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Lester Huang JP

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INSOLVENCY 破產
Hong Kong’s Amended Winding-Up Legislation Enhances Protection for Creditors 香港的清盤法例修訂加強對債權人的保障
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When negotiating a complex commercial transaction or relationship, it is common for parties to enter into an agreement in stages (eg, due to the deal being too complex or time-consuming to complete in a single stage or there being uncertainties surrounding the transaction that take time to resolve). For such deals, parties often first enter into a memorandum of understanding (“MOU”) (also referred to as heads of agreement, letter of intent or term sheet). The MOU is a document that outlines the key terms and details of a transaction, generally through both binding and non-binding provisions. The binding provisions govern the process that leads to the execution of a more formal or definitive agreement, while the non-binding provisions lay out the substance of the deal, or the key commercial terms.

As the author of the Corporate law feature (p. 33) explains, there are a fairly standard set of binding procedural provisions that are included in MOUs; however, no such standard set exists for non-binding commercial provisions. As the non-binding provisions generally determine the fate of a transaction, the author sets out a systematic approach that can be adopted to determine the minimal commercial terms that an MOU should contain to ensure that there is a transaction in reach.

Elsewhere in the April issue, the Judicial Review piece (p. 28) examines the recent judicial review proceedings against the approval of the Airport Authority Hong Kong’s Environmental Impact Assessment Report and the grant of an environmental permit for the proposed third-runway system at the Hong Kong International Airport. After analysing the court’s holdings on the four key issues considered during the proceedings, the author highlights a number of points that practitioners should keep in mind when drafting the Form 86. The Insolvency law article (p. 38) discusses the recently enacted Companies (Winding Up and Miscellaneous Provisions) (Amendment) Ordinance (Cap. 32) and its new and improved provisions, concluding with some practical tips for companies and creditors under this new legal regime.

Also included is a Career Development feature (p. 66) that outlines a variety of career management ideas for women in law. Here, the author concludes that while it is important for women to work industriously and conscientiously throughout their careers, neither is sufficient to secure long-term success and security. That can only be achieved by putting thought into what you want your career path to be and making a plan to achieve it.

Cynthia G. Claytor
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The Belt and Road:
A Catalyst for Connectivity, Convergence and Collaboration

Date: Friday, 12 May 2017
Time: 9:30 am – 6:00 pm
Venue: Hong Kong Convention and Exhibition Centre

Enquiry:
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The 110th Jubilee Celebration Dinner

Date: Saturday, 13 May 2017
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Venue: Grand Hall,
Hong Kong Convention and Exhibition Centre

Dinner: Chinese cuisine

Dress Code: Black tie / National dress / Lounge Suit
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You have a chance to win awesome prize during lucky draw session!
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2017 marks the 20th anniversary of the establishment of the Hong Kong Special Administrative Region ("Hong Kong") and the implementation of One Country, Two Systems. The principles of this unique system are enshrined in our Basic Law. Coincidentally, the promulgation of the Basic Law was adopted in the month of April, at the 7th National People's Congress of the People's Republic of China on 4 April 1990. All of these anniversaries make it an opportune time to reflect on the implementation of our mini constitution. Unlike constitutional documents in some jurisdictions, this mini constitution is not a thick volume. It consists of only 160 articles. Yet, this document defines the relationship between Hong Kong and the Central People's Government, the political structure, the economy, the external affairs, education, science, culture, sports, religion, labour and social services of Hong Kong as well as the fundamental rights and freedoms of Hong Kong residents.

As a member of the legal profession, I will focus my reflection on the areas concerning the maintenance of the common law system, the independence of the Judiciary and the Rule of Law.

Common Law

Article 8 of the Basic Law provides that the courts may refer to precedents of other common law jurisdictions. In addition, Art. 82 of the Basic Law provides that the Court of Final Appeal may as required invite judges from other common law jurisdictions to sit on the Court of Final Appeal. We are privileged to have leading judges from well established common law jurisdictions serving as non-permanent judges in the Court of Final Appeal including, for instance, Sir Anthony Mason, former Chief Justice of the High Court of Australia and Lord Neuberger, President of the Supreme Court of the United Kingdom.

There has been recent media coverage on a suggestion that the Basic Law be reviewed in order to prohibit foreign judges from hearing constitutionally related cases and to cease recruiting any more foreign judges. Hong Kong prides itself as an international city. For the legal profession, we are proud to have registered foreign lawyers from 32 different overseas jurisdictions practising in Hong Kong offering diversified legal services to our international community. Our pool of legal talent is enriched by the presence of these skilled and competent foreign lawyers bringing in specialised knowledge peculiar to their own jurisdictions of admission, thereby enhancing Hong Kong’s competitiveness as a legal service hub in Asia. Similarly, the selection of judges which is conducted by the Judicial Officers Recommendation Commission, an independent commission, is based on individual merits, not on nationality. The wealth of experience in common law brought in by these eminent overseas judges is invaluable. The preservation of our common law system is largely attributable to the contributions made by these highly respected judges who sit on the Court of Final Appeal.

Independence of the Judiciary

The Basic Law contains very clear provisions for an independent Judiciary in Hong Kong. For example, Art. 2 guarantees Hong Kong’s right to enjoy independent judicial power, including that of final adjudication in accordance with the provisions of the Basic Law; Art. 19 provides that Hong Kong shall be vested with independent judicial power, including that of final adjudication; Art. 85 provides that the courts shall exercise judicial power independently, free from any interference; and Art. 88 provides for the appointment of judges by the Chief Executive on the recommendation of the Judicial Officers Recommendation Commission, which is an independent statutory body composed of local judges, persons from the legal profession and eminent persons from other sectors.

Since the implementation of the Basic Law, the issue that has presented the biggest challenge to the perception of judicial independence is perhaps the various debates over the interpretation of the Basic Law by the Standing Committee of the National People’s Congress ("NPCSC") under the power
given in Art. 158.

There have been five instances where NPCSC has interpreted the Basic Law, two were requested by the then Chief Executive and the then Acting Chief Executive, one by the Court of Final Appeal and two on the own initiative of NPCSC:

1) Interpretation on the right of abode issue in 1999 (Art. 22(4) and 24(2) (3) initiated by the then Chief Executive);
2) Interpretation on the method for selecting the Chief Executive and the method for forming the LegCo in 2004 (Art. 7 of Annex I and Art. III of Annex II initiated by NPCSC);
3) Interpretation on the term of office of the new Chief Executive in 2006 (Art. 53(2) initiated by the then Acting Chief Executive);
4) Interpretation on state immunity in the case of FG Hemisphere Associates LLC v Democratic Republic of Congo & Others [2011] HKCU 1049 (Art. 158(3) referred by the Court of Final Appeal); and
5) Interpretation on the oath of allegiance by Legislative Councillors when they assumed office in 2016 (Art. 104 initiated by NPCSC).

The Law Society’s position has always been that the Basic Law is clear, but in case of doubt, the matter should preferably be resolved through the Hong Kong courts. We acknowledge that the power of interpretation of the Basic Law is vested in the NPCSC under Art. 158(1) of the Basic Law. Interpretation, if used at all, must be used with caution and restraint, since fundamental principles of the Rule of Law as due process, transparency and reasoned judgments from an independent Judiciary are essential elements in maintaining the Rule of Law. Reflecting on the experience we gained in the previous interpretations of the Basic Law, the process leading to an interpretation by the NPCSC can perhaps be improved by instilling more transparency in the process and by allowing stakeholders in Hong Kong to submit their views on the subject matter in advance for consideration by the NPCSC.

In recent years, there have been disturbing instances of open defiance of court orders and publication of abusive comments and threats at judges because of their judgments in certain court cases. Although these actions were undertaken by a small minority of the community, they could be damaging to the respect that the public has for a court’s decision made through the due process of law. Further, it is an affront to the Rule of Law to attempt to bring public pressure on a judge to decide or review a case in any particular way. The Law Society has publicly condemned these deplorable acts whenever the situation called for our voice.

Overall, the 20 years of the implementation of the Basic Law has been smooth and we have full confidence in the continual proper functioning of the legal and judicial systems under our unique One Country, Two Systems in accordance with the Basic Law.
2017年標誌香港特別行政區成立、一國兩制實施20週年。這個獨一無二制度的原則載於《基本法》。湊巧地，《基本法》正是於4月份頒佈，時為1990年4月4日，《基本法》在中華人民共和國第七屆全國人民代表大會上通過。現在正是我們對這小憲法作出反思的好時機。

有別於某些司法管轄區的憲法文件，這小憲法篇幅不長，僅包含160條。然而，這份文件為香港與中央人民政府之間的關係、香港的社會體制、經濟、對外事務、教育、科技、文化、體育、宗教、勞工和社會服務，以至香港市民的基本權利和自由，作出界定。

作為法律界一員，我會着重在維護普通法制度、司法獨立和法治等方面作出反思。

普通法

《基本法》第八條規定，香港原有法律，即普通法、衡平法、條例、附屬立法和習慣法，予以保留。第八十四條進一步規定，法院可參考其他普通法適用地區的司法判例。

此外，《基本法》第八十二條規定，終審法院可根據需要邀請其他普通法適用地區的法官參加審判。我們有幸邀得成熟的普通法司法管轄區的傑出法官擔任終審法院非常任法官，包括澳洲高等法院前首席法官梅師賢爵士及英國最高法院院長廖柏嘉勳爵。

最近傳媒報導，有建議檢討《基本法》，以禁止外籍法官聆訊憲法相關案件，並停止聘任更多外籍法官。香港以身為國際城市為榮。在法律界，我們的註冊外地律師來自32個司法管轄區，為國際化社會提供多元化的法律服務，對此我們引以自豪。這些經驗豐富的外地律師，將本身司法管轄區特有的專業知識帶來香港，豐富了香港法律界的人才資源，從而提高香港作為亞洲法律服務中心的競爭力。同樣，獨立的司法人員推薦委員會挑選法官時，考慮個人的優點。這些傑出的外籍法官在普通法方面的豐富經驗是無價的，這些備受尊重的終審法院法官，對維護我們的普通法制度貢獻良多。

司法獨立

《基本法》明確規定香港享有司法獨立。例如，第二條規定香港享有獨立的司法權，包括依照本法的規定享有終審權；第十九條規定，香港享有獨立的司法權和終審權；第八十五條規定，香港法院獨立進行審判，不受任何干涉；及第第八十八條規定，香港法院的法官，根據當地法官和法律界及其他方面知名人士組成的獨立委員會推薦，由行政長官任命。

自《基本法》實施以來，對司法獨立的最大挑戰，或許是由全國人民代表大會常務委員會(人大常委会)根據第一百五十八條賦予的權力就《基本法》進行解釋引發的各種辯論。

人大常會五度對《基本法》作出解釋，當中兩次由時任行政長官和署理行政長官提請，一次由終審法院提請，另外兩次由人大常委會提出：

1）1999年對居留權問題的解釋(第二十二條第四款及第二十四條第二款第(三)項，由時任行政長官提請)
2）2004年對行政長官選舉辦法及立法會產生辦法的解釋(附件一第七條及附件二第三條，由人大常委會提出)
3）2006年對新任行政長官任期的解釋（第五十三條第二款，由署理行政長官提請）
4）就FG Hemisphere Associates LLC v 刚果民主共和國和其他[2011] HKCU 1049對國家豁免權的解釋(第一百五十八條第三款，由終審法院提請)
5）對立法會議員在2016年就任時宣誓的解釋(第一百零四條，由人大常委會提出)

總的來說，《基本法》實施20年以來一切順利，我們對一國兩制下法律制度和司法制度根據《基本法》繼續運作充滿信心。
Allan Leung
Hogan Lovells, Partner

As head of the litigation practice of Hogan Lovells in Hong Kong, Mr. Leung has over 25 years of experience dealing in a broad range of dispute work, including corporate commercial, financial services and regulatory, judicial review, environmental, product liability, cross-border contentious insolvency, fraud and asset recovery, and employment. He is widely recognised and named in a number of legal directories as an outstanding litigator.

Lam Tsz Yuet
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Mr. Lam is head of the litigation team of Lo & Partners. With over 25 years of experience, he has extensive experience in handling disputes in various areas including corporate, commercial, financial services, regulatory, judicial review, environmental, product liability, cross-border contentious insolvency, fraud and asset recovery, and employment. He is widely recognised and named in a number of legal directories as an outstanding litigator.

Thomas Wong
Hogan Lovells, Senior Associate

Depth and versatility summarise Mr. Wong’s experience as a senior associate in Hogan Lovells’ litigation team. Breach of fiduciary and director’s duties, audit negligence, commercial and infrastructure judicial review applications, defamation, and company litigation are just some of the areas of commercial litigation work he handles. In addition to his commercial litigation work, Mr. Wong also has particular interests and experience in international legal affairs and advocacy. He has worked as a part-time lecturer (non-clinical) at the University of Hong Kong Law Faculty, where he coached top students for an international mooting competition on the law of the World Trade Organization.

Xin Fang
Mayer Brown JSM, Associate

Xin Fang holds a First-Class Honours Master’s Degree in Corporate Law from the University of Cambridge. She has worked at Mayer Brown JSM since 2010, focusing on international mergers and acquisitions, joint ventures and private equity transactions.
Cheung Kwun Yee
Baker McKenzie, Partner
Kwun Yee Cheung is a partner in the dispute resolution practice at Baker McKenzie in Hong Kong, focusing on company insolvency and commercial litigation. Ms. Cheung’s practice includes litigation and advisory work representing insolvency practitioners, corporate clients and banks on a wide range of complex disputes and insolvency and restructuring matters, including compulsory and voluntary liquidations, receiverships, corporate restructuring and schemes of arrangement. She also focuses on company law and commercial disputes, regularly advising corporate clients, shareholders and directors in relation to matters including shareholders’ rights and remedies, directors’ duties, joint venture disputes and unfair prejudice petitions.

Jenny Kung
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Jenny Kung is an associate in the dispute resolution practice at Baker McKenzie in Hong Kong. Ms. Kung advises clients on a range of commercial disputes and advisory matters, with a particular focus on corporate insolvency, debt recovery/enforcement of security and shareholders’ disputes.

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Ms. Khemaney started her legal recruiting career in 2007 with a leading international recruitment firm placing lawyers with both in-house and private practice clients across the APAC region. She has built up a strong network of contacts within the legal industry and has extensive experience in serving AmLaw 100, Magic Circle, international law firms, multi-national companies and financial services clients through the placement of lawyers across Asia. Through her network, Ms. Khemaney has also assisted lawyers in the US who are looking to return to Asia. At Lewis Sanders, she focuses on both in-house and private practice placements.

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I recently read Michael Jackson’s article “HKSAR v Chan Kam Shing: CFA Finds ‘No Wrong Turning’” in the March edition of Hong Kong Lawyer. While the feature provides a good summary of HKSAR v Chan Kam Shing FACC 5/2016 and the adverse political environment in which the doctrine was operating in the UK, it failed to touch on instances in which the doctrine is susceptible to abuse in Hong Kong.

In "Is Abolishing Joint Enterprise Beneficial for Hong Kong?" (Hong Kong Lawyer, May 2016), Franklin Koo convincingly set forth a number of public policy considerations that weigh against the extended version of doctrine, or as Jackson termed “the wide principle”, being maintained in Hong Kong. Namely, he highlighted the possibility of the doctrine being used to oppress particular groups – such as those in politically sensitive groups or those involved in local social movements. While the doctrine has not been used in this way in Hong Kong to date, this is a worrisome possibility, as joint enterprise liability is applicable to a wide variety of offences, not just gruesome, gang-related murders.

Even after looking at the public policy considerations used to justify the creation and maintenance of the doctrine in the wider context, these concerns are not assuaged. As noted by Koo and Jackson, the Chan Wing Siu principle does have certain merit, in that it was designed to deter people from participating in gang-related criminal activities by holding all participating members of a gang responsible for each other's criminal actions. As Koo noted, studies have shown that “gang members commit over five times as many offences as non-gang members”. He also pointed out that “social science research literature strongly suggested that individuals in groups behave very differently than they do when alone. They take more risks, are pressured to conform with the majority, and feel less personal responsibility, thus raising the possibility that group crimes lead to escalated and unplanned violence.” Even with this being the case, it still seems anomalous that a secondary defendant can be convicted of a crime on proving mere foresight, when the prosecution must prove the “intent” of the primary defendant to secure a conviction. Put another way, this seems grossly unfair because foresight is a lower mental requirement than intention, which is the mens rea that must be established by the prosecution to meet its burden of proof.

Also troubling is the possibility of an individual being convicted of a crime based on their involvement in a joint criminal enterprise, when he or she did not physically perpetrate the crime, had no intention to do so and was never at the crime scene. For all of these reasons, it is regrettable that the UK's approach in Jogee was not followed in Hong Kong.
Proposals to Enhance Asset Management Regulation and Point-of-Sale Transparency

The Securities and Futures Commission (the “SFC”) in late November 2016 issued a consultation paper on its Proposals to Enhance Asset Management Regulation and Point-of-Sale Transparency. Under the consultation, the SFC proposed changes to the SFC’s Fund Manager Code of Conduct (“FMCC”) and the Code of Conduct for Persons Licensed by or Registered with the SFC (the “Code of Conduct”).

The main changes the SFC has considered included the following:

• under the FMCC, the proposed amendments were mainly for securities lending and repurchase agreements, custody of fund assets, liquidity risk management, and disclosure of leverage by fund managers;

• as for the Code of Conduct, the proposed amendments were to address the potential conflicts of interest in the sale of investment products and to enhance disclosure at the point-of-sale by:
  ° restricting an intermediary from representing itself as “independent” or using any term(s) with a similar inference if the intermediary received commission or other monetary or non-monetary benefits or it had links or other legal or economic relationships with product issuers which were likely to impair its independence; and
  ° requiring an intermediary to disclose the range and maximum dollar amount of any monetary benefits received or receivable that were not quantifiable prior to or at the point of sale.

With the assistance of its Investment Products and Financial Services Committee, the Law Society has reviewed the consultation paper. It acknowledged the policy objectives underlining the proposal (ie, to enhance Hong Kong’s position as a major international asset management centre, and thus it was important to ensure that the related regulations were properly benchmarked to evolving international standards). Further comments were provided.


FROM THE COUNCIL TABLE

理事會議題

加強資產管理業規管及銷售時的透明度的建議

證券及期貨事務監察委員會(「證監會」)於2016年11月就「加強資產管理業規管及銷售時的透明度的建議」發表諮詢文件。證監會在諮詢文件內建議改動證監會的《基金經理操守準則》及《證券及期貨事務監察委員會持牌人或註冊人操守準則》(《操守準則》)。

證監會考慮的主要改動包括：

• 《基金經理操守準則》的改動所涉及的主要範疇包括證券借貸和回購協議、基金資產的託管、流動性風險管理及基金經理就槓桿借貸比率的披露；

• 《操守準則》的改動建議旨在透過以下措施處理中介人在銷售投資產品時的潛在利益衝突，以及加強銷售時的披露：
  ° 當中介人表明自己為「獨立」或使用任何有類似意思的用語時，限制該中介人收取佣金或其他金錢或非金錢收益，或與產品發行人有任何聯繫或其他法律或經濟關係，而這些聯繫或關係可能損害其獨立性；及
  ° 當所取得或可取得的任何金錢收益無法在訂立交易前或在訂立交易時量化計算的時候，要求中介人披露有關金錢收益的幅度及最高金額。

律師會在投資產品及金融服務委員會協助下檢視了該諮詢文件，認同建議背後的政策目標(即加強香港作為主要國際資產管理中心的地位，因此必須確保相關條例遵循不斷演變的國際標準)，並進一步提供了意見。

Enhancing Transparency of Beneficial Ownership of Hong Kong Companies

The Law Society in January received a consultation paper from the Financial Services and the Treasury Bureau ("FSTB") on Enhancing Transparency of Beneficial Ownership of Hong Kong Companies ("Consultation Paper"). By the Consultation Paper, the Government sought views from the public on its proposal to amend the Companies Ordinance (Cap. 622) in order to enable beneficial ownership information of companies to be captured and maintained. That served the purpose of allowing law enforcement agencies access to such information when necessary.

The Law Society noted the Government’s policy objectives to bring the regulatory regime of Hong Kong to be in line with international obligations on anti-money laundering and terrorist finance. These policy objectives underscored the above proposal.

The Company Law Committee has studied the Consultation Paper. They agreed that the above objectives were laudable and were in principle in support. However, the Committee was not convinced that Hong Kong should adopt a statutory regime for disclosure of corporate beneficial ownership; they had much reservation on the conceptual framework which underlined the Government’s proposals. They considered that enhancing the transparency of a Hong Kong company mandated by a statutory disclosure regime did not add much to the trust and confidence building process for persons engaged in business dealings. To the contrary, it would drive away investors, increase compliance costs and also create security risks. If the investigative powers of law enforcement agencies were inadequate, that can and should be addressed by enhancement of those powers, rather than imposing further burdens on law abiding investors or companies.

The above views were endorsed by the Law Society’s Council. The detailed submission on the Consultation Paper can be found at: http://www.hklawsoc.org.hk/pub_e/news/submissions/20170307.pdf.

提升香港公司實益擁有權的透明度

律師會於1月接獲財經事務及庫務局有關「提升香港公司實益擁有權的透明度」的諮詢文件（「諮詢文件」）。政府在諮詢文件中就修訂《公司條例》（第622章）的建議徵詢公眾意見，該建議修訂旨在收集和備存公司的實益擁有權資料，讓執法機構有需要時能夠及時取覽。

律師會知悉政府的政策目標，是使香港的規管制度符合反洗黑錢及資助恐怖分子的國際義務。上述建議反映了這些政策目標。

公司法委員會研究了該諮詢文件，同意上述目標值得讚揚，原則上支持。然而，委員會不認為香港應該用法定制度來規管公司實益擁有權的披露；委員會對政府建議的概念框架有很大保留，認為以法定披露制度指令香港公司提升透明度，對從事商業交易者建立信証和信心並無幫助，相反會趕走投資者，增加合規成本，並構成安全風險。

若執法機構的調查權力不足，則應該加強他們的權力，而不是對守法的投資者或公司進一步施加負擔。

Let Us Showcase Our Strengths to the World

Hong Kong is well known as a highly competitive global city and a leading international financial centre. We achieved flying colours in a number of international rankings. Just to name a few, Hong Kong ranked:

• First in the 2017 Index of Economic Freedom, an annual guide published by The Heritage Foundation;
• Fourth in the 2016 Global Financial Centres Index published by Z/Yen Group, which measured the competitiveness of the world financial centres;
• Second in the 2015 Global Opportunity Index published by Milken Institute;
• Fifth easiest place in the world to do business according to the Doing Business Report 2016 published by the World Bank; and

In these rankings, Hong Kong has consistently demonstrated distinctive strengths in category indexes like the Rule of Law, infrastructure development, business environment and financial market access.

Without the pool of talent available in Hong Kong, these outstanding achievements would not have been possible. We are proud to have a legal profession that fearlessly safeguards the Rule of Law by ensuring the fair, just and transparent administration of the legal and judicial systems in Hong Kong. In addition, our lawyers are well experienced and skilled in a diverse range of legal services that meet the needs of domestic and international clients.

Hong Kong’s outstanding capabilities are well known but not as widely as we would like, in particular to the jurisdictions along the Belt and Road.

Incidentally, we no longer refer to the Initiative as “One Belt, One Road” because it does not involve only one route. Broadly, “Belt” (i.e., the Silk Road Economic Belt) aims to bring together China, Central Asia, Russia and Europe (the Baltic); link China with the Persian Gulf and the Mediterranean Sea through Central Asia and West Asia; and connect China with Southeast Asia, South Asia and the Indian Ocean. “Road” (i.e., the 21st Century Maritime Silk Road) will stretch on one hand from China’s coast to Europe through the South China Sea and the Indian Ocean and on the other, from China’s coast through the South China Sea to the South Pacific. These routes cover some 65 countries, all of which are keen to boost trade and infrastructural connectivity.

This economic vision opens up opportunities for our legal profession for generations to come. While polishing our own skills to meet the future demands, we must also promote our strengths so that clients and legal
professionals in jurisdictions that have relatively fewer dealings with Hong Kong lawyers in the past will get to know our expertise and competitive edge.

The Law Society’s Belt and Road Conference on 12 May 2017 is organised to accomplish both ends. Not only do we have a diversified programme covering a wide range of legal issues that are relevant to cross border transactions and dispute resolution, we have invited speakers and participants from different parts of the world, mostly from the countries along the Belt and Road to join us. Participants can have the opportunity to enhance and update their legal knowledge and skills as well as connect and make themselves known to their counterparts in the Belt and Road jurisdictions.

Some may view their active participation in the Belt and Road Initiative as remote at present. Nevertheless, going forward, the vast scale of this significant national Initiative is going to dictate a large portion of the legal service demands in the region for decades.

As a member of the Hong Kong legal profession, we owe it to our successors to do our best to lay a solid foundation for them to take advantage of the Initiative when the time comes. We need to mobilise everyone to encourage each other to take an active interest in the demands of legal services that will be generated by the Initiative, to take concrete steps to enhance the needed skills and to act as ambassadors of the Hong Kong legal profession to promote and showcase our strengths whenever an opportunity arises.

The Belt and Road Conference on 12 May presents such an opportunity to fulfil these goals. It is an occasion where the Law Society, acting as “Convenor” of legal professionals in the Belt and Road jurisdictions, brings the relevant stakeholders together, encourages exchanges of ideas and knowledge and creates a platform for our profession to showcase our strengths and to impress the world with our best practices at top international standards.

This cannot be achieved without the support of our members. Please join us at the Conference on 12 May. The programme which is accredited with 5 CPD points, sponsorship opportunities and registration details are available at the Conference’s official website at hklawsoc-beltandroad.com.

### Monthly Statistics on the Profession

(Updated as of 28 February 2017):

<table>
<thead>
<tr>
<th>Category</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Members (with or without practising certificate)</td>
<td>10,415</td>
</tr>
<tr>
<td>Members with practising certificate</td>
<td>9,016</td>
</tr>
<tr>
<td>(out of whom, 6,860 (76%) are in private practice)</td>
<td></td>
</tr>
<tr>
<td>Trainee Solicitors</td>
<td>1,049</td>
</tr>
<tr>
<td>Registered foreign lawyers</td>
<td>1,350</td>
</tr>
<tr>
<td>(from 32 jurisdictions)</td>
<td></td>
</tr>
<tr>
<td>Hong Kong law firms</td>
<td>874</td>
</tr>
<tr>
<td>(48% are sole proprietorships and 41% are firms with 2 to 5 partners, 11 are limited liability partnerships formed pursuant to the Legal Practitioners Ordinance)</td>
<td></td>
</tr>
<tr>
<td>Registered foreign law firms</td>
<td>82</td>
</tr>
<tr>
<td>(11 are limited liability partnerships formed pursuant to the Legal Practitioners Ordinance)</td>
<td></td>
</tr>
<tr>
<td>Civil Celebrants</td>
<td>2,075</td>
</tr>
<tr>
<td>Reverse Mortgage Counsellors</td>
<td>445</td>
</tr>
<tr>
<td>Solicitor Advocates</td>
<td>49</td>
</tr>
<tr>
<td>(44 in civil proceedings, 5 in criminal proceedings)</td>
<td></td>
</tr>
<tr>
<td>Student Members</td>
<td>345</td>
</tr>
<tr>
<td>Registered Associations between Hong Kong law firms and registered foreign law firms (including Mainland law firms)</td>
<td>37</td>
</tr>
</tbody>
</table>

這個經濟視野為法律界往後幾代開創機遇。我們提升技能以滿足未來需求，同時也必須提升自身的實力，從而令過去與香港律師合作的司法管轄區的客戶和法律專業人士，能了解我們的專業知識和競爭優勢。

律師會將於2017年5月12日舉辦一帶一路會議，滿足雙方所需。會議涵蓋跨境交易和爭議解決相關的廣泛法律議題，並邀請了來自世界各地（主要來自一帶一路沿線國家）的講者和與會者參加。與會者將有機會提升和更新他們的法律知識和技能，同時與一帶一路沿線國家的同業接觸。

有些人或許認為現在積極參與一帶一路言之尚早。然而，展望未來，這項規模龐大的重要國家倡議，將決定地區內未來數十年的大部份法律服務需求。

作為香港法律界的一員，我們應盡力為後人奠定鞏固基礎，令他們在遇適當機時受益於這項倡議。我們需要動員大家，互相鼓勵，積極留意一帶一路產生的法律服務需求，採取實際行動以提高必要的技能，擔任香港法律專業的大使，只要一有機會，即促進並展示我們的優勢。

5月12日的一帶一路會議正好是實現這些目標的良機。律師會作為一帶一路沿線司法管轄區的法律專業人士「召集人」，藉此機會讓相關持份者聚首一堂，鼓勵思想和知識交流，創造平台讓香港法律界展示其優勢，以國際最高標準的執業讓世界留下深刻印象。

實現這些目標有賴會員的支持。誠邀會員於5月12日參加一帶一路會議。參加會員可獲5個CPD分，贊助機會及登記詳情，請瀏覽會議官方網站hklawsoc-beltandroad.com。
Face to Face with

Lester Huang JP

Managing Partner and Co-Chairman of P.C. Woo & Co. and
Former President of the Law Society of Hong Kong

By Cynthia G. Claytor

Mr. Lester Huang, Managing Partner and Co-Chairman of P.C. Woo & Co. and former President of the Law Society of Hong Kong, reflects on the current practice environment for solicitors in Hong Kong and how it might be further improved.

