper on Sexual Offences involving Children and Persons with Mental Impairment
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Third Party Funding for Arbitration in Hong Kong: Law Reform Commission’s Final Report
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To find out more, contact Amantha Chia at amantha.chia@thomsonreuters.com or (65) 6870 3917
On 12 October 2016, the Law Reform Commission (“LRC”) issued a lengthy report, including a set of recommendations calling for the Hong Kong Government to reform the law to make it clear that third party funding of arbitration and associated proceedings under the Arbitration Ordinance is permitted under Hong Kong law. In this report, the LRC recognised that third party funding has become increasingly common around the world and that the proposed reforms to abolish the doctrines of champerty and maintenance is necessary to enhance Hong Kong’s competitive position as an international arbitration centre and to avoid being taken over by its competitors. The Disputes article (p. 44) in this issue discusses the recommendations in the LRC’s report and how they might be implemented.

On the heels of the LRC issuing their final report, on 7 November, Singapore’s Ministry of Law submitted the Civil Law (Amendment) Bill 2016 to Parliament to permit third party funding in arbitration and to lay the groundwork for further expansions. It indicated that this decision was part of its ongoing efforts to ensure Singapore maintains its competitive edge as an international commercial dispute resolution hub. This has prompted some to claim that the arbitration hub has now “leapfrogged” ahead of Hong Kong.

In response to these developments, Christopher Bogart, Chief Executive Officer of Burford Capital, wrote a letter to Hong Kong Lawyer (p. 12). In his letter, he essentially urges Hong Kong to follow Singapore’s lead, advocating for the Government to not only follow the LRC’s recommendations to remove any ambiguity and explicitly allow for the use of litigation finance in arbitration, but also to go further and expand the sanctioned use of litigation finance generally, including in commercial litigation. He also expresses his support for the adoption of the LRC’s “light touch” approach to the regulation of third party funding of arbitration in Hong Kong, noting that an unduly regulatory environment would discourage capital flows and disadvantage Hong Kong relative to other centres.

Both the letter and the Disputes article touch on a variety of important issues currently being weighed by the Hong Kong Government as it considers how best to move forward with the reform proposals. How will the Hong Kong Government respond in light of Singapore’s step forward? Hopefully, in a way that will further bolster its position as a premier seat of arbitration in Asia. We will continue to follow and report on developments in this space. Please write in if you would like to add to this interesting, on-going discussion.
The Law Society of Hong Kong

ANNUAL

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The Professional Indemnity Scheme ("PIS") has been the professional indemnity provider of law firms in Hong Kong for nearly 30 years. It is governed by the Solicitors (Professional Indemnity) Rules (Cap. 159M) ("PIS Rules") and is held, managed and administered by the Hong Kong Solicitors Indemnity Fund Limited ("Company").

The PIS Rules were drafted nearly three decades ago and are in need of revision. The Solicitors (Professional Indemnity) (Amendment) Rules 2016 and Solicitors’ (Practice) (Amendment) Rules 2016 (together “Amendment Rules”) were gazetted on 25 November 2016. The Amendment Rules aim to improve the clarity of the PIS Rules, enhance the operation of the PIS and provide better protection to the public. Salient features of the changes include:

(a) amending the definition of “Practice” (r. 2 of the PIS Rules) to clarify that the business of practising as a solicitor includes “the neutral in any form of alternative dispute resolution procedure; China-Appointed Attesting Officer; or civil celebrant…”;

(b) amending the Senior Counsel Clause (para. 8(1)(c) of Schedule 3 to the PIS Rules) to give the Indemnified and the Company a choice to refer a difference or dispute arising between them regarding the defence or settlement of a claim, to either a Junior or a Senior Counsel for final determination (the “Counsel Clause”). This may result in cost savings as the current PIS Rules only make reference to a Senior Counsel;

(c) clarifying the existing power of the Company or the Law Society to disburse or reimburse out of the fund all expenses and liabilities incurred in the handling of claims and other expenses and liabilities incurred in respect of the fund and the PIS Rules, subject to the Company or the Law Society having acted in good faith (para. 3(d) of Schedule 2 to the PIS Rules);

(d) removing an exclusion (para. 1(2)(c)(x) of Schedule 3 to the PIS Rules) so that Indemnity will be provided even where no Receipt had been issued to the relevant practice because of some default by its principals. This means that subject to the terms and conditions of the PIS Rules, the relevant law firm will still be indemnified even when its principals have failed to pay the PIS contributions. The deletion of this exclusion to the PIS Rules is aimed at safeguarding the public. The Company’s remedy for the law firm’s failure to pay its contribution is to rely on its power to charge interest on overdue contributions (pursuant to para. 5 of Schedule 1 to the PIS Rules) and to pursue each principal of the firm for reimbursement of any payment made by the Company to satisfy the claim against the firm, together with interest (under para. 9 of Schedule 3 of the PIS Rules).

Members should take note however, that a solicitor’s practising certificate shall be suspended if he/she fails to maintain PIS cover pursuant to r. 6 of the PIS Rules;

(e) clarifying the Company’s discretion to take over the conduct of a claim, which is important in cases where a claim may be made against a sole practitioner who has passed away and no personal representative has been appointed to administer the estate. Unless the Company takes over the conduct of the claim the claimant may go uncompensated.

In addition to these two sets of Amendment Rules, the Board of the Company and the Law Society have also taken note of the rising number of registered foreign lawyers ("RFLs”) practising in Hong Kong. The Law Society does not currently require RFLs, who apply for registration to be employed in a Hong Kong law firm to supply evidence of professional indemnity insurance pursuant to s. 6 of the Foreign Lawyers Registration Rules; on the basis that they are covered by the PIS. The number of RFLs practising in Hong Kong has risen by more than 67 percent over the last 10 years. (from 777 in 2005 to 1,299 in 2015). As at 31 December 2015, 74 percent of RFLs are employed in Hong Kong law firms. There is thus an increase in potential exposure to claims arising out of errors or omissions by RFLs in Hong Kong firms. The top three home jurisdictions of RFLs are the United States, England & Wales and mainland China.
Despite the rising number of RFLs practising in Hong Kong law firms, the number of RFLs is not incorporated in the contribution formula and therefore is not reflected in the contributions payable. RFLs are treated no differently to unqualified staff. To remedy this inequity in the PIS contribution calculation, the Council and the Board have resolved to incorporate the number of RFLs into the formula for calculation of PIS contributions and deductibles.

The Board is also considering other proposals to improve the coverage of the PIS, preferably at no additional cost to members. If you have any comments or suggestions, you are most welcome to let me know at president@hklawsoc.org.hk.

Thomas So, President
Peter Duncan SC  
*Review of Sexual Offences Sub-Committee, Chairman*

Mr. Peter Duncan, SC practiced in New Zealand before moving to Hong Kong in 1973 to join the Attorney General’s Chambers as Crown Counsel. He then joined ICAC as one of its in-house counsel shortly after its inception in 1974. In 1983, he joined the Hongkong Land Company Limited as Group Legal Manager, and was appointed Regional Counsel with Dow Chemical Pacific Limited in 1990.

Mr. Duncan left the business sector to join the Bar in 1998 and was appointed Senior Counsel in 2004. He has since developed a substantial practice in criminal law with an emphasis on “white collar” crime. He has also appeared in a number of High Court civil/commercial litigation cases and acted as an arbitrator. Mr. Peter Duncan has also sat as a Deputy High Court Judge of the Court of First Instance.

Kim Rooney  
*Gilt Chambers, Arbitrator and Barrister*

Kim Rooney is an international arbitrator and barrister, chairing the Hong Kong Law Reform Commission’s Sub-committee on Third Party Funding for Arbitration. Before qualifying as a barrister in 2010, she was a partner of White & Case LLP, and headed its Hong Kong based Asian dispute resolution practice. She is an alternate member of the ICC Court of International Arbitration, and a member of the Hong Kong Bar Council (and chair of its Special Committee on International Practice), the Hong Kong Government’s Advisory Committee on Promotion of Arbitration in Hong Kong and its Committee on the Provision of Space in the Legal Hub among other memberships. She is co-author of ICCA’s *Guide to the Interpretation of the 1958 New York Convention: A Handbook For Judges*, among other works.

甘婉玲  
*Gilt Chambers 仲裁員及大律師*

Mardi Wilson
Head of Eversheds Agile, Hong Kong

Mardi Wilson is the Head of Eversheds Agile, Hong Kong, leading the service offering for high quality, interim legal professionals in Hong Kong as part of Eversheds Agile international expansion of into the Asia market.

Ms. Wilson has 16 years experience in recruitment and HR and has been with Eversheds since 2010. As Head of Eversheds Agile, Hong Kong, she is responsible for sourcing and selecting candidates with the right calibre and experience to then match these lawyers with short term opportunities with an outstanding list of clients, many clients being household names in the international and Hong Kong market.

Joyce Chan
Clyde & Co, Partner

Ms. Chan is a Partner at Clyde & Co with a particular emphasis on the insurance sector. She advises in financial services institutions and intermediaries, on a broad range of corporate, regulatory and compliance matters which includes mergers & acquisitions, joint venture, reorganisation work, assets sale and purchase, establishment of distribution platforms, green field licensing, authorisation of financial products and establishment of compliance programs.

Prior to joining Clyde & Co, Ms. Chan spent more than 15 years in the area of insurance, both in private practice and as in-house counsel, leading the legal teams at two multinational insurers in Hong Kong.

Gillian Morrissey
Clyde & Co, Registered Foreign Lawyer

Gillian (Gill) Morrissey is a corporate lawyer based in Hong Kong specialising in corporate and regulatory insurance. She has experience in advising on various corporate, regulatory and commercial matters and transactions in Hong Kong and Europe. She acts for insurers, reinsurers, intermediaries and acquiring and disposing corporate groups in the insurance sector.

Ms. Morrissey joined Clyde & Co Hong Kong in February 2016 and has been working in Hong Kong since January 2014. She currently practices as a Registered Foreign Lawyer in Hong Kong and is pending admission as a solicitor in Hong Kong having passed the Overseas Lawyers Qualification Exams. She trained and qualified as a solicitor in Ireland, and is also admitted in England & Wales.

Gillian Morrissey
其禮律師行 外地註冊律師

Gillian(Gill)Morrissey是一位駐香港的企業律師，專攻企業和保險監管。她有各種有關香港及歐洲企業、監管和商務與交易的諮詢經驗。她是保險公司、再保險公司、中介機構與保險界企業收購及出售的法律代表。

Morrissey女士在2016年2月加入香港其禮律師行,並自2014年1月以來一直在香港工作。她目前在香港作為註冊外地律師執業,通過海外律師資格考試後,正在等待獲認許為香港律師。她在愛爾蘭受訓和獲律師資格,也在英格蘭及威爾士獲認許。

Mardi Wilson
Eversheds Agile, Hong Kong 主管

Wilson女士是Eversheds Agile, Hong Kong的主管，專門為客戶提供臨時和優質的專業法律服務，而這也是業務國際化的Eversheds Agile拓展其亞洲市場業務的其中一部分。

在員工招聘和人力資源方面，Wilson女士擁有16年的工作經驗，而她本人則是自2010年開始在Eversheds服務。作為香港Eversheds Agile的主管，Wilson女士負責物色具有適當能力及經驗的法律專業人員，並將他們推薦給在國際和香港聲譽卓著，並且廣為人知的大型企業，讓這些法律專業人士以短期性質為該等客戶提供服務。
Consultation on Proposed Enhancements to the Position Limit Regime and the Associated Amendments

The Securities and Futures Commission (“SFC”) launched a consultation in late September on “Proposed Enhancements to the Position Limit Regime and the Associated Amendments to the Securities and Futures (Contracts Limits and Reportable Positions) Rules and Guidance Note on Position Limits and Large Open Position Reporting Requirements”.

Under the existing position limit regime, an exchange participant or its affiliate may seek authorisation from the SFC to hold or control Hang Seng Index (“HSI”) and Hang Seng China Enterprises (H-shares) Index futures and options contracts in excess of the statutory limit for the purposes of hedging risks that arise in the course of providing services to clients. The current cap on the excess that may be authorised by the SFC is 50 percent of the statutory limit.

The SFC proposed enhancements to the above position limit regime: it suggested that, among other things, the cap on the excess position limit that may be authorised by the SFC would increase from 50 percent to 300 percent of the statutory position limit. In addition, new excess position limits were proposed for index arbitrage activities, asset managers and market makers of exchange-traded funds.

The thinking underlining these proposed enhancements was said to address market participants’ business needs and to encourage them to conduct more of their derivative activities on exchange markets.

The Investment Products and Financial Services Committee (the “Committee”) has assisted The Council in reviewing the above consultation paper. The Law Society generally agreed with or had no particular views on those consultation questions put forward in the consultation paper. Those views were summarised in a submission, which could be found at http://www.hklawsoc.org.hk/pub_e/news/submissions/20161110.pdf.

有关建議改進持倉限額制度和相應修訂的諮詢文件

證券及期貨事務監察委員會（證監會）於9月發表「有關建議改進持倉限額制度和對《證券及期貨(合約限量及須申報的持倉量)規則》及《持倉限額及大額未平倉合約的申報規定指引》作相應修訂的諮詢文件」。

根據現行的持倉限額制度，交易所參與者或其聯繫人可向證監會申請授權，讓他們對沖為客戶提供服務過程中產生的風險而持有或控制數目超出法定上限的恒生指數及恆生中國企業(Ｈ股)指數期貨及期權合約。

現時可獲證監會授權持有或控制的超額持倉量上限為法定限額的50%。

證監會建議改進上述持倉限額制度，包括將可獲證監會授權持有或控制的超額持倉量上限，由法定持倉限額的50%上調至300%。此外，證監會亦為指數套戥活動、資產管理人及交易所買賣基金的莊家建議新的超額持倉限額。

證監會稱，建議的改進旨在應付市場參與者的業務需要，並鼓勵他們於交易所市場內進行更多衍生工具活動。

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- **Volume 2** – Mental Health Ordinance, District Court Ordinance, Hong Kong Court of Final Appeal Ordinance, Legal Practitioners Ordinance, Lands Tribunal, Labour Tribunal Ordinance
- **ADR Volume** – The 2017 service continues to highlight a significant number of decisions on important points of practice based on the underlying objectives.

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Letter to Hong Kong Lawyer
給《香港律師》的信

By Christopher P. Bogart, CEO  Burford Capital

Welcoming Third Party Funding for Arbitration to Hong Kong
歡迎推動香港引入第三方資助仲裁

As a leading global finance firm focused on law and the world’s largest publicly traded provider of litigation finance, it will come as no surprise that Burford Capital welcomes the Law Reform Commission’s 12 October 2016 Final Report on Third Party Funding for Arbitration, recommending a new openness to “third party funding” (also known as litigation finance or litigation funding) in Hong Kong.

Burford’s own experience proves that there is significant client demand in Hong Kong for outside capital to cover the extraordinary cost of commercial litigation and arbitration. A meaningful number of commercial users of dispute resolution want or need to access external capital. This trend is driven by the unceasing rise in litigation cost, ever-growing litigation volumes and enhanced corporate sensitivity to incurring legal expense. Moreover, corporations around the world are increasingly recognising that litigation and arbitration claims are valuable corporate assets, just like any other contingent receivable, and are capable of underpinning corporate financing activity. A move toward third-party funding in Hong Kong enables this clear business need to be met.

Hong Kong’s move toward openness to third party funding will also help to ensure that it keeps pace with competing arbitration centres around the world, among them Singapore, which has very recently introduced legislation to open the door to litigation finance. Indeed, as the Final Report asserts, “proposed reforms are necessary to enhance Hong Kong’s competitive position as an international arbitration centre”. Billions of dollars of external capital have already flowed to arbitration centres like London and New York. Hong Kong has heretofore persisted as a noticeable outlier among sophisticated legal and capital markets centres in maintaining significant restrictions on commercial litigation and arbitration finance. By failing to remove barriers to its use, Hong Kong has already fallen behind other such centres and is continuing to see its position erode.

The recommendations of the Final Report will help address Hong Kong’s competitive gap with other arbitration centres – but we would go further. Hong Kong should not only follow the Final Report’s recommendation to remove any ambiguity and explicitly allow the use of litigation finance in arbitration, but it should also expand the sanctioned use of litigation finance generally, including in commercial litigation.

歡迎推動香港引入第三方資助仲裁

法律改革委員會(“法改會”)於2016年10月12日發布最後一份關於第三方資助仲裁的報告書，建議香港開放接受“第三方資助”(亦稱為訴訟融資或訴訟資助)；作為在全球位居前列的融資公司，專注於法律領域，並且上市公司中規模最大的訴訟資金提供者，Burford Capital歡迎法改會的報告書乃屬意料中事。

Burford從其本身的經歷體會到，香港有很多商業訴訟和仲裁當事人需要資金應付巨額費用，因此對外界資金存在很大的客戶需求。爭議解決機制的商業使用者中，有不少希望或需要得到外來資金。這種趨勢的動力源於不斷上漲的訴訟費，有增無減的訴訟個案，以及企業對法律開支更高的敏感度。此外，全球各地企業漸漸認識到訴訟和仲裁申索是具有價值的企業資產，就像任何其他或有應收款一樣，能夠支持企業融資活動。香港引入第三方資助能使這種明顯的企業需要有機會得到滿足。

在香港推動第三方資助仲裁，亦有助確保香港保持與全球相互競爭的仲裁中心步伐一致，其中新加坡不久前已經推出法例，打開通往訴訟融資的大門。事實上，正如最後報告書所言：「有關建議改革旨在加強香港作為國際仲裁中心的競爭力。」現時已經有數十億外來資金流入倫敦和紐約等仲裁中心。香港迄今仍然給商業訴訟和仲裁融資施加諸多限制，明顯偏離成熟的法律和資本市場的做法。由於未有消除使用融資的障礙，香港早已落後於其他這一類中心，甚至地位正在不斷被削弱。

最後報告書的建議將幫助消除香港與其他仲裁中心在競爭優勢上的差距——但我們想得更遠一點。香港不應只是跟隨最後報告書的建議，釐清含糊之處，明確准許利用訴訟融資為仲裁提供資金，還應在其整體上擴大批准使用訴訟融資的範圍，包括用於商業訴訟。
As Hong Kong opens to third party funding of arbitration, we would also caution against the adoption of an unduly regulatory environment, which would discourage capital flows and disadvantage Hong Kong relative to other centres. Burford already faces far more demand for its capital than it has capital available. Adopting an unduly regulatory or interventionist approach to third party funding will not solve the current disinclination to do business in Hong Kong and will simply leave the status quo in place. Third party funding has enjoyed widespread adoption in the major English-language common law jurisdictions such as the United States and the United Kingdom, as well as in international arbitrations conducted by institutions such as the ICC, LCIA, ICSID, PCA, AAA and others. Thus, if Hong Kong merely opens the door a crack to litigation finance but seeks an onerous and intrusive regulatory regime, it will achieve much the same result as if it had not engaged in any reform at all.

Moreover, if any regulation is to occur, Burford strongly objects to the concept that regulation is appropriate based on the identity or line of business of the capital provider as opposed to the activity or function being carried out. A company that calls itself a “third party funder” should not be regulated differently than an insurance company or hedge fund that does essentially the same thing in providing external capital to arbitration. A hedge or private equity fund or an insurer providing capital in support of a litigation matter – in whatever form of transaction – must be subject to the same regulation as a “funder”. To proceed otherwise would be unfair and discriminatory.

The other issue Hong Kong needs to approach cautiously relates to adverse costs. Litigation funders are capital providers; they focus on annualised returns. Taking on others’ risk isn’t free. If litigation funders become liable for adverse costs, their prices will increase, reversing some of the access to justice gains sought by having them in existence in the first place. The way that position is managed in the UK is through the availability of litigation cost insurance; litigation funders insist that their clients purchase such insurance to protect both the client and the funder from a potential award of adverse costs, and the price of the insurance, while expensive, is considerably lower than funders would charge for assuming the same level of risk (as insurers have a lower cost of capital than funders). However, there is not a comparable robust litigation insurance market in Hong Kong, which means that pushing the risk of adverse costs onto funders will ultimately come at a very high price to claimants. Defendants may like that result, and it is not surprising that they would welcome the prospect of being able to avoid bearing adverse costs at all. Burford strongly objects to the concept that regulation is appropriate based on the identity or line of business of the capital provider as opposed to the activity or function being carried out. A company that calls itself a “third party funder” should not be regulated differently than an insurance company or hedge fund that does essentially the same thing in providing external capital to arbitration. A hedge or private equity fund or an insurer providing capital in support of a litigation matter – in whatever form of transaction – must be subject to the same regulation as a “funder”. To proceed otherwise would be unfair and discriminatory.

All of that said, we are heartened by the Final Report’s recommendation of a “light touch” approach to the regulation of third party funding of arbitration in Hong Kong for an initial period of three years, and we urge that this approach become a more permanent stance thereafter. But the implementation will be important, and needs to happen in the context of a global capital market, not a parochial legal system.
Breaking the Glass Ceiling

Although men and women are not equally distributed around the globe, they are more or less evenly split in number. According to the 2015 estimates by the United Nations, there are 101.8 men for every 100 women.

The latest published data by the Census and Statistics Department show that 54 percent of Hong Kong’s population is female. The ratio of male to female has decreased continuously over the past decade. In 2015, there were 931 males in every 1,000 females, compared to the ratio of 979 to 1,000 in 2005.

It follows that out of the human talent pool, women take up nearly half of the world’s total and in the context of Hong Kong, more than half. Ensuring the healthy development and appropriate use of this talent pool therefore has a vital bearing in the growth, competitiveness and future readiness of an economy.

Gender mainstreaming, the integration of gender perspectives and needs in legislation, policies or programmes, in any area and at all levels, has been established as a major global strategy for the promotion of gender equality by the United Nations since the mid 1990s. The Hong Kong Government has also taken measures in support of this strategy. For instance, the Government has applied a “gender benchmark” to appointed non-official members of advisory and statutory bodies since 2004. The benchmark then was 25 percent. As of June 2016, 31.7 percent of government appointed non-official members in advisory and statutory bodies were women.

Within Hong Kong’s solicitors’ branch, the proportion of women varies at different stages – women made up 60 percent of trainee solicitors, 59 percent of assistant solicitors, 36 percent of consultants and 27 percent of partners (data as of 17 November 2016).

These figures raise questions about the retention and advancement of women in the profession. Sixty percent of those entering the legal profession are women, yet only 27 percent of partners are female. This pattern of gender participation repeated itself with little change over the past decade. The female trainee to female partner ratios were 67 percent to 22 percent and 60 percent to 21 percent in 2005 and 2015, respectively.

Some attribute the low retention of women talent at senior levels to the additional stress required of those taking on leadership roles, which require one to be fully committed and available anytime, anywhere. The
demands of work travel, attending evening business development events and rushing through late night urgent assignments can pose greater challenges to women, typically those with children. Being unavailable is generally seen as being less committed and limits career advancement opportunities.

Firms invest heavily in human capital and incur substantial costs in recruitment, education and training of their employees. However, these investments are futile if firms fail to retain their employees. Further, apart from professional knowledge, women bring a unique skill set and perspective to leadership roles and can help enrich a firm’s communication and servicing styles and expand its client base.

An increasing amount of attention has been placed on work-life balance. This is a welcoming trend for professions traditionally known to be stressful. Perhaps, the efforts can go further and encourage a gender neutral approach so that policies promoting work-life balance, such as parental leave and flexible working arrangements, are made to appeal not only to women, but to all.

The first step towards change is awareness. With the majority of new entrants to the profession being women, it is important that this talent pool is retained and fully utilised for the healthy development of our profession. Hopefully, more law firms will have gender diversity policies that are not only written down, but are actually put into practice.

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**Monthly Statistics on the Profession**

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<tr>
<th>Category</th>
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<tbody>
<tr>
<td>Members (with or without practising certificate)</td>
<td>10,253</td>
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<tr>
<td>Members with practising certificate</td>
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<tr>
<td>(out of whom, 6,673 (74%) are in private practice)</td>
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<tr>
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<td>Solicitor Advocates</td>
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Face to Face with

Lilian Chiang
Senior Partner, Deacons

Elaine Lo
Partner, Head of China Practice, Mayer Brown JSM

By Cynthia G. Claytor

Two prominent female practitioners from two of Hong Kong’s oldest law firms speak about their careers, gender diversity issues, and how Brexit and the US Presidential election results may impact local and regional markets.
Lilian Chiang

Senior Partner, Deacons

How have you built such a successful practice?

It was my good fortune to have joined Deacons. Although conveyancing was not my first choice, it was the first department I was allocated to as a trainee. I initially wanted to be a litigator because resolving conflicts has always appealed to me. But I was never rotated out of the property department, so I have been a property lawyer ever since. Throughout the years, however, I continue to read and update myself on other areas of law as the property practice is a highly technical area which requires a very strong grounding in contract law, commercial law, trust, tort, tax, and even criminal law.

I have partially built my practice through wide exposure. For more than 35 years, I've had the opportunity to handle a wide range of property-related matters. The work has ranged from development projects, town planning and zoning, sale and purchase transactions, joint ventures, real estate finance, real estate management, real estate tax, regulatory advice or landlord and tenant matters. But what I enjoy doing most is advisory work. There is always a different and interesting problem to solve.

Relationships have also greatly mattered, and I really enjoy interacting with clients. Helping them find solutions and solving their problems is very satisfying and over the years, many of my clients have become my personal friends.

Lastly, I would say that building a successful practice is also based on drive. I have a real passion for my work and I do not enjoy being idle. Work gives me a sense of purpose. Many things in life are beyond your control. Work is a “constant” in the sense that you can see the result of hard work.

What are some of the biggest challenges you have faced throughout your career? How did you overcome them?

Occasionally, clients can be unreasonable. It’s a challenge to manage their expectations and it’s not easy. I always practise open and direct communication. It’s better to be upfront and achieve your task properly rather than take short-cuts. Conveyancing has become an extremely competitive area after scale fees were abolished but we don’t compromise our standard or the quality of our work for revenue.

Also we have had to deal with the fluctuating economic situation, but that’s where the breadth and depth of our property practice and the diversity of work at Deacons helps. For example when the secondary transaction market is down, we still have project development, regulatory advisory and tenancy work.

What advice would you give to junior lawyers?

Integrity; if you are asked to do something which will compromise your integrity even when you are under pressure, don’t do it. It is not easy because sometimes your clients can be incredibly demanding and occasionally unreasonable.

Of course, I also can’t over-emphasise the importance of perseverance and hard work.

What do you think are the most pressing issues facing the legal profession in Hong Kong?

Hong Kong has an extraordinarily vibrant and competitive legal industry.

For conveyancing in Hong Kong, one of the most pressing issues is the lack of new blood. It is not a popular discipline for new qualifiers and there aren’t many lawyers entering the property practice these days because the competition for fees is fierce. Conveyancing is also not an easy practice as you need to have a wide breath of knowledge to be an effective conveyancing lawyer. The conveyancing practice in Hong Kong has seen the most significant claims and the size of the transactions leaves no room for error.
For the profession as a whole, the commoditisation of many areas of work is driving fees down.

Also worth noting is that PRC firms are increasingly establishing themselves in Hong Kong. But looking in the other direction, we are not on equal footing in terms of practising Chinese law in the PRC.

What is the most interesting deal you have ever closed?

There have been many memorable deals over the years but a few in particular stand out. The first is the purported sale of the Grand Hyatt hotel in Tsim Sha Tsui. It attracted a lot of media attention because it was after SARS. On the day we opened the bid, there was a huge turnout of uninvited press. I had to unexpectedly and suddenly deal with it in a low key manner.

I also had to deal with unusual requests; during the course of preparing for that tender, we discovered that in the Grand Hyatt restaurant, Hugo, there was a decorative suit of armour. The client wished to confirm as to whether or not it was a genuine antique and I had to ring up Christies to obtain a valuation.

Another memorable deal was when I was handling the sale by receiver of a property at Severn Road at the Peak. I was asked to inspect the site and found a house full of paintings and a tiger head and skins. One entire wall was comprised just of a painting and I was asked to decide whether it was a genuine piece and how to deal with it in the tender process.

What are the biggest changes you have seen in your practice area over the course of your career?

In the past, deals were more straightforward; most of them were simply the sale and purchase of properties.

Now deals are more complex. Matters may involve joint ventures or the sale and purchase of company shares for acquisition of properties with several layers of companies. These involve different issues such as tax, accounting, title, construction, town planning and government policies etc.

The deal size is also much larger as many transactions are over HK$1 billion.

How is technology impacting your practice area? How is your firm preparing for the future?

The biggest impact has been the introduction of blackberries. Clients can now access you at any time, be it day or night, 24 hours a day. We can now work on client matters using a computer at home or even during an overseas trip; this has been a big change.

Other developments have included a growing database (both local and overseas) of judgements and law resources, which as a tool has facilitated research in a more cost and time efficient manner. It also has resulted in document automation.

The implementation of the e-stamping system by the Stamp Office has facilitated in completing the stamping of documents. This is particularly important for handling project sales as a large number of sale and purchase agreements need to be stamped and submitted for land registration within a short period of time.

The implementation of the e-filing system will save storage space and hence warehouse rental expenses. Files will also be secure from risk of destruction by fire. I have recommended that the firm explore this system.

On the other hand, advanced technology has also facilitated the perpetuation of fraud in conveyancing transactions (such as the production of fake title deeds and identification documents). We have to be more cautious in accepting instructions from new clients and keep ourselves updated with regard to the latest development of fraud cases. The firm takes cyber-security very seriously and it is an issue that all law firms should be concerned about.

I think that in the longer term, there are some areas of legal services which lawyers have traditionally provided (eg, some aspects of IPO) which a machine will eventually replace.

I am of the view that although artificial intelligence may assist in significant and meaningful ways to a solicitor’ practice, they are not able to fully (or ever will be able) replace the value of a skilled solicitor in many areas which involve intuition, sound judgement and strategic application of the law to resolving conflicts and creating solutions.

I believe that our future success will lie in our ability to identify the areas in which we can be replaced and those which we cannot be replaced. Our aim is to adjust our business models to make use of technological advances and at the same time promote the areas which artificial intelligence is not able to provide.
How do you think Brexit and the US Presidential election results will impact Hong Kong property markets?

After Brexit, sterling has significantly depreciated. The Hong Kong dollar, which is pegged to the US dollar, has become very expensive to overseas buyers. This is now compounded with the problem of an increased AVD rate. Hong Kong property has become too expensive for everyone, perhaps with the exception of mainland Chinese buyers.

As regards Trump winning the election, the effect remains to be seen. What I will say is that, due to globalisation, the world is much smaller than before. It will definitely impact Hong Kong. If Trump follows through on his presidential campaign rhetoric on unfair trade practices and implements protectionist measures, it will be detrimental to Hong Kong economically. Hong Kong is very dependent on exports. If a trade war develops, Hong Kong which is the world’s freest economy will suffer, and the property market will be affected. The gain in strength of the US dollar after the election will also exert pressure on the Hong Kong housing market.

Anything else you would like to share?

I consider myself to be very fortunate because I never planned to be where I am now. It never worked that way for me. Life takes its own turns. I just consistently give my best effort and work hard. When I look back, I can see that the practice of law has enriched my life in many ways. I’ve come across lots of remarkable people and interesting cases.

Elaine Lo
Partner, Head of China Practice, Mayer Brown JSM

How have you built such a successful practice?

