Cover Story
Face to Face with
Teresa Ko
China Chairman,
Freshfields Bruckhaus Deringer

CROSS-BORDER 跨境
Belt and Road Series: Intelligence Without Bounds?
一带一路系列：智能发展无极限？

LITIGATION 訴訟
A Procedural Wright Hassall
Wright Hassall案的程序性爭議

INTERNATIONAL LAW 國際法
Law and Politics in Colonial Hong Kong
香港殖民地时期的法律与政治
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Thomson Reuters Hong Kong Limited
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Tel: +852 2847 2088
www.thomsonreuters.com
ISSN 1025-9554

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Rowan Varty’s Careers in Rugby and the Law

88 LEGAL TRIVIA QUIZ
9.00am  Welcome and introductions

9.15am  Hype and reality
- What is “blockchain”, “distributed ledger” and “smart contract” technology?
- Where and how is it being applied in practice?
- Will the technology survive the Bitcoin crash and ICO scandals?

9.45am  “Smart”, “Connected” and “Data driven” contracts
- What is a “smart” contract?
- Legal, regulatory and data protection issues. Are “smart” contracts legally valid and enforceable?
- Jurisdiction, governing law and enforcement

10.45am  Morning Tea-Break

11.00am  IoT, distributed ledger and supply chains
- The key to “frictionless” international trade and border clearance?
- Free zones and “virtual” free zones
- Data pipelines and “end-to-end” tracing
- Whose system? Government procurement, or government access?
- Confidentiality and data protection. Can distributed ledgers ever meet data protection law requirements?

1.00pm  Networking Lunch

2.00pm  Business structures and “decentralized autonomous organisation”
- What is a DAO?
  (i) In concept
  (ii) In practice
- Can DAOs be identified, regulated and taxed?
- Will DAOs bend to the law, or will the law bend to DAOs?

3.00pm  Afternoon Tea-Break

3.15pm  Contract law, contractual drafting and interpretation
- Drafting for “hybrid” smart contracts
- Creating and enforcing valid guarantees, indemnities and performance bonds
- Can a judge or arbitrator “read” a smart contract?

4.15pm  Commercial applications and use cases
- Shipping and logistics
- Manufacturing
- Asset tracing and supply chain management
- Land and corporate registration
- Creating and managing digital identity: government services, investigation and law enforcement and consumer protection

4.45pm  Q&A

Testimonials

“Yes, a good demystification of blockchain contracts.”
JOHN SIMPSON, MANAGING PARTNER, INCE & CO

“Malcolm Dowden is clearly an expert and a good teacher.”
PARTNER, ZAID IBRAHIM & CO.

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Speaker
Malcolm Dowden
Legal Director
Womble Bond Dickinson

For Event Registration  Taranjit Kaur - (65) 6870 3909 / taranjit.kaur@tr.com

— CPD POINTS WILL BE APPLIED FOR WITH THE LAW SOCIETY OF HONG KONG —

Agenda

1st time in Hong Kong for 1 day only! Sold out in Singapore to almost 90 attendees!
I would like to start by wishing you, our readers, a Happy Easter.

Often, people tend to assume that legal fees are high and therefore when a dispute arises, some may contemplate self-representation to avoid such costs. Such persons are referred to in some jurisdictions as litigants in person. However, the legal rules and court procedures involved might be difficult for them to understand. The question therefore is whether they should be exempted from or be given some special treatment in relation to complying with such processes. The Litigation feature discusses the UK Supreme Court decision of February 2018 on this point. (p. 32)

A hot topic in the legal community is the introduction of artificial intelligence. Some consider it to promote efficiency given that it automates tasks and minimises human hours. Others worry about the possibility of it replacing the jobs of legal professionals. The Cross-Border feature examines legal issues surrounding regulation and liability in relation to the development and use of A.I. products. (p. 28)

You may or may not be aware, but you are probably negotiating all the time and in various capacities. The Practice Skills section shares effective negotiation techniques which after some practice, might help to obtain a favourable result. (p. 74)

For those who were not fortunate enough to get hold of tickets for the Hong Kong Sevens, not all is lost. The Leisure section features Rowan Varty who is a practising solicitor in Hong Kong and plays rugby on a professional level and represents Hong Kong at the Hong Kong Sevens. (p. 84)

Finally, I would like to remind our readers that they can subscribe to our free e-Newsletter to receive regular updates on the latest trends and developments in Hong Kong and China. Please visit http://hk-lawyer.org

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《香港律師》編輯
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8th Members & Family Fun Day 2018

Date: 6 May 2018 (Sunday)
Time: 11:00am - 5:30pm
Venue: Hong Kong Sports Institute
25 Yuen Wo Road, Sha Tin
Fee: HK$100*

Talent Show
Drawing Competition
Bouncy Castle
Light Snacks
Game Booths
Track & Field Competitions
Outdoor Yoga for adults*

RSVP: Download “The Law Society App”
→ Upcoming Events → 8th Members and Family Fun Day

Enquiry: funday@hklawsoc.org.hk

*Each competitor (members’ child or grandchild) 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 Law Society reserves the right to alter any arrangements including the programmes, competitions, rundown and to cancel the event.
Great Bay Area

Most people in Hong Kong have their ancestral roots in the Guangdong Province with strong links at the village and kinship levels. We also share a common dialect, the unique Cantonese dialect, which is not spoken anywhere else in China. Such close cultural proximity and historical affiliations between Hong Kong and Guangdong provide an affectionate and powerful impetus to the Guangdong-Hong Kong-Macao Bay Area (the ‘Great Bay Area’) initiative (‘Initiative’).

The Great Bay Area consists of nine cities in the Guangdong Province including Shenzhen, Guangzhou, Huizhou, Dongguan, Foshan, Zhuhai, Jiangmen, Zhaoqing and Zhongshan, in addition to two special administrative regions, Hong Kong and Macao.

To fully utilise the huge potential of these cities, the visionary plan of consolidating the distinctive strengths that each city has and facilitating their complementarity for each other surfaced in as early as 2008. The State Council adopted “The Framework on Development and Reform Planning for the Pearl River Delta Region (2008-2020)” in 2008. The Framework advocated close co-operation, integration and common development of the cities in the Pearl River Delta Region with Hong Kong and Macao aiming to build the most dynamic and internationally competitive city cluster in the Asia-Pacific Region.

Since then, the liberalisation measures opening up the Mainland market to Hong Kong are usually first implemented on a pilot basis in the Guangdong Province. For instance, the relaxation of the restrictions on Mainland law firms that can form associations with Hong Kong law firms in the Mainland under Supplement VI to CEPA were first applied to Mainland law firms in the Guangdong Province in 2009.

2010 witnessed a new phase of Hong Kong-Guangdong cooperation. The Framework Agreement on Hong Kong-Guangdong Cooperation was signed in April 2010. Having monitored the development closely, the Law Society conducted a study to evaluate the role of the Hong Kong legal profession in the development of the Pearl River Delta Region. In April 2011, we published a Report titled “Study on the Prospects of Development of Legal Practice by Hong Kong Law Firms in the Pearl River Delta Region”.

The vision of an integration of the cities in the Pearl River Delta Region gradually developed into the concept of the Great Bay Area, referencing to the development of the San Francisco Bay and the Tokyo Bay. In the 13th Five Year Plan for the Economic and Social Development of China announced in 2016, special mention was given to the Great Bay Area. The Initiative has been elevated to a national strategy encouraging Hong Kong to play an important role in promoting cooperation in the Greater Pearl River Delta Region and advance the development of the Great Bay Area and major trans-provincial cooperation platforms.

The Framework Agreement on Deepening Guangdong-Hong Kong-Macao Cooperation in the Development of the Bay Area signed among the Hong Kong Government, the Macao Government, the National Development and Reform Commission and the Guangdong Provincial Government on 1 July 2017 signified another milestone in the joint development of the Great Bay Area. It set out clearly the objectives and key areas of co-operation among the various parties.

The cooperation in the legal service sector in the Great Bay Area was manifest in the increasing collaboration between Hong Kong and Mainland law firms in the Guangdong Province. As of November 2017, 11 associations in the form of partnership between Mainland and Hong Kong law firms had been approved with 7 in Shenzhen, 2 in Guangzhou and 2 in Zhuhai. 12 barristers and 2 solicitors were retained as legal consultants by Mainland law firms in the Guangdong Province.

Further, the Law Society is discussing with the Guangdong Lawyers Association to establish a joint meeting system for lawyers associations in the Bay Area to coordinate efforts in promoting and expanding the legal service sector and to conduct regular exchanges on issues of common interest pertaining to the development within the Great Bay Area. The Law Society is also planning visits to the other cities in the Great Bay Area. The coming visit to Guangzhou, Foshan and Zhaoting is tentatively planned for May.

The frequent collaboration between Hong Kong lawyers and Mainland lawyers is not only confined to professionally related matters. To foster deeper mutual understanding between lawyers in the Mainland, Hong Kong and Macao jurisdictions with the Great Bay Area, the Law Society has also been creating opportunities for interaction in various social and recreational activities. The Law Society takes turn with the Guangdong Lawyers Association and the Macao Bar Association to organise the Annual Sports Meet for lawyers in the three jurisdictions. During the Law Society’s annual Cross Straits Four Regions Young Lawyers Forum, we will also organise social events including reception and visits for participants from Hong Kong, Macao and the Mainland to connect with each other socially.

The clear direction set by the national strategy in relation to the development of the Great Bay Area has driven rapid economic growth. Without going into detailed economic data, a simple comparison between the data collated in the Law Society’s Report on the Pearl
River Delta Region in 2011 and the current statistics is telling. Within a span of 7 years, the number of lawyers in the cities in the Pearl River Delta Region has nearly doubled or even tripled: Guangzhou (+79 %), Shenzhen (+100 %), Foshan (+130 %), Dongguan (+100 %), Zhuhai (+88 %), Zhongshan (+174 %). The increase in economic activities in the Region has created a huge demand for legal services and the number of lawyers has been growing at an annual rate of as high as 25% to meet the demand.

Further, within roughly the same period, the number of Mainland lawyers registered as foreign lawyers and the number of Mainland law firms in Hong Kong have also increased substantially by 72% and 160% respectively. The Mainland has replaced the US as the top jurisdiction among foreign law firms in Hong Kong.

As the Initiative progresses, it is expected that more liberalisation measures will be introduced to enhance the integration and complementarity of the strengths of each city in the Great Bay Area. The Law Society will continue to work closely with the relevant Mainland and Hong Kong authorities as well as the legal professional bodies to advance the appropriate measures for the benefit of our profession.

www.hk-lawyer.org
CONTRIBUTORS

Nicholas Millar
Nicholas Millar is a solicitor and civil higher courts advocate. He would like people to instruct him rather than represent themselves.

Hin Han Shum
Squire Patton Boggs, Associate
Hin Han Shum has a broad range of advisory and contentious commercial experience. She focuses her practice on telecommunications, and advises on data privacy, cybersecurity, and technology matters. She has served as legal representative in various litigation proceedings and is an accredited general mediator.

岑顯恆
翰宇國際律師事務所 律師
岑顯恆有廣泛的諮詢及爭議性商業事務經驗，她專注於電信業務，並就數據私隱，網絡安全與技術事宜提供建議。她曾在各種訴訟程序中擔任法律代表，並且是經認可的一般事務調解員。

Nicholas Millar
Nicholas Miller是一名事務律師及民事高等法院的出庭代訟人。他希望人們委任他而不是他們自己出庭進行訴訟。
Jenkin Chan  
*Foo and Li, Solicitor*

Jenkin is a solicitor, notary public and accredited general mediator. He is currently a consultant with the law firm of Foo and Li.

Rowan Varty  
*Tanner De Witt, Solicitor*

Rowan attended the University of Nottingham to read law and the University of Hong Kong where he obtained his PCLL. He joined Tanner De Witt in 2011 as a trainee and in September 2014 he qualified as a practising solicitor after taking a year off to kick-off his professional rugby career. At Tanner De Witt Solicitors, Rowan works closely with the Employment team. He also assists with a range of immigration matters.

陳少勳  
李鳳翔律師事務所 律師

陳少勳是一名律師，公證人和經認可的一般事務調解員。他目前是李鳳翔律師事務所的顧問。

華路雲  
泰德威律師事務所，律師

Rowan在諾丁漢大學修讀法律及在香港大學獲得學士後法律證書。他於2011年加入泰德威律師事務所成為實習生，請了一年假參加職業橄欖球賽後，於2014年9月取得執業律師資格。在泰德威律師事務所，Rowan與僱傭事務團隊密切合作。他也協助處理一系列的移民問題。
Kwong Ka Yin Phyllis (the ‘Respondent’)

- Principle 4.16 of the Hong Kong Solicitors’ Guide to Professional Conduct, Volume 1, 2nd Ed (the ‘Guide’)

Hearing date:
22 August 2017

Findings and Order:
21 December 2017

The Solicitors Disciplinary Tribunal (‘Tribunal’) found the following complaints against the Respondent proved on her own admission:

1st Complaint
Breach of principle 4.16 of the Guide in that on or about 5 December 2013, the Respondent entered into a retainer agreement (the ‘First Retainer Agreement’) with a company (the ‘1st company’) to act for the 1st company in respect of a High Court proceedings (the ‘Court Proceedings’), in circumstances where the First Retainer Agreement amounted in part to a contingency fee arrangement for the Respondent acting in contentious proceedings.

2nd Complaint
Breach of principle 4.16 of the Guide, in that on or about 5 December 2013, the Respondent entered into a retainer agreement (the ‘Second Retainer Agreement’) with a company (the ‘2nd company’) to act for the 2nd company in respect of the Court Proceedings, in circumstances where the Second Retainer Agreement amounted in part to a contingency fee arrangement for the Respondent acting in contentious proceedings.

3rd Complaint
Breach of principle 4.16 of the Guide, in that on or about 5 December 2013, the Respondent entered into a retainer agreement (the ‘Third Retainer Agreement’) with a company (the ‘3rd company’), to act for the 3rd company in respect of the Court Proceedings, in circumstances where the Third Retainer Agreement amounted in part to a contingency fee arrangement for the Respondent acting in contentious proceedings.
The Tribunal ordered:

(a) The Respondent be censured;

(b) The Respondent be fined a total sum of HK$6,000 in respect of the 1st Complaint, the 2nd Complaint and the 3rd Complaint;

(c) By consent, the 4th Complaint be withdrawn;

(d) The costs of the proceedings including the costs of the Clerk and the costs of the investigation by the Law Society be borne and paid by the Respondent on a party-and-party basis, to be taxed if not agreed. The costs of the Clerk having been agreed at a fixed sum; and

(e) The Respondent’s application under s. 13A of the Legal Practitioners Ordinance, Cap.159 for a non-publication order be dismissed with no order as to the costs.

Mr. Glenn Haley of Haley Ho & Partners for The Law Society of Hong Kong.


Mr. Iu Ting Kwok, Clerk to the Tribunal.

Tribunal Members:
Mr. Albert Bux (Chairman)
Mr. Yuen Tat Tong
Ms. Lee Sau Wai, Cecilia
Free Does Not Mean Pro Bono

The catch cry ‘pro bono’ is increasingly used in the wider community as a synonym for free, but this is not actually what it is. Short for ‘pro bono publico’, or ‘for the public good’, pro bono pertains to a philosophy which goes far beyond the question of cost. But as the word ‘publico’ fades from common usage, the true meaning of this phrase is drifting away. In the legal profession, we must however remind ourselves that pro bono still refers to pro bono publico. It arises from the longstanding professional responsibility of lawyers to assist in upholding the administration of justice. This is a key element in building and strengthening rule of law, which relies on the law being applicable and accessible to all members of the community. Pro bono therefore increases access to justice for those marginalized members of the community, who have no other means of accessing legal assistance.

Free or discounted work that lawyers are often called upon to do for family, friends or clients is not pro bono. This is best described as concessional work, and benefits us in some way, usually in terms of retaining a personal or business relationship. As a result, these types of matters can present heightened risks of legal conflicts and breaches of confidentiality, because of the interwoven relationships they seek to continue or strengthen. Concessional work is not pro bono work. Rather, pro bono is defined by the fact that its purpose is to assist people who otherwise could not access justice. Generally, these are people who are ineligible for Government funded legal services, who cannot afford to pay for private legal services, or those who are marginalized and the organizations which assist them and as a result who have no practicable and timely source of legal advice or representation.

While not defining all free or discounted work undertaken by a law firm as pro bono, somewhat paradoxically, doing pro bono work can actually be of value to the law firm itself. It is not normally the rationale for doing pro bono but there is no denying that it can be beneficial. In 2016, an independent study in Australia tested a long-held anecdotal belief about the value of pro bono to the legal profession, but the study’s findings showed that pro bono work can be beneficial to law firms in terms of building their reputation, enhancing their business relationships, and improving their public image.
businesses of law firms, the so-called ‘business case’ for pro bono. In that study, nine large law firms in Australia were interviewed about their pro bono practices, and each of them endorsed the view that pro bono was good for recruitment, retention, engagement, competency acquisition, career progress, business development, client relationships and the firm’s reputation and culture. [Australian Pro Bono Centre: The Value of Pro Bono to Law Firms, August 2016]

Pro bono nurtures collegiality across the legal profession, and provides the opportunity to work with colleagues and clients without the pressure of the profit motive. At the local level, we have seen this blossom in Hong Kong with law firms and NGOs working together on an increasing number of projects that assist vulnerable members of the community. Such cooperation is the legal profession at its finest. Every couple of months a law firm hosts the Hong Kong Pro Bono Roundtable, a forum which brings together representatives from law firms, corporate counsel, NGOs and law schools to discuss how the profession can better offer work pro bono publico. Anyone who is interested in pro bono is welcome to attend.

At the regional and global level, pro bono projects are also increasing access to justice by growing capacity for legal institutions in locations like Laos, Myanmar, Cambodia, Nepal and Indonesia. Projects include legal matters and also often involve delivering CLE and practical legal training. While the full impact of the potential for pro bono projects to increase access to justice and strengthen the rule of law across the region has yet to be fully realized, let’s keep in mind that it has nothing to do with such work being free.

公益服務能夠促進法律界的相互協作，提供與同僚和客戶之間的合作機會，而又無需面對尋求利潤的壓力。我們喜見香港在這方面的蓬勃發展，因為現在有越來越多的律師事務所和非政府組織共同攜手，為推動該些協助弱勢社群的項目而努力，而此等合作，可說是法律專業達至的崇高境界。香港每隔數月，便會有一家律師事務所舉辦公益服務圓桌會議，那是一個匯聚各方代表（包括律師事務所、企業法律顧問、非政府組織、法律學院等）的論壇，共同探討法律界如何更有效地投身社會公益服務，任何對公益服務有興趣的人士都歡迎出席。

在香港的区域性和全球性的層面，例如在老撾、緬甸、柬埔寨、尼泊爾和印尼等地，公益服務項目亦提升了法律機構的地位，從而促進司法公義。該等項目涉及法律事宜，並通常包括提供持續法律教育和實用法律培訓。儘管在整個區域促進司法公義和加強法治的公益項目所產生的總體影響尚未完全實現，但我們必須謹記，它與免費提供服務不盡相同。
Managing Absences for Sole Practitioners

As solicitors, we are trained to be trusted advisors of our clients. We analyse a client’s position, identify the legal issues, explain the practical implications and provide advice on ways to protect the client’s legal rights. This is what solicitors typically do day-in and day-out. To ensure the advice we give covers the relevant issues comprehensively, we meticulously consider every detail of the case leaving no stones unturned.

Solicitors give their best to serve clients. For some, their undivided attention to client matters has even resulted in a neglect of their own affairs. This is particularly the case with sole proprietorships.

As of the end of February 2018, there were 892 Hong Kong law firms. Out of them, 423 (47 percent) are sole proprietorships. A sole practitioner shoulders the heavy burden of running the legal practice on his own. To ensure that clients’ interests are protected at all times, there are regulatory requirements governing arrangements in the event of an absence of the sole practitioner.

Every office of a legal practice must be managed by a practising solicitor who is normally in attendance at that office during all hours when it is open to the public. Further, the office must also be attended on each day by a solicitor with an unconditional practising certificate who will spend sufficient time to ensure adequate control of the staff and afford adequate facilities for consultation with clients (Rule 4A of the Solicitors’ Practice Rules).

A sole practitioner must therefore make adequate standing arrangements for his practice to be managed during his absence in accordance with the minimum standards of supervision provided in the Solicitors’ Practice Rules. Absences for holiday breaks are often scheduled in advance and arrangements during such a period of absence can be put in place generally without much difficulty.

However, some absences, like illness, may occur unexpectedly. To enable the practice to continue with minimum interruption, standing arrangements should be in place at all times. For example,

- There must be a willing solicitor who holds an unconditional practising certificate with sufficient seniority and relevant experience ready to supervise the practice in a sudden absence of the sole practitioner;
- Proper arrangements must have been made to notify, when necessary, relevant parties to facilitate the supervision of the practice by the solicitor including, for instance, the manager of the Professional Indemnity Scheme to ensure that there is indemnity cover for the solicitor as well as bankers of the practice to ensure that the solicitor can operate the client and office accounts.

It is also important that the staff and the family of the sole practitioner are kept informed of these standing arrangements and the identity of the solicitor who has agreed to assist to supervise the practice so that they know exactly what to do.
and who to approach when the circumstances require them to act immediately. Incidentally, the appointment of an attorney under the Enduring Powers of Attorney Ordinance (Cap. 501 of the Laws of Hong Kong) is worth a mention in this context. An enduring power of attorney (EPA) under the Ordinance allows a donor, while he is still mentally capable, to appoint an attorney to take care of his financial matters in the event that he subsequently becomes mentally incapacitated. While a general power of attorney will cease to be effective in such situation, an EPA will “endure” the donor’s mental incapacity and give the attorney the power to continue to take care of the donor’s financial affairs.

In the Solicitors’ Practice Rules, there are also provisions dealing with the unfortunate event of the death of a sole practitioner. Under rule 5AA of the Rules, a sole practitioner is required to make a will containing provisions for the management of his practice after his death. The sole practitioner has to provide information to the Law Society regarding the location of his will, the identity and contact details of his executors and of the solicitor appointed to manage his practice upon his death. The purpose of these requirements is to direct the mind of a sole practitioner to his own affairs. He has to decide what arrangements he wishes to put in place with respect to the management of his practice in the event of his death and make the necessary preparation. This is important as the existence of proper arrangements can avoid the prospect of an intervention by the Law Society, the cost of which is high and is to be borne by the beneficiaries of the estate.

The requirement to provide the relevant information to the Law Society under rule 5AA of the Solicitors’ Practice Rules is a continuing obligation in that any changes to the information filed upon commencement of the sole proprietorship must be submitted to the Law Society within 14 days of the change. This ensures that the record kept by the Law Society in the rule 5AA form can be relied on as the current arrangement. We have had experience of solicitors named in the form refusing to act as solicitor managers on the basis that they were not aware of the appointment or they had never consented to act.

Sole practitioners are therefore urged to check from time to time the details in the rule 5AA form that they had filed with the Law Society to ensure that the information is still accurate. If there is any update, please advise the Law Society as soon as possible. The rule 5AA form can be downloaded from the Law Society website.

### Monthly Statistics on the Profession

(Updated as of 28 February 2018):

<table>
<thead>
<tr>
<th>Category</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Members (with or without Practising Certificate)</td>
<td>10,791</td>
</tr>
<tr>
<td>Members with Practising Certificate</td>
<td>9,367</td>
</tr>
<tr>
<td>(out of whom, 7,051 (75%) are in private practice)</td>
<td></td>
</tr>
<tr>
<td>Trainee Solicitors</td>
<td>1,182</td>
</tr>
<tr>
<td>Registered Foreign Lawyers</td>
<td>1,479</td>
</tr>
<tr>
<td>(from 33 jurisdictions)</td>
<td></td>
</tr>
<tr>
<td>Hong Kong Law Firms</td>
<td>892</td>
</tr>
<tr>
<td>(47% are sole proprietorships and 41% are firms with 2 to 5 partners, 21 are limited liability partnerships formed pursuant to the Legal Practitioners Ordinance)</td>
<td></td>
</tr>
<tr>
<td>Registered Foreign Law Firms</td>
<td>85</td>
</tr>
<tr>
<td>(14 are limited liability partnerships formed pursuant to the Legal Practitioners Ordinance)</td>
<td></td>
</tr>
<tr>
<td>Civil Celebrants of Marriages</td>
<td>2,107</td>
</tr>
<tr>
<td>Reverse Mortgage Counsellors</td>
<td>446</td>
</tr>
<tr>
<td>Solicitor Advocates</td>
<td>51</td>
</tr>
<tr>
<td>(46 in civil proceedings, 5 in criminal proceedings)</td>
<td></td>
</tr>
<tr>
<td>Student Members</td>
<td>187</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>

### Yearly Membership Statistics

(As at 31 December 2018):

<table>
<thead>
<tr>
<th>Category</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Members (with or without Practising Certificate)</td>
<td>10,791</td>
</tr>
<tr>
<td>Members with Practising Certificate</td>
<td>9,367</td>
</tr>
<tr>
<td>(out of whom, 7,051 (75%) are in private practice)</td>
<td></td>
</tr>
<tr>
<td>Trainee Solicitors</td>
<td>1,182</td>
</tr>
<tr>
<td>Registered Foreign Lawyers</td>
<td>1,479</td>
</tr>
<tr>
<td>(from 33 jurisdictions)</td>
<td></td>
</tr>
<tr>
<td>Hong Kong Law Firms</td>
<td>892</td>
</tr>
<tr>
<td>(47% are sole proprietorships and 41% are firms with 2 to 5 partners, 21 are limited liability partnerships formed pursuant to the Legal Practitioners Ordinance)</td>
<td></td>
</tr>
<tr>
<td>Registered Foreign Law Firms</td>
<td>85</td>
</tr>
<tr>
<td>(14 are limited liability partnerships formed pursuant to the Legal Practitioners Ordinance)</td>
<td></td>
</tr>
<tr>
<td>Civil Celebrants of Marriages</td>
<td>2,107</td>
</tr>
<tr>
<td>Reverse Mortgage Counsellors</td>
<td>446</td>
</tr>
<tr>
<td>Solicitor Advocates</td>
<td>51</td>
</tr>
<tr>
<td>(46 in civil proceedings, 5 in criminal proceedings)</td>
<td></td>
</tr>
<tr>
<td>Student Members</td>
<td>187</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>
Teresa Ko’s career is characterised by a series of ‘firsts’. She became the first Chinese and a female to be made an equity partner at Freshfields and the first partner to be appointed China Chairman; and the first ever female chairman of the Listing Committee of the Hong Kong Stock Exchange. Adopting the motto “life is what you make of it and never never never give up”, she maintains a work-life balance, having two children who are young adults now who still talk to their mum and staying happily married.

Teresa was born and raised in Hong Kong. As a child, she was not too fond of school and her grades were “often a disaster”. She sleep-walked on one occasion and asked her mother to sign her red inked report. At 13, she was sent off to a convent boarding school in the UK to be “educated”. Although this was an intimidating experience when she first arrived as she did not speak much English, she soon appreciated the perks: less homework and most of the time she worked with classmates together in groups. Too much of a good thing led to grades that were inadequate for admission to university. “My life’s first big failure.” Teresa fortunately realised her mistake. She jolted herself into a massive study overdrive and attained two “firsts” - one being her law degree from what is now called the University of Westminster, and the second being a Master’s degree from Cambridge. “It proved I had a brain after all, which was a relief to me and my family. Setbacks are not failures if you deal with them proactively and learn lessons from them. Over the years I have become an avid believer of the growth mindset. I consider myself a late developer and I am still developing!”

Law was not Teresa’s first choice of career. She did some sewing when she was little which might be the reason she was interested in fashion design. “I even made a Qipao for my mother and I have always had a creative streak in me!” Teresa’s father however didn’t think it was much of a profession but she knew he would not object to the law. Teresa worked for four years as a lawyer at a medium-sized law firm in London (two years as a trainee and two years as a solicitor). She hadn’t considered any of the leading law firms as rumours at the time were that trainees at big law firms spent most of their time photocopying which was “far from the truth and especially so today”.

A decade before Hong Kong’s handover to China, whilst Hong Kong’s economy was booming, Teresa decided that it was a good time to move back. She was also lured by the luxury of accessing affordable domestic help. “I don’t have to do the ironing anymore!” Teresa had received lots of job offers but chose to work at Freshfields which was a small law firm in Hong Kong at the time with just three partners and around five associates.

Teresa hadn’t planned on specialising in IPOs. “I thought joining a small office would mean the work would be more varied but I spent three years doing aircraft financing. This was very active and hard work but I learned a huge
amount from the then senior partner who was a legal guru in the asset financing field.” She also learned M&A from other partners. “So overall I had a very varied diet, literally doing anything and everything that came through our door!”

Teresa was the only Chinese (or rather, Cantonese) speaker in the office, as the only other Chinese associate resigned after she had joined the firm. So when Beijing invited Freshfields (along with eight other law firms in Hong Kong) to give a talk on how to list Chinese state-owned enterprises (SOEs) on the Hong Kong Stock Exchange, Teresa was the only choice. “I protested and explained I spoke Cantonese, not Mandarin and that I didn’t even know what a listing was in those days, let alone being able to give a talk on the chosen subject.” Teresa had to prepare and give a speech with help. Internally, her colleagues in Freshfields London assisted in writing the speech. Externally, some Chinese translation service providers translated the speech into Chinese characters and Teresa’s Mandarin tutor subsequently re-wrote the draft into Chinese “that a Mainland audience could understand.” “I practiced the words with pinyin annotations all over the page literally like a parrot for three weeks until I could sing the whole speech like an operetta.” Her efforts were not in vain – “we fortuitously landed ourselves with the first dual Hong Kong and New York listing of what is now Sinopec Shanghai Petrochemical.” This meant more Mandarin.

Teresa found the first SOE listing to be an incredible experience. They were working an hour outside Shanghai in Jinshan, which is a gigantic petrochemical plant and a town for the workers. “Part of our job included separating the profit-making business from the non-profit-making support services such as schools, hospitals, restaurants and even the courthouse, which was nothing I (or anyone else for that matter) had ever done before. The listing was a great success and I was astute enough to see this huge wave of listings coming. I told the then-senior partner that doing one feels like a bit of an accident, but if we do two, we will have a track record. He then told me to go and get the second one. I did get the second one, and the rest is history.”

Teresa has kept her practice diverse. As well as listings, she has continued to work on M&A transactions, including many complex and novel deals such as a three-way privatisation, the most transformative banking takeover in Hong Kong, cross-border outbound acquisitions, securities joint ventures in Mainland China as well as many takeovers and restructurings involving listed and non-listed companies. “I owe a lot of my legal grounding to my early days at Freshfields in Hong Kong, thinking out-of-the-box and often working things out with just a blank sheet of paper!”

