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Secretary for Commerce and Economic Development

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The joint enterprise doctrine was established by the Privy Council in 1985 in the Hong Kong case of Chan Wing Siu [1985] 1 AC 168. In that case, Mr. Chan was part of a gang who went into a house to commit robbery. During the robbery, his fellow gang member stabbed the victim to death. While it was clear that Mr. Chan did not kill the victim himself, the Privy Council upheld his conviction for murder, holding that for an accomplice to be guilty of murder, the prosecution need only establish that he could foresee what resulted as a possible consequence of the common design being carried out.

While this has been the common law position in both Hong Kong and England & Wales for over three decades, the UK Supreme Court recently abolished the doctrine in Jogee ([2016] UKSC 8), holding Chan Wing Siu took a wrong turning and that the introduction of the doctrine was based on an incomplete and erroneous reading of the case law, coupled with generalised and questionable policy arguments. When invited to follow the UKSC's Jogee decision in Chan Kam Shing, FACC 5/2016, the Hong Kong Court of Final Appeal declined, holding Chan Wing Siu had not taken any "wrong turning". To understand the CFA's holding in Chan Kam Shing, take a look at the Criminal Law feature (p. 34).

Elsewhere in the March issue, the Family Law piece (p. 40) examines the recent YBL v LWC, CACV 244/2015 decision, in which the Court of Appeal comprehensively reviewed the judgment summons procedure under r. 87 of the Matrimonial Causes Rules (Cap. 179A), holding that certain features of the procedure were incompatible with the Hong Kong Bill of Rights Ordinance (Cap. 383); this article concludes by highlighting a number of important changes to the procedure that will flow from this decision. Also included is the On China feature (p. 46), which provides an overview of existing regulatory structures in the EU and US that may be implicated by Chinese outbound investment. The authors of this piece offer useful tips on how to minimise deal-related regulatory risks, which seem particularly relevant given the growing demand of Chinese outbound investment in the EU in recent years.

Also, for readers leading small to medium-sized firms, the Practice Management section (p. 72), which is the first installment of a two-part series, may be a piece worth reading. This installment highlights a series of strategic and operational considerations for small and medium-sized firm leaders and how these are changing with intensifying competition in Hong Kong. The second installment will explore what law firm leaders need to do, including moving from cash flow management to revenue generation as an outgrowth of this and a structural shift in organisational mindset.

Cynthia G. Claytor
Editor, Hong Kong Lawyer
Legal Media Group Thomson Reuters
cynthia.claytor@thomsonreuters.com
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**Enquiry:**
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**The 110th Jubilee Dinner Reception**

for celebrating the 110th Anniversary of the Law Society

**13 May 2017**

**Venue:** Grand Hall,
Hong Kong Convention and Exhibition Centre

**Enquiry**
Tel: (852) 2846 0583, Ms Dove Liu
Email: adegag@hklawsoc.org.hk
Generosity: Pro Bono and Community Services

At the 2017 Ceremonial Opening of the Legal Year on 9 January, I took the opportunity to reiterate the importance of generosity to a true legal professional to engage in pro bono and community service work. I urge support on three fronts – from law firms, from all other relevant institutions including the Government, the Judiciary, NGOs and charitable organisations, as well as from individual practitioners.

Many law firms have already been actively promoting a corporate culture that encourages their lawyers to do pro bono work. The initiatives vary with different firms and generally include the following:

- setting up a dedicated internal committee to focus efforts;
- developing a working relationship with public interest institutes to understand their needs;
- serving on boards of directors of community organisations;
- identifying suitable pro bono and community service opportunities;
- ensuring the quality of pro bono work is no less than any other paid work (i.e., same level of professional support in terms of staff and supervision and same appraisal process);
- allocating designated funds (e.g., a fixed proportion of the annual surplus, for advancing pro bono causes);
- allowing staff time off to participate in charitable activities;
- matching hours of voluntary work done for a charity by staff with donations by the firm.

Hopefully, an overview of some of these initiatives will help inspire those firms that are considering a move in this direction to develop an approach that suits their own set up.

At the regulatory level, it is interesting to note that a number of jurisdictions have implemented measures to raise awareness of or even to mandate pro bono contribution by members of the legal profession. In 2012, the New York State Court of Appeals adopted a new rule requiring applicants for admission to the New York State Bar to perform 50 hours of pro bono services. Other state bars including California, Montana, Connecticut and New Jersey are considering a similar pre-admission pro bono requirement.

In Singapore, the Legal Profession (Mandatory Reporting of Specified Pro Bono Services) Rules 2015 (“Reporting Rules”) came into effect in March 2015. The Reporting Rules serve to raise awareness of the role of lawyers in their contribution to pro bono work in society. Upon an application for a practising certificate, every Singapore advocate and solicitor is required to report the time spent on pro bono work in the preceding year. As it is only a reporting obligation, lawyers will not be subject to sanctions or adverse consequences for a report of zero pro bono hours.

We are not advocating any kind of mandatory obligations in relation to pro bono work, but it is worth noting that the pro bono culture is strengthening its shape in different parts of the world in various forms.

At the individual level, we do not yet have comprehensive statistics to compare the commitment of lawyers in Hong Kong to pro bono work with lawyers in other jurisdictions. We sent a questionnaire on pro bono work to all members, along with the application forms for the 2017 practising certificate. We have received a 17 percent response rate so far. Out of the responses received, the majority spent between 5 to 20 hours of pro bono work in 2016.