No one joins a law firm at the tender age of 24 expecting to be the head of that firm 28 years later. I consider myself an extremely lucky person to have had the opportunity to do the things I have done. I joined Mayer Brown JSM (then known as Johnson Stokes & Master or JSM) as a trainee in 1979 when China started opening its economy to the outside world. The country needed capital and investment to rebuild its infrastructure and manufacturing industries after the decade old Cultural Revolution. As a junior lawyer in the early part of 1980s, I was involved in many infrastructure projects, helping clients to invest in and finance ports, toll roads, bridges and power plants in mainland China. The high point of my career arrived in 1987 when the firm sent me to set up an office in Beijing. This is the first office that JSM established outside Hong Kong.

China’s accession to the World Trade Organization (“WTO”) in 2001 was a transformational event that served as a catalyst to open up China’s banking, insurance, utilities and other regulated industries. Clients started to make landmark acquisitions. I led the legal team to advise Hang Seng Bank on its acquisition of a pre-IPO interest in the Industrial Bank Co. Ltd. Other M&A deals I led included helping a Hong Kong utility company in their acquisition of a substantial interest in Shenzhen Gas Group, and assisting HSBC with the formation of a life insurance joint venture in Shanghai.

Mainland China was the common thread that went through all the deals I handled throughout my career. I have been privileged to witness the growth of our clients’ business in many sectors in mainland China, and I am grateful for having played a small part in strengthening Hong Kong’s role as a gateway to and out of mainland China during the past 35 years.

I was elected the first woman Senior Partner of JSM in 2007. I took on the
role of leading one of Asia’s biggest law firms with eagerness and excitement, but also a fair amount of trepidation. There were many challenges facing the firm at that time. Globalisation had already become an irrevocable trend as we witnessed many of our clients becoming multi-national organisations. Our mainland Chinese clients were also rapidly expanding their operations outside Asia. JSM was still a Hong Kong-based law firm, and we had limited capabilities to provide services to clients who were expanding rapidly in the United States and Europe. My partners and I decided that we needed to transform our firm from a Hong Kong-based regional law practice into an international law firm with a global network in order to better serve our clients.

I led my firm’s negotiations with Mayer Brown and, within three months of assuming the position of Senior Partner, the merger with Mayer Brown was completed. We became part of Mayer Brown in January 2008 and changed our name to “Mayer Brown JSM”.

What is the biggest professional challenge you have faced as a lawyer?

One of the biggest (if not the biggest) challenge I faced in my career was negotiating a merger for my firm with a US based law firm. I had to assume the role of strategic adviser to my 50 equity partners, whose interests and concerns varied depending on the nature of their practice, their seniority in the partnership, and their perception of the legal market. I had to ensure that my partners’ concerns were adequately addressed and their interests protected. Fortunately, I had the advice of a few partners whose vision and strategy were the same as mine, and I also received encouragement and support from many others. To this date, I am grateful to my partners for vesting their trust and confidence in me to represent them on such a strategically important transaction that changed the fabric of our partnership forever. Overcoming the challenges of transforming and transitioning JSM into a part of a global law practice requires conviction and steadfastness. Most of all, I had to believe that I was leading my firm in the right direction. Never once did I doubt that such transformation would produce enormous opportunities for the future generations of lawyers in our firm, and would also be most beneficial to our firm’s clients. It is this belief that motivated me to think creatively and find solutions to remove all obstacles leading up to the combination with Mayer Brown.

How do you view gender diversity-related issues in Hong Kong’s legal market?

In Hong Kong, there is an interesting phenomenon that while two-thirds of the new entrants to the profession are female lawyers, only a small proportion of them attain partner status in the private practice. Although awareness of gender diversity issues has been increasing in Hong Kong’s legal market, it is difficult to overcome some of the biggest challenges which impede female lawyers’ progression to leadership positions. One significant challenge is to remove the unconscious bias which impacts decision making regarding allocation of work assignments, performance appraisals and promotions. Providing training to law firm leaders is a first step to helping them understand their subconscious biases and how to prevent such biases from influencing their decisions.

Other ways to remove barriers to female lawyers’ advancement is by adopting a consistent, prejudice free approach to recruiting, retention and promotion practices. Conscious efforts should be made to mentor women lawyers, provide opportunities for them to achieve professional and personal growth, and encourage them to showcase their achievements within the organisation.

What do you think are the most pressing issues facing the legal profession in Hong Kong?

The most pressing issues include (1) identifying growth opportunities – where are these likely to come from for law firms operating in a very competitive jurisdiction like Hong Kong, (2) determining how to meet increasing client demands for more efficient delivery
of legal services – these demands have resulted in huge fee pressures for Hong Kong firms, (3) finding ways to satisfy the aspirations of the younger generation of lawyers who enter the profession now, and their desire for work-life balance.

Hong Kong is Asia’s pre-eminent international financial centre, and has been the most important conduit for capital to flow into and out of China. Hong Kong law firms have benefited from mainland China’s economic growth over the past 35 years. But competition in every segment of the legal market has been intensifying, and continuing to achieve growth in revenue and profitability is a major challenge for every law firm.

Many clients now have big corporate law departments that manage projects farmed out to external counsels. The General Counsels of these in-house departments demand high quality, cost effective legal service delivered on time and at predictable prices. Capped fee and other alternate fee arrangements are now the norm for charging legal services in Hong Kong. Some General Counsel of multi-national companies even require their external legal adviser to disaggregate a large complex project into different types of activities, and to outsource the more process-orientated activities (such as due diligence, document review, legal research) to a lower cost service provider. Whether a law firm is able to meet the demands of its most important clients will determine whether that law firm can sustain its growth and continue to prosper in the next decade.

Succession planning is important for the long term survival of a law firm, and every law firm is concerned with retaining its talent. A common challenge that law firm managing partners face today is how to demonstrate to their firm’s junior lawyers that there are ample opportunities for career growth within their firm, while at the same time accommodating these young lawyers’ wish to have more balance between work and family commitments or personal development activities.

How do you think Brexit and the US Presidential election results will impact Chinese markets? Your practice?

President Xi Jinping’s state visit to the UK last year (which witnessed the signing of US$60 billion in trade deals) was heralded as opening a “golden era” in China-UK economic, political and trade relations that would infuse dynamism into the European economy. The UK referendum result came as a shock since it could cause Beijing to lose its strategic access to Europe through Britain. In addition, Beijing may also lose a key ally that has been pushing for completion of an EU-China trade deal, as well as for China to gain “market economy status”.

However, Brexit may not be all bad news. The UK will need a major free trade partner after it leaves the EU, and China appears to be a perfect fit. A trade deal between China and the UK could be used by each country as leverage to negotiate with the EU. Brexit’s impact on China will not be significant even if the UK loses its ability to “passport” its services to the EU since China has not been using the UK to access the EU market, and every financial centre in Continental Europe will welcome Chinese investment. Furthermore, it has been reported that the plans of all major Chinese banks to expand their operations in London will not be affected by Brexit, and that China’s outward foreign direct investments into the UK may well increase as Chinese companies take advantage of the weaker Pound Sterling.

Turning to the US situation, President-elect Trump has won his campaign on a platform heavy on anti-globalisation and fair trade rhetoric. He listed three specific priorities, namely (1) re-negotiating NAFTA, (2) imposing significant new tariffs on imports from China, and (3) scrapping the Trans-Pacific Partnership (“TPP”) trade agreement. While China is not presently included in the TPP, it has laid out its own alternative vision for regional trade, called the Regional Comprehensive Economic Partnership (“RCEP”) which does not include the US.

President-elect Trump has also just unveiled his plan for his first 100 days in office, including proposals related to immigration, trade deals and defence policies. Based on this, we can expect to hear more about the negative impact of globalisation, outsourcing and offshore production, anti-competitive behaviour, currency manipulation, cybersecurity, and acquisitions or investments that threaten US national security. It would therefore not be surprising if the Trump administration were to focus on legislative and regulatory measures to curb these perceived threats. Such policies will disrupt the flow of capital, goods and investments between China and the US, and new barriers to market access may be erected. These developments are bound to adversely impact Chinese companies planning to make acquisitions in or export products to the US, as well as US companies that have manufacturing and R&D facilities inside mainland China.

The results of both the UK referendum and the US election have created a lot of uncertainty for our clients. While a wide spectrum of risks will surface, accompanied by ensuing regulatory and legislative repercussions, there are also opportunities to be tapped. We look forward to continuing to advise our clients on their business strategies and helping them to adapt to an uncertain regulatory environment.
你如何建立如此成功的執業？

我有幸加入了的近律師行。雖然物業轉易並非我的首選，但那是我當實習律師時被分派的第一個部門。最初我想當訴訟律師，因為解決衝突一直很吸引我。但我從來沒被調離物業部門，所以我一直當物業律師。不過，多年來我繼續進修其他法律領域，更新知識，因為物業是一個高技術的領域，在合同法、商業法、信託、侵權、稅務甚至刑事法方面，都需要很強的根基。

我建立的執業部份有賴於廣闊的閱歷。超過35年來，我有機會處理各種物業相關的事務，包括發展項目、城市規劃和分區、買賣交易、合資企業、房地產金融、物業管理、物業稅、規管諮詢或租賃事宜。但我最享受做諮詢工作。總有不同而有趣的問題等待解決。

關係也很重要，我享受與客戶互動，幫助他們找出方法解決問題，很有滿足感。多年來，我與許多客戶建立了友誼。

最後，我會說建立成功的執業也基於推動力。我對工作有真正的熱情，我不喜歡無所事事。工作給我一種使命感。生活中許多事都不在控制之內，而工作是「恆久不變的」，因為努力不懈就可看到成果。

作為律師，你遇過最大的專業挑戰是什麼？

客戶偶爾或會不講理。我對工作擁有真正的熱情，我不喜歡無所事事。工作給我一種使命感。生活中許多事都不在控制之內，而工作是「恆久不變的」，因為努力不懈就可看到成果。

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此外，我們亦必須面對波動的經濟情況，這點我們執業的廣度和深度，以及的近律師行業務的多元化很有幫助。例如，當二手交易市場下跌時，我們仍有項目開發、監管諮詢和租賃工作在手。

你如何看待香港法律市場的性別多元議題？

在挑戰方面，有些女性律師可能覺得時間工作長，難以兼顧家庭。的近律師行在這方面提供靈活的工作安排。在招聘人才時，我會考慮應徵者的合適度和資歷。律師行重視不同性別、信仰、年齡、種族和性取向，我們認為這些可見及不可見的差異，才使我們每個人獨一無二。

總的來說，保持律師行的多元化至關重要，因為我們在國際化的商業環境中營運。
你會給年輕律師什麼建議？

誠信。如果你被要求做一些會損害誠信的事，即使受到壓力也不為之。這不容易，因為有時客戶要求可能很高，甚至不合理。

當然，我必須再三強調堅持和努力的重要性。

你認為香港法律界面對最迫切的問題是什麼？

香港的法律界非常活躍而具競爭力。

對於香港的物業轉易界，最迫切的問題之一是缺乏新血。對新入行律師來說，這不是一個熱門的領域，投身的律師不多，因為現時收費的競爭十分激烈。物業轉易也不是一個容易的執業領域，因為需要擁有廣泛的知識，才能成為高效的物業轉易律師。香港的物業轉易領域經歷過最巨大的申索，交易規模也沒有錯誤餘地。

對於整個行業來說，許多領域的工作商品化，亦降低了律師收費。

同樣值得一提，中國的律師行越來越在香港發展。但另一方面，我們在內地中國法律執業方面卻並不平等。

你完成過最有趣的一宗交易？

這些年來處理過許多難忘的交易，有幾宗特別突出。其中一宗是據稱尖沙咀凱悅酒店出售，吸引了很多傳媒的關注，因為那是在SARS之後。我們開標的那一天，有大量傳媒不請自來，我必須低調處埋這個意料之外的突發情況。

另一宗難忘的交易，是山頂施勳道一項物業由接收人出售。我被要求檢查該物業，發現屋內充滿繪畫、虎頭和虎皮。有一面牆完全被一幅畫作覆蓋，我被要求決定該幅畫作是否真跡，及在招標過程中如何處理它。

在事業生涯中，你看到執業領域中最大的變化是什麼？

過去的交易較直接，大部分是簡單的物業買賣。

現在交易更複雜，可能涉及合資企業或買賣公司股份以收購多層公司的物業。這些涉及不同的問題，如稅務、會計、所有權、建築、城市規劃和政府政策等。

交易規模也大得多，許多交易超過10億港元。

科技如何影響你的執業領域？你的律師行如何為未來做好準備？

黑莓智能手機的推出影響最大。客戶可24小時隨時聯絡你。我們現在可在家中，甚至在海外旅行期間，透過電腦處理客戶的事件，這是一個巨大的轉變。

其他發展包括法庭判決和法律資源數據庫(本地及海外)日益增加，這種工具使得研究能以更具成本和時間效益的方式進行，亦導致了文檔自動化。

印花稅署推出電子印花系統，方便完成文件印花工作。這對處理項目出售尤其重要，因為大量買賣協議需要在短時間內加蓋印花及提交土地登記。

電子存檔系統節省存儲空間，從而節省倉庫租金，還可防止檔案受火災毁壞。

我曾建議律師行探討使用這個系統。

另一方面，科技先進也促使了轉易交易中詐詐行為的持續存在(例如偽造地契和身份證明文件)。我們接受新客戶指示時必須更謹慎，隨時更新有關詐詐案件的最新發展。律師行十分重視網絡安全，這是所有律師行都應該關注的問題。

我認為，一些傳統上由律師提供的法律服務或IPO的某些方面，將運用機器取代。

我認為雖然人工智能或可大大幫助律師的執業，但不能完全取代律師在許多方面的技術，因為那涉及直覺、正確的判斷和法律策略的應用。
你如何建立如此成功的執業？
24歲加入律師行，28年後成為該律師行的主管合夥人，這是誰沒想過的事。我認為自己非常幸運，有機會做我做過的事。我於1979年加入孖士打律師行（當時稱為Johnson Stokes & Master或JSM）擔任實習律師，當時中國開始實行經濟對外開放。在十年的文化大革命之後，國家需要資金和投資來重建基礎設施和製造業。在80年代初擔任初級律師，我曾參與多個基建項目，協助客戶在中國內地投資和融資於港口、收費公路、橋樑和發電廠。我的事業於1987年到達高峰，當時律師行派我到北京設立辦事處。那是JSM首個香港澳門以外的辦事處。

中國於2001年加入世界貿易組織（WTO）是一項轉型變革，促使中國內地的銀行業、保險業、公用事業和其他受監管的行業開放。客戶開始進行重大收購。我領導法律團隊，向其提供意見。我領導的其他併購交易包括協助一間香港公用事業公司收購深圳燃氣集團的重大權益，及協助匯豐在上海成立人壽保險合營企業。

作為律師，你遇過最大的專業挑戰是什麼？
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解決衝突，創造方案。
我相信，我們未來的成功將取決於我們的能力，確定哪些領域能被取代，哪些領域不能被取代。我們的目標是調整商業模式以利用科技的進步，同時促進人工智能無法提供的領域。

還有什麼想分享嗎？
我覺得自己很幸運，因為我從沒計劃擁有今天的成就。這種方式對我來說是行不通的。生活自有曲折。我只是一直盡力付出，努力工作。回顧以往，我見到法律執業在許多方面豐富了我的生命。我遇到了許多傑出的人，有趣的事。

作為律師行 合夥人，中國業務主管

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在美國及歐洲迅速擴展的客戶，我們提供服務的能力有限。合夥人和我決定，我們需要從以香港為基地的地區律師行，轉型為擁有全球網絡的國際律師行，以更好地服務客戶。

我領導律師行與Mayer Brown談判，在出任首席合夥人後三個月內，與Mayer Brown的合併完成。我們於2008年1月成為了Mayer Brown的一部分，並改名為Mayer Brown JSM。

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繼任計劃對所有律師行的長期生存同樣重要，保留人才與每間律師行都息息相關。律師行管理合夥人現今的共同挑戰，是如何向年輕律師展示，在他們的律師行內有充足的发展及晉升機會，同時遷就他們對平衡工作和家庭生活或個人發展需要的希望。

你認為英國脫歐和美國總統選舉結果，對中國市場和你的執業會有何影響？

習近平主席去年對英國進行國事訪問（見證了600億美元貿易協議的簽署），被視為開啟中英經濟、政治和貿易關係的「黃金時代」，將為歐洲經濟注入活力。英國公投結果令人震驚，因為它可能導致北京失去透過英國進入歐洲的戰略。此外，北京也可能失去推動完成中歐貿易協議及中國獲得「市場經濟地位」的關鍵盟友。

然而，英國脫歐可能不是一面倒的壞消息。英國脫離歐盟後，將需要一個主要的自由貿易夥伴，而中國似乎是完美的對象。中英之間的貿易協議，可被兩個國家用作與歐盟談判的槓桿。即使英國失去了向歐盟輸出服務的能力，英國脫歐對中國的影響也不會很大，因為中國一直沒有利用英國進入歐盟市場，歐洲大陸每個金融中心均會歡迎中國投資。此外，據報導，所有中國的重要銀行在倫敦擴展業務的計劃，不會受英國脫歐影響。

談到美國局勢，特朗普的政綱側重反全球化和公平貿易言論，並以此勝出當選。他列出三個優先事項，即(1)重新談判北美大西洋自由貿易區（NAFTA）；(2)對中國進口商品徵收高額的新關稅；(3)退出《跨太平洋伙伴關係協定》（TPP）。中國目前沒有加入TPP，但已提出區域貿易的替代性願景，稱為《區域全面經濟夥伴協定》（RCEP），而美國不在協定之內。

當選總統特朗普剛發表了首100日宣言，包括有關移民、貿易和國防政策的建議。據此，我們可預期將聽到更多全球化、判決和離岸生產、反競爭行為、貨幣操縱、網絡安全和收購投資如何影響美國國家安全的言論。因此，特朗普政府將更加立法和規管措施遏制這些可能的威脅，就不足為奇了。這些政策將破壞中美之間的資本、貨物和投資流動，豎立新的市場准入壁壘。對計劃向美國進行收購或出口產品的中國公司，及對在中國內地擁有製造和研發設施的美國公司，這些發展趨勢必帶來負面影響。

英國公投和美國大選結果，為我們的客戶帶來了不確定性。雖然廣泛的風險將會浮現，加上規管和立法的反響，仍有助客戶適應不確定的監管環境。
Visit to the Court of Final Appeal

The Member Benefit Committee organised two guided visits to the Court of Final Appeal ("CFA") on 25 August and 18 October respectively and around 60 members in total attended the visits. Apart from visiting court rooms and restricted areas such as the library which is normally only open to those lawyers engaged in court hearings, members visited the Architectural Heritage Gallery where models illustrating the scale of restoration work undertaken by the Architectural Services Department when the building was returned to the Judiciary were displayed. The visit could not be completed without a visit to the Exhibition Gallery showcasing the history of the Judiciary. Members also had the chance to see artifacts on display such as the pre- and post-1997 Maces used on ceremonial occasions and wigs worn by judges and barristers.

參觀終審法院

會員權益委員會於8月25日及10月18日分別舉辦了兩次終審法院導賞參觀，約有60位會員參加。會員參觀了法庭和限制區域，例如僅開放予參與聆訊律師的圖書館，亦參觀了建築歷史展覽廊，該處設有模型，展示法院大樓交還予司法機構時，由建築署所負責的復修工程規模。此外當然不少得參觀展覽廊，了解司法機構的歷史。會員亦有機會觀賞到回歸前後在各禮儀場合上所使用的權杖及法官和大律師所佩戴的假髮等展品。
The Hong Kong Academy of Law

The Hong Kong Academy of Law (“Academy”) organised a total of 79 seminars in October.

A symposium entitled “Developing Commercial Law through the Courts: Rebalancing the Relationship between the Courts and Arbitration” (“Symposium”) was held on 17 October to discuss the development of commercial law and arbitration based on the theme of a speech delivered by The Right Honorable The Lord Thomas of Cwmgiedd, Lord Chief Justice of England & Wales in March 2016 and a paper on the same topic written by him. 155 participants attended the seminar.

The speakers of the Symposium were: The Right Honorable The Lord Phillips of Worth Matravers, Past President of the Supreme Court of England and Wales; The Honorable Chief Justice Mr. Geoffrey Ma; Mr. Christopher Tahbaz, Partner and Co-Chair of Asian Litigation, Debevoise & Plimpton; Mr. Ralph Ybema, Managing Director of China Law & Tax Direct Limited and Honorary Member of The Hong Kong Corporate Counsel Association. Mr. Denis Brock, Council Member and Member of the Arbitration Committee of The Law Society, was the moderator of the Symposium.

Career Talks for Law Students of the City University of Hong Kong and the University of Hong Kong

Two career talks for law students were held on 13 October and 1 November at the City University of Hong Kong (“CityU”) and The University of Hong Kong (“HKU”) respectively. Council members Bonita Chan, Nick Chan and Serina Chan spoke to CityU students about a legal career path and provided helpful advice for students on job interviews. Council member Serina Chan offered useful tips at the HKU talk to students on how to boost their chances of turning an internship into a training contract.
Reaching out to Central and Eastern European Markets

In light of the Belt and Road Initiatives, the Law Society sees great potential in the legal service market in Central and Eastern Europe and the need to strengthen our network there.

The Law Society has maintained a working relationship with the Czech Bar Association and the Croatian Bar Association since 2008 and 2011 respectively. Recently, representatives of the Law Society had the chance to visit them again and to provide updates on our developments.

Poland

Poland, with a population of 38.5 million, has maintained steady economic growth rate for the past years, ranking among one of the best result achievers in the European Union. In 2015, €990 million worth of goods (or 7.2 percent of the total trade between Poland and China) was routed through Hong Kong. Taking this opportunity, the Law Society organised a seminar titled “China-Hong Kong-Poland: Opportunities for the Polish Business” in Warsaw on 26 October jointly with the Polish National Bar of Attorneys (“PNBA”), the Hong Kong Economic and Trade Office, Berlin (“HKETO, Berlin”), and the Polish Chamber of Commerce (“PCC”).

Under the witness of Mr. Xu Jian, Chinese Ambassador to Poland, the Law Society also signed a Memorandum of Understanding with the PNBA. The Law Society looks forward to fostering a closer relationship with the PNBA and to creating more opportunities for professional exchanges among our respective members.

Hungary

Hungary is Hong Kong’s largest trading partner in Eastern Europe with a population of 9.8 million and about €1.4 billion (approx. 22.3 percent) of the total trade between Hungary and Mainland China was routed through Hong Kong in 2015. The Law Society took the opportunity to organise a luncheon on 30 October at the occasion of the UIA 60th Congress to promote Hong Kong’s legal services, enabling the participants to understand how enterprises can take advantage of Hong Kong’s seamless connection between the east and the west to tap into the Asian and Chinese markets.

Furthermore, representing the Law Society at the UIA 60th Congress, Vice-President Melissa Pang spoke at the food law and private international law sessions while Immediate Past President Stephen Hung spoke at the criminal law session on 30 and 31 October respectively.

The Law Society will continue to further expand connections in Central and Eastern Europe that offer extensive business opportunities for our members.
Vice-President Amirali Nasir welcomed the luncheon participants by introducing Hong Kong’s unique features, the Law Society, and its newly formed Belt and Road Committee. The luncheon was well attended by over 100 overseas delegates.

Meeting with overseas bar associations were arranged to discuss future cooperation opportunities.

波蘭
波蘭人口約三千八百五十萬，近年經濟穩定發展，是歐盟經濟發展最好的國家之一。在2015年，波蘭與中國的貿易額有7.2%(約值九億九千萬歐元)經香港進行。律師會於10月26日與波蘭國家律師協會、香港駐柏林經濟貿易辦事處及波蘭商會合辦一個名為「中國——香港——波蘭：波蘭業界的商機」的座談會。

律師會的講者包括副會長彭韻僖律師及黎雅明律師、上任會長熊運信律師、理事會成員黎壽昌律師，以及一帶一路委員會主席簡家駿律師。座談會其他講者包括中國駐波蘭大使徐堅先生、駐柏林經貿辦處長何小萍小姐、波蘭商會會長Andrzej Arendarski先生、波蘭國家律師協會會長Dariusz Satajewski先生、中華全國律師協會會長王俊峰先生及馬來西亞律師公會會長Steven Thiru先生。講者就「一帶一路」下的商機、香港的法規及與波蘭律師、投資者和企業相關的法律問題，踴躍交換意見。

在中國駐波蘭大使徐堅先生的見證下，律師會亦與波蘭國家律師協會簽署諒解備忘錄。律師會期待日後與波蘭國家律師協會加深合作關係，為兩協會成員的專業交流製造更多機會。

匈牙利
匈牙利人口九百八十萬，是香港在東歐的最大貿易夥伴；在2015年，匈牙利與中國的貿易額中約22.3% (約值十四億歐元)經香港進行。律師會趁國際律師聯盟第六十屆大會的機會，副會長彭韻僖女士及上任會長熊運信先生分別於10月30及31日代表律師會分別就「食品法及國際私法」及「刑法」環節發言。

律師會將繼續在中東歐拓展網絡，為會員處的優點，開拓亞洲及中國的市場。
The 11th Recreation and Sports Night: Law Society’s First Event in “Space”!

On 15 October, space citizens from nearby galaxies showed up on the “Eleventh Planet”, for a party literally out of this world! Celebrating the 11th anniversary of the Recreation and Sports Committee, the Organising Committee of the 11th Recreation and Sports Night showcased the best that Earthlings have to offer to our fellow neighbours outside the Milky Way.

The warp tunnel at the entrance thrust more than 300 lawyers and guests at faster-than-light speed to the venue. Amongst the attendees, our counterparts from the Mainland and Taiwan joined the celebration.

The fun-filled night was attended by all sorts of space dwellers – spacewalking NASA Astronauts, Spock of the Vulcan race in “Star Trek”, Jedi Masters and Sith Lords from “Star Wars”, and even the little green aliens from “Toy Story”. You have to see it to believe it.

The space party kicked off with the dramatic entrance of the Captains and Convenors. Their performance of the hit Korean song “Nobody” was well-received by the crowd, followed by President Thomas So firmly planting the flag of the Law Society on “Eleventh Planet” soil. What a memorable way to make a welcoming speech, to say the least!

Lawyers are not only good with the law – we take our social events seriously, and know how to have fun! Entertainment for the night included an impressive opening performance from the Dancing Team, a creative origami table prize game, and live performances from the TLF, the Law Society’s Live Band. The highlight of the night was a group game called “Selfieholic”, where we introduced the popular act of taking “selfies” on Earth to our space friends.

Attendees were keen to sign up for the Best Dressed Competition, with Obi-Wan Kenobi winning the individual category, as well as the group category with his “Star Wars” friends. There were lucky draw sessions spread throughout the night, with the top prize being a brand new smart phone!

As the event came to a close, the dance floor was opened to all, and our space friends gradually made their intergalactic journey home. The Organising Committee would like to extend a big thank you to all the sponsors, and to all members for their support in making the event a great success. Hope to see you all next year!

Barry Wong
Trainee Solicitor
第11屆康樂及體育晚會：
律師會首次衝出宇宙！

來自不同星系的朋友於10月15日到訪「十一•星」，參與一個好玩到「飛上太空」的派對！為慶祝康樂及體育委員會成立11週年，第11屆康樂及體育晚會籌委會向銀河系以外的一眾朋友，展示了地球人友好的一面。

超過300名律師和嘉賓，穿過入口處的太空隧道，以比光速更快的速度，由不同星系到達會場，當中包括來自內地和台灣的同業，與我們同歡共慶。

不同扮相的外太空居民出席了這個充滿歡樂的晚上，包括NASA太空人、《星空奇遇記》的瓦肯星人冼樸、《星球大戰》的絕地武士和西斯尊主，甚至《反斗奇兵》的三眼仔，實在百聞不如一見！

太空派對由各隊長和召集人揭開序幕。他們表演韓國人氣歌曲《Nobody》，激起現場熱烈氣氛。然後，會長蘇紹聰律師將律師會旗幟牢牢插在「十一•星」的土地上。這個致歡迎辭的方式實在令人難忘！

律師不僅精通法律，我們亦認真對待社交活動，懂得如何盡興！當晚的娛樂節目包括舞蹈隊的開場表演、創意摺紙有獎遊戲、律師會樂隊TLF現場表演等。全晚高潮為「Selfieholic」（自拍狂）的小組遊戲，我們藉此向外星朋友介紹地球最流行的自拍。

當晚最佳衣著比賽競爭激烈，結果由「天行者」的師父奧比溫獲得個人獎，而他和《星球大戰》中的朋友組隊贏得團體獎。全晚進行了多次幸運大抽獎，大獎為全新智能手機一部！

來到晚上尾聲，來賓都把握最後機會到舞池狂歡，之後陸續返回自己的星球。籌委會衷心感謝所有贊助商和會員的支助，令晚會得以圓滿成功。期待明年再會！

黃瀚霆
實習律師
Upcoming Changes to Hong Kong’s Corporate Governance Framework for Insurers

By Joyce Chan, Partner
Gillian Morrissey, Registered Foreign Lawyer

Clyde & Co
Clyde & Co
On 7 October 2016, a revised (GN10) (“Revised GN10”) was issued by the Office of the Commissioner of Insurance (“OCI”). The Revised GN10 replaces the (GN10) (“Existing GN10”) which came into effect on 1 September 2003. It sets out the minimum standard of corporate governance that the OCI expects of insurers authorised to carry on insurance business in and from Hong Kong (“Insurers”), including the composition, role and responsibilities of the board; internal controls; and compliance with laws and regulations.

The timing of the proposed changes to Existing GN10 is not wholly surprising as one of the objectives of the Insurance Companies (Amendment) Ordinance 2015 (“Amendment Ordinance”), of which only selected sections (relating to the establishment of the provisional Insurance Authority) have so far been commenced, is to strengthen the corporate governance standards applicable to Insurers. The Amendment Ordinance will overhaul the regulatory insurance framework, which includes the transition from the OCI to the new independent Insurance Authority.

Revised GN10 is issued to align Hong Kong with updated international standards, in particular the International Association of Insurance Supervisors’ updated Insurance Core Principles (“ICPs”). ICP 7 is related to corporate governance and ICP 8 sets out standards relating to risk management and internal controls.

It is now an opportune time to consider some of the most note-worthy revisions to Existing GN10.

Scope

Revised GN10 applies to an expanded scope of Insurers. Existing GN10 applies to insurers incorporated in Hong Kong (except certain insurers in run-off and captive insurers), and Insurers incorporated outside Hong Kong (“Overseas Insurers”) with more than 75 percent of their annual gross premium income attributable to Hong Kong insurance business, unless the Overseas Insurer obtains a written exemption from the OCI.

Revised GN10 will apply to Hong Kong-incorporated Insurers (except general Insurers that are in run-off (no new or renewal business), and long term Insurers that are in run-off (no new business and renewal business annual gross premium income less than HK$20 million) which is a continuation of the existing position), and certain Overseas Insurers. Revised GN10 lowers the annual gross premium income threshold of Overseas Insurers to 50 percent. Applicable Overseas Insurers may apply for derogation from the Revised GN10 from the OCI.