Teresa has faced many challenges, sometimes deal-related like creating WPIP or eIPO to facilitate simultaneous A- and H-share listings or easier applications by brokers respectively,
sometimes client driven like preparing four versions of a possible takeover and restructuring transaction to minimise suspension time and sometimes market-driven like an unfortunate leak that needs sorting as well as ensuring the deal still got done. "To me challenges are often opportunities to do something different, to differentiate ourselves or myself and to make a difference. What I think is most important is not to panic, to keep a cool head and to think - it is no shame to say I have to think about this - and it does help if there is a nice cup of tea to hand!"

Teresa has some ‘dos and don’ts’ for IPO practitioners. “Let me start by saying that preparing a company for an IPO is both a privilege as well as a responsibility. It is a privilege as we get to understand someone else’s business. This is usually a fascinating and enriching experience as no two businesses are ever the same, whether the company is a state owned enterprise, a privately owned enterprise or an international business. It is also enormously satisfying to help take a company public. IPO proceeds can fuel further growth which in turn benefits the company, its employees, its shareholders and other stakeholders. Preparing a company for an IPO is also a responsibility as serious legal and regulatory liabilities flow from so many aspects of the work on an IPO."

Teresa shared three ‘don’ts’. The first ‘don’t’ for IPO lawyers is not to end up just being a document processor or a glorified project co-ordinator. Even junior lawyers can get involved in the prospectus and the whole exercise and follow the discussions on the substantive issues. The second ‘don’t’ is don’t just copy and paste and be a slave to precedents - think through what is needed, as what was in the last prospectus is no guarantee that it will be right for this one. The third don’t is don’t always accept at face value what you are being told, (even when this comes from your client!) – ask searching and thoughtful questions.

In terms of ‘dos’, the first would be to spend time to develop real legal skills – the basic tools of the trade are the relevant rules and regulations – and to work on being technically strong. In Hong Kong, this means reading the Listing Rules, the Listing Committee’s decisions, the guidance letters, the FAQs and understanding the rationale behind each rule and decision. Also, pay attention to the guidance published by the SFC and what the SFC is focusing on. The second ‘do’ is to take due diligence seriously. Remember to apply “professional scepticism” - you are paid not only to provide solutions but also to ask questions, not just to clients but also to the other professionals involved, and sometimes you need to ask tough questions. The third ‘do’ is to make sure the management and directors of the company being listed understand what it truly means to be a public company. Lawyers have an important role to play in training directors – “I often tell clients that an IPO is only the beginning of life as public company!”

With regard to upcoming developments, “as many will know, we will soon be able to list innovative companies with weighted voting rights on the Hong Kong Stock Exchange, list US-listed companies with weighted voting rights and list pre-revenue as well as pre-profit biotech companies on our Exchange.” Teresa added, “whilst this is an exciting new chapter for our market, many of the companies wishing to take advantage of this new opening up will have a high risk or even speculative profile - we really need all professionals to act as filters to ensure the sustainable development of Hong Kong as an international financial centre and ideally to help to develop
Hong Kong as the venue of choice for high quality companies to list and raise funds here.”

A topic close to Teresa’s heart is the percentage of women on listed companies’ boards. “I question if the current proposal goes far enough in not providing gender breakdowns in listed companies’ disclosure even though the diversity policy disclosure is proposed to be upgraded to a listing rule requirement. It is embarrassing to see women on Hong Kong listed boards at only 13.8 percent in January 2018 when the statistics in all other major financial markets are well over 25 percent if not higher. May be it is the reluctance of listed companies to bring about real change, to only pay lip service to governance at board level and to be reluctant to let capable and committed independent non-executive directors function as they should that is the matter - why indeed should women waste time on boards if nothing can ever be changed for the better!”

Teresa is also involved in public service. She sat as an Independent Non-Executive Director of the Travel Industry Council for eight years. “I learned a lot about how a self-regulatory body was not necessarily the best way to tackle some of the problems which have challenged our tourist industry. The government is finally doing something about this after 15 years as a statutory body is being formed to regulate tour guides and tour operators soon. In my time, I did help to change the byelaws to allow the government to appoint more independent directors to the board and to allow the nomination of candidates for direct election onto the board.” She is currently a Non-Executive Director of the Securities and Futures Commission in Hong Kong and a deputy chairman of the Hong Kong Takeovers and Mergers Panel. She also chairs the Investor Compensation Company Limited. She served on the Listing Committee of the Hong Kong Stock Exchange from 2006 to 2012, the first three years as a Deputy Chairman and the last three years as Chairman. She has also served as a member of the Exchange Fund Advisory Committee of the Hong Kong Monetary Authority and as a member of the Expert Advisory Committee for M&A of the China Securities Regulatory Commission.

“Being on these committees requires a lot of commitment. I remember when I was chair of the listing committee, every Wednesday night was spent buried under prospectuses and weekends before policy meetings were fully taken up reading papers and planning how to chair the discussions so we had a proper debate of the topics and developed some sensible decisions to help improve our market. What I enjoy most is the interaction with fellow committee members and the opportunities for learning and growth. I also think it is vital that practitioners have a strong voice so that practical as well as legal aspects can be considered by the regulators.”

Recently, Teresa was appointed as one of 22 trustees of the IFRS Foundation, which is responsible for the governance and oversight of the International Accounting Standards Board, which sets IFRS Standards. “I value this opportunity as I believe in the mission of the foundation, which is to adopt a global set of accounting standards across all jurisdictions. It is a truly international organisation. Another opportunity for learning for me!”

With regard to the future of the law profession, she believes that lawyers definitely need to adjust and embrace change. Notwithstanding artificial intelligence and other technological innovations, the legal business is a people’s business which brings with it the need for experience, judgement, relationships and the human touch; these are important facets of the profession that will endure.

One piece of advice Teresa would like to give someone thinking of pursuing a career in law: “I have been incredibly lucky to have enjoyed my career in the law so tremendously – even though I didn’t originally choose it! It is hard work and getting even more competitive. So don’t do it if it is just to please your parents – nor just for the money. I hope if you consider a legal career it is because you believe in the power of the law which permeates every aspect of our society and you want to do your bit to uphold it – and to help and influence others to do the right thing!”

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1 Hang Seng Index (HIS) 50 listed companies
高育賢律師事業生涯蘊含着多個「第一」。她是富而德律師事務所權益合夥人中的首位華人女性，也是首位出任中國區主席的合夥人；她也是香港聯合交易所上市委員會的首位女主席。就如她的人生格言：「生命由自己創造，永不永不永不言放棄」 — 高律師做到了工作和生活兩者兼顧，婚姻幸福，兩名子女長大成人後與母親仍會彼此傾訴心事。

作者 Navin G. Ahuja

高律師在香港出生和長大，年少時不太愛上學，成績總是「滿江紅」。有一次，她竟在夢遊時請母親在她紅色的成績單上簽名！13歲那年，她離港赴英國的一間修院寄宿學校「被他人教育」。由於英語能力不佳，最初她感到頗為吃力，但很快便開始享受箇中的樂趣：那所學校功課不多，大多數時間是與同學一起進行小組研習。然而，樂趣過多便促成了惡果，她的學業成績讓她進不了大學。「那是我人生遭遇的第一個重大挫折。」幸好她能迷途知返，於是發奮圖強，最後取得兩個「一級」：一個是現稱為西敏大學的法律學士學位，而另一個是劍橋大學的法律碩士學位。「我和家人都為此感到如釋重負，因為這證明了我有一個不錯的腦袋。挫折不等於失敗，但前提是，你必須以積極的態度來面對，並從中汲取教訓。多年以來，我一直深信一個人可以持續成長。我認為自己是起步較慢的一個人，而且至今仍在繼續學習！」

法律本來並非高律師的首選事業。她小時後學過縫紉，而這也許是她對時裝設計特別感興趣的原因。「我甚至曾經為母親縫製過一件旗袍，而我是經常懷有創作激情的！」然而，高律師的父親認為時裝設計不算是一門專業，而高律師知道父親不會反對她唸法律。高律師曾在倫敦的一家中型律師事務所任職(兩年見習和兩年執業)。她當時並沒有考慮在大型律師事務所的見習律師大部分時間都花在影印工作上，但「其實這比事實差得遠，尤其是在今天。」

香港在回歸中國之前的10年經濟正值發展蓬勃，高律師認為那是她回港發展的適當時機；而另一個吸引她回流的原因，是可以聘用負擔得起的家庭傭工。「我不再需要自己熨衣服了！」高律師接獲不少聘書，但她最後選擇了富而德律師事務所。那時，富而德在香港仍是一家規模較小的律師事務所 — 只有三名合夥人和大約五名助理律師。

高律師並沒有打算專門從事IPO方面的工

了三年時間在飛機融資的業務。這是一項很活躍和十分辛苦的工作，但我從當時的資深合夥人 — 一名當時在資產融資領域鼎鼎大名的權威身上學到許多有用東西。」此外，她也從其他合夥人學習如何處理併購業務。「總括而言，只要是客戶委託我們辦理的任何法律工作，各式各樣我都參與了！」

高律師在其律師事務所裡是唯一會說華語（其實只是會說廣東話）的人，因為另外僅有的一名中國籍律師在她進入富而德之後離職。因此，當北京邀請富而德(連同香港其他八家律師事務所)就中國國有企業如何在香港聯交所上市發表演講時，高律師成為不二之選。「我提出抗議並向他們解釋，我只懂說廣東話，不會說普通話，而且那時候甚至不懂甚麼叫上市，更別說要就這一專題發表演說！」然而，在其他人的協助下，最後她還是為這次演講作好準備。在富而德內部，倫敦辦事處的同事協助她撰寫演講稿；在外部，有翻譯人員為她將演講稿譯成中文，再由高律師的普通話導師協助重寫，使它成為「內地聽眾能聽懂」的中文。「我在整頁的講稿上滿滿的標註了漢語拼音，並且連續三星期像鸚鵡學舌一般練習，直至自己能夠將整篇講稿像輕歌劇一樣唱出來。」她的努力最終沒有白費 —「喜出望外地，我們獲得委託處理首宗在香港和紐約兩地上市的交易，而所涉及的企業，就是現在的中國石化上海石油化工。」這意味着，她還得繼續說普通話。

這一宗首次國有企業上市給高律師帶來難以忘懷的經歷。他們需要前往上海遠郊一小時車程的金山區工作，那是一家規模十分龐大的石油化工廠，也是工人生活的一個市鎮。「我們的部分工作包括將該企業的盈利性業務與學校、醫院、餐廳、甚至法院等非盈利性的支援服務分開，這是我（或參與該項工作的其他人）以前從未試過的。這次上市取得了重大成功，而我察覺到，一輪巨大的上市浪潮即將到來。」高律師補充稱：「這確是一個令我們市場感到振奮的新篇章。然而，許多打算利用這一新開放政策的企業是高風險的，甚至涉及高度投機性 — 因此，我們確實需要所有的專業人員均發揮其過濾功能，確保香港得以作為一個可持續發展的國際金融中心，並盡力使香港發展成為優質企業來港上市和籌集資金的首選地點。」
高律师心中所记挂的一件事情，是女性在香港上市公司董事局所佔的比例。「虽然有建议将多元政策披露提升为一项上市规则的规定，但並無要求在上市公司的资料中披露按性别划分的数据，我懷疑這建议是否已經足夠。女性在香港上市公司董事局所佔的比例，於2018年1月只佔百分之十三點八，而其他主要金融市场的統計数字顯示，當地的上市公司董事局的女性所佔比例達百分之二十五甚至更高，對香港而言這實在令人感到尷尬。問題可能在於上市公司沒有動力作出真正的改變，而在董事局企業管治層面過於表面化，未能讓有承擔的獨立非執行董事於這議題發揮其應有職能——假若沒有途徑改善現狀，為何女性還要花時間擔任董事局成員？」

此外，高律师亦参与其他公職。她曾在旅遊業議會擔任了8年的獨立非執行董事。「我深切了解到，一個自我監管的組織未必是解決旅遊業所面對的某些問題的最佳方法。政府終於在15年後對此作出一些舉措，目前正在籌組一個法定機構，以盡快對導遊及旅行社作出規管。我在旅遊業議會擔任公職期間，曾經協助修訂旅遊業議會的章程，讓政府可以委任更多獨立董事進入董事局，以及容許提名候選人直接參與董事局選舉。」

高律师目前擔任香港證券及期貨事務監察委員會的獨立非執董，以及香港公司收購及合併委員會副主席，以及投資者賠償有限公司的主席。此外，她曾於2006年至2012年服務香港聯合交易所有限公司董事局，在前三年擔任副主席，後三年擔任主席。高律师亦曾擔任香港金管發改委會和調查委員會委員，以及中國證券監督管理委員會及購並重組專家諮詢委員會委員。

「在這些委員會擔任公職，需要作出很大的承擔 — 記得我在擔任上市委員會主席時，每個星期三晚上都需要整夜埋首於招股章程中，而在周末召開政策會議之前，我需要不停地閱讀文件，思考如何引導大家進行討論，以便各成員能夠就相關議題進行具建設性的辯論，並作出明智的决策，以促進我們市場的發展。」

高律师近期獲委任為國際財務報告準則基金會的22名受託人之一，該會負責規管及監督制定國際財務報告準則的國際會計準則理事會。「我非常珍惜這一機會，因為我認同該基金會的使命，那就是：讓所有司法管轄區採用同一套全球性會計準則，它是一個真正的國際組織，就我而言是另一個大好的學習機會！」

關於法律界的未來發展，高律师認為律師必須作出調整和接受改變。儘管近年興起人工智能以及其他科技創新，但法律業務畢竟是對人的行業，與它密不可分的是經驗、判斷、關係、人與人的接觸；這些都是法律專業內不會被淘汰的重要元素。

對於有意投身法律界的人士，高律师給予他們的一點意見是：「我很慶幸自己如此熱衷從事法律工作 — 儘管投身法律界並非我的原意！律師的工作很辛苦，並且競爭越來越激烈。所以，如果你純粹是為了取悅父母，又或是為了賺錢，那麼我勸你不要選擇當律師。如果你考慮以法律作為終身事業，我希望這是你相信法律所能發揮的力量 — 它滲透了我們社會的每一層面，而你希望盡一己之力去維護它，並幫助和影響其他人做應做的事！」

1. 恆生指數（恆指）50家上市公司
The Hong Kong Academy of Law

The Law Society and the Hong Kong Academy of Law organised a total of 14 seminars in February, 2 of which had an audience of over 100.

The Law Society organized a seminar entitled “International Arbitration Law: The Most-Favoured Treatment Clause” jointly with The Hong Kong Institute of Certified Public Accountants and The Hong Kong Institute of Chartered Secretaries on 5 February. The seminar discussed different interpretations of the Most-Favoured Treatment Clause in the New York Arbitration Convention on the Recognition and Enforcement of Foreign Arbitral Awards in several contracting States. The speaker of the seminar was Professor Peter Kindler, Ph.D., Chair of Private Law, Commercial and Corporate Law, Private International Law and Comparative Law, Faculty of Law, Ludwig-Maximilians-Universität. Professor C.K. Low, Associate Professor in Corporate Law, CUHK Business School was the moderator of the seminar. The seminar attracted an audience of over 100.

A seminar entitled “The New Licensing Regime for Trust or Company Service Providers (‘TCSPs’) and the Keeping of Significant Controllers Registers (‘SCRs’) by Companies” was held on 28 February. The seminar apprised attendees of the major statutory requirements for the new licensing regime for TCSPs and keeping of SCRs under the new legislation. The speakers and the panelists of the seminar were Ms. Judith Sihombing, Lecturer of The Chinese University of Hong Kong and The University of Hong Kong, Ms. Ellen Chan, Deputy Principal Solicitor of the Companies Registry and Ms. Margaret Chan, Senior Solicitor, Registry for Trust and Company Service Providers of the Companies Registry. Other panelists were Mr. Francis Mok, Senior Solicitor, Company Law Reform of the Companies Registry and Mr. Roger Wong, Deputy Registry Manager, Trust and Company Service Providers of the Companies Registry. Over 300 participants attended the seminar.

2月28日舉行了有關「信託或公司服務提供者(TCSPs)新許可制度和保留重要控制人登記冊(SCRs)」的講座，向與會者介紹了新法例下TCSPs和備存SCR的主要法定要求。講者包括香港中文大學及香港大學講師Judith Sihombing女士、公司註冊處副首席律師(公司法改革)陳蕙玲女士及公司註冊處高級律師(信託及公司服務提供者)陳綺芬女士。其他嘉賓包括公司註冊處高級律師(公司法改革)黃綺芬先生及公司註冊處副公司註冊處經理(信託及公司服務提供者)黃輝偉先生。講座吸引了超過300位人士出席。
IP Committee’s Meeting with WIPO China

In January, the Intellectual Property Committee of the Law Society met the Director of the World Intellectual Property Organization (‘WIPO’) in China, Mr. Chen Hongbing. Members exchanged views with Mr. Chen on developments of intellectual property in Hong Kong and in China, the opportunities arising from the Belt and Road Initiative and the growing demand for quality IP service in the Asian region. The Committee looks forward to more discussions and cooperation with WIPO China.

Knowledge Property Committee with World Intellectual Property Organization China Office

律師會知識產權委員會於1月與世界知識產權組織中國辦事處主任陳宏兵先生會面。委員會成員與主任就香港和中國的知識產權發展、一帶一路帶來的機遇以及亞洲地區對高質量知識產權服務的需求增長等問題交換了意見。委員會期待與世界知識產權組織中國辦事處進行更多討論和合作。

Young Solicitors’ Group – Secondees to London Unite!

Firms view international secondments as an essential part of trainees’ and young lawyers’ development. As usual, London is a popular secondment destination for trainee solicitors and young lawyers from Hong Kong.

To facilitate trainees and young lawyers on secondment or otherwise working in London for mutual support and community-building, last September, the Young Solicitors’ Group (‘YSG’) invited those who were currently in London or were going to London to exchange their contacts.

Around 30 participating members organised numerous events with other members in the group in the past six months. Trainees and young lawyers soaked up the historical sights and discovered other vibrant areas in London together in their free time.

Members who exchanged contacts were also well placed in London to travel to Europe and they did a lot of that at the weekends together. There are plenty of budget airlines and members reached beautiful cities like Oslo, Rome, Paris and Madrid all in a couple of hours.

If you wish to connect with fellow young solicitors and trainees, please keep an eye on activities organised by the YSG!

Reported by: Catherine Wong

青年律師組 – 借調律師於倫敦聚首一堂

律師行視國際借調為培育實習律師和年青律師發展的重要一環，而倫敦是頗受香港實習律師和年青律師歡迎的借調地點。

為協助借調在倫敦工作的實習律師和年青律師，互相支持和建立社群，年青律師組於去年9月邀請了正在倫敦或將要前往倫敦工作的律師交換聯絡資料。

在過去6個月，大約30名參加者與組內的其他成員舉辦了多次活動。實習律師和年青律師在空閒時一起參觀歷史名勝，發掘倫敦有趣的地方。

交換了聯絡資料的會員亦曾在周末一起遊覽歐洲，當地有不少廉價航空公司，只需幾小時就能遊覽到奧斯陸、羅馬、巴黎和馬德里多個美麗城市。

如果您想與年青律師和實習律師建立聯繫，請留意年青律師組的活動！

由汪嘉恩律師報導
Spring Reception 2018

Over 330 guests with Guests of Honour Mr Geoffrey Ma, Chief Justice of the Court of Final Appeal and Ms Teresa Cheng, SC, Secretary for Justice, attended the Law Society's Spring Reception 2018 held on 26 February to celebrate the Year of Dog.

In his remarks, President Thomas So mentioned that 2017 was a year full of challenges. Foreseeing more challenges to come in 2018, he encouraged members to continue to uphold our core professional values and the Rule of Law as well as to continue as a trusted advisor for clients.

President Thomas So extended his warmest New Year wishes to all guests.

Mr Geoffrey Ma, Chief Justice of the Court of Final Appeal (front row, fifth left) and Ms Teresa Cheng, SC, Secretary for Justice (front row, fifth right) and members on the Roll of Honour, Past Presidents, Council members and Secretary General.

2018戊戌年新春酒會

律師會於2月26日舉行戊戌狗年新春酒會，由終審法院首席法官馬道立先生及律政司司長鄭若驊資深大律師擔任主禮嘉賓。約330名嘉賓和律師會會員在酒會上互送新年祝福。

會長蘇紹聰律師在致辭時表示，2017年是充滿挑戰的一年，預期2018年的挑戰將會更多。他鼓勵會員繼續維護法律界的專業核心價值和法治，同時保持各界對法律界的信任，為客戶提供服務。
President Thomas So (middle) and Council Members greeted Mr Yu Xuejie, Deputy Director-General of the Department of Law (second right).

會長蘇紹聰律師（中）與理事會成員祝中聯辦法律部余學杰副部長（右二）新春快樂。
Belt and Road Series: Intelligence Without Bounds?

By Hin Han Shum, Associate

A.I. These 2 simple letters may conjure up images of robots dominating the world, but really—what is it?

A.I. (artificial intelligence) is exactly what its name indicates. Intelligence that is artificial- or synthesized—which allows a program/robot to perform tasks usually performed by living humans and animals. Though there is no set definition for A.I., it commonly boils down to the ability to associate one thing with another by the use of algorithms, equations, big data learning, and past experiences.

Though we may not notice it, A.I. has quietly permeated our lives. We see it in our smart phones (with programs which can respond and “talk” to us), in office personal assistant programs, in chess games and in vehicles. All these new technologies use A.I. and are meant to make our lives more efficient. The potential for it is boundless.

However, these conveniences come bundled with some complicated legal issues surrounding regulation and liability. The need to understand these developments, consider whether to regulate within one’s own territory, and how to reconcile the development and use of A.I. products amongst the other jurisdictions, are important issues to explore.

This article outlines issues on liability that we should examine in hopes of creating a framework to allow A.I. development and protect the safety of consumers and users of A.I. products. All the examples presented in this article are hypothetical and are not based on any existing products or research and development, but serve to broach the subject of how to consider liability.

Regulation and Liability
The need to create laws in relation to A.I. has been discussed much in the past...
year, but the concepts are still very vague, with the extent of the regulations (if any at all) shrouded in uncertainty.

Ultimately, regulation is being considered, to put in place accountability for liabilities. Who should be liable for the faults, negligence or damage that may be caused by A.I. programs?

The A.I. Robot?
Can the A.I. robot (or program, if there is no physical form) be liable? This discussion goes into ethics and the extent we are willing to recognize A.I. robots/programs as beings accountable for their own actions. What could they give to compensate damage and loss suffered? In theory, if A.I. robots/programs are to be held liable, that would likely mean that they have first been given rights. This concept encompasses a plethora of fundamental rights questions, including whether they should in the future be entitled to rights similar to our human rights.

Let us consider this idea in the scheme of the Belt and Road. Spreading across more than 70 jurisdictions, the Belt and Road embodies a vast and rapidly expanding trading platform with different religions and cultures – factors of which affect policy and law making. These nations may have different views on whether A.I. programs themselves can be held accountable, and cross border disputes on this may be complicated if bodies of people have different fundamental perspectives concerning A.I. programs.

The law should be able to provide for certainty to the furthest extent possible. If some countries have regulations holding the A.I. robot liable whilst others hold the operator/manufacturer/coder liable, there will not be any clarity and certainty in the laws with regard to cross border trade, especially if the damage caused could amount to a criminal offence which cannot be contracted out of by the parties.

The Operator?
Assuming that we do not want to explore holding robots and programs accountable, we have to consider whether the operator, the manufacturer or the coder is to be liable for loss or damages suffered by other humans.

In some cases, the operator of the A.I. robots/programs could simply be an unwitting person who presses a button to start up the A.I. program. Or it could be a passenger who happens to be sitting in the front seat of an autonomous vehicle. This person may not know the latent defects in the system, or may not be able to control the learning of the A.I. robot/program (which could possibly learn something wrong and amplify it).

Let us consider the following hypothetical example:

Presume that an A.I. powered baking robot, which is operated by an operator who turns on a button, baked a wedding cake and incorrectly added salt, rather than sugar. The cake was not the taste that the consumer had contracted for and this problem could not be rectified in time for the wedding. Assuming the operator had supplied all the sufficient raw materials to the baking robot, would the operator be liable? What if the accompanying bullet-shooting ‘subdue threat’ function. For example, suppose a group of people were conversing loudly to each other near the premises where this security system was installed and the noise level was assessed by the system as being an extreme threat. The security system then shoots at the group and injures them – who would be liable? What if the accompanying bullet-shooting robot had a defect, causing it to shoot off target, thus injuring a passerby, who would be liable?

Further to consideration of defects in the learning and execution of the A.I. robot, the range of the ‘subdue threat function’ will also have to be tailored for different jurisdictions, as the method for protecting one’s premises may be different amongst different jurisdictions. This may be an issue to consider if the A.I. program can learn and develop its own assessment and reaction.

Further to what was discussed above, there may be other parties who might be liable, and the above hypothetical examples only bring out some of the issues that should be considered. Issues in relation to foreseeability and causation also need to be explored.

Building the Framework
這些是艱難的問題，我們如何看待這些問題將大大取決於我們的法律和對人類和道德的觀點。

也許可以建立一個由科技感興趣的人、政策制定者、社會學者、法律專業人士以及在相關產業的人士組成的政府部門，考慮如何建立和發展人工智能技術，以保護我們但不對技術進步造成過度制約。

一些現有法律可以應用於某些情況以覆蓋人工智能的使用。可能會需要發佈指導方針來進一步補充這些法律。

由於技術很可能在國界之間使用，特別是在使用人工智能的程序中，我們可能也需要考慮建立一個國際機制來監管和準備人工智能使用的國際協定，以確保責任明確。即使人工智能的技術發展沒有界限，也應該有控制措施來幫助確保社會的潜在損失保持在可控制的範圍內。

加入我們

香港律師會組織第二次一帶一路會議於2018年9月28日星期五在灣仔展覽中心舉辦，今年的主要特色是技術。

請與來自一帶一路國家的同行一起探索更多關於人工智能和法律問題的問題，並加入我們參加一帶一路會議。
願意承認人工智慧機器人/程序就好似人類一樣，可為其自身的行為負責。對於所蒙受的損害和損失，它們究竟可作何賠償呢？理論上，如果我們需要人工智慧機器人/程序為失誤負責，便等於是說，它們應首先獲得賦予權利。這一概念，涉及許多基本權利方面的問題，包括它們在未來，是否應當享有類似人類所享有的權利？

讓我們試從「一帶一路」計劃來思考這一概念。「一帶一路」計劃的推展範圍，遍及70多個司法管轄區，當中包含一個龐大並正在迅速發展，且具有不同宗教、文化背景的交易平台—這些皆為對政策和法律的制定構成影響的因素。至於是否可向人工智慧程序追究責任，這些國家可能會有各自不同的看法。假如不同的群體，根本上對人工智慧抱有不同的看法，那麼當出現這方面的跨境糾紛時，性質便會更形複雜。

法律應盡可能維持確定性，如果某些國家的法規，規定人工智慧機器人需要承擔責任，而另一些國家的法規，則規定須由操作人員/製造商/編程人員承擔責任，那麼與跨境貿易有關的法規將會欠缺清晰度和明確性，尤其是如果所蒙受的損害足以構成刑事罪行的話（在這情況下，當事方將不可藉藉約免除此責任）。

操作人員？
假定我們不欲探討機器人和程序是否需要承擔責任，我們便必須考慮，操作人員、製造商或編程人員是否需要對其他人所蒙受的損害或損失負責？

在某些情況中，人工智慧機器人/程序的操作員，可能只是一名普通的工作者，他只負責按下啟動人工智慧程序的按鈕；又或者，他只是坐在自動駕駛汽車前座的乘客。他也許並不知道該系統存在一些甚麼風險，又或是他並不能夠對人工智慧機器人/程序的學習施加任何管制（這些機器人/程序有可能學習了一些錯誤的東西，並將其擴大）。

讓我們看看以下的一個假設性例子：
假設有一個由人工智慧驅動的烘焙機器人，是由一名操作員負責操作。該操作員將按鈕按下，烘焙出一個結婚蛋糕，但機器人錯誤地將鹽（而並非糖）加入該蛋糕中，故這個蛋糕造出來後，並不是顧客所要求的樣子，這便引來了問題。如果該名操作員已給該機器人提供了一切足夠的原材料，他是否仍需要為這一趟失誤負責呢？假如該機器人從大數據中（當中的信息並不經常準確）「學習」到：糖份少一些，食物將會更健康，它因而故意將鹽放入其中。在這情況下，有關責任應該由誰來負呢？該名操作員是否需為此負責呢？

建立框架
這些都屬於棘手問題，而我們應如何看待這些問題，很大程度上取決於我們的法律，以及我們的人文和道德倫理觀。

也許可以考慮成立一個政府部門，邀請專門技術人員、決策者、社會科學家、法律專業人士、在開發人工智慧技術的行業中工作的人士等，共同深入研究如何規範和發展人工智慧技術，使它一方面可以為大眾提供保障，另一方面不會對科技的發展帶來不適當限制。

目前有一些法例可適用於某些涵蓋人工智慧使用的情況，政府可發出相關指引以對其作進一步的補充。

人工智慧技術的使用有可能涉及跨境性質（尤其是在使用人工智慧程序方面），故確實有需要就有關的監管設立一個國際專家小組，為人工智慧的使用擬訂公約，從而明確各方的責任。儘管人工智慧的技術發展並無極限，但我們需要訂立相關的監控措施，以確保其不會對社會帶來巨大破壞，並使有關責任更為清晰明確。

誠意邀請
香港律師會正籌備於灣仔會議展覽中心舉行第二次「一帶一路」週年論壇。時間是2018年9月28日，而本年所討論的一個重點將會是科技。

會員如有興趣與「一帶一路」沿線國家的同行深入探討人工智慧和相關法律議題，請勿錯過這一機會。

www.hk-lawyer.org 31
In 1999 Lord Woolf in effect tore up the then rules of civil procedure in England and Wales, as recorded in the White Book, and substituted new ones. His objectives included “simplicity and clarity”.

The changes in civil procedure in England and Wales have continued and indeed are continuing. Unfortunately Lord Woolf’s aims have proved not to be met. The revised White Book, which was originally quite slim, is now of a greater volume than the one in existence immediately prior to his reforms. There has been a huge plethora of satellite litigation, often on technical points.

With that procedural change and plethora of litigation has gone a substantial increase in the number of litigants in person. This is for a variety of reasons, not least in England and Wales the almost complete abolition of legal aid.

