Cover Story 封面專題
Face to Face with 專訪

Roll of Honour Inductees 榮譽名冊入選者

Robin Peard JP 白樂天 JP
Anna Wu 胡紅玉

CORPORATE 企業
Against all Odds: Activist Strategies in Controlled or Blockholder-Influenced Companies in Hong Kong and Germany (Part II)
面對重重困難：積極主義者對香港與德國的受控公司或受大股東影響的公司所採取的策略(第二部分)

DISPUTES 爭議
Time to Go Back To Basics? 是時候回歸到基本面？

REGULATORY 監管
Transparency of Information in the Market: the CITIC Case before the Market Misconduct Tribunal
市場訊息透明度：市場失當行為審裁處對中信一案的裁決
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With the decline in commercial litigation in Hong Kong and the shifting focus of the litigation departments in many international law firms in Hong Kong from doing actual litigation work to other types of disputelike work, such as FCPA and other investigations, financial regulatory work and arbitration, it is worth considering where all the commercial cases are going. Are contracting parties identifying other jurisdictions in their exclusive jurisdiction clauses of their commercial contracts? Is Singapore’s much-hyped International Commercial Court seen as a more attractive option? Or perhaps commercial parties are more often opting to resolve their disputes through arbitration or other forms of ADR instead of turning to the Hong Kong court system?

While it is difficult to identify the precise cause for this shift, given the substantial rise of arbitration in Hong Kong and recent legislative developments on this front, it may be helpful to reassess the relative advantages of litigation and arbitration in terms of the ways in which each is best suited to help parties achieve their objectives relatively quickly. In the Disputes feature (p. 41), the author contrasts the beneficial features of each dispute resolution process, noting advantages of litigation that may occasionally be overlooked – including the right to appeal and the summary judgment procedure. The discussion in this timely contribution contrasts well with the President’s Message (p. 5), which highlights two new Amendments to Hong Kong’s Arbitration Ordinance, which many believe will further boost the popularity of arbitration and mediation in Hong Kong as a means to resolve commercial disputes.

Elsewhere in the July issue, is the second instalment of the Corporate Activism series (p. 34). Building upon the analysis in the first article, which focused on strategies and tactics shareholder activists employ in controlled or blockholder-influenced companies in Hong Kong and Germany, this instalment drills down to assess further similarities and differences between the hedge fund activist experiences in both markets. The Regulatory article (p. 46) discusses the CITIC case before the Market Misconduct Tribunal, identifying some of the more important issues raised by the Tribunal’s findings and the SFC’s decision not to appeal.

Also of interest, may be a new series we are running in the Practice Skills section, which will provide practical tips and advice on how to improve essential skills you need as a lawyer. The article in our last issue provided tips on improving “writing processes”, while the one in this issue (p. 80) takes a closer look at “writing products”.

Cynthia G. Claytor
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Legal Media Group Thomson Reuters
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"Third Party Funding for Arbitration in Hong Kong: A New Chapter to Boost the Access to Justice"

These are exciting times for legal practitioners, especially for members having practices in arbitration, mediation and intellectual property in Hong Kong. On 14 June 2017, the Legislative Council passed two bills that clarify the scope and nature of arbitration services in Hong Kong: the Arbitration (Amendment) Bill 2016 (on arbitrability of intellectual property disputes) and the Arbitration and Mediation Legislation (Third Party Funding) (Amendment) Bill 2016 (now becomes the Arbitration and Mediation Legislation (Third Party Funding) (Amendment) Ordinance 2017) (the “Ordinance”). The amended arbitration law is set to further boost the popularity of arbitration and mediation in Hong Kong, as a means to resolve commercial and other disputes.

For arbitration funding, there has been much discussion, which culminated in a report issued by the Law Reform Commission of Hong Kong (“LRC”) on Third Party Funding for Arbitration on 12 October 2016. After lengthy public consultations, the Arbitration and Mediation Legislation (Third Party Funding) (Amendment) Bill 2016 was published in the Gazette on 30 December 2016 and introduced into the Legislative Council on 11 January 2017.

For an overview of the background of third party funding in Hong Kong, readers can refer to the two feature submissions, among many others, from the January and November 2016 issues of the journal.

Highlights of the Ordinance

The Ordinance unequivocally provides that third party funding of arbitration and mediation are not prohibited by the common law doctrines of maintenance and champerty (s. 98E, K and L).

Arbitration under the Ordinance is given an extended meaning to include not only arbitrations to which the Arbitration Ordinance (Cap. 609) applies, but also proceedings before the court, proceedings before an emergency arbitrator and mediation proceedings (s. 98F).

Furthermore, a new s. 98N extends the definition of arbitration to those where the place of arbitration is outside Hong Kong or where no seat is specified (common for certain investment arbitrations). Note however the costs and expenses of arbitration services are defined to include only those relating to the services provided in Hong Kong.

A code of practice and regulatory framework for arbitration funders are to be provided and issued. An authorised body is to be empowered to issue, amend or revoke the code of practice setting out practices and standards for third party funders (s. 98P). Those matters that may be covered in the code of practice (s. 98P(1)) and the process for issuing, amending and revoking the code of practice (s. 98P(2)) have been laid out.

One should not lose sight of the provisions relating to mediation. I would underline for the attention of those members practising in mediation s. 98T. That provides for communication of information for third party funding of arbitration.

Benefits and Risks

I read with interest Chapter 5 of the Law Reform Commission Sub-committee’s Report of 19 October 2015. This 2015 Report contains a user-friendly summary of the possible benefits and risks of third party arbitration funding. This may assist members to respond to queries from potential funded clients and funders, and also to manage expectations of clients in an applicable matter from the outset.

For the fuller texts and other related background documents, members could refer to the Ordinance and other papers posted on the LRC and the Legislative Council websites. For example: http://www.legco.gov.hk/yr16-17/english/counmtg/agenda/cm20170614.htm.

While its operation remains to be seen, members should note a potential challenge to the new third party funding regime in Hong Kong. There is a notable absence of any statutory power under the Ordinance for an arbitral tribunal to make an adverse costs order or a security for costs order against a third party funder should it be appropriate to do so (eg, where there have been cogent evidence of abuse of process). It remains to be seen how this would impact third party arbitration funding. Where appropriate, members may consider advising their clients of the potential consequences.

I welcome members to share any experiences in this regard with the Law Society’s relevant committees in due course.

Getting Ready for the New Opportunity

To prepare for the new dynamics in third party arbitration funding, members would do well to keep abreast of the related legal and regulatory developments, the Code of Practice (to be issued), the funding industry and reputable candidates that offer third party funding in Hong Kong.

Moreover, members should ensure they
remain compliant with the duty of care at common law and relevant provisions of the Hong Kong Solicitor’s Guide to Professional Conduct (Volumes 1 and 2), the Legal Practitioners Ordinance (Cap. 159) and other relevant requirements that may apply to third party arbitration funding. I envisage that, from members’ perspective, some ethical standards to be negotiated and addressed in the third party funding agreement, and/or the funded client retainer with the law firm, could include the following:

• conflicts of interest;
• confidentiality;
• legal professional privilege and without prejudice privilege;
• control (and abuse) of the arbitration by the third party funder;
• grounds for termination of third party funding; and
• anti-money laundering and terrorist financing.

For starters, the professional conduct and legal duties of members under Hong Kong Solicitor’s Guide to Professional Conduct (Volume 1, Third Edition) and the corresponding common law requirements will apply to third party arbitration funding. Those include, among others, the duty to exercise diligence, care and skill under r. 5.12, the duty to act competently under r. 6.01 and the duty to inform the client about costs (and how costs are met, e.g., any third party funding) under r. 4.01. While the light-touch regulatory approach has been adopted in Hong Kong to third party arbitration funding, members should avoid underestimating relevant risks. It is important to continue to exercise proper risk management and conduct adequate due diligence checks, in order to avoid possible abuse of the new regime by any rogue funder.

Members should also pay attention to the meaning of “arbitration funding” in s. 980 which states that: “This Part [10A] does not apply in relation to the provision of arbitration funding to a party by a lawyer who, in the course of the lawyer’s legal practice, acts for any party in relation to the arbitration.” The section goes on to define the word “lawyer” broadly to include the “legal practice and any other lawyer who works for, or is a member of, the legal practice”. If a member plans to engage in a funding role, he or she would need to ensure effective systems and processes are in place to conduct relevant checks in the matter. This includes, among others, identifying any conflicts of interest and other concerns at the outset of the matter and regularly monitoring the situation thereafter and taking steps to mitigate any risks if necessary to avoid breaching s. 980 to Part 10A.

Firms should on the other hand ensure relevant training, policies and systems are updated to manage the risk. For example, a red flag may arise where a member of a law firm is asked to act for one of the parties in an arbitration in which another member of the same firm is engaged as a third party funder, whether now or later (and vice versa).

**Way Forward**

In conclusion, without repeating the Law Society’s submissions to the Consultation on Third Party Funding for Arbitration (dated 5 January 2016) in support of the third party funding in general, I welcome the passing of the amendment bill to the Ordinance.

Arbitration in Hong Kong has finally come of age under the amendments. An arbitration involving a third party funder now is no longer merely an “alternative” dispute resolution process. For a party who may have the option of going to court or arbitration but who might otherwise be deprived of access to justice due to lack of proper funding, arbitration now becomes a feasible option.

To tap into the anticipated business opportunities and to respond to enquiries, members are encouraged to familiarise themselves with the provisions of the Ordinance ahead of the commencement date(s) of the amendments (to be announced as of writing). In light of the risks and relatively young third party funding arbitration industry in Hong Kong, members should also stay vigilant and mitigate the professional conduct risks and other concerns going forward.

To assist members, the Hong Kong Academy of Law will arrange training on this subject as part of our ongoing CPD and/or RME programmes.

*Thomas So, President*
香港第三方资助仲裁：推动司法公正的新篇章

對於法律執業者來說，特別是對在香港從事仲裁、調解和知識產權法的會員，這是令人興奮的時刻。2017年6月14日，立法會通過了兩項條例草案，釐清香港仲裁服務範圍和性質：《2016年仲裁(修訂)條例草案》(有關知識產權糾紛的仲裁)和《2016年仲裁及調解法例(第三者資助)(修訂)條例草案》(現為《2017年仲裁及調解法例(第三者資助)(修訂)條例草案》(《條例》))。修訂的仲裁法例旨在進一步提高以仲裁和調解解決商業和其他爭議在香港的普及程度。

對資助仲裁的討論已久，香港法律改革委員會(「法改會」)於2016年10月12日發表《第三方資助仲裁》報告書。經過長時間的公眾諮詢，《2016年仲裁及調解法例(第三者資助)(修訂)條例草案》於2016年12月30日刊憲並於2017年1月11日提交立法會審議。有關香港第三方資助背景概述，讀者可參考本刊2016年1月及11月的兩篇專題文章。

《條例》重點

《條例》內明確規定，第三者資助仲裁及第三者資助調解，均不受助訟及包攬訟訟的普通法法則禁止(第98E、K及L條)。修訂擴大了仲裁的定義，不僅包括《仲裁條例》(第609章)適用的仲裁，還包括在法院程序、在緊急仲裁員席前進行的程序及調解程序(第98F條)。此外，修訂後的第98N條將仲裁的定義擴展至香港以外或無註明仲裁地點的仲裁(在某些投資仲裁尤其常見)然而，應注意的是仲裁費用僅指就該仲裁而在香港提供的服務的費用和開支。

為仲裁資助者而設的實務守則和規管框架亦將在稍後時間推出。獲授權機構將有權發出、修訂或撤銷實務守則，設定出資第三者須遵從的常規和標準(第98P條)。實務守則的內容(第98P(1)條)和發出、修訂和撤銷實務守則的過程(第98P(2)條)已有規定。

我們不應忽視有關調解的條文。從事調解業務的會員，應特別注意第98T條，就第三方資助仲裁傳達資料方面的規定。

好處與風險

我對法改會轄下的第三方資助仲裁小組委員會於2015年10月19日發表的報告內第5章尤其感到興趣。該報告總結了第三方資助仲裁的可能好處及風險，這或有助會員回答獲資助客戶和資助者的疑問，從一開始即妥善管理客戶的期望。

《條例》的全文及其他相關背景資料文件，可參閱立法會及法改會網站，如：http://www.legco.gov.hk/yr16-17/english/counmtg/agenda/cm20170614.htm。

新設的第三方資助制度的實施仍有待觀察，會員應留意其潛在挑戰。根據《條例》，仲裁庭即使在合適情況下(例如有確實證據顯示其濫用程序)，仍無任何法定權力對第三方資助者發出不利的訟費令或訟費保證令，這對第三方仲裁資金的影響尚有待觀察。在適當的情況下，會員可以考慮告知客戶潛在的後果。我歡迎會員在適當時候與律師會相關委員會分享這方面的經驗。

作好準備：迎接新機遇

為第三方資助仲裁的新形勢作好準備，會員應熟悉相關的法律法規發展、即將公佈的實務守則、資助業務和在香港提供第三方資助的有信譽資助者。

此外，會員應確保遵守普通法的謹慎責任和《香港事務律師專業操守指引》(第一冊及第二冊)、《法律執業者條例》(第159章)的相關條文及其他第三方資助仲裁適用的規定。我認為，從會員的角度來看，第三方資助協議及/或律師行聘用資助客戶中一些有待磋商的道德標準可包括：

• 利益衝突；
• 保密；
• 法律專業保密權及無損權利特權保護；
• 由第三方資助者操控(和濫用)的仲裁；
• 終止第三方資助的理據；
• 反洗黑錢和資助恐怖主義。

首先要注意的是，《香港事務律師專業操守指引》(第一冊第三版)規定會員的專業操守和法律責任，及普通法的相應規定，將適用於第三方資助仲裁。當中包括履行職、謹慎和技能的責任(第5.12條)、具專業能力行事的責任(第6.01條)及告知當事人相關費用(及如何支付費用(例如任何第三方資助))的責任(第4.01條)。律師會曾就第三方資助仲裁諮詢文件提交意見書(2016年1月5日)，大體上支持第三方資助仲裁。我不再重覆上述內容，我對修訂草案的通過表示歡迎。

通過這些修訂，香港的仲裁終於成熟。涉及第三方資助者的仲裁，不再僅僅是一個「替代」的爭議解決過程。可訴諸法庭或仲裁的當事人，礙於缺乏資金，有可能被剝奪尋求公義的機會，仲裁現在就成為了可行的選擇。

展望未來

律師會曾就第三方資助仲裁諮詢文件提交意見書(2016年1月5日)，大體上支持第三方資助仲裁。我不再重覆上述內容，我對修訂草案的通過表示歡迎。
Charles Allen
Orrick, Partner & Head of Commercial Litigation and International Arbitration

Charles Allen, a partner in Orrick’s Hong Kong office, heads the Commercial Litigation and International Arbitration practice in Hong Kong. With over 20 years’ experience conducting high-value complex commercial litigation and arbitration in the Asia-Pacific region, Mr. Allen acts for and advises clients on a variety of business issues and disputes. Mr. Allen conducts litigation in the High Court of the Hong Kong SAR, and has also handled numerous ad hoc and institutional arbitrations in Hong Kong and elsewhere under various rules. He sits as an arbitrator.

Dr. Ami de Chapeaurouge
de Chapeaurouge + Partners (Frankfurt, Hamburg, London, New York), Partner

Mr. de Chapeaurouge is a founding partner of the Germany-based corporate law firm DE CHAPEA UROUGE + PARTNERS. He is admitted to practice in Frankfurt and New York and obtained his German law degrees at Frankfurt University, earning further degrees in the United States from Columbia Law School (LL.M.) and Harvard Law School (S.J.D.), respectively.

Concentrating in corporate, securities, M&A, corporate finance, capital markets, commercial lending and workout-related matters, he lends a trusted perspective as Consigliere to Governments, multi-lateral agencies, families, financial institutions, asset managers, venture capital (VC), private equity (PE) and hedge funds, technology companies, and public and private corporations.

Dr. Ami de Chapeaurouge
de Chapeaurouge + Partners (法蘭克福、漢堡、倫敦、紐約)，合夥人

de Chapeaurouge先生是德國的專攻企業事務的律師行DE CHAPEA UROUGE + PARTNERS的創始合夥人。他獲認許在法蘭克福和紐約執業，並在法蘭克福大學獲得德國法學學位，從美國哥倫比亞法學院及哈佛法學院分別獲得(LL.M)及(S.J.D.)等更高學位。

他集中於企業、證券、合併與收購、企業融資、資本市場、商業貸款和對問題債務相關事宜作出重新安排；他並作為政府、多邊機構、家族、金融機構、資產管理人、風險投資、私募股權投資、對沖基金，科技公司，公私營企業的可信任顧問。
Syren Johnstone
Faculty of Law, University of Hong Kong, Principal Lecturer

Mr. Johnstone has worked for over 25 years in securities regulation and corporate finance. He has undertaken senior management roles regulated by the Securities and Futures Commission and The Stock Exchange of Hong Kong Limited, and is currently a member of the SFC’s Fintech Advisory Group. In 2016, he co-authored Financial Markets in Hong Kong: Law and Practice (OUP). His academic works have been referenced in Legco and by the Court of Appeal. He is a solicitor in England & Wales and Hong Kong.

Nigel Davis
Faculty of Law, University of Hong Kong, Principal Lecturer

Mr. Davis is a solicitor specialising in corporate finance law in Hong Kong. He teaches corporate and corporate finance law at HKU and was between 2010 and 2014 a member of the Listing Committee of the Stock Exchange of Hong Kong Limited. He is a co-author of Hong Kong Listed Companies: Law and Practice.

Oliver Allcock
Robert Walters Hong Kong, Manager, Legal & Compliance

Oliver is currently Manager of the Legal and Compliance division at Robert Walters Hong Kong. Oliver joined the legal recruitment industry upon graduating from the University of Leeds in 2007 with a BA in European Politics. He joined Robert Walters London in 2009 and relocated to Hong Kong in early 2012. He has experience recruiting for legal and compliance professionals across both the UK and Asia; including Head of Legal & Compliance, General Counsel and Partner-level hires. He has worked for a broad variety of clients across the in-house and private practice sectors, providing services from contingent high volume recruitment to bespoke and retained mandates.
Mark Alexander Pierrepont (“Respondent”), formerly the sole proprietor of Messrs. Pierrepont Law Office (a closed firm) (“Firm”)

• Rule 5B(1) and (2) of the Solicitors’ Practice Rules (“SPR”)

• Rules 7, 10(1), 10(3), 10A, 11(1) and (2) of the Solicitors’ Accounts Rules (“SAR”)

Hearing Date
23 May 2016 and 3 November 2016

Findings and Order
1 December 2016

Reasons and Orders
23 March 2017

Orders
31 May 2017

On 1 December 2016, the Solicitors Disciplinary Tribunal found the following complaints (save for Complaint 3) against the Respondent proved:

Complaint 1
Breach of r. 7 of the SAR in that money was drawn from the Firm’s client account which exceeded the total of the money held for the time being in such account.

Complaint 2
Breach of r. 10(1) of the SAR in that the Respondent failed to keep properly written up books and accounts of the Firm for the period from 1 April 2011 to 21 November 2012. The Respondent admitted this Complaint.

Complaint 3
The Applicant withdrew this Complaint.

Complaint 4
Breach of r. 10(3) of the SAR in that the Respondent failed to record in a separate cash book and ledger all dealings of the Firm relating to his practice as a solicitor other than those referred to in r. 10(1)(a) of the SAR before the end of the month following the month in which the dealings were carried out. The Respondent admitted this Complaint.

Mark Alexander Pierrepont (下稱「答辯人」)為Messrs. Pierrepont Law Office (已結業)(「律師行」)的獨營東主

• 《律師執業規則》(「《執業規則》」)第5B(1)及(2)條

• 《律師帳目規則》(「《帳目規則》」)第7、10(1)、10(3)、10A、11(1)及(2)條

聆訊日期：
2016年5月23日及2016年11月3日

裁斷及命令：
2016年12月1日

理由及命令：
2017年3月23日

命令：
2017年5月31日

律師紀律審裁組於2016年12月1日裁斷以下各項對答辯人作出的申訴證明屬實(第三項申訴除外)：

第一項申訴
律師行的當事人帳戶被提取的款項超過當其時在該當事人帳戶持有的款項的總數，因而違反《帳目規則》第7條。

第二項申訴
答辯人於2011年4月1日至2012年11月21日期間，沒有備存妥為詳細記敘的簿冊和帳目，因而違反了《帳目規則》第10(1)條。答辯人承認此項申訴。

第三項申訴
申請人撤回此項申訴。

第四項申訴
除《帳目規則》第10(1)(a)款所提出的交易外，答辯人沒有備存有與他執業為律師有關於的交易，即沒有在進行該等交易的月份的下一個月份終結前，記錄在個別的現金簿冊及分類帳，因而違反了《帳目規則》第10(3)條。答辯人承認此項申訴。
Complaint 5

Breach of r. 10A of the SAR in that the Respondent failed to prepare monthly bank reconciliation statements and monthly client ledger reconciliation statements from 1 April 2011 to 14 June 2012 (or within such shorter period or periods between these two dates) in accordance with the said r. 10A. The Respondent admitted this Complaint.

Complaint 6

Breaches of r. 5B(1) and (2) of the SPR and r. 11(1) and (2) of the SAR in that the Respondent, on divers occasions between 2 February 2012 and 23 November 2012, failed to produce the books and accounts of the Firm at such time and place as were fixed by the Council for the inspection of the Monitoring Accountants of the Law Society. The Respondent admitted this Complaint.

The Respondent lodged with the Court of Appeal a Notice of Appeal on 22 December 2016 against the Tribunal’s Order regarding Complaint 1.

On 23 March 2017, the Tribunal handed down the Reasons and Orders by which the Respondent was ordered to be:

1. fined HK$10,000 in respect of Complaint 1;
2. fined HK$20,000 in respect of Complaint 2;
3. fined HK$5,000 in respect of Complaint 4;
4. fined HK$5,000 in respect of Complaint 5;
5. fined HK$5,000 in respect of Complaint 6; and
6. censured.

Further the Tribunal directed the Applicant to deliver submissions on the order to be made with respect to costs within 21 days of the service of the Reasons and Orders and the Respondent to serve submissions in response within 14 days thereafter.

The Respondent lodged with the Court of Appeal his Request for Dismissal of Appeal by Consent on 31 May 2017 and was granted an order in terms on 1 June 2017.

On 31 May 2017, the Tribunal ordered the Respondent:

1. to pay the agreed costs by monthly instalments, the first instalment to be paid within one month from the date of the Order and thereafter on or before the last day of each month; and
2. to pay the fines by monthly instalments of HK$5,000 each, the first instalment to be paid on 30 June 2017 and thereafter on or before the last day of each month.

Mr. Stephen W.K. Lau, Prosecutor, for the Applicant
Mr. Andrew Hart, for the Respondent
Mr. Patrick M K Hui, Clerk to the Tribunal

Tribunal Members:
Mr. Charles William Allen (Chairman)
Ms. Kelly Yuen Hang Wong
Prof. Paul Kay Sheung Chan

第五項申訴
答辯人於2011年4月1日至2012年6月14日期間(或在這兩個日期之間的較短時期或期間內)，沒有按《帳目規則》第10A條擬備每一個公曆月銀行對帳表及每一個公曆月當事人分類帳，因而違反了《帳目規則》第10A條。答辯人承認此項申訴。

第六項申訴
答辯人在2012年2月2日至2012年11月23日期間，多次未能在律師會理事會指定的時間、地點出示律師行的簿冊及帳目，以供律師會的監察會計師查閱，因此違反《執業規則》第5B(1)及(2)條及《帳目規則》第11(1)及(2)條。答辯人承認此項申訴。

答辯人於2016年12月22日就審裁組就第一項申訴作出的命令向上訴法庭提出上訴通知。

審裁組於2017年3月23日向答辯人下達理由及命令，命令答辯人：

1. 就第一項申訴，罰款港幣10,000元；
2. 就第二項申訴，罰款港幣20,000元；
3. 就第四項申訴，罰款港幣5,000元；
4. 就第五項申訴，罰款港幣5,000元；
5. 就第六項申訴，罰款港幣5,000元；及
6. 受譴責。

此外，審裁組指示申請人在21天內就作出理由和命令的費用提交陳述，而答辯人則須在其後的14天內提交答覆陳述。

答辯人於2017年5月31日向上訴法庭提交了同意撤銷上訴申請，並於2017年6月1日獲法庭就申請作出命令。

審裁組於2017年5月31日命令答辯人：

1. 以按月分期付款方式支付議定的費用，第一期付款在命令發出日起一個月內支付，其後在每個月的最後一天或之前支付；和
2. 以每月分期付款港幣5,000元方式支付罰款，第一期付款於2017年6月30日支付，其後在每個月的最後一天或之前支付。

代表香港律師會檢控員劉永強先生
代表答辯人Andrew Hart先生
審裁組書記許文傑先生

審裁組成員：
Charles William Allen先生（主席）
黃苑桁女士
陳基湘教授
2017 Annual General Meeting

Over 120 members attended the Law Society’s 2017 Annual General Meeting (“AGM”) on 26 May. The Clubhouse was packed to the brim.

Apart from the AGM proper, two additional events took place. The first was the admission ceremony to the Law Society’s Roll of Honour and the second was the prize presentation to the outstanding achievers in our sports and recreation teams.

In the Roll of Honour ceremony, Mr. Charles Lee, Mr. Robin Peard and Ms. Anna Wu were formally admitted to the Law Society’s Roll of Honour.

Mr. Charles Lee was recognised for his invaluable, and well known, contributions in moving the necessary reforms to modernise Hong Kong’s financial infrastructure and to strengthen Hong Kong’s status as an international financial centre. His efforts have opened up huge potentials for the development of legal services in the IPO market. Mr. Robin Peard, also a prime mover of reforms, was recognised for his immense contributions in the area of arbitration. He was closely involved in the comprehensive reform of the arbitration regime in Hong Kong, enhancing the city’s attractiveness as an international arbitration centre. Ms. Anna Wu was recognised for her dedication to defending the principles of equality and fairness, which has been demonstrated through her commitment in various public offices including...
Monthly Statistics on the Profession
(updated as of 31 May 2017):

<table>
<thead>
<tr>
<th>Category</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Members (with or without practising certificate)</td>
<td>10,518</td>
</tr>
<tr>
<td>Members with practising certificate</td>
<td>9,152</td>
</tr>
<tr>
<td>(out of whom, 6,883 (75%) are in private practice)</td>
<td></td>
</tr>
<tr>
<td>Trainee Solicitors</td>
<td>1,051</td>
</tr>
<tr>
<td>Registered foreign lawyers</td>
<td>1,369</td>
</tr>
<tr>
<td>(from 33 jurisdictions)</td>
<td></td>
</tr>
<tr>
<td>Hong Kong law firms</td>
<td>878</td>
</tr>
<tr>
<td>878 (48% are sole proprietorships and 41% are firms with 2 to 5 partners, 13 are limited liability partnerships formed pursuant to the Legal Practitioners Ordinance)</td>
<td></td>
</tr>
<tr>
<td>Registered foreign law firms</td>
<td>80</td>
</tr>
<tr>
<td>(10 are limited liability partnerships formed pursuant to the Legal Practitioners Ordinance)</td>
<td></td>
</tr>
<tr>
<td>Civil Celebrants</td>
<td>2,085</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>207</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>

业界每月统计资料（截至2017年5月31日）：

<table>
<thead>
<tr>
<th>Category</th>
<th>数量</th>
</tr>
</thead>
<tbody>
<tr>
<td>会员（持有或不持有执业证书）</td>
<td>10,518</td>
</tr>
<tr>
<td>持有执业证书的会员</td>
<td>9,152</td>
</tr>
<tr>
<td>（当中有6,883位（75%）是私人执业）</td>
<td></td>
</tr>
<tr>
<td>实习律师</td>
<td>1,051</td>
</tr>
<tr>
<td>註冊外地律师</td>
<td>1,369</td>
</tr>
<tr>
<td>（来自33个司法管辖区）</td>
<td></td>
</tr>
<tr>
<td>香港律所</td>
<td>878</td>
</tr>
<tr>
<td>878（48%是独资经营，41%是2至5名合夥人的合伙企业，13是有限责任合伙企业）</td>
<td></td>
</tr>
<tr>
<td>註冊外地律所</td>
<td>80</td>
</tr>
<tr>
<td>（10是按照《法律执业者条例》组成的有限法律責任合夥律師）</td>
<td></td>
</tr>
<tr>
<td>婚姻监禮人</td>
<td>2,085</td>
</tr>
<tr>
<td>安老按揭輔導法律顧問</td>
<td>445</td>
</tr>
<tr>
<td>訣辯律師</td>
<td>49</td>
</tr>
<tr>
<td>（民事程序：44位，刑事程序：5位）</td>
<td></td>
</tr>
<tr>
<td>學生會員</td>
<td>207</td>
</tr>
<tr>
<td>香港律師行與外地律師行（包括內地律師行）在港聯營</td>
<td>36</td>
</tr>
</tbody>
</table>

委員會主席和競爭事務委員會主席，致力捍衛公平公正原則。

他們三位在法律界均備受尊重，對律師會、法律執業及香港法律界發展均貢獻良多，為同業樹立了良好榜樣。他們多年來為業界作出的無私服務，因本欄篇幅有限，恕難以一一盡錄。週年大會的完整記錄，包括榮譽名冊的頒授儀式和得獎者發人深省的講話，已上載至律師會網站會員區。

Ms. Anna Wu (right) receiving the Certificate of Admission to the Roll of Honour.
胡紅玉律师(右)获颁授荣誉名册证书。

Ms. Vivian Yu (left) and Mr. Bruce Fu were recognised with the RSC Outstanding Performance Award, while Ms. Eliza Chang (right) was named the Recreation and Sports Person of the Year.
余玉瑩律师(左)及符致鍇律师获汶康體會表現獎, 而鄭麗珊律師(右)則獲頒授年度康樂及體育精英獎。
The Hong Kong Law Society maintains a Roll of Honour, which consists of the names of solicitors who have distinguished themselves through their service to the Law Society or its Council, by their contributions to the development of the legal profession in Hong Kong or to the practice of law. To be nominated for admission, a three-quarters majority of the Council must agree that the contributions of the solicitor warrant special recognition.

This year’s honourees, Anna Wu and Robin Peard JP, speak about their nominations and admissions, while reflecting on their legal careers and participation in the work of the Law Society.
Ms. Wu describes her decision to pursue a career in law as a “default choice”, but nothing about her distinguished career suggests she has adopted a “default” mode of thinking since. From building a successful private practice to serving as a member of the Legislative Council to fighting for the enactment of a variety of fair play laws in Hong Kong, Ms. Wu has been a stalwart and forward-thinking advocate for change.