All Overseas Insurers, irrespective of the proportion of their Hong Kong insurance business, must comply with the applicable corporate governance of their home jurisdiction. General application of Revised GN10 to Hong Kong branches of Overseas Insurers has been a much-discussed topic in the market, bearing in mind the practical difficulties Overseas Insurers (with more than 50 percent of their annual gross premium income attributable to Hong Kong insurance business) might have in implementing a corporate governance structure that complies with Revised GN10 and the relevant laws of their domiciled jurisdictions.

For instance, since 1 January 2016, certain insurers licensed by the Bermuda Monetary Authority (“BMA”) in specified classes are required to establish and maintain their head office in Bermuda to ensure the BMA can exercise sufficient regulatory oversight over the business carried on by these licensed insurers. Of the factors the BMA uses to determine whether a commercial insurer has complied with its head office requirements are, for example, where the underwriting, risk management and operational decision-making of the insurer takes place, and the location of senior executives responsible for and involved in the decision making relation to the insurer. As at the beginning of November 2016, in Hong Kong there are twelve Bermuda-incorporated Insurers.

Captive Insurers were expressly exempted from Existing GN10. This position has been revisited such that captive Insurers are “encouraged to adopt” Revised GN10 as appropriate. What this means in practice is not yet clear. For example, if a board of a captive expressly adopts Revised GN10, what happens in case of non-compliance by that captive? This is an interesting development, as
the captive sector is generally subject to a less onerous regulatory framework (eg, capital and solvency requirements), and under the new s. 64G to be introduced by the Amendment Ordinance, employees of captive insurers carrying on regulated activities will be exempt from licensing requirements.

Existing GN10 relaxes certain provisions for small insurers with both an annual gross premium income and total gross insurance liabilities at the end of the preceding financial year below HK$20 million. Revised GN10 expressly allows small composite insurers to benefit based on the aggregate of the general and a long-term element of their business.

**Corporate Governance**

ICP 7 requires insurers to establish and implement a corporate governance framework which provides for sound and prudent management and oversight of their business whilst protecting policyholder interests.

**Board Composition and Minimum Number of INEDs**

There is no change to the minimum number of directors required on the board of an insurer or the proportion of directors that should have sufficient knowledge and experience of insurance business. Revised GN10 expressly provides that a board should have “an adequate spread and level of expertise” and that this should be in a number of areas such as underwriting, actuarial, claims, in addition to the areas of finance and investment as set out in Existing GN10. A sufficient number of independent non-executive directors (“INEDs”) is an important check and balance against the influence of management. Small insurers, with less than five directors must have a minimum of one INED, otherwise, the requirement for the proportion of INEDs on the board has been increased from one-fifth to one-third. A welcome revision is the express provision in Revised GN10 for a temporary exemption for the reduction of the number of INEDs where there is a valid justification, which, for example, insurers may need to avail of in the unfortunate event of a death or serious illness of an INED prior to their being able to replace the individual or his return to health.

There are amendments to the independence criteria of INEDs. In particular, former employees of the insurer or its group will be required to wait three years whereas Existing GN10 focuses on current roles only. A new factor on which the OCI is unlikely to consider a proposed director to be independent is if he is a director or controller of a company that has significant financial interest with the insurer or any group company, for example, a major service provider.

**Obligations of Individual Directors**

This is a new section, building on existing legal and Existing GN10 requirements that individual directors owe fiduciary duties and a duty of care to the insurer.

There is no limit on the number of directorships an individual director may hold, rather a principles-based provision that if an individual directors has other directorships he should ensure that he has sufficient time and can give sufficient attention to discharge his obligations to the insurer.

**Separation of Role of Chairman/CEO**

Under Existing GN10, the Chairman and CEO should be separate unless there are appropriate controls. This requirement has been bolstered further in Revised GN10. Going forward, the Chairman should not be the CEO, appointed actuary or serve as chair of any board committee.

**Board Committees**

Under Existing GN10, other than for small insurers, the establishment of an audit committee is mandatory, unless the insurer is part of a group which has a group audit committee. Revised GN10 introduces requirement that it should be chaired by an INED and preferably have an INED majority. The particular committees established and their composition will depend on the board size.

A new mandatory requirement is the establishment of a risk committee. Small insurers are exempt from this obligation.

The optional committees which the board of an insurer should consider where appropriate having regard to the insurer’s size, practical needs and business activities have not changed. These are: investment committee – which must observe the (CGN13); nomination committee; remuneration committee; underwriting committee; reinsurance committee; and claims settlement committee.

Membership of a remuneration committee should include INEDs, one of whom is chair. The remuneration committee would be expected to work closely with other relevant committees, including the risk committee to assess the impact of the insurer’s remuneration policy on its risk-taking behavior. The provisions relating to the nomination committee have been strengthened to require that its membership should include at least one INED and that in addition to nominating suitable candidates for board roles, its brief extends to senior management appointments also.

Under Revised GN10 the functions of committees can be combined so long as their effectiveness and integrity is not compromised. A footnote clarifies that the mandatory committees are two separate committees. Revised GN10 notes that it may be necessary to consider rotating the membership of committees to avoid undue concentration of powers.

**Group Policies and Group-Level Committees**

A welcome clarification in Revised GN10 is the express acknowledgement that insurers can adhere to applicable group policies and procedures. This is subject to the qualification that they are appropriate to maintain the insurer’s sound and prudent operation. Insurers
may also rely on group-level committees instead of establishing board-level committees, including in respect of the otherwise-mandatory audit committee and risk committee.

**Internal Control Systems and Risk Management Framework**

ICP 8 requires insurers to establish and maintain effective systems of risk management and internal controls, including effective functions for risk management, compliance, actuarial matters and internal audit. The risk management and internal control provisions of Existing GN10 are enhanced in Revised GN10.

**Risk Management**

As well as the new mandatory risk committee, Revised GN10 introduces an optional chief risk officer role with a direct reporting line to the board and be separate from the other executive functions.

**Key Persons in Control Functions (“KPCFs”)**

Under the Insurance Companies Ordinance, the appointed actuary of life Insurers, directors and controllers of Insurers are subject to regulatory scrutiny to promote good corporate governance. To comply with IAIS requirements, the Amendment Ordinance will require the prior approval by the regulator of senior executives of Insurers (other than captives) who carry out “control functions” (“CFs”) based on fit and proper criteria. A CF is likely to enable the individual responsible for it to exercise significant influence on the Insurer’s business. The Amendment Ordinance specifies the following CFs: risk management, financial control, compliance, internal audit, actuarial and intermediary management, and additionally provides for the Financial Secretary specifying others by notice. Revised GN10 introduces specific provisions on KPCFs and senior management.

**Remuneration Matters**

Revised GN10 is more prescriptive than Existing GN10 in relation to remuneration. Insurers are required to establish a board-approved risk-averse remuneration policy, in-line with their objectives, business strategies and long-term interests, and providing a clear relationship between performance and remuneration. As well as the board, and where relevant, the remuneration committee, Revised GN10 requires the involvement of senior management and key persons in the risk management CF in the setting and monitoring of the remuneration policy.

The scope of application of remuneration policies is expanded by Revised GN10 to cover all directors (including INEDs) and employees, including senior management, KPCFs and “material risk-taking employees” whose individual actions, or aggregated of groups of employees, may have a material impact on the Insurer’s risk exposure through the assumption of material risk or by taking on material exposure.

Revised GN10 sets out detailed principles relating to remuneration structure, including:

- As regards the criteria for measuring performance, some subjectivity is permitted on top of pre-determined performance criteria.

- Specific parameters for the remuneration of KPCFs, noting the inherent potential conflicts of interest that could compromise their objectivity and indeed integrity.

- Generally, guaranteed bonuses should not be offered. The OCI notes that these are inconsistent with performance-based remuneration and sound risk management.

- Variable components linked to performance should not be disproportionate to the fixed part.

- Variable remuneration should take account of the Insurer’s capital management strategy, targets and regulatory capital requirements, and the majority of this component deferred for a suitable period according to the seniority and responsibility of the individual and the nature and time period of the risks he has undertaken.

- Safeguards to be implemented where variable remuneration comprises share-based elements.

**Cyber security**

Taking into account technological advancements since Existing GN10 was issued, a new section on cyber security obligations has been added.

**Timing**

Revised GN10 will largely take effect from 1 January 2017. In the meantime, Insurers remain subject to the requirements of Existing GN10. A later implementation date of 1 January 2018 applies to the revised requirements as to the minimum number of INEDs, the new remuneration requirements and the new mandatory requirement to establish a risk committee. Additionally, the provisions applicable to KPCFs will take effect when the statutory provisions have been commenced.

**Concluding Comments**

As 2017 is just around the corner, prompt steps must be taken by Insurers to perform a gap analysis of their corporate governance, risk management and internal control systems framework against the requirements of Revised GN10.
香港保險公司管治架構即將出現的變化

作者 陳詩豪 合夥人
其禮律師行

Gillian Morrissey 外地註冊律師
其禮律師行

香港保險業監理處於2016年10月7日發出了經修訂的《獲授權保險公司的公司管治指引》(指引十)(下稱《指引十的修訂版本》)。《指引十的修訂版本》取代於2003年9月1日起生效的《獲授權保險公司的公司管治指引(指引十)》(下稱《指引十的現行版本》)。該指引論述保險業監理處所預期的，獲授權在香港及自香港經營保險業務的保險公司(下稱「保險公司」)所應具備的最低公司管治標準，包括董事會的組成、其職能和責任；內部控制；法律和規例的遵守等。

當局在這時提出對《指引十的現行版本》作出修訂，並不全然令人感到驚訝，因為《2015年保險公司(修訂)條例》(下稱《修訂條例》)的其中一個要旨，是要將保險公司的公司管治水平提升。《修訂條例》審視了整個保險業的監管架構，包括從保險業監理處過渡至新設的獨立保險業監督。

當局發出《指引十的修訂版本》，目的是為了使香港符合最新的國際標準，特別是「國際保險監督聯會」所發布的最新《保險核心原則》(“ICP”)。《保險核心原則》第7條論及公司管治，而第8條則訂立風險管理及內部控制等的標準。

目前正是對《指引十的現行版本》中，若干最值得關注的修訂進行審視的適當時機。

範圍

《指引十的修訂版本》適用於有所擴大的保險公司範圍；而《指引十的現行版本》則適用於在香港註冊成立的保險公司（但不限於那些正在清償保險債務的保險公司和專屬自保保險公司），以及在香港以外成立，其全年毛保費收入的75%以上，是來自香港保險業務的保險公司(下稱「海外保險公司」)。《指引十的修訂版本》將適用於在香港成立的保險公司(其已停止接受新造業務或續保業務，而其毛保費收入每年少於港幣2,000萬元)除外，因它們只屬目前情況的延續)，以及某些海外保險公司。《指引十的修訂版本》將海外保險公司的全年毛保費收入的門檻降至百分之五十，而適用的海外保險公司，可向保險業監理處申請豁免遵守《指引十的修訂版本》。

所有海外保險公司(不論其在香港的保險業務所佔比率為何)，均須遵守其本地司法管轄區所適用的公司管治規定。鑑於海外保險公司(其香港保險業務佔其全年毛保費收入百分之五十以上)所實施的公司管治架構，是一個既需要符合《指引十的修訂版本》的規定，又需要遵守其居籍所在的司法管轄區之相關法例的架構，當中
因此會存在不少實際困難，故《指引十的修訂版本》對海外保險公司的香港分公司的一般適用情況，一直以來都是市場的熱烈討論焦點。

例如，自2016年1月1日起，某些獲百慕達金融管理局（“BMA”）發給指定類別牌照的保險公司，必須在百慕達設立及維持其總辦事處，以確保百慕達金融管理局能夠對該等持牌保險公司所經營的業務進行充分的監管與監督。百慕達金融管理局賴以確定商業保險公司是否已依循其總公司之規定的衡量因素包括：

例如，該保險公司進行其承保業務、風險管理和運營決策的所在地方；以及，有份負責和參與制訂該保險公司之決策的高級管理人員所身處的地方。截至2016年11月初，香港共有12家在百慕達成立的保險公司。

專屬自保保險公司獲明確豁免遵守《指引十的現行版本》。然而，此一情況現時需要進行重新審視，以達致在適當情況下，專屬自保保險公司亦須依循《指引十的修訂版本》之規定。

《指引十的現行版本》規定下，除非是小規模經營的保險公司，否則必須設立審計委員會，除非該保險公司是一個已設有集團審計委員會的集團的其中一部分。

《指引十的修訂版本》訂明，審計委員會的主席應由獨立非執行董事出任，而且更理想的情況是，獨立非執行董事在該委員會中佔多數。各個特定委員會的設立和組成，視董事會之規模而定。

《指引十的修訂版本》亦對獨立非執行董事的獨立準則作出了修訂。特別是，保險公司或其集團的創辦人在離職後三年，才可擔任獨立非執委員會的主席，否則，應確保該創辦人在離職後三年內沒有從事任何商業活動。

《指引十的修行版本》對經營規模小的保險公司（即全年毛保費收入，以及在對上一個財政年度結算前的總保險負債毛額，均少於港幣2,000萬元的保險公司）放寬了某些規定；而《指引十的修訂版本》明確准許經營規模小的綜合保險公司從中受益（以其業務的一般與長期這兩項元素之總和作為基礎）。

公司管治

《指引十的修訂版本》第7條規定保險公司必須建立與實施公司管治架構，此舉能有效為公司業務提供健全而審慎的管理與監督，並同時保障保障持有人的利益。

董事會的組成與獨立非執行董事的最低人數

保險公司董事會的最低董事人數，以及對保險業務具有充分知識和經驗的董事比率等規定，均沒有作出任何更改。

《指引十的現行版本》明確規定，董事局應具備「充分的專業知識範圍與水平」，而除了《指引十的現行版本》所列明的，董事局應具備與財務和投資等範疇有關的專業知識外，還應具備在例如承保、精算、索償等方面的專業知識。擁有充足數目的獨立非執行董事（“INED”），是對管理層的影響力的一項重要制衡。經營規模小的保險公司的董事人數若少於5人，便必須至少有一名獨立非執行董事，否則，董事局的獨立非執行董事比例，應當從五分之一增至三分之一。一項受歡迎的修訂，是《指引十的現行版本》中明確規定，只要具有正當理由，便可以要求當局批准給予暫時豁免，減少獨立非執行董事的數目（例如，當有獨立非執行董事去世或患上嚴重疾病，保險公司面對這不幸情況，在物色其他替代人選，或是在該董事康復前，它可能需要採取一些臨時應變措施）。

《指引十的現行版本》亦對獨立非執行董事的獨立準則作出了修訂。特別是，保險公司或者其集團的前僱員需要在離職三年以後，才能出任獨立非執委員會的主席，否則，應確保該僱員在離職後三年內沒有從事任何商業活動。

《指引十的現行版本》規定下，除非是小規模經營的保險公司，否則必須設立審計委員會，除非該保險公司是一個已設有集團審計委員會的集團的其中一部分。

《指引十的現行版本》明確規定，審計委員會的主席應由獨立非執行董事出任，而且更理想的情況是，獨立非執行董事在該委員會中佔多數。各個特定委員會的設立和組成，視董事會之規模而定。

董事局轄下的委員會

在《指引十的現行版本》規定下，除非是小規模經營的保險公司，否則必須設立審計委員會，除非該保險公司是一個已設有集團審計委員會的集團的其中一部分。

《指引十的現行版本》明確規定，審計委員會的主席應由獨立非執行董事出任，而且更理想的情況是，獨立非執行董事在該委員會中佔多數。各個特定委員會的設立和組成，視董事會之規模而定。

一項新的強制性規定是設立風險委員會，但小規模經營的保險公司可免除遵從這項規定。

風險委員會的設立和組織

風險委員會在考慮了保險公司的規模、實際需求和業務活動後，可考慮設立其認為合適的委員會。這項規定並沒有任何改變。此等委員會包括：投資委員會 — 其必須遵守《獲授權保險人的資產理指》（指引十三）第三條規定，並在投資委員會、承銷委員會、再保險委員會、及償付申索委員會。
薪酬委員會的成員應包括數名獨立非執行董事，而他們當中的其中一人，應為該委員會的主席。薪酬委員會預期將會與其他相關委員會進行密切合作（其中包括風險委員會），以評估保險公司之薪酬政策對其承受風險行為所產生的影響。與提名委員會有關之規定亦已經強化，規定在該委員會的成員中，應至少包含一名獨立非執行董事；而除了提名適當的人選擔任董事職務外，該委員會所獲得的授命，亦擴大至高級管理人員的任命。

根據《指引十的修訂版本》規定，公司可將各委員會的職能合併，前提是此舉不會有損它們的效能和誠信。該指引的另一項註腳闡明，審計委員會與風險委員會是兩個各自獨立的委員會。《指引十的修訂版本》亦指出，各個委員會的成員可能需要進行輪換，以避免權力不適當地集中。

集團政策及集團層次委員會

《指引十的修訂版本》中一項有用的澄清，就是明確承認保險公司可以依循適用的集團政策與程序，前提是，它們必須適於維持保險公司的健全和審慎運作。此外，保險公司亦可以依賴集團層面的委員會，而無需設立董事會層面的委員會，包括屬強制性的審計委員會與風險委員會。

內部控制系統及風險管理架構

《保險核心原則》第8條要求保險公司建立與維持有效的風險管理和內部控制系統，並包括風險管理、合規、精算事務、內部審計等各方面的有效職能。《指引十的修訂版本》中的風險管理和內部控制規定，在《指引十的修訂版本》中得到進一步強化。

風險管理

除了根據新規定而須設立的風險委員會外，《指引十的修訂版本》亦表明保險公司可考慮設立風險監督一職，而這一職位必須獨立於其他行政職能以外，直接向董事會負責。

管控制員

根據《保險公司條例》，人壽保險公司的委任精算師、保險公司的董事及管控人員，皆須接受監管審查，以促進良好的公司管理。為符合「國際風險監督聯會」的規定，《修訂條例》規定監管機構必須根據適當政策，對負責執行「管控制能」的保險公司（專屬自保險公司除外）的高級管理人員作出事先審批。管控職能很可能會導致負責執行的人員對保險公司的業務施加重大影響。《修訂條例》中載列以下各項管控職能：風險管理、財務管控、合規、內部審核、精算及管理中介人，並且規定，財政司司長可透過刊登公告，指明某項職能為管控職能；而《指引十的修訂版本》，亦制訂了有關管控委員和高級管理層的具體規定。

薪酬事宜

與《指引十的現行版本》比較，《指引十的修訂版本》在薪酬方面顯得更具規範性。保險公司必須根據其自身的目標、業務策略與長期利益，制訂經董事會批准的風險規避薪酬政策，並確立工作表現與薪酬之間的明確關係。《指引十的修訂版本》規定，對薪酬政策進行制定與監督時，高級管理層和參與風險管理職能的委員亦必須參與。

《指引十的修訂版本》擴大了薪酬政策的適用範圍，並涵蓋所有董事（包括獨立非執行董事）和僱員，當中包括高級管理層、管控制員及「承擔重大風險的僱員」（其個人行動或整體僱員行動，可能會基於其所承擔或面對的重大風險，而對保險公司所承受的風險產生重大影響）。《指引十的修訂版本》詳細列出各項與薪酬結構相關的原則，包括：

- 關於衡量工作表現的準則方面，除了已預先制定的工作表現準則之外，亦容許當中存在若干主觀成份。
- 由於管控委員面對固有的潛在利益衝突，這有可能會危及其客觀性，甚至是誠信，因此在薪酬方面應為他們特別制訂標準。
- 一般而言，公司不應給予僱員固定花紅。保險業監理處指出，此等舉措不符合以工作表現為本的薪酬待遇與風險管理原則。
- 與表現掛鉤的可變動部分，不應與固定部分過度不相稱。
- 可變動的薪酬待遇，應配合保險公司的資本管理策略、目標及資本監管規定，並應根據有關人員的資歷、所承擔責任、所承受之風險的性質和期間，將此項元素的大部分延至一個適當時期來處理。
- 可變動的薪酬中倘若包含股份成份，公司便應當採取預防措施。

網絡安全

鑒於自《指引十的現行版本》發佈以來，科技上取得重大進展，因此該指引額外增加了一項有關網絡安全責任的新條款。

生效時間

《指引十的修訂版本》規定，大部分會自2017年1月1日起生效。在這期間，保險公司仍須遵守《指引十的現行版本》中的規定。在2018年1月1日起生效的規定，將會適用於經修訂的獨立非執行董事最低人數規定、新的薪酬規定、以及設立風險委員會的新強制性規定。此外，適用於管控委員的條文，亦將在相關法定條文開始生效時實施。

結語

隨著2017年即將到來，保險公司必須根據《指引十的修訂版本》規定，迅速採取應對措施，並對其公司管治、風險管理、內部控制系統架構等進行差距分析。
Overview of the Law Reform Commission’s Consultation Paper on Sexual Offences involving Children and Persons with Mental Impairment

By Peter Duncan SC, Chairman

Review of Sexual Offences Sub-Committee
In November 2016, the Law Reform Commission’s Sexual Offences Sub-committee published a consultation paper on Sexual Offences Involving Children and Persons with Mental Impairment, setting out its provisional recommendations for reform. This is the second in a series of four consultation papers intended to cover the overall review of the sexual offences, and covers sexual offences which are largely concerned with the protective principle, that is to say, that the criminal law should give protection to certain categories of vulnerable persons against sexual abuse or exploitation. These vulnerable persons include children, persons with mental impairment, and young persons over whom others hold a position of trust. The consultation period closes on 10 February 2017.

Overview of Principal Recommendations

The Age of Consent

The age of consent is the threshold age below which sexual activity is unlawful. Most of the existing offences in Hong Kong have an age of consent of 16. However, while the age of consent for homosexual buggery has been lowered to 16 by the Statute Law (Miscellaneous Provisions) Ordinance 2014, it is still an offence for a man to commit buggery with a girl under the age of 21 pursuant to s. 118D of the Crimes Ordinance (Cap. 200).

In light of the William Roy Leung decision (Leung TC William Roy v SJ [2005] 3 HKLRD 657 (Court of First Instance) (see CACV 317/2005, Court of Appeal upholding decision)), which held that s. 118C of the Crimes Ordinance was unconstitutional and invalid to the extent that it applied to a man aged 16 or over and under 21, and having considered the rising trend of setting a uniform age of consent in other jurisdictions, the Sub-committee sees no justification for raising or lowering from the present age of consent, nor any justification for allowing a legislative disparity between homosexual and heterosexual sexual activity.

One may argue that lowering the age of consent may have the undesirable consequence of encouraging premature child sexual activity at an early age. Then again, any suggestion to raise the age of consent may also be criticised for failing to recognise that children are physically and psychologically mature at a much earlier age nowadays. Recommendation 1 therefore proposes a uniform age of consent in Hong Kong of 16 years of age, which should be applicable irrespective of gender or sexual orientation.

Gender difference?

In respect of gender neutrality, the general trend of the legislation of overseas jurisdictions (including Australia, Canada, England & Wales, and Scotland) is to apply equality of treatment between boys and girls regarding protection against sexual exploitation, and gender neutrality in offences involving children and young persons. Recommendation 2 thus proposes that the offences involving children and young persons should be gender-neutral. However, there should be two separate types of offences to protect young persons: one involving children under 13 and the other, children under 16 (Recommendations 3). Furthermore, offences should be capable of being committed by either an adult or a child offender (Recommendation 5).

Absolute Liability

At the moment, sexual intercourse with a person under 16 is of absolute liability in Hong Kong. It is no defence that the accused did not know and had no reason to suspect that the child was under 16.

Contrary to the current position in Hong Kong, in some overseas jurisdictions, sexual offences involving children between 13 and 16 do not carry absolute liability. The main rationale is that it is in the interests of justice and fairness that a person who makes a genuine mistake on reasonable grounds that the child is not under-age should not be penalised. The Sub-committee is well aware of the arguments for and against having absolute liability in offences involving children between 13 and 16, and appreciates that there are bound to be divergent views on the issue. Hence, Recommendation 6 proposes that the issue as to whether absolute liability should apply to offences involving children between 13 and 16 years of age should be considered by the Hong Kong community before a recommendation is made.

Consensual Sexual Activity between Persons who are Between 13 and 16

Generally speaking, it is considered absolutely wrong for anyone to engage in sexual activity with very young persons under the age of 13. People may, however, have different views as to whether the criminal law should intervene in respect of consensual sexual activity between persons who are between 13 and 16 years of age.

The Sub-committee considers that under the protective principle, children should not be encouraged to engage in sexual activity before they are emotionally and physically ready to cope with the consequences. Therefore, it recommends that consensual sexual activity between persons who are between 13 and 16 be criminalised but allow prosecutorial discretion to bring a charge in appropriate cases (Recommendation 8). For instance, if sexual exploitation is not involved, such a case may be dealt with by cautions under the Police Superintendents’ Discretion Scheme which appears to have been operating well in Hong Kong.

Creation of New Offences

In Chapter 7, the Sub-committee recommends the creation of a range of new offences involving children which are gender-neutral and provide wider protection to children (Recommendations 9 to 15). These offences include: penetration of a child under 13, and a similar offence for a
of sexual activity with PMIs fell into two types of offences provided for in respect of PMIs. In this paper, Chapter 10 provides a comprehensive discussion on the protection of young persons aged 16 or above, but under 18 (i.e., 16 and 17 year-olds), from those who are in a position of trust with regard to them.

Sexual Grooming

Sexual grooming refers to the phenomenon of a paedophile who “grooms” a child with a view to engaging in conduct which constitutes a sexual offence against the child. The paedophile may do so by communicating to him/her on a number of occasions in order to gain the child’s trust and confidence. The act is often performed by electronic means such as through the use of a mobile phone or the internet. The paedophile would eventually arrange to meet the child with the intention to sexually abuse him/her.

To combat such undesirable situations, the Sub-committee recommends the creation of the offence of sexual grooming which would serve to protect children before the sexual abuse took place (Recommendation 22). This should also allow the Police to take early action to investigate suggested cases of abuse or potential abuse of children and young persons which may serve as a deterrent to would-be sex predators.

Reform of Legislation in Respect of Persons with Mental Impairment (“PMIs”)

Around the time when this consultation paper was published in November 2016, the local community had a heated debate over the adequacy of protection provided to mentally incapacitated persons. In this paper, Chapter 10 provides a comprehensive discussion on what approaches might be adopted for reform of legislation in respect of PMIs.

A review of current legislation in Hong Kong and overseas revealed that the types of offences provided for in respect of sexual activity with PMIs fell into two broad categories. The first category of offences covers a situation when a PMI fits the definition of a mentally incapacitated person and certain defined types of sexual activity with the PMI would be outlawed (e.g., buggery by a man with a mentally incapacitated person). The second category of offences applies to a PMI whose level of mental impairment is not so severe to the extent that he/she lacks the capacity to consent to sexual activity. While the PMI is capable of giving consent, his/her “consent” is improperly obtained by perpetrators using exploitative means.

The Sub-committee favours the approach taken in the second category of offences, as they can maintain an appropriate balance between respecting the sexual autonomy of those persons whose extent of mental impairment is not so severe as to prevent their capacity to consent, and the need to protect them from sexual exploitation by perpetrators using exploitative means or maintaining an imbalanced relationship with them. The Sub-committee considers that the first category of offences can be subsumed under the general lack of consent model previously recommended by the Sub-committee.

In Chapter 11, the Sub-committee proposes a range of new offences which would be gender-neutral and provide improved protection to PMIs (Recommendations 23 to 30). Some general provisions applicable to the new offences are also proposed, including: defining situations where a relationship of care exists; exceptions to liability; requirement as to knowledge of mental illness; and the evidential burden as regards the accused’s knowledge of the illness (Recommendations 31 to 34).

Reform of Sexual Offences involving Abuse of a Position of Trust

This area of reform relates to the protection of young persons aged 16 or above, but under 18 (i.e., 16 and 17 year-olds), from those who are in a position of trust with regard to them.

Consultation

The consultation period will last for three months until 10 February 2017 and the Sub-committee welcomes views, comments and suggestions on any issues discussed in the consultation paper. Copies of the consultation paper can be obtained either from the Secretary, Law Reform Commission, 4/F, East Wing, Justice Place, 18 Lower Albert Road, Central, Hong Kong, or on the internet at www.hkreform.gov.hk.
法律改革委員會關於《涉及兒童及精神缺損人士的性罪行》諮詢文件概述

2016年11月，法律改革委員會性罪行小組委員會發表了一份關於《涉及兒童及精神缺損人士的性罪行》諮詢文件，當中載述其對有關改革的現行建議。這是一系列共四份諮詢文件的第二份，內容涵蓋對性罪行的全面檢討，和主要涉及保護原則的性罪行。也就是說，刑事法應當保護某些類別的弱勢群體，使其免於遭受性侵犯或剝削。

該等弱勢群體包括兒童、精神缺損人士及少年人(其他人對他們而言，是處於受信任地位)。諮詢期將於2017年2月10日結束。

概述各項主要建議

同意年齡

同意年齡(age of consent)是指一個門檻年齡(threshold age)，而在該年齡以下的人進行涉及性的行為(sexual activity)，將屬於非法。香港現時大部分罪行的同意年齡皆為16歲。然而，雖然《2014年成文法(雜項規定)條例》已將進行同性肛交的同意年齡降至16歲，但根據《刑事罪行條例》第118D條(第200章)，男性與21歲以下的女性進行肛交仍屬違法。


也許有人認為，降低同意年齡可能會產生不良後果，例如，鼓勵尚未成熟的兒童過早進行涉及性的行為。然而，建議提高同意年齡也可能會招致其他人的批評，因為這一建議並沒有顧及到，現時的兒童在生理和心理方面的成熟程度，已比以前提早了許多。因此，建議1提議將香港的同意年齡劃一規定為16歲，並且不論某人的性別或性取向為何，均應予以適用。

性别差異?