In a recent decision (Barton v. Wright Hassall LLP) [2018 UK SC 12] the Supreme Court did on the 21st February 2018 hold, by a split three two decision, that litigants in person be given no special provision in interpretation or implementation of the civil procedure rules. Of necessity, they also dealt with what might constitute good service.

Although the rule in issue in that case is not exactly replicated in the Hong Kong rules, the decision is of interest and potential importance in Hong Kong.

The judiciary, and others, have expressed concern at the number of litigants in person appearing before them, with the consequent unfamiliarity with rules and lack of following of such, as well as trials...
being lengthier than might otherwise be. While litigants in person are far from unknown in the higher courts, they are particularly prevalent in the District Court where, apparently, between 40 percent and 50 percent of cases have at least one litigant in person. Given the impending increase in District Court jurisdiction from $1M to $3M, coupled with the very low financial limits to be eligible for legal aid, the number of litigants in person is only likely to increase further.

**Background of the case**

In 1999 the appellant Mr. Barton was represented by a firm of solicitors Bowen Johnsons in proceedings for ancillary relief following his divorce. In 2005, he brought an action against those solicitors alleging that they had failed to protect his interests in the drawing of the consent order by which the ancillary relief proceedings were terminated. In those proceedings against Bowen Johnsons Mr. Barton was represented by Wright Hassall LLP, until May 2007 when they were allowed to come off the court record following a dispute about fees.

Wright Hassall commenced proceedings claiming their costs against Mr. Barton. He commenced an action, which eventually culminated in the Supreme Court decision, for professional negligence against Wright Hassall. In that action for professional negligence Mr. Barton initially acted in person. He commenced proceedings by a “claim form” (essentially a writ) issued on the 25th February 2013.

Apparently the present rules provide that the claim form be served on the defendant by the court but that the issuing party may elect to do so himself, as was the case with Mr. Barton. He had four months in which to do so, his time expiring on the 25th June 2013.

On the 26th March 2013 Wright Hassell instructed their own solicitors, (BLM) who, on the same day, wrote by email to Mr. Barton asking him to address all future correspondence to them. In a subsequent email on the 27th April 2013 BLM concluded their email by saying “I await service of the claim form and particulars of claim”.

On the 24th June 2013, being the last date before expiry of the period for service, Mr. Barton emailed BLM with, amongst other documents, the claim form and particulars of claim “by way of service”, and asked they acknowledge receipt of that email by return.

BLM did not respond until the 4th July 2013 when they stated they had not confirmed they would accept service by email.

By the court rules to be able to serve by email – as is now permitted in England and Wales – such is effective when the recipient has confirmed in advance that they will accept service by email.

BLM went on to say that the claim form had expired unserved and the claim was statute barred.

The English rules are quite lengthy and not as per the Hong Kong Rules. Before the District Court Judge (seemingly akin to a Master) Mr. Barton contended that he had complied with the rules and asked on three alternatives bases for service to be validated or time thereof extended.

He lost and was given leave to appeal only on the basis that the “service” by him be validated. All subsequent hearings proceeded on the basis that service by email was not valid (in the particular case) and the only question was whether such should be validated.

The limitation of the question posed proved to be fatal to his claim, at all subsequent levels including the Court of Appeal and Supreme Court.

**Majority Decision**

Lord Sumption delivered the majority judgement. He held that the particular rule (Part 6) which governs service in England and Wales is different in its nature to other rules which confer a power to relieve a litigant from any “sanctions” imposed for failure to comply with the rules, a practice direction or a court order. He observed that part 6 is directed specifically to the rules governing service of a claim form and as such “give rise to special considerations which do not necessarily apply to other formal documents ...” and that “the main difference is that the disciplinary factor is less important”.

He said that what constitutes “good reason” for validating the non-compliance service the claim form is a matter of factual evaluation not lending itself to over analysis or citation of authority. He then referred to principles derived from the decision of the Supreme Court in Abela v. Baadarani [2013] 1 WLR 2043 where it was held that the most important purpose of service was to ensure that the contents of the documents are brought to the attention of the person to be served, this being the critical factor, although knowledge of the existence of the content of the claim form is not of itself a good reason to make an order validating non-compliant service.

Lord Sumption goes on to say that “in the generality of cases” the main relevant factors are likely to be:

(i) whether the claimant (the plaintiff) has taken reasonable steps to effect service in accordance with the rules; and

(ii) whether the defendant or his solicitor was aware of the contents of the claim form at the time when it expired; and

(iii) what if any prejudice the defendant would suffer by the retrospective validation of a non-compliant service of the claim form, bearing in mind what he knew about its content.

Lord Sumption specifically held that the fact that Mr. Barton’s mode of service successfully brought the claim form to the attention of BLM is not sufficient, in that the manner in which this is done is also important. He says that rules of court must identify some formal step which can be treated as making
the defendant aware of it, in order to determine the exact point from which time runs for the taking of further steps or the entry of judgement in default of them.

He remarks that time stops running for limitation purposes when the claim form is issued and thus the period of the validity of the claim form is equivalent to an extension of the limitation period before the proceedings can effectively begin.

Lord Sumption also records some problems associated with electronic service, which, to date, do not concern Hong Kong. More relevantly Lord Sumption records that, certainly in England and Wales, litigating in person is not always a matter of choice, given the restrictions of the availability of legal aid and (there) conditional fee agreements. As such, litigants in person lack of representation may justify making allowances in making case management decisions and in conducting hearings. “But it will not usually justify applying to litigants in person a lower standard of compliance with rules or orders of the court”.

He cites that “the overriding objective” requires the court so far as practicable to enforce compliance with the rules. That of course is not one of the “underlying objectives” within the Hong Kong rules (see Order 1A rule 1).

Lord Sumption says “[t]he rules provide a framework within which to balance the interest of both sides. That balance is inevitably disturbed if an unrepresented litigant is entitled to greater indulgence in complying with them than his represented opponent. Any advantage enjoyed by a litigant in person imposes a corresponding disadvantage on the other side. ... Unless the rules and practice directions are particularly inaccessible or obscure, it is reasonable to expect a litigant in person to familiarise himself with the rules which apply to any step which he is about to take.”

Lord Sumption then specifically rejects the contention that the particular rule and practice direction were “inaccessible and obscure” on the basis that they are accessible on the Internet!

Lord Sumption says that BLM “were under no duty to give [Mr. Barton] advice” that his purported service was not valid, or steps he might have been able to take to rectify the position.

Lord Sumption appears to be directly influenced by the fact that the defendant would have been deprived of a limitation defence if service was validated. This is to be compared with the attitude of Lord Briggs.

**Decision of Minority**

Lord Briggs (for the minority) dissented and would have allowed the appeal. Whilst noting the dictum in the Abela case, as referred to above, Lord Briggs goes on to say that there is a second important purpose, namely to notify the recipient that the claim has not merely been formulated but actually commenced as against the defendant and upon a particular date. In other words the communication the contents of the document be by way of service rather than just for information, as it is service which engages the court’s jurisdiction over the recipient defendant.

Lord Briggs says that where all purposes of the rules about service (by email) had been achieved then in his view such was at least prima facie good reason for validating service.

He says that in his view Mr. Barton attempts to serve the claim form and the particulars of claim by email did fully achieve the purposes underlying the rules about service by email. First, there was a common ground that the defendant, through its solicitors, was fully appraised by the email of the contents of the claim form. Second, the claim form was sent expressly “by means of service upon you”, thus not just by way of information. Third, it had not been suggested that the recipient firm was in any way hampered by not having sufficient monitoring procedures in place etc.

Lord Briggs expressly disagrees with Lord Sumption. He says that he does not regard the fact that validation would deprive the defendant of an accrued limitation defence as a factor against validation. The defendant solicitors were aware of the attempt to serve them before the expiry of the claim form and thus, in his view, the acquisition of the limitation defence would have been “a windfall”.

Lord Briggs does say that “save to the very limited extent to which the [civil procedure rules] now provide otherwise, there cannot fairly be one attitude to compliance with rules for represented parties and another for litigants in person, still less a general dispensation for the latter from the need to observe them ...”

Lord Briggs says that the good reason for validation, in his view, is not that Mr. Barton was a litigant in person but rather that his attempted service by email achieved all the underlying purposes of the present rules.

**Conclusion**

Although they came to different conclusions on the facts, the Law Lords all appear to be of the view that no particular allowance should be given to litigants in person as to (none) compliance with “disciplinary” court rules, as distinct from case management or conduct of hearings.

The Court of Final Appeal on its website gives very limited guidance to litigants in person as to how to deal with that court. To what extent the Court of Final Appeal (or lower courts in Hong Kong) might wish to refer to principles expounded as to dealings with litigants in person in UK, where based on procedural rules that do not apply here, might be left for the future, although it should be noted that the Court of Final Appeal has demonstrated, most recently in the decision of HKSAR v. Chan Kam-Shing (FACC 5 / 2016), that it is quite willing to depart from decisions of the UK Supreme Court.
Addendum. The below information was received too late for incorporation in the article. The judiciary does not keep statistics as to number of unrepresented litigants. It does keep them as to number of hearings involving unrepresented litigants. What the table does show is that there are a large number of hearings at all levels, including the Court of Appeal, involving at least one unrepresented litigant. Exactly why may be the subject of academic research. Given the number of hearings however Hong Kong might regard itself as lucky, to date, to have avoided procedural wrangles such as in the Wright Hassel case.

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*Appeals/Trials/Substantive Hearings involving unrepresented litigants refer to those appeals/trials/substantive hearings in which at least one of the parties is unrepresented.

**Wright Hassall 案的程序性爭議**

英國最高法院就近期的一宗案件（Barton v. Wright Hassall LLP）[2018 UK SC 12]，於2018年2月21日以三對二的比數裁定，在民事訴訟程序規則的解釋和實施方面，無律師代表的訴訟人不會獲得給予特殊待遇，而該法院也因此無可避免地，須處理什麼構成有效送達（service）的問題。

該案所論及的法院規則，雖然與在香港實施的並非完全相同，但有關的裁決仍對香港具参考價值和一定的重要性。

司法機構（及其他各方）關注到在法庭所審理的案件中，有越來越多訴訟人並無聘請律師。由於他們不熟悉和少遵循訴訟規則，以致審訊時間經常超過原來所需時間。儘管較高層級的法院所審理的案件，也有訴訟人沒有聘請律師，但這情況在區域法院較為常見。在後者所審理的案件中有百分之四十至五十，是至少有一名訴訟人沒有聘請律師作為代表。由於區域法院的司法管轄範圍，即將從100萬元提高至300萬元，以及由於申請法援的財務資格有更多的人可申請，無律師代表的訴訟人只會繼續不斷增加下去。
案件背景

1999年，上訴人Mr. Barton在其離婚訴訟完結之後的附屬濟助法律程序中，聘請了Bowen Johnsons律師事務所作為其代表。他在2005年向該律師事務所提起訴訟，指該所在擬訂關於終止附屬濟助法律程序的同意命令時，未能保障他的權益。Mr. Barton聘請Wright Hassall LLP作為其向Bowen Johnsons提起訴訟的代表律師，而這情況一直維持至2007年5月。之後，雙方因法律費用問題產生爭議，Wright Hassall獲准終止作為Mr. Barton的代表律師。

Wright Hassall就訴費事宜向Mr. Barton提起訴訟，而Mr. Barton亦同時向Wright Hassall提起專業疏忽訴訟，並最後產生了由最高法院所作的裁決。在該宗專業疏忽訴訟中，Mr. Barton起初是親自行事。他根據一份於2013年2月25日發出的「申索表格」（本質上與令狀相似）展開有關的法律程序。

現行規則明確規定，申索表格是由法院送達被告人，但發出表格的一方有權選擇自行送達，而Mr. Barton當時也是選擇如此實行。他需要在4個月內將有關文件送達，而最後的限期是2013年6月25日。

Wright Hassall於2013年3月26日委託了自己的代表律師（BLM），同日，該代表律師向Mr. Barton發出電郵，要求他將所有今後往來的書信寄給他們。BLM其後於2013年4月27日再向Mr. Barton發出電郵，並在結尾部分稱：「本人期待申索表格和申索詳情的送達」。

2013年6月24日（即送達期限屆滿的最後一天），Mr. Barton向BLM發出電郵，並「藉送達」附上（除其他文件外）有關的申索表格和申索詳情，並要求對方藉回覆該電郵而作出確認。

BLM是直至2013年7月4日才給予Mr. Barton回覆，當中表明他們從來沒有確認會接納以電郵方式送達。

根據法院規則，訴訟方可以通過電郵方式作出送達－但前提是收件人須在事前已確認，他們會接納以電郵方式送達。

BLM續稱，Mr. Barton的申索表格的時限已經屆滿，但仍未獲送達，故該申索因法定時限屆滿而被禁制。

英國法院的規則與香港的不同，前者的篇幅較長。Mr. Barton在區域法院法官（與聆案官相類）的席前辯稱，他已經遵守相關規則，並曾經要求使三種送達的替代方式成為有效，又或是延長有關的送達時間。

Mr. Barton最後敗訴。法庭下令如果他要提出上訴，只能夠以使其所作的「送達」成為有效，作為提出上訴的理由。在其後進行的聆訊中，皆以藉電郵方式送達乃屬無效（就該案件而言）作為基礎，而當中唯一需要考慮的問題，乃應否使其成為有效。

在隨後的各級審訊中（包括上訴法院及最高法院），時效乃Mr. Barton的申索失敗之主因。

多數裁決

Lord Sumption下達了由多數法官所作出的判決，裁定規管英格蘭和威爾士之文件送達的規則（第6部），其在性質上，與免除訴訟人因沒有遵守相關規則、實務指示或法庭命令而須受「制裁」的其他規則有所不同。Lord Sumption稱，第6部尤其涉及與送達申索表格有關的規則，因此「需要對其作出特殊的，並非適用於其他正式文件的考慮…」，而「其主要分別，在於紀律性的因素較不重要」。

他指出，使不合規的申索表格送達成為有效，其「良好理由」是關乎對實際情況的衡量，而非倚賴過度的分析或對案例的援引。他續稱，「在一般的情況下」，主要的相關因素大致為：

i) 申索人（原告人）是否已採取合理步驟，依據相關規則完成送達；

ii) 在申索表格的期限屆滿之時，被告人及其律師是否已知悉當中的內容；及

iii) 假如不合規的申索表格送達得以成為有效，被告人及該律師會因該等疏忽及已往的舉措而蒙受什麼損害（並須考慮其對當中的內容有何知悉）。

Lord Sumption裁定，僅管Mr. Barton所作的送達，確實能使BLM留意到該申索表格，但此舉並不夠，因為如何實行也是同樣重要。他指出，法院規則必須確立若干能讓被告人知悉有關送達的正式步驟，從而得知一個確切時點，以作為採取進一步行動，又或是法庭作出欠缺行動之判決的時間計算依據。

他續稱，如果申索表格已經發出，那麼與時效有關的時間計算便告停止，亦因此，該申索表格的有效期，乃相當於該法律程序可有效展開之前的時效期限的延長。

Lord Sumption亦提出一些與電子方式送達有關的問題，但此等問題目前與香港並無關連。Lord Sumption指出，基於所提供的法律援助的限制性及按條件收費協議，英格蘭和威爾士的訴訟人沒有為自己聘請代表律師，確實並非單純是一項選擇。此等情況，為法庭在案件管理決定的作出、聆訊的進行等方面，給予無律師代表的訴訟人寬容提供了理據。「然而，在遵守法院的規則和命令方面，讓無律師代表的訴訟人得以適用一個較低的標準，此舉並不恰當。」

他指出，「基本目標」要求法院在切實可行的範圍內，強制當事人遵守有關規則。但需要注意的是，這並不屬於香港的法院規則之下的「基本目標」（參看第1A號命令第1條）。

Lord Sumption稱「該等規則提供了一個平衡雙方權益的架構。倘若沒有聘請代表律師的訴訟人在遵守有關規則時，需要特別容許，這一平衡便無可避免地會受到影響。無律
師代表的訴訟人所享有的任何有利之處，相應地成為了另一方所須面對的不利之處…除非有關的法院規則和實務指示確實無法查閱和令人難以理解，否則要求無律師代表的訴訟人熟悉其所採取的步驟有關的規則，此舉實屬無可厚非。」

Lord Sumption接著否認該等法院規則和實務指示乃「無法查閱和難以理解」，因為它們可透過互聯網查閱得到！

Lord Sumption稱，BLM「並沒有責任告訴[Mr. Barton]」有關的送達不具效力，又或是告訴他應當採取什麼步驟來糾正有關情況。

Lord Sumption似乎認為：如果可使該案的送達成為有效，被告會因此被剝奪以時效作為其抗辯理由。我們試比較Lord Briggs的看法。

少數裁決
Lord Briggs(代表少數法官的意見)提出異議，認為應判處Mr. Barton上訴得直。雖然Lord Briggs留意到Abela一案的附帶意見(見上文)，但他認為不可忽略當中的第二個重要目的－就是通知收件人，讓他知悉有關的申索不僅已草擬完成，並且已在某日期向被告提出。換句話說，該等文件的內容已藉送達而向另一方傳達，而並非僅供其罔視。只有完成送達，法院才可向收受的該等文件的被告行使司法管轄權。

Lord Briggs認為，如果與該送達(藉電郵)有關的規則，其所欲達致的皆已達致，這至少從表面看來，已構成使該送達成為有效為合理理由。他認為，Mr. Barton嘗試透過電郵來達至申索表格和申索詳情，完全達至前往該電郵來進行送達的規則所欲達致的目的。首先，雙方均認為被告(通過其代表律師)藉該電郵而對有關的申索表格之內容具有全面性的了解；其次，該申索表格的送達，是表明「向訊下送達」，因此並非僅供其罔視；第三，沒有任何證據顯示，收取有關文件的律師事務所因沒有製訂充分的監管程序而受損。

Lord Briggs顯然並不同意Lord Sumption的見解。他提出關於「使送達成為有效，會剝奪被告以時效作為抗辯理由」的說法，不可作為一項反對使送達成為有效的考慮因素。被告人的律師知悉，原告人曾嘗試在申索表格的期限屆滿前把文件送達，故Lord Briggs認為，假如被告能夠以時效作為其抗辯理由，這純屬「意外收穫」。

結語
儘管最高法院的大法官就相關案情達至不同的結論，但他們看來都認為，就遵守「紀律性」的法院規則而言(此等規則有別於案件管理或進行聆訊的規則)，無律師代表的訴訟人不應享有特別寬容的對待。香港終審法院就如何在該法院進行訴訟，試圖透過網站向無律師代表的訴訟人提供指引，但當中的內容十分有限，至於它(或香港較低層級的法院)是否願意參考英國在處理有關事宜方面所運用的原則(其所依據的程序規則並不適用於香港)，這仍有待日後的觀察。然而，值得注意的是，終審法院在近期的HKSAR v. Chan Kam-Shing (FACC 5 / 2016)一案的裁決中，已表明在某程度上，它不欲依循英國最高法院的裁決。

補述
下列資料因為來得太遲，所以未能收納於本文中。司法機構並沒有保存關於無律師代表訴訟人的數目方面的統計資料，而只是保存了涉及無律師代表訴訟人的聆訊數目。下圖顯示在各級法庭(包括上訴法庭)的聆訊中，有很大部分涉及至少一名無律師代表的訴訟人，這是它為何具有學術研究的價值。從該等聆訊數字來看，香港至今竟未發生像Wright Hassel案所出現的程序性爭議，這也確屬幸運。

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* 涉及無律師代表訴訟人的上訴/審訊/實質聆訊，是指在該等上訴/審訊/實質聆訊中，至少有一方並無律師作為其代表。
Law and Politics in Colonial Hong Kong

‘International Law as a Tool of Power Politics’
(the title of a book review by Meghana V. Nayak)

This article recounts two famous and important court cases involving international power politics in Colonial Hong Kong.
The Man from Saigon

In one cold evening of Jan 1933 at 3 Chatham Road, Kowloon, which was the private residence of Francis Henry Losby (1883–1967), a senior solicitor of Russ & Co. and President of the Law Society, (whose daughter, Patricia Losby was to become the first female solicitor in Hong Kong on 27 July 1953) hosted with extraordinary treatment and secrecy a fugitive from the French colony of Annam called Sung Man Cho. Sung went by the alias Nguyen Ai Quoc. Losby, disguised as a European architect, would meet Sung outside the YMCA, where Sung stayed, and pretend to be his contractor. He would then take Sung to his house for dinner. Sung would dress in a Chinese gown sewn by Mrs. Losby and wear a beard, looking like a Chinese professor. He would then be so seated that his back was to the mirror to avoid being seen by any of the Losby’s household helpers.

In fact, Sung was a client of Losby who had successfully defended him in an extradition proceeding in the Hong Kong Supreme Court and the Privy Council (see In the Matter of Sung Man Cho v. The Superintendent of Prisons of Hong Kong and Another[HKCAMP 30/1933]). On 29 October 1929, the Imperial Court in Annam sentenced Sung to death. He escaped to Hong Kong, but was arrested and imprisoned in the Victoria Gaol. Through International Communist, Losby was instructed to defend him as the French authority demanded his extradition without trial. There had been nine sessions of hearing under a writ of Habeas Corpus and Sung was represented by Denis Noel Pritt, KC.

Sir Stafford Cripps (the former Solicitor General) was for the British Colonial Office, taking silk together with Pritt previously. The parties arrived at a settlement whereby the Government of Hong Kong would undertake to use its best endeavours to secure that Sung should reach a place of his desire with costs awarded to Sung.

Still fearful for Sung’s safety (as both the French and the Kuomintang detectives were after him), his followers falsely announced that Sung had died. Losby then arranged for him to stay at the YMCA and also sought assistance from the Governor, Sir William Peel. On the dark and chilly night of 22 January 1933, Sung disguised as a wealthy Chinese merchant together with Losby, boarded a private launch organized by the Governor to reach the S.S. Anhui, which was waiting for them outside the Hong Kong Harbor. Sung departed Hong Kong for Amoy (escorted by Losby), then to Shanghai and Russia. Sung, the man from Saigon, was universally known by his Chinese name, Ho Chi Minh (1890–1969). He was said to have formed the Vietnamese Communist Party during his stay in Hong Kong.

When Ho Chi Minh told Francis Losby that he had no money to retain him as his lawyer, Losby said: “I’ll defend you because of honour, not for money,” (see The Legal Case of Nguyen Ai Quoc (Ho Chi Minh) in Hong Kong 1931-1933 (Documents and Photographs) (assembled by the National Political Publishers, the Ho Chi Minh Museum (2006)).

The Legal Battle in the Air

The change of the ruling party and government in China after World War II had caused a reshuffle of power and multiple claims for Chinese properties in Colonial Hong Kong, among which was the plight of some 40 aircrafts that had remained in the Kai Tak airfield.

After the Central People’s Government of China proclaimed itself the Chinese Government on 1 October 1949, the general managers of Central Air Transport Corporation (‘CATC’) and China National Aviation Corporation (‘CNAC’), two major airlines in the Republic of China, defected to the new Government together with some 2000 employees. They first flew 12 and then 80 aircrafts to China, apparently on the order of Zhou Enlai, the first premier of the new Chinese Government dated 12 November 1949, to protect all the assets of the two airlines in Hong Kong. This is commonly known as ‘the two airline incident.’ The defection of employees and removal of aircrafts triggered a struggle for control of the remaining aircrafts in the British Colony whose embarrassed Government would like to see this controversial issue resolved by the court.

In an effort to save the aircrafts remaining in the Hong Kong airfield, the Nationalist Government in Taiwan appointed a loyal CATC employee, Ango Tai, to be the acting president of CATC with full power to deal with all its affairs on 13 November 1949. Ango Tai then obtained an interim injunction to restrain defected employees from removing the assets, but it was disregarded and the physical control of the aircrafts were still in their control. On 5 December 1949 two US citizens, Claire Lee Chennault (formerly the US general, and leader of the ‘Flying Tigers’ and the Republic of China Air Force fighting for the Nationalist Government in World War II) and Whiting Willauer (a US diplomat) offered to purchase the physical assets of CATC for US$1.5 million. The offer was accepted by the Nationalist Government on 12 December 1949 with the condition that the assets sold would not be used to transport to or from the Communist areas of China. The new partnership...
was called Civil Aviation Transport Incorporated (‘CATI’), formed under the laws of the State of Delaware, USA.

On 5-6 January 1950, the British Government recognized the Central People’s Government as the de jure and de facto government of China. This was the political background leading to the legal battle for the ownership of the Chinese aircrafts in Hong Kong.

On 19 May 1950, CATI instituted proceedings in the Hong Kong court against CATC, claiming a declaration that ‘the 40 aircrafts now on the Government airfield at Kai Tak in the Colony of Hong Kong formerly the property of the defendants...are the property of the plaintiffs and/or that the plaintiffs have the sole right to possession thereof.’ [Civil Air Transport Incorporated v. Central Air Transport Corporation (OJ Action No. 269/1950)]

The action was tried in March 1951 before Sir Gerald Howe, Chief Justice who dismissed the claim but allowed appeal to the Full Court. CATI’s main ground of claim was that ‘a change of government is by succession and not but title paramount and accordingly that Nationalist Government was empowered to enter into this transaction, being still recognized as the de jure government by the H.M.G. and the doctrine of retroactivity did not apply.’ The Trial Judge rejected this argument on two main grounds.

The first ground was that the situation of the Nationalist Government on 12 December 1949 was such that it could not validly enter into such a sale and that the terms of the purported sale were not such as the Government could lawfully impose. The second ground was that the retroactive effect of the recognition by H.M.G. in the UK of the Communist Government as the de jure government of China was not from 5-6 January 1950. He concluded that ‘this was an act by members of the Nationalist Government done not in good faith as trustees but for an alien and improper purpose.’

CATI appealed to the Full Court (Gould and Scholes JJ) (Appeal No. 5/1951) which dismissed the appeal on 28 December 1951 adopting the first ground of the Chief Justice while Gould J dissenting on the second ground. In his dissenting judgement, Gould J said that ‘the Central People’s Government could not show any superior right or title to possession, nor can it rely upon any rights arising out of actual possession in the way it was; therefore it had no possession that could bring into effect of the doctrine of retroactivity...I hold that the ordinary principle of continuity was not displaced by any consideration of retroactivity and that it follows that the Nationalist Government was entitled to possession of, and had jurisdiction over the aeroplanes.’ It was observed that a special Order in Council was made to give the Hong Kong Supreme Court jurisdiction to hear the action notwithstanding the Central People’s Government’s failure to appear. The US Government’s response was inimical as Republican Senator William F. Knowland termed the release of the aircrafts to Peking “one of the greatest blows to non-Communist world that has been delivered in that part of the world.” And the British Government was blamed for actually accelerating the spread of communism in Asia. [William M. Leary: Perilous Missions: Civil Air Transport and CIA Covert Operations in Asia 2006]

CATI appealed to the Privy Council of UK ([1952] UKPC 15) which adopted Gould J’s argument and allowed its appeal. It was also held that the Nationalist Government must be regarded as the sole de jure sovereign government of China up to midnight of 5–6 January 1950; that the Communist Government was not the de jure government until that time. On 12 December 1949, the Nationalist Government was the de jure government of China, of which the respondent was an organ and therefore the property in the 40 aeroplanes was in the Nationalist Government. It was open to the owners of the aeroplanes to sell them and thereby to pass property in them to the purchasers. Retroactivity of recognition primarily operated to validate acts of a de facto government which had subsequently become the new de jure government, and not to invalidate acts of the previous de jure government. The winning party immediately transported the remaining 71 aircrafts (hardly in flying condition) to Los Angeles by an American aircraft carrier.