While lawyers may rely on precedent banks, it is no longer safe to bank on precedent in this time of unparalleled change. The transformation of the legal industry is being fuelled by competitive pressures, economic uncertainties and disruptive technology. The legal market continues to grow, but buyers’ changing purchasing patterns and their evolving expectations of legal service providers is putting significant pressure on firms and their business models, with small to medium-sized law firms being particularly affected.

Mr. Lester Huang believes SME law firms have an important role to play in the coming years, but explained that their leaders will need to understand their business and their place in the market and then determine how to continue to attract the types of clients that they want. Just as in the past, challenges and opportunities will continue to arise in tandem. However, to remain relevant, Hong Kong law firms must continue to diversify their service offerings and seek new business opportunities in places outside of Hong Kong.

A Steady Hand at the Tiller

Since 1985, Mr. Huang has built his private practice at P.C. Woo & Co., where he started as an articled clerk and worked his way up to become the firm’s co-Chairman. Throughout his 32-year tenure, he has spent 26 as a managing partner, not only assisting the firm transform from a property-based practice to a diversified commercial legal service provider, but also helping it open offices in New Territories, Chengdu and Nanjing. The official opening of the Chengdu Representative Office in 2002 distinguished P.C. Woo & Co. as the first Hong Kong law firm to establish a vital link between Southwestern China and Hong Kong.

In addition to his work in the private sector, Mr. Huang has dedicated substantial time and energy to public service initiatives. He has been particularly instrumental in his work with the Law Society as a former President and Council Member and with government bodies and NGOs in principal positions. Through these roles, he has vigorously...
pushed for changes that would improve the practice environment for solicitors in Hong Kong, among other things.

**Challenges Ahead**

Reflecting on the challenges that may lay ahead for SME law firms in Hong Kong, Mr. Huang highlighted a number of issues P.C. Woo & Co. has encountered, indicating that they were not unique to his particular firm.

**Competing for Local Talent**

One of the first issues Mr. Huang addressed was the fierce competition for local talent, which he has found “to be one of the most interesting exercises” in running the firm. There is always talent present in the market, but being able to capture it is a different story, he explained. “In vying for good trainees, we find ourselves having to start earlier and earlier in our recruitment exercises. Of course, after having brought them in and trained them up, it is also a challenge to hold on to them. Over 60 of the world’s top 100 firms are represented in Hong Kong. So, they, like us, are trying to attract young local talent. This is a challenge for us because our larger international counterparts can offer more attractive packages than we can – and not just in terms of pecuniary remuneration, but also in arranging international secondments and a variety of other opportunities that provide young lawyers with sterling CVs at the end of their training contacts.

When speaking on the difficulty of maintaining a property practice, Mr. Huang first noted that P.C. Woo & Co. started off as a conveyancing firm. He explained that the founding partner, Dr. Pak Chuen Woo, opened the firm’s first office just six weeks after the close of World War II to help clients with property that had been requisitioned by the British and Japanese armies. Until a certain point before 1997, Hong Kong property market was thriving and conveyancing work generated enough income to enable firms to survive and develop. However, if you look at the legal market for property work today, property transactions are no longer lucrative legal work.

“While we have not had to decrease the size of our property department, it is no longer a prominent fee-earning practice. Some months, the department barely breaks even because the fees we can charge clients are so low. All of this has made it increasingly difficult to persuade young lawyers to specialise in this area. If we cast our minds forward five to 10 years, it is difficult to say where our property practice will be or who will be doing this work. This issue is not unique to P.C. Woo & Co., but as property has always been a mainstay of the Hong Kong economy, it is worrisome. We need brilliant lawyers in the property sector just as much as in the commercial or financial sector.”

As President of the Law Society, Mr. Huang expressed his concern with the severe competition and pressure on legal fees for conveyancing work and proposed various measures to resolve the unhealthy situation. However, the situation has persisted.

**Impact of ADR**

Another interesting development, which Mr. Huang noted was exemplified in personal injury cases, is the increased reliance of parties on alternative dispute resolution techniques to resolve disputes. ADR tools enable parties to confidentially settle cases outside of the court system and thereby avoid public scrutiny.
While ADR has many benefits, Mr. Huang explained that it also poses a number of unique challenges for common law-based societies, like Hong Kong, whose lawyers base their advice on precedent. With decisions being rendered confidentially, current trends or thinking on certain legal issues may be unascertainable. For instance, instead of looking at a precedent for an award of damages in a personal injuries case, lawyers will now have to go by their feel for the rates based on personal experience in other cases or anecdotal information.

**Capturing Opportunities**

With China moving forward with its Belt and Road initiative and predictions that ASEAN will continue to expand in 2017, there are many potential economic opportunities on the horizon. In noting the significant role lawyers play in guiding and advising business, promoting legitimate interests and fostering trust, Mr. Huang hopes the Law Society will continue to work closely with Hong Kong law firms to ensure they are well positioned to capture new business as it is generated.

**Law Society’s Role**

During his time as President of the Law Society, Mr. Huang observed that the globalisation of legal services brings benefits and challenges. “For law societies and regulators there are always concerns of practice rights eroding local interests. Hong Kong exercises a very liberal policy for foreign lawyers, in the belief that foreign lawyers with particular expertise bring benefits to Hong Kong with increased investment. In turn, the local profession stands to benefit through developing new skill sets. Furthermore, the Hong Kong legal profession also gains by being able to develop access to work outside of Hong Kong,” he wrote in his January 2009 President’s Message.

In terms of the Belt and Road initiative, Mr. Huang believes it will generate huge opportunities, but explained that the challenge for Hong Kong will be in language and the profession’s readiness to work in less familiar territories. “It’s a mentality that we have to develop and cultivate among the younger generation – to be ready to encounter this adventure and build and seize upon opportunities as they come our way. The Law Society is well positioned to lead this initiative,” he said.

To develop access to work outside of Hong Kong, Mr. Huang believes it is vital for members of the profession to forge relationships with those overseas. “During my time as President, one initiative I spearheaded was inviting different Bar Associations from around the world to attend our Opening of the Legal Year ceremonies. The rationale was to use this event to promote Hong Kong and support efforts to take Hong Kong international through cultivating relationships with our overseas counterparts. With our global aspirations, it is important to consolidate friendships through activities, such as the Opening of the Legal Year; we will need friends to achieve our goals over the long-term. I am glad to see that the Law Society has made extending invitations to Bar Associations and overseas dignitaries to attend the Opening of the Legal Year ceremonies a permanent fixture.”

Mr. Huang indicated that it has also been encouraging to see the Law Society continue to build and develop relationships through signing Memoranda of Understanding with different jurisdictions. One additional development he hopes to see in the future is the involvement of more junior lawyers in these relationship-building initiatives. “If they can develop their network in different jurisdictions and promote Hong Kong Law, it would only be for Hong Kong’s betterment.”

**Size Matters**

Over the long-term, Mr. Huang hopes the Hong Kong legal community will put more emphasis on extending its markets by establishing a presence in major centres of economic activity around the world.

“We have skills and experience that compare with some of the best in the world and these should be used to
good effect. To be able to branch out, however, local firms must have not only skills, but also manpower. To be able to send skilled personnel abroad, the firm must have capacity to spare and this is where size matters. The fact that the vast majority of Hong Kong firms are relatively small explains the absence of Hong Kong firms abroad."

“If there was a consolidation of smaller practices into larger ones, I think it would be for Hong Kong’s better good. This was something, even as a President of the Law Society, I had hoped to see, but it is not easy. In a way, I feel that this holds back Hong Kong practitioners from going into more challenging regions to make a living. Whereas so many lawyers from overseas are able to set up foreign practices in Hong Kong, we should see if Hong Kong law firms can and are doing the same,” he said.

For this reason, he believes laws such as the ones to enable limited liability partnerships and solicitor corporations are important. He hopes to continue to see the Law Society do what it can to encourage firms to amalgamate and grow. “Regulation must not stand in the way of good progress. If there is the possibility of Hong Kong firms growing, I think the Law Society should support that.”

**Net Legal Service Exporter**

Mr. Huang also hopes to see Hong Kong become a net exporter of legal services. “With our open market environment, we have the necessary basis to export our expertise. In any event, international clients are not restricted on who they must use, and will go to the best even if it means shifting the work offshore to Hong Kong. Hong Kong attracts much foreign investment for itself and for onward investment into China. We also serve as a trading hub between China and the rest of the world. Local lawyers must aim to export their services to the investors and overseas traders to reap the benefits. The Law Society has done this by continuing to promote Hong Kong’s strengths, including our capacity as an international dispute resolution centre," he has previously written.

He also noted that lawyers in other jurisdictions, such as the US and UK, have developed a wide network of overseas offices, which can lead to a number of benefits (eg, the use of cross-selling, increased productivity, client expansion, work referrals from other offices and ability to leverage global resources). Mr. Huang believes Hong Kong solicitors can further develop by expanding internationally.

“Hong Kong solicitors are properly positioned to serve both local and international interests. A bolder mindset and a readiness to commit to longer term returns will strengthen the profession in all ways.”

**Pro Bono Culture**

“When you think of pro bono, often times you associate the term with helping clients who are facing a court action and need representation to get through their case on a low bono or pro bono basis. As such, the term pro bono is often associated with the issue of access to justice. P.C. Woo & Co. does some pro bono work like that, but that is not the only type of pro bono or low bono work we do. We also serve on boards of different NGOs and advise a variety of bodies and non-commercial entities on their work. Our involvement can range from setting up charities to advising clients on governance issues,” Mr. Huang explained.

“Many solicitors in Hong Kong contribute their time in this way. I think that is a huge strength of the legal profession in Hong Kong. The Law Society recognises solicitors’ efforts on this front every year through its pro bono awards.” Mr. Huang thinks this is an important feature of Hong Kong’s legal culture that the community should continue to promote.

For Mr. Huang personally, he said that this kind of work is “the spice” of his legal practice. “If I was confined to my desk job, doing the same things and dealing with the same kinds of issues and clients day in and day out, my last 30 odd years would likely have been quite mundane. Going out and meeting different people who are doing totally different things and learning about these different sectors gives me a richness in life that I might not otherwise enjoy. In that sense, I not only hope to continue to have the opportunity to serve, but also to learn. That has been the kind of spirit that I’ve always adopted.”

One aspect that he hopes will evolve on the pro bono front is in the appointment of people to government committees. “Junior lawyers are not often appointed to contribute on these committees. I hope this will change in the future, as their increased involvement will only be good for Hong Kong. The voices of the younger members of our community are very important and I feel that through the consultative set up that the government has, it is a very useful channel for their voices to be heard.”
這個年代所經歷的改變是空前的，律師置身其中雖然有先例可循，但依循先例不再是萬全之策。現在，同業競爭構成壓力，經濟環境陰晴不定，技術應用衆繁增亂，俱驅動法律行業改革求變。法律市場持續增長，不過，消費者不斷改變的購買模式，他們對法律服務提供者逐步形成的期望，給律師行及律師行的業務模式帶來了沉重壓力，中小型律師行更是首當其衝，壓力尤重。

胡百全律師事務所合夥人兼聯席主席黃嘉純認為，中小型律師行在未來幾年佔有舉足輕重的地位，不過律師行負責人需要了解律師行的業務、所處的市場位置，然後決定吸引目標客戶群的方法。一如既往，挑戰和機遇會繼續接踵而至。然而，要保持自身的相對性，香港律師行必須繼續實現服務種類多元化，並在香港以外地區尋找新商機。

胡百全律師事務所合夥人兼聯席主席、香港律師會前任會長黃嘉純深思香港律師當前的執業環境，細想如何可以進一步開創佳境。

處事沉穩的掌舵人

黃律師自1985年開始已經在胡百全律師事務所工作，在那裏建立自己的事業；他由見習律師做起，拾級而上，現在已成為該律師行的聯席主席。黃律師在32年的事業生涯裏，有26年是擔任合夥人職務，不僅要協助律師行由一間主力房地產業務的律師行，漸漸轉變為多元化

的商業法律服務提供者，而且要幫助律師行在新界和中國成都、南京開設辦事處。隨著成都代表辦事處在2002年正式啓用，胡百全律師事務所成為第一間在中國西部地區與香港之間建立重要連結的香港律師行。

除了處理私人執業的工作之外，黃律師亦投入大量時間和精力參與公共服務。他擔任過律師會會長及理事會成員，以及政府機構和非政府機構的主要職位，任內在律師會和各機構的工作上起了明顯的推動作用。他透過工作積極推動

變，果實碩碩，當中包括改善了香港律師的執業環境。
未來的挑戰

黃律師細數香港中小型律師行未來可能面臨的挑戰時，特別提到胡百全律師事務所經歷過的一些問題，他指出，這些問題都不是他的律師行所獨有。

爭相招攬本地人才

搶聘本地人才是黃律師處理過的最重要問題之一，他覺得這是營運律師行「其中一項最有趣的工作」。市場總有可造之才，但是我們能否將他們羅致旗下卻是另一回事。黃律師說：「我們爭相招募能出色實習律師時發現，我們必須提早展開招聘工作，並且一次比一次早。當然，吸納人才並培訓了他們之後，如何留住他們同樣是個難題。」

要保持競爭力及相關性，中小型律師行就得想方設法突围而出，吸引本地人才。...

市場趨勢

中小型律師行還得面對另一個重大問題，就是設法守住過往利潤豐厚的業務，或者以個人客戶為主要服務對象的業務，例如物業轉易、家事法事宜、繼承事宜。近年來，這些業務已經入不敷支，致使香港律師行不得不擴大服務範圍，多元化客戶群，以求繼續經營下去。

當談到維持房地產業務所遇到的難處時，黃律師第一件事告訴筆者，是胡百全律師事務所最初是一間處理房地產轉易的律師行。他解釋說，創辦人胡百全博士在第二次世界大戰結束後只過了六星期，就開設了胡百全律師事務所第一間辦事處，幫助客戶處理已經被英軍和日軍徵用的房地產。一直到1997年之前某年某月，香港房地產業蓬勃暢旺起來，房地產轉易業務帶來可觀收入，足夠讓律師行經營並發展下去。然而，黃律師解釋，如果你看看今天法律市場的房地產工作，就知道房地產交易不再是賺大錢的法律工作。

替代訴訟糾紛解決方案的影響

還有另一個有趣的發展，就是當事人越來越倚賴替代訴訟糾紛解決方案，以作為解決糾紛的方法，黃律師提到可以列舉人身傷害案說明情況。替代訴訟糾紛解決方案為各方當事人提供庭外和解的機會，從而避開公眾耳目。

替代訴訟糾紛解決方案有許多好處，不過黃律師指出，解決方案亦給奉行普通法的社會（例如香港，香港的律師是以案例為基礎提供法律意見）帶來各種獨
把握機遇

隨著中國朝向「一帶一路」倡議邁進，以及有預測認為東盟會在2017年繼續擴展，我們放眼可見很多有潛質的經濟機會。黃律師認為律師的作用非常重要，可以在業務上作出指引和建議之餘，亦能提高客戶的合法權益並促進兩方的信任，他強調律師具有重要性的同時，亦希望律師會將來繼續與香港律師行緊密合作，確保各律師行做好充足準備，隨時緊抓住新冒起的商機。

律師會發揮的作用

黃律師在擔任律師會會長期間，注意到法律服務全球化帶來的好處和挑戰。他在2009年1月份的《主席的話》撰文道：「法律界和監管機構一直關注執業權利損害香港本地的利益。因為相信具備某種專才的外國律師會給投資活動增加的香港帶來好處，香港對外國律師的政策是非常寬鬆的。本地專業人才進而透過發展新技能而受益。此外，香港法律專才亦因為能夠開拓通往香港以外地區工作的渠道而受惠。」

就「一帶一路」倡議而言，黃律師相信「一帶一路」會帶來龐大機遇，不過對於香港來說，克服語言障礙以及專業人員要準備在不大熟悉的地區工作都是大難題。他說：「我們抱有一種心態，就是培養和栽培年青一代——使他們做好準備冒這個險，並建立自己，講準時候，緊抓商機。」律師會已做好在「一帶一路」倡議中帶路的準備。

規模的問題

長遠而言，黃律師希望香港法律界多花心思，藉著巡視全球主要經濟活動中心，擴展法律市場。

「我們的能力和經驗與全球某幾間頂級律師行的不相伯仲，我們應當好好利用能力和經驗，達至理想的效果。不過，要有能力擴充業務，本地律師行所要具備的不只是能力，還要有人力。要有能力將人才送到外國去，律師行就必須有空缺崗位，這就牽涉到規模的問題。香港律師行的規模相對較少，這個事實解釋了為甚麼我們在外國找不到香港的律師行。」

他說：「如果將小型律師行合併為規模較大的律師行，我想，對香港會是一件好事。我當時雖然是律師會會長，但還是希望見到有律師行合併，不過合併不是簡單的事。在某種程度上，我覺得這會窒礙香港執業律師投身更富挑戰性的地區，力爭上游。」
律師能夠在香港開設外國律師行，我們應當想想香港律師行可有能力甚或已經同様遠赴海外開業。」

正因如此，他認為法例相當重要，例如讓律師行能夠成為有限法律責任合夥及律師法團的法例。他希望律師會竭盡所能，讓香港律師行能夠合併增長。在進展理想的路上絕對不能立例諸多限制。如果香港律師行有增長的可能，我想，律師會應當創造實現可能的有利條件。」

法律服務的淨出口地
黃律師亦希望見到香港成為法律服務的淨出口地。他曾經撰文寫道：「我們的市場是向外開放的，具備輸出專業技能所必要的基礎。不管怎樣，國際客戶沒有被限制必須選用某些律師行，相反，客戶都會找上最出色的律師行，即使要將工作搬到香港亦然。香港為自己引入大量外國投資，繼而把投資引進到中國去。我們也是貫通中國與全球各地的貿易樞紐。香港律師必須銳意向投資者和海外商家輸出他們的服務，以求獲得好處。律師會已經作出行動配合，繼續向外推廣香港的強項，包括香港作為國際爭議解決中心的地位。」

他亦提到，其他司法管轄區的律師，例如美國和英國的，已經發展海外辦事處，建立廣闊的業務網絡，從中得到不少好處（例如交際銷售、提升生產力、擴大客戶群、獲得其他辦事處轉介工作、能夠利用全球資源）。黃律師認為香港律師有能力衝出國際作進一步發展。

「香港的律師已經做妥準備，隨時為本地和外國客戶提供服務。心意堅定，準備好追求更長遠回報，將會增強法律專業人員各方面的能力。」

義務工作的文化
「當你想到義務工作的時候，往往聯想到是幫助有官司纏身的客戶，而這些客戶都是需要義務或半義務代表律師協助渡過難關的。就此而論，『義務』一詞通常離不開『尋求公義』的問題。胡百全律師事務所也從事一些這一類的義務工作，不過這不是我們唯一一種以義務或半義務形式所做的事。我們也向多間非政府機構提供服務，給各種各樣的機構和非商業企業提供工作意見。我們的義務工作範圍廣泛，包括成立慈善組織以及就政府問題向客戶提供意見。」黃律師解釋說。

「香港有很多律師都是這樣貢獻自己的時間。我想，這是香港法律專業人員的過人強項。律師會每年都頒授公益法律服務獎項，表彰律師在這方面付出的努力。」黃律師覺得這是香港法律文化中應當繼續在社區宣揚的重要特色。

有一件事是黃律師希望從前線義務工作演變過來的，就是委任人加入政府委員會。「年青律師通常不獲委任加入這些委員會。我希望這個情況將來會改變，因為有更多年青人參與對香港只會是一件好事。年輕一代的聲音對於我們的社會非常重要。我想，我們透過政府的諮詢平台就可以聽到他們的聲音，諮詢平台是聆聽他們聲音的最好的渠道。」
7th Members & Family Fun Day 2017

Date: 14 May 2017, Sunday
Time: 11am - 5:30pm
Venue: Hong Kong Sports Institute,
25 Yuen Wo Road, Sha Tin, N.T.
Fee: HK$100*
Dress Code: Hero-related

- Game Booths
- Obstacle Course
- Bouncy Castle
- Light Snacks
- Track & Field Competitions
- Talent Show
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Enquiry: funday@hklawsoc.org.hk

* Each competitor (members’ child) will be charged once for taking part in one or more competition(s) including Track & Field Competitions, Drawing Competition and Talent Show.
^ Subject to extra fees.

Please refer to the circular for the detailed programme rundown and fees. The organiser reserves the right to alter any arrangement or otherwise cancel the event.
The Hong Kong Academy of Law and The Law Society

The Law Society (“Society”) and Hong Kong Academy of Law (“Academy”) organised 17 seminars in February.

The Society jointly organised a seminar entitled “Cap. 622 – Three Years On” with the Hong Kong Institute of Certified Public Accountants and The Hong Kong Institute of Chartered Secretaries on 27 February. The seminar highlighted the successes of the Companies Ordinance (Cap. 622) (“Ordinance”) and identified areas which may be in need of further fine-tuning or reform. 195 participants attended the seminar.

Speakers of the seminar were Professor David C. Donald, Professor in the Law Faculty of The Chinese University of Hong Kong, Mr. Peter Lake, Partner of Slaughter and May, Mr. Ernest Lee, Council Member of The Hong Kong Institute of Chartered Secretaries, Ms. Susan Lo, Executive Director, Director of Corporate Services and Head of Learning & Development of Tricor Services Limited, Professor C.K. Low, Associate Professor in Corporate Law, Business School of The Chinese University of Hong Kong and Dr. William M.F. Wong, S. C. of Des Voeux Chambers.

The Law Reform on Child Custody and Access: Joint Meeting with Legislative Council Members, Labour and Welfare Bureau, Social Welfare Department and NGOs

On 20 February, the Law Society’s Family Law Committee had a joint meeting with a few Legislative Council members and representatives from the Labour and Welfare Bureau, the Social Welfare Department and NGOs. At the meeting, the parties had a useful exchange of views on the proposed Children Proceedings (Parental Responsibility) Bill.

就子女管養權及探視權的法律改革：與立法會議員、勞工及福利局、社會福利署及非政府機構會面

律師會家事法委員會於2月20日與勞工及福利局、社會福利署、數名立法會議員及非政府機構代表舉行了會議，就擬議的《子女法律程序(父母責任)條例草案》進行了有建設性的意見交流。
Supreme People's Procuratorate visits the Law Society

Led by Ms. Lu Xi, Director of Anti-Corruption-and-Bribery Bureau and Vice-ministerial Level Member of Procuratorial Committee of The Supreme People’s Procuratorate of the People’s Republic of China, a delegation paid a visit to the Law Society on 24 February. Vice President Mr. Amirali Nasir, Council Members Mr. Nick Chan, Mr. C M Chan, Mr. Simon Lai, Mr. Roden Tong, Committee members of the Greater China Legal Affairs Committee Ms. Catherine Mun, Ms. Alexandra Lo and Mr. Ronald Kan received the delegation and introduced the development of Hong Kong’s legal services sector, the structure and management of the Law Society and the professional conduct of members of the Law Society.

Greater China Legal Affairs Committee Annual Brainstorming Session

The Greater China Legal Affairs Committee (“GCLAC”) held its annual Brainstorming Session and regular meeting, which was chaired by Vice President and Chairman of the Committee Melissa Pang, on 4 March at the Qianhai Shenzhen-Hong Kong Modern Service Industry Cooperation Zone. Committee members reviewed the activities held last year and discussed the committee’s direction and programme in the coming year in a relaxed atmosphere. They also took this opportunity to visit a law firm located in the Cooperation Zone so as to get a better understanding of the cooperation and development of associations between Hong Kong and Shenzhen law firms.
The Environmental Impact Assessment Process and Hong Kong’s Third Runway

By Allan Leung, Partner
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www.hk-lawyer.org
Judicial review proceedings against the approval of the Airport Authority Hong Kong’s (“AAHK”) Environmental Impact Assessment (“EIA”) Report and the grant of an environmental permit (“Permit”) for the proposed third-runway system at the Hong Kong International Airport (“HKIA”) were dismissed with costs on 22 December 2016 (HCAL 21 & 22/2015, 22 December 2016).

This is a crucial infrastructure project valued at HK$141.5 billion which aims to enhance Hong Kong’s standing as an aviation hub in the region and its economy.

The Court dismissed all of the challenges, finding that AAHK’s EIA Report met all legal requirements.

The EIA Process

The EIA Ordinance (Cap. 499) (“Ordinance”) prescribes a process for the proponent of a designated project to obtain a Permit without which construction of a designated project may not commence. An airport, including the proposed third-runway system, is such a “designated project”.

The EIA process begins with the project proponent applying to the Director of Environmental Protection (“Director”) for a Study Brief, by submitting, *inter alia*, a project profile that complies with the Technical Memorandum. The Technical Memorandum is generally applicable to all designated projects, whereas the Study Brief is project-specific.

Within 14 days, the Director is empowered to ask the applicant to give further information concerning the project profile or notify the applicant of any defects in the application. Thereafter, the Director is obliged to issue to the applicant an EIA Study Brief within 45 days.

The project proponent then completes an EIA report in accordance with the Study Brief and the Technical Memorandum and submits it to the Director, who has 60 days to decide whether the EIA report meets the requirements of the EIA Study Brief and the Technical Memorandum. Following a positive decision, the EIA report will be advertised, published and made available for public inspection. Meanwhile, the Advisory Council on the Environment has 60 days to give their comments on the EIA report to the Director.

The EIA report then enters the critical stage of approval: the Director has 30 days to “approve, approve with conditions or reject” the EIA report. After the EIA report has been approved, it will be placed on the EIA register. Following this, and before the project proponent commences works in relation to a designated project, the proponent should refer to the EIA report on the register and apply to the Director for a Permit.

The Director has 30 days to reject the Permit application or approve it with conditions. The project proponent may not proceed to construct and operate the designated project without the Permit.

The Third-Runway System

Judicial Review Proceedings: Four Key Issues

The same EIA process applied to the third-runway system. The Director issued a Study Brief to AAHK, the project proponent, on 28 May 2012 pursuant to which the EIA Report was prepared. Eventually, the EIA Report was approved and the Permit granted on 7 November 2014.

Bearing in mind the EIA process described above, four key legal issues were raised in the third-runway system judicial review proceedings:

1. Whether “strict compliance” with the Technical Memorandum and Study Brief was required in every case.
2. Whether the so-called *Tameside* duty is applicable to the EIA process.
3. Whether the Technical Memorandum and Study Brief in this case required AAHK’s EIA Report to state an assumption that the immediate airspace in the Pearl River Delta area (“PRD Airspace”) would be available for use by the projected air traffic movements into or out of Hong Kong (the “PRD Airspace Assumption”).
4. Whether the Technical Memorandum and Study Brief mandated consideration and provision, in the EIA Report, of off-site compensation measures during the construction phase of the third-runway system in relation to the ecological impact assessment concerning Chinese white dolphins (“Dolphins”).

These issues are examined respectively below.

**Issue 1: “Strict Compliance” with the Technical Memorandum and Study Brief**

On this issue, the Court rejected the argument that any deviation or non-compliance from or with the Technical Memorandum and Study Brief, however minor, insignificant or inconsequential, would result in the invalidation of the Director’s approval of the EIA report. The correct position was set out in Shiu Wing Steel Ltd v Director of Environmental Protection & Airport Authority (No. 2) (Third Party) (2006) 9 HKCFAR 478 that:

- if the EIA report deviates from or does not comply with the Technical Memorandum and Study Brief, the Director should advise the project proponent of the reasons why the EIA report is unacceptable; and
- if the Director approved an EIA report not complying literally or fully with the Technical Memorandum and Study Brief, whether the Director’s decision was made without jurisdiction or unlawfully would depend on the circumstances of the case, including the nature and seriousness of the non-compliance. In particular, whether the non-compliance or breach is purely technical and has no material impact on the decision or on the environment.

**Issue 2: Tameside Duty**

The so-called Tameside duty, derived from the House of Lords’ decision in Secretary of State for Education and Science v Tameside MBC [1977] AC 1014, requires every decision-maker [here, the Director] “to take reasonable steps to equip himself with the necessary relevant information to enable himself to make an informed decision”. In these judicial review proceedings, an Applicant contended that a Tameside duty exists alongside the statutory duties imposed on the Director.

The Court rejected this argument, holding that the express obligations imposed by the Ordinance were already highly detailed and prescriptive, and should be regarded as a sufficient discharge of the Director’s duties in relation to the EIA process. The court should not impose additional obligations on the Director.

However, the Court did not completely close the door on potential scope for further duties, whether in terms of Tameside or the duty to inquire/consult. But in any particular case, the Court should only strike down a decision for any such failure “if no reasonable [decision-maker] possessed of that material could suppose that the inquiries they had made were sufficient”.