就罪行無分性別(gender neutrality)而言，海外司法管轄區(包括澳洲、加拿大、英格蘭和威爾士、以及蘇格蘭)的總體立法趨勢，是在不受性剝削的保護方面，實行男女童待遇平等，而在涉及兒童和少年人的犯罪方面，亦採納罪行無分性別原則。因此，建議2提出，涉及兒童和少年人的罪行應當無分性別(gender-neutral)。然而，法律應反映對兩類少年人的保護，即:13歲以下兒童，和16歲以下兒童，並應就兩者分別訂有不同系列的罪行(建議3)。此外，涉及兒童和少年人的罪行，除了成年罪犯外，兒童罪犯亦可以干犯(建議5)。

絕對法律責任

目前在香港，與16歲以下的人性交，屬於絕對法律責任(absolute liability)罪行，被控人不得以不知道，或沒有理由懷疑有關兒童未滿16歲作為免責辯護。在某些海外司法管轄區，涉及年滿13歲但未滿16歲的兒童的性罪行，並不屬於絕對法律責任罪行(這與香港目前所規
定的法律及精神條文的影響，以及如何在不同的情況下應用這些條文，以確保兒童的權益和福祉。

改革與精神缺損人士有關的法例

在本諮詢文件於2016年11月發表之時，本地社區曾就「精神上無行為能力人士」是否獲得提供充足保護，進行了激烈的辯論。小組委員會認為，對於這一點，必須要考慮到「精神缺損人士」的性自主權和對於他/她的性侵犯，進行立法。小組委員會在第10章建議新訂立一系列不分性別，並能為「精神缺損人士」提供更佳保護的罪行，並提出了若干適用於新訂罪行的一般規定，包括就如下情況作出界定：照護關係的存在；法律責任的例外情況；關於知情有精神病一事的規定；有關被控人知情受害人有精神病一事，在證據上的舉證責任等(建議31-34)。

對涉及濫用受信任地位的性罪行的改革

這一改革範疇，是關於保護16歲或以上但未滿18歲(即16及17歲)的成年人，使其不致被處於受信任地位的成年人所侵害。這一群體的年齡雖然過了同意年齡，但仍未算是成年人，對於為他/她們進行立法，當中存在正、反兩方面的論點。例如，有些人會認為，16歲和17歲的成年人已有足夠成熟程度作出選擇，而其真實關係可以獲得承認；另一方面，也有人認為，這一少年人群體仍應當根據保護原則而受到保護。鑑於目前社會上對這一議題意見分歧，小組委員會認為在提出相關建議前，應當先就這一議題諮詢公眾的意見(建議40)。

諮詢

有關於的諮詢期將會持續三個月，直至2017年2月10日結束，小組委員會歡迎社會各界人士，就諮詢文件所討論的任何議題提出其意見、看法和建議。諮詢文件的副本，可向香港中區下亞厘畢道18號正義廣場東翼4樓法律改革委員會秘書處索取，亦可以透過互聯網下載，網址為www.hkreform.gov.hk。

www.hk-lawyer.org
Third Party Funding for Arbitration in Hong Kong: Law Reform Commission’s Final Report

By Kim M. Rooney, Arbitrator and Barrister

Gilt Chambers
On 12 October 2016, the Law Reform Commission (“LRC”) released its Final Report on Third Party Funding for Arbitration (the “Final Report”) recommending that the Hong Kong Arbitration Ordinance (Cap. 609) be amended to provide that the common law doctrines of maintenance and champerty do not apply to third party funding of arbitration and associated proceedings under the Arbitration Ordinance (namely emergency arbitrator proceedings, mediation and court proceedings).

The Final Report was published following a study by the LRC’s Third Party Funding for Arbitration Sub-committee (the “Sub-committee”) established in June 2013 of the relevant law in Hong Kong and in the main arbitration centres of the world.

The results of the Sub-committee’s study were summarised in the Sub-committee’s consultation paper published in October 2015 (the “Consultation Paper”). The Consultation Paper made preliminary recommendations for reform of the law and invited public comment. As outlined below, 73 responses to it were received from members of the public which were overwhelmingly supportive of the preliminary recommendations. These were taken into account in formulating the final recommendations in the Final Report published in October 2016.

Reasons for Recommendations

In the Final Report concluded that the reform of Hong Kong law is needed to make it clear that third party funding of arbitration and associated proceedings under the Arbitration Ordinance is permitted under Hong Kong law, provided that appropriate financial and ethical safeguards are complied with. They considered that such reform would be in the interests of the arbitration users and the Hong Kong public and consistent with the relevant principles that the Court of Final Appeal has formulated.

The LRC also considered that a party with a good case in law should not be deprived of the financial support it needs to pursue that case by arbitration and associated proceedings under the Arbitration Ordinance. Compliance with the ethical and financial safeguards set out in the Final Report by third party funders of arbitration with the monitoring, supervision and review framework that the LRC proposed, will protect against potential abuse.

Finally the LRC considered that these reforms are necessary to enhance Hong Kong’s competitive position as an international arbitration centre and to avoid Hong Kong being overtaken by its competitors.

What is Third Party Funding?

As the Final Report discusses Third Party Funding of Arbitration is where there is:

(i) funding by a body without an interest recognised by law in the arbitration (other than under the funding agreement)
(ii) of a party (or prospective party’s) costs and expenses of an arbitration
(iii) in return for a share of the proceeds from the arbitration if it is successful as defined in the funding agreement.

Thus it involves a “third person” to the arbitration providing financial “assistance or support to a party to” the arbitration (or other proceedings). The third party funder will be compensated only from the funded party’s net recoveries from the proceedings (after deduction of agreed costs and expenses). A funded party will not have to pay any amount to the third party funder if the proceedings are unsuccessful.

Global Law and Practice

As summarised in the Consultation Paper, third party funding of arbitration is currently permitted in all but one of the world’s major arbitration centres. The remaining centre (Singapore) announced in June 2016 that it intends to amend its law to permit it and introduced legislation to do so in October 2016.

LRC’s Review of the Third Party Funding for Arbitration

The Sub-committee was established in June 2013, following a request by the Secretary for Justice and the Chief Justice to the LRC to review “the current position relating to Third Party Funding for arbitration for the purposes of considering whether reform is needed, and if so, to make such recommendations for reform as appropriate.”

The Sub-committee’s work included reviewing the application of the ancient (700 year old) legal principles of maintenance and champerty to funding of arbitration.

Maintenance has been defined as: “the giving of assistance or encouragement to one of the parties to an action by a person who has neither an interest in the action nor any other motive recognised by the law as justifying his interference.”

Champerty has been defined as: “a particular kind of maintenance, namely maintenance of an action in consideration of a promise to give to the maintainer a share of the subject matter or proceeds thereof, if the action succeeds.”

The question of whether the principles of maintenance and champerty also apply to third party funding for arbitration taking place in Hong Kong was expressly left open by the Court of Final Appeal in 2007 in the case of Unruh

* The members of the Sub-committee consisted of Ms Kim M Rooney (Chair) Barrister, Ms Teresa Y W Cheng, SC, Senior Counsel, Mr. Justin D’Agostino Global Head of Practice – Dispute Resolution, Herbert Smith Freehills. Mr Victor Dawes, SC Senior Counsel, Mr. Jason Karas, Principal Lipman Karas and Mr Robert Y H Pang, SC Senior Counsel.
v Seeberger (2007) 10 HKCFAR 3. They confirmed that these principles continue to apply in Hong Kong and to prohibit third party funding of litigation, both as a tort and as a criminal offence, save in three exceptional areas:

(i) where a third party has a legitimate interest in the outcome of the litigation;
(ii) where a party should be permitted to obtain third party funding, so as to enable him/her to have access to justice; and
(iii) in miscellaneous recognised categories of proceedings including insolvency proceedings (for some years third party funding of insolvent has been regularly sanctioned by the Hong Kong Courts).

Results of Public Consultation
Responses to the October 2015 Consultation Paper were received from 73 various interested parties during the consultation period, which included responses from accounting firms, arbitral institutions, arbitrators, barristers, chambers of commerce, consumer and public interest groups, the financial sector, government bureaux and departments, third party funders, insurers and insurances’ associations, and law firms.

The public’s response to the four preliminary recommendations made in the October 2015 Consultation Paper was overwhelmingly supportive, as may be seen from paragraphs 2.2 at pp. 13–14 of the Final Report, and in the more detailed discussion of the public response that follows.

The Recommendations in the Final Report
As outlined in the introduction, the LRC recommended that the Arbitration Ordinance be amended to provide that the common law doctrines of maintenance and champerty not apply to third party funding of arbitration and associated proceedings under the Arbitration Ordinance.

Among other things, the LRC recommended that the proposed amendments of the law should also apply to the funding of services provided in Hong Kong for arbitrations taking place outside Hong Kong. However, third party funding provided either directly or indirectly by a person practising law or providing legal services should not be permitted to avoid conflicts of interest by lawyers in serving their clients.

The LRC also recommended that appropriate standards should apply to the provision of third party funding in Hong Kong, proposing the adoption of a “light touch” regulatory approach for an initial period of three years. Third party funders funding arbitration in Hong Kong should comply with a Code of Practice (the “Code”) to be issued by a body authorised under the Arbitration Ordinance after public consultation setting out the standards (including ethical and financial) that they should comply with.

The LRC recommended that the Advisory Committee on the Promotion of Arbitration should be nominated by the Secretary for Justice to be the Advisory Body under the Arbitration Ordinance to monitor the conduct of third party funding for arbitration and the implementation of the Code, and to liaise with stakeholders. The Advisory Body should issue a report reviewing the Code’s operation three years after it has come into effect, and make recommendations as to the updating of the ethical and financial standards contained in it.

The Final Report includes in its Appendix I a set of draft proposed amendments to the Arbitration Ordinance to implement the LRC’s Recommendations in the Final Report.

The LRC also recommended that consideration be given as to whether the non-application of the common law principles of maintenance and champerty should be extended to mediation within the scope of the Mediation Ordinance (Cap. 620).

If the law is revised as the LRC recommends, lawyers will likely need to advise their clients of the possible option of seeking third party funding for arbitration and related proceedings. Among the LRC’s recommendations is that the professional conduct rules applicable to barristers, solicitors, and foreign registered lawyers should be amended to expressly state the terms and conditions upon which such lawyers may represent parties in arbitrations and related court proceedings funded by third party funders. It will be important for lawyers to review these and comply with them.

Implementation of the LRC’s Recommendations
On 22 November 2016, the Department of Justice (“DoJ”) submitted to the Panel on Administration of Justice and Legal Services of the Hong Kong Legislative Council (the “AJLS Panel”) a paper setting out the approach to implementation and response to the Recommendations in the Final Report (the “DoJ’s Paper”) and attaching a draft Code of Practice for Arbitration at Annex B.

The DoJ’s Paper states that, following the publication of the Final Report, the DoJ has consulted the legal and arbitration professional bodies, as well as the Steering Committee on Mediation, on the Final Report’s recommendations. The DoJ Paper observes that the organisations which have responded have indicated support, including support by the Steering Committee on Mediation for the proposed consequential amendments to the Mediation Ordinance.

The Government takes the preliminary
view that, from the perspective of promoting Hong Kong’s arbitration services, the proposed law reform is desirable, so that Hong Kong, as one of the leading centres for international legal and dispute resolution services in the Asia Pacific region, can keep up with the latest practice in international arbitration and hence enhance its competitive position. The DoJ’s Paper refers to the consultation process involved for the draft Code of Practice. It states also that a draft Code in relation to third party funding for mediation will be drawn up for consultation with relevant stakeholders.

The DoJ’s Paper states, among other things, that the Government proposes to introduce legislative amendments to the Arbitration Ordinance and the Mediation Ordinance to ensure that third party funding of arbitration and associated proceedings is not prohibited by the common law doctrines of maintenance and champerty; and to provide for related measures and safeguards based on the Final Report. As to the way forward, the DoJ’s Paper states that, subject to the comments of the members of the AJLS Panel, the Government intends to implement its legislative proposals by introducing an amendment bill into the Legislative Council in early 2017.

Conclusion

In the event the Arbitration Ordinance is amended, as foreshadowed, it will be clear that under Hong Kong law third party funding of arbitration and related proceedings under the Arbitration Ordinance is permitted, with appropriate measures and safeguards in place. This should serve arbitration users, support Hong Kong’s role as a leading international arbitration and dispute resolution centre and enhance Hong Kong’s competitive position.

此外，法律改革委员会亦認為，假如當事方透過《仲裁條例》下的仲裁及相關法律程序來進行追討，是有充分的法律依據，那麼他們所需之財政支援便不應受到剝奪。在法律改革委員會所建議的監察、監管和檢討架構內，只要仲裁的「第三方出資者」遵從《最終報告書》所明列的專業操守及財務保障規定，便可以防止出現可能的濫用情況。

最後，法律改革委員會確認，進行此等改革是必須的，因為此舉可加強香港作為國際仲裁中心的競爭地位，並避免香港被其競爭對手所超越。

何謂第三方資助？

正如《最終報告書》中所述的，的涵義是：
(i) 有關的仲裁，是由在該仲裁中並無任何獲法律承認的利害關係的人士所資助(根據資助協議提供資助的除外)；
(ii) 所資助的，是某一仲裁方(或準仲裁方)的仲裁費用及開支；
(iii) 並意圖藉著此等資助，分享相關仲裁在獲勝時所取得的利潤(如資助協議所規定的)。

因此，它是關於某一仲裁程序的「第三方」，向該仲裁程序(或其他法律程序)中的某一個當事方提供財政上的「協助或支援」。該「第三方出資者」，將可向「受資助方」收取從有關法律程序中所獲得的「討回淨得益」(net recoveries)(須扣除所協議的費用和開支)，並以此為報酬。「受資助方」如果未能在有關的法律程序中勝訴，他將無須向「第三方出資者」支付任何款項。
全球的法律和實務

正如《諮詢文件》中所述的，全球所有主要仲裁中心(除了一個)現時都允許實行第三方資助仲裁，而餘下的一個主要仲裁中心—新加坡，亦已於2016年6月宣布，他們打算修訂月例，讓該國在2016年10月進行立法，從而實行第三方資助仲裁。

法律改革委員會對第三方資助仲裁所進行的檢討

鑒於律政司司長與終審法院首席法官向法律改革委員會提出，要求該委員會檢討「現行第三方資助仲裁的法律地位及實務有關的情況，以考慮是否需要進行改革」，以及在該等建議作出回應(以下簡稱「律政司文件」)。

《最終報告書》的建議

正如在引言中所指出的，法律改革委員會建議修訂《仲裁條例》，從而訂明助訟及包攬訴訟的普通法法則，不應適用於第三方資助仲裁的法律地位及實務，而不申請於仲裁條例下的仲裁及相關法律程序。此外，法改會亦建議，有關第三方資助仲裁的法律修訂，應適用於在香港以外地方進行的仲裁，而在香港本地提供的服務所作出的資助。然而，由從事法律執業或提供法律服務的人士所直接或間接提供的第三方資助，不應將其包含在准許之列，以避免律師在為其客戶提供服務時產生利益衝突。

「助訟」的定義是：「一名人士給予訴訟的其中一方協助或鼓勵，而該名人士在該宗訴訟中，並不涉及任何利益，亦不具有任何其他獲法律承認的動機，足以證明他具有適當的理由介入該宗訴訟。」

「包攬訴訟」的定義是：「助訟中的一種特定類別，而其含義是，在某一宗訴訟中向當事人提供協助，從而換取當事人承諾，在該訴訟獲得勝訴後，資助者將可獲得其中一部分的標的物或收益以作為報酬。」

究竟助訟及包攬訴訟法則，是否亦適用於在香港進行的仲裁及相關法律程序？終審法院於2007年在Unruh v Seeberger(2007) 10 HKCFAR 3一案中，將有關問題懸空。終審法院在該案中裁定，該等法則將繼續適用於香港，亦即是：第三方為訴訟提供資助，乃屬侵權行為及刑事罪行，必須予以禁止，但下列三種情況例外：

(i) 第三方與有關的訴訟結果享有合法權益；
(ii) 若非取得第三方所提供之資助，當事方將無從為自身尋求公義；及
(iii) 獲認可的雜項類別法律程序(包括無力償債法律程序)。

《最終報告書》的附件1中，載有一份修訂《仲裁條例》的條文擬稿，以落實法改會在該報告書中所提出的建議。此外，法改會亦建議考慮：助訟及包攬訴訟法則的不予適用情況，是否應伸延至《調解條例》適用範圍內的調解程序。

倘若對《仲裁條例》所作的修訂獲得通過(正如所預示的)，那麼根據香港的法律，第三方資助《仲裁條例》下的仲裁及相關法律程序將會明確獲得批准，並須符合適當的措施和保障規定。此等舉措，將促進香港作為仲裁使用者提供服務，支持香港所扮演的領導國際仲裁與爭議解決中心的角色，並提升香港在香港這方面的競爭能力。
EMPLOYMENT LAW

Driving for the boss or driving as a boss?

The Uber world did a double turn on 28 October when a UK employment tribunal decided that Uber drivers are workers and not independent contractors, stating in its often times faintly mocking judgment, “the notion that Uber in London is a mosaic of 30,000 small businesses linked by a common platform is to our minds faintly ridiculous.”

The Judgment

The judgment was based in part upon the fact that the tribunal found Uber enforced contract terms on drivers that resort to “fictions, twisted language and even brand new terminology”, all for the purpose of denying that Uber is running a transportation business.

The tribunal’s analysis revealed that in fact, Uber does run a transportation business through which its drivers provide the skilled labour. The tribunal’s considerations included the fact that Uber: interviews and recruits drivers, controls key information (such as passengers’ names), requires drivers to accept trips and/or not cancel trips, sets the default route, fixes fares, subjects drivers to a de facto performance management procedure, determines issues about rebates, accepts the risk of loss, handles complaints by passengers and reserves the right to amend drivers’ terms unilaterally.

The tribunal’s finding that Uber drivers are workers paves the way for claimants to continue proceedings pursuant to the National Minimum Wage Regulations 2015, The Working Time Regulations 1998 and the Employment Rights Act 1996. Uber intends to file an appeal. In any event, the parties were asked to deliver written representations by 2 December to the tribunal as to the best way forward to assess drivers’ claims.

Insights

Does the UK decision have implications for Uber in Hong Kong? It is unlikely the employment tribunal’s finding will have immediate or even significant implications for Uber drivers in Hong Kong. Although the tribunal’s analysis is derived from a consideration of how much control Uber exercises over its drivers and this same control may very well be exercised by the company in Hong Kong, the employment legislation differs greatly between the UK and Hong Kong. For instance:

• Hong Kong’s employment laws only provide for two types of working people – employees and independent contractors. The notion of a “hybrid” worker does not exist in Hong Kong legislation.

• Hong Kong has no legislation to govern standard or minimum working hours. In contrast, the UK passed The Working Time Regulations 1998. The UK tribunal considered at length the question of “working time” for Uber drivers and concluded that, “... the Uber driver’s working time starts as soon as he is within his territory, has the App switched on and is ready and willing to accept trips and ends as soon as one or more of those conditions ceases to apply.”

This finding was for the purpose of allowing claims to proceed pursuant to The Working Time Regulations 1998. There is no comparable law in Hong Kong.

• UBS’ annual “Price and Earnings” study found that Hong Kongers work the longest hours in the world, out of all 71 surveyed countries. Moonlighting in Hong Kong is a way of life and for Hong Kong Uber drivers, this is no exception. They bring their own tools of trade to the job (their cars), choose their own hours and take on additional employment.

The argument that Uber drivers are anything but independent contractors under Hong Kong law is as difficult as fitting a square peg in a round hole.

- Adam Hugill, Partner, Oldham Li & Nie Lawyers

僱傭法

誰是司機的老闆？

10月28日是全球Uber變天的日子；當日，英國勞資審裁法庭裁定Uber司機是合約工人，不是獨立承包商；審裁法庭的判決書往往語帶嘲諷，這次的判決書就指出：“我們認為，倫敦Uber是靠共用平台由30,000家小型企業拼湊而成這個說法，聽來有點荒謬”。

判決

判決有部分是建基於審裁法庭發現的一個事實：Uber把合約條款強加於司機，但合約條款是「假象，歪曲言辭，甚至用上全新的術語」，目的是否認Uber在經營運輸生意。
審裁法庭的分析揭示一個事實：Uber的確在經營運輸生意，其司機透過這門生意提供熟練的勞動力。審裁法庭考慮的因素包括，Uber：進行面試招聘司機；掌控重要資料（例如客人姓名）；規定司機必須載客及 / 或不可拒載；預設行車路線；固定車資；規定司機必須符合實際工作表現管理程序的要求；就有關折扣的爭議作出決定；承受損失風險；處理乘客投訴及保留單方面修訂司機條款的權利。


高李嚴律師行的見解

英國的裁決對香港Uber有影響嗎？勞資審裁法庭的裁斷不大可能對香港Uber司機有即時甚或重要的影響。儘管審裁法庭的分析源於其考慮到Uber在多大程度上控制其司機，而香港Uber可能也正同樣控制著Uber司機，但是英國的僱傭條例和香港的有很大差異。例如：
- 香港僱傭法只規限兩類工作人士：僱員和獨立承包商。香港法例不存在「混合式」(hybrid)合約工人。
- 香港沒有法例規管標準工時或最低工時，英國卻在1998年通過了《工時規定》。英國審裁法庭詳細考慮了Uber司機的工時「問題」，總結說「Uber司機一身處他的區域範圍內，開著程式，準備好並願意載客，工時就開始計算，而以上一項或多過一項條件結束時，立即停止計算。」這個裁決的目的是讓一方便可以根據1998年《工時規定》提出申索。香港沒有相若的法例。
- 瑞銀的年度《價格與收入》研究發現，在所有71個受訪國家中，香港是全球工時最長的地方。在香港，兼職是香港Uber司機的生活方式，沒有人例外。他們自備謀生工具（他們的汽車）上班，自己選擇時間做兼職。

爭辯指Uber司機在香港法律下不是獨立承包商，就如方枘裝圓鑿，難度可想而知。

- Adam Hugill 合夥人，高李嚴律師行

GC AGENDA

SAIC Circulates Draft Rules to Implement Right to Return Online Merchandise

On 27 September 2016, the State Administration for Industry and Commerce (“SAIC”) circulated for public comment the Announcement of the State Administration for Industry and Commerce on Soliciting Public Opinions on the “Implementing Measures for Seven-day Unconditional Return of Products Purchased Online (Draft for Comments)” 2016, which will take effect 15 March 2017.

The draft measures give consumers who purchase certain products using the internet, television, telephone, mail order and other related means a limited right to return those products for a full refund within seven days of receipt without the need to provide justification for the return.

The following products are expressly excluded from the scope of protection:
- Tailor-made products.
- Perishable products.
- Opened or downloaded consumer audio and video products, computer software and other digital products.
- Newspapers and periodicals.

The following products also may be excluded, if the seller obtains the consumer's consent at the time of the sale:
- Products that can easily change or that threaten health or safety by being unpacked.
- Products that are significantly devalued by being activated or by trial use.
- Products that when sold have a clear limited shelf life or a defective nature.

To be eligible for return, a product (and related accessories or trade marks) must be intact and retain its original quality and functionality. Although opening and reasonably testing a product does not disqualify it for return, testing a product beyond its quality and functional requirements to significantly devalue the product does disqualify it for return.


Market Reaction

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

“The draft SAIC measures are a welcome effort to clarify the practical application of the general provisions of the Consumer Protection Law introducing the seven-day return policy. By seeking to make clearer, for example, what products are reasonably exempted from the policy, and also the proper condition of goods being returned under the policy, the
measures should help reduce abuses of the policy by both unscrupulous merchants and over-demanding consumers.”

**Action Items**

General Counsel for manufacturers, retailers and other distributors of products sold online (or through television, telephone, mail order and so on) in China will want to advise business colleagues of consumers’ rights under the 2013 Consumer Protection Law and the implication of these recent implementing drafts, and ensure that they have put in place robust internal procedures to carry out returns (and the corresponding refunds) and to object to improper and unqualified requests.

- **Practical Law China**

**法律顧問備忘錄**

**工商總局發布實施退回網絡商品權利的規定草案**

2016年9月27日,國家工商行政管理總局（「工商總局」）發布國家工商行政管理總局關於對《網絡購買商品七日無理由退貨實施辦法(徵求意見稿)》公開徵求意見的公告。實施辦法自2017年3月15日起施行。

實施辦法草案給予消費者收貨後七日內無理由退貨並獲全數退款的有限制權利,而享有這種權利的都是利用互聯網、電視、電話、郵購及其他相關方式購買某類商品的消費者。

下列商品列明不包括在保護範圍內:

- 訂造商品。
- 鮮活易腐的商品。
- 消費者拆封的或者在線下載的音像製品、電腦軟件等數字化商品。
- 報紙及期刊。
- 一經激活或者試用後價值貶損較大的商品。
- 銷售時已明示的臨近保質期的商品、有瑕疵的商品。
- 市場回應

「工商總局草擬實施辦法,以釐清實際上如何應用《消費者權益保護法》有關七日退回政策的一般規定,誠屬可喜。草案闡明實施辦法的規定,比方說,列明有理由獲豁免政策規定的商品及根據政策退回完好商品的標準,因此應該有助減少奸商和貪得無厭的消費者濫用政策。」

跟進事項

為國內透過網絡(或電視、電話、郵購等)銷售商品的廠家、零售商及其他分銷商工作的法律顧問，一定想根據《2013消費者權益保護法》向公司同事提供有關消費者權利的意見,以及這些新公布實施辦法草稿的影響,確保他們已經設置穩健的內部程序收回退貨（及退還相應款項）,拒絕不恰當和不符合規定的退貨要求。

- **Practical Law China**

**GC Agenda**

**SPC Creates Database of Online Judicial Auction Service Providers**

On 19 September 2016, the Supreme People’s Court (“SPC”) issued the Measures of the Supreme People’s Court for the Establishment and Management of the Database of Online Service Providers 2016, which took effect 20 September 2016.

The measures help implement the Provisions on Several Issues concerning Network Judicial Auctions by People’s Courts 2016.

The measures establish a Network Service Providers Review Committee charged with the selection, evaluation and removal of network service providers.

To qualify under the measures, online auction services providers must possess the following:

- The equipment, funds and personnel to ensure a secure and orderly online auction.
- No record of illegal activities.
- The qualifications and security systems required under laws and regulations.
- An open system with advanced technology that is compatible with the courts and capable of expansion over time.
- Specified technical capabilities.

The measures empower the review committee to:

- Ensure a service provider is not capable of manipulating the auction process.
- Engage a third party to appraise new applicants.
- Conduct an annual evaluation of service providers already in the database.
- Specify technical capabilities.

Online providers must promptly report to the review committee major changes in their normal operations.

**Market Reaction**

**Jerry Fang, Partner, Global Law Offices, Shanghai**

“网络司法拍卖已经成为一个非常流行和成功的拍卖方式，有助于提高司法执行效率和透明度，从而显著降低潜在的腐败风险。这些措施将有助于实施。”
the SPC interpretation on network judicial auctions by standardising the qualifications of service providers. While there are a few famous network judicial auction platforms currently in operation, other regional platforms are being established. By establishing a database of qualified network service providers, the measures will help to ensure an orderly and regulated environment for network judicial auctions.”

**Action Items**

General Counsel for companies interested in purchasing assets through online judicial auctions should take a close look at the auction procedures detailed in the measures to ensure the business can reach an informed decision on the bidding strategy.

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**HOSPITALITY**

“Ladies’ Night”

“Ladies’ Night” was the title of a hit song in 1979 by Kool & the Gang. The purported practice of “Ladies’ Night” provides some of the background to the recent case of *Yiu Shui Kwong v Legend World Asia Group Ltd* [2016] HKEC 2313, DCEO Action No. 8 of 2015.

In particular, the claimant sought damages for injury to his feelings following a visit to an establishment operated by the respondent. On the evening in question, the claimant visited the establishment (a Club venue) which apparently operated a discounted entrance fee for adult female customers.

Some readers may be familiar with the concept that resembles *Ladies’ Night*; by all accounts, a well-known practice in some of Hong Kong’s liquor licensed establishments.

The claim for damages was dismissed because he was unable to show any injury to his feelings as a result of any allegedly discriminatory acts (his claim having been premised on ss. 5, 6 and 28 of the Sex Discrimination Ordinance (Cap. 480)). The claimant also abandoned his claim for exemplary damages.

The judgment and purported practice of discounted entrance fees are noteworthy for a number of reasons.

**Discriminatory.** The respondent (the operator) of the premises chose not to appear in the proceedings. Therefore, the claimant obtained an interlocutory judgment for damages to be assessed.

While a “door discrimination” practice may be unlawful, the judgment does not conclusively decide on the merits or otherwise of a practice that resembles *Ladies’ Night*. Furthermore, the legality of gender-based price disparity appears to be an issue in respect of which there is a dearth of case law.

**Industry Practice.** For now, a practice of discounted entrance fees appears to continue and is apparently regarded as an industry norm within much of the entertainment industry. It is worth bearing in mind that the claimant launched his claim with the assistance of
the Equal Opportunities Commission. It will be interesting to see whether other claims follow or whether there are any consequences for a premises’ liquor licence.

**Damages for “Injury to Feelings”**: The case is a useful summary of common law principles relating to an award of such damages and of exemplary damages. On a fair reading of the judgment, it appears that the court had limited sympathy for any hurt to the claimant’s feelings; indeed, some may interpret the outcome in the case as (in part) a victory for common sense. For example: (i) in the context of the claim for exemplary damages, the court makes a point of stating that it did not regard the claimant as a “true victim” of discrimination; and (ii) the court rejected the claimant’s representative’s argument that the respondent’s absence from the proceedings, and the fact that the proceedings were publicly funded, justified a departure from the general practice (in District Court proceedings under the Ordinance) that each party bear its own costs.

- Warren Ganesh, Smyth & Co in association with RPC

* With acknowledgment to Cynthia Claytor, Editor, Hong Kong Lawyer.

**Significant Changes to Data and Cybersecurity Practices under PRC Cybersecurity Law**

The PRC Cybersecurity Law will come into force on 1 June 2017, and has significant implications for the data privacy and cybersecurity practices of both Chinese companies and international organisations doing business in China.

While Chinese officials maintain that the new law is not closing the door on foreign companies, there has been widespread international unease that competition may be stifled. There is also concern regarding data localisation, perceived increased surveillance, and the handover of proprietary information to Chinese authorities. Other new obligations – including enhanced personal data protections – have been less controversial, but could signal a change to the enforcement environment in China.

Some of the key provisions include:

- A range of new obligations that apply to organisations that are “network operators”. There is speculation that this definition could potentially catch any business that owns and operates IT networks/infrastructure or even just websites in China.

In terms of data protection, the new law formalises as binding legal obligations some safeguards that were previously only perceived as best practice guidance in China. Network operators must comply with comprehensive data protection obligations, including notification/consent, data security and breach notification requirements. While an earlier draft specifically provided protection to personal information of “citizens”, the final law does not make this distinction, and so seemingly offers a broader protection to all personal information.

As regards network security, network operators must fulfill certain tiered security obligations according to
the requirements of a classified cybersecurity protection system, which prescribes a wide range of security measures, standards and reporting requirements.

Network operators must also provide technical support and assistance to state security bodies. The form and extent of such co-operation is not currently clear.

- Chinese citizens’ personal information and “important data” gathered and produced by “key information infrastructure operators” ("KIIOs") during operations in China must be kept within the borders of the PRC, unless a Government-approved security assessment is conducted or other PRC laws permit the overseas transfer. While the new law specifies that certain sectors (such as utilities and finance) will be considered KIIOs, the definition remains vague and also considers the impact of security breaches, and so could capture a broader range of organisations. While “personal information” is defined, the types of information that might constitute “important data” is also currently unclear.

- Additional security safeguards apply to KIIOs, including staff vetting and training obligations, and annual assessments. Strict network-related procurement procedures will apply.

- Providers of “network products and services” must also comply with prescribed security measures, standards and reporting requirements; and notably must provide security maintenance support that cannot be terminated within the agreed customer contract term. This will require technology providers to update their current maintenance offerings and contracts.

- Critical network equipment and specialised cybersecurity products must obtain government certification or meet safety inspection requirements.

Great uncertainties remain as to how the new legislation will be applied and enforced. Organisations are advised to review their data compliance programmes before the new law comes into force and as further guidance becomes available.

