Cover Story

Face to Face with

Gerard Sanders
General Counsel, Asian Infrastructure Investment Bank
由香港城市大學與中國人民大學合作，在香港城市大學開設的《中國人民大學法學碩士課程》已有廿二年的教學歷史，迄今有519名學生獲得中國人民大學法學碩士學位。本課程獲國家教育部和香港教育局批准。

中國人民大學是以人文科學、社會科學、管理學為主，兼有信息科學、環境科學等理工科目的綜合性研究型全國重點大學。人大法學院創立於1950年，是中華人民共和國成立後創辦的第一所正規高等法學教育機構。曾三次蟄獲教育部課程中心評比的全國法學學科排名第一。由中國法學會憲法學研究會會長、著名法學家韓大元教授擔任院長。

《中國人民大學法學碩士課程》由中國人民大學法學院專業教授以普通話在香港城市大學授課，科目包括：《法理學》、《中國法制史》、《憲法與行政法》、《刑法》、《國際公法》、《國際法》、《國際商法》、《國際貿易法》等十二門中國法學科目。已獲得法學學士學位或其他非法律專業學士學位或以上學歷的人士均可報讀。

學生在修滿十二門中國法學科目學分後，可獲中國人民大學法學院頒發的課程結業證書，及後在專任教師指導下完成一篇碩士論文並參加論文答辯，學生成功通過論文答辯後，可獲國家認可的法學碩士學位。本碩士課程屬兼讀制，一般約需兩年四個月或兩年九個月時間完成（包括每年三個學期六門科目及論文答辯）。學生必須在中國人民大學研究生院碩士學位申請之規定時間內，在指定的教授指導下完成法學碩士論文的研究，及按中國人民大學教學規定參加論文答辯（《中國人民大學法學碩士課程》會為法學碩士學位論文的完成及答辯程序提供輔導材料）。

報讀者也可在取得香港城市大學法學碩士學位後，轉讀《中國人民大學法學碩士課程》。如已選修香港城市大學碩士學位五門指定科目中的任何科目，將可在《中國人民大學法學碩士課程》中獲豁免修讀最多四門科目。

曾就讀本課程並完成各大科目考試合格但未取得學位者，可申請緩讀。申請者需提交入學申請表及選擇研究方向，供學院審批。完成指定及與研究方向相對的輔修科目後（至少兩學期），在指導教授指導下完成碩士論文並通過論文答辯，可獲國家認可的法學碩士學位。人大法學院每屆續讀之安排、課程內容及審批具最終決定權。有關續讀課程的費用，請向人大法律學院查詢。

學費及費用（港幣）
1. 2017屆學生報名費為$250元；
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1. 此時的學費及論文指導及教室費會作出調整。
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有興趣可向香港城市大學法律學院索取有關本課程設置及報名的詳細資料，並可報名參加免費推廣講座。

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日期：2017年6月10日（星期六）及2017年7月8日（星期六）
時間：下午2時—3時30分
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Earlier this year, UK Lord Chancellor Truss exercised her statutory power to change the multiplier for calculating damages for the victims of personal injuries from 2.5 percent to -0.75 percent. This caused a serious uproar in the UK, with insurance industry professionals claiming it was an unjustifiable change that will create a windfall for claimants. This multiplier is often referred to as the “discount rate” and it is used to calculate damages for future losses in personal injury claims.

A neutral rate would be a multiplier equal to the actual number of years of lost income whereas a negative percentage increases the number of years required to produce the same revenue stream. If the discount rate is not aligned with current economic data, damages for pecuniary loss will not reflect reality and claimants will either be over or under compensated.

The objective in both the UK and Hong Kong is to synchronize current economic data and pecuniary loss awards. With that in mind, the Tort Law feature (p. 32) examines the chequered history of the discount rate in the UK and Hong Kong and proposes a number of practical solutions that could be adopted in Hong Kong to ensure a better balance is struck on this front.

Elsewhere in the June issue, the Corporate article (p. 38) discusses strategies and tactics shareholder activists employ in the controlled and blockholder-influenced company universe in Hong Kong. It draws parallels between the strategies employed in the Hong Kong and German public company market structures, as the shareholder population concentration is more similar in these two markets than between Hong Kong and either the UK or US. The Technology piece (p. 47) analyses the current state of artificial intelligence technology and its presently available applications and limitations, dispelling exaggerated doomsday predictions of how it will impact the legal profession.

In the Practice Management section (p. 68), the second installment of the two-part series exploring issues facing small and medium-sized firms in the context of the broader competitive market outlines four items that are critical for law firm leaders to continually monitor to ensure they are successful, given the changing competitive environment in Hong Kong and buying patterns of clients. Also included in the Practice Skills section is an article (p. 81) that provides a few tips on how to improve the processes of drafting client correspondence.

**EDITOR’S NOTE 編者的話**

今年年初，英國大法官特拉斯行使其法定權力，將人身傷害受害者的損害賠償金額的計算乘數，從2.5%改為-0.75%。此事引起了重大的嘩然，保險業專業人士聲稱這是一個無理的變化，將為索償人造成意外之財。這個乘數通常被稱為“貼現率”，用於計算未來人身傷害申索的損害賠償引致之損失。

中性率相當於實際損失收入年數的乘數，而負百分比則增加產生相同收入流所需的年數。假如折現率與目前的經濟數據不一致，則有關金錢損失的損害賠償將不會反映現實，而索償人將被過度賠償或賠償不足。

英國和香港的目標是使當前的經濟數據和金錢損失的賠償同步。考慮到這一點，「侵犯法」專欄(第35頁)審視了英國和香港貼現率的多變歷史，並提出了一些可在香港採用的實際解決方案，以確保在這方面取得更好的平衡。

在六月號的其他地方，「企業」專欄文章(第43頁)討論了股東積極主義者在香港的受控公司和受大股東影響的公司領域中採取的策略和戰術。文章比較了香港和德國上市公司市場結構中採用的策略，因為兩者之間的股東人口結構特點的相似程度，比香港與英國或美國之間更為相似。「科技」文章(第50頁)分析了人造智能技術的現狀及其目前可獲得的應用和限制，從而消除了誇張的末日預言如何影響法律專業。

在「執業管理」欄(第70頁)中，這系列的第二部分介紹了在競爭激烈的市場背景下中小企業面臨的問題。鑑於香港的競爭環境以及客戶的購買模式不斷變化，文章概述了律師事務所領導者需不斷監察，以確保他們取得成功的至關重要的四個事項。此外，在「實踐技能」文章(第81頁)中，還提供了一些有關如何改進起草客戶函件過程的技巧。
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My first message as President of the Law Society was published in the July 2016 issue of Hong Kong Lawyer. One year has elapsed since my election as President last June.

It has been an honour to serve the profession and I am grateful for the support given to me from all fronts. Reflecting on my presidency in the past year, three major areas are worth highlighting.

Professional Standards

The Law Society exercised its statutory powers pursuant to the Legal Practitioners Ordinance (Cap. 159) to intervene in the practices of four law firms in 2016. Intervention into the practice of a law firm is a serious matter and the Council will only exercise this statutory power when it is absolutely necessary to do so. Unfortunately, the Council found it necessary to exercise this power on four occasions in 2016. Some of the interventions involved active practices of a substantial scale. As the relevant records of the intervened firms appeared incomplete, the intervention work in 2016 had taken up much more resources of the Law Society than in preceding years.

This is a good wake up call for the profession. We must be vigilant to ensure strict compliance with our professional practice requirements at all times.

The practice of law in Hong Kong is a highly regulated profession because lawyers play an important role in society. In addition to knowledge in the black letter law, solicitors must familiarise themselves and ensure compliance with the professional ethical rules and operational requirements on their legal practice. Every office of a law firm must be supervised and managed in accordance with the statutory requirements. The Law Society takes a serious view of any breach of the standards of practice supervision and management. These standards underpin the independence of our profession and must be strictly adhered to.

Maintaining the highest professional standards not only ensure that clients get the best service possible and that the public is protected, it also strengthens our Hong Kong brand as a world-class legal service provider as well as our profession’s competitiveness in the increasingly challenging legal market.

The Law Society will continue to assist the profession to maintain their practice standards by making available relevant and effective training opportunities. The Law Society will also be reviewing the RME courses with a view to ensuring that they align with international standards. Further, we have developed a practice management course which will soon be rolled out as an RME elective for our members.

Rule of Law

During the past year, the heated political debates surrounding issues like, for instance, the oath of allegiance by the Legislative Councillors when they assumed office and the interpretation of the Basic Law that followed, have reaffirmed the need for Hong Kong to adhere to the Rule of Law, respect One Country, Two Systems and act in accordance with the Basic Law.

One of the important roles of the Law Society is to safeguard the Rule of Law and to uphold those principles on which this core value is founded. One of these fundamental principles is the independence of the Judiciary. The proper functioning of our judicial system under One Country, Two Systems in accordance with the Basic Law is crucial. While the Law Society acknowledges that the power of interpretation of the Basic Law is vested in the NPCSC under Art. 158 of the Basic Law, the Law Society’s position has always been that NPCSC should exercise restraint in invoking its power under that Article to maintain confidence in One Country, Two Systems and the Rule of Law in Hong Kong. The power should only be exercised when it is absolutely necessary. We also think that the transparency of the process should be enhanced and more stakeholders in Hong Kong should be allowed to submit their views on the subject matter in advance for consideration by NPCSC.

We shared the above suggestion on improving the transparency of an interpretation of the Basic Law by NPCSC with the relevant authorities in our recent visit to Beijing in April 2017. We will continue our efforts in facilitating the maintenance of the right balance in administering the unique One Country, Two Systems in accordance with the Basic Law.

Belt and Road

With respect to exploring new business opportunities, no one will dispute that the global focus has been on the Belt and Road Initiative. The Initiative is designed to expand multilateral ties among over 65 economies in Asia, Europe and Africa. The priority is on infrastructure development and connectivity. The business opportunities arising from the Initiative are of a massive and unprecedented scale. The legal profession in Hong Kong, equipped with the necessary international experience and expertise, is well placed to meet these demands. Legal practitioners are encouraged to reach out to their counterparts in the emerging economies covered by the Initiative and pave the way for an active role in this visionary project.

Legal practitioners in Hong Kong have many unique capabilities. The Law Society has worked hard to raise the profile of the Hong Kong legal profession in the international community to secure a role for us in the provision of legal services arising from the Belt and Road Initiative. In addition to organising seminars at the
我以會長身分撰寫的第一篇講話是在《香港律師》2016年7月份期刊發表的。我去年6月當選會長至今，轉眼已經一年了。我一直為著自己有機會為法律界人士服務而感到榮幸，也滿心感謝各界給我的支持。回顧去年擔任會長的日子，有三個主要範疇特別值得提起。

專業標準

律師會在2016年根據《法律執業者條例》(第159章)行使其法定權力，介入四間律師事務所的業務。介入律師事務所的業務非同小可，理事會只在絕對有需要介入的時候，才會行使這項法定權利。不幸地，理事會在2016年四次發現有需要行使其權力，不幸地，理事會在2016年四次發現有需要行使其權力，當中的涉及大量實際執業事宜。由於被介入業務的律師事務所的相關記錄似乎不齊全，律師會2016年因介入行動而耗用的資源，比較過往幾年所耗用的要多得多。這對於法律界是很好的提醒。我們一定要打醒十二分精神，確保時刻嚴格遵守律師執業的規定。

在香港，法律執業是受到高度監管的專業行業，因為律師在社會發揮重要的作用。除了對普遍接受的基本法律原則有了解之外，律師亦必須熟悉專業道德規則及經營律師業務的規定，確保自己符合要求。律師事務所每間辦事處必須按照法定要求受到監督和管理。律師會嚴肅正視任何違反執業監督和管理標準的情況。這些標準是支持法律專業保持獨立的基礎，律師必須嚴格遵守。堅守最高的專業標準不僅確保客戶可以得到最好的服務，也確保公眾得到保障，並且穩定香港作為世界級法律服務提供者的地位，在日益艱難的法律市場中提升香港律師的競爭力。

律師會將繼續開設內容相關並實用的訓練機會，協助業界維持執業水平。律師會亦會檢討風險管理教育課程，確保課程符合國際水平。此外，風險管理教育課程即將增設實務管理課程，歡迎會員選擇修讀。

法治精神

過去一年，多次環繞政治問題的爭拗，例如立法會就職宣誓效忠一事觸發全國人大常委會(「全國人大常委會」)解释《基本法》，再次肯定香港有需要堅守法治精神，尊重「一國兩制」，並按照《基本法》的規定行事。

我們不久前在2017年4月到訪北京，向有關當局建議提高全國人大常委會釋法的透明度。「一國兩制」是獨一無二的，我們按照《基本法》為「一國兩制」的實踐提供幫助時，會繼續努力使其保持適度平衡。

一帶一路

在发掘新的營商機會方面，全球焦點已經放到「一帶一路」倡議之上是不爭之事。「一帶一路」旨在延伸亞洲、歐洲、非洲超過65個經濟體之間的多邊關係。首要工作是發展並貫通基礎設施。「一帶一路」產生的商機多不勝數，規模之大史無前例。香港的法律專業人才具備必要的國際經驗和專門知識，正處於應付這些需要的有利位置。法律執業人員應當盡量與「一帶一路」沿線新興經濟體的法律界人士建立關係，為自己搭橋鋪路，做好準備積極參與這項願景宏大的項目。

香港的法律執業人員有很多獨特的才能。律師會努力提升香港法律專業人員在國際社會的形象，幫助業界成功在「一帶一路」沿線提供法律服務。我們有在定期舉行的國際會議(包括Inter Pacific Bar Association、International Bar Association、Union Internationale des Avocats舉行的國際法律會議)安排研討會，除此之外，律師會在2016年與俄羅斯、台灣的法律界人士建立的關係亦取得了重大進展。此外，律師會第一次舉行的「一帶一路」論壇於2017年5月12日圓滿結束，有超過650名人士出席，其中包括律師會的本地會員之外，還有來自23個海外司法管轄區的44個律師協會所委派的代表。考慮到「一帶一路」沿線項目大多是跨越司法管轄區進行的，我們計劃推出更多有關跨境交易的訓練課程，為執業人員裝備必要的技能。

這是律師會未來的整體方向，希望會員繼續支持我們的工作。如果你有其他意見或建議，歡迎發電郵到president@hklawsoc.org.hk向我提出。

Thomas So, President
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 CHAPEAUROUGE + 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.

Neville Sarony QC

*π Chambers*

Mr. Sarony is, first and foremost, an advocate who relishes trial work which he likens to a cross between a knight errant and a street fighter both of whom are constrained by the rules and the conventions of courtesy to Court and opponent. Though sometimes pigeon-holed as a P.I. specialist, in fact his practice covers almost the entire spectrum. When not writing, cooking or sailing, he can be found playing jazz piano.

Dr. Ami de Chapeaurouge

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

Mr. de Chapeaurouge先生是德國的專攻企業事務的律師行DE CHAPEAUROUGE + 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，在美國哥倫比亞法學院及哈佛法學院分別獲得(LL.M.)與(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，公私企業的可信任顧問。
Anna Kim
*KorumLegal, Consultant & Product Manager*
Ms. Kim is a US-qualified lawyer with wide-ranging experience advising on corporate commercial, merger & acquisition, energy construction and IT matters. She has worked both in private practice and as an in-house counsel.

Ms. Kim is currently a consultant at KorumLegal, the boutique legal innovator providing legal solutions through people, process and legal technology. Her expertise in law and technology enables her to be both a lawyer and a coder so in addition to her consulting role, Anna is leading KorumLegal’s LegalTech software development project.

Alan Hodgart
*Hodgart Associates Ltd, Managing Director*
Mr. Hodgart is recognised as a leading strategic change consultant to professional service firms globally. His client base includes leading firms in all major professions and a wide range of smaller to mid-market firms in many countries. The legal market is a particular area of focus. He works with clients throughout the world, including in the Asia Pacific.

Mr. Hodgart has written extensively on management issues facing professional firms. His two most recent books are *Organizational Culture in Law Firms* (Ark, 2012) and *Strategies and Practice in Law Firm Mergers* (Legalease, 2005).

Prior to his career as a consultant, he had a successful career as a professional cyclist.

Rob Ashing
*Hodgart Associates Ltd, Director*
Mr. Ashing has worked in legal services for over 15 years both as an external strategy consultant to professional services firms and in-house for a number of large international law firms. He has lived and worked in the UK, US and Africa. Prior to rejoining Hodgart Associates in 2016, Mr. Ashing spent nine years in the Asia Pacific, including four years in Hong Kong.

Mr. Ashing works with clients globally to help develop and support their growth strategies. He has particular expertise in business and organisational development. Previously, he served on the Board of Justice Centre Hong Kong.

www.hk-lawyer.org
Review of the Building Management Ordinance (Cap. 344)

The Building Management Ordinance (Cap. 344) (“BMO”) provides a legal framework for owners to form and run owners’ corporations to facilitate their discharge of responsibilities in building management. In April, the Legislative Council Panel on Home Affairs invited views on the Government’s latest legislative proposals to update the BMO and the related administrative measures.

The proposed amendments to the BMO, according to the Government, were to address public concerns on building management, including bid-rigging and disputes arising from large-scale maintenance projects, use of proxies at the owners’ corporation meeting and appointment and remuneration of deed of mutual covenant managers.

The Council has reviewed the proposed amendments to the BMO, with the assistance of the Property Committee. It was disappointed that some of the issues previously raised by The Law Society had not been taken into consideration by the Government. The Government’s attention was drawn to several legislative proposals which should merit a serious and thorough consideration. A written submission was prepared and sent to the Panel on Home Affairs. The Law Society’s submission is available at http://www.hklawsoc.org.hk/pub_e/news/submissions/20170504.pdf.

檢討《建築物管理條例》(第344章)

《建築物管理條例》(第344章)為業主成立及營辦業主立案法團提供法律框架，以協助他們履行樓宇管理的責任。立法會民政事務委員會在4月就政府提出最新立法建議以更新《建築物管理條例》及相關行政措施徵詢意見。

據政府表示，對《建築物管理條例》的擬議修訂旨在回應公眾對樓宇管理的關注，包括與大型維修工程有關的圍標活動和糾紛、在法團會議上委任代表文書的使用，以及大廈公契經理人的委任和酬金等。

Asian Legal Business is proud to present the **Hong Kong 2017 In-House Legal Summit** on 12 September in Hong Kong. This annual summit gathers together over 200 in-house counsels, legal practitioners and industry experts to discuss recent regulatory changes, hot pressing legal issues and best practice solutions in HK and the Greater China region.

**Companies who attended the Hong Kong 2016 In-House Legal Summit:**
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- AIA Company Limited
- AXA Asia
- BNP Paribas
- Canon Hongkong Company Limited
- CBRE
- CHANEL
- Credit Suisse
- DFS GROUP LIMITED
- DHL Express (Hong Kong) Limited
- eBay
- FOX Networks Group
- Guoco Group Limited
- Hang Seng Bank Limited
- Hong Kong Disneyland
- Hutchison Port Holdings Limited
- Hyatt International-Asia Pacific, Limited
- IBM
- Jardine Matheson Limited
- JP Morgan
- KPMG
- Manulife
- Marriott International Inc.
- McDonald's Corporation
- Melco Crown Entertainment Limited
- Michael Kors
- Microsoft
- Morgan Stanley
- MTR Corporation Limited
- Nestlé Hong Kong Limited
- NTT Com Asia Limited
- Pernod Ricard Asia
- Phoenix Satellite Television Company Limited
- PRADA Asia Pacific Limited
- Prudential Corporation Asia
- PwC
- Ralph Lauren
- Societe Generale
- Spotify
- Television Broadcasts Limited
- The Hongkong and Shanghai Banking Corporation Limited
- The Walt Disney Company (China) Limited
- UBS AG
- United Overseas Bank Limited
- Zurich Insurance Company Ltd.
- And many more companies!

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“Successful and fruitful event! Great work. Keep it up!”

“Conference was informative and practical. I’m satisfied with the style of presentation, course materials.”

“Great diversity of speakers who know their respective area.”

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- **FREE** passes to in-house counsel and business leaders with access to full-day sessions
- Key insight into the latest legal issues from Hong Kong and the Greater China region
- Networking opportunities with leading lawyers, legal in-house experts and key decision makers
- In-depth panel discussion sessions with some of the most distinguished corporate counsels in the region
- VIP networking luncheon and refreshments

*Limited complimentary seats available for In-house Legal Counsels on a first-come-first-serve basis. Free passes are not applicable to law firms, related legal service providers and vendor companies.*

To register for this event, please visit [www.regonline.com/HK-IHLS2017](http://www.regonline.com/HK-IHLS2017)

For speaking opportunities, please contact **Willy Leonardi** at (65) 6870 3102 or willy.leonardi@thomsonreuters.com

For sponsorship opportunities, please contact **Amantha Chia** at (65) 6870 3917 or amantha.chia@thomsonreuters.com

Staff Due Diligence

To be able to practise as a solicitor is not a right, but a privilege. As a member of the profession, we are respected as trusted advisers and we play a key role in the administration of justice as Officers of the Court.

Along with the privilege of practice comes many responsibilities and potential pitfalls. We owe our clients a duty to serve them ethically, competently, conscientiously, diligently, promptly and efficiently. Solicitors’ work covers a wide range and unqualified staff are commonly engaged to support the work of a legal practice. However, a partner is primarily responsible for the proper supervision of his staff and he cannot escape responsibility for work carried out during the course of his practice by leaving it to his staff.

As part of risk management, a solicitor should exercise due care in the recruitment of staff for his practice. A firm can suffer irreparable harm to their reputation if they maintain slipshod hiring practices. The Legal Practitioners Ordinance (Cap. 159) (“Ordinance”) has dedicated the entire s. 53 to the prohibition of law firms knowingly employing certain categories of people, unless it obtains the Law Society’s written permission.

The prohibited categories include any person who (1) is disqualified from practising as a solicitor or a foreign lawyer by reason of having been struck off the roll of solicitors, deregistered, suspended from practice or declared an undischarged bankrupt; (2) is the subject of an order made by a Solicitors Disciplinary Tribunal whereby the employment of such person by any solicitor or foreign lawyer is prohibited; or (3) has been convicted of a criminal offence involving dishonesty.

The legislative intent is clear. The section serves to ensure that law firms properly review the suitability of their potential employees and give a role to the Law Society as the professional regulatory body in deciding whether a person who has a particular background is fit to be employed in a legal practice entrusted with handling clients’ money and properties.

Law firms are therefore reminded to carry out proper due diligence on their job applicants pursuant to s. 53 of the Ordinance. For instance, with respect to s. 53(3), law firms should specifically ask their job applicants to disclose whether they have been previously convicted of any offence involving dishonesty and then seek the Law Society’s permission prior to employing any applicant who has such a previous conviction.
Monthly Statistics on the Profession
(updated as of 30 April 2017):

<table>
<thead>
<tr>
<th>Category</th>
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<tbody>
<tr>
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<td>Members with practising certificate</td>
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<tr>
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<td></td>
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<tr>
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<tr>
<td>Solicitor Advocates</td>
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<td>(44 in civil proceedings, 5 in criminal proceedings)</td>
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<td>Registered Associations between Hong Kong law firms and registered foreign law firms (including Mainland law firms)</td>
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Section 2(1) of the Rehabilitation of Offenders Ordinance (Cap. 297) ("ROO") provides that criminal convictions are treated as "spent" under specified circumstances. An interesting issue relates to the interplay between s. 53(3) of the Ordinance and s. 3 of the ROO on whether a conviction can be claimed to be spent under the ROO so that a person is not obliged to disclose it even when asked upon or under an obligation to disclose his previous convictions.

Section 3(1)(c) of ROO provides that "nothing in [s.] 2 shall affect" the operation of any law under which the individual is "subject to any disqualification, disability, prohibition or other penalty". Section 53(3) of the Ordinance has been held to constitute a "disqualification or prohibition" for the purpose of s. 3(1)(c) of ROO as regards that individual. Hence, the ROO does not give a job applicant the right to refuse to disclose his previous conviction on the ground that it has been spent.

Other provisions relating to the control of unqualified staff include, for example, the prohibition against profit sharing by solicitors with people other than practising solicitors subject to some exceptions (r. 4 of the Solicitors’ Practice Rules (Cap. 159 Sub. Leg.) ("Practice Rules")), the ratio of solicitors to unqualified staff to be maintained in a legal practice and the prohibition of unqualified staff working in more than one law firm at the same time (r. 4B of the Practice Rules).

It is incumbent on the sole principal or partners of a law firm to ensure compliance with these regulations and in particular, the prohibitions set out in s. 53 of the Ordinance during their recruitment process. Just as customer due diligence is important in the Anti-Money Laundering context, staff due diligence is equally important for risk management purposes of a legal practice.

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業界每月統計資料

截自2017年4月30日:

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<tr>
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<td>持有執業證書的會員</td>
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Face to Face with
Gerard Sanders

General Counsel, Asian Infrastructure Investment Bank

By Cynthia G. Claytor

Gerard Sanders, General Counsel of the Asian Infrastructure Investment Bank, speaks about the AIIB’s objectives, operations and current legal needs, and reveals the AIIB’s thinking about various dispute resolution approaches, including whether AIIB views Hong Kong as a likely venue for resolving contractual disputes with the institution.

On 12 May, Hong Kong and the Law Society hosted the international conference, The Belt and Road: A Catalyst for Connectivity, Convergence and Collaboration, providing a platform for participants to discuss issues and opportunities that may flow from China’s Silk Road Economic Belt and the 21st-century Maritime Silk Road project, commonly referred to as the Belt and Road Initiative. While still in its early days, this mega-plan, first announced by President Xi Jinping in 2013, is projected to cover around 65 percent of the world’s population, one-third of the world’s GDP and one-quarter of all of the goods and services traded annually.

Among the renowned guests invited to speak at the conference was Mr. Gerard Sanders, General Counsel of the Asian Infrastructure Investment Bank ("AIIB" or "Bank"), who shared his insights and hopes in a plenary session on a number of Belt and Road-related issues, including the complementary role of the AIIB in financing Belt and Road projects. After the conference, Mr. Sanders spoke to Hong Kong Lawyer more generally about the AIIB’s objectives and his aspirations as the AIIB’s General Counsel.

No Grand Plan

Before turning to the Bank’s operations, Mr. Sanders shared a bit about his background in development finance and his decision to move on from the International Fund for Agricultural Development ("IFAD"), a specialised agency of the United Nations headquartered in Rome, after two years to join the AIIB. Before his time with IFAD, he held various positions at the European Bank for Reconstruction and Development ("EBRD"), rising up to the rank of Deputy General Counsel. He also held a number of roles in the private sector in New Zealand, the US, Amsterdam and London, where he gained broad-based commercial legal experience, much of it in the cross-border financing space and often in developing and emerging economies. “In terms of the legal dimensions of development finance, I’ve been fortunate to have been exposed to a great deal of it,” he remarked.

For Mr. Sanders, the development work he has undertaken for the better part of his career seems deeply aligned with his personal and professional interests. When explaining how he transitioned into this field, he said it was neither by a grand plan nor by complete happenstance, but likely somewhere in the middle and definitely due in large part to the support he received from a number of wonderful mentors. “Gradually, my interest in living and working in different places, studying different aspects of international law, observing what was going on around me and examining different environments from the perspective of development led me to pursue work in this field. I had been thinking a lot about the different levels of equality around the world and why it is that some countries do well while others do not. Why do some states fail, why is there such persistent poverty and what can be done to alleviate it? For me, I wanted to make some personal contribution to addressing these issues. That thinking all coalesced when I accepted my first role with the EBRD, more than two-thirds of a career ago. I still find this work to be deeply meaningful. When I eventually retire, I plan to remain involved in some way in development work – partly for selfish reasons because I find it stimulating, but also because I believe people have an obligation to share what they’ve learned.”

As for his new role at the AIIB, Mr. Sanders is excited by the new professional opportunities that lie ahead. “A new multilateral development bank only comes along once in a generation. Being part of the creation of a new institution – shaping policies, building its internal legal team, as well as shaping the Bank’s legal culture and determining the degree of legal risk it will take – is a once in a lifetime opportunity. Because I was learning a great deal at IFAD about rural development and the particularities of working in the UN system, I was not
looking at all for another position. Rome, too, is such a special place, but when the AIIB asked me to join as General Counsel, I felt that it was something I had to do. I thought if I didn’t jump at the chance, then I’d come to regret it. I’ve been fortunate to maintain great contacts with both IFAD and EBRD, which is a boon at AIIB where we place emphasis on working closely with other MDBs.”

**Goals as GC**

In terms of what Mr. Sanders hopes to accomplish as General Counsel, he indicated that high priority would be given to entrenching an internal rule of law and ensuring that the AIIB is an institution which respects high standards of governance. “I would like to establish a strong legal culture at the AIIB, one that ensures that rules are made in accordance with recognised processes and that the content conforms with universal standards as understood in the world of MDBs. I would like others to see that we abide not only by our public international law obligations, but also in accordance with a sound internal legal framework and that we can be held accountable for the implementation of our social and environmental policies.”

Another objective for Mr. Sanders is creating an internal legal department to help facilitate the proper functioning of the institution. “I want to be able to attract people who share the excitement of creating a twenty-first century development bank, one with a globally relevant remit. The emphasis is on recruiting thoughtful and experienced lawyers with a record of achievement in investment, finance, development and public international law. These areas of law are the most relevant for internal clients, whether the governance bodies or those delivering the projects.”

As to his current legal department, Mr. Sanders said that they are settling in new staff as well as drawing upon the assistance of consultants and secondees for the interim, but the latter will fall away progressively as more staff are brought on. At present, the Office of the General Counsel comprises four units organised around the needs of internal clients. The largest unit advises on investment operations, including projects in the sovereign, sub-sovereign and private sectors. A second unit advises on finance, in particular in relation to treasury operations, the controller’s function and auditing. Two other units advise on corporate and institutional matters, as well as integrity and compliance. Governance issues permeate all aspects of the work done by these units. “While I advise the Boards of Governors and Directors as well as participate in the principal management committees, the heads of the four units advise the Board committees and various management bodies. A lot of emphasis is placed on ensuring that the governance arrangements work well,” he explained.

Finally, Mr. Sanders wants the AIIB to be a knowledge sharing institution. He plans to continue hosting knowledge sharing events at the Bank’s headquarters and speaking and participating at events elsewhere. The AIIB will also host an annual conference and launch an AIIB legal journal. The inaugural conference’s theme will be *Good Governance and Modern Multilateral Development Banking*, and the first issue of the journal, expected to be published at next year’s annual meeting, will feature articles along this theme. Mr. Sanders also plans to continue accepting opportunities to speak at legal conferences, law schools and at other functions, something which he also encourages his team to do. “If we have knowledge, especially that which we acquire through our investment and other experiences, we should share it. Outreach is really important.”

**Private Sector Assistance**

As for the AIIB’s legal needs, Mr. Sanders indicated that the Bank currently has in-house capacity to handle institutional matters, and core elements of the operational work. However, the Bank will need the support of external legal advisors for private sector investment, in particular, to provide technical expertise in certain infrastructure spheres, and to assist with logistical challenges in managing complex transactions. In addition, the Bank will need legal advice on local laws, particularly in relation to due diligence and the taking of security. Interested law firms are welcome to register through the AIIB’s website and give a presentation at the Bank’s headquarters to its lawyers and operational staff on any topic that they specialise in and may be relevant to the Bank.

“To date, we have not had much need for assistance from external counsel, as most of the operations have been sovereign-backed and in the state sector. Most are also being co-financed with other multilateral development institutions, so the governing law for the financing agreements is public international law given the treaty obligations involved. At the AIIB, as is the case at other MDBs, the legal work on this kind of work is all done in-house because that is where much of the expertise really resides,” he noted.