**Issue 3: PRD Airspace Assumption**

One of the judicial review proceedings grounds challenged the assumptions on which the EIA Report was based, claiming that:

- AAHK’s EIA Report had to disclose the assumptions and their limitations, and the findings and calculations employed in arriving at the environmental impacts of capacity increase at the HKIA;
- the assumption that the PRD Airspace would be available for use by the projected air traffic movements into or out of Hong Kong was wrong; and
- accordingly assumptions adopted by, and upon which the EIA Report was based, were incorrect.

The Court rejected this line of argument, holding that the EIA Report’s noise impact assessment study is concerned with finding out what may be the third-runway system’s possible or likely noise impact, and the assumptions on which this is based are not required to be justified in the EIA Report.

**Issue 4: The Dolphins**

Finally, on the Dolphins issue, the Applicant complained that the EIA Report failed to consider the possibility of off-site mitigation – specifically, compensation – measures during the third-runway system’s construction phase.

The Court also rejected this complaint, holding that the general policy for mitigating impacts on important habitats and wildlife, in order of priority, are avoidance, minimising, and compensation. In this case, the EIA Report already identifies and recommends a series of on-site mitigation measures during the third-runway system’s construction phase, which are designed to avoid and/or minimise the adverse ecological impacts caused by the third-runway system. Further, though off-site compensation measures during the construction phase had been considered but rejected because of impracticability, nothing in the Technical Memorandum or Study Brief requires the EIA Report to specifically “consider” or “provide” off-site compensation measures during the third-runway system’s construction phase.

**Practical Points**

Chow J’s written judgment concludes with a strong reminder of the way in which Form 86 should be drafted by referring to a statement by Litton PJ in Lau Kong Yong v Director of Immigration (1999) 2 HKCFAR 300, that “what is required, in a proper Form 86, is to state the grounds of judicial review clearly, succinctly and in a few numbered paragraphs”. Chow J closes his judgment with the threat of Court actions to enforce compliance with these basic requirements of the Form 86.

Practitioners should take heed of these wise words.
環境影響評估程序及香港的第三跑道

作者 梁鎮宇 合夥人
黃偉傑 高級律師

就香港機場管理局(下稱「機管局」)為擬興建的香港國際機場第三跑道系統而編寫的「環評報告」獲得通過，以及就有關的「環境許可證」獲得批予而提起的司法覆核程序，被法庭於2016年12月22日駁回，申請人並需支付訟費(HCAL 21 & 22/2015, 22 December 2016)。

這項造價達 1,415 億港元的龐大基建項目，旨在增強香港作為地區性航空樞紐的地位，以及促進香港的經濟發展。

法庭駁回了申請人所提出的全部質疑，裁定機管局所編寫的「環評報告」符合所有法律規定。

環境影響評估程序

《環境影響保護條例》(第 499章)(以下簡稱《條例》)訂明了「指定工程項目」的倡議人在取得「環境許可證」方面的相關程序，而在獲得發給該許可證以前，任何與「指定工程項目」有關的建造工程均不得展開，而機場(包括擬興建的第三跑道系統)是屬於「指定工程項目」。

「環評報告」的展開，是先由工程項目的倡議人提交符合「技術備忘錄」要求的「工程項目簡介」，並要求環境保護署署長(下稱「環保署署長」)根據該簡介向其發出「研究概要」。一般而言，「技術備忘錄」適用於所有「指定工程項目」，而「研究概要」則按個別工程項目而定。

環保署署長獲賦予權力，可在14天內要求申請人提供與該「工程項目簡介」相關的進一步資料，又或是告知申請人其申請所存在的瑕疵。之後，環保署署長須於45天內向申請人發出「環境影響評估研究概要」。

接著，該工程項目的倡議人須依據「研究概要」及「技術備忘錄」來編寫「環評報告」，並向環保署署長提交該報告。在接獲該份「環評報告」後，環保署署長可於60天內決定其是否符合「環境影響評估研究概要」及「技術備忘錄」之規定。倘若符合有關規定，該「環評報告」將予以公佈、刊發，並提供予公眾查閱。同時，環境諮詢委員會會於60天內，向環保署署長提交其對該份「環評報告」的意見。

之後，該份「環評報告」遂進入決定性的審批階段：環保署署長可於30天內，批准、有條件批准或拒絕批准該份「環評報告」。假如獲得審批通過，該份「環評報告」將會存置於「環境影響評估登記冊」內。隨後，以及在該工程項目的倡議人展開與該「指定工程項目」有關的建造工程以前，倡議人須就該存置於登記冊的「環評報告」，向環保署署長提出發給「環境許可證」的申請。

環保署署長可在30天內，拒絕接納該要求發給許可證的申請，又或是在有條件的情況下作出批准。在獲發「環境許可證」以前，工程項目的倡議人不得建造及營辦該「指定工程項目」。

第三跑道系統的司法覆核程序：四個主要爭議點

該「環境影響評估程序」同樣適用於第三跑道系統。環保署署長在2012年5月28日向該工程項目的倡議人(亦即機管局)發出「研究概要」，以供其作為編寫「環評報告」的根據。最後，該份「環評報告」在2014年11月7日獲得通過，並獲發給「環境許可證」。
在該項有關第三跑道系統的司法覆核程序中，申請人基於上述的「環境影響評估程序」，而提出以下四個主要爭議點：

1. 是否在每一情況中，都需要「嚴格遵從」該「技術備忘錄」及「研究概要」。

2. 所謂的「Tameside責任」，是否適用於該「環境影響評估程序」。

3. 案中的「技術備忘錄」及「研究概要」，是否要求機管局的「環評報告」必須載有一項假設，指出在珠江三角洲地區有即時的空域（下稱「珠三角地區空域」），可滿足未來的香港航空交通需求（下稱「珠三角地區空域假設」）。

4. 該「技術備忘錄」及「研究概要」是否規定，在對中華白海豚的生態影響評估方面，該「環評報告」必須考慮和訂立在第三跑道系統建造期間，於工地範圍以外的補償措施。

以下我們就上述各個爭議點逐一加以討論。

第一個爭議點：「技術備忘錄」及「研究概要」的「嚴格遵從」

關於這一點，法庭並不同意任何對該「技術備忘錄」及「研究概要」的偏離或不遵從，不論其為如何次要、不顯著、或無足輕重，都會導致環保署署長對該「環評報告」所作的批准無效。法庭認為，正確的取態應當是有如Shiu Wing Steel Ltd v Director of Environmental Protection & Airport Authority (No. 2) (Third Party) (2006) 9 HKCFAR 478一案中所述：

・該「環評報告」倘若偏離「技術備忘錄」或「研究概要」，或不遵從當中的規定，環保署署長應當告知工程項目的倡議人該「環評報告」不被接受的理由；

・環保署署長所批准的該份「環評報告」，倘若並沒有確切地遵從「技術備忘錄」及「研究概要」的規定，則環保署署長是否沒有權力又或是不合法地作出該項決定，須視乎該案的實際情況而定，當中包括所指的不遵從是屬何性質，以及其嚴重程度如何。尤其是，該等不遵從或違反規定的情況，是否純粹屬於技術性質，其對所作出的決定或是對環境，並不會構成任何重大影響。

第二個爭議點：Tameside責任

所指的Tameside責任，是源自上議院在Secretary of State for Education and Science v Tameside MBC [1977] AC 1014一案中的裁決，當中要求每一名決策者（在本案中為環保署署長）必須採取合理步驟以取得所需的相關資料，從而在掌握充分資料的情況下作出有關決定。在這項司法覆核程序中，一位申請人提出爭辯，稱Tameside責任與委予環保署署長的法定責任應當同時並存。

法庭拒絕接納這項論點，並認為《條例》所委予的明文責任已經非常詳盡和具規範性，環保署署長倘若已根據該「環境影響評估程序」履行此等責任，便應被視為已充分履行其職責，法庭不應向他施加額外的責任。

然而，環保署署長是否有需要承擔進一步的責任（無論是Tameside責任，還是調查／諮詢責任），法庭並沒有完全抹殺這方面的可能性。在任何特定情況中，假如「掌握該等資料的任何合理[決策者]，均不會同意他們所作的調查已經充分」，法庭方可在這情況下針對其失責情況而將有關決定推翻。

第三個爭議點：珠三角地區空域的假設

該宗司法覆核案的其中一個爭議點，是對作為該「環評報告」之編寫依據的該等假設提出質疑，並認為：

・機管局的「環評報告」必須披露該等假設以及當中的局限性、相關的研究結果，以及在考慮香港國際機場容量增加對環境所產生的影響方面，其所使用的量度方法；

・該等關於珠三角地區空域的假設是不能成立的；及

據此，該份「環評報告」所採納並以其作為依據的該等假設是錯誤的。

法庭拒絕接納這些論點，並認為該份「環評報告」的噪音影響評估研究，主要是為了明確第三跑道系統可能或相當可能產生的噪音影響，而作為其依據的該等假設，並不在該份「環評報告」中得到證明。

第四個爭議點：中華白海豚

最後，關於中華白海豚方面的問題，該司法覆核程序的申請人提出，該份「環評報告」並沒有考慮在第三跑道系統的興建期間，採取工地範圍以外的緩解措施（具體而言，即是補償）之可能性。

法庭也駁回了這項申訴，並認為若要對重要的棲息地和野生動物所造成的影響作出緩解，所採取的一般政策，按其優先次序應為：力求避免、將影響程度減至最低、及給予補償。在本案中，該份「環評報告」已經確認和建議了一系列在第三跑道系統興建期間的工地緩解措施，其目的就是力求避免及/或緩減第三跑道系統對生態環境所造成的不利影響。此外，在第三跑道系統的興建期間，雖然確曾考慮工地範圍以外的補償措施，但基於實際情況不可行而告放棄，但無論是該「技術備忘錄」還是「研究概要」，都沒有規定該「環評報告」須具體提交「考慮」或「訂明」在第三跑道系統的興建期間，必須採取工地範圍以外的補償措施。

實務要點

周家明法官在其書面判詞的最後結論中，就應當如何草擬「第86號表格」作出了一項重要提醒。他提述終審法院常任法官列顯倫在Lau Kong Yong v Director of Immigration (1999) 2 HKCFAR 300一案中的一項陳述，就是「一份妥為擬備的「第86號表格」，需要清晰和簡潔地按段落排序的方式，述明提出司法覆核的各項理由。」最後，周家明法官警告稱，對於該等未能符合這些基本要求的「第86號表格」，法庭將會採取強制遵從的措施。

法律執業者務須留意這項善意提醒。
Memorandum of a Transaction Foretold

By Xin Fang, Associate

Mayer Brown JSM
In an acquisition or a joint venture transaction, the first substantive document on which the parties sign their name is the memorandum of understanding (the “MOU”). To a large extent, the MOU foretells the fate of the transaction.

The MOU (also known as heads of terms, letter of intent and term sheet) is a document that outlines the parties’ initial understanding of the terms of the transaction. It usually comprises a set of binding and non-binding provisions. Each set plays a different role. The binding provisions govern the mechanical processes while the non-binding provisions lay out the key commercial terms. The non-binding commercial provisions are the focus of this article.

The fate of the transaction is written in the non-binding provisions, but it is common for commercial parties to rush through them in order to commence due diligence and serious drafting. This article seeks to set out a systematic approach for determining the minimal commercial terms that an MOU should contain to ensure that there is a transaction within reach.

**Binding Procedural Provisions**

The binding provisions govern the process that leads to the execution of the definitive agreements. They define the parameters of the parties’ conduct and set out their obligations during the due diligence and negotiation stages. There is a fairly standard set of binding procedural provisions, which typically includes:

- an exclusivity provision (which is sometimes coupled with a deposit/earnest money provision) that is usually a precondition to the parties’ further investment of resources in the transaction;
- a confidentiality provision that facilitates the exchange of sensitive business information;
- a cost provision that typically specifies that each party bears its own costs; and
- mechanical provisions such as the governing law and dispute resolution provisions.

Since the procedural provisions set out the ground rules of the pre-execution phase, the parties usually agree that they should be binding.

**Non-Binding Commercial Provisions**

The non-binding provisions lay out the substance of the deal. They are necessarily non-binding because the parties need to retain flexibility pending due diligence, financial modelling and further negotiations. Unlike the binding procedural provisions, there is no standard set of non-binding commercial provisions. They can range from the very vague to the very detailed, from being a little more than a formal way of saying “let’s make some money together” to being almost a full blown definitive agreement. The amount of commercial detail speaks volumes about how smoothly (or otherwise) the transaction will be.

**How much commercial detail?**

How much commercial detail should an MOU contain? Sometimes a purchaser may, for strategic reasons, favour a bare-bone MOU. This may occur where there are multiple bidders. The top priority for the bidders would be to secure an exclusivity arrangement with the seller as soon as possible, rather than to negotiate the commercial terms.

Putting strategic reasons aside, the more key commercial issues addressed in an MOU the better. Some parties prefer to leave the hard issues to the drafting stage, because they wish to commence the transaction on a friendly note and they believe that the sunk cost would be so great at the later stage that the parties would have to compromise.

This is a bad idea. If a hard issue is a deal breaker, saving it until last will not guarantee a solution. The parties may end up with a collapsed deal and a huge bill. Even if the issue is resolved in the end, this is not an efficient way to run a transaction. Moreover, in the case of a joint venture, the grilling negotiations may start the collaboration on the wrong foot.

So what are the key commercial issues that should be included in an MOU? Commercial issues can be categorised by their level of importance (ie, their potential to kill transactions) into (1) top priority issues; (2) high priority issues; and (3) low priority issues. An MOU should address all the known “top priority issues” and “high priority issues”.

**Top Priority Issues**

“Top priority issues” are the issues that go to the root of a transaction. Without agreement on these issues, there is simply no deal.

Although the focus and concerns of the parties to each transaction differ, in the context of an acquisition, the top priority issues are usually those relating to the target and the price. Questions as to whether the target would include the seller’s entire business or only part of it, the indicative price, whether the consideration would be satisfied by cash or a combination of cash and non-cash should be agreed.

Parties should also watch out for fundamental issues that are deal-specific. For example, in the context of a joint venture, if one party’s business imperative is to constitute the joint venture company as both parties’ sole platform for operating a certain line of business, this should be raised upfront and agreed in the MOU. Given the importance of this issue, the parties should also go into more detail of how this would work, such as:

- Would each party transfer its current business to the joint venture company?
- How would the parties ensure that
future opportunities are referred to the joint venture?

• What level of approval is required for the joint venture company to take up the opportunity?
• If the joint venture company does not take up the opportunity, can one party pursue the opportunity either alone or with third parties?

The precise wording and mechanisms can be left to the drafting stage, but the parties should lay out the principles at the MOU stage.

**High Priority Issues**

“High priority issues” are potential deal breakers and matters that may have a significant impact on the timeline or structure of the deal. At the MOU stage, it is not necessary to settle all of these issues in detail. The aim should be to agree on the principles for addressing the deal breakers and to signpost the matters which may materially affect the transaction.

Warranty provisions are just one example of potential deal breakers. For instance, PRC sellers are, generally speaking, accustomed to a less extensive set of warranties than what is customary in Europe and the United States. Hence, there might be a discrepancy between the extent of warranties that a PRC seller is willing to provide and that which a European or American purchaser requires. It is obviously premature to set out the warranties in the MOU, but the parties should agree on the principles (i.e., whether “mere title warranties” or “a full set of title and business warranties” would be included in the transaction document).

Non-compete undertakings are another example of potential deal breakers. At a minimum, the parties should agree on whether restrictive covenants are required. They should also try to agree on the scope of the restricted activities, territorial reach and duration of the restrictions.

As mentioned, “high priority issues” also include matters that may significantly impact the timeline and deal structure. The purpose of including them in the MOU is not to find an immediate solution (which may not be available), but to identify hurdles, manage expectations and plan the next move. Time-consuming action items identified could also be taken care of at an early stage.

Take conditions precedent for instance. If the parties have flagged out “merger clearance” as one of the conditions precedent to completion, once the MOU is signed, the parties could kick off the legal work stream to conduct a more thorough analysis and prepare the filing documents. If governmental or regulatory approvals are conditions precedent, the parties may wish to commence discussions with the government or regulators to explore, early on, whether such approvals would be forthcoming.

**Low Priority Issues**

“Low priority issues” are commercial issues that are unlikely to result in protracted negotiations. They are usually items that supplement the key commercial positions that have already been addressed as “top priority issues” or “high priority issues”. As such, the room for argument is limited. Examples would include the cap amount and de minimis threshold for warranty claims, pre-emption rights, drag-along rights, tag-along rights, the list of reserved matters. Unless a quick decision can be made, discussions on “low priority issues” could be left out of the MOU for negotiation at a later stage.

**Conclusion**

The non-binding commercial provisions in an MOU contain early signs of whether the road to completion is a smooth highway, a rough uphill track or a cul-de-sac. If circumstances permit, by advising clients on the “top priority issues” and “high priority issues” that should be addressed at the MOU stage, lawyers can help parties to ensure that there is a true meeting of minds and a transaction within reach.
意向書：被忽略的預言

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在併購和合資項目中，交易各方簽署的第一份實質性文件就是「意向書」。在很大程度上，它的內容和質量預示了交易的命運。

意向書是一份概括性文件，旨在記錄各方對交易條件的初步共識。它通常由兩類條款組成。第一類條款屬於程序性、規定性的條款，具有法律約束力。第二類條款屬於商業條款，一般不具法律約束力。這些商業條款正是本文的焦點。

交易是否順利、能否走到「成交」這一步，很大程度取決於這些不具約束力的商業條款。然而，交易各方為了盡快進入盡責調查和草擬正式交易文件的階段，往往草率地處理意向書裡的商業條款。結果反而欲速不達，各方在投入了很多人力資源後才發現他們在許多重大商業問題上存在分歧，必須減慢項目進度，甚至擱置交易。

若要避免這個結果，就必須確保各方在簽訂意向書時，已經在交易的主要方面達成共識，並將此記錄在意向書內。那麼，意向書應該包括哪些主要的商業條款？本文通過對商業條款的分析和分類，提供一個系統的解答。

具有約束力的程序性條款
一般來說，從簽訂意向書到簽訂正式交易文件，中間相隔至少一兩個月。在這段時間裡，各方會展開盡責調查、商業談判、草擬正式交易文件等一系列工作。交易各方在這個過程中的行為和義務，由意向書裡的程序性條款管轄。這些年來，業內已經發展出一套相當標準的程序性條款，其中包括：
• 排他性條款，用於限制交易一方或各方在談判期間與其他買家或投資者接觸。這個條款表達了各方合作的誠意，是各方進一步投放談判資源的前提。
• 保密條款，其作用在於通過維護信息披露方的權益，鼓勵各方交換敏感商業信息，以推進盡責調查和項目評估的工作。
• 管轄法律和爭議解決條款。

程序性條款定下簽署正式交易文件前的「遊戲規則」，因此交易各方一般會在意向書中約定，該等條款具有法律約束力。

不具有約束力的商業條款
商業條款是交易的骨架，可在絕大數情況下，這些商業條款都不具法律約束力。這是因為在簽訂意向書時，各方尚未完成盡責調查，還需要對項目的可行性和風險程度進行更深入的分析，並與對方討論更具體的操作性問題。由於這些因素會影響各方的決策，所以為了給自己留下迴轉餘地，交易各方一般都會在意向書中明文規定，其內的商業條款不具法律效力。

與程序性條款不同的是，業內並沒有發展出一套相對標準的商業條款。意向書中的商業條款可以僅僅是一套表達合作
誠意的客套話，也可以是一套猶如正式交易文件般全面詳細的條款。大部分意向書裡的商業條款介於這兩個極端之間。商業細節的多寡往往跟交易過程的順利與否直接掛鉤。

應該包括多少商業細節？

一份意向書應該包括多少商業細節？出於策略原因，買家有時偏向於一份簡約的意向書。比如說，當市場上有幾個買家對同一個目標公司感興趣，為了排除其他競爭者，每個買方都希望儘快跟賣方簽訂意向書。在這種場合，買方的主要目的是通過意向書內的排他性條款限制賣方與其他買家接觸，而不是定下交易的具體商業條款。

在沒有戰略原因的前提下，意向書中的主要商業條款越多越好。有些交易方喜歡把最難的議題留到最後，一方面，這是因為他們想在一個輕鬆友好的環境下展開談判，另一方面，他們打算到了後期，隨著各方的沉沒成本越來越多，各方會更有動力解決分歧、做出妥協。

這個做法的風險性很高。把一個致命的商業議題留到最後，不代表一定會有解決方案。如果這是在一個各方都不能讓步的商業點，那各方只能在投入了大量金錢和時間後，才會揚長避短。如果事情發生在一個合資項目中，就算一方最終妥協了，他可能會覺得自己在談判過程中被對方“挾持”了。彼此之間的嫌隙肯定不利於他們未來的合作關係。

那麼意向書應該包括哪些主要的商業點？我們可以根據其重要性，把商業議題分為三類，即「關鍵議題」、「重要議題」和「次要議題」。

關鍵議題

「關鍵議題」指的是交易成立的根本條件。若各方在這些議題上存在分歧，那就沒有繼續協商的必要。如果這是交易方都不能讓步的商業點，那各方只能在投入了大量金錢和時間後，才會揚長避短。

在併購交易中，買賣雙方經常為賣方對目標資產提供的陳述與保證爭吵不休。買方要求賣方提供的陳述與保證，賣方未必願意給。例如，比起中國內地的賣方，歐美地區的賣方一般會為目標資產提供更廣泛詳盡的陳述與保證。因此，歐美買方經常不滿意中國內地賣方提供的陳述與保證。若要在意向書的階段列出賣方的每個陳述與保證，顯然為時過早。但是，雙方應該在這個階段約定原則性問題，即賣方是僅僅提供產權方面的陳述與保證，還是提供全套的產權和商業經營方面的陳述與保證？

另一個比較大的爭議點是競業禁止。由於競業禁止會直接影響一方未來的業務，所以雙方在談判時容易陷入膠著狀態。在準備意向書的階段，各方至少應該商定是否需要競業禁止，最好他們也能約定競業禁止所限制的活動、區域和期限。

重要的議題

「重要議題」指的是有可能阻礙交易成功的爭議點，或對交易的結構或時間表造成重大影響的問題。在意向書裡提及「重要議題」主要是為了界定這些議題的處理原則，和規劃後續的跟進工作。例如，在併購交易中，買賣雙方經常為賣方對目標資產提供的陳述與保證爭吵不休。買方要求賣方提供的陳述與保證，賣方未必願意給。例如，比起中國內地的賣方，歐美地區的賣方一般會為目標資產提供更廣泛詳盡的陳述與保證。因此，歐美買方經常不滿意中國內地賣方提供的陳述與保證。

次要議題

「次要議題」指的是那些相對容易解決的問題。這些問題通常屬於輔助性事項，若各方在「關鍵議題」和「重要議題」上已商定的原則，對交易機制進行補充和完善，因此爭議性不大。「次要議題」包括陳述與保證的有效期、賠償的封頂限制、優先購買權、随售權等。除非各方可以在「次要議題」上迅速達到共識，否則可以将「次要議題」押後至草擬正式交易文件時再處理。

結論

意向書中的商業條款是一個預兆，預示通往成交的路是一個平坦的公路，還是崎嶇的山路，或者死胡同。在草擬意向書時，律師應當協助客戶梳理、考慮和商定「關鍵議題」及「重要議題」，這樣才能確保交易各方在主要方面取得共識，做好進入下一個階段的準備。
Hong Kong’s Amended Winding-Up Legislation Enhances Protection for Creditors

By Cheung Kwun Yee, Partner
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Baker McKenzie
Baker McKenzie
The Companies (Winding Up and Miscellaneous Provisions) (Amendment) Ordinance (Cap. 32) (the “Amendment Ordinance”) recently came into operation on 13 February 2017. The Amendment Ordinance brings Hong Kong’s winding-up procedures and insolvency law in line with international developments. As identified in the reform exercise, the underlying objectives are to have a more efficient administration of the winding-up process and enhanced creditor protection.

**New and Improved Avoidance Provisions**

An important aspect of the reform is the increased protection offered to creditors against asset depletion in an insolvent company. This includes a new provision on transactions at an undervalue (which was previously only applicable to individuals) and a self-contained provision on unfair preferences applicable to companies. Notably, there is greater clarity to the definition of associates and connected persons. The floating charge provision has also been improved to distinguish those charges created in favour of persons connected with the insolvent company and those created in favour of persons not so connected.

**Transactions at an Undervalue and Unfair Preferences**

The previous legislation did not include any avoidance provision for transactions at an undervalue for companies (although a provision existed in respect of individuals under the Bankruptcy Ordinance (Cap. 6)). A transaction at an undervalue takes place when the company makes a gift or enters into a transaction on terms providing for no consideration to the company, or enters into a transaction for a consideration the value of which is significantly less than the value of the consideration provided by the company. The provision empowers the court to make orders (for example, to require the property transferred to be vested in the company) in relation to a company which has entered into a transaction at an undervalue before its winding-up.

Furthermore, under the previous regime, the provisions on unfair preferences in relation to companies were incorporated by reference to the Bankruptcy Ordinance which concerns individuals only. There is now a self-contained provision on unfair preference applicable to companies, largely mirroring that of the Bankruptcy Ordinance.

Both transactions at an undervalue and unfair preferences can only arise during the “relevant time”:

- the relevant time for a transaction at an undervalue to be caught is any time within the period of five years ending with the commencement of the winding-up;
- the relevant time in relation to unfair preferences given to a person who is connected with the company is at a time in the period of two years ending with the commencement of the winding up. In other cases of unfair preference, the relevant time is at a time in the period of six months ending with the commencement of winding up.

In addition to the above, the company must have been unable to pay its debts at the time of the transaction or unfair preference, or became unable to pay its debts as a result of the transaction or unfair preference.

Separately, the previous legislation also had anomalies in the definition of “associate” under the Bankruptcy Ordinance when applied in the context of companies. The definition of “associate” has now been specifically tailored for companies and a concept of “person connected with the company” has been added. A “person connected with the company” means:

- an associate of the company; or
- an associate of the company’s director or shadow director.

The definition of “associate” includes:

- in respect of individuals (e.g., directors), a person is an associate of another
person if that person is a spouse or cohabitant of that other person;  

• in respect of companies, a company is an associate of another company if the same person has control of both companies; and  

• a person can be considered as having control of a company if he is entitled to exercise, or control the exercise of, more than 30 percent of the voting power at any general meeting of the company or of another company which has control of it.

**Floating Charges**

The previous regime provided that floating charges created on an undertaking or property of a company within 12 months of commencement of its winding up were invalid, unless it was proved that the company was solvent immediately after the charge was created. This was designed to prevent companies from creating, at a time when liquidation was imminent, floating charges which give no new value to the company and which resulted in converting unsecured creditors into secured creditors in preference to other unsecured creditors. However, the provision did not distinguish between floating charges created in favour of persons connected with the insolvent company (eg, a director) and floating charges created in favour of persons not so connected. This has now been addressed.

The Amended Ordinance has increased the clawback period for floating charges created in favour of a person who is connected with the company to a period of two years ending with the commencement of winding up. For floating charges created in favour of persons who are not connected with the company, the relevant time remains as 12 months. The company must also have been unable to pay its debts at the time or became unable to pay its debts as a result of the transaction creating the charge. As with the previous regime, however, if new money was paid to the company in consideration for the charge at the same time or after the charge was created, the charge will only be invalidated to the amount not covered by the new money. The Amended Ordinance further provides that the consideration for the charge can either be new money paid at the direction of the company, or property or services supplied to the company.

**New Liability of Past Shareholders and Directors for Share Redemption or Buy-Back Out of Capital**

Under the Amendment Ordinance, past directors and members can be potentially liable for improperly returning share capital to members prior to the insolvent winding-up of a company. This can occur where a company has redeemed or bought back its own shares by payment out of its capital and the company became insolvent and was wound up within one year of the redemption or buy-back. Past shareholders and the directors (who made the relevant solvency statement for the payment out of capital without having reasonable grounds for the opinion expressed in the statement) will be jointly and severally liable to contribute to the assets of the company an amount not exceeding the payment in respect of the shares.

This is a new provision that protects the company against any divestment of capital prior to its insolvent liquidation and members getting a preference in circumstances where they ought not to do so. To manage any risk of exposure, shareholders and directors should ensure that they are properly acquainted with the company’s financial state and that the company has sufficient assets prior to any redemption or buy-back of capital.

**Enhanced Creditor Protection in a Creditors’ Voluntary Winding-Up**

Under the previous regime, the first creditors’ meeting had to be held on the same or the following day of the members’ meeting for commencing a creditors’ voluntary winding-up case. There was no minimum notice period for calling the first creditors’ meeting which meant that creditors were often not given sufficient time to prepare for the first meeting.

The Amendment Ordinance requires the first creditors’ meeting in a creditors voluntary winding-up to be held on a day not later than 14 days after the members’ meeting. There will then be a minimum notice period of seven days for calling the first creditors’ meeting. In addition to improving the efficiency of a creditors’ voluntary winding-up, this will protect the company’s assets and provide creditors with sufficient time for considering their position and making the appropriate decisions.