While reflecting on her appointment by the Council to the Roll of Honour, Ms. Wu said “I was very touched and humbled by the honour. Being in public service and public law can be quite lonely and often I felt I was away from the mainstream practice of law. I did not expect to receive the honour but it was extremely gratifying to be counted and embraced by my professional peers as one of their own.”

Incidental Course

“Law was an incidental profession for me. When I entered University to study law, it was my default choice after being advised by wiser friends that I would not be able to earn a living with an anthropology specialisation. However, once there, I found myself constantly running away from classes. It felt like pure drudgery, as the curriculum was compartmentalised and neither experiential nor solution-based.”

In an attempt to escape law, Ms. Wu recalled writing to the United Nations to ask for any job that may be available to her upon graduating. “To their credit, someone took the trouble of responding to tell me that I would need a second degree or two years of working experience to even be considered. It was a rude awakening that what I had was not good enough, but, luckily, it motivated me to finish my legal studies and qualify as a lawyer,” she said.

It’s Alive

“When I started working as a practitioner, my attitude about the law changed. I was able to see, in a way that was obscured to me as a student, that it could be used to solve problems and construct solutions,” she explained.

“By assisting clients, I learned that the law wasn’t merely a compilation of dead rules. That my work could have an indelible impact on a client’s life made a great impression on me. Seeing these additional layers of the law – that it was all interconnected and not compartmentalised – added the context I needed to fully appreciate its utility and its potential. It was then that the law came alive for me.”

Seeing the Bigger Picture

Ms. Wu started her career in private practice, specialising in intellectual property law. “While it was somewhat outside of mainstream work, I enjoyed it. I was in touch with creative people and innovative products: music, literary work, fashion, toys, games, patented medicine, really any item that came my way. I spent time working out what the product was and how best to protect the original thinking behind it – the intangible rights and their manifestations. I was also involved with the commercial side of IP, franchising, licensing, distribution, transfer of rights, valuations, and the like, as well as the litigation side involving many applications for interlocutory injunction trying to stop infringement quickly.”

From there, she transitioned to a general litigation practice because she felt that as a young lawyer, she needed to know basic litigation skills. Ms. Wu recalled working on a precedent-setting case that centred on whether someone not wearing a seat belt had contributed to the injury. “I acted for an insurance company. Wearing a seat belt was a recommended practice under the highway code and the argument was whether on policy ground the seat belt should have been worn. The insurance company won on the basis that public policy and safety would be defeated by not wearing one. There was a reduction in damages. The law was subsequently changed to require the wearing of seat belts.”

“Through this case, I learned that in the application of the law, one must look at the purposefulness of a law. Public policy and social context can both influence the outcome of a court case and the law does not function in a vacuum.”

An Unexpected Appointment

Ms. Wu indicated that it was in the run up to 1997 that she pursued public interest law in earnest. As a pro-democracy supporter, she turned her unexpected appointment to the Legislative Council into an opportunity to not only push for the most representative form of government she could vote for, but also for the enactment of equal opportunities laws, aimed at eradicating discrimination in both the public and the private sector. “This appointment, at which I initially balked, gave me the chance to initiate a private member’s bill for equal
opportunities. It was the first private member’s bill that covered a whole area of policy. Through pursuing this, I was able to make law as a member of the legislative body and create solutions to deal with human conflicts,” she said.

Later, as the Chairperson of the Equal Opportunities Commission (“EOC”), Ms. Wu worked to change the business community’s mindset about equal opportunities laws, explaining the benefits of compliance in the language of economics. As the Chair of the Operations Review Committee of the Independent Commission Against Corruption (“ICAC”), she battled the culture of corruption, then endemic in Hong Kong’s public sector. Now, as the Chairperson of the Competition Commission (the “Commission”), she is involved with a brand new area of law to create a competitive environment in Hong Kong.

“These areas of law and many others involve social and economic policies. The process of understanding the value and the philosophy behind each piece of legislation continues to draw me to work within the legal sphere and not desert it,” she said.

Natural & Progressive Process
In speaking about her transition from the private to the public sector, Ms. Wu said it was a natural and progressive process in that she had always been interested in the political and social issues that affect the wider community. “I was educated in a Catholic high school for girls. We were taught to go beyond the school and learn about our community – the value of community service and of taking charge of our lives and to solve problems. During my high school days, together with another school mate, we drafted the constitution for our student council and established probably the first one in Hong Kong high schools. We were allowed to run our own lives and to solve our problems. Looking back this was wonderful training, priming me from an early age for the subsequent roles I would assume.”

Ms. Wu’s varied public service work has all involved level playing field issues for the private and public sector, business and individuals. “It is a rare privilege to have gone through such a broad range of level playing issues and all associated with fundamental qualities of the rule of law – that everyone is equal before the law and should be given equal treatment and fair opportunity.”

“A system based on meritocracy that provides equal opportunity for all is essential to community advancement and individual development. It has economic value, as well.”

Proudest Moments
Of Ms. Wu’s many professional successes, she indicated that one of her proudest moments involved the successful outcome of a case brought by the EOC against the Government on the discriminatory treatment of girls when entering high schools. “Our best girls were systematically subject to adverse treatment on admission to high schools and their exam scores were effectively lowered. Education is the first port of call for individual development. How could we possibly allow this to continue in a world that has systematically discriminated against women? I am proud that this created a landmark case both in and outside of Hong Kong. It involved an application for judicial review brought in the name of the EOC and not the victims’ individually. A declaratory order of discrimination was sought from the court because it would be hopelessly difficult and time consuming to take thousands or even hundreds of cases to court in the name of the individuals affected. It is also a poignant example of why it makes sense to support enactment for class actions.”

Competition Commission
As the founding Chair of the Commission, Ms. Wu indicated that she is glad to see a law that provides the Commission with a full range of enforcement powers and panoply of sanctions to deter anticompetitive conduct. “I hope that what I am able to do in this role will set the tone for the work of the Commission well into the future.”

“What I have learned over the course of my career, especially on the consumer protection front, is that it can take Government a long time to come around. For those in the same boat fighting
Robin Peard JP  
Senior Consultant and Former Partner of Mayer Brown JSM

Through political revolutions and technological evolutions, Mr. Peard’s provision of highly-regarded legal services and contributions to Hong Kong’s legal community have solidified his place among local legal titans. His career, which spans over a half century, has gone from strength to strength and is bedecked with a host of accolades that range from being the first practising solicitor to be appointed as a Deputy Judge of the High Court in 1996 to spearheading the development and overhaul of Hong Kong’s arbitration regime.

Reflecting on his appointment by the Council to the Roll of Honour, Mr. Peard said “coming at the end of my legal career, this means a great deal to me”.

Mere Coincidences

While Mr. Peard is a fourth generation lawyer in his family, he said that his decision to pursue a career in law could more aptly be described as springing from a “mere coincidence” rather than emanating from a thoughtfully orchestrated plan. “I wasn’t sure what I wanted to do when I finished my schooling. However, being from a family of lawyers, it was a foregone conclusion that someone would suggest I try the law. It seemed as secure a career option as any other, so that is what I did,” he said.

He also describes his decision to move to Hong Kong as similarly incidental. “I had just finished articling at an English solicitors firm in the country, and I was looking for a new adventure. I had been bitten by the travel bug, so I decided to look abroad. It was 1964, so my choices were quite limited. Pursuing work abroad was not common in those days. However, I came upon two vacancies – one in Hong Kong and the other in Lisbon. The reason for the opening in Lisbon was due to the UK and Portugal’s longstanding economic ties; someone had opened an English law firm in Lisbon to assist clients with operations straddling those two economies. As you may have surmised, I chose the job in Hong Kong, joining George Stevenson at Stewart & Co., and that is how my career as a lawyer in Hong Kong began.”

Completely Different Market

In discussing his arrival in Hong Kong in 1965, Mr. Peard noted that the legal profession was completely different than it is today. “The market was relatively small. There were probably around 100
solicitors and 40 barristers. The solicitors firms would basically take any work that came in the door. Also present in the market was a system of interpreters, who would introduce clients to firms for a commission, but that system has long since been abolished. The firm I joined when I arrived was very small, so I did everything you could think of in terms of legal work.”

Mr. Peard believes that acquiring such broad base experience early in his career was a boon, but noted that this is probably not possible in the current market for junior lawyers, who must specialise if they want to join a substantial firm.

**Trying Times**

Politically and economically, 1965 to 1967 were trying times in Hong Kong – so much so that Mr. Peard decided to leave for a brief stint.

“There was the Cultural Revolution in China. Then there was a big banking crisis. So at the end of 1967, I moved to Bangkok to work at a business advisory firm with Charles Kirkwood, an American lawyer whom I met in Hong Kong. I was unable to work as a lawyer during that period, as only Thai nationals were allowed to practice law. As such, Charles and I worked as business advisors alongside a few Thai lawyers at the firm.

After a few years, I briefly returned to London. Then in 1971, I was drawn back to Hong Kong to work with Brutton & Stewart, which through a series of amalgamations and takeovers, merged with Johnson Stokes & Master and then became Mayer Brown JSM.”

**Noteworthy Cases**

As a solicitor, Mr. Peard’s principal areas of practice were commercial and construction litigation, as well as litigation involving the shipping and insurance fields. Of the many cases he tried as a litigator, he noted two that are of particular significance to him.

The first interesting case was one he handled in 1971 soon after returning to Hong Kong. It involved a dispute over the ownership of a property in Kowloon – the disputed property was a whole city block that was occupied by a school; at the time, it had high real estate value, he explained. “Our client was in his 80s and he had to give evidence at the trial. He was cross-examined for two days. It was amazing to watch. At the age of 80, his memory of what had happened in the 1930s, which is what was relevant, was spot on. Although, we didn’t win every case, we managed to win that one.”

The other case he described as perhaps the biggest piece of civil litigation in which he was involved in his career. In this case, he advised the Hong Kong Government in a major dispute arising from the construction of Tin Shui Wai New Town. “In those days, that area in New Territories consisted of fish ponds,” he said.

To provide some context, Mr. Peard explained that during that period, the on-going negotiations between the PRC and the British Government were creating much uncertainty about the future of Hong Kong. In an attempt to encourage investors to come to the city, the Hong Kong Government entered into an agreement with two conglomerates in the early 1980s to develop Tin Shui Wai.

“Somewhere along the way, the project went wrong,” he explained. “It took the Government a very long time to fill the fish ponds and turn the area into developable land. They attempted to complete this filling operation by pumping marine sand across some hills into the fish ponds, but the whole process took much longer than initially anticipated. The conglomerates got fed up with the delays and sued the Government.”

“At trial, the case centred on whether the Government was using its ‘best endeavours’ to produce this land. It was a tremendously heavy documents case – we had a team of about four or five lawyers who were exclusively tasked with looking through boxes upon boxes of discovery that filled an entire room. This dispute went on for about five years. It was one of the longest civil trials in Hong Kong, but fortunately, the Government won in the end. The judge found that the Government’s ‘best endeavours’ are rather different from commercial ‘best endeavours’ given that the Government also has public policy to think of and other people’s interests to deal with. As such, the judge found that what the Government did was reasonable under the circumstances.”

**Arbitration**

In addition to handling litigation, Mr. Peard is also a chartered arbitrator, a Fellow of the Hong Kong Institute of Arbitrators, as well as a Fellow of the
Singapore Institute of Arbitrators, and has extensive experience in arbitration proceedings. Over the past 20 years, he has been involved as arbitrator in more than 400 domestic and international arbitrations and has issued more than 200 awards.

Throughout his career, Mr. Peard has made substantial contributions in the area of arbitration in Hong Kong. He is a past chairman of the Chartered Institute of Arbitrators (East Asia Branch). He has also been a member of the Council of the Hong Kong International Arbitration Centre since its founding in 1985 and was previously its vice-chairman. He was closely involved in the comprehensive reform of the previous arbitration regime in Hong Kong, particularly in the drafting and passing of the new Arbitration Ordinance in 2010. The reform in the arbitration legislation is an important step taken in Hong Kong to enhance Hong Kong's standing as a major centre for international arbitration in Asia. The new Arbitration Ordinance harmonised the arbitration law in Hong Kong in line with established international norms and made it more user-friendly and attractive for international arbitrations.

Mr. Peard noted that Hong Kong has come a long way since the time he first started practising with respect to the types of disputes it attracts as a major dispute resolution hub. He indicated that very recently he was involved in an international arbitration that exemplifies the type of arbitral disputes that are now being dealt with in Hong Kong. The parties were from Mainland China and Malaysia and they had chosen Hong Kong to be the arbitral seat. The dispute involved a pharmaceutical company in Mainland China, but, other than the parties agreeing to settle their disputes by arbitration in Hong Kong, there was no other Hong Kong connection. “This was a very big investment for the Malaysians in a state-owned enterprise, which went badly wrong. Eventually, the Malaysian party sued the Mainland party and arbitration in Hong Kong commenced. We had three arbitrators – one was a Malaysian lawyer, the other was a Mainland lawyer from Shanghai and I was the chairman,” Mr. Peard said.

In addressing the well-worn question of whether Singapore or Hong Kong is the more attractive disputes resolution hub, Mr. Peard said that he thinks the two jurisdictions are complementary, as opposed to antagonistic. “There may be some antagonistic feelings, but Singapore is really looking at dealing with disputes from India, Malaysia and Indonesia, in particular; whereas Hong Kong is more focused on Mainland China, Thailand, Vietnam and the Philippines. So you have a territorial distinction between the two.”

“The problem that Hong Kong has always suffered from is that the people who are deciding where to have the seat of arbitration often mistakenly think that Hong Kong is a part of the legal system of Mainland China and then do not choose Hong Kong as a seat. Since before 1997, we have been trying to preach the gospel of Hong Kong, so to speak, and educate others that in terms of arbitration, the law is completely different and independent of that in Mainland China.”

Commitment to Public Service

In addition to the contributions Mr. Peard has made to the legal and arbitration field, he has served the Hong Kong community in a number of other ways. For instance, Mr. Peard actively participates in the Professional Indemnity Scheme (“PIS”)–related work of the Law Society. He served on the PIS Claims Committee from 1987 to 1997, and was the chairman of that committee for most of that period. He also chaired the Professional Indemnity Advisory Committee from 1999 to 2015, and has since remained as its member until now. He was also a member of the PIS Panel Solicitors Selection Board from 1993 to 1997.

Mr. Peard has also been a Member of the Solicitors Disciplinary Tribunal Panel, helping to maintain the standard of the legal profession for the interest of the general public. He was appointed the Deputy Tribunal Convenor for six years, from 2005 to 2011. To enhance the interest and understanding of panel members and clerks as well as other solicitors on the work of the Disciplinary Tribunal, he also assisted as a speaker and a moderator at seminars on a number of occasions.

Mr. Peard thinks the Disciplinary Tribunal’s work is a very important check on lawyers, who set their own professional standards. “While it is necessary to have some lawyers sitting on the Tribunal, particularly the Chairman, to ensure the case is handled fairly, it is also immensely valuable to have lay members on the Panel as well, so it’s not just lawyers disciplining other lawyers.”

Additionally, he has contributed his time as the chairman of the Corruption Prevention Advisory Committee and as the chairman of the Building Appeal Tribunal respectively.

Looking Ahead

Mr. Peard indicated that he was pleased to see the recent passage of Third-Party Funding legislation by the Legislative Council, providing for the provision of third-party funding for arbitrations and mediations in Hong Kong. He hopes this will increase access to justice by enabling parties that may otherwise not attempt to enforce their legal rights due to financial limitations with adequate funds to do so. In the not-too-distant future, he hopes to see the Government expand the scope of the bill to permit third-party funding in the litigation context.

Looking ahead, Mr. Peard hopes to see the judiciary increase the amounts used in the assessment and recovery of legal costs in Hong Kong. “The allowable costs by the court are very low and have not been raised for over 10 years. As a result, the scale is not aligned with the current economic reality in Hong Kong as it relates to costs litigants incur to procure legal counsel. If the recoverable costs were increased, that would not only address issues of fairness, but it would also make it more likely for cases to settle because the amount at stake would go up if you fear that substantial costs will be awarded against you.”
Charles Lee GBM OBE JP

While Mr. Lee, who was among this year’s Roll of Honour Honourees, was not available for an interview, the following was provided by the Hong Kong Law Society to highlight his many accomplishments and contributions to the profession and the Hong Kong legal community.

Mr. Lee is a solicitor and a China-Appointed Attesting Officer. He graduated from the London School of Economics and Political Science of the University of London with a Master's degree in Law. He was admitted as a solicitor in England and Hong Kong in 1968 and 1969, respectively. Besides his legal qualification, he is also a qualified accountant and a chartered secretary.

Mr. Lee founded Woo, Kwan, Lee & Lo in 1973, and is now a consultant of the firm. Mr. Lee has been an influential figure in Hong Kong, particularly in shaping Hong Kong’s financial infrastructure to support its role as an international finance centre. He is also a prime-mover of reforms.

From 1968 to 1973, he was the Secretary to the Companies Law Revision Committee and played a leading role in driving the enactment of the Securities Ordinance and substantial amendments to the Companies Ordinance.

From 1988 to 1991, he was a member of the Council of the Stock Exchange of Hong Kong Limited. He became its Chairman in 1992, and remained in that post until 1994. In 1999, he became the first Chairman of Hong Kong’s merged stock and future exchanges and associated clearing houses, the Hong Kong Exchanges and Clearing. He has indeed played a key role in breaking down initial hostility of Hong Kong’s stockbrokers and futures brokers and pushing through the merger of Hong Kong’s stock and futures exchange. He remained as the chair of the Hong Kong Exchange for seven years until 2006.

During his tenure as the Chairman of the Stock Exchange and the Hong Kong Exchange, Mr. Lee initiated a series of reforms that modernised the operations of these organisations, attracted listings from mainland enterprises, and also reinforced Hong Kong’s position as an international financial centre. We saw him successfully encourage many big enterprises in Hong Kong to go public at a time when most favoured bank loans over equity and pioneer the landmark event in 1993 when we had the first mainland enterprise listing in Hong Kong. He insisted that Chinese enterprises wishing to raise funds in Hong Kong should upgrade their corporate governance and management style in line with international standards, and rejected suggestions for a separate China board with lower listing requirements.

The effort of Mr. Lee to facilitate the flourishing of the IPO market for Hong Kong has generated a lot of work for the legal profession.

Mr. Lee has also displayed great enthusiasm for public service and has extensive experience in this regard. Besides being the Chairman of the Stock Exchange and the Hong Kong Exchange, he has taken up many other public appointments. To name but a few: in 1997, he served as a non-official ExCo member for a total of 12 years, over two time periods from 1997 to 2002 and then from 2005 to 2012. In 1998, he was appointed by the Hong Kong Government to coordinate the formation of the Mandatory Provident Fund Schemes Authority and has acted as the chairman and advisor of the Authority. He also served on the Equal Opportunities Commission from 1996 to 2003. He was the chairman of the Executive Committee of Hong Kong Arts Festival Society Limited from 2003 to 2012.

On the academic side, Mr. Lee served on the Court of the Hong Kong Polytechnic University from 1995 to 2002, and the Council of the Hong Kong University of Science and Technology from 1998 to 2004. He chaired the Council of the Open University of Hong Kong from 1998 to 2003 and 2004 to 2009 respectively and has since November 2013 been appointed the Pro Chancellor of the Open University of Hong Kong.

Mr. Lee also participates actively in community service. He assumed various positions in The Community Chest of Hong Kong at different times, including as its first Vice-President and the Executive Committee Chair of its Board of Directors. He remains today as the Vice-Patron, as well as the Campaign Committee co-chair of the organisation.

Mr. Lee also took time from his busy schedule to contribute to the work of his legal and accountancy profession. When the Law Society played host for the 5th Annual Conference of the Presidents of Law Associations in Asia in Hong Kong back in 1994, we had the honour of Mr. Lee, as the then-Chairman of the Stock Exchange, addressing our overseas delegates on the topic of “The Hong Kong Stock Market: In a China Dimension” on the opening day. He served on the Law Society’s Revision of Solicitors’ Accounts Rules Committee for about four years from 1978 to 1981. Mr. Lee also chaired the Audit Profession Reform Advisory Group of the Hong Kong Institute of Certified Public Accountants.

He was appointed a Non-official Justice of the Peace in 1993 and an Officer of the Most Excellent Order of the British Empire in 1994. In 2000, he was awarded the Gold Bauhinia Star by the Hong Kong Government and the degree of Doctor of Laws honoris causa by The Hong Kong University of Science and Technology. In 2001, he was also awarded the degree of Doctor of Business Administration by The Hong Kong Polytechnic University. He was thereafter awarded the degree of Doctor of Social Sciences Degree honoris causa by The Open University of Hong Kong and the University of Hong Kong in 2003 and 2005 respectively. In 2006, he was awarded the Grand Bauhinia medal.
香港律師會設有榮譽律師名冊，褒揚積極參與律師會或律師會理事會工作的律師，他們都表現卓越，推動香港法律界或法律執業發展不遺餘力。獲提名的人選，一定要得到理事會四分之三成員贊同其貢獻良多，以大比數通過頒授殊榮，以表讚揚。

胡紅玉、白樂天律師（太平紳士）今年獲加入榮譽律師名冊。二人接受本刊專訪，講述他們的法律工作及參與律師會事務的點點滴滴，同時分享獲提名而晉身榮譽律師行列的感受。

胡紅玉
白樂天 JP
胡紅玉
專訪競爭事務委員會主席

胡女士把她從事法律工作的決定，形容為「預設的選擇」(default choice)，並非她刻意選上的，不過她事業成績出眾，一點也不叫人覺得她當初的想法是被「預設」的。胡女士目光遠大，由私人執業，成功建立事業，到擔任立法會議員，竭力爭取香港制定各種公平競爭法，一直是支持改革的中堅分子。

分享自己獲理事會通過而成為榮譽律師的感受，胡女士表示：「非常感激，當之無愧。投身公共服務和公共法律領域，感覺可以是孤伶伶的，我經常覺得自己偏離了法律執業的主流。沒有想過自己會被加入榮譽律師名冊，不過，能夠得到法律界同儕的支持和接納，成為其中一員，我是萬分高興的。」

無心插柳
「法律不是我的首選。我考上大學讀法律的時候，它是我的預設選擇，因為之前有比我有見地的朋友忠告我，在人類學的專門領域是賺不到錢生活的。不管如何，我一開始上課，就已經不斷『走堂』。法律課程劃分為幾個部分，教的不是體驗式知識，也不是解決問題的辦法，它給我的感覺是單調沉悶，全無趣味可言。」

胡女士想過一走了之，她記得自己試過寫信給聯合國求職，希望那裡有適合畢業生的工作，甚麼工作都可以。她說：「值得一讚的是，聯合國有人花工夫給我回覆，告訴我，我至少要有碩士學位或者兩年工作經驗，才會被考慮。這個答覆有如當頭棒喝，讓我知道自己料子不夠，慶幸的是，這反而驅動我完成法律課程，最後取得律師資格。」

法律的生命力
她解釋說：「開始做執業律師的時候，我對法律改觀了。我體會到法律是可以用來解決問題和想出解決辦法的，我做學生的時候朦朧，看不透。」

「我向客戶提供協助，學懂法律不只是一大堆硬綁綁的規條。我深深感受到，自己工作的對客戶的影響可能是一生一世的。認識到法律的其他層面——各層是相互關聯，不是界線分明的——我知道自己需要充分了解法律的用處和潛能。那個時候，在我面前的法律是富有生命力的。」

遠瞻遠矚
胡女士在私人執業領域開展事業，專攻知識產權法。「雖然知識產權法有些不屬於主流工作的範疇，但是我樂在其中。我接觸的是有創意的人，新穎的產品：音樂、文學作品、時裝、玩具、遊戲、專利藥物，全都是我一手一腳處理的。我花時間弄懂那些究竟是甚麼東西，設法盡力保護產品背後的原有創意——無形的權利及其表現形式。我有參與訴訟事情，處理過許多想迅速阻止侵犯行為的非正審強制令申請，除此之外，我也有參與商業性質的工作，例如知識產權、專營權、特許權、經銷權、權利轉讓、估值等。」

她其後轉為從事一般的訴訟事務，因為她覺得身為年輕律師，有需要認識基本的訴訟技巧。胡女士想起一宗已成案例的案件，案件的爭論點是，不配帶安全帶的人是否有份造成損傷？「我當時是代表保險公司行事的。根據道路使用者守則，配帶安全帶是建議的做法，爭議點是，是否基於公共政策理由而道路使用者應當配帶安全帶。保險公司獲判勝訴，理由是公共政策和公共安全因為不用配帶安全帶而被破壞。結果是損害賠償被扣減。法例其後被改訂，規定必須配帶安全帶。」

「透過這宗案件，我學會一件事：應用法例時，必須想想每條法例的明確目的。公共政策和社會情況都可以影響法庭案件的結果，法律不是在真空環境運作的。」

過程自然 循序漸進
談到她由私人機構轉到公營機構工作，胡女士認為是一個自然、循序漸進的過程，而在整個過程中，她總有興趣探討對更多人有影響的政治和社會問題。「我是在天主教女校讀中學的，老師教我們要認識學校以外的事，學習我們社會的事物——社會服務的價值、掌管自己生命的意義，也學習解決問題。讀中學的日子，我與另一同學合力草擬學生會憲章，結果制定可能是全港中學第一份的學生會憲章。我們可以經營自己的生活，解決自己的問題。」
回想起來，這是一次極好的訓練，讓我可以在人生初段打好基礎，為日後要擔當的角色做準備。

胡女士參加過多種公共服務，全都涉及公私营機構、企業及個人有關公平競爭的問題。「如此廣泛地研究公平競爭的問題，要有難得的特權方可成事，所有問題都與法治精神的基本特質扯上關係——法治面前人人平等，人人都應該受到公平對待，得到公平機會」。

「在一個信奉精英領導的制度之中，人人機會平等，這是社會進步和個人發展的基本要素，也具有經濟價值。」

最感自豪的一刻

胡女士締造過很多專業成就，她表示，其中一次叫她最感自豪的，是平機會向中學學位分配辦法帶有歧視女學生的部份，針對政府提起訴訟，結果獲判勝訴。「系統分配學位的辦法不利成績優秀的女學生，她們的考試分數實際上被調低了。教育是個人發展的首要事情。我們怎可以容許這樣一個有系統地歧視女性的制度繼續下去?這宗案件成為香港境內境外的經典案例，我感到很自豪。平機會有就案件申請司法覆核，申請是由平機會以其本身名義提出的，不是受害人以其個人名義提出。平機會要求法庭就歧視情況頒下宣告性命令，因為要法庭審理成千上萬人以個人名義興訟的案件，是極花時間。這亦是個非常貼切的例子，說明支持制定適用於集體訴訟的法例是合情合理的。」

競爭事務委員會

作為競委會創會主席，胡女士表示，她很高興見到有法例賦予競委會全面執法的權力，並且訂明遏止反競爭行為的處罰。「我希望自己任內所能夠做到的，可以為競委會日後的工作定下基調。」

她說：「我在整段工作生涯學到的，特別是消費者保障制度內的，是政府可能要經過漫長時間才會讓步。同坐一條船爭取改革的，不要輕言放棄。不要怯於向人表達意見。即使捍衛自己觀點是會冒犯別人的，也不要避而不談。此外，我明確偏愛公共服務。我深信，如果接受公職任命之後，是可以影響某個重大問題的結果的，你就應該欣然接受，為市民大眾服務，不要擔心自己在體制範圍內的工作會被人抨擊或批評。」

影響深遠

講述在整段職業生涯中的重要發展時，胡女士指出「一國兩制」的理念對香港法律制度及她——個人和事業上——有深遠的影響，她對此沒半點懷疑。「根據定義，一國兩制是有矛盾之處的，但是我們沒有憲法法院論斷任何差異。香港法庭依然保持獨立，運作暢順。但是，我們需要對任何破壞制度的潛在可能或看法保持警惕。如果我們把『一國』放在搖搖板的一端，『兩制』放在另一端，一端升高，另一端就會降低。要搖搖板不偏不傾，難度極高，因為我們沒有先例可循。」

白樂天 JP
孖士打律師行前合夥人兼資深顧問

經歷過政治革命和科技演進，白樂天律師始終提供備受推崇的法律服務，對香港法律界貢獻良多，奠定了他崇高地位。白律師的事業跨越逾半個世紀，從1996年成為首位獲委任為高等法院暫委法官的執業事務律師，至主導發展和改革香港的仲裁制度，成就屢受讚譽。

是次榮獲律師會理事會錄入榮譽律師名冊，白律師說：「在法律職業生涯接近尾聲時獲此榮譽，對我來說意義斐然。」

純屬偶然

白律師的家族四代均為律師，但他說投身法律事業的決定，並非經周詳計劃，反而可說「純屬偶然」。他表示：「完成學業後，我不知自己想做甚麼。由於出身律師世家，很自然有人建議我嘗試投身法律界。這似乎是個穩定的職業選擇，如是者我就照做了。」

他移居香港的決定也同樣偶然。「那時我剛在英國一間律師行完成實習，想尋找新的冒險。我一向熱衷旅遊，所以決定出國。
闖闖。那是1964年,去外國工作並不常見,我的選擇非常有限,但我找到兩個空缺,一個在香港,另一個在里斯本。里斯本的空缺是因為英國與葡萄牙長期有經濟聯繫,里斯本有一間英國律師行, 協助客戶處理跨越兩國的事務。不問而知,我選擇了香港的工作, 跟隨George Stevenson 加入了Stewart & Co,如是者開始了在香港的律師事業。」

截然不同的市場
白律師在1965年來到香港,他說當年的法律界與今天截然不同。「當年的市場相對較小, 約有100名律師和40名大律師。律師行基本上來者不拒。當年市場上還存在介紹人制度,介紹人收取佣金向律師行介紹客戶, 如今該制度早已被廢除。我初到埗時加入一間小型律師行,所以一切想像得到的法律工作我均涉獵過。」

白律師認為,在職業生涯早期獲得廣泛的基礎經驗是一大喜訊。但他指出,在現今的市場,這對年輕律師來說已是不可能的事,若他們想加入大型律師行,就必須有所專長。

艱難時期
1965年至1967年,無論從政治或經濟角度,香港均處於艱難時期,白律師甚至決定離開香港一段短時間。

「中國經歷文化大革命,然後又有一場銀行危機,所以在1967年底,我與一位在香港認識的美國律師 Charles Kirkwood 移居曼谷,在一間商業諮詢公司工作。那段期間我無法擔任律師工作,因為泰國只許許可國民執業。因此, Charles和我擔任商業顧問,與幾位泰國律師在一間律師行工作。幾年後,我回了倫敦一段短時間,然後在1971年,我返港加入Brutton & Stewart,幾經併購,與Johnson Stokes & Master合併,最後成為孖士打律師行。」

值得一提的案件
白樂天律師的主要執業領域是商業和建築訴訟,以及涉及航運和保險領域的訴訟。他經手的許多案件中,有兩宗對他具有特殊意義。

第一宗有趣的案件,是他在1971年回港後不久處理,涉及九龍一項物業的所有權爭議。有爭議的物業整幢被一間學校佔用,當時樓價很高,他解釋說:「我們的客戶已80多歲,他必須在審訊中提供證據。他被盤問了兩天。80多歲的他,對30年代發生有關案件的事情仍記憶猶新,令人驚訝。我們不是每宗訴訟都勝訴,但這一宗我們勝訴了。」

另一宗他形容為也許是其職業生涯參與過的最大型民事訴訟案件。他在興建天水圍新市鎮引起的一宗重大爭議中代表政府。他說:「那一年, 新界那區只有魚塘。」

白律師解釋說,在此期間,中, 英政府正在進行談判,香港的未來不明朗。為了鼓勵投資者來港投資, 政府於80年代初與兩家地產商達成協議, 發展天水圍。他說:「項目某處出了問題政府花了很長時間填平魚塘,將該區變成可開發的土地他們試圖將海沙沿山運去來填平魚塘,但整個過程比預期要長得多。該地產商厭倦了一直延誤, 控告政府。」

「這宗案件的爭議點在於政府是否盡了『最大努力』來提供土地。這宗案件涉及大量文件,我們有一支4至5位律師的團隊,專門負責翻閱一箱又一箱的文件,文件塞滿了整間房。這宗爭議持續了大約5年,是香港最長的民事訴訟之一,幸好政府最終勝訴。法官認為政府的『最大努力』與商界的『最大努力』不同,因為政府要考慮公共政策和兼顧其他市民的利益。因此,法官認為政府在當時的情況下做法合理。」

仲裁
白律師先生除了處理訴訟外,還是特許仲裁員、香港仲裁司學會資深會員及新加坡仲裁員協會資深會員,在仲裁方面擁有豐富經驗。20多年來,他在400多宗本地及國際仲裁中擔任仲裁員,作出了200多個仲裁裁決。

在職業生涯中,白律師對香港的仲裁領域貢獻良多外,還以其他方式服務香港社會。

例如, 白律師積極參與律師會專業彌償計劃的相關工作。他在1987年至1997年參與專業彌償計劃委員會, 期間大部份時間擔任該委員會的主席。在 1999年至2015年, 他亦擔任專業彌償小組律師遴選委員會成員。

白律師亦曾擔任律師顧問處常任委員會, 協助維護法律界的標準, 以保障市民的利益。2005年至2011 年間, 他獲任命為仲裁組副召集人。為加強審裁組成員和書記及其他律師對紀律審裁組工作的興趣和理
李業廣 GBM OBE JP

李律師今年亦獲加入榮譽律師名冊，由於他未能抽空接受訪問，以下是香港律師會提供的資料，重點敘述李律師的豐碩成就，以及對香港法律界的貢獻。

李律師是事務律師，也是中國委託公證人。

他畢業於倫敦大學倫敦經濟及政治科學院，持有法律碩士學位，分別於1968年在英國，1969年在香港獲認許為事務律師。除了持有法律專業資格之外，他也是合資格會計師及特許秘書。

李律師1973年創辦「胡關李羅律師行」，現在是該律師行的顧問律師。

李律師是香港具有影響力的人物，在金融基礎設施方面更扮演重要角色，全力支持香港擔起國際金融中心的角色。他也是推動改革的主要人物。

他1968至1973年是公司法檢討委員會秘書，牽頭推動制定《證券條例》及大幅修訂《公司條例》。


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展望未來，白律師希望司法機構增加評估和討回訴訟費的數額。「法院允許的訴訟費非常低，十多年來一直沒有提高。因此，數額與香港當前的經濟現實不符，因為涉及訴訟當事人訴訟律師的費用。若可討回的訴訟費提高，不僅可解決公平問題，而且還會使案件和解的機會更高，因為如果擔心獲判的訴訟費高昂，涉訴的金額就會提高。」

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The Hong Kong Academy of Law

Hong Kong Academy of Law organised 35 seminars in March, 27 seminars in April, 34 seminars in May and 32 seminars in June.