“One project that has been approved by our Board in the private sector is a project in Myanmar. This is being co-financed with the International Finance Corporation in Washington, DC, which is also a multilateral. In that case, we chose the same law firm as the IFC because our interests were so aligned and the IFC was the project lead. So that is our approach to date when we co-finance private sector projects with MDBs.”

“However, going forward, we have many projects in the pipeline that are both stand-alone and in the private sector. So, one issue that increasingly comes to the fore is how we will approach the hiring of law firms. We are still considering whether we will adopt a panel approach, although there is also much value in developing relationships with law firms in the region and remaining open to hiring law firms in every country where we work.”

**AIIB’s Complementary Role**

Tuning to the Bank’s objectives, Mr. Sanders explained the AIIB’s objectives are complementary to those being pursued through the Belt and Road initiative; however, the Bank’s operational
remit is much wider.

“The AIIB, which became operational on 16 January 2016, was conceived at a time when ideas on the Belt and Road Initiative were first taking hold. While the AIIB can and does finance infrastructure projects in Asia, it is not confined to doing so. Furthermore, the governance of the Bank means that investment policies are not necessarily those that drive the Belt and Road Initiative. Indeed, the 57 signatories to the AIIB Charter made no mention of the Belt and Road Initiative in the Articles of Agreement. Similarly, there is no reference to the Belt and Road Initiative in any of the institutional rules or operational policies of the Bank. Conformity with Belt and Road objectives is not a consideration in the AIIB’s evaluation of investment proposals.”

“The effect is that the AIIB finances projects both within and outside the places covered by the Belt and Road Initiative and its financing extends beyond infrastructure to include what, in undefined terms, the Charter calls ‘other productive sectors,’” he said.

To date, 13 projects have been approved by the Bank’s Board of Directors amounting to US$2.2 billion dollars, with the bulk of approved projects being in the transport and energy spheres and marked by high standards of environmental design. “Despite the flexibility regarding where the AIIB may invest, it so happens that all of these projects are located in countries along the Belt and Road. This will not continue indefinitely. Nonetheless, this underscores that, despite the absence of any legal or institutional connection, AIIB financing can sometimes, perhaps often, complement the objectives of the Belt and Road Initiative. Those objectives, in instances where the AIIB finances projects that fall within the Belt and Road corridor, will be shared in that the common purpose of the Bank and the Belt and Road can surely best be understood as the betterment of the lives of the people of the region,” he explained.

Asian Origins, International Mindset

While the AIIB was conceived by those from the Asian continent, when the treaty establishing the AIIB came into effect on 25 December 2015, the 57 Prospective founding members included not only Asian countries, but others from Europe, Africa, South America, Australia and from within Oceania. Today, a further 30 countries are in the process of becoming members, including Canada so that with North America every continent, other than Antarctica, is or will shortly be represented in the membership of the AIIB and in its Board of Governors.

While almost all Asian countries and most large economies are AIIB members, or have applied for membership, the US and Japan have still not applied. On this, Mr. Sanders indicated that the message that has consistently been conveyed to countries that are not yet members is that they are most welcome to apply. “Membership is a matter ultimately for the other members, as represented by the Board of Governors.”

Speaking about the role of the country that hosts the AIIB’s headquarters, namely, China, he noted that while the AIIB is a Chinese initiative and China is its single largest shareholder, it is still nonetheless a minority shareholder and over time, its minority share will be further diluted. Also, while the first AIIB President is Chinese, all Vice Presidents and most senior staff are not; and of course, within the governance arrangement – the Board of Governors and the Board of Directors – there is only one Chinese member. “This means that the strategy and the investment decisions are made by the membership as a whole, through those bodies. It is not a question of any one country setting the Bank’s agenda; rather it’s a collective effort. That said, certainly China, as the place where the headquarters are located, is a gracious host.”


While the AIIB’s mandate, governance, funding and operations as reflected in its Articles of Agreement are, in many ways, not fundamentally different from those of other MDBs, Mr. Sanders noted that the AIIB Charter includes a number of innovative provisions.

For instance, he explained the AIIB has introduced a number of governance provisions that should have a beneficial impact on the Bank’s efficiency and thus costs. These include establishing a non-resident board of directors and anticipating the eventual delegation of financing approval authority to the AIIB President.

In agreeing that a non-resident Board of Directors should be established, founding members considered the high costs associated with a resident Board of Directors, including financial and staff
resources. They recognised that given advances in travel and communications, there was less need for a board to be resident at the place of the Bank’s business. While smaller institutions often have a non-resident board, apart from IFAD where Mr. Sanders used to work, none of the large MDBs has a non-resident board. While ordinarily at AIIB there are four physical meetings of the Board of Directors each year, technology allows for electronic meetings to be conducted whenever needed and take place at relatively short notice. According to Mr. Sanders, many such meetings, which allow real-time multi-directional communications, have occurred and they work well. The Charter is also special in that it foresees the possibility that the Board of Directors may delegate the authority on the approval of financing, in whole or in part, to the President. In doing so, the Board of Directors would focus on setting the broad parameters within which the President is to conduct the business of the Bank. For his part, the President would focus on the implementation of strategy and policies approved by the Board. Of course, the Board remains the ultimate authority on financings, in that the delegated authority can always be revised.

Also innovative is the provision that opens up the AIIB’s membership to sovereign states and non-sovereign territories. While some MDBs confine their membership to sovereign states, the AIIB has chosen not to do so and has opened membership to non-sovereign territories that are members of the World Bank or Asian Development Bank, provided that their applications for membership are supported by the AIIB member responsible for such territory’s international relations. It is on this basis that Hong Kong’s application was approved by the Board of Governors on 23 March.

Other innovative provisions include: the creation of a sizeable number of “basic votes” ensuring that smaller members nonetheless have a meaningful voice in the governance arrangements of the Bank; a modest-sized Board of Directors (currently 12); the ability of the Bank to invest outside of the region (of Asia and the Pacific), provided that such investment fosters development, creates wealth or improves interconnectivity in the region; substantial flexibility in the use of financing instruments, and the power of the Board of Governors to amend the Articles of Agreement without parliamentary or other approval on the part of members.

Dispute Resolution Approach

Anticipating the possibility of disputes arising, the AIIB is currently conducting due diligence to determine the best approach to deal with them.

For disputes arising from sovereign-backed operations, Mr. Sanders explained that the approach is fairly well settled. “These disputes are rarely, if ever, resolved through formal adjudicative processes, as they usually involve payment failure. The problem is almost invariably an economic and political one, so having an arbitral award may not be useful if there are no assets against which enforcement might be effected.”

However, for disputes involving sub-sovereign borrowers where there is no sovereign financial support, and in the case of investments in the private sector, the Bank may wish to litigate in court or, where there is a genuine dispute and not a mere payment failure, will likely pursue arbitration. Consideration might be given to mediation in an appropriate case, such as where the parties consider an ongoing relationship worth preserving. Mr. Sanders indicated that the AIIB is undertaking extensive due diligence before deciding on the approach it will adopt. “We will likely have a high level of standardisation. We plan to offer a limited suite of dispute resolution mechanism choices to borrowers and other investees to consider – in all of these instances, the arrangements would also suit us. The idea is that this would streamline the due diligence process in relation to an aspect of contract negotiations which can sometimes be difficult. This has been quite an exercise for us, but we hope to have it concluded by the end of the year.”

Some of the issues Mr. Sanders and his team are currently grappling with include:

• should there be a preference for institutional or ad hoc arbitration;
• where should the seat of arbitration be;
• should there be a role for mediation (excluding situations where there is merely a payment failure); and
• what approach should be adopted regarding the appointment of arbitrators – should this be left largely to the institution or should there be extensive party involvement.

As for Hong Kong’s potential to be considered by AIIB as one of several suitable places for arbitrating disputes, Mr. Sanders indicated that the city is a credible contender. “Hong Kong has an established and enviable reputation in the sphere of commercial dispute resolution. In respect of arbitration, relevant treaty and other legal arrangements are in place and the courts are recognised for fostering arbitration, ensuring that party autonomy is respected. Hong Kong is also home to well-functioning arbitral institutions.”

“Of course, there are other credible dispute resolution jurisdictions and established arbitral institutions. Even once our initial suite of dispute resolution options is settled, we will remain open to agreeing other approaches that would be in the interests of both the Bank and its contractual counterparty. We want to be responsive to the reasonable needs of clients. However, if a client wishes to explore options outside of the set ones on offer, then this will inevitably involve additional due diligence, further time and attendant costs for that client, something which all parties would ordinarily wish to avoid. So the burden on AIIB choosing its menu options wisely from the outset is a heavy one.”
June 2017 • COVER STORY 封 面 專 題

専 訪

傑拉德 • 桑德思
亞洲基礎設施投資銀行總法律顧問

作者 Cynthia G. Claytor

亞洲基礎設施投資銀行(亞投行)總法律顧問傑拉德 • 桑德思(Gerard Sanders)暢談亞投行的目標、運作和當前的法律需求，並揭示亞投行對各種爭議解決方法的想法，包括亞投行是否選擇香港為解決合同爭議的可能地點。

港律師會於5月12日主辦了「一帶一路：連接、融合及協作的催化劑」國際論壇，為與會者提供平台，討論中國絲綢之路經濟帶及21世紀海上絲綢之路(統稱為「一帶一路」倡議)可能帶來的機遇。儘管倡議仍處於早期階段，但這個由國家主席習近平於2013年首次公佈的超大型計劃，預計將覆蓋世界人口的65%、全球國內生產總值的三分之一，及所有商品和服務年交易額的四分之一。

獲邀出席論壇的知名嘉賓包括亞投行總法律顧問桑德思先生。他在會上就「一帶一路」的多個相關議題分享見解，表達希望，包括闡述亞投行為「一帶一路」項目融資的補充作用。會後，桑德思先生向《香港律師》介紹了亞投行的目標，和他對亞投行總法律顧問一職的期望。

機緣巧合

在談及亞投行的業務前，桑德思先生分享了他在發展融資方面的背景，和他加入亞投行的決定。在加入亞投行前，他在聯合國轄下的專門機構、總部設於羅馬的國際農業發展基金任職兩年。此外，他曾在歐洲復興開發銀行擔任過各種職務，官至副總法律顧問。他還在新西蘭、美國、阿姆斯特丹和倫敦的私人機構擔任過許多職位，取得廣泛的商業法律經驗，其中大部分在跨境融資領域，而且不少人出於發展中國家和新興經濟體。桑德思先生說：「在發展融資經驗的法律方面，我有幸涉獵過多個範疇。」

對於桑德思先生來說，他的職業生涯發展似乎與個人和事業興趣息息相關。被問及如何過渡到這個領域時，他說並沒有鴻圖大計，亦並非全屬偶然，但很大程度上歸功於多位偉大師友的支持。他說：「我有興趣在不同地方生活和工作、研究國際法的不同領域、觀察周遭的事物、從發展哲學研究不同環境，這些逐漸促使我在這個領域開展工作。我一直思考世界各地不同程度的平等或不平等，為何有些國家發展得好，有些國家則不然。為何有些國家失敗，為何有些國家一直貧窮，如何能扶貧？我想為解決這些問題作出貢獻。直
至我接受了歐洲復興開發銀行的第一個職位，一切都凝聚起來。現在我仍覺得這份工作意義重大。將來退休後，我計劃繼續參與發展工作，一半是為了自己，因為我覺得這份工作能激勵人心，另一半是因為我相信有義務分享所學。」

對於他在亞投行的新角色，桑德思先生對面前的新機會感到振奮。他表示：「新設立多邊開發銀行，是幾十年一遇的機會。

作為總法律顧問，桑德思先生的工作重點之一是維護內部法治，確保亞投行是高度尊重管治安排的機構。「我想在亞投行內建立強而有力的法律文化，確保規則根據公認的流程制定，內容符合多邊開發銀行界的通用標準。我希望外界看到，我們不僅遵守國際公法義務，亦遵守健全的內部法律框架，我們可以就社會和環境政策的落實負責。」

桑德思先生的另一個目標，是創建內部法律部門，以協助促進機構的正常運作。「我想吸引的人才，會為創建具有全球職責的21世紀發展銀行而興奮。我們要講究心思細密，具豐富經驗，在投資、金融、發展和國際公法方面有所成就的律師。這些法律領域與內部客戶最息息相關，無論是管治部門還是執行部門。」

桑德思先生解釋說：「目前法律部門正安頓新員工，過渡階段有賴顧問和借調人員的協助，但隨著更多員工上任，後者將逐漸淡出。目前，總法律顧問辦公室由四個部門組成，以配合內部客戶的需求。最大的部門就投資業務提供諮詢服務，包括主權、次主權和私營機構項目。第二個部門提供財務諮詢，特別是有關財務、財務監視職能和審計。另外兩個部門就企業和機構事宜以及誠信和合規提供建議。我本人向董事會和理事會提供意見，並參與主要管理委員會的工作，而四位部門負責人則向董事會委員會和各管理部門提供意見。重點是確保管治安排運作暢順。」

最後，桑德思先生希望亞投行成為知識共享機構。他計劃繼續在中國和亞投行總部舉辦知識共享活動，並出席其他活動演講。亞投行還將舉辦法律周年大會，並出版亞投行法律期刊。首屆大會的主題是「良好管治與現代多邊開發銀行」，而第一期刊刊預計將於明年的亞投行周年大會出版，亦以此為主題。桑德思先生還計劃繼續在法律論壇、法律學院和其他場合演講的機會，並鼓勵團隊這樣做。「我們擁有知識，就應該分享，特別是通過投資和其他經驗獲得的知識，我認為對外推廣真的很重要。」

私營機構的協助

至於亞投行的法律需求，桑德思先生表示，該行內部目前具有處理機構事務和業務核心等的能力。然而，亞投行將需要外部法律顧問支援私營機構投資，特別是在某些基礎建設領域提供技術專業知識，及在管理複雜交易時進行溝通與協調。此外，亞投行將需要有關當地
法律的意见，特别是在尽职调查和担保方面。

欢迎有兴趣的律师行，通过亚投行网站注册，并向亚投行总部向律师和运营人员介绍其专长领域或可能与亚投行相关的议题。

桑德思先生说：「现时，我们仍未太需要外聘律师的协助，因为大多数事务由主权支持及涉及国家部门。大多数项目与其他多边开发机构共同融资，因此融资协定的适用法律为国际公法，因为它们涉及条约义务。与其他多边开发银行的情况一样，亚投行这些法律工作都在内部完成，因为他们需要专业知识。」

「董事会已批准的一个私营项目在缅甸，与华盛顿国际金融公司共同融资，后者也是一个多边开发机构。在这种情况下，我们将选择国际金融公司所用的律师行，因为我们对他们利益息息相关，而国际金融公司是项目牵头者。这是迄今为止我们与其他多边开发银行共同融资私营项目时的做法。」

展望未来，我们还有更多项目即将进行，包括独立和私营机构的项目。所以，其中一个值得我们思考的问题，是聘用律师行的取向。我们仍在考虑是否采用咨询小组的方式，但与区内多间律师行建立关系亦极有价值，并对在每个相关国家聘用律师行持开放态度。」

亞投行的輔助角色

至於亚投行的目标，桑德思先生解释说，亚投行的目标是辅助寻求参与「一带一路」者。然而，亚投行的业务职能范围其实更广。

亚投行设立于2016年1月16日投入运营，当时「一带一路」初步推上。虽然亚投行可以作为亚洲的基础设施项目融资，但并不局限于这范围。此外，亚投行的管治意味著政策上一定是「一带一路」的驱动力。事实上，亚投行的57个签署国在章程中并无提及「一带一路」。同样，在亚投行的任何章程规则或业务政策中，亦并无提及「一带一路」。符合「一带一路」的目标并非亚投行对投资建议的评估因素之一。」

他说：「亚投行融资『一带一路』涵盖地区内外的项目，融资范围亦不禁止法律措施，包括章程所称的『其他生产领域』。」

亚投行董事会至今共批准了13个项目，金额达22亿美元，其中大部分项目属于运输和能源领域，关乎高标准的环保设计。

「尽管亚投行的投资具灵活性，但这些项目均巧合地位于『一带一路』沿线国家。尽管这个情况不会永远持续，亦没有任何法律或体制上的限制，但这就突出了亚投行的融资有其特色。对『一带一路』的目标起著辅助作用。当亚投行的融资位于『一带一路』沿线国家时，亚投行与『一带一路』的共同目标被理解为改善域内人民的生活。」

創新章程條款

雖然亞投行章程內的授權、管治、資金和營運与其他多邊開發銀行基本上無大區別，但桑德思先生指出，亚投行章程包含了一些创新的条款。

他指出，例如，亚投行提出了对效率和成本有重要影响的管治条款，包括设立非常设董事局并预设将融资审批权利授予亚投行行长。

同意成立非常设董事会时，创始成员国考虑将常设董事会涉及高额成本，包括财务和人力资源成本。他们认同，鉴于交通和通讯进展，董事会不一定必须设于业务所处
地。較小型的機構往往設有非常設董事會，除了桑德思先生曾任職的國際農業發展基金外，大型多邊開發銀行均不設非常設董事會。亞投行通常每年舉行四次董事會實體會議，在有需要較快召開會議時，可透過科技進行電子會議。桑德思先生說，這類實時多方通信會議已舉行多次，過程順利。

亞投行的章程也有特別之處，它已預計董事會可能將審批融資的全部或部份權力授予行長。如此一來，董事會將集中於訂定基礎框架，而行長則在框架內執行亞投行的業務。行長將集中於執行董事會批准的戰略和政策。當然，董事會仍擁有批准融資的最終權力，因為授權總是可以被收回。

此外，亞投行開放成員資格予主權國家和非主權領土。一些多邊開發銀行規定成員僅限於主權國家，但亞投行選擇不作此限制，並開放成員資格予非主權領土的成員。這些非主權領土必須已為世界銀行或亞洲開發銀行成員，而其加入申請必須獲負責其國際關係的亞投行成員支持。正是在這個基礎上，香港的加入申請於3月23日獲理事會批准。

其他創新條文包括：設立相當數量的「基本票」，確保較小型的成員在亞投行的管治安排中能表達意見；大小適中的董事會（目前為12名代表）；在亞太地區之外投資的能力，前題是投資能在該地區促進發展、創造財富或改善互通；使用融資工具表現出較強的靈活性；以及理事會無須成員的國會或其他批准，有權修改章程。

爭議解決方法

亞投行預期爭議可能出現，目前正進行盡職調查，以決定處理這些爭議的最佳方法。

桑德斯先生解释說，對於主權支持的行動引起的爭議，解決方法已基本上有定案。「這些爭議較罕見，如有會通過正式的審判程序來解決，因為它們通常涉及支付失敗，幾乎總是牽涉到政治因素，所以如沒有可以執行裁決的資產，仲裁裁決並不特別有用。」

但是，對於涉及沒有主權財政支持的次級主權借款人的爭議，以及私營機構的投資，亞投行可能希望透過法庭訴訟，假如有真正的爭議，而不僅關乎支付失敗，可能會採用仲裁解決。在適當情況下，或會考慮進行調解，例如雙方認為關係值得保留。桑德思先生表示，亞投行正進行廣泛的盡職調查，然後才決定將採取何種方法。「我們可能會採用很高的標準化水準。我們計劃為借款人及投資者提供一系列解決爭議的選擇，無論如何，這些安排也會適合我們。目的是把有時頗為困難的與合同談判相關的盡職調查過程簡化。這項工作顯為艱巨，希望能在今年年底完成。」

桑德思先生及其團隊目前正處理的一些問題包括：

- 機構或特設仲裁兩者之間應否有所優先；
- 仲裁地點在哪裡；
- 應否設調解職能（不包括支付失敗的情況）；及
- 應採取什麼方法來任命仲裁員——應讓很大程度上由亞投行決定，或讓當事方參與任命。

至於香港有機會獲亞投行考慮作為進行爭議仲裁的合適地點之一，桑德思先生表示，香港的確有此潛力。「香港在解決商業爭議方面備受推崇。在仲裁方面，有關條約和其他法律安排已經到位，法院鼓勵採用仲裁，確保當事人的自主權受到尊重。香港也擁有一個良好的仲裁機構。」

「當然，還有其他可靠的爭議解決機構和仲裁機構。即使我們已初步確定爭議解決方案，若有符合亞投行及合約對方利益的其他方法，我們仍會抱持開放態度。我們希望對客戶的合理需求作出回應，若客戶希望探索其他選項，那將不可避免地涉及額外的盡職調查、時間和費用，各方通常希望避免。所以，亞投行負沉重責任，從一開始就得明智地確立選擇方案。」
Legal Talk for Pui Kiu College’s Parent-Teacher Association and school heads of the Tung Wah Group of Hospitals

The Law & New Generation and School Talks Working Group (“Working Group”) of the Community Relations Committee (“CRC”) organised a talk for Pui Kiu College’s Parent-Teacher Association (“PTA”) on 17 March with over 100 participants. The talk featured “Juvenile Delinquency – Internet-related Crime (including Cyberbullying and Dishonest use of computer and Theft)”, a topic of going concern to the PTA. Council Member Nick Chan shared his insights on the topic with the audience. CRC Chairman Philip Wong, Council member and Chairlady of the Working Group Serina Chan, and CRC member Joseph Ho also attended the talk and had good exchanges with the PTA.

On 13 May, the Working Group held another talk for school heads and executives of schools Tung Wah Group of Hospitals (“Tung Wah”). CRC member Cecilia Grace Wong gave a talk on topics of disciplinary action against students who violate school regulations from a legal perspective, and how to deal with student accidents. Ms. Serina Chan, Council member and Chairlady of the Working Group, also attended the talk as a supporter.

From the left: CRC member Joseph Ho, Council member Nick Chan (speaker), Council member and “Law & New Generation and School Talks” Working Group Chairlady Serina Chan, CRC Chairman Philip Wong, Pui Kiu College’s PTA Chairman Summe Cheng, Pui Kiu College’s Assistant Principal Vincent Wong.

(Third from left): Ms. Cecilia Grace Wong (speaker), Member of CRC; (Middle) Ms. Serina Chan, Council member and “Law & New Generation and School Talks” Working Group Chairlady, with school heads and executives of schools Tung Wah Group of Hospitals.

(左起): 社區關係委員會成員何澤群律師；理事會成員陳曉峰律師（講者）；社區關係委員會主席黃永昌律師；培僑書院家長教師會主席鄭樹森先生及培僑書院及學校講座工作小組王惠成助理校長。

為培僑書院家長教師會及東華三院轄下學校校長及行政人員舉辦法律講座

社區關係委員會轄下的「法治新一代」計劃及學校講座工作小組（「工作小組」）於3月17日於培僑書院家長教師會舉辦了一場有關「青少年常見違法行為—電腦及網上罪行（包括網上欺凌及不誠實使用電腦；及盜竊）」的講座。培僑書院家長教師會對此題目深表關注。理事會成員陳曉峰律師與超過100名與會者分享有關看法。社區關係委員會主席黃永昌律師、理事會成員兼工作小組主席陳潔心律師及社區關係委員會成員何澤群律師亦出席是次講座，及與家長教師會進行交流。

5月13日，工作小組為東華三院轄下學校校長及行政人員亦舉辦另一場講座。社區關係委員會成員黃麗顏律師從法律角度講解懲處違反校規學生的事宜，以及如何處理學生意外事件。理事會成員兼工作小組主席陳潔心律師亦出席是次講座。
Risk Management Education Introductory Sessions

The Law Society of Hong Kong held Risk Management Education Introductory Sessions in Shanghai, Kaohsiung and Dongguan earlier this year. Around 400 people attended the sessions. President Thomas So was invited by the Chongqing Lawyers Association to introduce the risk management education programme to more than 80 local legal professionals and share relevant cases and the basic concepts of risk management. Attendees gained a better understanding of the importance of implementing sound risk management policies within law firms and how such policies can ensure success when handling cross-border business related to the Belt and Road Initiative in the future.

風險管理教育課程推介會

香港律師會今年初先後於上海、高雄和東莞舉辦風險管理教育課程推介會，出席人數近400人。蘇紹聰會長於4月14日應重慶市律師協會邀請，向約80名當地法律界人士介紹律師會的風險管理教育課程，以及分享風險管理的基本概念和相關案例，讓他們了解良好的風險管理對法律專業，以及未來處理「一帶一路」相關貿易事宜的重要性。

Visit by China Law Society

Led by its Vice President Mr. Zhang Mingqi, a five-member delegation of the China Law Society visited the Law Society of Hong Kong on 19 April. President Thomas So, together with Mr. Rico Chan, Ms. Natalia Cheung and Mr. Lawrence Yeung, members of the Greater China Legal Affairs Committee, received the delegation and had a discussion on promoting the exchange and cooperation between the two societies. The delegation was invited to attend upcoming events.

中國法學會訪問香港律師會

中國法學會張鳴起副會長率領五人代表團於4月19日訪問律師會，由蘇紹聰會長、大中華法律事務委員會委員陳偉國律師、張翹欣律師和楊先恆律師接待。會面期間，雙方就促進交流合作的事宜進行探討，並邀請對方出席即將舉行的活動。
Meeting with the State Administration for Industry and Commerce

The Chairman, Mr. Kenny Wong, and other members of the Intellectual Property Committee, met with a Mainland delegation led by the Vice Minister of the State Administration for Industry and Commerce, Mr. Liu Junchen, to exchange industry updates and views on matters relating to trademarks and other intellectual properties.

**YSG: One Day Seminar on Contract Management 2017**

On 22 April, the One Day Seminar on Contract Management (“Seminar”), jointly organised by the young groups from the Chartered Institute of Arbitrators (East Asia Branch), the Chartered Institution of Building Services Engineers (Hong Kong Branch), the Institution of Civil Engineers, the Hong Kong Institute of Surveyors and the Hong Kong Institution of Engineers (collectively “Organising Committee”), with the Young Solicitors’ Group (“YSG”) being a supporting organisation, was successfully held at Christian Family Service Centre, Kwun Tong.

Around 300 professionals from the Law Society and the five other professional institutions took part in this year’s Seminar. The Organising Committee invited experienced professionals in the legal and engineering sectors to speak on topics including the practical level of procurement, negotiating settlement and construction management in construction-related projects, basic know-how of different construction contracts and background knowledge of common forms of alternative dispute resolution.

We are grateful to our speakers, Sr. Daniel Chang (The Hong Kong Institute of Surveyors), Mr. Joseph Chung and Mr. Justin Yuen (Deacons), Sr. Paul Wong (Chinney Construction), Mr. Honic Yip (Gary Soo’s Chambers), and Sr. Andy Mack and Sr. Vincent Chong (Chun Wo Construction), for sharing their invaluable expert insights with us, and all those who participated in this event.

We look forward to the next One Day Seminar and future co-operation with the Organising Committee in joint professional events.

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 Belt and Road Conference

The Law Society of Hong Kong’s first and foremost Belt and Road Conference entitled “The Belt and Road: A Catalyst for Connectivity, Convergence and Collaboration” was successfully held on 12 May at the Hong Kong Convention and Exhibition Centre. Providing a regional platform for exchange of knowledge and synchronisation of international laws so that participants may optimise the benefits of the Belt and Road Initiative, the Conference was well attended by over 650 participants from the Belt and Road countries.

The Hon. C Y Leung, Chief Executive; Mr. Zhang Xiaoming, Director of the Liaison Office of the Central People’s Government in HKSAR; Ms. Tong Xiaoling, Acting Commissioner of the Ministry of Foreign Affairs of the People’s Republic of China in HKSAR; and The Hon. Rimsky Yuen SC, Secretary for Justice attended the Conference as officiating guests.

The Conference kicked off with keynote speeches by President Thomas So, Chief Executive and Secretary for Justice. The President highlighted Hong Kong’s unique position and sound legal and judicial system which entrust Hong Kong legal professionals with an integral role in the Belt and Road blueprint. He also mentioned in his speech that The Law Society would work with legal professionals across the Belt and Road route to push for uniformity of laws in trade and investment and promote more exchanges with lawyers from other jurisdictions.

In the Chief Executive’s keynote speech, he reiterated the advantage of Hong Kong’s legal profession and Hong Kong’s role as super connector and dispute resolution centre under the Belt and Road Initiative. Meanwhile, Secretary for Justice said Hong Kong could be a “second-to-none” legal hub for Belt and Road countries, citing the arbitration services on offer. He also highlighted the legal risks brought by multi-jurisdictional transactions.

Riding on this opportunity, The Law Society signed a “Hong Kong Manifesto” with 37 law associations from 22 jurisdictions along the Belt and Road which pledged to promote synergy, strategic partnership and collaboration amongst the signing members.

The Conference continued with a plenary session, bearing the same theme as the Conference, moderated by Mr. Huen Wong, Chairman of the Conference Organising Committee & Council Member and Past President. Renowned speakers, including Mr. Gerard Sanders, General Counsel of Asian Infrastructure Investment Bank; Mr. Joseph Ngai, Director & Managing Partner, Hong Kong & Company, Inc. Hong Kong; Mr. Nicholas Kwan, Director of Research of Hong Kong Trade Development Council and President So, shared their insights and hopes on issues arising from changes of the global geo-economic profile and legal landscape under the Belt and Road Initiative.

The three informative concurrent breakout sessions filled up the whole afternoon, covering a wide range of practice areas from opportunities and challenges for bilateral and multilateral trade; the use of e-tools for international trade; and resolving disputes in cross-border trade. The event concluded with a dedicated “Business Speed-dating Session” for participants to connect with those who match their business needs and build a network of long lasting business relationships.

Visits to Shenzhen Court of International Arbitration and Qianhai Free Trade Zone were arranged for the overseas delegates on the following day.

Participants and speakers remarked that as a result of preparing for and attending the Law Society’s Belt and Road Conference, they have learnt more and have a better appreciation of the multi-party win-win opportunities that can flow this Initiative.

The Organising Committee would like to express their sincere gratitude to the sponsors, especially the Platinum Sponsor – Hong Kong Fortunate Community Charitable – for their generous sponsorship. We would also like to thank our supporting organisations, speakers, moderators, guests and fellow legal practitioners from all over the world for grace us with their support and participation.

Witnessed by The Hon. C Y Leung, Chief Executive (front row, second left), Mr. Zhang Xiaoming, Director of the Liaison Office of the Central People’s Government in HKSAR (front row, second right), Ms. Tong Xiaoling, Acting Commissioner of the Ministry of Foreign Affairs of the People’s Republic of China in HKSAR (front row, first right), and The Hon. Rimsky Yuen SC, Secretary for Justice (front row, first left), The Law Society signed a “Hong Kong Manifesto” with 37 law associations from 22 jurisdictions along the Belt and Road.
On behalf of the Law Society, Vice President Amirali Nasir expressed his sincere gratitude to the sponsors, supporting organisations, speakers, moderators, guests and participants from all over the world for their support and participation at the Closing Ceremony.

President read out the “Hong Kong Manifesto” at the Opening Ceremony.

Vice-President Melissa Pang presented a token appreciation to Mr. Sze Ching Lau, Executive Vice-Chairman of the Hong Kong Fortunate Community Charitable for its generous sponsorship to The Law Society for organising this conference.

Mr. Huen Wong, Chairman of the Conference Organising Committee & Council Member and Past President; Mr. Gerard Sanders, General Counsel of Asia Infrastructure Investment Bank; Mr. Joseph Ngai, Director & Managing Partner, Hong Kong of McKinsey & Company, Inc. Hong Kong; Mr. Nicholas Kwan, Director of Research of Hong Kong Trade Development Council and President (from left to right) joined a panel discussion on the topic “The Belt and Road: A Catalyst for Connectivity, Convergence and Collaboration” at the plenary session.