Meanwhile, additional safeguards are in place to limit the powers of the liquidator appointed by the members during the period before the holding of the first creditors’ meeting. The powers of the directors will also be restricted (before the appointment of a liquidator) so that they cease to have full management powers and can hand over the administration of the company’s affairs to a duly appointed liquidator as soon as possible.

**New Provisions on Provisional Liquidators and Liquidators**

New provisions have also been added in relation to a provisional liquidator or liquidator’s appointment, disqualification, disclosure and liability. These improve the transparency and integrity of the winding-up process, and include:

• The list of persons disqualified from
acting as a provisional liquidator or liquidator has been expanded to include certain persons with a conflict of interest and those subject to a disqualification order.

- A provisional liquidator or liquidator (excluding those appointed for a members’ voluntary winding-up) must file a disclosure statement disclosing specified relationships (eg, the creditor, debtor or auditor, etc. of the company).

- The prohibition on touting has been expanded to any person who offers an inducement to anyone to secure or prevent an appointment or nomination as a provisional liquidator or liquidator.

- An order for release of a liquidator will not absolve the liquidator from liabilities arising from his misfeasance or breach of duty or trust.

**Practical Tips for Companies and Creditors**

Businesses need to be continually vigilant and seek advice when negotiating transactions, especially in volatile times, to ensure that transactions are not eventually found to be at an undervalue. This may require conducting professional valuations of the assets.

Similarly, any creditors receiving payments or security from companies that may be under financial distress should be wary of the risk of the payment or security being an unfair preference. Advice should be sought early on as to the surrounding circumstances of the payment or granting of the security (eg, reasons for providing the credit or security and how demands were made). This can have a substantial impact on whether a court finds that there has been an unfair preference.

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**香港的清盤法例修訂加強對債權人的保障**

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《公司(清盤及雜項條文)(修訂)條例》(第32章)（下稱《修訂條例》）已於近期－即自2017年2月13日起－開始實施，這有助香港的公司清盤程序和無償債能力法規與國際的發展接軌。正如在相關的改革陳述中所指出的，它的主要目的是為了使清盤程序變得精簡，並加強對債權人的保障。

**遜值交易與不公平優惠**

以往並無任何法例訂立涉及遜值交易並適用於公司的防止條文(儘管《破產條例》(第6章)中訂立了適用於個人的條文)。當公司作出饋贈，或訂立一項交易，而該交易的條款訂明，該公司不收取任何代價；又或是，當公司訂立一項交易，而其代價的價值，是顯著低於該公司所提供的代價之價值，此等情況將會導致遜值交易的產生。上述條文賦予法院權力，可以對一間在清盤前訂立了遜值交易的公司作出頒令(例如，下令將已經轉移的財產歸予該公司)。
此外，在以往的架構下，任何涉及公司的不公平優惠條文，都是藉著提及該項只適用於個人的《破產條例》而被納入；但一項獨立的、適用於公司，並主要反映《破產條例》中之規定的不公平優惠條文現時已經訂立。

遜值交易與不公平優惠只可以在「有關時間」內作出：
• 一項遜值交易的有關時間，是指於該公司開始清盤當日終結的一個為期 5 年的期間內的任何一個時間；
• 向與該公司有關連的人提供不公平優惠，其有關時間是指於該公司開始清算當日終結的一個為期 2 年的期間內的某一個時間；倘若屬於其他不公平優惠的情況，則其有關時間是指於該公司開始清算當日終結的一個為期 6個月的期間內的某一個時間。

除上述規定外，在進行有關交易或給予不公平優惠之時，該公司必須已是沒有能力支付其債務，又或是因著該交易或所給予的不公平優惠，而成為沒有能力支付其債務。

另一方面，在以往的法例中，當要將《破產條例》中關於「有聯繫人士」的定義適用於公司的情況時，便往往會出現有欠恰當之處。現時關於「有聯繫人士」的定義，是專門為公司而制訂，並同時增加了一個「與該公司有關連的人」的新概念，而「與該公司有關連的人」是指：
• 該公司的有聯繫人士；或
• 该公司的董事或幕後董事的有聯繫人士。

「有聯繫人士」的定義包括：
• 就個人而言（例如董事），某人如為另一人的配偶或同居人士，該人即為該另一人的有聯繫人士；
• 就公司而言，倘若兩間公司受同一人控制，則其中一間公司即屬另一間公司的有聯繫人士；及
• 任何人倘若在一間公司的股東大會上，或在控制該公司的另一間公司的股東大會上，有權行使多於百分之三十的表決權，或有權控制多於百分之三十的表決權的行使，則該公司可被視為受該人所控制。

浮動押記
以往的架構規定，一間公司在開始清盤後的 12 個月內，就其業務或財產設立浮動押記，那麼，除非有證據可以證明，在緊接該押記設立之後，該公司仍具有償債能力，否則該項押記即屬無效。此舉旨在避免一間公司於臨近清盤之時，設立不能為其自身帶來任何新價值的浮動押記，並且會導致一些無抵押債權人成為了有抵押債權人，從而得以比其他無抵押債權人享有更優先的地位。然而，對於旨在惠及與無償債能力的公司有關連的人而設立的浮動押記，以及對於旨在惠及該些沒有如此相關的人而設立的浮動押記，有關條文並沒有對此二者作出任何區分。

對於旨在惠及與公司有關連的人而設立的浮動押記，《修訂條例》已經將相關的回溯期限延長至兩年（並於該公司開始清盤當日終結）。對於旨在惠及與公司有關連的人而設立的浮動押記，有關時間仍然維持在12個月。此外，該公司在當時也必須沒有能力支付其債務，又或是因著設立該項押記的交易，而成為沒有能力支付其債務。然而，就像以往的架構一樣，倘若該公司在同一時間，又或是在有關押記設立之後獲得支付新的款項，以作為設立該項押記的代價，則該押記的無效程度，將須依據該新款項所涵蓋的範圍以外的款額來確定。《修訂條例》亦進一步規定，為該押記而支付的代價，可以是按該公司所作出的指示而支付的新款項，又或是供應該公司的財產或服務。

前股東及董事以公司的資本贖回或回購股份的新法律責任
在《修訂條例》下，倘若一間公司在其無償債能力清盤程序開始之前，不適當將股本退回給其股東，該公司的前董事及股東可能將須為此承擔法律責任。此等情況的發生，可能是由於：該公司以其自身的資本贖回或回購其本身的股份，而在贖回或回購該等股份後的一年內，該公司成為無償債能力並最終被清盤。該公司的前股東及董事（他們雖已有關的資本贖付作價付能力陳述，但未能就當中所表達的意見提供合理理由作為依據）須就分擔提供該公司的資本，承擔共同及個別的法律責任（其範圍不超過該等股份而支付的金額）。

這是一項新訂立的條文，旨在保護公司的資本，使其免於在無償債能力清盤程序展開之前被剝離，以及避免股東在不應當取得相關優惠的情況下而取得該等優惠。為了管控任何可能出現的風險，股東及董事應當確保其適當地了解公司的財政狀況，並確保公司在贖回或回購其資本以前已擁有足夠的資產。

在債權人自動清盤程序中加強對債權人的保障
在以往的架構下，首次債權人會議的舉行時間，必須在為展開債權人自動清盤程序而召開的股東會議的同一天，又或是在該股東會議召開後的第二天。然而，法例並沒有規定召開首次債權人會議所須給予的最短通知期限。這意味著，債權人經常欠缺充足時間來為首次債權人會議作準備。

《修訂條例》規定，關於債權人自動清盤的首次債權人會議，必須在相關股東會議召開後的 14 日內舉行。而之後若要召開首次債權人會議，亦必須給予至少
7天的通知期限。这一规定，除了有助于提高债权人的自动清盘的效率，也可以对公司资产作出保护，并同时允许债权人在获得充分时间考虑自身情况和做出适当决定。

与此同时，该法例也建立了一些额外保障措施，以防在首次债权人会议举行之前，对债权人而对该公司所享有的权力作出限制。另一方面，该法例也允许董事在清盘人被委任之前，使其不再全面拥有公司的管理权，以便在适当情况下，将公司的管理权移交给被任命的清盘人。

### 對臨時清盤人和清盤人的新規定

至於其他新訂立的條文，則是與臨時清盤人或清盤人的委任、資格取消、披露及法律責任等有關，而這將有助提升清盤程序的透明度和誠信，當中並包括：

- 把無資格獲委任為臨時清盤人或清盤人的人士的類別擴大，以包含該些存在利益衝突，及受制於取消資格令的人士。
- 臨時清盤人或清盤人(但在股東的自動清盤程序中獲委任的除外)必須提交披露陳述書，以披露其與對方的特定關係(例如：是否屬於公司的債權人、債務人或核數師等)。
- 關於禁止招徠方面的規定，已經擴展至任何人向其他人提供誘因，而其出發點，是為了確保或阻止某人獲委任或提名為公司的臨時清盤人或清盤人等情況。
- 解除清盤人責任的命令，不會令致清盤人因其失當行為、失職行為、或違反信託行為而須承擔的法律責任獲得免除。

### 對公司和債權人的提醒

企業需要不斷地保持警覺，並應當在有關的交易進行磋商之際，向專業人士尋求意見(特別是在情況多變的環境下)，以確保該等交易最終不會被法庭裁定為屬於遜值交易，而要達致這一目的，也許需要對相關資產進行專業估值。

同樣地，如果有處於財政困境的公司向債權人作出支付或提供抵押品，債權人便必須留意該等支付或抵押品的提供，是否蓄意給予不公平優惠的風險，並應盡快採取措施防止或阻止該等支付或抵押品提供之周遭環境(例如，提供該等信用或抵押品的因由，以及付款的要求是如此提出)，向專業人士尋求意見。此舉對於法庭是否會裁定存在不公平優惠情況，將會產生關鍵性的影響。
ANTI-MONEY LAUNDERING

Lawyers and Designated Non-Financial Businesses and Professions

As reported in the February 2017 edition of the Hong Kong Lawyer ("DNFPBs"), the Financial Services and the Treasury Bureau ("FSTB") has recently undertaken a consultation, proposing to extend client due diligence ("CDD") and record-keeping requirements contained in the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance (Cap. 615) (the "Ordinance") to certain professions; including, law firms and registered foreign law firms in Hong Kong.

Since the consultation was launched it is has become clearer that the law profession's Practice Direction P ("AML") is the most comprehensive guidance given to any profession in Hong Kong. Indeed, Practice Direction P was recently revised and updated (Law Society Circular 17/167(SD), 13 March 2017, "Amendments to Practice Direction P"). Practice Direction P is not just a set of guidelines; it is a standard for good practice*. Some of its provisions are mandatory (for example, paras. 18–28, including Client identification, verification and due diligence). It is also used as a source of reference by some other professions in Hong Kong.

A question posed, in these circumstances, is why has the solicitors' profession in Hong Kong been put in the same category as (for example) estate agents or accountants?

Of the Financial Action Task Force Recommendations (on international standards for combating money laundering and terrorist financing), Recommendation 22 relates to DNFBPs' CDD. The underlying principle as regards financial institutions is that CDD and record-keeping requirements should be set out in law (which includes legislation and relevant binding judicial decisions). The means by which it is proposed to extend certain CDD and record-keeping requirements to (among others) lawyers in Hong Kong is for the Ordinance to be amended to contain a definition of DNFBPs (including, solicitors and foreign lawyers). However, Practice Direction P was promulgated pursuant to the statutory powers of the Law Society of Hong Kong, has been tested and approved in court and is enforceable.

If the consultation proposals purport to be no more than a codification of current professional practice requirements (insofar as law firms in Hong Kong are concerned), a further question remains – why does FSTB consider there is a "regulatory gap" with respect to lawyers? Particularly, given that it is widely acknowledged that Practice Direction P is fit for purpose and the standard of AML "reporting" by law firms to the relevant authorities is pretty good.

Furthermore, consistent with the consultation proposals being a codification exercise, they do not purport to increase the regulatory powers of the Law Society of Hong Kong. Therefore, what appears to be driving the proposals may be something else in (for example) "FATF world", as Hong Kong approaches her fourth on-site mutual evaluation in the last quarter of 2018.

- Jason Carmichael, Partner, Smyth & Co in association with RPC

* April, 2015 – Industry Insights: “Internal Controls – No Passing the Buck or Turning a Blind-Eye”.
財務行動特別組織（關於打擊洗錢和恐怖分子資金籌集的國際標準）的建議之中，第22項與指定非金融企業及行業的客戶盡職審查有關。關於金融機構的基本原則是，客戶盡職審查和備存紀錄規定應在法律訂明（包括法例和相關並具約束力的司法決定）。有建議把某些客戶盡職審查和備存紀錄規定擴大至（其中包括）香港律師，方法是修訂《條例》包含的非金融企業及行業（包括律師和外國律師）的定義。

然而，Practice Direction P是依據香港律師會法定權力制定，已經接受過測試，在法庭獲認可，並可予強制執行的。

即使（就香港律師行而言）諮詢建議的本意，只不過是把現行專業實務規定編纂成為文法則，仍然會有人問，為甚麼財庫局認為現時存在與律師有關的「監管上的不足」（regulatory gap）？特別是Practice Direction P是廣獲公認的合用指示，也是律師行向有關當局「舉報」洗黑錢的相當不錯的標準，為甚麼還有不足呢？

此外，他們貫徹諮詢建議編纂成文法則的本意，沒有表示要增加香港律師會法定權力。因此，正值2018年最尾季度香港接受第四輪現場相互評估之時，看來推動建議可能別有原委，譬如說，「世界性的財務行動特別組織」的某些事情所致。

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**ARBITRATION**

**Court Upholds Enforcement of ICC Award, Reinforcing Its Pro-Enforcement Attitude**

In U v A (unrep., HCCT 34/2016, 23 February 2017 per Mimmie Chan J), the Court of First Instance dismissed an application to set aside an order granting leave to enforce an ICC arbitral award, in the process dismissing arguments that (i) the Respondents (“A”) in the arbitration had been unable to prevent their case; (ii) the award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration; and (iii) it would be contrary to public policy to enforce the award.

The case, in which the authors acted for the Claimant ("U") in the arbitration and before the Court, illustrates the much vaunted pro-enforcement approach of the Hong Kong courts. In line with this approach, the exhaustive grounds set out in s. 86 of the Arbitration Ordinance (Cap. 609) by which the Court may refuse enforcement are to be narrowly construed, enforcement should be “almost a matter of administrative procedure” and the Court should be “as mechanistic as possible” (see KB v S, reported previously in Hong Kong Lawyer, November 2015).

**Background**

The parties had entered into an agreement (the “PAC”) for inter alia U’s purchase of majority shareholdings in a PRC joint venture company (the “JV”), the transfer of certain assets from the 2nd Respondent to the JV, and effecting changes to the JV’s board composition. Disputes arose in respect of the latter two issues. U commenced ICC arbitral proceedings (seated in Hong Kong) as a result and, having prevailed, U was awarded specific performance, damages and costs.

In September 2016, U obtained an Order granting it leave to enforce the award; in October, A applied to set aside the Order on the grounds stated above.

**Decision and Key Take-Aways**

Mimmie Chan J emphasised inter alia as follows in respect of the grounds relied upon by A:

- The conduct complained of must be sufficiently serious, such that due process is undermined or the structural integrity of the award is in doubt, before a court could find that a party was unable to present his case. So long as the parties were able to make representations in respect of any decision that might affect the arbitration, whether procedurally or substantively, they will have been afforded due process and given a fair hearing. On such basis, Her Ladyship rejected A’s contention that they were unable to present their case because the arbitrator had refused to admit into evidence a PRC court judgment which was purportedly relevant to the validity of the PAC. She held that the arbitrator was entitled to impose timetables for the filing of evidence in the proper exercise of case management and procedural discretion, and in any event, A had been given fair and full opportunity to address the arbitrator on the validity of the PAC.

The phrase “a difference not contemplated by or not falling within the terms of the submission to arbitration” should only catch issues clearly unrelated to or not reasonably required for the determination of the arbitration. Her Ladyship therefore rejected A’s contention that the issue of whether U is entitled to appoint the chairman of the JV is not within the scope of the arbitration. She held that, on the whole, A had been given fair and ample notice of U’s claim that it is entitled to appoint the chairman, and full opportunity to prepare and answer such claim.

The phrase “contrary to public policy” means contrary to the fundamental conceptions of morality and justice of Hong Kong, and must not be a
catchall provision to be used whenever convenient. Her Ladyship rejected A’s contention that it is contrary to public policy to enforce the award in Hong Kong as the PAC is purportedly invalid for lack of registration and approval by PRC authorities. She held that A was essentially arguing that the arbitrator had made an error of law in holding that the PAC is valid, but it is not for the Court to review the correctness of the arbitrator’s decision.

The decision demonstrates once again the Hong Kong courts’ reluctance, absent compelling grounds, to set aside arbitral awards. Parties should give careful thought before bringing such applications, particularly given the courts’ practice of imposing indemnity costs against an unsuccessful applicant.

- Matthew Townsend, Legal Manager, and Zi Wei Wong, Associate, Peter Yuen & Associates in Association with Fangda Partners

### Civil Procedure

**Interest on Judgment Debts: Keep It Simple**

Section 49 ("Interest on judgments") of the High Court Ordinance (Cap. 4)

"(1) Judgment debts shall carry simple interest –

(a) at such rate as the Court of First Instance may order; or

(b) in the absence of such order, at such rate as may be determined from time to time by the Chief Justice by order..."

In some difficult trading conditions and an active disputes resolution market, at present, it is (perhaps) no surprise to
see parties become involved in disputes concerning entitlement to pre- and post-judgment interest, following judgments in certain high value claims.

Some of these developments are summarised in Industry Insights for August (“Pre-judgment Interest Rate”) and November 2016 (“Post-judgment Interest”).

In the more recent case of Lo Yuk Sui v Fubon Bank (Hong Kong) Ltd [2016] HKEC 2909, HCA 409/2005, besides claims for enhanced costs and pre-judgment interest pursuant to the regime for sanctioned offers, the successful plaintiff also sought a higher rate of post-judgment interest than the 8 percent per annum as determined by order of the Chief Justice (which has not changed since 2009)*. Given that the defendant paid the judgment debt soon after judgment was handed down, the amount of the extra post-judgment interest claimed by the plaintiff does not appear to have been that significant; particularly, when compared with the plaintiff’s claim for pre-judgment interest. However, the court still recognised the practical importance of the issue generally – in particular, the express power of the court to order post-judgment interest at a different rate.

The court went out its way to clarify that this power (s. 49(1)(a) of the Ordinance) should not be exercised in the absence of “special circumstances” and that the convention is to award post-judgment interest at the rate set down by the Chief Justice from time to time. As the court notes, this is justified on the basis of need for consistency, need for certainty. Furthermore, the “normal” post-judgment interest rate should be justification enough for a judgment debtor who can pay to do so.

At the time of writing, it appears that the certain appeal points arising from the case are headed to the Court of Appeal (CACV 47/2017). In recent years, the Court of Appeal has shown a strong disposition for keeping things simple when it comes to determining issues relating to pre- and post-judgment interest rates.

In the absence of any contractual entitlement, the default rate for pre-judgment interest is prime rate (“best lending rate”) plus 1 percent; in order to compensate the plaintiff on the basis of having notionally had to borrow to fund a shortfall pending judgment. Absent special circumstances (which would appear to be exceptional), post-judgment interest is based on the rate as determined by the Chief Justice and does not look like it is going to change anytime soon.

- Ben Yates, Senior Associate, Smyth & Co in association with RPC


民事訴訟程序

判定債項的利息：簡單行事

《高等法院條例》(第4章)第49條(「判決的利息」)

(1)判定債項……須帶有單利——
(a)利率按原訟法庭所命令者計算；或
(b)如無該項命令時，利率則按終審法院首席法官不時藉命令所決定者計算……

隨着某些涉及高價值的申索案作出判決之後，法庭雖困難，但審慎的爭議解決市場之中，現在即使有當事人涉及關乎判決前利息和判決後利息權利的爭議，也(可能)不是甚麼出奇的事。

《業界透視》2016年8月(「判決前利率」)和8月(「判決後利息」)有就某些爭議的發展作過概述。

在更近期的Lo Yuk Sui v Fubon Bank (Hong Kong) Ltd [2016] HKEC 2909(HCA 409/2005)之中，勝訴的原告訴除申索增加的訟費和依據附帶條款和解提議規定計算判決前利息之外，亦要求判決後利息按相較終審法院首席法官藉命令決定的每年8%(自2009年以來沒有變動過)為高的利率計算*。

由於被告人在判決書頒布後不久就支付判決債項，衛訴人所申索的額外的判決後利息來並不怎麼高，特別是相對於原訟人所申索的判決前利息而言。然而，法庭於整體上確認該爭議實際的重要性——特別是法庭明確有權命令按不同利率計算判決後利息。

原訟法庭不厭其煩地闡明，這項權力(《條例》第49(1)(a)條)不應在沒有「特殊情况」的時候行使。傳統的做法是按終審法院首席法官不時訂定的利率計算判決的判決後利息。正如法庭提到，在需要連貫性，需要確定性的基礎上，這是合理有基礎的。此外，「正常的」判決後利息應該是一個合理的利率，足以令有能力支付判決債項的判決債務人支付判決債項。

我撰寫本時，若干源自案情的上訴論點似乎要被提到上訴法庭(CACV 47/2017)。近幾年，上訴法庭每當要就關乎判決前利率和判決後利率的問題作出決定時，都表現得極想簡單行事。

在沒有任何合約權利的情況下，判決前利息的預設利率是優惠利率加一厘；目的是要在原訴人理論上得借款湊足有待判決的不足之數的基礎上，補償原訴人。如果沒有特殊情況(看來會是一種例外的情況)，判決後利息是按終審法院首席法官所決定的利率計算，看來不會在短時間內改變。

- 叶子彬 資深律師， Smyth & Co與RPC聯營

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

Reining in IPO Share Price Volatility

On 20 January 2017, the SFC and the HKEX issued a joint statement regarding the price volatility of GEM stocks and a guideline to sponsors, underwriters and placing agents involved in the listing and placing of GEM stocks (the “Guideline”). This was in part a response to the volatile price movements of an increasing number of GEM stocks in recent years – some with first-day share price surges reaching 500 percent!

The Guideline serves as a stern reminder to GEM listing applicants to abide by the GEM Listing Rules. The Guideline especially focused on the importance of respecting the spirit of GEM Rule 11.23 – that there must be an open market in the securities for which listing is sought – which is to ensure there is sufficient liquidity of the shares in the market to protect minority shareholders.

According to GEM Rule 11.23(2)(b), the equity securities in the hands of the public should be held among at least 100 persons, but, as the Guideline points out, this is merely a guideline, and even if this minimum number has been met, it does not necessarily mean GEM Rule 11.23 has been satisfied. There were cases where the top 25 places took up more than 90 percent of the offering. This scenario is quite common on GEM; the conditions for an open market may not exist even if securities are held by more than 100 persons.

Soon after the Guideline was published, a few companies that were undergoing the listing process postponed their planned listings “due to enquiries made by regulators in relation to requirements under GEM Rule 11.23”. This may suggest that the Guideline is effective in curbing undesired behaviour from GEM applicants, but it is yet to be seen whether the SFC and the HKEX will take stronger actions to enforce the Listing Rules against already listed companies.

While the Guideline appears to be relevant only to GEM listings, the Guideline reiterates the general obligations of placing agents, applicable to both GEM and Main Board listings, to (i) conduct adequate “know your client” procedures under the Code of Conduct for Persons Licensed by or Registered with the SFC, (ii) have a robust marketing and placing strategy and allocation basis with a view to achieving an open market in the offered securities, including an adequate spread of shareholders, and (iii) ensure that the percentage of securities in public hands meets the relevant regulatory requirements. Counsel for underwriters in Main Board listings may want to follow this development and see whether the Guideline will have any repercussions on tightening the requirements of sponsors, underwriters and placing agents for Main Board listings as well.

- Danny Kan and Jasmine Wee, Linklaters

DATA PRIVACY

Data Protection: Lessons in Direct Marketing

On 26 January 2017, the Court of First Instance handed down a judgment on s. 35G of Personal Data (Privacy) Ordinance (Cap. 486) (“PDPO”) in HKSAR v Hong Kong Broadband Network Limited, HCMA 624/2015. The case involves a telecommunications service provider (the data user) (“A”) approaching its then customer (the data subject) by telephone to offer a discount.

The data user approached its then customer by telephone to offer an extended service at a discounted price. The Court of First Instance held that the data user had not obtained the customer’s consent to make the call, and it therefore had not complied with the requirements of PDPO s. 35G. The data user argued that it was not necessary to obtain consent because the customer had previously provided its information to the data user, but the Court rejected this argument.

The Court held that the data user had failed to comply with its obligations under PDPO s. 35G and issued an order requiring it to take steps to rectify its position. The data user was also ordered to pay costs and damages to the data subject.

The Court’s decision provides important guidance for businesses that wish to make direct marketing calls to their customers. It reminds businesses that they must obtain the consent of their customers before making such calls, regardless of whether the customers have previously provided their information to the business. Businesses that fail to comply with these requirements may face legal action.

- 楊家豪及Jasmine Wee, 年利達律師事務所
The data subject was a customer of A since December 2011 for two years, with a contract expiring in December 2013. Despite an earlier request given by the data subject to A, demanding that A cease using his personal data in direct marketing, an employee of A left a voice message to the data subject informing him that his contract would expire soon and that A could provide a renewal offer at a discounted price.

The voice message reads, inter alia, “Hello Mr. Chan … your contract is about to expire … there will be an increase in price in June and we do not wish you to pay a higher price … therefore I would like to let you know that if you are happy with our 1000M services, we can give you a promotional offer this month so that you will not be affected by the increase in price. Please return a call to me when you receive this voice message …”

A was convicted of having contravened s. 35G of the PDPO which provides that a data user who receives a request from a data subject to cease using his or her personal data in direct marketing must comply with such request.

It was argued by A in the appeal that the purpose of the voice message was a reminder to the customer of his expiring contract and that the Prosecution must prove that A had the mens rea to conduct direct marketing beyond reasonable doubt. It was further argued that the voice message was only a demonstration of good after-sales customer service which does not constitute a “new purpose” as stipulated in Principle 3 of the Data Protection Principles.

The Court of First Instance had a different view.

It was held that on the true construction of the legislative intent of the PDPO and having regard to the regulatory nature of s. 35G, it is not necessary for the Prosecution to prove mens rea in respect of s. 35G, particularly in view of the wording used and the statutory defence provided in the same section.

So far as this case is concerned, direct marketing refers to the offering or advertising of the availability of goods, facilities or services. It was held that the first part of the voice message which reminded the data subject of his expiring contract was merely an opening remark for A to offer other services. The voice message went beyond a simple reminder, and since “offering” and “advertising” must not be narrowly interpreted, the voice message constituted a “new purpose” and direct marketing.

The precautions in place were insufficient to prevent direct marketing. It was argued by the Defence that the employee departed from the standard script of A; however, the Court found that the standard script itself included words that introduce the renewal of service plans and therefore constituted direct marketing. Audio recordings of telephone calls were also held to be insufficient measures to prevent employees from violating the laws.

As a result, A was unable to rely on the statutory defence as it had not taken all reasonable precautions or exercised all due diligence to avoid commission of the offence.

Take-Away Points
This is one of the earliest prosecutions under s. 35G of the revised PDPO, which came into effect on 1 April 2013. The Defendant was fined HK$30,000. Following conviction in the Magistracy, the then Privacy Commissioner issued a statement indicating that he hoped the verdict would enhance respect for the privacy of personal data. Solicitors whose clients engage in direct marketing should advise them of this recent case and work with them to ensure their activities are compliant with the law as interpreted.