The UK was one of the first countries to recognize the Central People’s Government as the de jure and de facto government of China and established diplomatic relation. But in June 1950, the Korean War broke out and the UK was in alliance with the US under a UN resolution fighting for South Korea against North Korea which was then supported by the PRC and the USSR. It was the overture to the Cold War that lasted until the disintegration of the USSR in 1991. The reversal of judgment by the English Privy Council in the legal battle between the two airline corporations would certainly please the US Government, but at the expense of further damaging the China-UK relation.
來自西貢的人

在1933年1月的一個寒冷冬夜，Russ & Co律師行的資深律師兼當時的香港律師會會長 Francis Henry Losby (1883–1967)(他的女兒Patricia Losby在1953年7月27日成為香港的首位女事務律師)以特殊及隱秘的方式，在他位於九龍漆咸道3號的住宅，接待了一位名叫Sung Man Cho的客人，這位客人當時正在逃離安南(當時的法國殖民地)當局對他的追捕。Sung當時以Nguyen Ai Quoc的化名，居住在中華基督教青年會。Losby僞裝為一名歐洲建築師，與Sung相約在青年會的門外等候洽商，然後將他接到自己家裡共進晚餐。Sung當時穿著一件由Mrs. Losby所縫製的長衫，臉上貼有鬍鬚，外表看來像一位中國教授。Losby安排他坐在背對著鏡子的座位，以免他的容貌被家中傭人看到。

其實，Sung是Losby所處理的一宗案件的當事人。在這宗於香港最高法院和樞密院進行的引渡訴訟中，Losby成功為Sung進行抗辯(參看In the Matter of Sung Man Cho v. The Superintendent of Prisons of Hong Kong and Another [HKCAMP 30/1931])。Sung於1929年10月29日被安南朝庭判處死刑，他輾轉逃到香港，但被逮捕及囚禁於域多利監獄。法國當局要求香港在無需審訊的情況下將Sung引渡，共產國際乃委託Losby擔任Sung的辯護律師。法庭就Sung的人身保護令進行了九次聆訊，Sung由一位剛獲委任的御用大律師Francis C. Jenkin作為代表。合議庭裁定Sung須被遞解出境，但批准他可向樞密院提出上訴。在樞密院的上訴程序中，Sung由御用大律師Denis Noel Pritt作為他的代表，而Sir Stafford Cripps(英國的前律政專員)則代表英國殖民地部(他與Pritt在同一時期獲委任為御用大律師)。控辯雙方達成了一項協議，而根據該協議，香港政府承諾盡力確保Sung得以前往他打算前往的地方，並獲判給該案的訟費。

由於擔心Sung的人身安全(因為當時的法國政府和國民黨的偵查人員正在追捕他)，Sung的追隨者乃謊稱Sung已經過世，而Losby則安排Sung居於中華基督教青年會，並同時向當時的香港總督貝璐(Sir William Peel)求助。1933年1月22日晚上，那是一個非常寒冷的黑夜，Sung僞裝為一名富有的中國商人，在Losby的陪同下，登上一艘由港督貝璐為他安排的駁艇，將他載往正在香港外海等待的安徽號輪上。在Losby的護送下，Sung離開香港前赴廈門，再轉往上海和俄羅斯。這位來自越南西貢的姓Sung男子，就是後來廣為人知的胡志明(1890–1969)，而越南的共產黨，據說也是在他逗留香港時期成立的。

胡志明當時告訴Losby，他沒有錢聘請他作為其辯護律師，但Losby對他說：「我為你辯護不是為了錢，而是為了一份榮譽。」(參看The Legal Case of Nguyen Ai Quoc (Ho Chi Minh) in Hong Kong 1931-1933 (文件及相片) (由胡志明博物館轄下的國立政治出版機構彙編(2006)))。
航空法律戰

二次世界大戰後，中國的執政黨和政府出現更替，並導致當權者的權力重新洗牌，由此衍生的，是中國對在香港(當時屬英國殖民地)的多項資產提出申索，其中包括當時停留在啟德機場的大約40架飛機。中華人民共和國中央人民政府於1949年10月1日宣布其為中國的唯一合法政府，而當時的兩家中華民國主要航空公司：「中央航空運輸公司」(CATC)及「中國航空(集團)有限公司」(CNAC)，連同其屬下二千多名職員，一起歸順了新成立的政府。在新政府的首任總理周恩來的命令下，這兩家航空公司的職員於1949年11月12日將首批12架飛機，以及次批80架飛機駕駛回中國，以保護該等公司在香港的資產，而這就是所謂的「兩航事件」。這兩家航空公司職員的歸順，以及他們將飛機駕走，引發了對仍然停靠在香港的飛機的控制權爭奪，而處於尷尬局面的香港政府則建議希望透過司法程序來解決有關爭議。

當時已遷至台灣的國民黨政府，為了取回該批仍然停留在香港機場的飛機，乃於1949年11月13日委任了「中央航空運輸公司」的一名本地職員Ango Tai作為該公司的代理總裁，全權處理該公司的一切事宜。Ango Tai獲法庭頒發一項臨時禁制令，限制該公司歸順新中國政府的職員挪移有關的資產，但這些職員並不理會該項禁制令，繼續維持對該批飛機的實際掌控。

1949年12月5日，兩名美國人：一位是陳納德(他是一名前美國將軍，也是二次世界大戰時期的「飛虎隊」，以及國民黨政府麾下的中華民國空軍的指揮官)，而另一位是Whiting Willauer(他是一名美國外交官)，提出以150萬美元收購「中央航空運輸公司」的所有有形資產。國民黨政府於1949年12月12日接受該項收購建議，條件是該批資產於出售後，不得在共產政權所管轄的中國範圍內，作為境內外的運輸工具。這二人根據美國特拉華州的法律成立了一家公司，名為「民航空運公司」(CATI)。

1950年1月5-6日，英國政府承認中央人民政府為中國的法律上及事實上的政府。在這政治背景下，遂發生了在香港爭奪該批飛機的法律戰。

1950年5月19日，「民航空運公司」在香港法院向「中央航空運輸公司」提起訴訟，要求法院宣告：「該40架現時停靠於啟德香港政府機場的飛機，以前是被告人的財產，現時則屬於原告人，及/或原告人享有獨一的權利管有該批飛機。」[Civil Air Transport Incorporated v. Central Air Transport Corporation (OJ Action No. 269/1950)]

該宗訴訟於1951年3月在首席按察司Sir Gerald Howe席前進行審訊，他駁回了原告人所提出的申索，但批准其向合議庭提出上訴。「民航空運公司」的主要論據是：「政府是藉繼承而進行更替。在當時，國民黨政府仍被英國政府承認為法律上的政府，因此有權訂立該項交易，而溯及既往的原則並不適用。」主審法官根據兩項主要理由反駁了這一說法。第一項理由是，國民黨政府在1949年12月12日的處境，導致它未能有效進行該項出售，而該政府亦不能合法地就該項出售訂立條款；第二項理由是，英國政府承認中國共產黨政府為法律上的中國政府，其追溯力是從1950年1月5-6日開始。該法官所作出的結論是：「有關的作為是國民黨政府成員所作出的擔任受託人的作為，但它並非出於真誠，而是出於為外國人的緣故以及為不適當的目的。」

「民航空運公司」向合議庭提出上訴(Gould and Scholes JJ) (Appeal No. 5/1951)，該法庭接納了Gould J的論點，裁定該公司上訴得直。合議庭亦裁定，在1950年1月5-6日午夜之前，國民黨政府須被視作中國唯一的一個法律上的主權政府，而共產黨政府在該時間以前，並非法律上的政府。國民黨政府在1949年12月12日是法律上的中國政府，而答辯人只是一個機關，因此該40架飛機的擁有權屬於國民黨政府，而這批飛機的擁有權有權將它們出售，並將其所有權轉移給買方。關於承認方面的溯及既往，其主要目的是為了使一個事實上的政府，當它後來成為一個新的法律上的政府後，它先前的作為亦得以成為有效；但這項原則，並不是要使先前的法律上的政府之作為成為無效。該宗訴訟審結後，勝訴一方隨即以一艘美國航空母艦，將整批71架飛機運往洛杉磯(該批飛機當時並不適於飛行)。

英國是其中一個國家，最早承認中央人民政府為法律上及事實上的中國政府，並與新中國建立外交關係。然而，1950年6月韓戰爆發，而根據一項聯合國決議案，英國與美國聯手協助南韓抵抗北韓的侵襲(北韓當時獲中國及蘇聯的支持)。它只是冷戰的一個序幕，而這冷戰一直維持至1991年蘇聯解體。關於該兩家航空公司的法律戰，英國樞密院最後推翻了香港法院的原來判決，英國政府對此顯然感到高興，但換來的，是中英關係的進一步受損。
ARBITRATION

Anti-Suit Injunction Granted in Pro-Arbitration Judgment

In the latest chapter of the saga between Arjowiggins HKK2 Ltd (‘Arjowiggins’) and Shandong Chenming Paper Holdings Ltd (‘Shandong Chenming’), Justice Mimmie Chan in the Court of First Instance granted an anti-suit injunction to restrain Shandong Chenming from continuing its proceedings in Mainland China against Arjowiggins and an agent of Arjowiggins (see Arjowiggins HKK2 Ltd v. Shandong Chenming Paper Holdings Ltd [2018] HKCFI 93). This decision once again highlights the pro-arbitration attitude of the Hong Kong courts.

Facts and arguments

The present case concerns an anti-suit injunction sought by Arjowiggins. It was revealed that the Award remains unpaid and that on 5 July 2017, Shandong Chenming commenced fresh proceedings in the Weifang court in Shandong Province against Arjowiggins and a director of the joint venture company nominated by Arjowiggins (the ‘Weifang Proceedings’). Arjowiggins argued that the Weifang Proceedings were in breach of the parties’ arbitration agreement. It also argued that Shandong Chenming’s conduct was vexatious and oppressive since among other reasons, the claims in the Weifang Proceedings have been decided by the arbitral tribunal.

In response, Shandong Chenming argued that its claims in the Weifang Proceedings were tortious in nature and constitute a derivative action as it was seeking remedy on behalf of the joint venture company, and that since the arbitration agreement was only made between Arjowiggins and Shandong Chenming, the arbitration agreement and the Award do not bind the joint venture company or the director.

Decision

Justice Chan examined the claims raised in the Weifang Proceedings and noted that irrespective of the nature of the proceedings, the claims clearly relate to the joint venture agreement and the parties’ rights and obligations thereunder. She therefore held that the Weifang Proceedings fall within the scope of the arbitration agreement. Further, she accepted that the claims raised in the Weifang Proceedings have been determined by the arbitral tribunal, and added that even if there are new claims, those claims should be pursued in accordance with the arbitration agreement.

Arbitration
Justice Chan also agreed to extend the injunction to proceedings against the director, as Shandong Chenming had made the same claims against the director in the arbitration on the premise that Arjowiggins was vicariously liable for the actions of the director. Justice Chan stated that to permit the proceedings would be to discredit the findings made in the Award.

Finally, Justice Chan took into account the conduct of Shandong Chenming in deciding whether to exercise the court’s discretion to grant the injunction. Echoing the views of Justice Harris, Justice Chan was highly critical of Shandong Chenming’s conduct, noting that it “displayed complete disrespect for the arbitration agreement and the arbitral process” and that its “deliberate disregard of the order of this Court and of the Award cannot be countenanced”. The anti-suit injunction sought by Arjowiggins was therefore granted.

**Comments**

This judgment shows that the court is prepared to look beyond the form of the impugned proceedings to determine whether they in substance fall within the scope of an arbitration agreement. As a clear recognition of the negative aspect of an arbitration agreement, it shows that the court is willing to restrain foreign court proceedings even after the conclusion of the arbitral proceedings in order to guard against attempts to re-litigate matters determined by the tribunal. It also serves as a reminder that the Hong Kong courts have little tolerance for parties who refuse to comply with arbitral awards.

A practical point to note is that Arjowiggins’ application is based on s. 21L of the High Court Ordinance. By way of comparison, it may be recalled that in *Ever Judge Holding Company Ltd v. Kroman Celik Sanayi* [2015] 3 HKC 246, in which an anti-suit injunction was sought whilst an arbitration was pending, the applicant relied on s. 45 of the Arbitration Ordinance but the judge suggested without deciding that s. 21L of the High Court Ordinance may be the more appropriate basis.

The saga continues as it is understood that the Weifang Proceedings have since been withdrawn but an appeal with respect to Justice Harris’ decision on 7 July 2017 is pending.

- Joanne Lau, Associate, Allen & Overy

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**仲裁**

法庭判決支持仲裁並發出禁訴令

在Arjowiggins HKK2 Ltd(「Arjowiggins」)和山東晨鳴紙業集團股份有限公司(「山東晨鳴」)的長篇故事最新的一章，原訟法庭法官陳美蘭發出禁訴令，禁止山東晨鳴繼續在中國內地針對Arjowiggins及Arjowiggins的代理人進行訴訟(見Arjowiggins HKK2 Ltd v. Shandong Chenming Paper Holdings Ltd [2018] HKCFI 93)。這個決定再一次強調香港法庭對仲裁持支持態度。

**案件歷史**

Arjowiggins和山東晨鳴是合資企業協議的締約方，該協議規定以香港為仲裁地。雙方發生爭議，2015年11月20日，仲裁庭作出裁決，判Arjowiggins勝訴(「該裁決」)。山東晨鳴申請撤銷該裁決，陳法官在2016年10月12日拒絕接受該申請。

Arjowiggins其後向山東晨鳴送達法定要求償債書。山東晨鳴申請禁訴令，禁止Arjowiggins以法定要求償債書為基礎，向法庭提出清盤呈請，2017年7月7日，法官夏利士拒絕接納申請，在判決書批評山東晨鳴的行為，指出該公司拒絕履行仲裁裁決，「表現得漠視香港法律體系的完整性」，是「不符情理」的(見《香港律師》2017年8月的一篇文章)。

**案情和爭論點**

本案關乎Arjowiggins尋求的禁訴令。案情顯示，山東晨鳴未有支付仲裁裁決的金額，更在2017年7月5日在山東省濰坊法院針對Arjowiggins及Arjowiggins指定的合資公司董事展開新一輪訴訟(「濰坊訴訟」)。

Arjowiggins辯稱，濰坊訴訟違反兩方的仲裁協議，亦指稱山東晨鳴的行為是無理纏擾，咄咄逼人，因為(除了別的理由之外)仲裁庭已經就濰坊訴訟的申索作出了判決。

港法官指示當山東晨鳴在濰坊訴訟提出的申索後認為，姑勿論訴訟的性質，申索顯然違反兩方的仲裁協議，亦指稱山東晨鳴的行為是無理纏擾，咄咄逼人，因為(除了別的理由之外)仲裁庭已經就濰坊訴訟的申索作出了判決。

陳法官亦同意把禁制令擴展到針對董事的申索，因為在Arjowiggins就董事的作為負上轉承責任的前提下，山東晨鳴的申索及其在仲裁裁決的申索是相對的，陳法官同意，審訴訟會使仲裁裁決的定論受到質疑。

最後，當決定是否行使法庭的酌情權，發出禁制令的時候，陳法官考慮了山東晨鳴的行為。陳法官對和法官夏利士的意見，嚴厲批評山東晨鳴的行為，指出山東晨鳴「表現得完全不尊重仲裁協議和仲裁程序」，並且「刻意漠視本法庭的命令及仲裁裁決的命令，做法不可取」。

Arjowiggins申請的禁訴令因此獲批。

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**評論**

這次判決顯示法庭對當事人於仲裁程序外的行為將會作出決定，仲裁裁決的定論不會因為該任行為而受到質疑。
的範圍之內。判決清楚知道仲裁協議的負面情況，顯示法庭為了防止有人試圖再就仲裁庭已經裁定的事情提起訴訟，即使仲裁程序已經完結，也願意禁制在外地法庭進行訴訟。判決亦提醒人們，對於拒絕履行仲裁裁決的當事人，法庭的容忍度極低。

這宗案有一點很實用：Arjowiggins是根據《高等法院條例》第21L條提出申請的。現舉另一案件與之相比：在Ever Judger Holding Company Ltd v. Kroman Celik Sanayi [2015] 3 HKC 246，申請人根據《仲裁條例》第45條申請禁訴令，申請之時，仲裁仍未之結，不過法官認為但沒有裁定《高等法院條例》第21L條可以是更合適的申請基礎。

濰坊訴訟已被撤銷，但故事仍未完結，因為就法官夏利士2017年7月7日的裁決提出的上訴尚待裁定。

安理國際律師事務所助理律師劉煦婷

ARBITRATION

Winding-up Petition Dismissed in Favour of Arbitration

Lasmos Ltd v Southwest Pacific Bauxite (HK) Ltd [2018] HKCFI 426, 2 March 2018, is another in a line of cases that demonstrate the pro-arbitration stance of the courts in Hong Kong. The case decides that a petition to wind-up a company on the grounds of insolvency should generally be dismissed if:

- the respondent company disputes the debt relied on by the petitioner;
- the dispute relating to the debt comes within the terms of an arbitration clause in the contract under which the debt is alleged to arise; and
- the respondent company takes steps required under the arbitration clause to commence the dispute resolution process and files an affidavit/affirmation in accordance with Rule 32 of the Companies (Winding-Up) Rules (Cap. 32H) confirming as much.

The judgment of the judge in charge of the ”Companies List” of the High Court is a significant departure from previous thinking in Hong Kong – including: (i) that a petition to wind-up a company on the basis of insolvency would not be stayed in favour of arbitration even if the debt arises in connection with an agreement that contains an arbitration clause (Industry Insights, September 2014 – “Arbitrability of Shareholder Disputes”), and (ii) the respondent company opposing a winding up should demonstrate that it has a bona fide defence on substantial grounds.

The judge’s reasoning is heavily reliant on case law developments from jurisdictions such as England and Wales and Singapore, the “Object and principles” of s. 3 of the Arbitration Ordinance (Cap. 609) – “party autonomy” – and the progressively pro-arbitration stance of the local courts, all of which are set out in a fully reasoned judgment.

The judgment also makes it clear that there may be “exceptional cases” in which a creditor whose debt is disputed would be justified in issuing a winding-up petition notwithstanding that the dispute appears to come within the terms of an arbitration clause. What these “exceptional cases” might be is an argument for another case, but an example given in the judgment is of a petitioner who can show a risk of a misappropriation of a respondent company’s assets such as to justify the appointment of provisional liquidators.

Lasmos Ltd v Southwest Pacific Bauxite (HK) Ltd represents not only a significant change in the law, it is also likely to have some important practical consequences. For example, following these developments, a court in Hong Kong should generally dismiss a winding-up petition that is based on an alleged debt that comes within the terms of an arbitration clause in a contract, provided the respondent company disputes the debt.

The judgment should also curtail the strategy of some petitioners who try to get around arbitration agreements by presenting winding-up petitions. Contracting parties should think twice before inserting arbitration clauses in contracts if there is a possibility later that they may want to access the courts to petition for winding up or to use other mechanisms that are available in the litigation process. Arbitration is not a panacea and there are situations when litigation may be better suited.

The judgment will generally be welcome in the arbitration community of Hong Kong.
At the time of writing no appeal is evident, although the legal principles raised are arguably deserving of appellate court review. That said, given that the judge found that even applying the previous law the respondent company had established a *bona fide* dispute on substantial grounds, such that he would have dismissed the petition, opportunities for an appeal might appear to be limited.

- *David Smyth and Warren Ganesh, RPC*

**仲裁**

**法庭支持仲裁，撤銷清盤呈請**

香港法庭支持仲裁，在一系列展現法庭这一立場的案件中，Lasmos Ltd v Southwest Pacific Bauxite (HK) Ltd [2018] HKCFI 426（2018年3月2日）就是一例。該案的裁決定是在下列情況下，以無力償債為由把公司清盤的呈請應被撤銷：

- 答辯人公司對呈請人賴以為依據的債項有所爭議；
- 債項被指稱是根據合約產生的，有關債項的爭議屬於合約的仲裁條款範圍之內；及
- 答辯人公司根據仲裁條款，按要求逐步展開解決糾紛的程序，並按照《公司(清盤)規則》（第32H章）第32條規則，提交誓章確認有關事項。

判決亦應限制一些呈請人的策略，所指的是限制呈請人藉清盤呈請逃避仲裁的意圖。要是締約方有可能其後想向法庭呈請，要求把公司清盤，或者有可能其後想利用其他在訴訟程序中可用的機制，他們就應該在合約加入仲裁條款之前三思。仲裁不是萬靈丹，有的情況可能最好是透過訴訟解決。

一般來說，香港使用仲裁服務的人會歡迎判決。

Lasmos Ltd v Southwest Pacific Bauxite (HK) Ltd不只是一宗法律明顯改變的代表案件，有可能也有某些重要的實際後果。例如，按照有關發展，假如答辯人公司對債項有所爭議，而清盤呈請是建基於被指屬於合約中仲裁條款範圍內的債項，香港法庭通常應該撤銷呈請。

法官的判決極度倚重源自英格蘭及威爾斯、新加坡等司法管轄權區的判例法發展，《仲裁條例》(第609章)第3條的「目的及原則」——「當事人自主權」(party autonomy) ——和本地法庭逐步支持仲裁的立場；所有詳情載述於論據充分的判決書之中。

判決亦訂明可以有「例外情況」，在例外情況中，債項受爭議的債權人會有充分理由發出清盤呈請，即使有關爭議看來在仲裁條款的範圍之內亦然。什麼是「例外情況」？這個可以是另案爭論的問題，不過法官在判決書舉了一個例子：呈請人能夠證明存在答辯人公司的資產被挪用的風險，以致有充分理由支持委任臨時清盤人。

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Of equal interest is the Court of Appeal's confirmation that Hong Kong law did not follow a more recent English approach regarding a judge's powers on reviewing a taxing master's certificate under the equivalent of RHC O. 62, r. 35. Therefore, a judge's review of a taxing master's certificate pursuant to this provision was not a hearing *de novo* and he or she did not have an unfettered discretion.

CIVIL PROCEDURE

Reviews of Taxed Costs

As reported in *Industry Insights* for the September 2017 edition of the *Hong Kong Lawyer* (“Solicitor and Own Client Costs”), on a review of a taxing master’s certificate, pursuant to RHC O. 62, r. 35, a judge saw fit to disallow the costs of a second partner’s time following a “solicitor and own client taxation”.

The sole ground for discounting the second partner’s costs was a so-called “duplication of work”, notwithstanding that four barristers had also assisted with the case.

An appeal as of right was heard in *Lam & Lai (Solicitors) v Ho Chun Yan Albert* [2018] HKCA 83 and for some the costs outcome may appear fairer. The Court of Appeal allowed the solicitors' appeal and varied the judge's taxation review so as to allow the costs of one partner and the costs of a “notional” junior solicitor (equivalent to half of the costs of a partner) on the taxation of the sixty-four items disputed in the solicitors' bill.

Having regard to the complexity and importance of the underlying court proceedings, out of which the costs dispute arose, the Court of Appeal considered that the judge had erred in simply taxing off the costs of one of the two partners without considering other justifiable options – such as (for example) allowing a senior solicitor to be assisted by a junior solicitor. Therefore, the Court of Appeal felt justified in exercising the court's discretion afresh.

Of equal interest is the Court of Appeal's confirmation that Hong Kong law did not follow a more recent English approach regarding a judge's powers on reviewing a taxing master's certificate under the equivalent of RHC O. 62, r. 35. Therefore, a judge's review of a taxing master's certificate pursuant to this provision was not a hearing *de novo* and he or she did not have an unfettered discretion.

Rather, the judge should only interfere with the decision of the taxing master in limited circumstances; for example, where it could be shown that the taxing master had erred in principle or had made a mistake of law (*Chan Yin Na v Union Medical Centre Ltd*, HCPI No.
While the Court of Appeal saw fit to interfere with the exercise of the judge’s discretion the judge had not applied the wrong law.

For those familiar with matters of costs in court proceedings, the Court of Appeal’s reasoning will make sense. While in matters of costs there are winners and losers, overall taxing masters are usually better placed to deal with costs disputes. By comparison, some judges may lack the necessary current experience to deal with the matter of taxation of costs as a hearing *de novo*; that experience is not necessarily made-up for by dealing with summary assessments of costs (*Chan Yin Na*, at para. 24).

As the Vice-President of the Court of Appeal states in his judgment in *Lam & Lai* (at para. 7):

“It is not the practice of the court to list a review before a judge for the same length as the taxation before the taxing master. Expensive and lengthy taxation processes (including review and appeal) is another form of satellite litigation which should be avoided if the utility is not high”.

- **Warren Ganesh, Senior Consultant, and Mark So, Associate, RPC**

相反，法官只應在有限度的情況下，才干預訟費評定官的決定；例如，當能夠證明訟費評定官在原則上犯錯或者犯了一個法律錯誤的時候(*Chan Yin Na v Union Medical Centre Ltd*, 高院傷亡訴訟案2003年第804號，2011年8月5日，已獲批准)。雖然上訴法庭認為適宜干預法官酌情權的行使，但法官並沒有錯用法律。

對於熟悉法律程序訟費事宜的人來說，上訴法庭的審理論有道理。在訟費問題上，有人贏，也有人輸，整體而言，訟費評定官通常更有條件處理訟費爭議。相比之下，有些法官不大知道現時的訟費水平，欠缺經驗把訟費評定的事宜當成審查一樣處理；以簡易程序評估訟費的經驗不一定補足得這方面的缺欠(*Chan Yin Na*案第24段)。

正如上訴法庭副庭長在他撰寫的*Lam & Lai*案判決書所言(第7段)：

「在法官席前列出與訟費評定官席前的長度相同的覆核清單不是法庭的做法。昂貴並冗長的訟費評定過程(包括覆核和上訴)是另一種效用不高就應予避免的附屬訴訟」。

- **莊偉倫、蘇瑋程 資深顧問，RPC**

### 民事訴訟程序

#### 覆核經評定訟費

誠如《香港律師》2017年9月版的〈業界透視〉所報道(「訟費官司」)，法官以《高等法院規則》第62號命令第35條規則為基礎，覆核訟費評定官的證明書之後，認為不適宜按照「律師及當事人訟費評定」(solicitor and own client taxation) 而准予另一名合夥人所花時間的訟費。相當然的，訟費官司後律師與當事人仍可提起上訴，當呈上訴庭重審。在*Lam & Lai (Solicitors) v Ho Chun Yan Albert* [2018] HKCA 83案，上訴法庭審理申請送交覆核訟費評定官的訟費時，准予一名合夥人的訟費及一名「假想的」(notional)合夥人的訟費（相等於合夥人訟費的一半）。

訴訟雙方就法律程序的訟費發生爭議，上訴法庭考慮過有關法律程序的複雜性和重要性之後，認為法官犯了錯，因為他只是在訟費評定中扣減其中一名合夥人的訟費，不考慮其他合理的選擇——譬如說，考慮是由一名初級事務律師協助一名資深事務律師。因此，上訴法庭覺得有充分理由支持重新行使法庭的酌情權。

英國有一條與第62號命令第35條規則對應的規則，法院最近處理了與法官根據這條規則覆核訟費評定官證明書的權力有關的爭議。同樣有趣的是，香港上訴法庭確定，香港法律並不依循英國法院的處理方法。因此，法官是根據這條規則覆核訟費評定官的證明書，不是重審；他或她沒有不受任何束縛的酌情權。

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CRIMINAL LAW

Social Celebrities Attending Court Trial

The former Chief Executive Donald Tsang Yam-kuen who was accused of accepting benefits from Wave Media was not convicted at the jury trial in 2018. The issue of social celebrities attending jury trials for defendants raised many discussions.

It may be a possibility that the attendance of most social celebrities in a jury trial, seated at the areas exclusively for the relatives and families of defendant, may induce jurors, who are ordinary people, to believe the defendant is a good man; the chance for the defendant to commit the offence is low, and hence he may not be guilty.

We must balance the interests of both the prosecution and the defendant. Donald was the number one official in Hong Kong, so most of his friends should be the social celebrities. Their showing up in court is one of the ways to show their generous support to Donald.

If the social celebrities are disallowed to attend court trials, support given by friends to the defendant may be deprived, it may be unfair to the defendant. It may also deprive the right of general public to attend court to hear legal trial at any time they wish (the right of public hearing).

Anyway, there are two sides to this issue. The problem with attendance of social celebrities in court is not an easy question for both the prosecution and the defendant. To ensure the jury is only adjudicating the case in accordance with evidence, if there is any dispute before the real trial, a mini-legal trial may be held. The court may decide who the necessary parties can show up in the court room. However, the argument that the defendant fails to see his friends in court room and hence loses support from them in legal trial is not well handled.

Technology Court may be both problems and solutions for the protection of right of public hearing. Not all courts have the broadcasting systems. If we put this suggestion into practice, should all courts install broadcasting systems? If there is no broadcasting system, should the court and jury not hear criminal cases? Even if the court does have a camera system in operation, there must be more than one for recording the legal trial at the same time. In case of any one of the cameras is broken down, the remaining cameras can still function. The legal trial can go on, the broadcasting can go on, and neither are stopped by reason of mechanical error.

If the court finally decides that anyone may attend, perhaps the court might warn the jurors before a criminal trial:

- Anyone appearing in court, except witnesses, judges, lawyers, prosecutors, defendants and necessarily parties, are all irrelevant;
- In order to have a fair jury trial for the defendant, the jurors are prohibited to communicate, in any form, to other parties; and
- Holding conservations and taking photos etc. are all prohibited.

Are these warnings effective and sufficient? Can they be used to ensure a fair legal trial? After warnings are given, and if the jurors still contradict them, should the judge find the jurors to be in contempt of court? Should the legal trial go on or stop? These are questions that we need to further and carefully consider before implementation.

- David Chan, Associate Professor in Macao Polytechnic Institute

刑事法

社會知名人士法庭聽審

前特首曾蔭權被控收受雄濤廣播利益案，陪審團在2018年的審訊中未能對此達成裁決，但社會知名人士到法庭聽審，以表示對被告的支持，這話題引起了社會的熱議。

社會知名人士在有陪審團參與的審訊中聽審，坐在為被告的親友和家人而設的範圍中，可能會促使陪審員（他們都是由普通市民組成）覺得被告應該是一個好人，他觸犯有罪的機會很微，因此他很可能沒有罪。

我們必須平衡控方與被告人之間的利益。曾蔭權過去曾經出任香港的最高級官員，所以他有很多朋友是社會知名人士，這也不足為奇，而他們現身法庭，是其中一種表示對曾蔭權大力支持的方法。

如果不許這些社會知名人士到庭聽審，被告人會被剝奪其朋友給予他的支持，這對被告人來說並不公平。同時，此舉也剝奪了公眾人士隨意前往法庭聽審的權利（公開審訊權利）。
不管怎樣，這一爭議可以從正反兩方面來看。社會知名人士到法庭聽審，這對控方和被告人來說，都是一個不易處理的問題。為了確保陪審團只根據證據來斷案，在正式審訊未展開之前，如果出現了任何爭議，大可先進行一個迷你審訊，由法官決定甚麼人有權在庭內聽審。但這一迷你審訊的缺點是，它會增加訴訟的時間和費用。

如果法官只批准家人和親友在庭內聽審，公開人士不准進入，那我們如何保障公開審訊的權利呢？假如瀏覽香港司法機構的網站，我們可以發現，在「科技法庭」、「科技法庭概覽 — 法庭審訊廣播系統」的網頁中有如下內容：

「科技法庭設有法庭審訊廣播系統，以便法庭內沒有足夠空間容納所有人時使用。」

如果主審法官認為有需要，可立即將法庭等候處改為法庭的延伸部份。

當廣播系統啟動後，在法庭等候處的士可透過在該範圍設置的投影屏幕和LCD顯示器，看到法庭內的審訊情況。」

假如法庭最後決定，任何人都可以進入庭內聽審，那麼在展開刑事審訊之前，法庭可以先行提醒陪審員：

• 除了證人、法官、律師、主控官、被告人及其他必要的當事人外，法庭上的其他人都是與案件無關；
• 為了讓被告獲得公平審訊，陪審員不得以任何方式與他人溝通聯繫；及
• 話話與拍照等行為一律禁止。

此等提醒是否有效和充分呢？它們是否能確保審訊得以公平進行呢？在法官作出了提醒後，假如仍有陪審員不予遵守，法官是否應該裁定他藐視法庭呢？正在進行的審訊應該繼續下去，還是應當停止呢？在實施有關建議之前，我們必須對這些問題作出更深入和仔細的思考。

- David Chan, 澳門理工學院副教授

DATA PRIVACY

The EU General Data Protection Regulation (Summary) *

The EU General Data Protection Regulation (‘GDPR’) is fast approaching. After a two-year implementation phase, the new Regulation will be coming into force on 25 May 2018. It is Europe’s biggest shift in data protection law for the last decades. Not only European companies are affected. Based on the extra-territorial effect of the GDPR, numerous Hong Kong entities will face substantial challenges adapting to the new requirements.

The new law comes in the shape of a regulation and is directly applicable in all member states. Whereas the Personal Data (Privacy) Ordinance (Cap. 486) (‘Ordinance’) generally only provides direct compliance obligations for controllers, the GDPR imposes these obligations on both controllers and processors. This is most likely going to affect the way supply and other commercial agreements are drafted in regard of the new European rules.

One of the key foundations of lawful data processing under the GDPR is the data subject’s consent. The requirements in this regard have been increased, compared to the previous regulation under the Data Protection Directive (‘DPD’) and go beyond those of the Ordinance. Valid consent has to be (i) freely given, (ii) specific, (iii) informed and (iv) unambiguously indicated. Hong Kong companies within the scope of the GDPR that rely on the consent of data subjects as a lawful basis for any of their processing activities should ensure that they meet the new obligations.