A Conference on Insolvency Law and Practice was held on 9 March. It provided an update on the developments in insolvency law. Topics discussed included cross-border insolvency and choice of forum, legislative reforms on corporate rescue, litigation funding and acquisition of non-performing loans. 287 participants attended the seminar.

Apart from Mr. Justice Harris, Judge of the Court of the First Instance of the High Court, who was the Keynote Speaker, other speakers of the Conference included (in alphabetical order): Mr. Theron Alldis, Sourcing Asia of SC Lowy; Ms. Christina Cheung, Law Officer (Civil Law) of the Department of Justice (“DOJ”); Mr. Paul Forgue, Managing Director of Alvarez & Marsal; Mr. Keith Ho, Chairman of the Insolvency Law Committee of the Law Society; Mr. Camille Jojo, Member of the Insolvency Law Committee of the Law Society; Dr. Stefan Lo, Senior Assistant Law Officer (Civil Law) (Commercial) III (Acting) of the Civil Division, Commercial Unit of DOJ; Mr. Ian Mann, Head of Litigation & Insolvency Practice (HK) of Harneys; Ms. Phyllis McKenna, The Official Receiver of Official Receiver’s Office; Mr. Edward Middleton, Head of Restructuring Services, Deal Advisory of KPMG China and Asia Pacific; Ms. Melissa Pang, Vice-President of the Law Society; and Mr. Rupert Purser, Senior Advisor of Burford Capital. Mr. Ian De Witt, Member of the Insolvency Law Committee of the Law Society and Mr. Victor Joffe, QC, Temple Chambers were moderators of the seminar.

Three seminars on “Hong Kong e-Legislation (“HKel”)” were conducted in April and May. Ms. Karmen Kwok, Senior Government Counsel and Ms. Leonora Ip, Senior Assistant Law Draftsman from the Law Drafting Division of DOJ were the speakers. They demonstrated to the participants the different functions of HKel, including those which are not available under the Bilingual Laws Information System. Two of the seminars were conducted in English and one was in Chinese. About 670 participants attended the three seminars.
Korean and Japanese Internship Programmes

The Law Society devotes much effort in assisting our young members to broaden their international legal horizons. One way of fulfilling this objective is through organising internship programmes between Hong Kong and overseas jurisdictions. Thanks to the support of the Ministry of Justice of the Republic of Korea and the Korean Bar Association, this year marks the 4th year that we jointly hosted a two-week internship programme in Hong Kong and Korea.

Nine Korean interns, including lawyers and law students, started their two-week internship training in local law firms from 4 to 18 January while two Hong Kong lawyers underwent their two-week internship training in Korea from 9 to 20 January.

Subsequent to the two-week Hong Kong-Korea internship programme held in January, we co-ordinated another two-week internship programme in March between Hong Kong and Japan with the support of the Japan Federation of Bar Associations. Starting from 6 March, five Japanese interns started their two-week internship training in local Hong Kong law firms and five Hong Kong lawyers commenced their two-week internship training in Japan.

During the programmes, the interns visited the Legislative Council during their stay to further their understanding of Hong Kong’s legal system. The Korean interns also joined the Ceremonial Opening of the Legal Year 2017 at the City Hall on 9 January, where they were able to mingle with the local legal practitioners.

The internship programmes were well-received by both the interns and Hong Kong law firm sponsors.
Promotion of Hong Kong Legal Services to Indonesia
The Law Society has been actively promoting the role of Hong Kong solicitors in the development of the Belt and Road Initiative. The Initiative has a vast coverage. To begin with, the Law Society will focus our efforts on the ASEAN countries. Indonesia is a member of the ASEAN and the largest economy among the ten nations there.

On 9 March, the Law Society jointly organised a seminar entitled “Hong Kong - Indonesia: Opportunities for the Indonesian Business” with the Indonesian Advocates Association (“PERADI”) in Jakarta. Taking this opportunity, the Law Society introduced Hong Kong’s legal system, the advantages of doing business in Hong Kong as a gateway to China and the importance of risk management to the local participants.

A Memorandum of Understanding (“MOU”) with the PERADI was also signed at the occasion of the joint seminar. The Law Society will continue to strengthen our connection with the Indonesian lawyers and work together to raise the standards of the profession to serve our clients’ needs through regular joint seminars and knowledge exchange sessions.

向印尼推廣香港的法律服務
律師會一直積極推廣香港律師在「一帶一路」倡議發展過程中可扮演的角色。「一帶一路」倡議涵蓋全球多個國家，而律師會先集中於東盟成員國。其中，印尼是東盟成員國之一，亦是東盟十個成員國中經濟規模最大的國家。

律師會於3月9日在雅加達與Indonesian Advocates Association (“PERADI”)合辦了題為「香港 - 印尼：印尼業界的商機」的研討會。律師會藉此機會向印尼同業介紹香港的法律制度、在香港營商以便開拓中國市場的好處、以及風險管理的重要性。

律師會亦於研討會期間與PERADI簽署諒解備忘錄。律師會將繼續加強與印尼律師的聯繫，並透過定期合辦研討會和知識分享環節，合力提升業界水平，滿足客戶需求。
YSG: Distinguished Speakers’ Luncheon
Talk by Professor Lam Chiu-ying, SBS

On 29 April, the Young Solicitor’s Group (“YSG”) organised its first Distinguished Speakers’ Luncheon of 2017. We were honoured to have Professor Lam Chiu-ying, SBS, former-Director of the Hong Kong Observatory and current Adjunct Professor of the Department of Geography and Resource Management with the Chinese University of Hong Kong, share his views on “Laws of Nature”, which was followed by an interactive Q&A session.

During his presentation, Professor Lam explained the correlation between natural law and statutes, introduced the concepts of environmentalism and conservatism, and drew distinctions between protecting human inhabitants and protecting nature. Not only was the talk inspiring but also entertaining.

YSG is grateful to Professor Lam for taking time out of his busy schedule to share his insightful ideas with our members, and YSG is also grateful to members who participated in the event on a Saturday afternoon.

For those who missed the talk, please note that a recording of Professor Lam’s speech has been uploaded onto the Law Society’s website at http://www.hklawsoc.org.hk/pub_e/news/video/20170508.asp.

Members who are interested in joining the event organised/arranged by the YSG, please feel free to visit http://www.hklawsoc.org.hk/pub_e/ysg, join our Facebook group (https://www.facebook.com/young.solicitorsgroup) or contact Assistant Director, Member Services at adms@hklawsoc.org.hk.
The Secretary for Justice, the Director of Public Prosecutions, moderators and various speakers for the Criminal Law Conference 2017.

Criminal Law Conference 2017

Criminal Law Conference 2017 was held on 20 May at the Function Hall of the Justice Place. It was co-organised by the Law Society of Hong Kong, the Department of Justice and the Hong Kong Bar Association. During the conference, criminal law practitioners shared their views on various topics including case management, protection of vulnerable witnesses, joint enterprise law and sentencing practices.

The Secretary for Justice, the Director of Public Prosecutions, moderators and various speakers for the Criminal Law Conference 2017.

In-House Lawyers: Sweat & Glory Series 2017

Job Matching 2.0: Branding Yourself for Success on Social Network

On 25 May, the In-House Lawyers Committee ("IHLC") organised a seminar under the In-House Lawyers: Sweat & Glory Series 2017 entitled "Job Matching 2.0: Branding Yourself for Success on Social Network". The seminar was attended by over 40 members comprising in-house members from a variety of backgrounds.

Speakers on this panel included Mr. Nathan Khan, Enterprise Solutions Manager, LinkedIn and Mr. Sebastian Ko, Regional Director and Legal Counsel, Epiq Systems. Many thanks to the speakers who provided a number of tips on how lawyers can market themselves and attract job opportunities by using the social media platform and advice on how companies/businesses can use digital channels to identify the suitable candidates to join their teams.

(From left): Mr. Grand Chan, IHLC Chairman, and speakers Mr. Sebastian Ko and Mr. Nathan Khan.

企業律師的苦與樂2017

工作配對2.0：在社交網絡成功打造個人品牌

企業律師委員會於5月25日舉辦了「企業律師的苦與樂2017」－「工作配對2.0：在社交網絡成功打造個人品牌」研討會，吸引了40多位會員出席，當中包括來自不同行業的企業律師。

感謝講者LinkedIn企業客戶業務經理簡浩權先生及埃貝科技訴訟文件審閱服務總監 - 亞太區及法律顧問高一鋒律師，分享律師如何包裝自己，和使用社交媒體平台吸引就業機會的建議，以及企業如何使用電子渠道來確定合適的應徵者。
YSG Joint Professional Art Appreciation and Networking Drinks

On 26 May, the Young Solicitors’ Group (“YSG”) organised a Joint Professional Art Appreciation and Networking Drinks event with the support of the West Kowloon Cultural District Authority (“WKCD”), together with the Hong Kong Institute of Architects, the Hong Kong Bar Association, the Hong Kong Institute of Certified Public Accountants, the Hong Kong Dental Association, the Hong Kong Institute of Landscape Architects, the Hong Kong Medical Association, the Hong Kong Institute of Planners and the Hong Kong Institute of Surveyors.

Held at a coffee house situated in the Wong Chuk Hang district, a thriving arts and culture hub, the event proved to be very popular with more than 140 attendees packing the cafe from wall-to-wall.

The afternoon began with a sharing session featuring guest speakers Mr. Kevin Lim, Architect and Managing Director of an award-winning design studio, and Ms. Kate Jones, Creative Consultant, and moderator Ms. Serina Chan, Council Member and Chairlady of the YSG. During this session, the guest speakers shared their journeys in discovering interesting artists and offered advice on how to begin building one’s own personal art collection.

The sharing session was followed by a networking session. All attendees enjoyed the opportunity to learn more about art appreciation and art collection, as well as meeting new friends from different professions.

This event follows a history of collaboration between the YSG and the WKCD. Given the strong show of interest by young members, the YSG intends to organise more collaborative events with the WKCD and other similar organisations in the future to help members engage with the growing arts and culture scene in Hong Kong.

Members who are interested in joining the event organised/arranged by the YSG, please feel free to visit http://www.hklawsoc.org.hk/pub_e/ysg, join our Facebook group (https://www.facebook.com/young.solicitorsgroup) or contact Assistant Director, Member Services at adms@hklawsoc.org.hk.

Mr. Ken Wong, Head of Learning and Participation (Performance Arts) at the WKCD (seventh from left), and representatives from the young members’ groups of eight professional institutes and the YSG.

Group photo of the participants from nine professional institutes.
Meeting with the Correctional Services Department

The Criminal Law and Procedure Committee met the representatives from the Correctional Services Department (“CSD”) on 2 June to discuss various logistics issues relating to legal visits.

與懲教署會面

刑事法律及程序委員會於6月2日會晤懲教署的代表，討論有關羈留探訪的各種程序事宜。
YSG Explore HK Event

On 30 April, the Young Solicitors’ Group (“YSG”) organised its first Explore HK event, a series aimed at helping our members explore the lesser known sides of Hong Kong, so as to understand and better appreciate this city we all call our home.

Our members joined us on a hike in Tai Tam Country Park, guided by Mr. Stuart Woods, a local WWII heritage enthusiast and a professional photographer; Mr. David Willock, also a local WWII heritage enthusiast and a snake catching expert; and Dr. Wong Chun Lam who assisted in first aid duty.

Not only was it a good opportunity for some exercise on a Sunday morning, it also got our members to venture deep into the vegetation of the park, trek up steep slopes and explore hidden tunnels in the mountains, which were dug by the British forces during colonial times to hold off the Japanese invasion during WWII.

Armed with torches and adventurous hearts, our members followed each other into the long, dark, winding tunnels. There our members witnessed the poor conditions our forefathers lived in during wartime and learned how the various exits to the tunnels created important vantage points for gunning down the enemy.

Our members also saw various creatures that are not usually seen in the city, including bats, cave crickets, and the scary-looking cave centipede.

The event was well received by our members. With your support, we hope to increase the scale of our next Explore HK event. Stay tuned and do get in touch with the YSG if you have any great ideas of where we should visit next!

For members who are interested in joining events organised/arranged by the YSG, please visit http://www.hklawsoc.org.hk/pub_e/ysg, join our Facebook group (https://www.facebook.com/young.solicitorsgroup) or contact Assistant Director, Member Services at adms@hklawsoc.org.hk.
Against all Odds: Activist Strategies in Controlled or Blockholder-Influenced Companies in Hong Kong and Germany (Part II)

By Dr. Ami de Chapeaurouge, Partner de Chapeaurouge + Partners (Frankfurt, Hamburg, London, New York)
This is the second instalment in the Corporate Activism series. The first article discussed strategies and tactics shareholder activists employ in controlled or blockholder-influenced companies in Hong Kong and Germany. This instalment will drill down to assess further similarities and differences between the hedge fund activist experiences in both markets. The third instalment, which will be featured exclusively online, will argue that the dominant theme in Hong Kong and simultaneously the pragmatic common ground of shareholder and hedge fund activism between Hong Kong/China and Germany/Continental Europe is the notion of shareholder engagement.

**Activist Hedge Fund Monitoring Effectiveness**

The principal-agent conflict is ascertainable in those 40 percent of German public companies that are widely held. In distinction, in Hong Kong, an agency conflict exists between controller and minority shareholders, as most listcos are controlled or blockholder-dominated.

In the view of many, the separation of ownership and control (Berle-Means) and the principal-agent problem (Jensen-Meckling) has recently led to sharp market cap drops and share price value-losses at the expense of shareholders in large DAX 30 German corporations and corporate groups, say, such as the utilities RWE and E.on, but also TUI, Commerzbank, Volkswagen and Deutsche Bank. It is no secret that concerned institutional investors have initiated discussions with activist hedge funds to make proposals to management about the future strategic course of their companies. This statement is not quite accurate in Hong Kong, where the predominance of controlling shareholders creates a manifest agency problem between controllers and minority shareholders rather than a principal-agent conflict.

In such a setting, active or activist investors can be successful in eradicating corporate waste by making proposals to the management/controller to enhance company value, improve operative efficiency and deepen investor relations ascertainable in a stock price rise. It is the controller who profits the most from such constructive suggestions on the part of active or activist investors.

By analysing 50 different activist campaigns lodged between 2003–2015 by international and local Hong Kong activists, Frank Wong has established that it is largely inaccurate to describe activist goals to be short-sighted or largely oriented towards short-term payouts. Rather, activist interventions and campaigns have created significant and quantifiable long-term value in Hong Kong over this time period. His research has helped us advance our understanding of the direct (and indirect) processes through which activist hedge funds are exerting an ascertainable, considerable disciplining effect on management and the controllers of the Hong Kong public company universe.

**Game Changer**

Until recently, the principal corrective for managerial slack and shareholder value destruction due to performance failure in these markets was deemed to be the threat of a hostile takeover. Today, active monitoring by engaged value minority investors is the dominant corrective force, which occurs when minority investors generate enough support among fellow shareholders and institutional investors to form the requisite statutory AGM majorities, if necessary. With foreign institutional Investors owning 60–70 percent of the voting stock of leading German corporates, this train of thought is to be taken seriously. Similar trends of strong global institutional and passive investor interest currently inform the Hong Kong equity markets.

**Challenging the Legitimacy of Equity Hedge Fund Activism in Germany**

As a common observation for both Hong Kong and Germany, at first blush, the role of activist hedge funds as “Corporate Governance Monitor” seems to be almost self-explanatory due to their flexibility, independence and core competency in financial and capital markets expertise. However, in Germany it is strongly argued that the corporate structure conditions due to the two-tiered board set-up trump, if not vitiate such intuition. It is held that the supervisory board is not only the organ whose monitoring role and indirect participation in the management function via approval of certain defined business decisions requiring such consent stands out; but that it is simultaneously charged with insuring Good Corporate Governance practice on a firm-wide level.

To highlight this notion, traditional German scholarship contrasts the German Corporate Governance Code (“DCGK”) with the UK Stewardship Code (2012). The UK Stewardship Code provides: “For investors, stewardship is more than just voting. Activities may...
include monitoring and engaging with companies on matters such as strategy, performance, risk, capital structure, and corporate governance, including culture and remuneration. Engagement is purposeful dialogue with companies on these matters as well as on issues that are the immediate subject of votes at general meetings” (No. 4, 1st Sentence). While the DCGK provides: “It is the task of the supervisory board to advise the management board in the course of leading the enterprise and to monitor its actions” (No 5.1). “The management board regularly and instantly informs the supervisory board about all relevant questions of planning, development of the business and risks, including risk management and Compliance” (No 3.4). “Management and supervisory board closely cooperate to further the well-being of the enterprise” (No 3.1).

The almost identical wording of the description of the activity spectrum and tasks of active shareholders in a UK setting and the role of the German supervisory board suggests – so the traditionalists argue – little room left for creating additional shareholder value through the offices of yet another monitoring instance in the German context.

The role of “non-executive”, independent directors in the UK (and Hong Kong, as opposed to supervisory board members in Germany), they say, has a different gravamen which implies a perceived need for an additional corporate monitor in the UK. In other words, neither are there similar objections to a monitoring role of activism in Hong Kong; nor are the conservative German doctrinal objections against activists as an additional layer of monitoring compelling.

Increased Influence of Activist Hedge Funds in Public Company Universe

Activist campaigns in Europe generally, and in Germany in particular, range from moderate engagements in governance demands (eg, separation of CEO and Board Chairman, already built into the German dual system) to more intrusive interventions in strategy such as stock buybacks/dividend payments, divesting non-core divisions, replacing CEO/board members, or selling the company. In Europe, hedge fund activism is a less combative or confrontational, behind-the-scenes, pro-active form of intervention in underperforming or even performing targets, with more nuanced, at times even patient value investors seeking incremental changes. This is also true for Hong Kong.

There are ascertainable converging interests between activists and institutional investors who are supportive of insurgents if they present credible and thoughtful proposals, backed by convincing evidence of operational improvements and strategic logic in a constructive manner, detailing facts and the competitive landscape. This extends to the serious media if choices are being suggested with analytical and stylistic integrity rather than stereotype accusations, aggressive letter-writing or unfair name-calling typical of extremist activism.

Their success has emboldened activists in recent years to engage larger market cap companies in a crescendo of involvement such as seeking dialogue, negotiations with management, shareholder resolutions, publicity campaigns, proxy fights and litigation. With proxy advisory firms wielding significant influence, no public company today seems immune from activist pressure, regardless of its market capitalisation, as support for activists by traditional long-term passive and index investors has lost any stigma that it once had.

Different Classes of Value and Activist Investors in Hong Kong

In Germany, over 100 different, mostly foreign, activist hedge funds have initiated about 400 campaigns against approximately 200 public companies in the past 15 years – most of them informal and secretive; only recently have local funds begun to play a more visible role (the August 2016 Stada campaign being the first successful proxy fight by a local German fund). The German regulatory and tax regime is quite unfavourable to setting up hedge funds and investment partnerships.

By contrast, there are four classes of different value- and investor relations-driven actors that make up the shareholder engagement and activism spectrum/movement in Hong Kong.

1) When a portfolio company underperforms, globally operating institutional investors such as BlackRock, T. Rowe Price and Vanguard now seek informal and private discussions with the board on an annual basis (see the typical list of demands made by such investors in Appendix B in Part I, featured in Hong Kong Lawyer (June 2017)), a collaborative and secret approach that has been described as “engagement” which has to be contrasted with traditional voting behaviour on part of such passive institutional or index investors in AGMs/Special Meetings. BlackRock alone is invested in 900 Hong Kong listcos and in close performance discussions with 100 of them on an annual basis – this signifies hundreds overall such exchanges and meetings between global institutional investors and underperforming public Hong Kong companies.

There are two different manifestations of local active Hong Kong investors investing in Hong Kong listcos:

(2) The first group (Value Partners) approaches management/the controller of underperforming Hong Kong companies in a spirit of informal politeness and constructive dialogue in order to persuade them to adopt some of the value enhancing demands and measures (see Appendix B) put forth by the investors – if the controller or management refuses to entertain such discussion with their investor, they immediately after the failure of establishing dialogue between investor and target company sell their position;

(3) The second group of local active Hong Kong investors (Argyle Street) identify purposefully widely held targets (of which there are only about 100 in the Hong
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Kong public market, instead of controlled companies) for their investment strategy: in the event of reluctance of the target board to engage in a dialogue about value and investor relations improvement (see the catalogue of investor demand in Appendix B), they do not exit their position (unlike the first group under (2), but proceed in the opposite direction by increasing their stock position and attempt a contested takeover strategy of such reluctant target company instead.

(4) The fourth, and most visible, class of activist investors that are the subject of Frank Wong’s study of Hong Kong activism (TCI, Elliott, SAM, Webb), some local Hong Kong and several international activist investors, just like the other already mentioned three classes of Hong Kong active or activist investors, also at first attempt to engage in constructive dialogue with the listcos in which they are invested in the hope that target management would adopt their proposals (see for such typical demands, Appendix B). They go public/hostile reluctantly as a last resort, only after a break-down of negotiations.

The most intriguing example for such informal and constructive activist approach was established by several local Hong Kong ongfunds with hundreds of campaigns that have followed the pathway as described above under (2). They deliberately do not crave the name recognition of some of the well-known local Hong Kong and international activist investors (as outlined under (4)); they rather seek to convince with a broad investment base and successful dialogue as outcome determinative, even if virtually hidden from the public view. Just one of those Hong Kong funds alone (Value Partners) is invested in minority positions in the 5–10 percent range in a little under 200 Hong Kong listcos and has been engaged in value improvement and investor relations enhancement discussions with half of their targets over time.

In the fund’s self-understanding, it pursues a philosophy that is constructive rather than confrontational to the invested firms. Regarding the local peculiarity that family-controlled firms make up the vast majority of the public market, this fund recognises the chairman-centricity of many potential target firms so much so that all corporate decisions are de facto centralised. Hence, after having made their investment in the 5–10 percent range, this fund typically commences its communicative engagement with the target company chairman, and attempts to come across as friendly with its often very detailed list of suggestions for improvement (see Appendix B). Much like BlackRock, they appeal to the self-interest of the controller that stands to profit the most from better valuation and higher share price.

We describe the paradigmatic active local fund activist approach in Hong Kong merely as “giving advice”. We are told that such fund’s constructive approach has worked in two-thirds of their engagements. If the approach does not work, they prefer to sell their position and exit rather than becoming confrontational. Typically, the local fund’s advice will include an improvement of dividend pay-outs, other capital structure optimisation, and an enhancement of investor relations. In terms of target firms, their engagements focus on small to mid-cap firms as historic targets since its establishment.