- Morley Chow Seto

個人資料私隱
個人資料保障：直接促銷的一課
2017年1月26日，原訟法庭頒下香港特別行政區高等法院原訴香港寬頻網絡有限公司案(HCM 624/2015)的判決書，內容與《個人資料(私隱)條例》(「《條例》」)第35G條有關。案件涉及一間電訊服務公司(資料使用者)「A」致電其當時的客戶(「資料當事人」)，向他提供延長服務優惠價。

資料當事人於2011年12月開始使用A的服務，合約期為兩年，於2013年12月屆滿。雖然資料當事人早前要求過A停止在直接促銷中使用他的個人資料，但A的一名僱員留下留言訊息通知資料當事人，他的合約快將屆滿，而A可以給他提供續約優惠價。

留言訊息內容包括「Hello，陳生你好，……contract期方面即將完結囉，……緊接6月份開始個續約價錢會調整，到時會貴啲，咁我哋都唔希望貴咗之後比唔返平價陳生你啦，就通知返，咁所以呢就係想阿陳生你如果1000M服務用得滿意嘅話，就請你自己嘅 normalsize 購買服務，今個月有個個內部優惠俾返陳生，確保唔會收到任何加價影響佢。麻煩如果陳生你收到口訊，覆個電話比我丫……」
A被裁定違反《條例》第35G條；第35G條規定資料使用者當收到資料當事人的要求時，必須按照要求，停止在直接促銷中使用他或她的個人資料。

A在上訴時辯稱，留言訊息的目的提醒客人他的合約快將屆滿，控方必須在毫無合理疑點下證明A有進行直接促銷的犯罪意圖。A亦進一步辯稱，留言訊息只顯示A妥善地履行客戶售後服務，並不構成保障資料原則第3原則所指的「新目的」。

原訟法庭有另一套看法。

原訟法庭裁定，按照對《條例》立法原意的真確詮釋，並考慮第35G條的監管性質，特別是鑒於同一條文的用字和所提供法定抗辯理由，控方無需要就第35G條證明A的犯罪意圖。

新設的預防措施不足以預防直接促銷。A方指稱該僱員偏離了A的標準講稿；然而，法庭認為標準講稿本身包括介紹續約計劃的字眼，因此構成直接促銷。法庭亦裁定，員工向客戶的電話有錄音，但此舉不足以預防僱員違反法例。

因此，由於沒有採取所有合理預防措施及作出一切應有的努力，以避免犯該罪行，A不能夠倚賴法定抗辯理由。

開設

粹言

這宗是根據經修訂《條例》第35G條最早提出的檢控之一。被告人被罰款30,000港元。被告人在裁判法院被判罪名成立之後，私隱專員發出新聞稿，表示希望裁決能夠提高個人和機構對個人資料的尊重。
法律顧問備忘錄

外管局放寬資金流入管制並加強資金流出的真實性審查

2017年1月26日，國家外匯管理局（「外管局」）發出《關於進一步推進外匯管理改革完善真實合規性審核的通知》（「《通知》」）。

《通知》旨在對中資外匯指定銀行放寬若千外匯流入管制，並加強資金流出真實性、合規性的審查。

《通知》具體要求如下：

‧ 擴大境內外匯貸款結匯範圍。
‧ 允許通過跨境放貸、股權投資，將內保外貸項下資金調回中國境內使用。
‧ 便利跨國公司外匯資金集中運營管理，准許境內全數運用跨國公司外匯資金主賬戶存款。
‧ 允許中國自由貿易試驗區內境內機構境內外匯帳戶結匯。
‧ 規定銀行審核外資企業相關的董事會決議、稅務備案表原件、經審計的財務報表，確保利潤匯出前已經彌償以前年度虧損。
‧ 規定境內機構辦理境外直接投資登記和資金匯出手續時，銀行審查外匯來源和使用計劃，以及相關董事會決議或合夥人決議、合同或其他真實性證明材料。
‧ 澆清外幣境外放款餘額與人民幣境外放款餘額相同(即合計最高不得超過其上年度經審計財務報表中所有者權益的30%)。

市場回應

徐建輝合夥人，中倫律師事務所香港辦事處

「外管局發出《通知》，旨在注入中國境外債券發行所得收益，符合中國政府最近鼓勵對內投資和資金流入的政策。此外，《通知》的實施很可能鼓勵更多更多中資債券發行人把簡單的保函結構用於境外債券發行，以及維好協議，作為提高債券發行人信用質量的一種方法，因此《通知》在中國不會那麼受歡迎。」

跟進事項

境外公司和外資企業的法律顧問應與負責融資的同事並肩工作，一起充分利用《通知》造就的機會。此外，法律顧問會想向融資同事提出建議，希望他們檢視公司或企業的中國外匯銀行真實性和合規性審查程序的任何修訂，以避免不必要地延遲匯出外幣匯款。

Practical Law China

GC AGENDA

SPC Issues Judicial Interpretation on Trade Mark Authorisation Rights

On 10 January 2017, the Supreme People’s Court issued the Provisions on Several Issues Concerning the Adjudication of Administrative Cases on Granting and Affirming Trademark-related Rights, which will take effect 1 March 2017.

The provisions apply to cases brought in the People’s Courts by related parties or interested parties who disagree with administrative decisions on:

• Trade mark re-examination.
• Trade mark registration review.
• Trade mark revocation review.
• Trade mark invalidation declarations and invalidation declaration review.
• Other administrative acts of the Trademark Review and Adjudication Board ("TRAB").

Specifically, the provisions clarify:

• The application of certain provisions of the 2013 Trademark Law.
• When a trade mark damages the prior copyrights of a copyright holder, what documents may be used as prima facie evidence of copyright ownership and what documents may be used as preliminary evidence of ownership.
• When a trade mark damages a natural person’s name rights, whether a person’s name rights extend to his or her pen name, stage name, translation and so on, and when the registration of a trade mark identical or similar to a person’s name is likely to lead to confusion among the relevant public.
• The circumstances where a trade mark can lead to public misunderstanding of the name of a copyrighted work and the characters in that work, or of the short name of a well-known enterprise name.
• The circumstances under which the People’s Courts may admit new facts and evidence.
• The circumstances where the People’s Courts may not accept an application to re-adjudicate a matter in relation to which a valid judgment has been issued.
Market Reaction

Chris Smith, Consultant, Baker & McKenzie, Hong Kong

“Many of the provisions are likely to only be of interest to trade mark practitioners, but they do include important guidance on how the courts should examine cases where a disputed trade mark is alleged to infringe the prior rights of the party bringing the dispute. The provisions also provide guidance in terms of how to assess fame and on situations where bad faith can be inferred on the part of the owner of a disputed trade mark. They will not satisfy everyone, but as the examination standards of Chinese courts are generally quite opaque the provisions are to be welcomed for bringing increased clarity, particularly in terms of highlighting the types of evidence that courts should be looking for when examining a complainant’s claims.”

Action Items

General Counsel for clients involved in or considering administrative litigation in the Beijing Intellectual Property Court and beyond in relation to a TRAB decision should carefully study and review the provisions with trial counsel to ensure everyone has a common understanding of the relevant sections, including the clarified evidentiary requirements.

- Practical Law China

INSOLVENCY

Annual Insolvency Law and Practice Conference

On 9 March 2017, the Hong Kong Law Society’s Academy of Law launched its inaugural Annual Insolvency Law and Practice Conference. The hugely popular event took place in a packed auditorium of the Hong Kong Exhibition Centre with over 300 delegates. In attendance were members of the legal and financial press who had been invited to report on recent landmark restructuring rulings of the Companies Court, a division of the Court of First Instance of Hong Kong, as well as topical issues.

Keynote speaker, Mr. Justice Jonathan Harris, spoke on a panel with offshore litigation lawyer Ian Mann of Harneys; the panel was moderated by Hong Kong barrister, Victor Joffe QC of Temple Chambers.

Melissa Pang, Vice President of the Law Society, opened the conference with a rousing call to practitioners to focus on training and continuing professional development in this particularly exciting area of law. Ms. Pang noted the increasing regional insolvency and restructuring work and the skill of Hong Kong practitioners.

Ms. Christina Cheung, a law officer of the Department of Justice of the HKSAR Government noted the commitment of government to this area of law and the continuing development and improvement within the profession.

Mr. Keith Ho of Wilkinson & Grist and Chairman of the Insolvency Law Committee promised an exciting inaugural conference addressing a...
number of live issues.

In what is thought to be first in legal history, Mr. Justice Harris’ panel included pre-recorded video commentary from judges of three of the major offshore jurisdictions – the BVI, the Cayman Islands and Bermuda. The audience watched in palpable amazement as the four judges comments were delivered to them in a dynamic panel. Having access to extra-judicial comments from four eminent judges of the various jurisdictions in an interactive and engaging panel was the highlight of the day.

The four jurisdictions share a proud history with the UK and are bonded forensically and culturally by the common law. An increasing number of applications are made by offshore liquidators to the Hong Kong Court for “recognition and assistance” by way of “common law recognition”. Mr. Justice Harris enthralled the assembled lawyers with the reasoning behind his landmark decision in The Joint Official Liquidators of A Company v B Company [2014] HKEC 1244 and the many cases that have followed. He also discussed the idea of recognising an offshore provisional liquidator, the tool for restructuring in those places, such that parallel schemes of arrangement could take place between an offshore court and the Hong Kong court. This was a creative way to recognise restructuring in a way that might otherwise not be available.

Ian Mann noted that as a non-Hong Kong lawyer and “a consumer of Hong Kong legal services” he was delighted with the Hong Kong Court’s progressive approach to recognising offshore liquidations as well as parallel restructuring. He noted that Hong Kong “is the de facto restructuring hub of Asia” with an “innovative and quality first instance court that Hong Kong lawyers should be proud of”. He noted “there is no other Court in the world driving the boundaries of common law assistance as much as Hong Kong – with perhaps the exception of Bermuda”.

Justice Barry Leon of the Commercial Division of the BVI High Court spoke by video on the recent Judicial Insolvency Network, a network of judges who have proposed a protocol for co-operation in cross-border insolvency cases for the efficient disposal of cases.

Chief Justice Anthony Smellie of the Grand Court of the Cayman Islands spoke by video citing recent cases of cross-border insolvency co-operation between the courts of the Cayman Islands and Hong Kong.

Chief Justice Ian Kawaley of the Bermuda Supreme Court spoke of the flexibility of the Bermuda provisional liquidator as a restructuring tool that could then be recognised, if appropriate, by a Hong Kong Court.

Camille Jojo of Norton Rose and a member of the Insolvency Law Committee, Phyllis McKenna, the Official Receiver, and Dr. Stefan Lo, Deputy Principal Government Counsel (acting) of the Department of Justice, had a lively panel discussion outlining proposed legislative reforms that would create a “provisional supervision” and would allow Hong Kong companies to enter into a legal breathing space to restructure their financial and operational structures when they are in financial difficulty. Employee protection featured strongly as the backdrop to these reforms.

Ian de Witt of Tanner de Witt, Rupert Purser of Burford Capital and Edward Middleton of KPMG conducted a humorous and thoughtful panel discussion on the use of litigation funding in insolvency matters. The discussion was refreshingly in-depth and practical. Edward Middleton unabashedly probed funder, Rupert Purser, about what threshold he would have to meet to obtain funding in any particular case. The panel heard the exact returns that funders look for, as well as the necessary due diligence that is conducted.

In what to many was an eye-opening detailed discussion on the trading, purchasing and restructuring of non-performing loans, Keith Ho, Theron Aldids of SC Lowy, Paul Forge of Alvarez & Marsal and Ian Mann rounded off the day. The panel asked Theron Aldids to reveal the secrets of how one makes money out of non-performing loans and an impressive discussion of financial restructuring, negotiations with stakeholders, an understanding of the underlying business of a debtor ensued.

- Thomson Reuters

破產

破產法與實務週年會議

香港法律專業學會於2017年3月9日舉行了其首屆破產法與實務週年會議。這項活動在香港會議展覽中心的一個會議廳舉行，共有300多位代表出席，深受大家歡迎。出席人士當中，包括來自法律與金融資訊媒體的記者，而主會邀請他們出席，是希望有更多媒體能為公司法庭(其從屬於原訟法庭)在近期所作出的具里程碑意義的重組裁決，以及就其他熱點議題進行廣泛報導。

當晚的主題演講嘉賓是香港原訟法庭法官
夏利士，他與衡力斯法律事務所的離岸訴訟律師Ian Mann在同一個專題研討會中擔任講者，而該研討會的主持人為Temple Chambers的Victor Joffe御用大律師。

為大會主持開幕儀式的，是香港律師會副會長彭韻僖律師，她呼籲法律執業者重視這個受關注的法律範疇，並將焦點放在相關培訓與持續專業發展方面。彭韻僖律師亦提到區內的破產及重組工作正在增加，以及香港法律執業者的技能。

律政司的民事法律專員張錦慧女士指出，香港特區政府十分重視這一法律範疇及這個專業的持續發展與改進。

高露雲律師行合夥人兼香港律師會破產法委員會主席何文基律師稱，這個首趟舉行的會議別具意義，並將會論述一系列的當今議題。

由夏利士法官參與的該專題研討會，當中包含由英屬維爾京群島、開曼群島、百慕大等三個司法管轄區的法官預先錄影的評論視頻，而此舉更被認為是開法律界之先河。各與會者可以看到，這四位法官在一個動態進行的研討會中分享他們各自的看法，份外覺得生動有趣，而當日的亮點所在，就是會眾能夠在一個互動和氣氛熱烈的研討會中，聆聽四位來自不同司法管轄區的知名法官所作的司法體系以外的評論。

這四個司法管轄區均與英國有著一段共同的驕人歷史，而它們之間更透過普通法而在法律與文化上緊密相連。現時由離岸破盤人向香港法院提交的申請越來越多，要請求「普通法的承認」而給予「承認和協助」。夏利士法官闡述他在 The Joint Official Liquidators of A Company v B Company [2014] HKEC 1244一案中的里程碑意義的裁決和其後的許多案例的背後理據，大大引起各與會的法律界人士的興趣。此外，他也論及承認離岸臨時破盤人(該等地區所運用的一項重組工具)的舉措，目的是讓並行的債務償還安排，得以同時在離岸法院與香港法院之間進行。這是一個若非如此便不可能無法實行的具創意的承認重組方法。

Ian Mann指出，他自己作為一位非香港律師，以及作為「一名香港法律服務的消費者」，很高興看到香港法院在承認離岸清盤及並行重組方面的進一步措施。他指出，香港是「亞洲事實上的重組中心」，並「擁有一個優質及具創造力的原訴法庭，足以令本地的律師感到自豪」。他續稱，「世界上可能除了百慕大以外，沒有其他地方的法院能夠像香港的法院般積極提供普通法的協助。」

英屬維爾京群島高等法院商事法庭法官Barry Leon透過視像，就近期成立的司法破產網絡發表講話。有一些法官建議訂立一項協定，以促進在跨境破產案件中的合作，從而有效處理該等案件，而司法破產網絡是指一個由這些法官組成的網絡。

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that the proposed new regime may be part of Chinese regulators’ wider efforts to boost China’s foreign exchange reserves and manage capital outflow.

While it is difficult to grasp the full implications of the proposed new regime until SAFE officially announces the relevant details, there has already been much discussion over whether it is a boon or bane to Hong Kong’s IPO landscape. On the one hand, it may encourage more mainland companies to list in Hong Kong by expanding the pool of potential cornerstone investors. On the other hand, issuers may not find the new regime attractive given the repatriation requirements, and identifying new investors and educating them about Hong Kong’s IPO regulations may take considerable time.

As the implementation details of the proposed new regime have not yet been officially announced, it remains to be seen whether the new arrangement is supposed to replace the current QDII regime or serve as an additional avenue for potential cornerstone investors to invest in Hong Kong IPOs.

- Danny Kan and Jasmine Wee, Linklaters

**TRUST**

**“Tainted Love”?**

There is a line in the famous song of the same title that goes something like: “The love we share, seems to go nowhere”.

Not only is there an industry out there of such things as “Telephone Scams”, “Online Romance Scams” and “Online Naked Chat Blackmail” (Industry Insights, November 2015), recent cases in Hong Kong suggest that some parties may be losing substantial amounts of money due to what the judge in Karla Otto Ltd v Bulent Eren Bayram [2017] HKEC 378, HCA 821/2011, described as, perhaps, “misplaced trust which is generated when parties are engaged in a romantic relationship”.

The judgment is interesting for a number of reasons and provides a cautionary tale.

A certain “Ms. Otto” and the first defendant had been in a personal relationship and the latter had, apparently, been allowed to operate one of the plaintiff company’s online bank accounts. After the relationship ended, the plaintiff sought the return of monies paid out of its bank account some of which appear to have ended up in the bank account of the second defendant, a Hong Kong company of which the first defendant was the sole shareholder and director.

Given that the first defendant was found to be acting as a de facto director of the plaintiff company, he owed it a fiduciary duty and was held liable, together with the second defendant company (which, in effect, he controlled), to return the money to the plaintiff.

The comprehensive set of reliefs granted by court to the plaintiff (in addition to repayment of the money) is worth noting; for example, declarations, delivery up of share certificates or books and records of the second defendant company (which, in effect, he controlled), to return the money to the plaintiff.
second defendant pursuant to s. 729 ("Court may order remedies") of the Companies Ordinance (Cap. 622).

There is also a suggestion in the judgment that the first defendant may have attempted to adjourn the trial by the use of a questionable "doctor's note" (also see – "Video testimony and doctors' notes", Industry Insights, October 2013).

A lesson to be learned is that business and personal relationships often do not mix very well.

Furthermore, without reference to any particular case, no one should allow another person to operate their bank account. In a sign of the times, appropriate due diligence is required not only in a business context but also prior to entering into and during a personal relationship. Indeed, anything else risks a financial loss and an exposure to being held accountable for another person's alleged nefarious activities.

- David Smyth and Warren Ganesh, Smyth & Co in association with RPC

Also see Chu Wen Jing Jennifer v Sin Hon Wai [2016] HKEC 2474, HCA 10, 6 and 121/2016.

信託
腐朽的愛？

名曲《Tainted Love》（意譯：腐朽的愛）有一句的中文意思大概是：「我倆的愛似乎不會有好結果」。

香港不但有「電話騙案」、「網上情緣」和「網上裸聊勒索」（2015年11月《業界透視》）等騙人招數，而且最近有案件的當事人之所以損失巨款，就是因為高院法官在Karla Otto Ltd v Bulent Eren Bayram [2017] HKEC 378(高院民事訴訟2011年第821號)所說的「投入戀情以致所託非人」*所致。

是項判決之所以有趣的原因有很多，判決的背後是一個警世故事。

某位『Otto女士』與第一被告人有過一段感情關係，那時後者明顯獲准管理原告人公司其中一個網上銀行賬戶。二人的關係結束之後，原告人要求獲歸還由該銀行賬戶撥款支付的款項，其中一部分似乎最終存入了第二被告人的銀行賬戶；第二被告人是香港公司，第一被告人是第二被告人唯一的股東兼董事。

由於第一被告人被斷定是以原告人公司實際董事的身分行事，他負有受信責任，因此被判有責任歸還款項給原告人，第二被告人（實際上由他控制的公司）同樣有此責任。

法庭授予原告人的補救（除了獲償還款項之外）相當全面，值得一書留意；例如法庭命令作出宣告、交出第二被告人由第一被告人管有的股票或簿冊及紀錄、以及以《公司條例》（第622章）第729條（「原訟法庭可命令作出補救」）為依據，命令第一被告人辭任第二被告人董事一職。

判決中亦有指第一被告人可能是利用有問題的「醫生紙」試圖押後審訊（亦見2013年10月《業界透視》「以視像系統作供及「醫生的筆記」」）。

這個警世故事的教訓是，商業關係和感情關係通常不會並存而相安無事的。

此外，不用參照任何具體案例也當知道，任何人都不應容許另一人管理自己的銀行賬戶。時移勢易，現在不只做生意的需要在適當的盡職審查，我們連交友結伴、投入感情關係之前也需要如此。事實上，不這樣的話，就有可能招致金錢上的損失，也有可能要就另一人被指歹毒之事，負上責任。

- 施德偉及莊偉倫，Smyth & Co與RPC聯營

亦請參閱Chu Wen Jing Jennifer v Sin Hon Wai [2016] HKEC 2474(高院民事訴訟2016年第10、6及121號)。
Hudson Timothy George Loh v Director of Immigration [2017] HKEC 126
Court of First Instance
Constitutional and Administrative Law
List No. 50 of 2015
Anderson Chow J
25 January 2017

Director of Immigration – Hong Kong Special Administrative Region Passports Appeal Board – decisions refusing application for Hong Kong Special Administrative Region passport on basis applicant not Chinese national – judicial review

X’s parents (M and F), both of Chinese descent, were born in Canada and were Canadian nationals. F and M had resided in Hong Kong since 1995 and 1996 respectively and became Hong Kong permanent residents in 2002 and 2008 respectively. During a temporary stay by F in Canada due to the outbreak of SARS in Hong Kong in 2003, X was born in July 2003 and acquired Canadian nationality at birth. Since September 2003, X had continuously been a resident and settled in Hong Kong. In 2012, X became a Hong Kong permanent resident. In August 2013, M on behalf of X applied for an HKSSR passport. The Director of Immigration (the “Director”) rejected the application. The Hong Kong Special Administrative Region Passports Appeal Board (the “Board”) dismissed M’s appeal and rejected the contention that X was a Chinese national by virtue of para. 2 of the Explanations of Some Questions by the Standing Committee of the National People’s Congress Concerning the Implementation of the Nationality Law of the People’s Republic of China in the Hong Kong Special Administrative Region (adopted at the Nineteenth Session of the Standing Committee of the Eighth National People’s Congress on 15 May 1996) (the “NPC Explanations”), which states that “All Hong Kong Chinese compatriots (香港中國同胞) are Chinese nationals, whether or not they are holders of the ‘British Dependent Territories Citizens passport’ or ‘British Nationals (Overseas) passport’…” Section 3(2)(a) of the Hong Kong Special Administrative Region Passports Ordinance (Cap. 539) provides that the Director shall not issue an HKSSR passport to an applicant unless the applicant has satisfied, inter alia, the condition that he is a “Chinese citizen” as defined in s. 2 as “a person of Chinese nationality under the Nationality Law of the People’s Republic of China [PRC Nationality law], as implemented in the [HKSAR] in accordance with [the NPC Explanations] ...”.

Held, dismissing the application, that para. 2 as creating a further class of Chinese nationals consisting of persons falling within the expression “香港中國同胞 (Hong Kong Chinese compatriots)” would be inconsistent with the clear meaning and effect of para. 1 which exhaustively defined two categories of persons as being Chinese nationals insofar as the implementation of the PRC Nationality Law in the HKSAR was concerned.

CIVIL PROCEDURE

Yifung Developments Ltd v Liu Chi Keung Ricky (No. 2) [2016] HKEC 2750
Court of First Instance
High Court Action No. 1341 of 2014
Queenie Au-Yeung J
20 December 2016

Costs – action commenced without authority but subsequently ratified – relation back of ratification as equivalent to antecedent authority – pre-ratification costs and post-ratification costs – solicitors did not have to bear any costs – nor did directors

An action in the name of the plaintiff-company (“C”) was commenced without authority. But its commencement was then ratified. D1’s summons on the issue of authority was dismissed. It was ordered nisi: that D1 should have certain pre-ratification costs of the authority summons; that C’s solicitors (the “Solicitors”) show cause why they should not bear those costs; and that half of C’s post-ratification costs of the authority summons be paid by D1. In addition, C was called on to make representations as to whether a mandatory injunction should be set aside for non-disclosure and consequently, whether the action had been necessary. Both sides sought variation of the order nisi. A variation summons taken out by C and a subsequent application to amend that summons were both dismissed with costs to D1. D1’s variation summons sought the costs of the hearing of the authority summons and, as an alternative to the Solicitors’ potential costs liability, asked that C’s directors (the “Directors”) pay his costs.

Held, dismissing DT’s summons, making the order nisi absolute, and ruling that there was no basis for costs to be ordered against the Solicitors or Directors nor had there been any material non-disclosure, that:

• That the action had been commenced without a compliant board resolution to do so, that C succeeded in only one of its four lines of argument and that it had made unjustified complaints that D1 lacked locus and of abuse of process had all been reflected in the order nisi that C have only half of its post-ratification costs. There was no reason to order any variation in D1’s favour.

• The ratification related back and was deemed to be equivalent to antecedent authority. The Solicitors should not be ordered to bear any of D1’s costs.

• There was unity of purpose of all the stakeholders, and the Solicitors had all along taken instructions from two of the Directors as constituting the entire board of C. In all the circumstances, the Solicitors need not bear any of their client’s costs.

• The action was for the purpose of recovering C’s assets. And the Directors could not have been the true beneficiaries of the action or the summons. There was no basis for making them personally liable.

• No reason to question the obtaining of the injunction or the necessity of the action was made out. D1 having triggered the Court’s concern on those matters, he should bear C’s costs of making representations thereon.

裁判 — 駁回申請：

《人大解釋》第2段處理持有「英國屬土公民護照」或「英國國民(海外)護照」的香港中國同胞的身份，並指明該等人士須視為中國公民。假如把第2段解讀為產生另一類包含屬於「香港中國同胞」的中國公民，則這將與《人大解釋》第1段的清晰涵義和效力不符。為了在香港特別行政區實施《中華人民共和國國籍法》，第1段盡列兩類人士為中國公民。
民事訴訟程序

Yifung Developments Ltd v Liu Chi Keung Ricky (No. 2) [2016] HKEC 2750

原訟法庭
高院民事訴訟案2014年第1341號
原訟法庭法官歐陽桂如
2016年12月20日

訴費 — 訴訟未獲授權而展開, 但其後獲追認 — 追溯確認權限等同於先前授予權限 — 追認前訴費和追認後訴費 — 律師不須承擔任何訴費 — 各董事也不須承擔

一宗訴訟在未獲授權的情況下以原告公司的名義展開, 但其後獲追認。第一被告人就權限問題發出的傳票(「權限傳票」)被駁回。法庭作出暫准訴費令: 第一被告人應當確定權限傳票截至追認當日之前的訴費; 原告公司的律師(「原告律師」)必須提出因由解釋為甚麼不應由他們承擔訴費; 由被告人支付原告公司在作出追認後就權限傳票所支付的訴費的一半。此外, 原告公司被傳召就兩個問題, 即強制性禁令應否由於有人不披露事實而擱置及是否有必要提起訴訟, 作出陳述。訴訟兩方俱要求更改暫准訟費令。原告公司被傳召就兩個問題, 即強制性禁令應否由於有人不披露事實而擱置及是否有必要提起訴訟, 作出陳述。訴訟兩方俱

裁決

撤銷第一被告人的傳票, 命令暫准訴費令是絕對命令, 而且沒有理據支持作出不利原告律師及各董事的訴費令, 也從來沒有人不披露關鍵事實:

• 原告公司在暫准訴費令下只討回其追認後訴費的一半, 這充分反映了三件事: 該訴訟是在未經董事會決議授權展開的情況下展開的, 原告人的四項論據只有一項成立, 以及原告公司無理由投訴第一被告人缺乏起訴資格及濫用法律程序。法庭無理由命令作出任何對第一被告人有利的更改。

• 追溯確認權限被視為等同於先前授予權限。原告律師不應被命令承擔第一被告人的訴費。

• 所有持份者的目的是一致的, 原告律師一開始就聽令於兩名董事, 而原告公司董事會就是由這兩名董事組成。在任何情況下, 原告律師都不需要承擔其當事人的訴費。

• 原告公司提起訴訟的目的要討回其資產。各董事由始至終都不可能是訴訟或傳票的真正受益人。本案並無任何支持由他們承擔個人責任的理據。

• 法官認為沒有理由質疑原告公司要求禁制令或提起訴訟的必要性。第一被告人觸發原訟法庭對上述問題的關注, 因此應由他承擔原告公司就此所付的相關訴費。

CIVIL PROCEDURE

AA v Securities and Futures Commission [2017] HKEC 54
Court of First Instance
Constitutional and Administrative Law
List No. 41 of 2016
Zervos J in Chambers
13 January 2017

Parties – joinder – judicial review of decision of Securities and Futures Commission to transmit compelled answers, testimony and documents to foreign regulators – whether leave to be granted for Secretary for Justice to intervene in proceedings in respect of constitutionality of s. 181 – Securities and Futures Ordinance (Cap. 571) s. 181

In May 2016, Xs obtained leave (the “Leave Decision”) for judicial review of the decision of the Securities and Futures Commission (“SFC”) to transmit their compelled answers, testimony and documents to Japanese regulators (the “SFC’s Decision”). Xs sought a declaration that the SFC had thereby acted unlawfully, absent a binding prohibition of the use of these materials in criminal proceedings and/or a proper assurance against them, or their contents, being leaked to the media and otherwise made public; and a declaration that s. 181 of the Securities and Futures Ordinance (Cap. 571) (the “SFO”), contravened Art. 10 of the Hong Kong Bill of Rights (Cap. 383) and was unconstitutional. In February 2016, Xs had obtained an anonymity order requiring leave before the court file, including the Form 86 and supporting affirmations and documents relevant to the anonymity application, could be inspected by any interested party and the public (the “Anonymity Order”). In July 2016, the SFC informed the Department of Justice (“DoJ”) of the proceedings and invited the DoJ to consider joining as an interested party, enclosing a copy of the Form 86. In December 2016, the DoJ requested copies of all documents filed by the parties before deciding whether to intervene. The SFC then provided the parties’ affirmations, the Leave Decision, the originating summons and various court orders to the DoJ believing it was entitled to do so under s. 378(3)(f)(iii) and (5) of the SFO; which was in breach of the Anonymity Order. The present hearing was to determine applications by: (a) the Secretary for Justice (“SJ”), made on 23 December 2016, to join as an intervener in the proceedings but only on the issue of the constitutionality of s. 181 of the SFO; and (b) the SFC for an order that “retrospective leave be granted to [the SFC] to provide all Court documents and affirmations in these proceedings to the [DoJ].” Xs opposed the SJ’s application to intervene, relying on the SJ’s delay in making it until shortly before the hearing of the substantive judicial review hearing scheduled for 17 January 2017 and the resultant prejudice to them. At the hearing, the SFC sought to amend the order sought by inserting the words: “Without prejudice to [Xs]’ right of action
for any alleged breach of the [Anonymity Order], ...” (the “SFC’s Amendment”).