- Carolyn Bigg, Of Counsel, DLA Piper

中國內地

中國《網絡安全法》給數據及網絡安全作業模式帶來重大變化

中國《網絡安全法》將於2017年6月1日起施行，對在華營商的中資企業及國際機構有關個人信息和網絡安全的作業模式具有深遠影響。

雖然中方官員強調新法不是關上門，把海外公司拒諸門外，但國際間已經瀰漫不安氣氛，擔心新法可能扼殺競爭。也有人對於在境內存儲資料、增強監測預警，以及向中國當局移交專有資料的規定表示關注。其他新責任——包括加強保護個人資料——過去較少受到爭議，但也可以是中國執法環境改變的訊號。

重要規定包括：

- 有多項適用於「網絡經營者」機構的新責任。有人猜測這個定義有可能包括在中國擁有或經營資訊科技網絡／基礎設施，甚至只是網站的公司。新法把一些過去在中國只被視為最佳營商指引的安全措施，規範為具有約束力的法律責任。網絡經營者必須履行全面保護資料的責任；包括通知／同意書、資料安全及違反通知的規定。雖然早前的草案特別規定保護「公民」的個人資料，但最終的法例沒有這個規定，因而似乎是要更廣泛地保護所有個人資料。

- 至於網絡安全，網絡經營者必須按照保密網絡系統的規定，履行某些相應的安全責任：這個系統訂明了各種各樣的安全措施；標準及通報規定。網絡經營者亦必須給國家安全機構提供技術支援和協助。這種合作的形式及範圍目前仍未清楚界定。

- 除非有進行經政府批准的安全評定程序，或者其他中國法例准許海外轉移，否則在中國營商期間由「主要的信息基礎設施經營者」搜集或生產的中國公民個人資料及「重要數據」，必須存儲在中國境界範圍內。雖然新法具體說明某些行業（例如公用事業和金融服務）會被當作主要的信息基礎設施經營者，但信息基礎設施經營者的定義仍然含糊。加上考慮到違反安全規定的影響，這個名稱因而可以包含多種不同機構。「個人資料」已有定義，不過可以構成「重要數據」的資料種類目前尚不確定。

- 增添的安全保障適用於主要的信息基礎設施經營者，包括員工審查和訓練責任，以及年度評估。將來會應用嚴格的網絡採購程序。

- 「網絡產品、服務」的提供者亦必須遵守規定的安全措施、標準及通報規定，更必須提供不能在協定的客戶合約年期內終止的安全維護支持。這需要技術提供商更新其現時的維護建議和合約。

- 網絡關鍵設備和網絡安全專用產品必須由政府認證，或者通過安全檢查規定。應用和執行新法的方法仍然存在具大不確定性。機構應當在新法施行及其他指引發出之前，檢視其資料合規計劃。

- Carolyn Bigg 顧問律師，歐華律師事務所
**PROFESSION**

**Ad hoc Admission of Overseas Counsel: Not Getting Any Easier?**

Just like some yellow buses in Central, after a period of quiet, publicly reported cases dealing with applications by overseas counsel for *ad hoc* admission in Hong Kong sometimes come along in “threes”. In this instance, three recent unsuccessful applications: *re David Perry QC* [2016] HKEC 2323, *re Tim Owen QC* [2016] HKEC 2272 and *re Jonathan Caplan QC* [2016] HKEC 1704.

As is customary, all three applications were heard by a Judge of Appeal sitting at first instance.

In *re Perry QC*, the application for *ad hoc* admission was a renewed one; the applicant (no stranger to Hong Kong) having failed to obtain permission to appear on behalf of two appellants in a magistracy appeal before a judge of first instance (Industry Insights, May 2016 – “Admission of Overseas Counsel and Adverse Costs Orders”). This time around the applicant applied to represent the appellants on an application to the Appeal Committee of the CFA for permission to appeal*. In short, the application failed because (without prejudging the application for permission to appeal) the court considered that it was made with reference to issues that did not arise out of the magistracy appeal or that did not contribute substantially to local jurisprudence or were not unusually difficult or complex.

In *re Perry QC* (again, no stranger to Hong Kong eg, HKSAR v *Jutting*), the applicant applied to represent a defendant on an application to the Appeal Committee of the CFA for permission to appeal (the Court of Appeal having quashed the defendant’s conviction and ordered a retrial). The application failed because the court was not satisfied that the application was with respect to an appeal in which the issues raised were either novel or unusually difficult or complex”.

As in *re Caplan QC*, there is nothing to stop an applicant applying for *ad hoc* admission to appear in the lower courts (in this case, complex criminal proceedings in the District Court) on the basis that the proceedings are headed for the CFA; however, this (of itself) does not mean that the application will be granted. In any event, matters were somewhat overtaken by the CFA’s recent judgment in HKSAR v *Yang Sigai* (Industry Insights, November 2016 – “Dealing Offence: Overseas Conduct”).

Like it or not, some takeaway points (for now) include the following.

- When applications for *ad hoc* admission are contested, there appears to be a trend towards more vociferous opposition from the Bar Association, including on occasion seeking adverse costs orders. In fairness, it is understood that those counsel instructed to oppose applications on behalf of the Bar Association do so on a *pro bono* basis.

- The role that the “CFA factor” plays on applications for *ad hoc* admission appears to evolve and to mean different things in different contexts (and to different judges). This may aid the court’s overall discretion (to do what is in the “public interest”) but arguably is at the expense of clarity for those advising whether an application should be made.

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

  * At the time of writing, the Appeal Committee was due to hear the application for permission to appeal on 9 November 2016.

  ** At the time of writing, the Appeal Committee was due to hear the application for permission to appeal on 8 November 2016.

**Industry Insights** – “Getting Any Easier?

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**Industry Insights** – “Getting Any Easier?

Overseas Counsel: Not
REAL ESTATE

HK Residential Property Stamp Duty Jump to 15%

As an attempt to cool off residential property market, the Hong Kong Government, on 4 November 2016, announced that the Stamp Duty Ordinance would be amended to increase the ad valorem stamp duty (“AVD”) rates for all residential property transactions to a flat rate of 15 percent with effect on 5 November 2016.

This is a significant leap from the so-called “Double Stamp Duty” (Scale 1 of AVD) under the current regime, which stands at a range of 4.25 to 8.5 percent, being applicable to purchases by non-Hong Kong permanent residents and/or if the purchaser already owns another residential property at the time of the subsequent purchase.

Key Features of New AVD Rates
- There will be a flat rate of 15 percent of the purchase price applied, irrespective of the amount or value of consideration.
- The flat rate will apply to all residential purchases, irrespective of whether the purchaser is individual, company or otherwise.
- The flat rate will apply to all agreements for sale and purchase executed on or after 5 November 2016, unless specifically exempted or provided otherwise in the Stamp Duty Ordinance.
- The AVD must be paid within 30 days after the execution date.

Exceptions & Exemptions
According to Government, exemptions and exceptions to the payment of AVD rates already provided for in the Ordinance will continue to apply.

One key exception is on residential property acquired by a Hong Kong permanent resident (“HKPR”) who:
- is acting on his/her own behalf; and
- does not own any other residential property in Hong Kong at the time of acquisition.

For those purchases, the lower rate under Scale 2 of AVD is chargeable.

Refund Mechanism
The refund mechanism under the existing regime is also retained. Some key examples include:
- An HKPR buyer who changes his/her single residential property within six months from the date of completing the new transaction.
- An acquisition of old residential properties for redevelopment purpose.

The AVD paid excess of that payable under lower rate at Scale 2 (ie, the difference between higher rate at Scale 1 and the lower rate at Scale 2) would be refunded.

The duty is on the applicable to prove to the satisfaction of the Collector of Stamp Duty that the relevant criteria for the refund are satisfied.

Non-Residential Properties Not Affected
Transactions relating to non-residential properties will not be affected by the change.

Conclusion
The Stamp Duty Ordinance will need to be amended to incorporate the above changes. It remains to be seen whether the actual amended provisions will tally with the above measures so announced by the Government.

The FAQ published by the Inland Revenue Department can be found here: http://www.ird.gov.hk/eng/faq/index.htm#avd.

Such drastic increase of the AVD rates will no doubt cool down the residential property market with immediate effect. However, given the increasing demand for domestic homes and the consistent shortage of residential land supply (which, interestingly, is controlled by Hong Kong Government itself), it remains to be seen whether and how this new measure could effectively contain the heat in residential property market in long-run.

- Alan Yip, Partner, Mayer Brown JSM
房地產

香港住宅物業印花稅調高至15%  

香港政府於2016年11月4日宣布將修訂《印花稅條例》以把所有住宅物業交易的「從價印花稅」稅率劃一調高至15%，2016年11月5日生效，冀藉此為住宅物業市場降溫。

新稅率遠高過目前機制下被稱為「雙倍印花稅」(「從價印花稅」第1標準稅率)介乎4.25%至8.5%的稅率；「雙倍印花稅」適用於非香港永久性居民及/或買家在置業時已經擁有另一住宅物業的情況。

新「從價印花稅」稅率重點
• 適用稅率將劃一為買價的15%(不論物業價值或售價多少)。
• 划一稅率將適用於所有住宅物業的買賣交易(不論買家是個人、公司還是其他)。
• 划一稅率將適用於所有在2016年11月5日或之後簽立的買賣協議,惟《印花稅條例》明確豁免或另有規定的則除外。
• 「從價印花稅」須於簽立日期後30天內繳付。

例外情況和豁免

根據政府資料，《印花稅條例》已規定的繳付「從價印花稅」稅率的豁免和例外情況將繼續適用。

主要獲豁免的是香港永久性居民取得住宅物業的情況，而他/她：
• 是代表自己行事；及
• 在取得有關住宅物業時，在香港沒有擁有任何其他住宅物業。

就上述買賣徵收的稅率為較低的「從價印花稅」第2標準稅率。

退還稅款的機制
現時退還稅款的機制亦會保留。部分主要例子包括：
• 在完成新交易日期起六個月內轉換他/她唯一住宅物業的香港永久性居民買家。
• 收購舊式住宅物業作重建用途。

已繳付「從價印花稅」中超出根據較低的第2標準稅率計算應付稅款的部分(即按較高的第1標準稅率與較低的第2標準稅率計算的差額)會獲退還。

申請人有責任向印花稅署署長證明他/她已經符合獲退還稅款的相關標準，並且須證明至印花稅署署長信納的程度。

非住宅物業不受影響

與非住宅物業相關的交易不會受到新措施影響。

結論

《印花稅條例》將需要作出修訂以納入上述變更。實際經修訂的條文會否符合上述政府公布的措施，我們還得拭目以待。


大幅調高「從價印花稅」稅率無疑會即時為住宅物業市場降溫。然而，長遠而言，基於住宅單位需求不斷增加，住宅地供應持續短缺(有趣的是，土地供應是由香港政府控制)，新措施能否壓抑住宅物業市場的過熱樓價，成效如何，仍然有待分曉。

- 葉冬生合夥人，孖士打律師行

REGULATORY

Client Agreements and SFC Guidance on FAQs

Given its importance, the topic of the SFC’s new “suitability clause” (to be incorporated into financial intermediaries’ client agreements) has featured in several previous editions of this journal. The new provisions for client agreements come into effect on 9 June 2017. Some licensed or registered intermediaries carrying out regulated activities are aiming for implementation before the deadline. Chief among the new provisions are: (i) the suitability clause and its non-derogation provision (para. 6.2(i) of the SFC’s Code of Conduct) as part of the minimum content of client agreements; and (ii) a prohibition of any provision in a client agreement which is inconsistent with the Code of Conduct or which misdescribes the services to be provided to a client.

As with previous occasions (for example, 22 January 2015), the SFC has provided guidance on the client agreement regime by responses to FAQs; this time with respect to the application of the suitability clause. Key points to note are as follows.

• There are limited circumstances in which an intermediary can waive the need to enter into a client agreement; for example, an intermediary engaged by an institutional professional investor. Where an intermediary chooses to enter into a client agreement, the need for which could otherwise be waived, the intermediary is not required to include the suitability clause in the agreement. The ISDA master agreement (a master service agreement used in derivative transactions between institutional clients) would not normally include the suitability clause.

• All intermediaries that are licensed or registered for Type 9 regulated activity (asset management) or that provide discretionary investment management services should include the suitability clause in their client agreements, unless they are entitled to exemptions as set out in paras. 35 and 36 of the SFC’s Consultation Conclusions (dated 8 December 2015).

• Intermediaries should have regard to paras. (a) to (i) of the definition of “professional investor” in s. 1 (“Interpretation”) of Schedule 1 of the Securities and Futures Ordinance (“SFO”) when determining whether an unregulated fund, a hedge fund or a sovereign wealth fund can be treated as an institutional professional investor for the purpose of not including the suitability clause in their client agreements, unless they are entitled to exemptions as set out in paras. 35 and 36 of the SFC’s Consultation Conclusions (dated 8 December 2015).

• Intermediaries should have regard to paras. (a) to (l) of the definition of “professional investor” in s. 1 (“Interpretation”) of Schedule 1 of the Securities and Futures Ordinance (“SFO”) when determining whether an unregulated fund, a hedge fund or a sovereign wealth fund can be treated as an institutional professional investor for the purpose of not including the suitability clause in an agreement with such clients.

• An intermediary carrying out corporate finance work (for example,
advising on a new share placement or rights offer) that comes within the definition of “advising on corporate finance” in Part 2 of Schedule 5 of the SFO should generally be able to rely on para. 6.4 (“Limited provision of services”) of the Code of Conduct to exclude the suitability clause from a client agreement.

- No modification to the wording of the suitability clause is permitted, other than to standardise references to the parties and such like; for example, altering “we” to “the Firm” and “you” to “the Customer”.

- As for the practical issue of how best to update existing client agreements (for example, by way of amendment or replacement), in order to make them compliant with the new provisions of para. 6 of the Code of Conduct, the SFC’s response suggests that intermediaries “seek legal advice on this if in doubt”. Options include a negative consent approach or re-execution of client agreements. Customers may wish to review their mail carefully.

- Jonathan Cary, Smyth & Co in association with RPC


**监管**

**證監會回覆常見問題以提供有關客戶協議的指引**

鑑於《香港律師》過往幾期都刊登以證監會這條新條款為題的特寫文章*。

適用於客戶協議的新合約條款在2017年6月9日生效。某些從事受規管活動的中介人，或所有提供全權委託投資管理服務的中介人，均應將合適性規定條款納入其客戶協議中，除非中介人有權獲得在《證券及期貨條例》附表1第1條(「釋義」)「專業投資者」第(a)至(i)段所載的豁免。

若中介人在有限的情況下，例如為機構專業投資者提供服務，可以寬免訂立客戶協議的需要。凡中介人選擇訂立客戶協議，而訂立客戶協議的需要基本是可以寬免的，中介人就不需要在協議納入合適性規定條款。國際掉期和衍生工具協會(ISDA)總協議(機構客戶就衍生工具交易而在彼此之間所訂立的總服務協議)通常不會納入合適性規定條款。

所有獲牌或註冊從事第9類受規管活動(資產管理)的中介人，或所有提供全權委託投資管理服務的中介人，均應將合適性規定條款納入其客戶協議中，除非中介人有權獲得在(日期為2015年12月8日)的證監會諮詢總結第35及36段列明的豁免。

中介人的客戶如果不受監管的基金、對沖基金或主權財富基金，為了不在客戶協議中納入合適性規定條款，中介人在釐定這些客戶可否被視作機構專業投資者時，應留意《證券及期貨條例》附表1第1條(「釋義」)「專業投資者」第(a)至(i)段所載的定義。

從事企業融資活動(例如就新股配售或供股提供意見)的中介人，只要活動屬於《證券及期貨條例》附表5第2部的「就機構融資提供意見」的定義範圍內，一般可以《操守準則》第6.4段(「提供有限度的服務」)為依據，不把合適性規定條款納入客戶協議中。

不得改動合適性規定條款的用詞，但規範對訂約方的提示及類似改動則除外，例如把「我們」和「閣下」分別改成「本公司」和「客戶」。

為了符合《操守準則》第6段的新條款規定，中介人需要更新現有的客戶協議(例如修訂或取代客戶協議)，但實際問題是怎樣才是最佳的更新方式？證監會就這個問題建議中介人「如對此有疑問，應諮詢法律意見」。選擇包括以不提出反對即表示同意的方式，或重新簽立協議。客戶或許希望重新仔細翻閱其郵件。

- 莊啟禮，Smyth & Co與RPC聯營

* 2014年11月，2014年12月，2015年4月及2016年1月。

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The information provided here is intended to give general information only. It is not a complete statement of the law. It is not intended to be relied upon or to be a substitute for legal advice in relation to particular circumstances.

本欄所提供的資訊僅屬一般資訊，並不構成相關法律的完整陳述，亦不應被依賴為任何個案中的法律意見或被視作取代法律意見。
CIVIL EVIDENCE

Re Inno-Tech Holdings Ltd
[2016] HKEC 1900
Court of First Instance
Miscellaneous Proceedings No. 241 of 2015
Anthony Chan J in Chambers
1 September 2016

Expert evidence –
disqualification proceedings against company directors under s. 214(2)(d) – leave to file and serve expert evidence on PRC law – proceedings subject to Practice Direction 5.2 – whether breach of Practice Direction – whether proposed evidence necessary for resolution of issues

R1–4 were the only executive directors of C, a listed foreign registered company. In disqualification proceedings brought by the Securities and Futures Commission (the “SFC”) against Rs under s. 214(2)(d) of the Securities and Futures Ordinance (Cap. 571) for breach of their duty of care in respect of the acquisition and disposal of a gold mine in the PRC, Rs filed an affirmation alleging that in light of three major new regulations in the PRC (the “Regulations”), there were substantial changes in the regulatory requirements governing mineral companies and the disruptions and delay caused to the original operation plan were initially unexpected by Rs. The SFC now sought leave to file and serve expert evidence on PRC law concerning the allegations (the “Summons”). Rs argued, inter alia, that the proposed evidence was in breach of para. 20 of Practice Direction 5.2 (PD 5.2).

Held, dismissing the Summons, that:

• PD 5.2 applied to these proceedings as para.1 states that it “applies to all civil actions in the Court of First Instance …” and the proceedings did not fall within any of the exceptions identified therein. However, since the SFC’s supplemental skeleton arguments identified its proposed expert, when read together with the Summons, the SFC had prima facie established the admissibility of the intended expert evidence and there was no breach of para. 20 of PD 5.2.

• Notwithstanding, on the facts and at this stage at least, no issue had been identified which the Court could not resolve without the proposed expert evidence and it should not be admitted.

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CIVIL PROCEDURE

Tang Chai On v Tang Sing Ki
[2016] HKEC 1850
Court of Appeal
Miscellaneous Proceedings No. 1632 of 2016
Lam V-P and Andrew Chan J
29 August 2016

Extension of time for appeals – applications for leave to appeal against trial court’s refusal of extension of time to appeal from its decision and renewal application before Court of Appeal for extension – guidance on appropriate procedure – approach to exercise of discretion

The trial court refused the applicant an extension of time to appeal. Next, the applicant sought leave to appeal to the Court of Appeal against that refusal. Leave was refused by the trial court. The applicant then applied to the Court of Appeal for leave to appeal against the trial court’s refusal of an extension. Such application was treated by the Court of Appeal as a renewed application for an extension.

Held, dismissing the renewed application, that:

• Whilst it was technically possible to appeal to the Court of Appeal against a trial court’s refusal of an extension of time to appeal from its decision, the obviously more straightforward course was to renew the application for an extension before the Court of Appeal. Hence, this application to the Court of Appeal for leave to appeal against the trial court’s refusal of an extension was treated by the Court of Appeal as a renewed application before themselves for an extension.

• The approach in considering whether or not to grant an extension was as stated in Lee Chick Choi v Best Spirits Co Ltd (unrep., HCMP 371/2015, [2015] HKEC 899) at para.19 where this is said: “The legal principles regarding an application to extend time for an appeal are well established. In the exercise of its discretion, the court will take into account the length of the delay, the reasons for the delay, the chances of the appeal succeeding if an extension is granted, and the degree of prejudice to the other party if the application is granted. Where the delay is substantial and not wholly excusable, the applicant must show a real prospect of success on the merits, not merely a reasonable prospect of success.” It would be wrong to treat R (Hysaj) v Secretary of State for the Home Department [2015] 1 WLR 2472 at para. 46 as warranting any departure from that approach.

• Here, the time spent on the inappropriate procedure of seeking the trial court’s leave to appeal against its refusal of an extension, such procedure not having been objected to by the other side or the Trial Judge, would not be regarded as inexcusable delay.

• As to the prospects of success of the proposed substantive appeal, the original grounds had no prospect of success. The Court of Appeal, as had been repeatedly said, was cautious in dealing with new or additional grounds. The ones put forward before the Court of Appeal were new (although the applicant called them “additional”). There were absolutely no merits in the new grounds.
裁決—駁回在上訴法庭席前重新提出的延期申請，也駁回上述被視為重新提出申請的上訴許可申請。

• 原審法庭拒絕延展就其決定提出上訴的期限，雖然就此向上訴法庭上訴在技術上可行，但是在上訴法庭席前重新申請延展顯然為更為直接。因此，這項就原審法庭拒絕延展期限而向上訴法庭提出的上訴許可申請，被上訴法庭視為申請人在上訴法庭席前重新提出的延展期限申請。

• 考慮是否批准延期的方法正是Lee Chick Choi v Best Spirits Co Ltd (未經彙報, HCMP 371/2015, [2015] HKEC 899)第19段所列明的方法：「關於延展上訴期限申請的法律原則早已確立。法庭行使其酌情決定權時，會考慮延誤時間的長短；延誤的理由；倘批准延期，上訴得直的機會；以及倘批准申請，另一方蒙受損害的程度。凡延誤情況嚴重及不能完全辯解，申請人必須證明有理據致使上訴有確實的勝訴機會，而不只是合理的勝訴機會。」把 R (Hysaj) v Secretary of State for the Home Department [2015] 1 WLR 2472第46段視為法庭批准背離那個方法是不對的。

• 在本案，申請人就原審法庭拒絕延展申請向上訴法庭申請上訴許可，但訴訟另一方或原審法官都沒有反對有關程序，因此申請人把時間花在不恰當的程序上，不會被視為不能辯解的延誤。

• 說到擬提出的實質上訴的勝訴機會，原先呈交的理由是沒有勝訴機會的。上訴法庭再三提到，上訴法庭會謹慎處理新的或附加的理由。在上訴法庭席前提出的都是新的理由(雖然申請人稱之為「附加的」)。新的理由完全沒有理據可言。

CIVIL PROCEDURE
Man On Sum v Man Ping Hei
[2016] HKEC 2059
Court of First Instance
High Court Action No. 352 of 2015
Andonder Chow J in Chambers
21 September 2016

Summary order for account – order under O.43 r.1 sought for true and proper account for income and expenditure of t’ong – O. 43 r.1 not appropriate for seeking specific discovery, answers to interrogatories or where dispute first needed to be resolved at trial

P was a member of a t’ong and D was its sole registered manager. P brought proceedings under O. 43 r. 1 of the Rules of the High Court (Cap. 4A, Sub. Leg.) for a summary order for a true and proper account of the t’ong’s money, assets and properties between 2003 and 2014, to be verified by an affidavit by D. D submitted that he had provided full accounts for the t’ong’s income and expenditure every year by displaying in public places the relevant ledgers and pages of the passbook for the t’ong’s only bank account. P countered that there were irreconcilable discrepancies between the figures in the ledgers and the passbook. The Master instead ordered D to provide P with a complete copy of the passbook from 2004 to 2014 and explanations for entries in it other than “for updating [or] interest” (the “Order”). D appealed. P argued that the Order should be upheld as: (a) the passbook had missing pages; and (b) some of the passbook entries were unexplained.

Held, allowing the appeal, that:

• The Order could not be justified. First, if the Master had considered P was entitled to the account sought, she should have ordered D to provide it. Instead, she had effectively turned the O. 43 application into one for specific discovery and/or interrogatories, which was contrary to principle.
• Second, a summary order for account was not appropriate. There was clearly a dispute as to whether D had rendered a “complete and proper account” and this was a “preliminary question” which should be resolved first at trial, before D could be ordered to give such an account. Further, as to the missing pages, if P in fact wanted a complete copy of the passbook, he ought to have applied for specific discovery, not an account. As for the unexplained entries, O. 43 was not designed as an instrument for seeking answers to interrogatories or clarification of accounts already rendered.

民事訴訟程序
Man On Sum v Man Ping Hei
[2016] HKEC 2059
原訟法庭
高院民事訴訟2015年第352號
原訟法庭法官周家明內庭聆訊
2016年9月21日

訴費 — 關於帳目的簡易命令 — 根據第43號命令第1條規則要求法庭下令就「堂」的收支提交真實和妥善的帳目 — 第43號命令第1條規則不應用作尋求披露具體文件或回答質詢書，也不適用於涉及先要經由審訊解決的爭議的案件

本案原告人是某個「堂」的成員，被告人則是該「堂」的唯一註冊司理。原告人根據《高等法院規則》(第4章，附屬法例A)第43號命令第1條規則提起法律程序，要求法庭作出簡易命令，即下令被告人提供真實和妥善的帳目，詳述該「堂」於2003至2014年間的金錢、資產和物業，而該帳目必須由被告人以誓章核實。被告人陳詞指，他透過按年在公共地方張貼該「堂」的相關分類帳及該「堂」唯一銀行戶口的存摺為的相關內頁，已提供該「堂」的...
所有收支帳目。原告人反駁指，該等分類帳所列數字與該等存摺內頁所列數字之間有不能協調的出入。聆案官下令被告人向原告人提供該「堂」於2004至2014年間的完整銀行存摺副本以及就當中記項提供解釋(下稱「涉案命令」)。被告人不服，提出上訴。原告人辯稱涉案命令應獲確認，因為：(a)有關存摺內頁不齊全；及(b)存摺內部份記項未予以解釋。

裁決——上訴得直：

• 另外，裁決時，聆案官若然認為原告人有權獲提供他所尋求的帳目，便理應下令被告人提供該帳目。然而，聆案官實際上把根據第43號命令提出的申請變為要求披露具體文件及/或質詢書的申請，而此舉有違原則。

• 第二，涉案命令無理可據。首先，聆案官若然認為原告人有權獲提供他所尋求的帳目，便理應下令被告人提供該帳目。然而，聆案官實際上把根據第43號命令提出的申請變為要求披露具體文件及/或質詢書的申請，而此舉有違原則。

CIVIL PROCEDURE

Deyi Investment Ltd v Macjin Info-com Tek., Ltd [2016] HKEC 2032
Court of Appeal
Civil Appeal No. 253 of 2015
Cheung, Kwan and Barma JJA
15 September 2016

Writ – service – leave to serve writ out of jurisdiction – setting aside – whether contract between plaintiff and second defendant within O. 11 r. 1(1)(d) (iii) and (iv) – whether Recorder’s approach to plaintiff’s application to amend pleadings, jurisdictional issue and merits flawed

P brought proceedings against D1–2, two South Korean companies, alleging that it had entered into a contract with D1, for and on behalf of D2, to purchase goods which D2 had refused to deliver. P claimed against D2 as the principal of the contract, asserting that D2 had clothed D1 with apparent authority to represent that it was D2’s agent during negotiations held in September 2013 (the “Negotiations”). P obtained leave to serve a writ out of jurisdiction on D2 on the basis of O. 11 r. 1(1)(d)(iii) and (iv) of the Rules of the High Court (Cap. 4A, Sub. Leg.) (the “Order”). The Recorder allowed D2’s application to set aside the Order and refused P’s application to amend its pleadings. The Recorder noted that all the pleaded representations came from D1’s personnel only and P had failed to establish any good case that D2 was a contracting party with P through D1 as its agent for the purpose of seeking service out of the jurisdiction. As for P’s application to further amend its re-amended statement of claim by pleading that during the Negotiations, the representations as to authority to P came from D1 and D2’s personnel, specifically S who was employed by both D1–2, the Recorder found that P had not pleaded that S held such a position with D2 in September 2013 when the representations were allegedly made to P; on D2’s undisputed evidence, it had terminated S’s employment in August 2012 (ie, before the Negotiations); and so the proposed amendment added nothing to P’s case on apparent authority. P appealed against both decisions of the Recorder.

Held, dismissing the appeal, that:

• Although the Recorder had referred to the proposed amendment in her discussion on the merits of the appeal on service out of jurisdiction, this had no impact on the overall soundness of her judgment because she had also addressed the merits of P’s case separately from its proposed amendment. Her approach in holding that the amendment should not be allowed unless P could show a good arguable case that S was in D2’s employ in September 2013 in order to demonstrate that a representation of D1’s agency emanated from D2 as its principal so as to ground leave for service out under one of the O. 11 r. 1(1) gateways was not flawed.

• On the jurisdictional aspect, the Recorder was correct in applying the good arguable case test to the issue of whether P had sufficiently proved the existence of the contract with D2 on agency principles in order to bring its claim within O. 11 r. 1(1)(d)(iii) and (iv), when the contract was ostensibly only with D1. She adopted the same approach when she considered the proposed amendment.
Even if the question of agency and the apparent authority of D1 was an aspect of the merits of P's case and not jurisdiction under O. 11 r. 1, the Recorder's approach had not gone beyond the threshold of a serious issue to be tried. Based on the pleadings including the proposed amendment, she considered that P's case based on apparent authority had no prospect of success.

COMPANY LAW

Re Hin-Pro International Logistics Ltd [2016] HKEC 2123
Court of Appeal
Civil Appeal No. 54 of 2016
Kwan JA and Thomas Au J
30 September 2016

Compulsory winding-up – petition – application to amend petition by substituting original debt for post-petition debt – jurisdiction to do so – test less stringent than that for plaintiff seeking leave to amend writ

P commenced winding-up proceedings against C, a company, based on an unsatisfied costs order which was subsequently discharged. P sought leave to re-amend the petition by substituting for the original debt a number of outstanding debts arising from judgments and orders which accrued after the date of the petition (the “Subsequent Debts”). The Judge held that the Eshelby rule did not apply to a creditor’s winding-up petition and so the Court had jurisdiction to amend the petition, citing differences between a creditor’s petition and a writ action. Under the Eshelby rule, a court may not amend a writ without the consent of the parties, so as to bring a cause of action which was non-existent at the time the writ was originally issued. C appealed.

Held, dismissing the appeal, that:

• The Court had jurisdiction to allow amendments to include post-petition debt.
debts. The test to be satisfied by a petitioner was less stringent than that for a plaintiff seeking leave to amend a writ to add a post-writ cause of action. The Eshelby rule did not apply to a creditor’s winding-up petition as, *inter alia*, it asserted a class remedy on behalf of all the company’s creditors and it was in the public interest that an insolvent company not be allowed to continue to trade. Further, the threshold for other creditors of a company to participate in a creditor’s winding-up petition was much lower. There was nothing in r. 33 of the Companies (Winding-up) Rules (Cap. 32H, Sub. Leg.) or O. 20 of the Rules of the High Court (Cap. 4A, Sub. Leg.) which precluded the court’s discretion to allow a creditor’s winding-up petition to be amended to include post-petition debts.

- It was not appropriate in this instance to determine whether the *Eshelby* rule should continue to apply in writ actions, s. 168A petitions and shareholder’s winding-up petitions on the just and equitable ground, where the public interest might be absent.
- There was no error in principle in the Judge’s exercise of his discretion. C had not demonstrated that it was readily apparent that the proposed amendments were bound to fail.

**Company Law**

Re Hin-Pro International Logistics Ltd [2016] HKEC 2123

- Insofar as a possible application of the Eshelby rule to a petition under s. 168A of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) and a winding-up petition was concerned, these proceedings could be distinguished from a creditor’s winding-up petition as the public interest was seldom engaged; and adding facts which arose after the petition to update an existing complaint was clearly permissible and did not contravene the *Eshelby* rule.