Conclusion

It is important to distinguish between the above-referenced four different types of active global institutional and active local Hong Kong investors, as opposed to local Hong Kong and international activist investors and hedge funds that differ markedly in their investment thesis and execution of their strategic plans, but have one tactical outlook in common: They resort to a publicity campaign in the press, a proxy fight or litigation for minority shareholder protection only reluctantly, once all attempts at reasoning with target management/the controller about specific value propositions designed to increase the stock price and shareholder value have broken down. The most remarkable phenomenon is that, as Frank Wong has demonstrated, (i) so many more instances of local or international active and activist investments have taken place in the Hong Kong market missed by the press and professional circles; (ii) how large passive investors such as BlackRock have been quite active in this segment, with about 100 annual monitoring meetings out of their 900 Hong Kong portfolio companies on their part alone; and (iii) how local Hong Kong funds (such as Value Partners) have refined their pragmatic, “giving advice” approach in hundreds of precedent cases that is both so effective and at the same time purposefully hidden from public view.
面對重重困難：積極主義者對香港與德國的受控公司或受大股東影響的公司所採取的策略(第二部分)

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這是一系列討論公司積極主義的文章的第二篇。在第一篇文章中，我們討論了積極主義股東對香港和德國的受控公司或受大股東影響的公司所採取的策略和戰略。本文將繼續討論對沖基金積極主義者在這兩個市場所進一步體驗到的一些相同和不同情況。第三篇文章(只供網上閱讀)將會討論香港的主要論述，以及香港/中國、與德國/歐洲大陸之間在股東和對沖基金積極主義方面，其實際共同點就是股東介入這一概念。

積極主義對沖基金的監察效能

百分之四十被廣泛持有的德國公眾公司，均存在主事人與代理人之間的衝突。相反，由於香港大多數的上市公司都是受控公司或受大股東影響的公司，因此香港的代理衝突，存在於控權股東與小股東之間。

許多人認為，擁有權與控制權的劃分(Berle-Means)，以及主事人與代理人方面的問題(Jensen-Meckling)，在近年已導致市場資本的急速滑落和股價價值的損失，從而犧牲了大型的DAX 30德國企業以及企業集團的股東利益，例如：RWE、E.on等公用事業公司，以及TUI、Commerzbank、Volkswagen和Deutsche Bank等。有鑑於此，關注此等情況的機構投資者，已提出就有關事宜與積極主義對沖基金進行磋商，從而尋求恢復當中的價值(參見《香港律師》(2017年6月)所載的本文第一部分的《附錄A》)。

觀察家們相信，通常取得1%至10%少數股權(在總數上很少會超過15%)的主要積極主義對沖基金，它可以代表全體股東行使監察職能，但又不致於破壞周年同仁大會(股東)、監督委員會和管理委員會之間的權力平衡。首先，它們並沒有將自身的觀點加諸任何人身上(但管理委員會或監督委員會除外)；相反，它們尋求介入並提出經過周詳考慮的行動替代方案。其次，它們必須遊說大多數少股東並贏得他們的信任，願意將票交給它們，從而發揮策略性的影響力。

歐洲一些具識見的市場人士對於這樣的說法－擁有權與行政管理權的劃分，導致產生更高的代理費用和其他耗費，但基於積極主義者的介入，此等費用將可降低－開
德國對權益對沖基金積極主義的合法性提出挑戰

首先，根據香港和德國所作的共同觀察，由於積極對沖基金在資金規模、獨立性、以及在金和資本市場的專門知識方面所具備的核心競爭力，因此我國企業家對於企業管治監察者，這種似乎就是理所當然的。然而，德國也沒有對此的意見認為，若非他們採取雙層形式的委員會架構，該國的企業結構狀況亦非必然理想。

他們指出，監督委員會不僅是一個具有監督職能和間接參與管理職能（通過對某些須給予相關同意的業務決策並作出核准）的重要機構，它同樣亦需要對整個企業的「良好管治」實務負責。

為了強調這一概念，傳統的德國學說將《德國企業管治守則》（“DCGK”）與《英國管理守則》（2012年）來作一比較。《英國管理守則》訂明：「對投資者來說，管理不僅僅是投票表決。事實上，它的範圍可包括在策略、績效、風險、資本結構和企業管治（包括文化和報酬）等方面，對公司的管理進行監察和介入。介入公

德國對權益對沖基金積極主義的合法性提出挑戰

祙，亦即是指與公司就某些必須具有的議題（例如與股東大會）進行有意義的對話」（第3.1節）。DCGK則訂明：「監督委員會的任務，是在管理委員會領導公司的過程中，向其提供意見，並對其所採取的行動予以監察」（第5.1.1節）。

「管理委員會須定期及時前進行報告，業務發展和風險等所有相關問題（包括風險管理和合規事宜）」，「監督委員會作出匯報」（第3.4節）。「管理委員會和監督委員會進行密切合作，以期更進一步要企業管治」（第3.1節）。

基於對英國的積極股東的活動範圍和任務所作的描述，以及對德國監督委員會的職能所作的描述，其運用的措辭都幾乎相同，這一事實表明（而傳統主義者亦因此認為）德國並沒有太大空間，可以通過另一個監察機構來創造額外的股東價值。

有意見認為，英國（就德國的監督委員會委員而言，也包括香港的「非執行」）獨立董事角色，亦即是指與公司就某些必須具有的議題（例如與股東大會）進行有意義的對話，而有時甚至是有着許多的價值投資者，他們會尋求增量的變化。

在今天，德國企業家對於企業管治監察者，這種似乎就是理所當然的。然而，德國也沒有對此的意見認為，若非他們採取雙層形式的委員會架構，該國的企業結構狀況亦非必然理想。他們指出，監督委員會不僅是一個具有監督職能和間接參與管理職能（通過對某些須給予相關同意的業務決策並作出核准）的重要機構，它同時亦需要對整個企業的「良好管治」實務負責。

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事實上，香港的技術也如是。

支持採取反行動的積極主義者和機構投資者如果能夠提出可靠和周詳的建

議，並獲得建設性的運作改良和策略邏輯等方面的具說服力證據（當中詳細描述相關事實和競爭狀況）作為支持，它們之間是存在可予確定的相同利益的。這情況也可延伸至嚴肅的媒體，前提是所提供

的選擇具有分析性和風格完整性，而並非只是極端積極主義所慣常作出的刻板式指責、發具攻擊性的信函、使用不公平的侮辱性言詞等。

它們近年在這方面所取得的成功，鼓勵了積極主義分子以漸強的參與方式，介入股權市場的企業，例如尋求雙方對話，與管理層進行談判，股東決議、宣傳活動、委託投票權之爭和訴訟等。在今天，隨著代理顧問公司的影響力日增，而由於積極主義者獲得傳統的長期被動和指數投資者所給予的支持，因此沒有任何一家公司（不管其市值多少）能夠得以免於面對積極主義者所施加的壓力。
香港不同類別的價值及積極主義投資者

德國在過去15年，有超過100個不同（大多數為外國的）的積極主義對沖基金，曾經向大約200家公眾公司發動了大約400次行動，而其中大部分是正式和非公開地進行的；到了近期，才有當地資金開始扮演為人們所覺察的角色。德國的監管和稅務制度，對於設立對沖基金和建立投資夥伴關係，存在著頗為不利的影響。

相反，不同的價值驅動因素和投資者關係驅動因素合共有四類，而它們形成了香港的股東介入和積極主義範圍/行動。

（1）一家投資組合公司如果表現不佳，在全球營運的機構投資者（例如BlackRock、T.RowePrice和Vanguard）現時會要求每年與該公司的董事會進行非正式和私下的商談（參看《附錄B》關於該等投資者通常所提出的要求），而那是一種被稱為“介入”的協作和不公開做法（這有別於在AGM /特別會議中的被動機構投資者或指數投資者的傳統表決行為）。單是BlackRock本身，便已投資於900家香港的上市公司，且每年會與其中100家進行緊密的業績商談，而這意味著，環球機構投資者和表現不佳的香港公眾公司之間，存在著數以百計的此等交流及會議。

本地的積極香港投資者投資於香港的上市公司，有著兩種不同的形態：（2）第一類的投資者（Value Partners）會本著非正式和不公開做法的精神，與表現不佳的香港公司的管理層/控權者接觸，以期說服他們採取該等投資者所建議的一些價值提升要求和措施（參見《附錄B》）。如果該控權者或管理層拒絕與其投資者進行商議，這些投資者眼看與目標公司建立對話的嘗試失敗，他們會立即將所持有的該公司的股份出售；

（3）第二類的本地積極香港投資者（Argyle Street）它們就其投資策略，針對性地識別一些被廣泛持有的目標公司（在香港的公開市場中，只有大約100家這類公司，而受控公司不包括在內）：目標公司的董事會若不願意就價值和投資者關係的改善與他們進行對話（參看《附錄B》），他們不會將其持有的股份出售（這有別於第（2）點所描述的第一類投資者），而是會以相反的方向採取行動，亦即是，增持該公司的股份，並嘗試對不願意接受其意見的目標公司採取爭奪性的收購策略。

（4）第四類（也是最為人覺察的一類）的積極主義投資者，是Frank Wong對香港積極主義所進行的研究對象（TCI、Elliott、SAM、Webb），它們是一些本地香港和數個國際積極主義投資者，而正如其他曾經提及的三類香港積極或積極主義投資者一般，它們也是首先嘗試與其投資的上市公司進行建設性的對話，以期該目標公司的管理層能夠採納它們的建議（參見載於《香港律師》(2007年6月)的本文第一部分的《附錄B》所述的該等常規要求）。如果只有在談判破裂後，才會不惜願地將採取公開/敵對態度，以作為一種最後的手段。這些不正式和具建設性的積極主義策略的其中一些最顯名例子，是由數個本地香港基金所作出，它們曾按照上述第（2）點所述的方式發起了數次行動。它們並不刻意追求一些知名本地香港及國際積極主義投資者的知名度（正如第（4）點所述的情況）。而是寧可嘗試以廣泛的投資基礎和成功的對話來說服對方（即便此等行動看來是隱藏於公眾的背後）。在該等香港基金中，只有一個（Value Partners）是單獨投資幾近200家香港上市公司，並擁有其在5-10%範圍內的少數股權，並且在某一段時間之內，與半數其目標公司持續進行價值提高和改善投資者關係的商議。

該基金的自我概念是，它所採取的，是一種對所投資企業的建設性而非對抗性的哲學。本地的公眾市場，絕大多數是由家族控制的企業所佔據，對於此等情況，該基金明白到許多潛在的目標公司，都是以董事長為領導核心，因此所有的公司決策實際上都是中央集權。因此，當這基金單獨對某一目標公司作出了5-10%範圍內的投資後，它通常會與該公司的董事長展開溝通對話，並會嘗試以友好方式，提出其詳盡的改善建議（參見《附錄B》），而它的做法，也是與BlackRock的做法十分類似，即是訴諸公司控權者的自身利益一當公司獲得更佳的估值和當其股價上升時，這些公司控權者才是真正的最大得益者。

我們將香港的典型積極本地基金積極主義處理方式，描述為「提供意見」。我們得悉，該基金的建設性處理方式，已經在其所接觸的三分之一管理層中產生作用。如果該基金所提出的建議，會包括對股息的支付作出改善，對其他資本結構進行優化，以及加強與投資者之間的關係。該目標公司而言，該等基金自成立以來，它們的焦點向來都是放在中小型企業身上。

結論

我們必須區分上述四種不同類型的積極環球機構和積極本地香港投資者（相對於本地的香港和國際積極主義投資者及對沖基金而言），而它們在投資理念和策略計都的執行方面，都有著顯著的差異，但當中有一個戰略觀點卻是一致的：它們只有在無法與目標公司的管理層/控權者，就該等為了提升股價和股東價值而提出的一些具體價值主張達成協議時，才會不情願地為了保障小股東的權益，在新聞媒體展開宣傳行動，以及進行委託投票權之爭或提起訴訟。最顯著的一種情況是，正如Frank Wong所提出的，（i）其實還有更多本地或國際積極及積極主義投資例子在香港市場出現，但它們卻被新聞媒體和專業界所遺漏；（ii）大型的被動投資者（例如BlackRock）是如何活躍於這一範疇中（單就它們本身而言，在其合共900家的香港投資組合公司中，便曾進行了大約100次的年度監察會議）；及（iii）本地香港基金（例如Value Partners）如何在數百個先例中調整其「提供意見」的實際舉措（那是一項既有效，同時又刻意地隱藏於公眾背後的舉措）。
Time to Go Back To Basics?

By Charles Allen, Partner & Head of Commercial Litigation and International Arbitration

Orrick
“This decision confirms Hong Kong’s position as an arbitration-friendly jurisdiction.”

This ritual phrase seems to follow every law firm bulletin reporting on the latest judgment staying proceedings brought in breach of an arbitration agreement or granting indemnity costs following unsuccessful applications to set aside arbitral awards, and the like.

The truth of the statement is undoubted, but it is questionable whether it adds much to the debate about the merits of Hong Kong as a seat, or as a forum in which to enforce awards, relative to, say, Singapore. Hong Kong is arbitration-friendly because it has excellent hardware and software: legislation based on the UNCITRAL Model Law, decades of jurisprudence, and good lawyers and judges. A more precise statement, therefore, would be that Hong Kong is a “rule of law-friendly” jurisdiction, because our judges uphold their oaths and do their job in accordance with what the law requires.

Talking about the merits of Hong Kong as a dispute resolution centre, it is interesting to observe the extent to which the litigation departments of many international law firms in Hong Kong are shifting from doing actual litigation to other types of dispute-like work, such as FCPA and other investigations, financial regulatory work, and of course arbitration. In fact, it is probably fair to say that the days of plentiful general commercial knockout litigation in Hong Kong are largely over. The reality these days is that there are fewer and fewer international law firm solicitors issuing writs, fronting up before the Master on security for costs and Order 14 applications, and generally rolling up their sleeves in the High Court. It is also becoming less common these days to see an exclusive jurisdiction clause in a commercial contract identifying the Hong Kong High Court as the forum.

If you doubt this, do a Writ search and see how many banks, listed companies and MNCs are suing and being sued in Hong Kong these days. Whilst true that the courts are busy, and there are plenty of judgments, it is not the large business institutions who are litigating in Hong Kong except in cases where there is nowhere else to go, for instance insolvency matters, shareholders’ disputes, fraud cases, etc.

So, where are the commercial cases going?

That is obviously a difficult question, but the likelihood is that, in cases where there is a choice, parties are choosing courts in other jurisdictions, perhaps even Singapore’s much-hyped International Commercial Court. In addition of course, there is arbitration.

A shift towards arbitration is completely understandable. It has a number of features which are attractive to commercial parties, especially with respect to cross-border transactions, not the least of which is the ease of enforcement under the New York Convention. However there is an aspect of the rise of arbitration, and the general decline in commercial litigation in Hong Kong, that is a slight concern, namely that some of the advantages of litigation over arbitration are occasionally neglected.

Arbitration versus Litigation

Imagine, for a moment, a transaction which has no cross-border elements, where there are no concerns about enforcement outside Hong Kong, and neither party is worried about home-turf advantage.

In those circumstances, not only may there be no compelling reason to choose arbitration, there might in fact be good reasons not to choose it. Two of these reasons are worth particular attention.

The first of these is the right to appeal. The Hong Kong International Arbitration Centre’s excellent website says this:

“The main advantages of arbitration can be summarized as follows: ... Final and Binding Arbitration awards are usually final and not subject to review on the merits, meaning prolonged court appeal procedures can generally be avoided.”

In other words, arbitration is a good thing because there is no entitlement to appeal against an award.

This has always been one of the so-called advantages of arbitration over litigation that leaves many people baffled.

There is, generally-speaking, no entitlement to appeal against an arbitral award. True, an application can be made to set aside an award in some circumstances on grounds of procedural unfairness etc., but there is no appeal on the merits (except on a point of law if you have opted in to the relevant provisions in the Arbitration Ordinance).

It is quite difficult to understand why parties would agree to this, except as a trade-off against ease of enforcement and some of the other undisputed advantages of arbitration which may be relevant in a particular case. Ask any lawyer who has ever represented a losing party. How likely is it that the client’s first question will be “I am so glad this decision is final and not subject to review on the merits, meaning I can avoid prolonged court appeal procedures”? Much more likely, in fact 99 times out of 100, the client’s first question will instead be “Can we appeal against this?”

Perhaps the suggestion is that arbitrators are virtually infallible, such that whilst the law contemplates that whilst they might get the procedure wrong or exceed their jurisdiction, the prospect of them misunderstanding the facts or misapplying the law is negligible.

That is quite obviously not the case. As much as many arbitrators are well-educated, experienced and smart, they still make mistakes. Even the full-time arbitrators, just like judges, sometimes get it wrong, whether it is on the law or
on the facts. Arbitrators, like judges, are human. And this is why, in the court system, we are fortunate to have a Court of Appeal and a Court of Final Appeal.

In a sense, the clue is in the question. If parties are absolutely set on arbitration, but either or both of them is not entirely confident that the tribunal will get it right, they can maximise their prospects of an objectively-good outcome by opting into the appeal system. But the reality is that few arbitration clauses are customised in this way, and most contracts contain boilerplate arbitration language, such that the losing party only finds out that it has lost any serious prospect of recourse against the award when it is too late.

The second advantage is the summary judgment procedure. As any experienced litigator will tell you, Order 14 of the Rules of the High Court entitles a Plaintiff to apply for summary judgment on the basis that there is no defence to the claim. There are some minor procedural hoops to get through (ie, Notice of Intention to Defend must have been filed, a Statement of Claim must have been served, and a Summons supported by an Affidavit must have been issued). In addition, the procedure is not available where the claim is based on an allegation of fraud or certain torts. But essentially, Order 14 provides a fast track mechanism to judgment which is especially useful in cases where the Plaintiff’s claim is for a debt. (A similar, but not identical, procedure is available under Order 86, enabling the Plaintiff to obtain summary judgment for specific performance of a contract).

These procedures are not available in arbitration, and this ability to issue a summary judgment application immediately after the Defendant has indicated that it will contest the action is a major advantage. It enables the Plaintiff to demonstrate quickly and cheaply that it means business, and the result is that cases are often settled swiftly. Moreover, even if the Defendant contests the application, and the court is not satisfied that a judgment should immediately be entered, the court may be sufficiently suspicious about the nature and strength of the defence that leave to defend is only granted on a conditional basis, such that security has to be provided for the claim. This ability, in some cases, to force a Defendant to provide security is another important advantage to the Plaintiff. It is also a major disincentive to the Defendant who may prefer to settle rather than tying up its capital as the case proceeds to trial.

It is of course recognised that the parties may agree, or the tribunal might be persuaded, to adopt a short form, expedited, procedure which could result in an award relatively quickly. In some circumstances, moreover, a tribunal might be persuaded to grant an interim or partial award.

In addition, it is appreciated that the courts are busy, the cause lists get full, and that there can be delays getting hearing dates. However, that is not an issue that only affects the judiciary: many international arbitrators are extremely busy and difficult to get hold of, and when you have tribunals of three, the problem is tripled. In any case, even where the Defendant does file affidavit evidence in opposition to an Order 14 Summons, and argues the application, the delays are likely to be measured in months rather than years.

Conclusion

The point overall is that whilst Hong Kong certainly is an arbitration-friendly jurisdiction, practitioners should not forget that arbitration is not the universal panacea. The arbitration community is constantly, and correctly, reminding clients and those advising them to take care when drafting jurisdiction and dispute resolution provisions, and in particular to get the arbitration clause right. And very often recommending arbitration is absolutely the right thing to do.

But sometimes it is also right to go back to basics. Appeals are useful for righting wrongs, and summary judgment can help Plaintiffs achieve their objectives relatively quickly.
是時候回歸到基本面？

作者 Charles Allen 合夥人兼商業訴訟及國際仲裁主管

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「這項裁決確認了香港是一個十分尊重仲裁程序的司法管轄區。」

在法庭就近期的一宗關於擱置法律程序的案件（該法律程序的提起，涉及違反仲裁協議，而法庭對要求撤銷有關的仲裁裁決之申請予以駁回，並下令申請人須支付彌償訟費）作出了判決後，每一家律師事務所在其通訊報導中，幾乎都慣性地作出了上述的評論。

這項評論的正確性是無庸置疑的。然而，談到香港作為一個執行仲裁裁決的司法管轄區，其所具備的優點，若與例如新加坡相比，也許亦會引起大家的一番爭論。

香港可說擁有一個有利仲裁的環境，因為它享有這方面的優良軟、硬件，例如：香港的仲裁法是以《聯合國國際貿易法委員會國際商事仲裁示範法》為依據；香港有一個累積了數十年相關法學經驗的仲裁體制；以及，這兒擁有優秀的律師和法官。

因此，我們亦可以更確切地說：香港是一個崇尚法治的司法管轄區，這裡的法官信守誓言，並嚴格依據法律來履行其職務。香港具備了作為一個爭議解決中心的各項優點，而我們觀察到的一個現象是：現時香港有更多國際律師事務所的訴訟部門，將其業務從實際訴訟工作，轉為從事更多與爭議解決有關的其他類別工作，例如：FCPA及其他調查、金融監管工作，當然也包括仲裁。香港處理一般性的商業訴訟的全盛時期，可以說已經成為過去，而國際律師事務所的律師亦已經減少；發出傳訊令狀；就訴訟保證金及「第14號命令」向聆案官提出申請；以及出庭為其當事人的利益在高等法院進行爭辯。此外，商業合約中的專屬司法管轄權條款，亦已經較少規定以香港高等法院作為解決相關爭議的審訊地。

倘若大家對上述的說法有所懷疑，大可在網上進行一次有關傳訊令狀的搜尋，看看近年有多少家銀行、上市公司和跨國企業在香港提起民事訴訟，又或是被別人提出民事申索。香港法院的審訊工作雖然相當繁重，且作出了大量的裁決，但該等訴訟僅有數是由大型企業機構在香港提起，除非此等案件涉及一些必須在香港解決的事宜，例如：破產、股東糾紛、欺詐等。

那麼，此等商業案件是由誰來處理呢？

這是一個頗難回答的問題，但當中的一個可能情況是：假如訴訟方有權選擇的話，他們也許會考慮在其他司法管轄區的法院提起訴訟，例如，在聲譽卓著的新加坡國際商業法庭。此外，當然還有仲裁案件。

現時有更多人願意採用仲裁來解決爭議，而這一趨勢是完全可以理解的，因為對商業爭議的當事人而言，仲裁具有一些相當具吸引力的特點：例如，有關爭議若涉及跨境交易，當事方可根據《紐約公約》享有在外國執行相關仲裁裁決的方便。然而，香港仲裁案件數目的增加，商業訴訟案件數目的減少，其實也是由於人們忽略了在某些方面，訴訟具有較仲裁優勝的地
仲裁與訴訟

就以一宗不含跨境元素的交易為例。在這項交易中，交易雙方不必擔心在香港以外地方執行有關裁決的問題，亦不必顧慮對方是否會享有主場之利。

仲裁裁決通常是終局的，不必就其是非曲直進行覆核；這意謂，我們可以免除冗長的法院上訴程序。換句說，仲裁的優勝地方，在於它沒有賦予人們權利，可就仲裁裁決提出上訴。

一般而言，爭議的當事方無權就有關的仲裁裁決提出上訴；但在某些情況下，他們可以以程序不公為由，要求撤銷有關的仲裁裁決，但卻無權對案件的是非曲直提出上訴(除非該當事方選擇受《仲裁條例》的相關條文約束)。

令人不解的是，除了因為仲裁裁決便於執行，以及在某些情況下，享有其他一些不具爭議性的好處之外，當事方為何願意接受仲裁的如此限制呢？我們不妨問一問那些敗訴方的代表律師，便知道其當事人在敗訴後，所發表的第一點意見是甚麼？

我們都明白法庭的審訊工作繁重，待審的案件排得滿滿，案件的審訊日期經常需要延後。但此等問題並非司法機構所獨有，許多國際仲裁員的工作也是十分繁重，當事人若要與他們取得聯繫，有時是談何容易。審理某宗案件的仲裁庭，假如需要由三名仲裁員組成，那麼當事人所面對的困難，便是上述困難的三倍。假如案件是由法庭處理，那麼即使被告人反對法庭發出有關「第14號命令」的傳票，並提出一份誓章作為證據支持，及就原告人所作之申請提出爭議，但被告人的此舉所造成的時間延誤，一般來說也只是按月、而非按年計算。

結語

結論

總括而言，香港雖然是一個十分尊重仲裁程序的司法管轄區，但執業者必須謹記，仲裁並非解決任何問題的靈丹妙藥。仲裁界的人士不時(及正確地)提醒各當事方及其意見提供者：在草擬司法管轄權和爭議解決條文的時候務須審慎，尤其是，必須正確擬訂仲裁條款，而使用仲裁程序來解決爭議，絕對是正確的選擇。但在某些情況下我們若能回歸到基本面，循訴訟途徑解決爭議，這亦不失為一個明智的抉擇：上訴程序能有效地糾正在裁決
Transparency of Information in the Market: the CITIC Case before the Market Misconduct Tribunal

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The Market Misconduct Tribunal recently found that a no material adverse change ("no-MAC") statement published by CITIC Limited in 2008 did not constitute market misconduct under s. 277 of the Securities and Futures Ordinance ("SFO") because the statement was unlikely to influence the market price of CITIC securities, and because it was not materially false or misleading.

This came as a surprise to many because at the time of the statement, directors of CITIC were aware of but had not disclosed to the market that it was facing significant mark-to-market losses on foreign currency derivative contracts. When disclosed to the market weeks later, CITIC’s share price plunged, wiping out around HK$20 billion, or two-thirds, of its market capitalisation.

This article identifies some of the more important issues raised by the Tribunal’s findings and the SFC’s decision not to appeal.

The “Likely To” Element

For a breach of s. 277 to be established, the no-MAC statement must have been likely to, inter alia, maintain, increase, reduce or stabilize the price of CITIC’s securities. This requires a potential causative effect in the market. The Tribunal understood this to mean likely to induce the investing public to deal, so as to undermine the open and honest workings of the market. Given the absence of any measurable effect of the no-MAC statement on CITIC’s share price, the Tribunal’s focus fell on the concepts of maintaining or stabilizing.

The purpose of a no-MAC statement is presumably to facilitate shareholders to evaluate the merits of a transaction against the background knowledge that it is “business as usual” in relation to all other aspects of the company’s affairs. Hence it is logical to focus on the concept of “maintenance” when considering the likely effect of a no-MAC statement. However, because maintenance seeks to preserve an existing state of affairs, the assessment of causality requires careful consideration.

The Tribunal concluded that the no-MAC statement was not likely to have the effect of maintaining CITIC’s share price because it was a routine statement relating to a transaction that was very likely to pass unnoticed by the market, and because of the absence of any prevailing trend or volatility in CITIC’s share price at the time of the statement. This view appears to be inconsistent with the practice of listed companies and their advisers relating to MAC statements – they are generally considered to be a significant requirement, are not made lightly and are subject to rigorous internal procedural controls (as was the case with CITIC). Given this, it is hard to accept that they are not at least potentially important in terms of their market effect. In other words, a company’s comment on its MAC position is the type of information that the market pays attention to – open markets rely on a continuous assessment of the total mix of available information and a no-MAC statement is a confirmation no less than is a statement there has been a MAC.

Recognising this requires a developed appreciation of the causal relationship between “no change” public announcements and maintenance. The Tribunal in Sunny Global (2008) accepted that “no change” announcements could underpin investor sentiment and maintain or stabilize share prices. The SFC has also warned that negative confirmations may be misleading because they can mask the impact of other factors (newsletter April 2015). One might compare this to the position of the captain (the decision maker) of a ship: his receipt of confirmation that the tide remains the same “maintains” his decision to stay on the present course just as an omission to provide him with information that an iceberg lays dead ahead does. The US Supreme Court long ago recognised the tangible importance of omissions to shareholder behaviour without requiring anything more than asking...
whether there would be a reasonable likelihood that the omitted fact would have assumed tangible significance in its deliberations (TSC Industries v Northway, 426 US 438 (1976), which has been judicially approved in the Singapore Court of Appeal).

Interpretative Process
An important step in the Tribunal’s reasoning was that CITIC’s no-MAC statement had been made pursuant to a requirement in the listing rules, which provided no definition of the term.

Undertaking an interpretation that sought to give the words their natural and ordinary meaning, unless the context and purpose points to a different meaning, the Tribunal concluded the MAC phrase meant that the financial integrity of the company must have been undermined for an enduring period. It is unclear why the Tribunal’s analysis of MAC phrases used in a loan default scenario, such as the Grupo Hotelero case, is germane to its use in an equity context. No analysis was undertaken of the background to the listing rule inclusion of the MAC statement requirement, nor of the major and connected transaction scenarios provided for in the listing rules that trigger MAC statements, nor the Exchange’s guidance on the phrase in its HKEX-GL41-12. Moreover, no account was made of how the Tribunal’s interpretation would serve the needs of shareholders assessing a proposed transaction – that it would be of little assistance suggests the Tribunal’s interpretation may be inconsistent with a core purpose of the listing rules.

That the MAC requirement in LR Chapters 14/14A does not contain the same language as LR13.09 appeared relevant to the Tribunal’s treatment of the MAC requirement as an “independent obligation”. However, unlike legislation, listing rules are far more directive in nature. LR13.09 is a continuing obligation and the listing rules do not treat information disclosures as existing in segregated silos: LR2.13 specifically requires information in any announcement to be complete, not misleading or deceptive, or present risk factors in a misleading way.

The primary question of course is not breaches of the listing rules but whether CITIC’s no-MAC statement was false or misleading or omitted material facts for statutory purposes. If the obligation to make a MAC statement was not an independent one then omitting other information the market would expect to be disclosed in compliance with the listing rules would be relevant to consider for this purpose – much like the ship captain’s position in the analogy above. In SFC v Wong Shu Wing and Another [2013] HKCFI 2302, the court recognised that listing rule disclosure requirements are relevant to the information a shareholder might reasonably expect to receive for statutory purposes (s. 214 SFO). Alternatively, if one followed the Tribunal’s approach, would a circular issued pursuant to LR Chapter 14 not be misleading even though it failed to mention a connected party element as required by LR Chapter 14A?

The Tribunal’s position leaves the market in an unsatisfactory situation. The utility of MAC statements to equity investors has been greatly diminished, and much uncertainty is introduced as to whether a statement pursuant to one provision of the listing rules has any bearing on compliance with other requirements. These are concerns that continue following the introduction of Part XIVA SFO particularly where a disclosure may be made pursuant to the listing rules to facilitate a corporate transaction at a time when the issuer is also withholding inside information pursuant to an applicable safe harbour.

The Macroscopic Perspective
When considering the CITIC case, one can also reflect on the Andrew Left/Citron case earlier this year in which a short seller was found by the Tribunal to have committed market misconduct under s. 277 as a result of issuing a report without conducting adequate due diligence. That case raised concerns related to the potential stifling of negative commentary in the market. In contrast, to find that CITIC is able to engage in corporate opacity of considerably greater proportions while at the same time pursuing other corporate objectives presents a macroscopic anomaly – company insiders acting opaquely appear to be held to lower standards than are applied to negative commentators. This suggests an erratic valuation of the free flow of information in a transparent market.