Held, granting the SJ’s application and dismissing the SFC’s application, that:

• The constitutional importance of Xs’ challenge to s. 181 concerning the SFC’s regulation of the financial services industry; and that the SJ was the guardian of the public interest and had a legitimate interest in the outcome, warranted the SJ’s intervention.

• As for Xs’ opposition to the SJ’s application, the SJ’s draft skeleton argument was filed on 11 January 2017 in compliance with the Practice Directions within three clear days of the substantive hearing. The SJ’s submissions would not significantly lengthen the hearing or disadvantage Xs. Further, to appropriately address Xs’ concerns, the constitutional issue could be dealt with on the last of the three days set aside for the substantive application. The SJ was accordingly joined as an intervener in the proceedings.

• However, Xs’ objection to the SFC’s Amendment was valid, given the SFC conceded there was a breach of the Anonymity Order and the amendment still sought retrospective leave sought by the SFC, even in its amended form, was an appropriate order for the Court to make.

民事訴訟程序

AA v Securities and Futures Commission [2017] HKEC 54
原訟法庭
高院憲法及行政訴訟2016年第41號
原訟法庭法官薛偉成內庭聆訊
2017年1月13日

訴訟各方 — 加入訴訟 — 司法覆核證券及期貨事務監察委員會關於把被逼作出的回答、證供和文件交給外國監管機構的決定 — 是否批予許可，容許律政司司長就第181條的合憲性介入訴訟 — 《證券及期貨條例》(第571章)第181條

證券及期貨事務監察委員會(「證監會」) 把兩名申請人被迫作出的回答、證供和文件交給日本監管機構(「日本監管機構」);兩名申請人在2016年5月就證監會的決定取得司法覆核許可(「許可判決」)。兩名申請人在2016年2月取得身分保密令，規定有利害關係一方及公眾人士必須先獲得許可，才能查閱法庭檔案，包括表格86及支持誓章，以及身分成保密申請的相關文件。「身分保密令」。證監會在2016年7月致函律政司告知該宗訴訟，邀請律政司考慮以有利害關係方的身分加入，隨附表格86的副本。律政司在2016年12月還未決定是否介入訴訟的時候，要求獲提供全部由各方提交的文件的副本。證監會相信在《條例》第378(3)(j)(ii)及第378(5)條之下，證監會有權向律政司提供法庭文件，因此向律政司提供了各方的誓章、許可判決、原訴傳票及多項法庭命令。證監會這樣做違反了身分保密令。是次聆訊的目的是要就兩項申請作決定，即：(a)對律政司司長在2016年12月23日為了加入訴訟成為介入人而提出的申請作決定，律政司司長只以《條例》第181條是否合憲的爭議作為申請理據；及(b)對證監會的申請作決定，證監會在申請中要求法庭命令「批予具追溯效力的許可，容許[證監會]向[律政司]提供法律程序中所有法庭文件和誓章。」兩名申請人反對律政司司長申請加入訴訟，理據是律政司司長延遲至預定進行司法覆核的實質聆訊之日前不久，即2017年1月17日之前不久才提出申請，導致兩名申請人受到損害。
訊時，證監會要求修訂所要求的命令，加入「不損害[兩名申請人]就任何被指違反[身分保密令]的事情進行訴訟的權利，……」（「證監會的修訂」）。

裁決　一批准律政司司長的申請，駁回證監會的申請：

第 181 條關乎證監會對金融服務業的監管，兩名申請人對第 181 條提出質疑，在憲法上具有重大意義；律政司司長是公眾利益的保衞者，在結果中享有合法利益，足以支持律政司司長介入訴訟。

至於兩名申請人反對律政司司長的申請，律政司司長在 2017 年 1 月 11 日呈交擬備的論點綱要，符合《實務指引》在實質聆訊前 3 天之前呈交論點綱要的要求。律政司司長的陳詞不會大幅加長聆訊時間或損害兩名申請人的利益。此外，法庭預留了3天時間聆訊實質申請，把是否合憲的爭議放在最後一天處理，應該可以妥善地消除兩名申請人的憂慮。律政司司長因而加入訴訟成為介入人。

然而，兩名申請人反對證監會的修訂是合理的，因為證監會已經承認存在違反身分保密令的情況，而且兩名申請人是有權就藐視法庭罪提起訴訟的，證監會面對兩名申請人有可能提起的訴訟，仍然提出修訂，要求具有追溯力的許可，為的就是合法化其行為。

證監會沒有故意或嚴重違反身分保密令。事件的發生是無心之失，完全沒有引致任何損害或不方便的情況。要是證監會提出要求的話，證監會早就獲批准向律政司提供法庭文件的許可，證監會司長能夠考慮是否介入訴訟。同樣重要的是，律政司司長如果不批准介入訴訟，就會成為訴訟一方，在任何情況下都可以取閱所有法庭文件。然而，原訴法庭不認為原訴法庭應作出證監會所要求的追溯許可命令，即使是已經修訂的命令亦不適宜。

CRIMINAL EVIDENCE

HKRS v Frank Laurent
[2017] HKEC 26
Court of Appeal
Criminal Appeal No. 243 of 2015
Lunn V-P, Macrae and McWalters JJA
10 January 2017

Ambit of defence counsel’s power to conduct trial in best interests of client – decisions to not apply for severance and to rely on exhibit – client’s informed consent – irrespective of such consent, client was responsible for tactical decisions made by his counsel within ambit of counsel’s power – Judge’s duty to direct on issues whether or not defence wished that direction thereon be given

D was tried on three counts. Count 1 was of raping Ms. W at a hotel on 1 May 2013. D was acquitted on this count. Count 2 was of indecently assulting Ms. X in his apartment on 8 August 2013 while Count 3 was of raping Ms. Y in that apartment on 24 October 2013. D was convicted on these two counts. He sought leave to appeal against his convictions. The grounds of appeal put forward on his behalf were as follows. Ground 1 was that there was a lurking doubt about the safety of the conviction in respect of Ms. X because there was evidence that she might have been influenced by two former girlfriends of D’s to make a false allegation against him. Ground 2 was that there was a lurking doubt about the safety of the conviction in respect of Ms. Y because: she had gone to D’s apartment knowing that they would be alone there; she did not tell him that she did not consent to sexual intercourse; and in those circumstances, he had honest and genuine grounds to believe that the sexual intercourse between them was consensual. Ground 3 was that the Judge had erred in directing the jury to consider whether D’s WhatsApp message to Ms. Y at 23:20 hours saying, “I stopped when you asked me to stop” was “so spontaneous and so immediate as does suggest to you that he may have been telling the truth”, there being no evidence as to why there was a delay in D making that response to Ms. Y’s message at 22:16 hours in which she had said, “You should never force anyone if they are unwilling to do it”. Ground 4 was that the Judge had erred in giving the jury directions on recklessness, contrary to defence counsel’s submission, the issue not having arisen on the evidence since it was the prosecution’s case that D knew full well that Ms. X and Ms. Y did not consent, and it was not D’s case that he had mistakenly believed that they consented. Ground 5(a) was that it was a material irregularity that the three counts were tried together since the defence to Count 3 was separate and distinct from the defence to Counts 1–2; that D’s counsel at trial had failed to advise him to apply for severance and had erred in failing so to apply, thus depriving him of the opportunity to make an informed decision on severance and depriving him of a fair trial. Ground 5(b) was that, given that the prosecution did not rely on similar fact evidence, D had been subjected to impermissible and highly prejudicial cross-examination by prosecuting counsel in respect of Ms. X, the questions having been suggestive of an uncharged offence of attempting to rape her. And Ground 5(c) was that D was deprived of a fair trial by the admission into evidence in cross-examination of Ms. W and Ms. X of highly prejudicial hearsay evidence of his conduct, in particular as set out in Exhibit D4 a Facebook message, namely that he had tricked women into having sex, communicated venereal disease and violently attacked a girlfriend. The application for leave to appeal was made out of time, but the prosecution did not object to it being so made, and the Court entertained it.

Held, refusing leave to appeal, that:

• The trial proceeded as a trial of all three counts and Exhibit D4 was adduced into evidence in the cross-
examination of Ms. W and Ms. X with D’s informed consent. That way of conducting the defence fell within the ambit of defence counsel’s power to conduct the trial in the best interests of his client. In any event, it would have been very difficult to succeed in an application for severance. Defence counsel was alive to the advantages and disadvantages of conducting the defence in the way in which it was conducted, which included relying on Exhibit D4. Irrespective of the fact of D’s consent, these decisions were tactical decisions in the defence case, for which decisions D was responsible.

The lurking doubt formula must be applied with great caution; an appellate court reading papers and not seeing the witnesses must be cautious in imposing its subjective feelings for the conclusion of the jury which had the advantage of seeing the witnesses and assessing their credibility; and “lurking doubt” means not an insubstantial doubt but a substantial remaining doubt. In the circumstances, there was no merit in the grounds of appeal asserting the existence of a lurking doubt.

The issue of recklessness did arise on the evidence. And whether or not the defence wished that a direction on recklessness be given, the Judge had a duty to give the jury such a direction.

**Prosecution**

**HKSAR v Frank Laurent**  
[2017] HKEC 26

The prosecution argued that the defendant was guilty of the following:

1. **Assault**
   - 2013年5月1日在一家酒店强姦W女士。
   - 被裁定不成立。

2. **Incest**
   - 2013年8月8日在其住所猥亵侵犯X女士。
   - 被裁定成立。

3. **Assault**
   - 2013年10月24日在同一住所强姦Y女士。
   - 被裁定成立。

被告不服判决，向上诉法庭提出上诉。上诉理由包括但不限于以下几点：

1. 判决被告人强姦Y女士罪名成立稳妥与否，存在「潜在疑点」，因为被告到被告人寓所的时候是知道寓所内只会有他们二人，而且她没有告知被告人她不同意性交；在该等情况下，被告人有真誠真摯的理由相信，他敬业交是在双方同意下进行的。

2. Y女士在22:16发给被告人的WhatsApp短讯说「如果你家不愿意，你就应该强迫我」，被告人到了23:20才发给被告人的WhatsApp短讯说「你一叫我停，我就停下来了」。案中并无任何证据解释被告人为何会是这样。因此，上訴法庭认为，就人格上，上訴法庭不认为应有疑点。

3. 被告人大律师在職權範圍內以符合當事人最大利益的方式進行審訊 — 不申請分割審理和依賴證物的決定 — 當事人在知情的情況下同意 — 不管有否同意，當事人要就他的人大律師在大律師職權範圍內作出的策略性決定負上責任 — 原審法官有責任就爭議給予指示，而分辨法官所指的不是他認為他可能會同意。

4. 原審法官犯錯，因為他沒有建議被告申請分割審理罪名兩宗的，導致被告被剝奪在知情的情況下就分割審理作出決定的機會，也被剝奪了得到公平審訊的機會。理由5(a): 對罪名3的答辯和對罪名1-2的答辯是各自獨立，並不相干，而審理三項罪名是極不妥當的做法；而且被告人大律師在原審時犯錯，因為他沒有建議被告申請分割審理罪名，導致被告被剝奪在知情的情況下就分割審理作出決定的機會，也被剝奪了得到公平審訊的機會。

5. 原審法官犯錯，因為他沒有建議被告申請分割審理罪名，故令被告被剝奪在知情的情況下就分割審理作出決定的機會，也剝奪了得到公平審訊的機會。理由5(b): 對於控方不倚賴相近的事實證據，被控方控方大律師盤問與X女士有關的問題，但那次盤問是不獲准許並對被告極為不利的。當中的問題令人聯想被告被控告企圖強姦X女士。理由5(c): 在盤問W女士和X女士的過程中對被告極為不利的傳聞證據，特別是證物D4面書短訊中的細節，即是他花言巧語欺哄女人與他發生性行為，傳染性病，暴力襲擊一名女朋友，獲接納為證據，以致被告被剝奪到公平審訊。上訴許可的申請是逾期提出的，不過控方沒有就此提出反對。法庭受理申請。

裁決—拒絕許可上訴：

1. 原審時審理的是三項罪名，W女士和X女士接受盤問時，證物D4在徵得被告人的知情同意下被呈堂作為證據。
抗辯的方式必須符合他當事人的最大利益。無論如何，分割審理的申請本來就極難成功。辯方大律師意識到他進行抗辯的方式(包括在抗辯中依賴證物D4)的利與弊。不管被告人事實上有否同意，有關決定是辯方的策略性決定，被告人均須就決定負上責任。

潛在疑點的原則必須萬分謹慎地應用；上訴法庭只閱讀文件，看不見證人，陪審團則有目睹證人作供及評定他們可信性的優勢，因此上訴法庭必須謹慎，不容其主觀的感受取代陪審團的結論；「潛在疑點」不是指不重大的疑點，是指重大剩餘的疑點。在這情況下，辯方的上訴理據，即辯方聲稱存在潛在疑點，並不成立。

被告人有否罔顧X女士和Y女士是否同意的爭議，的確是基於證供產生的。而且，不論辯方是否希望原審法官就罔顧的爭議給予指示，原審法官都有責任就這爭議給予指示。

CRIMINAL EVIDENCE

HKSAR v Ip Tsz Yau [2017] HKEC 147
Court of Appeal
Criminal Appeal No. 199 of 2015
Lunn V-P, Macrae and McWalters JJA
26 January 2017

Prosecution’s duty of disclosure – non-disclosure of police notebooks – potentially relevant and disclosable – non-disclosure rendered conviction unsafe

D was convicted of assaulting a police officer in the execution of his duty, trafficking in a dangerous drug and possession of a dangerous drug. The prosecution case was that, during an anti-narcotics operation by eight police officers, including PW1–3, D was intercepted after leaving his flat and ketamine was found on D and in his flat. At trial, PW1–3 denied that anyone else had been at the scene, apart from the police, D and his neighbour, DW1. This was contrary to D's testimony that he was outside his flat chatting with two friends, L and DW2, when someone suddenly pulled him away and he was pressed to the ground; L and DW2 were taken to a rear staircase, while D was taken to another staircase where he was threatened, assaulted and the ketamine was planted on him and in his flat. Although DW1–2 confirmed D's evidence, the Judge rejected D and DW1–2's testimony. The Judge, however, stated, “Although [DW1–2's] evidence do not say directly as to how the police had threatened [D] and planted the drugs ..., their evidence, if accepted, would cast a reasonable doubt on the credibility of the prosecution witnesses.” D appealed against his convictions, relying on the prosecution’s non-disclosure of the notebooks of the other five police officers, Xs, at the scene (the “Notebooks”), each verified L and DW2's interception in the vicinity of D's flat, albeit a few minutes after D's arrest. D sought to admit the Notebooks as fresh evidence. The prosecution applied to admit a floor plan to show the different times and locations of D's arrest, and L and DW2's interception, and emphasised that the latter occurred after PW1–3 had entered D's flat and so even if the Notebooks had been disclosed, they would not have undermined the prosecution evidence.

Held, allowing the appeal by quashing the convictions, but ordering a retrial, that:

• The Notebooks were disclosable. Xs were present at the scene as part of the police operation and the Notebooks were potentially relevant. However, there was no bad faith in the prosecution not disclosing the Notebooks.

• Given the defence case to be advanced, namely that Xs had played a far more prominent part not only in D's arrest but the interception of L and DW2 at about the same time, D's counsel would not only have wanted but also needed to see the Notebooks, yet made no such request of the prosecution. However, the suggestion that the defence deliberately did not ask for such disclosure was rejected.

Once it became clear that the material was potentially relevant to the issues before the Court, it was incumbent on prosecuting counsel to disclose the Notebooks to the defence. Although the Notebooks were not passed to him and were in a foreign language, that could not abrogate the vital and continuing duty to make necessary and timely disclosure.

• The evidence of the Notebooks and the plan should be admitted for this appeal as both necessary and expedient in the interests of justice. By virtue of the non-disclosure of the Notebooks, and the essential findings of credibility relating to all defence witnesses including D, which this material might be said potentially to impugn, the verdict could not be regarded as safe and satisfactory. Had the Judge known that Xs had all confirmed the interception of L and DW2 at the scene that day, he could not have found it an “irresistible inference” that D, DW1–2 had all lied about the latter's presence.

刑事證據

HKSAR v Ip Tsz Yau [2017] HKEC 147
上訴法庭
刑事上訴案件2015年第199號
上訴法庭副庭長倫明高
上訴法庭法官麥機智
上訴法庭法官麥偉德
2017年1月26日

控方的披露責任 – 不披露警員記事冊 – 可能有關係而須予披露 – 不作披露令定罪不穩妥

被告人被裁定「襲擊正在執行職務的警務人員罪」、「販運危險藥物罪」及「管有危險藥物罪」罪名成立。控方案情是，被告人離開住宅單位時，八名警務人員(包括控方第1-3證人在內)正在執行掃毒行動，被告人被截查，之後被發現他身上及他單位藏有氯胺酮。審訊時，控方第
1–3証人否認現場除了警方、被告人和他的鄰居(即被告第1證人)之外，還有其他人。控方案情與被告人的證供相反，被告人作供稱，他在自己單位外與兩名朋友L君和被告第2證人閒聊的時候，突然被人拉開，之後被壓倒在樓梯間；L君和被告第2證人被帶到後樓梯間；被告人於當時被恐嚇、襲擊，而他身上和他單位內的氯胺酮是被插贓嫁禍的。雖然被告第1–2證人否認被告人的證供，但原審法官拒絕接納被告人的證供。不過原審法官表示「雖然[被告第1–2證人的]證供沒有直接指出警方是怎樣恐嚇[被告人]和怎樣把毒品栽贓於……」，他們的證供如果獲接納，會使人對控方證人的可靠性產生合理的懷疑。被告人不服定罪，提出上訴，上訴理據是控方沒有披露現場其餘五名警務人員(「五名警員」)的記事冊(「五本記事冊」)每本記事冊都證明L君和被告第2證人在被告人單位附近被截查，但截查時間是在被告人被捕數分鐘之後。被告人要求法庭接納五本記事冊為新證據。控方提出申請，要求法庭接納一張樓面平面圖為證據，該平面圖證明被告人被拘捕與L君、被告第2證人在時間和地點上都不一樣；控方強調，L君和被告第2證人是在控方第1–3證人走進被害人單位之後才被截查的，因此，即使是五本記事冊也沒有被披露，控方證據也不會被削弱。

裁決

一上訴得直，撤銷定罪但命令重審案件：

- 五本記事冊須予披露。五名警員當時身在現場，是警方行動的部分成員，而五本記事冊是可能有關係的證據。然而，控方不是惡意不披露五本記事冊。
- 基於辯方將會提出的案情，即五名警員不在現場而是被警方一人一事的責任慫恿其他人，L君和被告第2證人在同一時間被截查的事實，也是有合理懷疑的，而被告第2證人亦有機會在現場。
- 惟本文本記事冊和平面圖應獲接納為證據，為了公平起見，這樣做是必要的，也是合宜的。五本記事冊可以被說成可能令人對辯方所有證人(包括被告人)的可靠性表示懷疑，而由於五本記事冊不被披露，並且原審法官就該等證人的可靠性作了關鍵性的裁斷，原審時的裁決不能被視為安全穩妥。若果原審法官早知道五名警員當日即場講明他們是怎樣截查被告和第2證人，他就不可能會認為「無可避免地推斷」被告人和第1–2證人都撒謊，胡說第1–2證人身在現場。

CRIMINAL SENTENCING
Secretary for Justice v Wan Hoi Ming
[2017] HKEC 93
Court of Appeal
Application for Review No. 2 of 2016
Lunn V-P, Macrae and Pang JJA
20 January 2017
Manslaughter – aggravating factors – use of stupefying substance – planning and premeditation – sustained and violent manner of overcoming victim’s resistance – care to be taken not to give duress undue weight as mitigation – instances in which appropriate to adopt sentencing starting point in manslaughter cases – whether “review” discount to be given on review of sentence

D pleaded guilty to “unlawful act” manslaughter and was sentenced to three years’ imprisonment, the Judge having adopted a starting point of four and a half years and discounted it by one-third for plea. The victim, V, was D’s mother-in-law. It was at the flat in which D, his wife, his son, his mother-in-law and a domestic helper lived that the incident took place. D was indebted to, and unable to pay, a loanshark who threatened to harm his wife and son unless he paid up. The loanshark was holding the wife hostage. In order to obtain the money to repay the loanshark, D asked V for a loan.  She refused. D did not tell her of the threat to her daughter and grandson. Instead he decided to render V unconscious and then to search the flat for, and rob her of, her valuables. Having sent the domestic helper out of the flat, D rendered V unconscious by covering her mouth and nose with a towel impregnated with a stupefying substance, namely thinner. As she lay motionless on the floor, D telephoned the police, saying that he had suffocated her to death. Among
the injuries which she sustained were chemical burns over her face. Some days later, she died in hospital. The cause of her death appeared to be brain damage and aspiration pneumonia, which could have been caused by the inhalation of the stupefying substance, by smothering due to the blockage of the external respiratory orifices or by a combination of both. In sentencing D, the Judge noted that D had been under duress; took the view that there was no aggravating factor in the commission of the offence; and made no specific reference to premeditation. The Secretary for Justice applied for a review of sentence.

**Held**, allowing the application by substituting a sentence of six years and two months’ imprisonment, that:

- **The use of a stupefying substance to commit a crime was an aggravating factor.**
- **Duress was to be taken into account as mitigation, but considerable care had to be taken not to accord stress and fear too much weight lest it be thought that it in any way justified what was done.**
- **There was an element of planning and premeditation by D in the commission of the offence, albeit the acts of planning occurred in a period of only 40 minutes prior to the attack. This was an aggravating factor.**
- **The sustained and violent manner in which D had overcome V as she resisted his attack was also an aggravating factor.**
- **The sentence imposed by the Judge was unduly lenient, the starting point of four and a half years’ imprisonment failing to reflect D’s culpability.**
- **It was not always appropriate to adopt a sentencing starting point in manslaughter cases, but this was an appropriate instance in which to do so. The appropriate starting point in this case was 10 years.**

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

就完整的摘要和判決書，請到 www.westlaw.com.hk 參閱Westlaw及《香港法律彙報與摘錄》。
More women than ever are choosing a career in law – over the past 15 years Hong Kong’s legal profession has seen an increase in female lawyers entering the profession and they now constitute around 50 percent of Hong Kong’s legal professionals. However, the numbers at the most senior end of the career spectrum in law firms – partners, particularly equity partners – paints another picture. Even though women no longer face the same challenges they encountered 30 years ago, conservative social attitudes still play an element in shaping the female narrative.

Conventional wisdom suggests that it is only a matter of time before women climb the ranks to partnership. However, this rationale does not stack up when applied to the legal profession that has employed a critical mass of women for many years. As competition for legal talent increases (and with women making up a significant amount of the talent pool at the entry level), retaining and advancing women’s careers is essential for law firms seeking to attain a competitive advantage. This article outlines career management ideas for women that can have an important impact on career satisfaction, success and longevity.

Be Smart About Managing Your Career

The beginning of your career is the time to start taking a long term view on your professional goals and to have a plan for the next three to five years. You are free to change it as time passes, but it is important to have a professional development plan. Hard work alone does not necessarily guarantee the career you want or are qualified to do: you also need to make the right decisions regarding career direction and the platform that will best support your growth. Failure to do this can see you work in an area designated by your firm rather than one based on your own personal interests, which can be difficult to change due to the firm’s business needs or your own inertia. Therefore, understand how the choices you make at the beginning of your career have a lasting impact and be passionate about the path you choose.

Take notice of whether there are female partners and other women in the senior ranks of the practice you have chosen. As you progress, start building your skillset and carving out a niche practice or set of clients that will make you indispensable. Becoming a specialist in a niche area
could ensure your skills are always in demand.

As you progress through your career, evaluate if partnership is still what you want. The idea of partnership is very different to the ongoing demands of partnership. If it is your chosen path, take control of your career and actively seek out opportunities that will assist you in achieving it – no-one is more invested in your career than you. Be prepared to work late nights and weekends, develop business and client relationships vigorously and be in a position where you will be able to generate work to be self-sufficient after making partner. Too many of us think that by putting our heads down, we will be given the career progression that we “deserve”, when in actual fact we need to articulate our expectations and be clear on the path to achieving the objective. Ideally you should be in a growth practice area at your current firm and also consider the firm’s overall financial health and growth strategy for the next couple of years. If your firm is losing key partners and not replacing head count at associate level then you may need to consider looking at other firms. Do your due diligence on the firm and the partners that you want to join and research whether the firm has a track record of stifling or nurturing female talent.

**Networking**

The traditional steps to climbing the law firm career ladder require hours spent outside the office at networking events, drinks after work and lunches. Women who are juggling careers and young families are often unable to attend these functions and by doing so miss the valuable opportunities of establishing relationships that will help them advance professionally. Your network represents both clients who would follow you and people who will support you, therefore, it is important to invest time in this and find a way to balance family and work life that is suitable for you.

Your network should consist of peers at other law firms (should you ever need to make a move you want to have a strong reputation and connections in the market), clients and most importantly supporters within your own firm.

**Find a Mentor**

Whilst it is important to build your technical skills it is also important to build your soft skills – for example, learn to please multiple demanding partners and also know when to push back. Find someone who you think has done this well and start to build a relationship with them – take them to lunch – this is a valuable way to build a relationship while gaining information. There is growing support from the legal community in Hong Kong to encourage a larger female presence in the senior ranks of the legal industry. A number of private practice and in-house lawyers have joined forces to launch “Women in Law Hong Kong” (WILHK). WILHK was established as a platform to help women in the legal profession connect and collaborate and to assist law firms in retaining female talent. WILHK offers a mentoring programme as a result of feedback from both women and law firms who have identified a significant lack of senior female lawyers compared to their male counterparts. Other specialist female professional groups that have been formed in Hong Kong include LILA (Ladies in Litigation and Arbitration) and IWIRC Hong Kong (International Women’s Insolvency and Restructuring Confederation). The Women’s Foundation also has a host of programmes and resources to assist women with career planning and development.

**Motherhood**

Should you step into motherhood the focus then becomes balancing family with work obligations. However, this is a priority for both parents and therefore it is important to talk to your partner about both of your respective career and family aspirations. In order for both of you to remain successful at work and home, you will likely have to work as a team. Returning from maternity leave can feel daunting and whether your career aspirations change or remain the same, you need to figure out how to manage your career effectively. It can be difficult to think past the next few months or years, but you will need to in order to keep your options open. Pro-actively restart career conversations and let it be known that you are still looking for progression and are committed to doing what is necessary to achieve it – lead and be in control of the conversation.

Women bring a distinctive way of thinking to the workplace as managers, leaders and peers whose value is increasingly recognised to the people who matter most to law firms: their clients. Women should not need to emulate the behaviour of men around them to be successful – aggressive female attorneys are often labelled “hard” or unpleasant and the quieter individuals as weak or lacking self-confidence – be who you are. Women do, however, need to put thought into what they want their career paths to be. Career management is the individual’s responsibility and you therefore need to consciously choose if partnership (and private practice) is what you want. Do not become so caught up performing your role that you do not have time to keep a perspective on whether achieving partnership is what you are really looking for. Obviously you will need to be conscientious in order to do a good job but this should not be to the exclusion of managing your career as it is not enough to keep your head down and work hard to assure success and security.