Mandatory reporting of pro bono work has been implemented in a number of states in the US. According to the published reports of some of these states, the average hours of pro bono work per attorney were impressive. For example, for the period 2009 to 2012, the average hours of pro bono work per attorney per year (including both active and inactive attorneys) ranged from 32 to 69 in Hawaii, 24 to 27 in Illinois, 31 to 34 in Maryland and 44 to 50 in Nevada. If we can achieve an average of 30 hours of pro bono work per solicitor every year (i.e., 2 to 3 hours every month), based on about 9,000 practising certificate holders as of the end of 2016, we will already be able to offer 270,000 hours of pro bono work as a profession!
慷慨行善：公益及社會服務

在1月9日的2017法律年度開幕典禮上，我重申真正的法律專業人士應彰顯慷慨美德，參與義務公益服務。我促請三方面作出支持 — 律師行；包括政府、司法機構、非政府機構、慈善組織等相關機構及個別執業者。

許多律師行已經積極推動鼓勵律師從事公益工作的企業文化，舉措各異，一般而言包括以下內容：

- 設立專責內部委員會，集中力量；
- 與公共利益機構建立工作關係，以了解他們的需要；
- 擔任社區組織董事會成員；
- 尋找合適的公益和社區服務機會；
- 確保公益工作的質量不低於任何其他有償工作(即在工作人員和監督的專業支援水平一致，相同的評估過程)；
- 分配特定資金(如年度盈餘的固定比例用於促進公益事業)；
- 允許員工休假參加慈善活動；
- 工作人員為慈善做志願工作的時間，律師行捐贈同等善款。

綜觀以上措施，希望有助激勵那些正在考慮採取此方向的律師行，建立適合它們的方式。

在監管層面，值得留意，一些司法管轄區已經採取措施，提高法律專業人員對公益貢獻的認識，甚至要求他們必須作出公益貢獻。2012年，紐約州上訴法院通過了一項新規則，要求申請人必須提供50小時公益服務，才能取得紐約州律師執業資格。例如，2009年至2012年期間，每年每名律師的公益工作平均時數(包括在職律師和非在職律師)在夏威夷為32至69小時，伊利諾伊州為24至27小時，馬里蘭州為31至34小時，內華達州為44至50小時。如果我們每位律師每年做的公益工作時數平均能達到30小時(即每月2至3小時)，以截至2016年年底約9,000名執業證書持有人計算，我們的專業將能夠提供270,000小時的公益服務！

法律從業人員可以通過許多途徑回饋社區。律師會舉辦不同的公益和社區活動，為會員提供廣泛的選擇，以配合他們的興趣和時間。除了透過律師會的免費法律援助熱線和免費法律諮詢服務，為市民提供免費法律協助外，會員亦可透過其他律師會的活動增進市民的法律知識，例如學校講座及非政府機構研討會、報章撰稿，在年度活動，「青Teen講場」助理學生作小組討論，或在律師會法律周期間就法律相關主題發言。此外，家庭活動，如訪問老人院及教授貧困兒童英語，亦可供希望與家人分享社區服務經驗的成員參加。律師會全年舉辦這些活動，並在每月通告中公佈，就我們如何將這些活動與公益和社區工作的需求聯繫起來，歡迎各位給予意見。

There are many avenues through which legal practitioners can give back to community. The Law Society has been organising different pro bono and community activities offering a wide range of choices for members to suit their interests and availability. Apart from the provision of free legal assistance to the public through the Law Society’s Free Legal Helpline and Free Legal Advice Consultation Service, members may also help enhance the legal knowledge of the public through other Law Society activities like giving school talks and seminars for NGOs, writing newspaper articles, facilitating group discussions of students in our annual Teen Talk event or giving community presentations on law related topics during the Law Society’s Law Week. Further, family activities like visits to the homes for the elderly and teaching English to underprivileged children are also available for members who wish to share the experience of serving the community with their families. These Law Society activities are organised throughout the year and publicised in our weekly Circulars. Your comments on how we can align these activities with your needs in relation to pro bono and community service work are most welcome.

www.hk-lawyer.org
Héctor Armengod is a partner in the Brussels office of Latham & Watkins and a member of the firm’s global Antitrust & Competition Practice. He focuses his practice on EU and Spanish competition law. In particular, Mr. Armengod represents clients in merger control proceedings before the European Commission and the Spanish competition authority and coordinates merger control filings in multiple jurisdictions globally. He also represents clients in major European Commission cartel and Art. 102 TFEU investigations. Mr. Armengod has extensive experience in various sectors including pharmaceuticals, medical devices, IT, automotive and retail.
Les Carnegie
Latham & Watkins, Partner

Les Carnegie is a partner in the Washington, D.C. office and co-head of the Export Controls, Economic Sanctions & Customs Practice. He has extensive experience representing clients before the Committee on Foreign Investment in the United States (“CFIUS”). Mr. Carnegie advises US and non-US clients on issues of national security arising in international trade, including US economic sanctions, export controls, and national security reviews of foreign investments in the United States by CFIUS. Mr. Carnegie has counseled foreign government-owned buyers, private equity investors, and public and private companies in a variety of industries on negotiating resolutions of challenging CFIUS reviews.

