Hong Kong Court Opens Door to Winding Up Foreign Company Arbitration Award Debtor on Basis of Its Secondary Listing in Hong Kong

HK$280
Overview
Asian Legal Business is proud to present the Hong Kong 2017 In-House Legal Summit taking place on 12 September. ALB’s signature annual summit gathers together in-house counsels, legal practitioners and industry experts to discuss recent regulatory changes, hot pressing legal issues and best practice solutions in Hong Kong and the Greater China region.

Current Speakers Confirmed To Date
- Jose Martin R. Tensuan, Partner, ACCRALAW
- Jose Eduardo T. Genilo, Partner, ACCRALAW
- Oliver Massmann, Partner, Duane Morris Vietnam LLC
- Robin Snasdell, Managing Director, Consilio
- Joshua Cole, Managing Partner, Ashurst Hong Kong
- Chin Yeoh, Partner, Ashurst Hong Kong
- Patricia Woodbury, Managing Director, Risk & Investigations, FTI Consulting
- Sean Lam, Managing Director, Risk & Investigations, FTI Consulting
- Dr Christopher Boog, Partner, Schellenberg Wittmer
- Wai B. Zee, General Counsel, Asia Pacific, WeWork
- Kevin Brocklehurst, Head of Legal & Governance, Group Investments, AIA
- Stephen Wong, Privacy Commissioner for Personal Data, Hong Kong
- Nick Malhotra, Director Compliance Asia Pacific, Philip Morris International
- Beverly Chau, Asia Pacific Legal Counsel, L’Oréal
- Kevin Wilkey, Head of Legal, Asia, MetLife
- Kevin Marr, Assistant General Counsel, Global Financial Crimes Legal, JPMorgan Chase
- Maaike van Meer, Chief Legal & Compliance Officer, AXA Insurance Hong Kong
- Fiona Phillips, Associate General Counsel, The Hong Kong and Shanghai Banking Corporation Limited
- And many more pending confirmation!

Agenda at a Glance*
- The Forensic Response to a Regulatory Investigation
- How to Handle ADR Proceedings Like Mediation or Adjudication: Best Practices, Tactical Considerations and Pitfalls
- Exploring Cross-Border M&A Opportunities across Asia Pacific and the Greater China Region
- Addressing Day-to-Day Challenges Faced by In-House Lawyers
- Strengthening Hong Kong’s Anti-Money Laundering Regime
- Tips on Optimizing your Company’s Legal Department Management
- Investment Opportunities and Challenges in Vietnam & Myanmar
- Addressing Multi-Jurisdictional Cyber Offenses in the Philippine Context
- Cybersecurity and Data Protection – How Should In-house Counsels Deal with Real-World Legal and Regulatory Issues
- The Liabilities of In-House Counsels

Are you interested to speak on any of the above topics? ** Please contact Willy Leonardi at willy.leonardi@thomsonreuters.com

If you are a law firm or legal services provider and would like to be involved in this event, please contact Amantha Chia at amantha.chia@thomsonreuters.com or call +65 6870 3917.

Register now at www.regonline.com/HK-IHLS2017

Complimentary passes are available for in-house legal counsels subject to first come first serve basis.

For more information about this event, please visit www.legalbusinessonline.com/ihs/HK-IHLS2017

* This is a working agenda. ALB reserves the right to amend the agenda and speakers at anytime.
** The speaking/panel slots at this event are reserved for in-house legal/compliance professionals, while law firms/solutions providers speak on a sponsorship basis.
Inside your August issue
八月期刊內容
42 DISPUTES
Hong Kong Court Opens Door to Winding Up Foreign Company Arbitration Award Debtor on Basis of Its Secondary Listing in Hong Kong

48 INDUSTRY INSIGHTS

61 CASES IN BRIEF

70 CAREER DEVELOPMENT
The Return of WILHK’s Mentoring Programme

72 PROFESSIONAL MOVES

75 CAMPUS VOICES

78 LAWYERS AT LEISURE
Formula E Hong Kong ePrix set to Roar Back to the Heart of Hong Kong in December 2017

82 ASIDE
Stepping Into the Unknown

86 LEGAL TRIVIA QUIZ

88 BOOK REVIEW
Atrocity Speech Law: Foundation, Fragmentation, Fruition

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For event information and submissions, contact Caryl Aquino at mary.aquino@thomsonreuters.com or call +632 982 5938.

For table reservations, contact Sardor Yangibayev at sardor.yangibayev@thomsonreuters.com or call +65 6870 3190.

For sponsorship opportunities, contact Amantha Chia at amantha.chia@thomsonreuters.com or call +65 6870 3917.
There is a growing awareness of the negative impact of business practices that fail to respect human rights, with much publicity in recent years focusing on supply chain risks and abuses. It is especially important for lawyers to be attuned to these issues, as human rights abuses can present legal, financial and reputational risks for clients and have severe consequences when discovered.

As observed by the International Bar Association, law firms are increasingly expected to help their clients identify and manage human rights risks, as well as broader reputational risks that may be associated with them. With human rights constantly evolving and increasingly being reflected in hard law instruments, in-house lawyers are also being asked to play a significant role in managing their company’s strategic and reputational risks, including those that relate to human rights.

To assist lawyers who are involved in advising businesses globally, the International Bar Association Legal Policy and Research Unit (“IBA LPRU”) released a Handbook for Lawyers on Business and Human Rights on 17 July 2017, which provides guidance on how to address human rights risks in relation to certain legal practice areas: corporate mergers, acquisitions and restructuring; and commercial contracts, including supply, distribution and franchise agreements.

To offer further support, the IBA LPRU has also developed a curriculum and training programme for lawyers on business and human rights, which will be piloted this year in Australia, in partnership with the Law Council of Australia. The IBA LPRU will monitor and assess the pilot programme’s impact and areas for potential improvement in hopes of replicating it in other jurisdictions. The author of the Human Rights insight (p. 52) speaks more about the Handbook, as well as the training programme and its future potential.

The author also notes that for initiatives like the IBA LPRU to succeed in any jurisdiction, the entire legal profession, including legal regulators and bar associations, must be engaged and fully supportive. Hopefully, once this programme is available to other IBA members, leaders in other legal communities, including legal regulators, will support and lobby for its local replication, in addition to drawing upon the Handbook and other similar initiatives to ensure local lawyers are adequately equipped to advise businesses.

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2017 Annual Conference of In-House Lawyers
Organised by The Law Society’s In-House Lawyers Committee

KEYNOTE SPEAKER:
Mr. Rimsky YUEN
Secretary for Justice, HKSAR

Morning session
• Keynote Speech
• Prelude: What does the top management expect from the in-house legal team?
• Will Apology Legislation make Saying Sorry Less Difficult?

Afternoon session
• Innovation and Regulation: the Role of In-House Lawyers during the Transition to the Fintech Era
• Governance, Risk and Compliance - Managing Sustainability of an Organisation
• Doing business in Japan

29 September 2017
Friday

Morning session (2.5 CPD points):
9:00 am to 12:30 pm
(Registration starts at 8:15 am)

Afternoon session (3.5 CPD points):
2:00 pm to 5:50 pm
(Registration starts at 1:15 pm)

Meeting Room S221
Hong Kong Convention and Exhibition Centre

Registration fee is $100 per session

For registration, please complete the online reply slip via the Law Society Circulars and settle full payment of registration fee on or before 1 September 2017, Friday. Registration via other means will not be entertained.

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Government Support for the Development of the Legal Profession

Being the executive authority responsible for formulating and implementing policies and drawing up budgets for the allocation of resources, the government is in a unique position to influence and determine the future development of the territory. Government leadership in showing support for an initiative, a project or a sector raises territory-wide awareness and motivates progress.

I was deeply impressed by the strong support given by the Sri Lankan Government to its legal profession at the recent POLA (Presidents of Law Associations of Asia) Summit hosted by the Bar Association of Sri Lanka in Colombo. His Excellency, Hon. Maithripala Sirisena, President of the Democratic Socialist Republic of Sri Lanka, attended the Summit. Prime Minister Hon. Ranil Wickremesinghe and Attorney General Hon. Jayantha Chandrasiri Jayasuriya also spared time to speak to the delegates. The gracious attention given by the national leader to the Summit speaks volumes about the respect and support the nation has for the legal sector reaching out to the international community.

Another example of strong government leadership in supporting the legal profession is Singapore. To encourage law firms to use technology to improve their productivity, the Singaporean Government has allocated up to S$2.8 million to law firms as funding support of up to 70 percent of the firms’ first-year’s cost for technology products in practice management, online research and online marketing.

In Hong Kong, the policy objectives of the government include enhancing Hong Kong’s status as a centre for international legal and dispute resolution services in the Asia-Pacific region and as a key link for the Belt and Road, leveraging on Hong Kong’s unique competitive qualities including the availability of legal talent with multi-jurisdictional practice experience.

In alignment of these policy objectives, the Law Society has been actively promoting Hong Kong legal services to the international community at every possible opportunity. We are also putting in substantial efforts to enhance the global understanding of the unique position of Hong Kong as a Special Administrative Region of the People’s Republic of China under the implementation of the concept of One Country, Two Systems. Through networking with law societies and bar associations around the world, the Law Society has established extensive connections with legal professionals in different overseas jurisdictions, laying a good foundation for future collaborative initiatives for the benefit of our members. On the other hand, the Law Society is injecting more cross-border and international elements in our professional training programmes to equip our members to meet the increasing demands for multi-jurisdictional legal and dispute resolution services.

While the Law Society is trying its best to champion these causes, as a local professional body, our resources are limited and it is disappointing that the Government has not been as supportive for the legal profession as in some other jurisdictions.

One recent frustrating experience was the rejection by the Government of the Law Society’s application for space in the West Wing of the former Central Government Offices (“CGO”), which has been set aside for use by law-related organisations. The Government aims to create a Legal Hub at the heart of Hong Kong comprising the West Wing of the former CGO, the former French Mission Building and the Department of Justice offices in the Main Wing and the East Wing of the former CGO. The Law Society is a law-related organisation that has put in much effort to promote Hong Kong’s legal and dispute resolution services and is in need of additional space to continue to do so. The denial of our presence in the Legal Hub is disappointing, which is telling of the level of support the Government accords to the legal profession.

Apart from direct support like allocation of space, there is also room for improvement in the indirect support that the Government can give to the legal profession. Just to list a few examples of support that the Government may provide:

- more market information and more guidance on policy direction in economic initiatives (e.g., on the priority jurisdictions in the vast area covered by the Belt and Road Initiative that the legal service sector should focus its efforts in exploring expansion opportunities);
- more resources to improve and modernise Hong Kong’s capability to host international legal conferences enabling the legal profession to strengthen its worldwide connections;
• more resources to support training for practising law in Chinese including strengthening the bilingual capability of students from early schooling and building up a comprehensive supply of resources in respect of law books, precedents and judgments in Chinese;

• more resources to enable the implementation of appropriate technological tools to improve the efficiency of the legal system;

• long-term education planning to properly prepare the next generation to master and take advantage of the rapid evolution of information technology.

The legal profession is the backbone of society tasked with the heavy responsibility of defending the Rule of Law and protecting the legal rights of the public. It is important that the profession maintains a healthy and sustainable development. Support from the Government to achieve this is essential. Members’ views and wish lists on what the Government can do more to support the development of the profession are always welcome.

政府對法律界發展的支持

作為負責制定和實施政策、擬定預算、分配資源的行政機關，政府處於能影響和決定未來發展的獨特地位。政府高層對一個倡議、項目或界別表示支持，即能提高市民對它的關注，推動其發展。

我最近前赴科倫坡，出席由斯里蘭卡律師協會主辦的POLA（亞洲律師協會會長）高峰會。斯里蘭卡政府對該國法律界的鼎力支持，令我留下深刻印象。斯里蘭卡民主社會主義共和國總統Maithripala Sirisena先生撥冗出席了會議，總理Ranil Wickremesinghe先生及司法部長Jayantha Chandrasiri Jayasuriya先生亦出席並向與會者講話。國家領導人出席高峰會，向國際社會展示了國家對法律界的高度重視與支持。

另一個政府對法律界大力支持的例子是新加坡。為鼓勵律師行利用科技來提高生產力，新加坡政府撥出280萬新加坡元，支持高達70%律師行在執業管理、網上研究和網上市場推廣方面首年的科技產品成本。

在香港，政府的政策目標包括提升香港作為亞太區國際法律及爭議解決服務中心的地位；作為「一帶一路」的主體國，香港要積極爭取擁有現時多個司法管轄區具執業經驗的法律人才。

為配合這些政策目標，律師會積極爭取機會向國際社會推廣香港的法律服務。我們也希望香港能成為中華人民共和國特別行政區，實行一種兩制的特別地位。通過與世界各地的律師協會和大律師公會建立網絡，律師會與海外司法管轄區的法律專業人士建立了廣泛聯繫，為日後的合作奠定了良好基礎，為會員帶來利益。另一方面，律師會正為專業培訓計劃注入更多跨境和國際元素，配合會員的需要，以應付跨司法管轄區的法律和爭議解決服務日益增加的需求。

儘管律師會盡力支持，但作為一個本地專業團體，我們的資源有限，令令人失望的是，政府對法律界的支援並未如其他司法管轄區。

最近一個令人沮喪的消息，是政府拒絕了律師會使用前中區政府合署西座的申請，該處已騰出供法律相關組織使用。政府有意在前中區政府合署西座、前法國外方傳道會大樓及前中區政府合署中座及東座的律政司辦公室，在香港市中心打造法律樞紐。律師會是法律相關組織，一直致力推廣香港的法律和爭議解決服務。本會需要額外的空間，才能繼續進行這方面的工作，拒絕我們進駐法律樞紐，是個令人失望的決定，說明了政府對法律界的支援度。

除了分配空間等直接支持，政府向法律界提供的間接支持，亦有改善空間。以下是政府可提供支持的一些例子：

• 就經濟措施的政策方向提供更多市場信息和指引（例如「一帶一路」廣闊的幅原中，法律界應著力開拓機遇的重點司法管轄區）；

• 提供更多資源以改善和現代化香港舉辦國際法律會議的能力，令法律界能夠加強與全球的聯繫；

• 提供更多資源支持中文執業培訓，包括在早期教育加強學生的雙語能力、建立中文法律書籍、判例和判決書的綜合資源；

• 提供更多資源以落實利用適當的科技工具來提高法律系統的效率；

• 進行長期的教育規劃，令下一代作好準備，掌握和利用發展迅速的資訊科技。

法律界是社會的骨幹，肩負維護法治、保障公民合法權益的重責。法律界必須保持健康而可持續發展，而政府的支持對實現這個目標至關重要。會員如對政府可如何支持行業發展有任何意見，歡迎向本會提出。

www.hk-lawyer.org
Ben Yates
RPC, Senior Associate in Commercial Disputes

Ben Yates is an experienced commercial litigation and arbitration solicitor in RPC’s Hong Kong office. His practice focuses on complex disputes involving cyber law, data protection and fintech, often with a cross-border element.

Rojo Weiing
Liberty Chambers, Barrister

Antonio Da Roza is a barrister-at-law at Liberty Chambers. He is a contributor to Hong Kong Civil Procedure; Hong Kong Archbold; Securities and Futures Ordinance Commentary and Annotations; and the author of the Amendments and Transitions to Cap. 32: A Visual Guide; The New Companies Ordinance: A Visual Guide; Companies (Winding Up and Miscellaneous Provisions) Ordinance Commentary and Annotations (2d Ed.); and the new Financial Institutions (Resolution) Ordinance Commentary and Annotations.
Rico Chan

RPC, Trainee Solicitor

Rico Chan is trainee solicitor in the Insurance and Commercial Disputes teams at RPC handling a wide range of contentious matters covering contractual and shareholder disputes, employment, professional negligence, insurance coverage, international arbitration, regulatory advisory, debt recovery, liquidation proceedings and China-related litigation. He has a particular interest in cyber law and data protection.

Damien McDonald

Fangda Partners in association with Peter Yuen & Associates, Partner

Damien McDonald specialises in international arbitration with a particular focus and expertise in China-related disputes. He has also extensive experience in dealing with commercial disputes in Hong Kong, the United Kingdom and Australia. He has practiced with leading local and international dispute resolution teams in Hong Kong, Beijing, Shanghai, London and Australia.

Matthew Townsend

Fangda Partners in association with Peter Yuen & Associates, Legal Manager

Matthew Townsend has represented clients in arbitration proceedings in a number of jurisdictions under a variety of different arbitration rules, principally in the energy, infrastructure, construction and technology sectors. As a Chinese speaker, he also has experience appearing as advocate in arbitration hearings.

麦道民

上海市方達律師事務所聯營阮葆光律師事務所 合夥人

麥道民專長於國際仲裁,特別是中國相關爭議。他在處理香港、英國和澳洲的商業糾紛方面也具備豐富經驗。他曾在香港、北京、上海、倫敦和澳洲執業,領導本地和國際解決爭議的團隊。

馬修

上海市方達律師事務所聯營阮葆光律師事務所 法律經理

馬修代表客戶在多個司法管轄區根據各種仲裁規則進行仲裁程序,主要涉及能源、基礎設施、建築和技術業。他能說中文,亦有在仲裁聆訊中擔任律師的經驗。
Legal Tech

The breakneck pace at which technology evolves is marvellous. Its ubiquity creates an omnipresent influence on even the most intransigent of luddites. The legal profession, which is famed for its recalcitrance to innovation, has reached a tipping point. The legal, regulatory and business demands that lawyers must help their clients navigate ever more quickly by the day has pushed many practitioners, who want to remain relevant, to look towards technological solutions for assistance.

However, embracing technology to drive efficiencies and value on micro and macro levels comes with challenges – how can lawyers embrace innovative practices without compromising professional ethical standards?

The tech world has identified a number of major trends in 2017. Among them are automation and machine learning.

The legal profession has traditionally been considered a human-exclusive practice where machine automation had no meaningful role. However, the development of new technological tools has increasingly demonstrated technology’s relevance and usefulness to legal service providers. These innovative tools range from the automation of mundane time-keeping tasks to sophisticated legal research work. For instance, timekeeping solutions can now streamline and simplify the process of tracking billable hours by capturing relevant time, through the application of artificial intelligence (AI) analysis, across all devices, including desktops, laptops, and mobile, and producing a daily summary to the user.

Much attention has also been drawn to the development of the ROSS platform which is built on IBM’s Watson computer. It is supported with cognitive computing and natural language processing capabilities. Users may ask ROSS research questions in natural language as if they were speaking to a colleague. The AI then “reads” through the law, gathers evidence, draws inferences and returns with a “highly relevant”, evidence-based answer.

Further, the adoption of AI assisted predictive coding to expedite document review in the maze of millions of electronic documents in litigation was recently considered and approved by the English High Court in the landmark case of Pyrrho Investments Ltd v MWB Property Ltd [2016] EWHC 256 (Ch) (“Pyrrho”).

Technological advancements keep pushing new limits in storage capacity, microchip density, download speed and energy efficiency. As a result of the ease and convenience in generating and communicating digital information, large volumes of electronically stored information are being created, duplicated and stored in different formats, locations and jurisdictions every second, every day. The Pyrrho case is illustrative of the cautious readiness of
the judicial system to accept the use of technology to solve issues caused by technology itself, after having considered relevant factors like time, cost and party agreement.

AI’s impact on the routine tasks of our day-to-day practice like timekeeping, legal research, contract review or due diligence analysis will only intensify in the years ahead. Understanding and using technology intelligently to support the operation of our legal practices should be a priority in these changing times.

Non-law firms are aggressively leveraging on their technological skills to erode the scope of work from law firms. Some law firms may not wish to engage in the tedious and mechanical tasks in any event and may gladly unbundle the services they provide to the non-law firms that rely on machines to do them. However, this outcome must still be reached through a conscious choice made by the law firms after evaluating the pros and cons of engaging technologically enhanced work processes in their legal practices, and not through erosion of their market share by non-law firms due to their resistance to innovation and loss of competitiveness.

Our goal is to help members navigate this new world ethically and successfully. One of the ways is to provide more practical skills training on how to use technology effectively. Suggestions on any other ways to assist are always welcome.

**Upcoming Deadlines**

- Those who have successfully applied to sit the 2017 Overseas Lawyers Qualification Examination are reminded that the closing date for registration to sit the Examination falls on Friday, 11 August 2017.
- The professional indemnity cover for law firms for the 2016/2017 indemnity year will expire on Saturday, 30 September 2017. To renew indemnity, principals of law firms should file an Application for Indemnity and a Gross Fee Income Report with the Scheme Manager, ESSAR Insurance Services Ltd (“ESSAR”) on or before 15 August 2017.

**Monthly Statistics on the Profession**

(updated as of 30 June 2017):

<table>
<thead>
<tr>
<th>Category</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Members (with or without practising certificate)</td>
<td>10,558</td>
</tr>
<tr>
<td>Members with practising certificate</td>
<td>9,205</td>
</tr>
<tr>
<td>(out of whom, 6,896 (75%) are in private practice)</td>
<td></td>
</tr>
<tr>
<td>Trainee Solicitors</td>
<td>1,045</td>
</tr>
<tr>
<td>Registered foreign lawyers</td>
<td>1,358</td>
</tr>
<tr>
<td>(from 32 jurisdictions)</td>
<td></td>
</tr>
<tr>
<td>Hong Kong law firms</td>
<td>880</td>
</tr>
<tr>
<td>(48% are sole proprietorships and 41% are firms with 2 to 5 partners, 15 are limited liability partnerships formed pursuant to the Legal Practitioners Ordinance)</td>
<td></td>
</tr>
<tr>
<td>Registered foreign lawyers</td>
<td>80</td>
</tr>
<tr>
<td>(9 are limited liability partnerships formed pursuant to the Legal Practitioners Ordinance)</td>
<td></td>
</tr>
<tr>
<td>Civil Celebrants</td>
<td>2,084</td>
</tr>
<tr>
<td>Reverse Mortgage Counsellors</td>
<td>445</td>
</tr>
<tr>
<td>Solicitor Advocates</td>
<td>49</td>
</tr>
<tr>
<td>(44 in civil proceedings, 5 in criminal proceedings)</td>
<td></td>
</tr>
<tr>
<td>Student Members</td>
<td>213</td>
</tr>
<tr>
<td>Registered Associations between Hong Kong law firms and registered foreign law firms (including Mainland law firms)</td>
<td>36</td>
</tr>
</tbody>
</table>

**截止日期將至**

- 已成功申請參加2017年海外律師資格考試者，請注意應考註冊截止日期為2017年8月11日(星期五)。
- 涵蓋2016/2017彌償年度的律師行專業彌償保險將於2017年9月30日(星期六)到期。如要繼續投保，律師行主管人須於2017年8月15日或之前，向計劃經理恒利保險服務有限公司(ESSAR)遞交申請。

**業界每月統計資料**

(截至2017年6月30日):

<table>
<thead>
<tr>
<th>類別</th>
<th>數量</th>
</tr>
</thead>
<tbody>
<tr>
<td>會員(持有或不持有執業證書)</td>
<td>10,558</td>
</tr>
<tr>
<td>持有執業證書的會員</td>
<td>9,205 (當中有6,896位(75%)是私人執業)</td>
</tr>
<tr>
<td>實習律師</td>
<td>1,045</td>
</tr>
<tr>
<td>註冊外地律師</td>
<td>1,358 (來自32個司法管轄區)</td>
</tr>
<tr>
<td>香港律師行</td>
<td>880 (48%為獨資經營者和41%為有2至5名合夥人的律師行，15名為按照《法律執業者條例》組成的有限法律責任合夥律師行)</td>
</tr>
<tr>
<td>註冊外地律師行</td>
<td>80 (9名為按照《法律執業者條例》組成的有限法律責任合夥律師行)</td>
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Face to Face with

Hon. Dennis Kwok

Legislative Council Member, Functional Constituency, Legal

By Cynthia G. Claytor

Dennis Kwok, Legislative Council Member of the Legal Functional Constituency, speaks about his transition from law into politics and his role and current priorities as the legislative representative of the legal profession.

Almost one year into his second term as the legal sector’s Legislative Council representative, Mr. Kwok remains energised about pursuing a diverse range of legal and regulatory reforms, impacting everything from Hong Kong’s arbitration regime to its judiciary, all in the name of safeguarding the rule of law and enhancing the ability of Hong Kong lawyers to thrive at home and abroad.

Speaking about his early legal career and transition into politics, Mr. Kwok provides key insights into core values that have driven him to excel as a civic-minded lawyer and legislator.

Legal Career

As Mr. Kwok neared his second year of law school, he had no clear idea of whether he wanted to be a solicitor or a barrister. Given his uncertainty, he decided to apply for a training contract and got an offer from Herbert Smith, which he accepted. He joined the firm’s Hong Kong office after completing his PCLL studies at the University of Hong Kong, where he remained for 5 years.

“This was a good decision because the firm has a phenomenal training programme and a wide range of practice areas for young lawyers to explore. When I speak to law students now, I tell them if they are unsure about whether they would like to be a barrister or solicitor, they should consider joining a solicitors’ firm with a broad range of specialisations. That way, they will have the opportunity to explore different practice areas during their two year training contract. As a trainee, I was able to rotate between the corporate finance, insurance, litigation and arbitration teams, as well as be seconded to London for six months. That experience created a strong foundation upon which I have built my legal and political career. I still draw upon that training in the work I do today,” he said.

Post-qualification, Mr. Kwok practiced as a solicitor for three years with Herbert Smith before transitioning to the Bar in 2006. During this time, he worked on a number of complex commercial disputes and was able to learn from some of the best practitioners in the profession. “As a barrister, this experience has been immensely instructive. I also find it helpful as the legal profession’s legislative representative – I can leverage what I learned about law firms’ internal operations when I am dealing with practice development-related policy issues. This background has certainly given me a better understanding of the legal profession than I otherwise would have had,” he explained.

Mr. Kwok indicated that a key factor in his decision to move to the Bar was his desire to work on a wider range of legal issues such as judicial review and constitutional challenges facing Hong Kong. “I did enjoy working on large commercial cases, but I also started to develop an interest in looking at many other legal problems within the Hong Kong community. This motivated me to take up pro bono legal work – giving free legal advice at a public housing estate. In the end, it led me to question and eventually revise my long term career plan.”
“Being a barrister has given me more freedom over my time, as well as choice over the type of work I take on. It has also allowed me to transition into politics – where I can strike my own balance between maintaining my law practice and fulfilling my public service obligations.”

The Transition
His initial interest in politics, coupled with the emotive effect of local political stirrings that culminated in the landmark demonstration in the summer of 2003, gave him the desire to go into politics. His pro bono work at the public housing estate also exposed him to a number of influential barristers and then Legislative Councillors, who were instrumental figures in the blossoming civil movement and provided him with an outlet to productively channel his energy. These barristers would go on to form the Civic Party and invite Mr. Kwok to join them as a founding member in 2006.

Learning the Ropes
Mr. Kwok noted that there are two ways to learn first-hand about politics: “You can either join a political party or work for the government. I learned about front-line politics through my involvement as a founding member of the Civic Party. I was involved in a lot of party-related work right from the start – elections and a broad range of policy and political issues. It taught me how to think about and take a stance on different issues, how to present arguments and how to deal with media, among other things. In those early days, I would also go and sit in on Legislative Council proceedings so I could listen to the debates.”

Law and politics are an extension of one another – they are closely related, he continued. “I find that having a background in law has helped me as a legislator. For instance, I draw upon what I learned when presenting arguments in court or handling negotiations. The skills you develop through legal practice are transferrable to politics.”

Legal Functional Constituency
Mr. Kwok indicated that his job as the representative of the legal profession involves two major roles. The first is to defend the rule of law and the Constitution, which entails defending One Country, Two Systems and pushing for the advancement of democracy in Hong Kong. The other involves building on the foundation for the rule of law in Hong Kong: to ensure the independent Judiciary has enough resources and manpower, developing and promoting the Hong Kong legal profession at home and abroad, following through on law reform recommendations, and fighting for the expansion of legal aid and other access to justice issues. Like other legislators, he also works on a wide range of issues from education to environmental protection to the economy.

Defending the Rule of Law
One of the most challenging instances that Mr. Kwok recalls in which he was required to defend the rule of law in Hong Kong occurred shortly after he took office. “I was still a very junior legislator in mid-2014 when the State Council issued a White Paper on the Practice of ‘One Country, Two Systems’ Policy in the Hong Kong Special Administrative Region. This caused a huge controversy both locally and internationally, and my position required me to take a firm position. With the White Paper garnering mass international media attention, there was a huge amount of pressure – it seemed everyone was interested in what this White Paper meant for Hong Kong and the preservation of the One Country, Two Systems regime,” Mr. Kwok said.

“This was an important and formative experience in my political career. A great deal is expected of us as a profession – namely, that the public expected us to be staunch and vociferous defenders of the rule of law; to firmly stand up for separation of powers and our independent judiciary, which are core values of Hong Kong’s common law system and enable us to maintain our status as one of the top jurisdictions in the world.”

“Some people may ask why making a firm statement to the international community was necessary. The risk, if we did not, is for the White Paper to become our reality in the future. The White Paper’s positions undercut the values upon which we’ve built our community, legal system and Hong Kong as a whole. If we would like to safeguard our way of life and our livelihoods, it becomes incumbent upon us all to send a clear message on our position to Beijing and the international community, and on our desire to make the One Country, Two Systems work the way it was originally designed.”

Developing the Legal Profession
The other core responsibility Mr. Kwok shoulders is developing Hong Kong’s legal services and ensuring laws are kept up-to-date so the legal profession can thrive. “If the legal profession is not healthy and development is not stable, it will impact our ability to maintain the rule of law in Hong Kong. Even if you have the best system in the world, if lawyers are not developing their practices and young lawyers are unable to find jobs, we will enter into a period of decline,” he said.

Reform and New Legislation
Mr. Kwok is working with the Law Society to push for an immediate update and reform of the ‘Scale Rates’ for taxation in the District Court and the High Court which have not been changed since 1997. He also intends to push for legislation that will facilitate class action lawsuits,
the further expansion of legal aid, and on matters such as listing reforms to improve Hong Kong’s financial regulatory regime.

Mr. Kwok remains focused on keeping Hong Kong’s laws up-to-date and ensuring there are sustainable work opportunities for lawyers, especially for new entrants. Key areas of interest include strengthening Hong Kong’s arbitration laws and services, as well as young lawyers’ understanding of the new competition regime.

Arbitration
To bolster Hong Kong as an arbitration hub, Mr. Kwok was instrumental in pushing LegCo to adopt a number of arbitration-related bills, two of which were passed in mid-June. One concerned third party funding and the other concerned the permissibility of resolving intellectual property disputes through arbitration.

“I was the Chairman of the Bills Committee for the third party funding bill and made it a priority to get this law enacted as soon as practicable in a way that the legal profession and the broader community would welcome.”

“I have also been pushing for improvements in the way Hong Kong promotes its arbitration services. For example, to develop the new arbitration centre that would be housed in the former Court of Final Appeal and making sure we will continue to have first class arbitration facilities.”

Mr. Kwok hopes that the new legislation in conjunction with this state-of-the-art facility will enable Hong Kong to maintain its edge as an international disputes resolution hub. “In my mind, this can only lead to more work opportunities for the profession.”

Competition Law
Mr. Kwok noted that the recently enacted cross-sector competition regime is a ripe area for young lawyers to specialise. “I have been working with the Competition Commission to set up a work programme for young lawyers to go to the UK and Australia to learn about competition law and other practice areas – that programme is up and running and is open to young solicitors and barristers. To remain competitive and ensure sustainable growth with our legal services industries, we have to continue developing new practice areas that give young lawyers room to enter.”

Listing Reform
Mr. Kwok is also intimately involved in pushing for a host of financial regulatory reforms. “It is very important that as an international financial centre, Hong Kong has a first class regulatory system. Whether it is regulating financial services or listed companies, banks or insurance companies – we need to ensure that all are capable of operating in a safe and balanced regulatory environment. By ensuring this, we can make it attractive for international investors to come to Hong Kong.”