Several provisions on accountability and governance support the enforcement of the principles of data processing. A new feature is data protection by design and by default, which does not exist

* The full text was circulated via Hong Kong Lawyer eNewsletter and posted on Hong Kong Lawyer website.
under Hong Kong law. Furthermore, the GDPR provides mandatory rules on Data Protection Officer and data breach notifications, whereas under the Hong Kong data protection regime such measures are only recommended.

The new Regulation strengthens the rights of individuals. These namely consist of the right of information, rights to access, rectification and erasure, right to restriction of processing, right of data portability, right to object and the right not to be subject to automated decision making (eg profiling).

Administrative fines up to EUR 20,000,000.00 or in the case of an undertaking (e.g. group), up to 4 percent of the total worldwide annual turnover, whichever is higher, can be imposed in case of infringements of the Regulation. Furthermore, individuals may claim for compensation of both material and non-material damages.

The GDPR provides an elaborated regulatory system as a result of several decades of data protection in Europe and a long lasting legislation process. It is an important step towards full data harmonization within the EU. Detailed requirements and heavy fines provide challenges for all affected organisations. Hong Kong companies will not be able to fully rely on existing protection measures set out in accordance with the Ordinance, which is largely based on the former European DPD. Organisations adapting to the new challenges and implementing measures like data protection by design and access ability of data may also benefit from the new, more efficient data processing and accounting systems. The new Regulation will enter into force soon and companies should take immediate steps to ensure compliance. However, several member state rules in specific areas and case law on the new provisions have yet to be established.

- Dr. Andreas Respondek, Ms. Jasmin Eberhard, Mr. Johannes Schmidt, Respondek & Fan

#MeToo in the Office – Workplace Bullying in the Spotlight

The international growth of the #MeToo movement has drawn attention not only to sexual harassment but also to bullying in the workplace. Any kind of behaviour that humiliates, intimidates or threatens can be classified as bullying.

Bullying in the spotlight

Reported workplace bullying cases are on the rise, as they continue to hit the news headlines and put a number of senior leaders in the spotlight.

Several recent high profile cases have highlighted the issue, including allegations made by staffers in MPs’ offices at the UK Parliament, where, in a survey published in January 2018, 24 members of staff reported having been bullied by the MP they work for. A new grievance procedure could see MPs being sacked if they are found to have bullied their staff.

Also in January 2018, three former
employees of the Green Party in Canada accused their leader Elizabeth May of creating a toxic work environment with behaviour that included shouting at and humiliating employees in front of their workmates. As the media pressure mounted, several former staff also called on her to step down and resign.

**Definition of “bullying”**

Presently, there is no statutory definition of workplace bullying in Hong Kong. Bullying may be viewed as a repeated pattern of unreasonable behaviour that is directed towards a colleague, or group of colleagues, that presents a risk to health and safety.

Examples of workplace bullying towards co-workers includes any behaviour that may be viewed as humiliating, intimidating or threatening. It may include the making of constant criticisms without a valid basis, raising one’s voice towards the person, or making them feel ostracised from the team.

Employers in Hong Kong owe a general duty of care to their employees. If an employer becomes aware or reasonably should have known that bullying is taking place in the workplace and does nothing about it, that could be a breach of the duty. In addition, employers should also be aware of the implied duty of “mutual trust and confidence” under which an employer must avoid acting in a way that is calculated and likely to seriously damage its relationship with employees.

**Bullying at work in Hong Kong**

Conduct that destroys trust extends beyond simple physical abuse.

In December 2017, a major public transport network serving Hong Kong was criticised by a labour union for turning a blind eye to bullying in the workplace. Examples of mistreatment cited by staff reportedly included verbal abuse in public areas.

Elsewhere in the service sector, Hong Kong’s postal authority was accused in August 2017 of failing to handle properly discrimination against workers with disabilities. Victims reportedly said that complaints to the management of Hongkong Post had been ignored. The complaints included an incident in which a senior postal inspector was understood to have referred to an employee with a cleft palate as “broken mouth”.

In a Hong Kong employment case in 2000, an employer was found to have kicked, pushed and punched a domestic helper, subjecting her to psychological abuse of a frightening and degrading nature. The employer was found liable to pay damages, as the court found the behaviour was a breach of the implied duty.

**Confronting the bullies**

Permitting bullying to continue in a workplace can result in decreased morale, lowered productivity and increased staff turnover. Allowed to continue, it can adversely affect the company’s reputation in the market, making it harder to attract and retain talent.

Having a good ethical work culture is therefore good business, as it mitigates personal liability and enhances the corporate brand.

A top down approach is however required. Employers should communicate to staff - at all levels - that bad behaviour in the workplace can mean the loss of an individual’s job and reputation, as well as harming the firm’s own reputation.

Employers should consider implementing policies which prohibit all types of harassment and bullying in the workplace. Such policies should include examples of behaviour that will not be tolerated, encourage reporting of unacceptable behaviour and state the consequences of breach.

As with many other aspects of corporate governance, it is all about setting the right tone from the top. However, it is also everyone’s responsibility to eliminate inappropriate behaviour in the workplace!

- Anita Lam, Counsel, Clifford Chance
勞工法

辦公室“MeToo” - 專談工作場所的「欺凌」

#MeToo運動在國際間漫延，引發人們關注的問題不只是性騷擾，還有工作場所的欺凌行為。任何羞辱、恐嚇、威脅他人的行為，都可以歸類為欺凌行為。

專談“欺凌”

在工作場所遭欺凌的事件繼續登上新聞頭條，也把好幾名高層領袖放到聚光燈下之際，相關的舉報個案也多了起來。

最近幾宗個案突出了欺凌問題，這包括英國國會議員辦公室職員的指控：一項調查發現（調查結果在2018年1月公布），國會議員辦公室有24名職員指稱自己一直被國會議員上司欺凌。根據新的申訴程序，國會議員如果被發現欺凌員工，將會被開除。

另外，在2018年1月，三名加拿大綠黨前員工指控他們的領袖伊麗莎白·梅（Elizabeth May）；據報，她在其他人面前大聲喝斥甚至侮辱員工，而那些「其他人」是該員工的同事。傳媒壓力隨之而來，多名前員工亦要求她辭職下台。

「欺凌」的定義

目前，「工作場所的欺凌」在香港沒有法定定義。「欺凌」可被視為針對某同事或一班同事重複作出的不合理行為，危害到被針對者的健康和安全。

在工作職場欺凌同事的行為包括任何可被視為羞辱、恐嚇、威脅他人的行為。舉例說，不斷蠻不講理地作出批評，向人大聲呼喝，或者令組員覺得被排擠，這些都是在工作場所的欺凌行為。

在香港，僱主對其員工負有一般的謹慎責任。僱主應該知道自己負有一種隱含責任，即「僱傭關係互信責任」，據此，僱主必須避免採用有可能嚴重損害僱傭關係的方式行事。

香港工作場欺凌問題

破壞信任的行為不單只是普通的身體虐待。

在2018年12月，香港某大型公共交通服務公司被工會批評對工作場所的欺凌事件置若罔聞。據報，工會列舉的惡意對待包括在公眾地方口頭謾駡。

還有其他服務行業被投訴。在2018年8月，香港郵政被指沒有恰當處理殘疾員工被歧視的問題。據報，受害人稱香港郵政的管理層一直不理有關投訴。投訴的事件包括某名高級郵務督察對一名郵政員工的「崩嘴」稱呼。

在香港2000年的一宗僱傭案件，僱主被發現拳打腳踢並手推家庭傭工，令傭工心理上飽受威脅和侮辱。僱主被裁定須支付損害賠償，因為法庭認為僱主違反了隱含責任。

正視欺凌問題

如果容許工作場所的欺凌事件繼續下去，可能削弱員工士氣，生產力可能降低，員工流失率也可能增加。容讓情況繼續的話，可能對公司在市場的聲譽產生負面影響，以致公司難以吸引和挽留人才。

因此，培養一種合乎道德的工作文化是件好事，因為在這種文化下，個人法律責任會減輕，企業品牌會提升。

不過，公司也需要一種下行方法。僱主應當與員工——所有職級的員工——溝通，讓他們知道，工作場所的壞行為可以令人失去工作，名聲受損，並且損害公司本身的聲譽。

僱主應當考慮實施政策，禁止所有人在工作場所作出任何騷擾或欺凌行為。這類政策應該包括例子，用作說明公司不容忍的行為，鼓勵舉報不可接受的行為，並且陳明違反政策的後果。

與企業管治許多其他方面一樣，其實這全在於由高層定準基調。然而，人人都有責任消除工作場所中的不恰當行為。

— 高偉紳律師行顧問律師林尹菁

FINTECH

Is Blockchain Technology Disrupting Intellectual Property Management and Legal Practice in Hong Kong?

Public interest in the blockchain has spiked since the latter half of last year. As shown by Google Trends, web and news search of the term has grown exponentially since April 2017. The blockchain is essentially a decentralised ledger that stores data securely by encryption and distributes them publicly across a network of data-receiving nodes.

Innovators have been looking to apply the blockchain to different data management systems, including the management of intellectual property. The blockchain may be used as a registry of intellectual property since original copies of registered items can be stored with a clear date and tamper-proof evidence of ownership. Platforms such as Bitcoin notary, Binded and Bernstein, among others, have been providing blockchain-based solutions for intellectual property.

Another promising feature of the blockchain is that it powers smart contracts that are able to define rules and penalties of an agreement, and
自2017年4月以來，“網上搜尋和新聞搜尋「區塊鏈」的次數以倍數遞增。區塊鏈實質上是去中心化總帳，利用加密技術安全地儲存數據，網絡佈滿接收數據的節點，四通八達，數據通過節點向外分發。儲存在區塊鏈的數據有時間戳，不可變更，使得這門技術對欺詐容易得逞或想有透明度的行業具有吸引力。作為加密貨幣的平台，區塊鏈亦支援網站內容的終端用戶向創作者直接支付小額費用。

革新者一直想把區塊鏈應用到各種數據管理系統裏去，包括知識產權的管理。由於儲存已登記項目的正版時，可同時儲存準確日期和不可篡改的擁有權證明，區塊鏈可以用作知識產權登記冊。如此，區塊鏈就可以追蹤已登記知識產權以及證明有問題的項目在之前的使用。一直以來，包括Bitcoin公證、Binded及Bernstein在內的平台在區塊鏈的基礎上，提供知識產權適用的解決方案。區塊鏈的另一亮麗特點是，它大力推動智能合約。智能合約能夠界定協議的規定和罰則，不用中介人就可以自行執行。例如，商業合約的條款一旦在區塊鏈編成密碼，有效期改變或價格變動等事件可以觸發智能合約自行執行已編成密碼的條款。相信在確保交易的盡職調查及評估表現方面，這是挑戰律師的職能。

商業世界渴望發現區塊鏈技術的巨大潛能的同時，區塊鏈的實際作用也在不斷演變，不過現時未有人充分評估相關風險。這就解釋了為何香港至今仍未有關於實施區塊鏈技術的具體監管指引。

這令人懷疑香港會否承認已在區塊鏈登記的知識產權及智能合約，甚至其他招致的訴訟的有效性也存疑。有意採用基於區塊鏈的解決方案的機構或個人，應當鑽研相關司法管轄區的相關規定和措施，尤其是採取更多預防措施，在亞洲的更應如此，因為區塊鏈在那裡仍是一門新技術。隨著智能合約精簡協議的組成和執行，也降低相關費用，律師的策略建議、專業經驗和網絡將同樣為公司及個人法律意見的尋求者增值。

司法管轄區：香港

- JC Legal負責人Janice Chew
- JC Legal的Yuly Yung(專責知識產權事務)
FRANCHISE LAW
Recent Trends and Practical Solutions for Licensing and Franchising

Franchising, in its various forms, continues to present businesses with an excellent way of achieving profitable and successful international growth without the need for either substantial capital investment or a broad managerial infrastructure. In sectors as diverse as F&B, retail, hospitality, education, healthcare and financial services it continues to be a popular catalyst for international commerce and makes a strong and effective contribution to world trade.

Looking at trends in various sectors:

- **Hotels:** On a global basis, most hotel operators have a balance between franchised and managed hotels, with, as rough average, two-thirds franchised and one-third managed (though this varies by operator). However, a growing trend is to favour franchising over hotels. In Asia Pacific, the vast majority of hotels are operated under management agreements rather than franchise agreements because of concerns about the quality of would-be franchisees and the need to protect brand standards. There are signs, however, that this is changing. IHG has been trialling what it calls a “Franchise Plus” model for its Holiday Inn Express brand in China, which extends a franchise offering to third parties, whilst retaining some of the control elements of a management agreement. IHG has now announced plans to extend the model to its Crowne Plaza and Holiday Inn and Holiday Inn Resort brands.

- **Retail:** Issues around “Omni channel” continue to dominate as traditional retailers struggle with how to roll out E-Commerce and M-Commerce across their international franchise network. Most retail franchisors have granted E-Commerce rights to their country franchisees as E-Commerce and traditional “Bricks and Mortar” businesses become more connected. Some franchisors have developed their own platforms that they require franchisees to use. Franchisors will also need to consider approving online stores on marketplaces and social media sites such as “Tmall” “WeChat” in China. Master franchise agreements and development agreements need to accommodate multi-channel approvals and certification with E-Commerce being less of an add-on and more of an integral part of the franchisee’s expansion in a country.

- **Wellness and healthcare:** Wellness is a $3.72 trillion global industry. There is a huge upsurge in interest in healthy living. The Wellness sector includes gyms, fitness and spas, healthy eating, nutrition and weight loss, beauty and anti-aging, health prevention and complementary medicine. There are a large amount of gym and fitness franchise emerging in different parts of the world and spreading internationally and also licenses and franchisees for luxury spas. In the healthcare sector, personal home care franchisees in North America are spreading to other parts of the world but care should be taken in adapting to local conditions and ensuring that where necessary the franchisor has “boots on the ground” in the local market.

- **Food & Beverage:** Trends in food and beverage include the growth of healthy options such as vegan and smoothie concepts and customization of food to customers’ requirements. There is an increasing use of technology in F&B such as ordering on-line, mobile apps and on-demand products and services and franchisors need to consider how to introduce these to the franchise network and to update their franchise documentation and manual accordingly.

Services: There is a growing trend for multi-brand franchising in the services sector whereby the franchisor group acquires complementary service brands. For example, Franchise Brands is an international multi-brand franchisor that owns ChipsAway, Ovenclean, Barking Mad, and Metro Rod and has expanded through the acquisition of complementary service franchise companies. Acquiring a franchise brand can have its challenges in integrating the new brand into the existing culture and practices whilst keeping all franchisees across the brands happy.

General trends include:

- **Social Media:** Franchisors are still negotiating how to benefit from franchisees engaging in social media whilst ensuring that they stay on message and do not damage the reputation of the brand. Every franchisor should have a social media policy and appropriate protections in its franchise agreements.

- **Multi-Unit and Multi-Brand Franchisees:** There has been a growth in franchisees who own multiple units of the same franchise brand and multiple brands across the same or different sectors. A franchisee may have a pizza, coffee shop and chicken franchise or own multiple brands across different service sectors. It is essential to ensure that these multi-unit/multi-brand franchisees have the right management structure in place and maintain brand standards and do not grow too fast to quickly to be able to cope.

Franchisors are still using the traditional franchise structures in international franchising such as master franchises and development agreements but regional master franchise and development agreements are also being granted even in smaller countries to spread the risk of the a local partner not performing. Increasingly there is the use of hybrid structures such as subordinated equity arrangements where the franchisor takes a share in the franchisee and “Manchising” where a franchisee with little operational
experience can be assisted by a management team put in place by the franchisor.

- Shelley Nadler, Legal Director, Bird & Bird LLP

特許經營法

授權和特許經營的新趨勢及務實成果

不需要投放大筆資金，也不需要大堆管理基礎設施，特許經營繼續在國際市場以不同形式出現，給各行各業提供盈利增長並成功發展的絕佳方法。在各種各樣的行業裡，包括餐飲業、零售業、酒店業、教育產業、健康護理及金融服務業，特許經營繼續是受歡迎的國際商務催化劑,在全球貿易建樹良多，成效顯著。

特許經營在不同行業的趨勢:

- 酒店業：縱觀全球，大部分酒店經營者在特許經營類酒店和委託管理類酒店之間作出了平衡，粗略估計，三分之二是特許經營，三分之一是委託管理（雖然經營者各有比例）。然而，特許經營模式日益普及，在酒店業漸成趨勢。在亞太地區，因為關注到未來加盟商的質素及保護品牌標準的需要，絕大多數酒店是根據管理合約而不是特許經營合約經營的。然而，有跡象顯示情況有變。洲際酒店集團(IHG)現已在中國試驗其稱為「智選假日酒店」品牌的特許經營模式(Franchise Plus)，在此模式下，加盟商可以委託第三方公司管理酒店，同時保留管理合約的某些控制權。IHG現已公布擴大特許經營模式的計劃，於旗下皇冠假日酒店及度假村、假日酒店和假日度假酒店品牌開放特許經營模式。

- 零售業：在傳統零售商努力在國際特許經營網絡推出電子商務和流動商務之際，有關「全渠道」(Omni channel)的爭論繼續不斷地。電子商務和傳統的「一磚一瓦」式業務的聯繫越來越緊密，加盟商需要照顧到多渠道核准及認證，合約包含的電子商務可不一定是附加上去的，更有可能是加盟商在一國之內擴展業務所必不可少的部分。

- 保健業：全球保健業總值達3.72萬億元。人們對健康生活的關注程度直線上升。保健行業包括健身及水療、健康飲食、營養和減肥、美容和抗衰老、疾病預防及另類藥物。全球各地湧現大量以特許經營模式經營的健身公司，有國際化之勢，另亦有以授權或特許經營模式經營的豪華水療。在健康護理業，來自北美洲的個人家居護理特許經營權正延伸全球其他地區，不過人們應留心特許經營模式的實情，並在有需要時，小心確保特許經營商在當地市場是否已經投入足夠人力。

- 餐飲業：向顧客提供健康餐單在餐飲業已成趨勢，例如素食及水果奶昔概念，以及按顧客要求提供貼心合意的食品。應用於餐飲業的技術越來越多，例如網上訂餐、手機應用程式、隨選產品及服務，特許經營商需要考慮如何把技術引進特許經營網絡，以及如何相應地更新特許經營的文件及手冊。

- 服務業：在服務業，多品牌特許經營有增長之勢，集團式特許經營商亦借勢收購配套服務品牌。例如，Franchise Brands是國際多品牌特許經營商，擁有ChipsAway、Ovenclean、Barking Mad及Metro Rod，現已藉收購配套服務的特許經營公司，擴展業務。將新品牌融入現有文化及常規的同時令有關品牌的加盟商繼續感滿意，可以是收購特許經營品牌的挑戰。

整體趨勢包括下列兩方面：

- 社交媒體：特許經營商仍在商議如何善用參與社交媒體的加盟商，同時又確保他們目標明確，不會分心，不會損害品牌的聲譽。每個特許經營商都應該有一套社交媒體政策，並在特許經營合約訂明適合的保障。

- 多單位加盟商和多品牌加盟商：在同一行業甚或不同行業裡，有越來越多加盟商在同一特許經營品牌甚至多個品牌擁有單位特許經營權。加盟商可以有一家薄餅店、咖啡店及雞品店的特許經營權，或在不同服務行業擁有更多個品牌。重要的是確保這些多單位／多品牌加盟商建立了適當的管理架構，保持品牌標準，並且不會增長太快，以至力有不逮。
Enhancing Hong Kong’s Regulatory Regime for Combating Money Laundering and Terrorist Financing – Part I

Both the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) (Amendment) Ordinance 2018 and the Companies (Amendment) Ordinance 2018 were passed by the Legislative Council on 24 January 2018 and have come into operation on 1 March 2018. This article seeks to set out the background and objectives, and highlight the major requirements, of the two Amendment Ordinances.

The Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) (Amendment) Ordinance 2018 (‘The AML Amendment Ordinance’)

The Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance (Cap. 615) (‘AMLO’) was first enacted in July 2011 and came into operation in April 2012 to require financial institutions (as defined in Part 2 of Schedule 1 to the AMLO) to, among other things, comply with the customer due diligence (‘CDD’) and record-keeping requirements as set out in Schedule 2 to AMLO. The said requirements are the main strands of the anti-money laundering and counter-terrorist financing regulatory regime championed by the Financial Action Task Force (‘FATF’), an inter-governmental body of which Hong Kong has been a member since 1991.

To enhance Hong Kong’s regulatory regime for combating money laundering and terrorist financing in fulfilment of Hong Kong’s international obligations as a member of the FATF, the Government introduced the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) (Amendment) Bill 2017 (‘AML Amendment Bill’) into the Legislative Council on 28 June 2017 to amend the AMLO to apply the statutory CDD and record-keeping requirements (‘AML/CTF requirements’) to solicitors and foreign lawyers (as defined in section 2(1) of the Legal Practitioners Ordinance (Cap. 159) (‘LPO’), accountants, estate agents and trust or company service providers (‘TCSPs’) (collectively called designated non-financial businesses and professions (‘DNFBPs’)) when they conduct certain specified transactions and for that purpose to establish a regulatory regime for TCSPs, and designate relevant professional or regulatory bodies as “relevant authority” or “regulatory bodies” to implement the statutory requirements for various DNFBPs. The AML Amendment Bill was subsequently passed on 24 January 2018.

Under the AML Amendment Ordinance, non-compliance with the AML/CTF requirements by DNFBPs may result in disciplinary sanctions imposed by the relevant authority or regulatory bodies. For the TCSP sector, the AML Amendment Ordinance introduces a licensing regime for TCSPs which is administered by the Registrar of Companies (‘Registrar’). Under the new regime, a TCSP must apply to the Registrar for a licence to carry on a trust or company service business in Hong Kong. Any person carrying on a trust or company service business in Hong Kong without a licence commits an offence (new section 53F). A licence would be granted only if the Registrar is satisfied that the applicant is a “fit and proper” person (new section 53H). New section 53ZQ contains transitional provisions applicable to TCSPs who have been carrying on a TCSP business and holding a valid Business Registration Certificate. For this group of persons, a licence is deemed to have been granted when the licensing requirement came into effect on 1 March. If they wish to continue to carry on their businesses, they must lodge an application for the TCSP licence within the transitional period of 120 days, which will expire after 28 June 2018.

In the case of legal professionals, The Law Society of Hong Kong (‘LSHK’) takes on statutory oversight for monitoring and ensuring the compliance of solicitors and foreign lawyers with the AML/CTF requirements. Non-compliance with the requirements would be handled in accordance with the prevailing investigation and disciplinary procedures under the LPO governing professional misconduct. To this end, the LPO has been amended to enable the LSHK to take disciplinary action under the existing regulatory regime in respect of failure to comply with the AML/CTF requirements. Enabling provisions have also been introduced (new section 7(1)) so that LSHK has the discretion to promulgate guidelines as they consider appropriate in relation to the operation of the requirements. LSHK may have regard to or take into account any practice direction that it has issued in providing guidance on the AML/CTF requirements.

To avoid regulatory overlap, exemption from the new licensing requirements for TCSPs are given to, among others, accounting professionals and legal professionals who are subject to the regulation of their respective professional
bodies. For details of the licensing regime and its exemption, please visit www.tcsp.cr.gov.hk.

- Ms Ada Chung, Registrar of Companies, Ms Christy Yiu, Senior Solicitor, Companies Registry

監管與合規
香港加強打擊洗錢及恐怖分子資金籌集監管制度 — 第I部分

《2018年打擊洗錢及恐怖分子資金籌集(金融機構)(修訂條例)》和《2018年公司(修訂)條例》兩項修訂條例已於2018年1月24日由立法會通過，並於2018年3月1日實施。本文旨在闡述該兩項修訂條例的背景及目的，並扼要介紹該兩項修訂條例的主要規定。

《2018年打擊洗錢及恐怖分子資金籌集(金融機構)(修訂條例)》(下稱「《打擊洗錢(修訂)條例》」)

《打擊洗錢及恐怖分子資金籌集(金融機構)條例》(第615章)(下稱「《打擊洗錢條例》」)最初於2011年7月獲制定為法例，其後於2012年4月實施，規定金融機構(按照《打擊洗錢條例》附表1第2部所界定的涵義)必須遵從多項規定，包括就客戶作盡職審查及備存紀錄的規定(載列於《打擊洗錢條例》附表2)，上述規定是財務行動特別組織(下稱「特別組織」)倡議能有效打擊洗錢及恐怖分子資金籌集的監管制度的主要一環。特別組織是一個跨政府組織，而香港自1991年起成為特別組織的成員地區。

為避免出現規管重疊，受所屬專業機構規管的會計專業人士和法律專業人士，可獲豁免遵從新的信託或公司服務提供者發牌規定。如欲了解發牌制度及豁免的詳情，請瀏覽公司註冊處信託及公司服務提供者發牌制度的網站www.tcsp.cr.gov.hk。

- 鍾麗玲，公司註冊處處長
  姚麗盈，公司註冊處高級律師
REGULATORY & COMPLIANCE

Enhancing Hong Kong’s Regulatory Regime for Combating Money Laundering and Terrorist Financing – Part II

The Companies (Amendment) Ordinance 2018 (‘the Companies Amendment Ordinance’)

To combat money laundering and terrorist financing, the Financial Action Task Force (‘FATF’) requires member jurisdictions to take measures to prevent the misuse of legal persons for money laundering and terrorist financing by ensuring that adequate and accurate information on the beneficial owners and control of legal persons can be obtained or accessed in a timely fashion by law enforcement agencies.

To achieve this, the Companies Amendment Ordinance requires a company incorporated in Hong Kong to ascertain the individuals and legal entities that have significant control over the company, and maintain a significant controllers register (‘SCR’). Listed companies are exempt from this requirement as they are already subject to a more stringent disclosure regime under the Securities and Futures Ordinance (Cap. 571).

The Companies Amendment Ordinance adds a new Division 2A (ss. 653A to 653ZK) to Part 12 and three new Schedules (Schedules 5A, 5B and 5C) to the Companies Ordinance (Cap. 622).

A significant controller includes a registrable person and a registrable legal entity. A registrable person is generally a natural person with significant control over the company. A registrable legal entity is a legal entity which is a shareholder of the company and which has significant control over the company.

Under the Companies Amendment Ordinance (ss. 653E and 1 of Schedule 5A), a person has significant control over a company if the person meets one or more of the following conditions:

a) the person holds, directly or indirectly, more than 25 percent of the issued shares in the company or, if the company does not have a share capital, the person holds, directly or indirectly, a right to share in more than 25 percent of the capital or profits of the company;

b) the person holds, directly or indirectly, more than 25 percent of the voting rights of the company;

c) the person holds, directly or indirectly, the right to appoint or remove a majority of the board of directors of the company;

d) the person has the right to exercise, or actually exercises, significant influence or control over the company;

e) the person has the right to exercise, or actually exercises, significant influence or control over the activities of a trust or a firm that is not a legal person, but whose trustees or members satisfy any of the first four conditions (in their capacity as such) in relation to the company.

The major obligations of a company in this regard include –

• keeping a SCR at the company’s registered office or a prescribed place;

• taking reasonable steps to ascertain the company’s significant controllers, including, where appropriate, issuing notices of inquiry to such persons and those who know the identity of another person who is a significant controller of the company;

• entering the required particulars of its significant controllers in the SCR;

• keeping the particulars required up-to-date;

• allowing inspection and making of copies of the SCR by law enforcement officers upon demand.

If a company fails to comply with any of the above requirements, the company and each of its responsible persons commit an offence.

Although the changes brought about by the Companies Amendment Ordinance apparently deviate from the principle of company law that no notice of any trust may be entered in the register of members of a company, the disclosure of corporate beneficial ownership is now part and parcel of an international concerted effort to prevent the misuse of companies for illicit purposes.

Similar disclosure arrangements have been put in place in other member jurisdictions of the FATF. For example, with effect from 6 April 2016, UK companies are required to keep a register of people with significant influence or control (PSC), and with effect from 30 June 2016, to deliver the PSC information to the central register at the Companies House. The PSC register is accessible to the public.

Likewise in Singapore with effect from 31 March 2017, Singaporean companies are required to keep a similar register which may be inspected by the Registrar of Companies and public agencies when the agencies are administering or enforcing any written law of Singapore.

For details of the new requirements introduced under the Companies Amendment Ordinance, please visit www.cr.gov.hk/en/scr.