Choose your career, do not let it choose you!
女性期望如何：在法律界工作的女性须有的事业管理概念

現時有越來越多女性投身法律界，香港女律師的人數，在過去15年不斷攀升，現時香港的法律界中，約有一半律師是女性。然而，在律師事務所的最高層(亦即合夥人 — 特別是權益合夥人)中，卻又是另一番景象。儘管今天的女性已不必面對三十年前她們所面對的挑戰，但在形成社會對女性地位的看法方面，保守的社會態度依然起著不容忽視的作用。

傳統的智慧告訴我們，女性攀登至合夥人的位置，只是一個時間上的問題。可是，如果我們將這一說法套用到多年以來已有不少女性進入的法律界，這又好像是與真實情況不符。由於法律界在人才方面的競爭日趨激烈，而在初入行的律師族群中，女性又佔有一個頗大的比重，因此律師事務所若要取得競爭上的優勢，女性員工的留任和晉升，便成為一個十分重要的問題。本文將概述女性的事業管理概念，此等概念在取得工作滿足感、成就感、及任職時間的長久性方面，都有著非常重要的影響。

有效地管理你的事業

我們在事業剛起步的階段，便需要先從長遠的角度，衡量我們在專業上所欲達至的目標，然後制訂一個未來三至五年的計劃。隨着時間慢慢地過去，我們可以按實際情況修訂這些計劃，但是為自己訂立一個專業發展計劃，卻是至關重要的。將全副精神放在工作上，並不保證你必然可以根據你自己的抱負、或你所擁有的資歷來開展你的事業。你需要正確地認定：你的事業發展方向是什麼?什麼平台最能為你的事業發展提供支援?否則，未來看到的只會是，你要聽從指派，在律師事務所指定(而並非根據你的個人興趣)的業務範疇工作。

基於律師事務所本身的業務需要，又或是基於你個人的慣性，在往後的日子要改變這一局面的機會並不大。因此，你需要在事業剛起步的階段，明白如何為自己做抉擇，這對你所選擇的未來事業路向，以及你是否能持續地熱愛你的工作，都將會產生深遠的影響。此外，你亦需要留意到，在你所選擇發展的事業範疇中，是否能為女性擔任合夥人或其他一些高層職位。隨著你朝向個人事業的目標邁進，你需要開始建立自己的專門領域，並形成一個細分的服務範疇或特定的客戶群，使你所提供的服務，在你的客戶群中是無人可取代。如果你能夠令自己成為一個細分服務範疇的專門提供者，這將可以確保你所擁有的技能，會成為你的客戶不可或缺的東西。

在你的事業穩步發展的同時，你需要思考合夥人一職，是否仍是你所追求的
目標？合夥人的概念，與對合夥人的持續要求存在很大分別。如果這確是你所選擇發展的路向，你便需要管控自己的個人事業，並積極尋求能夠助你達成這一目標的機會，因為沒有人比你更重視自己的事業發展。你要有埋頭苦幹至深夜，以及在週末上班的心理準備。當你成為合夥人後，你需要擁有自給自足的業務。許多人認為，只要我們能自給自足的業務。許多人認為，只要我們

尋求導師協助

建立技術性的技能固然重要，但發展軟技能也同樣不容我們忽視。例如，學習如何在合夥人面前表達意見，但又不會使得對方對你說「不」。你可以嘗試認識在這方面表現傑出的一群人，並與他們建立關係。你也可以嘗試建立雙方的關係，也能助你的事業發展。香港法律界對這方面的支持也正在增加，以鼓勵更多女性擔任法律界的高層職位。一個名為‘Women in Law Hong Kong’ (WILHK)的組織，是由一些私人執業和一些擔任機構內部法律顧問的律師共同推動發展的。WILHK的成立，旨在成為一個協助女性在法律界進行互相聯繫和協作的平台，並在女性職員的留任方面，為律師事務所提供幫助。WILHK目前正在推行一個導師計劃，原因是有一些合夥人反映，指出在律師事務所中，並沒有女性律師人數，遠比資深的男律師人數少。其他在香港成立、具專門性的女性專業團體包括：LILA (Ladies in Litigation and Arbitration)、國際婦女破產和重組聯合會(International Women’s Insolvency and Restructuring Confederation)等。此外，婦女基金會也推動一系列的計劃和提供各項資助，協助婦女實現對自己的事業規劃和發展。

建立社交網絡

要登上律師事務所的事業階梯，傳統的路徑就是經常出席社交活動，在下班或午膳後，在業務上有來往的人把酒談天。這些活動對於需要同時兼顧社會活動和市場拓展的女律師來說，實在難以抽空出席。於是，她們失去了那些建立關係的寶貴機會，因而無法在事業上更上一層樓。所謂的網絡，是指你對不離不棄的客戶及用心支持你的人，而這種關係確實值得我們投放時間來經營。所以，你應當努力尋求一個在家庭生活和工作上取得適當平衡的方法。你所建立的網絡，應當包含其他律師事務所中與你的資歷相約的人(假如你有意在市場上為自己建立顧客的名聲和廣泛的聯繫)、客戶、以及最重要的，你的律師事務所中那些授予你支持的人。

母親的角色

如果你已經肩負著母親的角色，那麼你現時所關心的，便是如何在家庭和工作責任之間取得適當的平衡。然而，照顧家庭是一種優先責任，需要由父、母親一起共同分擔。因此，你需要與伴侶就各自對事業和家庭的期望進行坦誠的對話。你們需要作為一個團隊，相互配合，從而無論是在工作還是在家庭方面，都取得令人滿意的成果。當你完成產假重返自己的工作崗位後，你可能會遇到棘手的問題。不論你的事業願
PROFESSIONAL MOVES

Newly-Admitted Members

CHAI WENWEN
柴雯雯
BAKER & MCKENZIE
貝克·麥堅時律師事務所

HUI TIK CHUNG CALVIN
許拓翀
CLEARY GOTTLIEB STEEN & HAMILTON (HONG KONG)
佳利(香港)律師事務所

LI SIU LUN AARON
李肇倫
BRYAN CAVE
博凱律師事務所

CHAN DA CUNHA SANTOS INES
山澤東
BRYAN CAVE
博凱律師事務所

KWOK FU KEUNG
郭富強

LIU XINYIN
劉昕吟
NU SKIN ENTERPRISES HONG KONG LLC.

CHIK WING KI
戚詠琪
SLAUGHTER AND MAY
司力達律師樓

LAU YIP WAI
劉業唯

LUN SHIU YAN BERNITA
倫肇恩
BRYAN & MCKENZIE
貝克·麥堅時律師事務所

CHOI SZE MAN
蔡思敏
WONG & CO., SIMON
黃國康律師事務所

LEUNG SIU TUNG SHELDON
梁兆彤
FRESHFIELDS BRUCKHAUS DERINGER
富而德律師事務所

MA MENGWEI
馬夢蔚
ALLEN & OVERY 安理國際律師事務所

DONG ZHI YAO ROGER
董之嶢
ASHURST HONG KONG
亞司特律師事務所

LI YUEN LIM JEREMY
李元念

MA WING SUM MICHELLE
馬泳森
STEPHENSON HARWOOD
羅夏信律師事務所
Editorial Note: the photo of PANG HELEN WAI KIU, Baker & Mckenzie, did not appear in the February 2017 issue of Hong Kong Lawyer.

編按：2017年2月號的《香港律師》內 遺漏了 彭慧翹(貝克‧麥堅時律師事務所)的相片，敬希垂注。
Partnerships and Firms

合夥人及律師行變動

changes received as from 1 February 2017

- CHAN LUNG JUNE
  commenced practice as a partner of Luk & Partners as from 13/02/2017.
  陳遠
  自2017年2月13日成為新開業陸繼鏘律師事務所合夥人。

- CHAN WING LEUNG
  ceased to be a partner of Partick Chan & Co. as from 01/03/2017 and the firm closed on the same day.
  陳永良
  自2017年3月1日不再出任陳永超律師樓合夥人一職，而該行於同日結業。

- CHEUNG CHUN PUN
  commenced practice as a partner of Luk & Partners as from 13/02/2017.
  張俊斌
  自2017年2月13日成為新開業陸繼鏘律師事務所合夥人。

- CHEUNG WING LEUNG
  ceased to be a partner of Partick Chan & Co. as from 01/03/2017 and the firm closed on the same day.
  陳永良
  自2017年3月1日不再出任陳永超律師樓合夥人一職，而該行於同日結業。

- CHEUNG YING
  commenced practice as a partner of Luk & Partners as from 13/02/2017.
  張 瑩
  自2017年2月13日成為新開業陸繼鏘律師事務所合夥人。

- CHIK PUI HONG
  joined Ashurst Hong Kong as a partner as from 16/02/2017.
  植沛康
  自2017年2月16日加入亞司特律師事務所為合夥人。

- CHONG YI JANNEY
  joined Smyth & Co as a partner as from 15/02/2017.
  莊怡
  自2017年2月15日加入Smyth & Co為合夥人。

- CROOCK JAMES MAXWELL
  became a partner of Dechert as from 01/03/2017.
  自2017年3月1日成為德杰律師事務所合夥人。

- FERGUSON DONOVAN JOHN
  joined King & Wood Mallesons as a partner as from 27/02/2017.
  自2017年2月27日加入金杜律師事務所為合夥人。

- FUNG LAI YIN FREDERICK
  ceased to be the sole practitioner of Fung, Law & Ng as from 15/02/2017 and the firm closed on same day.
  馮禮賢
  自2017年2月15日不再出任馮禮賢,羅國良, 吳裕雄律師行獨資經營者一職，而該行於同日結業。馮律師於2017年2月16日加入梁陳彭律師行為合夥人。

- HUI KEE SING
  ceased to be a partner of Patrick Chan & Co. as from 01/03/2017 and the firm closed on the same day.
  胡家星
  自2017年3月1日不再出任陳永超律師樓合夥人一職，而該行於同日結業。

- JI HUI
  joined Jeffrey Mak Law Firm as a partner as from 01/03/2017.
  季輝
  自2017年3月1日加入麥振興律師事務所為合夥人。

- KWAN HOI TING HELEN
  ceased to be a partner of Christine M. Koo & Ip, Solicitors & Notaries LLP as from 02/02/2017 and remains as a consultant of the firm.
  关凯婷
  自2017年2月2日不再出任顧張文菊、葉成慶律師事務所有限法律責任合夥人一職，而轉任為該行顧問。

- LAU KOON TAI
  ceased to be a partner of Patrick Chan & Co. as from 01/03/2017 and the firm closed on the same day.
  劉觀帶
  自2017年3月1日不再出任陳永超律師樓合夥人一職，而該行於同日結業。

- LUK KAI CHIANG EDWIN
  commenced practice as a partner of Luk & Partner as from 13/02/2017.
  陸繼鏘
  自2017年2月13日成為新開業陸繼鏘律師事務所合夥人。

- PANG CHUNG FAI BENNY
  ceased to be a partner of Loeb & Loeb LLP as from 01/02/2017.
  彭中輝
  自2017年2月1日不再出任Loeb & Loeb LLP合夥人一職。
CityU: Visit by Delegation of Korea University to Hong Kong Centre for Maritime and Transportation Law

Professor Captain Kim In Hyeon, Professor of School of Law and Director of Maritime Law Centre of Korea University, and his six students visited the Hong Kong Centre for Maritime and Transportation Law (“HKCMT”) on 13 February 2017. Dr. Xing Lijuan and Dr. Zhao Liang, Associate Directors of HKCMT and Assistant Professors of the School of Law, City University of Hong Kong, received the delegation.

Dr. Xing and Dr. Zhao welcomed the delegation at the reception. Dr. Zhao further delivered a seminar titled “Chinese Maritime Law and Recent Development” in which he sketched the definition, source and practice of Chinese Maritime Law. However, the highlight of the seminar was Dr. Zhao’s elaborations on recent heated cases from Supreme People’s Court of China concerning bills of lading, maritime salvage and marine insurance. The seminar ended with an engaging discussion, during which the students from Korea University actively raised questions. In the evening, Professor Captain Kim also met students from CityU School of Law and gave a guest lecture on “Liability of the Time Charterer.”

On behalf of HKCMT, Dr. Xing and Dr. Zhao presented souvenirs. Both sides look forward to more collaborative academic opportunities in the future.
CUHK Law Hosts a Conference on Regional Energy Cooperation in Asia to Discuss Regulation of Energy Investments along ‘Belt & Road’

Exploring the issues associated with energy and the law, and alongside The Chinese University of Hong Kong (CUHK) Strategic Plan 2016–2020 which identifies “Environment and Sustainability” as one of the four major research areas, CUHK Faculty of Law co-organised with Konrad Adenauer Stiftung (“KAS”) and International Energy Charter an international conference on “Meeting on Regional Energy Cooperation in Asia: The Regulation of Energy Investments along the ‘Belt and Road’” from 23–25 February 2017 in Hong Kong.

The Organisers were honoured to invite Miss Yvonne Choi, Commissioner for Belt and Road, to deliver a keynote address on the opening day (23 February) to share her views on how Hong Kong can contribute to energy cooperation in legal and financial context under the Belt and Road Initiative.

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The conference discussed the role of law in China’s energy security, and the interaction between Belt and Road and national and multilateral energy security measures. Conference details can be found at http://www.law.cuhk.edu.hk/Obor_Energy_Conference.

Left to right: Prof. Christopher Gane, Dean, Faculty of Law, CUHK; Dr. Masami Nakata, Assistant Secretary General, the Energy Charter Secretariat; Prof. Fanny Cheung, Pro-Vice-Chancellor/Vice-President, CUHK; Miss Yvonne Choi, Commissioner for Belt and Road; Dr. Peter Hefele, Director, KAS Regional Energy Security and Climate Change Project; Prof. Anatole Boute, Associate Professor, Faculty of Law, CUHK.

左至右：中大法律學院院長Christopher Gane教授、能源憲章秘書處助理秘書長中田真佐美博士、中大副校長張妙清教授、「一帶一路」專員蔡瑩璧小姐、KAS區域能源安全和氣候變化項目總監Peter Hefele博士、中大法律學院Anatole Boute副教授。
Consisting of 6 plenary sessions and subsequent discussion sessions, the Conference attracted more than 40 experts and academics from all over the world to speak on topics related to “Energy Policy Objectives of China’s OBOR”, “Institutional Frameworks for Energy Cooperation”, “The Perspective of the OBOR Countries: FDI and Energy Market Reform”, “Financing Energy Investments”, “Resolution of Energy Investment Disputes” and “Energy Transit". The Conference critically discussed the role of law for the achievement of China’s energy security under this initiative and explored the interaction of Belt and Road policy with the domestic and multilateral energy security initiatives. Further details of the Conference are obtainable at http://www.law.cuhk.edu.hk/OBOR_Energy_Conference.

The three-day Conference attracts more than 40 experts and academics from all over the world to speak on the regulation of energy investments along the “Belt and Road”. 為期三天的會議吸引了來自世界各地的40多位專家學者就“一帶一路”對能源投資的監管發表演講。
University Honours HKU Law Professor with Knowledge Exchange Excellence Award 2016

The University of Hong Kong (“HKU”) introduced the Knowledge Exchange (“KE”) Excellence Award in 2015/16. This University-level award has been introduced to recognise outstanding KE accomplishments that have made significant economic, social or cultural impacts to benefit society. Only Faculty KE Awardees in current and past years may be nominated by their Faculty to compete for the University’s award. As a past winner of the Law Faculty’s KE award in 2011, the Faculty nominated Ms. Amanda Whitfort, Associate Professor in the Department of Professional Legal Education, for the University-level award this year. Having reviewed the knowledge transfer impact of her publication: Review of Animal Welfare Legislation in Hong Kong (2010), the KE Executive Group selected Ms. Whitfort as the winner of the inaugural KE Excellence Award 2016. The Award Presentation Ceremony for Excellence in Teaching, Research and Knowledge Exchange 2016 was held on 27 March 2017 at the Grand Hall, Lee Shau Kee Lecture Centre, Centennial Campus.

KE together with Teaching and Research, form the three pillars that underpin all activities at HKU. HKU defines KE as engaging, for mutual benefit, with business, government or the public to generate, acquire, apply and make accessible the knowledge needed to enhance material, human, social, cultural and environmental well-being. The KE work Ms. Whitfort has undertaken, in partnership with Dr. Woodhouse of the Hong Kong Society for the Prevention of Cruelty to Animals, has had profound policy implications and clear impact on society.

In 2008, Ms. Whitfort and Dr. Fiona Woodhouse, Deputy Director (Welfare) of Society for Prevention of Cruelty to Animals (HK), were granted a Public Policy Research grant, by the Research Grants Council, to conduct a comparative study evaluating animal protection legislation. Hong Kong’s animal protection laws were drafted in the 1930s and the study was timely. After spending two years reviewing the adequacy of all of Hong Kong’s laws protecting animals kept for companionship, food, entertainment and laboratory use, and controlling wild and feral animals, the Review of Animal Welfare Legislation in Hong Kong was published.

The Review found that Hong Kong’s anti-cruelty legislation lacked the necessary power to assist animals in danger of suffering and abuse. The law is enforced only when an animal is the victim of an overtly cruel act. Criminal neglect of animals is not regarded as an offence. The study recommended significant reform to Hong Kong’s laws through the introduction of a new Animal Welfare Ordinance, which would impose on owners a positive duty to care properly for their animals. In regard to sentencing practices in animal cruelty cases, the study found that despite the maximum penalty for the offence having been raised in 2006, court sentences had remained lenient, even following convictions for sustained and serious abuse.
The Review also uncovered serious failures at local slaughterhouses and in live wet food markets to meet animal welfare standards prescribed by the OIE (World Organisation for Animal Health) Terrestrial Animal Health Code 2009 (Slaughter of Animals), to which China is a signatory.

In relation to the pet trade, the Review found Hong Kong's lack of legislative control on animal trading had resulted in only two licensed dog breeders offering animals for sale in Hong Kong, with the remaining animals coming from unlicensed hobby breeders or import dealers. The study highlighted that the continued lack of legislation requiring the licensing of all dog breeders had allowed animals of dubious origin and health to be widely sold throughout the Territory, threatening public health and compromising animal welfare standards.

The Review provided the first and, to date, only empirical study of the adequacy of animal protection legislation in Hong Kong. It generated widespread public discussion about the treatment of animals and critically, provided empirical data to support NGO's working in the field and seeking law reform. In 2011, the former Executive Director of SPCA (HK) made the following comments on the importance and impact of the Review:

This is the first review of its kind conducted in Hong Kong and its publication has been of immense value to society. It has created an excellent platform for positive change and much needed reform. We are currently utilising the Review's findings as a basis for dialogue with government and other animal welfare stakeholders. We have also disseminated the results of the Review to our members and are using the findings as a means to marshal support for law reform.

The publication of Ms. Whitfort and Dr. Woodhouse's Review raised a previously neglected field of study to a topic of widespread public debate and concern. Societal awareness of the poor state of Hong Kong's animal welfare laws led to intense pressure on government

香港的動物褔利法是在二十世紀三十年代起草的，而該研究可謂正合時宜。經過兩年檢討是否有足夠的香港動物福利法例應對有關飼養動物作陪伴、食物、娛樂和實驗室用途以及控制野生動物後，出版了《香港動物福利立法之檢討》。

該《檢討》發現，香港的反虐待動物立法缺乏在動物遭遇痛苦和虐待時提供協助的必要權力。法律只有當一種動物被公然殘酷對待時才被執行。對動物的刑事疏忽不屬於犯罪行為。研究報告建議通過引入新的動物福利條例，對香港的法律進行重大改革，這將對動物主人施加積極義務，妥善照顧其動物。關於虐待動物案件的量刑做法，研究發現，儘管2006年提出了犯罪行為的最高處罰，但法庭即使對因持續和嚴重虐待而被定罪的判決仍然寬鬆。

該《檢討》還揭露了當地屠宰場和活牲畜濕食品市場的情況嚴重，不足以符合中國簽署的「世界動物衛生組織」《2009年陸生動物衛生法》(動物屠宰)規定的動物福利標準。

關於寵物貿易方面，該《檢討》發現香港缺乏對動物貿易的法例管制，導致只有兩名持牌犬種育種者在香港出售動物，其餘動物來源無牌的，作為愛好的育種者或進口商。研究報告強調，若繼續缺乏立法以牌照規管所有犬種育種者，將使不明來歷和健康有問題的動物到處廣泛銷售，從而威脅著公眾健康，損害了動物福利標準。

《香港動物福利立法之檢討》提供了有關香港動物福利法例是否充夠的第一次，也是迄今為止唯一一次的實證研究。該《檢討》引起了公眾有關對待動物的廣泛討論，批評性地提供了實證數據，以支持非政府組
to introduce law reform. Ms. Whitfort has given public lectures on her research, and has been invited to present her findings and recommendations to several government departments, including the Agriculture, Fisheries and Conservation Department (“AFCD”), the Department of Food and Environmental Hygiene, the Department of Justice, the Hong Kong Police, Legislative Council members (“LegCo”) and other stakeholders, including veterinarians and frontline animal rescue officers.

Since publishing the Review, Ms. Whitfort has received regular requests to provide input to local and international news articles, radio talk back programmes and television exposés, focusing on animal protection laws in Hong Kong. The media has documented an increasing public concern with the adequacy of legislation available to address cases of cruelty to animals. Ms. Whitfort’s work has resulted in the introduction of specialised training for police and prosecutors in presenting animal cruelty cases at court and the AFCD is now meeting regularly with the police and SPCA (HK) to discuss animal welfare cases. The Department of Justice is also proactively reviewing sentences for animal cruelty convictions.

In 2014 video, the former Secretary to the Hong Kong Law Reform Commission made the following observation of Ms. Whitfort’s work:

Professor Whitfort’s research on animal welfare legislation is extremely important. It puts forward the case, very strongly, for reform of Hong Kong’s legislation and it informs and encourages debate within government and the wider community. It is extremely difficult to have legislation changed. Virtually any government is conservative and resistant to change, but the process of change is hugely helped if you have, supporting your arguments, the kind of empirical, comparative research that Professor Whitfort has produced.

The Review has spawned important changes in legislation and policy. In November 2010, it was endorsed and adopted by six legislative
parties sitting in LegCo who made a joint call on the government to implement the study’s findings in new animal welfare policies for Hong Kong. In the same year, Ms. Whitfort and Dr. Woodhouse were invited to join the AFCD’s Animal Welfare Advisory Group’s Legal Sub-committee, as expert advisors. The Sub-committee is charged with developing animal welfare initiatives in law and policy for the AFCD. In 2011, in response to one of the key recommendations made in the Review, the AFCD announced the introduction of a trial “Trap-Neuter-Return” programme (in conjunction with the SPCA) for managing the welfare of feral dogs and improved policies for the management of abandoned animals which allow easier adoption access for the public.

In 2016, Ms. Whitfort and Dr. Woodhouse’s key recommendations for reform of the pet trade were passed into law by the Public Health (Animals and Birds) (Animal Traders) Regulations. Alongside the new regulations, legally enforceable Licensing Conditions and Codes of Practice for the care of companion animals in Hong Kong were drafted by the Sub-committee, on the basis of the Review findings. These will come into effect in 2017 (initially for dogs and later for cats and exotic pets).

Ms. Whitfort’s pioneering work to improve the legislative protection of animals is far from over. The Sub-committee she sits on, within the AFCD, continues to examine the findings of the Review to support further law reform initiatives including Hong Kong’s need to update its legislation to comply with OIE requirements for pre-slaughter stunning of food animals in wet markets and the modernisation of Hong Kong’s animal cruelty laws to recognise criminal negligence as a basis for liability for prosecution.

The Faculty and the University celebrate Ms. Whitfort’s significant achievements and support her continued endeavors to improve society.
With the surge in coffee production and consumption in Asia in recent years, the coffee bean seems primed to stage a coup in Eastern markets that have for centuries kowtowed to the tea leaf. According to a 2014 report compiled by the International Coffee Organisation, Asia has experienced the most dynamic growth in coffee consumption in the world from 1990 to 2012, growing by an average rate of 4 percent per annum, increasing to 4.9 percent since 2000. While more tea than coffee is consumed in most Asian countries, the blossoming coffee culture in the East, coupled with the dynamics and high population density of developing markets, seems promising to those in the coffee sector.

As for Hong Kong, local consumer preferences seem to be changing in tandem with broader regional trends. To embrace the City’s evolving hot beverage preferences, the Member Benefits Committee organised a Coffee Day at the Law Society Clubhouse in March, providing members with the opportunity to increase their appreciation and understanding of coffee production, preparation and tasting. Assisting the Committee with this event, a local coffee shop prepared a variety of drinks using their signature house blends, which included espresso, black coffee and white coffee variations (i.e., latte, cappuccino, flat whites and piccolo).

The event kicked off with coffee cupping or tasting, which is the practice of observing the aromas, fragrances and flavours of brewed coffee. As explained by the Specialty Coffee Association, a standard cupping procedure generally involves deeply sniffing the coffee, then strongly slurping the coffee to aspirate it over the entire tongue. Through these techniques, the coffee taster attempts to assess aspects of the coffee’s taste, such as its body, flavour and aftertaste. Since a coffee bean’s flavour contains clues about the region where it was grown, professional cuppers often attempt to identify the bean’s origin through its flavour profile. The house blend espresso coffee served at the event was a mixture of beans harvested in 2016: 30 percent of the mixture comprised Brazilian coffee beans harvested from...
Fazenda Ouro Verde and the remaining 70 percent comprised Colombian coffee beans harvested from the El Danubio Farm.

In addition to origin, the method used to process coffee from the seed of a coffee cherry into a ready-to-roast green coffee bean also impacts its final flavour profile. The local coffee shop representative explained that the two beans comprising its house blend espresso coffee underwent two different processing methods, with the Brazilian beans undergoing a natural or dry process and the Colombian beans undergoing a washed or wet process.

The natural process, which is one of the oldest methods, entails, just as its name suggests, drying coffee cherries after they are harvested. For those who have never seen a coffee cherry, it is covered by a skin that wraps closely around a thin layer of pulp, known as mucilage. Both the skin and mucilagce encase the seed, which usually contains two coffee beans. During the drying process, the entire cherry is left intact, with the coffee beans absorbing some of the characteristics of the pulp and skin. After the coffee cherry is dried to the appropriate moisture level, which can take up to four weeks, the layers surrounding the bean are hulled. The natural or drying process is used for about 80 percent of the coffee beans produced in Brazil and Ethiopia. Naturally processed coffee beans have bold, fruity flavours, which are inherited from the coffee cherry’s sweet pulp and skin. Generally, these beans produce a heavier bodied cup of coffee.

In contrast, with the washed or wet process, the coffee bean is separated from the cherry in a procedure called depulping. This relatively new method of processing involves coffee cherries being dropped into processors and carried by water to a holding tank directly after being harvest. Any defective, or less dense cherries, float to the top and are skimmed off. The good cherries sink and are sent through a de-pulping device. From there the seeds are directed to a fermentation tank to rest for one to two days. After the pulp is removed, the beans are dried and then hulled. Washed coffees are typically described as tasting cleaner, brighter and fruitier. The term “clean” does not connote that washed coffees are of a higher quality; rather, it means that flavours intrinsic in the seed are communicated more clearly, as opposed to the flavour of the fruit.

During the tasting, members noted that the Colombian and Brazilian bean mixture gave the coffee a fruity taste, similar to the taste of grapefruits. They also detected floral undertones and a trace of a nutty finish. The texture of this cup of espresso was creamy and intensely sweet, which differs from a cup of milk coffee that normally gives you the taste of nuts mixed in milk chocolate, with an extra creamy and smooth body.

A survey was conducted to determine the most favoured beverage. Surprisingly, most participants chose either the mocha drink or the latte. Those who chose the mocha drink explained that they fancied the taste combination of chocolate with bitter coffee. Those who preferred the taste of the latte indicated that they enjoyed the bold, bitter taste of coffee coupled with fresh, sweet steamed milk over it.

As evening fell, the Clubhouse was transformed into a latte art workshop with the help of Ms. Lamont Loo, a licensed Q-grader. The 8 members that attended learned how to create a simple heart-shaped pattern in the foam topping of their latte by using basic techniques of “high and mix” and “down and pour”. They also learned how to froth milk, which involved submersing a steam wand into a pitcher of milk until the milk reached the appropriate temperature and texture. While steaming milk may seem simple, it is remarkably difficult to do well, as it involves two phases – aerating (or stretching) and emulsifying (or texturing). Members learned that you have to attain a certain texture to the steamed milk to create latte art and that varying aerating and emulsifying techniques are used to create different types of milk-based espresso drinks.
“做豆，不做豆，問題在於做些甚麼豆”

隨着亞洲近年掀起咖啡熱，泡咖啡，喝咖啡蔚成風氣，咖啡豆在茶葉稱王幾世紀的東方市場，看來已經蓄勢發動政變。根據2014年一份由國際咖啡組織撰寫的報告，亞洲是1990年至2012年全球咖啡消耗量增長最富動力的地區，自2000年起一直增至4.9%，每年平均增長4%。雖然大多數亞洲國家消耗茶比消耗咖啡多，但咖啡文化正在東方綻放，加上發展中市場動力十足，人口密度高，咖啡產業看來大有可為。

獲得香港消費者的偏好似乎跟隨著亞洲近年掀起咖啡熱。香港人越來越愛喝熱飲，風氣漸成，為了支持這股風氣，會員福利委員會三月在律師會會所舉辦「咖啡日」，給會員機會提升鑑賞咖啡的能力，也了解多點咖啡的生產、製造咖啡的準備工夫，以及如何品嚐咖啡。委員會得到一家本地咖啡店提供協助，當時預備了多款招牌混合咖啡，包括特濃咖啡、義式鮮奶咖啡、泡沫咖啡、香濃咖啡、香草咖啡、香料咖啡等。

活動開始先介紹杯測，一種在咖啡泡成後用來評鑑咖啡的風味層次。按照精品咖啡協會的解釋，標準的杯測一般先要用力嗅一嗅咖啡的氣味，然後再用力吸啜咖啡，讓舌頭每處位置都嚐到咖啡的味道。透過這兩樣技巧，品嚐者嘗試品評咖啡味道的多個方面，例如咖啡的質感、風味和餘甘。由於咖啡豆蘊藏產地的風味，專業杯測者通常試著透過風味層次，分辨咖啡豆的原產地。例如，某家本地咖啡店的招牌混合咖啡，是由2016年採收的兩種咖啡豆調製而成：30%是Fazenda Ouro Verde的巴西咖啡豆，70%是El Dunubio Farm的哥倫比亞咖啡豆。

至於香港，香港消費者的偏好似乎跟隨影響廣泛的亞洲趨勢走。香港人越來越愛喝熱飲，這是一種新型的飲品。香港人在品嚐咖啡時注重咖啡的風味，往往會選擇具有特點的咖啡豆，特別是那些具有獨特風味的咖啡豆。香港的咖啡市場正在不斷發展，越來越多的人開始注重咖啡的品質，並開始嘗試不同的咖啡豆。

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LEGAL TRIVIA

This month, our questions focus on some famous criminal cases in Hong Kong and other British courts in Asia. The questions have been prepared by Douglas Clark, Barrister. Suggestions for questions to appear in next month’s journal are most welcome.