In the pre-Part XIVA context of the CITIC facts, the decision to use s. 277 was likely motivated by the lack of hard sanctions available for a breach of LR13.09 and the possibility of obtaining compensation under s. 213 SFO for shareholders who had incurred losses. However, the failure before the Tribunal and the SFC’s decision not to appeal has left shareholders without a real prospect for a remedy. It also leaves the market with an interpretation of how the listing rules operate that is at odds with commercial practice and lacks investor utility, putting the Exchange and the SFC in something of a conundrum as to whether to clarify the operation of the MAC statement requirement for it to service investor interests, or just to rewrite the disclosure requirement more unequivocally. The decision not to appeal also appears to sit uncomfortably with the SFC’s recent efforts to highlight an enforcement priority as being corporate wrongdoing that wipes out market value and impacts the integrity of the market. Further clarification of s. 277 will need to wait.
市場訊息透明度：市場失當行為審裁處對中信一案的裁決

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市場失當行為審裁處（下稱「審裁處」）近期裁定，「中信股份」於2008年發出的「沒有重大不利變動」聲明，並沒有違反《證券及期貨條例》第277條所指的市場失當行為，原因是該項聲明不大可能會影響中信所發行的證券的市場價格，而該項聲明亦不存在重大的虛假或誤導成份。

「審裁處」的該項裁決令許多人感到訝異，因為當中信發出上述聲明時，其董事已知悉該公司在外匯衍生工具合約方面，正面對巨大的按市價計值損失（mark-to-market losses），但卻沒有向市場作出相關披露。數星期後，當中信向市場披露有關消息時，該公司的股價大幅下挫，導致其大約200億港元，或相當於三分之二的市值被蒸發。

本文將討論「審裁處」的該項裁決和證監會決定不提出上訴，當中所引發的一些較為重要問題。

「相當可能會」這項元素
如要證明中信違反了第277條的規定，便必須明它在作出該項「沒有重大不利變動」的聲明時，會維持、提高、降低或穩定其證券價格，並因而需要證明市場存在潛在的因果作用。「審裁處」明白到當中的含義，是指這很可能會誘使社會投資大眾進行證券交易，並因而損害了市場的公開和誠實運作。由於並沒有任何方法可以用來衡量該項「沒有重大不利變動」聲明，將會對中信的股價產生甚麼影響，「審裁處」因此乃將其焦點放在「維持」及「穩定」此等概念上。

一間公司作出「沒有重大不利變動」的聲明，目的是要讓股東能夠根據其所掌握的背景知識（即是：就該公司的所有其他方面事務而言，該公司是否「業務一切如常」），來考慮是否決定進行某項交易。因此，在考慮某項「沒有重大不利變動」聲明所可能產生的影響時，較為合理的做法，是將重點放在「維持」這一概念上。然而，由於「維持」的含義是尋求保持現狀，因此在對因果關係進行評估時必須格外審慎。

「審裁處」最後的結論是，由於該項「沒有重大不利變動」聲明，是一項與某宗交易所有關的一般聲明，並非會慢慢過去而不為市場所察覺，而在中信作出該項聲明時，其股價亦並無任何明顯的走勢或波動，因此它不大可能會對維持中信的股價構成影響。「審裁處」的這一觀點，與上市公司及其顧問作出「重大不利變動」聲明的做法似乎並不一致，因為該等聲明一般會被視為事關重大的規定，不會輕易作出，而且必須受嚴格的內部程序所監控（正如中信一案的情況般）。因此，如果說，該項聲明不大可能會對市場產生重大影響，這說法是不能令人信服的。換句話說，一間公司倘若就其「重大不利變動」情況作出評論，這將會引起市場的相當程
度關注 — 而一個公開的市場，會將其獲得的各項消息綜合起來，並進行持續性的評估，而「沒有重大不利變動聲明」與「重大有利變動聲明」這二者事實上並無差別，都屬於一項確認。

要了解這一點，便需要更深入認識「沒有變動」公告與「維持」之間的因果關係。「審裁處」在Sunny Global (2008)一案中同意，公司如果發出「沒有任何變動」的公告，這能有助穩定投資者的情緒，以及維持和穩定股價。證監會也曾作出警告稱，負面的確認會有可能令人被誤導，因為它們可能會將其他因素所產生的影響隱藏起來（參閱2015年4月的通訊）。我們試將此等情況，來與一艘船的船長(決策者)所處的情況作一比較:當該名船長收到浪潮並沒有變動的確確認消息後，他作出了「維持」目前航向的決定;然而，不幸的是，對方遺漏了告訴他前面有一座冰山。

美國最高法院很久以前已承認，遺漏向股東披露關鍵事實是一個很嚴重的問題，尤其是需要考慮到，所遺漏披露的關鍵事實，是否會有合理可能導致產生嚴重後果(TSC Industries v Northway 426 US 438 (1976), 新加坡上訴法院同意這一看法)。

解釋過程

在「審裁處」的裁決理由中，其中的一個論點是:中信所發出的「沒有重大不利變動」聲明，是根據 《上市規則》之規定而作出，但《上市規則》並沒有對這一用語作出任何界定。「審裁處」在解釋這一用語時，嘗試賦予其自然和一般的含義(除非其文意和目的另有所指)，而「審裁處」的結論是，所謂的「重大不利變動」，其意思是指該公司的財務穩健狀況，已明確地受到長期破壞。但令人不解的是，「審裁處」對於這一在債務違約狀況(例如Grupo Hotelero 一案)中運用的術語所作的分析，為何會與在股本權益狀況中的運用存在密切關係。

當然，該案主要涉及的問題，並非中信是否違反了《上市規則》，而是它所作出的「沒有重大不利變動」聲明，是否屬於虛假、誤導，或遺漏了法定的事關重要事實?如果作出「重大不利變動」聲明的責任，並非一項獨立的責任，那麼沒有遵守《上市規則》的規定，遺漏披露市場預期披露的其他資料，也是一種應當加以考慮的情況 — 而這情況正好與上述此中，該船長所面對的情況類似。法院在SFC v Wong Shu Wing and Another [2013] HKCFI 2302一案中，承認 《上市規則》的披露規定，與股東就法定目的而合理預期獲得的資料是相關的(《證券及期貨條例》第213條獲得賠償)。然而，「審裁處」裁定中信並沒有違反，而證監會又決定不提出上訴，此舉將會給一個透明市場中的資訊自由流動帶來不穩定的評價。

宏觀角度

我們在討論CITIC一案時，也可以參考在本年較早時審理的Andrew Left/Citron一案。在該案中，一名沽空者於並無作出充分盡職審查的情況下刊發了一份報告， 「審裁處」後來裁定他觸犯了第277條所指的市場失當行為，而該案的裁決，引發人們關注其對市場的負面影響所可能造成的損害。相反，中信被裁定可以在更大範圍內，作出有欠透明的企業行為，而另一方面，它又同時可以尋求達致其他企業目的;事實上，這為市場帶來了一種宏觀異常狀況 — 法庭似乎是運用較衡量負面評論者為低的標準，來衡量行事不透明的企業內部人員，而此舉將會給一個透明市場中的資訊自由流動帶來不穩定的評價。
ANTI-MONEY LAUNDERING UPDATE

Giving Official Statistics Some Context

Recent headlines in the local press that convictions for money laundering were on the decrease and this was apparently cause for concern need to be given some context.

First, there is no offence of “money laundering” as such. Rather, the relevant legislations set out a number of offences, the two most well-known of which are “dealing” with the proceeds of serious crime and “failing to report” a knowledge or suspicion. For now, the “dealing” offence has become the prosecution’s main weapon of choice in prosecuting alleged offenders, whereas charges for “failing to report” are rare.

Second, while (at the time of writing) the statistics on the Joint Financial Intelligence Unit (“JFIU”) website do show a downtrend in the number of convictions and assets restrained or recovered since 2015, the figures are generally not dramatic. The downtrend can be explained without any suggestion that more people have been getting away with money laundering type activities in the last two years. For example:

• a heightened awareness of anti-money laundering activities has resulted in far greater compliance and reporting across financial institutions, regulated entities and other business sectors, including the professions. As a profession, solicitors have helped lead the charge to combat money laundering in Hong Kong;
• it would be no surprise if the drop in convictions was explained (in part) by certain high profile and landmark cases that passed through the Court of Final Appeal between 2014–2016. These cases helped clarify (among other things) the requisite alternative mens rea for the dealing offence (namely, “having reasonable grounds to believe”) with respect to conduct in Hong Kong and overseas (“Dealing in Proceeds of Crime and the Alternative State of Mind” and “Dealing Offence: Overseas Conduct”, Industry Insights, March 2015 and November 2016, respectively).

Third, the official statistics take no account of just how active (for example) the Securities and Futures Commission has been in the fight against money laundering, as regards those entities or persons governed by its Code of Conduct. It is not unusual to see regulatory investigations or proceedings against licensed corporations and associated entities and their responsible officers for breaches of the industry’s AML guidance. At the same time the SFC leads among the regulators in Hong Kong (as does the Law Society of Hong Kong among the professions) in promoting standards of good practice (“Some Lessons from SFC’s Further Guidance to the Markets”, Industry Insights, March 2017).

Like most (if not all) official statistics, it is important to know their context. Particularly, in this case, as Hong Kong gears-up for her next Financial Action Task Force (and Asia Pacific Group) mutual evaluation in 2018–2019 and while statutory proposals are being considered with respect to the record-keeping and customer due diligence requirements for solicitors, foreign lawyers and accountants in Hong Kong.

While no excuse for complacency, a downtrend in these recent statistics could be a good sign and an uptrend (in future years) should not necessarily be a cause for alarm. Everything has a context.

- Jason Carmichael and Warren Ganesh, RPC

打擊清洗黑錢的最新消息
給官方統計資料提供一點背景資料

最近本地新聞有標題報道，被裁定洗黑錢罪名成立的人數在下跌，這些報道明顯值得關注，並需要給提供一點背景資料。

第一，現在沒有「清洗黑錢」的罪行。相關法例只是列出幾項罪行，而兩項最為人知曉的是「處理」嚴重罪行的得益，以及「不舉報」所知道的或所懷疑的事。目前來說，「處理」罪行已經成為控方檢控被指稱的罪犯可選用的主要武器，而「不舉報」則極少被用來檢控罪犯。

第二，(撰寫本文時)聯合財富情報組網站的統計資料(「聯合財富情報組」)的確顯示，自2015年開始，被定罪人數及被限制的財產價值或已的回金額呈下跌趨勢，不過數字整體上不是遽然下跌的。我們可以給下跌趨勢作出解釋，而完全不用認為過去兩年從事清洗黑錢一類活
**ARBITRATION**

**Hong Kong Court grants execution against PRC state-owned enterprise, rejecting its claim of Crown immunity**

In TNB Fuel Services SDN BHD v. China National Coal Group Corporation [2017] HKCFI 1016, the Hong Kong Court of First Instance (the "Court") has granted a charging order against shares held in Hong Kong by China National Coal Group Corporation ("China Coal") (a PRC state-owned enterprise ("SOE")), in so doing rejecting an assertion of Crown immunity by China Coal. The judgment provides valuable guidance on the approach of the Hong Kong courts to any claim of Crown immunity by PRC entities in Hong Kong.

**Background**

Crown immunity, the common law doctrine arising from the principle that a State may not be sued in its own courts, was, in the case of *Hua Tian Long* (No. 2) [2010] HKLRD 611 (the "HTL Case"), held to apply in Hong Kong following the 1997 handover of Hong Kong from Britain to China. It entitles the PRC Central People's Government ("CPG") to claim immunity from suit and execution in the courts of Hong Kong.

Whilst Crown immunity does not apply to arbitration proceedings in Hong Kong, it will, however, apply to ancillary and enforcement proceedings in the territory, as these will come before the Hong Kong courts.

In the HTL Case, the Court of First Instance determined that the Guangzhou Salvage Bureau ("GSB") was *prima facie* entitled to claim Crown immunity, principally because it was controlled by the CPG.

In the current case, the Respondent, China Coal ("Award"), obtained an arbitral award for approximately US$5.3 million against the Respondent, China Coal ("Award"). The Court granted TNB leave to enforce the Award. Subsequently, TNB applied for a charging order over shares held by China Coal in a Hong Kong company, China Coal Hong Kong Limited. TNB successfully obtained an *order nisi* in respect of the shares. However, China Coal, which is wholly owned by the Chinese government’s State Asset Supervision and Administration Commission ("SASAC"), asserted that, as an entity of the CPG, it was entitled to Crown immunity in Hong Kong. The Hong Kong Secretary for Justice ("SJ") intervened in the proceedings.

**Judgment**

Justice Mimmie Chan rejected China Coal’s assertion of Crown immunity, finding that: (a) China Coal was not entitled to claim immunity because it lacked the authority to make a valid claim; (b) as a matter of fact under PRC law, China Coal was not a part of the CPG nor of SASAC; and (c) applying the "control test", China Coal’s ability to exercise independent powers of its own, its business and operational autonomy meant that it was not entitled to invoke Crown immunity.

In determining that China Coal lacked the authority to assert Crown immunity, Justice Chan gave particular consideration to a letter obtained by the SJ from the Hong Kong and Macao Affairs Office of the State Council of the CPG (the "Letter"). Among other assertions, the Letter confirmed, that save for in "extremely extraordinary circumstances where the conduct was performed on behalf of the state via appropriate authorisation etc." SOEs carrying out commercial activities shall not normally be deemed to be acting "on behalf of the Central Government".

The Court determined that the relevant PRC law and regulations, demonstrated that China Coal “has autonomy and extensive independence in carrying out its business which autonomy is in fact expressly provided for and protected...”. The status of China Coal was readily distinguishable from the GSB under the earlier HTL Case. In that case, the entity was a public institution which had no shareholder, no paid-up capital, no right to independently acquire or dispose of assets, and no ability to assume
independent civil liabilities.

Accordingly, the Court dismissed China Coal’s assertion of Crown immunity and granted the charging order absolute against the shares. China Coal was ordered to pay TNB’s and SJ’s costs of the application.

Comment

The TNB Fuel Services judgment provides helpful guidance on the application of Crown immunity in Hong Kong, in particular when it comes to Chinese SOEs. The reasoning employed by the Court suggests that absent the “extremely extraordinary circumstances” referred to in the Letter, SOEs will face difficulties in successfully claiming Crown immunity in Hong Kong.

- Damien McDonald and Matthew Townsend, Peter Yuen & Associates (in association with Fangda Partners)

仲裁

香港法庭批准針對中國國有企業執行裁決，駁回官方豁免權的聲稱

在TNB Fuel Services SDN BHD v. China National Coal Group Corporation [2017] HKCFI 1016,香港原訟法庭(「原訟庭」)發出押記令,扣押中國國有企業(「國企」)中國中煤能源集團有限公司(「中煤」)所持有旗下一間香港公司的股份。TNB成功取得臨時押記令扣押該批股份。然而，中煤是由中國國務院國有資產監督管理委員會(「國務院國資委」)全資擁有的,中煤聲稱,中煤作為中央政府屬下的企業,在香港享有官方豁免權。香港律政司介入訴訟。

判決

陳美蘭法官駁回中煤聲稱享有官方豁免權的主張,裁斷:(a) 中煤沒有聲稱享有豁免權,因為中煤沒有提出有效聲稱的權限;(b) 根據中國法律,中煤事實上不屬於中央政府或國務院國資委的一部份;及(c) 應用「控制權測試」,中煤能夠行使獨立自主的權力,自行經營業務,那就是說,中煤不可援用官方豁免權。

裁定中煤沒有聲稱享有官方豁免權的權限時，陳法官特別考慮到國務院港澳事務辦公室發給律政司的函件(「該函件」)。除了解他主張之外,該函件確定,在一般情況下,除非在極其罕有的情況下獲中央政府授權代為行事,否則國企的商業行為不應被視為代表中央政府執行職務。

原訟庭裁定,根據中國相關的法律法規,中煤有自主權,很大程度上可以獨立經營業務,其自主權是明文規定並受保護的。中煤的身份與上述HTL案廣州打撈局的身份是可以輕易區分的。在HTL案,涉案實體是公共機構,沒有股東,沒有繳足資本,沒有獨立購買或處置資產的權利,也沒有獨立承擔民事法律責任的能力。

因此,原訟庭駁回中煤聲稱享有官方豁免權的主張，並發出扣押該等股份的絕對押記令，命令中煤支付TNB和律政司的申請訟費。

短評

TNB Fuel Services案的判決關於官方豁免權在香港的應用,給香港法庭提供了有用的指引,特別是對於涉及中國國企的案件,作用更大。原訟庭提出了論據，表明沒有該信函所指的極其罕有的情況,國企在香港成功聲稱享有官方豁免權殊不容易。

- Damien McDonald及Matthew Townsend,阮葆光律師事務所(聯營方達律師事務所)
The last time the District Court’s monetary jurisdiction increased was in 2003. In summary, that increase was to the current level of HK$1 million for general civil claims and HK$3 million for land-related claims. The previous increase was in 2000. Therefore, the confirmation in the Judiciary Administration’s recent Paper (“Review of the Civil Jurisdictional Limits of the District Court and the Small Claims Tribunal”) that these jurisdictional limits are due to increase in 2018, subject to approval by the Legislative Council (“Legco”), will be welcome in many quarters. The proposed increases are (in short) HK$3 million and HK$7 million, respectively.

The Judiciary Administration’s Paper makes for an interesting read. Not only does the Paper contain a summary of projections for the increased workload of the District Court, as a result of the proposals, it also tracks developments in the District Court’s experience and procedures since 2000. Since then, District Court civil practices and procedures have increasingly mirrored those of the High Court, such that they are essentially the same (save for certain specialist areas that are traditionally more the focus of the District Court).

The proposals should also be seen in the context of the change in certain economic indicators in Hong Kong since the last increase in 2003. Not surprisingly, these indicators focus on inflation and property prices and are summarised in the Paper.

An integral part of the proposals is a corresponding increase in the monetary jurisdiction of the Small Claims Tribunal (in the new West Kowloon Law Courts Building) from HK$50,000 to HK$75,000.

The proposals are due to be implemented in the first half of 2018, subject to passage of the necessary resolution in Legco, pursuant to s. 73A (“Amendments of limits of jurisdictions and other amounts”) of the District Court Ordinance (Cap. 336).

The Judiciary Administration’s Paper also outlines certain logistical arrangements necessary to handle the District Court’s increased workload, as a result of the changes.

Given the proposed jurisdictional increases and that civil litigation procedures in the District Court are modelled on those of the High Court, attention should turn to the “two-thirds costs recovery” rule in the District Court (pursuant to RDC O. 62, r. 32 – “Scale of costs”). If that rule is regarded as sacrosanct in the District Court (given, for example, access to justice type concerns and the socio-economic background of many of the court’s users, including a higher incidence of litigants in person), then for many stakeholders (including practitioners) more focus should be directed towards the solicitor High Court hourly costs recovery rates. As the President of the Law Society of Hong Kong stated in his letter to members, dated 9 June 2017, with respect to inter partes costs recovery rates:

“There should be a more effective mechanism to recover reasonable costs on the success of a meritorious claim. With the obsolete Solicitors’ Hourly Rates still in place, the recoverability gap of legal costs, ie, the difference between what a successful litigant has actually paid to his lawyer, and what he can recover from the other party under a costs order becomes wider and wider.”

Incredible as it seems, these hourly rates have been frozen for some twenty years and are yet another thing for all stakeholders to reflect on since reunification.

- Warren Canesh, Senior Consultant, RPC
**DISPUTES**

**Privilege in Investigations: No More Shackles?**

The High Court in London recently decided for the first time on the availability of litigation privilege in criminal investigations conducted by the UK Serious Fraud Office (the “SFO”). The decision could significantly limit the ambit of litigation privilege in cross-border investigations involving UK regulators, which will have implications for financial institutions and multinational corporations with operations in Hong Kong (The Director of the Serious Fraud Office v Eurasian Natural Resources Corporation Ltd [2017] EWHC 1017 (QB)).

**Decision at a Glance**

In 2011, Eurasian Natural Resources Corporation (“ENRC”) agreed with the SFO to engage external counsel to perform a “self-reporting” investigation, regarding allegations of fraud, bribery and corruption in its overseas business operations. In April 2013, the SFO terminated its dialogue with ENRC and commenced its own formal investigation instead.

The SFO applied to the Court for a declaration that documents generated during the self-reporting investigation were not privileged. These included (1) external counsel’s notes of individuals’ evidence, (2) forensic accountants’ books and records which identified controls and systems weaknesses and potential improvements, (3) factual evidence presented by external counsel to ENRC’s management, and (4) documents sent by ENRC’s external counsel to the SFO. ENRC mainly relied on litigation privilege for category 1, 2 and 4 documents, and legal advice privilege for category 3 documents.

Andrews J rejected all claims to litigation privilege, because criminal proceedings were not reasonably contemplated at the time they were created despite the existence of the investigation, and also on the basis that the documents were not created for the dominant purpose of obtaining legal advice pertaining to the conduct of litigation. Only the claim for legal advice privilege for category 3 documents succeeded.

**When is litigation reasonably contemplated?**

The judgment explored the issue of when adversarial litigation becomes “reasonably in contemplation” for the purpose of litigation privilege. The test is objective, but the court will also consider a party’s actual state of mind. There must be a real prospect of litigation. Where it is neither pending nor threatened, it must be in the active contemplation of a party. A “distinct possibility” or a “general apprehension” of future litigation is insufficient. In this case, ENRC needed to show that it was “aware of circumstances which rendered litigation between itself and the SFO a real likelihood rather a mere possibility”.

Andrews J rejected ENRC’s submission that a criminal investigation by the SFO should be treated as adversarial litigation for the purpose of privilege. Mere contemplation of an investigation is insufficient.

The Judge also set a higher threshold as to when a criminal prosecution is a real likelihood, as compared to the threat of civil proceedings. While there is no inhibition on commencing civil proceedings without foundation except costs sanctions, a criminal prosecution cannot be started “unless and until the prosecutor is satisfied that there is a sufficient evidential basis for prosecution and the public interest test is also met”. This appears to require knowledge on the party claiming privilege that the prosecution has gathered sufficient criminal evidence to justify a prosecution.

**Relevance to Hong Kong**

Under the lex fori principle, issues of privilege are determined by the laws of the forum. If disclosure is sought in an English court, English law applies regardless of any privilege that may exist under other laws. Financial institutions and multinational corporations which may become subject to investigations by UK regulators should be alert to...
this approach. Moreover, this stricter approach to litigation privilege might potentially be adopted by the Hong Kong courts.

In Super Worth International Ltd v Commissioner of ICAC [2016] 1 HKLRD 281, the Court of Appeal stated that there is “room for flexibility” in applying the lex fori principle. The Court expressly left open the question as to what approach would be taken where a discovery application is made to assist in foreign proceedings (ie, whether the Court should look beyond the lex fori and consider the laws on privilege of that foreign jurisdiction). This issue could loom large in the context of legal advice privilege, due to the difference in approach between Hong Kong and England, as Hong Kong has parted ways with English law by rejecting the narrow definition of “client” under Three Rivers (No. 5) since the recent case of Citic Pacific (No. 2).

- Richard Keady and James Wong, Bird & Bird

DISPUTES

Third Party Funding: Tales from the Emerald Isle

Given the similarities with regard to the laws of maintenance and champerty in Ireland and Hong Kong, and the “sisterhood” of the common law, the recent judgment of the Irish Supreme Court in Persona Digital Telephony Ltd & Anor v The Minister for Public Enterprise, Ireland & Ors [2017] IESC 27 should be of considerable interest to those who follow the debate about the merits of professional (“commercial”) third party funding for litigation.

As the leading judgment of the Chief Justice of Ireland notes (judgment of The Hon. Mrs. Susan Denham, at para. 7):

“This is the first case to come before the Court which raises the issue of the potential use of a third party professional funding agreement to support litigation.”

In short, the Irish Supreme Court refused to grant a declaration that an investment agreement, entered into during the
course of proceedings and providing for the third party funding of the claim, would not contravene the laws of maintenance and champerty. In doing so, the court held that the torts and crimes of maintenance and champerty survived as a matter of statute and common law in Ireland. It did not matter that there appeared to be have been no relevant prosecution in Ireland in living memory or that the statute concerned was ancient.

It is important to note that while the plaintiffs (the appellants) were seeking declaratory relief they were not challenging the doctrines of maintenance and champerty. There was also no suggestion of any wrongdoing on their part.

The Supreme Court’s decision is primarily underpinned by public policy considerations and it is clear that the outcome would have been the same even if the third party funding agreement had been entered into before the proceedings. As a result it appears that, for the foreseeable future, reform in this area in Ireland will be matter for legislation.

The case is relevant in Hong Kong, whose laws of maintenance (Winnie Lo v HKSAR, FACC No. 2/2011) and champerty (Unruh v Seeberger & Anor, FACV No. 10/2006) survive as a matter of common law with respect to Hong Kong court proceedings. Given that Ireland has not adopted statutory reform in this area (unlike, for example, England & Wales) it is interesting to note, as a matter of common law convention, the part that both Hong Kong cases played in the Irish Supreme Court’s deliberations; both cases having been considered (particularly, Unruh).

Short of a legitimate commercial interest (as opposed to a professional third party funding interest) third party funding for litigation in Hong Kong remains unlawful. The miscellany of exceptions that exist in Hong Kong are a result of case law developments.

As previously noted in Industry Insights, progress with respect to commercial third party funding for litigation in Hong Kong is stalled. Legislative reform in this area is unlikely in the foreseeable future; particularly, given the local circumstances of Hong Kong. Efforts for now are concentrated on the coming into force of the Arbitration and Mediation Legislation (Third Party Funding) (Amendment) Ordinance 2016, passed by the Legislative Council on 14 June 2017.

**David Smyth, Partner, RPC**

**爭議**

**第三者資助：綠寶石島的故事**

鑑於愛爾蘭與香港在助訟及包攬訴訟的法律方面有相似之處，並且在普通法上有「姊妹關係」，那些密切關注專業(「商業」)第三者助訟及包攬訴訟的優點，留意有關討論的人，應該對愛爾蘭最高法院最近在Persona Digital Telephony Ltd & Anor v The Minister for Public Enterprise, Ireland & Ors [2017] IESC 27的判決很感興趣。

正如愛爾蘭首席大法官在其主要判決指出（首席大法官Susan Denham的判決書第7段）：

「這宗案件涉及支持法律訴訟程序一方當事人的第三方專業資助協議，是法庭席前第一宗提出相關協議潛在用途作為爭論點的案件。」

簡言之，愛爾蘭最高法院拒絕批給聲明指出，投資協議，在法律程序的過程中訂立並就申索提供第三者資助的，不會違反助訟及包攬訴訟的法律。法庭拒絕這樣做，裁定在愛爾蘭的法規和普通法上，助訟及包攬訴訟的民事侵權和刑事罪仍然存在。在現代人的記憶中，愛爾蘭似乎一直沒有有關的檢控，有關法規也相當古舊，但這些都不是問題。

有一重點要注意，雖然原告人(上訴人)正尋求宣布性質的濟助，但他們不是挑戰助訟及包攬訴訟的原則。此外，沒有跡象顯示他們本身有行差踏錯。

最高法院的決定主要有公共政策考慮作為基礎，清楚的是，即使第三者資助協議在進行法律程序之前已經訂立，結果都是一樣。因此，看來在可見的將來，愛爾蘭在這領域的改革會是一件透過立法進行的事。

案件切合香港的情況，在香港關乎法律程序的普通法之中，助訟(Winnie Lo v HKSAR, FACC No. 2/2011)及包攬訴訟（Unruh v Seeberger & Anor, FACV No. 10/2006)的法律仍然存在。鑑於愛爾蘭未有在這個領域正式通過法律改革(有別於英格蘭及威爾斯等)，留意在普通法的傳統上，兩宗香港案件在愛爾蘭最高法院的考慮中所發揮的作用，也是一件有趣事；兩宗案一直有被考慮(特別是案)。

少了合理的商業權益(而不是專業第三者資助權益)的第三者資助訴訟，在香港仍然是不合法的。香港現有混雜繁多的例外情況是判例法發展的結果。

正如過往在《業界透視》指出，第三者資助商業訴訟在香港的發展停滯不前。這個領域在可見的將來不可能立法改革；考慮到香港的情況，就更不可能了。現在的精神都集中用來使立法會2017年6月14日通過的《2016年仲裁及調解法例(第三者資助)(修訂)條例》生效。

- 合夥人施德偉，RPC
GC AGENDA

CAC Issues New Rules on Internet News Information Services

On 2 May 2017, the CAC issued the Provisions on the Administration of Internet News Information Services, which will take effect 1 June 2017.

The CAC circulated a draft of the provisions in January 2016. The final version augments similar rules under the same name legislation promulgated in 2005.

Under the provisions, the term “news information” carries largely the same meaning as under the 2005 rules, that is, reports and comments on:

- Social and public affairs such as politics, economy, military affairs and foreign affairs.
- Social emergencies.

Like the 2005 rules, the provisions prohibit foreign investment in this sector and require a provider of internet news information services to obtain an internet news information service licence from the CAC or its competent local counterpart.

The provisions, however, expand the scope of “internet news information services” to reflect technological changes that have occurred since 2005 and govern all internet news and information services provided to the public, through forms such as websites, applications, forums, blogs, micro-blogs, public accounts, instant messaging tools and webcasts.

Unlike the 2005 rules, private investment in the editorial business of any internet news information service provider is expressly prohibited, and the business operation and editorial functions of the service provider must be separated.

In addition, the provisions require an internet news information service provider to:

- Only provide services to users who are registered under their real identity, and protect users’ personal information.
- When reprinting news information, indicate the original author and title, and ensure the source of the news information can be traced.
- Prominently display the internet news information service licence number on its website, establish a convenient complaint reporting channel, and timely respond to complaints.

Market Reaction

Gordon Milner, Partner, Morrison & Foerster, Hong Kong

“The core regulatory regime governing internet services in China has been extensively re-engineered over the past two years. Many of the provisions, such as the real-name registration and information security requirements, bring the 2005 rules into line with that regime. Others, such as the expansion to cover new media channels and technologies, capture apps which historically have occupied a grey area in the law. Moreover, the requirements to separate editorial functions and cite sources represent new material steps in a trend toward tightening control over editorial content and clamping down on the viral spread of stories the authorities consider ‘fake news’.”

Action Items

The provisions expressly prohibit foreign investment in this sector. Counsel for all domestic providers of internet news information services, no matter the application, should take immediate steps to initiate or tighten mechanisms to ensure compliance with the provisions, including separating editorial and business functions, ensuring the traceability of published information, protecting personal data, and responding to consumer complaints and the demands of regulators.

- Practical Law China

法律顧問備忘錄

網信辦發布互聯網新聞信息服務新規定

2017年5月2日，國家互聯網信息辦公室（「網信辦」）公布《互聯網新聞信息服務管理規定》（「《規定》」），自2017年6月1日起施行。

網信辦在2016年1月發布《規定》的草稿。

最後版本增加2005年頒布的同名法例一類的規定。

根據《規定》、「新聞信息」的涵義與2005規定所界定的幾乎相同，是指：

- 報道和評論社會公共事務，例如政治、經濟、軍事、外交。
- 報道和評論社會突發事件。

像2005規定一樣，《規定》禁止外商投資這個領域，規定互聯網新聞信息服務提供者向網信辦或者地方網信辦申請互聯網新聞信息服務許可。
然而，《規定》透過網站、應用程式、論壇、博客、網誌、微博、公共帳戶、即時通訊工具、網路直播等方式，擴大「互聯網新聞信息服務」範圍，以反映自2005年以來的技術變革，監管所有向公眾提供的互聯網新聞和信息服務。

與2005規定不一樣，《規定》明確禁止非公有資本介入互聯網新聞信息服务提供者的採編業務，服務提供者的經營業務和非公有資本介入互聯網新聞信息服務提供者的採編業務，服務提供者的經營業務和採編業務應當分開。

此外，《規定》要求互聯網新聞信息服務提供者：
- 健全信息安全、實時公共信息巡查、應急處置制度。
- 只向提供真實身份登記的用戶提供服務，並且保護用戶個人信息。
- 轉載新聞信息，應當註明新聞信息原作者、原標題，確保新聞信息來源可追溯。
- 在其網站明顯位置明示互聯網新聞信息服務許可證編號，建立便捷的投訴舉報渠道，及時處理投訴舉報。

市場回應

Gordon Milner  合夥人，香港美富律師事務所

「過去兩整年，規管中國互聯網服務的主要制度大規模革新。許多規定，例如實名登記和信息安全要求，使2005規定與制度一致。其他的，例如擴大範圍以涵蓋新媒體渠道和技術，使得從前處於法律灰色地帶的應用程式亦受監管。此外，在加緊監控採編內容，嚴禁瘋傳有關當局認可新聞的『假新聞』的傾向中，《規定》分開採編業務和經營業務，重申經營業務和採編業務應當分開。」

後話

《規定》明確禁止外商投資這個領域。國內所有互聯網新聞信息服務(無論是甚麼應用服務)提供者的法律顧問，應當採取即時步驟來協同或收緊機制，以確保符合規定，包括分開採編業務和經營業務；確定已發出的信息可以追溯、保護個人數據、處理客戶投訴並回應監管機構的要求。

- Practical Law China

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GC AGENDA

SPC and SPP Release Interpretation on Criminal Infringement of Personal Information

On 9 May 2017, the Supreme People’s Court (“SPC”) and the Supreme People’s Procuratorate (“SPP”) jointly released the Interpretation on Several Issues on the Application of Law to the Adjudication of Criminal Cases Involving the Infringement of Citizens’ Personal Information, which takes effect 1 June 2017.