Les Carnegie
瑞生國際律師事務所合夥人

Les Carnegie是華盛頓特區辦公室的合夥人，也是出口管制，經濟制裁與海關業務部門的合夥人。他在美國外國投資委員會（CFIUS）有豐富代表客戶的經驗。Carnegie先生就國際貿易中出現的國家安全問題向美國和非美國客戶提供諮詢意見，包括美國經濟制裁，出口管制以及CFIUS對在美國的境外投資的國家安全審查。Carnegie先生曾為外國政府買家，私募股權投資者以及各種行業的公共和私營公司提供諮詢，就具有挑戰性的CFIUS審查決議進行談判。

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.

Alan Hodgart
Hodgart Associates Ltd 董事總經理

Hodgart先生作為全球多個專業服務機構的資深策略變更顧問，其客戶群包括：許多國家中的大型專業服務機構(涉及各個主要專業範疇)，以及範圍廣泛的小型至中端市場企業，而法律市場是一個特別受關注的範疇。Hodgart先生為全球各地區(包括亞太區)的客戶提供服務。

Hodgart先生亦不時發表文章，論述各專業服務機構所面對的管理問題。他的兩本最近期著作分別為：Organizational Culture in Law Firms（Ark，2012）；及Strategies and Practice in Law firm Mergers (Legalease, 2005)。

在擔任現時的顧問工作以前，Mr. Hodgart是一位出色的單車職業運動員。

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.

Rob Ashing
Hodgart Associates Ltd 董事

Ashing先生在法律服務行業服務了超過15年，曾擔任專業服務機構的外部策略顧問，以及若干大型國際律師事務所的內部顧問。此外，Ashing先生曾經在英、美及非洲居住和工作。在他於2016年加盟Hodgart Associates之前，他曾經在亞太地區工作了9年，其中4年是在香港。

Ashing先生為全球各地的客戶提供顧問服務，協助他們訂制增長策略，並提供所需的支援。他本人尤其專長於業務和組織發展。

此外，Ashing先生曾經是Justice Centre Hong Kong董事會的其中一名成員。
Law Reform Commission Report on Sexual Offences Involving Children and Persons with Mental Impairment

The Law Reform Commission ("LRC") in April 2006 was asked to review the existing sexual offences under the criminal law. A sub-committee, chaired by Mr. Peter Duncan SC, was formed in June 2006. The Sub-committee published consultation papers in July 2008 (on establishment of a sex offenders register), December 2010 (on abolition of the common law presumption that a boy under 14 is incapable of sexual intercourse) and September 2012 (on rape and other non-consensual sexual offences).

In November 2016, the Sub-committee published another consultation paper. This latest paper is on sexual offences involving children and persons with mental impairment (the "Consultation Paper"), and is the fourth consultation paper issued under the terms of reference of the Sub-committee.

In the Consultation Paper, the LRC made a total of 41 recommendations. The sexual offences covered therein are largely concerned with the “Protective Principle” (ie, criminal law should give protection to certain categories of vulnerable persons against sexual abuse or exploitation). These vulnerable persons include children, persons with mental impairment, and young persons over whom others hold a position of trust.

The main recommendations contained in the Consultation Paper are:

(i) there should be a uniform age of consent in Hong Kong of 16 years of age, which should be applicable irrespective of gender and sexual orientation;

(ii) offences involving children and young persons should be gender-neutral with two separate types of offences, one involving children under 13 and the other involving children under 16, and capable of being committed by either an adult or a child;

(iii) the question of whether offences involving children aged between 13 and 16 should be of absolute liability should be a matter for consideration by the Hong Kong community;

(iv) consensual sexual activity between persons who are aged between 13 and 16 should remain to be criminalised while recognising the existence of prosecutorial discretion;

(v) new range of sexual offences involving children, which should be gender-neutral, and may be committed by either an adult or a child.

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(iii) the question of whether offences involving children aged between 13 and 16 should be of absolute liability should be a matter for consideration by the Hong Kong community;

(iv) consensual sexual activity between persons who are aged between 13 and 16 should remain to be criminalised while recognising the existence of prosecutorial discretion;

(v) new range of sexual offences involving children, which should be gender-neutral, and may be committed by either an adult or a child.
(v) the creation of a range of new offences involving children which are
gender-neutral, and which provide wider protection to children;
(vi) the creation of a new offence of sexual grooming to protect children
against pedophiles who might groom them by communicating with
them on a mobile phone or on the internet to gain their trust and
confidence with the intention of sexually abusing them;
(vii) the creation of a range of new offences involving persons with mental
impairment which would be gender-neutral and provide improved
protection; and
(viii) the question of whether there be legislation to deal with conduct
involving abuse of a position of trust in respect of young persons aged
16 or above but under 18 should be a matter for consideration by the
Hong Kong community.

The Law Society has reviewed the Consultation Paper with the assistance
of its Criminal Law and Procedure Committee. The Law Society had no
hesitation to support the Protective Principle. It also agreed that those
persons with mental impairments were vulnerable and should also be
protected against possible sexual exploitation. At the same time, however,
it pointed out certain issues which it considered should merit careful
legal analysis. The detailed views of the Law Society on the Consultation
Paper, together with its comments on the individual recommendations
of the LRC, can be found at: http://www.hklawsoc.org.hk/pub_e/news/
submissions/20170118.pdf.