行政長官在主題演講中重申,香港法律界在“一帶一路”倡議下的優勢,以及香港作為超級聯繫人和調解爭議中心的角色。同時,律政司司長以仲裁服務為例,表示香港可成為“一帶一路”沿線國家首屈一指的法律樞紐。他特別強調涉及多個司法管轄區的商業活動所帶來的法律風險。

藉此機會,律師會將與來自“一帶一路”沿線的22個司法管轄區的37個律師協會簽署《香港宣言》,以促進簽署成員之間的協同效應、戰略夥伴關係及協作。

論壇由會長蘇紹聰律師、行政長官及律政司司長的致辭,為整日的精彩活動揭開序幕。會長強調香港的獨特地位及健全的法律和司法制度,令香港法律界人士在“一帶一路”倡議下的獨特地位。他又提到,律師會將與“一帶一路”沿線國家的法律界人士合作,推動貿易及投資下的法律一致性,並促進香港與其他司法管轄區律師之間的交流。

論壇翌日,律師會安排海外與會者到訪深圳國際仲裁院和前海自由貿易區。
The 110th Jubilee Celebration Dinner of the Law Society

The significant event of 2017 – The 110th Jubilee Celebration Dinner – was held at the Grand Hall of the Convention and Exhibition Centre on 13 May. Attended by almost 1,300 guests, the event concluded with much blessings and applause. We were very honoured that The Hon. Geoffrey Ma, Chief Justice of the Court of Final Appeal and The Hon. Rimsky Yuen SC, Secretary for Justice, joined us as our Guests of Honour, together with distinguished delegates from countries along the Belt and Road, as well as members of the Law Society.

The grand celebration dinner unveiled with the procession of Roll of Honours, Past Presidents and the Council led by President So and our two Guests of Honour, after the start of bagpipes. Chief Justice Ma, Secretary for Justice Yuen and President So delivered speeches to the guests before President So made a toast to the guests, addressing both the Law Society’s accomplishments over the past 110 years and its aspirations for the next 110 years.

The showcase at the foyer and the 110th Jubilee Celebration video provided an abbreviated overview of the magnificent history of Hong Kong’s legal profession. These historical pieces also bear testimony to the foresight of the Law Society’s founders to promote the solicitor profession. The size of our profession has grown from a handful of solicitors to now a membership of over ten thousand.

The night reached its climax during the lucky draw session, with the top prize being business class air tickets to Europe! Other highlights included the performances by four talented Jockey Club Opera Hong Kong young artists; Erhu and Violin duet by young musicians Mr. Kin Szeto and Mr. John Sit, as well as an impressive magic show presented by the renowned magician Mr. Jeff Teo.

The Organising Committee would like to express their heartfelt thanks to all sponsors, delegates, performers and Law Society members for their support, as well as the dedication of the secretariat members – you made the event an even greater success!
Law Society Council members and the participants enjoyed a wonderful night!

在5月13日假香港會議展覽中心大會堂圓滿結束。我們慶幸地邀請到終審法院首席法官馬道立先生及律政司司長袁國強資深大律師擔任宴會的主禮嘉賓，其他來賓包括來自「一帶一路」國家的律師會代表和律師會會員。在風笛手演奏下，蘇紹聰會長及兩位主禮嘉賓率領榮譽名冊會員、前會長及理事會成員進場，為晚宴揭開序幕。隨後由終審法院首席法官馬道立先生、律政司司長袁國強資深大律師及蘇紹聰會長致開幕辭。蘇紹聰會長與嘉賓回顧律師會過去110年取得的成就，及分享未來110年的願景後，向所有來賓祝酒。設置在會場入口的展覽區和於晚宴上播放的110周年紀念影片，介紹了香港法律界的輝煌歷史。這些歷史珍藏品見證了律師會創辦人推動律師專業的遠見。律師會從最初數名律師發展至今已超過萬名會員。晚宴上的抽獎活動把全晚氣氛推至高峰，頭獎為歐洲商務艙機票！其他亮點包括賽馬會香港歌劇院四位才華洋溢的青年演唱家的表演、青年音樂家司徒健先生和薛子豪先生的二胡、小提琴二重奏；以及著名魔術師張哲銘先生令人目不暇給的魔術表演。

籌委會衷心感謝所有贊助商、來賓、表演者和律師會會員的支持，以及秘書處的努力，令晚宴得以圓滿成功！

www.hk-lawyer.org
7th Members & Family Fun Day

How did you spend your Mother’s Day this year?

Around 700 attendees from 200 members’ families participated in the 7th Members and Family Fun Day at the Hong Kong Sports Institute on 14 May, which was Mother’s Day.

Marking its 7th anniversary, our young participants competed in over 90 track and field events with new records this year, and the Talent Show with over 70 performances by children as young as two years old. Their exciting performances included singing, dancing, playing musical instruments, reciting poems and more. Some children also shared their fondness for their beloved mothers through their submissions in the “Mother’s Day” themed Drawing Competition. In spite of the competitive spirit brought out by the games, families and children had a good time enjoying various game booths which included a bouncy castle, an obstacle course, fencing training, a frisbee game, remote car racing, roller-skating, a photo booth among a variety of other activities.

We were honoured to welcome our special guests of honour, namely Ms. Maggie Chau, Principal of St. Stephen’s Girls’ College, Dr. Maggie Koong, Chief Principal of Victoria Educational Organisation, and Ms. Catherine Lui, Head of School and Supervisor of Ludus Kindergarten and Nursery, who assisted us in selecting the winners of the Drawing Competition and the Best-Dressed Competition. Once again, a big congratulation to all of the winners!

If you missed the fun, don’t worry, as the Swimming Gala is approaching soon on 20 August. Registration via the Law Society App will be open shortly. Of course, we definitely look forward to seeing you again next year at the 8th Members and Family Fun Day!
第七屆會員及家庭同樂日

大家怎樣渡過今年的母親節？

來自200多位會員家庭的700名參加者，於5月14日参加了在香港體育學院舉行的第七屆會員及家庭同樂日，一同慶祝母親節。

會員及家庭同樂日今年已踏入第七屆，一眾年輕的參加者於超過90個田徑項目中互相較量並刷新了多項紀錄。此外，70多位小朋友在才藝表演中展示他們各方面的才華，包括唱歌、跳舞、演奏樂器、背誦詩歌等等。當中年紀最小的一位表演者只有兩歲。有些小朋友亦參加了以母親節為主題的兒童繪畫比賽，向媽媽表達愛意。現場設有多個攤位遊戲，包括充氣城堡、越野賽道、劍擊訓練、飛碟爭奪賽、遙控賽車、滾軸溜冰和自助照相亭等，一家大細均樂而忘返。

我們有幸邀得聖士提反女子中學校長周維珠女士、維多利亞教育機構總校長孔美琪博士及念蘅幼稚園校監呂詩慧女士擔任特別嘉賓，並擔任繪畫比賽和最佳服飾比賽的評判。再次恭喜所有得獎者！

如果你錯過了今屆會員及家庭同樂日，別擔心，周年水運會將於8月20日舉行。會員即將可透過律師會手機應用程式報名。我們期待在明年的第八屆會員及家庭同樂日與各位再見！
“The time has come, the Chancellor said
To talk of many things
Of discount rates and damages
And the cost of buying things.” (Apologies to Lewis Carroll)
On 27 February 2017, UK Lord Chancellor Truss exercised her statutory power to change the multiplier for calculating damages for the victims of personal injuries from 2.5 percent to -0.75 percent. This caused furious fluttering in the dovecots of the insurance companies and much shouting that it was an unjustifiable change. Though a little confusing, the multiplier is often referred to as the “discount rate”.

A neutral rate would be a multiplier equal to the actual number of years of lost income whereas a negative percentage increases the number of years required to produce the same revenue stream.

Unquestionably, the change will make a profound difference to the damages awarded for loss of income and the cost of providing for future needs, the two heads of damage that require financial projections, together classified as pecuniary loss.

A study of judicial decisions demonstrates the importance of ensuring that as economic data changes, so the courts must have a practicable machinery to reflect those changes lest claimants are over or under compensated.

**Discount Rate in Operation**

If the actuarial discount rate is not synchronised with current economic data, damages for pecuniary loss will be critically out of kilter with reality. The stark difference can be seen by comparing the outcome if such a change as Truss proposed in the UK were applied to a Hong Kong case of a notional 30-year-old male earning HK$180,000 per annum as at the date of trial and rendered unable to work to his pensionable age of 65. Using the Personal Injury Tables for Hong Kong, the current rate of 2.5 percent and its associated multiplier of 23.04 produces HK$4,147,200. By contrast, a discount rate of -0.75 percent would yield a multiplier of 39.21, so producing a total of HK$7,058,700.

The objective in both the UK and Hong Kong is to maintain the balance between the real economy and pecuniary loss awards. As proposed below, Hong Kong must introduce a suitably flexible mechanism into its tort law.

**Court’s Rationale**

To understand the judicial rationale behind awards for pecuniary loss, the speeches in the decision of the House of Lords in *Wells v Wells* [1999] 1 AC 345, are highly informative. Lord Hope of Craighead stated the underlying principle:

“...the object of the award of damages for future expenditure is to place the injured party as nearly as possible in the same financial position he or she would have been in but for the accident. The aim is to award such a sum of money as will amount to no more, and at the same time no less, than the net loss ...”

Lord Hope defined the discount rate as:

“the rate of interest to be expected where the investment is without risk, there being no question about the availability of the money when the investor requires repayment of the capital and there being no question of loss due to inflation.”

An important practical consideration is the necessity to create an investment that will produce such a revenue stream yet be accessible from day one to meet existential needs. It is this latter characteristic that makes the typical pension fund wholly inappropriate.

Underlying these principles is the fact that the calculations are, necessarily, projections, which insurers like to castigate as mere speculation, forgetting that the entire insurance industry is premised on economic projections. The principal difference is most probably that insurers prefer to have the freedom to set their discount rates on the industry’s in-house figures rather than having them imposed upon them by government.

The parallel argument raised against a mechanism that tracks inflation is cost. Can the insurers, and the public who have to pay the premiums, afford to pay for such a system? The answer can be found in Chief Justice McLachlin’s compelling reasoning in the Canadian Supreme Court decision in *Bazley v Currie* 174 DLR (4th) 45, where it was held that the tortfeasor, having created a risk which results in the injuries, must bear the cost if the risk is realised.

**Discount Rate’s Chequered History**

The chequered history of the discount rate is remarkably revealing. The rate of 4 to 5 percent set in 1979 in *Cookson v Knowles* [1979] AC 556 remained unchanged for 20 years in the UK and 34 years in Hong Kong, despite the wide fluctuations in both economies over those periods.
The UK Parliament recognised the inadequacy of this seemingly inflexible figure and in s. 1 of the UK Damages Act 1996 gave the Lord Chancellor power to set the rate. However, for three more years the UK courts adhered stubbornly to an arbitrary discount rate that bore little relation to reality.

Hong Kong courts followed, some might say slavishly, the UK practice. But in Chan Pui Ki v Leung On [1996] 2 HKLR 401, Mr. Justice Peter Cheung grasped the compelling merits of linking the rate to the retail price index in an ill-fated attempt to blow away the judicial cobwebs that had led to serious under-compensation of accident victims. Regrettably, a five-man Court of Appeal rubbedish the use of actuarial tables. Inasmuch as the court was not referred to the widespread use in the UK of the Ogden Tables to calculate damages, its belief that a 4 to 5 percent rate had quasi-biblical provenance is marginally forgivable.

**UK Welcomes Economic Evidence**

The decision in Wells v Wells opened the UK’s doors to the admission of economic evidence upon which to set the discount rate. In so doing they were adopting the recommendation of the Law Reform Commission (Cm. 2646)

“... Our provisional view was that courts should make more use of information from the financial markets in discounting lump sums to take account of the fact that they are paid today.”

The full effect of admitting financial data into the process also meant that the irrational prohibition on taking inflation into consideration had to go.

The judicial analyses in Wells v Wells show how the court settled upon government index linked bonds (“gilts”) as a model financial vehicle which met the criteria for a safe investment, sheltered against inflation yet enabling the victim to draw down on the fund as necessary.

**Implementing Wells v Wells**

Section 1 of the UK Damages Act 1996’s mechanism for regular review by the Lord Chancellor was essential if frequent recourse to the courts to re-set the discount rate was to be avoided. It empowered the Lord Chancellor from time to time, to set the discount rate for future pecuniary loss. History proved that the vague draftsmanship in “from time to time” left the mechanism blowing idly in political winds.

The position in Hong Kong remained in the Cookson v Knowles strait jacket until the meticulously crafted decision of Mr. Justice Barrwhaney in Chan Pak Ting v Chan Chi Kuen & Anor [2013] HKEC 202 in February 2013.

Taking as a starting point the necessity to take financial information into account, the judge was faced with the critical distinction that Hong Kong had no financial instrument equivalent to UK gilts but he still had to devise a model portfolio that met the criteria for being relatively risk free, inflation sensitive and accessible to be drawn down on during its life.

In the course of argument before him, it was submitted that inflation is measured against both the Retail Price Index (“RPI”) and the Retail Wage Index (“RWI”). Thus to fairly reflect economic change, if the indices differed, there should be two separate discount rates, one for the cost of providing future goods and services and the other for loss of income as was done in the Privy Council decision in Simon v Helmot [2012] UKPC 5. Bharwaney J rejected dual rates because the difference between RPI and RWI indices was minimal. Nevertheless, he cleverly leveraged the principle to set different discount rates for plaintiffs with different future needs.

Absent a Hong Kong equivalent of gilts, the judge held that depending on the period for which the pecuniary loss was being purchased, different considerations obtained. Thus a claimant with a five year purchase would need ready and regular access to his fund, and because it has a short life it cannot be invested in long or medium term instruments. A mid-range, between five and 10 years had to reflect the balance between risk on return and accessibility; therefore, it requires a different mix in the portfolio but still no equity element. Conversely, those with needs in excess of 10 years could load their portfolio with risk-free long and medium term instruments and need an equity element to provide against inflation.

This compartmentalisation of years of dependency on the fund meant that the judge had to construct different hypothetical model portfolios for each category. He recognised that in so doing, the validity of the composition of each model would change in line with the fluctuations in the market. But herein lies the problem. If the discount rate is to satisfy the judicial criteria, the constituent parts of each category of the portfolio will have to be reviewed regularly.

This is all the more important because of the need to invest in equities. Thus the three categories were given their respective rates -0.5 percent for less than five years, 1 percent for five to 10 years and 2.5 percent for purchase in excess of 10 years.

The judge’s solution to future changes in the economy was to suggest that a review could be initiated by the judge in charge of the Personal Injuries List who would select appropriate cases to re-test the validity of the prevailing discount rate. To my knowledge, to date, no such review has been initiated.

The suggestion of Professor Chan Wai Sum, the Plaintiff’s expert, was that a Working Party chaired by the Chief Justice and consisting of judges, lawyers, actuaries and economists should review the issue periodically or a Hong Kong equivalent of s. 1 of the UK Damages Act 1996 be put on the statute book. Again, no such Working Party has been set up nor do we have a statutory provision as yet.

**A Practical Hong Kong Solution**

To be effective, any formalised review body would have to adhere to fixed frequencies. The failure to activate s. 1 of the UK Damages Act 1996 in the UK
demonstrates that the process should not be subject to political whimsy or external influence.

Lord Chancellor Truss's decision has re-awakened the question for consideration in Hong Kong. It would be costly and grossly inefficient to have to litigate the matter on a regular basis. *Chan Pak Ting* not having been appealed, we may safely assume that the governing principles are settled.

A Chief Justice's Working Party mandated to annual reviews would have the benefit of considering (a) the continued viability of the constituents of each of the three categories of years and (b) the ability of the 10 year plus category equity elements in the model portfolio to shelter against inflation. Within the boundaries established by *Chan Pak Ting*, the Working Party ought to be empowered to amend the models so as to meet the perceived needs that it identified.

Just as medical science eradicates diseases only to find them cropping up again in a modified form, unless prompt steps are taken to establish a regular review mechanism, the stasis of *Cookson v Knowles* could re-appear in a new mutation.

The picture would not be complete without mentioning s. 2 of the UK Damages Act 1996, which empowers the courts to order periodic payments instead of a lump sum award but only if both parties agree. To date, there has been little enthusiasm for this option and, in my experience, it would have very little attraction for most Hong Kong claimants. Quite apart from any cultural or psychological disinclination for such a system, it would always be inherently subject to the long-term financial liquidity of the insurer.

By contrast, a Chief Justice's Working Party composed of representatives of all those with the expertise and the vested interests, is far more likely to achieve a consensual *modus operandi*.

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「大法官說，時候到了我們有許多東西要談折扣率、損害賠償和購物支出。」(向路易斯·卡羅爾說聲抱歉)

正在施行的折扣率

倘若該等經過精算的折扣率，並未能與現行經濟數據的變動一致，那麼受害人因所蒙受的金錢損失而獲得的損害賠償，將會與現實的情況嚴重失衡。我們試透過以下的一個例子，說明卓慧思大法官所提出的對英國折扣率之修訂倘若適用於香港時將會出現的情況: 假設有一名30歲的男子，他的全年收入是港幣18萬元(按審訊日當天計算)。他因為別人的疏忽，導致他的身體受到傷害，無法繼續工作，而他的退休年齡應當是65歲。我們只要比較有關的計算結果，便可以看到當中的重大差別。根據《香港人身傷害資料表》來計算，香港的現行折扣率是2.5%，其相關乘數為23.04，經過計算後，得出的金額為港幣4,147,200元。相反，如果現行的折扣率是 -0.75%，其相關乘數為39.21，經過計算後，得出的總金額為港幣7,058,700元。
無論是英國還是香港法院，其宗旨都是要在現實經濟與判給受害人的金錢損失方面，取得一個適當的平衡。正如下文所指出的，要達到這一目的，香港必須在其侵權法中引入一個具有適當靈活性的機制。

司法理據

上議院在Wells v Wells [1999] 1 AC 345一案的裁決中所作的評論，對於理解法庭判給受害人金錢損失的司法理據方面極有幫助。Lord Hope of Craighead在該案中闡述了相關原則：

「法庭為受害人未來所需的支出而判給的損害賠償，是要將受害人置於一個與若非有該意外事故發生，他或她原應享有的經濟條件盡量相近的狀況；而此舉的目的，是要讓他或她所獲得的補償不多也不少，剛好與其蒙受的淨損失相等…」

Lord Hope將折扣率界定為：

「有關的投資是無需面對風險時所預期獲得的利率，而當中並不存在投資者要求退還資本時，也不存在因通貨膨脹而招致損失的問題。」

一項可供考慮實施的重要舉措是：設立一個可以產生該等收益的投資項目，而該投資項目從一開始，便可以讓當事人提取款項以應付其日常生活所需。基於後面所述的該項條件，一般的退休基金實完全無法符合有關要求。

與這些原則相關的事實是，該等計算必然屬於預估性質，並且經常被保險公司批評為純屬推測；但它們不要忘記，整個保險行業事實上是建基於對經濟的預估。因此，其中最可能存在的重大分歧是，保險公司希望有權自行根據其行業的內部數字來釐定有關的折扣率，而並非由政府強制施行。

折扣率的曲折過去

折扣率所曾經歷的曲折變化，確是具有相當的啟發性。1979年在Cookson v Knowles [1979] AC 556一案中所訂立的百分之四至五的折扣率，於過去20年的英國，以及於過去34年的香港，均從來沒有作出任何變動，儘管在過去的該兩段時期，這兩地的經濟都曾經出現廣泛的波動。

英國國會承認，該等看來缺乏靈活性的數字，確實存在著不足之處。雖然《1996年英國損害賠償法》第1條賦予大法官權力訂立該項折扣率，但三年過去，英國法院仍然只是固守著一個任意制訂，與現實情況幾乎脫節的折扣率。

折扣率的施行

若要避免為了要求重新釐定折扣率，而經常需要將有關的爭議帶到法庭，《1996年英國損害賠償法》第1條關於由大法官對相關機制進行定期檢討之規定，便顯得必不可少。該機制賦予大法官權力，可就受害人的未來金錢損失不時釐定折扣率。但過去的情況證明，法律律師使用「不時」這一字義是不夠明確的，故此它們之間的爭議便經常帶到法庭。

香港的情況仍然是依循Cookson v Knowles一案的規定，直至Mr. Justice Barwhaney於2013年2月在Chan Pak Ting v Chan Chi Kuen & Anor [2013] HKEC 202一案中，作出了他的精心研擬裁決。

作為一個起步點，Mr. Justice Barwhaney必須將財務資料納入考慮範圍之內，而他所面對的難題是，香港並沒有與英國的「與指數掛鉤的政府債券」類似的財務工具，可是他仍需設訂一個能符合：較為免於風險、對通脹敏感、有關款項在其存續期間可以提取等各項條件的模型投資組合。

訴訟方在Bharwaney J席前進行爭辯時，提出應該同時根據「零售物價指數」(Retail Price Index, 簡稱”RPI”)和「零售工資指數」(Retail Wage Index, 簡稱“RWI”)來衡量有關的通脹情況。因此，要適當反映經濟狀況的轉變，便需要分別訂立兩個不同的折扣率（假如該兩個指數是相互有所不同）：一個是用於提供未來貨品及服務的支出方面；另一個是用於收入損失方面(正如樞密院在Simon v Helmot [2012] UKPC 5一案的裁決所作的處理一般)。Bharwaney J拒絕接納雙重折扣率，認為這兩個指數

止將通貨膨脹納入考慮範圍的做法。

對Wells v Wells一案所作的司法分析，顯示法庭是如何將「與指數掛鉤的政府債券」用作一種示範性的金融工具，而它亦符合了：安全投資、免受通貨膨脹影響、在有需要時受害人仍可取得有關款項等各項條件。

英國同意接納經濟證據

Wells v Wells一案的裁決開啓了英國的門戶，讓它同意依據經濟證據來訂立折扣率，而它的此舉，也是採納了英國法律改革委員會的建議（Cm. 2646）。

「…我們現階段的看法是，倘若因為現時便需要支付整筆款項而須對其作出打折，那麼法庭當應當更廣泛地參考來自金融市場的資訊。」

倘若我們可以將財務數據納入有關程序，這也意味著，我們必須廢除該不理性地禁止
之間的實質差別不大。不過，他機智地運用該項原則，就原告人不同的未來需求訂定不同的折扣率。

由於香港並沒有「與指數掛鉤的政府債券」此類財務工具，Bharwaney J因此裁定需要根據有關的金錢損失所涵蓋的期間來作出不同考量。所以，一名申索人在金錢損失方面的涵蓋期倘若只有5年，他可能會需要隨時和定期提取有關款項。由於涵蓋期短，因此不宜將有關款項投資於中長期金融工具。一個5至10年的中程期限，必須反映回報風險與款項提取這二者之間的平衡；因此，需要在相關投資組合中混合不同要素，但當中仍不可存在權益元素。相反，申索人需求如果超過10年，他們可以利用長期投資工具投放於其投資組合中，當中並需要包含權益元素，以抵消通貨膨脹的影響。

此一根據對款項的需求來對年期作出劃分，意味著法官必須為每個類別構建不同的假設性的模型投資組合。他承認，倘若如此實行，每一個模型的成份的有效性，便將會隨著市場的波動而改變。但問題是，假如要該折扣率符合該等司法準則，便必須對該投資組合中每個類別的組成部分定期進行檢討。

由於需要在權益證券方面進行投資，故這點變得尤為重要。該三個類別因此獲提供不同的折扣率：少於5年的，其折扣率為-0.5%；5至10年的，其折扣率為百分之0.5；超過10年的，其折扣率為2.5%。

關於未來的經濟變化方面，Bharwaney J提出的解決方案是：由負責「人身傷亡案件審訊表」的法官進行檢討。這名法官需要選擇合適個案，從而對現行折扣率的有效性進行重新驗證。就我個人所知，直到今天為止，香港並沒有進行任何類似檢討。

一個由終審法院首席法官領導，並獲委進行年度檢討的工作小組，可以對下述情況進行審視：(a) 該三個不同年數類別的每一個，其各項組成要素的可持續能力；及(b) 在該個10年以上的類別中的模型投資組合，其所包含的權益元素在抵抗通貨膨脹方面的能力。該工作小組必須獲得賦權，在Chan Pak Ting一案所確立的界線範圍內對該等模式進行修訂，以符合其所覺察的需要。

醫學為我們消除了某些疾病，但另一些疾病經變種後，可能又會突然出現。同樣地，倘若我們現時不迅速採取行動，建立一個定期檢討機制，Cookson v Knowles一案在沉寂了一段時間後，可能又會再次以一個突變後的新形式出現。

現在讓我們談談《1996年英國損害賠償法》第2條，好讓這幅圖畫變得更完整。該條文賦予法院權力，有權命令保險公司向受害人作出定期性的支付，以代替判給其整筆款項，但前提是需要獲得訴訟雙方的同意。可是，直到目前為止，並沒有太多人為這項選擇的提供而感到雀躍。根據我的經驗，這項規定對大多數的香港申索人來說，吸引力並不會太大。這並非由於他們在文化或心理上，對這個制度有所抗拒，而是他們總會考慮到保險公司的長期支付能力。

相反，一個由終審法院首席法官領導的工作小組，其組成人員包括許多擁有專門知識的人士和既得利益者，在運作模式的商討上，他們會有更大的可能達成共識。
Against all Odds: Activist Strategies in Controlled or Blockholder-Influenced Companies in Hong Kong

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This article will discuss strategies and tactics shareholder activists employ in the controlled and blockholder-influenced company universe of Hong Kong, where 80–90 percent of all listed public companies (or listcos) are controlled by families or at least dominated by significant blockholders, and the best ways to counter them. This remarkable shareholder concentration in Hong Kong stands in stark contrast to the US and UK where a quite different distribution of share ownership prevails and public corporations predominantly exhibit free float, dispersed and widely held share ownership. In fact, the shareholder distribution pattern of Hong Kong is much more similar with the share ownership concentration on the European Continent and in Germany, where approximately 60 percent of all public companies are either controlled or blockholder-dominated.

Shareholder and hedge fund activism have ascertainably become an influential, if not dominant, force in corporate governance and corporate law evolution in the US and in Britain. Additionally, the movement received worldwide attention and fueled imagination about value creation, corporate strategy, operative efficiency and corporate governance improvements on a global scale, a debate that spilled over to the European Continent and to Asia and triggered intense controversies; but even informed observers have remained divided about its impact in jurisdictions outside the US and the UK. While there is growing awareness in Hong Kong and Germany about activism as a market phenomenon, widespread misperception about or even denial of activist campaigns and interventions having any impact on governance and the corporate markets in China and Continental Europe still obfuscate reality and prevail, when, in fact, shareholder engagement and activism have become influential, if not pervasive, in these markets just the same.

This three-part series will discuss shareholder and hedge fund activism in Hong Kong and Germany. In Part 1, we discuss the parameters and framework for shareholder activist demands and hedge fund activism across both jurisdictions. In Part 2, we delve into further commonalities and dissimilarities between activism in Hong Kong/China and Germany/Continental Europe by introducing empirical evidence of wide-ranging shareholder engagement and hedge fund activist interventions in both jurisdictions, belying the frequently encountered denial of their very existence. In the final Part 3 (which will appear online only), we 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; and we will conclude with a couple of strategic and tactical recommendations for outside counsel and solicitors interested in this evolving practice area.

**Hong Kong-Germany Connection**

In spite of Hong Kong’s English legal heritage and indebtedness to US legal evolution, it may be surprising to learn that there are deeper commonalities between the Hong Kong and German public company market structures than between Hong Kong and either the US or UK markets.

Such varying degrees and differences in shareholder population concentration impact on minority shareholder rights and how activist shareholders proceed strategically and tactically in order to influence portfolio companies with deliberate interventions and campaigns designed to unlock shareholder value. Thus, analyzing activism trends in Hong Kong and Germany, given their similar ownership distribution and concentration in companies, seems fruitful from a comparative legal and economic perspective in that it helps to illuminate how corporate governance and corporate law may evolve in response. Also instructive is the fact that Germany is representative of Continental Europe, while Hong Kong is somewhat emblematic for China as her gateway to international capital markets; at the same time, Hong Kong/China and Germany have two of the most powerful economies outside of the US and UK.
Influencing Decision-Making through Informal Mechanisms

Since activists have a limited ability to formally influence the decision-making of a fully controlled firm, when they decide to target German or Hong Kong controlled companies, they rely more heavily on informal mechanisms. Given the commonalities between German and Hong Kong markets, it should come as no surprise that a striking commonality exists between the informal approaches used by activists in both jurisdictions. In Germany the adoption of informal channels seems primarily a matter of corporate culture and etiquette and not so much shareholder distribution pattern, while in Hong Kong, informality is caused by the power of controllers who may block out any confrontation.

If a controller owns 50 percent or more; and if in the jurisdiction (such as Hong Kong or Germany) minority shareholders may not elect independent directors, any activist campaign challenging such controlling shareholder for underperformance (in my definition) must be classified against all odds – the controller can stonewall and ignore an activist petition or request for a meeting, rendering it extremely difficult to prevail in any contest.

When preparing to host a conference on shareholder activism in Frankfurt, we were told there were only a handful of German cases, when, in fact, independent research uncovered that there had been 400 campaigns against approximately 200 public targets in the past 15 years (out of a total of 650 publicly traded corporation in Germany of what was a peak of about 1,000 German listcos 10 years ago). However, only 70 to 80 of these interventions ever became publicly known.

Similarly, when preparing to host a similar conference in Hong Kong, we were told that shareholder activism did not really exist in Hong Kong either, an assessment that was also proven to be untrue. It is presumably a reflection of the perceived lack of dialogue between legal practitioners and investment bankers in Hong Kong on one hand, and local Hong Kong activists actually doing the transactions and enlivening the global activism debate with a particular Hong Kong brand of what might be called “giving advice” or constructive activism. Just like in Germany, our Hong Kong findings suggest that over the last 12 years or so there have been hundreds of such activist interventions and campaigns as well.

Investment Process and Strategic Objectives of Equity Investor and Hedge Fund Activism

To our understanding, hedge fund activism stands for minority investments in undervalued or poorly managed public companies by one or several investors, investment partnerships or activist funds based on strategic objectives and tactical measures carefully formulated in advance (ie, successful value restoration to the benefit of all shareholders, enhanced corporate governance monitoring and increased operative efficiency as the aimed for outcomes).

After exhaustive due diligence and analysis, an activist fund makes an informed investment decision in the approximate range of one to 10 percent (depending on target size, but usually no more than 15 percent) of the voting stock of a target corporation. This decision is implemented over time by acquiring such stock position through various stealth methods.

Thereafter, an attempt is made to communicate with senior management/executive board members (and supervisory board in Germany) and, down the road, inform fellow shareholders about the fund’s considered view about the best possible strategic course of action compared to the plans of incumbent management for value recovery at what has become an underperforming portfolio company of the fund compared to its peers.

According to conventional theory, engagements with controlled companies (the base case in Hong Kong) should be rare, since the presence of a controlling shareholder is to dramatically reduce the chances of an activist campaign to threaten credibly, wage and actually win a proxy contest when negotiations with the target board on a variety of value-enhancing, governance-monitoring and efficiency-improving demands break off. With the two conferences we hosted, we attempted to outline detailed arguments, strategies and action plans on how to convince reluctant controlling shareholders or blockholders about the necessity for change and acceptance of value- and investor relations-enhancing shareholder proposals.

Role of Controlling Shareholders

The justification for ownership concentration in Hong Kong is that a controlling shareholder has both the skills and incentives to properly conduct the business of the company and closely monitor its professional managers so as to also benefit the minority shareholders.

This justification includes a number of implicit (and occasionally false) assumptions, namely that:

• controller’s strategic decisions are, on average, superior to those of other public shareholders (including activists);

• even when an activist articulates a value-enhancing proposal, the controller is the main beneficiary of any increase in firm value; and

• controllers everywhere like to claim that the lower percentage of activist campaigns in controlled companies is the result of superior management skills of controlled companies, rendering them less attractive targets for activism than ill managed widely held companies.