The interpretation clarifies certain terms related to criminal infringement of citizens’ personal information under the ninth amendment to the Criminal Law of the People’s Republic of China 1997, which provides for criminal sentences for “serious” and “particularly serious” offences.

The interpretation defines “personal information” as various information recorded by electronic or other means that can be used alone or in combination with other information to identify a natural person’s identity or reflect the activities of a natural person, such as name, identity document number, account password, property status, and location.

“Serious” offences include obtaining, selling or providing citizens’ personal information:
- On the whereabouts, communications content, credit information or property information, and of 50 pieces or more.
- On personal factors that may affect personal and property security (such as health and transaction information), and of 500 pieces or more.
- On other personal information, and of 5,000 pieces or more.
- That generates illegal gain of RMB50,000 or more.
- When obtained while performing duties or providing services, and the sum of the quantities or amounts exceed half of these thresholds.

- When one has been subject to criminal penalties for infringing upon a citizen’s personal information or has been subject to administrative penalties within two years.
- When certain kinds of personal information are illegally obtained during legitimate business activities, and either the offence generates illegal gain of RMB50,000 or more, or the perpetrator has been subject to criminal penalties for infringing upon a citizen’s personal information or has been subject to administrative penalties within two years.

“Particularly serious” offences include infringement involving quantities or amounts ten times these thresholds, or where the act either:
- Causes serious consequences such as death, serious injury, mental disorder or kidnapping.
- Results in significant economic losses or an adverse social impact.

The person in charge and other directly responsible persons are subject to punishment as individuals where a business or other unit infringes upon a citizen’s personal information.

Market Reaction

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

“In addition to providing much needed definitions for the key terms in Art. 253 of the 1997 Criminal Law, the interpretation sets forth more clearly the conviction and sentencing criteria for the infringement of personal information. The sentencing criteria in general have been lowered to crack down on the rampant leaking of personal data. In particular, companies that violate Art. 253 will be fined and senior management and other persons directly responsible will be sanctioned.”

Action Items

General Counsel for any company that gathers or stores the personal information of Chinese nationals, including employees, customers, suppliers, will want to review the interpretation and Art. 253 of the
1997 Criminal Law, explain to senior management the corporate penalties and personal liability at stake, and ensure that documented steps are taken to avoid leaks and unauthorised uses of this personal data.

- Practical Law China

法律顧問備忘錄
最高院聯同最高檢公佈關於侵犯個人信息刑事案件的解釋

2017年5月9日，最高人民法院(最高院)、最高人民檢察院(最高檢)聯合公佈《關於辦理侵犯公民個人信息刑事案件適用法律若干問題的解釋》(「《解釋》」)，自2017年6月1日起施行。

《中華人民共和國刑法修正案(九)》(「《刑法修正案》」)就「情節嚴重」罪行及「情節特別嚴重」罪行的刑罰作出規定，《解釋》釐清《刑法修正案》若干與侵犯公民個人信息刑事案件有關的術語。

根據《解釋》，「公民個人信息」是指以電子或者其他方式記錄的能夠單獨或者與其他信息結合識別特定自然人身份或者反映特定自然人活動情況的各種信息，包括姓名、身份證件號碼、通信通訊聯繫方式、住址、賬號密碼、財產狀況、行蹤軌跡等。

「情節嚴重」罪行包括：
• 非法獲取、出售或者提供可能影響人身、財產安全(例如健康生理信息、交易信息)的公民個人信息五百條以上。
• 非法獲取、出售或者提供可能影響人身、財產安全(例如健康生理信息、交易信息)的公民個人信息五百條以上。
• 非法獲取、出售或者提供可能影響人身、財產安全(例如健康生理信息、交易信息)的公民個人信息五百條以上。

「情節特別嚴重」罪行包括涉及數量或數額達到上述規定標準十倍的，或者行為屬下列情況之一的：
• 造成死亡、重傷、精神失常或綁架等嚴重後果的。
• 造成重大經濟損失或惡劣社會影響的。

凡有企業或其他單位侵犯公民個人信息的，依照相應自然人犯罪的定罪量刑標準，對直接負責的主管人員和其他直接責任人員定罪處罰。

市場回應

陳劍音合夥人，香港寶維斯律師事務所
「1997年《刑法》第二百五十三條的重要術語亟須闡明，《解釋》除了給術語下定義之外，更加清楚地說明侵犯個人信息的定罪和處罰標準。為了嚴打洩露個人數據的猖獗情況，處罰標準整體上已經降低。特別一提，違反第二百五十三條的公司會被罰款，公司高級管理層及其他人員會被處罰。」

後話

公司法律顧問，凡為收集或存儲中國公民(包括僱員、客戶、供應商)個人信息的公司工作的，會想翻閱《解釋》和1997年《刑法》第二百五十三條，向高級管理層解釋企業受罰或個人受罰的風險，確保公司採取步驟有記錄存檔，防止有人洩露或未經授權而使用這批個人數據。

- Practical Law China

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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CASES IN BRIEF

CIVIL PROCEDURE

Re Mahesh J Roy (Intervener: Secretary for Justice) [2017] HKEC 743
Court of Appeal
Civil Appeal No. 226 of 2015
Cheung CJHC and Lam V-P
11 April 2017

Parties – person assisting claimant in Labour Tribunal proceedings found guilty of insulting behaviour – proper parties to appeal – person committed for contempt and Secretary for Justice as respondent, not Presiding Officer

In Labour Tribunal proceedings, the Presiding Officer found X, a person assisting the claimant, guilty of insulting behaviour under s. 42 of the Labour Tribunal Ordinance (Cap. 25). X issued a notice of appeal naming the Presiding Officer as the respondent. By consent, X and the Secretary for Justice (the “SJ”) applied for an order that the Presiding Officer cease to be a party to the appeal and that the proceedings be re-intituled “In Re: [X]” with the SJ listed as intervener.

Held, granting the order sought, that:

• Here, X was the person committed and the SJ should be the respondent. The role of the SJ in contempt of court cases was akin to that of the Attorney General in England. As guardian of the public interest, he had an important duty to safeguard the due administration of justice in contempt and s. 42 cases.

• While the Court was content to adopt the agreed course proposed by the parties in the appeal, in similar cases in future, the proper course was to name the SJ as the respondent to the appeal.

民事訴訟程序

Re Mahesh J Roy(介入人：律政司司長) [2017] HKEC 743
上訴法庭
上訴法庭民事上訴案2015年第226號
高等法院首席法官張舉能·上訴法庭副庭長林文瀚
2017年4月11日

訴訟方 – 在勞資審裁處程序中協助申索人的人被裁定作出侮辱行為 – 恰當的上訴各方 – 應為因藐視法庭而被交付羈押的人及律政司司長，而非勞資審裁處審裁官

在涉案的勞資審裁處程序中，勞資審裁處審裁官裁定一名協助涉案申索人的人(下稱 X)干犯《勞資審裁處條例》(第25章)第42條所指的侮辱行為。X發出上訴通知書，當中把上述審裁官列為答辯人。經X及律政司司長同意下，該雙方提出申請，要求法庭下令上述審裁官停止成為該上訴的任何一方，以及下令把該上訴重新命題為「關於[X]並把律政司司長列為介入人」。

裁決 — 作出所尋求的命令：

• 是項上訴的性質類似針對主審司法人員就藐視法庭的簡易裁決而提出的上訴，而恰當的上訴各方應為因藐視法庭而被交付羈押的人及律政司司長。勞資審裁處審裁官不應成為上訴的任何一方。下級程序的各方也不應牽涉在是項上訴之中。

• 在本案中，X是被交付羈押的人，而律政司司長應為答辯人。在涉及藐視法庭的案件中，律政司司長的角色與英國律政司近似。律政司司長身為公眾利益的守護者，在涉及藐視法庭及第42條的案件中負重要責任，即須確保司法公義妥為實施。

• 在本案中，本庭安於採納各方經同意後提出的方案。不過，假如日後出現同類情況，則恰當的做法是指名律政司司長為上訴中的答辯人。
The schemes were approved at single to a 50 percent discount for litigation risk. Claims would be recognised but subject defined PLI claims would be determined by a assets: receive distributions of the scheme released in exchange for the right to in respect of scheme claims would be made for all proved and admitted surpluses. While interim post-liquidation interest ("PLI") had been paid, there were legal issues and so uncertainty as there being a sizeable surplus in each legal issues that arose as a result of litigation to resolve the technical legal issues that arose as a result of there being a sizeable surplus in each liquidation. Each scheme creditor was in the same position. They were being asked to give up a right of uncertain value in return for the certainty, cost effectiveness, and expedition provided by the schemes. While the Schemes dealt with sophisticated matters, in accordance with s. 671(3) of the CO, the explanatory statements set out the effect of the arrangement and compromise under the Schemes and the explanatory statements were sufficient to enable scheme creditors to make an informed judgment as to how to vote at the scheme class meeting.

- The Schemes were such that an intelligent and honest man, a member of the class concerned and acting in respect of his interest, might reasonably approve.

COMPANY LAW

Re Lehman Brothers Futures Asia Ltd [2017] HKEC 250
Court of First Instance
Miscellaneous Proceedings Nos. 2264, 2265, 2266 of 2016
Harris J.
14 February 2017

Scheme of arrangement – liquidation – scheme proposed expeditious distribution of large surplus and avoided litigation over legal issues – determining classes of creditors: in insolvency commonality of interest in beneficial result of scheme considerably important – material difference in rights not necessarily sufficient to divide creditors into separate classes if sufficient commonality

Cs were three Hong Kong companies that were part of the Lehman Brothers group which had filed for bankruptcy. Cs’ joint liquidators (“Ls”) had realised substantial assets, provision had been made for all proved and admitted claims, and there was a very substantial surplus. While interim post-liquidation interest (“PLI”) had been paid, there were legal issues and so uncertainty as to the entitlement to PLI before it could be paid in full. If these uncertainties were litigated, there would be expense and delay before creditors received the balance of their entitlement. There were also non-provable claims. Ls proposed schemes of arrangement for each of Cs (the “Schemes”) under s. 673 of the Companies Ordinance (Cap. 622) (the “CO”) intended to bring the liquidation to an end and expedite payment. The schemes provided that all obligations in respect of scheme claims would be released in exchange for the right to receive distributions of the scheme assets: provable claims would be paid; PLI claims would be determined by a defined methodology; and non-provable claims would be recognised but subject to a 50 percent discount for litigation risk. The schemes were approved at single class meetings of creditors for each C by the statutory majority under s. 674 of the CO. The Court’s sanction was now sought.

Held, sanctioning the Schemes, that:
- In the insolvency context it was legitimate to have regard to the creditors’ common interest in establishing a workable scheme as an alternative to litigation when considering whether it was necessary to divide creditors into separate classes for voting purposes. When considering in this context whether the rights to be released or varied were sufficiently dissimilar that they could not sensibly be expected to consult together, it was thus necessary to consider not only what was to be replaced, and with what, but also why the compromise embodied in the scheme was proposed. Consequently, even a material difference in rights was not necessarily sufficient to require creditors to be divided into separate classes if, notwithstanding differences in existing rights, there was sufficient commonality of interest in the commercial purpose and substance of the proposed compromise that they could deliberate on a scheme as one class.
- Here, the single class of scheme creditors was properly constituted. The facts of this case were relatively extreme. For that reason, it served to emphasise the considerable importance that the Court attached to the commonality of interest in the beneficial result of schemes when determining classes. The scheme creditors had a common interest in avoiding the expense and delay of litigation to resolve the technical legal issues that arose as a result of there being a sizeable surplus in each liquidation. Each scheme creditor was in the same position. They were being asked to give up a right of uncertain value in return for the certainty, cost effectiveness, and expedition provided by the schemes.
- While the Schemes dealt with sophisticated matters, in accordance with s. 671(3) of the CO, the explanatory statements set out the effect of the arrangement and
有權獲發利息的餘額。還有不可證明的索償額。共同清盤人根據《公司條例》(第622章)第673條，為三間公司提出結束清盤並加快還款的協議計劃(「該等計劃」)，一間一份。該等計劃規定，一切與計劃的索償額有關的責任會被解除，換來的是債權人有權獲分派計劃的資產：會償還可證明的索償額；會用一套限定的方法確定清盤後利息的申索；並會確認不可證明的索償額，但因為有訴訟風險而須扣減一半金額。根據《公司條例》第674條，該等計劃必須在單一類別債權人會議上得到過半數通過；在三間公司各自為各類別債權人舉行的會議上，該等計劃以法定過半數獲批。共同清盤人現要求法庭批准。

裁決
批准該等計劃:

– 在公司無力償債的情況,清盤人可制定可行的償債安排作為訴訟的另一個選擇,而當考慮是否有需要把債權人分為不同類別進行投票的時候,顧及各類債權人在償債安排的共同權益乃屬合理。當在這情況考慮將予解除或更改的權利的差異,如果差異之大足以叫人預計債權人無法合理地一同參與討論,需要考慮的就不只是將被取代的甚麼,用甚麼去取代,還得考慮償債安排為甚麼包括與債權人妥協的建議。因此,縱然現有權利存在差異,只要在商業目的及妥協建議的內容上有足夠的共同權益,以至於債權人可合一地就償債安排作仔細考慮,即使權利大不相同,也不一定必須把債權人分為不同類別。

– 計劃的單一類別債權人是恰當地組成的。這宗案的案情相當極端。基於這個原因,當決定債權人類別的時候,強調法庭相當重視償債安排效益中的共同利益是有用的。每間公司的清盤因為有巨額餘款而產生技術上的法律爭議,入稟法庭解決這些爭議會產生開支和引致延遲,避免開支和延遲是計劃債權人的共同利益。每名計劃債權人的情況相同。各債權人被要求放棄價值並不確定的權利,以換取該等計劃所提供的確定性、成本效益及高速度。

– 該等計劃處理的是複雜的問題，按照《條例》第671(3)條，說明陳述明該等計劃的安排或妥協的效力，足以令計劃債權人能夠在計劃的債權人會議上，在知情的情況下判斷如何投票。

– 該等計劃有如此這般內容，是相關類別的聰明誠實並為自己權益行事的債權人應該明智地通過的。

CRIMINAL
HKSAR v Ma Sin Chi
[2017] HKEC 590
Court of Appeal
Criminal Appeal No. 424 of 2013
Registrar Lung Kim Wan in Chambers
14 March 2017

Costs – taxation – Department of Justice, as receiving party in taxation of costs in criminal appeal, should provide information on seniority of Government counsel involved in appeal

The question in the taxation of the bills of costs of the Department of Justice (the “DOJ”) in these 11 criminal appeals was whether the DOJ, as receiving party, should provide information on the seniority of the Government counsel involved in the appeals. Relying on a statement made by Burrell J in Building Authority v Business Rights Ltd [1999] 3 HKC 247 at p. 255 that, regardless of who appeared, the hourly rate for an advocate conducting a case in court “should be equivalent to senior partner level for solicitors or even higher”, the DOJ argued that it need not provide such information.

Held, withholding taxation of the bills of costs until the DOJ had supplied information on the post-qualification experience of the Government counsel involved and the complexities of the case, if applicable, that:

• For Burrell J in Building Authority v Business Rights Ltd was being read out of context by the DOJ. Reading it to mean that the rate of costs for a senior partner of a law firm should apply to a Government counsel irrespective of that counsel’s seniority was contrary to common sense and inconsistent with the decision of the Court of Appeal in Ling Yuk Sing v Secretary for the Civil Service [2010] 3 HKLRD 722.

• The taxing authority would be unable to discharge its duty of taxing a bill of costs without evidence or information from the DOJ as to the experience of the Government counsel in charge of the items of the bill of costs and the complexities of the case if the charge was above the norm.

判決— 暫停進行訟費單的評定，直至律政司提供該等資料為止：

• 對於貝偉和法官在Building Authority v Business Rights Ltd一案的相關言論，律政司有斷章取義之嫌。將該言論解釋為律師行資深合夥人的收費率應用於政府律師(不論其年資)不但有違常理，而且與上訴法庭在Ling Yuk Sing v Secretary for the Civil Service [2010] 3 HKLRD 722一案的決定不符。

刑擧—— 暫停進行訟費單的評定，直至律政司提供相關政府律師的年資資料為止。律政司辯稱其毋須提供該等資料，並倚靠律政司及法官在Building Authority v Business Rights Ltd [1999] 3 HKC 247一案第255頁所言。貝法官在該處指出，不論何人出庭，在庭上處理訟案的訟辯人的按小時收費率「應等同於事務律師當中的資深合夥人，甚或較之更高」。
CRIMINAL EVIDENCE

HKSAR v Yee Wenjye
[2017] HKEC 912
Court of Appeal
Criminal Appeal No. 172 of 2016
Lunn V-P
9 May 2017

Fresh evidence – appeal proceedings – refusal to admit evidence on appeal – no reasonable explanation advanced for failure to adduce such evidence at first instance – court not satisfied admitting such evidence would be in interests of justice

D was granted, by a single judge of the Court of Appeal, leave to appeal against conviction. Such leave was granted on the ground that, having regard to the Trial Judge’s finding that he “might not have understood clearly [the evidence of a witness examined in proceedings in New Zealand] might be used [by the prosecution] for the trial proper” together with the unresolved issue of his alleged impecuniosity which stood in the way of his attending the proceedings in New Zealand or being represented thereat, the Trial Judge erred in admitting that witness’s deposition otherwise than for the limited purpose of producing his business records as exhibits. D sought from that single Judge of the Court of Appeal a ruling that he could adduce on appeal evidence of such lack of clear understanding and of such impecuniosity.

Held, ruling that he could not adduce any such on appeal, that:

• D could have adduced such evidence at first instance but chose not to do so in the face of a clear invitation by the Trial Judge to call evidence.
• He advanced no reasonable explanation for his failure to adduce such evidence and therefore failed to satisfy the conditions of s. 83V(2) of the Criminal Procedure Ordinance (Cap. 221).
• As for s. 83V(1) of the Ordinance, the Court was not satisfied that admitting such evidence on appeal would be in the interests of justice.

Prosecution’s duty of disclosure – suggestions as to improvement of system for ensuring that proper disclosure made

D faced a count of conspiracy to throw corrosive fluid, namely sulphuric acid, with intent to do grievous bodily harm to Mr. Mitchell (“V”), the particulars of the count being that D had on or about 27 October 2009 conspired with a number of named persons to carry out that attack. That attack was carried out on that date outside the District Court Building where V was appearing as counsel for the prosecution of X. The witnesses who gave evidence for the prosecution against D included two of the persons named as his co-conspirators. These two witnesses were PW2 and PW3, each of whom had pleaded guilty to the conspiracy in question and had been sentenced to 11 years’ imprisonment. Having been arrested in 2009 and released from custody in 2010, D was rearrested in 2013. His trial in the High Court commenced in 2015. PW2–3 testified against him. In the witness box, D admitted being present when V was attacked but denied being involved in the conspiracy or the attack. The jury found him guilty. D applied for leave to appeal against his conviction. Two grounds of appeal were put forward on his behalf. Ground 1 was that there had been material non-disclosure by the prosecution in that certain documents which should have been disclosed were not disclosed. The documents were specified to be: (a) PW2’s affirmation filed in support of his application for leave to
appeal against sentence out of time; (b) letters written to various police officers by PW3 while he was in custody; and (c) various police investigation reports and police notebooks recording the fact of certain visits by police officers to PW2–3 while they were in the custody of the Correctional Services Department. Ground 2 was that having regard to the prosecution's reliance on accomplice evidence, there were “irregularities or unsatisfactory aspects” of the Judge's summing-up which “created a lurking doubt” rendering D's conviction unsafe and unsatisfactory.

Held, granting leave, treating the hearing as the appeal and allowing the appeal by quashing the conviction, but ordering a retrial, that:

- As was observed in Hall v HKSAR, the rationale, status, nature and scope of the prosecution's duty of disclosure in Hong Kong was as set out in HKSAR v Lee Ming Tee (No. 1) (2003) 6 HKCFAR 336.

- The prosecution's duty of disclosure in respect of accomplice witnesses was of particular importance.

- That was so whether the accomplices gave evidence under immunity or they gave evidence otherwise than under immunity but there was a possibility of a reduction in sentence being afforded to them by an appellate court or the Chief Executive.

- PW2's affirmation should have been disclosed to the defence because it would have, if disclosed, permitted a line of cross-examination by the defence that he was motivated to secure a reduction of sentence on the basis that not only had he given a detailed statement to the police describing the conduct of his accomplices but was prepared to give evidence against them, including D.

- Prosecutors had a duty to be proactive in discharging their duty that all disclosable material was disclosed to the defence, all the more so in a serious case involving accomplice evidence.

- It was necessary that the principles of disclosure articulated in the Department of Justice's “Prosecution's Code” be underpinned and given effect by a simple system in which prosecuting counsel gave directions to investigating police officers in respect of potential unused material, requiring confirmation as to whether such material did or did not exist, the directions and responses to be in writing and retained.

- The fact that PW3 had written 12 letters to police officers involved in the prosecution of D and that police officers had made 20 visits to him and the fact that the accomplices had been provided with their out-of-court statements and their non-prejudicial statements in the days prior to the commencement of D's trial would have, if disclosed as they should have been, provided the defence with potentially fruitful lines of cross-examination of the accomplices.

- With regard to disclosure, the Code of Practice in England & Wales might provide the Director of Public Prosecutions in Hong Kong with a useful point of reference.

- Since the appeal succeeded on Ground 1, it was unnecessary to deal with Ground 2.

- Having regard to the strength of the prosecution's case, there should be a retrial despite the disadvantage to the defence arising from the fact that only very limited records of the conversations between the accomplices and police officers existed, such disadvantage being a matter in respect of which the judge could give the jury appropriate directions at the retrial.

刑事證據
HKSAR v Wun Shu Fai
[2017] HKEC 533
上訴法庭
刑事上訴案件2015年第48號
上訴法庭副庭長倫明高
上訴法庭法官張澤祐
上訴法庭法官潘兆初
2017年3月16日

控方披露材料的責任 — 關於改善方法確保已作出妥當披露的建議
被告人面對的罪名是，串謀意圖使葉祖耀大律師(「受害人」)的身體受嚴重傷害而淋潑腐蝕性液體，即硫酸，罪名的詳情是，在2009年10月27日或前後日子，被告人串同多名指名人士襲擊受害人。案發當日，受害人於區域法院出庭為一宗檢控X的案件擔任控方代表律師，他在區域法院大樓門外遇襲。控方有證人指控被告人，控方證人包括兩名同被指名為被告人串謀者之一的人。這兩名證人是控方第2和第3證人，他們已各自承認犯了相應的串謀罪，被判監禁11年。被告人於2009年被拘捕，2010年獲釋放，2013年再被拘捕。被告人2015年開始在香港高等法院接受審訊。控方第2和第3證人作供指證他。在證人欄內，被告人承認自己在受害人被襲擊時身在現場，但否認有份串謀襲擊或襲擊受害人。陪審團裁定他有罪。被告人不服定罪，申請上訴許可。他的代表律師提出兩點上訴理由。理由一：控方沒有披露重要材料，以至控方沒有披露某些本應向辯方披露的文件。理由二：控方披露材料的責任 — 關於改善方法確保已作出妥當披露的建議

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重審案件：

正如在H v HKSAR指出，在香港，控方披露責任的理念、狀況、性質和範圍就如在HKSAR v Lee Ming Tee (No. 1) (2003) 6 HKCFAR 336所列明的一樣。

控方與從犯證人有關的披露責任尤其重要。

這方面的責任尤其重要，不論從犯是在獲得豁免起訴的情況下作證，還是其他不獲豁免起訴的情況下作證，他們只要作證，就有可能獲得上訴法庭或行政長官減刑。

控方第2證人的誓章本來早就應該向辯方披露，因為如果有披露的話，辯方就可以循這方面向證人作出盤問，基於他不僅在詳盡的口供中向警方描述同謀的行為，還願意指證包括被告人在内的同謀，質疑他是為了獲得減刑而作證。

控方有責任積極地履行責任，主動向辯方披露所有須予披露的材料，在涉及從犯證供的嚴重案件，更應如此。

律政司「檢控守則」清楚列出的披露原則必須是有基礎的，並且有一套實現原則的簡單方法，有了這套方法，控方大律師可以就有可能不用於檢控的材料向負責調查的警員作出指示，要求獲確認該等材料是否確實存在還是不存在；指示和回應都應該以書面方式作出並予以保存。

控方第3證人寫了12封信給有份參與檢控被告人的警員，警員探訪過他20次；各名從犯在被告人開始接受審訊之前的日子，已獲提供他們的庭外陳述書及不具損害性的證人陳述書，如果控方不獲披露這些本來早應披露的事實，辯方就有可能試圖就從犯的問題。

在披露材料方面，英格蘭及威爾斯的實務守則(Code of Practice)也許給香港刑事檢察專員提供可用作參考的有用論點。

因為單憑理由1已經可以判被告人上訴得直，所以無需要處理理由2。

EMPLOYMENT LAW

Lo Kwok Kuen Danway v Secretary for Justice [2017] HKEC 821
Court of Appeal
Civil Appeal No. 180 of 2016
Cheung, Yuen, Kwan JJA
25 April 2017

Employees’ benefits – civil servant – whether Government entitled to deduct from pension benefits of civil servant in settlement of debt upon discharge from bankruptcy

In February 1999, B, a police officer, was compulsorily retired following disciplinary proceedings with pension benefits deferred until he had attained the age of 55 in February 2012. B’s application for judicial review of the decision was dismissed with costs. In November 2004, the Secretary for Justice served a statutory demand on B demanding immediate payment of the costs debt. In December 2005, B was adjudged bankrupt. In December 2009, B was discharged from bankruptcy and the debt remained unpaid. In February 2012 and shortly before B turned 55, the Government Treasury informed B that it would make a 25 percent deduction from the pension benefits payable to him in settlement of the outstanding debt.

B objected and contended that he was entitled to be paid his pension benefits in full without deductions by reason of the Certificate of Discharge. The Deputy Judge dismissed B’s claim for declaratory relief and B appealed. The Government argued that: (a) it was a secured creditor of the debts owing to it by B by way of an equitable charge created under s. 31(2) of the Pension Benefits Ordinance (Cap. 99) (the “PBO”) on the pension benefits and was entitled to enforce the security by way of deduction; (b) there was no surrender or waiver of this security; (c) in any event, s. 31(2) of the PBO overrode s. 32(2) of the Bankruptcy Ordinance (Cap. 6) (the “BO”) which released a debtor from all his bankruptcy debts upon the discharge of the bankruptcy order. Section 28(1) of the PBO provides that “If any person to whom a pension has been granted is adjudicated bankrupt … subject to sub-s. (5), payment of the pension shall cease as from the date on which he is so adjudicated.” Section 28(5) provides for the restoration of the payment of the pension upon the discharge of the bankruptcy order. Insofar as material, s. 31 provides that “(1) … pension benefits granted to an officer shall not be assignable or transferable except for the purpose of – (a) satisfying … a debt due to the Government; … and pension benefits shall not be liable to be attached, sequestered or levied upon for or in respect of any claim or debt other than a debt due to the Government. (2)(a) Where any person to whom pension benefits are granted owes a debt to the Government, … the Director of Accounting Services may apply those benefits … for the satisfaction … of the debt.”

Held, allowing the appeal, that:

• The Government did not hold any
security in the pension benefits and was therefore not a secured creditor. An equitable charge was only created where there was an appropriation of a particular fund by the debtor for the discharge of his debt in favour of the creditor so that the creditor might have a proprietary interest in the segregated fund. Section 31(2) of the PBO, whether by itself, or read together with s. 28 and s. 31(1), did not enable one to detect the intention to impose a charge on the pension benefits. Section 31(1) was a general provision which applied to all civil servants irrespective of whether they owed any debts to the Government. The Government was merely asserting in s. 31(2)(a) a countervailing claim in respect of the civil servant's liability for the debts which operated in extinction of so much of the Government's liability for the payment of pension benefits towards the civil servant. The provision for deduction was simply to impose a limit on the deduction depending on whether the deduction was consensual or not. There was no segregation of a specific fund in the first place which might have the effect of creating a security in favour of the Government.

• (Obiter) The rule on surrender of security applied only to a security which, if given up, would augment the estate against which the creditor sought to prove. As s. 28 of the PBO prevented the vesting of B's pension in the trustee in bankruptcy, no question of the Government's surrender of its security in the pension benefits to the trustee for the general benefit of the creditors could arise. The same argument applied to the question on waiver.

• There was nothing in the BO or the PBO which showed that, notwithstanding the clear wording of the provision on release of all the debtors' debts upon discharge, debts owing to the Government were given special treatment so that they survived after the discharge of bankruptcy.