- As far as *Eshelby* case rule is concerned, in a writ action, s. 168A petitions and shareholder’s winding-up petitions on the just and equitable ground, where the public interest might be absent.
- There was no error in principle in the Judge’s exercise of his discretion. C had not demonstrated that it was readily apparent that the proposed amendments were bound to fail.

**Decision**

- In this case, it was not appropriate to apply the *Eshelby* rule to a petition under s. 168A of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) and a winding-up petition. These proceedings could be distinguished from a creditor’s winding-up petition because the public interest was seldom engaged; and adding facts which arose after the petition to update an existing complaint was clearly permissible and did not contravene the *Eshelby* rule.

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Re Hin-Pro International Logistics Ltd [2016] HKEC 2123

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**Company Law**

Re Hin-Pro International Logistics Ltd [2016] HKEC 2123

- Insofar as a possible application of the *Eshelby* rule to a petition under s. 168A of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) and a winding-up petition was concerned, these proceedings could be distinguished from a creditor’s winding-up petition as the public interest was seldom engaged; and adding facts which arose after the petition to update an existing complaint was clearly permissible and did not contravene the *Eshelby* rule.

- As far as *Eshelby* case rule is concerned, in a writ action, s. 168A petitions and shareholder’s winding-up petitions on the just and equitable ground, where the public interest might be absent.
- There was no error in principle in the Judge’s exercise of his discretion. C had not demonstrated that it was readily apparent that the proposed amendments were bound to fail.

**Decision**

- In this case, it was not appropriate to apply the *Eshelby* rule to a petition under s. 168A of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) and a winding-up petition. These proceedings could be distinguished from a creditor’s winding-up petition because the public interest was seldom engaged; and adding facts which arose after the petition to update an existing complaint was clearly permissible and did not contravene the *Eshelby* rule.

- It was not appropriate in this instance to determine whether the *Eshelby* rule should continue to apply in writ actions, s. 168A petitions and shareholder’s winding-up petitions on the just and equitable ground, where the public interest might be absent.
- There was no error in principle in the Judge’s exercise of his discretion. C had not demonstrated that it was readily apparent that the proposed amendments were bound to fail.

**Company Law**

Re Hin-Pro International Logistics Ltd [2016] HKEC 2123

- Insofar as a possible application of the *Eshelby* rule to a petition under s. 168A of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) and a winding-up petition was concerned, these proceedings could be distinguished from a creditor’s winding-up petition as the public interest was seldom engaged; and adding facts which arose after the petition to update an existing complaint was clearly permissible and did not contravene the *Eshelby* rule.

- As far as *Eshelby* case rule is concerned, in a writ action, s. 168A petitions and shareholder’s winding-up petitions on the just and equitable ground, where the public interest might be absent.
- There was no error in principle in the Judge’s exercise of his discretion. C had not demonstrated that it was readily apparent that the proposed amendments were bound to fail.

**Decision**

- In this case, it was not appropriate to apply the *Eshelby* rule to a petition under s. 168A of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) and a winding-up petition. These proceedings could be distinguished from a creditor’s winding-up petition because the public interest was seldom engaged; and adding facts which arose after the petition to update an existing complaint was clearly permissible and did not contravene the *Eshelby* rule.

- It was not appropriate in this instance to determine whether the *Eshelby* rule should continue to apply in writ actions, s. 168A petitions and shareholder’s winding-up petitions on the just and equitable ground, where the public interest might be absent.
- There was no error in principle in the Judge’s exercise of his discretion. C had not demonstrated that it was readily apparent that the proposed amendments were bound to fail.
CONTRACT LAW

Goal Upward Investment Ltd v Osman Mohammed Arab [2016] HKEC 2089
Court of First Instance
High Court Action No. 1355 of 2016
Deputy Judge Nicholas Cooney SC in Chambers
23 September 2016

Termination – notice period – exclusivity agreement for negotiations with liquidators to restructure company – whether notice by liquidators terminating agreement satisfied time requirement – whether notice null and void – whether interlocutory injunction against liquidators to be granted

On 14 April 2016, Ds, the court-appointed liquidators of a wound-up company (“C”) entered into an exclusivity agreement with P for a six-month period to negotiate a restructuring of C (the “Agreement”). Clause 8.2 provided, inter alia, that Ds were entitled to terminate the Agreement by giving notice of “not less than seven days” if in their reasonable opinion the restructuring proposals were unlikely to succeed due to the occurrence of a “Specified Event”. At 5.56 pm on 15 May 2016, Ds sent a facsimile to P stating that “pursuant to cl. 8.2”, they were terminating the Agreement “with effect from 22 May 2016” (the “Notice”). P brought proceedings against Ds, seeking a declaration that the Notice and purported termination were null and void and the Agreement was extant and binding on Ds (the “Declarations”).

Held, dismissing the applications, that:

• The Notice was too short and thus, null and void. Applying the common law rule and excluding 15 and 22 May 2016, the Notice failed to comply strictly with the time requirements of cl. 8.2. Further, viewed objectively, it was neither clear nor unambiguous that Ds meant to give “not less than” seven clear days’ notice. In any event, on the facts, it was clear that Ds intended the termination to take effect on 22 May 2016.

• The Injunction was refused. Given, inter alia, Ds’ fiduciary duties to C, its creditors and shareholders, the Injunction would be effectively an order for specific performance of the Agreement. It would be futile to grant it, because inter alia Ds considered that P’s restructuring proposal was unlikely to succeed such that a Specified Event had occurred and it was assumed that Ds, having the right to terminate the Agreement, would exercise it thereby rendering an order for specific performance nugatory.

• As for the O. 14A application, the question was one of the construction of a document which was suitable for determination without a trial because all necessary facts and matters were available. Notwithstanding, although such construction was in P’s favour, the Declarations were refused first, because the issue of whether a Specified Event had occurred would remain unresolved but should be resolved in a single set of proceedings; and second, as a matter of discretion, given Ds’ obligations it was most undesirable that they should have to negotiate with P exclusively despite considering that its restructuring proposal was unlikely to succeed.
有權給予「不少於七天」通知以終止該協議。2016年5月15日下午5時56分，眾被
告人發傳真給原告人，指出「根據第8.2條」，他們終止該協議的生效日期是「從
2016年5月22日起」開始。「該通知」。
原告人向眾被告人提起法律訴訟，要求法庭宣告該通知無效，理由是眾被告人只給
予原告人六天通知。原告人辯稱：不足一日的不應計算在內；所指的事件（即終止
該協議）發生當天不應包括在內；相關期間應以「一整日」計算。原告人要求法庭
發出非正審禁制令，禁止眾被告人就重組清盤公司與任何其他潛在投資者商議及/
或訂立任何協議（「該禁制令」）；並根據《高等法院規則》（第4A章，附屬法例）第
14A號命令第1條規則申請簡易判決，要求法庭宣告該通知及聲稱的終止無效，該
協議仍然存在並對眾被告人具有約束力（「該宣告」）。

裁決
駁回申請：

• 通知時間太短，因此無效。應用普通法規則，不把2016年5月15及22日包
括在內，該通告就不完全符合第8.2條的時間規定。此外，客觀來說，眾被
告人所言的「不少於」七日通知，意
思既不清楚，也不無含糊之處。無論
如何，事實上有一點是清楚的，就是
眾被告人想該協議從2016年5月22日
起終止。

• 法庭拒絕發出該禁制令。除了別的以
外，基於眾被告人對清盤公司、清盤
公司的債權人和股東負有受信責任，
該禁制令實際上是強制履行該協議的
命令。法庭只會是徒然批出禁制令，
因為（其中包括）眾被告人認為原告人
的重組建議不大可能成功，但又必
須與享有獨家商議權的原告人商議，
因此，法官行使酌情決定權拒絕作出
該宣告。

CRIMINAL SENTENCING

HKSAR v Odira Sharon Lensa
[2016] HKEC 2052
Court of Appeal
Criminal Appeal No. 56 of 2016
Lunn V-P and McWalters JA
22 September 2016

Discount and mitigation – drug trafficking – post-
sentence events – recognition should be given to prisoner for
participation in campaign to warn Africans about dangers of
drug trafficking in Hong Kong – matter better determined by
the executive than by the Court of Appeal

In May 2013, D arrived in Hong Kong on
a flight from Nairobi. When questioned,
she said that she had objects inside
her body that needed to be discharged
immediately. She discharged a total
of 96 packets of dangerous drugs
consisting of 0.56 kg of heroin
hydrochloride. In November 2013, she
pleaded guilty to unlawfully trafficking
in those dangerous drugs, and was in
January 2016 sentenced by the Court of
First Instance to 13 years' imprisonment.

In February 2016, D applied for leave
to appeal against sentence out of time.
She filed no grounds of appeal against
sentence, but complained in a letter to
the Court of Appeal dated 21 August
2016 that the purity of the heroin
hydrochloride in which she trafficked
had been overlooked when a starting
point of 18½ years’ imprisonment had
been adopted and an enhancement of 1
year’s imprisonment had been ordered.
D also said that there were fellow
inmates who had trafficked in the same
or even greater quantities of dangerous
drugs, but who had received sentences
lower than hers. She attached to her
letter a letter from Fr John Wotherspoon
OMI, CSD Chaplain No. 51 in which he
described a campaign which he had
launched in 2013 to warn East Africans
about the dangers of drug trafficking
in Hong Kong. He also described the
contribution which D and her family
had made to that campaign, she having
joined the campaign in early 2015.

Held, dismissing the application, that:

• D not having advanced a satisfactory
explanation to excuse the very
lengthy 2-year delay in applying for
leave to appeal against her sentence,
there was no justification for granting
her the extension which she sought.

• In any event, there was nothing in her
complaints against her sentence.

• The Court did, exceptionally, have
regard to post-sentence events and
the most commonly encountered
exception was that of assistance to
the law enforcement and prosecuting
authorities. But that was an exception
which existed for very particular public
policy reasons. And there would be
cases where a court would be moved
to take action in an appellant's favour
by reason of post-sentence events
because a failure to do so, by that
court and at that stage, would defeat
the ends of justice and the public
interest.

• But that was not the position with
regard to participation in a campaign
such as Fr Wotherspoon's campaign.

• It was apparent from Fr
Wotherspoon's testimony that
the participant of an inmate in his
campaign might vary from inmate
to inmate. Some might be more
involved than others and for many
the involvement might be a lengthy
ongoing one where the inmates’
relatives were enlisted to carry
forward the campaign in the inmate's home country. At the sentencing stage, this might require evidence to be called and an enquiry to be conducted by the sentencing judge in order properly to assess the involvement of the prisoner and the value of that involvement to Hong Kong. Assessing the value to Hong Kong of the prisoner’s actions within the framework of Fr Wotherspoon’s campaign was a task for which the executive would generally be better equipped than the Court of Appeal to perform.

**Criminial Judgement**

**HKSAR v Odira Sharon Lensa**

[2016] HKEC 2052

Court of Appeal

Court of Appeal criminal appeal case 2016 No. 56

Deputy Chief Judge Lun Ming Kho, Judge of Appeal Davis

22 September 2016

**Release and Request of a Light Sentence** — Drug Trafficking — Events after the Execution — Whether in the sentence should be reflected that the prisoner participated in the program in order to warn African people of the consequences of drug trafficking in Hong Kong — This is a task for which the executive would generally be better equipped than the Court of Appeal to perform.

In this case, the defendant arrived in Hong Kong on 5 May 2013 by air from Nairobi. She stated during her interrogation that she had a substance in her body, which she required to be discharged immediately. She discharged 96 small packages containing 0.56 kilograms of methamphetamine. She pleaded guilty to trafficking in this dangerous drug on 11 November 2013 and was sentenced to imprisonment for 13 years on 1 January 2016. She applied for leave to appeal against sentence on 2 February 2016. She failed to submit any appeal grounds for the file but in a letter dated 21 August 2016 and addressed to the Court of Appeal, she stated that the original court had taken 18.5 years as its basis for sentencing and increased her term to 1 year. In this letter, she stated that other convicts who had transported the same or more dangerous drugs were given lighter sentences. The letter attached a letter from Fr John Wotherspoon OMI, CSD Chaplain No. 51, who stated that he had initiated a program in 2013 to warn African people about the consequences of drug trafficking in Hong Kong. This letter stated that the defendant had joined the program in 2015 and described her and her family’s contributions.

**Decision** — Refused application:

- The applicant has been delayed in applying for leave to appeal for two years and has failed to provide an explanation for this delay, therefore the Court is not inclined to grant an extension of time.

- Nevertheless, no grounds for appeal presented by the applicant were established.

- In exceptional circumstances, the Court will consider the sentence after the occurrence of events. The most common exceptional circumstances are those where a convict assists the law enforcement and prosecution authorities. However, such circumstances exist on public policy grounds. In certain cases, the Court may take a view that is beneficial to the applicant, as if the Court were to fail to do so at this stage, it would fail to uphold justice and ignore the public interest.

- However, participation in Fr Wotherspoon’s program is not included in the above circumstances.

- The evidence provided by Fr Wotherspoon’s statement indicates that the level of participation varies among inmates, some being active, while others are less so. Most inmates have participated in the program for a long period and have mobilized their families and friends to help implement the program in their home countries. In sentencing, the judge may have to hear evidence and conduct inquiries in order to properly assess how much the prisoner participated in the program and its value to Hong Kong. Generally, the executive is better equipped than the Court of Appeal to make this assessment.

For full summaries and judgments, please refer to Westlaw and Hong Kong Law Reports & Digest at www.westlaw.com.hk.
It’s been eight years since the start of the global financial crisis, and like a bushfire that has left turmoil in its wake, recovery and regrowth soon follows. Given the time that has now passed, the green shoots of business recovery are well and truly established; however, one thing that is certain is that the legal landscape has changed.

Following the initial slash and burn to stay afloat in the financial crisis, businesses have now moved on to the next stage in recovery. This means the conversation has moved on to sustainable working practices: efficiency and value are key focus areas and high on the agenda of many business leaders and general counsels.

To date, cost reduction has been a common theme, regardless of where business is based. Over the past few years, the obvious routes to achieve these cost reductions have been taken through redundancies, spending cuts, non-essential office closures and so forth. Hong Kong has not been exempt from this and has seen businesses take the same steps in local offices. So how does a legal team transition now from a cost focus to start looking forward to drive efficiency and value in their business?

**NewLaw: A Growing Trend?**

Beyond the traditional law firm and the in-house legal team structures there is now a wide spectrum of legal services that have emerged, predominantly, to meet the evolving needs of in-house legal teams. NewLaw providers have positioned their services as solutions for in-house legal teams to enhance their efficiency. These legal services include NewLaw (or alternative legal services), legal process outsourcing and automated technology. This is in addition to the law firms that have embraced the challenge to innovate, diversify and provide alternative services for their clients.

However, until recently, in Asia, there has not been as many available options to in-house legal teams by way of alternative solutions when compared to their US or UK counterparts. In the US and the UK, NewLaw solutions have become almost commonplace and the number of providers has increased in response to demand. Why is this a growing trend? And are these solutions only viable for the UK and US markets, or are they capable of being embraced in Hong Kong as well?

**Statistics vs Actual Demand**

A 2016 survey by the In-House Congress Hong Kong showed that 82.1 percent of in-house legal counsel have used or would be willing to use a NewLaw alternative service provider. But, if so many are willing, why is it not yet part of the everyday conversation with legal counsel when they look at how they can operate more efficiently? If there was a show of hands across in-house legal teams, far fewer than 82 percent have actually engaged a NewLaw solution. Some of the barriers for legal teams include the lack of time and/or support, resistance to change, budget constraints and limited suppliers.

Although, there is one area of NewLaw that is quickly emerging as an easy win: flexible interim legal resources. This is just one of the many alternative legal resources available, but it seems to be more readily embraced, likely due to in-house counsel being able to see its immediate benefit. For example, to deploy cost saving and efficiency driving products, such as legal process outsourcing and automated technology, general counsel often must prepare detailed business cases for board level approval that justify the potential
upfront costs and time that must be invested to set up the product and get it running. However, in the case of flexible resourcing, the business drivers are more obvious and its benefits are immediately realised. Thus, it is not surprising that many in-house legal teams in Hong Kong, both international and local firms across a wide range of sectors, are embracing it.

While corporates’ use of flexible resourcing is encouraging, the number of businesses utilising this service represent just a small sliver of businesses in Hong Kong. As many in-house legal teams currently have lean operations, some being as small as just one lawyer, change can have an immense impact. Utilising a NewLaw solution such as flexible resource could enable legal teams to be more responsive to organisational changes and corporate legal needs. This solution could be deployed to cover a peak in workload, to bridge a gap within a niche skill area, to cover work generated by a new project or by staff taking parental leave or during gaps when recruiting talent. With NewLaw and interim legal resources, there is flexibility but also cost certainty for the period of the engagement. It is also a more cost effective solution than engaging external counsel. Also, there are no termination fees for redundancy should a contract end earlier than expected, unlike redundancies for permanent staff.

Across the globe, businesses must respond quickly to change. As there is still a lot of instability in the market, it is essential for legal teams to respond with the greater efficiency and look at new products to drive value. It is difficult to know if a business plan and team structure now will still be fit for purpose in two years’ time. This holds true regardless of whether a legal team is based in the US, UK, Australia or Asia. Having a NewLaw solution to engage interim resources means legal teams have the ability to bulk up skills in a particular area. It also allows corporates to dedicate temporary resources to a project that may only have a limited lifespan or in some cases, to try a new team structure on a temporary basis before committing to engaging permanent headcount.

**Hong Kong Market Overview**

The growing number of NewLaw providers in Hong Kong should increase demand for their services amongst in-house legal teams in Asia. The key NewLaw providers currently based in the local market are currently Axiom, Korum, Lawyers On Demand (previously AdventBalance) as well as law firms such as Allen & Overy and Eversheds with their respective services of Peerpoint and Eversheds Agile.

It is hoped that the Hong Kong market follows the same trend as the UK. In 2011, the market for NewLaw flexible resource started with just 4 to 5 providers; in 2016, there are now more than 20 different providers in the UK. This means greater choice for in-house legal teams, as well as greater volume of opportunities for the lawyers who want to work more flexibly.

If over 80 percent of in-house legal teams are willing to engage a NewLaw service provider, it suggests the market is still underdeveloped and there is likely room for growth. However, to sustain growth, NewLaw providers must continue to expand and tailor their services and offerings.

Moving forward, current providers and new market entrants will both need to determine if there are a sufficient number of lawyers in the market who want to work flexibly, whether there currently is enough work from businesses to keep these lawyers employed on temporary assignments, as well as whether in-house legal teams are constrained by other factors, such as resistance to try a different solution or lack of internal support from stakeholders such as finance or HR.

The advantage that Hong Kong has in engaging these NewLaw providers is that the model has been tested elsewhere and has proven successful. Now it is just a case of adapting it to the local market. However, it is important to note that one key difference between NewLaw providers operating in the US and UK markets, versus those in Asia, is the lawyers they retain – with those in the US and UK possessing a broader range of legal expertise and areas of specialism. To be successful, NewLaw providers in Hong Kong must ensure that the lawyers they retain have the requisite experience to cover the breadth of international work, as well as locally generated work. It is also vital for them to understand the importance of China as a business partner and retain lawyers that possess required language competencies and cultural awareness.

**2017 and Beyond**

There have been NewLaw providers in the Hong Kong market for several years, but the pace appears to be picking up, with new entrants to the market in the previous 12 months. Given the increasing buzz from businesses as demand has picked up, it is reasonable expect further growth in 2017 and beyond. Albeit, all change takes time.

As the interest level among clients continues to grow and NewLaw solutions become less novel, providers will start to fully integrate into Hong Kong’s legal landscape. As has been seen so far, NewLaw providers have found the markets in Hong Kong, Singapore and Australia as suitable platforms for their services offerings. The question is, can these products expand across Asia, most notably into China, where different legal requirements, employment regulations and local business needs provide new and different challenges for NewLaw providers to overcome.
作者 Mardi Wilson 主管
Eversheds Agile, Hong Kong

環球金融危機爆發以來，距今已有八年；它有如一場叢林大火，當危難過後，又見萬木逢春。隨著時間的流逝，經濟復甦的勢頭良好，且已確立了良好的根基。然而，有一樣事情可以肯定的是，法律景觀已經有所改變。

企業在擺脫了金融危機所帶來的困境後，現正步入一個逐漸復甦的新階段。這意味著，話題慢慢開始集中在可持續的業務運作方面，而效率與價值乃焦點所在。因此，在許多企業領導層和總法律顧問的議程中，它們亦成為了重要的議題。

直到今天，不論所經營的地方為何，企業的一個共同要旨，仍是盡量降低成本。過去數年間，將成本減輕的一個最明顯方法，就是：裁員、削減開支、將非必要的辦事處關閉等等，而香港在這方面也不能倖免。目前，已有企業採取類此方法來處理其在香港的辦事處。有鑒於此，法律團隊應當如何從過往只是聚焦於成本，轉移至開始著眼如何提升其業務的效率和價值？

NewLaw:一個正在不斷增長的趨勢？

現時除了傳統律師事務所和企業內部法律團隊等架構外，也有範圍廣泛的法律服務提供者應運而生。它的出現，主要是為了滿足企業內部法律團隊不斷變化的需求。NewLaw的服務提供者已將所提供的服務定位為：為企業內部法律團隊提供解決方案，從而提升其運作效率。此等法律服務包括NewLaw(或替代性法律服務)、法律流程外判、自動化技術等。這構成律師事務所面對的創新、多樣化、為客戶提供替代性服務等挑戰以外，另一項新的挑戰。

然而，與英、美的情況相比，亞洲的企業內部法律團隊以往較難藉替代性解決方案而獲得更多選擇。NewLaw解決方案在英、美等國目前已是相當普及，而它的服務提供者的數目，亦隨著服務需求的上升而有所增加。為何此等服務呈現增長趨勢？這些解決方案是否只適用於英、美市場；抑或是，它們亦同樣適用於香港？

統計數字與實際需求

一個由「公司法務代表大會」(In-House Congress) 進行的調查顯示，82.1%的企業內部法律顧問已經在使用、或將會願意使用NewLaw所提供的替代性法律服務。然而，既然有這許多業內人士願意使用這項服務，那麼，當法律顧問在探究如何能更有效地提升運作效率時，為何他們鮮有提及這項服務呢？假如向所有企業內部法 律團隊進行統計調查，我們便會發現，實際使用NewLaw解決方案的人數遠遠少於82%。妨礙這些法律團隊使用該等方案甚麼推動香港企業的「按需定制」法律服務發展？
的原因，包括：缺乏時間及/或支援、對變革所抗拒、財政預算上的限制、服務提供者的數目不足等。

NewLaw現時提供一個新的法律服務範疇，它在瞬間更成為了廣受歡迎的項目，那就是：靈活性的臨時法律資源（flexible interim legal resources）。儘管它只是眾多替代性法律服務的其中一項，但卻似乎更為用戶所接受，原因可能是：企業內部法律顧問察覺到它能提供即時的效益，例如，當要設置一些有助節約成本和具效益的產品時（例如：法律流程外包和自動化技術），總法律顧問通常都必須詳細備妥有關的業務個案，以至將之設置成可用的服務，投資成本和時間，將有關建議交予董事會審批。然而，假如運用具靈活性的資源，其產生的業務驅動作用將更加明顯，而其所帶來的效益也馬上可以得到實現。因此，香港許多企業的內部法律團隊（包括涉及各個不同行業的國際和本地企業）逐漸接受這項服務的提供，實在是不足為奇。

企業願意使用該等具靈活性的資源，確是令人鼓舞，但使用它的企業，實際上只佔香港企業的一小部分。許多企業的內部法律團隊目前都需要將業務簡化（有些更只聘請了一名律師），所以要進行變革，將會給它們帶來巨大的影響。

運用NewLaw解決方案（例如：靈活的資源提供），可以促使法律團隊對機構變革和企業的法律需求作出更有效的回應。這一解決方案的設置，可以：涵蓋最高峰值的工作量；彌合專門技能領域中所出現的缺口；以及，處理新項目、員工育兒假、人才招聘時間的差距中所產生的工作量等。在NewLaw和臨時法律資源的協助下，用戶將可享有資源的靈活性和成本的確定性。此外，這也是一個較諸使用外聘律師更具成本效益的解決方案。另外，它與裁減永久性員工的不同之處是，終止合約的時間假如比預期早，企業亦可以無需向有關員工支付終止合約的補償。

全球的企業都必須對變革作出迅速的回應。由於市場上仍然存在許多不穩定因素，法律團隊必須更高效地作出回應，並關注新產品的面世，以期為企業創造更新可觀的價值。我們很難預期，一個現行的業務計劃和團隊架構，在兩年後是否仍會適合其原定目的：不論該法律團隊是位處美國、英國、澳大利亞，還是亞洲，情況一樣如此。通過NewLaw解決方案來運用臨時資源，意味著法律團隊可以將某特定領域的技能提升。此外，它也可以讓企業將臨時資源配置於許可只維持短暫時間的項目中；又或是，在某些情況下，在決定聘請某名永久性的員工之前，先對新的團隊架構進行短暫的運作測試。

香港市場概況

隨著香港的NewLaw服務提供者的數目日增，在亞洲區的企業內部法律團隊對這方面的服務需求亦將會提升。目前本地市場的主要NewLaw服務提供者有：Axiom、Korum、Lawyers On Demand（前稱AdventBalance）、以及Allen&Every和Eversheds等律師事務所，而它們亦各自經營Peerpoint和Eversheds Agile等服務。

倘若亞洲市場跟隨英國的發展趨勢，2011年時，NewLaw的資源靈活運用市場，只是從4至5個提供者開始。到了2016年，英國已擁有20多個不同提供者。這意味着，企業內部法律團隊將可獲得更多選擇，而意欲以更靈活的方式工作的律師，亦可以獲得更多服務機會。

2017年及往後

NewLaw服務提供者在香港的市場已發展了數年，但其發展步伐步伐至為有所加快。過去12個月，不斷地有新的加盟者進入市場。隨著服務需求的上升，投資氣氛更見澎湃。因此，可以合理預期的是，2017年及往後的日子，NewLaw服務將會有更進一步的發展 — 儘管，任何變革都不可能一蹴而至。

當客戶的興趣和要求不斷提高，而NewLaw解決方案又不再是那麼一種新穎的服務時，提供者便需要促使其服務完全融入香港的法律環境中。到目前為止，NewLaw服務提供者發現，香港、新加坡及澳洲的市場，都是他們開拓其服務和產品的合適平台。但問題是，這些產品的拓展是否可以遍及整個亞洲，特別是進入中國市場。中國的法規、就業規管、業務需求等，皆有其獨特之處，這種種都給NewLaw的服務提供者帶來各種它們需要克服的新挑戰。
Newly-Admitted Members

CHAN CHI HO
陳智灝
HASTINGS & CO.
希仕廷律師行

FONG CHI WING
方枳潁
TAI & CO., S.W.
戴思華律師行

LAU SIK KIU SUKI
劉惜翹
HASTINGS & CO.
希仕廷律師行

CHAN CHO NAM
CALEB
陳祖男
TC & CO.
崔曾律師事務所

HO CHUNG MAN
JASON
何頌文
SIT, FUNG, KWONG & SHUM, SOLICITORS
薛馮鄺岑律師行

LIN CHENG
林鎸

CHAN HING FAAT
陳慶發
SIT, FUNG, KWONG & SHUM, SOLICITORS
薛馮鄺岑律師行

HUI WING HAN
許詠嫻
WOO, KWAN, LEE & LO
胡関李羅律師行

MILLER JAMES
PATRICK DUDWELL

CHAN WOON LAM
QUEENIE
陳煥霖

IP BO YAN
EUGENIA
葉榮欣
SIT, FUNG, KWONG & SHUM, SOLICITORS
薛馮鄺岑律師行

NG PUI MAN
吳佩文
ONC LAWYERS
柯伍陳律師事務所

CHOW SHIU LAM
周兆霖

IU WAI KIT
姚偉傑
CHEUNG & CO., D.S.
張岱樞律師事務所

OR BRIAN PATRICK
柯沛霆
Partnerships and Firms
合夥人及律師行變動

- CATCHPOLE SARAH JANE became a partner of Kennedys as from 01/11/2016.
  自2016年11月1日成為肯尼狄律師行合夥人。
- CHAN SAI KEUNG HUGO became a partner of Or & Partners as from 17/10/2016.
  陳世強自2016年10月17日成為柯廣輝律師事務所合夥人。
- CHAN HOI NAM STEPHEN joined Oldham, Li & Nie as a partner as from 17/10/2016.
  陳凱南自2016年10月17日加入高李嚴律師行為合夥人。
- CHAN WAN KEI became a partner of Oldham, Li & Nie as from 18/10/2016.
  陳韻祺自2016年10月18日成為高李嚴律師行合夥人。
- CHENG BIN became a partner of Jun He Law Offices as from 11/10/2016.
  姜斌自2016年10月11日成為君合律師事務所合夥人。
- CHENG SHUN ceased to be a partner of Deacons as from 15/10/2016.
  陈珣自2016年10月15日不再出任的近律師行合夥人一職。
- CHIU CHI WAI ALAN ceased to be a partner of Hogan Lovells as from 17/10/2016 and joined Ella Cheong & Alan Chiu, Solicitors & Notaries as a partner on the same day.
  邱之威自2016年10月17日不再出任霍金路偉律師行合夥人一職，並於同日加入張淑姬趙之威律師行為合夥人。
- FAGAN MICHAEL STIRLING commenced practice as the sole practitioner of Fagan as from 12/10/2016. 自2016年10月12日獨資經營Fagan。
- HO SZE MAN joined Lin and Associates as a partner as from 07/11/2016.
  何斯敏自2016年11月7日加入林華榕律師事務所為合夥人。
- LAU KWONG CHEUNG ceased to be a partner of C.C. Lee & Co. as from 20/10/2016 and remains as a consultant of the firm. Mr. Lau commenced practice as the sole practitioner of K.C. Lau & Co., Solicitors as from 02/11/2016. 劉廣祥自2016年10月20日不再出任李楚正律師事務所合夥人一職，而轉任為該行顧問。劉律師於2016年11月2日獨資經營劉廣祥律師事務所。
- LEUNG YUK WAI ceased to be a partner of T.K. Tsui & Co. as from 01/11/2016 and remains as an assistant solicitor of the firm. 梁育瑋自2016年11月1日不再出任徐子健律師行合夥人一職，而轉任為該行助理律師。
- MADDIX JEFFREY MILLIS ceased to be a partner of Cadwalader, Wickersham & Taft as from 11/10/2016. 自2016年11月1日不再出任凱威萊德律師事務所合夥人一職。
- NG KA LOK LAURENCE SUNNY became a partner of Chiu, Szeto & Cheng as from 01/11/2016. 吳嘉樂自2016年11月1日成為趙、司徒、鄭律師事務所合夥人。
- TSANG PUI LAM PATRICK became a partner of Hui & Lam LLP as from 17/10/2016. 曾沛霖自2016年10月17日成為許林律師行有限法律責任合夥合夥人。
- TSO KA HANG ARTHUR became a partner of Kirkland & Ellis as from 06/10/2016. 曹嘉珩自2016年10月6日成為凱易律師事務所合夥人。
- WATKINS NEVILLE JAMES JENNER ceased to be a partner of Stevenson, Wong & Co. as from 01/11/2016. 韋健士於2016年11月1日不再出任史蒂文生黃律師事務所合夥人一職。
- YAN LAI YU JAMIE ceased to be a partner of Winnie Leung & Co. as from 01/11/2016 and joined Li, Wong, Lam & W.I. Cheung as an assistant solicitor as from 07/11/2016. 殷麗瑜自2016年11月1日不再出任梁鳳慈律師行為合夥人，並於2016年11月7日加入張永賢・李黃林律師行為助理律師。
- YANG MING HAN ANDREW joined Francis & Co. as a partner as from 17/10/2016.
  杨明翰自2016年10月17日加入Francis & Co.為合夥人。
- YEOH KUAN HUA ceased to be a partner of O’Melveny & Myers as from 12/10/2016 and joined Sidley Austin as a partner on the same day.
  杨冠華自2016年10月12日不再出任美邁斯律師行合夥人一職，並於同日加入盛德律師事務所為合夥人。
RMB Bonds Market in Hong Kong

The RMB bonds market in Hong Kong is commonly referred to as the “Dim Sum” bond market as Hong Kong was the first place to offer offshore RMB bonds. Currently, Chinese enterprises can issue RMB bonds in Hong Kong directly and indirectly. The issuers of direct bond issuance are mainly offshore subsidiaries of domestic enterprises with good credit worthiness. The advantages of offshore RMB bond issuances lie in following aspects: (1) issuance cost and interest rates are relatively low; (2) the financial service system of Hong Kong is relatively mature and market-driven; (3) easier for the issuers to attract international investors.