However, not all controllers have superior business skills. A high percentage of controlled Hong Kong companies are family firms managed by the heirs of the founders. Economic literature has firmly established that over time, firms run by generations of decedents of founders underperform in relation to firms that
are managed by hired CEOs. This results because the heirs of the original founders often lack the spunk, mental robustness, business expertise, talent, or motivational drive of the founders.

Even if controlling shareholders maintain a large economic interest and possess superior skills, they may pursue interests not aligned with the interests of other investors, such as entrenchment, capital preservation, entering into new (risky) businesses they don’t understand or engaging in various forms of self-dealing transactions that transfer value from minority shareholders to the controller. They may also be motivated by non-pecuniary factors such as pride, envy, or animosity, inducing controllers to reject activists’ demands for all the wrong reasons – to the detriment rather than benefit of minority shareholders.

Commonalities and Dissimilarities

By exploring a broader paradigm of activism, we discovered that there are two significant factors that explain activist campaigns and market acceptance of shareholder activism in Germany and Hong Kong corporate governance debates.

For one, 60 percent of the 650 German publicly listed companies are dominated via share block ownership by families, founders, management teams, investors or holding companies; as opposed to 80 to 90 percent of the 900 Hong Kong public companies (not counting another 900 PRC listcos). Only 250 German and 100 Hong Kong public companies thus lend themselves to the US/UK presumption that activism is dependent on dispersed shareholder ownership so that upon breakdown of negotiations with management, the activist resorts to launching a confrontational proxy fight in order to replace some or all members of the supervisory board (Germany)/executive management board (Hong Kong) with directors in line with the activist’s strategic game plan.

Second, there is a certain long-term, consensus-orientation in both German and Hong Kong corporate culture, etiquette and decorum that favors negotiated solutions with management as rather than publicity and adversarial campaigns, proxy fights or resorting to litigation.

These findings should encourage us to broaden our view on shareholder activism. Just because a proxy fight approach, litigation and making activist demands public are less prevalent or promising tactics in Germany/Continental Europe and Hong Kong/China than in either the US or the UK, the more consensual tactics adopted there may still be considered part of the global activist playbook. One simply needs to broaden the perspective on tactically feasible moves of engaging target management and the controllers.

In Hong Kong, activist targets are usually controlled public companies. In Germany – except for such transactions as TCI’s investment in Volkswagen AG preferreds (a controlled company), activists invested in companies in free float with dispersed ownership – with most campaigns never becoming public knowledge.

This requires clarification: there is a particular segment of active investors in Hong Kong who primarily identify underperforming HK listcos that exhibit dispersed ownership (ie, are widely held and therefore somewhat atypical for the Hong Kong equity markets). If the target board is not amenable to constructive dialogue, they increase their position and opt for a hostile takeover of the target company.

Conclusion

Our experience suggests that because of the similarities in shareholder concentration, corporate culture, etiquette and decorum between Germany and Hong Kong, the tactics employed by shareholder activists in both jurisdictions are quite similar, with shareholders having an almost identical catalogue of specific value-enhancing measures and governance-improvement proposals to the respective portfolio companies at their disposal (compare the similarities of the respective right columns of both Appendix A and B). Activist in both Hong Kong and Germany appear to break the taboos of publicity, litigation or proxy fights only as a matter of last resort.
Appendix A: Parties and Communication Lines or Actions Involved in a German Equity Activist Campaign – It is no M&A Control Play, but mostly Influence-Seeking Minority Investment

US Institutional Investor (such as X, Y, Z)

Seeks Discussion with and Help from Activist to Monitor and Launch a Value-Enhancing Intervention Improving Target Performance, Governance and Value

Activist Hedge Fund A

Informal Arrangement with other Activists (Wolf Pack) below the Threshold of Insider Trading (§14 WpHG) or Acting in Concert (§30 WpÜG)

Activist Hedge Funds B + C

(Unhappy) Investor Invested in Underperforming German Public Portfolio Company [heightened Agency Costs and Corporate Waste]

A Performs In-Depth Due Diligence, and Acquires 5–10% over Time to Engage Company Leadership

B+C may likewise Invest in Portfolio Company in Support of Activist A

Breakdown of Negotiations – Unilateral Hostile Activist Action by A, B + C to Preserve Value of their Investment Campaign

Value Enhancing Measures as a Result of Informal Negotiations between Activist and Company

Additional Information
Special Dividend or Stock Buyback
Other Capital Allocation
Sale of Assets – Strategy Change
Business Model Changes
Monetize other Assets
Supervisory Board Seat
Management Board Seat
Other Changes In Governance
Argue for Spin-off
Induce Company to Sell Itself
Frustrate or Push for an M&A Deal
Publicity, Proxy Fight or Litigation

Appendix B: Parties and Communication Lines or Actions Involved in a Hong Kong Equity Activist Campaign – no M&A Control Play, but mostly an Influence-Seeking Minority Investment

US Institutional Investor (such as X, Y, Z)

In order to Enhance Monitoring Depth, X, Y, Z may encourage A to Launch a Value-Enhancing Intervention Improving Performance, Governance and Value

Activist Hedge Fund A

Informal Arrangement with other Activists (Wolf Pack) below the Threshold of Insider Trading (Securities and Futures Ordinance), Connected Persons (Listing Rules) or Concert Parties (Takeover Code)

Activist Hedge Funds B + C

(Unhappy) Investor Invested in Underperforming Hong Kong Public Company [heightened Agency Costs and Corporate Waste]

Seeks Engagement with Management Board

A Performs In-Depth Due Diligence, and Acquires 5–10% over Time to Engage Company Leadership

B+C may likewise Invest in Portfolio Company in Support of Activist A

Breakdown of Negotiations – Unilateral Hostile Activist Action by A, B + C to Preserve Value of their Investment Campaign

Value Enhancing Measures as a Result of Informal Negotiations between Activist and Company

CO/SFO/FRCO Hong Kong Stock Exchange Listing Rules
Hong Kong Corporate Governance Code

Independent/non-Executive Directors

Hong Kong Public (Portfolio) Company

Executive Directors/Manager- ment Board

Provides Additional Information
Special Dividend or Stock Buyback
Other Capital Allocation Changes
Strategic Changes - Sale of Divisions
Business Model Changes
Monetize other Assets
Management Board Seat
Goverance – Further Changes
Probe Self-Dealing or Taking-Private
Argue for Spin-off
Induce Company to Sell Itself
Frustrate or Push for an M&A Deal
Publicity, Proxy Fight or Litigation
本文將討論積極股東在香港的受「控權股東」控制，或受大股東影響的公司(香港百分之八十至九十的上市公都是由家族所控制)中所實行的策略和戰略，以及對其作出回應的最佳方法。香港明顯存在的股權集中情況，在英、美等國較為罕見。英、美的公眾公司股份大多屬於可自由流動，而且股權分散，由社會各階層人士廣泛持有。事實上，香港的股權分佈格局，較為類似歐洲大陸及德國的股權集中情況。在該處，有大約六成的公眾公司是受控權股東所控制，又或是受具有影響力的大股東所支配。

在英、美的企業管治及企業法的發展過程中，積極股東及「對沖基金積極主義」毫無疑問已變得深具影響力。這一進程廣受全球關注，並為價值創造、企業策略、運營效率、環球企業管治改革等各方面，增添了許多可供想像的空間。同時所產生的爭議，亦延延至歐洲大陸和亞洲，並引發激烈的辯論。然而，即使是熟悉該種情況的觀察家，他們對於此等情況在英、美以外的司法管轄區會產生如何的影響，也依然是意見分歧。作為一種市場現象，積極主義不僅在香港及德國日益受到關注，但在中、美和歐洲大陸，人們對積極主義行動和所作出的干預，經常抱有不正確的認識和對其真實情況欠缺了解，並拒絕承認它們對企業管治及市場所帶來的影響。事實上，股東的介入和股東積極主義，已在本等市場產生了相當大的影響力。

本文的討論共分為三個部分，涉及香港與德國的股東和「對沖基金積極主義」，我們將會在第一部分，討論這兩個司法管轄區的「積極股東」所控制，又或是受具有影響力的大股東所支配。

在第二部分，我們將會闡述在香港/中國，和在德國/歐洲大陸的廣泛股東介入，以及對沖基金積極主義者之干預等方面的例證，進一步探討這兩個司法管轄區在積極主義方面的共同及相異之處，從而證明拒絕承認此等情況的存在是如何站不住腳。最後，我們會在第三部分提出若干在策略和戰略上的建議。
場結構方面，較諸香港與美、英等國市場之間，有著更多的共同地方。

此等在股東人口集中方面的不同程度和差別，對小股東的權利，以及對積極股東如何採取策略性與戰略性行動(藉著作出以提升股東價值為目標的幹預及積極行動)來影響投資組合公司，皆構成分程度的影響。基於香港和德國在公司股權的分佈和集中等方面的近似，因此從法律與經濟的比較角度，對這兩地的積極主義發展趨勢進行分析，確是具有十分重大的意義，因它有助闡明企業治理及公司法將會如何發展以回應當前的形勢。此外，另一個相關的因素是：德國可視為歐洲大陸的代表，而香港則可視為中國通往國際資本市場的門戶；而在同一時間，在中國/香港及德國背後的，正是兩個在英、美以外的最強大經濟體。

透過非正式機制影響公司的決策
積極股東如要循正式途徑影響該等完全受控的公司之決策，他們在這方面的能
力可能有限。因此，倘他們決定以德國或香港的受控公司作為目標，他們會較為傾向運用非正式的機制。由於香港與德國的市場有許多共同之處，這兩個司法管轄區的積極股東所運用的非正式途徑，當中存在許多極為相似的地方，這完全是不足為奇的。德國所採用的非正式途徑，其主要著眼點是企業文化和禮節，而並非常股權的分佈模式；另一方面，香港所採用的非正式途徑，是基於「控權股東」所具備的對任何對抗作出壓制的力量。

如果「控權股東」擁有超過百分之五十的股權，以及，如果在該司法管轄區中(例如：香港或德國)，小股東並不享有推選獨立董事的權力，那麼，因表現不佳(根據我個人所下的定義)而向「控權股東」提出挑戰的任何積極主義行動，都必須視作面對重重困難－「控權股東」可以採取拖延的手法，又或是對積極股東就舉行會議所提出的呈請或要求不予理會，使其極難在任何的競逐中佔有優勢。

之後，他們會嘗試與公司的高級管理層/執行委員會(在德國則為監督委員會)的成員進行溝通。接著，他們會在重置價值方面，就其對該表現不佳的投資組合公司(與該基金的其他投資組合公司相比)所可能採取的最佳策略性行動(與現有管理層所進行的計劃相比)，將經過其仔細考慮後的看法告知其他股東。

根據傳統理論，介入受控公司(香港的基本情況)管理層的情況應當十分罕見，原因是當積極股東與目標公司的董事會就價值提升、管治監控、效率改進等各樣訴求所進行的談判出現破裂時，「控權股東」會大幅降低積極主義行動在提出可信的威脅，和發動並實際贏得在委託投票權之爭等方面的機會。在上述兩個由我們所主持的大型會議中，我們曾就如何說服不情願的「控權股東」或具影響力的大股東作出態度上的改變，使其同意接納關於價值提升和加強投資者關係的股東建議，詳述了有關的論據、策略及行動計劃。

「控權股東」的角色
所有權集中的情況在香港出現，原因
是：「控權股東」具有適當的技能和動機，可以妥善管理公司的業務，並對公司的專業管理人員作出嚴密的監控，從而讓小股東亦能因此得益。

此等理由隱含了若干假設(其有時可能是錯誤的)，即是：
• 「控權股東」所作的策略性決策，平均而言，較其他公眾公司的股東(包括積極股東)所作的優勝；
• 即使積極股東就價值的提升提出了建議，但在公司的任何價值提升方面，「控權股東」仍然是主要的受惠者；及
• 任何「控權股東」都會聲稱，有較少的積極主義行動在其受控公司出現，原因是該公司擁有較佳的管理技能，使其不必像該等由廣泛的股東持有、
且管理有欠妥善的公司一般，成為積極主義者所注意的目標。

然而，並非所有「控權股東」都擁有優秀的業務管理技能。香港有許多受控公司都是屬於家族經營企業，由其創辦人的後代來負責管理。一些經濟理論學說已明言，由創辦人的各個後代負責管理的企業，隨著時間的推移，其經營業績，必然會比不上由受聘的行政總裁所負責管理的企業。此等情況的出現，主要是由於公司創辦人的後代，通常在勇氣、毅力、業務專門知識、才幹、動力等各方面，皆會比不上該公司的創辦人。

「控權股東」即使在公司擁有龐大的經濟利益，以及卓越的管理技能，但他們所尋求的利益，也許與其他投資者所尋求的並不一致。例如，「控權股東」會努力尋求鞏固自身地位、保存資本、從事嶄新而其本人並不熟悉的高風險業務、進行各種形式的自我交易，從而將價值從小股東轉移至「控權股東」的身上來。此外，「控權股東」也可能會受非金錢因素所驅使（例如：驕傲、妒忌、敵意等），促使他們會基於各項錯誤理由，而拒絕接受積極股東所提出的訴求，並最後令小股東的利益受損（而非令其得益）。

亦因此，當積極股東與管理層的談判破裂時，前者可以透過發動對抗性的委託投票權之爭（proxy fights），從而罷免監督委員會（德國）/執行管理委員會（香港）中的若干或所有成員，並以該些與積極主義者的策略性博弈計劃一致的董事取而代之。

第二項因素是，在德國與香港的企業文化、禮儀及成規中，存在著某種程度的通過與管理層進行談判來尋求解決方案的長期共識，並捨棄透過傳宣、採取對抗性行動、委託投票權之爭，又或是訴之於訴訟等手段，來尋求將有關問題解決。

該等研究結果應可鼓勵我們從一個更宏觀的角度來察看股東積極主義的含義。正是由於德國／歐洲／香港／中國的情況有別於英、美等國，故委託投票權之爭、訴訟、將積極主義的訴求訴諸群眾等手段，並非普遍和成功機會較高的戰略。因此，這兩個司法管轄區所採取的較為側重取得雙方共識的做法，仍將構成全球積極主義者所實行的策略的一部分。所以，我們必須將視角拓寬，除了介入目標公司的管理層和控權股東等做法外，也需要將其他在戰略上可行的舉措列入考慮範圍。

在香港，受控的公眾公司通常是積極主義者的目標；而在德國，除了例如TC投資於Volkswagen AG（一間受控公司）等交易外，積極主義者所投資的公司，大多數是屬於股份可以自由流動，以及股權分散的公司 — 而它們所採取的積極行動，大多數從來不為外界所知悉。

但有一點需要補充說明的是：香港有一些積極投資者在專門尋找一些管理不佳兼且股權分散的香港上市公司（亦即是說，它們的股份是由廣泛的投資者所持有，但這並不屬於香港股票市場的普遍情況）。目標公司的董事會倘若不願意與投資者進行建設性的對話，這些投資者將會加強其在該公司的持股地位，並會考慮對該公司進行惡意收購。

結論

根據我們的經驗，由於德國與香港在股權集中、企業文化、禮儀及成規等方面有許多近似的地方，故這兩個司法管轄區的積極股東所採取的戰略也頗為接近，而這兩地的股東對其各自的投資组合公司所實行的價值提升措施和管治改進方案，也是大致上相同（比較附錄A和附錄B右欄的相同之處）。因此，宣傳、訴訟、委託投票權之爭等手段，在香港和德國的積極主義者眼中，只會是其最後考慮運用的一種手段。
附錄A：一項德國權益積極行動所涉及的相關各方及溝通線路或行動 – 並無進行併購控制活動，但主要屬於尋求發揮影響力的小股東投資

美國機構投資者（例如X, Y, Z）

尋求與積極主義者商討及得到其幫助，以監控及進行提升價值的干預行動，從而促進目標公司的績效、管理和價值

積極對沖基金A

在內幕交易（§14 WpHG）或合謀（§§22, 30 WpHG）的門檻之下，與其他積極主義者（Wolf Pack）作出非正式安排

積極對沖基金B + C

談判破裂——A, B + C採取單方面的惡意積極行動，以保存其投資行動的價值

德國公開投資組合公司（AG）

A進行了詳盡的盡職調查，並在一段時間內取得了5—10%的股權以介入公司領導層

DCGK的年度更新

提升價值的措施，並積極主義者與公司進行非正式談判所產生的成果

監督委員會

公司條例/證券及期貨條例/財務匯報局條例

香港聯交所上市規則

香港公司企業管治守則

特別股息或股份回購

業務模式改變

將其他資產轉為貨幣

其他管治變更

爭取分拆

受挫或推動進行併購交易

訴訟—優於股權之爭

附錄B：一項香港權益積極行動所涉及的相關各方及溝通線路或行動 – 並無進行併購控制活動，但主要屬於尋求發揮影響力的小股東投資

美國機構投資者（例如X, Y, Z）

為了加強監管力度，X, Y, Z可鼓勵A進行提升價值的干預行動，從而促進目標公司的績效、管理和價值

積極對沖基金A

在內幕交易（證券及期貨條例），聯繫人士（上市規則）或一致行動人士（收購守則）的門檻之下，與其他積極主義者（Wolf Pack）作出非正式安排

積極對沖基金B + C

談判破裂——A, B + C採取單方面的惡意積極行動，以保存其投資行動的價值

獨立/非執行董事

公司條例/證券及期貨條例/財務匯報局條例

香港聯交所上市規則

香港公司企業管治守則

特別股息或股份回購

業務模式改變

將其他資產轉為貨幣

其他管治變更

爭取分拆

受挫或推動進行併購交易

訴訟—優於股權之爭
Intelligent Machines: Does AI Really Spell the End of Lawyers?

By Anna Kim, Consultant & Product Manager

KorumLegal
The concept of artificial intelligence ("AI") is not novel, but in recent years, it has rapidly transitioned from the science fiction department into real life, causing discussions and debates on how it might affect the fate of humanity.

Professor Stephen Hawking, rather noncommittally noted that, "AI will be either the best, or the worst thing, ever to happen to humanity – we just don’t know which.”

Presumably, that statement also applies to the legal profession – and one or other version of it is actively being discussed by lawyers and broader intellectual community.

While the possibility of an approaching doomsday is undoubtedly a consideration, it is equally important to understand the current state of the technology and in particular, its presently available applications and limitations.

**So, what is artificial intelligence?**

Many people imagine AI to be a robot or at the very least, a computer programme that has human-like cognitive capacity, including an ability to learn, think and make decisions. While that is one aspect of AI, the term itself is generally understood more broadly to include any kind of computational modelling of intelligent behaviour.

Conventionally, it is understood that, just like lawyers at a law firm, AI has its hierarchy:

1. **Junior Associate AI aka Artificial Narrow Intelligence (or Weak AI)** is a machine intelligence which is domain specific. It is bound by the principles and relationships of the domain and literally cannot think “outside the box”. That means that the machine is only good at a specific task, such as playing the complex board game “Go” or getting you out of paying for a parking violation, but not both.

2. **Senior Associate AI aka Artificial General Intelligence (or Strong AI)** is a machine intelligence which is human-like, meaning it can perform the same cognitive tasks as a human, including generalisation of learning. Although in many circumstances human intelligence does not seem like much at all, it has one critical component which is not yet accessible to machines – using existing skills to solve new problems. If we learn how to use a spoon to eat soup, most of us will probably figure out that the same spoon can be used to eat rice or ice-cream or even scoop out sand from a sandbox into someone’s shoes. That is not so obvious to the machines. Yet.

3. **Partner AI aka Superintelligence** is, in the words of Nick Bostrom, “an intellect that is much smarter than the best human brains in practically every field, including scientific creativity, general wisdom and social skills.” What that looks like is unclear, but hopefully, something like the humanoid robots from Isaac Asimov’s novels...

It is important to note that all of today’s advanced AI applications are Weak AI – they are confined to a single domain and require a substantial amount of human oversight. We can thus gain some intuition on the future of AI within the legal industry – for years to come, we will be stuck with the Junior Associate.

It would therefore appear that the important question now is not whether the Junior Associate AI will end the world as we know it, but what this AI can do for us and whether it is worth keeping around.

So, what can an AI system do within the legal domain? Today – just two things, really.

**1. Natural language processing (NLP)**

Natural language processing, or computational linguistics, is a field of AI that is trying to endow the machines with an ability to understand and reproduce human speech.

Probably, the easiest to understand application of NLP is chatbots. In this case, natural language serves as an interface between the user and a knowledge database behind a chatbot. The user can ask questions in regular sentences and the chatbot will spew out, hopefully, relevant information. It is conceivable that chatbots could be quite useful in the areas of legal research and regulatory compliance. But at the current stage, most chatbots floating around are nothing more than a glorified FAQ tool.

ROSS is not marketed as a chatbot but is very similar to one. ROSS is an AI lawyer which can answer legal questions asked in natural language and even put together (with some help from a human) a brief memo. Present ROSS with a legal issue, and it (or he?) will produce a list of most relevant cases within seconds – a task that would take a human lawyer hours and hours of billable work.

Another application of NLP that looks promising is organisation of large sets of unstructured data which can become an indispensable tool in the area of document management.

Kira is an AI system that uses machine learning technology to do precisely that. On the company website, Kira is said to be able to take legal documents as an input, sort them, identify specified concepts and clauses and spot and analyse issues and trends across the documents, which would be particularly useful during due diligence and discovery.

Both legal research and due diligence are generally very time-consuming tasks and for the most part are done by junior lawyers. So will ROSS, Kira and others in their likeness make lawyers obsolete? Probably not. But if you are paying for junior lawyers more than those systems cost, perhaps it’s time to ask for a discount.
2. Modelling and Predictive Analytics

Predictive data analytics and modelling is another very important aspect of AI that is finding application in the legal domain, especially in the area of litigation. Decisions on such issues as the best timing for a settlement offer or the optimal judge-attorney personality fit are a couple of examples that can be aided by a data-driven approach.

The main premise of predictive data analytics is that if you deconstruct and analyse a meaningful data set in relation to a certain system through a machine learning algorithm, you will obtain a statistical model that can predict the future behaviour of such system.

A key phrase in the above sentence is “meaningful data”. Data that is not meaningful will not produce an accurate model, which in turn, will not produce accurate analytics.

The first principle of “meaningful data” is that the data set needs to be large enough (see the law of large numbers (ie, the larger the sample size, the more accurate the statistical analysis) and the overall fascination with Big Data).

The second principle of “meaningful data” is that the data set needs to be accurate, both in terms of factual accuracy and absence of bias.

It is pretty obvious – if you input inaccurate or biased data, then you cannot expect an accurate/unbiased model as an output. Garbage in, garbage out – but many of the current analytical systems don’t seem to take that into account. In the recent months, there has been an increase in the number of reports noting that some AI systems learning from real-world data are displaying unpleasant traits such as racism or gender bias – the all too familiar faults of our society.

With that in mind, enter Lex Machina, a legal analytics platform from LexisNexis. On the company website, it says that Lex Machina “mines litigation data, revealing insights never before available about judges, lawyers, parties, and the subjects of the cases themselves, culled from millions of pages of litigation information.”

Another company providing similar insights is Ravel, which according to their website, “enables lawyers to find what’s important, understand why it’s important, and put that information to use in the most persuasive way possible.”

Can those companies deliver on their promises? Perhaps. However, while it may be reasonable to assume that their data is relatively accurate – knowing that on a relevant scale, the entire data set of legal precedents is quite small – the insights from those companies, and especially their predictive capacity, should be considered with a degree of caution. There is no doubt, however, that the legal profession will benefit from the systematisation of knowledge those companies are pursuing.

This is probably much more than an average junior associate is capable doing. However, it remains to be seen whether the insights from the services such as Lex Machina and Ravel can compete with the insights and intuition coming from seasoned practitioners.

Conclusion

As with everything, only time will tell what AI’s true impact will be on the legal profession. But for now, there is no need to brace for the end of the world as we know it.
智能機器：人工智能是否意味律師會被淘汰？

作者 Anna Kim 顧問及產品經理

人工智能這概念並非甚麼新鮮事，但在近年，它驟然從科學小說的題材，變為我們的現實生活情節，並引起它對人類命運會帶來甚麼樣的影響的討論和爭議。

史蒂芬·霍金教授有點兒模棱兩可地指出：「人工智能對於人類來說，可以是最美好的東西，也可以是最惡劣的東西，但究竟是哪一樣，我們實難以確定。」

他的這一說法，對法律專業而言也許同樣適用。法律專業人員和知識界現時也在熱烈地討論人工智能所衍生的各個議題。

毫無疑問，我們需要積極關注這一個可能到來的危機；但同樣重要的是，我們需要更多了解該等技術的發展情況，尤其是它在目前的應用和局限。

那麼何謂人工智能？

在很多人的心目中，人工智能就是一個機器人；或至低限度，它是一項電腦程式，具有與人類所具有的相類似的認知能力，當中包括：學習、思想、及決策能力。雖然，這確是人工智能所涵蓋的一些層面，但這個名詞本身，也可被理解為具有更廣泛的含義，當中包括任何類別的智能行為計算模型。

據了解，人工智能在傳統上，就像律師事務所的情況一般，包含各個不同等級：

1. 「初級助手人工智能」(也稱為「侷限的人工智能」，又或是「弱人工智能」) 是一種在特定領域的機器智能。它受有關領域的原則和關係所約束，不具備任何跳岀「框架以外」來進行思考的能力。意思就是，它只懂處理特定的工作，例如玩“Go”等複雜的棋盤遊戲，又或是助你免除支付違例泊車的費用，但不能兩者兼而有之。

2. 「高級助手人工智能」(也稱為「通用人工智能」，又或是「強人工智能」) 是一種與人類的智能近似的人工智能。意思就是，它可以執行與人類的近似的認知工作，包括進行歸納式學習。儘管在許多情況下，人類的智能在表面上並沒有甚麼特別，但它有一種重要的特性是機器所無法做到的，那就是：使用現行所掌握的技能來解決新問題。當人們學習如何使用匙羹喝湯時，他們大多數同時也會想到如何使用這匙羹來吃飯或吃雪糕，甚至是用它來將沙從沙桶中舀出，倒進別人的鞋裡，而機器則似乎仍然無法做到這點。

3. 「合夥人人工智能」(也稱為「超級人工智能」)，而套用Nick Bostrom的話，就是 「幾乎在每一個領域，都遠比最優秀的人腦還聰明的一種智能，其中包括：科學創造力、一般智慧和社交技能。」 它將來的發展情況會是怎樣，我們目前實在還不大清楚，但可望會有如Isaac Asimov的小說中所述的，它將會是一個具有人類特質的機器人 ...
我們需要知道，今天所有的先進人工智能的應用，都是屬於「弱人工智能」，而它們的運用，只限於在單一領域中，並需要由人類進行嚴密的監督。因此，關於法律行業在未來對人工智能的運用，我們的直覺是：在可見的將來，我們對人工智能的運用，仍將會集中於在「初級助理」方面。

因此，我們目前所面對的問題，似乎並非「初級助理」人工智能是否會為人類帶來危機(就像我們所預期般)，而是此等人工智能可以為我們提供一些甚麼服務，以及我們是否值得將它保存下來。

故此，人工智能系統在法律領域內，究竟可以發揮一些甚麼效果呢？真正來說，在今天只有兩方面的事情。

1. 自然語言處理

自然語言處理(或計算語言學)是人工智能的其中一個領域，它正嘗試讓機器能夠理解人類語言。

要了解對自然語言處理的運用，最簡單的途徑也許就是透過與聊天機器人對話。在與其對話的過程中，自然語言便成為了用家與聊天機器人背後的知識資料庫之間的界面。用家可以使用正常的句子來發問，而聊天機器人會吐出相關的資料。因此我們可以想像，在法律研究和法規遵從等工作方面，這一功能尤其值得關注。

一般而言，法律研究和盡職審查都是十分耗時的工作，而大部分此等工作都會交由初級律師來處理。那麼，對ROSS、Kira以及其他類似的智能系統的運用，會導致律師終有一天被淘汰嗎？應該不會。不過，如果你就此類工作而支付給初級律師的費用，比運用這些系統所需的費用還要高，那麼現在也許是要求降低有關收費的時候了。

2. 模型建構和預測性數據分析

預測性數據分析和模型建構，是應用於法律領域(特別是訴訟範疇)的另一項十分重要功能。若干可以藉數據驅動方法來為我們提供幫助的例子包括：確定甚麼時候是作出和解提議的最佳時機；及，就法官與律師在性格上的最適切配合出研判等。

預測性數據分析的主要前提是：倘若你運用機器學習運算法則來對該等與某個系統相關的有意義數據集進行解構和分析，那麼，你將可以獲得一個能夠對該系統的未來行為作出預測的統計模型。

上文所提到的「有意義數據」是一個重要用詞。因為沒有意義的數據將不能產生一個精準的模型，亦因而無法作出準確的分析。「有意義數據」的第一項原則是：所採用的數據集必須夠大。從數量龐大定律(即：樣本的規模越大，所作的統計分析便越準確)及沒有偏見。

有意義數據」的第二項原則是：數據集的資料必須準確(包括事實資料的準確及沒有任何偏見)。

一個很清楚的情況是：你所輸入的數據如果不算準確或存在偏見，那麼，你不可預期它將會產生一個準確和沒有偏見的模型。「輸入的是垃圾，輸出的自然也是垃圾」—— 但在目前，許多分析系統似乎並沒有考慮到這個事實。有越來越多的報告提及，一些透過現實世界數據來進行學習的人工智能系統，經常會展現出一些令人不快的運算結果，例如：涉及種族主義或性別歧視，而這些都是我們社會中現時最常見的謬誤和偏差。

有鑒於此，我們不妨進入LexisNexis的法律分析平台Lex Machina看看。根據該公司的網站所作的介紹，Lex Machina「曾經翻閱了數百萬頁的訴訟資料，並剖析了大量的訴訟數據，提供了法官、律師、訴訟方、案件標的等方面的深入見解。」另一家提供類似深入研究的公司是Ravel。根據該公司的網站所言，「其系統可以協助律師尋找重要資料，了解該等資料的重要性，並以最具說服力的方式來運用該等資料。」

這些公司都能實現它們的承諾嗎？也許會。然而，儘管我們可以合理地假設，這些公司所提供的數據頗為準確—— 有鑑於整個法律判例資料集的規模並不大 — 但我們應當以審慎的態度來檢視它們所作的分析(尤其是它們的預測能力)。不過，毫無疑問，法律界將會因該等公司就知識的系統化所付出的努力而得益。

也許這些系統所發揮的功能，會遠遠超過一名普通初級律師的能力所及範圍。然而，Lex Machina和Ravel等系統所提供的服務，究竟是否足可與經驗豐富的法律執業者的分析能力及直覺相比呢？這仍須我們拭目以待。

結語

就像任何其他事情一樣，只有時間才能告訴我們：人工智能將會為法律界帶來甚麼樣的實際影響？但在現階段，我們實無需擔心，世界末日會像我們所預期般到來。
ANTI-MONEY LAUNDERING

Government Consultation: A “Solution” Looking for a Problem

As noted in previous Industry Insights (April 2017 – “Lawyers and Designated Non-Financial Businesses and Professions”) (“DNFBPs”) the government is proposing to legislate to bring lawyers within the statutory customer due diligence (“CDD”) and record-keeping regime of the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance. The government’s consultation was launched in January 2017 (together with a separate consultation on enhancing transparency of beneficial ownership of Hong Kong companies).

In the government’s Consultation Conclusions announced on 13 April 2017, the Financial Services and the Treasury Bureau have confirmed their intention to proceed with two amendment bills based on the conclusions. Given the relatively short consultation period and that the Law Society of Hong Kong’s Submission is dated 11 April 2017 (having had to take time to consult with its members), it is not entirely clear how much consideration the government has given to the legal profession’s views.