Last year LegCo passed the Financial Institution Resolution Ordinance, which will allow regulatory authorities to intervene into the operations of major financial institutions if there is a meltdown. Looking ahead, listing reform is on the horizon. “The Hong Kong Government and regulators need to tackle this regulatory quagmire – listing reform is essential to make Hong Kong the first class international financial centre that we say we are,” he said.

“The recent crash involving more than a dozen listed companies is good evidence of the imminent need for reform and to root out some of the poorly regulated listed companies. I will continue working with the SFC and HKMA to address these issues.”
Class Action Law Suits and Other Law Reforms

Mr. Kwok also briefly noted his efforts to push the Government to enact legislation that would facilitate class action lawsuits. “As I am sure most are aware, the Law Reform Commission has already recommended there be class action lawsuits in Hong Kong. This would enable Hong Kong to follow the development of other jurisdictions and to enable better access to justice.” Other areas of law reform which Mr. Kwok is looking at include corporate rescue and debt restructuring, employment and family law reform.

Access to Justice

The provision of legal aid is crucial in maintaining the rule of law – namely through ensuring access to justice. Mr. Kwok indicated that he has been working with the Department of Legal Aid and the Government to expand legal aid coverage in Hong Kong.

“Supplementary legal aid has been expanded and the financial eligibility limits have also been increased during my time in office, which should enable more people and types of cases to be covered.”

The provision of pro bono legal services is another important aspect of addressing the access to justice issue and has been something else that Mr. Kwok is keen to further develop. “I have been advocating and working to create more pro bono legal services clinics and to expand the duty lawyers’ scheme. This is very important because a lot of people face legal problems and challenges, but lack access to legal advice. This is an area where I hope the Law Society and the Bar Association will do more,” he said.

Mr. Kwok provided a few examples of how both legal regulators could assist. “When lawyers go out to do pro bono work, there is a big question mark as to whether they will be covered by indemnity insurance – this is something both regulators could help to clarify. We should make it easier for a more robust pro bono legal culture to flourish in Hong Kong,” he explained.

While the legal community does have a role to play in addressing the current access to justice issue in Hong Kong, in the end, much of the burden lies with the Government to create a legal system that is more efficient and less expensive and complicated for the average citizen to deal with.

Judicial Reform

Another important aspect of Mr. Kwok’s role is making sure the Hong Kong judiciary has adequate resources to function effectively in 21st Century Hong Kong. “Sitting judges are already working very hard. My job is to ensure that the yearly budget provides enough resources to enable them to continue running an efficient and modern judiciary.”

As the Deputy Chairman of the Administration of Justice and Legal Services (“AJLS”) Panel, Mr. Kwok engages with the Judiciary to discuss myriad policy issues – such as their efforts to recruit more judges, as well as employment conditions and remuneration packages. The salary of High Court judges has recently been increased to attract more talents to join the Judiciary.

Mr. Kwok is also pushing for the retirement age of judges to be increased. “There’s no reason why a talented and experienced judge should have to retire at 65. For the High Court, we would like to see the retirement age be raised from 65 to 70. For the Court of Final Appeals, we hope the retirement age will be raised from 70 to 75. I’m expecting to see a report from the Judiciary this year on that recommendation. Hopefully this will attract more people to join by enabling practitioners who join the Judiciary to extend the trajectory of their professional careers.”

“In recent years, we have also seen unwarranted attacks on the Judiciary and individual judges. It is part of my duty to defend the Judiciary against such attacks which are completely unacceptable.”

Hopes for the Future

Looking to the future, Mr. Kwok hopes parties from all sides will work together and bring Hong Kong politics back to a more positive direction. “We need to resolve some of the gridlocks in LegCo and ensure that much needed reforms can be enacted. The new Administration must lead in this effort, and they must not push for policies that go against our core values and the Basic Law. The next five to ten years will be an important decade for Hong Kong. We will need to find a way to move forward on issues such as constitutional reform and at the same time preserve our current system and way of life. The last generation was tasked with handling the transition from colonial Hong Kong to the Hong Kong Special Administrative Region. Our generation is tasked with preserving the system – by safeguarding our Constitution and One Country, Two Systems.”
立法會法律界功能界別議員郭榮鏗議員暢談他從法律界過渡到政界的過程，以及作為法律界立法會代表的角色和當前的重點工作。

郭榮鏗議員連任兩屆立法會法律界功能界別代表，本屆立法會開始至今已近一年，郭議員一直致力於各項法律和監管改革，對香港的仲裁制度以至司法系統發揮影響，以捍衛法治並加強香港律師在本地及外地發展為目標。

郭律師談及他早期的法律事業和過渡到政界的过程，闡釋其核心價值如何令他成為富有公民意識的律師和立法會議員。

法律事業

郭議員在法律學院升讀二年級時，並不清楚自己想成為事務律師還是大律師，所以他決定申請見習合約，並接受了Herbert Smith的聘用。完成香港大學PCLL課程後，他加入了該律師行的香港辦事處，他在那裡工作了5年。

他說：「那是個正確的決定，因為該行有出色的培訓計劃和廣泛的實踐機會，讓年青律師探索。現在我都告訴法律學生，如果他們不知道自己想做大律師或事務律師，就應該考慮加入專業領域廣闊的律師行，在兩年的見習合約期探索不同的執業領域。我在見習期間輪流參與公司財務、保險、訴訟和仲裁團隊，並曾借調到倫敦6個月。這個經驗為我的法律和政治生涯奠定堅實基礎。見習時的經驗仍值得我今天的工作借鑑。」

取得資格後，郭議員在Herbert Smith擔任事務律師3年後，才於2006年轉為大律師。在此期間，他曾處理一些複雜的商業糾紛，跟隨法律界一些最出色的執業者學習。他解釋：「作為大律師，這種經驗非常有啟發性。我覺得它對我當立法會議員的工作也很有幫助，當我處理執業發展相關的政策問題時，我能夠利用我對律師行內部運作的認識。這個背景的確令我對法律專業有更深入的了解。」

郭議員表示，決定轉任大律師，是因為他希望處理更廣泛的法律問題，如司法覆核和香港面臨的憲制挑戰：「我喜歡處理大型商業案件，但也開始對香港社會其他法律問題產生興趣。這推動我提供義務法律服務，在公共屋邨提供免費法律諮詢。這引發了我的思考，最後改變了我的長遠事業規劃。」
「當大律師令我在工作時間及接受工作類型方面有更大自由，亦令我能夠適應到政界，在法律執業與履行公共事務責任之間取得平衡。」

過渡
他最初對政治的興趣，加上2003年夏天香港政治氣氛下出現了大型示威活動，令他有志從政。他在公共屋邨提供義務法律服務，亦令他接觸到多位具影響力的大律師和立法會議員，他們是公民運動中舉足輕重的人物，為他提供了發揮能量的渠道。這批律師後來組成了公民黨，並於2006年邀請郭議員加入成為創黨黨員。

掌握竅門
郭議員指出，學習政治有兩種方式：「你可以加入政黨，或者投身政府。我通過加入公民黨，成為創黨黨員，學習到前線政治。我從一開始就接觸很多黨務，包括選舉和廣泛的政策及政治議題，學會了如何思考和就不同議題採取立場，如何提出論據，以及如何面對傳媒等。早年我也會去旁聽立法會會議，觀摩議員辯論。」

法律和政治是彼此的延伸，兩者息息相關。他續說：「我覺得法律背景有助我擔任立法會議員。例如，我在法庭上抗辯或進行談判時學到的技巧，也能學以致用。法律執業培養的技巧可以套用於政治工作。」

捍衛法治
郭議員回憶，捍衛香港法治最具挑戰性的事件之一，在他上任後不久發生。他說：「2014年中我仍是新議員，當時國務院發表了《「一國兩制」在香港特別行政區的實踐》白皮書，在本地和國際社會引起巨大爭議。我身為議員，必須採取堅定的立場。白皮書引起國際傳媒廣泛關注，似乎每個人都對白皮書對香港的意義和維護一國兩制感興趣。」

「這是我在政治生涯中的一個重要的成長經驗。公眾對法律界期望甚殷，期望我們堅定捍衛法治，維護一國兩制。」

「有人可能會問：為何要向國際社會發表立場堅定的聲明？如果我們沒有這樣做，白皮書在未來就有機會成為事實。白皮書的立場损害我們建立的社會、法律制度和經濟價值。我們若要維護我們的生活方式，就有義務向北京和國際社會表明我們的立場，我們的意願是保持一國兩制以原本的方式運作。」

發展法律事業
郭議員的另一個核心責任，是發展香港的法律服務，確保法律跟上社會發展，讓法律界蓬勃發展。他說：「假如法律界不健康，發展不穩定，便會影響香港維持法治的能力。即使擁有世界上最好的制度，如果律師未能發展其專業，年青律師也找不到工作，我們就會陷入衰退期。」

改革與新法例
郭議員現正與律師會合作，推動立法會改革及改善地區和高等法院訴訟費評定收費率，該收費率自1997年以來一直沒有進行修訂。

他亦打算推動集體訴訟立法，進一步擴大法律援助，及推動上市改革等事宜，以改善香港的金融監管制度。
郭議員致力令香港法律跟上社會發展，及確保律師有可持續的工作機會，尤其對年青律師來說。他重視關注的領域包括加強香港的仲裁法律和服務，以及年青律師對新競爭制度的理解。

仲裁
為鞏固香港作位仲裁樞紐的地位，郭議員積極推動立法會通過若干仲裁相關法案。其中兩項已在6月中通過：一項涉及第三方資助，另一項涉及允許通過仲裁解決知識產權糾紛。

「我擔任第三方資助條例草案委員會的主席，法律界和社會均歡迎法例盡快通過，我以此為優先工作。」

「我也推動改善香港仲裁服務的推廣方式。例如，研究在前終審法院大樓設立新的仲裁中心，確保我們會繼續擁有一流的仲裁設施。」

郭議員希望，新法例配合先進設施，能使香港保持國際爭議解決中心的優勢。

「我認為這能為法律界帶來更多工作機會。」

競爭法
郭議員指出，最近頒佈的跨行業競爭制度是年青律師可以從事的成熟領域。「我一直與競爭事務委員會合作，為年青律師設立工作計劃，去英國和澳洲學習競爭法和其他執業領域。該計劃正在進行中，供年青律師和大律師參加。為了保持競爭力，確保法律服務業可持續發展，使年青律師有機會投身其中。」

上市改革
郭議員亦密切參與推行多項金融監管改革。「香港作為國際金融中心，一流的監管制度非常重要。無論監管金融服務還是上市公司、銀行或保險公司，我們都需要確保所有人能夠在安全而平衡的監管環境中運作，從而加強香港對國際投資者的吸引力。」

去年，立法會通過了《金融機構（處置機制）條例》，在主要金融機構發生崩潰的情況下，讓監管機構進行干預。展望未來，上市改革即將展開。他說：「香港政府和監管機構需要解決這個監管困局。上市改革對香港成為一流國際金融中心至關重要。」

「最近涉及十多家上市公司的股災，就證明了有迫切需要改革，根除一些監管不力的上市公司。我會繼續與證監會和金管局合作，解決這些問題。」

集體訴訟及其他法律改革
郭議員亦指出，他曾致力推動政府制定便利集體訴訟的法例。「我相信大多數人都知道，法律改革委員會已經建議在香港引入集體訴訟。這將讓香港能夠跟隨其他司法管轄區的發展，令市民更容易訴諸司法尋求公義。」

郭議員正在研究的法律改革領域還包括企業拯救和債務重組、僱傭和家庭法改革。

訴諸司法
提供法律援助對維護法治至關重要，確保市民有訴諸司法的途徑。郭議員表示，他一直與法律援助署及政府合作，擴大法律援助的覆蓋範圍。

「法律援助補助計劃的範圍已經擴大，財務上限在我任內亦已提高，覆蓋更多市民和案件類別。」

提供義務法律服務，是解決訴諸司法問題的另一個重要方向，也是郭議員渴望進一步發展的方向。他說：「我一直主張和努力設立更多的義務法律服務診所，擴大義務法律的涵蓋範圍。」

司法改革
郭議員的另一個重要工作方向，是確保香港司法系統有足夠的資源在21世紀的香港有效運作。「法官的工作繁重，我的工作是確保年度預算能提供足夠的資源，使他們能夠繼續運作高效和現代化的司法系統。」

作為立法會司法及法律事務委員會副主席，郭議員與司法機構討論各種政策問題，例如招聘更多法官的工作，以及就業條件及薪酬待遇等。高等法院法官的薪資最近增加，以吸引更多人才加入司法機構。

郭議員亦在推動提高法官退休年齡。「有才華、有經驗的法官，無理由必須在65歲退休。我們希望將高等法院法官的退休年齡，從65歲提高到70歲，終審法院法官的退休年齡，從70歲提高到75歲。司法機構今年將就此提交報告，希望藉此吸引更多業者加入司法機構，延長他們的職業生涯。」

「近年，我們看到有人對司法機構和個別法官作出無理攻擊。這些攻擊是完全不可接受的，捍衛司法是我的職責之一。」

展望未來
展望未來，郭議員希望所有黨派能夠攜手合作，令香港政治帶回更正面積極的方向。「我們需要解決立法會的一些僵局，以制定急需的改革。新政府必須帶頭，不能推行違反我們核心價值觀和基本法的政策。未來5至10年對香港十分重要，我們需要尋找方法，推動政改等議題，同時維護現行的制度和生活方式。上一代的任務是處理香港從殖民地過渡到特別行政區，而我們這一代的任務是保護這個制度，維護憲法和一國兩制。」
SmartHK

As a supporting organisation, the Law Society participated in SmartHK, Fuzhou on 25 May organised by the Hong Kong Trade Development Council. The Law Society and three Hong Kong law firms also separately set up exhibition booths at the event to promote Hong Kong’s legal services and explain to visitors how Hong Kong lawyers can help Mainland enterprises expand their businesses. The organiser has arranged a series of seminars on Hong Kong service industry. On behalf of the Law Society, Ms. Daphne Lo, Member of the Standing Committee on External Affairs, spoke to visitors about legal due diligence and its scope.

創新升級 香港論壇

香港律師會以支持機構的身分參與香港貿易發展局於5月25日在福州舉辦的「創新升級・香港論壇」，並偕同三間香港律師行分別在展覽會設置宣傳攤位，向參觀人士介紹香港律師如何幫助內地企業擴展業務，以及推廣香港法律服務。大會亦安排多個有關香港服務業的研討會，其中對外事務 ammonia會委員盧鳳儀律師代表香港律師會出席研討會，向在場人士從法律角度探討「盡職調查」及其所涵蓋的範圍。

Legal Seminar in Celebration of the 20th Anniversary of the Establishment of the HKSAR

Invited by the China Law Society, President Thomas So and Mr. James Wong, Vice-Chairman of the Greater China Legal Affairs Committee, attended the Legal Seminar in Celebration of the 20th Anniversary of the Establishment of the HKSAR on 5 June in Zhengzhou, Henan Province. Mr. So delivered a speech on behalf of the Law Society in which he shared the importance of the Rule of Law to Hong Kong’s development, as well as the role of One Country, Two Systems after Hong Kong’s reunification. Mr. Wong spoke on the topic “Hong Kong Basic Law: Looking Back and Ahead: Strengthening Basic Law Theoretical Study and Legal Literacy”.

慶祝香港回歸二十周年法學研討會

應中國法學會邀請，蘇紹聰會長和大中華法律事務委員會副主席黃江天律師出席了該會於6月5日在河南鄭州舉行的「慶祝香港回歸二十周年法學研討會」。蘇會長代表香港律師會在活動上致辭，分享法治對香港發展的重要性，以及「一國兩制」在香港回歸後所擔當的角色。黃律師則以「香港基本法實施回顧與展望－加强基本法理論研究及普法教育」為題進行演說。
**Legal Seminar on Legal Services and Dispute Resolution**

Organised by the Hong Kong Chinese Enterprises Association, the *Forum on China’s Outbound Investment Trend and the Role of Hong Kong* was held on 14 June at the Hong Kong Convention and Exhibition Centre. The Greater China Legal Affairs Committee of the Law Society; the Legal Affairs Steering Committee and the Commercial Mediation Commission of the Hong Kong Chinese Enterprises Association, together with other associations organised a Legal Seminar on “Legal Services and Dispute Resolution: The Role and Strengths of Hong Kong” that afternoon. As one of the speakers, President Thomas So spoke to about 200 attendees on “Risk Prevention of Overseas Merger and Acquisition and the Role of Hong Kong”.

**Visit to Chongqing and Chengdu**

Led by President Thomas So, a six-member delegation of the Law Society visited Chongqing and Chengdu from 21 to 24 June. The delegation met with the Chongqing Lawyers’ Association and the Chengdu Lawyers’ Association and arranged two legal seminars for lawyers in the two cities. The seminars covered topics such as the negotiation process and procedure of overseas mergers and acquisitions, due diligence and managing risks associated with intellectual property transactions, as well as legal risk prevention and control of listing in Hong Kong. The seminars were well received by more than 130 attendees. Both lawyers’ associations have indicated their desire to provide more relevant training courses for local lawyers to enhance their knowledge and skills on Chinese outbound investments.

**訪問重慶及成都**

蘇紹聰會長帶領香港律師會一行6人的代表團於6月21日至24日訪問重慶及成都，拜訪重慶市律師協會及成都市律師協會，並為兩地律師舉辦了兩場法律研討會。研討會的題目涵蓋海外併購的談判過程及流程、知識產權的盡職調查和交易風險管理，以及赴港上市的法律風險防控等。活動反應良好，共吸引超過130名律師參與。兩個律師協會均表示計劃為當地律師提供更多相關中國對外投資的培訓課程，以提升當地律師的執業水平。
Mainland Visitors visit the Law Society

The Law Society received two groups of visitors from the Mainland in June, namely Mainland officials receiving common law training in Hong Kong and a delegation from Shenzhen Intermediate People’s Court. On 13 June, 14 Mainland officials receiving common law training in Hong Kong visited the Law Society so as to better understand the role of the Law Society and the development of the legal system and legal profession in Hong Kong. Mr. William Lam and Ms. Catherine Mun, Members of the Greater China Legal Affairs Committee, received the visitors led by its Vice President Mr. Hu Zhiguang. On 26 June, a delegation from Shenzhen Intermediate People’s Court, visited the Law Society to get a better understanding of Hong Kong’s mediation system and the profession. The delegation was received by Mrs. Cecilia Wong, Chairperson of the Mediation Committee; Ms. T.Y. Lam and Mr. Norris Yang, Members of the Mediation Committee; Mr. Ronald Kan and Mr. Gary Yin, Members of the Greater China Legal Affairs Committee.

Belt and Road: Practice of the Rule of Law and Innovation of Legal Services Seminar

Ms. Melissa Pang, Vice President of the Law Society and Chairperson of the Greater China Legal Affairs Committee, was invited to attend the Belt and Road: Practice of the Rule of Law and Innovation of Legal Services Seminar on 25 June. Ms. Pang shared her views on the topic “Establishment of a Corporate Compliance System for the Chinese Enterprises Going Global”, which was well-received by attendees. The seminar, held in Shenzhen, was jointly organised by China Legal Services (Hong Kong) Limited, China Legal Services (Macau) Limited and Shenzhen Lawyers Association. More than 300 local lawyers and representatives of Chinese enterprises attended the seminar.

内地訪問團

香港律師會於6月接待了兩個來自內地的訪問團，包括在香港參加普通法培訓計劃的內地部門工作人員，及深圳市中級人民法院代表團。6月13日，14位在香港參加普通法培訓計劃的內地部門工作人員訪問律師會，旨在了解香港律師會的角色以及香港法律制度和法律業界的发展概況，並與大中華法律事務委員會委員林靖寰律師和文理明律師交流；另外，深圳市中級人民法院代表團於6月26日在胡志光副院長帶領下到訪香港律師會，了解香港的調解制度和行業概況。調解委員會主席黃吳潔華理事、委員林子絪律師、楊洪釗律師，以及大中華法律事務委員會委員簡汝謙律師及饒詩傑律師與代表團會晤。
Seminar on Legal Aspects of Fund Raising for Social Enterprises

On 29 June, the Working Group on Seminars for Social Enterprises of the Law Society’s Pro Bono Committee and the Hong Kong Council of Social Services (“HKCSS”) jointly organised a seminar on Legal Aspects of Fund Raising for Social Enterprises. Over 70 representatives from various social enterprises attended.

Dr. Teresa Chu, member of the Working Group, introduced to the audience common types of fundraising exercises, funding schemes and crowdfunding. She also gave some important pointers on fundraising and scaling up a company.

Clubhouse Farewell Party

On 9 June, the Clubhouse Committee organised a farewell party to bid farewell to the Clubhouse after its 20 years of service. Over 40 members including Past Presidents, former and current Council members and members of the Standing Committee on Member Services attended the party.

The participants were glad to catch up with old friends including Council members of 1997 when the Clubhouse was founded.

After Past President Anthony Chow gave a brief history of the Clubhouse, our guests were presented with a pleasant surprise – a pre-arranged personalised caricature portrait with Law Society Clubhouse as setting!

A party cannot succeed without great music. The audience sang and danced along with the singing performance of Past President Anthony Chow and the Law Society band “TLF”. The party reached its climax when some ‘new’ faces volunteered to showcase their hidden musical talent. The party marked the end of service of our Clubhouse with good memories in all those who attended.
告別會所派對

會所委員會於6月9日舉辦了一個告別派對，以告別服務了20年的律師會所。40多名會員，包括前任會長、前任及現任理事會成員及會員服務常務委員會成員均出席了告別派對。

來賓與老朋友歡樂相聚，多位1997年（會所於該年成立）的理事會成員亦應邀出席。前任會長周永健律師簡述會所的歷史後，來賓們都收到了一個驚喜—每位嘉賓獲贈一幅以律師會所為背景的個人似顏繪！

派對怎能沒有美妙的音樂？前任會長周永健律師與律師會樂隊TLF即席獻唱，而其他來賓則開歌起舞。一些「新」面孔踴躍展示音樂才藝，將派對推至高峰。會所多年來的服務隨著派對終結，為來賓留下美好回憶。
THE LAW SOCIETY OF HONG KONG

12th Recreation and Sports Night

Date: 21 October 2017, Saturday
Time: 7:00 pm - 11:00 pm
Venue: Hong Kong Football Club, 3 Sports Road, Happy Valley, HK
Dinner: Buffet
Ticket price: HK$400 per member
HK$600 per non-member
HK$4,800 for each table for 12 pax (can include non-members)
Dress code: Marine and aquatic

Ark of Justice

For enquiries, please contact Robert Chan of the Member Services Department on 2846 0570 or robert@hklawsoc.org.hk

Limited places. Act now!

*The Law Society reserves the right to alter any arrangements of the event or otherwise cancel the event.
**Recreation and Sports Committee Feature**

**康樂及體育委員會特寫**

### Trump or No-trump, It’s Your Call

In bridge, you either play a “trump” contract or a “no-trump” contract for each hand, and it’s up to the four players at the bridge table to make the choice. To start a bridge game, all you need is a deck of standard playing cards and two pairs of players. There are two distinct stages for each hand, the bidding stage and the playing stage. During the bidding stage, each player takes turns to make their bids until three consecutive players pass their bids, in which case the last bid before the passes becomes the contract. During the playing stage, the pair of players who lost the bidding would play as “defenders”, and the players in the winning pair would play the role of either “declarer” or “dummy”, depending upon the bidding sequence. The dummy, as the name suggests, has no further role in the hand other than laying down his/her hand which is to be played by the declarer. The defenders and the declarer then take turns to play their cards one by one with the objective of maximising their respective winning tricks. In most cases, a bridge hand will take no more than 10 minutes to finish. The above overly simplistic introduction of the game, however, belies the complexity of skills which are required of bridge players, both at the bidding stage and the playing stage. If you wish to experience this exciting card game, join the Law Society Bridge Team today!

The Law Society Bridge Team was formed in March 2014, after an ad hoc team of four competed in the first Bridge Tournament organised by the Recreation and Sports Club for Hong Kong Professional Bodies (“RSCP”) in 2013. Since then, the Team has attracted players of different playing levels, from beginners to more seasoned bridge players, to take part in our regular weekly practices and external bridge tournaments. The Team’s highlight came in 2015 when, just two years into its formation, the Team clinched the championship in the RSCP Bridge Tournament. What the Team treasures more, however, is the friendship which has been developed over the bridge table in the past few years. It is our wish that more and more members could join the Team and enjoy the fun of playing bridge at their leisure.

The Team used to host weekly Monday practices in the Law Society Library but due to upcoming renovation, the Team is currently exploring options on other practice venues. The Team is also planning to run a beginners’ course later this year. Please keep an eye on the circulars on the arrangements. If you have any good suggestions on the practice venue or you wish to learn more about bridge, please do not hesitate to contact Mr. WK Ng, Bridge Convenor, on wkng@luilaw.com.hk. We look forward to seeing you at the bridge table soon!
王牌與否 由你決定

每局橋牌，一是打王牌(trump)合約，一是打無王(no-trump)合約，而這全由橋桌上的四位橋手決定。要開始一局橋牌，所需的只是一套標準撲克牌及兩對橋手。每局橋牌均分成兩個不同階段：叫牌(bidding)和打牌(playing)。在叫牌階段，每位橋手輪流叫牌，直至連續三位橋手叫出「不叫」叫品(pass)，則在該等「不叫」叫品前的最後叫品便會成為合約。在打牌階段，輸掉叫牌的一對橋手成為防家(defenders)，而贏出叫牌的一對橋手則視乎叫牌過程分別成為莊家(declarer)或夢家(dummy)。人如其名，夢家的作用只是攤牌，莊家將全權決定夢家出哪一張牌。防家和莊家於打牌過程中輪流逐張出牌，以贏出最多磴數(trick)為目標。在大部份情況下，一局橋牌不會超過10分鐘。以上為超簡化的橋牌玩法介紹，但橋牌所講求的技巧遠遠更為複雜，不論叫牌或打牌階段亦然。想體驗這個刺激的紙牌遊戲，歡迎你今天就加入律師會橋牌隊！

由四人臨時組成的橋牌隊於2013年參加了香港專業團體康體會舉行的第一屆橋牌錦標賽後，律師會橋牌隊於2014年3月正式成立。自此，橋牌隊吸引了由初學者以至橋牌好手加入，參加每週練習和橋牌比賽。2015年，成立了僅兩年的橋牌隊勇奪香港專業團體康體會橋牌錦標賽冠軍。比起勝利，隊員更著重過去幾年建立的友誼，橋牌隊期望更多會員加入，一起享受橋牌的樂趣。

橋牌隊以往每逢星期一在律師會圖書館進行練習。由於圖書館將進行翻新工程，橋牌隊正尋找其他練習場地，亦計劃於今年稍後時間開辦初學班，請留意會員通告，緊貼最新消息。如對練習場地有好提議或想了解更多關於橋牌的知識，歡迎隨時聯絡橋牌隊召集人伍偉傑律師(電郵：wkng@luilaw.com.hk)。我們期待在橋牌桌上跟你砌磋！

Hong Kong Inter-City Bridge Championships 2014
2014 年香港城市橋牌錦標賽

The team was crowned Champion in the Tournament. 律師會團隊榮獲錦標賽冠軍。

RSCP Bridge Tournaments 2015
香港專業團體康體會橋牌錦標賽 2015

Friendly Match with Taipei lawyers in 2015
2015 年與台北律師進行友誼賽

The Tournament gathered over 50 participants from various professional bodies. 論對賽吸引了超過50位來自多個專業團體的橋手。
The Egg Drop Container: Hong Kong’s Financial Institutions (Resolution) Ordinance

By Antonio M. Da Roza

Liberty Chambers
**The Egg Drop Experiment**

Remember that experiment where students would build a container for eggs, then drop the container from a height, to see if it would protect the eggs from breaking?

September 2008 – mortgage giants Fannie Mae and Freddie Mac were taken over by the US government. Bank of America purchased Merrill Lynch for US$50 billion. Lehman Brothers filed for bankruptcy. AIG, the world’s largest insurer, accepted a US$85 billion federal bailout. Regulators closed Washington Mutual Bank. And on and on the global financial crisis went. Splat, splat, splat – eggs break when dropped.

But catching them as they fall is difficult. Banks that had invested in the rapidly devaluing mortgage-backed financial instruments experienced liquidity crises, bringing the global financial system to the brink of collapse. Lehman Brothers brought the global financial system to its knees.

The enormous public cost and threat to stability of the global financial system underlined how unsuitable insolvency proceedings are for resolving SIFIs whilst maintaining their provision of critical financial services, and the lack of regulatory power over SIFI failure.

In September 2009, the G20 Leaders engaged the Financial Stability Board (“FSB”) to devise more effective arrangements for resolving SIFIs – “Design a container for eggs to protect them when dropped, or to minimise the mess if broken.”

In October 2011, the FSB adopted the Key Attributes of Effective Resolution Regimes for Financial Institutions (“Key Attributes”), a framework for effective resolution regimes. The Key Attributes were endorsed by the G20 in November 2011 as the “new international standards for resolution regimes”, which would require legislative reforms in most jurisdictions to implement.

Some jurisdictions had already implemented reforms – the Dodd-Frank Act in the US (July 2010) or the Bank Recovery and Resolution Directive in the EU (May 2014). However, significant gaps were identified by the FSB’s Thematic Review on Resolution Regimes: Peer Review Report (April 2013) as to regulator powers of resolution in Hong Kong.

The Financial Institutions (Resolution) Ordinance (“FI(R)O”) was thus conceived to implement the Key Attributes locally.

Nine years after the Financial Crisis, the question is whether the FI(R)O, which came into force on 7 July 2017, is just another layer of regulation wrapped over existing layers or will prove an effective egg-drop container.

**One Size Fits All**

At first glance, the FI(R)O appears to be another layer of regulation – a cross-sectoral statute providing new regulatory powers for the Hong Kong Monetary Authority (“HKMA”), the (new) Insurance Authority, and the Security and Futures Commission (“SFC”) as “resolution authorities” for banking, insurance and securities and futures sector entities, respectively. The FI(R)O applies to all banks, global systemically important insurers and licensed corporations, and financial market infrastructure entities (referred to as “within scope financial institutions”). The jurisdiction of the FI(R)O may be extended to holding companies and affiliated operational entities of financial institutions within the FI(R)O’s scope.

<table>
<thead>
<tr>
<th>FI(R)O Terms</th>
<th>Banking Sector Entity</th>
<th>Insurance Sector Entity</th>
<th>Securities and Futures Sector Entity</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Resolution Authority</strong></td>
<td>HKMA</td>
<td>Insurance Authority</td>
<td>SFC</td>
</tr>
<tr>
<td><strong>Within Scope Financial Institution</strong></td>
<td>- Authorized institutions incorporated in Hong Kong - Authorized institutions incorporated outside Hong Kong - Settlement institutions of designated clearing and settlement systems, not authorized institutions, not wholly owned or operated by Government - System operators of designated clearing and settlement systems not authorized institutions, not wholly owned or operated by Government - Financial institutions HKMA is designated resolution authority of (s. 6) - Holding companies (s. 28) - Affiliated operational entities (s. 29)</td>
<td>- Global systemically important insurers - Financial institutions Insurance Authority is designated resolution authority of (s. 6) - Holding companies (s. 28) - Affiliated operational entities (s. 29)</td>
<td>- Non-bank non-insurer global systemically important financial institutions - Branches, subsidiaries, subsidiaries of holding companies of global systemically important banks or insurers that are licensed corporations - Recognized clearing houses - Recognized exchange companies designated within scope - Financial institutions SFC is designated resolution authority of (s. 6) - Holding companies (s. 28) - Affiliated operational entities (s. 29)</td>
</tr>
</tbody>
</table>

**Who regulates and is regulated by the FI(R)O – the definitions of “within scope financial institution” and “resolution authority”**
The application of the FI(R)O to corporations licensed under the Securities and Futures Ordinance (“SFO”) is unascertained, as the FSB’s assessment methodology for non-bank non-insurer global systemically important financial institutions has yet to be finalised.