Main Methods of RMB Fund Flowback

In October 2011, China’s Ministry of Commerce (“MOFCOM”) and the People’s Bank of China (“PBOC”) promulgated the Administrative Measures on RMB Settlement Business for Foreign Direct Investment (“Administrative Measures”) and Notice on Cross-border Direct Investment with RMB Fund (“Notice”), expressly permitting foreign investors to apply overseas legally raised RMB fund to make direct investment in China.

Currently, offshore RMB fund raised through bond issuance can flow back into China by the following methods: (1) if the issuer is a special purpose vehicle (“SPV”), it can establish a joint venture with a domestic enterprise or a wholly foreign-owned company in China. After successful issuance of bonds, the SPV would transfer the raised fund to the aforesaid joint venture or wholly foreign-owned company by means of capital injection or capital injection plus loan; (2) the issuers who have already set up foreign invested enterprises in China can transfer raised RMB fund to the foreign invested enterprises by capital injection which can realize large scale of inward fund. When the bonds become mature, the principals can be repaid by means of offshore refinancing or transfer of equities of the subsidiary; (3) domestic financial leasing company can borrow fund from offshore market within its foreign debt quotation and transfer the raised fund to the onshore market through financial leasing company. The Chinese government can encourage the offshore raised fund to flow to the industries promoted by the state by equity direct investment and debt direct investment.

Main Limitations on RMB Fund Flowback

Currently, the major limitations on flowback of RMB fund to onshore market are as follows:

1. Limited scope of investment

The Notice expressly provides that cross-border RMB direct investment should comply with the requirements of Chinese laws on foreign investment and industrial policies on foreign investment. If the total amount of the RMB direct investment exceeds specific amount or involves special industries, the investment shall obtain approval from MOFCOM first, such as: (1) investment with capital contribution amount of RMB 300 million or more, (2) investment in industries such as financial leasing, small amount loan and auction, (3) investment in foreign invested companies, foreign invested venture capital enterprises or equity investment enterprises, and (4) investment in national macro-control industries such as cement, steel, electrolytic aluminum, maritime and others.

2. Strict governmental examination and approval procedures

The Notice stipulates that cross-border RMB direct investment shall comply with strict governmental examination and approval procedures. Compared with foreign direct investment, foreign investors shall not only submit normal foreign investment related legal documents but also submit fund resources proof and explanation, use of fund explanation and specific forms to the relevant government authorities for approval.

In addition, the Administrative Measures requires foreign investors to open different types of accounts for different transactions such as special deposit account for RMB front fee and special account for RMB reinvestment. Furthermore, the Administrative Measures requires foreign invested enterprises to make registrations with local PBOC branch for enterprise information after obtaining business licenses.

3. Unclear provisions on investment methods

However, the Notice and Administrative Measures fail to clearly define the RMB direct investment methods. Generally speaking, the equity investment activities such as incorporation, acquisition, capital increase and equity transfer are all important RMB fund flowback methods. However, the Notice and Administrative Measures fail to clarify several important issues: (1) whether onshore RMB investment by way of acquisition includes round-trip investment or not, (2) whether RMB direct investment includes offshore shareholder’s loan or not, and (3) whether foreign invested enterprises are exempted from the foreign debt registration obligations imposed by existing regulations of SAFE.

Suggestions on RMB Fund Flowback Methods

Therefore, it is believed that Chinese governments should make following improvements on fund flowback methods raised by offshore bond issuance.

1. Expand direct investment scope of RMB fund

It is suggested that the PRC governments shall gradually allow RMB fund to invest in onshore entrusted loans or securities and financial derivatives directly or indirectly. Meanwhile, on the basis of complying with national industrial policies, the PRC government shall also gradually allow RMB fund to invest in foreign invested companies, foreign invested venture capital enterprises or equity invested enterprises directly, and gradually release the limitations on investment in national macro-control industries such as cement, steel, electrolytic aluminum, maritime and others.

2. Confirm the offshore shareholder’s RMB loan as a method of fund flowback

The Notice fails to confirm whether RMB direct investment includes offshore shareholder’s RMB loan or not. However, the Administrative Measures allows foreign invested companies to borrow Renminbi from its overseas shareholders, affiliates and offshore financial institutions within its credit quotation. Therefore, offshore shareholder’s RMB loan should be an important method of flowback of RMB fund raised through bond issuance.

Generally speaking, there are many legal obstacles for offshore fund to flow back into China. However, compared with previous RMB fund flowback pilot management regulations, the Notice and Administrative Measures has already provided a simplified RMB fund flowback examination and approval procedures. As the Chinese government pushes ahead to accelerate reform efforts in terms of opening up the capital markets and internationalizing the currency, we will inevitably see an increase in the usage of RMB worldwide, and the development of the bond market is an important step to facilitate this growth.

By Ms. Vivian Ji, Counsel
Watson Farley & Williams
We would like to congratulate Leung Sew Tung Thomas, Senior Associate at the Tony Kan & Co., the winner of our Legal Quiz #31.

LEGAL TRIVIA #32

As with previous years, in the spirit of the winter holidays, all readers need to do for the December quiz is match photos of buildings to their names or former names. The questions have been prepared by Douglas Clark, Barrister. Suggestions for questions to appear in next month’s journal are most welcome.

Answers to Legal Trivia Quiz #31

1. B. The ICAC was established in 1974.
2. D. Sir Jack Cater was the first Commissioner of the ICAC.
3. C. Under the Basic Law, the ICAC is accountable directly to the Chief Executive.
4. B. Rafael Hui was Chief Secretary of Administration.
5. A. The Carrian Group was at the centre of the 1980s fraud in Hong Kong.
6. C. The trial judge after an eighteen month trial ruled there was no case to answer. This was found to be wrong by the Court of Appeal on an Attorney-General’s reference.
7. A. True. Dennis Barker who tried the Carrian case died in car accident in Cyprus four months after retiring.
8. C. The High Court of Australia in 1998 ordered Tse Chu-fai (of the Allied Group) to be extradited to Hong Kong overturning a first instance decision that had refused extradition because of the change in status of Hong Kong.
9. C. Proceedings against members of the Allied Group were permanently stayed twice and overturned on appeal by the CFA twice.
10. A. True. Ronald Li, head of the Hong Kong Stock Exchange, was convicted and sentenced to four years’ imprisonment.

Contest Rules:
To be eligible to win a bottle of Ch. La Croizille 2007 from Global Vintage Wines Centre, please send your quiz question answers to cynthia.claytor@thomsonreuters.com. The first reader to respond with the most correct answers, with no more than 3 incorrect responses, will be deemed the winner. The decision of Thomson Reuters regarding the winner is final and conclusive.
法律知識測驗 #32

普天同慶聖誕佳節。與去年一樣，12月測驗為配對題，請讀者把圖中的建築物與其正確名稱配對。
問題由馬錦德(Douglas Clark)大律師編製。歡迎建議下期問題。

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

法律知識測驗 #31的答案
1. B. 廉政公署於1974年設立。
2. D. 姬達爵士是首任廉政專員。
3. C. 根據《基本法》，廉政公署直接向行政長官負責。
4. B. 許仕仁曾任政務司司長。
5. 佳寧集團是80年代香港一宗詐騙案的主要涉案公司。
6. B. 主審法官經過18個月的審訊後，裁定被告無須答辯。在律政司轉介下上訴
法庭後來裁定判決錯誤。
7. A. 阿寧亞集團的法官柏嘉退休後4個月在塞浦路斯死於車禍。
8. A. 澳洲高等法院於1998年下令將謝柱輝（聯合集團）引渡回港，推翻因香港
的地位改變而拒絕引渡的初審判決。
9. C. 對聯合集團成員的起訴兩次被永久擱置。永久擱置令兩次在終審法院被上訴
推翻。
10. A. 是。聯交所主席李福兆被判罪名成立，入獄四年。

廉政公署於1974年設立。
姬達爵士是首任廉政專員。
根據《基本法》，廉政公署直接向行政長官負責。
許仕仁曾任政務司司長。
佳寧集團是80年代香港一宗詐騙案的主要涉案公司。
主審法官經過18個月的審訊後，裁定被告無須答辯。在律政司轉介下上訴
法庭後來裁定判決錯誤。
是。審訊佳寧案的法官柏嘉退休後4個月在塞浦路斯死於車禍。
澳洲高等法院於1998年下令將謝柱輝（聯合集團）引渡回港，推翻因香港
的地位改變而拒絕引渡的初審判決。
是。聯交所主席李福兆被判罪名成立，入獄四年。
10th Anniversary Gala Dinner of CUHK Faculty of Law

To celebrate the 10th Anniversary of its establishment, the Faculty of Law of The Chinese University of Hong Kong (“CUHK”) held its Gala Dinner at Conrad Hong Kong on 12 November 2016. Nearly 500 distinguished guests, alumni, students and staff of the Faculty of Law gathered to celebrate the anniversary. Distinguished guests attending the Gala Dinner included The Hon. Mr. Justice Patrick Chan Siu-oi, Chairman of the Standing Committee on Legal Education and Training; Dr. and Hon. Sir David Li Kwok-po, Chairman and Chief Executive of the Bank of East Asia; The Rt. Hon. Dame Elish Angiolini, DBE QC, Principal of St. Hugh’s College, University of Oxford; The Hon. Annabelle Bennett AO SC, Retired Judge of the Federal Court of Australia; Prof. Christopher Forsyth, Sir David Williams Professor of Public Law, University of Cambridge; Prof. Joseph Sung, Vice-Chancellor, CUHK; Prof. Ambrose King, Prof. and Hon. Arthur Li and Prof. Lawrence Lau, former Vice-Chancellors, CUHK; Prof. Mike McConville, Founding Dean of the Faculty of Law, CUHK; as well as many distinguished professional mentors, who always provide their valuable advice and tremendous support to the Faculty and its students.

The Faculty specially prepared a mega sand timer for the Gala Dinner, which represents the accomplishments achieved through the concerted efforts of the Faculty and its students.

Welcoming address by Prof. Christopher Gane, Dean of the Faculty of Law, CUHK.

Mr. Edwin Mok, representative of Mok Hing Yiu Charitable Foundation (left) and The Rt. Hon. Dame Elish Angiolini, QC, Principal of St. Hugh’s College, University of Oxford (right) give their blessings to the Faculty.

香港中文大學法律學院十周年院慶晚宴

為慶祝學院成立十周年，香港中文大學(中大)法律學院於2016年11月12日舉行院慶晚宴。近500位嘉賓、校友及師生聚首一堂慶祝。出席嘉賓包括法律教育及培訓常設委員會主席陳兆愷法官、東亞銀行董事局主席兼行政總裁李國寶爵士、英國牛津大學聖休學院校長Elish Angiolini、澳洲聯邦法院榮休法官Annabelle Bennett、英國劍橋大學法律學院教授Christopher Forsyth教授、香港中文大學校長沈祖堯教授、三位中大校長金耀基教授、李國章教授及劉遵義教授、中大法律學院創院院長Mike McConville教授，以及一直對學院大力支持並經常向學生提供寶貴意見的一眾傑出業界導師。

大會特別為晚宴製作一個巨型沙漏計時器，象徵法律學院師生在過去十年共同努力的成就。於晚
efforts of CUHK staff and students in its first 10 years. In a ceremony at the beginning of the dinner, officiating guests gave their blessings to the Faculty by pouring sand into the sand timer. Then, Prof. Christopher Gane, Dean of the Faculty of Law, CUHK, set the timer in motion, which symbolised the bringing of the Faculty’s accomplishments and best wishes forward to the next decade.

As a token of appreciation, the Faculty presented souvenirs to 16 staff who have been working in the Faculty for 10 years or more. To conclude the Gala Dinner, 10 CUHK law students and alumni from different programmes, years and nationalities, sang a song to congratulate the Faculty on its 10th Anniversary and to thank all of the distinguished guests for their guidance and support.
As an avid jewellery enthusiast, I was most excited to visit the Hong Kong gallery of Sotheby’s on a chilly November evening. We had a superb turnout on the night with more than 50 members of the Law Society attending this event, encompassing an introduction to fine jewels and timepieces by Sotheby’s in-house specialists and a display of auction items.

To my delight, on display was more than delectable jewels, but timeless watch pieces from renowned makers such as Patek Philippe and Vacheron Constantin, precious jadeite, charming vintage pieces from the Golden Era and most importantly, a free flow of red and white wine (simply to warm one’s chilly soul).

The event kicked off with a warm introduction from Sotheby’s. We were then taken “back in time” to the Egyptian era 4000 BC, where jewellery was mainly in the form of collars and crowns symbolising power and wealth. Popular gemstones at that time were carnelian, amethyst and turquoise. We then transcended into ancient Roma, where the use of brooches for holding togas and amulets were common amongst the royalty and commoners. Such pieces were infused with designs of animals and coiling snakes, dotted with sapphires, emeralds, jet and pearls. Later, during the reign of Queen Victoria, who was renowned for her fashionable taste, jewellery was all the rage across Europe. The roaring twenties then brought the rise of Art Deco, introducing fresh concepts such, as geometrical shapes, abstract designs, cubism, modernism and oriental art into jewellery. This was also the time when established houses started making their mark, such as Cartier, Van Cleef Arpels and Boucheron. The wearing of wristwatches was also popularised, including amongst women. During World War II, there were widespread embargoes on gemstones, and jewellery pieces were simplified to metal pieces adorned with symbols of patriotism. Post war, people celebrated with bright coloured jewellery; and diamonds solidified its position as the most sought after gemstone.

Whether for personal pleasure or investment, one should select and purchase gemstones based on three factors – rarity, beauty and durability (and obviously, the amount of cash one can spare). Rarity depends on supply and demand. For example, amethyst was a precious stone amongst the Egyptians, but its value depleted considerably when a huge source was later discovered in Africa. Beauty is more subjective. What may project beauty in one’s eye may not in that of another. And lastly, durability. Diamonds are the most durable and hardest element on earth. It is also a very stable stone and can endure heat, cold and various household chemicals. This is also one of reasons it is so sought after in the market.

On the night, of the many pieces on display, what caught my eye was the iconic Cartier “Panthere” diamond, sapphire and emerald ring and a white gold, diamond and emerald encrusted Frank Muller automatic “No.105 Master Double Mystery” wristwatch, all “dream” pieces any girl would want to own. Naturally, one would assume that auctions are reserved for the wealthy and exclusive, but in recent times, auctioneers, including esteemed houses, such as Sotheby’s, have begun to cater for a more modest market. The pieces mentioned above, are just a fraction of the retail price (notably, deduction will be given for wear and tear). But most pieces are in mint condition, and if you’re lucky, there may even be a lovely story behind the piece you acquire...
Guided tour at Sotheby’s Hong Kong Gallery

By Hugo Ngaw, Group Legal Counsel

Our guided tour of Sotheby’s started with wine tasting and was followed by a speech given by Kevin Ching, Chief Executive Officer of Sotheby’s Asia. Kevin joined Sotheby’s in 2006 after working both in private practice and in-house! Yes, he was a solicitor! He concluded his talk by joking that if we were bored by his colleagues’ talks, we could leave and start shopping immediately.

Yvonne Chu, Sotheby’s jewel specialist, gave the first very informative talk. She quickly transported us through the history of jewellery, from appraising the features of Egyptian jewels dating from 4000 BC to Roman-style pieces ranging from 700 BC to 2 AD to jewels owned by Queen Victoria in 1900s.

Moving on to selecting pieces to purchase, she noted that most consumers usually focus on the brand and craftsmanship; however, Yvonne recommended we look into three additional elements, which we could remember through the acronym “RDB”:

• **Rarity:** whether the diamond/gemstone is rare and from a well-known brand;

• **Durability:** gemstones differ in hardness; some need extra care if you wish to look after it for your generation; and

• **Beauty:** it is subjective, so different people will have their own aesthetic feelings.

Regarding the market trends of gemstones, Yvonne suggested investing in stones that are red, green and blue. She also noted that the combination of diamond and gemstones is currently trendy.

Yvonne concluded her talk by reminding us that the most important consideration when purchasing jewellery was to pick something we would like, as well as something we would wear.

Jessie Kang, Sotheby’s watch specialist, gave the second talk, in which she explained how to select the perfect timepiece. She provided us with her own acronym, “BPM”, to remember when making our decision. It stands for:

• **Brand:** brand recognition is important: the continuity of the brand’s history, whether the brand is locally and globally well-known; whether such brand has signature models;

• **Production:** whether it is a limited edition; and

• **Movement:** the watch movement.

Some brands do not manufacture their own calibre (i.e., the “movement”, is the mechanism of a watch, the small device inside the watch which makes it “move”). Some watch buyers/collectors prefer the watch brands that still make their own calibre. Others like more complicated products (e.g., tourbillon).

After the talks concluded, I asked Jessie a few questions about tourbillons, as I have never owned one myself. For the uninitiated, a tourbillon (a French word that means “whirlwind”) is an additional mechanism of a watch escapement that aims to counter the effects of gravity by mounting the escapement and balance wheel in a rotating cage, to negate the effect of gravity when the timepiece (thus the escapement) is stuck in a certain position. By continuously rotating the entire balance wheel/escapement assembly at a slow rate, typically about one revolution per minute, positional errors are averaged out.

Despite the hype, I learned that tourbillons have been proven to be no more accurate than a traditional escapement on a wristwatch. While some saying tourbillons are “useless”, they are still common among the uppermost echelon in the watch market. Many Swiss-made examples start at around US$40,000 and price tags often break the six-figure barrier.

Jessie explained that tourbillons are still arguably one of the most difficult movements to make by hand. The tourbillon mechanism is tiny, weighing in at under a gram, and is usually crafted with more than 40 parts, finished by hand and made from lightweight metals like aluminium and titanium. They require a special set of tools and a lot of time to make. Many take more than one year, some even as long as two!

In spite of claims disavowing their utility, I still look forward to owning my own tourbillon watch one day!
大飽眼福
作者 黃文珊 資深律師
孖士打律師行

作為一位珠寶愛好者，11月有機會參觀蘇富比香港藝廊令我十分興奮。當晚超過50位律師會會員出席活動，蘇富比的專家為我們講解製作的珠寶鐘錶和展示拍賣品。

展出的珍品包括瑰麗珠寶、百達翡麗和江詩丹頓等名錶、珍珠翡翠、黃金時代的迷人大古董，而且有關方面還提供紅、白酒任飲，在寒冷的晚上溫暖我的心靈。

活動由蘇富比的熱情講解揭開序幕。我們「回到」公元前4000年的埃及時代，當時的珠寶以頸圈和頭冠為主，象徵權力和財富。當時流行的寶石包括紅玉髓、紫水晶和綠松石。然後，我們穿越到古羅馬時代，當時的皇族和平民均喜歡使用胸針來固定長袍和作為護身符。這些珠寶加入了動物和卷蛇的設計，以藍寶石、綠寶石、黑玉和珍珠點綴。之後的維多利亞女王以其時尚品味聞名，珠寶風潮席捲歐洲。裝飾藝術在興旺的20年代興起，幾何形狀、抽象設計、立體主義、現代主義和東方藝術等新概念融入珠寶設計。這時期一些著名品牌也開始建立，如卡地亞、梵克雅寶和Boucheron。佩戴手錶也開始在包括婦女之間普及。二次大戰期間，寶石遭受禁運，珠寶簡化為帶有愛國主義符號的金屬飾品。戰後，人們以色彩明亮的珠寶慶祝，而鑽石亦鞏固了其地位，成為最受追捧的寶石。

無論是個人樂趣或作為投資，選擇和購買寶石時，應基於三個因素：稀有度、美感和耐久度(當然還視乎每人的消費力)。稀有度取決於供應。例如，紫水晶對埃及人是種珍貴寶石，但後來在非洲發現巨大來源時，紫水晶的價值便大大降低。美感較主觀，各花入各眼。最後是耐久度。鑽石是地球上最耐久、最堅硬的元素，它也是一種非常穩定的寶石，耐熱、耐冷、不受各種家用化學品破壞。這是市場如此追捧鑽石的原因之一。

當晚許多展品中，最吸引我的是一隻卡地亞經典「美洲豹」形態鑽石、藍寶石和綠寶石戒指，以及Frank Muller「No.105 Master Double Mystery」白金鑲鑽和綠寶石自動腕錶，是所有女士的夢幻逸品。人們總認為拍賣是富豪的專利，蘇富比等尊貴拍賣行的拍賣師開始迎合更大衆化的市場。上面提到的珍品價格比零售價低得多(價格主要因磨損降低)，但大部份是接近全新。如果運氣好，你買到的珍品背後更可能有一個動人故事。
我們的蘇富比導賞參觀由品酒活動展開序幕，然後由蘇富比亞洲區行政總裁程壽康先生致辭。程先生於2006年加入蘇富比，之前曾私人執業和擔任企業律師！是的，他是律師！致辭結束時，他開玩笑說，如果同事的講解太沉悶，我們可以離開立即開始購物。

首節講解由蘇富比珠寶專家Yvonne Chu主持，內容十分充實。她向我們簡述珠寶的歷史，從公元前4000年的埃及珠寶，到公元前700年至公元2世紀的羅馬風格作品，到1900年代維多利亞女王的珠寶，她都一一講解特點。

談到購買珠寶時如何選擇，她指出，大多數消費者通常專注於品牌和工藝；然而，Yvonne建議我們研究三個額外的元素，記住縮寫「RDB」：

- **Rarity（稀有度）**：鑽石/寶石是否罕見和來自知名品牌；
- **Durability（耐久度）**：每種寶石硬度不同，如果想長久保存，有些需要特別保養；
- **Beauty（美感）**：這是主觀的，每人有自己的審美觀感。

關於寶石市場的趨勢，Yvonne建議投資於紅色、綠色和藍色的寶石。她也指出，目前流行鑽石和寶石的組合。

最後，Yvonne提醒我們，購買珠寶時最重要的考慮，是選擇自己喜歡、自己會佩戴的珠寶。

第二節講解由蘇富比手錶專家Jessie Kang主持。她解釋如何選擇完美的手錶。她說我們決定時可考慮「BPM」，這代表：

- **Brand（品牌）**：品牌認知度是重要的：品牌的歷史；是本地品牌或國際知名品牌；品牌是否有經典型號；
- **Production（生產）**：是否是限量版；和
- **Movement（機芯）**：手錶機芯。有些品牌不製造自家機芯（即movement，手錶的機械結構，手錶內使其「移動」的小裝置）。一些手錶買家/收藏家喜歡製作自家機芯的手錶品牌。有些則喜歡更複雜的產品（例如陀飛輪）。

講解結束後，我問了Jessie幾個有關陀飛輪的問題，因為我從未擁有陀飛輪手錶。陀飛輪（tourbillon，法文意思指「旋風」）是手錶的一個額外擒縱動力結構，通過在旋轉框架中裝嵌擒縱裝置和平衡擺輪，當時計（即擒縱裝置）在某一位置時，減少地心引力所做成的影響。透過持續旋轉整個平衡擺輪/擒縱裝置，通常每分鐘轉動一周，消弭方位差的影響。

儘管被大肆炒作，我得悉陀飛輪的精確度已證實不比傳統的手錶擒縱結構高。雖然有人說陀飛輪「毫無用處」，但它在高檔手錶市場仍很常見。很多瑞士製陀飛輪的價格由4萬美元起跳，甚至經常超過六位數字。

Jessie解釋，陀飛輪仍可說是手工製作困難度最高的機芯之一。陀飛輪結構微細，重量少於一克，通常由超過40個部件組成，手工完成，由銅和鈦等輕質金屬製成，需要使用一套特殊工具，製造過程耗時甚長，有些需要一年多，甚至兩年才能完成！

雖然有人否定陀飛輪的作用，但我仍然期待有一天擁有一隻陀飛輪手錶！
TIMELESS GIFTS FOR LOVED ONE

The renowned Danish design house Georg Jensen works with precious materials, crafting innovative collections that weld function with form in designs that promise to quietly transform living spaces, bestow effortless style on modern day jewellery and ensure special occasions are honoured with gifts that will be cherished in a family throughout generations.

The Copenhagen-headquartered design house has for 112 years, since its founding in 1904, drawn from the vast array of talent in rising new designers to give life to ideas born on a charcoal sketchpad, evolved from nature and lent a modern twist. “In art as life, hindsight informs foresight,” says David Chu, the Creative Director and Chairman of the Danish Royal Warrant-holding brand.

A bold awakening

The designs of Sweden’s renowned 20th century Swedish silversmith Vivianna Torun Bülow-Hübe, the industry’s first female pioneer to ever gain international recognition, are inspired by the magic of nature.

The sleek, numberless Vivianna Bangle Watch – the first wristwatch ever produced by the Georg Jensen brand – was created under the auspices of a philosophy of liberation. With a claspless design that flows seamlessly from dial to bangle, the graceful piece floats on the wrist freeing the wearer of the conventional impositions of chronometry. Its moulded sculptural form is at once elegant yet practical, with a sensuality reminiscent of the curved figures of an ice skater on ice, a pastime that Vivianna once said informed much of her silver work.

Vivianna’s powerful clean lines are also present in her avant-garde Vivianna Torun Bangles, which pare down traditionally opulent ladies’ jewellery to create understated yet luxurious emblems of feminine courage and union. They are characterized by a rare eye-catching clasp that connects the bangle’s serenely flowing lines, capturing the essence of a love story that promises greater strength in union than singularity.

The design house’s Fusion collection, comprised of the creations watch of Danish textile artist Nina Koppel, marries the similarly elusive paradoxes of the ethereal with the practical and movement with durability. The sense of unruly ocean waves is cast in utterly refined precious metal and gemstones embedding pendants and statement rings. Inlaid with illuminating pops of precious stones, the creations revolutionise luxe fashion and deliver maximal impact with minimal size to brighten any outfit with contemporary flare.

“I didn’t want to be trapped by time, so I made the watch open, made it shiny and took away everything that was watch-like, so when you looked at the watch you saw yourself and the second hand which reminded you that life is now, now, now, now.”

VIVIANNA TORUN BÜLOW-HÜBE
The triumph of asymmetry

Henning Koppel is responsible for what we have come to think of as “Danish design”.

Henning Koppel’s designs broke new ground for Georg Jensen with expansive and beautiful shapes. His designs are constructed in clean lines and exude warmth, a true feat of expertise. Koppel’s designs temper the strict rules of functionalism with organic, lifelike shapes. His mission was to make everyday life products beautiful as well as practical. He was trained as a sculptor and began collaborating with Georg Jensen in 1946.

The Danish modernist sculptor and silversmith whose flawless rendering of flatware, hollowware and jewellery into flowing shapes re-imagine abstraction in functional form. The most recent variation of Koppel’s iconic 1978 wristwatch debuted at Basel World this year, with the playful vitality of the Swiss-made Koppel Grand Date Small Second Automatic in black, white and navy enthralling horologists and stylists alike. The Grand Date Small Second Automatic builds on the DNA of its original, which surprised chronographers at the time with its deliberate use of dots to mark minutes lending Scandinavian elegance to Swiss precision. Its 41-mm casing chronograph, minimalist dial and delicate elongated hands honour are luxuriously restrained, in contrast to a bold date module that offers that adds a contemporary twist to the emblematic mid-century timepiece.

During his life, he won many awards including the Milan Triennial, the International Design Award and the Lunning Prize. Accolades are important, but what means even more to us is that people still choose to wear a watch by Henning Koppel or to serve coffee from one of his pots. The integrity and appeal of his designs remain vital and undiminished.

Yet the emphasis on modernity in the Scandinavian design movement is nowhere more advanced by than in the collections of Henning Koppel, the Danish modernist sculptor and silversmith whose flawless rendering of flatware, hollowware and jewellery into flowing shapes re-imagine abstraction in functional form.