Readers may recall that the legal profession considered it was inappropriate for the profession to be included in the CDD and record-keeping consultation proposals, especially when the profession already has an enforceable regulatory regime in place; namely, Practice Direction P. The legal profession has also led the professions in Hong Kong in promoting an awareness of anti-money laundering and reporting suspicious transactions.

On a fair reading of the Consultation Conclusions what appears to be driving the government’s legislative proposals is Hong Kong’s next mutual evaluation by the Financial Action Task Force (“FATF”), sometime in the last quarter of 2018 (for reporting in June 2019); and the fact that it is stated that some other jurisdictions received less favourable FATF ratings because of an absence of statutory CDD requirements for DNFBPs (para. 3.9 of the Consultation Conclusions).

All relevant stakeholders are agreed on the need to maintain Hong Kong’s status as an international financial centre and a safe place to do business. However, one could be forgiven for thinking that some of the Consultation Conclusions suggest change based on preconceived policy considerations rather than being data driven. If the government’s representatives during Hong Kong’s next mutual evaluation have sufficient expertise and advocacy and Hong Kong is given a fair hearing, there ought to be no reason why the next FATF evaluation will be any less satisfactory compared with (for example) the FATF’s “4th Follow-up Report – Mutual Evaluation of Hong Kong, China” in October 2012.

As leading industry commentators have noted, the government’s proposals could be a “solution” looking for a problem. Practice Direction P has proved fit for purpose (as a matter of substance and form) and has stood a test of time (having been adopted in 2007), while being recently updated. This appeared to be the unanimous view of solicitors and foreign lawyers at a well-attended Members’ Forum on 9 March 2017 and was reflected in the Law Society’s Submission.

It appears that matters will now go to the Legislative Council (“Legco”) with the introduction of two amendment bills (on CDD and record-keeping requirements for DNFBPs and transparency of beneficial ownership of Hong Kong companies). It will be interesting to see what Legco makes of all this.

- Jason Carmichael, Partner, RPC

打擊清洗黑錢

修例諮詢：庸人自擾

正如早前在《業界透視》(2017年4月——「律師和指定非金融企業及行業」)指出，政府現建議立法把律師納入《打擊洗錢及恐怖分子資金籌集(金融機構)條例》客戶盡職審查及備存紀錄的法定規則範圍內。政府就此在2017年1月進行諮詢(同時就提升香港公司實益擁有權的透明度進行個別諮詢)。

在2017年4月13日公布的諮詢總結中，財經事務及庫務局表明有意基於諮詢總結的內容，繼續進行兩項修例草案的工作。由於今次諮詢期相當短，並且香港律師會的意見書是在2017年4月11日發出(需時(review)諮詢意見)，政府在多大程度上考慮過法律界的意见，未盡可知。
讀者或會想起，法律界是認為，諮詢文件建議把法律人員納入客戶盡職審查及備存紀錄規定的涵蓋範圍並不恰當，特別是業界早已設立可予強制執行的監管制度 (即 Practice Direction P)。法律界亦牽頭提高香港專業人士的警覺性，加強留意打擊清洗黑錢並舉報可疑交易。

看過諮詢總結後平心而論，推動政府提出立法建議的，看來是財務行動特別組織 (「特別組織」) 下一次於 2018年第四季對香港進行的相互評核 (2019年6月發表報告)；諮詢總結指出，有些司法管轄區就是因為未有作出指定非金融企業及行業適用的法定客戶盡職審查及備存紀錄規定，所以得到較低評級 (第3.9段)。

有關的持份者都認同有需要保持香港作為國際金融中心及營商安全地的地位。不過，如果認為諮詢總結部份修例建議是基於政策考慮而不是數據提出，也是無可厚非的。只要下一輪相互評核的政府代表具有足夠的專業知識，做足推廣工作，並且有公平發言的機會，香港的評核成績理應不會遜色於(譬如說) 2012年特別組織在香港的相互評核報告(4th Follow-up Report — Mutual Evaluation of Hong Kong, China)中所給的評級。

正如業界知名評論員已指出的那樣，政府提出建議可能是庸人自擾。Practice Direction P最近經過修訂，而且事實證明，Practice Direction P(在內容和形式上)是合用的指引，經得起時間考驗(2007年已獲採納)。這似乎是2017年3月9日有眾多會員出席的討論會，律師和外國律師一致表達的意見；律師會的意見書已反映有關意見。

如今看來，將有兩項(關於指定非金融企業及行業適用的客戶盡職審查及備存紀錄規定，以及香港公司實益擁有權透明度的)修例草案一併提交立法會審議。去看立法會通過怎麼樣的法例，自是樂事一樁。

- Jason Carmichael 合夥人，RPC

**ARBITRATION**

**Update on Third Party Funding for Arbitration in Hong Kong**

At the time of writing, the Arbitration and Mediation Legislation (Third Party Funding) (Amendment) Bill 2016 is making good progress through Hong Kong's Legislative Council ("Legco"), with its supporters pushing for passage of the Bill on or about 14 June 2017. Whether that date proves to be realistic, given the busy Legco year-end before the summer recess, remains to be seen.

The latest submissions regarding the Bill are available on the Legco website (http://www.legco.gov.hk/yr16-17/ english/bc/bc102/general/bc102.htm). They focus on the deletion of s. 98G(2) of the Bill (which purported to exclude third party funding of arbitration by lawyers) and its replacement provision (namely, a new s. 98NA). The new section seeks to exclude lawyers from providing third party funding for arbitrations governed by the Arbitration Ordinance (Cap. 609) where they (or their legal practice) act for any party in relation to the arbitration. The new section appears to have wider support in Legco and among different cross-party groups; realising this, the government's lawyers have shown themselves willing to compromise.

That said, time for passage of the Bill this Legco term is tight (with a summer recess after 12 July until the new 2017–18 Legco term, starting in mid-October). Assuming passage of the Bill this Legco term, attention will turn to the Third Party Funding of Arbitration Code of Practice. In particular, interest will focus on the capital adequacy requirements for third party funders under the Code, including the threshold for minimum access to capital and how that capital should be held.

Not to be lost, in all of this, are two important practical points.

First, any party who receives third party funding for an arbitration governed by the Arbitration Ordinance should be required to disclose the fact of such funding to the arbitral tribunal and to the other parties within a stipulated period of time set down by the tribunal or the governing arbitral rules.

Second, many concerns about third party funding of arbitration can be assuaged if arbitral tribunals seated in Hong Kong ensure that funded parties (or their funders) are required to provide fortified security for the other parties’ costs (which, in substantial commercial arbitrations, can run into HK$ millions). Further, the amount of such security should be a realistic proportion of those costs.

In all of this (both now and after passage of the Bill) arbitral tribunals and arbitral institutions in Hong Kong have a huge part to play, as Hong Kong promotes her arbitration capabilities along the Belt and Road.

- Mike Allan, Of Counsel, RPC
仲裁

關於香港第三方資助仲裁的最新消息

本文撰寫時，香港立法會正審議《2016年仲裁及調解法例(第三者資助)(修訂)條例草案》(「《草案》」)，過程順利，支持者爭取在2017年6月14日或前後日子通過《草案》。由於立法會正趕在夏天休會之前最後衝刺，《草案》最後是否真的可以如期通過，還需拭目以待。

立法會網站載有最新有關《草案》的意見書供各界查閱( http://www.legco.gov.hk/yr16-17/chinese/bc/bc102/general/bc102.htm)。意見書的重點是刪除《草案》第98G(2)條(本意是禁止律師為仲裁提供第三者資助)，以及取而代之的新建議條文，即第98NA條。新條文旨在不把代表仲裁某方行事的律師(或其律師業務)納入《仲裁條例》(第609章)有關第三者資助仲裁的規定範圍內。新條文似乎在立法會及各跨黨派團體中得到廣泛支持;有見及此，政府律師已經表明願意妥協。

不過，今個立法會會期剩餘時間不多，通過《草案》時間緊迫(7月12日立法會夏天休會期開始，一直到10月中才開始2017–18年新會期)。

如果《草案》在今個立法會會期通過，繼而要花時間的是《第三方資助仲裁實務守則》(「《實務守則》」)。特別是，關注重點會是《實務守則》適用於出資第三者的資本充足要求，包括可用資本下限及應當如何持有資本。

還有，當中有兩點實務規則相當重要。

首先，第三者資助仲裁受到《仲裁條例》監管，應當規定收取第三者資助的仲裁當事人，在仲裁庭或監管仲裁的規則定出的指定時間內，向仲裁機構及其他當事人披露收取仲裁資助一事。

第二，只要以香港為仲裁地的仲裁機構確保受資助當事人(或向其提供資助者)須就其他當事人的仲裁費用提供費用保證，以防萬一(在牽涉巨額爭議的商業仲裁之中，費用可能高達數百萬港元)，就可緩解很多關於第三者資助仲裁的憂慮。此外，保證金額與仲裁費用應當比例合理。

香港現正沿着“一帶一路”推廣其仲裁能力，香港仲裁庭及仲裁機構(現在和《草案》通過後)在修例的工作上，可發揮重大影響力。

- Mike Allan 顧問律師，RPC

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GC AGENDA

CAC Circulates Draft Rules on Exporting Personal Information and Important Data


Under the draft:

• “Personal information” means electronic or other types of records capable of identifying a natural person’s identity either by itself or in combination with other information, including without limitation a natural person’s name, date of birth, identification number, personal biometric information, address and phone number.

• “Important data” means data closely related to national security, economic development, and the public interest as specified in national standards and important data guidelines.

The draft also requires a network operator to submit to a government organised security assessment in certain circumstances and prohibits the export of certain data.

Market Reaction

Marissa Dong, Partner, Jun He, Beijing

“The cross-border data transfer assessment requirement may potentially impact the data transfer by China-based operations in this fast-developing digitised world with their headquarters, business partners, regulators and so on in other jurisdictions. Companies which have adopted a cloud solution for internal management on a global basis will need to revisit their IT infrastructure, data storage and transfer arrangements, and internal rules to prepare for the measures.”

Action Items

General Counsel for any company with China operations will want to closely study the draft and revisit the company IT infrastructure, data storage and transfer arrangements, and internal rules to prepare for the measures.

- Practical Law China
法律顧問備忘錄
國家互聯網信息辦公室發布個人信息和重要數據出境規則徵求意見稿

2017年4月11日，國家互聯網信息辦公室發布《個人信息和重要數據出境安全評估辦法(徵求意見稿)》(「《徵求意見稿》」)。《徵求意見稿》部分規定落實2016年《中華人民共和國網絡安全法》的執行。

根據《徵求意見稿》：

・「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自然人個人身份的各種信息，包括但不限於自然人的姓名、出生日期、身份證件號碼、個人生物識別信息、住址、電話號碼等。

・「重要數據」是指與國家安全、經濟發展，以及社會公共利益密切相關的數據，具體範圍參照國家有關標準和重要數據識別指南。

《徵求意見稿》對「網絡運營者」，即網絡所有者、管理者和網絡服務提供者，訂明一些規定：

・在中國境內運營中收集和產生的個人信息和重要數據，應當在境內存儲。

・個人信息出境之前，應先得到個人信息主體的同意。

・數據出境是指網絡運營者將個人信息和重要數據，提供給位於境外的機構、組織、個人。網絡運營者應在數據出境之前，自行進行網絡安全評估。

・每當遇上下列情況，應重新進行安全評估：
  ° 出境數據接收方出現變更；
  ° 數據出境目的、範圍、數量、類型等發生較大變化；或
  ° 數據接收方或出境數據發生重大安全事故。

《徵求意見稿》亦規定，網絡運營者在某些情況下應報請政府部門組織安全評估，並規定某些數據不得出境。

市場回應
董瀾合夥人，君合律師事務所北京辦公室
「數碼世界發展一日千里，跨境數據傳輸的評估規定，對已經進駐中國，但總部、業務夥伴、監管機構等都在其他管轄區域的公司，可能產生潛在影響。全球已經採用雲端解決方案解決內部管理問題的公司，將需要重新檢視其信息技術基礎設施、數據儲存及傳輸安排，以及內部規則，為措施做好準備。」

後話
公司法律顧問，凡其公司有在中國經營業務的，會想鑽研《徵求意見稿》的內容，並重新檢視公司的信息技術基礎設施，清楚知道數據出境新發展有可能給公司業務帶來的影響和變化。

GC AGENDA
China Establishes Landmark Xiong’an New Area

On 1 April 2017, the CPC Central Commission and State Council announced to establish a new national economic zone (Xiong’an New Area) based in north China’s Hebei province. Located in and around Xiongxiang, Rongcheng and Anxin counties to the west of Baoding city in Hebei province, Xiong’an New Area joins the Shenzhen Special Economic Zone and Shanghai Pudong New Area as China’s third central-level economic zone. It initially will comprise 100 square kilometres and eventually encompass 2,000 square kilometres. The region possesses convenient transportation, a moderate geography with rich freshwater resources, a relatively low level of development with abundant room for growth, and other basic conditions for development.

Xiong’an New Area is intended to facilitate the development of a northern economic axis connecting Beijing, Tianjin and Hebei province’s capital city Shijiazhuang with a view toward:

・Redirecting some of Beijing’s “non-capital functions”.
・Alleviating congestion and pollution in Beijing and Tianjin.
・Speeding the growth of a relatively poor section of north China.
・Creating a new, more environmentally stable development model by attracting high-technology “clusters” and other innovative businesses.

The government will support planning and financing arrangements for major transportation, ecology, water conservancy, energy and public service development projects.

Market Reaction
Paul McKenzie, Partner, Morrison & Foerster, Beijing and Shanghai

“Beijing is abuzz with discussion about the establishment of the Xiong’an New Area. It is viewed by many as likely to have immense historical impact. Certainly, if successful, launch of the Xiong’an New Area will effect dramatic changes on Beijing, easing environmental and social pressure on an urban area that cannot accommodate further growth itself. Meanwhile, in its implementation,
Xiong’an New Area represents an epic public infrastructure project that will likely present significant opportunities for foreign investors.”

**Action Items**

General Counsel for companies in industries such as technology, transportation, energy and environmental protection may wish to work with business colleagues and officials from the Xiong’an New Area to determine if the new economic zone offers significant investment opportunities.

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**法律顧問備忘錄**

**中國設立新地標——雄安新區**

2017年4月1日，中共中央、國務院宣布在華北河北省設立全國新經濟區（雄安新區）。

雄安新區西向河北省保定市，位於雄縣、容城縣、安新縣及周邊部分區域，是繼深圳經濟特區和上海浦東新區之後，中國第三個國家級經濟特區。起步區面積約100平方公里，遠期控制區面積約2,000平方公里。區內交通便利，地勢平坦，淡水資源豐富，現有發展程度較低，發展空間充裕，並具備其他開發建設的基本條件。

設立雄安新區是為了促進發展連接北京、天津、河北省省會石家莊的华北經濟軸心，期望達到以下目的：

• 重新調配北京部分非首都功能。
• 紛解北京、天津的擁擠和污染情況。
• 加快華北相對貧窮地區的發展。
• 吸引高科技產業集群及其他創新企業，創造環境更穩定的發展新模式。

中央政府支持大型交通、生態、水利、能源、公共服務發展項目的計劃和融資安排。

市場回應

麥保羅合夥人，美富律師事務所北京及上海代表處

「國內對設立雄安新區的消息議論紛紛。很多人認為，設立雄安新區相當可能在歷史及發展上有遠遠影響。當然，如果開設雄安新區成功的話，現在無法再發展的北京市將經歷巨變，環境壓力和社會壓力得以紓解。與此同時，雄安新區是公共基礎設施項目，實現過程艱巨，相當可能帶給外國投資者重大商機。」

後話

如果公司是從事科技、交通、能源或環境保護等產業的，其法律顧問可能希望與專責業務的同事和雄安新區的官員合作，一起探究新經濟區帶來的大量投資機會。

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**PRC**

**China Implements New Work Authorisation Policies on Expats**

After the implementation of a pilot programme in ten locations (including Beijing and Shanghai) for six months, the China State Administration of Foreign Expert Affairs ("SAFEA") has recently issued the Circular on the Implementation of Work Permit Services Guidelines for Foreigners in China ("Guidelines"), which takes effect from 1 April 2017 across the country.

The new work authorisation policies signal a new era of employment management for expats in China. Compared with the pilot programme, the Guidelines maintain the basic principles of optimising the administration of work authorisation and further specify and detail the provisions of criteria and procedural requirements for work permit applications ("new policies"). These new policies may have a significant impact on the expat employment market in China and strategies of structuring a cross-border secondment arrangement.

Key points of those impacts include:

• **Classified administration of expats at three levels.** The new policy classifies expats into three different levels on a score-based assessment by their education, work experience, salary awarded from the sponsoring entity, Mandarin proficiency, working locations in China, age and so on. Applicants in each of the three categories are generally subject to the same procedural requirements, but high-end talent in Category A can be entitled to some preferential conveniences.

• **Engagement certificates.** An engagement certificate or a cross-border secondment letter will be officially acceptable for the purpose of proving the connection between a work permit applicant and a Chinese entity under certain applicable circumstances (including when the applicant is a service provider under an overseas service contract).

• **Renewing work permits without exiting China is feasible.** An expat is permitted to renew his/her work permit without exiting China if he/she falls within certain applicable circumstances (including when changing employers but the job position remains unchanged and the residence permit is still valid).

• **Credit management system.** All
applicants will be identified by a single code number through which the governmental authority will file on the foreigner's work history.

- **Requirements on invitation letter are removed.** Chinese employers previously had to apply for a work visa invitation letter issued by an authorised organisation after obtaining an Employment Licence and before moving to the step of the work visa application at a Chinese embassy or consulate overseas. This step is now no longer required.

- **E-application system is launched.** Companies are required to create their online accounts with the SAFEA and then submit the expat's application through an online system. Where an agency is involved, the required information of the agency must also be registered online, while the authorisation document and the ID card copy of the handling person must be provided on site.

In addition, the Employment Permit and Expert Permit are combined into a single Work Permit. The new approval system was launched on 1 April 2017 nationwide. The old versions of the Employment Permit and Expert Permit will no longer be issued after 1 July 2017. Foreign employees, who hold the Employment Permit and Expert Permit with the remaining valid period of six months or above, may voluntarily apply to change to a Work Permit after 1 October 2017 through the online system.

**Action Items**

As these new policies are still in the early implementation stage, it may take a few months for the local authorities to come up with detailed practical rules and update the handling system. Additional requirements on procedures may be added. Solicitors, when advising clients in such an application process, should keep the change of time cost and local variations in mind.

- **Helen Liao, Senior Associate, Deacons**

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**PROFESSIONS**

**Accountants: Auditors’ Professional Standard Headed for Final Appeal**

Professional Accountants Ordinance (Cap. 50), Section 34 – Disciplinary Provisions

“(1) A complaint that –
(a) a certified public accountant …
(vi) failed or neglected to observe, maintain or otherwise apply a professional standard; … shall be made to the Registrar who shall submit the complaint to the Council which may, in its discretion but subject to section 32D(7), refer the complaint to the Disciplinary Panels.” (italics added)

In *Registrar of HKICPA v Wong & Anor*, CACV 233/2015, 30 August 2016, the Court of Appeal declined to interfere with a professional disciplinary committee’s decision that the respondents had breached s. 34(1)(a)(vi) of the Professional Accountants Ordinance by failing or neglecting to observe, maintain or otherwise apply a professional standard;

... shall be made to the Registrar who shall submit the complaint to the Council which may, in its discretion but subject to section 32D(7), refer the complaint to the Disciplinary Panels.” (italics added)

In *Registrar of HKICPA v Wong & Anor*, CACV 233/2015, 30 August 2016, the Court of Appeal declined to interfere with a professional disciplinary committee’s decision that the respondents had breached s. 34(1)(a)(vi) of the Professional Accountants Ordinance by failing or neglecting to observe, maintain or otherwise apply a professional standard;

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

雖然上訴法庭拒絕批准兩名答辯人上訴，但兩名答辯人最近獲得終審法院上訴委員會的批准(FAMV 51/2016，2017年4月27日)。

除了在應否對「可供出售資產」的公允值作出減損調整的測試方面，就真確詮釋香港會計準則第39號所涉及的技術問題作出裁斷之外，終審法院還要裁斷另兩個上訴委員會認為具有重大廣泛的或關乎公衆的重要性質的有趣論點：

• 「核數師在履行其作為核數師的功能時，只消錯解或錯用專業標準，就已經違反第34(1)(a)(vi)條，是嗎？」; 及
• 「……第34(1)(a)(vi)條有引入合理性的準則或其他類似考慮，並且這些準則或考慮關係到評定核數師是否條文所指的『沒有或忽略遵守、維持或以其他方式應用專業標準』，是嗎？」。

本文撰寫時，案件預定在2017年12月4日在終審法院進行聆訊。看來，為了上訴至終審法庭，上文所述兩個主要論點(與上訴法庭席前的相比較)是再經擬定，去蕪存菁。聯繫香港會計準則第39號來看，甚至更廣泛地說，論點亦帶出關於第34(1)(a)(vi)條的應用的重要問題，應該引起香港審計行業的關注。

雖然監管機構紀律委員會的處罰是相當之輕，但是兩名答辯人看來真的對相關專業標準的應用抱有不同見解；因此，法律程序(至今)仍在進行。

終審法院會否裁斷上訴論點之中有的或全部有充分理據，因而判兩名答辯人上訴得直，還是(像所發生的情況一樣)會覺得提供一些判例法但拒絕根據事實加以干涉會較好？看看後事如何，自是樂事一樁。

- 施德偉合夥人，RPC

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Injunctions – extended Mareva injunction based on “Chabra” jurisdiction – defendant’s substantive control over assets held by third party not sufficient to invoke “Chabra” jurisdiction – ultimate test was whether good reason to suppose that assets held by third party would be amenable to execution of judgment obtained against defendant

P1 was the holding company of a group of subsidiaries (including P2) and was now in compulsory liquidation. In 2009, it was discovered that D1, the former Chairman and CEO of P1, misappropriated more than HKD5 billion from Ps by means of fictitious transactions over the years with the assistance of D2–13. D13 was a corporate vehicle of D1. In 2013, Mareva injunctions were obtained against D1–13. In June 2014, the Mareva injunctions were extended to 13 companies in which D1 allegedly held substantial assets through his relatives and close associates. Among those companies was C, a company owned by R1–3 (D1’s daughters studying in universities in London), all of whom purportedly received a loan of USD82 million from D13. In August 2016, the injunctions were extended to Rs as third parties on the basis of the Chabra jurisdiction so that they were not allowed to dispose of or deal with the assets belonging to D1/D13 or assets acquired through the use of funds provided by D1/D13 or assets which D1/D13 had the power to direct, dispose or deal with or assets held in accordance with their instructions; in particular R1 was restrained from dealing with a property in London (the “Property”) or its proceeds (the “Freezing Order”). Ps applied for the continuation of the Freezing Order against Rs. Rs applied for its discharge or alternatively variation, contending that the Freezing Order was too wide in scope.

Held, allowing Ps’ application subject to certain deletions in the Freezing Order, allowing Rs’ application for variation of the Freezing Order to that limited extent, that:

• While “substantial control” by a defendant of the asset of a third party might well be a factor, or even a strong factor, in favour of the inference that the asset in fact belonged to the defendant in a suitable factual situation, “substantive control” was not itself sufficient to invoke the jurisdiction. The ultimate test was whether there was good reason to suppose that the assets held by the third party would be amenable to execution of a judgment obtained against the defendant.

In respect of assets which D1/D13 had the power to dispose of or deal with as his own asset and assets held in accordance with the instructions of D1/D13, they were different ways of saying that the asset concerned was subject to the “substantial control” of D1/D13. As assets in each of these categories was not necessarily amenable to execution of a judgment obtained against D1/D13, their presence in the Freezing Order went beyond what was permitted pursuant to the jurisdiction and should be struck out.

• The remainder of the Freezing Order against Rs was not defective. Rs were young and did not have business or financial resources of their own. The inferences were that nearly all they had was given to them by their close relatives and that they should know where their assets came from. Since there was nothing to suggest that Rs had received any substantial assets from anyone other than their parents and their grandmother, the possible sources of Rs’ assets were very limited. The task for Rs to ascertain the source of their assets was not impossible. The alleged “secret gift” of shares in C by D1 to Rs, coupled with the fact that Rs were D1’s daughters, gave rise to at least good reasons to suppose that D1 would have used them to hold assets for him.
民事訴訟程序

China Metal Recycling (Holdings) Ltd v Chun Chi Wai (No. 2) [2017] HKEC 606

原訟法庭
高院民事訴訟案2013年第1412號
暫委法官李運騰內庭聆訊
2017年3月24日

強制令 — 基於Chabra司法管轄權
擴大馬雷瓦強制令 — 被告人實質上控制住由第三方持有的資產不足以支持援用Chabra司法管轄權 — 最終是驗證可有充分理由認為由第三方持有的資產會容許所取得判被告人敗訴的判決的執行。

第1原告人是多間附屬公司(包括第2原告人)的控股公司,正進行強制性清盤。第1被告人是第1原告人的前主席兼行政總裁,他2009年被發現多年來在第2至第13被告人的協助下,藉虛假交易挪用眾原告人超過50億港元。第13被告人是一間公司,也是被告利用的工具。眾原告人在2013年取得禁制第1至第13被告人的馬雷瓦強制令(Mareva Injunction)。2014年6月,馬雷瓦強制令的範圍擴大至13間公司,第1被告人聲稱他透過親友及緊密有聯繫人士,持有該13間公司的資產。其中一間公司(「該公司」)是由第1至第3答辯人(第1被告人在倫敦讀大學的女兒)擁有,據稱她們都從第13被告人收取了8,200萬美元貸款。2016年8月,禁制令以Chabra司法管轄權為基礎,擴大範圍至作為第三方的眾答辯人,使得眾答辯人被禁止處置或買賣屬於第1/第13被告人的資產,或處置或買賣使用第1/第13被告人提供的資金而購得的資產,或處置或買賣第1/第13被告人有權指示、處置或買賣的資產,或處置或買賣按照他們的指示而持有的資產;第1答辯人更被禁止在倫敦買賣某物業(「該物業」)或處理該物業的收益(「資產凍結令」)。眾原告人申請延續禁制眾答辯人的資產凍結令。

眾答辯人辯稱資產凍結令的範圍太廣濶,申請撤銷或更改資產凍結令。

裁決 — 批准眾原告人的申請,但須刪減資產凍結令部分內容,在有限範圍內,批准眾答辯人更改資產凍結令的申請:

• 雖然在合適的事實情況中,被告人對第三方資產的「實質控制權」很可能是一種因素,甚至是有力的因素,支持推斷該資產事實上是被告人的資產,但「實質控制權」本身不足以支持援用Chabra司法管轄權。最終是驗證可有充分理由認為由第三方持有的資產會容許所取得判被告人敗訴的判決的執行。

• 雖然使用第1/第13被告人提供的資金而購得資產能夠得出一個推論,就是所考慮的資產事實上是屬於第1/第13被告人的,但用作證明某件事而援用的證據與該件事本身並不相同,應在兩者之間作出區別。關於第1/第13被告人有權當作為自己資產一樣處置或買賣的資產,以及按照第1/第13被告人的指示而持有的資產,相關資產都受到第1/第13被告人的「實質控制」,只是說法不同而已。由於上述資產類別的資產不一定容許所取得判第1/第13被告人敗訴的判決的執行,把它們列入資產凍結令之中,是超越Chabra司法管轄權所准許的範圍,因此應被剔除。

• 禁制眾答辯人的資產凍結令的其餘部分沒有不妥當之處。眾答辯人是年青人,沒有自營生意,經濟上也不是自給自足。得出的推論是,她們幾近全部所有的都是由近親供給,因此她們應知道資產的來源。由於沒有甚麼使她們聯想到眾答辯人除了父母及祖母之外,也收取過其他人的資產,眾答辯人的資產來源非常有限。對於眾答辯人來說,確定資產來源不是不可能做到的事。第1被告人被指稱送「神秘禮物」(該公司的股份)給眾答辯人,加上眾答辯人是第1被告人的女兒,至少使人有充分理由認為第1被告人會利用她們代他持有資產。

CRIMINAL SENTENCING

HKSAR v Andrianaintana Adrien Luck Yu Pau [2017] 2 HKLRD 500
Court of Appeal
Criminal Appeal No. 129 of 2016
Lunn V-P and McWalters JA
7 March 2017

Multiple offences – totality – final stage of process by which court determined appropriate totality of sentence

D (who was in his mid-50s, had lived in Hong Kong since the age of eight and was treated as a man of previous good character despite a conviction for a minor offence in 1982) was sentenced to 60 months’ imprisonment after pleading guilty to four charges. Charge 1 was of taking a conveyance without authority; Charge 2 was of dangerous driving; Charge 3 was of using a motor vehicle without third party insurance; and Charge 4 was of robbery. The terms of imprisonment imposed on each of those charges after discounting the starting points for plea were: eight months on Charge 1; 16 months on Charge 2; six months on Charge 3; and 40 months on Charge 4. Four months of the sentences on Charges 1 and 3 were made consecutive to that on Charge 2; and the resulting total of 20 months was made consecutive to the 40 month-term on Charge 4, resulting in an overall sentence of 60 months’ imprisonment. Shortly stated, the circumstances of the offences were these. Boarding a temporarily unattended light goods vehicle, D drove it away. His driving included: reversing the vehicle against the flow of traffic several times; driving along a pavement; reversing along a pavement; ramming into four street stalls; damaging the exterior of two shops; and colliding with a set of traffic lights and the metal railing on a pavement. The damage to the street stalls and shops totalled HK$174,800; the cost of repairing the vehicle was around HK$70,000; and 12 oil drums had fallen off the vehicle. D was not in a position to pay compensation. After alighting from the vehicle...
the vehicle, he entered a hotel. At the front desk, he pointed a screwdriver at a male member of the hotel staff; shouted, “Robbery, sound the alarm”; entered the front desk area; picked up the handset of a landline telephone and pressed the dialing buttons; picked up a mobile telephone belonging to a member of the hotel staff; threw the landline telephone handset onto the desk; and left the hotel with the mobile telephone which was never recovered. D was intercepted by a police officer about 20 metres from the hotel. Two screwdrivers, measuring 18 cm and 21 cm respectively, were found in D's trouser pocket. Under caution, he said that he had entered the hotel to use the toilet; had been refused permission to do so; he had acted out of anger at such refusal; and had abandoned the mobile telephone in the rear lane outside the hotel. In a subsequent interview, he added that he had consumed “ice” in a park shortly before the offences; driven the vehicle away for fun; and had the two screwdrivers in his possession for the purposes of his work. D appealed against sentence.

Held, allowing the appeal by reducing the total sentence from 60 months to 48 months’ imprisonment, that:

• By reason of the way in which the screwdriver was used in this robbery, it was rightly regarded by the Deputy Judge as a dangerous weapon, and the starting point of 9 months adopted by the Deputy Judge for using a motor vehicle without third party insurance should be reduced to 6 months and discounted for plea to a sentence of four months’ imprisonment.

• Given the Court of Appeal’s conclusion that the sentences imposed by the Deputy Judge for taking a conveyance without authority and using a motor vehicle without third party insurance were too high, and noting the reduced sentences imposed by the Court of Appeal, D’s overall culpability for those two offences was appropriately to be reflected by ordering that only two months of those sentences run consecutively to the sentence of 16 months’ imprisonment for dangerous driving.