- Ms Ada Chung, Registrar of Companies, Mr Francis Mok, Senior Solicitor, Companies Registry

監管與合規

香港強加打擊洗錢及恐怖分子資金籌集監管制度 — 第II部分

《2018年公司(修訂)條例》（下稱「《公司(修訂)條例》」）
為打擊洗錢及恐怖分子資金籌集，財務行動特別組織(下稱「特別組織」)要求
成員司法管轄區採取措施，確保執法機關可就法人的實益擁有人和控制權，及時獲取充分和準確的資料，以防止有人利用法人作洗錢及恐怖分子資金籌集用途。

為達致這個目的，《公司(修訂)條例》規定，在香港成立為法團的公司必須確定對公司有重大控制權的個人及法律實體，以備存重要控制人登記冊(下稱「登記冊」)。因上市公司受《證券及期貨條例》(第571章)更嚴格的披露制度所規管，獲豁免遵從上述規定。

《公司(修訂)條例》在《公司條例》(第622章)第12B部加入新的第2A分部(新訂第653A至653ZK條)，並加入3個新訂附表(新訂附表5A, 5B及5C)。

重要控制人包括須登記人士和須登記法律實體。須登記人士一般是指對公司有重大控制權的自然人。某法律實體如為公司的股東，並對該公司有重大控制權，該實體即屬該公司的須登記法律實體。

根據《公司(修訂)條例》(第653E條及附表5A第1條)，如某人符合一個或以上的下述條件，則該人對公司有重大控制權——

a) 該人直接或間接持有該公司25%以上的已發行股份；或如該公司沒有股本，該人直接或間接持有分攤該公司25%以上的資本或分享該公司25%以上的利潤的權利；
b) 該人直接或間接持有該公司25%以上的表決權；
c) 該人直接或間接持有委任或罷免該公司董事局的過半數董事的權利；
d) 該人有權利或實際上對該公司行使重大影響力或控制；
e) 該人有權利或實際上對某信託或商業的活動發揮或行使重大影響力或控制，而該信託或商業並不是法人，但該信託或商業的成員(以其作為信託受託人或商業成員的身分)，對該公司而言符合首四個條件中的任何一個條件。

公司在這方面的的主要責任包括——

• 在公司的註冊辦事處或某訂明地方備存重要控制人登記冊；
• 採取合理步驟，確定公司的重要控制人，包括在適當情況下向該等人士和知道有另一人是公司的重要控制人及其身分的人士發出查詢通知；
• 把重要控制人的所需詳情記入重要控制人登記冊；
• 保持登記冊內的所需詳情更新；
• 在執法人員要求下，容許執法人員查閱重要控制人登記冊並複印登記冊。

如公司未有履行上述任何規定，公司及其每名責任人即屬犯罪。

特別組織的其他司法管轄區成員已實施類似的披露安排。例如，由2016年4月6日起，英國的公司須備存擁有重大影響力或控制權人士登記冊，並須由2016年6月30日起將登記冊資料包括在英國公司註冊處的中央登記冊，供公眾查閱。

同樣，在新加坡，由2017年3月31日起，新加坡的公司須備存類似的登記冊，新加坡公司註冊處處長可以查閱該登記冊，而當地的公共機構在施行或執行新加坡的任何成文法時亦可查閱該登記冊。

如欲了解《公司(修訂)條例》所訂立有關新規定的詳情，請瀏覽公司註冊處網頁(www.cr.gov.hk/tc/scr/)所載的資料。

－鍾麗玲，公司註冊處處長
－莫少堅，公司註冊處高級律師

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

本欄所提供的資訊僅屬一般資訊，並不構成相關法律的完整陳述。亦不應被依賴為任何個案中的法律意見或被視作取代法律意見。
Civil Procedure — costs — sanctioned offer or payment — acceptance out of time — whether usual costs order should apply — correct approach — question was whether unjust to make usual order, not whether there were special circumstances — Rules of the High Court (Cap. 4A, Sub. Leg.) O. 22 r. 23

Personal injuries claim — original elderly plaintiff did not accept defendant’s sanctioned payment within prescribed time — after her death, new plaintiff (representing her estate) granted leave to accept payment out of time

In 2013, the original plaintiff, L, then aged 88, sustained injuries in an accident at the residential care home operated by D. On 6 July 2015, L brought personal injury proceedings against D. On 17 July 2015, D made a sanctioned payment into court of $380,000 (the ‘Payment’). On 31 July 2015, interlocutory judgment was entered for L, who did not accept the Payment within the prescribed time. L died of unrelated causes in February 2016. L’s son, P, the representative of her estate, took over her action and on 14 July 2016 applied for leave to accept the Payment and costs of the action. The Deputy Judge granted leave and ordered D to pay P’s costs up to 14 August 2015 and P to pay D’s costs from 15 August 2015, including of the application (the ‘Costs Order’); finding that L’s death was a contingency inherent in litigation and not a special circumstance justifying a departure from the usual costs order. The Deputy Judge refused P leave to appeal against the Costs Order and P obtained leave from the Court of Appeal. Under O. 22 r. 23 of the Rules of the High Court (Cap. 4A, Sub. Leg.) (‘RHC’), the court could order the plaintiff to pay any costs incurred by the defendant after the latest date on which the payment or offer could have been accepted without leave (r. 23(3)); and it shall make such order unless it considered it unjust to do so (r. 23(5)) in all the circumstances of the case (r. 23(6)).

Held, allow the appeal by setting aside the Costs Order, that:

• Under O. 22 r. 23 of the RHC, injustice should be the benchmark based on “what the fairness of the situation demands”, rather than “exceptional circumstances” which suggested that only extreme circumstances would count. The reasonableness of a plaintiff rejecting the sanctioned payment within time was a relevant consideration but, depending on the facts, not necessarily determinative. Ultimately, the question was whether it was unjust to make the normal costs order. Costs decisions were highly fact-sensitive and it was not helpful to compare one case with another (Matthews v. Metal Improvements Co Inc [2007] EWCA Civ 215, SG v. Hewitt [2013] 1 All ER 1118 applied; (Wong Ching Wan v. AS Watson & Co Ltd [2007] 4 HKLRD 362 not followed). (See paras. 17–20.)

• As there were situations where imposing the normal costs consequence might be unjust, flexibility was built into the O. 22 regime under r. 23(5) and (6) as a deliberate and important safety valve. A classic example was where the plaintiff changed his mind after reassessing the risk based on relevant information withheld by the defendant. A party might change his mind for other reasons including a change in the person in charge of a corporate plaintiff; a change of legal advisor who took a different view of the case; and a change of circumstances due to contingencies inherent in litigation. None of these situations was likely to constitute injustice (Jones v. Jones (unrep., 13 October 1999), SG v. Hewitt [2013] 1 All ER 1118 applied). (See paras. 21–26.)

• The Deputy Judge had not considered whether it would be unjust to order costs against P in the circumstances of the case. Consequently, the Costs Order was set aside and the discretion exercised afresh. Although the Court could not adjudicate on the merits at a costs hearing, in a case of acceptance out of time with leave where the application of the normal costs rule was disputed, under O. 22 r. 23(6) (a), the Court was obliged to consider the reasonableness of the sanctioned payment albeit on a very broad-brush basis to assess if it was unjust to apply the normal costs rule. (See paras. 28, 30.)
Here, D admitted liability and there was no contributory negligence. P’s injuries fell within the serious injury category for which awards for pain, suffering and loss of amenities ranged from $510,000 to $692,000. Even taking into account L’s age and pre-existing condition, it was reasonable for P to have rejected the Payment (Wong Man Kin v. Golden Wheel (C&HK) Transportation Co Ltd [2015] 5 HKC 570 applied). (See para. 31.)

Given the history of the action up to L’s death and the manifestly inadequate Payment, since D had not filed an answer to the statement of damages, P’s lawyers could not properly and accurately advise her on quantum. It was open to P to accept the Payment and seek costs up to the date of late acceptance. Applying O. 22, including r. 15(3) with r. 23, it was unjust to require P to pay costs to D. The costs incurred since the Payment could not have been avoided. D was ordered to pay the costs of the action up to the date of late acceptance and the costs of this appeal, including the costs of the application for leave. (See paras. 34, 38–41.)

**Appeal**

This was an appeal by the representative of the estate of the deceased in a personal injuries action against the costs order made against him by Deputy Judge Eric Tam in the District Court following his application for leave to accept out of time a sanctioned payment made by the defendant (see [2017] 1 HKLRD 308). The facts are set out in the judgment.

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**民事訴訟程序**

Or Siu Lung, appointed to represent the estate of Lam Choi Ching(林賽貞), deceased v. Fu Hong Home for the Elderly Co Ltd [2018] 1 HKLRD 872

民事訴訟程序

民事訴訟程序 – 訴費 – 附帶條款

和解提議或附帶條款付款

– 逾期接受

– 慣常的訴費命令是否適用 – 正確方法 – 問題在於作出慣常命令是否不公正，而不是是否有特別情況 – 《高等法院規則》(第4A章，附屬例)第22號命令第23條規則

民事訴訟程序 – 訴費 – 附帶條款

和解提議或附帶條款付款 – 人身傷害申索 – 原先的原告人(長者)不在訂明時限內接受被告人的附帶條款付款 – 她死後，新原告人(她的遺產代表)獲給予逾期接受付款的許可

2013年，原先的原告人L在被告人經營的一間安老院舍意外受傷，她當時88歲。2015年7月6日，L就所受人身傷害向被告人提出訴訟。2015年7月17日，被告人作出附帶條款付款，向法院繳存$380,000(「該筆付款」)。2015年7月31日，判L勝訴的非正審判決予以登錄，但L沒有在訂明時限內接受該筆付款。L在2016年2月死去，死因與意外受傷無關。L的兒子P，她的遺產代表，接手她這宗訴訟，在2016年7月14日申請接受該筆付款的許可及訴訟的訴費。暫委法官給予許可並命令被告人支付原告人截至2015年8月14日的訴費，原告人則支付被告人2015年8月15日起的訴費，包括傳票費用(「該訴費令」)；暫委法官裁定，L之死是訴訟固有的或有事件，不是支持偏離慣常訴費命令的特別情況。暫委法官拒絕給予原告人針對該訴費令上訴的許可，原告人其後取得上訴法庭的上訴許可。根據《高等法院規則》(第4A章，附屬例)第22號命令第23條規則，法庭可以命令原告人支付被告人在有償付款或提議本可無需法庭許可而被接受的最後日期後所招致的任何訴費(第23(3)條規則)；法庭須作出該命令，但如果法庭考慮案件的整體情況後(第23(6)條規則)，認為作出該命令並不公正，則不可作出該命令(第23(5)條規則)。

裁決 – 一判上訴得直，撤銷該訴費令：


• 由於有情況是判以慣常訴費的結果是不公正的，第22號命令第23(5)及(6)條規則富有靈活度，猶如刻意設置的重要安全閥。典型的例子是，原告人根據被告人所隱瞞的相關資料重新評估風險之後，改變主意。訴訟一方可以因為其他理由改變主意，包括：公司(原告人)換了負責人；換了法律顧問，而新法律顧問對案件有不同看法；情況由於訴訟固有的或有事件而改變。上述情況完全不可能構
CIVIL PROCEDURE

Jagdip Kaur Sadhu Singh v. I-Live Ltd [2018] 1 HKLRD 957
District Court
Civil Action No 3222 of 2017
Judge Liu Man Kin in Chambers
6 February 2018

Civil procedure — default judgment — action for declaration of trust — whether appropriate case for grant of judgment — whether entire value of fund allegedly subject to trust within jurisdiction of District Court — District Court Ordinance (Cap. 336) s. 37(2)

Courts and judicial system — District Court — jurisdiction — action for declaration of trust — value of fund allegedly subject to trust in excess of Court’s jurisdiction — whether abandonment of part of claim under s. 34(1) so as to give Court jurisdiction — District Court Ordinance (Cap. 336) s. 34(1)

P’s case was that after receiving a cold call from TT, purportedly a UK online financial services provider, P opened an investment trading account with TT and deposited into an account at HSBC held by D, a Hong Kong company, USD5,000 initially and subsequently a total of USD130,101 (the ‘Investment Fund’). When P encountered difficulties relating to the entire Investment Fund, she made a report to the police and discovered that only US$26,295.22 remained. P brought proceedings against D in the District Court, seeking, inter alia, on P’s pleaded case. As P had not alleged any fraud, the dispute between P and TT was a contractual one, and its resolution depended on the terms of their agreement. The only wrongful act on D’s part was allowing the Investment Fund to be transferred out of the HSBC account for “purposes unrelated to investment”, but P had not pleaded particulars of this allegation. (See paras. 11–13)

Further, contrary to para 4 of Practice Direction 27, P had not pleaded why her claim fell within the jurisdiction of the District Court or specified which of ss. 32–39 of the District Court Ordinance (Cap. 336) applied. P’s claim was for a declaration that a trust subsisted, but s. 37(2) of the Ordinance limited the maximum amount of the fund subject to the trust to HK$1 million. On P’s pleaded case, the value of the entire Investment Fund was about HK$1,014,800 and therefore outside the Court’s jurisdiction. (See paras. 15–17.)

As for P’s plea that she would relinquish that part of her claim in excess of the Court’s jurisdiction, s. 34(1) of the Ordinance was of no assistance. First, s. 34(1) concerned monetary claims and P was seeking declaratory relief. Second, reading P’s statement of claim as a whole, a trust relating to the entire Investment Fund, and not any lesser amount, subsisted. (See paras. 18–19.)

Application

This was an application by the plaintiff for default judgment against the defendant on the ground it had failed to file and serve a defence. The facts are set out in the judgment.
民事訴訟程序

Jagdip Kaur Sadhu Singh v. I-Live Ltd [2018] 1 HKLRD 957

區域法院

區域法院法官廖文健內庭聆訊
2018年2月6日

民事訴訟程序
—
因欠缺行動而作出的判決
—
信託聲明書的訴訟
—
是否適合批予判決的案件
—
整筆被指稱受信託規限的資金價值是否在區域法院司法管轄權範圍內
—
《區域法院條例》(第336章)第37(2)條

法院及司法制度
—
區域法院
—
司法管轄權
—
信託聲明書的訴訟
—
被指稱受信託規限的資金價值超逾區域法院的司法管轄權
—
是否根據第34(1)條放棄部分申索以使區域法院具有司法管轄權
—
《區域法院條例》(第336章)第32–39條

原告人的案情是，她接到TT的直銷電話，TT宣稱是英國網上金融服務提供者，成功遊說她在TT開立投資交易賬戶並存款到滙豐銀行一個由被告人持有的帳戶，首筆存款是5,000美元，其後分幾次存款，合共存入130,101美元(「投資資金」);被告人是一間香港公司。原告人終止交易帳戶遇到困難，於是向警方報案，其後交易帳戶被發現只剩餘26,295.22美元。

原告人在區域法院針對被告人提出法律程序，申索濟助包括要求法庭宣告，被告人以歸復信託方式為她持有投資資金，或者交替地說，TT以明示信託方式為原告人持有投資資金，而被告人，作為TT的代理，對原告人負有法律構定受託人的責任;另亦要求法庭命令被告人歸還她存放在滙豐銀行帳戶的投資資金。原告人現針對被告人申請因欠缺行動而作出的判決(「欠動判決」)。

裁決–駁回申請:

• TT不是訴訟一方，亦無證據證明原告人曾向TT發出訴訟通知，法院不可就原告人建基於明示信託的交替案情，對TT作出任何命令。(見第9段)
  • 除了別的以外，不宜基於原告人在狀書提出的案情，授予藉欠動判決所尋求的濟助。由於原告人有指控任何欺詐，原告人與TT的爭議是合約爭議，解決方法取決於兩方合約的條款。容許轉撥滙豐銀行帳戶的投資資金用於「與投資無關的用途」(purposes unrelated to investment)是被告人所做的唯一的錯誤作為，但原告人沒有作訟說出這項指控的詳情。(見第11–13段)
  • 此外，原告人沒有作訟解釋為何她的申索不在區域法院司法管轄權範圍內，也沒有指明所引用的是《區域法院條例》(第336章)第32–39條中哪些條文。原告人申索要求法庭宣告信託存在，只是《區域法院條例》第37(2)條指明受信託規限的資金的最高限額是港幣$1,000,000。根據原告人在狀書提出的案情，整筆投資資金的價值約為港幣$1,014,800，因此不在法院司法管轄權範圍內。(見第15–17段)
  • 至於原告人作訟指稱她會放棄申索超逾法院司法管轄權的那一部分，《區域法院條例》第34(1)條沒有任何幫助。首先，第34(1)條所關乎的是金錢申索，但原告人尋求的是宣布性質的濟助。其次，從整份申索陳述書看來，存在的是整筆投資資金的信託，不是較少投資資金的信託。(見第18–19段)

應用

這是一宗申請欠動判決的案件。原告人針對被告人申請欠動判決，理由是被告人沒有提交，也沒有送達抗辯書。案情已在判決書詳細列出。

CIVIL PROCEDURE

CLS v. LPKP [2018] 1 HKLRD 957
District Court
Matrimonial Causes No 17127 of 2014
Judge Grace Chan in Chambers
28 August 2017, 8 January 2018

Civil procedure — discovery — inappropriate in matrimonial proceedings to seek discovery against banker of spouse rather than spouse

In these matrimonial proceedings, the petitioner-wife applied for specific discovery, not against the respondent-husband, but against his bankers.

Held, dismissing the application, that:-

• Although the wife’s application was taken out under s. 21 of the Evidence Ordinance (Cap. 8) and s. 47B of the District Court Ordinance (Cap. 336), the applicable rule was, as counsel on both sides agreed, O. 24 r. 7 of the Rules of the High Court (Cap. 4A, Sub. Leg.). (See para. 23.)
  • The discovery sought was unnecessary for the fair disposal of the matter or
for saving costs (LKW v. DD [2010] 13 HKCFAR 537 applied). (See para. 65.)

- It was inappropriate to seek discovery against the husband’s banker rather than against the husband himself. That the husband had refused the discovery requested by the wife was not a good and sufficient reason for her to seek discovery against the banker (Chan Wai Sun v. Law Shiu Kai Andrew [2003] 3 HKLRD 954 distinguished). (See para. 72.)

- Family practitioners were to be reminded that applicant spouses should not in situations like the present attempt to achieve their discovery objectives by way of subpoena or discovery applications directed to bankers. (See paras. 73.)

Application

This was an application by the petitioner-wife in matrimonial proceedings for specific discovery against the banker of the respondent-husband. The facts are set out in the judgment.

**CRIMINAL SENTENCING**

**Secretary for Justice v. Chan Yiu Tung Anthony** [2018] 1 HKLRD 835

Court of First Instance

Magistracy Appeal No 463 of 2016

Deputy Judge Pang Chung Ping

8 December 2017, 23 January 2018

Criminal sentencing — road traffic offences — speeding — defendant pleaded guilty to charge which did not specify exact speed of vehicle alleged — whether magistrate had power to conduct Newton hearing to determine exact speed for sentencing purposes — whether magistrate erred in refusing to hold hearing and sentencing defendant on artificial basis

D was charged with speeding and admitted the offence but denied the actual speed alleged of 137 km/h in a 70 km/h zone. At the beginning of the trial, the prosecution sought to amend the summons and summary of facts by deleting the precise speed alleged and told the Magistrate that after conviction on D’s own plea, the prosecution would adduce evidence to prove the actual speed by “somewhere in the nature of a Newton hearing”. The application was granted and D then pleaded guilty to speeding on the amended summons and summary of facts. The Magistrate however queried the legal basis for holding the hearing sought and ruled that there was no dispute on the amended facts to warrant a Newton hearing. D did not advance any mitigation. The Magistrate then sentenced D on the basis that he had exceeded the speed limit by 1 km/h and imposed a fine of $2,000. On an application by the Secretary for Justice (‘SJ’) for a review of the decision not to hold a hearing to receive evidence on the actual speed, the Magistrate upheld it and the SJ now appealed against it by way of case stated.

**Held,** allowing the appeal and remitting the case to the Magistrate to conduct a Newton hearing and to sentence D accordingly, that:

- If the Magistrate erred in law in sentencing D, an appeal by way of case stated could be brought against his decision. If the exact speed of D’s car were proved to have been 137 km/h, ie 45 km/h over the speed limit, the sentence would be much more severe and include a mandatory disqualification order. The exact speed would therefore make a material difference to D’s sentence. (See paras. 31–32, 63.)

- Where there was a plea of guilty, both sides had a duty to ensure that the judge was aware of any discrepancy between the basis of plea and the prosecution case that could potentially have a significant effect on sentence, so that the court could consider holding a Newton hearing. Even where the basis of plea was agreed, the judge retained a discretion (R v. Tolera [1999] 1 Cr App R(S) 25, R v. Cairns [2013] 2 Cr App R(S) 73 applied). (See paras. 35–37, 52.)

- The prosecutor’s conduct was out...
of the ordinary. It was not necessary to amend the summons by deleting the exact speed. The proper course was for the defendant to plead guilty to the offence and then for a trial to determine the exact speed in excess of the limit. Notwithstanding, the amended summons here was not a nullity (R v. Yiu Yuk Lun (unrep., HCMA 381/1993) applied). (See paras. 40–42.)

• The amended summary of facts was not the agreed basis of D’s plea for the purpose of sentencing, but a reflection of the extent of the prosecution case that could be admitted by D. There was clearly a serious dispute on a significant fact alleged by the prosecution. Although D was convicted on his own plea and admission of the amended summary of facts, the Magistrate had the power to hold a Newton hearing to decide the actual speed of D’s car. (See paras. 43–47, 54–55.)

• It was the duty of both the prosecution and the defence to assist the Magistrate as to what was the true basis of the plea of guilty tendered by D; and of the Magistrate to sentence D on the true facts of the case. D would not have been prejudiced by a hearing to prove the exact speed of his car. Accordingly, the Magistrate erred in refusing to hold such a hearing; as well as in sentencing D on an artificial basis (R v. Tolera [1999] 1 Cr App R(S) 25, R v. Cairns [2013] 2 Cr App R(S) 73). (See paras. 57–58, 61–64, 66.)

Appeal
This was an appeal by way of case stated by the Secretary for Justice against the decision of a Deputy Special Magistrate not to hold a hearing to receive evidence from the prosecution as to the actual speed of the respondent’s car after the respondent pleaded guilty to speeding. The facts are set out in the judgment.
Criminal law and procedure — costs — taxation — guidance for drafting of bills for criminal matters — basis of taxation — appropriate hourly rates — approach where government counsel did work of both solicitor and barrister

The Department of Justice (DoJ) sought a review of the taxation of costs of a criminal appeal by the Registrar under ss. 7–8 of the Costs in Criminal Cases Rules (Cap. 492A, Sub.Leg.) for the purpose of providing guidance for the future drafting of bills in criminal matters.

Held, that:

- For criminal taxation, the common fund basis should apply. Drafters of criminal bills must adopt for reference the hourly rates in the Law Society’s Circular entitled “High Court Taxation – Consolidation Circular – Updated April 2008”. The different bases for taxation only affected the factors to be taken into account for the amounts to be allowed. If the drafter adopted other rates without explanation in the bills, the court would raise requisitions on them (Wing Fai Construction Co Ltd (Costs: Taxation) (2012) 15 HKCFAR 657 applied). (See paras. 9–10.)

- The DoJ could request higher rates for taxation of particular items but must state the reasons for doing so. The costs of government counsel who did the work of both a solicitor and a barrister was one of the factors for consideration. Whether or not to accept such reasons and what the appropriate rates of charge should be were in the court’s discretion. The costs of government lawyers who were treated as barristers and solicitors for the purpose of fees and costs were to be taxed on the same basis as private practitioners (Ling Yuk Sing v. Secretary for the Civil Service [2010] 3 HKLRD 722 applied). (See paras. 11–13.)

- A solicitor with higher rights of audience under r. 21(8)(b)(ia) of the Legal Aid in Criminal Case Rules (Cap. 221D, Sub.Leg.) usually had higher seniority. This was by no means comparable to junior government counsel in the present case who had only three years’ post-qualification experience. She could charge for time spent on the work of a solicitor and counsel, but her hourly rate must be reasonable and the burden was, on the common fund basis, on the DoJ. She could not justifiably command the same hourly charge of a partner in a solicitor’s firm of 10 or more years. The indemnity principle of costs applied equally to government counsel (Building Authority v. Business Rights Ltd [1999] 3 HKC 247 considered). (See paras. 16–17.)

Application

This was an application by the Department of Justice for a review of a taxation of costs of a criminal appeal by Registrar Lung Kim Wan on 4 August 2017 (see [2017] HKEC 1718). The facts are set out in the judgment.
— possession of offensive weapon in public place — chilli spray intended for purpose of causing injury to others at protest — relevant factors — whether prosecuting counsel attempted to influence sentence by advocacy — Public Order Ordinance (Cap. 245) s. 33(1), (2)

D1–2 were convicted of possession of an offensive weapon in a public place contrary to s. 33(1) and (2) of the Public Order Ordinance (Cap. 245). The prosecution case was that D1, dressed in armour-like protective gear, was with D2 near a protest. D1–2 were found carrying respectively inter alia five bottles of chilli spray and one bottle of chilli spray. The chilli spray was oil-free and contained capsaicin and dihydrocapsaicin (collectively ‘capsaicinoids’) and isopropyl alcohol with effects similar to pepper spray (pain, stinging, irritation and swelling) but mild and not noxious. The bottles could discharge a fine spray over a range of 50 cm. At trial, D1 testified that he was on his way to provide first aid outside certain premises, the bottles contained chilli oil from relatives and he had already consumed some. D2 testified that the bottle was from a friend and he used it while eating out; and he was showing D1, a stranger, the way to the premises in question when they were intercepted. The Magistrate was entitled to find that D1 knew the liquids were not edible; given DTs clothing and equipment, he expected clashes; and the prosecution had proved Ds possessed the chilli sprays for the unlawful purpose of causing injury to others by them or some other person. Ds appealed against conviction. D1 also appealed against his sentence of nine months’ imprisonment.

Held, dismissing the appeals, that:

Appeal against conviction by D1

• Given her overall analysis, the Magistrate had not shifted the burden of proof onto D1. In considering whether the articles were offensive weapons, she had to make findings on the credibility of D1’s testimony; otherwise it would be impossible to safely determine the relevant issues. She had first accepted the prosecution witnesses as honest and reliable and then rejected DTs testimony that he had lawful authority or reasonable excuse for possession as incredible. Section 94(A) of the Criminal Procedure Ordinance (Cap. 221) did not have much application here. (See paras. 26, 31, 35–36.)

• DTs clothing and equipment were not evidence of “uncharged acts” but part of the evidence as a whole and relevant to the purpose of his possession of the chilli spray. Such evidence should be admitted if there was no statutory provision requiring its exclusion and the Magistrate properly took it into account (R v. Chong Ah Choi [1994] 3 HKC 68, Chin Hon Man v. HKSAR (1999) 2 HKCFAR 145, HKSAR v. Chu Chi Wah (No 1) [2010] 4 HKLRD 675, HKSAR v. Kwok Hing Tony [2010] 3 HKLRD 761 applied). (See paras. 38–39, 47–48.)

• Given the expert evidence as to the effects of the chilli spray, the Magistrate was entitled to find that D1 knew the liquids were not edible and reject his assertion that they were for consumption as completely unbelievable. There was sufficient circumstantial evidence for her conclusion that D1 had the requisite unlawful intention and this was the only reasonable inference that could be drawn. As for DTs argument that his clothes were merely the type worn by BMX riders and he had a reflective vest bearing the words “First Aid”, even if they were for other legitimate purposes, it did not affect the finding that D1 possessed items intended to

Criminal law and procedure — possession of offensive weapon in public place — chilli spray — not offensive weapon per se — whether offensive weapon on basis intended for purpose of causing injury to others — whether lawful authority or reasonable excuse — whether magistrate reversed burden of proof — whether erred by taking account of uncharged acts — whether erred in approach to circumstantial evidence — Public Order Ordinance (Cap. 245) s. 33(1), (2)

Criminal sentencing

CRIMINAL LAW AND PROCEDURE

HKSAR v. Chan Yiu Shing
[2018] 1 HKLRD 421
Court of First Instance
Magistracy Appeal No 377 of 2016
Albert Wong J
17 March, 7 April 2017

Criminal law and procedure — possession of offensive weapon in public place — chilli spray — not offensive weapon per se — whether offensive weapon on basis intended for purpose of causing injury to others — whether lawful authority or reasonable excuse — whether magistrate reversed burden of proof — whether erred by taking account of uncharged acts — whether erred in approach to circumstantial evidence — Public Order Ordinance (Cap. 245) s. 33(1), (2)

Criminal sentencing

www.hk-lawyer.org
D1–2被控一項在公眾地方管有攻擊性武器罪，違反《公安條例》第33(1)及(2)條，裁判官裁定二人罪名成立。(见 paras. 50, 53, 57–63, 67.)

**Appeal against conviction by D2**

• D2的罪名不是不可推翻的，裁判官亦就自己被判處80及245週的判處進行宣判。這是一個由D2的被告上訴計算其刑期的案件，本身及當前案件。(见 paras. 98–99, 103.)

• Given the circumstances as a whole, there was no good reason to interfere with the Magistrate’s finding as to the credibility of D2’s defence; and his intention to possess it (R v. Chong Ah Choi [1994] 3 HKC 68 applied). (See paras. 117, 119.)

• D had previous convictions including one relating to an explosive substance. That D1 had five bottles of the liquid in his possession suggested that he intended to use them continuously. There was also a risk that some might fall into the hands of others for illegal purposes. Bringing chilli spray to protests might also discourage members of the public from exercising their right to participate in peaceful protests. Accordingly, while D1’s sentence was severe, it was not manifestly excessive. (See paras. 120–121, 123–125.)

**Appeal**

This was an appeal by the first defendant against conviction and sentence for possession of an offensive weapon in a public place and by the second defendant against conviction for the same offence imposed by Ms Winnie Lau in the Magistrates’ Court. The facts are set out in the judgment.