The rationale behind creating a single, cross-sectoral regime was to better support the orderly resolution of financial institutions in a wider financial services group operating across multiple sectors. In resolving such a group, the FI(R)O empowers the Financial Secretary to designate a lead resolution authority. The lead resolution authority may exercise powers in respect of financial institutions as though it were the resolution authority of the sector that financial institution belongs to. In practice, it seems more likely that the lead resolution authority will give written directions to the other regulators, who must comply with such directions.

Whilst certain features of the FI(R)O – including compensation in Part 6 and the review tribunals under Part 7 – are common to all three sectors, it remains to be seen how the divers needs of different types of within scope financial institution will be addressed in resolution. Some provisions, such as the power of the HKMA to make capital reduction instruments under s. 31, or sub-s. 90(5) on suspension of termination rights in contracts of insurance, are sector-specific. Others, such as stabilisation options, may not be equally applicable.

Pre-Resolution Compliance

All three sectors are subject to preparation for resolution. However, compliance with these provisions is likely to differ in practice from sector to sector.

To ensure the efficacy of resolution, resolution authorities may carry out resolvability assessments of within scope financial institutions and carry out planning for their resolution. For these purposes, the HKMA has already published a Code of Practice on Resolution Planning Core Information Requirements (May 2017). Powers of assessment and planning are supplemented by powers of information gathering (s. 158) and entry and inspection (s. 160).

During assessment, the structure, operation, or business practices of a within scope financial institution may be considered “impediments” to the planned resolution. Resolution authorities may direct removal or mitigation of such impediments – though there is currently no guidance as to what an “impediment” is.

Further to capital requirements under the Banking Ordinance (“BO”), Insurance Companies Ordinance (“ICO”), or SFO, the FI(R)O empowers resolution authorities to make rules for loss-absorbing capacity of within scope financial institutions. Reference is made in s. 19 to international standard-setting bodies – the Legislative Council brief for the Financial Institutions (Resolution) Bill (2015) referred to the FSB’s Principles on Loss-absorbing and Recapitalisation Capacity of G-SIBs in Resolution as one example.

Resolution authorities may also make rules to require provisions in contracts that create liabilities for within scope financial institutions to acknowledge they may be subject to bail-in under stabilisation. A further rule-making power provides for acknowledgement of eligibility of termination rights in contracts with qualifying entities to be suspended in resolution.

To protect the resolution process, petitions for winding up by the Courts may not be presented in respect of within scope financial institutions unless notice is given to the relevant resolution authority (s. 192). This section will not come into force until rules have been made as to court practice and procedure.

### Pre-Resolution Requirements

- **Resolvability assessment (s. 12):** ascertain if there are impediments to the orderly resolution of financial institutions (eg, its structure, operations or business practices that affect the efficacy of resolving the institution).

- **Resolution planning (s. 13):** plan for the resolution of financial institutions. Resolution authorities may direct removal/mitigation of impediments (s. 14).

- **Loss absorption (s. 19):** resolution authorities may make rules on the loss-absorbing capacity of financial institutions.

- **Contractual provision requirements (s. 60 and s. 92):** due to the potential effect of exercising resolution powers (eg, in respect of conversion of capital instruments), resolution authorities may require the inclusion of provisions in such contracts to acknowledge that potential effect.
Ceasing to be Viable and Initiating Resolution

Key to the FI(R)O is the concept of “resolution”, which differs from winding up. Where insolvency proceedings maximise and distribute remaining assets to creditors, resolution should be a rapid response for protecting critical functions (such as deposit taking, provision of loans, managing payment systems, etc) of failing financial institutions.

Section 5 provides that a financial institution is considered non-viable if it has failed to meet conditions required to maintain its authorisation to carry on business (such as licensing, approval, recognition or designation under the BO, ICO or SFO), and that authorisation may be removed, or it is unable to discharge its obligations for carrying on business. “Unable to discharge obligations” under this section may be confusingly similar to the inability to pay debts for the purposes of winding up. Key Attribute 3.1 states “[t]he resolution regime should provide for timely and early entry into resolution before a firm is balance-sheet insolvent and before all equity has been fully wiped out” (emphasis added), illustrating the pre-emptive nature of resolution.

Section 25 sets out conditions for initiating resolution – (1) that the financial institution has ceased to be viable; (2) there is no reasonable prospect the financial institution could become viable again through private sector action; and (3) the non-viability of the financial institution poses risks to the stability of the financial system.

These conditions are also relevant as prerequisites to exercise certain powers, such as the resolution authority’s power to give directions (s. 22), remove directors (s. 24), or make capital reduction instruments (s. 31).

Fulfilling the three conditions is likely to differ from sector to sector, raising the issue of how resolution powers will be exercised where a group includes within scope financial institutions in more than one sector.

Resolution and Stabilisation

Once s. 25 conditions have been fulfilled, a resolution authority must consult with the Financial Secretary before initiating resolution (s. 27). Resolution is initiated by issuing a letter under s. 30 indicating the resolution authority’s mindedness to resolve the financial institution. The financial institution may make representations in respect of the potential resolution.

FI(R)O Part 5 sets out powers of resolution authorities in resolution. Resolution authorities may manage or exercise the powers of a financial institution in respect of its affairs, business or property, as well as powers to transfer or issue securities to the resolution authority (s. 93). This may in some ways be compared to the powers of a liquidator, though the purpose and outcome of resolution is much different than distributing assets in liquidation.

Resolution authorities may suspend contractual obligations of a financial institution in resolution (s. 83), though certain types of obligation are excluded from suspension (s. 84). Similarly, the resolution authority may suspend termination rights of counterparties otherwise exercisable under contract with the financial institution in resolution (s. 90). Measures taken for the purposes of resolution are to be disregarded and shall not trigger contracts containing default provisions (s. 89).

To stabilise the parts of financial institutions that perform critical functions, a resolution authority may apply statutory stabilisation options to a financial institution in resolution. Under s. 33, the five options are:

- to transfer the securities, assets, rights or liabilities of the financial institution to a privately owned purchaser;
- a bridge institution;
- an asset management vehicle;
- a temporary public ownership company; or
- to bail-in the financial institution.

Under s. 34, the resolution authority may apply one or a combination of the options, together or sequentially, or apply stabilisation to certain parts of the financial institution only. The resolution authority may also choose not to apply stabilisation – the general powers under s. 93 may apply, or the financial institution may be allowed to fail in the normal way, presumably by exercise of the resolution authority’s regulatory powers to wind up financial institutions, or by way of insolvency proceedings.

An Effective Egg Drop Container?

Due to the size and scope of the FI(R)O, matters such as: removal of officers; clawback of their remuneration; offences; compensation; and non-Hong Kong resolution actions have not been discussed.

It remains difficult to assess the effectiveness of the FI(R)O. The cross-sectoral approach leaves much open, presumably for flexibility. Further regulatory guidance needs to be developed under the rule-making powers – as illustrated by the exclusion from commencement of Part 8 and s. 192 of the rules for the court procedure of clawback of remuneration and on how notice of winding up petitions can be made.

Guidance as to when an institution is considered “non-viable”, and how more draconian powers such as removal of “impediments” are to be exercised, will be critical for compliance of within scope financial institutions. The issue of consistency between the three sectors where groups include within scope financial institutions in more than one sector also remains.

What is clear, however, is the ambitiousness of what the FI(R)O tries to accomplish, and the potential complexity in exercising resolution powers in Hong Kong.
防護雞蛋墜地的裝置：
香港的《金融機構(處置機制)條例》

作者 羅敬韜大律師

大家還記這樣的一個學校實驗嗎？
同學們被要求設計一個雞蛋容器，然後將雞蛋放進這容器中，再從高處將這容器掉到地上，看看裡面的雞蛋會否碎裂。

2008年9月，美國政府接管了按揭貸款巨人房利美和房地美；美國銀行以500億美元代價收購美林；雷曼兄弟提出破產呈請；全球最大保險公司AIG接受850億美元的聯邦緊急救援；監管機構關閉了華盛頓互惠銀行。事件一波接一波地發生，最後導致環球金融危機爆發。雞蛋接連墜地，傳來一聲又一聲的「啪啦」聲音。

然而，如果我們要在雞蛋墜地之前把它接住，這是談何容易。銀行若曾投資於以按揭貸款作為支持，其價值正在急降的金融工具，便必然會面對流動性危機，以致環球金融體系達至近乎崩潰的邊緣。可以說，雷曼兄弟會是最後一家獲准倒閉的「具系統重要性金融機構」，而其他的「系統重要性金融機構」，它們會獲得透過注入資金、資產或負債擔保、公開籌募資金等方法來得到支持。

破產法律程序所涉及的巨大公共成本，以及其對環球金融體系的穩定性所形成的威脅，顯示了它被運用來處置「系統重要性金融機構」並不合適，尤其是在需要維持對主要金融服務的提供，以及對「具系統重要性金融機構」的倒閉缺乏監管權力的情況下。

2009年9月，20國集團的領導人委託「金融穩定理事會」作出處置「具系統重要性金融機構」的更有效安排，亦即是：「設計一個防護雞蛋墜地的裝置，或盡量避免雞蛋破裂時出現混亂情況。」

2011年10月，「金融穩定理事會」接受《金融機構有效處置機制的主要元素》（下稱「主要元素」），那是一個為處置機制的有效運作而提供的框架。20國集團在2011年11月認可了「主要元素」為「新的處置機制國際標準」，而此舉促使大多數的司法管轄區需要進行立法改革以落實推行這一機制。

若干司法管轄區已明確進行了相關的改革，例如：美國的《多德-弗蘭克法案》（2010年7月）；或歐盟的《銀行恢復及處理指令》（2014年5月）。然而，在「金融穩定理事會」所發表的《處置機制專題檢討：同業評審報告》（2013年4月）中，揭示了香港的處置機制在監管權力方面呈現著重大的缺口，這促使香港需要制定《金融機構(處置機制)條例》，從而讓「主要元素」得以在本地落實施行。
在這「金融危機」過後的第九個年頭，香港目前需要考慮的問題是：該項在2017年7月7日實施的《金融機構(處置機制)條例》，將會是在現行法規之上再覆蓋的另一項新法規，還是它將會讓大家看到：它是一個能有效防止雞蛋墜地和碎裂的裝置。

### 一體適用

乍眼看來，《金融機構(處置機制)條例》似乎只是另一條跨界別條文法規，目的是將新的監管權力，賦予香港金融管理局、新成立的保險業監管局，以及證券及期貨事務監察委員會(它們乃分別作為銀行、保險、證券及期貨界別的「處置機制當局」)。《金融機構(處置機制) 條例》適用於所有銀行、具全球系統重要性的保險人和持牌機構，以及金融市場基建實體(以下統稱「受涵蓋金融機構」)。

### 《金融機構(處置機制)條例》適用於受涵蓋金融機構

<table>
<thead>
<tr>
<th>受涵蓋金融機構</th>
<th>銀行界別實體</th>
<th>保險界別實體</th>
<th>證券及期貨界別實體</th>
</tr>
</thead>
<tbody>
<tr>
<td>處置機構當局</td>
<td>- 在香港成立的獲授權機構</td>
<td>- 具全球系統重要性保險人</td>
<td>- 銀行及保險人以外的具全球系統重要性金融機構</td>
</tr>
<tr>
<td>- 在香港以外成立的獲授權機構</td>
<td>- 保險業監管局被指定作為其處置機構當局的金融機構(第6條)</td>
<td>- 具全球系統重要性銀行或保險人的分行、附屬公司、或控權公司的附屬公司，且為持牌法團</td>
<td></td>
</tr>
<tr>
<td>- 指定結算及收付系統的接收機構，但並非認可機構，亦並非由政府全資擁有和全權管理</td>
<td>- 控權公司(第28條)</td>
<td>- 認可結算所</td>
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</tr>
<tr>
<td>- 指定結算及收付系統的系統營運者，但並非認可機構，亦並非由政府全資擁有和全權管理</td>
<td>- 相關營運實體 (第29條)</td>
<td>- 被指定為受涵蓋金融機構的認可交易所以</td>
<td></td>
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<tr>
<td>- 金管局被指定作為其處置機構當局的金融機構(第6條)</td>
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</tbody>
</table>

### 由誰負責監管以及誰受《金融機構(處置機制)條例》的監管

'受涵蓋金融機構」和「處置機構當局」的相關定義

由於「金融穩定理事會」對銀行和保險人以外的具全球系統重要性金融機構的評估方法仍未定案，因此根據《證券及期貨條例》獲發執照的機構如何適用《金融機構(處置機制)條例》，目前尚未明確。

設立一個單一和跨界別機制的背後理論，是為了對該等在經營範圍廣泛，業務涉及多個界別的金融服務集團中的金融機構(處置機制)條例」，目前尚未明確。

設立一個單一和跨界別機制的背後理論，是為了對該等在經營範圍廣泛，業務涉及多個界別的金融服務集團中的金融機構(處置機制)條例」，目前尚未明確。
構(處置機制) 條例》賦予權力，可就受涵蓋金融機構的吸收虧損能力(loss-absorbing capacity) 訂立相關規則。第19條提述了「國際標準訂立團體」，而其中一個例子，是立法會關於《2015年金融機構(處置機制)條例草案》的參考資料摘要，當中提述了「金融穩定理事會」所制訂的《處理過程中應有的吸收虧損和資本重整工具原則》。

此外，「處置機制當局」可以訂立規則，規定合約中須載有為受涵蓋金融機構產生負債的條文，確認其在穩定措施下，可能需要作為內部財務重整的對象；此外，該局的另一項制訂規則權力亦訂明，合資格實體所訂立的合約的終止權，可在處置過程中予以暫停。

為了保障有關的處置程序，除非「處置機制當局」已獲給予相關通知，否則任何人不得向法庭提出呈請，要求法庭對受涵蓋金融機構作出清盤(第192條)。該項條文目前仍有待與法庭的實務和程序相關的規則確立後，才會付諸實施。

**處置前的規定**

- 處置可行性評估(第12條)：須確定若要對金融機構作出有秩序處置，是否將會面對障礙(例如，將會對處置該機構的效能產生影響的結構、運作或業務操作)。
- 處置規劃(第13條)：處置金融機構方面的規劃。「處置機制當局」有權就排除/減低障礙作出指示(第14條)。
- 吸收虧損(第19條)：「處置機制當局」可就吸收虧損能力作出相關規定。
- 合約條文規定(第60及92條)：基於在行使處置權力時所產生的潛在影響(例如：轉換資本票據)，「處置機制當局」可要求在該等合約中附加條文以確認此等潛在影響。

不再可持續經營及啟動處置

《金融機構(處置機制)條例》的關鍵之處，是「處置」這一概念，而它與清盤的含義亦有所不同。可以說，破產法律程序是最大限度地，將所剩餘的資產分配給相關債權人；而處置的含義，則是對瀕臨倒閉的金融機構作出快速反應，以保護其關鍵職能(例如：存款、貸款、管理支付系統等等)。

第5條訂明，倘若某一受涵蓋金融機構未能符合所規定的條件，以維持其在經營相關業務(例如根據《銀行業條例》、《保險公司條例》或《證券及期貨條例》的規定，進行給予許可、批准、確認或指明等方面的業務)上所獲的授權，該授權將可能會被撤銷；又或是，該機構在經營業務方面未能履行其義務。在這情況下，有關機構將被視作不再可持續經營。在這方面，處置機制應訂明要及時提早進入處置程序，避免待至某公司在資產負債表上出現資不抵債的問題及所有股本被徹底註銷的地步(斜體字以示強調)，這顯示了處置所具的優先性質。
第25條列明各項啟動處置的條件：(1) 有關金融機構已不再可持續經營；(2) 有關金融機構無法合理機會透過私營範疇的任何行動而恢復可持續經營；及(3) 有關金融機構不持續經營，對香港金融體系的穩定構成了風險。

在行使某些權力上(例如：「處置機制當局」可出手指示(第22條)、罷免董事(第24條)、或訂立資本縮減文書(第31條)等方面的權利)，該等權利也屬於先決性的權利。

然而，如何能符合上述三項條件，這可能須視不同的界別而定。一個集團之內，倘若包含一個集團的受涵蓋金融機構，這將會產生如何行使處置權力的問題。

處置與穩定

當第25條所述的三項條件一一實現後，「處置機制當局」在啟動有關處置前，須先行諮詢財政司司長的意見(第27條)。

「處置機制當局」可行使某一金融機構的權力，並管理該機構的事務、業務或財產。此外，「處置機制當局」亦可行使將相關金融機構的證券、資產、權利或負債轉讓予由私人擁有的買家；轉讓予資產管理工具；轉讓予暫時公有公司；或該金融機構進行內部財務重整。

處置與穩定

根據第33條的規定，該項5項措施為：

• 將相關金融機構的證券、資產、權利或負債轉讓予私營機構或個人受讓人；
• 轉讓予資產管理工具；
• 轉讓予暫時公有公司；或
• 轉讓予資產管理工具；
• 轉讓予資產管理工具。

為了使金融機構能夠在關鍵功能的執行上維持穩定，「處置機制當局」可對被處置金融機構實施法定的穩定措施。根據第34條的規定，該項5項措施為：

• 將相關金融機構的證券、資產、權利或負債轉讓予由私人擁有的買家；
• 轉讓予資產管理工具；
• 轉讓予資產管理工具；
• 轉讓予暫時公有公司；或
• 轉讓予資產管理工具。

為了一個集團之內，倘若包含一個集團的受涵蓋金融機構，這將會產生如何行使處置權力的問題。
Lessons from the WannaCry Ransomware Attack

By Ben Yates, Senior Associate in Commercial Disputes
Rico Chan, Trainee Solicitor
RPC
RPC
The recent WannaCry cyber-attack has sent shockwaves through the global business community. Since its initial outbreak in May 2017, the largest ransomware attack in internet history has infected over 300,000 computers in more than 150 countries. According to some estimates, the attack has given rise to US$4 billion in losses. In late June 2017, a similar ransomware attack using “Petya” ransomware hit computers across the globe.

The WannaCry and Petya incidents highlight a growing danger posed to businesses by ransomware extortion. In a typical attack of this kind, hackers use malicious software to encrypt the victim’s data, blocking access to it and threatening to publish or delete it, unless a ransom is paid. This article discusses some of the legal and practical issues surrounding ransomware attacks, including the question of the legality of ransom payments and the key role lawyers can play in advising on preventative measures, mitigation of loss and cyber insurance.

Should a victim pay the ransom?

It is doubtful whether paying a ransom is likely to be productive in the majority of cases. Carrying out a ransomware attack is a highly illegal act, in contravention of several statutory criminal laws and punishable by lengthy prison terms. If caught, the offenders may be charged with offences under the Theft Ordinance (fraud, blackmail) and s. 60 of the Crimes Ordinance (destroying or damaging property), as well as more “cyber-crime”-specific offences under s. 161 of the Crimes Ordinance (access to a computer with criminal or dishonest intent) and s. 27A of the Telecommunications Ordinance (unauthorised access to computer by telecommunications). Individuals prepared to commit such serious criminal offences are unlikely feel any ethical quandary if they fail to honour a bargain to release their victims’ data on receipt of a ransom. Even if the data is released, payment of the ransom is likely to encourage repeat attacks by indicating the victim is a “soft target”.

However, it is understandable that some victims may be tempted to risk making the ransom payment. Time pressures may mean that businesses have limited options. Some victims may choose to rely on their backup systems to restore the files, while others may opt to employ computer experts to attempt to decrypt the files. However, none of these methods is usually as effective as obtaining the decryption “key” directly from the hackers. This is particularly true when the victim has not made regular system backups or does not have extensive financial resources or technological support.

The Legality of Ransom Payments

Is a business making a ransom payment acting lawfully in doing so? This question not only concerns the victims, but also their insurers.

Currently, there is no specific legislation under Hong Kong or generally applicable international law which makes ransom payments illegal. Also, there is no duty on ransom payers to report the incidents to the police in Hong Kong (although the police encourage them to do so).

In Mansefield AG v Amlin Corporate Member Ltd [2011] EWCA Civ 24, a case which involved the seizure of a vessel and its cargo and crew off the coast of Somalia by pirates, the common law position on whether the payment of a ransom is lawful was clarified by the Court of Appeal of England & Wales. An argument was raised that the ransom payment was unlawful since it was contrary to public policy to reward piracy. However, the Court of Appeal rejected this argument, concluding:

there is no universal morality against the payment of ransom, the act not of the aggressor but of the victim of piratical threats, performed in order to save property and the liberty or life of hostages. There is no evidence before the court of such payments being illegal anywhere in the world. This is despite the realisation that the payment of ransom … encourages the incidence of piracy for the purposes of exacting more ransoms. (Perhaps it should be said that the pirates are not classified as terrorists. It may be that the position with regard to terrorists is different.)

The court’s observation that the public policy position with regard to terrorists could be different has, at present, limited relevance to ransomware attacks. In Hong Kong, under s. 7 of the United Nations (Anti-Terrorism Measures) Ordinance, a person must not provide or collect any property with the intention or knowledge that such property will be used to commit any terrorist acts. However, to date, there is no known connection between ransomware attacks in Hong Kong and terrorism, and even if there were, the victim may not be aware of it. It is therefore unlikely that a ransom payment made in response to a ransomware attack would fall within the scope of this offence.

It is worth noting that the UK’s Counter-Terrorism and Security Act 2015 introduced a new offence prohibiting insurers from making any reimbursement of ransom payments made by the insured to persons involved or suspected to be involved in terrorism. It remains to be seen whether Hong Kong will adopt a similar provision.

Litigation Exposure for Data Breaches and Data Loss

Businesses suffering from ransomware attacks may face potential claims arising from data breaches or loss of data.

Under the Personal Data (Privacy) Ordinance (“PDPO”), a “data user” shall comply with the data protection principles covering various aspects of “personal data”. Principle 4 requires data users to take all practical steps to protect personal data against unauthorised or accidental access, processing, erasure, loss or use.

Those steps may include the use of secure computer software. The WannaCry hackers took advantage of a security flaw in the Microsoft Windows operating system.
system. Microsoft had issued security patches for the more recent versions of Windows in order to address this vulnerability, but not all users had installed the patch. Of further concern was the vulnerability of the 16-year-old Microsoft Windows XP, for which Microsoft had stopped releasing security patches in April 2014. Despite its age, Windows XP has continued to be used widely. If hackers gained access to or destroyed personal data stored on a business’ computer system as a result of its failure to update the operating system used on its computers or to download and install security patches when available, the business could be held to have failed to take adequate steps to prevent the incident, in contravention of Principle 4.

In addition, pursuant to s. 66 of the PDPO, any person suffering damages as a result of such contravention would be entitled to claim compensation from the “data user”. Victimised businesses must, therefore, be mindful of their potential exposure to civil claims from parties affected by damage to, disclosure of or loss of personal data, which may include their employees, clients and trading partners.

Can a victim sue the software supplier?

One potential avenue for recovering losses resulting from a ransomware attack is to bring proceedings against the software supplier for the security flaw. Such a claim may be brought on the basis that the software supplier should not be liable for security breaches. Unless security is integral to the product’s purpose (eg, in the case of antivirus software), such clauses are likely to satisfy the reasonableness test under the Control of Exemption Clauses Ordinance.

Shifting Risks via Cyber Insurance

Recently, the Hong Kong Productivity Council reported a 23 percent rise in security incidents in Hong Kong in 2016 as compared to 2015. Among the 6,058 incidents, malware cases (including ransom attacks) powered the surge, with the number of reported incidents increasing by 247 percent. In this context, cyber insurance can play an important role in shifting the business risks associated with cyber security. Although policy terms vary significantly, policies generally provide coverage for costs connected with ransomware attacks, for example:

- **Ransom payment**: usually a ransom is not paid up-front by the insurer; once the threat is over, the insurer will reimburse the policyholder for the ransom up to a certain amount.

- **Costs of data restoration**: victims will commonly consult computer specialists for assistance with decryption of the files or restoration from backups.

- **Loss of revenue due to business interruption**: typically there must be a direct causal relationship between the ransomware attack, business interruption and the loss of revenue.

- **Costs of forensic investigation**: forensic investigations are usually required to determine the scope of the attack and the files which have been lost or encrypted.

- **Third Party Liability**: defence costs and civil damages arising from third party liability claims (eg, customers and suppliers) arising out of a cyber incident may be covered, such as security and data breaches, defamation, breach of privacy and negligence claims.

It is relatively common for those taking out cyber insurance policies to lack adequate understanding of how those policies operate, and what is and is not covered by them; many will benefit significantly from legal advice and assistance with negotiation at the time of entry into the policy. Areas particularly ripe for disputes, and which may be affected by the policy wording, include causation, the date on which the loss is deemed to have been suffered, the timeliness and proportionality of the insured’s response, and the adequacy of the insured’s cyber security measures.

**Guidance on Reducing Cyber Risks**

Besides cyber insurance, businesses should be advised to adopt cyber security measures (indeed, failing to take adequate measures could prevent recovery under the insurance policy, and could in some circumstances also expose directors and officers to personal liability). In response to the alarming proliferation of the WannaCry ransomware, on 15 May 2017 the Securities and Futures Commission published a circular to alert all licensed corporations to the risk of ransomware attacks and suggested the following measures:

- apply the latest security update to your computers and network devices;
- install and properly set up a firewall or broadband router for connecting your devices to the internet;
- perform offline backup (ie, backup on another storage device, disconnected after backup);
- avoid opening links and attachments in any suspicious emails;
- avoid connecting any computer or device to your office network before proper security verification; and
- ensure that suitable antivirus / internet security software is installed and regularly updated.

Finally, the circular states that business entities are expected to evaluate the effectiveness of their cybersecurity controls critically and to seek advice from...
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Conclusion

WannaCry and similar incidents have raised significant IT security issues across various industries in Hong Kong and across the world. The loss suffered and liability to third parties incurred in the event of such an attack can be devastating. Businesses should therefore be advised to keep a close eye on the latest technological developments and on the steps they should take to protect their IT systems from such an attack in compliance with any applicable regulations.

However, the reality is that no system is entirely invulnerable. Before becoming a victim to a ransomware or other cyber attack, businesses should therefore be advised on making the necessary preparations for the worst, ensuring not only that they have adequate insurance cover in place but also that they adopt comprehensive response plans to mitigate the potential losses resulting from ransomware attacks. Such response plans should include the coordination of urgent assistance from lawyers and technical experts well versed in the field.

以WannaCry勒索軟件所發動的攻擊為戒

最近由WannaCry (中文譯為「想哭」) 勒索軟件所發動的網絡攻擊，引起全球商業領域的極大震盪。這一互聯網史上歷來規模最大的勒索軟件攻擊，在2017年5月首度爆發後，導致逾150個國家的三十多萬台電腦受到感染。根據估計，是次攻擊造成40億美元的損失。2017年6月下旬，另一個勒索軟件“Petya”也向全球電腦發動了類似攻擊。

從WannaCry和Petya在互聯網上肆虐觀之，勒索軟件對企業所造成的危害正在與日俱增。在此類典型的網絡攻擊中，黑客會使用惡意軟件來將受害者的資料加密，並威脅受害者支付贖款，否則會阻礙他們存取有關資料，甚至會將這些資料公開或刪除。本文將討論與勒索軟件攻擊有關的一些法律與實務上的問題，包括支付贖款是否合法；以及，採取防範措施、減少損失及網絡保險等事宜的意見提供上，律師可扮演的關鍵角色。

受害者應否支付贖款？

在大多數情況下，支付贖款是否便能夠將問題解決，這是令人值得懷疑的。犯事者如被查獲，他們可能會被控《盜竊條例》下的罪行（欺詐、勒索）、《刑事罪行條例》第60條下的罪行（摧毀或損壞財產）、《刑事罪行條例》第161條下的《網絡罪行》有更密切關係的罪行（有犯罪或不誠實意圖而取用電腦），以及《電訊條例》第27A條（藉電訊而在未獲授權情況下取用電腦資料）。決意干犯該等嚴重罪行的人，即使他們於收取贖款後不履行承諾，將受害者的資料交回，他們內心也不會感到如何歉疚。縱然他們將資料交回，受害者願意支付贖款，這在他們心目中，受害者顯然是一個「軟目標」，他們會因而被鼓勵，再度向受害者發動攻擊。

然而，有一些受害者確實會願意冒險，嘗試支付贖款。他們的此舉，其實也是可以理解的。時間緊迫所造成的壓力，使企業沒有太多選擇餘地。一些受害者會考慮運用其備份系統，將有關檔案復原；另一些受害者則會考慮聘請電腦專家，由他們來協助將有關檔案解密。然而，所有這些方法，通常都比不上直接從黑客那兒取得解密的「鑰匙」；特別是，受害者倘若並沒有定期為其電腦系統進行備份，又或是欠缺足夠的財政資源或技術支援，情況尤其如此。
支付贖款的合法性

企業支付贖款的做法是否合法？這一問題不僅為受害者所關注，其保險公司也對此同樣重視。

香港目前並沒有這一方面的具體法例，而國際上也沒有任何通行法規，訂明支付贖款的行為違法。另一方面，支付贖款的人士並沒有責任將有關事宜向警方呈報（雖然香港警方也勸告他們如此行）。

在Mansefield AG v Amlin Corporate Member Ltd [2011] EWCA Civ 24一案中（那是一宗涉及索馬利亞海域附近的海盜，擄走了一艘貨船及其船員和貨物），英格蘭和威爾斯上訴法院闡明了在普通法下，支付贖款是否合法的問題。有人認為，支付贖款的行為不合法，因為此舉無疑是對海盜的所作所為給予獎勵，違反共公政策。

然而，該上訴法院不接受這一說法，並認為：

支付贖款沒有違背普世的道德規範，因為此等行為並非由侵害者，而是由面對海盜行為威嚇的受害者作出，目的是為了拯救財產以及被擄者的自由和生命。

有人向本法庭提交任何證據，證明世界上有哪一地方，認定支付贖款的行為是不合法，儘管我們都曉得，支付贖款給海盜，確實會助長海盜行為，鼓勵他們作出更進一步的苛索。（但有一點也許必須加以說明的是，海盜和恐怖份子並不屬同一類人。今天如果是恐怖分子作出此等行為，情況也許便會不同。）

雖然該法院指出，針對恐怖分子的公共政策是有所不同，但在目前，它與勒索軟件所發動的攻擊並沒有太大關連。在香港，《聯合國(反恐怖主義措施)條例》第7條訂明：任何人不得提供或籌集任何財產，倘若他懷有意圖或是知道，該等財產將會用於作出恐怖主義行為。然而，直至今天為止，在香港出現的勒索軟件攻擊，其與恐怖主義並沒有任何已知的聯繫；即使有，受害者也可能並不知情。故此，因為遭受勒索軟件的攻擊而支付贖款，不應被視作犯上述罪行。

值得注意的是，英國的UK’s Counter-Terrorism and Security Act 2015一案訂立了一項新罪行，規定受保人如果向任何涉及或懷疑涉及恐怖主義的人士支付贖款，保險公司不得向該名受保人作出賠償。至於香港是否會實行類似規定，仍需我們拭目以待。

因資料洩漏及喪失而導致的訴訟風險

遭受勒索軟件攻擊的企業，可能會面對因為資料洩漏或喪失資料而提出的申索。

根據《個人資料(私隱)條例》，「資料使用者」必須遵守涉及個人資料的各方面的保障資料原則。第四項保障資料原則規定，資料使用者必須採取切實可行的步驟，保障個人資料不會未經授權或意外地被查閱、處理、刪除、喪失或使用。

該等步驟可包括安全電腦軟件的使用。WannaCry勒索軟件的黑客，利用微軟視窗作業系統中存在的安全漏洞。儘管微軟曾經就較近期的視窗版本向用戶發送安全補丁，以協助其修補有關的漏洞，但並非所有用家都安裝了該些補丁。