(vi) 新訂一項為性目的誘識兒童的罪行以保護兒
童，防止戀童癖者藉流動電話或互聯網與兒童
通訊來進行誘識，以取得他們的信任和信心，
意圖對他們作出性侵犯；
(vii) 新訂一系列涉及精神缺損人士的罪行，這些罪
行無分性別，並可提供更佳的保護；及
(viii) 應否訂立法例處理涉及就年滿16歲但未滿18歲
的少年人濫用受信任地位的行為，這個問題應
交由香港社會考慮。

The Law Society will establish the Panel of Arbitrators of The Law
Society of Hong Kong ("Panel"). The Panel will be served as the sole
database for promotion of Solicitor-Arbitrators’ services in Hong Kong
and overseas jurisdictions.

Detailed information on the admission requirements and the
relevant ethical code are available via Circular 17-76(PA).
For application and enquiries, please contact the Law Society
at 2846 0584; or by email at arbitration@hklawsoc.org.hk.

PANEL OF ARBITRATORS OF THE LAW SOCIETY OF HONG KONG

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at 2846 0584; or by email at arbitration@hklawsoc.org.hk.
First Anniversary: Limited Liability Partnerships

One year has elapsed since the introduction of Limited Liability Partnerships (“LLPs”) for law firms in Hong Kong last March. There are currently 22 law firms practising as LLPs pursuant to the Legal Practitioners Ordinance. Eleven are Hong Kong law firms and 11 are registered foreign law firms, representing respectively 1.2 percent and 13.5 percent of the total number of Hong Kong firms and foreign firms. The uptake is modest but progressing steadily with five “conversions” to LLPs in the first month of implementation and then one to two new notifications nearly every subsequent month.

Once a firm has made its decision to operate as an LLP, the procedure to put the decision into effect is relatively simple:

• designate the partnership as an LLP by a written agreement between the partners;

• ensure that the requisite top-up insurance cover of at least HK$10 million per claim above the statutory professional indemnity level with no aggregate limit is in place;

• Notify the Law Society seven days prior to the firm’s commencement as an LLP in a prescribed form;

• ensure the name of the firm will include “Limited Liability Partnership”, “LLP” or “L.L.P.” and if it has a Chinese name, “有限法律責任合夥”; and the new name will be displayed clearly in all the firm’s stationery and websites;

• submit a commencement notification to the Law Society together with a declaration in relation to the compliance with the statutory top-up insurance requirement within 14 days of commencement as an LLP;

• obtain a confirmation from the Law Society on the filing of the commencement notification;

• submit an application for a revised business registration certificate from the Business Registration Office within seven days of the date of the Law Society confirmation;

• submit the revised business registration certificate to the Law Society as supporting evidence of the change of the name of the firm;

• send a notification to the existing clients of the firm within 30 days of it becoming an LLP ("existing client" is defined in the Ordinance as a person who is a client of the firm at the time the firm becomes an LLP); and

• notify clients of the overall supervising partner(s) for their particular matter within 21 days of acceptance of instructions and keep them so informed throughout.

壹周年：有限法律責任合夥

香港在2016年3月1日引入適用於律師行的有限法律責任合夥，時至今日已經满了一年。目前有22間按照《法律執業者條例》以有限法律責任合夥模式經營的律師行。11間是香港律師行，11間是註冊外地律師行，分別佔香港律師行總數及外地律師行總數1.2%及13.5%。數目不算多，但增幅穩定，實施第一個月，有五間「轉」為有限法律責任合夥，之後差不多每個月都有一至兩間以新合夥模式經營的知會。

律師行一旦決定以有限法律責任合夥模式經營，只需要進行相當簡單的程序就可以將決定付諸實現：

• 合夥人以書面協議指明合夥關係為有限法律責任合夥；

• 確保除了法定的專業彌償額外，亦備有法例規定的不少於每項彌償1,000萬港元的加額保險(總額不設上限)；

• 律師行以有限法律責任合夥模式開業前最少七天，以指定表格通知律師會；

• 確保律師行名稱包含Limited Liability Partnership、LLP或L.L.P.，如有中文名稱，則名稱包含「有限法律責任合夥」，並且律師行所有文案和網站俱清楚顯示新名稱；

• 以有限法律責任合夥模式開業後14天內，向律師會提交開業通知，並附上保證遵守法定加額保險規定的聲明；

• 向律師會索取確認收到開業通知的確認函；

• 在律師會確認函日期七天內提交申請表，向商業登記署申請經修訂的商業登記證；

• 向律師會提交經修訂的商業登記證，作為律師行已經改名的證據；

• 在律師行成為有限法律責任合夥後30天內，向現有當事人發出通知書(「現有當事人」在《條例》定義為在該律師行成為有限法律責任合夥時屬其當事人的人)；

• 在接受延聘處理某事宜的21天內，將至少一位該事宜的整體監督合夥人的身分，告知當事人，並在處理該事宜的整段期間，保持令該當事人知悉至少一位該事宜的整體監督合夥人的身分。
Monthly Statistics on the Profession
(updated as of 31 January 2017):