僱員福利 — 公務員 — 政府是否有權在公務員獲解除破產後扣減該公務員的退休金利益以抵債

1999年2月，一名警員（「該警員」）經紀律程序後被勸令提早退休，退休金利益要到2012年2月他年滿55歲時才可領取。該警員申請司法覆核該判決，法庭駁回其申請，並判他須支付訟費。2004年11月，律政司司長向該警員送達法定要求償債書，要求他立即償付訟費債項。2005年12月，該警員被判定破產。2009年12月，該警員獲解除破產，但他依然未償還該筆債項。2012年2月該警員快到55歲的時候，政府庫房通知該警員，庫房會從應付他的退休金利益扣減25%以抵債。該警員反對，辯稱他已獲發破產解除證明書，因此有權獲付全額不經扣減的退休金利益。暫委法官駁回其要求宣布性質濟助的申索，該警員上訴。政府辯稱：(a)該名警員欠下政府債項，政府是他的有抵押債權人，因為根據《退休金利益條例》(第99章)(「《條例》」)第31(2)條，其退休金利益產生衡平法押記，政府有權藉扣減退休金利益，強制執行該抵押；(b)政府沒有放棄或免除這項抵押；(c)《破產條例》(第6章)第32(2)條規定，債務人在破產令獲解除後，其一切破產債項皆獲免除，但無論如何，《條例》第31(2)條凌駕第32(2)條。《條例》第28(1)條規定，「已獲批予退休金的人，如被……判定破產……，則在不抵觸第(5)款的條文下，該項退休金的支付須自該人被如此判定當日起停止。」第28(5)條就破產令獲解除後恢復支付退休金作出規定。重要的是，第31條規定，「(1)……批予任何人員的退休金利益不得轉付或轉讓，但為以下目的者則屬例外 — (a)清償到期須付予政府的債項……；(b)退休金利益並不得為或就任何申索或債項(到期須付予政府的債項除外)而被扣押、暫時扣押或查押。」

裁決 — 上訴得直：

• 政府沒有在退休金利益持有任何抵押，因此不是有抵押債權人。衡平法押記只在一種情況產生，就是債務人就其債務的解除，撥出特別資金給債權人作為押記，債務人因此而應該在該筆撥分出的資金享有所有權權益。《條例》第31(2)條，不論是該條本身而言，還是與第28條及第31(1)條一併理解，並非任何人察覺到在退休金利益之上施加押記的意圖。第31(1)條是適用條文，適用於所有公務員，不論他們有否欠下政府任何債項。政府只是在堅持第31(2)(a)條抵銷公務員要為債務負上的法律責任的權利主張，而該條只限於在政府向該公務員支付退休金利益的法律責任範圍內施行。扣除退休金利益的條文只是施加扣減限額，而扣除與否視乎雙方是否已經同意。起初已有一筆特定的資金被分開出來，如有的話，就有可能就該警員欠下政府的債務產生抵押品。

• (附帶意見)有關放棄抵押品的規定，只適用於如果被放棄就會增加債權人尋求證明的產業的抵押品。由於《條例》第28條禁止把該警員的退休金歸於破產受託人，因此根本不存在政府為了債權人的整體利益，而放棄其在退休金利益的抵押品給受託人的問題。同一爭論適用於免除的問題上。

• 《破產條例》或《條例》的條文雖然用語清晰，訂明債務人在破產令解除後也獲解除一切債務，但當中並無條文顯示有特別方法處理欠政府的債項，以至有關債項在破產獲解除後仍然存在。
Legal Job Hunting: Rumour vs Truth!

By Oliver Allcock, Manager, Legal & Compliance

“New jobs available!”
“Everyone is hiring in Legal & Compliance!”
“The market’s booming!”

Recent market information seems to suggest that new jobs are everywhere: from the pages of adverts at the back of this very magazine, to postings all over the internet, to discussions at happy hour and especially for those in private practice, headhunt calls to your work phone. It seems there are infinite opportunities and they are easily attainable. That is until you apply for one.

Upon application the process becomes a competition, a gauntlet you need to skilfully prepare for and navigate, a process that is often referred to as being on the same stress level as moving home or getting married.

As professional recruitment consultants, we are often one of a panel of recruiters working for the same client and we send more than one applicant for each job. Viewing this in total, it leaves a lot of applicants who aren’t getting the jobs that they want.

Of course this comes down to a number of factors – mostly technical skills, commercial mindset and personality fit – and you cannot change (at least without great time and difficulty) the practice you have built or the mindset with which you approach it. In most cases the legal market tends to require very specific skillsets and, albeit we do occasionally see people retrain or move, for example, from a corporate practice to a funds role, lawyers tend to be aware of what their skills are suitable for and indeed consultants should give honest advice on what specific clients will consider or not.

However, there are some grey areas in our industry, which this article will address. As recruiters we are a sociable bunch and tend to know at least one or two of our competitors. The information we share (always on a “no names” basis), as well as that which we get from our clients gives us accurate data on just how many jobs get offered and rejected, mainly due to misaligned expectations, and in my opinion the numbers have increased even more so than the recent growth in jobs available.

The growth in the legal and compliance market has far outstripped other professional disciplines. Is this giving the industry an altered sense of the process and worth as opposed to what the market can pay?

Considering this, it is beneficial to think on these following points before you begin the search for a new role:

**Whom to consult?**

Meet your recruitment consultant and build trust with them before you submit a specific application. A consultant’s job is to meet people from your industry and have real data to share. It is therefore in both your and the consultant’s interest to provide this and consult so that no one’s time is wasted. Of course you can speak with friends, colleagues, ex-employees etc., but consider how accurate their data is before locking it in as your benchmark.

**Market Rate**

When we ask job seekers for their expected salaries, a common response we get is “the market rate”. Well what is market rate? The truth is that market rate varies from job to job and salary surveys should only be used as a guideline;
salaries vary enormously between big banks and corporates compared with start ups and local companies. Other benefits such as bonus and annual leave vary even further. There is no set structure and therefore it is important to consider how and when to consult on package. My advice is as soon as the process begins. The easiest way to successfully balance expectations is clear communication throughout the recruitment process. Leaving discussions with the employer or consultant until later will invariably just give you an inaccurate and misinformed understanding of what the market rate is. Try to start the conversation early, make sure you are comfortable with the figures discussed, and then move forward with the package being a secondary motivator after the job itself.

Reasonable Demands
If you stay in your current job, the average annual increment is probably three to five percent. When changing jobs, the average increment is five to 10 percent, with 15 percent being the highest in most cases. Indeed many people take pay cuts when moving from law firms to in-house roles, or from the sell-side to a more bonus weighted buy-side role. Figures of 15 to 30 percent increment are often mentioned in market updates – these are only in extreme circumstances with applicants possessing perfect match skillsets in very niche or competitive areas. Do not assume this means everyone! It really is far from the market norm and clearly not sustainable across an entire industry.

When businesses are looking to hire, it invariably means they need that specific skillset immediately. While managers do want new hires coming in fresh and motivated, do not expect a month off before starting the new role. Consider a week off between jobs to be a great achievement, two exceptional. Anything more is really unheard of. They say a change is as good as a rest!

Perspective
How does the Hong Kong legal market compare globally? Having just reviewed the Robert Walters Global Salary Survey, an in-house lawyer in London of four to seven PQE earns on average £100,000 salary versus HK$1.3M in Hong Kong. However, if you then take into account the attractive tax rates here, the industry is near, if not at the top, of global rankings. Hong Kong is a great place to be, but also important to periodically put this into a global context. With Hong Kong being the Asia Pacific hub for legal and compliance work, there are career opportunities and regional exposure here to strengthen that attraction even further.

To summarise, Hong Kong provides a buoyant legal economy and plenty of career opportunity, but it remains a buyers’ market. Given the efforts one must commit to changing jobs, I hope this article helps define what realistic expectations are for the benefit of all!
法律及合规市场的增长远超过其他专业范畴，此等情况是否会改变法律行业对程序和价值方面的看法呢（相对于市场可支付甚或而言）？

基于这一点，在阁下开始寻求担任另一个新角色之前，请不妨先考虑下述各要点。

### 向谁咨询？

阁下在提交某份职位申请书之前，应先行与你的招聘顾问接触，并建立两个人之间的互信。招聘顾问的工作，是要与贵行业的人接触，并与他们分享有用的资讯。因此，提供此等资讯和进行咨询，对阁下和招聘顾问而言都是有利的，而且也不致导致任何人的时间被浪费。当然，你也可以咨询你的朋友、同事及该公司的前僱员，但在你决定将该等资料用作你的衡量准则以前，你必须考虑它们的准确性。

### 市场水平

当我们在询问求职者他们希望获得多少薪金时，常获得提供的答案都是：“市场水平”。什么是市场水平呢？现实情况是，市场水平会随工作性质的不同而异，而薪金调查亦可作为一种参考指引。大银行和大企业的薪金，与初创企业及本地公司的薪金会有很大差距，在其他福利方面（例如花红和年假），二者相差的程度会更大。由于没有一套固定的薪酬，所以我们会考虑如何及在何时询问整个薪酬待遇方案。我的建议是，尽可能在相关程序开始时，以更有效和平衡双方的期望，最简单的方法就是在整个招聘过程中进行清晰的沟通。倘若阁下延续与雇主或招聘顾问谈判薪酬待遇方案，这只会令你对市场水平存有不真实和被误导的看法。因此，阁下应尽量早与上述人士展开对话，并确保你对所提提的数字感到满意。接下来，大家便需要了解不同一篮子福利的计划（这构成该工作本身以外的另一股动力）。

### 合理要求

倘若你选择留在目前的工作岗位，你的每年平均增薪，大概会在百分之三至五之间；倘若你选择转工，你的平均增薪将会是百分之五至十之间；而在大多数情况下，百分之十五将会是极限。事实上，许多人从律师事务所私人执业，转而担任企业内部的法律顾问；又或是，从“买方”职位转往以奖金收入为主的“卖方”职务，他们所获得的薪酬都会有所下降。最新发布的市场资讯，时常都会提到百分之十五至三十的增幅，但这些只是属于极端的例子，它们会要求申请人拥有最佳的、能符合极为细分或竞争激烈的市场的所需技能。请不要假设此等情况适用於每一个人！事实上，它与市场规范存在很大的距离，而且在整个法律行业中，它是明显缺乏可持续性。

### 前景

与全球其他地方比较，香港法律市场的境况又如何呢？我们刚刚阅读了Robert Walters的全球薪酬调查报告（Robert Walters Global Salary Survey），得悉在伦敦，一名具有4至7年专业经验的企业内部法律顾问，他的平均薪酬是10万英镑，而香港的则为130万港元。然而，当我们将香港的低税率列入考虑范围之后，香港法律专业的薪酬待遇，可以说是位居世界前列（如非称冠）。虽然香港是一个先进地方，但我们也需要不时放眼全局，将它与世界的其他地方来作比较。在法律和合规工作方面，香港是亚太区的枢纽，这的良好的发展机遇，以及许多接触区内业务的机会，使它变得更加具有吸引力。

总而言之，香港有一个蓬勃发展的法律经济，能够提供许多事业发展的机会，但它仍然是一个由买方主导的市场。任何人如要转换工作，都需要付出努力。因此，我谨希望这篇文章能有助于掩饰何谓现实期望，让所有阅读过它的人，皆能有所裨益。
Newly-Admitted Members

**BUTLER JOHN XAVIER**
REYNOLDS PORTER CHAMBERLAIN

**CUTHBERT CHRISTINE ANDRA**
HERBERT SMITH FREEHILLS

**FISKEN ANDREW CHARLES**
NORTON ROSE FULBRIGHT HONG KONG

**FUNG HIU LAM**
LIPMAN KARAS

**CHILD ROBERT ALEXANDER**
CLIFFORD CHANCE

**HAYWOOD JEREMY EDWARD**
HERBERT SMITH FREEHILLS

**CURTIS NATALIE JAYNE**
HERBERT SMITH FREEHILLS

**KAI NCAI**

**LOK YIN SUN VIVIANE**

**ROBBINS MICHAEL DAVID**
DORSEY & WHITNEY

**SOOD ASHIMA**

**TEAR LEONIE NATALIE**

**TSE KAM HIN DANIEL**

**CHAN-PENSLEY RICHARD**

**CHAU MAN CHUN**

**CHILDROBERT ALEXANDER**

**CURTIS NATALIE JAYNE**

**FUNG HIU LAM**

**HAYWOOD JEREMY EDWARD**

**KAI NCAI**
Partnerships and Firms
合夥人及律師行變動
changes received as from 1 May 2017
取自2017年5月1日起香港律師會所提供之最新資料

- ALLISON DAVID ANDREW ceased to be a partner of Bird & Bird as from 01/05/2017 and remains as a consultant of the firm.
  自2017年5月1日不再出任鴻鵠律師事務所合夥人一職，而轉任為該行顧問。

- CHAN KAI JONG ELTON became a partner of Stephenson Harwood as from 16/05/2017.
  陳啟莊自2017年5月16日成為羅夏信律師事務所合夥人。

- CHAUDHRY MUHAMMAD KAMRAN became a partner of M.C.A. Lai Solicitors LLP as from 25/05/2017.
  自2017年5月25日成為賴文俊(有限法律責任合夥)律師行合夥人。

- CHEUNG KWAI NANG ceased to be a partner of K.B. Chau & Co. as from 02/06/2017.
  張貴能自2017年6月2日不再出任周啟邦律師事務所合夥人一職。

- CHEUNG MING YAN TRACY became a partner of Kennedys as from 19/05/2017.
  張明欣自2017年5月19日成為肯尼狄律師行合夥人。

- DEEGAN THOMAS ceased to be a partner of Sidley Austin as from 01/06/2017.
  自2017年6月1日不再出任盛德律師事務所合夥人一職。

- JAMISON SUANN commenced practice as the sole practitioner of Jamison as from 11/05/2017.
  自2017年5月11日獨資經營Jamison。

- JAMISON SUANN commenced practice as the sole practitioner of N.K. Lee & Co. as from 04/05/2017.
  自2017年5月4日獨資經營李寧基律師行。
• LEE PO WING ceased to be the sole practitioner of Chung and Associates as from 26/05/2017 and the firm closed on the same day. Mr. Lee remains as a consultant of Paul Kwong & Co.

李寶榮
自2017年5月26日不再出任鍾卓生律師行獨資經營者一職，而該行於同日結業。李律師仍繼續擔任鄺偉全律師行顧問一職。

• LEE SZE HAN joined Fitzgerald Lawyers as a partner as from 01/06/2017.

李思漢
自2017年6月1日加入德龍律師事務所為合夥人。

• LEE YIH SIN EUGENE ceased to be a partner of Latham & Watkins as from 01/05/2017.

李毓星
自2017年5月1日不再出任瑞生國際律師事務所合夥人一職。

• LEUNG WUN MAN EMBA joined Lam, Lee & Lai as a partner as from 02/05/2017.

梁婉雯
自2017年5月2日加入林李黎律師事務所為合夥人。

• MCMAHON EDEN ELIZABETH ceased to be a partner of Dorsey & Whitney as from 27/05/2017.

自2017年5月27日不再出任德匯律師事務所合夥人一職。

• NG ON KI joined K.T. Lo & Co., Solicitors as a partner as from 01/06/2017.

吳安琪
自2017年6月1日加入盧錦霆律師事務所為合夥人。

• NICKLIN MICHAEL PAUL joined Gibson, Dunn & Crutcher as a partner as from 31/05/2017.

自2017年5月31日加入吉布森律師事務所為合夥人。

• SINCLAIR PATRICK S joined Davis Polk & Wardwell as a partner 22/05/2017.

自2017年5月22日加入Davis Polk & Wardwell為合夥人。

• WANG LUK CHLOE ceased to be a partner of Loeb & Loeb LLP as from 28/05/2017.

王 露
自2017年5月28日不再出任Loeb & Loeb LLP合夥人一職。

• WONG CHI HO RAYMOND ceased to be a partner of King & Wood Mallesons as from 11/05/2017.

黃志豪
自2017年5月11日不再出任金杜律師事務所合夥人一職。

• WONG PAK LUNG ceased to be a partner of Li, Kwok & Law as from 01/06/2017 and remains as a consultant of the firm.

王白儂
自2017年6月1日不再出任李郭羅律師行合夥人一職，而轉任為該行顧問。

• YEOH SOON CHIN became a partner of Ashurst Hong Kong as from 09/05/2017.

楊順真
自2017年5月9日成為亞司特律師事務所合夥人。

• YEUNG HOK MIN THOMAS ceased to be a partner of Henry Chiu & Partners as from 24/05/2017 and joined Peter W.K. Lo & Co. as an assistant solicitor as from 01/06/2017.

楊學勉
自2017年5月24日不再出任趙端庭律師行合夥人一職，並於2017年6月1日加入盧偉強律師樓為助理律師。
My Tesla Model X test drive was scheduled on a day a severe thunderstorm was approaching, but luckily the day turned out to be gloriously sunny. Since I have never been an electric car fanatic, I arrived at the showroom in Wan Chai with no preset expectations. Stephen, the Owner Adviser, warmly welcomed me when I walked through the door and launched into a detailed overview of all of the Model X’s key breakthroughs before we hit the road. While informative, much I am sure was lost on me, as I steadfastly have hovered quite well outside of the periphery of the electric car enthusiast circles. But locking my gaze on the highly polished metallic black model could be aptly described as a near evangelical experience, with my interest piquing more sharply as the Model X’s theatrics began.

As soon as I touched the Model X’s stylish door handle, the front door opened towards me by itself. In no time, my instincts urged me to press on the handle of its rear door and the notorious “falcon wing” fly opened. As introduced, the falcon wing rear doors have sonar sensors behind the aluminium skin, which calculate by themselves an arc that allows them to open in even the tightest of spaces, keeping them from delivering an uppercut to your head or garage ceiling. As I tower just above six feet tall, the falcon wing door allowed me to practically walk into the cabin with less ducking than is required using a traditional door. Perfecting innovations take time though: the falcon wing door may give you a headache if you need to drop off your kids swiftly in central business districts.

When I was inside the cabin, the 17-inch tablet style dashboard placed elegantly next to the driver’s seat caught my eyes. With a tap on the giant touch screen, both the front and the falcon wing doors closed. I was about to locate the car key when I was told this family-friendly 7-seater SUV could be controlled by the dashboard and a mobile application. Simply put, the dual electric motors (NOT engines) could be switched on by just a few taps on the phone, and as Stephen stressed, this feature enables family members to share the car with ease.

We were on our way to Central when Stephen started to demonstrate how
Tesla Model X: 引誘你加入電動車革命行列

作者 William Tong 實習律師

試駕Tesla Model X 那天，風暴將至，但幸好天公作美，結果天朗氣清。我一向不是電動車愛好者，所以到達灣仔陳列室時，我並沒有很大期望。

甫到達陳列室，業主顧問Stephen熱烈歡迎我，並在出發前向我介紹Model X的主要突破功能。Stephen的介紹詳盡，但我堅信自己對電動車不感興趣。但是，當我將目光鎖定在閃亮的金屬黑色Model X上時，我就完全被它深深迷住，深深激起我的興趣。

我一碰Model X型格時尚的門把，前門就徐徐向我敞開。直覺驅使我按一下後門的把手，聞名的「獵鷹翅膀」打開。據介紹，「獵鷹翅膀」後門的鋁殼下面裝有聲納感應器，自動計算開門的弧度，即使在緊迫的空間也能打開，而不會撞到頭或車庫頂。

進入車廂後，駕駛座旁的17寸平板電腦風格儀錶板吸引我的目光。輕輕觸碰巨型屏幕，前門和後門的單一圓錶板控制著車內的大多數功能，從全螢幕的衛星導航系統到Google maps到TuneIn Radio，享受來自世界各地的廣播。

我刻意關閉音樂，因為我想要享受電動車在電池動力上的音響體驗，這是一種全新的感受。這結合了全玻璃的全景風窗，提供了無與倫比的天空視野，讓我30分鐘在最繁忙的路段的駕駛變得如此愉悅。

在回灣仔的路上，我將Model X切換到“Ludicrous”模式，希望能激發出它的全部力量。這個功能被讚揚為讓Model X可以超越許多其他超級跑車—能夠在3.1秒內從0加速到100公里/小時。我迫不及待要試試“油門”踏板，但不幸的是，現在車流密度非常大。那一刻，唯一可以說“荒唐”的事情就是我們的行進速度，因為我們的速度比一輛自行車還慢。

在接近停車場時，Stephen建議我們調換座椅。他讓我拉緊安全帶，將頭靠在頭枕上，僅僅感覺到我的失望。在下一刻，我們以一種令人難以置信的速度加速，那是如此強大，讓我實際上感動像在主題公園裡坐滾輪車。

Model X在氣候和燃料效率方面都很環保，卻又不失靈活和實用。它的設計是革命性的，這也讓電動車革命逐漸在我們香港邁進。
門均自動關上。我正想尋找車鎖，即使告知這輛家庭式七座SUV可用儀錶板和手機應用程式控制。簡而言之，在手機上點兩點即可啟動雙電機發動器（不是引擎），Stephen說，這個功能讓家庭成員可輕鬆共用一輛車。

我們向中環進發，Stephen開始示範如何用儀錶板控制汽車的大部份功能，包括Google地圖提供的全屏幕衛星系統，以及如TuneIn Radio等其他功能，讓你收聽世界各地的廣播電台。雖然小玩意都很有趣，但沒有令我留下深刻印象，直至Stephen向我展示如何調整Model X的懸掛高度。在屏幕上點幾下，Model X的空氣懸掛在幾秒內就可從低升高，防止車子在彈起時撞擊路面，從而保護車底。透過satnav系統，車子還會自動記錄手動升起懸掛的位置，你不必因相同的速度碰撞而煩惱兩次！

我在試駕期間特意關掉音樂，因為我想試試在電動車中的聽覺體驗，我覺得表現良好。加上令人驚嘆的全玻璃全景遮陽玻璃，我能無遮擋地看到天空，令在繁忙的市中心的30分鐘車程讓人感覺舒暢。

在返回灣仔的路上，我將Model X轉為Ludicrous模式，試著釋放它全部力量。據說這個功能令Model X能加速超越許多其他超級跑車，可在一個3.1秒內從0加速到100公里。我急不及待地踩下「油門」，不幸這時交通繁忙。那一刻，我們的速度比單車還要慢。當我們駛近停車場時，Stephen竟然提議交換座位。他似乎感覺到我的失望，於是叫我扣緊安全帶，把頭靠在頭枕上。在接下來的幾秒鐘，我們以驚人的速度加速。它真的很強大，我覺得我正在遊樂場坐過山車！

Model X 在氣體排放和燃料效能方面能做到環保，同時功能多樣和實用性也令人驚訝。儘管它重近6,000磅，但操控平穩，轉彎順暢。其革命性的設計，帶動電能汽車革命，在香港越來越顯赫突出，我期待更加積極投入電動車的行列。
CityU Team Seizes Runner Up in 2017 Manfred Lachs Space Law Moot Court Competition (Asia Pacific Regional Rounds)

The School of Law at City University of Hong Kong is pleased to announce that their team performed magnificently in 2017 Manfred Lachs Space Law Moot Court Competition (Asia Pacific Regional Rounds) held at the Adelaide Law School, Australia, from 18–21 April 2017. They made it through to the grand final and returned with the trophy for the first runner up and the award for the second best memorial in the competition. Chung Chun Wai also won an oralist award.

Under the guidance of Dr. Mark Kielsgard, Assistant Professor and the Director of Mooting of the CityU Law School, and Dr. Vernon Nase, Visiting Fellow of the CityU Law School, the CityU team consisted of Chung Chun Wai, Ting Darryl Chadlyn and Ho Mondi Man Hay from Bachelor of Laws with Honours (LLB).

Around 40 teams participated in the Asia-Pacific zone with the top 30 selected to take part in the oral round based on scores of written submissions. Teams competing included the host Adelaide Law School, Murdoch University (Perth, Australia), the National University of Singapore, Gujarat University (India), the China University of Political Science and Law (Beijing) and the University of Hong Kong. The CityU team lost to the National Law School of India University (Bangalore) by a slim margin in the Grand Final of the competition.

The Manfred Lachs Space Law Moot Court Competition is organised annually by the International Institute of Space Law (IISL). The aim of the Competition is to promote the interest in, involvement in and knowledge of space law among students by providing a fair and competitive environment for the exchange of thoughts and the deepening of understanding of space law. This year, the students argued about a case concerning lunar facilities, mining of the moon, liability for collisions on the Moon and withdrawal from the Outer Space Treaty.

香 香港城市大學代表隊獲2017年曼弗雷德•拉克斯國際空間法模擬法庭辯論賽亞太區亞軍

香港城市大學代表隊於4月18日至21在澳洲阿得萊德大學法學院舉行的2017年度曼弗雷德•拉克斯國際空間法亞太區模擬法庭辯論賽中表現出色。他們一路披荊斬棘闖進了決賽，最終奪得亞軍並獲書面陳述第二名。隊員鍾振威同學亦獲得辯論員獎。

城大代表隊由法律學院副教授、模擬法庭辯論賽主任Mark Kielsgard博士及訪問學者Vernon Nase博士擔任教練，成員包括法律學院榮譽學士課程四年級學生鍾振威、丁綽霖和何敏晞。

約40支隊伍參加了亞太區比賽的初選，通過評比各參賽隊伍提交的書面陳述，大會選出30支隊伍參加現場辯論環節。參賽的隊伍包括東道主阿得萊德大學法學院、澳洲柏斯莫道克大學、新加坡國立大學、印度古吉拉特大學、中國政法大學和香港大學。城大代表隊在決賽中以些微差距負於印度大學(班加羅爾)國立法律學院。

國際空間法學會每年都會舉辦曼弗雷德•拉克斯國際空間法模擬法庭辯論賽。比賽的目的在於提供一個公平的、競爭的環境，增加學生對空間法的興趣、參與度和知識，深化對空間法的理解和交流。今年模擬法庭比賽圍繞議題月球設施、月球礦場、月球碰撞責任和退出《外太空條約》展開。
CUHK Law Hosts a Conference on “The 60th Anniversary of the Treaty of Rome: EU and Global Perspectives”

To mark the 60th anniversary of the Treaty of Rome, The Chinese University of Hong Kong (CUHK) Faculty of Law hosted an international conference on “The 60th Anniversary of the Treaty of Rome: EU and Global Perspectives” from 26–27 May 2017 at its Graduate Law Centre with the support from the EU Office to Hong Kong and Macao.

On the first day of the Conference, the Faculty Dean Prof. Christopher Gane and the Acting Head of the EU Office to Hong Kong and Macao Dr. Jolita Pons delivered the opening remarks, followed by the keynote speaker Judge Ian Forrester QC of the EU General Court with his speech on “The Rule of Law and Integration in the EU”. In his speech, Judge Forrester QC identified the unique contribution of EU law to the rule of law and discussed the challenges which Brexit poses for the law in both the UK and the EU.

Consisting of 10 plenary sessions, the two-day Conference attracted nearly 40 leading scholars from around the world to speak on topics related to EU law, including “The EU as a Model of Legal and Economic Integration”, “Europe's Role in Global Economic Governance”, “The EU and Legal Integration”, “EU Competition Law and Policy”, “Social Europe”, “Asia’s Trade Agreements with the EU”, “Free Movement of Persons”, “Asia’s Investment Relationships with the EU” and “Environmental and Public Law”. The final plenary session on “The Future of the EU” took place in the form of round table discussion to conclude the topics discussed in the Conference.

For more information about the Conference, please refer to www.law.cuhk.edu.hk/EU_Law_Conf.

中大法律學院主辦「從歐盟及全球角度觀看《羅馬條約》60週年紀念」會議

為紀念《羅馬條約》簽訂60週年，中文大學法律學院在歐盟駐港澳辦事處支持下於2017年5月26日至27日在法律學院研究生部舉行了「從歐盟及全球角度觀看《羅馬條約》60週年紀念」會議。

中大法律學院院長Christopher Gane及歐盟駐港澳辦事處署理主任彭麗雅博士在第一天會議上致開幕辭。歐盟普通法院法官Ian Forrester QC在其主題演講「歐盟的法治及一體化」中，確定了歐盟法律對法治的獨特貢獻，並討論了英國脫歐對歐盟及英國法律構成的挑戰。

為期兩天的會議舉行了10個全體會議，吸引了來自世界各地近40位知名學者，就歐盟法律議題發表演講，包括「歐盟法律與經濟一體化模式」、「歐洲對全球經濟管治的作用」、「歐盟與法律一體化」、「歐盟競爭法及政策」、「社會歐洲」、「亞洲與歐盟的貿易協定」、「人民自由運動」、「亞洲與歐盟的投資關係」和「環境保護與公法」。會議以全體圓桌會議作結，討論「歐盟的未來」。

Leading scholars of EU law from around the world participate in the Conference.

來自世界各地的歐盟法律學者參加了會議。
CUHK Organises 6th Hong Kong Human Rights Moot

CUHK Faculty of Law in conjunction with Vidler & Co. Solicitors organised the finals of the 6th Hong Kong Human Rights Moot on 18 March 2017 at the CUHK Graduate Law Centre.

This year, teams from Hong Kong’s three law schools argued a moot question that raised issues of freedom of expression and the amenability of an ostensibly commercial decision by a statutory body to judicial review. The three finalist teams were: Michael LEUNG Hoi Ming and Joshua YEUNG King Lun of CUHK, LAW Ka Sing and LEE Ka Yee of CityU, and Griffith CHENG Ho Fung and Francis CHUNG Ho Chai of HKU.

The finals were adjudicated by a distinguished panel of moot judges: Mr. Tim Owen QC of Matrix Chambers in London, CUHK Faculty of Law Dean Prof. Christopher Gane, and Council Member of the Shenzhen Court of International Arbitration and HKU Visiting Professor Dr. Peter Malanczuk.

The Hong Kong Human Rights Moot was first launched in 2010 aiming to raise awareness amongst law students of human rights issues relevant to Hong Kong. Previous moot questions have touched on access to social housing, race discrimination, recognition of foreign registered same-sex marriages, and policing of non-violent demonstrations.

中文大學舉辦第6屆香港人權模擬法庭

中文大學法律學院與韋智達律師行於2017年3月18日在法律學院研究生部合辦了第6屆香港人權模擬法庭。

今年，來自香港三間法律學院的代表隊就一條模擬辯題引起的言論自由問題及一間法定機構表面商業決定對司法覆核的順從進行辯論。入圍的3支代表隊分別為：中文大學Michael LEUNG Hoi Ming及Joshua YEUNG King Lun、城市大學LAW Ka Sing及LEE Ka Yee，以及香港大學Griffith CHENG Ho Fung及Francis CHUNG Ho Chai。

決賽的模擬法庭法官團包括：倫敦Matrix Chambers Tim Owen QC、中大法律學院院長Christopher Gane教授、深圳國際仲裁院理事及香港大學客座Peter Malanczuk教授。

香港人權模擬法庭於2010年首辦，比賽旨在提高法律學生對與香港人權議題的認識。以前模擬法庭辯題包括獲取公共房屋權利、種族歧視、承認外國登記的同性婚姻以及對非暴力示威的警務行動。
In the last issue, we provided tips on “writing processes”. In this issue, we take a closer look at “writing products”. Over the years, lawyers’ writing products have earned themselves a reputation for being overly complex, replete with archaic expressions and legal jargon, and generally difficult for the lay person to comprehend. Numerous attempts to encourage clarity and plainness of expression have ensued, and these have generated numerous rules of thumb: “focus on the actor, the action and the object”; “prefer the active voice”; and “use base verbs, not nominalizations”.

These rules of thumb, as useful as they are, tend to be rather prescriptive. Here, we make some observations about legal writing taking a descriptive approach, which observes lawyers’ writing practices, in order to understand how they strategically use language to achieve their communicative goals.

We focus on strategies for presenting opinions in client correspondence. This is often the most sensitive part of the correspondence: it can be difficult for lawyers to be 100 percent certain about their opinion but they nevertheless need to present a clear opinion to their clients. Let’s see how one Hong Kong lawyer resolved this problem, when writing a barrister’s opinion for a solicitor, as observed in the first author’s empirical research. She summed up her opinion as follows.
“Having perused the correspondence between the parties, I believe that there is an enforceable tenancy despite the lack of a written lease.”