較為令人關注的問題是，面世已有16年的微軟視窗XP版本在遭受攻擊時，存在頗大的安全漏洞（從2014年4月開始，微軟已經停止為該版本發送安全補丁）。儘管該版本已經被使用了一段很長的時間，但它現時仍然被廣泛使用。企業如果未能更新其電腦作業系統，或是下載和安裝該等向其提供的安全保甲，以協助其修補有關的安全漏洞，但它現時仍然被廣泛使用。企業如果未能更新其電腦作業系統，或是下載和安裝該等向其提供的安全保甲，以協助其修補有關的安全漏洞，以致黑客有機可乘，取用或破壞其電腦系統中所儲存的個人資料，它有可能會被視作沒有採取充足步驟以防止有關事故發生，從而違反了第四項保障資料原則。

此外，根據《個人資料(私隱)條例》第66條，任何人如因該等違反事項而蒙受損害，他們有權向有關的「資料使用者」申索補償。因此，受害的企業必須留意，它們有可能會面對因個人資料受損、被披露、或喪失而受影響的人士向其提出民事申索（該等人士可包括其員工、顧客及生意夥伴）。

受害者是否有權起訴軟件供應商？

因勒索軟件的攻擊而蒙受損失的一個可能追討途徑，是向其軟件存在安全漏洞的供應商提起法律程序。提出有關申索的理据，是可以基於軟件供應商所提供的軟件存在漏洞（而此等漏洞可視為「產品缺陷」），因此該供應商應當就有關的違約或疏忽承擔法律責任。然而，要成功提出此等申索也絕非輕易，因為該等軟件供應商可辯稱，它的顧客並沒有採取合理步驟來避免其遭受攻擊（例如，該顧客並沒有下載或安裝該些向其提供的安全性更新或殺毒軟件）。

供應商與客戶之間的許可協議，通常會包含一項標準免責條款，指明軟件公司不須為任何資料洩漏承擔法律責任。除非就該產品之目的而言，安全性能是其中一個不可或缺的部分（例如，該產品是殺毒軟件），否則該項免責條款將有很大可能通過《管制免責條款條例》中的合理性測試。

風險轉移與網絡保險

根據香港生產力促進局近期所發表的一份報告，香港在2016年所發生的安全性能事故，較2015年上升了百分之二十三。在總共6,058宗的安全性能事故中，惡意軟件的肆虐（包括勒索軟件所發動的攻擊），是導致安全性能事故上升的主要原因，而所通報的事故數目，亦因而增加了百分之二百四十七。在這情況下，就轉移與網絡安全有關的企業風險而言，網絡保險可從中扮演一個重要的角色。雖然保單中的條款各有不同，但一般而言，它們都會包含因勒索軟件攻擊所招致的費用。例如：

- 支付贖款：保險公司通常不會预先支付贖款；當威脅解除後，保險公司會向保單持有人返還其所已支付的贖款（金額達至某一程度）。
- 還原資料的費用：受害者通常會要求電腦專家協助將有關的檔案解密或是
將備份還原。

- 因業務受到干擾而蒙受的收入損失：
  一般而言，勒索軟件所發動的攻擊、業務干擾、和收入損失之間，必須有直接的因果關係。

- 法證調查費用：進行法證調查的目的，是要確定受攻擊的範圍，和確定有哪些檔案已經喪失或已被加密。

- 第三方法律責任：其保障範圍可包括因網絡事故所引致的第三方法律責任申索(例如：由客戶和供應商提出)而產生的抗辯費用和招致的民事損害賠償。其範圍包括：就安全管理及資料洩漏、誹謗、私隱受到侵害和疏忽等方面而提出的申索。

投購網絡保險的人士經常對其保單如何運作，以及其保單涵蓋或不涵蓋哪些保障，都缺乏充足的了解。因此，法律顧問倘若能在其客戶簽訂保單時提供相關意見，並在進行有關商議時提供協助，這將可讓其客戶的利益得到重大保障。特別容易產生爭議，以及可能會受保單所運用的措辭影響的地方包括：因果關係、視作蒙受損失的日期、受保人所作回應的及時性和相稱性，以及受保人所採取的網絡安全措施是否充分等。

降低網絡風險的相關指引

除了網絡保險外，法律顧問也應當就網絡的安全措施向企業提出意見(事實上，倘若企業並沒有採取充分措施，它們有可能會無法根據其保單，要求保險公司作出相應賠償；在某些情況下，企業的董事或高級人員也可能需要面對承擔個人法律責任的風險)。WannaCry勒索軟件的不斷擴散，情況令人擔憂，香港證券及期貨事務監察委員會乃於2017年5月15日發出一份通函，就勒索軟件攻擊所可能帶來的風險，向所有持牌法團發出警告，並建議它們採取以下的防範措施：

- 為電腦及網絡装置安裝最新的保安更新程式；
- 將裝置連接至互聯網前，應安裝並妥善設置防火牆或寬頻路由器；
- 進行離線備份(即使用其他儲存裝置，備份後立即移除)；
- 避免打開任何可疑電郵內的連結或附件；
- 在安全性妥為核實之前，避免將任何電腦或裝置連結至公司網絡；及
- 確保已安裝並及時更新防毒軟件或互聯網保安應用程式。

最後，該份通函指出：企業實體應當嚴格檢視及評估其網絡保安監控措施的成效，有必要時，應當尋求外部專家的意見。

該份通函所提出的建議，事實上並非只與持牌法團有關，其他機構也應當積極關注，包括該些不須受特定行業規則監管的企業。此外，它們也應當留意證監會所發出的指引，以及由證監會、金管局、個人資料私隱專員等，就網絡安全所發出的無數通函。

然而，對於許多企業來說，該等通函所建議採取的安全措施，均涉及高昂的成本和費用，以致它們感到寸步難行。律師也許可以就：有哪些措施較有可能會被監管機構視為充分和相稱，向相關的企業提供意見。

結語

WannaCry勒索軟件所發動的攻擊以及其他類似的攻擊，引發香港與全球各個產業，對資訊科技安全問題的極大關注。該等攻擊所導致的損失，以及須對第三方承擔的法律責任，在程度上可以十分驚人。因此，為了符合任何適用的監管規定，法律顧問應當建議企業密切留意科技的最新發展，並採取適當措施以保護其資訊科技系統免受外來的攻擊。

然而，現實情況往往是，沒有任何一個系統是完美無瑕。企業如要避免成為勒索軟件和其他網絡攻擊的目標，便應當預先為最壞的情況作打算，確保其自身已經備有充分的保險，並已採取了廣泛的應變措施，以減輕因勒索軟件所發動的攻擊而蒙受的損失。應變的計劃應當包括：為擅長處理這方面問題的律師及技術專家所提供的緊急援助，作好充分協調的準備。
Hong Kong Court Opens Door to Winding Up Foreign Company Arbitration Award Debtor on Basis of Its Secondary Listing in Hong Kong

By Damien McDonald, Partner
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Fangda Partners in association with Peter Yuen & Associates
In Shandong Chenming Paper Holdings Limited v Arjowiggins HKK 2 Limited (HCMP 3060/2016), the Hong Kong Court of First Instance ("CFI") decided that an otherwise solvent mainland Chinese company with a secondary listing in Hong Kong, but with no assets in the jurisdiction, could be wound up in Hong Kong for failure to make payment of an arbitral award.

The company sought a declaration that it should not be wound up under Hong Kong law because the petitioner would not derive benefit from the winding up. The CFI rejected the company’s arguments, so potentially opening up an avenue of enforcement against award debtors whose shares are listed in Hong Kong, but do not otherwise have assets in the jurisdiction.

Legal Background

The Hong Kong courts have the power to wind up a foreign company under s. 327(1) and (3) of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32). This is a discretionary jurisdiction. It applies notwithstanding that ordinarily the appropriate jurisdiction to wind up a company is the jurisdiction in which it is incorporated.

The courts have developed three “core requirements” which must be satisfied before the discretion is exercised: (1) there is a sufficient connection with Hong Kong (but not necessarily the assets within the jurisdiction); (2) there is a reasonable possibility that the winding-up order would benefit those applying for it; and (3) the court must be able to exercise jurisdiction over one or more persons in the distribution of the company’s assets (per Kwan J in Re Beauty China Holdings Ltd [2009] 6 HKC 351).

Factual Background & Arguments

The Plaintiff (the “Company”) is incorporated in mainland China with shares listed on the Shenzhen Stock Exchange, and a secondary listing of shares on the Stock Exchange of Hong Kong Limited.

In October 2012, the Defendant (“AH2”) commenced arbitration proceedings against the Company in relation to a dispute arising out of a joint venture agreement. Subsequently, by an arbitral award dated 20 November 2015, the arbitration tribunal awarded AH2 damages of RMB 167,860,000 (the “Award”). On 7 December 2015, AH2 obtained leave from the CFI to enforce the Award. The Company failed to make payment and, on 18 October 2016, AH2 served a statutory demand on the Company.

The Company then applied to the court ex parte on notice to enjoin AH2 from issuing a winding up petition and then issued an originating summons seeking a declaration that the circumstances did not satisfy the “three core requirements” for the court to exercise its discretion.

The Company contended that it did not have any assets or undertake any business in Hong Kong and its only connection with the territory was its listing. It therefore submitted that the appointment of a liquidator in Hong Kong would be futile as he or she would not be able to realise the Company’s mainland assets. In other words, no benefit would be derived from the winding up order (and so the second core requirement would not be satisfied).

AH2 contended that it would benefit from a winding up on the basis: (1) that the Company’s listed status in Hong Kong was a valuable and realisable asset in Hong Kong; (2) that the Company had, prior to April 2015 a directly held subsidiary in Hong Kong, which controlled a significant part of the Company’s profit and which, notwithstanding a subsequent restructuring by which it became an indirect subsidiary held through Mainland and BVI companies, a liquidator could potentially obtain control of, and recover assets held by, this subsidiary; and (3) the winding up would facilitate an investigation into alleged breaches by the Company of the Listing Rules by failing to have at least one independent non-executive director who is ordinarily resident in Hong Kong.
Decision

The CFI first examined, and in turn dismissed, each of AH2’s arguments as to applicable benefit. First, in view of its corporate structure, the value of the listed status of the Company in Hong Kong was, “viewed realistically”, not capable of providing a material benefit to AH2 or other creditors of the Company.

Second, with respect to a potential liquidator realising benefits in the Company’s indirect subsidiary via the winding up of the Company, the CFI observed that it was “very difficult to predict how a court in the Mainland would react to an order made by the Hong Kong court to wind up a company incorporated in the Mainland”. The court then concluded on this issue that while it could not “entirely discount action by a liquidator in the Mainland resulting in a recovery for creditors it is a factor of limited weight”.

Finally, when it came to the Company’s alleged breach of corporate governance rules, the court found that “there are other ways of dealing with these kinds of infractions and of themselves they do not justify putting a solvent listed company into compulsory liquidation and, more pertinently, the Defendant would probably derive no benefit from an investigation into breaches of the Listing Rules”.

However, notwithstanding its rejection of AH2’s arguments, the court nonetheless went on to find in AH2’s favour that, although the Company had no assets in Hong Kong, AH2 would derive a benefit from the winding up order against the Company.

The court found that, whilst no obvious benefit could be derived from the listed status of the Company or its assets held outside of Hong Kong, such benefit could be derived from the “leverage” to AH2 created by the prospect of a winding up petition/appointment of a liquidator.

In the words of Justice Harris, “[t]he damage done to the Company’s reputation and the possible interference in its ability to carry on business overseas as a consequence of enforcement action by a liquidator would be immense”. Furthermore, “[u]nless the Company was surprisingly indifferent to these adverse consequences one would expect its management at some point in time to decide that the Company had no choice, but to pay the Award”.

The CFI went on to refer to “another consideration”, which would justify the moderation of the core requirements. This consideration, put simply, was the Company’s conduct in refusing to pay the award, notwithstanding its ability to do so. Justice Harris considered that there was a public interest in sanctioning this “unacceptable” conduct, in order “to disabuse other Mainland companies of the idea that they can take the benefit of access to Hong Kong’s financial system without the burden of complying with our laws”.

Justice Harris dismissed the originating summons. He also awarded AH2 its costs on an indemnity basis, reflecting the “unethical conduct of the Company”.

Comments on Public Policy

In light of the finding that there was sufficient benefit as described above, the CFI’s further finding on public policy is an important one. The implications of Justice Harris’s decision on public policy are obvious in that there is now a precedent in Hong Kong at the CFI level that in appropriate circumstances where a solvent foreign company listed in Hong Kong simply refuses to pay a debt, the Hong Kong courts may exercise their discretion to wind up the company.

Whilst this decision is an important one, and will no doubt be relied on in further cases to support similar applications, we do not consider that it sets down a general principle that foreign companies with no other connection other than a listing in Hong Kong, which refuse to pay their debts, will automatically justify a winding up order.

The jurisdiction to wind up a foreign company remains a discretionary jurisdiction and the petitioner in each case, will still be required to establish the core requirements and, in exceptional circumstances, that the public policy grounds ought to properly apply to the exercise of the court’s discretion.

The authors wish to thank Vivian Choi, trainee solicitor at Peter Yuen & Associates for her assistance in preparing this article.
香港法院基於外國公司仲裁裁決債務人在香港的第二上市而容許對其進行清盤

作者 夏道民 合夥人
馬修 法律經理

香港原訟法庭在Shandong Chenming Paper Holdings Limited v Arjowiggins HKK 2 Limited (HCMP 3060/2016)一案中，裁定一家具償債能力，並在香港進行第二上市的內地企業，雖然其在香港並沒擁有任何資產，但仍可因其沒有支付某項仲裁裁決所判定的款額而在香港被清盤。

該內地企業要求法庭作出宣告，它不該根據香港的法律被清盤，原因是提出有關清盤的呈請人，並不會從該項清盤中獲得任何利益。原訟法庭拒絕接納該內地企業的這一說法，並因此開闢了途徑，讓該等在港上市，但並無任何資產在香港的仲裁裁決債務人，可被強制執行相關仲裁裁決。

法律背景
香港法院有權根據《公司(清盤及雜項條文)條例》(第32章)第327(1)條，對一家外國公司進行清盤。這是一項酌情性的司法管轄權，而在一般情況下，對有關公司進行清盤的適當司法管轄區，應當是該公司註冊成立所在的司法管轄區。

法庭訂立了三項「核心規定」，規定在行使酌情決定權之前，該三項「核心規定」首先必須獲得符合，即是：(1) 該公司與香港有著充分聯繫(但並非必須在香港擁有資產)；(2) 該項清盤令有促使申請人獲益的合理可能；及(3) 在分配該公司的資產過程中，法庭必須能夠對一名或多於一名人士行使司法轄權(關淑馨法官在Re Beauty China Holdings Ltd [2009] 6 HKC 351一案中所作的評論)。

事實背景與論點
原告人(下稱「該公司」)於中國內地註冊成立，其股份於深圳證券交易所上市，並於香港聯合交易所第二上市。

2012年10月，被告人(下稱“AH2”)就某一因合資經營協議而產生的爭議，向該公司提起仲裁程序。其後，根據一項於2015年11月20日作出的仲裁裁決，仲裁庭裁定AH2可以獲得人民幣167,860,000元的損害賠償(下稱「仲裁裁決」)。2015年12月7日，AH2取得可強制執行該仲裁裁決的原訟法庭許可。然而，該公司未能支付該仲裁裁決所判定的款額，AH2於是在2016年10月18日向該公司送達一份法定要求償債書。

www.hk-lawyer.org 45
該公司於是向法庭作出單方面申請，要求發出禁止AH2提出清盤呈請的命令；然而，該公司再發出一份原訴傳票，要求法庭宣告有關情況並不符合該三項支持法庭可行使其酌情決定權的「核心規定」。

該公司辯稱，它並沒有在香港擁有任何資產和經營任何業務，而它與香港的唯一聯繫，就是它在香港聯交所的上市。因此，它認為在香港委任清盤人並無意義，因為該清盤人無法將該公司在內地的資產變現。換句話說，AH2並不能從該清盤令獲得任何利益（亦因此未能符合第二項核心規定）。

AH2主張，它可以因該項清盤而獲得利益，理由是：(1)該公司在香港的上市地位，是一項具有價值及可變現的香港資產；(2)在2015年4月以前，該公司在香港直接持有二家附屬公司，而這兩家附屬公司成為了一家必須通過內地及英屬維爾京群島的公司而間接持有的附屬公司，但清盤人仍然可以取得對該附屬公司的控制權，並追討由該附屬公司所持有的資產；及(3)由於該公司沒有委任至少一位通常在香港居住的人士擔任其獨立非執行董事，故被指違反《上市規則》的規定，而該項清盤將可有助對有關指控展開調查。

裁決
原訟法庭首先作出了有關審視，繼而駁回AH2所提出的各項關於其可獲益的論據。首先，「從現實角度來看」，基於該公司的企業結構，該公司所具有的香港上市地位，並不能夠為AH2或該公司的其他債權人提供重大利益。

第二，潛在清盤人欲藉著將該公司清盤，而將在該公司的間接附屬公司中的利益變現。但原訟法庭指出：「香港法院若頒令，將一家在內地註冊成立的企業清盤，很少估計內地的法院對此會有何反應」。此外，「除非是令人感到意外地，該公司毫不在乎會為其帶來甚麼不利後果，否則一般人都會預期，到了某個時候，該公司的管理層終會認定他們別無選擇，而惟有支付該仲裁裁決所判定的款額」。

接著，原訟法庭提到「另一項考慮因素」，而該項因素會為調整該等核心規定提供理由。簡單而言，它所指的就是該公司的行為表現：儘管該公司有能力支付仲裁裁決所判定的款額，但它仍拒絕作出支付。夏利士法官認為「除非該公司認定會為其帶來甚麼不利後果，否則一般人都會預期，到了某個時候，該公司的管理層終會認定他們別無選擇，而惟有支付該仲裁裁決所判定的款額」。

最後，關於該公司違反企業管治規則的指控，法庭裁定：「事實上，要處理該等違規情況，法官可以行使酌情決定權，將某具償債能力的公司予以強制清盤。但更為相關的一點是，即審判官對該公司是否違反了《上市規則》展開調查，被告人也不大可能會從中獲得任何利益」。

然而，雖然法庭拒絕接納AH2的論點，但法庭接著作出了有利於AH2的裁決，即：雖然該公司在香港並沒有任何資產，但AH2仍可從法庭向該公司發出清盤令而獲益。法庭認為，即使AH2不能因該公司的上市地位，又或是因為它在香港以外的地方持有資產而獲得明顯利益，但AH2可以藉著清盤呈請/對相關清盤人的任命所產生的「槓桿效應」而獲得利益。

關於公共政策的評論
除了如上所述，原訟法庭裁定AH2在該案享有充分的利益外，原訟法庭進一步就公共政策所作的裁定，也具有相當重要的意義。夏利士法官就公共政策所作的裁定，其所產生的影響是顯而易見的，因現時香港在原訟法庭的層次，已經立下了一個案例，規定在適當情況下，一家具償債能力並在香港上市的外國公司，倘若它拒絕履行義務償還某一債項，香港法院方可行使酌情決定權，將其清盤。

雖然該項裁決是重要裁決，並且毫無疑問，將會在其他案件中作為支持類似申請的依據，但我們並不認為已因此訂立了一項普遍原則，規定一家在香港上市的外國公司，倘若它拒絕履行其償還債務的義務，那麼即使它與香港並無任何其他聯繫，法庭仍可逕自向該公司頒發清盤令。

法庭向外國公司頒發清盤令的司法管轄權，仍然屬於酌情性的司法管轄權，而在有關案件中，呈請人仍須證明其符合相關的核心規定，而在特殊情況下，法庭在行使其酌情決定權時，必須以適當的公共政策理據作為支持。

本文的撰寫和成稿，獲阮葆光律師事務所的實習律師Vivian Choi提供協助，本文的作者谨此向她表示謝意。
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Industry Insights

Admiralty

Shipowners’ Limitation Actions and Funds

The Eleni, HCAJ 189/2013, 9 May 2017, arises out of a collision at sea. The case considers the relevance of s. 7 (“Limitation of actions”) of the Merchant Shipping (Collision Damage Liability and Salvage) Ordinance (Cap. 508) to the deadline specified for making claims against a shipowner’s limitation fund. The judgment decides that the two-year limitation period in s. 7(1) of the Ordinance is properly protected by issuance of a writ in certain circumstances and not necessarily by the filing of a claim against a limitation fund.

The judgment is an interesting review of the nature of a shipowner’s limitation action. In certain circumstances, a shipowner and/or charterer that does not dispute liability can seek a declaration that their liability be limited in accordance with the Merchant Shipping (Limitation of Shipowners Liability) Ordinance (Cap. 434). At the time of setting-up the limitation fund in this case the Ordinance applied the Convention on Limitation of Liability for Maritime Claims 1976 (set out in Schedule 2 of the enabling legislation), which has subsequently been replaced with the updated 1996 Tonnage Convention.

A “limitation action” is, therefore, usually an action by shipowner to limit its liability for major incidents at sea, including collisions or major cargo losses such as multiple containers falling overboard. Under the regime, in return for a payment into court a shipowner gets to limit its liability. The amount of security is calculated by reference to units of account (or special drawing rights) based on the ship’s gross registered tonnage.

A shipowner’s limitation action begins with the issue of an in personam writ, which it will serve on a claimant affected by the incident, and concludes with the grant of or refusal to grant a “limitation decree”. The court determines whether the shipowner has the right to limit its liability.

There are very limited circumstances in which a claimant (such as a cargo owner) can object to the setting-up of the limitation fund. If a limitation decree is made, it will include (among other things) provision for an administrative deadline for the filing of claims (known as “references”) against the fund. The limitation fund is constituted on the shipowner’s payment into court of the fund with interest since the date of the incident.

The regime for a shipowner’s limitation fund is important. As the judgment in The Eleni notes (at para. 12):

“Once the fund is constituted, the shipowner ceases to have any interest in disputing anybody’s claim because he is liable only for the amount he has paid in, and that being so all competing claimants to the fund are entitled to dispute one another’s claims against the fund. It is similar to the interpleader proceeding in which the interpleader brings the claimants to court and leaves it to them to resolve their rights over the subject matter of the interpleader.”

Andrew Horton, Partner, RPC
訟令狀開始，令狀會被送達受事件影響的申索人，最後以法庭發出或拒絕發出「局限法律責任的判令」結。法庭裁定船東是否享有局限其法律責任的權利。

申索人(例如貨物擁有人)只在非常有限的情況下，才能夠反對設立限制基金。要是法庭作出責任限制判令，判令會包括(除了別的以外)規定對基金提交申索(被稱為「轉交的申索」)的行政期限。限制基金是在船東向法庭繳存款項作為基金時設立的，利息自事故發生當日起計算。

船東限制基金的制度是重要的。正如在《Eleni》案的判決所提到(第12段):

「一旦基金設立了，船東不再有興趣爭議任何人的申索，因為他的責任只限於他已經支付的金額。正因如此，所有瓜分基金的申索人有權爭議另一人對基金提出的申索。情況與互爭權利訴訟相似，互爭權利訴訟把各申索人帶到法庭，由各申索人解決互爭權利訴訟標的事項的權利。」

- 賀敦合夥人, RPC

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**ARBITRATION**

**Intellectual Property Arbitration**

With the growth of intellectual property creation and commercialisation, parties increasingly prefer to resolve their IP disputes outside the court system. Most of the cases administered by the World Intellectual Property Organization (“WIPO”) Arbitration and Mediation Center (http://www.wipo.int/amc/en/center/caseload.html), according to its statistics, were filed in recent years, and the number of cases filed in 2016 alone was twice that in 2015.

Opportunities abound for IP arbitration practitioners, Hong Kong is determined not to trail behind the global trend. The Arbitration (Amendment) Ordinance 2017 was enacted in June. It introduces a new Part 11A (s. 103A to 103J) to the Arbitration Ordinance (Cap. 609) to clarify that all disputes of intellectual property rights (broadly defined so as to encompass IP rights wherever subsisting, by whatever name called, whether registrable or registered, as well as new types of IP rights which may come to be recognised in future) can be arbitrated, and that it is not contrary to public policy to enforce IP awards in Hong Kong.

These clarifications put beyond doubt that IP disputes can be arbitrated in Hong Kong. It avoids the legal uncertainties which some jurisdictions face as to whether IP disputes, especially those concerning the validity of IP rights registered with or granted by IP authorities, can be resolved by arbitration between private parties. Given the lack of local case law on the issue, the legal position in Hong Kong has hitherto not been entirely clear. The enactment removes one potential hurdle for parties to conduct IP arbitration in Hong Kong.

IP arbitration will continue to be conducted under the statutory framework of the Arbitration Ordinance. This means, for example, that IP arbitral proceedings and arbitral awards will remain confidential unless the parties otherwise agree, and subject to the statutory exceptions in s. 18 of the Arbitration Ordinance. The Amendment Ordinance also clarifies or adapts some of the provisions of the Arbitration Ordinance to make them more user-friendly to IP arbitration users. Pursuant to s. 73 of the Arbitration Ordinance, IP arbitral awards will, unless the parties otherwise agree, be final and binding on the parties only, and do not bind or affect the rights of non-parties. Given that IP licensing is common in the IP sector, s. 103E specifically confirms this position for an IP licensee who is not party to the IP arbitration, while providing that this does not affect the rights and liabilities as between an arbitration party and the third party licensee, whether those rights and liabilities arise in contract or by operation of law. Meanwhile, upholding party autonomy, new s. 103D(6) provides for the parties to have power to limit the arbitrator’s power to award remedies and relief, allowing greater flexibility for the parties to decide on the scope of remedies and relief appropriate to their case.

The new Part 11A will come into operation on 1 January 2018 (with the exception of s. 103J which will commence on the date of commencement of s. 123 of the Patents (Amendment) Ordinance 2016). Part 11A will apply to an arbitration commencing on/after 1 January 2018 as well as its related proceedings. Parties to an arbitration which has commenced before that day can also opt to apply Part 11A to their arbitration or its related proceedings.

The Arbitration (Amendment) Ordinance 2017 also updates the list of parties to the New York Convention in the Arbitration (Parties To New York Convention) Order (Cap. 609A). These amendments came into effect on the date of gazettal (23 June 2017).

- Hong Kong Department of Justice, Arbitration Unit

www.hk-lawyer.org 49
仲裁

知識產權仲裁


知識產權仲裁從業員機會處處，香港定意緊貼全球趨勢，不落人後。《2017年仲裁(修訂)條例》已於6月制定，在《仲裁條例》(第609章)加入新訂的第11A部(第103A至103J條)，以澄清可就所有知識產權權利(定義廣泛，包含各種知識產權權利，不論權利在哪裡存在，用甚麼名稱，是否可予註冊或已經註冊，也包含各種新的、將來有可能被承認的知識產權權利)的爭議，進行仲裁；也澄清強制執行知識產權裁決，並不違反香港的公共政策。

這次是毫不含糊地闡明，知識產權爭議可以在香港藉仲裁解決的。在私營企業或行業協會之間的知識產權爭議是否可以藉仲裁解決的問題上，特別是關於已在知識產權當局註冊或由之批予的知識產權權利的有效性的，有些司法管轄區正面對一些法律上不明確因素，而在香港進行仲裁就可避開這些問題。由於香港未有這方面的本地案例，香港的法律狀況至今一直未完全清晰。這項條例消除仲裁方在香港進行知識產權仲裁的潛在障礙之一。

知識產權仲裁會繼續在《仲裁條例》的法定框架下進行。換言之，(舉例說)知識產權仲裁程序及仲裁裁決將仍然保密，除非各方另有協議，並且不屬於《仲裁條例》第18條的法定例外情況。修訂條例亦澄清《仲裁條例》第73條，除非各方另有協議，否則知識產權仲裁裁決會是最終裁決，並且只對仲裁各方具有的束約力，對並非仲裁任何一方的，不具有約束力，也不影響其權利。

The measures require the following China-registered financial institutions to perform due diligence procedures on tax-related information of non-resident financial accounts:
- Commercial banks.
- Securities and futures companies.
- Securities and private equity (“PE”) fund management companies and PE partnerships (but not financial asset management companies).
- Insurance companies and insurance asset management companies.
- Trust companies.

The measures require qualified financial institutions to (among other things):
- Identify the tax residence status of individual and institutional account holders (or controllers).
- Identify the financial accounts of non-residents.
- Gather and report the relevant information on non-resident financial accounts and account holders.
- Maintain the confidentiality of the information gathered and retain the information for no less than five years.
- Register in the SAT's website before 31 December 2017 and report the relevant information gathered during the due diligence exercise before 31 May of each year.

The measures also require non-resident financial account holders to timely, accurately and completely provide their financial institutions with the required information.

Market Reaction
Jon Eichelberger, Partner, Baker & McKenzie, Beijing

"While the measures are targeted at the financial accounts of non-residents, their impact on non-residents is not likely to be material because, under China’s foreign currency controls, non-residents have very limited channels for maintaining financial accounts in China. The greater impact by far will be on Chinese residents with financial accounts in other countries and jurisdictions,
as the Chinese government, which taxes residents’ worldwide income, will automatically receive information about these accounts from the other participants under the Multilateral Competent Authority Agreement (“MCAA”). The automatic exchange of CRS information will change this situation dramatically and enable the tax authorities to collect more taxes from the foreign income of China’s residents.”

**Action Items**

General Counsel for qualified financial institutions will want to closely study the requirements under the measures and ensure these institutions install specific compliance mechanisms in relation to qualified accounts. Counsel may also wish to advise China residents with foreign financial accounts to make sure the information they disclose in relation to these accounts matches the CRS information that will be automatically disclosed to the Chinese government.

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**Practical Law China**

**法律顧問備忘錄**

**稅務總局與央行發布非居民金融賬戶盡職調查規定**

2017年5月9日，多個包括國家稅務總局（「稅務總局」）在內的金融監管機構與中國人民銀行（「央行」）聯合發布《非居民金融賬戶涉稅信息盡職調查管理辦法》（「《管理辦法》」），自2017年7月1日起施行。

《管理辦法》按照經濟合作與發展組織（「OECD」）的統一報告標準（「CRS」）制定，便利中國與各國(地區)每年自動交換金融賬戶信息。

《管理辦法》規定下列已在中國註冊登記的金融機構，履行非居民金融賬戶涉稅信息盡職調查的程序：

- 商業銀行。
- 證券公司、期貨公司。
- 證券投資基金管理公司、私募基金管理公司、從事私募基金管理業務的合夥企業(但不是金融資產管理公司)。
- 保險公司、保險資產管理公司。
- 信託公司。

《管理辦法》規定合資格金融機構(其中包括)：

- 識別帳戶持有人個人或機構(或者控制人)的稅收居民身份。
- 識別非居民的金融賬戶。
- 收集和報告與非居民金融賬戶和帳戶持有人有關的信息。
- 保密收集得的資料，並且保留資料至少五年。
- 2017年12月31日前登錄國家稅務總局網站辦理註冊登記，並且於每年5月31日前報送盡職調查期間收集得的相關資料。

《管理辦法》亦規定非居民金融賬戶持有人及時、準確、完整地向其金融機構提供《管理辦法》規定提供的資料。

**市場回應**

艾•文合夥人，貝克•麥堅時律師事務所北京辦事處

“雖然針對的是非居民的金融賬戶，但是《管理辦法》不大可能對非居民有重大影響，因為在中國的外匯管制下，非居民在中國開立金融賬戶的渠道非常有限。已在其他國家或地區開立金融賬戶的中國居民所受的影響要大得多，因為中國政府有向居民徵收全球入息稅，而根據多邊主管當局協議（「MCAA」），中國政府會收到由其他參與者自動提供的相關金融賬戶的資料。每年自動交換CRS資料將大大改變現時情況，並使稅務機關能夠從中國居民的外國入息收取到更多稅款。”

**後話**

合資格金融機構的法律顧問會想加緊研究《管理辦法》的規定，確保機構就合資格賬戶特設合規機制。他們也可能想向外國開立了金融賬戶的中國居民提供建議，以確保他們就該等金融賬戶所披露的資料，就是其他參與者自動向中國政府披露的CRS資料。

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**GC AGENDA**

**TC 260 Circulates Draft Guidelines on Security Assessment of Data Exports**

On 27 May 2017, the National Information Security Standardisation Technical Committee (“TC 260”) circulated for public comment the Guidelines for the Security Assessment of Outbound Data Transmissions (Draft).