<table>
<thead>
<tr>
<th>Category</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Members (with or without practising certificate)</td>
<td>10,360</td>
</tr>
<tr>
<td>Members with practising certificate</td>
<td>8,931</td>
</tr>
<tr>
<td>(out of whom, 6,828 (76%) are in private practice)</td>
<td></td>
</tr>
<tr>
<td>Trainee Solicitors</td>
<td>1,049</td>
</tr>
<tr>
<td>Registered foreign lawyers</td>
<td>1,347</td>
</tr>
<tr>
<td>(from 32 jurisdictions)</td>
<td></td>
</tr>
<tr>
<td>Hong Kong law firms</td>
<td>871</td>
</tr>
<tr>
<td>(48% are sole proprietorships and 41% are firms with 2 to 5 partners, 10 are limited liability partnerships formed pursuant to the Legal Practitioners Ordinance)</td>
<td></td>
</tr>
<tr>
<td>Registered foreign law firms</td>
<td>81</td>
</tr>
<tr>
<td>(TI are limited liability partnerships formed pursuant to the Legal Practitioners Ordinance)</td>
<td></td>
</tr>
<tr>
<td>Civil Celebrants</td>
<td>2,076</td>
</tr>
<tr>
<td>Reverse Mortgage Counsellors</td>
<td>445</td>
</tr>
<tr>
<td>Solicitor Advocates</td>
<td>48</td>
</tr>
<tr>
<td>(43 in civil proceedings, 5 in criminal proceedings)</td>
<td></td>
</tr>
<tr>
<td>Student Members</td>
<td>71</td>
</tr>
<tr>
<td>Registered Associations between Hong Kong law firms and registered foreign law firms (including Mainland law firms)</td>
<td>36</td>
</tr>
</tbody>
</table>
Face to Face with

Gregory So GBS JP
Secretary for Commerce and Economic Development

By Cynthia G. Claytor

Mr. So, Secretary for Commerce and Economic Development, speaks about his career and the Commerce and Economic Development Bureau’s priorities for 2017, identifying opportunities for solicitors across the regional landscape.

Doom and gloom haunt the economic news like a spectre these days, and it seems as though each new week summons another fearsome shade. From the sharp deceleration of global trade to underperforming advanced markets, the armies of trade protectionism have been awakened, and are marching to the beat of de-globalisation. Arrayed against them, the world’s policymakers can do little more than wring their hands, and console each other that times are undeniably tough and many challenges lie ahead.

While acknowledging that Hong Kong’s economic outlook will be fraught with uncertainties arising from the current geo-political environment in the year to come, Mr. So, Secretary of the Commerce and Economic Development Bureau (“CEDB”), continues to fix his gaze upward – focusing on progress and collaboration and embracing his work and Hong Kong’s future with hope. From opportunities in intellectual property (“IP”) trading and tourism to those that will flow from the Belt and Road initiative, it appears that Hong Kong’s policy bureau chief will spare no effort in finding new ways and fashioning innovative policies to grow Hong Kong’s economy. Much work remains to be done, but his approach suggests that he is channelling the Lion Rock spirit as he sets to work each day.

Selected to Serve

When asked what prompted his move from the private to the public sector, Mr. So explained that it was unintentional and actually came about as a result of his involvement with the Democratic Alliance for the Betterment and Progress of Hong Kong (or the DAB).

While Mr. So is currently at the forefront of politics in Hong Kong, he revealed that he wasn’t always politically-minded. “Growing up in Hong Kong during the colonial era, no one really talked about politics or encouraged political debate in school. It wasn’t until I moved to Canada and joined a major solicitor’s firm that I developed an interest,” he recalls. It was the firm’s collegial culture and his colleagues’ penchant to share their political views and debate policies that piqued his interest.

Mr. So remained politically engaged when he returned to Hong Kong in the 1990s, indicating that in the latter years of his practice he was motivated to use his spare time to help the DAB with policy research. “My sole interest in joining the DAB was to assist with research; I had no interest or intention at the time of joining the government. But that’s life. It takes you in unexpected directions,” he said. Eventually, he was nominated to chair the DAB’s policy committee. From there he became a Central Committee member, then a Standing Committee member and then the DAB’s Vice Chairman.

“To make a long story short,” he quipped, “my transition to the public sector was the by-product of being tasked with nominating people to join the government. After submitting my list to the DAB leadership, someone asked whether I could also be placed on the list. After giving it some thought, I felt that...
whether the provisions are effective and reviewed from time to time to assess whether adjustments need to be made.”

**Bureau’s 2017 Priorities**

As the CEDB’s portfolio is quite broad, Mr. So provided a high-level overview of their 2017 priorities: from tourism to IP trading to the Belt and Road initiative, the CEDB’s roster is full.

**Tourism**

The first area up for discussion was Hong Kong’s tourism industry, which makes up five percent of the city’s gross domestic product (“GDP”). As a pillar industry, it also drives growth in other related sectors, including the retail, hotel and catering industries and contributes significantly to Hong Kong’s economy. While the number of visitor arrivals has more than doubled over the last decade, the tourism sector has faced a number of hardships in recent years due to the slowdown of the global economy, depreciated currencies and relaxed visa requirements for Mainland visitors in neighbouring countries. The situation has become more stable, but the outlook for the coming year remains challenging. Despite the lacklustre forecast, Mr. So remains optimistic about a number of initiatives the Government is supporting to enhance Hong Kong’s tourism appeal, including light shows, home-grown mega events and small-and-medium sized Meetings, Incentive Travels, Conventions and Exhibitions (“MICE”) events, among others. “My priority this year is to add on to the tapestry of Hong Kong’s tourist attractions and to create a more unique cultural experience for visitors,” he said.