Best memory of holiday

Georg Jensen’s latest crop of distinctive and unique collections, based on the award-winning craft of designers such as Vivianna and Koppel, weave effortless elegance into the traditional gift-giving rituals of the upcoming holiday. The stainless steel HK pitcher that originated in Koppel’s Pregnant Duck marries beauty with function in a masterpiece that has become a classic symbol of the modern kitchen. The gently rounded contours of the pitcher, its embellished lip and curvaceous yet genteel handle lend a dramatic flare to a kitchen staple. The HK pitcher is part of Georg Jensen’s Bar and Wine collection, which features innovative indulgence to inspire the wine lover, and to bring elegant modernism to your entertaining.
FINANCIAL SERVICES
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PRIVATE PRACTICE

Insurance Litigator
- 2+ PQE
- International Law Firm

Our client is a very well-established litigation and insurance specialist law firm seeking for a junior to mid-level associate to take on a wide variety of contentious and non-contentious insurance work. You will be acting for leading international insurers and advising insurers in relation to coverage, liability, reserve strategy and other related matters. Most of the work will have an international dimension and will range from some of the largest and most complex transactions to smaller deals which requires greater responsibility. The ideal candidate will have at least 2 years’ PQE with exposure to insurance work. He/she will speak excellent English (written and oral). Mandarin language fluency will be an advantage but is not essential. Our client offers fast-track career advancement to candidates who are proactive and willing to learn. Ref: H3747680

Senior Aviation Associate
- 6+ PQE
- UK Law Firm

A leading UK law firm with a growing practice is looking for a senior aviation associate to join the newly set-up Hong Kong team. Taking on a senior associate role, you will assist the partners in managing a broad range of finance transactions with specific focus on aviation work. The firm has a strong network of established clients in the region and you will have the opportunity to work closely with clients across a number of sectors including infrastructure and transportation, financial institutions, energy and natural resources. You will be qualified in the UK, Australia or Hong Kong, with at least 5 years’ experience in aviation finance, where at least 2 years’ experience is obtained in Asia. You will work independently with minimum supervision and may enjoy to take on additional practice management and development responsibilities. Ref: H3668730

Finance Associate
- 3+ PQE
- City Firm

Our client is a leader among international law firms, with multiple offices in Asia and a truly global network. In this role you will be responsible for general banking and leveraged finance work for private equity sponsors and corporate borrowers. There will also be an opportunity to work on lender side mandates with international investment banks and Chinese financial institutions. There will be a strong focus on a variety of syndicated and bilateral loans within the finance practice. The ideal candidate will possess top academic results with at least 3-5 years’ cross-border transactional experience within the area of banking, ideally gained with leading international law firms. Familiarity with LMA templates as well as experience working with international banks and private equity houses will be essential. Ref: H3747540

Senior Legal Counsel
- 7+ PQE
- Multinational Corporate

Our client is a European based MNC offering market expansion services to business partners across various industries including FMCG, Healthcare, Retail and Technology. They are reputable in the market as a reliable outsourcing partner to help companies grow their businesses. You will take on a standalone role in Hong Kong reporting to the Head of Legal in Europe, working closely with senior management advising on a range of corporate and M&A transactions, intellectual property/competition/employment laws or any other ad hoc in-house matters. You will possess at least 7 years’ PQE with corporate commercial experience, any industry exposure in FMCG, Healthcare, Retail and Technology is highly regarded. Ability to work independently and being a self-starter is key. Strong communicator with proficiency in English and Chinese languages. Ref: H37356430

IN-HOUSE, CORPORATE

Funds Associate
- 2+ PQE
- Leading Offshore Firm

A highly reputable offshore funds practice is seeking for a junior to mid-level funds lawyer to join the established team. Working alongside well regarded partners you will touch on high profile funds work. You will have the opportunity work on a wide range of investment fund issues and products, specifically focusing on Cayman and/or BVI laws (although it is not essential that you have practised these laws directly). You will gain intimate knowledge of hedge fund, fund of fund and private equity fund structures. This position is open to candidates with solid corporate and banking background from international law firms as our client will offer comprehensive training in funds work. The ideal candidate should speak excellent English and Chinese would be a plus. Ref: H37093000

Intellectual Property Counsel
- 5+ PQE
- Leading Brand with Global Presence

A respectable international brand with global business presence is now inviting an experienced lawyer specializing in overseas trade mark matters to join their high caliber legal team in their Hong Kong office. Joining a team of four lawyers, you will be responsible for managing all offshore intellectual property (mainly trademark, copyright and domain name) matters, including applications, oppositions, renewals, and enforcement. The successful candidate will have at least 5 years PQE, with solid hands-on experience in matters involving intellectual property work. Experience gained reputable local or international law firms are preferred. Fluency in spoken and written English and Chinese (Mandarin and Cantonese) is required. Ref: H3734980

Looking Forward to 2017

Hong Kong’s legal sector enjoyed a steady 2016, and elements of caution did exist as a result of various macroeconomic factors. 2017 is expected to trend similarly, with an increasing number of new based-in-Hong Kong Chinese financial services firms seeking legal talent. Buy side will continue to grow within the financial services sector and employers will typically seek talent with asset management, private equity and fund house experience. Given the rising trend of Chinese securities and other buy side houses slowly establishing themselves in Hong Kong, lawyers who are familiar with SFC (Securities and Futures Commission) License Types (in particular 1, 4, 6 and 9) are massively in demand. However, global banks and multinational firms have slowed down recruiting due to the weaker economic climate and headcount issues. This may be a challenge for candidates who are keen to explore only positions in global corporations as there will be fewer openings available. Within the in-house commerce sector, we see strong and stable activity across the technology, digital, real estate, media, telecommunications sectors as well as mainland Chinese companies with bases in Hong Kong. The hiring trends in the private practice are similar to past years, although firms are now more cautious with hiring. Lawyers with experience in Banking Finance/M&A and Private Equity/Funds will continue to be sought after, though Chinese language skills is a key prerequisite. Increasingly, more employers, especially Chinese companies based in Hong Kong, are seeking professionals who have native Mandarin skills. Job seekers without this skill set will find it challenging to secure a new role as the demand for Mandarin speakers is rising exponentially.

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Legal Counsel  
› 5–10 PQE (PRC Qualification)  
› Reputable Property Developer  

Our client is a respectable property developer with premium commercial and residential property interests across the region. They are actively expanding their portfolio with a particular interest in China’s first and second tier cities. You will report to the General Counsel and provide legal advice on PRC and Hong Kong real estate matters including land bidding, land acquisition, financing, construction documentation and other corporate commercial and transactional matters. The successful candidate will be a PRC-qualified lawyer, with around 5–10 years’ PQE in real estate/related corporate matters. The ideal candidate will be a team player with strong interpersonal skill. Fluency in English and Mandarin is required. Candidates requiring visa sponsorship are welcomed to apply. Ref: H3745930

Senior Counsel  
› 7+ PQE  
› Reputable Bank  

Our client is a reputable and leading bank in Hong Kong, currently keen to take on a senior lawyer with strong financial services exposure. Joining a well-established legal team of over 12 lawyers, you will take on a senior counsel role reporting to the Head of Legal. Working with various businesses and providing legal support advice to them, you will identify and to mitigate any legal risk which may arise. The successful candidate will be a 7+ PQE lawyer with strong banking and/or financial services experience, with in house experience obtained with another bank/financial institution. The ideal candidate will be a team player with a stable career history, candidates who have worked with sizable law firms/financial institutions are sought after. Strong English and Chinese language skills are required. Ref: H3710810

Legal Counsel  
› 5–10 PQE (PRC Qualification)  
› Reputable Property Developer  

Our client is a respectable property developer with premium commercial and residential property interests across the region. They are actively expanding their portfolio with a particular interest in China’s first and second tier cities. You will report to the General Counsel and provide legal advice on PRC and Hong Kong real estate matters including land bidding, land acquisition, financing, construction documentation and other corporate commercial and transactional matters. The successful candidate will be a PRC-qualified lawyer, with around 5–10 years’ PQE in real estate/related corporate matters. The ideal candidate will be a team player with strong interpersonal skill. Fluency in English and Mandarin is required. Candidates requiring visa sponsorship are welcomed to apply. Ref: H3745930

Senior Manager/Legal Manager  
› 7–13 PQE  

Our client is an established Hong Kong listed conglomerate which is active in land development, hotel and other investments across Hong Kong, China and South East Asia (mainly Japan and Thailand). They are hiring a mid-level Hong Kong qualified lawyer to support their main business activities. Reporting to the Head of Legal, you will be supported by Legal Officers in handling real estate and general commercial legal matters, including first-hand sales, real estate project management, commercial agreement advisory and merger & acquisitions etc. The successful candidate must have at least 7–12 years’ PQE in real estate and general commercial law with established law firms or property developers. You must speak and write fluent English and Chinese. Lawyers with less than 7 years’ experience may be considered for a Legal Manager role. Ref: H3736370

Legal Counsel  
› 7+ PQE  
› Sizable Hong Kong Listed Conglomerate  

Our client is a HK listed company, part of a sizable listed conglomerate group, with a variety of businesses across oil & gas, logistics, trading and transportation. The company is seeking to take in a standalone legal counsel as a newly created role, to work closely with senior management and their internal Risk Control Team, to advise on and mitigate any potential disputes, as well as to advise on investment projects, M&A, joint venture transactions, and any other day to day commercial matters. You will possess at least 7 years’ PQE with a variety of litigation and corporate commercial experience, where in house exposure will be highly regarded. Ability to work independently and with strong interpersonal skills to liaise with stakeholders at all levels is required. Strong English and Chinese language skills including fluent Mandarin is required. Ref: H3464010

Legal Counsel  
› 3+ PQE  
› Investment Bank  

Our client is a full service house with established businesses across IBD, Asset Management, Securities, Brokerage and Financing. As businesses have been performing well, the legal team is seeking to take on a new products lawyer with good exposure in equity derivatives. You will have the opportunity to look after a variety of fixed income and equity products including cash, OTC, structured notes and equity derivatives. You will provide legal and regulatory support on complex and innovative structures, ensuring compliance with local regulatory guidance with SFO and HK Listing Rules, as well as PRC cross border regulations such as QFII, QDII and stock-connect. You will possess at least 3 years relevant experience, whether obtained in house or law firms. Senior candidates will be considered for a senior role within the team. Ref: H3613350

Assistant Legal Counsel/Legal Counsel  
› 1-6 PQE  
› Stable Financial Institution  

Our client is a stable financial institution with strong footprint in Hong Kong and China. The legal team is well established with little turnover, currently with 6 lawyers and eager to take on 1 new lawyer. Reporting to the Head of Legal and providing support to two senior counsels, you will support on OTC derivatives and capital market products, as well as related regulatory matters. You will draft/review/agree to agreements and may receive exposure to non-products related work such as securities, futures, taxation and general corporate. The successful candidate will possess at least 1 year’s PQE, with exposure in ISDA/derivatives/other structured products. Prior experience working in China is highly regarded, as is a legal qualification in the PRC. Strong English and Chinese language skills including spoken Mandarin is required. Ref: H3635470

Senior Manager  
› 8–13 PQE  
› Leading Hong Kong Financial Regulator  

Our client is an established financial regulator in Hong Kong and they continue to look to uphold the quality and development of the Hong Kong financial market. In particular, they are currently seeking for a seasoned corporate finance lawyer to join their team as a Senior Manager, to monitor and to regulate listing activities in Hong Kong. Reporting to the Directors, you will be leading junior professionals to vet listing applications and handle policy-making initiatives and projects. The successful candidate will have at least 8–13 years’ PQE in corporate finance, where experience is gained with established international law firms. Practical and down-to-earth candidates with outstanding academic track record are sought after. You will speak and write excellent English and Chinese. Ref: H3717250

Litigation/Financial Services Lawyer  
› 3-8 PQE  
› Established Public Body  

Our client is dedicated in ensuring full compliance of the financial markets to local regulatory guidelines and legislations. Adding onto the growing team, they are eager to recruit a high calibre litigation lawyer to join the Investigation Team. Reporting directly to the Senior Manager, you will be working with other professional team members in investigating alleged misconduct and non-compliance activities, and evaluating evidence collected from those investigations. You must have at least 3-8 years’ PQE in commercial litigation and/or financial services, where experience is obtained with leading international law firms. Driven candidates with strong academic background are preferred. You must speak and write fluent English and Chinese. Ref: H28850910
The global explosion in data variety, velocity, and volume has transformed legal practices requiring regular large-scale document disclosures. Electronic discovery ("eDiscovery") solutions are developed to help practitioners handle disclosures in arbitrations, litigation, and investigations in the era of Big Data. Technologies for the law must be critically reliable. Today, eDiscovery is integral to case management, as it can impact budgets significantly.

An eDiscovery project begins with data collection and preservation. This stage must be conducted with forensically-sound practices to avoid spoliation claims. The data (in volumes of 10s to 1000s of gigabytes) must then be processed and unitized in a database. Duplicates and system-created files are filtered out. Data files might also need decryption and repair. The data is hosted on a software platform, where keyword searches are applied to further reduce document sets for human review for case relevancy and privileged communications. The data set could also be limited by time range and custodian, and pre-sorted by email threads and document version (if more than one version was created). Users could also employ analytical technologies to automate review functions and gain further insights.

The execution of eDiscovery projects require legally defensible practices and trained specialists (vendors or in-house consultants) to address numerous case-specific requirements. Upstream errors arising from the collection and processing stages could compound and impair review and other downstream stages.

Internal and regulatory investigations drive the demand for Asian eDiscovery services. Such investigations often require cross-border data transfers, and many are connected with China. Demand is also driven by U.S. Foreign Corrupt Practices Act investigations, patent prosecution, and shareholder litigation.

Conducting cross-border eDiscovery adds several dimensions of complexity, and might require eDiscovery services in remote locations, different time zones, and multiple languages. For example, if data containing mixed English and CJK (Chinese, Japanese, and Korean) text is processed without accounting for their differences in encoding, the text would appear unsearchable and scrambled. Regularly, eDiscovery in Asia requires scanning of paper records, but optical character recognition may not be effective in all cases. Separate review workflows are needed for searchable and unsearchable records. Given the nuances involved, counsel should consult eDiscovery specialists who can apply global best practices while being sensitive to local requirements. This means having local presence and language skills.

Over 90% of Asian jurisdictions neither have common law systems, nor would recognize the concepts of discovery and legal privilege. Many Asian clients are often surprised by disclosure costs and the need for extensive evidence preservation. Hong Kong and Singaporean courts have eDiscovery rules that help litigants manage eDiscovery processes and costs. It is expected that these jurisdictions will develop eDiscovery practices rapidly following the U.S. and U.K., which have established comprehensive eDiscovery jurisprudence.

Data privacy and cybersecurity laws and compliance are hot topics in eDiscovery. There were Hong Kong and U.S. cases where parties invoked Chinese state secrecy and accountancy laws to block disclosure requests to varying degrees of success. eDiscovery might be conducted onsite at client offices to assuage various confidentiality concerns. Tailored workflows must therefore be implemented to handle sensitive data and work with corporate policies.

eDiscovery technology solutions impact widely on legal practice today, especially when complex disclosure projects are the “new normal”. Given the moving parts and aggressive timeframes of eDiscovery projects, it is cost-effective for lawyers, even those with eDiscovery experiences and capabilities, to consult eDiscovery specialists early on and to delegate technical duties. To conduct eDiscovery efficiently, its processes and technology must be managed and integrated carefully together with business, legal, compliance, and IT teams.

By Sebastian Ko, Regional Director of Document Review Services and Legal Counsel, Asia, Epiq Systems

Sebastian Ko is regional director and in-house legal counsel for Epiq Asia-Pacific, a leading provider of enterprise legal technology services. Ko assists law firm, banking and corporate clients in designing and executing strategies to conduct local and cross-border eDiscovery reviews for investigations, litigation and arbitration, utilizing the latest technologies and industry best practices. He is supported by his teams and partners in Greater China, Japan and Singapore. He also oversees the hiring and training of review teams. Previously, he practiced law in a U.K. Magic Circle firm and a U.S. Am Law 100 firm, where he advised banks, funds, retail manufacturers, insurers, professional service firms, securities dealers, and technology companies, and utilities on high-value, cross-border internal investigations and regulatory enforcement, and international arbitration and litigation.

Epiq is a leading global provider of integrated technology and services for the legal profession, including electronic discovery, regulatory investigations and data breach responses. Our innovative solutions are designed to streamline the administration of litigation, investigations, financial transactions, regulatory compliance and other legal matters. For more information, please visit www.epiqsystems.com.hk
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**COMMERCE & INDUSTRY**

**HEAD OF LEGAL**

INTERNATIONAL SHIPPING COMPANY

QDA/514920

A well established international logistics and shipping company is seeking a Head of Legal. You will manage the existing legal team and provide guidance as the business continues to grow through both organic and acquisitive channels.

**Key Requirements:**

- A qualified lawyer with a minimum of ten years’ PQE, either Hong Kong or other commonwealth qualified
- Well-proven experience in handling corporate commercial legal matters including M&A projects, transactions, corporate restructuring, etc.
- Strong decision making and analytical abilities
- Fluent English and Cantonese is essential for this role. Mandarin is advantageous

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**FINANCIAL SERVICES**

**HEAD OF COMPLIANCE**

EUROPEAN INVESTMENT BANK

QPD/514770

A prominent European banking group with a highly successful Private Banking/Wealth Management business in Asia is expanding their offerings by launching an investment banking business in HK. For this they need a strong IB Compliance professional, preferably with legal training, who will establish best practices and ensure compliant banking activity while additionally managing the relationship with the SFC.

**Key Requirements:**

- In depth regulatory knowledge related to Investment Banking activities
- Experience in senior compliance leadership position within a global bank; building and leading teams experience is ideal
- Demonstrated experience in working directly with front office trading teams in compliance advisory roles
- Fluent English and Chinese is essential for this role

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

Megan Craighead   +852 2103 5377  megan.craighead@robertwalters.com.hk
Ricky Mui   +852 2103 5370  ricky.mui@robertwalters.com.hk
Oliver Alcock   +852 2103 5317  oliver.alcock@robertwalters.com.hk
Tony Wilkey   +852 2103 5338  tony.wilkey@robertwalters.com.hk

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Private Practice

CORPORATE/COMMERCIAL HONG KONG SA/PARTNER
City firm seeks a fluent Mandarin corporate/commercial lawyer with solid PRC experience. You will need at least 6+ PQE from a reputable firm/multinational partnership is a responsibility practice. (HKL 11935)

COMMERCIAL LITIGATION HONG KONG PARTNER
Unique opportunity for a senior litigation lawyer or Partner to join this well-known top tier practice. Work involves a mix of general commercial and financial services litigation. No following or language skills required. (HKL 14667)

FUNDS HONG KONG 3-7 PQE
Off-shore law firm seeks experienced funds associate to join their growing practice. Working with major financial institutions/corporations in the establishment and structuring of offshore investments. Mandarin is not required and open to relocation of lawyers from overseas. (HKL 14650)

INTELLECTUAL PROPERTY HONG KONG 3-7 PQE
Well-established IP practice seeks an experienced lawyer who can focus on the full spectrum of IP matters, from litigation to licensing, portfolio management, advisory work, data protection issues, trademarks, copyright and patent enforcement. Chinese language required. (HKL 14645)

CORPORATE M&A HONG KONG 2-7 PQE
International law firm seeks a lawyer with solid transactional experience to join their growing practice where you will work with a highly-regarded lawyer. Representing household names across the region and internationally. Mandarin language skills and HK qualification required. (HKL 13869)

BANKING FINANCE HONG KONG 1-4 PQE
City firm seeks a banking finance lawyer to join their well-established tier 1 team. You should be qualified in a common law jurisdiction and possess solid experience in leveraged and acquisition finance from an international firm. (HKL 14640)

REAL ESTATE HONG KONG 3+ PQE
This leading practice seeks a lawyer with strong transactions experience to advise on commercial real estate matters such as; acquisition of rights, corporate leasing, projects, finance related transactions and more. This is a great opportunity for a lawyer to join an international law firm, working within a collegiate team of lawyers. Chinese language required. (HKL 14616)

In-house

HEAD OF COMPLIANCE HONG KONG 8-15 PQE
Leading insurance company seeks a strong senior compliance professional to provide compliance and privacy leadership in the region. You will play a key role and work closely with business leaders and the local compliance team. The ideal candidate will have a legal background and possess 10+ years of experience in the compliance field. (HKL 14683)

TRANSACTION LAWYER HONG KONG 5-10 PQE
Global asset manager has a vacancy for a transaction lawyer with solid experience in fixed income investments and structured finance; great opportunity to be part of a fast growing business and gain exposure to multiple products. Collegiate working environment and attractive package on offer. (HKL 14663)

AVIATION FINANCE LAWYER HONG KONG 5-10 PQE
Global airline business seeks a strong aviation lawyer to oversee a wide range of aircraft financing transactions including aircraft trading, leasing and acquisition. Rare opportunity to join an in house legal team and assist in high-profile financing deals and interesting legal matters. Solid experience in aircraft finance gained in a global law firm is required. (HKL 14694)

REGIONAL LEGAL COUNSEL HONG KONG 4-8 PQE
Global insurance group is looking to expand their regional legal team. The position will advise on a wide range of business operational matters including policy, distribution and marketing. Great opportunity to work on international/cross-border matters and in a highly dynamic and visible role. (HKL 14679)

LITIGATION COUNSEL HONG KONG 4-8 PQE
A high profile conglomerate seeks a commercially astute lawyer to assist on a range of employment and commercial litigation matters. The employment advice will span both contentious and non-contentious matters, while the disputes issues will include contractual, suppliers, personal injuries, IP and discrimination claims. (HKL 14669)

PRC LEGAL COUNSEL HONG KONG 3-7 PQE
Privately held asset management group with a strong presence in the region seeks a corporate/banking lawyer to advise on commercial matters. Experience in HK regulatory issues, capital markets and/or OTC derivatives matters/products will be highly valued. Native Mandarin and PRC bar qualification required. (HKL 14270)

LEGAL COUNSEL HONG KONG 1-4 PQE
International Financial Institution seeks experienced DCM lawyer to work within EMTN in Hong Kong and Taiwan markets. Excellent opportunity to move from private practice to in-house. Mandarin required. Excellent remuneration package on offer. (HKL 14579)

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

Claire Park
Tel: +852 2920 9134
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: HK Capital Markets, 2–4 years PQE (Hong Kong)
International law firm seeks an associate to join its capital markets team. This role offers an outstanding platform in Hong Kong working largely on DCM deals. The firm has a global presence and offers excellent training and development with a market-leading remuneration package.

ASSOCIATE OPPORTUNITY: Corporate or Funds, Commonwealth-qualified, 2–4 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.

ASSOCIATE OPPORTUNITY: Banking/Finance, 2–6 years PQE (Hong Kong)
US Law firm seeks a junior-mid level associate to join its banking team. This role offers outstanding international work experience with cross-selling between offices. Furthermore, mentorship and L&D initiatives at the firm give access to some of the best training resources in the market.

ASSOCIATE OPPORTUNITY: Arbitration, Commonwealth/US-qualified, 1+ years of experience, Mandarin language skills required (Singapore)
Top US law firm seeks an arbitration lawyer. The ideal candidate has previous arbitration experience from a top firm and has a stellar academic background. Relocation is available to the right candidate.

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

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

ASSOCIATE OPPORTUNITY: International Arbitration, Foreign-qualified, 7–10 years PQE, No Japanese skills are required (Tokyo)
Well-respected Japanese law firm seeks an international arbitration lawyer to join its Tokyo office.

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.
Senior Banking Lawyer
Leading Local Bank, 8+ Years PQE
- Reporting to the Head of Legal, ensuring the Bank is protected from legal risks and manage the advice sought from external Counsel
- Banking Industry experience will be considered
- Fluency in English and Chinese (Cantonese) required
- Ref: AT.502786

Commercial Litigator
International Law Firm, NQ - 3 Years PQE
- New position within this expanding international firm
- Be involved in a broad range of commercial litigation, marine disputes and some arbitration work
- Experienced litigators sought, but NQs with some litigation training from an international law firm may also be considered
- Spoken Chinese language skills required. Ref: MK.502828

Corporate Counsel
Leading Listed Property Developer, 5+ Years PQE
- Due to expansion, this Company is hiring an additional Counsel
- To provide legal support to the business units on cross-border M&A transactions and general in-house matters
- M&A and general commercial/litigation experience is required
- Fluency in English, Cantonese and Mandarin is required
- Ref: AT.502818

Commercial Litigation Partner
Global Law Firm, $ competitive
- Award-winning global law firm
- Seeking general commercial litigation partner
- Extra specialities (construction, BBR) an advantage
- Financial regulatory or arbitration expertise also a bonus
- Hong Kong admission required, strong book of business
- Collegiate environment. Ref: CT.502828

DCM / ECM Legal Counsel
PRC Financial Institution, 3+ Years PQE
- PRC lawyer (or HK lawyer with significant PRC experience) sought for newly created position
- Strong ECM/DCF experience and derivatives exposure is preferred
- Mature and commercial mind-set, willing to get involved in other types of transactions and projects
- Fluency in English and Putonghua a must. Ref: MK.502809

Corporate Associate (Hong Kong or US)
International Law Firm, 3-5 Years PQE
- Good broad deals exposure in a small team
- Early responsibility to handle deals, effective no.2
- Mix of IPOs, listing rules compliance, and M&A deals
- HK or US qualified lawyers from top tier firms are welcome
- Outgoing personality and ability to communicate with clients
- Fluency in Mandarin and English a must. Ref: CT.502822

For a confidential discussion regarding career opportunities, please contact:

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

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

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

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**In-House**

**HEAD OF LEGAL**  
HONG KONG  
15+ YEARS  

Insurance provider seeks a Head of Legal to advise the senior management on legal, risk management & strategic issues. Solid experience in insurance/private banking/funds is required and in-house experience highly preferred. Good interpersonal & communication skills are essential. HKL6222

**ED - FUNDS**  
HONG KONG/SHANGHAI  
9-12 YEARS  

Top US investment bank actively seeks a senior legal counsel at ED level with strong experience in a broad spectrum of funds work, including authorized & private funds as well as regulatory matters. Prior PRC-related experience is essential. Business level Mandarin skills are required. HKL6212

**DERIVATIVES LEGAL COUNSEL**  
HONG KONG  
6-10 YEARS  

Well-known international bank seeks a financial services lawyer with a derivatives background & ISDA experience. You will focus on Greater China coverage and so fluent spoken & written Mandarin is essential. Great work / life balance & a collegiate working environment on offer. HKL6216

**M&A LEGAL COUNSEL**  
HONG KONG  
5+ YEARS  

MNC seeks a legal counsel with extensive M&A experience gained from both private practice & in-house. You will work closely with the business and provide strategic advice to the BD team on a global and regional basis. No Chinese language skills needed. HKL6216

**IBD COMPLIANCE**  
HONG KONG  
5-10 YEARS  

Bulge bracket bank is looking to expand its compliance team. You will work on both IBD & investment management compliance. Outstanding private practice lawyers who have experience in corporate finance/funds/regulatory will also be considered. Chinese language skills preferred. HKL6163

**FUNDS LEGAL COUNSEL**  
HONG KONG  
5-8 YEARS  

Well-known PRC asset manager with an impressive AUM seeks a funds lawyer with experience in a range of investment products / financial services regulatory work. Business level Mandarin skills are essential. Attractive remuneration & entrepreneurial working environment on offer. HKL6204

**IN-HOUSE LITIGATOR**  
HONG KONG  
3-6 YEARS  

Regulatory body seeks a litigator who is looking to gain high quality contentious and non-contentious financial services/regulatory exposure. Competitive salary and good work/life balance on offer. Fluent written and spoken Cantonese essential. HKL3767

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**Private Practice**

**CONSTRUCTION PARTNER**  
HONG KONG  
10+ YEARS  

Global law firm is seeking a construction partner with significant arbitration experience to join its Dispute Resolution team. Fluent Mandarin skills advantageous. HK/Singapore qualified & extensive relevant experience in the region. A portable book of business is essential. HKL6207

**REAL ESTATE**  
HONG KONG  
6-8 YEARS  

International firm seeks a real estate lawyer to provide support to its corporate department. You will have broad real estate experience including leasing, conveyancing, acquisitions & disposals etc. Ability to work independently and fluent Cantonese and Mandarin are essential. HKL6190

**LITIGATION**  
HONG KONG  
5-10 YEARS  

Boutique litigation firm is seeking to hire a litigator with broad experience in general commercial litigation. Regulatory & financial litigation, insolvency & employment litigation experience will be considered. Excellent English & HK qualification is essential. HKL5460

**ARBITRATION**  
HONG KONG  
5-8 YEARS  

International law firm is seeking an experienced associate with international arbitration experience from a reputable practice. Fluent Mandarin language skills & strong English drafting skills required. Candidates from the Singapore market looking to relocate to HK are also welcome. HKL6223

**TRADEMARKS / IP**  
HONG KONG  
5+ YEARS  

This is an opportunity to join an international law firm with a top-tier IP practice in Hong Kong. Experience in trademark enforcement, trademark portfolio management, trademark clearance and prosecution is preferred. Chinese language skills an advantage. HKL6200

**DERIVATIVES / STRUCTURED PRODUCTS**  
HK  
2-4 YEARS  

Top tier financial services team seeks a lawyer with ISDA/derivatives & structured products experience. Experience from top international firms with strong banking, capital markets and/or financial regulatory considered. Mandarin skills essential. Good work/life balance on offer. HKL4559

**BANKING**  
HONG KONG  
0-3 YEARS  

Leading offshore firm seeks a junior banking lawyer for a broad range of banking matters - acquisition finance, project finance, leveraged finance etc. Training from an international firm with experience in general banking matters preferred. Fluent English & Mandarin are essential. HKL6215

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<thead>
<tr>
<th>Practice Area</th>
<th>PQE</th>
<th>Location</th>
<th>Details</th>
</tr>
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<tbody>
<tr>
<td><strong>Litigation</strong></td>
<td></td>
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<td><strong>2-5 PQE Hong Kong</strong> Globally recognised law firm seeks a litigation lawyer to join their market leading practice. They will work on a variety of matters including private law, corporate law, and regulatory issues. Ideal candidates will have significant experience and be able to work closely with partners. HKL4362</td>
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<tr>
<td><strong>Corporate Finance</strong></td>
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<td><strong>2-4 PQE Hong Kong</strong> This leading independent firm seeks a corporate finance lawyer to join their award-winning practice. They will work on a variety of corporate matters, including capital raising, compliance, and governance. You will be a part of a dynamic team led by a highly regarded partner. HKL4309</td>
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<tr>
<td><strong>Private Wealth</strong></td>
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<td><strong>5+ PQE Hong Kong</strong> This is an excellent opportunity for a private wealth lawyer to join a highly regarded firm. They will work with a team of experienced professionals and work closely with clients to provide tailored solutions. HKL4355</td>
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<tr>
<td><strong>Corporate M&amp;A</strong></td>
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<td><strong>1+ PQE China</strong> An international law firm seeks a corporate M&amp;A lawyer to join their highly regarded team. They will work on a variety of matters, including in-bound and out-bound transactions for SOEs and MNCs. You will work for dynamic partners and be able to make a difference in a collegial environment. HKL4311</td>
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<tr>
<td><strong>Banking &amp; Finance</strong></td>
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<td><strong>3-5 PQE Hong Kong</strong> Excellent opportunity for an associate to join a market leading practice. You will work on a variety of matters, including M&amp;A, private equity, and project finance. Ideal candidates will have significant experience and be able to work closely with partners. HKL4338</td>
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<tr>
<td><strong>Trademark</strong></td>
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<td><strong>5+ PQE Hong Kong</strong> Fantastic opportunity for a trademark lawyer to join a leading international law firm. You will work with a team of experienced professionals and be able to develop a strong skill set in trademark law. HKL4336</td>
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<tr>
<td><strong>Construction Litigation</strong></td>
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<td><strong>5+ PQE Hong Kong</strong> This premier practice seeks a construction lawyer to join their market leading practice. You will work on a variety of matters, including construction litigation and arbitration. Ideal candidates will have significant experience and be able to work closely with partners. HKL4317</td>
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<tr>
<td><strong>Corporate PSL</strong></td>
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<td><strong>5+ PQE Hong Kong</strong> Excellent opportunity for experienced PSL lawyers to step away from fee-earning and join a highly regarded firm. You will work with a team of experienced professionals and take on a full range of PSL duties, including creating a solid foundation for the firm. HKL3730</td>
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<tr>
<td><strong>M&amp;A/Private Equity</strong></td>
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<td><strong>2-6 PQE China/Hong Kong</strong> New opportunity for an associate to join a prestigious law firm. You will work on a variety of matters, including M&amp;A, private equity, and acquisition work. Ideal candidates will have significant experience and be able to work closely with partners. HKL4331</td>
</tr>
</tbody>
</table>

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We have been successfully guiding and shaping the careers of city professionals since 2002. Our global teams of specialist consultants are experts in their vertical markets with an unrivalled network across the legal sector. We partner with leading international law firms and global multinationals which enables our teams to have access to the best and most exclusive market opportunities.

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Arron Leale - Managing Consultant
+852 3708 5547
arron.leale@ojassociates.com

Richard Whalley - Senior Consultant
+852 3708 5539
richard.whalley@ojassociates.com

Erik Bainbridge - Consultant
+852 3708 5558
erik.bainbridge@ojassociates.com

www.ojassociates.com

oliver-james-associates @ojassociatesHK
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Arron Leale - Managing Consultant
+852 3708 5547
arron.leale@ojassociates.com

Richard Whalley - Senior Consultant
+852 3708 5539
richard.whalley@ojassociates.com

Erik Bainbridge - Consultant
+852 3708 5558
erik.bainbridge@ojassociates.com

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