The draft guidelines flesh out the Measures on Security Assessments for the Export of Personal Information and Important Data (Draft for Comments) by establishing the criteria, procedures and standards for carrying out security assessments of data exported from China.

The draft measures will partially
implement the Cybersecurity Law of the People’s Republic of China 2016 (“2016 Cybersecurity Law”), which requires operators of critical information infrastructure (“CII”) to store in China personal information and important business data collected in China and prohibits CII operators from transmitting this data abroad before passing a security assessment.

The draft measures require network operators, which includes all network owners, managers and service providers, to conduct a security assessment before exporting personal information and important data. The draft guidelines also expressly apply to all network operators, and not just CII operators, and impose compliance requirements in relation to data exports under certain specified circumstances.

The draft guidelines also contain a detailed set of assessment methods and criteria for determining if a data export adversely impacts personal rights and interests, national security or the public interest.

**Market Reaction**

Jeanette Chan, Partner, Paul, Weiss, Rifkind, Wharton & Garrison, Hong Kong

“The draft guidelines, like the draft measures, extend the data localisation requirement to network operators, and not just to CII operators as stipulated under the 2016 Cybersecurity Law. If enacted in its present form, the draft guidelines would greatly enhance the regulatory burden on companies transferring data out of China. In addition, other requirements included in the draft guidelines, such as political and legal assessments of data receiving countries, pose further compliance challenges to businesses operating in China.”

**Action Items**

The final versions of the draft guidelines, the draft measures and other implementing measures for the 2016 Cybersecurity Law will be promulgated in the near future. General Counsel for any business in China that transmits data abroad will want to closely monitor these developments and work with technology and government relations colleagues to ensure that the business develops and implements effective data security compliance mechanisms.
the legal profession despite increasing demand for advice and expertise in business and human rights. To address this, we have now developed a unique online handbook, of which the first two chapters will try to address the relevance of human rights to commercial transactions and M&A transactions. Through context, case scenarios, discussion exercises, sample checklists and further reading and resources we aim to assist lawyers to understand the importance of human rights due diligence for contemporary business and the ways in which lawyers (in-house and external) can provide advice to companies that is aligned with broader risk management and human rights perspectives.”

When the author of the United Nations Guiding Principles on Business and Human Rights, Professor John Ruggie, observed that business lawyers were among the most consequential new players in the business and human rights debate, he attributed it to their access to and influence with corporate executives. Five years later, business and human rights is a rapidly expanding area of law and practice and business lawyers have a key role to play, not only because of their relationships with corporate executives but because the promotion of business and respect for human rights are mutually reinforcing.

Businesses operate alongside the continuing expansion of economic activity from north and west to south and east, the movement of people across and within borders, and rapid developments in technology and social media. This presents them, and their advisors, with complex challenges, like how to address human rights risks, which require new ways of thinking – and new ways of lawyering.

Nicolas Patrick, partner and Head of Responsible Business at DLA Piper commented that, “Addressing these complex challenges requires more than just technical, legal advice and purely legal solutions. If business lawyers are to retain a competitive advantage in an increasingly globalised marketplace they must draw on other disciplines and expertise to advise their clients.”

Lawyers must understand the institutional, economic, geopolitical, environmental, social and ethical factors that affect the entire ecosystem of governance and regulation that can and does influence markets, financial systems and business transactions and interactions – this includes laws, hard and soft but also voluntary initiatives, international human rights standards, and social and moral norms and expectations.

To support lawyers respond to the demand from businesses and address these complex challenges, the IBA LPRU is also developing a curriculum and training programme for lawyers on business and human rights, which will be piloted in Australia, in partnership with the Law Council of Australia. The IBA LPRU will monitor and assess the programme’s impact and make any necessary changes before making it available to IBA members.

Bar associations around the world also have a role to play. Especially those where major business and finance centres are located, like Hong Kong, Singapore and Japan, bar associations must support lawyers to promote respect for human rights and the rule of law, prevent corruption, enhance fair competition, encourage critical thought and innovation and manage risks to their business clients. Not least because they are uniquely positioned to affect change on this front but, and most importantly, they have a responsibility to ensure the development of a strong, independent and effective legal profession, which goes hand-in-hand with well-functioning markets, stable financial systems and enabling business environments.

To properly serve their clients’ interests, business lawyers must not only understand that the promotion of business and respect for human rights are mutually reinforcing, but be able to counsel their clients on what this means in practice. To make this happen the entire legal profession must be engaged.

- Daniel D’Ambrosio, DLA Piper

人權

新推出關於人權風險的律師指引

2017年7月17日，國際大律師公會法律政策及研究組(the International Bar Association Legal Policy and Research Unit，下稱「政策及研究組」)推出一部關於工商企業與人權的手冊(Handbook for Lawyers on Business and Human Rights)，指導工商企業律師及其企業客戶如何處理企業及商業交易的人權風險。

該手冊集合工商企業律師、人權律師及專家、工商企業、投資者、文明社會及學者
等的專業知識和經驗編纂而成，包含的判例和實質指引是關於如何處理人權風險——對人的風險，適用於特定的法律領域：公司合併、收購及重組；以及商業合約，包括供應協議、分銷協議及專營權協議。

政策及研究組主管Jane Ellis表示：「雖然人們對關於工商企業及人權的法律意見及專業知識，需求日增，但法律界這方面的知識存在巨大空白。要解決這個問題，我們現在編纂了一部獨有的網上手冊，手冊首兩章針對說明人權與商業交易、收購及合併交易的重大關係。我們透過背景情況、個案實況、討論活動、樣本檢查清單及其他讀物和資源，致力協助律師瞭解現代企業人權盡責的重要性，以及律師（企業律師和外部律師）有多個方法向公司提供符合廣泛風險管理及人權觀點的意見。」

《聯合國工商企業與人權指導原則》（the United Nations Guiding Principles on Business and Human Rights）的作者是John Ruggie教授；他注意到工商企律師是工商企業與人權討論之中，最具影響力的參與者之一，並將此歸因於工商企律師有機會接近企業行政人員，對行政人員具有影響力。五年之後，工商企業與人權是快速擴展的法律和業務領域，工商企律師在當中發揮重要作用，究其原因，不只是因為他們與企業行政人員建立了關係，也因為推廣業務和尊重人權是相輔相成的。

工商企業運作的同時，經濟活動持續由北向南也由西向東擴展，人口跨區遷移也在區內流動，科技及社交媒體亦迅速發展，這給工商企業及其顧問帶來複雜的挑戰，例如處理人權風險；這方面需要新的思維方式——還有新的法律服務。

歐華律師事務所合夥人及負責任工商企業部主管Nicolas Patrick評論說：「應對這些複雜挑戰所需要的，不只是技術、法律意見及純粹法律解決方案。工商企律師如果要在日新月異的市場保住競爭優勢，一定要運用其他規章制度及專業知識，以向客戶提供意見。」

律師必須明白機構因素、經濟因素、地理因素、環境因素、社會因素及道德因素，這些因素都影響整個管治和規管的生態系統；這個生態系統能夠影響，也的確影響市場、金融體系、商業交易及互動——這包括法律（硬法和軟法），還有自願計劃、國際人權標準，以及社會和道德規範與期望。

香港的道歉立法，第一個國家法律由立法會通過，2017年7月13日於議會通過，7月21日公布於政府公告。

這個立法是綜合性的，審查了多個司法管轄區的法律，以及多篇學術文章。這部法律的目的是消除言及對不起的行動所可能帶來的負面影響，避免爭議升級，或者在非公開場合的和解。

這個法律是一個「法令」，適用於在法令公布後作出的道歉。法律中的道歉，定義為悔意、同情或慈善的表達，包括承認過錯或責任，以及事實陳述，但不會在法律程序中作供。行為目標，不會影響法律程序。這是因為香港法律中沒有對此保障，所以這個法令保障了道歉的自由。

全球各地的大律師公會亦發揮一定作用。特別是大企業及金融中心所在地，例如香港、新加坡、日本，各大律師公會都應當運用該手冊及課程（通過試驗之後），或者發展類似的計劃，以確保法律界知識上的空白消除，本地律師具備足夠資格向工商企業提供意見。

不論有沒有規管職能或者只有代表職能，各大律師公會都應當支持律師，以推動尊重人權及法治精神、防止貪污、促進公平競爭、鼓勵批判性思維及發揮創意，並為工商企客戶管理風險。其中一個重要的原因，是他們處於獨特地位，能夠影響這方面的改變，而最重要的是，他們有責任確保法律專業穩固、獨立，並且有效地發展，與運作良好的市場、穩定的金融體系及便利化的營商環境互有聯繫。

要妥當地為客戶提供符合他們利益的服務，工商企律師不單只要明白推廣業務和尊重人權是相輔相成的，也必須有能力就當中的實際意思向客戶提供意見。要這一切事，法律界全體上下都必須參與其中。

Daniel D’Ambrosio
歐華律師事務所

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LEGISLATION

Hong Kong Passes Apology Bill

Hong Kong's apology legislation, the first of its kind in Asia, was passed by the Legislative Council on 13 July 2017 and was published in the Gazette on 21 July 2017.

It is the culmination of a comprehensive review of the apology legislation in various jurisdictions and various academic articles. It seeks to remove disincentives in the way of making apologies, which may have otherwise prevented disputes from escalating or assisted in their amicable resolution.

The Apology Ordinance (the “Ordinance”) will apply to apologies made after the Ordinance comes into operation irrespective of when the related matter arose or when the applicable proceedings began. An “apology” is defined to mean an expression of regret, sympathy or benevolence, and includes an admission of fault or liability and any statement of fact. However, the Ordinance will not apply where the apology is in documents such as pleadings and witness statements submitted in applicable proceedings, where it is orally given at a hearing, or where it is adduced as evidence by or with the consent of the apology maker.

The three main areas of the Ordinance are:

1. Effect and Admissibility of an Apology in Applicable Proceedings

For the purpose of applicable proceedings, an apology will not constitute an admission of fault or liability and must not be taken into account in the determination of fault, liability or other issues to the prejudice of the apology maker. Evidence of the apology will not be admissible as evidence for such determination.

The reason for such protection is that previously there was no assurance under Hong Kong law that an apology could
not be relied on as evidence of admission of fault or liability, and this inhibited people from making apologies.

However, a decision maker will have discretion to admit a statement of fact contained in an apology as evidence in exceptional cases (eg, where no other evidence is available), provided it is just and equitable.

The Ordinance will apply to judicial, arbitral, administrative, disciplinary and regulatory proceedings and other proceedings conducted under an enactment; disciplinary proceedings include proceedings of professional institutes and statutory bodies and disciplinary proceedings by way of non-statutory self-regulation by industry bodies. The Ordinance will not apply to criminal proceedings, proceedings of the Legislative Council and proceedings conducted under the Commissions of Inquiry Ordinance, the Control of Obscene and Indecent Articles Ordinance and the Coroners Ordinance.

The Ordinance will not affect discovery or similar procedures in applicable proceedings, the operation of provisions of the Defamation Ordinance dealing with permission to put in evidence an apology as a defence or in mitigation of damages, and the operation of the Mediation Ordinance.

2. Apology not an Acknowledgment under the Limitation Ordinance

Under ss. 23 of the Limitation Ordinance, certain rights of action relating to land, personal property, debts, other liquidated pecuniary claim or personal estate are deemed to accrue on the date of acknowledgment.

The Ordinance will provide assurance that an apology does not constitute an acknowledgment within the meaning of the Limitation Ordinance, and the relevant limitation period will not be extended thereby.

3. Contract of Insurance or Indemnity not Affected

There were previously fears that clauses in insurance contracts that prohibit admission of fault may be relied on to repudiate liability. The Ordinance provides assurance by stipulating that insurance cover, compensation or other form of benefit under a contract of insurance or indemnity (whenever entered into) will not be voided or otherwise affected by an apology.

- Damien Laracy, Partner, and Fontaine Lai, Associate, Hill Dickinson

立法

香港通過《道歉條例草案》

香港的道歉法例——亞洲區最早的同類法例——2017年7月13日獲立法會通過，2017年7月21日刊憲。

這是全面審閱不同司法管轄區的道歉法例及許多學術文章之後的結果。道歉有可能防止爭議升級或有助達成友善和解，而制定道歉法例的目的，就是消除窒礙道歉的障礙。

《道歉條例》（「《條例》」）將適用於《條例》實施之後作出的道歉，不管相關事宜何時產生，適用程序何時開始。「道歉」被界定為表達歉意、懊悔、遺憾、同情或善意，包括承認過失或法律責任，以及任何事實陳述。然而，《條例》將不適用於在文件作出的道歉，例如在適用程序提交的狀書及證人陳述書中作出的道歉，或者被道歉者援引為證據的道歉，或者在道歉者同意下被援引的道歉。

《條例》有三大範疇：

1. 道歉在適用程序的效果及可接納性

就適用程序而言，道歉不會構成承認過失或法律責任；裁斷過失、法律責任或其他爭議事項時，不得列為不利於道歉者的考慮因素。道歉證據將不會為裁斷上述事項而被接受為證據。

這種保護源於香港法律以往沒有任何保障，沒有人可以依靠道歉作為承認過失或法律責任的證據；這樣會妨礙人作出道歉。

然而，裁斷者將具有酌情權，可在例外情況中（例如得不到其他證據）接受道歉所包含的事實陳述為證據，只要此舉屬公正、公平就行了。

《條例》將適用於司法、仲裁、行政、紀律處分及規管性程序，以及其他根據成文法則進行的程序：紀律處分程序包括專業機構及法定團體的程序，以及行業團體藉並非法定的自律規管方式進行的紀律處分程序。《條例》將不適用於刑事程序、立法會程序及根據《調查委員會條例》、《淫褻及不雅物品管制條例》及《死因裁判官條例》進行的程序。

《條例》將不會影響適用程序的文件透露或其他類似程序，以及《調解條例》的施行；《誤謬條例》載有條文批准以道歉作為抗辯或減低損害賠償的證據，《條例》亦將不影響此等條文的施行。

2. 道歉不是《時效條例》所指的承認

根據《時效條例》第23條，某些關於土地、非土地財產、債項，以及其他算定金
Re-Opening a Trial with Further Evidence in the Cayman Islands

In the recent case of In the matter of Shanda Games Limited, FSD 14 OF 2016 (NSJ) (July 2017) it was held by Justice Segal that the Court has jurisdiction to admit new evidence and order a further hearing (and thereby re-open the trial) after the trial and after the Court has handed down its judgment in draft, before the sealing of the Court's order (any appeal would be against the order of the Court and not the judgment). However, in the circumstances, the Learned Judge declined to do so.

The test to be applied in the Cayman Islands is:

• The principle to be applied generally is the overriding objective to deal with cases justly and at proportionate cost. This involves dealing with cases expeditiously and fairly and allocating an appropriate share of the Court's resources to a dispute.

• In cases involving an application to call new evidence and have a new trial, the Court should take into account the leading case of Ladd v Marshall. In the case of applications before the trial judge rather than the Court of Appeal, the Ladd v Marshall factors should be applied more leniently. Other "powerful factors" in the applicant's favour would be needed to justify the application.

• In the present case the summons to re-open was issued shortly before the draft judgment was received by counsel, however, the Learned Judge had completed the draft judgment and reached a decision on the petition. The handing down of a judgment in draft does not of itself preclude the granting of the application or determine how the Court should exercise the jurisdiction. Once the judgment has been handed down then a further issue arises, namely the question of reconsideration and the impact of depriving a successful party of a judgment already rendered needed to be taken into account when the Court is applying the overriding objective.

• In order to justify re-opening the trial and allowing further expert evidence to be introduced the Petitioner must show (in the absence of fraud) that the problems with the expert witness evidence are sufficiently serious such that the Court's decision cannot stand.

Conclusion

This decision from the Grand Court of the Cayman Islands will be of particular relevance to Hong Kong practitioners advising Cayman Island incorporated companies, as these companies are potentially exposed to litigation in the Cayman Islands courts. The company in this case, Shanda Games Limited, is itself a leading online game developer based in Shanghai that became embroiled in litigation with former shareholders following a take private merger that resulted in the company being delisted from the NASDAQ. There has been a significant upward trend in litigation by shareholders of Cayman Islands incorporated companies who dissent from take private mergers of listed PRC companies and ask the Grand Court of the Cayman Islands to determine the “fair value” of their shares.

- Ian Mann and Joanne Verbiesen, Harneys


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需要快捷、公平地处理案件，并且恰当分配法庭资源到各个争议。

在案件涉及传唤新的证据及重开审讯的申请时，法庭应考虑Ladd v Marshall这宗先导案例。在原审法官席前而不是在上诉法庭申请的案件中，应较为宽松地引用在Ladd v Marshall考虑的因素。申请人还需要其他有利的“有力因素”（powerful factors）作为支持其申请的理由。

在这宗案件，要求重开审讯的传票是在大律师收到判决草稿不久前发出的，但Segal法官当时已经完成判决草稿并就呈情作了决定。法官已经宣布判决草稿内容，但此举本身并不阻止他批准申请或决定法庭应如何行使司法管辖权。法庭只要实行首要的目的，其他在判决定布后才出现的争议点，即是重新考虑的问题及剥夺胜方已得的判决的影响，就需要重新被列为考虑因素。

为了支持重新审讯并准许加入其他专家证据，呈请人必须证明（在没有欺诈的情况下）有专家证人作供证明的是严重问题，足以令法庭的裁决不能成立。

结论

这项由开曼群岛大法院（the Grand Court）作出的决定，将会特别关系到向开曼群岛公司提供意见的香港律师，因为这些公司有可能面对在开曼群岛法庭展开的诉讼。涉案公司Shanda Games Limited是美国纳斯达克证券交易市场上市公司，总部设在上海，本身是领先的网络游戏开发商，公司被私有合併而从纳斯达克退市之后，捲入由前股东提起的诉讼之中。在开曼群岛注册成立并已上市的中国公司之中，明显有越来越多不满公司被私有合併的股东提出诉讼，要求开曼群岛大法院决定其股份的“公允值”。

- Ian Mann及Joanne Verbiesen，衡力斯法律事务所

PRIVATE EQUITY

Selling to China: Four Key Questions All Private Equity Deal Teams Should Ask on an Exit

Chinese acquirers are playing an increasingly important role as buyers of private equity sponsored companies — nearly 200 portfolio companies were sold to Chinese entities in 2016. However, in our view, measures taken by the Chinese government to scrutinise transaction fundamentals more closely and slow capital outflows have impacted deals. The number of deals completed so far in 2017 has fallen to 63, compared to 109 at the same point last year. With Chinese deals now facing higher abort risks, we consider what buyout firms must know and do in order to achieve a successful exit.

Why Do the Deal?

Chinese regulators are focusing on the authenticity and commercial purpose of deals by Chinese companies. Acquisitions with a solid rationale that benefit the Chinese economy are unlikely to be rejected outright. So-called “irrational” deals (outside of a Chinese buyer’s core sector, particularly in the real estate, media, sports or hospitality sectors) will face greater regulatory hurdles. Private equity firms and their advisers need to factor this into any approach from a Chinese buyer.

Who Is the Buyer?

Deal teams need to understand whether they are dealing with a private company, a publicly listed company or a state owned enterprise (“SOE”). Acquisitions by SOEs, with links to government departments, are less likely to be hindered by the rule-tightening. Deals worth less than US$300 million should also be safe, as smaller deals have a streamlined approval process. Overseas subsidiaries of Chinese parents with sufficient assets and financing capacities, offshore Chinese heritage companies and US$ funds managed by PRC based firms will generally not be affected.

Where Is the Money Coming From?

Chinese investors typically raise all or a portion of the purchase price within China, whether on balance sheet, via an existing or new bank facility, through a private placement of equity and/or from co-investors. The People’s Bank of China (“PBOC”) and the State Administration of Foreign Exchange (“SAFE”) have directed Chinese banks to more closely monitor any remittance of funds, and banks have slowed FX remittance out of China. Banks are also under pressure to scale back their provision of cross-border security and onshore deposit-backed offshore lending.

Deal teams should seek, at an early stage, to ascertain the sources of funds. Buyout firms may prefer to deal with an offshore entity affiliated with a Chinese buyer, which holds cash overseas (either in escrow or with a supporting standby letter of credit for the purchase and break fee costs) and is able to sidestep FX difficulties.

How Long Will the Deal Take?

Deal teams and Chinese buyers should engage early in deal timetable planning as Chinese buyers must file a significant
amount of information, which will take time to prepare. Work on obtaining state approvals should begin as quickly as possible, even if on a no-names basis.

What has Changed?

Certain transactions will not benefit from streamlined filing processes, including:

- Transactions of ≥ US$10 billion;
- Transactions of ≥ US$1 billion; involving overseas targets; and
- Unrelated to the Chinese buyer’s core business; and
- Outbound minority investments in overseas listed companies.

Chinese buyers now need to:

- Provide more information to the National Development and Reform Commission (eg, financial statements, sources of funding and target due diligence reports); and
- Conduct supervisory interviews with the PBOC or SAFE. Before a Chinese bank can process the transaction, SAFE must review the authenticity and compliance of transactions involving the purchase of foreign currency, payment of foreign exchange or outward remittance of funds over US$5 million.

- Frank Sun, Partner, Latham & Watkins (Hong Kong)

PROFESSIONS
Accountants: Restraining Publication of a Reprimand Pending Appeal

In Registrar of Hong Kong Institute of Certified Public Accountants v X, CACV 244/2016, 2 June 2017, the respondent accountants are appealing a decision of a Disciplinary Committee that they failed to apply a technical standard in the audit of a listed company, regarding the company’s treatment of the fair value of shares in its financial statements. At the time of writing, the appeal is due to be heard on 20–21 September 2017.

As a result of the Disciplinary Committee’s decision, the accountants were ordered to be reprimanded and to pay a penalty and the HKICPA’s costs. As is usual, the disciplinary proceedings were held in public. In accordance with the HKICPA’s prevailing policy, the Disciplinary Committee saw no reason to prohibit publication of its decision on the HKICPA’s website.

Given the appeal and the irreversible effect once a reprimand is made public, the accountants applied for an order
that publication of the Disciplinary Committee’s decision be restrained until final determination of the appeal (CACV 244/2016, 2 June 2017).

Section 38(2) of the Professional Accountants Ordinance (Cap. 50) provides that (among other things) the Registrar shall not record the relevant sanctions (including, “record a reprimand”) before an appeal has been finally determined. It makes no mention of “publication”.

Nevertheless, the Court of Appeal interpreted s. 38(2) of the Ordinance to mean that none of the sanctions were to take effect “in a substantive way pending appeal” (para. 41 of the judgment). Therefore, given that the reprimand is given full effect by making it public the legislative intent must have been that it should not be recorded in the Institute’s register or made public until the appeal is finally determined.

Disciplinary proceedings concerning alleged technical breaches of the application of a professional standard (particularly, as regards audit opinions of the financial statements of listed companies) are nothing new (see, Industry Insights, June 2017). Despite the public nature of the disciplinary proceedings, the sanctions that may follow do not have to be made public.

The outcome of the appeal (to date) has meant a significant costs liability for the regulator (CACV 244/2016, 21 June 2017). It also illustrates the point that members of professional bodies usually take their professional reputations very seriously. It is one thing to make a finding of error with regard to the application of a highly technical standard and quite another to publish a reprimand against a professional person. In many instances of less serious infractions some regulatory bodies are tougher on their members than the public interest requires or than is deserved.

- David Smyth, Partner, RPC
PROFESSIONS

“Fit and Proper” to be Admitted as a Barrister

Re A, HCMP 2079/2016, 16 June 2017, considers what it means to be “fit and proper” in the context of an application for admission to the Hong Kong Bar.

The applicant is a young man who had been convicted (when a student) of an offence before the Magistrates court. The offence appears to have involved some serious circumstances, for which the applicant received a short custodial sentence in 2010.

After working in another profession for a while, the applicant turned his hand to law and eventually became a bar pupil. The applicant disclosed his conviction (and certain other relevant details) with his certificate for eligibility. He was later granted a certificate of qualification for admission by the Bar Council. However, unlike the Bar Association, the Secretary for Justice did not consent to the applicant’s Notice of Motion to be admitted and enrolled as a barrister of the High Court of Hong Kong. Neither did the court.

The case is interesting in a number of respects. It is a rare example of a contested application for admission pursuant to s. 27(1) of the Legal Practitioners Ordinance (Cap. 159) (as opposed to ad hoc admission of overseas counsel pursuant to s. 27(4)). In particular, the parties were unable to refer to any previous application for admission pursuant to s. 27(1) where the Bar Association and the Secretary for Justice had reached different views on an applicant’s admission.

The case also raises the issue of the degree of disclosure required of an applicant to a regulator, both with regard to the offence itself and any disciplinary proceedings that may follow it.

- Warren Ganesh and David Kwok, RPC

專業導論

認許「適當」的人為大律師

Re A案(HCMP 2079/2016，2017年6月16日)是一宗關於某人申請認許作為香港大律師的案件，法庭在案中以認許申請作為背景來考慮「適當」一詞的意思。

申請人是一名年青人，他2010年(當時是學生)在裁判法院席前被定罪。申請人所犯罪行似乎涉及一些嚴重情節；他因為所犯的罪行被判短期監禁。

申請人在另一專門行業工作了一段時間之後修讀法律，最後成為見習大律師。他申請資格證明書的時候，向香港大律師公會執行委員會披露自己曾被定罪(及若干其他有關細節)。執行委員會其後發給他認許資格證明書。數個月後，申請人提交動議通知書，要求法院認許他為香港高等法院的大律師並予以登記，律政司司長對此不表同意，所持看法與大律師公會的並不一樣。法院也不同意。

這宗案件有多個有趣的地方。

這是個罕有的例子，極少有人根據《法律執業者條例》(第159章)第27(1)條申請認許(不是根據第27(4)條以專案性質認許海外大律師)是會受到爭議的。特別的，兩方都說不出任何舊有例子是申請人根據第27(1)條申請認許，而大律師公會與律政司司長對認許申請的分析並不一樣的。

案件亦另有用處，就是歸納了某些決定申請人是否法院所認許適當作為大律師的人時用上的一般法律原則。雖然事實不同，情況各異，但是這些一般原則可以廣泛應用到其他只收納適合及廉潔的人為會員的專業界別。

這類案件顯示一個情況，就是保障公眾利益與原諒申請人過往過失是有矛盾的。不是每名罪名成立而被判監禁的人都定必會失去成為律師的資格。可能會有讀者指出，(譬如說)涉及某種襲擊或擾亂公共秩序的罪行有別於與性質較嚴重或有人不誠實的罪行，兩者不能一概而論。

案件亦帶出一個爭論點，就是申請人要在多大程度上向監管機構披露所犯罪行及任何隨之而來的紀律程序。

- 莊偉倫及郭文龍，RPC

 Feel free to write in to us with more short contributions on latest industry developments and trends. Simply contact the editor at: cynthia.claytor@thomsonreuters.com

本刊歡迎各位提交短篇文章，廣大讀者分享業界的最新發展和動態。請與本刊編輯聯絡。

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

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ADMIRALTY

Eleni Maritime Ltd v Heung-A Shipping Co Ltd [2017] HKEC 931
Court of First Instance
Admiralty Action No. 189 of 2013
Deputy Judge Anthony To in Chambers
9 May 2017

Maritime claims – limitation decree – extension of deadline under decree for additional claimants to file claims against limitation fund – whether claims time-barred under s. 7(1) – whether claim “action” within meaning of s. 7(1)

After a collision with P’s vessel (The Eleni) in Vietnamese waters on 7 November 2013, D1’s vessel (The Heung-A Dragon) sank with all its cargo. P admitted and agreed liability with D1 at 70:30 respectively. P brought a limitation action against D1 and three other potential claimants (D2–4). On 14 May 2014, P obtained a decree of limitation under the Merchant Shipping (Limitation of Shipowners Liability) Ordinance (Cap. 434) which applied the Convention on Limitation of Liability for Maritime Claims 1976 (the “1976 Convention”) (the “Decree”), P constituted the limitation fund (the “Fund”). In mid-2015, well after the expiry of the extended final deadline of 28 January 2015 under the Decree for filing claims, but about six months before the expiry of the two-year limitation period under s. 7(1) of Merchant Shipping (Collision Damage Liability and Salvage) Ordinance (Cap. 508) (the “Ordinance”), some 22 additional claimants overseas including from the PRC and Vietnam (“Cs”) in respect of further claims against P. On 6 November 2015, one day before the expiry of the s. 7(1) limitation period, D2–4 and Cs filed protective writs of summons against P. On 14 October 2016, S sought an extension of the deadline under the Decree for D2–4 and Cs to file claims against the Fund. D1 objected, arguing that Cs’ claim against the Fund was statute-barred under s. 7(1) of the Ordinance, as “an action” to enforce a claim or lien in s. 7 did not involve only the issue of a writ but included the filing of a claim pursuant to a decree in the reference to the Registrar for decision under O. 75 r. 41 of the Rules of the High Court (Cap. 4A) (the “RHC”). Under Art. 13(1) of the 1976 Convention, any person having made a claim against a limitation fund shall be barred from claiming against any other assets of a person by or on behalf of which the fund had been constituted.

Held, granting leave to D2–4 to file their claims in the reference to the Registrar out of time, that:

• An “action” in s. 7(1) of the Ordinance meant an action to enforce any claim or lien against a vessel or its owners. On the constitution of the limitation fund, the vessel was released and the maritime lien for collision damage ceased to exist. Thus, the reference to the Registrar in which Cs sought to participate was not an action within s. 7(1), but an action against the Fund and thus, the s. 7(1) time bar did not apply.

• The deadline under a limitation decree was a procedural and administrative time limit. It did not override the s. 7(1) limitation period so that the defence of time bar was unavailable to a defendant. The fact that the administrative deadline expired before the statutory limitation period was alone a good reason for granting an extension of time under the decree.

If, as here, a claimant had commenced an action against the shipowner within the statutory time limit, but filed his claim in the reference after the administrative deadline expired, leave to extend that deadline was required and, subject to showing good reasons for the delay and lack of prejudice to other claimants, such leave invariably would be granted.
P was a general worker engaged in renovation works to a building at Nos 5–11 Un Chau St in respect of which D2 was the principal contractor and P's employer, D1, was the subcontractor responsible for the renovations to the external walls. As for the third parties (“TPs”), they were the registered owners of the 11th floor and roof of No. 9A Un Chau St. Almost the whole of their roof was covered by a structure made of asbestos tiles laid on top of a steel framework. While P was walking on the top of that structure in order to deliver a bucket of cement from the place where cement was being mixed to workers at the external wall on the other side of the building, he fell through the top of the structure onto the floor of the structure about 2.5 m below, suffering injuries to his left foot and ankle and his lower back. His claim against Ds was settled in the sum of HK$960,000 inclusive of interest.

Then Ds' claim against TPs came before a Recorder for determination. That claim was dismissed because the Recorder took the view that the defaults of TPs was not factually causative of P's injuries. One day out of time, Ds filed a notice of appeal against the Recorder's order.

Held, granting Ds leave to appeal out of time and allowing the appeal so as to order that TPs pay Ds 25 percent of the judgment for HK$960,000 inclusive of interest entered for P against Ds by consent, that:

- The reason for the delay was that after obtaining counsel’s advice, Ds' solicitors were only able to obtain confirmation of Ds' instructions to appeal one day after the time for appealing had expired. The delay was only of one day, and was excusable in the overall circumstances. More importantly, the appeal must succeed if brought so that it would be unjust not to extend time for bringing it. Lastly, there was no prejudice to TPs in granting the extension.