As regards progress on the mega events front, Hong Kong has recently hosted the FIA Formula-E Hong Kong ePrix, the “Light Rose Garden-Hong Kong” art installation at Tamar Park and the Sun Hung Kai Properties Hong Kong Cyclothon, which hopefully can be expanded to the Pearl River Delta. With the current initiatives set in place, Mr. So is confident that Hong Kong can be turned into a mega event capital of Asia.

**IP Trading**

Another key area of focus is IP trading and harnessing Hong Kong’s potential to attract more business. Pointing to the City’s status as a major trading hub and as a global “super-connector” to the Mainland, Mr. So said he was “very bullish” on Hong Kong’s potential in this regard.

Over the years, Hong Kong has accumulated much experience in cross-border IP transactions, and has become a regional marketplace and service centre for activities ranging from copyright trading, licensing and franchising to design services and technology transfer. It is also a boon that Mainland IP is rapidly expanding, he explained. But for Hong Kong to fully capitalise on its collective professional experience and service centres, it must establish a robust IP protection regime, which the IP Trading Working Group has noted is “a prerequisite to any aspiration or credible bid to promote IP trading in the competitive environment of the global economy.”

In an effort to enhance Hong Kong’s IP protection regime, the Government has introduced amendments to the current patent legislation to reform and update Hong Kong’s patent system. Hong Kong will have its own independent patent system that enables applicants to file applications for standard patents directly in Hong Kong, without obtaining a patent in a designated patent office outside of Hong Kong first. The current “re-registration” system will continue to run in parallel, and applicants can still re-register standard patents that were granted by the State Intellectual Property Office of China, the European Patent Office and the United Kingdom Intellectual Property Office. The Government is forging ahead with preparations to implement the new patent system in 2019. The Government has also pledged to keep other components of Hong Kong’s IP regime (copyright, trade marks, registered design, etc) under constant review to ensure the system follows international
norms and is conducive to IP trading. Just this February, the Government kick-started the legislative process to prepare for the implementation of the international trade mark registration and management system under the World Intellectual Property Organization’s Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks in Hong Kong in 2019. While much work remains to be done, Mr. So believes a key to Hong Kong being able to maintain stable economic growth lies in its ability to transform into an IP trading hub.

Crossover Initiatives

The CEDB also actively supports cross-sectoral collaboration (or crossover) initiatives, with the aim of encouraging collaboration across industries, including the manufacturing, design, film, electronic games, comics and animation and garment industries. It is hoped that by creating links between different creative and innovative sectors, local businesses will develop more insights as to how new elements can be added to their existing products and services. We hope to encourage cross-industry synergies that will allow local businesses to enhance their brand competitiveness, Mr. So explained.

One of the ways in which the CEDB supports these initiatives is by arranging meetings amongst members of different industries. Mr. So joked that he has become a professional “matchmaker” of sorts by helping people come together on and offline. For him, the idea of promoting crossover initiatives sprung from his negotiations with Disney in Los Angeles – Disney was interested in expanding in Hong Kong through a series of IP licensing arrangements. “I walked away from those meetings thinking that Hong Kong has the right resources and ingredients to pursue similar opportunities. When I returned, I began exploring opportunities on this front.”

To highlight progress in this space, Mr. So recounted a recent crossover initiative success story involving MOZACCO, whose sports gear debuted at the Standard Charter Hong Kong Marathon 2017. It is the first Crossover Co-create Brand of the Federation of Hong Kong Industries and its debut at the Standard Charter races demonstrated the Co-create Brand’s vibrancy and positive energy, while also promoting healthy lifestyle habits, he explained. MOZACCO’S work even got him out to run the 10 km after a six-year hiatus, which he happily reported finishing at a faster pace than he completed his last race.

Mr. So spares no effort in promoting crossover initiatives because he believes it is the trend of development. It can enable Hong Kong to capitalise on its advantages and pool its strengths to support the development of Hong Kong brands, he explained. It also has the potential to help develop Hong Kong as an IP trading hub, as cross-industry collaboration involves IP rights management.

Invest Hong Kong

Another focal point of the CEDB’s efforts is supporting Hong Kong’s start-up scene through Invest Hong Kong. Mr. So believes that Hong Kong has a good environment to enable a whole new generation of disruptors to create, test, show and launch their new businesses.

A recent positive development in this area is the Hong Kong and Shenzhen governments’ signing of a Memorandum of Understanding to jointly develop the Hong Kong/Shenzhen Innovation and Technology Park in the Lok Ma Chau Loop. This will be the largest innovation and technology platform that the Hong Kong Government has ever established and will hopefully make Hong Kong’s start-up scene even more attractive.

Belt and Road Initiative

Finally, Mr. So turned to Hong Kong’s efforts to support the Belt and Road initiative, a significant development
strategy launched by the Chinese government to promote economic cooperation and further market integration among countries along the Belt and Road routes. Specifically, the initiative plans to connect 65 counties in Asia, Africa and Europe to strengthen collaboration in five areas – infrastructure, trade, policy, finance and people.