**刑事法及訴訟程序**

HKSAR v. Chan Ying Shing [2018] 1 HKLRD 421

原訴法庭

裁判法院上訴案2016年第377號

高等法院原訟法庭法官黃崇厚

2017年3月17日、4月7日

**裁決**

D1被控罪名成立，裁定

• 從她的整體分析看來，裁判官沒有將舉證責任轉移給D1。考慮相關物品是否攻擊性武器時，她必須就D1的證詞的可信性作出判斷，否則她不可能合理地就相關證詞作出裁定。她先信納控方人員為誠實可靠，然後拒絕接納D1的證詞，判斷D1指自己曾有是否合理辯解。裁判官可有逆轉舉證責任 — 是否錯在考慮了不被檢控行為 — 有關環境證據的做法是否有錯 — 《公安條例》(第245章)第33(1)及(2)條

**裁判罪判刑**

— 在公眾地方管有攻擊性武器 — 擬在示威地點作傷害他人用途的辣椒噴霧 — 相關因素

— 檢控人員是否試圖藉訟辯影響判處 — 《公安條例》(第245章)第33(1)及(2)條

D1—2被控一項在公眾地方管有攻擊性武器罪，違反《公安條例》(第245章)第33(1)及(2)條，裁判官裁定二人罪名成立。控方案情是，D1穿著類似盔甲的保護衣服，與D2在示威地點附近現出。二人分別被發現身上帶有辣椒噴劑，D1有五樽，D2有一樽。辣椒噴霧沒有油的成份，含有辣椒素、二氫辣椒素(含稱「辣椒素物質」)和異丙醇，可引起與胡椒噴霧相若的效果(痛楚、刺激、紅腫)，不過程度輕微，算不上有害。樽內辣椒噴劑可以微細霧狀形態噴出來，距離可達50厘米，審訊時，D1作供稱，他當時正前往某幾處所外提供急救工作，所帶透明樽載著的是辣椒油，是朋友給他的，他在外出用膳時使用；他不認識D2，當時帶領D1前往有關處所，途中被截停。裁判官判斷控方證人為誠實可靠，拒絕對舉證責任轉移給D1。考慮相關物品是「辣椒噴霧」和「胡椒素物質」，案情決定，考慮相關物品是否攻擊性武器時，她必須就D1指自己曾有是否合理辯解。裁判官認為不被檢控行為不成立，有關環境證據的做法是有錯，指控兩名被告在公眾地方管有攻擊性武器罪名成立。
法權限或合理辯解的說法並不可信。

《刑事訴訟程序條例》(第221章)第94(A)條的作用對本案影響不大。(見第26–31、35–36段)


D1就判處提出上訴

裁判官判處D1的手法無可詬病。檢控官只是提醒了她，他的結案陳詞中所附的其中一宗案例有處理判處上訴，「簡下可唔可以幫助法庭」。他完全不是試圖藉訟辯影響裁判官的判處。裁判官指出該案與本案有相近之處，也有相異之處。(見第111–114段)

D2就定罪提出上訴

D2的定罪不是不安全，也不是不穩妥。辣椒噴劑本質上不是攻擊性武器。即使相關液體可以服用或服用了不致有害，它也有可能因為管有者擬使用它來攻擊別人而成為攻擊性武器。裁判官有責任考慮整體相關證據，以決定是否應將D2管有辣椒噴霧視為為了傷害他人的用途，並且這是唯一可以作出的合理推論。他們的結論理據充份。相關專家意見在於液體的性質和對人的影響，D2的辯解的可信性評估及他管有液體的意圖這兩方面有其作用。(引用R v. Chong Ah Choi [1994] 3 HKC 68)

Taxation — stamp duty — appeal against assessment by way of case stated — seven-day time limit — court had no jurisdiction to extend time limit — Stamp Duty Ordinance (Cap. 117) s. 14(2)

Human rights — equality before courts and right to fair hearing under art. 10 Hong Kong Bill of Rights Ordinance (Cap. 383) and art. 35 Basic Law

TAXATION

Danix Ltd v. Collector Of Stamp Revenue [2018] 1 HKLRD 910
District Court
Stamp Duty Appeal Nos 3 & 4 of 2012
Judge Liu Man Kin in Chambers
31 January, 2 February 2018

Taxation — stamp duty — appeal against assessment by way of case stated — seven-day time limit — court had no jurisdiction to extend time limit — Stamp Duty Ordinance (Cap. 117) s. 14(2)

Human rights — equality before courts and right to fair hearing under art. 10 Hong Kong Bill of Rights Ordinance (Cap. 383) and art. 35 Basic Law

[Stamp Duty Ordinance (Cap.117) s.14(2)]

CI–2 lodged notices of appeal against assessments by the Collector of Stamp Revenue (the Collector) of stamp duty payable Cs acknowledged receipt of the Case Stated from the Collector. However, Cs failed to serve it on the Secretary for Justice (SJ) or set down the cases for hearing within the seven-day time limit under s. 14(2) of the Stamp Duty Ordinance (Cap. 117). The Collector applied to strike out the appeals.
Held, granting the applications, that:

• Cs’ challenge to the seven-day time limit in s. 14(2) based on the right to equality before the courts and right to a fair hearing under art. 10 of the Hong Kong Bill of Rights could not succeed, since tax matters fell outside the scope of civil rights and obligations under art. 10. There was also no inequality between the absence of a time limit for the Collector’s duty to prepare the Case Stated taking into account the duty payer’s comments, which was a time-consuming exercise, and the seven-day limit for the duty payer’s duty under s. 14(2), which involved relatively simple matters. (Lee Yee Shing Jacky v. Inland Revenue Board of Review [2011] 6 HKC 307 (CFI), Lee Yee Shing Jacky v. Inland Revenue Board of Review [2012] 2 HKLRD 981 (CA).) (See paras. 18–19.)

• If a duty payer did not comply with s. 14(2), but the delay was excusable and the appeal meritorious, the duty payer could seek relief from the Court of First Instance by judicial review. Thus, the seven-day time limit did not infringe the right of access to courts under art. 35 of the Basic Law. (Lee Yee Shing Jacky v. Inland Revenue Board of Review [2012] 2 HKLRD 981 applied.) (See paras. 20–23.)

• Accordingly, the Court did not have jurisdiction to extend the seven-day time limit in s. 14(2). The appeals could not proceed and should be struck out under s. 48(1) of the Ordinance and O. 1B r. 1(2)(l) of the Rules of the District Court (Cap. 336H, Sub.Leg.) (Bangkok Capital Antique Co Ltd v. Collector of Stamp Revenue (1984) 2 HKTC 83 applied). (See paras. 24–25.)

Application

This was an application by the Collector of Stamp Revenue seeking an order to strike out the appeals brought by the two appellant-companies for non-compliance with the 7-day time limit under s. 14(2) of the Stamp Duty Ordinance (Cap. 117). The facts are set out in the judgment.

For full summaries and judgments, please refer to Westlaw and Hong Kong Law Reports & Digest at www.westlaw.com.hk.
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LAM NATALIE
KATE
林家希
TANNER DE WITT
泰德威律師事務所

TAM CHING
譚政
MAYER BROWN JSM
孖士打律師行

CHIU LOK SZE
SINCERE
趙樂施
CLIFFORD CHANCE
高偉紳律師行

LAU PO WA
VIVIAN
劉寶樺
STEPHENSON HARWOOD
羅夏信律師事務所

TAM TSZ SHAN
TIFFANY
譚芷珊
ALLEN & OVERY
安理國際律師事務所

FUNG CLEMENT
PETER
馮愷民
MAYER BROWN JSM
孖士打律師行

LI CHEUK BON
SANBORN
李焯彬
CLIFFORD CHANCE
高偉紳律師行

WONG JING
黃正
PRINCIPAL TRUST COMPANY (ASIA) LIMITED

April 2018 • PROFESSIONAL MOVES
會員動向

www.hk-lawyer.org
Partnerships and Firms
合夥人及律師行變動

changes received as from 1 February 2018
取自2018年2月1日起香港律師會所提供之最新資料

• CHAN LAI CHING
  joined Ricardo Lee & Associates Law Office as a partner as from 01/03/2018.
  陳麗菁
  自2018年3月1日加入李廣文律師行為合夥人。

• CHAN MING KIT
  became a partner of C.K. Charles Ho & Co. as from 01/03/2018.
  陳銘傑
  自2018年3月1日成為何傳經律師事務所合夥人。

• CHAN PAK LAM ANDREW
  ceased to be the sole practitioner of Andrew Chan & Co. as from 12/03/2018 and the firm closed on the same day. Mr. Chan remains as a consultant of Jimmie K.S. Wong & Partners.
  陳柏林
  自2018年3月12日不再出任陳柏林律師事務所獨資經營者一職,而該行亦於同日結業。陳律师仍繼續擔任黃嘉錫律師事務所顧問一職。

• CHAN YING LAM ANGELA
  became a partner of Wan Yeung Hau & Co. as from 02/02/2018.
  陳映霖
  自2018年2月2日成為溫楊侯律師事務所合夥人。

• CHONG MAN YEE
  became a partner of L & Y Law Office as from 20/02/2018.
  周敏儀
  自2018年2月20日成為林余律師事務所合夥人。

• CHUNG HOI YING MIRANDA
  commenced practice as the sole practitioner of Chung & Co., Solicitors as from 01/03/2018.
  鍾海英
  自2018年3月1日獨資經營鍾海英律師行。
HEW KIAN HEONG
ceased to be a partner of Pinsent Masons as from 01/03/2018.
丘健雄
自2018年3月1日不再出任品誠梅森律師事務所合夥人一職。

KAHNG JOO HEE
joined Ropes & Gray as a partner
as from 21/02/2018.
自2018年2月21日加入瑞格律師事務所為合夥人。

LAI LAI SHAN ESTHER
ceseased to be a partner of Deacons as
from 01/02/2018 and joined Kwok Yih & Chan as a partner as from
05/02/2018.
黎麗珊
自2018年2月1日不再出任的近律師行合夥人一職,並於2018年2月5日加入郭葉陳律師事務所為合夥人。

LAM SAN KEUNG
ceased to be a partner of L & Y Law Office as from 03/02/2018.
林新強
自2018年2月3日不再出任林余律師事務所合夥人一職。

LEE KA KIT SPENCER
ceased to be the sole practitioner of
Spencer Lee & Co. as from 01/03/2018
and the firm closed on the same day.
李家傑
自2018年3月1日不再出任李家傑律師事務所獨資經營者一職,而該行亦於同日結業。

LO KON KI
became a partner of Lo & Fung as from
08/02/2018.
羅幹淇
自2018年2月8日成為羅馮律師事務所合夥人。

LUI CHI HUNG
ceased to be a partner of Cheung & Liu,
Solicitors as from 01/03/2018 and joined
Wong, Fung & Co. as a consultant on the same day.
呂志雄
自2018年3月1日不再出任張廖律師事務所合夥人一職,並於同日加入黃馮律師行為顧問。

McBRIDE CATHERINE MARY
became a partner of Latham & Watkins
as from 01/02/2018.
自2018年2月1日成為瑞生國際律師事務所合夥人。

NG CHI HIM
ceased to be a partner of Winnie Leung & Co. as from 20/02/2018 and joined
Edward Lau, Wong & Lou as a partner on the same day.
吳自謙
自2018年2月20日不再出任黃偉倫律師行為合夥人一職,並於同日加入劉黃盧律師行為合夥人。

NG SHAN YUNG
joined L & Y Law Office as a partner as from 03/02/2018.
吳燦榕
自2018年2月3日加入林余律師事務所為合夥人。

OWEN KEVIN ROBERT
ceased to be a partner of Mayer Brown JSM as from 01/03/2018.
區建宏
自2018年3月1日不再出任孖士打律師行為合夥人一職。

LOU KON KI
became a partner of Lo & Fung as from
08/02/2018.
羅幹淇
自2018年2月8日成為羅馮律師事務所合夥人。

SILLI REBECCA
ceased to be a partner of Minter Ellison as from 01/03/2018.
自2018年3月1日不再出任銘德律師事務所合夥人一職。

SUEN CHI WAI
ceased to be a partner of DLA Piper Hong Kong as from 13/02/2018 and
joined Withers as a partner as from 26/02/2018.
孫志偉
自2018年2月13日不再出任歐華律師事務所合夥人一職,並於2018年2月26日加入衛達仕律師事務所為合夥人。

TANG CHIK CHEE TERRIS
became a partner of Latham & Watkins
as from 01/03/2018.
邓植之
自2018年3月1日成為瑞生國際律師事務所合夥人。

YU PUI HANG
joined Lam, Lee & Lai as a partner as from 03/02/2018.
余沛恒
自2018年2月3日加入林李黎律師事務所為合夥人。

ZANG YUANHONG
became a partner of Fongs as from
08/02/2018.
張元洪
自2018年2月8日成為方氏律師事務所合夥人。

ZANG YUE
ceased to be an assistant solicitor of Guantao & Chow Solicitors and
Notaries as from 01/03/2018 and joined Peter Yuen & Associates as a partner on the same day.
張悦
自2018年3月1日不再出任觀韜律師事務所(香港)助理律師一職,並於同日加入阮葆光律師事務所為合夥人。
Often, people tend to categorise those who appear to be dominant and stubborn as “strong” or “good” negotiators and assume that it is impossible to reach any agreement with such persons. Some may find asking for what they want to be confrontational in nature and would rather avoid it than to feel awkward or uncomfortable. Some might dismiss any discussion, labelling a subject-matter as non-negotiable. However, the reality is that we all, whether consciously or subconsciously, bargain all the time in order to obtain a favourable result and “everything is negotiable” (Eldonna Lewis-Fernandez, Think Like a Negotiator).

For lawyers, attempting to strike a deal is unavoidable. There are various situations in which lawyers regularly negotiate. For example, discussing fee arrangements with clients and/or the adjustment of their fees; carrying out transactions or settlements on behalf of clients; discussing the nature and schedule of tasks to be undertaken; and assignment of tasks to their subordinates. Even setting an agenda for any meeting, which might appear to be relatively straightforward, may sometimes require some form of negotiation. For example, there could be disagreements in deciding the topics to address, the order in which they should be discussed, who should start first, etc.

The fact that lawyers negotiate regularly is not enough to master the art – it has to be honed. By becoming aware each time when in a situation that requires bargaining and with the adoption of certain techniques, lawyers might gain more confidence in trying to achieve a favourable result.

1. Authority. Imagine having spent time preparing for a meeting and then proposing your points to the other party. At the end, the other party is convinced but does not have any decision-making authority as he or she is merely representing the client who is absent. Simply knowing who is sitting at the table might not be enough. At the beginning of the negotiation confirm with the other party whether or not he or she has the authority to settle any agreement reached. This would save you the hassle of going through the entire negotiation process once again with the person authorised to settle.

2. Positive atmosphere. Commend the other side for agreeing to negotiate. Share in the beginning (and throughout the negotiation as you identify) any common ground between yourselves. For example, both sides might be at the negotiation table to avoid going to court and legal fees, or both sides might be concerned about their reputation, etc. Subject to their confirmation of the common ground, consider listing them on a board or on some paper that is visible to the parties. If at some point the negotiations turn sour, you may want to refer to the common ground to diffuse the situation and to recreate positive feelings.

3. Know your bottom line - make an informed decision. Accurately evaluate what the best and worst outcomes (commonly referred to as BATNA or Best Alternative to a Negotiated Agreement and WATNA or Worst Alternative to a Negotiated Agreement respectively) might be if no settlement is reached. The former helps you identify your position. You might try to improve your BATNA and approach your BATNA if no agreement is reached at the negotiation. With regard to the latter, if the other side’s final offer is less than your WATNA, you could walk away from the table. Furthermore, your flexibility to settle would largely depend on how you feel about your WATNA. Often however, we tend to assume or are unrealistic as to what our BATNA and WATNA are and therefore we may decline an attractive offer or walk away from the table unnecessarily. A comprehensive calculation including taking into account the costs, duration, etc. would help avoid negotiating poorly.
4. **Active listening.** All or at least most of us know how to listen, but active listening is different. Usually when comments are being made, instead of actively listening, we are likely thinking of how to respond to those comments. Instead, try to:

a. Make eye contact. By maintaining little eye contact, you may be perceived as uninterested, disingenuous or indecisive. On the other hand, too much eye contact might make the other side feel uncomfortable or threatened.

b. Acknowledge. From time to time, nod your head, say “yes” or “uh huh” without being mechanical.

c. Rephrase. Use your own words to repeat what appears to be key points raised and to put a positive spin on any negative comments made. For example, Party A says “You have not paid my invoice for months!” Party B rephrases “So it is important for you to receive payments on time.”

d. Summarise what the other side has said from time to time.

e. Be aware of your body language. For example, try not to sit with your arms crossed as it may send a negative message.

Active listening is a powerful technique which might enable the other party to let off steam if any and appreciate being heard. It even works in personal relationships.

5. **Give and take - everyone is a winner.** Settlement agreements are usually entered into when all the parties feel that they are winning something and not losing everything. Abandon the “I must win all” attitude. But what do you give and what do you take?

a. Focus on interest rather than position. An important and necessary step in any negotiation is to ask why the other party is positional on his or her stance to establish his or her underlying goal. Also understand your own underlying goal. The classic example is where two parties quarrel over an orange. Merely suggesting that the parties split the orange in half may not work when one party wants the peel for baking and the other is interested in the pulp for juice. The more you ask, the more you learn about the other party’s interests.

b. Put yourself in the other party’s shoes. Prior to any negotiation, think about the situation from the other party’s perspective. This will help you to understand or at least give you an idea as to what the other party’s interest or underlying goal might be.

c. Keep an open mind and think of creative options. It increases the number of solutions the parties can choose from (provided they benefit all the parties involved as explained earlier). It may also have a positive impact on the outcome of the negotiation as many win-win options can only encourage the other party (including the dominant kind) to consider settling or to engage by brainstorming more win-win solutions. Examples of creative solutions might include (on the assumption that these are valid and enforceable): setting-off, long-term contracts, short-term contracts, minimum turnover, maximum turnover, exclusivity or partial exclusivity, royalties, installments, right of first refusal, conditional pricing, barter, fixed rate or floating rate, etc.

d. Fairness. Solutions should be based on objective criteria instead of a party’s bargaining power. Use standards or principles such as market value, custom, business practice, independent expert opinion, etc. Even consider flipping a coin if you reach a deadlock (Roger Fisher and William Ury, *Getting to Yes*).

6. **Embrace the power of silence.** After sharing with the other side an underlying goal or suggesting an option to the other side, the room may become silent. It may become awkward or uncomfortable and there is an urge to promptly clarify or digress just to fill the silence, thereby conceding that underlying goal or option. Instead, although this might be one of the most difficult techniques to learn, try to smile, maintain eye contact and wait for 10 to 12 seconds. Bear in mind that one of the reasons for the silence in the first place might be that the other party is digesting what you have just shared with them or the other party may be thinking of a response. The other party may eventually also find the silence to be unbearable and be encouraged to speak his or her mind quickly and possibly reveal critical information.

Practice the negotiation techniques in front of a mirror and/or on your friends, family members, colleagues and relatives with an open mind. Read articles and books for an in-depth analysis and further techniques on negotiation. A personal favourite is the classic *Getting to Yes* by Fisher and Ury. The key is to plan, prepare and practice!

“Maybe you should reconsider those place cards.”
透過談判取得有利結果

作者 Navin G. Ahuja

那些看來支配和固執的人,人們往往把他們視作「強」或「好」的談判者,並認為不可能與這些人達成任何協議。有些人可能會覺得出要求好像咄咄逼人,故寧願避而不談,也不願場面尷尬不安。有些人可能會拒絕任何討論,把事情列為不可談判。然而,事實是,我們不時有意識或潛意識地討價還價以獲得有利結果,一切都是可協商的。(Eldonna Lewis-Fernandez《Think Like a Negotiator》)。

對於律師而言,嘗試達成協議是不可避免的一環。律師經常需要談判的情況有很多種,例如與客戶討論費用安排及∕或調整費用;代表客戶進行交易或結算;討論將要开展的任務的性質和時間表;將任務分配給下屬等。即使制定會議議程,看起來很簡單,有時也需要某種形式的談判,例如,決定討論的主題、討論的次序、唯人首先發言等,均可能存在分歧。

律師經常談判,仍不足以掌握談判藝術,必須加以磨練。意識到每個需要討價還價的情況,採用某些技巧,或能令律師對取得有利結果更有信心。

1.**決策權。**試想像,你花了時間準備會議,然後向對方提出你的觀點,最後令對方信服,但對方沒有決策權,因為他只是代表缺席的客戶。只知道誰坐在談判桌或許不夠。在談判開始時,與對方確認一下,他是否有權就任何和解協議作出決定。這樣可節省再次與授權人員重新談判的麻煩。

2. 正面的氣氛。讚揚對方同意談判。在開始時談判時(及在整個談判過程中)指出雙方的共同點。例如,雙方可能在談判避免訴諸法庭和支付律師費,或雙方都關注其聲譽等。在他們確認共同點的基礎上,考慮將共通點列寫於雙方可見的佈板或紙張上。如果談判在某個時候急轉直下,你可提出共通點來分開局面,創造正面的觀感。

3. 知道你的底線,作明智的決定。準確評估若未能達成和解的最佳和最差結果(通常稱為BATNA或談判協議最佳替代方案),前者可幫你確定自己立場。如談判未能達成協議,你可以嘗試推進BATNA並接近它;如果對方的最終方案差於BATNA,你可以離開談判桌。此外,解決方案的靈活性很大程度上取決於你對WATNA的感受。然而,我們往往傾向堅持BATNA和WATNA,或者訂立不現實的BATNA和WATNA,因而可能拒絕有吸引力的提議,或不必要地離開談判桌。完整的計算,包括考慮成本、時間等,有助避免談判不當。

4. 積極傾聽。我們所有人或至少大多數人都懂得傾聽,但積極傾聽不同,通常在提出意見時,我們可能會考慮如何回應,而不是積極傾聽。相反,嘗試:
   a. 眼神交流。眼神接觸不足,你可能會被視為不感興趣、不誠實或優柔寡斷。相反,過多的眼神接觸可能會使對方感到不安或受威脅。
   b. 確認。不時點頭,回應「是」,但避免機械化。
   c. 改變措辭。用自己的說話重複提出的關鍵問題,並對負面評論給予肯定。例如,甲方說:「你們幾個月還沒有付清我的發票!」乙方改變措辭說:「所以你們按時收到付款很重要。」
   d. 不時總結對方的說話。
   e. 注意身體語言。例如,盡量不要雙臂交叉,因為這樣可能會傳達負面信息。

積極傾聽是強而有力的技巧,可讓對方消消氣,為被聆聽而高興。它甚至能在個人關係中起作用。

5. 能屈能伸,個個都是贏家。通常在各方都認為自己贏得一些什麼,而不是失去一切,才能達成和解協議。放棄「我必須贏得所有」的態度。但是你給予什麼,又得到什麼?
   a. 專注於利益而不是立場。任何談判中一個必要的步驟,就是問為什麼對方為了達成根本目標而站在他的立場上,同時也了解你的根本目標。典型的例子是雙方因為一個橙而爭吵。建議把橙分成兩半可能不行,因為一方想要燈皮烘焙,而另一方想要果汁。越問會了解對方的利益。

6. 沉默是金。與對方分享根本目標或向對方建議選項後,房間可能變得沉默無聲,場面可能會變得尷尬或不安,令人急於立時澄清或離題以填補沉默,從而承認這個潛在目標或選擇。相反,儘管這可能是最難學的技術之一,但試著微笑,保持眼神接觸,等待10至12秒。請記住,沉默的原因之一可能是對方正在消化你剛剛與他們分享的内容,或者對方可能正在考慮回應。對方可能最終也會變得沉默無法忍受,應該鼓勵他們盡快說出想法,並且可能會透露重要信息。

以開放的態度在鏡子及∕或朋友、家人、同事、親戚身上練習談判技巧。閱讀文章和書籍,深入分析和增進談判技巧,個人最喜歡是Fisher和Ury的經典著作《Getting to Yes》。關鍵是要規劃、準備和實踐!
Save the date!

ASIAN LEGAL BUSINESS

LAW AWARDS 2018

MALAYSIA - 22 March
CHINA - 19 April
SE ASIA - 10 May
JAPAN - 13 June
HONG KONG - 7 September
INDONESIA - 4 October
PHILIPPINES - 26 October
KOREA - 15 November

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Contact Amantha at amantha.chia@tr.com for more information on sponsorship and get publicity across the region.

WWW.LEGALBUSINESSONLINE.COM/LAW-AWARDS
CUHK Law Receives Major Research Grant from Erasmus+ Jean Monnet Programme and Joins the Jean Monnet Network ‘EUCROSS’ for 2018-2021

The Faculty of Law of The Chinese University of Hong Kong (‘CUHK Law’) has been awarded a major research grant from the Erasmus+ Jean Monnet Programme (2018-2021) managed by the Education, Audiovisual and Culture Executive Agency which implements programmes and activities on behalf of the European Commission. The Faculty has also joined the Jean Monnet Network’s ‘EUCROSS’ (‘The European Union at the Crossroads of Global Order’) to investigate the challenges and opportunities that the European Union (‘EU’) and its main international partners face in times when our conventional understanding of the global order is put into question and multilateralism is ‘contested’.

CUHK Law Team comprises members including Professor Julien Chaisse, Professor Yan Xu, Professor Jyh-An Lee, Professor Sandra Marco Colino, Mr. Denis Edwards, Ms. Rachel Xu Qian, Ms. Kehinde Olaoye, Ms. Flavia Marisi and Mr. Dini Sejko.

EUCROSS aims to bring international and interdisciplinary expertise together and to conduct research on the inter-relationship of the EU and its key international partners with a specific focus on the opportunities and challenges that these partnerships face in the context of an international system that is increasingly seen as being ‘out of order’ (Foreign Affairs 2017).

For these reasons, EUCROSS focuses on two central themes: (i) the EU’s strategic re-orientation in global affairs – including the new emphasis on ‘principled pragmatism’ and ‘resilience’ in its 2016 Global Strategy – and its enduring support for a rules-based and cooperative international order; and (ii) the specific challenges and opportunities for the EU to foster bilateral and multilateral cooperation with its main international partners, i.e. the United States and Brazil, Russia, India, China and South Africa (BRICS), while duly taking into account the latter’s recent actions and changes in strategic direction. More specifically, EUCROSS will investigate these two themes through the lens of the following five policy areas: trade, sustainable development, migration, counter-terrorism and human rights.

Upcoming Conference in June 2018

CUHK Law and the Leuven Centre for Global Governance Studies will co-organise the first international conference of EUCROSS entitled “The EU and its Partners in Global Governance: Trade, Investment, Tax and Sustainable Development” in Hong Kong on 14-15 June 2018 to investigate how the EU can seek new partnerships to implement these critical objectives. Details will be announced on the CUHK Law website (www.law.cuhk.edu.hk).
Article by CUHK JD Student Benny Chung
Published in Trusts & Trustees, Oxford University Press

CUHK Law JD student, Chung Cheuk Kwan Benny, has an article “Fraud Prevention? Dehors? Or What?: why secret trusts are enforced?” published in the journal Trusts & Trustees (Volume 24, Issues 2, Oxford University Press). Trusts & Trustees is a leading international journal on trust law and practice and is an essential source of reference for academics and practitioners specialising in trusts, members of the judiciary and regulatory bodies, and institutional libraries.

In his article, Benny seeks to discuss the flaws of the fraud theory and the dehors the will theory, and justify the enforcement of secret trusts with the conscience-estoppel theory, a theory that is built upon two established equity principles. He has cited the publications of CUHK Law Professors Steven Gallagher and Stephen Hall in his article, the full text of which can be viewed at https://doi.org/10.1093/tandt/ttx205.

Hong Kong Student Law Gazette Issue 11 (Fall 2017)

Founded in 2011 as the GLSA Gazette*, the Hong Kong Student Law Gazette (‘the Gazette’) is Hong Kong’s leading law student publication entirely run by students. It was initially written, edited and managed exclusively by CUHK postgraduate law students and subsequently began inviting participation from the CUHK undergraduate community, as well as students from all three universities with law programmes in Hong Kong. In fall 2012, the Gazette became an independent society of GLSA and was rebranded the Hong Kong Student Law Gazette. It is published twice per academic year with an aim to encourage students to engage in key legal and social issues, contribute to legal scholarship, and build closer ties between law students and the wider legal community.

The Gazette has interviewed members from the judiciary and the legal professions in the past issues. In the latest issue of Fall 2017, the Gazette features an interview with The Honourable Rimsky Yuen Kwok-keung SC, former Secretary for Justice of the HKSAR, and contains interesting articles contributed by students covering legal and social issues in Hong Kong and the international communities. An electronic copy of the Gazette is available at https://hongkongstudentlawgazette.com/fall-2017/.

*GLSA refers to ‘Graduate Law Students Association’, which is a student society of CUHK Law.
Greater China Legal History Seminar on “The History of Consumer Law in Hong Kong: Just a Series of Failed Endeavours?” (13 April 2018)

This CPD seminar to be delivered by Professor Geraint Howell will review the history of failed proposals to reform Hong Kong’s consumer protection system, explore why a coherent consumer policy is needed to meet the expectations of Hong Kong’s citizens and to underpin shopping tourism in Hong Kong and how such a policy can be implemented. Eligible participants will receive 1.5 CPD points from the Law Society of Hong Kong. For details, please visit http://www.law.cuhk.edu.hk/en/event-page/20180413.php.

Scholarships and Prizes Presentation Ceremony 2018

CUHK Law held a Scholarships and Prizes Presentation Ceremony on 2 March 2018 to present more than 70 scholarships and prizes to its LLB, JD, LLM and PCLL students and graduates. Donors, Faculty members, families and friends of the recipients attended to share the joy of the recipients’ academic achievements. At the ceremony, CUHK Law thanked the following scholarship and prize donors for their continued support: Boase Cohen & Collins, Davis Polk & Wardwell LLP, Freshfields Bruckhaus Deringer, Gallant Ho Charities & Public Well-Being Services (H.K., P.R.C.) Ltd, Hong Kong Bar Association, Jarvis & Kensington, LexisNexis, Mayer Brown JSM, Robertsons, Sir Oswald Cheung Memorial Fund Limited, The Association of China-Appointed Attesting Officers, The Hong Kong Institute of Trade Mark Practitioners, and The Law Society of Hong Kong.

2018年獎學金和獎項頒發典禮

中大法律學院於2018年3月2日舉行了獎學金及獎項頒發典禮，向法學學士、法學博士、法學碩士及PCLL學生及畢業生頒發70多個獎學金及獎項。捐助者、教職員、家屬和朋友出席典禮，與獲獎者分享喜悅。中大法律學院感謝以下獎學金和獎項捐贈者的長期支持：布高江律師行、Davis Polk & Wardwell LLP、富而德律師事務所、中國香港何耀棣慈善及公益事業有限公司、香港大律師公會、Jarvis & Kensington、LexisNexis、孖士打律師行、羅拔臣律師事務所、張奧偉爵士紀念基金有限公司、中國委託公証人協會有限公司、香港商標師公會有限公司及香港律師會。

Dr. Gallant Ho (front row on the left), donor of Gallant Ho Prizes in Law, Betty Ho Prizes in Law and Betty Ho Prize in Law for Summer Study Abroad, with the prize recipients, Faculty Dean and programme directors.

何耀棣法學成績優異獎、何美歡法學成績優異獎及何美歡法學暑期海外研習獎捐助人何耀棣博士（前排左）與得獎學生、院長及課程主任合照。
Inauguration Ceremony of the Undergraduate Law Society of the Student Union of CUHK, 2018-2019

This ceremony held on 1 March 2018 marked the introduction of the new Executive Committee of the Undergraduate Law Society “Incendo”, the official student representative body of undergraduate law students at CUHK. In Latin, “Incendo” carries the meanings including “to inflame”, “to excite” and “to illuminate”. It symbolises the new Executive’s fiery passion to serve and guide the members of the Society, and its responsibilities to provide leadership and illumination to the undergraduate community.

Welcomed by Professor Christopher Gane, Dean of CUHK Law, the ceremony was addressed by The Honourable Mr. Justice Robert Tang, SBS, Permanent Judge of the Court of Final Appeal; Mr. Alan Leong SC; and Mr. Nicholas Chan, Partner of Squire Patton Boggs. Representatives from the legal professions and members of CUHK Law were also present to give their support to the Society.

Mr. Philip Dykes SC of the Hong Kong Bar Association (first from left), Ms. Fiona Chan of Boase Cohen & Collins (first from right), Mr. Nelson Mu of Sir Oswald Cheung Memorial Fund Limited (second from right), with recipients of the PCLL subject prizes, Faculty Dean and programme director.

香港大律師公會主席戴啟思資深大律師(左一)、布高江律師事務所Fiona Chan女士（右一）與PCLL學科獎得獎者、院長及課程主任合照。

Mr. Benjamin Lee of LexisNexis (first from left), Ms. Priscilla Kam of Freshfields Bruckhaus Deringer (second from left) with recipients of the JD and LLB subject prizes, Faculty Dean and programme directors.

LexisNexis的Benjamin Lee先生（左一）富而德律師事務所Priscilla Kam女士（左二）與JD及LLB學科獎的得獎者、院長及課程主任合照。

Mr. Philip Dykes SC of the Hong Kong Bar Association (first from left), Ms. Fiona Chan of Boase Cohen & Collins (first from right), Mr. Nelson Mu of Sir Oswald Cheung Memorial Fund Limited (second from right), with recipients of the PCLL subject prizes, Faculty Dean and programme director.