- According to TPs' breaches admitted under the deeming provision in O. 16 r. 5 of the Rules of the High Court (Cap. 4A, Sub. Leg.), they had, in breach of their duty of care at common law and imposed by s. 3 of the Occupiers Liability Ordinance (Cap. 314) exposed P to a risk of injury of which they knew or ought to have known. Their conduct must have been causative of P's injuries. There was a factual dispute as to whether there was an alternative route which P could have taken, which dispute the Recorder did not resolve. And even if there was an alternative route, that did not absolve TPs. Having regard to...
the fact that Ds had a non-delegable duty of care to P, they were more blameworthy than TPs, so that an apportionment of 75 percent liability to them and 25 percent liability to TPs was just and equitable.

民事訴訟程序

Chen Qingqiang v Chan Yat Hong
[2017] HKEC 913

上訴 — 逾期上訴許可 — 向第三方提出申索，要求第三方對受傷原告訴人的損失作出分擔 — 應否批准延展時限

P是一名雜工，在一幢位於欽州街5至11號的大廈進行裝修工作。D2是該地盤的總承判商，而P的僱主D1是負責裝修該大廈外牆的分判商。案中第三方(下稱TPs)是欽州街9A號十二樓連天台的註冊業主。該天台幾乎全部由一個構築物遮蓋，該構築物透過把石棉塊鋪在鋼架頂部而搭成。事發時，P在該構築物頂部工作，負責把一桶混凝土從混製之處運送給正在大廈另一邊外牆工作的工友。運送途中，P從該構築物頂部墮到2.5米下的底部，令他左腳、左腳踝和腰背受傷。他向D1及D2索償，而該申索以960,000元(連利息)得到和解。D1及D2則向TPs索償，而經聆訊後，特委法官認為TPs的過失事實上並無導致P受傷，故裁定D1及D2敗訴。在提出上訴的期限屆滿一日後，D1及D2針對特委法官的裁決提交上訴通知書。

裁決 — 准許D1及D2逾時提出上訴，並裁定上訴得直，下令經各方同意下判定須由D1及D2付予P的960,000元(連利息)中的25%由TPs支付：

• D1及D2延誤提出上訴的理由為，他們的代表律師取得大律師的意見後，直到提出上訴的期限屆滿後一日才得到D1及D2確認指示提出上訴。延誤只有一日，在涉案整體情況下可以原諒。更重要的是，擬提出的上訴必會得直，因此不批准延展上訴時限將有欠公平。最後，延展上訴時限並無令TPs蒙受不利。

• 根據TPs按《高等法院規則》(第4章，附屬法例A)第16號命令第5條所承認的違責行為，他們已違反普通法和《佔用人法律責任條例》(第314章)第3條所施加的謹慎責任，令P面對他們確實或理應知悉的受傷風險。他們的行為必曾導致P受傷。案中曾有一項事實爭議，即是否有另一條運送路徑可供P選用，但特委法官沒有解決該項爭議。即使有另一條運送路徑可供P選用，這也不免除TPs的法律責任。考慮到D1及D2事實上對P負有不可轉授的謹慎責任，他們倘較TPs負有更大責任。因此，公平公正的做法是把責任攤分，以致D1及D2須承擔75%，TPs則須承擔25%。

CRIMINAL

Re Sutherland (Appeal: Wasted Costs Order) [2017] HKEC 967
Court of Appeal
Magistracy Appeals Nos. 685 of 2013 and 425 of 2014
Lunn V-P and Macrae and Pang JJA
15 May 2017

Wasted costs order – defence counsel ordered to pay wasted costs personally for his conduct during trial – principles involved in making wasted costs order – court's approach

D appeared in the Magistrates’ Court on a charge of indecent assault. He did not give evidence. His instructions to his counsel were that his elbow and hand had slipped and fell to the left accidentally hitting V on the leg while they were sitting next to one another in the cinema. Defence counsel, MS, had been party to the estimate that the trial would last two days. But the trial proper lasted 19 days spanning three-and-a-half months. Eventually, the Deputy Magistrate convicted D. On the prosecution’s application, the Deputy Magistrate made in its favour a wasted costs order of HK$180,000 against MS. MS appealed against the wasted costs order made against him. It was argued on his behalf that upon a correct application of the relevant principles, no such order should have been made. His appeal was reserved by the Court of First Instance to the Court of Appeal.

Held, dismissing MS’s appeal against the wasted costs order, that:

• It having been raised by the Court of Appeal of its own motion, the question of whether MS’s appeal against the wasted costs order could be referred to, and determined by, the Court of Appeal was answered in the affirmative.

• The legal principles on the making of wasted costs orders were as follows. An advocate enjoyed privileges before the court, and owed a duty to the court, for which he was bound by standards of professional conduct. As well as being compensatory, the wasted costs jurisdiction was punitive for the purpose of punishing the offending practitioner for failure to fulfil his duty to the court. In order to establish a breach of this duty, it was not necessary to establish dishonesty, criminal conduct, personal obliquity or behaviour such as would warrant striking a barrister off the roll. Equally, mere mistake or error of judgment would not generally suffice. The word “improper” in the definition of “wasted costs” in the Costs in Criminal Cases Ordinance (Cap. 492) (the “CCCO”) covers any significant breach of a substantial duty imposed by a relevant code of professional conduct. It also extended to any conduct which would be regarded as improper according to the consensus of professional (including judicial) opinion, whether or not such conduct violated the letter
of a professional code. By the use of the words “seriously” and “serious” in the definition of “wasted costs” in the CCCO, a higher threshold was required under s. 18 of the CCCO when compared with its civil or United Kingdom counterparts. It was not errors of judgment which attracted the exercise of the wasted costs jurisdiction, but errors of a duty owed to the court. Public policy required any court considering making a wasted costs order to take into consideration that advocates should be free to conduct cases in court fearlessly under our adversarial system of justice. Full allowance must also be made for an advocate’s difficulties or limitations in proceedings before a wasted costs order was made against him. A wasted costs order against a barrister personally was a draconian order. It should only be made on the basis of a seriously improper act or omission, or serious misconduct, not mere lack of wisdom, discretion or valour. The Deputy Magistrate considered: (a) whether MS had acted seriously improperly or been guilty of serious misconduct; (b) if so, whether that caused the applicant for a wasted costs order to incur unnecessary costs; and (c) if so, whether it was just in all the circumstances to order MS to compensate the applicant for the whole or any part of the relevant costs. The burden of proof rested on the applicant. It was a civil standard of proof, but the more serious the allegation, the stronger should be the evidence before the court found the allegation established on a balance of probabilities.

There was no error in either the Deputy Magistrate’s approach to the relevant legal principles or his application of those principles to the circumstances pertaining to the case (except that the order erred on the side of generosity to MS in that it could have, and should have, been greater).

### 虚耗訟費令 — 辯方大律師被命令由他本人就自己在審訊期間的行為支付虛耗訟費 — 作出虛耗訟費令所牽涉的原則 — 法庭的處理方法

被告人就一項猥褻侵犯控罪在裁判法院應訊。他沒有作供。他指大律師的指示是，他在戲院與受害人毗鄰而坐，他的手肘和手意外地滑向左邊，打落在受害人的大腿上。預計審訊需時兩天，MS一直是代表被告人確定預計審訊日數的大律師。可是，正審長達19天，審訊時間橫跨三個半月。暫委裁判官最終判被告人有罪。因應控方的申請，暫委裁判官作出虛耗訟費令，規定MS向控方支付虛耗訟費180,000港元。MS針對規定由他支付虛耗訟費的虛耗訟費令，提出上訴。他的代表大律師辯稱，如果各個相關原則有被正確地運用，本來就不應該有這個命令作出。原訟法庭將被告人的上訴留待由上訴法庭審理。

**裁決 — 駁回MS針對虛耗訟費令的上訴：**

- 上訴法庭主動提出一個問題：MS針對虛耗訟費令提出上訴，他的上訴可不
- 可以被轉呈至上訴法庭，由上訴法庭作出裁決？答案是肯定的。
- 現列出作出虛耗訟費令所牽涉的法律原則：出庭辯護人在法庭席前享有特權，但亦受專業操守準則約束，對法庭負有責任。作出虛耗訟費的司法管轄權除了帶有補償性質之外，也帶有懲罰性質，目的是懲罰沒有履行對法庭所負責任的涉案律師。要去證明有人不履行這項責任，不一定要證明該人不誠實、不正直、作出刑事行為或足令其姓名從大律師登記冊上被剔除的行為。同樣地，在一般情況下，僅是犯錯或判斷上出錯都不是足夠的證明。「虛耗訟費」在《刑事案件訟費條例》(第492章)(「《條例》」)的定義之中，「不當的」涵蓋以任何方式嚴重違反相關專業操守守則所訂明的實質責任，而按照專業人員(包括司法人員)的共識，涵蓋範圍亦延伸至任何被視為不當的行為，不論這樣的行为有否違反專業守則的字面意義。「虛耗訟費」在《條例》的定義用上「嚴重」一詞，相關民事法或英國的對等條例，《條例》第18條要求的門檻更高。引致行使關於虛耗訟費的司法管轄權的，不是判斷上的錯誤，而是對法庭負有的責任上所犯的錯。公共政策要求法庭考慮作出虛耗訟費令的時候，同時考慮到在對辯訟訴訟的司法制度下，出庭辯護人應該有處理法庭案件的自由，可以無所顧忌。另外，作出虛耗訟費令，規定MS須付虛耗訟費之前，亦必須充份考慮出庭辯護人在法律程序中遇到的困難和限制。規定由大律師本人支付虛耗訟費的命令是一項嚴苛的命令。
DAMAGES

Lo Hing Kin Nelson v Personal Representative of Lam Yuk Wan (deceased) [2017] HKEC 910
Court of Appeal
Civil Appeal No. 206 of 2015
Chu and Poon JJA and Godfrey Lam J
8 May 2017

Loss of earnings — loss of earning capacity — future medical expenses — approach to be taken by plaintiff in establishing entitlement to award of damages

On 18 June 2009, P, then aged 34, was injured in a traffic accident. Among other injuries, he suffered comminuted fractures of the lower tibia and fibula of his right leg. Later that year, judgment was entered for damages to be assessed. P’s case was that he was unable to go to any construction site until July 2011; he resumed contracting work from that date. His damages were assessed when such work was done at a height of 20 m. His damages were assessed on 14 August 2015. At the assessment, the Judge had merely required P to supervise the workers on site. He appealed against the Deputy Judge’s refusal to make any award for (a) loss of earnings after July 2011; (b) loss of earning capacity (pre-trial or post-trial); or (c) future medical expenses.

Held, dismissing the appeal, that:

Loss of earnings

• In reliance on the Deputy Judge’s observation that P “could have been entitled to claim for the extra business expenses including the cost of extra outside help and operating cost to take up part of his pre-accident roles on site in his business”, it was submitted on P’s behalf that he was entitled to damages representing such expenses. But that was not how the case was run below, which was that the business had been running at a loss after July 2011. There was no alternative claim for damages representing such expenses.

Advancing such an alternative case on appeal without having advanced it at first instance was precluded by the Flywin principle. It was argued on P’s behalf that it was for a defendant to establish that a plaintiff had failed to mitigate his loss, and that the Judge had reversed this burden. But an award for loss of earning capacity was not a conventional award to be made in the abstract but a specific mode of compensation that had to be based on evidence; and there was no evidence for such an award in the present case.

Future medical expenses

• The cost of a future operation would only be awarded if the court were satisfied that the operation was based on medical advice, was necessary or reasonably required for recovery or improvement or the relief of persistent pain and suffering, and was anticipated or likely to take place in the near or reasonably foreseeable future; and the Deputy Judge was entitled to resolve the issues of primary fact against P on those matters.

Loss of earning capacity

• It was submitted on P’s behalf that if no award was made for loss of future earnings, then damages should be awarded for loss of earning capacity. But an award for loss of earning capacity was not a conventional award to be made in the abstract but a specific mode of compensation that had to be based on evidence; and there was no evidence for such an award in the present case.

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作，包括在将被拆卸的框架上爬上爬落，也亲自进行一些较为危险的拆卸工作，例如在20米高拆卸物件。暂委法官于2015年4月14日评估他的损害赔偿额。

评估的时候，原告人的案情是，他一直到2011年7月才有能力到建筑地盘去；那个月他恢复承包建筑地盘工程，但只是承包较为安全的拆卸和运输工程，那些工程只需要他实地监督地盘工人。暂委法官拒绝以下的损失判决损害赔偿：(a)2011年7月之后损失的收入；(b)失去的谋生能力(审讯前或审讯后)；及(c)将来的医疗开支。

裁决 — 驳回上诉：

损失收入

— 暂委法官留意到原告人「原本有权申索额外的业务开支，包括聘用临时外援的费用，及由他人接手意外发生前一部分他公司承包并由他负责的地盘工程所涉及的运作成本」；原告人代表大律师依指原告人有权就这些开支得到损害赔偿。但在下级法院提出的案情不是这样，而是原告人的生意在2011年7月之后一直亏本。原告人没有就该等开支提出交替申索。Flywin案订明的原则禁止在上诉时提出没有在原审时提出的交替申索。

失去谋生能力

— 原告人代表大律师认为，要证明原告人没有减少损失的是被告，原审法官却张冠李戴。不过原审法官只是要求原告人证明他的损失。如果在下级法院提出的案情不是这样，而且是原告人的生意在2011年7月之后一直亏本。原告人没有就该等开支提出交替申索。Flywin案订明的原则禁止在上诉时提出没有在原审时提出的交替申索。

将来医疗开支

— 法院如果信纳以下的情况，就会就将来的手术费判决损害赔偿：手术是依照或改善或缓解持续痛楚、痛苦所需要或合理地必要的，并且预计或相当可能在不久的将来或合理可预见的将来进行手术；暂委法官可以根据这些事情，解决对原告人不利的主要事实的争议点。

FAMILY LAW

OMH v MT
[2017] HKEC 1157
Court of Appeal
Civil Appeal No. 65 of 2015
Lam V-P, Cheung and Chu JJA
19 May 2017

Parentage — declaration sought under s. 6(1) that respondent natural father of applicant — respondent absent and no scientific evidence — immigration status of applicant at issue — degree of proof required and approach — applicability of “manifestly contrary to public policy” ground for refusing declaration

In 2007, M, an Indonesian national and domestic helper in Hong Kong, began to cohabit with F, a Pakistani national who became a permanent resident of Hong Kong in November 2007. M claimed that she had a monogamous relationship with F; she discovered she was pregnant in September 2008 and told F about it; she left F in October 2008 and was later arrested for overstaying since June 2007 and working illegally, but released on recognizance. In July 2009, M’s son, X, was born. X’s father was not named on his birth certificate. X, by M as his next friend, applied for a declaration under s. 6(1) of the Parent and Child Ordinance (Cap. 429) (the “PCO”) that F was his natural father. M could not contact F. After failing to effect personal service on him even though he was in Hong Kong at the time, X’s solicitors (“S”) effected substituted service by advertisements in a local English newspaper. F never appeared at hearings. In March 2014, the Deputy Judge dismissed X’s application, finding that inter alia X had not proved that F was his natural father, since there had been no use of scientific tests as provided for under s. 13 of the PCO; solid evidence was required given the “massive” consequences of a declaration; and it would manifestly be contrary to public policy to determine parentage based solely on M’s assertion that she had no other sexual partners. X appealed. In November 2015, M traced and contacted F, who had another family and did not want his wife to know about X or the proceedings. In December 2015, F terminated all contact with M and X after being asked to collect court documents or provide an address for service of the same.

Held, allowing the appeal by granting the declaration sought, that:

• The issue of paternity was a serious one. On an application under s. 6(1) of the PCO, the court should consider the potentially far-reaching effects of a declaration which was binding on the Government and all persons, proceed with caution and require cogent proof of the truth, but also apply common sense in assessing the evidence. The court would refuse a declaration as being “manifestly
contrary to public policy” only where it would offend against our ideas of substantial justice. This residual discretion was to be sparingly exercised.

• The fact that the only evidence of parentage came from M did not necessitate corroborative evidence, although this went to whether the requirements in s. 6(3) were satisfied. It was relevant that notice of the application and the hearing was given by substituted service and F had not entered an appearance.

• The Deputy Judge was right to adopt a cautious approach. However, he was unduly swayed by the absence of evidence of scientific tests. M had lost contact with F before X’s birth and thus, the unavailability of such evidence was due to circumstances beyond X’s control. On an overall view and given the Deputy Judge made no adverse finding on M’s credibility, the lack of scientific evidence did not undermine M’s evidence or X’s case.

• M’s omission to mention F’s response when she told him about her pregnancy, although potentially crucial, did not mean the Court should or could not act on her evidence alone. If it was of concern, the Deputy Judge should have invited counsel to address him on what effect, if any, the omission had on the rest of M’s evidence and X’s claim. Moreover, M’s evidence that she was monogamous while cohabiting with F, was neither rejected nor doubted, and was capable of supporting X’s case on paternity. However, this issue was not canvassed at the hearing.

• It was clear that, despite having notice, F did not wish to participate in the court proceedings or to challenge X’s application. On all the evidence, X’s parentage was established.

• As for whether it would be manifestly contrary to public policy to grant a declaration under s. 6(1), X’s application was uncontested. The fact that the only evidence in support came from M and the lack of scientific evidence were not relevant considerations. There was nothing repugnant to the ideas of substantial justice in granting the declaration.

家 庭 法

OMH v MT
[2017] HKEC 1157

上訴法庭
民事上訴案件2015年第65號
上訴法庭副庭長林文瀚
上訴法庭法官張澤祐
上訴法庭法官朱芬齡
2017年5月19日

父子關係 – 根據第6(1)條要求法庭宣告答辯人是申請人的生父 – 答辯人缺席並且沒有科學證據 – 爭論申請人的入境身分 – 要求的舉證程度及方法 – 「明顯地有違公共政策」是否適用於作為拒絕宣告的理由


裁決 — 判上訴得直，作出宣告：

• 父子關係的問題是嚴肅的問題。當有人根據《條例》第6(1)條提出申請，法庭不單應當考慮作出宣告潛在的深远影響——因為政府及所有人都受到法庭作出的宣告所約束，事事謹慎，要求證實真相的有力證據，還應當在評核證據時運用常識。法庭只會在作出宣告會違反對實質公義的理念的情況下，才以「明顯地有違公共政策」為由，拒絕作出宣告。這項剩餘酌情權是要謹慎地行使的。

• 唯一證明父子關係的證據是由M提供的，這是一個事實，不需要佐證，不過還要看證據是否符合第6(3)條的規定。申請通知書和聆訊通知書是經替代方式送達F的，但F沒有呈交應訊答書，這點和本案有關聯。

• 暫委法官小心謹慎，做法正確。然而，他因為案中沒有經科學測試的證據而動搖。F在X出世前已經與F失去聯絡，因此，證據欠奉是因F所不能控制的情況所致。整體而言，考慮到暫委法官沒有對M的可信程度作出不利的裁決，欠缺科學證據並不削弱M的證據或X的論據。

• M沒有提到當她告訴F自己懷孕時,F的反應,雖然F的反應可能具有關鍵意義，但這並不代表法庭應當或者可以只基於她的證據行事。如果關注M的不作為，暫委法官本應該邀請大律師向他陳明M的不作為對M其餘證據及X的聲稱有甚麼影響(如果有任何影響的話)。此外, M作供稱自己與F同居時只有一個性伴侶，她的供述不被拒絕，也不被懷疑，能夠支持X所指的父子關係。然而，沒有人在聆訊時就這個爭論點徵求意見。

• 雖然F接到通知，但他不想參與法律程
序或質疑X的申請是清楚可見的。根據所有的證據，X與F的父子關係得以確立。

至於會否是第6(1)條所指的明顯地有違公共政策，X的申請並沒有受到爭議。支持申請的唯一證據是由M提供的，並且案中沒有科學證據，但此等事實不是相關的考慮因素。作出宣告與實質公義的理念沒有任何抵觸。

REGULATORY

Securities and Futures Commission v Yiu Hoi Ying Charles
[2017] HKEC 826
Court of Appeal
Civil Appeal No. 154 of 2016
Lam V-P, Cheung and Kwan JJA
26 April 2017

Insider dealing – s. 271(3) defence that purpose of dealing did not include securing profit by “using relevant information” – “using” in s. 271(3) did not cover withholding or non-disclosure of relevant information

R1 was the Executive Director and Financial Director of C, a Hong Kong listed company, and R2 was its company secretary. C was insolvent due to a long-standing debt owed to X, who served various statutory demands on C between October 2002 and April 2006, but had been generally open to negotiations on repayment of the debt. In February 2007, X assigned the debt to G for HK$25 million (the “Assignment”). C was informed of the Assignment and G demanded repayment. In April 2007, C received a statutory demand from G, demanding payment of HK$70,270,491 (the “Statutory Demand”). At that time, the Assignment and the Statutory Demand taken together constituted relevant information and Rs knew that they were relevant information under the Securities and Futures Ordinance (Cap. 571) (the “Ordinance”), no market misconduct was identified in respect of Rs. It was held that the defence under the then s. 271(3) of the Ordinance was applicable as their motivating factor was to profit from an unexpected speculative boom in the share price and their exercise of the share options was not in any way coloured by the price-sensitive information in their possession. The SFC appealed to the Court of Appeal. At the relevant time in 2007, s. 271(3) of the Ordinance provided that “A person shall not be regarded as having engaged in market misconduct by reason of an insider dealing taking place through his dealing in … listed securities or derivatives … if he establishes that the purpose for which he dealt … in the listed securities or derivatives in question … was not, or, where there was more than one purpose … did not include, the purpose of securing or increasing a profit … whether for himself or another, by using relevant information.”

Held, dismissing the appeal, that:

• The word “using” in the then s. 271(3) should not be construed as covering withholding or non-disclosure of relevant information. This would equate “use” of price-sensitive information with the “possession” of it and render the statutory defence in s. 271(3) otiose. If any senior executive who had such information would be deemed to have withheld information which he knew would significantly impact on the share price, regardless of the reason and whether it was the executive that caused the information not to be released to the public, so that there would always be a mischievous purpose in any dealing, the statutory defence would be illusory. Further, it was not necessary to strain the meaning of “use” to import the obligation of disclosure under r. 13.09 and related provisions of the Listing Rules in 2007, which were now codified into Part XIVA of the Ordinance.

• The suggestion that Rs knowingly and directly contributed to the maintenance of a falsely inflated share price of C by withholding or causing C to withhold price sensitive information and that they knowingly profited from the falsely inflated share price necessarily meant they were “using the relevant information” when they dealt in the shares, was not advanced by the SFC before the Tribunal. It was an issue of mixed law and fact, and there was no relevant finding of fact by the Tribunal to support this argument. Procedural fairness would
require that a person who was the subject of an inquiry should know the factual and legal bases which formed part of the SFC’s case, so that he would have a full opportunity to address the pertinent issues in evidence and make meaningful submissions.

監管

Securities and Futures Commission v Yiu Hoi Ying Charles
[2017] HKEC 826

上訴法庭
民事上訴案件2016年第154號
上訴法庭法官林文瀚
上訴法庭法官張澤祐
上訴法庭法官關淑馨
2017年4月26日

內幕交易 - 第271(3)條的辯護：
交易的目的不包括「利用有關消息」獲得利潤 - 第271(3)條的「利用」不包含隱瞞或不披露有關消息的意思

第一答辯人(「R1」)是香港一間上市公司(「C」)的執行董事及財務董事，第二答辯人(「R2」)是C的公司秘書。C長期拖欠X一筆債項，是一間無力償債的公司。X在2002年10月至2006年4月，多次向C送達法定要求償債書，但X通常都願意就債項的付還進行洽談。2007年2月，X將該筆債項轉讓予G，G支付的轉讓代價為2,500萬港元(「該轉讓」)。C獲告知該轉讓，G要求C還款。2007年4月，C收到G要求償還70,270,491港元的法定要求償債書(「該法定要求償債書」)。那時，兩名答辯人知道有該轉讓及該法定要求償債書，但市場並不知道。2007年2月至2007年6月，C的股份受到炒賣「細價」股浪潮影響，在沒有任何實際基礎支持的情況下，股價由2007年2月1日的0.20港元飆升至2007年5月29日的0.97港元(最高位)，2007年6月6日暫停買賣之前，見0.83港元。R1在2007年5月終出售600萬C股份，R2由2007年2月至2007年6月合共出售1,000萬C股份，R1和R2都售股獲利。2007年6月6日，G送達呈請書，要求將C清盤。證監會展開法律程序，控告(其中包括)兩名答辯人進行內幕交易。市場失當行為審裁處(「審裁處」)認為，雖然該轉讓和該法定要求償債書一併構成有關消息，並且兩名答辯人知道該等消息是《證券及期貨條例》(第571章)(「《條例》」)所指的有關消息，但完全找不到與兩名答辯人有關的市場失當行為。審裁處裁定，《條例》當時的第271(3)條下的辯護適用，因為股價突然隨炒股熱潮飆升，兩名答辯人是為了賺取利潤才出售股份，二人有擁有股價敏感資料，但這完全不影響他們行使購股權的決定。證監會上訴至上訴法庭。在2007年的有關時間，《條例》第271(3)條規定，「凡任何人證明以下情況，則不得以透過他進行……上市證券或衍生工具的交易……而發生的內幕交易為理由，而視他為曾從事市場失當行為，他進行……有關的上市證券或衍生工具的交易……的目的，並非在於(亦並不包括)利用有關消息為自己或他人獲得或增加利潤……損失。」

裁決 — 駁回上訴：

• 繼《第271(3)條的「利用」一詞，不應被解釋為包含隱瞞或不披露有關消息的意思。這樣解釋的話，「利用」股價敏感資料會等同於「擁有」股價敏感資料，令第271(3)條的法定辯護無用武之地。如果任何掌握這些資料並知悉資料會嚴重影響股價的高級行政人員，會被視為隱瞞資料，而不論箇中原因，也不論他是否就是那名引致資料不向公眾人士公布的行政人員，以致任何交易的目的會帶有惡意，法定辯護就會形同虛設。另外，並無必要延伸「利用」一詞的涵意，把披露責任加入其中，因為在2007年，披露責任是受到《上市規則》第13.09條及相關規定所規管，並且現在已被編纂為成文法則，載入《條例》第XIVA部之中。
• 有人認為，兩名答辯人在明知的情況下，隱瞞或引致C隱瞞股價敏感資料，是直接促成C股份維持於被假意抬高的價格，並且他們是在明知的情況下，趁股價被假意抬高而從中獲取利潤，意味他們在買賣股份的時候，必定有「利用有關消息」。證監會沒有在審裁處席提出這點，是一個同時牽涉法律與事實的爭論點，由審裁處就相關事實作出的裁斷並不支持這個爭論。公正的程序會要求研訊對象知悉證監會部份論據的事實依據和法律依據，以致他一早就完全有機會從證據中提出恰當的爭論點，作出具有內涵的陳詞。

For full summaries and judgments, please refer to Westlaw and Hong Kong Law Reports & Digest at www.westlaw.com.hk. For the complete version, please refer to www.westlaw.com.hk. www.hk-lawyer.org 69
As part of Women in Law Hong Kong’s (“WILHK”) commitment to enhancing the profiles, skills and networking opportunities for women in the legal field, we are delighted to launch, for the second year running, the WILHK Mentoring Programme.

Following the positive reception of last year’s pilot mentoring sessions, the 2017 WILHK Mentoring Sub-Committee has built this year’s programme with a strong focus on empowering mentees with key skills to navigate their legal careers: a slate of skills workshops form one pillar of the curriculum, while social events and time spent in mentor/mentee pairs and mentor/mentee small groups complete the foundation.

“We are lucky to have very active mentors and mentees, who are keen to share their ideas, experiences and suggestions for strengthening and improving the programme. We are continuously incorporating feedback from programme alumni and are always excited to see the level of engagement from those involved,” says Ka Yin Au Yeung, Mentoring Chair.

This past March, alumni mentors and mentees from the mentoring class of 2016 joined a discussion panel to share their thoughts on mentorship and their experience of the 2016 WILHK Mentoring Programme to prospective participants:

“The WILHK programme is, so far as I am aware, unique – it gives a young female lawyer the opportunity to seek impartial advice and guidance from someone she trusts without that advice being prejudiced by organisational baggage. This is why I wanted to get involved. If I can help just one person stay in the industry and make private practice more diverse, it will be worthwhile,” said Allan Wardrop, Partner at Hogan Lovells and Mentor, Class of 2016.

The programme saw more than 100 percent increase in the number of applications from last year. “There is a need for more mentoring in Hong Kong for females in the legal profession, and the level of interest is the best evidence of that. We hope to be able to expand the programme over time, and to build up the sponsorship infrastructure to give as many women no-cost access to mentoring as possible,” Susan Wong, Mentoring Vice-Chair noted.

“We are also extremely encouraged that so many 2016 mentors who had just gone through a mentoring cycle with us last year have again applied to be mentors this year. Again this shows real commitment from senior legal practitioners who are really trying to do their part in changing the industry landscape,” added Maya Wodnicka, Sponsorship Director.

Ten mentees and 13 mentors were shortlisted for the 2017 programme. All successful applicants were invited to participate in two matching sessions in April and May that involved ice breakers, with mentors giving 3-minute elevator pitches covering what they would like to offer mentees and their commitment to mentorship. The session hosted a mentor and mentee “speed-dating” to let mentors and mentees get to know each other and find the most suitable pairs for the programme. After the two matching sessions, mentors and mentees were asked to submit their top three choices and were matched based on mentoring.
This year, WILHK has partnered with and has been generously supported by Unibly, a startup mentoring platform application, and its Managing Director, Joash Lee. At the end of May, through Unibly’s software application, WILHK announced all matched mentor and mentee pairs.

“WILHK is keen to optimise the mentor/mentee relationship, and we saw the Unibly app, which is new to the mentoring market as a great way to bring ‘tech’ into the game.” Stella Loong, Committee Member, remarked.

The WILHK 2017 Mentoring Programme workshop series is now in full swing and summer informal mentoring sessions are planned for the next few months: more details of these will be available in an upcoming issue of the Hong Kong Lawyer.

The application period for the 2017 cycle of the WILHK Mentoring Programme is now closed. The next mentoring cycle will commence in the first quarter of 2018. The application process will begin around March 2018. To receive the most updated information about WILHK, please go to www.wilhk.com and register as a WILHK member.
Newly-Admitted Members

CAI XUANLUN
蔡暄倫
WEST OF ENGLAND INSURANCE SERVICES (LUXEMBOURG) S.A.