• In determining the appropriate totality of sentence, it was necessary to take a step back from a consideration of the appropriate sentences for each of the separate offences. Regard was to be had to the fact that D was a 55-year-old man at the time of the offences who had apparently led a productive working life and, in particular, that he was to be treated as a man of no previous convictions. He had in a short period of time visited disaster upon himself. In all the circumstances, the appropriate totality was to be achieved by ordering that only 8 months imposed on Charges 1–3 run consecutively to the 40-month term for robbery.
車走進一間酒店，在前台手持螺絲批指向酒店一名男職員，大喊「打劫，響警鐘」（Robbery, sound the alarm），又走進前台範圍，拿起座機電話的電話筒，按㩒電話鍵，並拿走一部手提電話，其後把座機電話的電話筒掟到枱面上，拿着手提電話離開酒店；手提電話之後不知所終。被告人在距離酒店20米的地方被一名警員截停，在被告人的褲袋發現兩枝分別長18厘米和21厘米的螺絲批。在警誡下，他稱自己走進酒店借用廁所被拒，一時氣憤而行事，他將手提電話棄置在酒店外後巷。在其後的會面中，他補充說自己在犯罪前不久在公園吸食「冰」，開走客貨車只是貪玩，而他管有的兩枝螺絲批是在工作時使用的。被告人針對刑期提出上訴。

裁決 – 上訴得直，總監禁期由60個月減至48個月：
• 因為被告人在這次搶劫中使用螺絲批的方式，暫委法官視螺絲批為危險武器是正確的，因此，搶劫罪以5年為量刑起點是恰當的。
• 考慮到未獲授權而取用運輸工具是單一罪行，並且被告人過往品格良好，暫委法官採納的量刑起點應由12個月減至9個月，另因被告人認罪而扣減至監禁6個月。
• 暫委法官有權裁定，沒有人因為被告人危險駕駛而受傷「全屬僥倖」（entirely fortuitous），因此就危險駕駛採納24個月為量刑起點（因被告人認罪而將監禁刑期扣減至16個月）。
• 考慮到被告人沒有同類的犯罪前科，在涉案所有情況下，暫委法官就被告人沒有第三者保險而使用汽車採納的量刑起點由9個月減至6個月，另因被告人認罪而將監禁刑期扣減至4個月。

FAMILY LAW

Fung Sing Wai v Chow Chiu Wan [2017] HKEC 539
Court of Appeal
Civil Appeal No. 245 of 2015
Yuen, Kwan and Poon JJA
17 March 2017


In 1947, X, the deceased, married M, the mother of P, D2, D3 and D4. It was D1’s case that she also entered into a marriage with X in December 1949. At that time, the Civil Code of the Republic of China of 1931 (the “Civil Code”) had been abrogated by the PRC and the PRC Marriage Law was not implemented until May 1950. X and D1 also had four children, D5–8. M died in 1988 and X died intestate in 2008. P sought revocation of the grant of Letters of Administration which had been granted to D1 and for the grant to himself with consequential orders, on the ground that D1 had failed to establish she was X’s wife. P challenged whether a marriage ceremony had taken place between X and D1, as D1 alleged, at a dinner in Guangzhou since X’s siblings were absent and there was no evidence that X and D1 had entered into a marital union during the dinner. If there was a valid marriage between X and D1, then she would be the only surviving wife and entitled to a share of his estate. The Judge found that D1 had failed to prove the formal validity of the alleged marriage and the alleged marriage would have also failed the test of essential validity. D1 appealed.

Held, dismissing the appeal, that:
• On the common ground that before the promulgation of the PRC Marriage Law in May 1950, the second marriage was only voidable, it followed that it was not void ab initio for want of capacity. Before the abrogation of the Civil Code, an earlier marriage would not have affected the capacity of a person domiciled in China to enter into a second marriage, in contravention of Art. 985 of the Civil Code.
• The present case was not a situation where there was no evidence of foreign law so that the court would presume it was the same as Hong Kong law; rather, there was expert evidence on foreign law to the effect that there was a “legal vacuum”, in that the codified law in the form of the Civil Code had been abrogated and the PRC Marriage Law had not yet been promulgated. The expert evidence that the new PRC Government had taken a pragmatic non-interventionist approach to such unions in this period merely indicated that X had the capacity to enter into the alleged marriage in December 1949, which was a matter of essential validity.
• D1 also had to prove the formal validity of the alleged marriage. On her case, she had to prove that the celebrations accorded with the formalities that were required (or at least were recognised as sufficient) for a customary marriage. It was not open to D1 to submit that the alleged marriage ceremony complied with the
formal requirements of a "Chinese modern marriage" as it was never pleaded as an alternative. Further, immemoriality and continuity were required for the establishment of a custom in the legal context, but the "Chinese modern marriage" was a creation of the Republican era only. In any event, the Judge was entitled to find D1's testimony as to what had occurred at the dinner to be untruthful or unreliable and there was insufficient evidence of what had taken place.

家庭法

Fung Sing Wai v Chow Chiu Wan
[2017] HKEC 539

上訴法庭
民事上訴案2015年第245號
上訴法庭法官袁家寧
上訴法庭法官關淑馨
上訴法庭法官潘兆初
2017年3月17日

婚姻 — 有效性 — 聲稱1949年某晚用膳期間舉行的婚禮 — 《民法典》被廢止至《中華人民共和國婚姻法》1950年生效期間 — 有否證明婚姻在形式上的有效性及在要素上的有效性

1947年死者X與M結婚，M是原告人及第2至第4被告人的母親。第1被告人的案情是，她（指第1被告人）在1949年12月與X結婚。那年，中華人民共和國廢止1931年頒布的《中華民國民法典》（「《民法典》」），直到1950年5月才實施《中華人民共和國婚姻法》。X與第1被告人亦有四名兒女，即第5至第8被告人。1988年M去世，2008年X未有立下遺囑而去世。第1被告人獲授遺產管理書，原告人以第1被告人證明不到她是X的妻子為由，要求法庭撤銷是項授予，並作出將遺產管理書授予他的相應命令。按第1被告人所聲稱，X與她是在廣州某晚用膳期間舉行婚禮的，原告人質疑他倆可有舉行過婚禮，因為當時X的弟妹都不在場，沒有證據證明X與第1被告人有在席間締結婚姻關係。如果X與第1被告人有有效的婚姻，她就會是唯一在世的妻子，有權享有X的遺產其中一個份額。原審法官裁定，第1被告人證明不到她所聲稱的婚姻在形式上的有效性，而所聲稱的婚姻本來亦驗證不到在要素上的有效性。第1被告人上訴。

裁決 — 駁回上訴：

• 控辯雙方同意，在1950年5月《中華人民共和國婚姻法》頒布之前，第二段婚姻只是可使無效，由此可見，第二段婚姻不是從一開始就因缺乏身份而無效。《民法典》第985條禁止有配偶者重婚，不過，以中國為居籍的人締結第二段婚姻關係的身份，在真空期，以《民法典》形式頒布的成文法被廢止，而《中華人民共和國婚姻法》尚未頒布。專家證供指出，新成立的中華人民共和國政府採取務實的方法，不干預在此期間的結合；這只表明X在1949年12月具有締結所聲稱婚姻的身份，而這身份是要素上有效性的問題。

• 第1被告人亦必須證明所聲稱婚姻在形式上的有效性。按照她的案情，她必須證明舉行過同舊式婚姻所規定的繁文縟節相一致的（或至少被認為是足夠的）婚禮。第1被告人不可以陳詞指，所聲稱的婚禮符合「中國新式婚姻」的形式規定，因它從來沒有被說成是一種替代。此外，在法律背景下，習俗之所以形成，古老和持續性是必要的條件，可是，「中國新式婚姻」只是共和國年代的產物。無論如何，原審法官有權裁定，第1被告人關於晚膳時所發生的事的陳述不盡不實或並不可靠，而且沒有足夠證據證明當時究竟發生過甚麼事。

LAND LAW

Lau Yun Lin v Kwan Tseung Co Ltd
[2017] HKEC 577
Court of First Instance
Miscellaneous Proceedings No. 29 of 2017
Deputy Judge Douglas Lam SC in Chambers
22 March 2017

Title/sale of land — application for order for execution of confirmatory assignment to rectify error — defendant dissolved long before proceedings commenced — proceedings not properly constituted as defendant non-existent — plaintiff could not rely on s. 25A to request court to nominate someone to execute confirmatory assignment for defendant

In an originating summons issued some three and a half years after D，a Hong Kong company，was dissolved，P sought an order that D execute a confirmatory assignment to rectify an error in an assignment of a property executed by P as purchaser and D as vendor (the “Summons”). P conceded that D had ceased to exist and argued that since it could not “after reasonable inquiry be found” pursuant to s. 25A(1)(b) of the High Court Ordinance (Cap. 4)，the Court could grant leave to nominate a person to execute the confirmatory assignment in its place.

Held，dismissing the Summons，that:

• Section 25A of the Ordinance did not apply. The proceedings were not properly constituted since the sole defendant was a non-existent entity and could not be sued. There was nothing in s. 25A to enable a departure from this general principle.

• More fundamentally，provided a Hong Kong company remained dissolved，its property was bona vacantia and
belonged to the Government under s. 752 of the Companies Ordinance (Cap. 622). The proper defendant was the Government and the Registrar of Companies had authority to act on its behalf.

• Given that there was no proper application by P for leave to amend the Summons to substitute C with the Companies Registrar and the Summons had not been served, it was preferable for P to commence fresh proceedings.

**Limitation of Actions**

Liu Hsiao Cheng v Wong Shiu Wai (No. 2) [2017] HKEC 541
Court of First Instance
High Court Action No. 1278 of 2013
Anderson Chow J in Chambers
17 March 2017

**Action for account – six-year limitation period under s. 4(2) – claim based on fiduciary duty of company director/de facto director to account to company for monies – claim for equitable relief so that s. 4(2) had no direct application – however, s. 4(2) applied “by analogy” under s. 4(7) exception**

P and D1 were shareholders and directors of C, a Hong Kong company, used to conduct a tobacco business in Zimbabwe. P brought a common law derivative action against D1 for breach of fiduciary duty involving money belonging to C. D1, by para.125 of his defence and counterclaim (“para. 125”), alleged in substance that P, in breach of his fiduciary duties to C, as a director or de facto director, had failed to provide information relating to the “use” or “application” of funds remitted by D1 to Zimbabwe pursuant to P’s requests, totalling HK$447,636,928.67; and sought an account of those monies. P sought to strike out para. 125 to the extent of any of the alleged remittances made on or before 12 July 2007 (the “Remittances”), being the date which was six years prior to the commencement of the action, on the ground they were time-barred under s. 4(2) of the Limitation Ordinance (Cap. 347).

**Held**, granting P’s application, that:

• D1’s claim was for equitable relief because it was based on P’s fiduciary duty, as a director or de facto director of C, to account to it for C’s monies remitted by D1 to Zimbabwe pursuant to P’s requests which came under P’s control. Therefore, s. 4(2) had no direct application.

• Nevertheless, s. 4(2) could apply “by analogy in like manner as the corresponding enactment contained in the Limitation Act 1980 … is applied in the English Courts” under the exception in s. 4(7). Where the equitable claim for an account was ancillary to another equitable claim, the same limitation period applicable to the latter would apply to the former. However, if there were no limitation period for the other equitable claim, the claim for an account would...
likewise have no limitation period.

- As a matter of principle, the six-year limitation period under s. 4(2) could be applied by analogy under s. 4(7) to D1’s claim against P for an account. A fiduciary had a general duty to account without the need to prove any breach of fiduciary duty. D1’s action for an account, insofar as it concerned remittances made on or before 12 July 2007, would be time-barred.

- D1’s claim could not be regarded as an action to recover trust property belonging to C or the proceeds thereof in P’s possession, so that no limitation period applied by virtue of s. 20(1)(b) of the Ordinance.

Para. 125 pleaded that insofar as the account sought might reveal that P had misappropriated any part of the impugned monies, P was liable to repay the same and account for the profits made out of the same. An account was only the first step which might lead to further remedies against P.

WILLS, PROBATE & SUCCESSION

Mak Mei Ki Angela v Chan Wai Fong
[2017] HKEC 455
Court of First Instance
Miscellaneous Proceedings No 1894 of 2016
Queeny Au-Yeung J
8 March 2017

Administration of estates – grant of letters of administration – revocation – removal of existing administrators – furnishing of accounts by them – fresh grant to professional administrator

X died intestate in 2005 survived by his wife and four children. Letters of administration (the “Letters”) were granted to the widow and a son in 2006. Complaining that the administrators had done nothing to administer the estate (the net value of which had been sworn to be about HK$52 million) apart from making partial distributions (amounting to about HK$6.5 million), a beneficiary applied by an originating summons for:

the revocation of the grant of Letters to them; their removal; the furnishing of accounts by them; and a fresh grant of Letters to a professional administrator.

The administrators did not acknowledge service or appear at the hearing.

Held, granting such relief, that:

- The conduct of the administrators was detrimental to the due and proper administration of the estate and to the interests of the beneficiaries in that the administrators had: failed fully to administer the estate (in that they had done nothing apart from making those partial distributions); failed to furnish accounts despite reasonable requests; and failed to answer the present proceedings. So they ought to be removed.
However, their removal was not enough. Given their complete failure to participate in the present proceedings, there was a real and substantial risk that the outgoing administrators would continue to be uncooperative and refuse to lodge the Letters upon their removal, thus causing further delay to the due administration of the estate. It was therefore appropriate to revoke the grant and dispense with the lodging of the Letters with the Probate Registry.

The outgoing administrators should give a full and proper account of the estate to enable the incoming administrator to know what still needed to be administered and whether it was necessary to take recovery action.

In order to save costs, only one of the two accountants who had consented to act would be appointed as administrator. A fresh grant of Letters would be made to him.

An order nisi would be made for the payment by the outgoing administrators of indemnity costs summarily assessed at HK$130,000.

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

就完整的摘要和判決書，請到 www.westlaw.com.hk 參閱Westlaw及《香港法律彙報與摘錄》。
Managing a Small/Medium-Sized Firm: The Role of the Leaders

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This is the second bulletin in a two-part series exploring issues facing small and medium-sized firms in the context of the broader competitive market and with specific reference to Hong Kong. In the first bulletin, we highlighted a series of strategic and operational considerations for small and medium-sized law firm leaders and how these are changing with intensifying competition. In this bulletin, we explore what law firm leaders need to do in response.

In most legal markets, there are three types of firms in the SME segment: commercial firms, whose core client base is small and medium-sized businesses; retail firms, whose core clients are individuals; and specialist firms whose core client base spans different businesses based on their area(s) of focus. Inevitably overlaps exist between these categories. As discussed in the first bulletin, this is particularly the case in Hong Kong where some clients have traditionally bought legal services from a single trusted adviser (often a smaller firm) across commercial and private client matters. Hence, SME firms are often more generalist than in other developed markets.

However, as buying behaviours change according to the value that clients ascribe to specific services and the providers available to them in the markets in which they operate, competition inevitably segments firms according to their particular capabilities. Small and medium-sized businesses may continue to use the same local firm for lower value commercial as well as family matters but increasingly move higher value commercial matters to a larger or more specialist firm with specific expertise in a particular area.

In other markets we have seen over time how more of the commercial work from the same clients migrates to different types of firms for a variety of reasons including where a trusted relationship has developed and the firm has proven capability, or the firm has demonstrated that it can perform the same services more efficiently (increasingly through the use of technology-led processes), or where there are legal needs in another jurisdiction in which it has a presence or geographic reach, etc. In other markets some buyers of legal services prefer to keep their business and personal legal requirements separate and give the work to different firms. Generational transition in some small and medium-sized or closely held family businesses can also act as a catalyst in changing buying behaviour.

Against this backdrop, firms need to take account of the changing competitive environment and buying patterns of their clients. The following four steps are critical for all law firm leaders regardless of the size of their firms.

Choose Your Strategic Focus

The first issue that the leader of an SME firm needs to address is what the firm’s strategic focus should be (i.e., where it aims to compete). This requires a decision about:

- A set of core clients and core services (or worktypes);
- How the core clients buy these core services (the value they place on each service and the volume of the work involved); and
- The firm’s competitive capabilities and those required in the future given the above, who it is they are (and will be) competing with, along with other possible changes in its market.

This will determine the firm’s strategic positioning. As discussed in the previous bulletin, strategic focus does not necessarily mean that all firms will choose to become specialists although some will choose to be at least more specialist than generalist. A strategy, say, focused on providing a mix of commercial advice to small and medium-sized manufacturing businesses and independent retailers is legitimate if those clients continue to value the competitive capabilities that a firm has relative to other firms in its market. The competitive advantage here will be less about technical expertise and more about a strong relationship incorporating real depth of knowledge about the client’s business and the issues
it faces such that the legal advice provides effective commercial solutions. If clients do not see this advantage, then the target clients/market and the firm’s services are not sufficiently well aligned and the firm is at risk of losing market position.

A firm’s focus should differentiate it from its competitors in terms of how it generates added value for its clients. This will be a combination of service delivery, relationship depth, client knowledge and pricing. Focusing on a select range of clients enables a firm to build stronger relationships, to better understand each client’s business through the relationship, and to provide advice that is more commercial. This is a “value-add” for clients who are seeking commercial solutions as much as technical advice from their lawyers. Having a defined range of practices, selected on the basis that the chosen client types will use them often, and in which the firm can build a real depth of experience and expertise, will support this.

**Deliver on the Focus**

Once the strategic focus is clear, the firm must ensure that it operates in such a way that the added value that the strategy is intended to generate is delivered to clients. The first step is to build relationship teams around the firm’s major clients. While this is often seen as an activity solely for larger firms, smaller firms can also use the technique, albeit on a smaller scale, through involving associates as well as partners in any relationship. (A relationship team can be as small as three people.) While a partner is likely to “own” the relationship and be the prime contact, others who provide services to that client should also maintain a relationship with at least the client’s key decision-maker. Working as a team with a client tends to generate more work, better knowledge of the client, and a better quality of advice than where each lawyer operates individually.

Alongside this is the need for an effective business development programme, in which all partners participate, directed at the types of clients targeted by the firm’s strategy. We contend that each partner should spend, on average, the equivalent of one day per week developing client relationships and new business, in order to retain its market share.

**Revenue Generation**

One of the characteristics of small and medium-sized firms in many markets is a tendency to focus on cashflow management rather than revenue generation. A business that prioritises cashflow management will behave differently from one that is focused on revenue generation.

In this case, a firm that is focused on revenue generation will actively manage the way in which cash comes into the business and other factors contributing to cashflow rather than focusing entirely on the work-in-hand, completing it and moving to the next matter. The factors contributing to cashflow include: an effective business development programme (reference above) including client development; lawyer utilisation as a whole and individually rather than on a matter-by-matter basis; by extension, recruitment (both to replace natural turnover but also aligned with growth projections and revenue targets); pricing both in winning work and in achieving target profitability (reference below).

**Know Your Numbers**

The next step is for all lawyers (especially, but not only, partners) to understand the cost structure of their work processes, and the firm’s targeted profit margin. This allows the firm to quickly provide prices that clients find acceptable, while ensuring that the firm achieves its profit margin. This may require a technology-based tool to assist with budgeting (breaking the work down into the tasks and time required per task), together with defining the most efficient processes for each work type. It also requires a capability to capture the time being spent in doing the work against each task in the budget, and effective scrutiny to ensure the work is brought in on budget.

Fundamental to this is whether the economic structure of the firm is suitable for the type of work, the type of clients the firm is targeting, and the pricing options envisaged to achieve the desired level of profitability. This can be separated into overhead costs and cost structure/remuneration:

- **Overhead costs:** is the existing expenditure effective in ensuring the firm operates at the right level of performance and competitiveness?
- **Operational Cost structure:** is the fee earning cost structure (including the mix of partners and non-partners) appropriate for the type of work and type of clients the firm is targeting? Is the fee-earner structure being used effectively (including non-partner utilisation) to generate competitive levels of revenue? (As a rule of thumb, higher performing firms generate total revenue 2.5 to 3.0 times the total remuneration of fee-earners, including a realistic notional salary for equity partners.)

**We Not Me**

Leverage is not a guarantee of profitability. Both high and low leveraged law firms are among the most profitable in the world. A one-partner IP practice with a large number of lawyer and non-lawyer fee earners can generate the same Profit Per Equity Partner (“PEP”) as a high value Corporate/M&A boutique with a much lower leverage. In their markets and given their product focuses, they are appropriately leveraged for the work that is core to their strategies.

However, leverage is only one of two principal levers of profitability, the other being Profit Per Lawyer (“PPL”) as determined by the Revenue Per Lawyer (“RPL”) – based on the available hours, utilisation, chargeable rate and realisation rate – and the Cost Per Lawyer (“CPL”) – based on salary and overhead costs. Hence, leverage is important regardless of the size of the firm.

The issue facing firms that are more focused on cashflow management than revenue generation (reference above) can be compounded in a low or underleveraged firm in which the partner(s) by necessity is heavily or overly involved in “production” that in a more highly leveraged firm would be carried out by less expensive non-partners. (In the latter model, partners
are able to simultaneously cultivate client relationships and build their revenue pipelines whilst supervising production, and recruiting and developing talent.) This also has the effect of creating “lumpy” (uneven) utilisation and hence revenue flows, and generally results in lower profit outcomes. Low leveraged SME firms tend to face the problem that with the partners doing much of the work there is insufficient time to do the business development and client relationship work required.

Founder-led firms often struggle to scale their businesses or may choose to remain small. At its extreme a single “partner” practice is limited in the number of files and matters that can be supervised simultaneously. Single “partner” firms also need to weigh up the opportunity cost of partner time spent on files compared with investment in business development and/or client relationship activities. The addition of one suitable partner has the potential to increase both a firm’s supervisory as well as its revenue generating capacity.

Manage Performance
The overall performance of a firm is a result of the cumulative performances of everyone within it. Establishing an effective performance management system, even in a small firm, can take time – but can pay dividends. The starting point is to define the main activities to be undertaken for each role in the firm and then put a performance target on each activity. The process should start with partners, and then flow to all fee-earners and other staff, so that all activities in the firm are covered.

Setting clear targets for each person (aligned with the firm’s targets) and then providing training and support to assist people in improving their performance is vital. (One hallmark of a successful firm is the development of its people.) Finally, it is crucial to be able to capture performance data, and feed it back constructively to each person.

Conclusion
Competitive pressures operate at all levels of the market; the SME segment is no exception. Firms that wish to be successful within this segment need effective management processes if they are to remain competitive over time. The same principles and disciplines that apply to larger firms are true for SME firms and those that choose to be guided by these will perform better (and survive longer in some cases) than those that do not. Size should not be used as a differentiator when it comes to the need to manage a firm effectively and to employ the best management practices and processes.

Please see our article published online with Hong Kong Lawyer, which contains two appendices and tables illustrating some of the points highlighted in this article. Most notably, Appendix 1 illustrates my findings on the degree of product focus of member firms of the Hong Kong Law Society and their average rankings across “business law” and other commercial practices based on the Directory of Hong Kong Law Firms 2016. It also highlights the challenge facing a large number of firms in Hong Kong. Whilst it is not possible to determine the Equity Partner to Non-Equity Partner split and it is conceivable that some of these include a proportion of non-lawyer fee earners (not listed among the Law Society members), it is fair to assume that many of these firms are under-leveraged.

Appendix 2 illustrates my findings on the impact on performance of various levers of profitability.
我們在其他市場中觀察到，隨著時間的推移，有越來越多的商業工作，正基於各種不同原因，從同一客戶群轉移至不同類別的律師事務所。該等原因包括：取得了客戶的信任，而該律師事務所亦證明其具有如此能力；或是，它證明其能夠更有效地處理相同的業務（藉著增強對由科技引導的程序之使用）；又或是，該客戶在另一個已建立了業務，或是在地理上與其有聯繫的司法管轄區有法律服務需求，等等。在其他市場中，一些法律服務的使用者會選擇將其業務與個人法律服務需求分開，並將不同工作交付不同的律師事務所負責處理。在一些中小型或是由家族嚴密控制的企業，世代的傳承也成為了一種改變客戶的購買行為的催化劑。

在這背景下，律師事務所需要關注不斷改變的競爭環境及其客戶的購買模式。以下四個步驟，對於所有律師事務所（不論其規模大小）的領導者而言，均屬至關重要。

**選擇你的策略性重點**

中小型律師事務所的領導者需要處理的第一個問題是，該律師事務所的策略性重點應當是什麼（即，它意欲在哪一個範疇進行競爭），而這需要就下述事宜作出決定：

- 一組核心客戶和核心服務（或工作類別）；
- 客戶如何購買此等核心服務（它們對每項服務的價值認定和所涉及的工作量）；以及
- 該律師事務所的競爭力；以及基於上述情況，它在未來所需具備的競爭力；它們目前（及將會）與何人競爭；以及，其市場中存在的其他可能變化。

這將會決定該律師事務所的策略性定位。正如在前一篇文章所談及的，策略性重點並非必然意味着所有律師事務所都會選擇成為專家，儘管有些律師事務所會選擇處理較專門的非一般性業務。例如，如果它們採取的策略是集中向從事製造業的中小型企和獨立零售商提供混合性的商業法律意見，這便為合理的（倘若與市場上的其他競爭對手比較，這些客戶仍然很重視該律師事務所具備的競爭能力的話）。這一方面的競爭優勢，主要並非在技術性的專業知識方面，而是較為在於其對該客戶的業務，以及對該客戶所面臨的問題具有正深刻認識方面，使得其所提供的法律意見，能夠為該客戶提供有效的商業解決方法。如果客戶未能察覺到此等競爭優勢的存在，這意味著該目標客戶市場、與該律師事務所提供的服務未能充分地相互配合，而該律師事務所亦將會因此面對喪失市場地位的風險。

律師事務所便按照如何能為客戶創造附加價值方面，必須與其競爭對手有所區別。倘若律師事務所將其重點放在所撰寫的客戶群中，此舉可以促使它與客戶建立更緊密的關係，並通過該等關係，更為了解客戶的業務狀況，以及為它們提供更具商業效益的法律意見。對於那些向律師尋求商業解決方案及技術性意見的客戶而言，這是一項「附加價值」，而確立界定的業務範圍（因為所選定的客戶類別是否經常使用此等服務，以及該律師事務所是否可就該等業務，建立真實而深刻且有專門知識作為選擇基礎），將可對此提供支持。

**創造收入**

在許多市場中，中小型律師事務所中的其中一個特徵，就是傾向將重點放在現金流的管理，而非創造收入方面。一個將現金流管理放在優先地位的企業，與一個將重點放在創造收入的企業比較，二者在行為上有顯著的不同。

因此，一家聚焦於創造收入的律師事務所，會將現金進入其有關業務的方式，以及帶來現金流的其他因素進行積極管理，而並非將重點完全放在手頭的工作上，專注於將它完成，繼而處理下一項事宜。帶來現金流的因素包括：有效的業務發展計劃（參見上文），當中包括客戶關係的發展；整體性和個別地運用律師，而並非以個別事宜為基礎；通過延伸，亦涵蓋招聘
工作(既取代自然周轉,也能夠與對業務增長的預期和收益目標一致)。為取得有關業務和實現目標盈利能力而進行的價格訂定(參見下文)。

了解你的數字

下一個步驟,是讓所有律師(尤其是,但並非只是,合夥人)了解他們的工作程序的本質,以及該律師事務所的目標利潤率,而此舉能夠讓它迅速為客戶提供其所同意接受的價格,並同時確保該律師事務所能夠達致其利潤率。這也將需要有一項以科技為基礎的工具來協助其訂制預算(將有關工作細分為各項任務,以及完成每項任務的所需時間),並同時為每個工作類別界定其最具效益的進程。此外,它也需要針對在相關預算中的每項任務,記錄處理有關工作的所需時間,以及進行有效的審查,以確保該項工作是在該預算範圍之內。

與此相關的基本情況是,該律師事務所的經濟能夠是否適合此等工作類別;該律師事務所針對的客戶類別;以及,要達到預期的盈利狀況而設想的價值選項。當中可以分為經常性費用及成本結構兩方面:

• 經常性費用:現行的支付是否能夠有效確保,該律師事務所得以在適當水平的經營業績及競爭能力中運作?