Mr. So explained that Hong Kong can play an important role in the Mainland’s implementation of the Belt and Road initiative by facilitating infrastructure investment and financing in the region. The Government plans to continue working with key stakeholders to promote and develop Hong Kong as an infrastructure and financing centre, as well as take advantage of other opportunities such as professional services, which have also been identified as key areas for growth and investment, in Chinese and third markets along the routes.

Global Outlook

As Mr. So recently attended an informal ministerial gathering on World Trade Organization issues, hosted by the Swiss government in January, he discussed the global outlook for trade and the rise of protectionist sentiments, which has cast uncertainties over the global economic and trade outlook. As Hong Kong is an open economy built on trade and services, it will inevitably be affected if the trend of protectionism intensifies to an extent that hampers global trade performance. Mr. So indicated that the Government will continue to monitor policy developments of various economies on the front of trade protectionism and mitigate or protect the economy from its effects.

One of the ways the Government seeks to create stability is by having legal certainty vis-à-vis its trade with other economies. In addition to entering into Free Trade Agreements (“FTAs”) and regional economic co-operation arrangements, Hong Kong continues to look to new opportunities for its economic development. So far, Hong Kong has concluded FTAs with Mainland China, New Zealand, the Member States of the European Free Trade Association (ie, Iceland, Liechtenstein, Norway and Switzerland) and Chile, and is currently conducting FTA negotiations with the Association of Southeast Asian Nations (“ASEAN”), Maldives, Georgia and Macau.

As a member economy of the Asia-Pacific Economic Cooperation (“APEC”), Hong Kong continues to work with other member economies to study issues related to the realisation of the Free Trade Area of the Asia-Pacific (“FTAAP”), which could accelerate regional economic integration and drive long-term economic development. In a recent press release, Mr. So noted that Hong Kong plans to continue to work closely with APEC member economies and participate actively in the relevant work plans of APEC in hopes of facilitating the early realisation of the FTAAP.

He also noted that Hong Kong has been closely monitoring the development of regional FTAs, including the Regional Comprehensive Economic Partnership (“RCEP”) which is one of the potential pathways to realise the FTAAP. The RCEP is currently the largest FTA negotiation in the Pan-Asia region. The combined GDP of the 16 RCEP participating economies, which are also important trading partners of Hong Kong, represents nearly one-third of the world’s GDP. As such, Mr. So indicated that the Government will continue exchanging views with its trading partners on the development of RCEP and other regional FTAs.

Message for Solicitors

Having heard reports from fellow practitioners of how competitive Hong Kong’s legal market is and remains, Mr. So encourages solicitors to explore opportunities that present themselves across the regional landscape through the Belt and Road initiative. “I truly believe that the Belt and Road initiative will be the next big source of workflow and opportunities for at least the next two decades.”

To assist Hong Kong’s professional services sector explore opportunities in foreign markets, the CEDB has developed and launched a new funding scheme called the Professional Services Advancement Support Scheme, or “PASS” for short. The HK$200 million Scheme provides funding support for non-profit making projects organised by local professional bodies amongst others, and aims to encourage the professional services sector’s pro-active outreaching promotion efforts and improvement in service offerings. Mr. So strongly encourages legal professional bodies to apply for funding. More background information about PASS is available at www.pass.gov.hk.

As for ideas on sourcing new business, Mr. So suggests solicitors look at providing services to start-ups and those supporting them. He also recommends looking for opportunities to assist those in the crossover space. “These are all developing business areas that will require legal support. Following the value where it is being developed is a great way to build a lucrative practice. I have always been a firm believer in competing in areas where there is a lot of head room for everyone. I think the ones I have mentioned are good spaces to watch,” he said.
商務及經濟發展局局長蘇錦樑先生談及他的事業、商務及經濟發展局2017年的工作重點，道出律師行業在區內的機遇。

選中服務社會
甚麼促使他從私營機構投身公共部門？蘇先生說是無心插柳，一切由他加入香港民間建港協進聯盟(民建聯)而起。
雖然蘇先生目前站在香港政治的前緣，但他透露，以往對政治並不怎麼感興趣。他回憶道：「殖民地時代在香港長大，絕少人談論政治或鼓勵在學校論政。直至移民加拿大，加入一間大型律師行，才對政治產生了興趣。」該律師行的合作文化，加上同事愛好交流政見、辯論政策，引起了他的興趣。

執業20年後，辭去民建聯的職位，蘇先生於2008年出任商務及經濟發展局副局長，並於2011年獲委任為商務及經濟發展局局長至今。

*商務及經濟發展局負責的政策範疇，包括香港對外商業貿易、促進富運投資、保護知識產權、為工商業提供支援、旅遊、保障消費者權益、促進競爭、通訊、廣告、電影和創意產業等。除上述的政策事宜外，商務及經濟發展局並同時負責監督轄下八個行政機關的運作，包括投資推廣署、知識產權署、工業貿易署、香港天文台、香港郵政、電影、報刊及物品管理辦事處、香港電台、通訊事務管理局辦公室及駐海外的香港經濟貿易辦事處。
競爭條例