LAM ALICJA EMMA
林曉欣
C/O SKADDE, ARPS, SLATE, MEACHER & FLOM

CASSIDY HANNAH ESTELLE
安瑞詩
HERBERT SMITH FREEHILLS
史密夫斐爾律師事務所

LEUNG CHO YU
梁祖瑜
MAK PATRICK & TSE
麥家榮律師行

LEUNG WAI YEE
梁慧怡
LINKLATERS
年利達律師事務所

ZHAO MEIPING
趙梅冰
FRESHFIELDS BRUCKHAUS DERINGER
富而德律師事務所

INDWAR SUMIT

LEUNG WAI YEE
梁慧怡
LINKLATERS
年利達律師事務所

LI XIN
李鑫
LINKLATERS
年利達律師事務所

LIM TONG CHUAN
韋業顯
WAI & CO., HENRY SOLICITORS
韋業顯律師行

KWOK CHI TSUN STEVE
郭子俊
SKADDEN, ARPS, SLATE, MEACHER & FLOM
世達國際律師事務所

LIM TONG CHUAN
韋業顯
WAI & CO., HENRY SOLICITORS
韋業顯律師行

MARQUIS VERONIQUE ELISABETH
安睿國際律師事務所
EVERSHEDS

SCHMIERER STEFAN CHRISTIAN ROBINSONS, LAWYERS
羅本信律師行

KWONG TAT HOI DANIEL
鄺達開
Partnerships and Firms
合夥人及律師行變動

- **ADEBIYI JOHN DANIEL ABIODUN**
  ceased to be a partner of Skadden, Arps, Slate, Meagher & Flom as from 01/07/2017.
  自2017年7月1日不再出任世達國際律師事務所合夥人一職。
- **CARABINE NEIL BRUCE**
  joined King & Wood Mallesons as a partner as from 06/07/2017.
  自2017年7月6日加入金杜律師事務所為合夥人。
- **CASSIDY HANNAH ESTELLE**
  joined Herbert Smith Freehills as a partner as from 22/06/2017.
  自2017年6月22日加入史密夫斐爾律師事務所為合夥人。
- **CHAN KA MAN KAREN**
  became a partner of Davis Polk & Wardwell as from 01/07/2017.
  自2017年7月1日成為Davis Polk & Wardwell合夥人。
- **CHAN SAI CHEE ELSA**
  ceased to be a partner of Baker & McKenzie as from 02/07/2017.
  自2017年7月2日不再出任貝克律師事務所合夥人一職。
- **CHANG MAN LEONG**
  became a partner of Michael Li & Co. as from 01/07/2017.
  自2017年7月1日成為李智聰律師事務所合夥人。
- **CHEN CHEN CHEUK HIM**
  became a partner of Khoo & Co. as from 04/07/2017.
  自2017年7月4日成為丘燦法律師事務所合夥人。
- **CHEN KIN PONG**
  became a partner of Rowdget W. Young & Co. as from 03/07/2017.
  自2017年7月3日成為楊振文律師行合夥人。
- **CHU PO KING**
  ceased to be a partner of Winston & Strawn as from 01/07/2017 and joined Withers as a partner on the same day.
  自2017年7月1日不再出任溫斯頓律師事務所合夥人一職，並於同日加入衛達仕律師事務所為合夥人。
- **COLE KEITH RICHARD**
  ceased to be a partner of Deacons as from 01/07/2017.
  自2017年7月1日不再出任德普律師事務所合夥人一職。
- **DAPIRAN ANTONY MATTHEW**
  ceased to be a partner of Davis Polk & Wardwell as from 01/07/2017.
  自2017年7月1日不再出任Davis Polk & Wardwell合夥人一職。
- **DUTTON EDWARD DREW**
  ceased to be a partner of Debevoise & Plimpton as from 01/07/2017.
  自2017年7月1日不再出任德普律師事務所合夥人一職。
- **FORSYTH ANGUS HAMISH**
  commenced practice as the sole practitioner of Angus Forsyth & Co. as from 01/07/2017.
  自2017年7月1日獨資經營Angus Forsyth & Co.。
- **HATZER PAUL JOHN**
  ceased to be a partner of Holman Fenwick Willan as from 01/07/2017.
  自2017年7月1日不再出任夏禮文律師事務所合夥人一職。
- **JI XIAODONG**
  commenced practice as the sole practitioner of William Ji & Co. as from 08/06/2017.
  自2017年6月8日獨資經營紀曉東律師行。
- **KWAN CHI KIT**
  commenced practice as the sole practitioner of David Fong & Co. as from 01/07/2017.
  自2017年7月1日成為方良佳律師事務所合夥人。
• KWOK CHI TSUN STEVE
  joined Skadden, Arps, Slate, Meagher & Flom as a partner as from 20/06/2017.
  郭子俊
  自2017年6月20日加入世達國際律師事務所為合夥人。

• LAU HARVEY
  joined Baker & McKenzie as a partner as from 01/06/2017.
  劉哈維
  自2017年6月1日加入貝克·麥堅時律師事務所為合夥人。

• LEE CHIU LEUNG
  joined Raymond T.M Lau & Co. as a partner as from 03/07/2017.
  李超亮
  自2017年7月3日加入劉德銘律師行為合夥人。

• LEHMKUHLER MARK JOSEPH
  joined Orrick, Herrington & Sutcliffe as a partner as from 13/06/2017.
  麥思帆
  自2017年6月13日不再出任孖士打律師行合夥人一職。

• LUI FUNG MEI YEE MABEL
  ceased to be a partner of Winston & Strawn as from 01/07/2017 and joined Withers as a consultant on the same day.
  呂馮美儀
  自2017年7月1日不再出任溫斯頓律師事務所合夥人一職,並於同日加入衛達仕律師事務所為顧問。

• MARQUIS VERONIQUE ELISABETH
  joined Eversheds as a partner as from 06/07/2017.
  沈煌華
  自2017年6月26日加入年利達律師事務所為合夥人。

• PETERMAN SCOTT DENNIS
  joined Orrick, Herrington & Sutcliffe as a partner as from 04/07/2017.
  自2017年7月4日加入奧睿律師事務所為合夥人。

• ROMPOTIS PHILLIP
  joined Cordells as a partner as from 06/06/2017.
  龍菲臘
  自2017年6月6日加入Cordells為合夥人。

• STEVENS MARK JOHN
  ceased to be a partner of Mayer Brown JSM as from 13/06/2017.
  麥思帆
  自2017年6月13日不再出任孖士打律師行合夥人一職。

• TANG KAM WING
  ceased to be a partner of Winston & Strawn as from 01/07/2017 and joined Withers as a partner on the same day.
  鄧錦榮
  自2017年7月1日不再出任溫斯頓律師事務所合夥人一職,並於同日加入衛達仕律師事務所為合夥人。

• TANG PETER
  ceased to be a partner of Poon & Cheung as from 01/07/2017 and remains as a consultant of the firm.
  鄧世明
  自2017年7月1日不再出任潘繼洪, 張宗泉律師事務所合夥人一職,而轉任為該行顧問。

• TARALA THOMAS JOSEPH
  ceased to be a partner of Hogan Lovells as from 08/07/2017.
  自2017年7月8日不再出任霍金路偉律師行合夥人一職。

• TONG YU PING GEORGE
  became a partner of Minter Ellison as from 01/07/2017.
  唐宇平
  自2017年7月1日成為銘德律師事務所合夥人。

• WONG WAI-SAN CASSANDRA
  ceased to be a partner of Chow Wong & Lawyers as from 16/06/2017 and commenced practice as the sole practitioner of CW Lawyers on the same day.
  王慧珊
  自2017年6月16日不再出任張葉司徒陳律師事務所合夥人一職,並於同日獨資經營王慧珊律師事務所。

• WONG WAI CHUNG
  ceased to be a partner of Vincent T.K. Cheung, Yap & Co. as from 04/07/2017.
  黃偉忠
  自2017年7月4日不再出任張葉司徒陳律師事務所合夥人一職。

On 5 June 2017, the School of Law of City University of Hong Kong ("CityU") was honoured to have Professor Baris Soyer, Professor of the College of Law at Swansea University, to give a staff seminar on “The Insurance Act 2015 – Reform of Warranties and Other Risk Control Provisions”.

Dr. Xing Lijuan, Assistant Professor of the School of Law and Associate Director of Hong Kong Centre for Maritime and Transportation Law, introduced Professor Baris Soyer at the beginning of the seminar. Professor Soyer is currently the Head of the Department of Shipping and Trade Law at Swansea University and is involved in the teaching of Admiralty Law, Marine Insurance Law, and Oil and Gas Law: Contracts and Liabilities in the LLM programme. He is one of the editors of the Journal of International Maritime Law and is also on the editorial board of Shipping and Trade Law and Baltic Maritime Law Quarterly.

After general introduction to the background of the Insurance Act 2015 and the main problems of the Marine Insurance Act 1906, Professor Soyer mainly discussed the appropriateness of the reforms introduced by the 2015 Act from risk assessment and management perspective.

During the seminar, Professor Soyer also offered a critical analysis on the potential impact of the changes on insurance law and practice. “A degree of uncertainty will be inevitable as a result of the changes especially with regard to the application of s. 11 of the Insurance Act 2015; but changes will undoubtedly improve the position of the assured,” Professor Soyer said. He also believes that the Insurance Act 2015 will accelerate the reform process in other common law jurisdictions such as Hong Kong.

August 2017  •  CAMPUS VOICES  法學院新聞
CUHK Law Organises Symposium on “The International Criminal Responsibility of War’s Funders and Profiteers”

The Faculty of Law of The Chinese University of Hong Kong organised a Symposium on “The International Criminal Responsibility of War’s Funders and Profiteers” on 23–24 June 2017 at its Graduate Law Centre, Central. The symposium examined the criminal accountability of individuals, businesses and governments that finance and profit from armed conflict. Around 40 scholars and practitioners from across the world participated to explore and discuss issues and challenges relating to the participation of economic actors in international crimes such as war crimes and crimes against humanity.

On the first day of the Symposium, the Vice-President and Judge of the Appeals Chamber of the International Criminal Tribunal for the Former Yugoslavia (“ICTY”) Judge Liu Daqun delivered the keynote address looking into the differentiation of the modes of participation, the financing of terrorism convention and the ICTY jurisprudence. The Symposium was welcoming remarks by Prof. Nina Jørgensen of CUHK Law.

Speakers explore and discuss issues and challenges relating to the participation of economic actors in international crimes.

Welcoming remarks by Prof. Nina Jørgensen of CUHK Law.

中文大學法律學院Nina Jørgensen教授致開幕辭。
Pathways Programme with King’s College London

The Faculty of Law at The University of Hong Kong has entered into a partnership with the Dickson Poon School of Law at King’s College London (“KCL”) under the HKU LLB Pathways programme. The programme offers a small number of HKU LLB students the opportunity to spend what would have been the final year of their undergraduate studies reading for an LLM at KCL. The students will then graduate with both an LLB from HKU and an LLM from KCL.

Pathways will commence in the academic year 2017/18 and aims to admit three high-achieving LLB students who would like to start on an LLM programme in one of the leading law schools in the world. Interested LLB students will make their application for Pathways at the end of the first semester in their second year of study. On successful completion of Pathways, students will finish their studies in four years instead of five with both an LLB and LLM qualification.

On a reciprocal basis, students enrolled in the LLB in English Law & Hong Kong Law programme at KCL may study for an LLM degree at HKU in the third year of their studies.

Dr. Marco Wan, Associate Dean (International Affairs), Associate Professor of Law & Honorary Associate Professor of English said: “Students on the Pathways programme obtain a truly global legal education by spending time at both HKU and KCL. We are excited about deepening our ties with the Dickson Poon School of Law through the programme, and look forward to taking our international collaborations to the next level.”

Vice Dean for International & External Relations of KCL Law School, Professor John Phillips, said: “The School is delighted to enter into this reciprocal agreement with the excellent Faculty of Law at HKU, which will give the best students from both universities an opportunity to study in a different legal jurisdiction and culture. It is very important to us that students have new perspectives and experiences in a world where legal problems are increasingly global in nature.”

港大與倫敦大學國王學院開辦銜接課程

港大與倫敦大學國王學院開辦銜接課程

香港大學法律學院與倫敦大學國王學院潘迪生法律學院合作，於港大LLB下開辦銜接課程。少數港大LLB學生將有機會在本科課程的最後一年，在倫敦大學國王學院修讀LLM課程，完成後同時取得港大LLB及倫敦大學國王學院LLM資格。

銜接課程於2017/18學年開始，將錄取三名希望在全球頂尖法律學院開始LLM課程的優異學生。有興趣修讀銜接課程的LLB學生，可於第二學年第一學期結業時提出申請。完成銜接課程後，學生將在四年內完成學位(而非五年)，並擁有LLB和LLM資格。

在互惠的基礎上，在倫敦大學國王學院修讀英國法律與香港法律課程的LLB學生，亦可於第三學年在香港大學修讀LLM學位。

港大法律學院副院長(國際事務)兼英文學院榮譽副教授溫文灝博士說：「修讀銜接課程的學生，將在香港大學和倫敦大學國王學院上課，能獲取真正全球性的法律教育。我們很高興透過該課程與潘迪生法律學院加強聯繫，並期待繼續提升國際合作水平。」

倫敦大學國王學院國際及對外關係副院長John Phillips教授表示：「學院很高興與優秀的港大法律學院達成互惠協議，為兩所大學最傑出的學生提供機會，在不同的法律管轄區和文化下學習。法律問題越趨全球化，學生擁有新的國際視野和經驗，對我們十分重要。」
Formula E Hong Kong ePrix set to Roar Back to the Heart of Hong Kong in December 2017

Interview with Kenneth Ng, President of the Hong Kong Automobile Association and Chairman of the Formula E Working Group

By Cynthia G. Claytor

On 2 and 3 December 2017, Formula E, the world’s premiere electric street racing series, will roar back into the Hong Kong with two full days of world-class racing. This will be the second ePrix Hong Kong will host and will kick-start Formula E’s fourth season.

The Hong Kong ePrix 2016 was the first time in over 30 years that the City hosted a premier motorsport event and achieved what many thought would be impossible – hosting an international open-wheel, single-seat racing event in the heart of Hong Kong.

In anticipation of the Hong Kong ePrix 2017, Kenneth Ng, President of the Hong Kong Automobile Association and Chairman of the Formula E Working Group, as well as Former Law Society Council Member, speaks to Hong Kong Lawyer about his involvement in the Formula E Hong Kong ePrix 2016, the upcoming race and his hopes for e-racing in Hong Kong in the future.

1. Can you tell us how you became involved with the Hong Kong Automobile Association and the Formula E Working Group?

Before I retired, I sat on committees of several NGOs, including the Hong Kong Automobile Association ("HKAA"). I have always had a passion for cars. Last year, when Formula E first came to Hong Kong, the HKAA was the technical supporter of the event and, as an HKAA General Committee member actively involved in the race preparation, I was appointed as the Chairman of the Formula E Working Group, overseeing a range of operational matters.

2. What type of work went into pulling off the first ever Formula E Hong Kong ePrix? What were some of the challenges of introducing the race in Hong Kong?

Motor racing has no priority in Hong Kong as it is still perceived as a rich man’s game. Against that background, it did involve a few years’ effort in persuading the Government to appreciate that this is good for Hong Kong. One can imagine, and appreciate, their reluctance in endorsing something which has no precedents in Hong Kong – a street race like Monaco or, closer to home, Macau. Once we had the Tourism Commission’s policy support in hand, the coordination for approvals/licenses from the various Government departments should have been all downhill. However, that is not the way it unfolded due to the lack of precedents. I am so glad that we pulled this off and in the end all of the Government departments were happy with the way the event turned out.
3. In a previous issue of the journal, you said “Hong Kong needs more positive energy these days and we hope that [the first Formula E Hong Kong ePrix] is just the beginning!” What else do you have in the works?

The HKAA has been working closely with the Homes Affairs Bureau to build an e-racing track within the compound of the Kai Tak Sports Park. We have been told that our track design will be included in the tender documents available to the bidders for consideration. This is a giant step.

Longer term, we are lobbying the Government, LegCo members and political parties to support our proposal to build a permanent multi-purpose motorsports circuit at the proposed reclamation off Sunny Bay in Lantau Island. We have no desire to compete for land, which can be used for building houses, hospitals, schools etc., but that piece of reclamation has already been designated for recreational purposes, as opposed to residential, due to the sound pollution caused by aircrafts. However, this will be a very long and uphill battle.

4. What car(s) do you drive outside of work? Are any of these electric cars? Any favourites?

I am very old fashioned and like the normal combustion engine, and the raw sound it produces. I don’t have a favourite car – or I don’t have a favourite car for long – as I seldom own a car for more than two years. In Hong Kong, most people do not need cars to commute as our public transport systems are so good. Cars, to me, and I am sure to a lot of us, are just toys. Suffice it to say, I always keep more than one car, with one of them having a manual gear, which gives me a lot of driving pleasure.

5. What’s your take on the future of electric vehicles globally and in Hong Kong?

It is definitively the future in Hong Kong, and if not for the reduced concession introduced recently by the Government, the future likely would have come earlier. It should be a global trend too, but I cannot speak for every country as electric cars still have issues to overcome (eg, recharging, and thus are not so reassuring for long distance driving).

6. How did you go from law to automobiles? What relationship do they have in your mind?

I did not actually move from one to the other, and there really is no relationship, as I see it, between my work in each area. However, if we were to talk about motorsports and the law, then I can see the relationship.

I have been a Racing Steward for several years. Last year, I was the National Steward for the Formula E Hong Kong ePrix. Judging the rights or wrongs of drivers as a Race Steward is similar to judging cases in a court of law as racing is a rules-based sport. Although stewards cannot normally reserve judgment because penalties, such as drive through penalty, stop-start penalty etc, will have to be imposed during the race and cannot normally wait until the race finishes.

7. If you were Elon Musk, what would you do?

I would be very busy figuring how to spend the huge amount of money I have earned and may not have time to attend this interview.

On a more serious note, I think I would leverage the high profile I had gained to push as hard as possible for the concept of smart mobility/smart city or autonomous driving. I believe this will be the ultimate solution to traffic congestion, which all major cities in the world are all trying to solve to no avail.

8. What happens if the Hong Kong Government withdraws the subsidies for electric vehicles in Hong Kong – what impact may this have?

It will undoubtedly slow down the environmental protection process. I question the wisdom behind the recent move by the Government, which does not sit well with the overall environmental policy. If the government feels that there are “enough” electric cars on the road in Hong Kong and therefore withdraws or reduces the tax concessions, what does it expect prospective car owners to do? It is not wrong, but a little unrealistic, to expect them to think from a high moral ground for the global environment when picking their next new car. As I said, it is not wrong, but just unrealistic.
Formula E 2017年12月載譽重臨香江

專訪香港汽車會會長兼Formula E工作小組主席伍成業

作者  Cynthia G. Claytor

世界頂級街道賽事－「國際汽聯電動方程式錦標賽」(Formula E)將於2017年12月2至3日載譽重臨，一連兩日在香港舉行兩場賽事。香港今年第二次舉行這項車壇盛事，為第四季世界頂級街道賽車揭幕。

去年首辦的Formula E香港站賽事是逾30年來香港首次舉辦國際頂級賽車項目，在香港鬧市中出現國際性單座位賽車，實現了不可能的任務。

香港汽車會會長兼Formula E工作小組主席伍成業是律師會前理事會成員。他在香港ePrix 2017前接受本刊訪問，介紹他在Formula E香港ePrix 2016的工作，即將舉行的賽事，以及他對電動車在香港的期望。

1. 你如何加入香港汽車會和Formula E工作小組的工作？

我退休前參加了幾個非政府組織的委員會，包括香港汽車會(HKAA)。我一直熱愛汽車。去年，Formula E首度在香港舉行，香港汽車會擔任技術支援。作為該會的常務委員會成員，我積極參加賽事的籌備工作，獲委任為Formula E工作小組主席，負責管理賽事運作。

2. 首次在香港舉辦Formula ePrix，做了什麼準備工作？在香港舉行賽事的挑戰是什麼？

賽車被視為富人的遊戲，因而在香港不受重視。在這個背景下，說服政府活動對香港有利，確實需要幾年的努力。可以想象政府不會同意批准在香港史無前例的比賽－摩納
3. In a previous issue of "The Lawyer Hong Kong," you said: "Hong Kong needs more positive energy, we hope this (Formula E Hong Kong ePrix) is just the beginning!" What have you been involved in?

Hong Kong Motor Association has been closely cooperating with the Leisure and Cultural Services Department to build an electric race track. We have discovered that our track design will be included in the tender document, allowing bidders to consider. This is a significant step.

In the long term, we will lobby the Government, the Legislative Council and political parties to support our proposal to build a multi-purpose race track on Lantau Island. We do not want this land used for residential purposes, as it has been designated for public use due to polluted air. However, this will be a long and difficult struggle.

4. What car do you drive when you are not working? Do you have an electric car? Do you have a favorite car?

I am traditional, preferring a regular car engine and its distinctive sound. I do not have a favorite car, or rather, I no longer have a favorite car, because I rarely keep a car for more than two years. Most Hong Kong people do not need to drive, and we have a well-developed public transport system. To me, I believe it is a toy for many. I always have more than one car, one of which is a "stick shift" because it gives me a lot of driving pleasure.

5. What is your view on the future of electric vehicles globally and in Hong Kong?

Electric vehicles are undoubtedly the future of Hong Kong, but if the Government were to reduce tax breaks, this future might come sooner. It is also a global trend, but varies by country because of the problems with electric vehicles, such as charging, so long-distance driving may not be so reassuring.

6. How do you see the transition from the legal profession to the automotive business? What do you think about the relationship between the two fields?

Actually, I have not moved to another field, and there is no relationship. However, if we talk about motorsport and law, I see a relationship. I have been serving as a judge for many years. Last year, I served as Formula E Hong Kong ePrix's judge. As a judge, I have to decide whether a driver is right or wrong, just like a judge in court, because motor sports are regulated sports.

However, a judge cannot delay a judgment, because all penalties, such as speed limits or penalties, must be carried out during the race, usually cannot be carried out after the race.

7. If you were Elon Musk, how would you do it?

I would be busy considering how to spend my huge winnings, I might not have time to do this interview.

More importantly, I believe I will promote my own name, as I believe in the concept of intelligent mobility / intelligent cities or autonomous driving. I believe this will be the final solution to traffic congestion, and major cities will try to solve this problem.

8. If the Hong Kong government withdrew the tax incentives for electric vehicles, what impact would it have?

This would undoubtedly slow down the progress of environmental protection. I question whether the Government's recent measures are suitable for the overall environmental policy. If the Government feels that Hong Kong already has enough electric vehicles, will it withdraw or reduce tax incentives? I wonder what they would do if they were to choose a new car in the future, considering the global environmental moral high ground. This is not wrong, but it is unrealistic.
Stepping Into the Unknown

A Heritage of Food

It was a long journey to reach that day in FERRANDI. The appreciation of food and cooking is in my blood; my parents emigrated to the UK over 40 years ago and opened the only Chinese restaurant on the Shetland Isles, in Scotland, where I was born. I grew up in the kitchen. My mother, a formidable woman, was the chef and cooked all the Chinese dishes herself. From a young age, I was immersed on a daily basis in a multitude of aromas that tickled my nose and taste buds. We moved south to Hampshire when I was four, where my parents set up an open kitchen Chinese takeaway, which was quite avant-garde at the time. I remember many weekend nights where my parents would stow me away in a little cubby hole directly under the counter and I would hear customers mull over the menu. I would be nodding off to sleep with the sound of my dad shouting orders and mum's wok banging against the gas cooker. I guess that was the life for most first generation British-born Chinese in those days.

Law and My Journey Down a Different Path

My mum never went to school, but like most Asian parents wanted the best for me and had high hopes. In my family’s eyes, there was no doubt I would be going down the professional degree path, it was just a question of which degree: accounting, medicine or law. Spurred on by witnessing how hard my parents worked to give me a better future (and watching copious episodes of Ally McBeal), I chose law. I was the first generation to go to university and the first to study law in my family. Although I studied hard for my degree, my passion for cooking never dissipated. At university, finally equip with an oven, I would host dessert parties and that was the first time I experienced seeing the delight on people’s faces from tasting desserts that I had made. It was immensely satisfying and I was hooked on that feeling.

As with most other professional careers, once you are on the legal track it’s pretty hard to get off and you follow what your peers do. Therefore, after law school, I
did an LLM degree and then came back to Hong Kong to do my PCLL at HKU. I secured a training contract and qualified as a solicitor. Throughout my legal career, I continued to bake and thanks to my years as a trainee, became very resourceful with researching on the internet for dessert recipes and also looking beyond the recipe and into the science and technicality behind it. I would accept birthday cake orders and enjoy the huge sense of accomplishment and satisfaction when friends expressed how beautiful and tasty the cakes were.

I believe life is a journey and we are presented with a multitude of crossroads where we make choices that take us on different paths. One of my defining crossroads manifested itself when I went to New York for a holiday and upon a friend’s recommendation, went to the French Culinary Institute’s adjoining restaurant for dinner. The students of the culinary school would cook the meal for diners. The food was impeccable and made me realise that a career as a chef did not have to start when you were in your teens apprenticing in Michelin starred kitchens. A seed was planted in my head that it was not too late in Michelin starred kitchens. A seed was planted in my head that it was not too late.

As a trainee, became very resourceful with researching on the internet for dessert recipes and also looking beyond the recipe and into the science and technicality behind it. I would accept birthday cake orders and enjoy the huge sense of accomplishment and satisfaction when friends expressed how beautiful and tasty the cakes were.

The decision to leave law and go to culinary school was tough, partly because culinary school is expensive, so I had to save the money, but mostly because I was afraid of stepping into the unknown. I had a stable professional job, which was respected in society; whereas a pastry chef is not a celebrated profession in Hong Kong. When I told most people my aspirations, they raised their eyebrows and asked why I wanted to “downgrade” myself. However, I knew I would regret it if I did not take the leap because I really loved to bake and be creative. If I stayed in law, I could be financially stable, but I would not be happy, I knew I would always wonder “what if?”. So after a year of deliberating, I enrolled in one of the best culinary schools in France, FERRANDI | L’école de Gastronomie in Paris for their intensive full immersion pastry course. I would be spending a year in one of the culinary capitals of the world learning the art of dessert making.

**Culinary School**

The course at FERRANDI entailed five months of hands-on classes and afterwards the school would arrange a 6-month internship for each of us at our chosen hotel/patisserie.

A typical school day would start at 8 AM, when we would have to clean and disinfect the kitchen before the chef would demonstrate how to make a certain dessert and we would then have to replicate it. The course was called “full immersion” because it would imitate the professional working kitchen environment. Unlike some of the other culinary schools where there were kitchen assistants to do all the ground work, we were treated like kitchen staff and had to do our own cleaning, stock taking, manning the oven and constantly respond to the chef's every command with “Oui Chef!” . Our day would end at 4 PM with one final big clean of the kitchen; mopping and disinfecting the floor, cleaning the fridges, oven and sink and ensuring we had enough stock for the following day.

Time at school flew by so quickly, but I had the opportunity to meet like-minded people from all backgrounds – teachers, graphic designers, accountants, pharmacists and even a professional wrestler. Although we had very different backgrounds and nationalities, we all had a common passion: pastry.

**Internship**

If we thought that being at school was tough, we were all in for a shock as soon as we started our internships. I secured an internship at Hôtel Barrière Le Fouquet’s, Paris, a five-star hotel on the Champs-Élysées which also housed a Michelin-starred restaurant, Le Diane. As soon as I stepped into the kitchen on the first day, it was all hands on deck, with the chef shouting commands in French. Although my French was conversational, I had not prepared myself for how quickly they talked and the special kitchen language that was unique to each person. Everyone had a different word or description for doing the same task. It was day one of being a trainee again, only everything had to be done yesterday and to absolute perfection because your client was going to eat it immediately. Stress levels were high, but I felt so alive, plating a hundred desserts for banquets within a set timescale. Everyone was working as a team and patting each other on the back when a particularly busy service had ended. This was what being a chef was all about, and I loved it. Working in a professional kitchen you learn so much more compared to school because you are working alongside people who have been in the profession for decades and can give you pointers that no recipe book or teacher will.

**Back to Hong Kong**

In what seemed like a flash, I attended my graduation ceremony in FERRANDI which brought my adventure in Paris to an end. I had spent a year in one of the most beautiful, magical and romantic cities in the world. It seemed somewhat of an anti-climax to then come back to Hong Kong.

However, Paris was just a spring board, I now had a year of pastry knowledge under my belt and I was eager to put my knowledge into practice in Hong Kong. One key aspect I learned from the chefs in Paris is that if you are passionate about something, then you never feel you know it all, there are always new techniques to learn and flavour combinations to play with.

I managed to secure a job at the two Michelin starred restaurant, Caprice, and
under the tutelage of French pastry chef, Nicolas Lambert, my pastry skills were taken to another level. The discipline needed to consistently produce plate after plate of top-grade, wow-factor desserts is absolutely incredible. My time at Caprice was invaluable, not just because I got to learn from such a talented chef, but also as Cantonese was frequently used in the kitchen, I got to know and become friends with many Hong Kong pastry chefs.

It was during my time at Caprice that I realised I wanted to explore my own creativity and not replicate the executive chef’s creativity. This is why I have set-up my own brand, “CAKED_by_Isabelle”, to see where my own creativity would take me. I design and make desserts for events and I am able to utilise my years of pastry knowledge and skills to give client’s products that are not only aesthetically pleasing but also gives you a firework of flavours and textures on your palate.

The last couple of years for me have certainly been life changing and opened my eyes to so many wonderful experiences; experiences that have on occasions challenged me both mentally and physically but the sense of accomplishment that comes with knowing I have pushed myself and not just settled in my comfort zone makes it all worthwhile.

I still meet my friends and ex-colleagues in law and I do wonder where I would be if I had remained. Maybe I would be working in-house now, or as a senior associate in private practice. Nevertheless, it is only a fleeting thought. I do not regret studying and practicing law. It has taught me so many life skills and allowed me to meet lifelong friends. However, I am also happy where I am now. Not because I am making a lot of money. Not because I have risen up the social ladder, but because I found something I was passionate about and pushed myself to step into the unknown. I hope others will realise as well – that they too have it within themselves to step into the unknown and see where life takes them. As one of my favourite authors, Paulo Coelho puts it, “Remember our dreams and fight for them. There is just one thing that makes your dream become impossible: the fear of failure.”