• 運作成本結構:賺取服務收入的成本結構是否適合該律師事務所的規模大小;以及,合夥人基於業務所需,而相當程度或過度地參與「生產」。然而,在一家槓桿程度較高的律師事務所,此等工作將會交由所需成本較低的非合夥人來負責處理。(在後一個模式中,合夥人於拓展客戶關係及建立其收入管道之餘,也可以同時負責進行生產監督、招聘及培植人才的工作。)這同時會產生因使用不均,以致收入亦不平均的影響,並導致出現利潤下降。槓桿作用不足的中小型律師事務所,其面對的問題是:合夥人親自處理過多業務,以致他無法擁有足夠時間來處理業務發展和建立客戶關係的工作。

績效管理

律師事務所的整體表現,是當中每名合夥人所付出之努力的累積成果。要建立一個有成效的業績管理制度,實有必要假以時日(對於小規模的律師事務所來說亦然),但最後它們終必需要達到業績的效果。其起始點是,先要界定律師事務所中每個角色所負擔的主要工作,然後為此項工作訂立業績目標。在這種情況下,律師事務所必須能夠取得相關的績效數據,並向每名員工作出建設性的反饋。

結語

競爭壓力可見於市場的每一個層面,中小型企業領域也不例外。期望能在該領域中成功經營的律師事務所,它們如要長期維持競爭力,便必須建立有效的管理程序。適用於較大型律師事務所的原則和措施,亦同樣適用於中小型律師事務所。願意以此等原則和措施作為指引的律師事務所,必能取得更優良的業績(而且在某些情況下能夠生存更久)。當我們談到有效管理一家律師事務所,以及實行最佳的管理方式和程序時,它們的組織規模大小,再不應成為一項作出區分的因素。
Newly-Admitted Members

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陳匡怡

CHAN ON HANG
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WAN HENG
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changes received as from 1 April 2017
取自2017年4月1日起香港律師會所提供之最新資料

• AHERN WILLIAM ANDREW
joined Haldanes as a partner as from 24/04/2017.
自2017年4月24日加入何敦,麥至理, 鮑富律師行為合夥人。

• BARZILAI DAVIDE
ceased to be a partner of Norton Rose Fulbright Hong Kong as from 01/05/2017.
自2017年5月1日不再出任諾頓羅氏富布莱特香港合夥人一職。

• BOLTZ JR. PAUL WILLIAM
ceased to be a partner of Ropes & Gray as from 21/04/2017 and joined Gibson, Dunn & Crutcher as a partner on the same day.
自2017年4月21日不再出任瑞格律師事務所合夥人一職,並於同日加入吉布森律師事務所為合夥人。

• BOSWALL RUPERT RICHARD TORQUIL
became a partner of Reynolds Porter Chamberlain as from 01/05/2017.
自2017年5月1日成為Reynolds Porter Chamberlain合夥人。

• CHAN KAM SHING
ceased to be the sole practitioner of Gilbert Chan & Co., Lawyers as from 01/05/2017 and the firm closed on the same day. Mr. Chan joined CFN Lawyers as a partner as from 01/05/2017.
陳錦成
自2017年5月1日不再出任陳錦成律師事務所獨資經營者一職,而該行於同日結業。陳律師於2017年5月1日加入陳馮吳律師事務所為合夥人。

• CHAN KIN MING
became a partner of Boase Cohen & Collins as from 18/04/2017.
陳健明
自2017年4月18日成為布高江律師行合夥人。

• CHENG SIU HANG
ceased to be a partner of C.L. Chow & Mackison Chan as from 01/05/2017.
鄭肇鏗
自2017年5月1日不再出任周卓立陳啟球陳一理律師事務所合夥人一職。

• CHENG YAN YAN CHERYL
joined Raymond T.M. Lau & Co. as a partner as from 02/05/2017.
鄭茵茵
自2017年5月2日加入劉德銘律師行為合夥人。

• CHEUNG CHEUK WA PERRY
張焯華
自2017年4月1日加入彭炳焜律師事務所有限法律責任合夥為合夥人。

• CHONG FU CHUEN
became a partner of Wong, Fung & Co. as from 01/05/2017.
莊富全
自2017年5月1日成為黃馮律師行合夥人。

• CHOW TING FUN JUSTIN
ceased to be a partner of de Bedin & Lee LLP as from 20/04/2017.
周廷勳
自2017年4月20日不再出任de Bedin & Lee LLP合夥人一職。

• CHU TAK SUM
commenced practice as the sole practitioner of T. S. Chu Lawyers as from 26/04/2017.
朱詠思
自2017年4月26日獨資經營朱德心律師事務所。

• CHU WING SZE JENNY
joined Benny Pang & Co as a partner as from 18/04/2017.
朱詠思
自2017年4月18日加入Benny Pang & Co.為合夥人。

• FLETCHER STEPHEN MARK
ceased to be a partner of Linklaters as from 01/05/2017.
自2017年5月1日不再出任年利達律師事務所合夥人一職。

• FENG CHAK WAI
ceased to be a partner of Locke Lord as from 29/04/2017 and joined Loeb & Loeb LLP as a partner on the same day.
馮澤偉
自2017年4月29日不再出任洛克律師事務所合夥人一職,並於同日加入Loeb & Loeb LLP為合夥人。

• HORAN JONATHAN FRANCIS
ceased to be a partner of Linklaters as from 30/04/2017.
自2017年4月30日不再出任年利達律師事務所合夥人一職。

• JALOWAYSKI SCOTT ALLEN
ceased to be a partner of Ropes & Gray as from 21/04/2017 and joined Gibson, Dunn & Crutcher as a partner on the same day.
簡傑新
自2017年4月21日不再出任瑞格律師事務所合夥人一職,並於同日加入吉布森律師事務所為合夥人。

• JAMES JAMES ROBERT
ceased to be a partner of Norton Rose Fulbright Hong Kong as from 01/05/2017 and remains as a consultant of the firm.
詹樂弼
自2017年5月1日不再出任諾頓羅氏富布莱特香港合夥人一職,而轉任為該行顧問。

• KOOK YIN TING
became a partner of Szwina Pang, Edward Li & Company as from 02/05/2017.
官譚婷
自2017年5月2日成為李國強、彭宏楓律師行合夥人。

• KU WING YAN GENEVIEVE
became a partner of Fongs as from 01/05/2017.
古穎欣
自2017年5月1日成為方氏律師事務所合夥人。

• LAM KAR KIE VICKY
became a partner of Norton Rose Fulbright Hong Kong as from 01/05/2017.
林嘉琪
自2017年5月1日成為諾頓羅氏富布萊特香港合夥人。

• LAM SUK-YAN KAREN
became a partner of Howse Williams Bowers as from 01/05/2017.
林淑欣
自2017年5月1日成為何韋鮑律師行合夥人。

• LEE CHEUK WANG
ceased to be a partner of Locke Lord as from 29/04/2017 and joined Loeb & Loeb LLP as a partner on the same day.
李卓宏
自2017年4月29日不再出任洛克律師事務所合夥人一職,並於同日加入Loeb & Loeb LLP為合夥人。
• LEE MAN HAU  
joined Henry Wan & Yeung as a partner as from 05/05/2017.  
李文侯  
自2017年5月5日加入尹楊律師事務所為合夥人。

• LEE TING HIN  
became a partner of TC & Co. as from 01/05/2017.  
利庭軒  
自2017年5月1日成為崔曾律師事務所合夥人。

• LEE WAI IN IRENE  
became a partner of Tsang, Chan & Wong as from 01/05/2017.  
李蕙姸  
自2017年5月1日成為曾宇佐陳遠翔律師行合夥人。

• LEUNG MEI KI IRIS  
became a partner of Linklaters as from 01/05/2017.  
梁美琪  
自2017年5月1日成為年利達律師事務所合夥人。

• LO CHI HANG LONNIE  
ceased to be a partner of Rene Hout & Co. as from 01/05/2017.  
盧志恆  
自2017年5月1日不再出任吳靜江律師事務所合夥人一職。

• MARTIN KEVIN ANDREW  
became a partner of Clyde & Co. as from 01/05/2017.  
自2017年5月1日成為其禮律師行合夥人。

• MILLIGAN DAVID JAMES  
became a partner of Norton Rose Fulbright Hong Kong as from 01/05/2017.  
自2017年5月1日成為諾頓羅氏富布萊特香港合夥人。

• NG YEUK LUNG JENNIFER  
became a partner of H.M. Chan & Co. as from 01/05/2017.  
吳若儂  
自2017年5月1日成為陳浩銘律師事務所合夥人。

• NICKLIN MICHAEL PAUL  
ceased to be a partner of Ropes & Gray as from 21/04/2017.  
自2017年4月21日不再出任瑞格律師事務所合夥人一職。

• PE ROBERT SAN  
ceased to be a partner of Gibson, Dunn & Crutcher as from 22/04/2017.  
自2017年4月22日不再出任吉布森律師事務所合夥人一職。

• ROMPOTIS PHILLIP  
ceased to be a partner of Stephenson Harwood as from 02/05/2017.  
羅菲臘  
自2017年5月2日不再出任羅夏信律師事務所合夥人一職。

• SCHWARZWALDER BRIAN ANTHONY  
ceased to be a partner of Ropes & Gray as from 26/04/2017 and joined Gibson, Dunn & Crutcher as a partner as from 27/04/2017.  
自2017年4月26日不再出任瑞格律師事務所合夥人一職，並於2017年4月27日加入吉布森律師事務所為合夥人。

• SINCLAIR PATRICK S  
ceased to be a partner of Ropes & Gray as from 01/05/2017.  
自2017年5月1日不再出任瑞格律師事務所合夥人一職。

• TSAI CHUNG-YANG DAVID  
became a partner of Clifford Chance as from 01/05/2017.  
自2017年5月1日成為高偉紳律師行合夥人。

• TSANG SHU WING AGNES  
became a partner of Allen & Overy as from 01/05/2017.  
自2017年5月1日成為安理國際律師事務所合夥人。

• TSUN WAI LAM DOMINIC  
became a partner of Clyde & Co. as from 01/05/2017.  
自2017年5月1日成為其禮律師行合夥人。

• WONG CHUN NAM DUFFY  
ceased to be a partner of Ho, Wong, Solicitors & Notaries as from 01/04/2017 and remains as a consultant of the firm.  
黃鎮南  
自2017年4月1日不再出任黃黃律師行合夥人一職，而轉任為該行顧問。

• WONG PAK HO PATRICK  
became a partner of Allen & Overy as from 01/05/2017.  
自2017年5月1日成為安理國際律師事務所合夥人。

• WONG TSZ WEI  
became a partner of Clyde & Co. as from 01/05/2017.  
自2017年5月1日成為安理國際律師事務所合夥人。

• WOO YUK YING PATRICIA  
became a partner of Squire Patton Boggs as from 15/04/2017.  
胡玉瑩  
自2017年4月15日成為翰宇國際律師事務所合夥人。

• XU CHUN  
ceased to be a partner of Ince & Co. as from 01/05/2017 and joined Stephenson Harwood as a partner as from 02/05/2017.  
許 椿  
自2017年5月1日不再出任英士律師行合夥人一職，並於2017年5月2日加入羅夏信律師事務所為合夥人。

• YANG TAI CHI  
became a partner of Clifford Chance as from 01/05/2017.  
自2017年5月1日成為高偉紳律師行合夥人。

• YEUNG SUI YIN  
ceased to be a partner of Henry Wan & Yeung as from 07/05/2017 and commenced practice as the sole practitioner of Victor Yeung & Co. as from 08/05/2017.  
自2017年5月7日不再出任尹楊律師事務所合夥人一職，並於2017年5月8日獨資經營楊浩然律師事務所。
The first thing that springs to mind whenever I hear the brand Aston Martin is James Bond. For more than five decades, the Aston Martin DB series have been featured in many James Bond films. Everything from the sound of powerful engine noise revving up to the classic car chasing scenes (with Daniel Craig behind the wheel of course) all resembles the Aston Martin DB heritage ingrained in Bond movies. I am an avid James Bond fan (well, since Daniel Craig took the helm of Bond in Casino Royale), so when I was informed that I would be test driving the new DB11 model, I could not contain my excitement. The new DB11 is the latest model of the DB series which was only revealed at the Geneva Motor Show in 2016. DB11's predecessor, the DB9, was launched 13 years ago.

Impeccable Exterior
Eager and anxious to try out the new DB11, I arrived at the Aston Martin Happy Valley showroom at my scheduled time slot and quickly spotted the car being parked on the side of the road. I could not take my eyes off of it, as I was mesmerised by its gorgeous silhouette. From the front, the DB11's hood/bonnet features the largest single piece of aluminium on any car in production which is perfectly curved like a clam-shell and cut into four air vents that assist in cooling its engine. As I followed the lines of the DB11's body from the front to its back, I noticed that the back is far wider than its front. One of the key features of the DB11 body's lines is that they are designed so that air will be sent underneath the bodywork, forcing wind out on the rear part of the car like a virtual spoiler of air. Aston Martin even named this as the “Aeroblade™”.

Luxurious Interior
As I climbed into the driver's seat, the first thing I noticed was the high-tech dashboard. The large digital dials present clear and unfussy information. The cabin is beautifully trimmed with sumptuous rich leather from head to toe and details such as perforated brogues can be found on the armrest, seats and doors. On the left side of the steering wheel is the central control panel fitted with numerous buttons and an 8-inch infotainment screen. Here, Mercedes-Benz owners will find a familiar set of controls as the Mercedes' “Command”-based system has been incorporated into the DB11. Fung Chu, Aston Martin's sales representative, confirmed that Daimler AG has a five percent stake in Aston Martin which explains such influence and also its use of the Mercedes-derived engine in the DB11. The gears are also conveniently located in this centre stack and are presented in the form of buttons: “Park”, “Reverse”, “Neutral” and “Drive”.

Ride and Handling
My route for the test drive was from Happy Valley to Shek O Big Wave Beach and from Big Wave Beach to North Point. After I started the engine, I noticed that the brakes were much heavier than my own car. It took me a while to adjust to their feel. Next, I stepped onto the gas pedal and the nice engine sound came roaring without hesitation. Indeed, it's such a nice sound to the ears. Although the DB11’s body is without a doubt long and heavy, I was surprised with how compact it feels when driving it. Carrying three passengers, the weight did not affect its performance one bit. DB11 offers three modes: “GT”, “Sport” and “Sport +”. I started off with the “GT” mode. As we approached the highway on the Island Eastern Corridor, I switched to “Sport” mode and noticed the difference right away. The suspension setting can also be adjusted into the same three modes. Once I adjusted the suspension and driving mode to “Sport +”, its engine...
noise was much more noticeable as compared with the “GT” mode. However, while I was switching in between the different modes, I noticed that my fingers on the buttons were faster than the indicator on the dashboard. It required some time to adapt to this and I had to switch between the different modes several times in order to get to my desired one.

With 600 horsepower and a 5.2 litre twin turbo V12 engine, there was no issue on the pick-up of the car either on the slopes or on tight bends. The car corners keenly and flat on the winding roads to Big Wave Beach. The steering on the DB11 is equipped with its first electromechanical technology and feels a little lighter than expected for a European car but that did not bother me that much. It was simply a pleasure cruising around in the DB11.

As we were approaching the parking area of Big Wave Beach, an oncoming car was heading straight towards me and I was able to test out the car’s responsiveness and exerted full force on the brakes. This resulted in the car’s swift and automated shift-gear response which also ensures that the RPM would not be dropped significantly in such a short moment. This, along with the handling of the car, was truly impressive.

Final Thoughts and Verdict
Although it was definitely an eye-opening experience to cruise around in the DB11, I did not have much of a chance to accelerate in it with the traffic cluttering the route to Big Wave Beach. It would have been even better if I could take the DB11 on a longer highway with less traffic to test out its speed in the “sports” mode.

The price tag of the DB11 comes to a hefty HK$3.8 million. If you have the money to spare and are looking for a unique option amongst similar GT sports car, the Aston Martin’s DB11 will not disappoint you. It has all the luxurious details, comfort and performance you would ask for in a dream car. The driving experience will definitely leave you in awe and you will likely never want to leave the driver’s seat.

Aston Martin’s DB11: Packing an Awe-Inspiring Punch on the Road

By Raphael Hui, Trainee Solicitor

Upon arriving at the Aston Martin showroom in Happy Valley, I saw the DB11 slowly swing by and park on the side of the road. A man got out and introduced himself. Another female representative from the showroom invited me to their desk and delicately went through the signing papers with me before I could start my test drive. The papers were quite straightforward and after a quick review, I signed my name and then we moved without a further moment of hesitation to the car. The man, who drove here and accompanied me throughout my drive, slipped the keyless-go car remote into my hand as we approached the car.

Quite a Looker
First of all, the appearance. The test drive vehicle was the classic Aston Martin metallic grey colour. It spanned the entire body of the car and had two continuous silver bands
covering the edges of the doors flanking each side of the roof. This design is what is being marketed as “Iconic Craft”. The new clamshell bonnet design is a single piece of aluminium that covers the entire front of the car, leaving a clean and singular outlook while, as I was told, significantly improving air flow through the chutes to minimise resistance. Another distinguishing feature of the DB11’s appearance is the new LED headlights and taillights design, with bright LED lines that curved around the lights. The interior is covered in tanned yellow stitched leather, which appeared luxurious, but became a bit of a distraction as its constant yellow reflection distorted my view through the windshield. I would advise customising the interior with a dark colour if you plan to order a GT. My DB11 driving companion just said that I should wear sunglasses on such a sunny day.

It should be noted though that Aston Martin was determined to make the entire interior of the DB11 as luxurious as possible. Apart from seeing and touching smooth and soft leather everywhere, with the press of a button, you can turn on the Infotainment system and the Bang & Olufsen speakers that are embedded in the front corners of the interior and protrude upward. I gather this design is to provide you with even greater sound quality of the Baroque music you play while touring the country side. The centre console also features smooth tan coloured wooden trim. I would think, however, the patterns on the wood are not fine enough to be a suitable match with the yellow tanned leather found everywhere on the inside. All in all, the exterior appearance hits the spot with its “wow factor”; however, the interior colour choice can be more carefully configured from Aston Martin’s astonishingly wide array of choices upon purchase.

**Power-Packed Drive**

As I plopped into the driver’s seat and started the engine, I heard a deafeningly loud roaring sound come from the engine. Sheer power within your control was exhilarating. Packed with a twin-turbocharged 5.2-litre V12 engine, the DB11 offers 600 horsepower and the ability to go from 0 to 100km/h in 3.9 seconds. The car roared to life with just the tiniest push of the gas pedal. Accelerating along, and accompanied by an 8-speed automatic gearbox, the DB11 easily overtook other vehicles. I was able to tightly cut some sharp turns into the side streets of Wan Chai with ease. The power steering felt very light and easy to manoeuvre, and even in sharp and narrow corners, the constant blinking noise of the parking sensors and the view of all sides of the car from the main console’s 8-inch LCD screen, thanks to the 360° cameras, helped me avoid any scratches or simply getting too close. But the blinking noise was a bit distracting at times, especially in Hong Kong traffic.

**Aerodynamic Designs**

An important aspect of the DB11 is the incorporation of further innovative aerodynamic designs into its bodywork. Special vents in the arch lining and in the side of each front wheel help dissipate aerodynamic lift on the front end of the vehicle. Additionally, a small and thin blade neatly embedded in the tail of the car, which is electronically controlled to automatically shoot itself outward when absolutely necessary at above 100km/h speeds, appears to enhance stability of the rear end of the car. This is Aston Martin’s way of making aerodynamic design discreet and subtle, while streamlining the entire design of the vehicle.

My driving companion explained to me that the new DB11 also took in certain design concepts from its new conglomerate co-parent, Mercedes Benz. The gear shift flaps on the side of the steering wheel and the infotainment system as well as various other electrical features underneath the dashboard were some of the elements adopted from the Mercedes line. The DB11 may also be offered in a V8 AMG engine in the near future.

**The Verdict**

The DB11 showed considerable ease and demonstrated immense power when I revved up some of the steepest roads in Hong Kong Island, leaving a trail of loud and lasting engine roars behind me. I was also able to overtake other vehicles confidently with sufficient coverage in the left and right mirrors, as well as its very own blinking sensors. Not to mention, being able to accelerate and reach high speeds very quickly forced me to remind myself to make sure I wasn’t going to get caught on a speeding camera, or even worse, pulled over by a cop. But the point I am trying to make is that the DB11 is more aptly a Gran Tourer than a sporty race car. It may have all the electric switches and driving modes of a sports car, but it feels exceptionally easy to drive around when you’re behind the wheel. Flooring the DB11 packed an awe inspiring punch on the road and breaking was done with sufficient control and ease. Moreover, at no time was I uncomfortably thrown back or forth while in the driver’s seat. I thoroughly enjoyed my test drive. The DB11 was certainly a great drive. ■
終極體驗

作者 馮詩嘉 政府律師

每年一聽到Aston Martin，第一時間想到是James Bond。Aston Martin DB系列過去50多年不斷出現在James Bond電影中。從強大的引擎聲到經典的汽車追逐場面（當然由Daniel Craig駕車），Aston Martin DB與占士邦電影淵源甚深。我是占士邦電影的死忠（其實是自從Daniel Craig在《新鐵金剛智破皇家賭場》擔任占士邦開始），所以當聽到有機會試駕最新的DB11型號時，我當然興奮莫名。DB11是DB系的最新型號，在2016年的日內瓦車展才亮相。DB11前身DB9推出已有13年。

完美車身

當日我急不及待試駕DB11，在指定時間到達Aston Martin跑馬地陳列室，看到車子已泊在路邊。我完全被它的線條迷住，目光離不開這輛名車。

從車頭開始，DB11的引擎蓋是所有汽車生產中最大的單件鋁質配件，像蛤殼一樣有著完美的曲線，上面有四個通風口，有助冷卻引擎。隨著車身線條向後移，我發現車尾比車頭寬得多。DB11車身設計的特點之一，是氣流會被抽至車底，然後導向車尾送出，就像一個虛擬的空氣擾流板。Aston Martin這個設計名叫Aeroblade™(空氣刀)。

奢華內籠

我爬上司機座位時，首先注意到高科技的儀表板，數字顯示清楚易明。車廂由頭到尾都以奢華皮革包裹，扶手、座椅和車門更有拷花等細節。

方向盤左側的中央控制板有多個按鈕和一個8寸的觸摸顯示屏。駕駛車主對這個系統會很熟悉，因為DB11採用了奔馳的操控系統。Aston Martin的銷售代表Fung Chu證實，Daimler AG擁有Aston Martin 5%股份，那就不難理解為甚麼DB11不但採用此系統，亦採用了奔馳生產的引擎。變速器位於中間，使用方便，而且是按鈕形式。

駕駛與操控

我試駕的路線是跑馬地去石澳大浪灘，再從大浪灣去北角。引擎起動後，我發覺剎車制比我自己的車重很多，花了一段時間來適應腳下的感覺。接下來，我踏上油門踏板，車子引擎嘶嘶地響起，實在悅耳。雖然DB11的車身無疑又長又重，但駕駛它時感覺很靈巧，令我驚訝。當日車內有3位乘客，但載重完全沒有影響車子的表現。DB11提供三種模式：「GT」、「跑車」和「跑車+」。我首先用「GT」模式，走近東區走廊時，我切換至「跑車」模式，感覺立刻截然不同。懸掛設置也可以調整為這三種模式。當我把懸掛和駕駛切換至「跑車+」模式時，引擎聲比「GT」模式大得多。但是，在不同模式之間切換時，我發現按鈕反應比儀表板上的顯示快，這需要一些時間來適應，我必須切換多次，才找到我想要的模式。

DB11擁有600匹馬力和5.2升雙渦輪增壓V-12引擎，在斜坡上或急彎加速毫無難度。駕駛者能流暢地駛向大浪灘。DB11的轉向系統設有機電技術，比一般歐洲車輕一點，但這點對我沒大影響。駕駛DB11是個愉快體驗。

當我們接近大浪灘停車場時，一輛車子向我們迎而來，讓我能夠測試汽車反應。車子的迅速自動換檔反應，確保了引擎轉速在這麼短的時間內不會大跌。這點加上車輛的操控，真是令人印象深刻。

最終裁決

雖然駕駛DB11絕對令我大開眼界，但大浪灘一帶交通擠塞，我沒有太多機會加速。如果可以在更長的高速公路上測試DB11的「跑車」模式的速度，那就更好了。

DB11的價格高達380萬港元。如果你有餘錢，希望找類似GT跑車的另類選擇，Aston Martin DB11將不會讓你失望。它擁有一輛夢幻之車的所有奢華細節、舒適和性能。駕駛經驗肯定會讓你驚豔，你可能永遠不想離開駕駛座。
Aston Martin DB11：震撼上路

作者 許譽曦 實習律師
譯譚葉律師行

甫到達Aston Martin跑馬地陳列室，我看到DB11慢慢地駛出停在路邊。一位男士出來介紹自己，而另一位女士邀請我到辦公桌前，仔細解釋試駕需要簽署的文件。文件很簡單，快速看了一下後，我就簽了名，然後急不及待往去看車子。在駕駛過程陪同我的那位男士把感應式引擎啟動系統遙控器交給我，試駕便告開始。

外觀誘人
首先說說外觀。試駕的Aston Martin整個車身是經典的金屬灰色，兩邊車頂車門邊有兩條銀色邊，稱為「標誌性工藝」。新的蛤殼式引擎蓋是一整塊鋁合金，覆蓋整個車頭，令車子看來非常俐落，據知這個設計能大大改善通過滑槽的氣流，大大減低阻力。DB11外觀的另一個特徵是新的LED頭燈和尾燈設計，燈邊帶有LED燈線。車子內籠為全黃褐色真皮，感覺奢華，但在陽光的反射下，有點影響擋風玻璃的視野。如果您打算訂購GT，我會建議選擇深色車廂。我的試駕同伴說，在這麼陽光燦爛的日子，應戴上太陽眼鏡。

馬力十足
我滑入駕駛座，發動引擎，即聽到一陣震耳欲聾的引擎咆哮聲，力量令人振奮。DB11搭載雙渦輪增壓5.2升600匹馬力V12引擎，能夠在3.9秒內從0加速至時速100公里。只而輕輕推動油門，車子立即活起來。配備8速自動變速箱的，DB11輕鬆超越了其他車輛。我能夠輕鬆地在灣仔的橫街窄巷轉彎。

最後裁決
我在港島一些最陡峭的道路上轉彎時，DB11表現得相當的輕鬆，展示巨大馬力，引擎咆哮聲在車後回響。左右鏡子及感應器視野充足，我能夠自信地超越其他車輛。車子加速度快，瞬間達到高速，我必須提醒自己不會超速，不要被影相甚至被警察截停。DB11感覺更像一輛Grand Tourer而非跑車，它可能具備跑車的所有電動開關和駕駛模式，但在方向盤後面感覺非常容易駕駛。

DB11在道路感覺勁力十足，但煞車操控輕鬆。我在司機座上完全沒有拉扯的不適感。我很享受今次試駕，DB11絕對是輛好車。
Survival Tips for the Uber Quick New Order of Client Correspondence: Sounds like a Plan?

By Mr Jack Burke, Senior Teaching Fellow, School of Law, City University of Hong Kong and Dr. Christoph A. Hafner, Department of English, City University of Hong Kong

It is no secret that solicitors in Hong Kong are under increasing time pressure from clients to provide accurate, succinct, affordable and easy-to-follow advice on highly complex legal issues. This dynamic can be especially challenging for those who are at a relatively early stage of their legal careers. There are two main kinds of skills that need to be mastered in order to meet these expectations; those related to the ‘processes’ of drafting client correspondence and those related to the end ‘products’, being the final version of the correspondence which is sent to the client. In this article, we provide a few tips on improving the processes of drafting client correspondence. In particular, for those for whom writing correspondence under these trying conditions is not quite second nature, we suggest employing the following processes to maximise the quality of their products.

Processes

• Make the time to obtain clear and comprehensive instructions from your client. What exactly is their situation? What outcomes are they seeking to achieve?

• Carry out any research prior to writing your advice, rather than trying to carry out these two processes simultaneously.

• If the advice requires deep critical analysis and creative and lateral thinking, consider drafting in an environment free from the constant distraction of email and phone calls, such as a break-out or meeting room.

• Craft the essential elements of your initial analysis in a first draft before expressing it more fully. In litigation matters, the IRAC methodology of legal analysis (I-issue, R-rule, A-application and C-conclusion) is a good start. In commercial matters, a similar structure could be usefully adopted. Namely, ascertaining and identifying the relevant facts about your client’s situation, confirming the outcomes which the client aims to achieve and then setting out the different options the client has to achieve such aims and his or her prospects of success.

• Finally, despite the pressure for a quick turn-around, devote as much time as you can to proofreading your products before these go to the client. Also, separating out your proofreading into discrete stages for accuracy of content, general readability, grammar and spelling will further reduce the possibility of any errors across these areas.

In next month’s issue, we will recommend some skills you can utilise to improve your final products.

Readers who want to learn more about improving both their processes and products can visit the Legal English in Hong Kong website at https://legalenglish.hk and view the video-based interviews with legal experts on these topics.
The Hon. Prof. Andrew Li’s Talk on Judicial Independence in Hong Kong at CityU

On 20 April 2017, the Hon. Prof. Andrew Li, First Chief Justice of the Court of Final Appeal delivered a lecture on Judicial Independence in Hong Kong upon the invitation of Prof. Lin Feng, Associate Dean of School of Law, CityU, and Director of the Centre for Judicial Education and Research, CityU. The lecture was well received by the LLM and JSD Chinese judge students and teachers of SLW.

Prof. Geraint Howells, Dean of the School of Law, CityU, chaired the lecture. After giving a brief opening remark and introducing Prof. Li, Prof. Howells turned the floor over to Prof. Li to commence his lecture, which evolved from the topic of Judicial Independence in Hong Kong. Prof. Li pointed out that “the rule of law with an independent Judiciary is universally recognised as a cornerstone of Hong Kong under One Country, Two Systems.” The arrangements for the appointment and removal of judges are designed to guarantee judicial independence. The Hong Kong Judiciary has also published a Guide to Judicial Conduct, in which it stated that a judge must be independent, impartial and display integrity and propriety in all matters of conduct both in and out of court.

Prof. Li also introduced some interesting features of the Hong Kong Judiciary, including, the inclusion of expatriate judges, the undertaking that judges at District Court and above shall not return to private legal practice in Hong Kong without the consent of the Chief Executive, and the purpose of audio recording during all court proceedings, among other things.

During the Q & A session, the Chinese judge students had an in-depth discussion with Prof. Li, sharing their thoughts and views about legal and social issues in both Hong Kong and Mainland China.

Two hours slipped away quickly, and the judge students still longed for more time to listen to Prof. Li. They thought the lecture provided a platform for them to better understand the differences between the two judicial systems.
HKU’s Continued Success in International Mooting

Following the success in last year’s Herbert Smith Freehills Competition Law Moot, where HKU was awarded the Championship and Best Written Memoranda (see report in Hong Kong Lawyer: http://www.hk-lawyer.org/content/hku-law-triumphs-herbert-smith-freehills-competition-law-moot-2016), HKU continued its international mooting success by achieving excellent results in the 15th Red Cross International Humanitarian Law Moot and the 58th Philip C. Jessup International Law Moot Court Competition.

After rounds of intensive competitions amongst 24 participating universities from over 20 regions, the HKU Red Cross Moot team proceeded to the Finals and captured the First Runner Up. The HKU team consisted of Ko Lun Jason (LLB), Mak Ho Ting Adrian (BSS(G&L)/LLB) and Lau Ka Yu Martin (PCLL), who were coached by Ernest Ng. We are very grateful to Anselmo Reyes, Martin Kok, Jacqueline Law, Michael Lok, Yvonne Ngai, Artem Sergeev, and members of the previous Red Cross Moot teams for their kind assistance and comments during practice sessions.

This year’s Jessup International Law Moot Court Competition attracted more than 550 teams from more than 87 countries, 127 of which proceeded to the international rounds in Washington, DC. The HKU team consisted of Wong Yeung Hou Howard (PCLL), Leung Man Hin Henness (PCLL), Hor Tsz Ching Sunny (PCLL), Cheng Wing Yan Angel (PCLL) and Chung Wing Fung Harrison (LLB), who were coached by Victor Lui. The team captured the Hong Kong regional championship in February 2017, and won the top three oralist awards in addition to the prize for the best Applicant memorial. The team won three out of the four preliminary round competitions in the Washington DC international rounds, ranking 36th overall (out of 127 teams). We are very grateful to Po Jen Yap, Jolene Chan, Adrian Lal, Jeff Chan, Alice Leung, Thomas Wong, Isaac Chan, Tinny Chan, Winky So and Terrence Tai for their extensive feedback during practice sessions.

The 58th Philip C. Jessup International Law Moot Court Competition


港大紅十字國際人道法模擬法庭比賽參賽隊伍經過多場緊湊的模擬訴訟，與來自20多個地區的24支大學隊伍較量後，躋身決賽，最後奪得亞軍。港大校隊由Ko Lun Jason (法學士課程)、Mak Ho Ting Adrian (社會科學學士(政治學與法學)/法學士課程)及Lau Ka Yu Martin (法學專業證書課程)組成，由Ernest Ng擔任教練。我們衷心感謝Anselmo Reyes、Martin Kok、Jacqueline Law、Michael Lok、Yvonne Ngai、Artem Sergeev及過往幾屆校隊成員襄助，在校隊練習期間給予寶貴意見。

今年的Jessup國際法模擬法庭比賽吸引近90個國家超過550支隊伍參賽，其中有128支躋身在華盛頓舉行的國際賽。港大校隊由Wong Yeung Hou Howard (法學專業證書課程)、Leung Man Hin Henness (法學專業證書課程)、Hor Tsz Ching Sunny (法學專業證書課程)、Cheng Wing Yan Angel (法學專業證書課程)及Chung Wing Fung Harrison (法學士課程)組成，由Victor Lu擔任教練。校隊2017年2月在香港區比賽勝出，並且除了最佳申請人書面陳述獎之外，還獲得首三名最佳辯論員獎。港大校隊在華盛頓國際賽初賽回合四勝一負，總排名第36位(共有127支隊伍)。我們衷心感謝Po Jen Yap、Jolene Chan、Adrian Lai、Jeff Chan、Alice Leung、Thomas Wong、Isaac Chan、Tinny Chan、Winky So及Terrence Tai在校隊練習期間提供意見，使隊友獲益良多。
CUHK Law Hosts Asia Foreign Direct Investment Forum to Explore China-EU Investment Relationship

With the theme of “China-European Union (“EU”) Investment Relationships: Towards a New Leadership in Global Investment Governance?”, the Asia Foreign Direct Investment (“FDI”) Forum III was held on 11–12 May 2017 at the Graduate Law Centre of The Chinese University of Hong Kong (“CUHK”). The Forum was organised by CUHK Faculty of Law Centre for Financial Regulation and Economic Development and Tsinghua Law School, with support from the Columbia Center on Sustainable Investment and the World Economic Forum. Distinguished scholars, civil society, key industry players, legal practitioners and over 100 participants attended for a vibrant exchange on the ongoing EU-China negotiations for a comprehensive investment agreement. Central to this exchange, was the global and regional implications of an investment agreement involving the world’s largest economies on reform of the investor-state dispute settlement regime.