1. Why was the Hello Kitty murder case in Hong Kong so-called?
   A. It was the name of the bar that the victim worked at.
   B. Kitty was the name of one of the victims.
   C. Parts of the victim’s body were found inside a Hello Kitty doll.
   D. The body was found in a room full of cats.

2. What flavour was the milkshake that Nancy Kissel used to drug her husband before killing him?
   A. Strawberry
   B. Banana
   C. Chocolate
   D. Vanilla

3. Rurik Jutting was a graduate of which university?
   A. Oxford University
   B. Cambridge University
   C. University of London
   D. Harvard University

4. Edith Carew who was convicted of killing her husband, Walter, in the British Court for Japan in Yokohama used which poison?
   A. Arsenic
   B. Cyanide
   C. Fugu (blowfish)

5. Why was the Hong Kong “Jars Murderer” so-called?
   A. He used a jar to kill his victims.
   B. He placed jars around his victims’ bodies to ward off evil spirits.
   C. He kept parts of his victims’ bodies in various containers.

6. Which Vice-President of the Court of Appeal was a junior counsel in the Braemer Hill Murder case?
   A. Wally Yeung
   B. Michael Lunn
   C. Johnson Lam

7. Atma Singh, a Sikh policeman who was convicted of murder by the British Supreme Court at Shanghai and sentenced to death by hanging is remembered in history for what reason?
   A. He assassinated the British Minister to China.
   B. He survived his hanging.
   C. A group of Sikhs surrounded the courthouse after his sentencing and freed him.

8. The “Cathay Girl in the Bath” case is so-called because?
   A. A senior government official was caught in the bath with a Cathay girl during an ICAC raid.
   B. A Cathay Pacific stewardess was killed while bathing.
   C. The badly decomposed body of a Cathay Pacific stewardess was found in a bath.

9. Cheung Tsz-keung aka “Big Spender” who was involved in high profile kidnappings in Hong Kong in the 1990s was convicted in which jurisdiction for the kidnappings?
   A. Hong Kong
   B. The Mainland of China
   C. Macau
   D. He was never convicted.

10. Katherine Hadley was convicted in 1933 in the British Supreme Court at Shanghai of murdering her common law husband. How many times had she been prosecuted for murder before this?
    A. 0
    B. 1
    C. 2
    D. 3

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.

Answers to Legal Trivia Quiz #35

1. C. The Full Court first sat in 1913.
2. D. The British Coat of Arms may still be seen on the exterior of the Court of Final Appeal.
3. B. The first puisne judge was appointed in Hong Kong in 1856.
4. A. Sir Alexander Grantham at one time in his career served as Chief Magistrate.
5. A. There was only one Chinese solicitor practising in Hong Kong in 1891, Mr. Wyson Ho.
6. C. Robert Tang was born in Shanghai.
7. A. Archie Zimmern was the first local barrister to be appointed directly to the High Court.
8. A. In the 1980s the Supreme Court had courts on the 31st and 32nd floors of the Sung Hung Kai Centre.
9. A. & C. Aston & Bell designed the façade of Buckingham Palace and the Victoria & Albert Museum.
10. B. The first Patents Ordinance was enacted in Hong Kong in 1862.
法律知識測試 #36

1. 「Hello Kitty藏屍案」因何得名？
   A. 這是受害人工作酒吧的名稱。
   B. 其中一名受害人名叫Kitty。
   C. 受害人的部份殘肢被藏於Hello Kitty娃娃內。
   D. 受害人的遺體在一間充滿貓的房間內尋回。

2. Nancy Kissel在殺死丈夫之前，在什麼味道的奶昔下藥？
   A. 士多啤梨
   B. 香蕉
   C. 朱古力
   D. 雲呢拿

3. Rurik Jutting畢業於哪所大學？
   A. 牛津大學
   B. 創橋大學
   C. 倫敦大學
   D. 哈佛大學

4. 被橫濱的英國在日法院判處謀殺親夫Walter的Edith Carew使用哪種毒藥？
   A. 砒霜
   B. 山埃
   C. 河豚

5. 「瓶子殺手」(Jars Murderer)因何得名？
   A. 他用瓶子殺死受害人。
   B. 他把瓶子放在受害人遺體周圍，以驅走惡靈。
   C. 他把受害人的殘肢存放於不同的容器內。

6. 哪位上訴庭副庭長在寶馬山謀殺案中擔任大律師？
   A. 楊振權
   B. 倪明高
   C. 林文瀚

7. 錫克教警員Atma Singh被上海英國在華最高法院判處謀殺罪成，處以繯首死刑。他因何在歷史上留名？
   A. 他暗殺到訪中國的英國大臣。
   B. 他在繯首死刑中倖存。
   C. 一群錫克教徒在判刑後包圍法院並釋放了他。
   D. 他未被定罪

8. 「國泰空姐浴缸案」(Cathay Girl in the Bath)因何得名？
   A. 一名政府高官在廉政公署突擊調查期間被發現與國泰空姐一起洗澡。
   B. 一名國泰空姐在洗澡時遇害。
   C. 一名國泰空姐的遺體被發現在浴缸裏溶解。

9. 綽號「大富豪」的張子強於90年代涉及多宗高調綁架案，他於哪個司法管轄區被判綁架罪成？
   A. 香港
   B. 中國內地
   C. 澳門
   D. 他從未被定罪

10. Katherine Hadley於1933年在上海的英國在華最高法院被判謀殺同居丈夫，在此之前，她被起訴謀殺多少次？
   A. 0
   B. 1
   C. 2
   D. 3

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

本月的問題圍繞香港和亞洲其他英國法院審理過的著名刑事案件。
問題由馬錦德大律師編製。歡迎建議下期問題。

法律知識測試#35的答案
1. C. 合議庭於1913年首次組成。
2. D. 終審法院外仍展示英國國徽。
3. B. 香港首位按察司於1856年獲委任。
4. A. 葛量洪爵士曾同時擔任首席裁判司。
5. A. 1891年僅一位華籍律師(何衛臣先生)在香港執業。
6. C. 鄧國楨法官於上海出生。
7. A. Archie Zimmern是首位被直接委任為高等法院法官的本地大律師。
8. A. 是。在80年代，最高法院曾設置於新鴻基中心31樓及32樓。
9. A. & C. Aston & Bel曾設計白金漢宮外觀及維多利亞和艾伯特博物館。
10. B. 香港最早的專利條例於1862年制定。

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

Soraya Tennent, Consultant, Legal Support
Soraya’s career with Michael Page commenced in Australia in 2015. She has 2 years of recruitment experience in the areas of legal and finance. After moving to Hong Kong, Soraya specialises in the recruitment of legal support staff for all leading and sizable law firms as well as global and local financial institutions. Soraya graduated from Curtin University with a Double Major in Business Law and Journalism.

Serena Tang, Associate Director, In House Corporate
Serena has over 6 years of recruitment experience, specialising in the recruitment of in-house lawyers where her industry focus is across in house corporate, assisting all types of commercial clients in Hong Kong. Serena has long standing work relationships with the executive-level legal and human resources professionals across a variety of industries with multinationals, state-owned enterprises, as well as domestic private and listed companies. Graduating from the University of Wisconsin, Serena gained experience in management consulting prior to joining Michael Page in 2010.

Kamil Butt, Senior Consultant, Private Practice
Kamil joined Michael Page Legal in year 2015 with over 2 years legal recruitment experience. He specializes in recruitment for private practice and financial services clients, with an excellent track record in recruitment covering all areas of practices for lawyers, from newly qualified up to partner level, for leading and sizable law firms in Hong Kong. He also oversees legal support hires for financial institution clients, and has recruited within the in house legal space. Kamil is a LLB graduate and worked in a leading law firm and a global insurance company before joining Michael Page.

Marta Verderosa, Manager, Private Practice
Marta has over 4 years of legal recruitment experience, with a dedicated focus on private practice. She has extensive experience in recruitment covering all areas of practices for lawyers, from newly qualified up to partner level, for leading and sizable law firms in Hong Kong. She also oversees legal support hires for financial institution clients, and has recruited within the in house legal space. Marta is a LLB graduate and worked in a leading law firm and a global insurance company before joining Michael Page.

Tina Wang, Managing Consultant, In-House Corporate
Tina has over 4 years’ recruitment experience within the in house commercial space, specialising in recruitment of in-house lawyers at all levels. She has an excellent track record working with multinationals, state-owned enterprises, as well as domestic private and listed companies in Hong Kong. Tina’s in-depth market knowledge and extensive networks in the region allows her access to high calibre candidates and clients. Tina is CPA qualified with a prior career in PriceWaterhouse Coopers prior to joining Michael Page.

Sabina Li, Consultant, Legal Support
Sabina specialises in the recruitment of company secretarial professionals at all levels, with a focus on in house commercial clients in Hong Kong. She has 2 years of recruitment experience servicing commercial clients across a variety of industries. Sabina graduated from the UK with a Bachelor of Science and a Graduate Diploma in Law. Prior to joining Michael Page, she worked with a law firm and a HK listed company as a paralegal and company secretary.

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- **10+ PQE**
- **Financial Institution**

Joining an established group with a medium sized office in Hong Kong, you will report directly to the CEO working closely with senior management and the business, in supporting the core businesses within the group including Securities, Lending, Asset Management and Financing. You will be supported by a paralegal and a compliance manager. The ideal candidate will be a 10+ PQE qualified lawyer with strong corporate experience, and financial institution exposure will be highly regarded. Experience in handling securities and lending matters are preferred, as is familiarity with local regulatory guidelines. Strong communication skills are required including English and business fluent Mandarin. Ref: 3920363

### PRC Legal Counsel
- **3+ PQE**
- **Infrastructure Company**

Our client is a Hong Kong based company with international infrastructure and construction management projects overseas. Responding to business growth, they need a Legal Counsel to take up an independent role to provide legal support to local and overseas businesses. You will identify legal risks in projects and provide advice in contract management. It is an excellent opportunity to define the legal function. The ideal candidate will be a PRC qualified lawyer with at least 3 years’ PQE and well versed in drafting and reviewing contracts and agreements. Native Mandarin is required as is fluency in spoken and written English. Ref: 3918818

### IP Legal Manager
- **2+ PQE**
- **Luxury Retail Group**

Our client is a reputable retail brand, headquartered in Europe with operations in over 100 countries. Due to their growing business across the globe, they are currently looking for a Legal Manager to join the team. Based in Hong Kong, you will be supporting the APAC operations, including intellectual property related issues as well as some general commercial work. You will be reporting to the Head of Legal, APAC and leading a paralegal. The ideal candidate will have a minimum of 2 years’ PQE with the ability to work independently under pressure and tight deadlines. You will also need to be driven and people oriented with strong communication skills in spoken and written English and Chinese (Mandarin and Cantonese). Ref: 3912130

### Senior DCM Lawyer
- **6+ PQE**
- **International Law Firm**

A leading international law firm with established offices in Hong Kong and other Asian major cities created a new headcount to take on a junior debt capital markets and structured finance solicitor. In this role you will be exposed to a wide range of high-profile and award-winning transactions, covering DCM transactions, bonds and securitization matters. The ideal candidate is a Hong Kong or UK qualified solicitor with good English and Chinese language skills. Candidates with solid banking finance experience from international law firms who interested in exploring a career in the DCM will be considered. Ref: 3920601

### Leveraged Finance Lawyer
- **2-6 PQE**
- **Red Circle Firm**

One of the red circle firms is seeking to take on a mid-level banking & finance lawyer. In this role, you will focus on acquisition finance, cross border lending, structured finance and mainstream banking matters. You will join a fast growing team of three associates and face demanding and intellectually stimulating work. The ideal candidate will be a Hong Kong qualified solicitor who is a native Cantonese speaker with good Mandarin and English language skills. Newly qualified lawyers with outstanding academics and relevant experience during traineeship will also be considered. Ref: 3920604

### Senior Property Lawyer
- **10+ PQE**
- **Hong Kong Law Firm**

Our client is a large Hong Kong law firm seeking to hire a Senior Property Lawyer with hands-on experience with property developer clients supporting them from land acquisition to property development and property sales. The ideal candidate should possess at least 10 years’ PQE specializing in real estate finance, property development, investment acquisitions and sales. You will also have solid experience in drafting and reviewing leasing and tenancy agreements for commercial and residential properties. Fluency in English and Mandarin is a must, as is the ability to draft in Simplified Chinese. Prior experience as an in-house counsel is advantageous, lawyers wishing to return to private practice are welcome to apply for this role. Ref: 3884960

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**FINANCIAL SERVICES**

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**PRIVATE PRACTICE**

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Private Practice

CONSTRUCTION
HONG KONG
S A/PARTNER
International law firm is actively seeking a senior associate or junior partner to join its construction practice. Whilst a following isn’t necessary, you will have established a good network of contacts and have a good reputation amongst the construction community. Immediate partnership on offer. (HKL 15077)

ASSET FINANCE
HONG KONG
3-8 PQE
Leading international law firm seeks a highly-motivated asset finance lawyer to join their well-established team. This is a great opportunity to gain exposure to complex asset leasing and financing transactions. Excellent career prospect on offer. Chinese language is not required; open to overseas candidates. (HKL 14980)

FUNDS
HONG KONG
3-7 PQE
International law firm seeks an experienced funds associate to join their growing practice. Preference for PE funds formation experience although clients include both hedge funds and private equity. New York salary on offer. (HKL 15031)

BANKING FINANCE
HONG KONG
3-6 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 plus solid experience in leveraged, structured or acquisition finance. Spoken Mandarin is critical for this role. (HKL 15102)

CORPORATE/M&A
HONG KONG
2-6 PQE
This leading international law firm is looking for top tier corporate lawyers with fluent Mandarin language skills to manage an interesting array of both ECM and M&A (both public and private) work. New York salaries on offer and opportunity to work on high profile deals. (HKL 15026)

CORPORATE ASSOCIATE
HONG KONG
NQ-6 PQE
This notable US law firm is seeking a corporate lawyer to work on a wide range of corporate transactions including IPO, M&A and Private Equity deals. This is a great opportunity to join a leading practice where you will advise blue chip clients including global banks and MNCs. Mandarin language skills essential. (HKL 15112)

DISPUTE RESOLUTION
HONG KONG
1-3 PQE
Top-tier international law firm is looking for litigators to join their dispute resolution practice. You will be working with leading clients on matters ranging from domestic/international commercial disputes, regulatory and finance litigation. Competitive salary on offer. (HKL 15126)

In-house

REGIONAL GC
HONG KONG
12+ PQE
This well-known MNC has a vacancy for a senior in-house commercial lawyer with good China and regional experience. Work will involve advising senior management on an interesting mix of contract, general commercial, employment and some compliance work. Opportunity to manage a small legal team. (HKL 15097)

SENIOR LEGAL COUNSEL
HONG KONG
10+ PQE
Leading financial services provider seeks a senior lawyer to advise on all aspects of the business, including issues relating to asset management and global markets. The successful candidate should possess solid experience gained in a financial institution. Fluency in Mandarin is required. An attractive package is offered. (HKL 15109)

FMCG
HONG KONG
5-10 PQE
UK listed company with significant growth plans for Asia Pac has headcount to appoint an in-house counsel in Hong Kong to support the regional management team covering Asia Pac. Great opportunity to support a dynamic and young executive team in a business that is one of the sectors’ best global performers. (HKL 15027)

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. Solid experience in aircraft leasing and finance is required; open to overseas candidates. (HKL 14694)

LEGAL ADVISOR
HONG KONG/CHINA
4-8 PQE
Global technology company has a vacancy in their international legal team. This team advises on all aspects of the company’s international business, including issues related to e-commerce, b2b commerce, digital data storage, and global regulatory matters. Fluency in English and Mandarin is critical. (HKL 15135)

EMPLOYMENT COUNSEL
SINGAPORE
4-8 PQE
Global financial institution seeks an employment lawyer to join their Corporate Services team based in Singapore. The lawyer will focus on advising the bank on employment related issues such as employment benefits, severance, and disputes across the APAC region, but will also be exposed to other general commercial work. Fluency in Mandarin is required. (HKL 14965)

SECURITISATION
HONG KONG
3-6 PQE
Well known investment bank seeks an experienced mid level lawyer with derivatives, structured products, and/or securitisation experience. Excellent opportunity to move from private practice to in-house. Competitive salary on offer. (HKL 15104)

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William Chan
Tel: +852 2920 9105
Email: w.chan@alsrecruit.com
**FINANCIAL SERVICES**

### SENIOR LEGAL COUNSEL
**GLOBAL CONGLOMERATE**
OAA/ 557400
This Hong Kong listed company is a leading conglomerate in Greater China with diverse business interests in e-commerce, mobile internet, publishing, outdoor media, television and entertainment and across markets in Mainland China, Taiwan and Hong Kong. They are looking for a senior lawyer to join a team and report directly to the CFO.

**Key Requirements:**
- Hong Kong qualified lawyer with a minimum of eight years’ PQE, ideally gained from listed companies
- Proficiency in Hong Kong listing rules and M&A projects
- Experience in managing legal staff in Mainland China
- Fluency in spoken and written English, Cantonese and Mandarin is required

### LEGAL COUNSEL
**GLOBAL FASHION BRAND**
OAA/ 557090
Global fashion house seeks a junior lawyer to join the Hong Kong office. The business is developing a stronger retail presence, growing rapidly in China and also merging some business lines, so there is a broad portfolio of work to do including commercial contracts, litigation and translation. The APAC legal team has four people and the role reports directly to the Head of Legal. The team sits in Quarry Bay and there will be some travel to China.

**Key Requirements:**
- Hong Kong or PRC qualified lawyer with zero to four years’ PQE
- Strong corporate commercial experience and ideally some exposure to PRC matters
- Fluency in spoken and written English, Cantonese and Mandarin is required

### HEDGE FUND COMPLIANCE/ OPERATIONS MANAGER
**APAC HEDGE FUND**
WDM/ 554210
Well established hedge fund in Hong Kong is seeking to expand their infrastructure to increase bandwidth for their COO and General Counsel. This high performing fund is looking for a sharp, motivated hedge fund infrastructure professional with strong knowledge of SFC regulations and the evolving compliance landscape. Additionally experience in fund accounting and project management would be an asset.

**Key Requirements:**
- Experience in a compliance and operational role within a lean high-performing hedge fund
- Strong knowledge of evolving regulatory environment for APAC hedge funds with particular emphasis on SFC requirements
- Demonstrated experience in leading projects and working with IT teams
- Additional middle-office or fund accounting experience would be a major asset

### DIRECTOR, AML POLICY AND ADVISORY
**LEADING ASIAN BANK**
QPD/ 552870
This dynamic platform is expanding their FCC team and looking for an AML/FCC policy expert who can help to define the AML strategy for the bank and lead a team. This is a newly created position and offers wide exposure and ability to make an impact.

**Key Requirements:**
- At least eight years’ relevant experience in banking space, ideally in corporate or wholesale banking, covering financial crime compliance
- Excellent knowledge and understanding of financial crime regulations in Hong Kong, both HKMA and SFC.
- Experience in Trade and cross border transactions and issues will be an advantage
- Proven management experience

### VP, AML
**GLOBAL INVESTMENT BANK**
QPD/ 551850
This is a VP level AML compliance advisory role for a boutique investment bank. This platform specialises in ECM, DCM, advisory, M&A, cash equities, fixed income and is rapidly expanding across APAC. This role will report directly to the head of compliance and will offer increased exposure and responsibility.

**Key Requirements:**
- At least eight years’ relevant experience in banking space, ideally in corporate or wholesale banking, covering financial crime compliance
- Excellent knowledge and understanding of financial crime regulations in Hong Kong, both HKMA and SFC.
- Experience in Trade and cross border transactions and issues will be an advantage
- Proven management experience

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

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Tony Wilkey  +852 2103 5338  tony.wilkey@robertwalters.com.hk

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

Derivatives & Structured Finance
2-4 PQE Hong Kong
This top tier practice seeks a lawyer to join their market leading international practice. You will work with highly regarded partners and be exposed to a wide range of structured finance and derivatives transactions, including repackagings, total return swaps, CLOs, CDOs and also OTC derivatives. HKL4231

Litigation
4+ PQE Hong Kong
This is a fantastic opportunity for a disputes lawyer looking for something slightly different. You will join this market-leading practice and work for a highly regarded partner within a collegiate team on a mix of high profile, complex commercial litigation and arbitration matters. Mandarin preferred but not essential. Contract role also available. HKL4298

Capital Markets
4-6 PQE Hong Kong
A fantastic opportunity for a lawyer to become part of this renowned practice with this US law firm. Your work will include focusing on a range of IPO and innovative merger and acquisition transactions on a global scale assisting highly-regarded partners. You will be common law qualified. Mandarin language skill essential. HKL4469

Corporate/Funds
3+ PQE Hong Kong
This is a stellar opportunity for an ambitious UK qualified associate to join the Funds/Corporate team of this notable practice. The ideal candidate will have solid experience in private equity or general corporate experience. Candidates with Japanese will be a bonus. HKL4476

Dispute Resolution
1-3 PQE Hong Kong
This is a superb opportunity for a US qualified junior litigator to join this top tier law firm and its established team to work on securities litigation, regulatory and government investigations. Ideal candidates will possess native Mandarin language skills and the ability to draft in English. HKL4467

Funds
3-5 PQE Hong Kong
This is a stellar opportunity for an ambitious lawyer to join the Funds team, in a tight knit team. The ideal candidate will have prior exposure to hedge funds, PE fund formation work. Corporate M&A lawyers keen to transition will also be considered. You will be admitted in a common law jurisdiction. Chinese required. HKL4501

Dispute Resolution
8+ PQE Hong Kong
This well-established litigation practice seeks a senior associate or counsel to join the ranks and handle contentious and non-contentious advisory and complex disputes and general commercial disputes in a collegiate environment. Opportunity to get on track if you are keen. You will be admitted in a common law jurisdiction. HKL4500

Corporate M&A
3-5 PQE Beijing
This is an outstanding opportunity for a midlevel associate with solid experience gained at an international law firm. You will join this top tier firm to focus on M&A/PE and China outbound transactions. PRC associates or lawyers admitted to the NY bar will also be considered. HKL4360

Debt Capital Markets
2-6 PQE Hong Kong
This is a fantastic opening for a lawyer to join a leading international practice and to work on a variety of global debt capital markets transactions advising issuers and underwriters, amongst a collegiate and professional team. UK/US/HK qualification required for this role; Mandarin required. HKL4449

Banking and Finance
1-2 PQE Hong Kong
This global law firm seeks a HK qualified junior lawyer to join their practice, assisting renowned individuals and high profile clients. You will work on big ticket deals, including corporate lending; equity-backed financing, restructuring and mainstream syndicated lending. The ideal candidate will have previous experience preferably with an international firm. HKL4453

Dispute Resolution
2-3 PQE Cayman Islands
This firm is providing an excellent opportunity for a UK qualified lawyer with commercial litigation, corporate governance cross-border restructuring and insolvency experience to take their career offshore for a few years before returning to Hong Kong. Mandarin and Cantonese essential. HKL4478

Head of Legal
10+ PQE Hong Kong
Leading asset management and investment firm seeks a competent lawyer to take on a legal role working closely with various departments within the business. You will be a corporate lawyer admitted in HK with private banking or securities house experience. Chinese essential. HKL4443

Banking and Finance
2+ PQE Sydney
This eminent firm seeks a Common law qualified lawyer to join their practice, assisting renowned partners and high profile clients. You will work on big ticket deals, including corporate lending, equity-backed financing, restructuring and mainstream syndicated lending, and leveraged finance. HKL4486

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**Partner hires**

**Private M&A Partner**

We are briefed by an international law firm in this exclusive search. Chinese language skills and a client following is not required but would be desirable. The position is open to either lateral Partners, or Counsels looking to step up to Partnership.

Partner

Geoff Denton
Head of Private Practice - North Asia
goeffdenton@taylorroot.com

**Corporate & Disputes hires**

**Corporate Associate**

Our client is an international law firm looking for a Corporate Associate to join its expanding team. Candidates with solid IPO, M&A and listing compliance experience from peer firms or leading local firms would be considered. Mandarin skills required.

2-8+ years' PQE

Samantha Fong
Associate Director
samanthafong@taylorroot.com

**Associate hires**

**Project Finance Associate**

Join this top projects team in Asia – open to relocations. You will ideally have project finance experience but general finance juniors welcome. You will gain exposure to deals within the SE Asia region. Chinese language not required.

NQ: 3+ years' PQE

Patricia Lui
Senior Consultant
patricialui@taylorroot.com

**PRC hires**

**M&A Associate**

Corporate Associates required for an international law firm in their corporate practice in Beijing & Shanghai. Solid M&A lawyers with prior experience working for top domestic or international firms. Fluent English is a must.

4-8+ years' PQE

Eric He
Lead Consultant, China
eriche@taylorroot.com

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**LEGAL DIRECTOR**
**HONG KONG**
10-15 years

Technology solution provider listed in HK seeks a Legal Director in HK to manage a team of lawyers in China & handle M&A, commercial contracts & listing compliance matters. Prior in-house experience & fluent English & Mandarin are required. HKL6413

**ED - CORPORATE SECRETARY**
**HONG KONG**
10+ years

Global bank seeks an Executive Director – Corporate Secretary to provide corporate secretarial services & support to its businesses. You will have a strong knowledge of company laws, corporate governance & compliance matters as well as the gravitas to advise the Board. HKL6238

**LITIGATION / INVESTIGATION**
**HONG KONG**
6-10 years

In-house opportunity for a mid-level litigator with experience in general commercial or financial services litigation. Interesting work & good work/ life balance on offer. Strong analytical skills & ability to understand complex issues are required. Fluent English & Chinese essential. HKL3989

**M&A/COMMERCIAL**
**HONG KONG**
5-10 years

Leading MNC is looking for a mid to senior level corporate/commercial lawyer. This role reports into the GC for Asia & you will advise on M&A, JVs, financial services & regulatory issues as well as general commercial matters. England & Wales qualification preferred. HKL6051

**FUNDS**
**HONG KONG**
5-8 years

Well-known PRC asset manager is looking for a funds lawyer to join its in-house legal team. You should have experience in a range of investment products/financial services regulatory work (both retail & private). Business level Mandarin & ability to read & write in Chinese are essential. HKL6204

**BANKING/DCM**
**HONG KONG**
4-8 years

Bulge bracket bank seeks a mid-level lawyer with banking & finance and/or DCM experience to join its legal team. Experience in leveraged acquisition finance ideal and candidates from both private practice & in-house will be considered. US Securities experience would be an advantage. HKL6379

**M&A / COMMERCIAL**
**HONG KONG**
1-3 years

Private investment firm with strong connections in the region is looking to expand its legal team. This role will involve providing legal support to the business on M&A/PE & other direct investments, as well as asset management & finance-related work. Mandarin skills essential. HKL6401

Private Practice

**BANKING PARTNER**
**HONG KONG**
9-20 years

US law firm is seeking a banking partner to expand its finance capability. You will be an experienced senior finance lawyer at a reputable international law firm in HK, who is a Junior Partner or a Counsel looking to make a step up to partnership. Fluent Mandarin language skills preferred. HKL6403

**M&A PARTNER**
**HONG KONG**
8-15 years

Top tier international firm seeks a Counsel or Junior Partner to join its M&A practice. You will have extensive APAC M&A experience, fluency in English & top tier firm training. Excellent opportunity for a Counsel to step into a partnership role. No book of business needed. HKL6390

**LITIGATION**
**HONG KONG**
5-10 years

UK law firm is looking to expand its disputes practice by adding a Senior Associate with experience in commercial litigation & regulatory investigations. Experience representing PRC clients in litigation preferred. HK qualification & Mandarin language skills essential. HKL6378

**REAL ESTATE PSL**
**HONG KONG**
5+ years

An international law firm is seeking a professional support lawyer to support the property department with legal & regulatory changes, maintain the knowledge management function including documents, practice notes & precedents & provide training to internal & external clients. HKL6249

**FUNDS**
**HONG KONG**
3+ years

Top tier firm seeks a funds associate with 3 - 5 years' post-qualification experience, solid training from a peer firm & be admitted in a Commonwealth jurisdiction. Lawyers with M&A or finance experience will be considered. Chinese language skills are preferred. HKL6355

**REGULATORY**
**HONG KONG**
2-4 years

Well-established UK law firm is seeking an associate for its regulatory practice. You will advise on the setting up of regulated businesses in HK, compliance, regulatory corporate governance, AML & data privacy amongst other issues. Fluent Chinese language skills are preferred. HKL6348

**LEGAL RECRUITER**
**HONG KONG**
2+ years

Lewis Sanders is busy across in-house and law firm recruitment & we are seeking a legal recruitment consultant to cover both areas. You may be a legal recruitment consultant with at least 2 years’ experience or a junior/ mid-level lawyer looking for a change in career direction. HKL1000

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