Leaving aside the overly formal use of the verb peruse, consider how the writer has strategically drawn on what applied linguists call “hedging” and “boosting” strategies.

- She explicitly reduces her commitment to the main proposition (“there is an enforceable tenancy”) by use of appropriate hedging, i.e. the phrase I believe. One could also use in my opinion, or it seems to me.
- The main proposition itself is not hedged. If one were to do so (e.g., “I believe that there may (perhaps) be an enforceable tenancy”), the opinion would lose its clarity.
- Finally, she boosts her opinion in the introductory clause (i.e., “Having perused the correspondence between the parties”), which draws the reader’s attention to the work she has put in. To achieve this effect, a lawyer could also say, “Having taken all of the circumstances into account….”

Such a combination of hedging and boosting strategies leads to the presentation of an opinion that is both strong enough to be clear and hedged enough to present an accurate picture of the writer’s state of knowledge and so accords with a solicitor’s ethical obligations (in particular, see Commentary 3 and 4 of Principle 5.18 of the Hong Kong Solicitors’ Guide to Professional Conduct. Vol. 1. 3rd ed. (2013)). Readers who are interested in other linguistic strategies for legal writing can refer to the material on our website Legal English in Hong Kong, which can be accessed at legalenglish.hk.
LEGAL TRIVIA #39

This month, we focus on one of Hong Kong’s most important legal institutions, the jury.
The questions have been prepared by Douglas Clark, Barrister. Suggestions for questions to appear in next month’s journal are most welcome.

1. When were jury trials introduced in Hong Kong?
   A. 1844
   B. 1845
   C. 1860
   D. 1891

2. When first introduced, what was the initial size of a jury in Hong Kong?
   A. 5
   B. 6
   C. 7
   D. 12

3. When were women first eligible to serve on a jury in Hong Kong?
   A. 1890
   B. 1919
   C. 1947
   D. 1970

4. When was the property qualification dropped for being a member of a jury in Hong Kong?
   A. 1851
   B. 1919
   C. 1951
   D. There never was one.

5. What is the size of a coroner’s jury in Hong Kong?
   A. 4
   B. 5
   C. 6
   D. 7

6. Which of the following offences does not have to be tried before a jury?
   A. Blasphemy
   B. Trafficking in a Dangerous Drug
   C. Genocide
   D. Trading with Pirates

7. When was trial by jury abolished in the Hong Kong District Court?
   A. 1960
   B. 1984
   C. 1997
   D. There have never been jury trials in the District Court.

8. When were Chinese language jury trials formally introduced in Hong Kong?
   A. 1984
   B. 1990
   C. 1995
   D. 1997

9. When were jury trials abolished in Singapore?
   A. 1960
   B. 1965
   C. 1995
   D. They still have jury trials in Singapore.

10. For which of the following civil causes of action is a jury trial not available in the High Court of Hong Kong?
    A. Libel
    B. False imprisonment
    C. Sedition
    D. Seduction

Contest Rules:
To be eligible to win a bottle of Ch. La Croixille 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 #39

本月的問題圍繞香港最重要的法律機構之一：陪審團。問題由馬錦德大律師編製。歡迎建議下期問題。

1. 香港於何年引入陪審團審訊？
   A. 1844
   B. 1845
   C. 1860
   D. 1891

2. 香港陪審團初時的規模有多少人？
   A. 5
   B. 6
   C. 7
   D. 12

3. 女性何年開始有資格在香港擔任陪審員？
   A. 1890
   B. 1919
   C. 1947
   D. 1970

4. 香港何時廢除對陪審團財產方面的限制？
   A. 1851
   B. 1919
   C. 1951
   D. 從來沒有限制。

5. 香港的死因裁判法庭陪審團由多少人組成？
   A. 4
   B. 5
   C. 6
   D. 7

6. 以下哪些罪行毋須由陪審團審理？
   A. 詭讀
   B. 販運危險藥物
   C. 種族滅絕
   D. 盜版交易

7. 區域法院何時取消陪審團審訊？
   A. 1960
   B. 1984
   C. 1997
   D. 區域法院從沒有陪審團審訊。

8. 中文陪審團審訊何時在香港正式推行？
   A. 1984
   B. 1990
   C. 1995
   D. 1997

9. 新加坡何時取消陪審團制度？
   A. 1960
   B. 1965
   C. 1995
   D. 新加坡仍有陪審團制度

10. 以下民事訴訟因由在香港高等法院審訊陪審團並不適用？
    A. 詭讀
    B. 非法禁錮
    C. 擊動叛亂
    D. 誘惑

競賽規則：
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info.claytor@thomsonreuters.com
首位能提供最多正確答案（答錯的題目不得多於三題）的讀者將成為優勝者。湯森路透就得獎者所作的決定是最終及不可推翻的。
Shanghai Lawyer: The Memoirs of America’s China Spymaster

Norwood F. Allman (annotated and illustrated by Douglas Clark)

By Patricia E. Alva, Barrister-at-Law

Gilt Chambers

Shanghai Lawyer is a gripping first-hand account of American Norman F. Allman’s life in China in the first half of the 20th century, which Douglas Clark annotated, illustrated and embellished. The memoir traces Allman’s journey, which began with his decision to leave his low-wage job in the US as a powder monkey (a person who works with explosives) and move to China in hopes of finding a better life. Through a series of twists and turns, Allman eventually became a lawyer, practicing before the US Court for China. Over the course of his 30-odd-year career, he held a variety of interesting roles, spanning from a student interpreter with the US Department of Justice to a spymaster in the OSS and CIA during and after World War II.

From Powder Monkey in the USA to Lawyer in the Land of Opportunities

Shanghai Lawyer is Allman’s account of how events around 1916 to 1950 shaped his professional and private life in China. His plan or dream of finishing tertiary education and working for a big company earning an enormous salary did not work out in the USA. After passing the State Department’s entrance examinations, Allman chose to be a student interpreter; no college or university degree was necessary. Out of three places in East Asia, he decided to take the one with the largest population. As his travelling expenses were paid on the basis of per mile travelled, he chose the longest route to China, where after studying the Chinese language for two years, he was promoted to the rank of interpreter. From then on he made his way to become a diplomat, lawyer, judge, and a spy, to name just a few of his different but interrelated positions.

Allman benefitted from extraterritoriality, a right secured by Americans and other foreigners under which they basically had to comply with the laws of their own country only. Extraterritoriality made Allman and other foreign lawyers very busy. He preferred corporate law and his firm helped organise the majority of American companies formed to do business in China (see Chapter IX). He also dealt with insurance and conveyance cases, among others.

Annotations and illustrations provided by Clark make Allman’s story all the more interesting but most importantly, all the more real. When facts and evidence are missing or incomplete, Clark makes sure that the reader gets the full story. For example, when Allman refers to a client from an insurance company as “perfectly willing to pay”, Clark points out that the client had in fact fought the case as hard as possible (see Chapter IX). Clark also discloses the real name of Allman’s “gentlemanly client” who defrauded him (see Chapter XII) as well as short biographies of the several persons mentioned by Allman. He shows pictures of Chinese title deeds and newspaper clippings at the time, Allman’s photographs in his various roles and Allman’s “grand house” in Shanghai.

No doubt, China became the Land of Opportunities to Allman, as it did to many others. Certainly, he came to China long after the two Opium Wars. By then, China had already been the Land of Opportunities to a number of foreign traders, albeit to the detriment of the locals.

It is apposite to mention that at the beginning of the 21st century, China continues to be the Land of Opportunities, but not by imposition. China has welcomed thousands of foreigners looking for job opportunities. For example, it has been reported...
《上海律師》：美國在華間諜奧爾曼的回憶錄
（馬錦德註釋說明）

作者　黎艾柏蒂大律師　Gilt Chambers

《上海律師》是美國人奧爾曼(Norman F. Allman)20世紀上半葉在中國生活的第一手記錄，由馬錦德(Douglas Clark)註釋、說明和潤飾。奧爾曼決定放棄在美國當火藥工人的工作，到中國尋找更美好的生活，這部回憶錄跟隨他的旅程。經歷重重曲折，奧爾曼最終成為律師，在美國駐華法院執業。在30多年的職業生涯中，他擔任過各種有趣的職位，包括在美國司法部當學生口譯員，到二戰期間和之後擔任美國戰略情報局和中央情報局的間諜。從美國的火藥工人到機會國度的律師

《上海律師》記述了奧爾曼關於1916至1950年左右在中國的專業和私人生活。他原本打算在美國完成高等教育，夢想進入大公司工作賺大錢，可是計劃沒有實現。通過國務院的考試後，奧爾曼選擇了當學生口譯員，這份工作不需要大學學位。在東亞三個地方之中，他決定選擇人口最多的國家。由於旅費以每英里計算，他選擇了路程最長的中國。在學習中文兩年後，他被晉升口譯員。從那時起，他成為一步步成為外交官、律師、法官和間諜，擔任與別不同卻又相互關聯的多個職位。

當時在華的美國人及其他外國人享有治外法權，他們基本上只須遵守其本身國家的法律。受惠於此，奧爾曼及其他外地律師均其門如市。他比較喜歡處理企業法，其律師行協助過大部份在中國開展業務的美國公司（見第九章）。他亦處理過保險和產權轉讓案件等。

馬錦德的註釋和說明令奧爾曼的故事更加有趣，但最重要的是令故事更真實。當事實的事實和證據遺漏或不完整時，馬錦德便會確保讀者讀到完整的故事。例如，當奧爾曼稱一位保險公司的客戶為「完全願意付錢」時，馬錦德指出，該客戶實際上已盡力爭取（見第九章）。馬錦德還透露，欺騙了奧爾曼的「紳士客戶」的真名（見第十二章），以及奧爾曼提到的幾個人的簡短傳記。他還展示了當時中國的所有權契據和剪報的照片、阿曼的生活照和在上海「大屋」。

《上海律師》介紹治外法權如何令外地律師得以有機會在中國生活和執業，展示外國人如何在已成為世界第二大經濟體的土地上實現夢想。從奧爾曼的經歷可見，他甚至超出了他的夢想。

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Serena has over 6 years of recruitment experience, specialising in the recruitment of in-house lawyers where her industry focus is across in house corporate, assisting all types of commercial clients in Hong Kong. Serena has long standing work relationships with the executive-level legal and human resources professionals across a variety of industries with multinationals, state-owned enterprises, as well as domestic private and listed companies. Graduating from the University of Wisconsin, Serena gained experience in management consulting prior to joining Michael Page in 2010.
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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 Li, Consultant, Legal Support
Sabina specialises in the recruitment of company secretarial professionals at all levels, with a focus on in house commercial clients in Hong Kong. She has 2 years of recruitment experience servicing commercial clients across a variety of industries. Sabina graduated from the UK with a Bachelor of Science and a Graduate Diploma in Law. Prior to joining Michael Page, she worked with a law firm and a HK listed company as a paralegal and company secretary.
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Soraya Tennent, Consultant , Legal Support
Soraya’s career with Michael Page commenced in Australia in 2015. She has 2 years of recruitment experience in the areas of legal and finance. After moving to Hong Kong, Soraya specialises in the recruitment of legal support staff for all leading and sizable law firms as well as global and local financial institutions. Soraya graduated from Curtin University with a Double Major in Business Law and Journalism.
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Tina is CPA qualified with a Bachelor Degree in Law from University of Wisconsin, Serena gained experience in management consulting prior to joining.

Kamil Butt, Senior Consultant, Private Practice

Sabina Li, Consultant, Legal Support

Our client is seeking to take on a seasoned lawyer to oversee a sub-team within the larger legal department. Overseeing all legal and regulatory matters, you will look after a variety of products with a focus on agency compensation and life insurance products, with exposure to investment fund products. You and your team will review and advise on a variety of related agreements such as insurance contracts, outsourcing agreements, investment agreements. You will stay in close liaison with local regulators including SFC and MIF intermediaries as well as insurance agents and brokers. The ideal candidate will possess at least 8 years’ PQE with relevant insurance products experience. Strong leadership experience is preferred, as is communication skills. Ref: 3932134

Compliance Counsel

› 10+ PQE
› Asset Manager

Our client is a growing asset manager being a subsidiary company under a well-established financial services house, seeking a compliance counsel to take on a senior role. As the compliance lead of the company, you will oversee the corporate compliance function and provide strategic advice to senior management. Locally you will manage a variety of SFC compliance matters and ensure the company is in compliance with local regulatory guidelines. You will work closely with fund administrators on KYC and AML matters, and to maintain close liaison with local regulators including SFC and HKMA. The ideal candidate will possess strong compliance experience, any exposure gained with other asset managers or financial institutions is highly regarded. Strong English and Chinese including Mandarin is required. Ref: 3933369

Financing Lawyer

› 6+ PQE
› Financial Services House

Our client is a SFC licensed entity with Type 1, 4 & 9, offering asset management and investment banking services, currently growing within the region with overseas operations. Reporting to the General Counsel, you will assist on a variety of financing matters including lending / loans, project finance and debt finance related work, as well as with exposure to funds formation and related regulatory matters. The successful candidate will be a mid to senior lawyer with hands on experience obtained in the areas of financing (general/project or debt) or loans, with willingness to pick up some funds work. Experience gained with international law firms or sizable financial institutions is preferred. Ability to work independently and readiness to work in a smaller outfit is important. Fluency in English and Chinese is required. Ref: 3933092

Legal Director (APAC)

› 8-12 PQE
› US Listed Multinational

A well-regarded global industry leader is currently seeking for a Legal Director to look after part of the regional business. You will lead a small legal team, with oversight across a full range of corporate transactions including M&A and corporate restructuring as well as to drive major negotiations of commercial agreements. You will work with internal and external lawyers to handle legal matters across 4 major Asia jurisdictions. The ideal candidate will possess at least 8 years’ PQE being well versed in commercial corporate matters, ideally with exposure to M&A. Prior in house experience with sizable companies is an advantage but not a must. Regional leadership experience is highly advantageous, as is excellent interpersonal skills. Strong English language skills is essential, and any other Asian language skills will be a plus. Ref: 391446

Dispute Resolution Associate

› 5 PQE
› UK Law Firm

Our client is a leading international law firm with strong history in representing multi-national corporations as well as commercial and investment banks, insurers and other financial institutions in high-stakes litigation and international arbitration matters, both cross-border and domestic. The practice focuses on general commercial litigation, international arbitration (both in the region and China-related) and contentious financial services regulatory work. The firm is seeking a 4-6 PQE dispute resolution lawyer, with expertise in banking and financial services litigation. You will have solid experience advising local and multi-national corporations as well as financial services in complex commercial disputes and regulatory enforcement matters. Proficiency in both English and Chinese is preferred. Ref: 3935106

Banking & Finance

› 6+ PQE
› Senior Associate/Of counsel

Our client is a boutique Hong Kong law firm with several offices located in Hong Kong and China, now seeking a junior to mid level corporate and commercial lawyer to join the firm’s Corporate & Capital Markets team. In this role you will focus on foreign direct investments in PRC, as well as other local and inbound joint ventures, mergers and acquisitions and private equity investments. The ideal candidate will possess at least 3 years’ PQE, with experience in assisting Chinese companies becoming listed in Hong Kong and other jurisdictions outside of China. Experience in advising listed companies on various aspects of listing procedures, M&As and debt reconstruction is also highly valued. Proficiency in both English and Chinese is a must. Ref: 3926323

Corporate & Commercial

› 3-6 PQE
› Firm HK Law Firm

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### In-House

#### HEAD OF LEGAL & COMPLIANCE  HONG KONG  10+ years
Well-known PRC financial institution seeks a Head of Legal & Compliance in HK. You will have solid legal/compliance experience from another financial institution & have significant exposure to IBD product compliance. Fluent English & Mandarin required. Attractive package on offer. HKL6515

#### GENERAL COUNSEL  HONG KONG  10 – 20 years
A HK statutory body seeks a General Counsel to provide legal support on regulatory & compliance matters. You will have strong experience advising listed companies, and fluent English & Cantonese are essential. Prior lobbying experience will be an asset. HKL6523

#### IBD COMPLIANCE  HONG KONG  5-10 years
Bulge bracket bank is looking to expand its compliance team. The role will involve IBD & investment management compliance. Lawyers in private practice experienced in corporate finance, funds and regulatory work will be considered. Chinese language skills are preferred. HKL6163

#### CORPORATE/COMMERCIAL  HONG KONG  3-5 years
A listed technology company, well-known for developing popular mobile apps, seeks a lawyer with good knowledge of the listing rules & solid corporate experience. The company offers a young, vibrant & entrepreneurial culture. Business level Mandarin is essential. HKL6497

#### PRIVATE EQUITY  HONG KONG  3-5 years
Reputable PRC financial institution seeks a lawyer to advise on PE investment projects and M&A transactions in HK & China. Both HK & PRC qualified lawyers currently based in HK will be considered. Solid PE experience & business level Mandarin are essential. HKL6516

#### CAPITAL MARKETS  HONG KONG  3-6 years
Investment bank seeks a legal counsel in HK. Reporting to the Head of Legal, you will provide legal support on capital markets matters. Great opportunity for those with strong capital markets experience to join a dynamic team. Fluent English, Cantonese & Mandarin required. HKL6516

#### TECHNOLOGY/COMMERCIAL  HONG KONG  1-3 years
A growing technology company is looking for a junior lawyer. You will report to the Chief Legal Officer & will handle commercial/technology related contracts, general corporate work, KYC and corporate governance matters. Strong English drafting skills are essential. HKL6531

### Private Practice

#### FINANCE ASSOCIATE/COUNSEL  HONG KONG  5-12 years
Leading US law firm is seeking a finance lawyer with strong experience in special situations and leveraged finance transactions. The candidate will have gained experience from a peer firm and fluent Mandarin preferred. NY rates on offer. HKL6495

#### DCM  HONG KONG  0-4 years
Fantastic opportunity for a junior lawyer to join the DCM practice of a Magic Circle firm. You will gain exposure to regional DCM work including bonds, PIPEs, global depository receipts and pre-IPO investments. Chinese language skills not needed. HKL6483

#### REGULATORY  HONG KONG  4-7 years
Magic Circle firm seeks an associate with a broad range of exposure to non-contentious regulatory matters. The role focuses on advising government bodies, investment banks and security houses on regulatory issues. Chinese language skills preferable but not essential. HKL6544

#### SHIPPING/GENERAL LITIGATION  HONG KONG  3-6 years
UK law firm seeks an associate to handle a mixture of general commercial and shipping litigation. You will have Commonwealth qualification and a strong interest in developing as a commercial and shipping litigator. Chinese language skills are an advantage. HKL65774

#### US CORPORATE  HONG KONG  3+ years
Top tier US firm is looking for a US qualified lawyer with Mandarin to join the corporate team. Great opportunity to join a well-established team whilst gaining exposure to a mix of corporate work including M&A, private equity and US capital markets transactions. HKL6520

#### CORPORATE FINANCE  HONG KONG  3+ years
Reputable US law firm is looking for a mid-level corporate finance lawyer. You will have strong IPO experience gained from an international firm or local firm and must be very familiar with HK listing rules. HK qualification as well as fluent Mandarin are essential. US rates on offer. HKL6517

#### M&A  HONG KONG  0-2 years
Leading UK firm is looking for a junior M&A lawyer to join its team. This is a pure M&A role and you must have prior M&A experience gained from an international law firm. 2017 qualifiers with extensive M&A experience are welcome to apply. Fluency in Mandarin is a must. HKL6551

This is a small selection of our current vacancies. Please refer to our website for a more comprehensive list of openings. Please contact Lindsey Sanders, lsanders@lewissanders.com +852 2537 7409 or Eleanor Cheung, echeung@lewissanders.com +852 2537 7416 or Karishma Khemaney, kkhemaney@lewissanders.com +852 2537 0895 or email recruit@lewissanders.com

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Derivatives
2+ PQE Hong Kong
An international UK Law firm is looking for a Derivatives Lawyer to join their Banking and Finance team. The successful candidate will have an OTC derivatives and structured product skill set. Previous coverage of HK regulatory matters an advantage. Common law qualified (ideally E&W or HK qualified). Chinese language skills preferred, but not essential. HKL4552

Corporate
4+ PQE Hong Kong/China
This top-tier law firm seeks a U.S. admitted associate (preferably with a Juris Doctor) with experience in Private Equity/ minority investment/ M&A work. You will have the opportunity to work with clients including major corporations, investment banks and private equity funds, on a broad range of corporate and securities matters. Strong English and Mandarin language skills are a must. HKL4576

Commercial Litigation
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

COMMC/DCM
3+ PQE Australia
This premier firm is seeking an individual with capital markets experience to join their highly regarded team in Australia, to represent issuers, arrangers, dealers and other participants. The successful candidate will have solid experience/ exposure to project finance, equity/debt capital markets, leveraged finance and restructuring. You will be US qualified with first rate academics and top tier law firm experience. HKL4617

Commercial Litigation/ Insolvency
3+ PQE Hong Kong
This leading firm seeks an associate to work on a range of litigation, restructuring and insolvency matters involving Cayman Island and BVI entities, structures and issues. With general commercial litigation experience, gained at a premier firm, you will be ready to participate in business development activities. Chinese language skills (written and spoken) highly valued. Insolvency and restructuring experience ideal. HKL4380

Litigation and Regulatory
4+ 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 Senior Associate to join their DR practice. The successful candidate will have general commercial litigation and contentious regulatory experience. Experience in family disputes and tax, and admission in Hong Kong as well as Cantonese will be a distinct advantage. HKL4414

Shipping/Trade Litigation
3+ PQE Hong Kong
Our client is an international commercial law firm recognised for their expertise in advising clients in the shipping industry. This is an excellent opportunity for an associate with a strong client-service focus and experience in shipping litigation, arbitration and international trade. Admission in Hong Kong or England & Wales, with Chinese language skills preferred but not essential. HKL4586

Arbitration
5+ PQE Shanghai
A fantastic opportunity for an associate who is a true team player and has a strong knowledge of international arbitration. You will have excellent analytical and communication skills to deliver advice that is commercially astute. Qualified in the PRC or other jurisdictions. Fluent English and native Mandarin language skills are essential (second Asian language an advantage). HKL4386

Corporate
2+ PQE Hong Kong
This global firm seeks a junior associate who is Hong Kong qualified. You will work on leading edge Hong Kong corporate finance matters. The practice advises on inter-country M&A, as well as the competition law issues raised in multijurisdictional M&A; capital markets matters and banking transactions. Cantonese, English and Mandarin language skills would be preferred. HKL4577

Construction Litigation
2+ PQE Hong Kong
This is a fantastic opportunity for a junior associate to join a firm recognized globally for its innovative approach to client service. You will work with a partner renowned as an excellent strategist and you will have the opportunity to work on high profile matters for the world’s leading construction companies, developers and engineering firms. Chinese language skills a plus. HKL4579

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3+ PQE Hong Kong
This leading firm seeks a lawyer to join their award-winning Finance practice to provide assistance on a variety of ship finance, international trade and restructuring issues. You will work with a market-leading partner and a very collegiate team for clients including arrangers, lenders, ship owners and offshore service providers, as well as private equity. Mandarin language skills essential. Qualified in the PRC or other jurisdictions. HKL4485

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Counsel - Partner Beijing/Hong Kong
A global law firm with a strong global competition practice are looking for a competition/anti-trust lawyer to head up their Asian practice. You must have either a strong fee/client following, there will be lots of work filtered through the Asian office with their blue-chip client base. Fantastic opportunity to grow your practice in Hong Kong or Beijing. HKL4561

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ASEAN LEGAL COUNSEL  SINGAPORE  10-15 PQE
Global IT services company seeks a legal counsel to provide support to their business across the ASEAN region. You will be responsible for advising on all legal matters, as well as to ensure compliance with all applicable laws, rules and regulations. You should have gained experience in the IT or telco sector. (HKL 15455)

INTERNATIONAL LEGAL ADVISOR  HK/CHINA  4-8 PQE
Global technology company has a vacancy in their international legal team. Solid experience in corporate and commercial law gained from a leading international law firm is required. Fluency in English and Mandarin and an ability to work in a fast-paced environment are critical. (HKL 15135)

LEGAL COUNSEL (PART-TIME)  HONG KONG  4-8 PQE
Fast growing retail brand seeks a legal counsel to support their global operations. You will advise on a wide range of operational issues including commercial contracts, IP, employment, regulatory matters. Chinese language (Cantonese and Mandarin) required. Flexible part-time arrangement on offer. (HKL 15423)

IP/DATA COUNSEL  HONG KONG  4-8 PQE
Leading conglomerate seeks an IP counsel to join their well-established global legal team. You will advise on all IP and technology related legal issues globally. This includes, but is not limited to, drafting and negotiating IP licenses and IT outsourcing agreements and advising on patent/trade mark portfolio management. (HKL 15477)

CASH EQUITIES / PRIME  HONG KONG  4-8 PQE
Financial institution looking to bring on an experienced DCM or banking finance lawyer to support their cash equities and prime finance teams. You will need prior in-house experience or solid law firm experience working for financial institutions. (HKL 15440)

LEGAL COUNSEL  HONG KONG  3+ PQE
Global insurance company seeks a legal counsel to join their well-established legal team. You will advise the business on a wide range of legal matters including issues relating to insurance products. Fluency in Cantonese (written/spoken) is required. (HKL 15272)

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- 3-6 year PQE general Commercial Litigation lawyer  
  International law firm

- 3-5 year PQE Commercial Litigation and Arbitration  
  Magic Circle law firm

- 4-5 year PQE International Arbitration lawyer  
  International law firm

- 4-8 year PQE International Arbitration  
  International law firm

- 4-8 year PQE Commercial Litigation/Insolvency Disputes Offshore law firm

- Counsel - International Arbitration – US law firm

- Partner – Commercial Litigation/Insolvency Disputes – Offshore law firm
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Technology Builds Transparency: Achieving Justified Trust

The ATO will soon require Australian MNCs to supply fact-based evidence to justify their tax positions. The new justified trust initiative is the next stage in the ATO's implementation of the OECD BEPS program.

What are the implications for those corporations already on the journey to transparency? How will it affect the relationship between finance and tax teams? Importantly, what steps can be put in place to prove out a position of Justified Trust without miring even more valuable resource into additional compliance efforts.

Find out here: tax.thomsonreuters.com.au/transparency

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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 (MiFID II) and more general ALM and KYC is essential
- Chinese languages are preferred

**Compliance Manager**
**GLOBAL CORPORATE BANK**
QPD/584880
This company is a prominent international banking group and is looking to hire a seasoned wholesale banking compliance manager into their compliance department. This person will report directly into the head of compliance and interact closely with the business as well as external regulators. This is an excellent opportunity to join a strong firm with a clear dedication to compliance.

**Key Requirements:**
- Compliance or legal experience and direct experience with HKMA, especially investigations will be advantageous
- Over five years’ experience in compliance for financial services companies
- Experience in managing a risk and or compliance function in a wholesale or corporate banking environment is essential

**FINANCIAL SERVICES**

**AVP, GLOBAL MARKETS ADVISORY**
**TOP INVESTMENT BANK**
QPD/586890
Our client is a leading European investment bank currently hiring an experienced markets professional. You will primarily be focused on fixed income and OTC derivatives, but will also support the equities and financing groups. This role offers wide exposure and will be sitting on the trading floor.

**Key Requirements:**
- A minimum of four years’ product experience in a global investment bank
- A CPA or CFA is preferred
- Derivatives knowledge is beneficial
- Experience dealing with front office will be advantageous
- Excellent spoken and written English is essential and Mandarin is preferred

**ACCOUNT MANAGER**
**GLOBAL MARKETS ADVISORY**
QPD/588350
This global investment bank is looking to hire an experienced account manager to join their market and distribution team. This role will focus on managing key client relationships and will work closely with teams throughout the region. Occasional travel will be required.

**Key Requirements:**
- Willing to travel within regions to see investments first-hand and develop strong relationships with regional team
- Having a strong desire to work within a lean high-end boutique environment
- Experience in private wealth with previous experience advising senior leadership.
- Strong experience in reviewing and translating commercial contracts
- Ability to support front-office bankers as point of escalation on any complex front-line risk or compliance matters
- Ability to work directly with global senior leadership team to ensure firm-wide adherence to global regulatory standards

**BUSINESS COMPLIANCE & RISK MANAGER**
**BOUTIQUE EUROPEAN PRIVATE BANK**
WDM/586810
Highly regarded European private bank is seeking a business risk and compliance manager to work directly with the firm’s CEO and head of compliance on the development of best practices for risk mitigation and regional compliance. This person will come from a legal or compliance background in private wealth with previous experience advising senior leadership.

**Key Requirements:**
- Ability to partner directly with APAC MD/CEO in advisory role revamping all front-line risk and compliance policies and operational practices
- Ability to support front-office bankers as point of escalation on any complex front-line risk or compliance matters
- Experience in private wealth industry is essential
- Having a strong desire to work within a lean high-end boutique environment is essential

**ASSOCIATE DIRECTOR - COMPLIANCE**
**FRONTIER MARKETS PRIVATE EQUITY FUND**
WDM/586860
Globally recognised frontier markets Private Equity fund with ASEAN focus is hiring a Hong Kong based compliance manager at the associate director level. This fund has nearly two billions USD in AUM, and 100 employees globally. The associate director - compliance will report into the group head of compliance and be responsible for oversight of compliance in Hong Kong and work closely with teams throughout the region. Occasional travel will be required.

**Key Requirements:**
- Ability to have ownership of all Hong Kong Compliance matters across: regulatory compliance with SFC, AML/ KYC, and investment compliance
- Ability to work directly with global senior leadership team to ensure firm-wide adherence to global regulatory standards
- Willing to travel within regions to see investments first-hand and develop strong relationships with regional team
- Strong experience in reviewing and translating commercial contracts
- Ability to support front-office bankers as point of escalation on any complex front-line risk or compliance matters
- Having a strong desire to work within a lean high-end boutique environment is essential

**LEGAL COUNSEL**
**GLOBAL FASHION BRAND**
ZRW/557090
A global luxury fashion house is seeking a junior legal counsel sitting in Hong Kong to provide legal assistance to its business in Hong Kong and fast expansion in PRC. You will be responsible to review and negotiate a wide range of retail commercial contracts, handle corporate insurance claims and IP matters in the PRC and general ad-hoc legal matters. You will report directly into the General Counsel.

**Key Requirements:**
- A Hong Kong educated legal profession with one to two years’ commercial work experience, ideally qualified but paralegals and trainees are also considered
- Strong experience in reviewing and translating commercial contracts
- Experience in PRAC-related commercial work will be advantageous
- Fluency in English, Cantonese and Mandarin is essential

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

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