The major aim of the Asia FDI Forum III was to analyse from a multidisciplinary approach the legal dynamics of PRC-EU investment relations by identifying and placing into comparative context the key political and economic issues involved. These engagements over the course of two days involved 10 panel discussions with 33 presentations. Panel presentations focused on the political challenges of the investment agreement, EU-Asian “new generation” treaties, the impact of the “Belt and Road Initiative” (“BRI”) initiative on EU-China FDI relationships, innovative investment rule making, the challenges of sustainable investment and proposals for a permanent investment court spearheaded by the EU. Professor Karl P. Sauvant, Resident Senior Fellow at the Columbia Center on Sustainable Investment, gave a presentation on the pillars of sustainable investment. Mr. Joao Ribeiro, Head of the United Nations Commission on International Trade Law (“UNCITRAL”) Regional Centre for Asia and the Pacific, talked
about UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration. Professor Jiaxiang Hu of the Shanghai Jiao Tong University made a presentation on free trade zones. Representing civil society, Ms. Mayling Chan, Director at Oxfam, Hong Kong also delivered a speech on sustainable development goals and business. Other presentations focused on procedural and substantive themes likely to affect the negotiations, including treaty shopping, financial services, transparency, non-discrimination standards, expropriation, investor-state dispute settlement sustainable development and state owned enterprises.

At the end of the Forum a few conclusions were reached. While the fate of the Trans-Pacific Partnership (“TPP”) remains undecided, subsequent investment negotiations should consider innovative features of the TPP’s environmental carve-outs, expropriation, FET and investor right versus state regulatory balancing clauses. While the US is focusing on inwards investment policies, China has accelerated outward investments as seen in the BRI. This highlights the increasingly important role of China in global investment governance and the significance of the EU-PRC investment agreement. EU led proposals for the establishment of a multilateral investment court, sustainable investment and the BRI initiative are themes that will shape the evolution of investment law in the next few years.

After two days of lively discussions and exchanges, the Forum ended on an optimistic note. Although the negotiation of the EU-China investment agreement is far from conclusion, the commitment of both parties is the only guarantee to keep their respective constituencies satisfied, open up new markets and reform the current investment law regime.

For more information of the Asia FDI Forum series, please refer to https://goo.gl/YU6zQ4

歡迎到訪https://goo.gl/YU6zQ4查閱更多亞洲海外直接投資論壇系列的資料
We would like to congratulate Sung Choi Fung, Patrick Mak & Tse, Trainee Solicitor, the winner of our Legal Quiz #37.

1. Jackson Road on which the Court of Final Appeal is formally located is named after?
   A. Michael Jackson, the singer
   B. Thomas Jackson, General Manager of the Hong Kong and Shanghai Bank
   C. Miles Jackson-Lipkin, former High Court judge
   D. Jackson Wong, rapper from Hong Kong

2. Jackson Road is located at which side of the Court of Final Appeal?
   A. The main entrance
   B. The rear entrance
   C. The south side
   D. The north side

3. In 1984, when the Joint Declaration was signed, what percentage of judges of the High Court of the Hong Kong Supreme Court were Chinese?
   A. 5%
   B. 10%
   C. 25%
   D. 50%

4. What is the name of the judge who was appointed to the District Court in the 1980s when he had already been invested as a knight?
   A. Sir Noel Power
   B. Sir Ti-liang Yang
   C. Sir Georges Souyave
   D. Sir Ivo Rigby

5. Is it legal to serenade your darling on Repulse Bay beach on a moonlit night?
   A. Yes.
   B. Yes, provided you are not annoying anyone (including your darling).
   C. No.

6. Your spouse is returning to Hong Kong from overseas and misses your cat very much. Are you allowed to take the cat to the airport to greet your spouse?
   A. Yes.
   B. Yes, but only in a cage.
   C. No.

7. Your 16 year-old son takes his younger siblings to Ocean Park on a beautiful spring day. Being children, the young-uns run amok. Has your 16 year old committed an offence?
   A. Yes.
   B. Yes, but only if he physically chastises them.
   C. No, don’t be ridiculous.

8. (True or false): It is legal to catch whales in Hong Kong waters.
   A. True
   B. False

9. Is it legal for a person to climb a tree in a pleasure ground (public park) in Hong Kong?
   A. Yes.
   B. Yes, but only in designated areas.
   C. No.

10. You are trying to give up smoking and decide to try chewing tobacco. Can you legally get any in Hong Kong?
    A. Yes.
    B. Yes, on prescription.
    C. No.

Answers to Legal Trivia Quiz #37

1. D. There is no winter vacation provided for in the High Court Ordinance (s. 29).
2. C. There are 17 official general holidays in Hong Kong.
3. A. True. The day following Good Friday is a general holiday. By definition it falls on a Saturday.
4. D. Court documents (other than originating process) that are served on a general holiday are deemed served on the next working day between Monday and Friday (Order 65, r. 7).
5. B. The last year the Queen’s birthday was a general holiday in Hong Kong was 1997.
6. D. Labour Day was first celebrated as a general holiday in Hong Kong in 1999.
7. C. A writ may be served in Hong Kong on Christmas Day. It may not be served on a Sunday without leave of the court (Order 65, r. 10).
8. E. Five additional general holidays were granted in 1997: July 1 and 2 (for the handover), 18 August (Sino-Japanese War Victory Day) and 1 and 2 October (for National Day).
9. C. An application to strike out pleadings is not vacation business.
10. D. The judiciary moved to the final phase of a five-day work week on 3 January 2017.
法律知識測驗 #38

今個月的問題圍繞法庭和香港的法律常識。
問題由馬錦德大律師編製。歡迎建議下期問題。

1. 終審法院位處的昃臣道(Jackson Road)以誰命名？
   A. 歌星Michael Jackson
   B. 香港上海滙豐銀行大班Thomas Jackson
   C. 前高等法院法官Miles Jackson-Lipkin
   D. 香港饒舌歌手Jackson Wong

2. 昼臣道位於終審法院哪一邊？
   A. 正門
   B. 後門
   C. 南邊
   D. 北邊

3. 1984年簽署《中英聯合聲明》時，香港最高法院高等法院華人法官的比例為？
   A. 5%
   B. 10%
   C. 25%
   D. 50%

4. 80年代哪位區域法院法官獲任命時已獲授騎士爵位？
   A. 鮑偉華爵士
   B. 楊鐵樑爵士
   C. Georges Souyave爵士
   D. 李比爵士

5. 月夜在淺水灣泳灘向愛人唱歌合法嗎？
   A. 合法
   B. 只要不能任何人士煩擾（包括你的愛人）。
   C. 非法

6. 你的配偶從外地返港，非常想念家裡的貓。你可以把貓帶到機場接機嗎？
   A. 可以
   B. 可以，但要把貓放在籠內
   C. 不可以

7. 你16歲的兒子帶弟弟到海洋公園。弟弟胡作非為，你16歲的兒子有犯罪嗎？
   A. 有
   B. 有，若他體罰弟弟的話
   C. 沒有

8. (是非題)：在香港水域捕鯨是合法的。
   A. 是
   B. 非

9. 在香港遊樂場地（公園）爬樹合法嗎？
   A. 合法
   B. 合法，但僅限
   C. 定區域
   D. 非法

10. 你想戒煙，決定嘗試咀嚼煙草。在香港能合法取得嗎？
    A. 能
    B. 能，但要有處方
    C. 不能

競賽規則：
讀者如欲贏取一瓶由Global Vintage Wines Centre提供的2007年Ch. La Croizille葡萄酒，請將問題答案寄交

www.hk-lawyer.org

本刊謹此祝賀宋彩鳳，麥家榮律師行實習律師，在法律知識測驗#37中勝出。
Department of Justice of the Government of the Hong Kong Special Administrative Region (HKSAR) is inviting applications for the post of Director of Public Prosecutions.

The Position
The Director of Public Prosecutions is the head of the Prosecutions Division of the Department of Justice and is responsible to the Secretary for Justice for the following -

(a) directing public prosecutions;
(b) administering the Prosecutions Division;
(c) advising the Secretary for Justice on all matters with implication of criminal law, including proposed legislation and law reform;
(d) conducting criminal cases in court;
(e) advising law enforcement agencies, and other branches of government, on the enforcement and implementation of criminal law;
(f) developing and promoting prosecution policy;
(g) representing the Prosecutions Division in dealings with the legislature, the legal profession, the media and the public; and
(h) devising initiatives to promote the public image of the Prosecutions Division.

The successful candidate will be appointed as Law Officer, initially to fill the post of the Director of Public Prosecutions but may be subject to transfer to other Law Officer posts in the Department of Justice.

The Person
Candidates should -

(a) be qualified either as barristers or solicitors in a recognised jurisdiction* as stipulated under Section 2A and Schedule 2 of the Legal Officers Ordinance;
(b) possess substantial knowledge and experience in criminal law and prosecutions work;
(c) possess an ability to produce constructive ideas in formulation of policy;
(d) possess excellent qualities of judgement and leadership. Management experience will be a considerable advantage;
(e) have good communication and inter-personal skills; and
(f) have strong command of written and spoken English. An ability to speak, read and write Chinese would be an advantage.

Persons who are not permanent residents of the Hong Kong Special Administrative Region may also apply but will be appointed only when no suitable and qualified candidates who are permanent residents are available.

* The recognised jurisdictions are Hong Kong, the United Kingdom, the States and Territories of the Commonwealth of Australia, the Territories and Provinces of Canada (except Quebec), New Zealand, the Republic of Ireland, Zimbabwe and Singapore.
The successful candidate will be expected to take up his or her duties within 2017.

**Remuneration**

The successful candidate will be appointed on civil service agreement terms for three years, which is renewable at Government’s discretion.

Law Officer is ranked at DL6 on the Directorate (Legal) Pay Scale. On appointment, the successful candidate will receive a monthly salary of HK$238,750. The package includes an end-of-agreement gratuity, vacation leave with leave passage allowance, medical and dental benefits, housing benefits (subject to meeting the eligibility criteria stipulated in the relevant civil service regulations), and other benefits commensurate with a position of such seniority. The appointee will be subject to the provisions of the Mandatory Provident Fund Schemes Ordinance (Cap. 485) and will be required to make employee’s contribution to a Mandatory Provident Fund (MPF) scheme.

Upon satisfactory completion of the agreement, the Director of Public Prosecutions will be eligible for an end-of-agreement gratuity which, when added together with the Government’s contribution to the MPF scheme, equals 25% of the total basic salary of the post drawn during the agreement period.

**How to Apply**

Letter of application, which must state in detail why the applicant considers himself or herself suitable for the post, together with a full curriculum vitae, should be sent to Appointments Unit, Room 941, 9/F, High Block, Queensway Government Offices, 66 Queensway, Hong Kong or by email to gman@doj.gov.hk. For enquiries, please call Miss Grace MAN on 2867 2360. The closing date of application is 3 July 2017. Candidates who are selected for interview will normally receive an invitation in a month from the closing date of application.

ALL APPLICATIONS WILL BE HANDLED IN STRICT CONFIDENCE.

**General Notes**

(a) Civil service vacancies are posts on the civil service establishment. Candidates selected for these vacancies will be appointed on civil service terms of appointment and conditions of service and will become civil servants on appointment.

(b) As an Equal Opportunities Employer, the Government is committed to eliminating discrimination in employment. The vacancy advertised is open to all applicants meeting the basic entry requirement irrespective of their disability, sex, marital status, pregnancy, age, family status, sexual orientation and race.

(c) The information on the salary is for reference only and it may be subject to changes. The entry pay, terms of appointment and conditions of service to be offered are subject to the provisions prevailing at the time the offer of appointment is made.

(d) Where a large number of candidates meet the specified entry requirements, the Department of Justice may devise shortlisting criteria to select the better qualified candidates for further processing. In the circumstances, only shortlisted candidates will be invited to attend the selection interview.

(e) Personal data provided by job applicants will be used strictly in accordance with Department of Justice’s personal data policies, a copy of which will be provided immediately upon request.

(f) It is Government policy to place people with a disability in appropriate jobs wherever possible. If a disabled candidate meets the entry requirements, he/she will be invited to attend the selection interview without being subject to any further shortlisting criteria.

(g) Civil service vacancies information contained in this column is also available on the GovHK on the Internet at http://www.gov.hk.
Worldwide Search for Talent

City University of Hong Kong is a dynamic, fast-growing university that is pursuing excellence in research and professional education. As a publicly-funded institution, the University is committed to nurturing and developing students’ talents and creating applicable knowledge to support social and economic advancement. The University has seven Colleges/Schools. As part of its pursuit of excellence, the University aims to recruit outstanding scholars from all over the world in various disciplines, including business, creative media, energy, engineering, environment, humanities, law, science, social sciences, veterinary sciences and other strategic growth areas.

The School of Law has three goals: becoming a world-renowned centre for research and teaching of law, equipping students with global knowledge, skills and perspectives; and establishing a trusted relationship with local and international legal establishments. These goals are reflected in the composition of the faculty, the curriculum and enrichment activities. The School has also developed special programmes for judges from Mainland China, including LLM and JSD programmes. These appointments are part of a strategy to enhance the School’s research performance. It has recruited excellent talents at all levels in recent years and these appointments represent a determined effort to increase the size of faculty by recruiting high calibre staff.

It is the School’s goal to provide quality legal education for students and to broaden their horizons. The School offers a broad range of degree programmes: LLB, JD, LLMArbDR, LLM and PCLL.

Applications and nominations are invited for candidates offering expertise in all areas of law, in particular: Family Law, Environmental Law, Equity and Trust and Tort Law.

Chair Professor/Professor/Associate Professor
School of Law [Ref. B/122/05]

Requirements: A PhD or equivalent qualification is normally required. Candidates must have a superior academic record, with demonstrable evidence of, or a strong potential for, excellence in scholarly research and teaching. They should in addition have the ability and willingness to contribute to the intellectual and scholarly life of the faculty community and to the University more generally.

Salary and Conditions of Service
Remuneration package will be driven by market competitiveness and individual performance. Excellent fringe benefits include gratuity, leave, medical and dental schemes, and relocation assistance (where applicable). Initial appointment will be made on a fixed-term contract.

Information and Application
Further information on the posts and the University is available at http://www.cityu.edu.hk, or from the Human Resources Office, City University of Hong Kong, Tat Chee Avenue, Kowloon Tong, Hong Kong [Email: hrojob@cityu.edu.hk/Fax: 2788 1154 or 3442 0311].

To apply, please submit an online application at http://jobs.cityu.edu.hk, and include a current curriculum vitae. Nominations can be sent directly to the Human Resources Office. Applications and nominations received by 30 June 2017 will receive full consideration and only shortlisted applicants will be contacted. The University’s privacy policy is available on the homepage.

City University of Hong Kong is an equal opportunity employer and we are committed to the principle of diversity. Personal data provided by applicants will be used for recruitment and other employment-related purposes.

Worldwide recognition ranking 55th, and 4th among top 50 universities under age 50 (QS survey 2016), 1st in Engineering/Technology/Computer Sciences in Hong Kong (Shanghai Jiao Tong University survey 2016); and 2nd Business School in Asia-Pacific region (UT Dallas survey 2016).
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MEET THE TEAM

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

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

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

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

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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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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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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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Legal Director
› 8+ PQE
› Private Equity House
A private equity house is seeking to take up a new lawyer to join the HK or London Office. You will join the compliance team to lead the compliance program. You will join a dynamic team with an excellent reputation in the market.

Regional Counsel
› 3+ PQE
› Leading Asset Manager
A global asset manager is currently seeking a compliance lawyer to join its legal team. You will work closely with the business and other teams in the company.

General Counsel
› 10+ PQE
› Hedge Fund
A hedge fund is seeking a new General Counsel to join its team. You will work closely with the senior management team and key business heads. You will oversee a variety of matters from fund formation to investments, administration, legal matters, advertising, documentation, and data privacy matters.

Compliance Director
› 8+ PQE
› International Law Firm
A leading international law firm is seeking a new Compliance Director to join its team. You will be responsible for ensuring compliance with local regulatory guidelines.

Legal Counsel
› 3-7 PQE
› Leading Asset Manager
A leading asset manager is currently seeking a new lawyer to join its team. You will work closely with the business and other teams in the company.

Corporate & Regulatory Lawyer
› 2-4 PQE
› US Law Firm
A US law firm is currently seeking a new lawyer to join its team. You will be responsible for ensuring compliance with local regulatory guidelines.

Regional Counsel
› 3+ PQE
› European Multinational
A multinational company is currently seeking a new lawyer to join its team. You will work closely with the business and other teams in the company.

Banking & Finance Senior Associate
› 4 PQE
› International Law Firm
A leading international law firm is currently seeking a new lawyer to join its team. You will be responsible for ensuring compliance with local regulatory guidelines.

Soraya Tennent, Consultant, Legal Support
Soraya has over 6 years of recruitment experience, specialising in in-house lawyers and paralegals at all levels. She has worked with a wide range of clients, including leading and sizable law firms, private and listed companies, and global and local financial institutions. Soraya graduated with a LLB graduate and worked in a leading law firm and a global insurance company. She has 2 years of recruitment experience in the areas of legal and business services.

Olga Yung, Regional Director, Financial Services
Olga has been specialising in legal recruitment for over ten years, with a focus on financial services clients. She has an outstanding proven track record in the financial industry and has worked with a wide range of clients, including leading and sizable law firms, private and listed companies, and global and local financial institutions. Olga 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 in Hong Kong.

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Soraya has over 6 years of recruitment experience, specialising in in-house lawyers and paralegals at all levels. She has worked with a wide range of clients, including leading and sizable law firms, private and listed companies, and global and local financial institutions. Soraya graduated with a LLB graduate and worked in a leading law firm and a global insurance company. She has 2 years of recruitment experience in the areas of legal and business services.

Olga Yung, Regional Director, Financial Services
Olga has been specialising in legal recruitment for over ten years, with a focus on financial services clients. She has an outstanding proven track record in the financial industry and has worked with a wide range of clients, including leading and sizable law firms, private and listed companies, and global and local financial institutions. Olga 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 in Hong Kong.

Soraya Tennent, Consultant, Legal Support
Soraya has over 6 years of recruitment experience, specialising in in-house lawyers and paralegals at all levels. She has worked with a wide range of clients, including leading and sizable law firms, private and listed companies, and global and local financial institutions. Soraya graduated with a LLB graduate and worked in a leading law firm and a global insurance company. She has 2 years of recruitment experience in the areas of legal and business services.

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Private Practice

**LITIGATION/REGULATORY COUNSEL/PARTNER**  
**HONG KONG**  
4-7 PQE  
US firm seeks a senior litigation lawyer with expertise in SFC/Regulatory matters to lead a thriving practice. The firm has an outstanding non-contentious team, but is now seeking to build out its litigation capability. (HKL 15206)

**CORPORATE FINANCE**  
**HONG KONG**  
1-6 PQE  
US law firm expanding its corporate practice and looking to bring on a junior to mid-level associate to work on corporate transactional work. Great opportunity for lawyers to move away from corporate finance work and also learn into private fund formation. No Chinese required. (HKL 15234)

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

**CORPORATE**  
**HONG KONG**  
4-7 PQE  
Opportunity with an off-shore law firm for a mid-level associate to work on corporate transactional work. Great opportunity for lawyers to move away from corporate finance work and also learn into private fund formation. No Chinese required. (HKL 15234)

**M&A PRIVATE EQUITY**  
**HONG KONG**  
2-4 PQE  
Top tier law firm expanding its US corporate practice. This team offer a mix of public/private M&A working with global corporations. You will need strong academics and training from an international law firm. This position offers NY rates. (HKL 14313)

**EMPLOYMENT**  
**HONG KONG**  
1-4 PQE  
US law firm keen to develop its employment department with the addition of a junior associate. You will join a solid team focusing on non-contentious matters, linking up with corporate transactions. Hong Kong qualified required. (HKL 15192)

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

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Email: c.park@alsrecruit.com

Georgeanna Mok  
Tel: +852 2920 9101  
Email: g.mok@alsrecruit.com

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

www.alsrecruit.com
**Funds Lawyer**

**GLOBAL ASSET MANAGER**

OAA/576350

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

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

**FINANCIAL SERVICES**

**Compliance Advisory, AVP/VP, Investment Banking**

**TOP US BANKING GROUP**

QDP/575640

This top tier investment bank is looking to hire into their well renowned compliance team. The role will support the investment banking and capital markets arm of the business in APAC. You will report directly into the compliance director and work closely with both the front line and the regulators. You must have a strong investment banking background with in-depth product knowledge and a good understanding of the regulatory environment in Hong Kong and across APAC.

**Key Requirements:**
- A minimum of five years’ relevant investment banking & capital markets compliance experience
- Relevant working experience in HKMA and SFC is preferred
- A good knowledge and experience in dealing with various regulatory framework in various jurisdictions in APAC
- Chinese languages are preferable

**SVP Compliance**

**LISTED HK FINANCIAL FIRM**

WDM/571960

A listed HK financial firm is hiring a SVP to lead the compliance team for their securities business. This person will have two direct reports and will have ultimate ownership for full compliance with all SFC and HKMA regulations impacting the securities business. Primary coverage areas will include ownership of the firms’ relationship with regulators, leading operational compliance professionals, developing the best practices and policies for the business and directly advising senior stakeholders and front office professionals.

**Key Requirements:**
- A minimum of 10 years’ experience in securities or investment banking compliance, with expert knowledge of SFC regulated activities
- Prior experience in leading teams
- Excellent poise and ability to build strong business relationships with senior stakeholders
- Fluency in English and Cantonese is essential, Mandarin is preferred

**Legal Professionals**

**FUNDS LAWYER**

**GLOBAL ASSET MANAGER**

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**FINANCIAL SERVICES**

**DEPUTY HEAD OF FINANCIAL CRIME COMPLIANCE**

**GLOBAL PRIVATE BANK**

WDM/574580

Highly regarded European Private Bank is seeking a senior financial crime compliance professional to assist in leading the Anti Money Laundering (AML) teams. This person will directly advise business teams on matters of AML risk and also work to streamline operational efficiency in the on-boarding process. Additionally this person will lead junior operational team members and act as a mentor for the AML/KYC teams.

**Key Requirements:**
- Expert knowledge of financial crime risk with particular expertise in the private banking/wealth management sector
- Demonstrated experience in leadership role within AML / financial crime compliance
- ACAMS Certification and Legal qualification would be preferred
- Fluency in English, Cantonese and Mandarin is essential

**COMPLIANCE ADVISORY, ASSOCIATE DIRECTOR/VP**

**BOUTIQUE EUROPEAN BANK**

QDP/562210

Exciting opportunity to join an established European banking group in a leading role on regulatory and business advisory compliance matters. This bank has a strong corporate banking platform with a growing markets piece. This role will report into the head of compliance and guide the Hong Kong business on compliance matters.

**Key Requirements:**
- A minimum of eight years’ experience in a senior compliance role of a banking or financial institution
- Familiar with general products and services offered in markets, corporate banking, trade & commodity finance and corporate finance advisory businesses
- Strong grasp of regulatory requirements, in particular, of the HKMA and SFC
- Fluency in English and Cantonese is essential, Mandarin is preferred

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

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Corprate M&A/PE
3-6 PQE | Beijing
A fantastic opportunity for a US admitted associate with solid M&A/PE experience to join this top tier international firm. You will represent both Chinese and non-Chinese clients on inbound and outbound cross-border transactions, including share acquisitions and disposals, JVs and going private transactions. English and Mandarin essential. HKL4534

Insolvency Litigation
3-6 PQE | Hong Kong
An excellent opportunity for an Insolvency Litigation Associate to join this leading law firm. You will work with a partner who is recognised as an expert in this field on complex international insolvencies, restructurings and security enforcements. You will have experience in a broad range of commercial and insolvency related disputes. Financial acumen will be considered an advantage. HKL4527

Banking & Finance
2-6 PQE | Hong Kong
An exciting opportunity for an ambitious associate to join the growing Finance practice of this premier law firm, to work on a diverse range of matters. The successful candidate must have experience in general banking, asset finance and/or structured finance work. Ideally English qualified/admitted. Experience in Hong Kong/Asia with Chinese language skills an advantage. HKL4542

Debt Capital Markets
2+ PQE | Hong Kong
This is a fantastic opening for a lawyer to join a leading regional practice, to work on MTN programmes and advise sponsors and issuers on a variety of global debt capital markets transactions, and corporate finance matters such as takeovers, private equity, JVs and regulatory compliance. Ideal candidates will have experience gained with a premier practice. Mandarin and Cantonese language skills are essential. HKL4529

Funds and Corporate M&A
3-6 PQE | Hong Kong
This leading law firm seeks an Associate who is a good team player with experience in general corporate, M&A and/or funds related work to join their Funds and Corporate practice. Admitted in a common law jurisdiction with excellence in English, you will also be ready to participate in business development activities. Experience in Asia an advantage. HKL4543

Conveyancing
3+ PQE | Hong Kong
This international firm seeks a self-motivated lawyer to handle a variety of real estate transactions including project conveyancing. You will be responsible for drafting and approving real estate documentation and the perusal of title deeds and approving title. Clients include international developers, real estate PE funds and corporate investors. Mandarin language skills and good commercial acumen are required. HKL4524

Insolvency Litigation
2+ PQE | Hong Kong
This is an excellent opportunity to join a leading team to work on some of the largest and most complex litigation matters in Asia Pacific and internationally. The team works on all aspects of the investigation, analysis, strategy, litigation and resolution of legal claims to achieve outstanding results. The successful candidate will be self-motivated with strong analytical and interpersonal skills. Experience in finance is an advantage. HKL4529

Corporate Finance
2+ PQE | Hong Kong
This leading international firm seeks a lawyer to join their award-winning Corporate Finance practice, advising clients on the full range of public and private financings. In a rapidly changing capital markets environment, you will structure new securities and transactions to help clients meet their business goals. Clients include investment banks, PE firms, government and government entities. The successful candidate will have excellent Mandarin language skills. HKL4532

Capital Markets
3-5 PQE | Hong Kong
This truly top tier global firm is seeking a lawyer to join their Capital Markets practice. Advising clients on all types of securities transactions, regulatory compliance and corporate governance issues, this leading practice has a history of representing clients in some of the most innovative capital-raising transactions. The successful candidate will be Hong Kong qualified with excellent Mandarin language skills. HKL4563

ECM/DCM
3+ PQE | Sydney
This premier firm is seeking an individual with capital markets experience to join their highly regarded team in Australia. You will have solid experience/exposure to project finance, equity/debt capital markets, leveraged finance and restructuring. You be US qualified with first rate academics and top tier law firm experience. HKL4540

Competition
2-6 PQE | London
This is an excellent opportunity for a true competition lawyer admitted in EU you will have experience of multijurisdictional merger control and antitrust investigations. The ideal candidate will be dynamic and comfortable working in a small team. Strong academics, ideally including postgraduate diploma in competition law. HKL4547

This is a selection of our current vacancies; for more information in complete confidence, please call the Hong Kong office on +852 2503 2500 or email us at nigel@atticus-legal.com or sandra@atticus-legal.com

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Register your interest for Hong Kong’s premier Private Practice market report

The Taylor Root Hong Kong Private Practice annual salary guide and market report is the most comprehensive publication of legal salaries and recruitment trends in Hong Kong and North Asia. Each year, our report is used by many lawyers to determine how their salary measures against the market and is also a valuable resource for law firms to benchmark salary levels.

If you would like to find out about the 2017 report and how to get a copy, please register at taylorroot.com/asia or get in touch with a member of our team for a confidential discussion.

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PRIVATE WEALTH  HONG KONG  5-10 years
Top tier investment bank seeks a mid to senior lawyer to cover a wide range of wealth management products. Candidates with a regulatory, funds, derivatives or broad banking background who are familiar with the SFO will be considered. Chinese skills are preferred. HKL5073

CORPORATE / M&A  HONG KONG  5+ years
Bio-medical technology company is seeking a lawyer with strong experience in commercial contracts, M&A transactions & familiarity with the listing rules. Prior experience with PRC companies & VIE structures advantageous. Mandarin & Cantonese skills are essential. HKL5785

BANKING / DCM  HONG KONG  4-8 years
Bulge bracket bank is looking for a strong mid level lawyer with banking & finance and/or DCM experience. Experience in leveraged acquisition finance would be ideal. US Securities experience would also be a strong advantage. Chinese skills not essential but would be preferred. HKL6379

MEDIA / COMMERCIAL  HONG KONG  4-8 years
In-house opportunity for a media/IP lawyer to join this HK conglomerate. You will work on a broad range of matters - media & entertainment, IP, commercial & regulatory. Prior exposure to media / commercial IP work preferred. Fluent English, Cantonese & Mandarin essential. HKL6371

CORPORATE / COMMERCIAL  HONG KONG  3-5 years
Listed technology company seeks a legal counsel with knowledge of the listing rules & general corporate experience from a reputable firm. A great opportunity for candidates who are keen on thriving in a young, vibrant & entrepreneurial environment. Mandarin skills essential. HKL6497

PRIVATE EQUITY  HONG KONG  3-5 years
Well known PRC financial institution seeks a mid-level lawyer with PE experience. You will advise on PE investment projects and M&A transactions in HK & China. Both HK & PRC qualified lawyers currently based in HK will be considered. Business level Mandarin is essential. HKL6470

CORPORATE / COMMERCIAL  HONG KONG  2-5 years
British MNC seeks a PRC qualified lawyer to oversee the legal and regulatory matters of the Group in China. Solid commercial experience gained from law firm/in-house, native Mandarin skills as well as strong communication skills are essential. Willingness to travel to China is required. HKL6490

FINANCE ASSOCIATE/COUNSEL  HONG KONG  5-12 years
US law firm seeks a finance lawyer with at least 5 PQE up to Counsel level with strong experience in special situations and distressed debt from a peer firm. Fluent Mandarin required, strong candidates without Mandarin may also be considered. NY rates on offer. HKL6495

CORPORATE COUNSEL  HONG KONG  6-8 years
Reputable offshore firm with established presence in HK is looking for a senior associate or Counsel. Strong corporate M&A/PE experience from a reputable onshore firm would be considered. Commonwealth qualification would be ideal and Chinese skills are not required. HKL6522

LITIGATION  HONG KONG  5-12 years
UK law firm is looking for a senior associate with experience in commercial litigation & regulatory investigations from a strong practice in HK. Prior experience representing PRC clients in litigation advantageous. HK qualification & native/ fluent Mandarin language skills essential. HKL6378

FUNDS  HONG KONG  3+ years
Our client seeks a corporate/funds associate with at least 3 years’ experience & fluent English language skills. An excellent opportunity for a lawyer who is looking to expand their skill-set to include funds related transactions. Both offshore & onshore firm experience considered. HKL5891

LITIGATION  HONG KONG  1-5 years
International firm seeks a junior to mid-level litigator to handle general commercial litigation & shipping disputes matters. Associates with either experience are welcomed. Excellent opportunity to join a well-established platform with a great culture. Fluent English & Chinese required. HKL6217

CORPORATE NQ  HONG KONG  0-2 years
White shoe law firm seeks a junior to join its Corporate practice. Second year trainees qualifying in 2017 will also be considered for a position upon qualification. Strong IPO experience from an international law firm and fluent Mandarin skills essential. NY rates on offer. HKL6481

LITIGATION PARTNER  HONG KONG  10-20 years
Top tier international firm is looking for a disputes partner with significant exposure to SFC & ICAC disputes. This is an excellent opportunity for a partner who is looking to lead a practice and manage a team. This firm is open to a Counsel looking for the step up to partnership. HKL6404

This is a small selection of our current vacancies. Please refer to our website for a more comprehensive list of openings.
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Shaping the careers of city professionals since 2002, Oliver James Associates partners with leading law firms and blue-chip multinationals worldwide. Our consultants have unrivalled knowledge of their vertical markets and networks that span the global legal sector, enabling you to access the most exclusive opportunities in the industry. Working from 12 international locations, we represent legal professionals within the Asia-Pacific regions, the US, UK and the EU, placing them in Associate, Legal Counsel, General Counsel and Partner-level positions. Embrace your future, transform your career and contact Oliver James Associates today.

Whether you are seeking your next career move now, or you would like to have a confidential discussion about the legal market to feel more informed, please contact us today.

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