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Mr. Philip Dykes SC of the Hong Kong Bar Association (first from left), Ms. Fiona Chan of Boase Cohen & Collins (first from right), Mr. Nelson Mu of Sir Oswald Cheung Memorial Fund Limited (second from right), with recipients of the PCLL subject prizes, Faculty Dean and programme director.
The 22nd Goff Arbitration Lecture: Making the Best of Arbitration

The 22nd Goff Arbitration Lecture was held on 12 February 2018 at the Connie Fan Multi-media Conference Room, City University of Hong Kong. This year, we were much honoured to have the Rt Hon. The Lord Hope of Craighead KT, as the speaker to give a lecture titled “Making the Best of Arbitration”.

In the beginning of the lecture, Lord Hope introduced arbitration and define it as a means to resolve disputes outside the court system. He emphasized the privacy and confidentiality of arbitration since it is opted-out the court system which highly depends on the contracts of agreement.

Then, he shared various aspects of the arbitration process based on his experience. He reminded the audience to be careful on drafting the arbitration clause and choose the appropriate law to govern the procedure. He also highlighted the importance of judge in supporting the arbitration process in a fast growing global market. He adopted the Fiona Trust case as one of the best known decisions in English arbitration case law, setting out a “fresh start” in English jurisprudence with the strong presumption that commercial parties intend all disputes to be determined in a single forum.

As an alternative means of dispute resolution involving foreign trade activities, international arbitration institution has started to play a notable role. For example, as a home grown institution, the Hong Kong International Arbitration Centre sets up rules to supplement the local law system; while the International Chamber of Commerce (ICC) as a world business organization based in Paris, helps businesses of all sizes and in all countries to operate internationally and responsibly. Lord Hope provided a critical analysis of the ICC and reminded the audience to evaluate the value of the choice of institution.

On the other hand, third party funding becomes a growing phenomenon. Lord Hope believed that it enhances the access to justice and is a good thing for the equality of arms and for the overreaching principles of procedural fairness and justice. However, he stated the risks of aggravating an already exploding caseload and the arrival of third-party funders may alter the entire landscape by significantly increasing the number of claims.

In conclusion, Lord Hope asserted that arbitration, as a means to resolve disputes, is an inexpensive and impartial alternative to the public courts. He encouraged arbitrator, as peace maker, to be open and frank at discussion in striking the balance of interests. Lord Hope illustrated many of the points made in the lecture with practical examples drawn from his extensive experience as an advocate, arbitrator and judge.

After the lecture, the participants raised interesting points for discussion with Lord Hope in a question and answer session led by Mr David Holloway from the School of Law, who proposed a formal vote of thanks to Lord Hope. Finally Dean Professor Geraint Howells presented a gift to Lord Hope and brought an end to the lecture.
HKU Law Receives the First Gift for its Golden Jubilee and Gives a Preview of its Celebration

The Eleventh Inauguration of Endowed Professorships sees the establishment of The Warren Chan Professorship in Human Rights and Responsibilities, as well as the successive appointment of The Kerry Holdings Professor in Law. We congratulate Professor Fu Hualing and Professor Douglas Arner for their respective appointments. The Faculty of Law is very grateful to its donors for their support to Hong Kong’s legal education and Rule of Law.

The Faculty of Law’s Endowed Professorships encompasses a wide range of specialisations (Notes). The Warren Chan Professorship in Human Rights and Responsibilities underscores the importance of human rights and responsibilities. Professor Fu Hualing, the inaugural appointee, is an internationally renowned scholar in constitutional law, legal institutions, and human rights with a focus on China, and cross-border legal relations in the Greater China region. His work has been important in building the University’s reputation for research and scholarship in relation to China’s legal reforms, legal institutions, and civil society.

Mr Warren Chan SC believes that the human rights of everyone should be equally protected, “Human rights are important, and human responsibilities are equally important. Ask not just what your rights are, but also what your responsibilities are, to yourself, to others and to the environment. Every society will have to strike its own balance of such rights and responsibilities.” He is confident that the University is in a good position to continue to play a constructive role in promoting the development of human rights. As an alumnus and close friend of the Faculty, he also wishes that others will join him in supporting the Faculty, especially at this time when Hong Kong’s first law school celebrates its 50th Anniversary.

The Faculty is thankful to Mr Chan and is excited that it is the first gift to the Faculty in conjunction with its Golden Jubilee. “One of the Law Faculty’s greatest assets is its outstandingly loyal alumni. Mr Warren Chan SC’s munificence caps a long and continuing history of support in many shapes and forms. The Faculty undertakes to ensure that every cent will be spent for the betterment of human rights and responsibilities in Hong Kong, and everywhere else in the world,” said Professor Michael Hor, Dean of Law, who also looks forward to celebrating this happy occasion with donors, alumni, members of the legal profession and the Hong Kong community.

Established in 1969, The Faculty of Law of The University of Hong Kong is the first law school in Hong Kong and one of the most prestigious law schools internationally. The year of 2019 marks the 50th Anniversary of the Faculty. The year-long celebration with the theme “Law, Justice and Humanity: 50 years and beyond” will begin with the largest conference ever organized by the Faculty - the Annual Conference of The International Society of Public Law (ICON-S 2018) in late June 2018. Please visit 50.law.hku.hk, a website which will be officially launched in late June 2018, for the latest information of the activities.

Notes: Named professorships in the Faculty of Law are (in chronological order):

- Sir Y.K. Pao Chair in Public Law
- Harold Hsiao-Wo Lee Professorship in Trust and Equity
- Kerry Holdings Professorship in Law
- Paul K C Chung Professorship in Jurisprudence
- Cheng Chan Lan Yue Professorship in Constitutional Law
- Warren Chan Professorship in Human Rights and Responsibilities

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Rowan Varty’s Careers in Rugby and the Law

By Rowan Varty, Solicitor

Rowan Varty first began playing rugby at the age of nine and it was the draw of playing in the Hong Kong Sevens which introduced him to the game at an early age. His parents took him to the Hong Kong Sevens each year and after watching the exhibition matches with children his own age playing, he and a friend decided they would rather be playing than watching. Varty began his rugby career by joining what was then the Kai Tak Tigers. Twenty-three years later, he is happy to say that he was able to fulfil his dream of playing at the Hong Kong Sevens (for the Kai Tak Tigers under 10s team) and then later for Hong Kong.

Touring the world with rugby
Playing rugby has taken Rowan around the world, both on tour and to play for a variety of teams. Throughout that time, he has represented Hong Kong internationally. Both of Rowan’s parents grew up in Hong Kong and raised him and his sister here, so representing Hong Kong has always been the biggest source of pride for him in his rugby career.

Varty has represented Hong Kong at the Hong Kong Sevens twelve times, winning the inaugural shield competition in 2010. He also captained Hong Kong to their first ever Asian Sevens Series victory in 2012, represented Hong Kong at three Rugby 7s World Cups, three Asian Games (winning two silver medals), and the National Games of the PRC, where Hong Kong also won a silver medal.

His rugby career was built upon and motivated by playing for Hong Kong at the Sevens. He has also had the great fortune of representing Hong Kong over forty times in the 15-a-side game, training with London Irish at a time when 2003 World Cup winner Mike Catt was player-coach, representing the Penguins RFC (a touring team made up of international players from around the world), and being the only Hong Kong person to represent the Barbarians RFC against England at Twickenham. He also spent a year playing in Japan for the Toyota Industries team based in Nagoya.

Balancing rugby with the law
Varty has been fortunate enough to enjoy a successful rugby career alongside his career in law. This has involved some flexibility from both ends at times; he sat his final PCLL (Postgraduate Certificate in Laws) exam and immediately got on a flight to Japan to play in a test for Hong
Kong. During his training contract, he would train with the Hong Kong team before and after work. Needless to say it was a busy time in his life!

On more than a few occasions, the two careers have coincided. One such occasion was in preparing for the 2010 Asian Games, the eligibility requirements for the Hong Kong rugby team to compete changed, and the players were required to hold a Hong Kong SAR passport. Rowan was able to work on the naturalisation applications of his teammates which ultimately allowed for those players to compete in the Asian Games. Hong Kong won a silver medal.

The greatest thing about rugby has been the people he has met through the sport. These include the partners at Tanner De Witt, who were brave enough to offer a rugby player a training contract, and then support him as he has balanced his career in law with his career in rugby. Without the support of the firm he would be a rugby player, or a lawyer, but not both. He is truly indebted to them for their support and foresight and would like to take this opportunity to thank them.

Rugby in Hong Kong

Hong Kong has a small rugby playing population but it is unusual in the sense that this small population is made up of professional players at one end, and very social players (who may not even play that much) at the other. Rowan is currently at the professional end of that scale, but looks forward to joining the opposite end in the future.

Rugby is a physical sport. Certainly at the elite level, the size of the players and physicality of the game have both grown in the last few years. But ultimately, rugby is a game of skill. Perhaps the biggest draw of the game is that it can be played by those of all shapes and sizes, and a brief glance at the teams competing each weekend in Hong Kong will confirm this. As one of the smaller, faster players, Varty has spent his career running away from the bigger and (hopefully) slower ones.

Getting Involved

Professional rugby players make up a very small percentage of the rugby community in Hong Kong. There is a strong rugby culture here, which whilst originally built within the expat community, has grown more recently in the local community. If you are interested in playing rugby, helping as a coach, offering a helping hand in any way, or simply joining a rugby club purely for the social aspect, Rowan encourages you to do so. The Hong Kong Rugby Union website has plenty of information on the various clubs which are spread all over Hong Kong and clubs are always ready to welcome new players, coaches, and those that can simply offer a helping hand even if they have no rugby experience whatsoever.
華路雲的欖球和法律生涯

作者 華路雲 律師
泰德威律師事務所

華路雲（Rowan Varty）9歲開始打欖球，正是因為香港七人欖球賽，令他自幼對欖球產生興趣。他的父母每年都會帶他去看香港七人欖球賽，看過同齡的小朋友比賽後，他覺得真正在場打球比做觀眾更為有趣，於是華路雲加入了當時的啟德老虎隊，開始了他的欖球生涯。23年後，他很高興能夠實現參加香港七人欖球隊的夢想（先後代表啟德老虎隊10歲以下組別和香港）。

隨欖球踏遍世界

華路雲因打欖球走遍世界各地，參加各項巡迴賽和各種球隊。那時他代表香港曾出戰不同的國際性賽事。華路雲的父母和妹妹都在香港長大，能夠代表香港出戰欖球賽，令他最引以自豪。

欖球與法律事業的平衡

華路雲在欖球生涯外，亦要兼顧法律事業，需要有一定的靈活性。他考畢
PCLL（法律研究生證書）當天，便立即飛往日本參加比賽。在實習合約期間，他會在上下班時與香港隊一起訓練。那時的生活，橄球與法律事務交織，十分繁忙！

兩方面的事業有時正好互相輔相成。其中一次是為2010年亞運會做準備時，香港橄球隊的參賽資格要求更改，球員必須持有香港特區護照。華路雲為隊友申請入籍，最終這些球員獲准參加亞運會，為香港贏得銀牌。

橄球最棒之處是他通過這項運動認識了很多人，包括Tanner De Witt律師行的合夥人，他勇於為一位橄球運動員提供實習律師合同，支持他在橄球和律師事業之間取得平衡。如果沒有Tanner De Witt律師行的支持，華路雲不能同時兼顧橄球和律師的生涯。因此，華路雲非常感激律師行的支持和遠見，並希望藉此機會感謝他們。

香港的橄球圈
在香港，打橄球的人為數不多，特別在這一小撮人要不是職業球員，要不是社交為主（甚至可能很少打球）。華路雲現時屬於專業球員，同時也期待未來打球以社交為主！

橄球是一項對體能要求甚高的運動。當然，在精英級別，對球員的體型和比賽實力在過去幾年中均有提高，但畢竟橄球亦是技巧性運動，其最吸引之處在於各種體型的球員均可參加，且看每個週末的香港球隊，就能看出這一點！華路雲體型較小、速度較快，長處是能更快跑離體型較大、速度較慢的對手。

歡迎你的加入
專業橄球運動員只佔香港橄球圈很少數。香港濃厚的橄球文化最初在外籍人士社群建立，近年伸延至本地人社群。華路雲積極鼓勵各位加入橄球俱樂部，參與橄球比賽、擔任教練、又或提供任何協助甚至結識朋友。香港橄球總會的網站有很多關於香港各橄球俱樂部的信息，隨時歡迎新球員、教練或完全沒有橄球經驗的人士加入。
This month, our questions concern perhaps the most famous fictional lawyer of the common law world, Horace Rumpole. The questions have been prepared by Douglas Clark, Barrister-at-Law. Suggestions for questions to appear in next month’s journal are most welcome.

1. **Rumpole is also known as Rumpole of the ...?**
   - A. Uxbridge Magistrates Court
   - B. Bailey
   - C. Chancery Division
   - D. Privy Council

2. **Rumpole refers to his wife Hilda as She Who Must...?**
   - A. Tremble and Obey
   - B. Not Be Allowed to Shop
   - C. Never Study Law
   - D. Be Obeyed

3. **Rumpole famously (in his mind at least) single-handedly, without a leader, secured an acquittal in which case:**
   - A. The Penge Bungalow Murders
   - B. The Hello Kitty Murder
   - C. The Charing Cross Murders
   - D. The Murder on the Orient Express

4. **What is the name of the wine bar Rumpole frequents?**
   - A. The Chancery
   - B. The Embankment
   - C. Pomeroys
   - D. Temple Inn

5. **Rumpole frequently quotes which poet?**
   - A. T.S. Eliot
   - B. Wordsworth
   - C. Shakespeare
   - D. Browning

6. **Claude Erskine-Brown, Rumpole’s chambermate, attended which public school?**
   - A. Eton
   - B. Harrow
   - C. Winchester
   - D. Charterhouse

7. **What is the nickname of older barrister who never has any briefs who spends much of his time in the clerks’ room of chambers?**
   - A. Uncle Paul
   - B. Uncle Pete
   - C. Uncle Ted
   - D. Uncle Tom

8. **What is the surname of the East London crime family for whom Rumpole regularly acts?**
   - A. The Molloys
   - B. The Timsons
   - C. The Mollards
   - D. The Simpsons

9. **Actor Leo McKern who played Rumpole in the TV series was from which country?**
   - A. South Africa
   - B. New Zealand
   - C. Australia
   - D. England

10. **To Rumpole the initials QC stand for what?**
    - A. Queen’s Counsel
    - B. Queer Customer
    - C. Quaint Customs
    - D. Quite Childlike

**Answers to Legal Trivia Quiz #46**

1. A. Sir Geoffrey Briggs had a fascination with frogs and his chambers and home were covered with frog collectibles of all shapes and sizes.
2. B. Denys Roberts, a prolific author, wrote “I’ll Do Better Next Time”.
3. C. James Findlay started his career as a member of the British South Africa Police in Rhodesia.
4. B. Mohammed Saeed, former Chief Justice of Uganda, was forced to flee Uganda by Idi Amin.
5. D. John Carrington was Attorney General of British Guiana before becoming Chief Justice of Hong Kong.
6. C. Robert Tang was Chairman of the Hong Kong Bar Association from 1988 to 1990.
7. A. Paul Cressal, was district judge in Palestine before being appointed as puisne judge in Hong Kong.
8. B. Leslie Gibson served with the RAF during WWII.
9. B. Henry Gompertz, puisne judge from 1909 to 1925, spoke Chiuchow, Hokkien and Cantonese.
法律知識測驗 #47

本月的問題圍繞普通法世界最著名的虛構律師Horace Rumpole。問題由馬錦德大律師編製。歡迎建議下期問題。

1. Rumpole亦被稱為哪個法庭的Rumpole？
   A. 鄂克斯橋(Uxbridge)治安法庭
   B. 中央刑事法庭
   C. 商事法庭
   D. 樞密院

2. Rumpole說他的妻子Hilda是必須......的人。
   A. 發抖和服從
   B. 不許購物
   C. 永遠不讀法律
   D. 被服從

3. Rumpole在以下案件中單人匹馬令當事人無罪釋放而聞名（至少在他的想象中）：
   A. Penge Bungalow謀殺案
   B. Hello Kitty 謀殺案
   C. 查令十字謀殺案
   D. 東方快車號謀殺案

4. Rumpole經常光顧的酒吧叫什麼名字？
   A. The Chancery
   B. The Embankment
   C. Pomeroys
   D. Temple Inn

5. Rumpole經常引用哪個詩人？
   A. T.S. Eliot(艾略特)
   B. Wordsworth(華茲華斯)
   C. Shakespeare(莎士比亞)
   D. Browning(勃朗寧)

6. Rumpole的同事Claude Erskine-Brown就讀哪所公立學校？
   A. 伊頓公學
   B. 哈羅公學
   C. 溫切斯特公學
   D. 查特豪斯公學

7. 從來未打過官司，大部分時間都花在文員房的老大律師的綽號叫？
   A. Paul叔叔
   B. Pete叔叔
   C. Ted叔叔
   D. Tom叔叔

8. Rumpole經常代表的東倫敦犯罪家庭姓什麼?
   A. The Molloys
   B. The Timsons
   C. The Mollards
   D. The Simpsons

9. 在電視連續劇中扮演Rumpole的演員Leo McKern來自哪個國家?
   A. 南非
   B. 紐西蘭
   C. 澳洲
   D. 英國

10. 對Rumpole來說，英文字母QC代表什麼?
    A. Queen’s Counsel(御用大律師)
    B. Queer Customer(古怪的客戶)
    C. Quaint Customs(老派的海關)
    D. Quite Childlike(有點孩子氣)

競賽規則：
讀者如欲獲取一瓶由Global Vintage Wines Centre提供的2007年Ch. Roquettes 2010 (Grand Cru)或Ch. Tour Baladoz 2006 (Grand Cru)葡萄酒，請將問題答案寄交navin.ahuja@thomsonreuters.com。首位能提供最多正確答案(答錯的題目不得多於三題)的讀者將成為優勝者。湯森路透就得獎者所作的決定是最終及不可推翻的。

法律知識測驗 #46的答案

1. 貝里士爵士對青蛙很感興趣，而且他的辦公廳及家裏都堆滿了各種形狀和大小的青蛙收藏品。
2. 多產作家羅弼時撰寫了：“I’ll Do Better Next Time”。
3. 范達理以作為英國駐南非羅得西亞警察的一員開始了他的職業生涯。
4. 烏干達前首席法官沙義德被伊迪阿敏強迫逃離烏干達。
5. 賈靈頓在成為香港首席法官之前是英屬圭亞那的律政司。
6. 鄧國楨於1988年至1990年擔任香港大律師公會主席。
7. Paul Cressal在被任命為香港陪席法官前，是巴勒斯坦地方法院法官。
8. 几卜生於第二次世界大戰期間在皇家空軍服役。
9. 1909年至1925年的陪席法官Henry Gompertz會說潮州話、福建話和廣東話。
10. 在1960年，何瑾加入「英日委員會」處理根據《舊金山和平條約》的爭議。
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To find out more, contact Amantha Chia at amantha.chia@thomsonreuters.com or (65) 6870 3917
A global trust/fiduciary and corporate services provider is looking for an experienced lawyer to head up their Legal Risk/Compliance department. The business has an established global legal and compliance team and this role will play a part in building the team in APAC. Day-to-day functions will include M&A transactions, trust and fiduciary services, onshore and offshore corporate advisory, risk management and regulatory compliance.

**Key Requirements:**
- Hong Kong or common law qualified lawyer of minimum five years’ PQE
- Experienced in M&A, funds/trusts or offshore corporate work
- Chinese language skills are advantageous but not essential

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A globally recognised asset manager seeks a Head of Legal & Compliance for the Hong Kong office. This is a new role; reporting to the Global General Counsel and Head of Compliance in London. The role requires a qualified lawyer with strong regulatory and transactional experience to take ownership of the function, maintain all interactions with the SFC and act as Money Laundering Reporting Officer.

**Key Requirements:**
- Minimum of eight to ten years’ experience in the Compliance or Legal functions, ideally from an asset management, the SFC or a top law firm
- Possess a good knowledge of SFC rules and regulations
- Possess knowledge of compliance and regulatory practice, with relevant fund management, dealing and distribution practices
- Chinese language skills are advantageous but not essential

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A well-established global bank with a strong presence in Hong Kong is looking to make a critical hire into their Financial Crime Compliance team. This is a director level role overseeing Hong Kong and China AML programmes, managing the AML team and reporting into the Regional Head of AML. In addition to the below requirements, you will need to have excellent communication and leadership skills.

**Key Requirements:**
- Minimum of eight years’ AML/financial crime experience and a minimum three years’ experience working in a regional role
- Strong knowledge of the local AML/CFT regulatory requirements
- Strong communications, analytical and presentation skills
- ACAMS or equivalent certification is preferred

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A rapidly growing fund manager specialising in private equity direct investments into leading healthcare, medical and bio-pharma companies. This fund has recently launched a hedge-fund business and they are keen to hire a compliance professional with some legal training or background to oversee the institutionalisation of their regulatory and compliance practices partnering with the senior leadership team.

**Key Requirements:**
- Minimum five years’ experience as a compliance professional within the asset management industry in Hong Kong, preferably with regional or global regulatory exposure
- Good knowledge of laws and regulations in relevant Asian jurisdictions, prior direct experience in developing internal policies and partnering with regulatory bodies will be preferred
- Good command in written and spoken English and Chinese (including Mandarin)

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To find out more, please contact Oliver at +852 2103 5317 or oliver.allcock@robertwalters.com.hk.

www.robertwalters.com.hk
Meet the team

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

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Chrystal Cheung
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Tina Wang
Associate Director,

Sabina Li
linkedin.com/in/sabinali

Tang Serena
Associate Director,
linkedin.com/in/tangserena

To apply, visit www.michaelpage.com.hk quoting the reference number or contact our consultants.
Real Estate

Leading real estate practice is expanding its already thriving practice and seeks a property partner or senior lawyer with ambition and drive. There is no requirement for a book of business given the reputation of the firm’s current practice. (HKL 16407)

M&A

This well-known international firm is expanding its highly rated M&A practice and seeks a senior lawyer from a top tier firm to take on a leadership role. Great opportunity for senior lawyers frustrated by lack of career prospects at their current firm. (HKL 16288)

Dispute Resolution

US law firm seeks young and ambitious litigators to join their disputes practice to work on a broad range of international commercial disputes, arbitration and regulatory investigation work. Strong academics and Mandarin required. (HKL 16304)

Associate – Insolvency Restructuring

City law firm seeks to expand its tier 1 insolvency restructuring practice. A great opportunity for a lawyer with corporate or finance background to work with special situations group and distressed debt acquisitions. (HKL 16297)

Competition

City firm seeks an experienced antitrust/competition lawyer to join their tier 1 practice. Lawyers with experience or keen interest in Asia related competition law, merger control, regulatory investigations preferred. Mandarin language required. (HKL 16297)

M&A

Global law firm seeks a lawyer to join their growing corporate team. You will have exposure to sizeable transactions, solid transactional experience in M&A and private equity matters. Chinese language not essential. (HKL 16384)

Banking Associate

International law firm with well-established banking practice seeks a junior to mid-level banking associate. You will have enjoyed training at an international law firm or reputable local law firm. Excellent English and Chinese required. (HKL 16341)

Legal Counsel

Well known investment bank seeks a junior lawyer with excellent knowledge of derivatives and master agreement documentation. This is a great opportunity for a lawyer in private practice or in-house to join a dynamic and collegiate team. (HKL 16394)

MNC Regional General Counsel

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. Fluency in Mandarin will be very useful. Opportunity to manage a small legal team. (HKL 15997)

In-House Paralegal

A global aviation company seeks a junior finance paralegal to provide legal support to the regional business. Excellent opportunity to develop into aviation asset finance. Fluency in both Mandarin and English required. (HKL 16320)

Legal Counsel

A global provider of clean energy seeks a mid-senior corporate/commercial lawyer to provide legal support to the regional business. Experience gained at a multinational corporate or an international law firm preferred. Fluency in both Mandarin and English required. (HKL 16386)

Senior Legal Counsel

A conglomerate with a growing APAC business seeks to hire a legal counsel with solid in-house experience. You will focus on their HK and growing SEA regional business. Experience from consumer goods or F&B industry is an advantage. Chinese language required. (HKL 16332)

Senior Legal Manager

A well-known real estate development group seeks a mid-senior level lawyer with corporate experience. You will provide legal advice on general corporate, M&A, joint venture, finance, commercial and fund transaction. Experience from international law firms / real estate industry is an advantage. Chinese language required. (HKL 16008)

Senior Legal Manager

A leading property developer seeks a mid-senior level real estate lawyer to support their business in Hong Kong. You will handle property transactions, sale agreements, commercial contracts and provide general legal advice on commercial matters. Fluency in English and Chinese required. (HKL 16182)
In-House

<table>
<thead>
<tr>
<th>REAL ESTATE/COMMERCIAL</th>
<th>HONG KONG</th>
<th>8-15 YEARS</th>
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<tbody>
<tr>
<td>Global luxury retailer seeks a senior lawyer to join its team in Hong Kong. You will have extensive real estate experience from another in-house position ideally in the retail, supply chain or luxury brand sector. Chinese language skills not needed and French would be helpful. HKL6976</td>
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<thead>
<tr>
<th>RETAIL/CORP/COMMERCIAL</th>
<th>HONG KONG</th>
<th>10+ YEARS</th>
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<tbody>
<tr>
<td>Global retail conglomerate is seeking an Associate General Counsel to join its legal team in Hong Kong. You should have at least 10 years of commercial legal experience with exposure to M&amp;A. Chinese language skills are essential. HKL6766</td>
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<tr>
<th>FUNDS</th>
<th>HONG KONG</th>
<th>8-10 YEARS</th>
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<tbody>
<tr>
<td>Asset manager seeks a Head of Legal for its Hong Kong office. You will have non-contentious regulatory experience &amp; Mandarin language skills. You will advise on fund related matters &amp; regional regulatory issues. Excellent opportunity for a lawyer looking to move in-house. HKL6956</td>
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<tr>
<th>ETHICS &amp; COMPLIANCE</th>
<th>HONG KONG</th>
<th>7+ YEARS</th>
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<tbody>
<tr>
<td>Global fashion brand seeks a senior lawyer to join its legal team in Hong Kong. You will be responsible for managing and delivering the Ethics and Compliance Program for the APAC region, including identifying critical issues and risks. Chinese language skills are essential. HKL6949</td>
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<tr>
<th>DCM</th>
<th>HONG KONG</th>
<th>5-8 YEARS</th>
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<tr>
<td>Well-known US investment bank is looking for its first legal counsel in Hong Kong. Reporting to the Head of Legal in London, you will be involved in a mix of equity &amp; debt markets work. The Hong Kong office offers a friendly &amp; collegiate atmosphere. Chinese skills are not essential. HKL6984</td>
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<tr>
<th>IP/TECHNOLOGY</th>
<th>HONG KONG</th>
<th>4-8 YEARS</th>
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<tr>
<td>Global financial institution seeks an intellectual property and technology counsel. You will support management &amp; business units in APAC in relation to IT. You will have at least 4 years PQE in the tech space from a law firm/ in-house environment. Fluency in English required. HKL6969</td>
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<tr>
<th>PRIVATE ASSET MANAGER</th>
<th>HONG KONG</th>
<th>1-5 YEARS</th>
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<tbody>
<tr>
<td>Asset manager for high net worth individuals is currently looking for a junior to mid-level lawyer to join its existing legal team, advising on general commercial &amp; compliance matters. Prior compliance experience would be an advantage. Chinese language skills are not required. HKL6994</td>
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Private Practice

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<thead>
<tr>
<th>BANKING &amp; FINANCE PSL</th>
<th>HONG KONG</th>
<th>4-10 YEARS</th>
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<tbody>
<tr>
<td>Excellent opportunity to join a global law firm as a professional support lawyer in the banking &amp; finance team. You will have strong banking &amp; finance experience, however prior PSL experience is not required. Excellent spoken &amp; written English and Chinese skills are essential. HKL6954</td>
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<tr>
<th>DISPUTE RESOLUTION</th>
<th>HONG KONG</th>
<th>6-8 YEARS</th>
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<tbody>
<tr>
<td>An international firm in Hong Kong is looking for a senior associate to join its top tier litigation practice. You should have between 6-8 PQE and be HK qualified with excellent Chinese language skills. Financial services regulatory experience is highly preferred. HKL6985</td>
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<tr>
<th>CORPORATE FINANCE</th>
<th>HONG KONG</th>
<th>5-8 YEARS</th>
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<tr>
<td>Leading offshore firm is looking for a corporate finance associate to join its busy team. You should have at least 5 years’ relevant experience and be Commonwealth qualified. Fluent Chinese language skills are required. Attractive remuneration on offer. HKL6972</td>
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<tr>
<th>FUNDS</th>
<th>HK/CHINA</th>
<th>5+ YEARS</th>
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<tbody>
<tr>
<td>Magic circle firm seeks a US qualified funds lawyer to join its team in Hong Kong, Shanghai or Beijing. You should have excellent academics and at least 5 years of fund formation experience from a top tier firm. Fluency in Mandarin and English required. HKL6975</td>
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<tr>
<th>IP LITIGATION</th>
<th>HONG KONG</th>
<th>3+ YEARS</th>
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<tbody>
<tr>
<td>International firm seeks an IP litigator to join its HK office. You will have at least 3 years PQE with a sound knowledge of IP litigation and fluent English &amp; Chinese language skills. You will be part of the Dispute Resolution team with a focus on TMT regulatory and IP matters. HKL6973</td>
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<tr>
<th>BANKING X 2</th>
<th>HONG KONG</th>
<th>1-8 YEARS</th>
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<tbody>
<tr>
<td>A top US firm is looking for banking associates to join its expanding team. Associates with between 1-8 PQE with specialist experience in the banking field, particularly in the restructuring area, may apply. You must be fluent in Mandarin. Great career track and strong platform on offer. HKL6946</td>
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<tr>
<th>PARALEGAL (REAL ESTATE)</th>
<th>HONG KONG</th>
<th>1-3 YEARS</th>
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<tbody>
<tr>
<td>A sizable international law firm is looking for a junior paralegal to support its real estate team. You will be working very closely with the partners and associates on drafting legal documents, preparing legal opinions and advice. Excellent $ and track provided. HKL6977</td>
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This is a selection of our current vacancies; for more information in complete confidence, please call the Hong Kong office on +852 2503 2500 or email us at sandra@atticus-legal.com or nigel@atticus-legal.com.

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Annual Calendar Ref. 5205G
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