美食世家

美食世家

入讀FERRANDI前的道路很漫長。美食烹飪對我來說是與生俱來，我的父母40多年前移居英國，在蘇格蘭昔德蘭群島開了島上唯一的中餐館。我就在那裏出生，在廚房長大。我媽媽負責煮所有中菜。我自小就在五味雜陳的環境中長大。四歲那年，我們南遷至漢普郡開設中餐外賣店，當時來說是嶄新的生意。我記得週末的晚上，父母把我放在櫃枱下面，我聽到客人在揭菜單，就這樣在父親的叫喊聲和母親的炒菜聲中睡著。我想那個年代英國華人的生活大多是這樣。

我看得英國電視長大，特別喜歡看烹飪節目。最欣賞Delia Smith在電視上教觀眾如何做完美的海綿蛋糕。我會盯著媽媽食譜內的甜品，幻想它們是真的。我做的第一個甜品是難吃極了的香蕉蛋糕。我們是個典型亞裔家庭，家裏沒有焗爐，只有電飯煲和煤氣爐。我以為微波爐和焗爐是一樣的，食譜説焗25分鐘，我就用微波爐高熱焗25分鐘，結果香蕉蛋糕變成黑焦。這個小小的挫折未能打擊我的鬥志，之後我在媽媽協助下專心做亞洲甜品，農曆新年時會蒸鬆糕和花生角仔。

法律與截然不同的路

法律與截然不同的路

我媽媽未讀過書，但像大多數亞裔父母，對子女寄予厚望。家人認為我一定要上大學，成為專業人士，問題只是當會計師、醫生或律師。眼見父母的苦心栽培，決定要讀法律。我是家中第一代大學生，讀法律的第一人。雖然我用心學習，但對烹飪的熱誠並沒減退。在大學裏，我終於有一台焗爐。我會舉行甜品派對，首次看到別人吃到我做的甜品時面上的喜悅，那種滿足感深深吸引著我。

正如大多數專業，法律界一旦入行便很難離開。法律學院畢業後，我考取了LLM學位，然後返港在香港大學修讀PCLL，後來當實習律師，再獲取律師資格。我一路繼續做餅，實習律師的經驗令我網上搜查技術了得，上網尋找甜品食譜之餘，亦進一步鑽研食譜背後的科學和技術。我會接生日蛋糕的訂單，享受朋友說蛋糕漂亮好吃一刻的無比成功感。

我相信生命是一趟旅程，到十字路口要作出選擇，走上不同的路。其中一個十字路口是我去紐約度假時，在朋友建議下去了法國烹飪學校附屬的餐廳吃飯。烹飪學校的學生為客人做菜。當晚的食物無可挑剔，令我意識到，要做廚師不一定要自小在米芝蓮餐廳當學徒。我去專業烹飪學校學習廚藝，還為時不晚。

離開法律工作去上烹飪學校的決定不易，部分因為烹飪學校要自學自費，我得儲錢，但主要是因為我害怕走進未知的領域。
有穩定的專業工作，在社會上備受尊重，而糕點師傅在香港並不是顯赫的職業。當我告訴別人我的理想時，他們會問：為何要「貶低」自己？但是，我知道如果不踏出這一步，我會後悔，因為我真的非常喜歡烘焙和創造。留在法律界我會財政穩定，但我不會開心。經過一年的認真考慮，我報讀了法國最好的烹飪學校之一：巴黎FERRANDI | L’Ecole de Gastronomie的密集全面糕點課程。我會在世界烹飪首都生活一年，學習甜品製作藝術。

烹飪學校
FERRANDI的課程為期5個月，之後學校安排我們在所選的酒店或糕點店實習6個月。

課堂通常由上午8時開始，首先清潔消毒廚房，待主廚來示範如何做某款甜品，然後我們就跟著做。課程模仿專業廚房的工作環境，不像有些烹飪學校有助理處理基礎工作，我們就像廚房員工一樣，必須自己清潔、點貨、顧焗爐和回答主廚的指令。每日最後大清潔後（消毒地板、清潔冰箱、焗爐和洗碗盆，確保明天有足夠用料），課堂約下午4時結束。

在學校的時間轉眼飛逝，我有機會認識不同背景和國籍但志向一樣的朋友，他們可以是老師、平面設計師、會計師、藥劑師，甚至职业摔角手，我們有著一個共同興趣：糕點製作。

實習期
我們認為在學校學習已經不易，怎料實習更加困難。我在巴黎Hôtel Barrière Le Fouquet's酒店實習。這是一家位於香榭麗舍大道上的五星級酒店，設有一家米芝蓮三星級餐廳Le Diane。第一天進入廚房，我就應接不下，廚師不斷用法語指叫，雖然我懂一點日常法語，但他說話速度快，又夾雜廚房專用語，同一件事每個人用的字都不同，這部份我仍未準備好。實習的第一天，一切必須如時完美完成，因為客人吃飯時間快到了。在限時內為宴會鋪上百個甜品，壓力大透了，但我覺得很好玩。忙碌的工作結束時，廚房裏每個人都互相拍背鼓勵。在專業廚房和幾十年經驗的人一起工作，給你食譜沒有的指示，學到的東西比學校多得多。

返港
在巴黎的一年很快過去，我參加了FERRANDI的畢業禮。我在世界上最美麗、最神奇、最浪漫的城市渡過了一年，是時回港。

不過，巴黎只是跳板，我現在有一年的糕點知識，渴望把知識付諸實踐。我在巴黎學到，如果你對某件事情充滿熱情，就永遠都覺得知識不夠，總是有新技巧、新口味可以學習。

我在米芝蓮兩星餐廳Caprice找到工作，在法國糕點師Nicolas Lambert的指導下，我的糕點技巧更上一層樓。糕點製作需要堅持不懈地不斷嘗試。我在Caprice的經驗很寶貴，不僅因為從才華橫溢的廚師身上學習，而且因為在廚房裏說廣東話，我也結識了許多香港糕點師傅。

在Caprice工作期間，我想探索自己的創作，而不是複制行政主廚的創作。於是我創立了自己的品牌CAKED_by_Isabelle。我為活動設計和製作甜品，利用多年的糕點知識和技巧，為客戶製作漂亮而口感豐富的糕點。

過去兩年，我的生活起了變化，得到不少機會，偶爾會身心俱疲，但為了當中的成就感，一切都是值得的。

我仍與法律界的朋友和舊同事保持聯絡。有時會想，假如當初沒有離開，也許現在當企業內部律師，或私人執業。不過，我沒有後悔讀法律和執業。它讓我學懂了許多生活技能，遇到終身摯友，現在我很快樂，不是因為我賺很多錢，不是因為我位高權重，而是因為我找到熱愛的東西，勇於踏進未知的領域。我希望其他人也會意識到，他們也可踏進未知領域，跟著生命走。正如我最喜歡的作家之一Paulo Coelho說：「記住我們的夢想，為它們而戰。只有一件事讓你的夢想變得不可能：恐懼失敗。」
1. Prior to the handover in 1997 what was the official (but mostly unused) title of the Director of Public Prosecutions?
   A. Crown Advocate
   B. Senior Crown Counsel
   C. Crown Prosecutor
   D. Queen’s Advocate

2. Is the DPP required by law to be a Hong Kong Senior Counsel?
   A. Yes
   B. No
   C. No, but s/he must otherwise be a Queen’s/Senior Counsel in another Commonwealth jurisdiction

3. Warwick Reid, a former senior prosecutor in Hong Kong in the 1980s was convicted of which crime?
   A. Corruption
   B. Possession of unexplained assets
   C. Intimidation

4. True or False: In the 19th Century, the Attorney General of Hong Kong was permitted to accept private cases as well as act on behalf of the government.
   A. True
   B. False

5. For what offences is it possible to bring a private prosecution in Hong Kong?
   A. All offences
   B. Summary offences
   C. None

6. Prior to 1 July 1997, public prosecutions in Hong Kong were brought in whose name?
   A. The People
   B. The Government of Hong Kong
   C. The Queen (or King)
   D. Hong Kong

7. In the 1980s, many of the public prosecutors in Hong Kong were from Australia. What nickname did this group of prosecutors have?
   A. The Ned Kellys
   B. The Kangaroo Courtesans
   C. The Gumleaf Mafia
   D. The Bruces

8. How many Hong Kong DPPs have become High Court Judges?
   A. 3
   B. 4
   C. 5
   D. 6

9. Until what year were lay prosecutors allowed to prosecute cases in the Magistrates’ Courts in Hong Kong?
   A. 1990
   B. 1997
   C. 2008
   D. They still are.

10. Which London QC was the lead prosecutor in Donald Tsang’s trial for misconduct in public office?
    A. Claire Montgomery QC
    B. Louis Malby
    C. David Perry QC
    D. Lord Pannick QC

Contest Rules:
To be eligible to win a bottle of Ch. La Croizille 2007 from Global Vintage Wines Centre, please send your quiz question answers to cynthia.claytor@thomsonreuters.com. The first reader to respond with the most correct answers, with no more than 3 incorrect responses, will be deemed the winner. The decision of Thomson Reuters regarding the winner is final and conclusive.
法律知識測驗 #40

本月的問題圍繞香港的刑事罪行檢控及一些家傳戶曉的檢控官。
問題由馬錦德大律師編製。歡迎建議下期問題。

1. 1997年回歸前，刑事檢控專員的正式職銜(但大多不使用)是什麼?
   A. Crown Advocate(皇家律師)
   B. Senior Crown Counsel(資深皇家律師)
   C. Crown Prosecutor(皇家檢控官)
   D. Queen’s Advocate(御用律師)

2. 法律有否規定刑事檢控專員必須為香港資深大律師?
   A. 有
   B. 沒有
   C. 沒有，但他必須為英國御用大律師或在其他英聯邦司法管轄區的資深大律師。

3. 80年代香港前高級檢察官Warwick Reid被判犯了哪項罪行?
   A. 貪污
   B. 管有來歷不明財產
   C. 恐嚇

4. 是非題：在19世紀，香港律政司獲允許受理私人案件同時代表政府行事。
   A. 是
   B. 非

5. 什麼罪行可以在香港以私人名義提出檢控?
   A. 所有罪行
   B. 簡易罪行
   C. 沒有

6. 1997年7月1日前，公訴在香港是以誰的名義提出?
   A. 人民
   B. 香港政府
   C. 英女皇(或英皇)
   D. 香港

7. 80年代香港有幾多位檢控官來自澳洲。這群檢控官暱稱為?
   A. The Ned Kellys
   B. The Kangaroo Courtesans
   C. The Gumleaf Mafia
   D. The Bruces

8. 從1790年代香港的刑事檢控專員成為了高等法院法官?
   A. 3
   B. 4
   C. 5
   D. 6

9. 非專業檢控主任可在裁判法院進行檢控工作直至何年?
   A. 1990
   B. 1997
   C. 2008
   D. 他們仍然可以

10. 以下哪位英國御用大律師在曾蔭權公職人員行為失當案中擔任主控官?
    A. Claire Montgomery QC
    B. Louis Malby
    C. David Perry QC
    D. Lord Pannick QC

競賽規則：
讀者如欲贏取一瓶由Global Vintage Wines Centre提供的2007年Ch. La Croizille葡萄酒，請將問題答案寄交
cynthia.claytor@thomsonreuters.com。首位能提供最多正確答案(答對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。
In June, CUHK Law Professor Gregory Gordon published “Atrocity Speech Law: Foundation, Fragmentation, Fruition”, a groundbreaking study on the law governing the relationship between hate speech and international crimes. The book, published by Oxford University Press (OUP) and with a Foreword by legendary Nuremberg prosecutor Ben Ferencz, is revolutionary in that it envisions a new paradigm for the law with its “Unified Liability Theory.” The current law is fragmented and does not function properly. But the Unified Liability Theory pieces the law together and makes all the parts work in relation to the other. So, for example, the speech crime of “incitement” (liability for speech before atrocity takes place) only applies to the substantive offense of genocide. Why should it not also apply to the horrible offenses of crimes against humanity and war crimes? It would under the Unified Liability Theory. Apart from fixing the relationship among the speech offenses, the book also proposes fixes to the individual speech offenses in themselves, for example, definitively removing causation as an element. The Chief Prosecutor for the International Criminal Tribunal for the former Yugoslavia, Serge Brammertz, has described the book as “The definitive source for prosecuting atrocity speech in international criminal law”.

Professor Gordon’s ideas germinated as a prosecutor with the International Criminal Tribunal for Rwanda ("ICTR"), where he served as Legal Officer and Deputy Team Leader for the landmark “Media” cases, the first international post-Nuremberg prosecutions of radio and print media executives for incitement to genocide. For this work, he received a commendation from Attorney General Janet Reno for “Service to the United States and International Justice.” After the ICTR, he continued prosecution work for the US Department of Justice and then served as Director of the Center for Human Rights and Genocide Studies for the University of North Dakota. In this capacity, he continued his scholarly focus on hate speech, publishing a series of influential articles on the topic. As he was transitioning to Hong Kong, OUP, the world’s top academic publisher, offered him a contract to write a book on this subject. The ideas put forth in “Atrocity Speech Law” are already having an impact. The International Nuremberg Principles Academy, for which Professor Gordon has served as a legal consultant, is using them for a project titled “Prevention and Accountability for Hate Speech”, which seeks to find effective ways to monitor, prevent and punish hate speech in countries around the world. He recently presented his book at United Nations headquarters and at Yale University. Based on the UN presentation, the Office of the Adviser on Genocide Prevention has proposed organising meetings with UN policy-makers in Geneva, including the International Law Commission, to see about implementing Professor Gordon’s ideas into human rights instruments (including a proposed Convention on Crimes against Humanity by the International Law Commission). And, centering on the book, the Yale Genocide Studies Program is in discussions with Professor Gordon about creating a traveling workshop and related exhibition (using photos, text and other media) that could be presented at educational and policy institutions around the world.
港中文大學法律學院Gregory Gordon教授出版了《Atrocity Speech Law: Foundation, Fragmentation, Fruition》一書，就仇恨言論與國際罪行之間的關係的法律規定作出了突破性研究。該書由牛津大學出版社出版，紐倫堡傳奇檢察官Ben Ferencz撰寫序言，以「統一法律責任理論」設想法律的新範式，頗具革新性。目前的法律零散，未能發揮其正常功能。但「統一法律責任理論」把法律結合起來，使所有部份相輔相成。例如，言論犯罪中的「煽動」(暴行發生前作出言論的法律責任)僅適用於實質的種族滅絕罪行。為何它不適用於危害人類的可怕罪行和戰爭罪行？根據「統一法律責任理論」它就適用。除了確定言論犯罪之間的關係，該書亦提出了對個人言論犯罪本身的修正，例如明確地排除因果關係為其中要素。前南斯拉夫問題國際刑事法庭首席檢察官Serge Brammertz形容該書為「起訴國際刑事暴行言論的終極資料來源」。

Gordon教授的意念源自出任盧旺達問題國際刑事法庭檢察官時，當時他擔任法律幹事及著名「傳媒案」的副團長。該案是紐倫堡後首宗對電台和印刷媒體高層作出的煽動種族滅絕國際起訴。Gordon教授因此項工作獲美國司法部部長雷諾授予「美國與國際司法服務獎」。在盧旺達問題國際刑事法庭工作後，他繼續在美國司法部擔任檢察工作，其後出任北達科他州大學人權與種族滅絕研究中心主任，期間繼續進行仇恨言論方面的學術研究，就此議題發表了一系列具影響力的文章。來港後過渡期間，世界頂尖學術出版社牛津大學出版社邀請他就此題目著書。

「暴行言論法」提出的想法已經產生影響。Gordon教授曾擔任法律顧問的國際紐倫堡原則學院，把這個想法用於其項目「仇恨言論的預防和責任」。該項目旨在尋找有效的方式來監察、預防和懲罰在世界各國的仇恨言論。他最近在聯合國總部和耶魯大學介紹其著作。根據在聯合國的介紹，防止滅絕種族罪行問題顧問辦公室建議與聯合國決策者在日內瓦舉行會議，包括國際法委員會，考慮如何把Gordon教授的意見納入人權文書(包括國際法委員會建議的《危害人類罪行公約》)。耶魯大學種族滅絕研究計劃亦正以本書為中心，與Gordon教授討論在世界各地的教育和政策機構舉辦巡迴工作坊和相關展覽(照片、文字及其他媒體)。

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

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

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**Marta Verderosa, Manager, Private Practice**

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

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**Kamil Butt, Senior Consultant, Private Practice**

Kamil joined Michael Page Legal in year 2015 with over 2 years legal recruitment experience. He specializes in recruitment for private practice and financial services clients, with an excellent track record in successfully assisting legal support candidates including paralegals and company secretaries at all levels. Kamil was born in Hong Kong and speaks both English and Cantonese, he graduated with a Bachelor Degree in Law from University of Bristol.

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

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**Soraya Tennent, Consultant , Legal Support**

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

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<table>
<thead>
<tr>
<th>Position</th>
<th>Experience</th>
<th>Company Type</th>
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<tr>
<td><strong>Legal Counsel</strong></td>
<td>4–8 PQE</td>
<td>Investment Bank</td>
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<tr>
<td></td>
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<td>A newly created role has arisen with a reputable investment bank with sizable operations in Asia. Joining a team of 3 lawyers, you will report to the Head of Legal &amp; Compliance, to support the investment teams where they have established businesses in both equity and debt investment, including but not restricted to, plain vanilla bond issuance, CB, exchange notes, loans. This bank also has a growing asset management business. The ideal candidate will be a corporate or banking lawyer, with at least 4 years’ post-qualification experience being a HK qualified lawyer. Willingness to learn and pick up new work is important. Candidates with international law firm experience is preferred. Both English and Chinese language skills are required and conversational Mandarin is useful. Ref: 3935870</td>
</tr>
<tr>
<td><strong>Senior Legal Counsel, APAC</strong></td>
<td>10+ PQE</td>
<td>US Listed Company</td>
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<td>Our client is a reputable US listed company with operations around the globe employing over 50,000 people. They are currently seeking a Senior Legal Counsel to join the regional legal team. You will report to the US while working closely with the General Counsel, APAC and the rest of the APAC legal team. You will be providing legal advice in regards to dispute, litigation and regulatory compliance. You will also be managing and implementing any global corporate compliance program and litigation and dispute related policies within the APAC region. The successful candidate will be a common law qualified lawyer with at least 10 years’ PQE coming from an international law firm or a similar in-house position. Fluency in English and Chinese is a must. Ref: 3939398</td>
</tr>
<tr>
<td><strong>Counsel</strong></td>
<td>8 PQE</td>
<td>International Law Firm</td>
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<td>A new senior role has arisen in the well-established financial regulatory practice of a global law firm. The team specialises in advising government bodies, investment banks, securities houses, exchanges and other players in the financial services industry. The team provides regulatory advice and partakes in complex cross-border regulatory investigations and enforcement cases. In this role you will be responsible for taking a lead role in advising clients, supervising the team and delivering practice specific training. The ideal candidate will possess 8+ years’ PQE and experience in contentious and/or non-contentious regulatory matters. Keen interest in dispute resolution work is desirable. Proficiency in both English and Chinese is preferred. Ref: 3938743</td>
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<tr>
<td><strong>Associate</strong></td>
<td>3-5 PQE</td>
<td>UK Firm</td>
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<td>Our client is a top tier UK law firm with more than twenty years of presence in Asia. They are now seeking a mid-level associate to join its Dispute Resolution practice. They provide a unique opportunity to the right candidate to work on high profile disputes and arbitrations across the APAC region as well as the opportunity to work with leading practitioners in the field. As a key member of the team, you will be involved in a broad spectrum of work including international arbitration, global investigations and US litigation cases. The ideal candidate should have 3 - 5 years’ PQE and possess strong technical and commercial experience gained in a leading law firm in Hong Kong or China. Proficiency in English, Cantonese and Mandarin is required. Ref: 3971090</td>
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<tr>
<td><strong>Legal Counsel</strong></td>
<td>2+ PQE</td>
<td>Fortune 500 Company</td>
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<td>Our client is a Hong Kong listed fortune 500 company with operations across various industries. They are currently seeking a Legal Counsel to join them at the group level. Reporting to the Group General Counsel, you will work with a high caliber team of experienced legal professionals. In this corporate commercial role, you will have the opportunity to work closely with a large number of internal stakeholders and be exposed to the decision-making and business planning processes behind M&amp;A deals and other corporate transactions. The successful candidate will have at least 2 years’ PQE, being well versed in commercial contracts as well as having strong English and Chinese language skills. Ref: 3937163</td>
</tr>
<tr>
<td><strong>Legal Counsel</strong></td>
<td>3+ PQE</td>
<td>Chinese Property Developer</td>
</tr>
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<td>A mainland Chinese company is strategically growing its presence in the Hong Kong property market. They are now seeking a Legal Counsel to join the team in Hong Kong to grow with the local projects. You will report to the Legal Director and be responsible for overseeing legal matters during the construction phase by providing legal advice and managing potential disputes. As the projects develop, you will be in charge of property transactions and be responsible for the preparation of DMC and sales brochures. The ideal candidate will have at least 3 years of PQE with relevant experience to real estate matters. Familiarly with the First-hand Sales Ordinance is a must while in house experience is not required. Fluency in English and Cantonese as well as conversational Mandarin is required. Ref: 3938366</td>
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<tr>
<td><strong>China Funds Associate</strong></td>
<td>3-6 PQE</td>
<td>International Law Firm</td>
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<td>A highly reputable funds practice has a rare vacancy for a China qualified junior to mid-level funds lawyer. Working alongside well regarded partners, you will be exposed to high profile funds work. You will have the opportunity work on a wide range of investment fund issues and products with exposure to off-shore jurisdictions. Our client offers comprehensive training in funds work. You will gain intimate knowledge of hedge fund, fund of fund and private equity fund structures. The ideal candidate should have 3-6 years’ PQE and should speak excellent English and Mandarin. This position is open to candidates with funds experience but also to candidates with a solid corporate and M&amp;A background from international law firms or leading Chinese firms. Ref: 3891820</td>
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**COMMERCIAL**

**PRIVATE PRACTICE**

To apply, visit www.michaelpage.com.hk quoting the reference number or contact our consultants.
**Litigation and Regulatory**

**2+ PQE Hong Kong**

Our client is a global law firm with a market-leading presence in Asia. This is an excellent and unique opportunity for a mid-level associate to join their disputes resolution practice. The successful candidate will have general commercial litigation and contentious regulatory experience. Admission in Hong Kong and/or Chinese language skills will be a distinct advantage. Ideal candidate will be common law qualified. HKL4605

**Competition/Antitrust**

**2+ PQE Hong Kong**

Competition Lawyer 2-3 years’ pqe, premier UK firm. Our client is looking for an anti-trust lawyer to join their Hong Kong team: You will currently be working in a top tier law firm with a strong background in competition law gained in Hong Kong preferably. Mandarin will be highly preferred, an outstanding opportunity to work closely with the partners and gain high end Competition Law experience. HKL4690

**Banking & Finance**

**2 - 6 PQE Hong Kong**

An exciting opportunity for an ambitious associate to join the growing finance practice of this premier law firm, to work on a diverse range of matters. The successful candidate must have experience in general banking, asset finance and/or structured finance work. Ideally English qualified/admitted. Experience in Hong Kong/Asia with Chinese language skills an advantage. HKL4542

**Employment**

**1+ PQE Hong Kong**

Outstanding opportunities for HK qualified lawyers to work in market leading practices for highly-regarded Partners advising blue chip clients on a range of non-contentious and contentious matters. If you are not currently focusing on employment law you must be able to demonstrate good exposure and a genuine passion in this practice area - whether your experience is contentious or non-contentious. You should be HK qualified, Mandarin an advantage. HKL4649

**Debt Capital Markets**

**2+ PQE Hong Kong**

This is a fantastic opening for a junior lawyer to join a leading regional practice, to work on MTN programmes and advise sponsors and issuers on a variety of global debt capital markets transactions, as well as corporate finance matters such as takeovers, private equity, joint ventures and regulatory compliance. Ideal candidates will have experience gained with a premier practice. Mandarin and Cantonese language skills are essential. HKL4540

**Disputes Resolution**

**2+ PQE Hong Kong**

Our client seeks a junior associate to join their exceptional team. This practice specialises in litigation matters that are high in profile, value and complexity, and has particular expertise in multi-jurisdictional disputes, including employment law, regulatory investigations, trust related claims and shareholder disputes. Ideal candidate will have fluency in Chinese. HKL4580

**Shipping/Trade Litigation**

**3+ PQE Hong Kong**

This is an excellent opportunity for a lawyer with experience in shipping litigation, arbitration and international trade. Our client is an international commercial law firm, well-known for being client-focused. You will join a leading team, recognized for their deep and broad experience, to offer services with a wide business perspective, across all well-known (and not so well-known) international regimes. HKL4586

**Construction Litigation**

**2+ PQE Hong Kong**

Our client, a leading international law firm, is looking to hire junior construction litigation associates to join their Hong Kong-based practice. You will advise major contractors, prominent property and infrastructure owners in project/infrastructure financing. The team also advise on disputes in the building, engineering and resource sectors. Experience with contractor and engineering firms with Mandarin is a must. HKL4579

**Capital Markets**

**2+ PQE Hong Kong**

Our client is seeking a US qualified corporate associate for their Hong Kong office with extensive capital markets experience. This is a fantastic opportunity for a junior associate with 2 years of post-qualification experience to join this established team. You will focus on cross-border M&A, private equity of US and HK listed companies, investments and divestments of portfolio companies, securities laws and more. Fluency in Mandarin is a plus. HKL4641

**Funds and Corporate M&A**

**3 - 6PQE Hong Kong**

This leading law firm seeks an associate who is a good team player with experience in general corporate, M&A and/or funds related work to join their funds and corporate practice. Admitted in a common law jurisdiction with excellence in English, you will also be ready to participate in business development activities. Experience in Asia an advantage. HKL4543

**Disputes Regulation**

**Partner Hong Kong**

This is a brilliant opportunity for a litigation counsel or partner with a portable book of business to join this US firm and develop their practice alongside very well regarded and skilled partners. You may have expertise in either general commercial litigation, construction litigation, insolvency or securities regulatory litigation. You will have proven marketing and business development skills and a desire to succeed. HKL4633

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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

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**Private Practice**

**HEAD OF CORPORATE**  
**HONG KONG**  
**PARTNER**

Unique opportunity for a corporate/commercial partner to join city firm as its head of corporate. You will need an established following of local Hong Kong clients be part of this rated commercial team. (HKL 15520)

**EMPLOYMENT**  
**HONG KONG**  
**5-10 PQE**

This leading employment practice in expansion mode seeks a lawyer experienced in the full range of employment law related issues. You will work for employers and employees on contentious e.g. complaints, internal investigations and non-contentious employment issues. No language requirement. (HKL 15536)

**DISPUTE RESOLUTION**  
**HONG KONG**  
**3-5 PQE**

Top-tier US international law firm is looking for litigators to join their dispute resolution practice. You will be working with the world’s leading clients on matters ranging from international commercial disputes, arbitration and regulatory investigations. (HKL 15561)

**BANKING FINANCE**  
**HONG KONG**  
**1-3 PQE**

A top-tier firm seeks a banking and finance lawyer to join their well-established team. You should be qualified in a common law jurisdiction and possess solid experience in general banking and leveraged finance. Training from a reputable international firm. (HKL 15567)

**FCPA**  
**HONG KONG**  
**1-3 PQE**

US Law firm with an established leading litigation practice will be expanding within FCPA and require a junior associate. You should be US or HK qualified with solid regulatory investigations experience. Mandarin is a preference. (HKL 15562)

**EMPLOYMENT**  
**HONG KONG**  
**1-3 PQE**

This international law firm with a highly regarded partner seeks a lawyer with strong communication skills and with employment law experience to join the team. This will be a good opportunity for someone who is looking for a challenge, working on the full range of employment issues. (HKL 15518)

**CORPORATE M&A**  
**HONG KONG**  
**NO-2 PQE**

Top tier US law firm is now open to considering NO level associates. Candidates will be trained from an international firm with solid corporate experience. US pay scales on offer and enviable career prospects. Mandarin is required. (HKL 15568)

**In-house**

**REGULATORY**  
**HONG KONG**  
**10+ PQE**

Global insurance group seeks a senior regulatory lawyer. You will lead a small team and advise on a full range of regulatory issues that affect the company and its subsidiaries. Solid experience in CRS and FATCA is required. Fluency in Chinese is important. (HKL 15559)

**HEAD OF LEGAL**  
**HONG KONG**  
**10+ PQE**

Well known insurance company seeks a head of legal to support its Hong Kong business. As well as managing the legal department the head of legal is expected to play a hands on role advising on product launches as well as developing and maintaining good relations with the various regulatory bodies. Fluency in Cantonese is critical. (HKL 15549)

**REGIONAL LEGAL**  
**HONG KONG**  
**6-10 PQE**

Global business with its HQ in Hong Kong seeks additional senior lawyers to support its various business units. Work involves advising the international business on general commercial work covering contracts, IP, HR issues. (HKL 15476)

**FUNDS**  
**HONG KONG**  
**5-10 PQE**

Leading financial institution seeks a legal counsel to support the asset management and brokerage business. Solid knowledge in funds and the regulatory arena is required. Chinese language is required. (HKL 15504)

**LEGAL COUNSEL**  
**HONG KONG**  
**5-8+ PQE**

Well-known property developer seeks a legal counsel to support their fast growing business. Solid experience in conveyancing, tenancy matters, general corporate and commercial matters required. You must be able to work independently. (HKL 15506)

**COMMERCIAL/CORPORATE**  
**HONG KONG**  
**5-8 PQE**

Leading global insurance firm seeks a general commercial lawyer to join their well-established legal team. You will advise the business on a wide range of general commercial and corporate matters. Fluency in Cantonese (written/spoken) is required. (HKL 15556)

**LEGAL COUNSEL**  
**HONG KONG**  
**3-8 PQE**

A leading bank seeks a legal counsel to support their legal function. Responsibilities include reviewing and amending a wide range of loan documents, product documents and other commercial contract, etc. Extensive knowledge of commercial law and proficient communication skills are essential. (HKL 15527)

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

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**Email:** w.chan@alsrecruit.com

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**FINANCIAL SERVICES**

**FUNDS LAWYER**  
**GLOBAL ASSET MANAGER**  
OAA/576350  
A global asset manager is seeking an additional lawyer for the APAC business. Sitting in Hong Kong and working with one other senior lawyer, you will be expected to undertake a wide range of legal (80%) and company secretarial (20%) assignments. Legal responsibilities will include reviewing typical investment management documents, agreements and contracts, regulatory matters (both internal and external) and general ad-hoc legal matters. You will also act as the named and registered company secretary of Hong Kong incorporated subsidiary companies and take on the associated duties.

**Key Requirements:**  
- A commonwealth qualified lawyer with a minimum of four years’ PQE  
- A good knowledge of funds documentation such as that mentioned above  
- Experience of company secretarial matters is beneficial but not essential  
- Chinese languages are preferable

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**FINANCIAL SERVICES**

**GLOBAL MARKETS LAWYER**  
**LEADING INVESTMENT BANK**  
OAA/588350  
A global investment bank is seeking an additional lawyer for the structuring and distribution legal team. Sitting in Hong Kong, this team is responsible for all of APAC. You will work with three other lawyers and be expected to undertake a wide range of legal matters relating to products such as equity derivatives and index licensing.

**Key Requirements:**  
- A commonwealth qualified lawyer with a minimum of two years’ PQE  
- A good knowledge of equity products or master agreements  
- Regulatory knowledge covering both products (e.g. MIFID II) and more general ALM and KYC  
- Chinese languages are preferred

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**LEGAL COUNSEL**  
**MAJOR HONG KONG CONGLOMORATE**  
ZRW/596360  
A major corporate multi-sector group in Hong Kong is looking for a legal counsel to take charge of their financial services business, with major focus on commodities trading. You will be joining four other lawyers who are responsible for the other arms of the group’s business and reporting directly to the Head of Legal.

**Key Requirements:**  
- Hong Kong qualified lawyer with six to ten years’ PQE in private practice and/or in-house  
- Experience in financial services industry, in particular commodities trading, is preferred  
- Chinese languages are essential

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**ETHICS AND INDUSTRY**

**ETHICS AND COMPLIANCE MANAGER, HEALTHCARE**  
**GLOBAL MEDICAL DEVICES FIRM**  
WDM/601300  
This is a multi-billion dollar global medical devices firm focused on the development of hardware and software used in Oncology treatments. They are growing their APAC compliance & ethics team and are seeking a strong candidate to work directly under their APAC Chief Compliance Officer in a highly autonomous role developing a robust monitoring and ethics program for the region. This person will assist in Due Diligence, transactional review, and lead development and training of ethics and compliance procedures regionally.

**Key Requirements:**  
- A minimum of five years’ working experience and a minimum of two years’ experience in the medical or healthcare industry  
- Strong knowledge of regional business laws relating to development and distribution of medical technology  
- Excellent understanding of corporate ethics and Corporate Social Responsibility, ability to educate key cross-border stakeholders in APAC  
- Good understanding of business operations and ability to partner with cross functional teams to achieve business outcomes  
- Chinese languages are essential

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**FINANCIAL SERVICES**

**SENIOR LEGAL COUNSEL**  
**GLOBAL LIFE INSURER**  
ZRW/599660  
A leading global life insurance group is searching for a senior legal counsel to advise on and oversee their life insurance business in Hong Kong, with an emphasis on the newly developed high net worth market and client base. You will be joining a team of three lawyers, reporting to the Deputy General Counsel.

**Key Requirements:**  
- Hong Kong qualified lawyer with a minimum of four years’ experience in the insurance or financial services industry  
- Exposure to high net worth products or market  
- In-house experience in life insurance is highly advantageous  
- Chinese languages are preferable

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**FINANCIAL SERVICES**

**COMPLIANCE ADVISORY, AVP/VP, FIXED INCOME**  
**TOP EUROPEAN BANKING GROUP**  
QPD/514420  
This is a leading, European investment bank currently hiring an experienced fixed income compliance professional. You will primarily be focused on supporting the fixed income business and sitting with the larger markets team. This role offers wide exposure and will be sitting on the trading floor, requiring strong communication skills.

**Key Requirements:**  
- A minimum of four years’ solid experience  
- Knowledge of Hong Kong rules and regulation relating to the fixed income business  
- Strong product knowledge of fixed income products  
- Excellent written and spoken English abilities is compulsory and Chinese languages are preferable

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

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