法律起草工作方面，蘇先生通常採取不干預的方式，但在草擬《競爭條例》時，他積極參與整個過程。他視這方面的工作為事業上重要里程碑。「一開始我們便遊說區議會和商會支持。我們發現許多企業東主擔心法例會令他們無意中跌入陷阱。為了獲得商界支持，我們必須在一些問題上妥協，向他們保證競爭事務委員會將以適當的程序處理個案，但從一開始已是一場苦戰。」

儘管得來不易，但他對這個經驗表示肯定，強調在四年的參與中獲益良多。其中學到的一個重點，是有意義的變革需要時間。他說：「綜觀其他司法管轄區和起訴案例，我們看到沒有靈丹妙藥。進行調查、歸納個案是個漫長的過程，需時經年，耗用大量資源。然而，我一直認為確保合規的最佳方法是公眾教育。」對他而言，這就是目標所在：通過合規實現公平競爭環境，而非依賴迫令訴訟。

被問及《競爭條例》的效力時，他說現在言之尚早。「競爭法將是一項不斷演進的法律，需要不時檢討，評估有關條文是否有效，是否需要作出調整。」

商務及經濟發展局2017年工作重點

商務及經濟發展局的工作範圍甚廣，蘇先生概述了該局2017年的工作重點：從旅遊業到知識產權貿易到「一帶一路」，任務繁重。

旅遊業

第一個討論的領域是香港的旅遊業。旅遊業佔香港本地生產總值5%。作為香港的支柱產業，旅遊業也推動其他相關行業的增長，包括零售、酒店和飲食業，對香港經濟貢獻重大。雖然過去10年訪港旅客人數增加了一倍多，但由於全球經濟放緩、貨幣貶值，以及鄰近國家對內地旅客放寬簽證規定，香港旅遊業近年面對多方面的困難。雖然情況已經穗定下來，但來年仍然充滿挑戰。

知識產權貿易

另一個重點領域是知識產權貿易，利用香港的潛力吸引更多商機。蘇先生指出，香港是主要貿易樞紐，全球與內地的「超級聯繫者」，他非常看好香港在這方面的潛力。

多年來，香港在跨境知識產權交易方面積累了豐富經驗，已成為版權貿易、牌照和特許經營、以及設計和技術轉讓的區域市場和服務中心。中國知識產權市場正迅速擴大，也是一個佳音。要充分利用集體專業經驗和服務中心，香港必須建立一個健全的知識產權保護制度。知識產權貿易工作小組表示，「這是在全球經濟的競爭環境下，能銳意推動知識產權貿易而有望成功的先決條件。」

為加強香港的知識產權保護制度，政府對現行的專利法例作出修訂，以改革和更新香港的專利制度。香港將擁有獨立的專利制度，申請人可在香港直接提交標準專利申請，而無須先在其中一個本港以外的指定專利當局獲得批予專利。現行的「再註冊」制度會繼續並行，申請人仍可就已獲國家知識產權局、歐洲專利局和聯合王國專利局批予的標準專利再註冊。政府正致力準備最早於二○一九年實施新專利制度，政府亦承諾會不斷檢討香港知識產權制度的其他組成部分（版權、商標、註冊外觀設計等），以確保該制度遵守國際規範，有利於知識產權貿易。政府將在七月展開立法程序，以準備最早於二○一九年在香港實施世界知識產權組織《商標國際註冊馬德里協定有關議定書》的國際商標註冊和管理制度。

聯に乗作

商務及經濟發展局還積極支持跨界別（或聯乘）協作，旨在鼓勵各行業互相合作，包括製造業、設計、電影、電子遊戲、動漫及服裝業，希望透過不同創意創新界別之間建立聯繫，令本地企業發掘如何在現有產品和服務中加入新元素。蘇先生解釋：「我們希望鼓勵跨行業協同效應，令本地企業提升其品牌競爭力。」

蘇先生以最近MOZACCO聯乘的成功經驗，闡述這方面的成就。MOZACCO是香港工業總會首個香港聯乘品牌，在渣打香港馬拉松2017首度亮相，展示這個共同創造的品牌充滿活力和正能量，也希望藉此推動知識產權貿易和有成功的先決條件。為支持MOZACCO，蘇先生久休6年復出，參與10公里競賽，並以較上次快的時間完成。蘇先生不遺餘力地推動聯乘協作，因為他認為這是發展趨勢，能令香港發揮優勢，集中力量支持香港品牌發展，亦有潛力協助香港發展為知識產權貿易中心。
心，因為跨產業合作涉及知識產權管理。

投資推廣署
商務及經濟發展局的另一個工作重點，是透過投資推廣署支持香港的初創企業。蘇先生相信，香港擁有良好的環境，供新一代初創企業創建、測試、展示和發行他們的新業務。

這方面最近取得積極進展。香港政府與深圳政府簽署了合作備忘錄，在落馬洲河套區共同發展「港深創新及科技園」。這將是香港政府建立的最大創新科技平台，希望藉此令香港的初創企業環境更具吸引力。

「一帶一路」
最後，蘇先生談及香港支持「一帶一路」的工作。「一帶一路」是中央政府發起的一项重要發展戰略，旨在促進沿線經濟合作，進一步推動市場一體化。具體來說，「一帶一路」計劃將連接亞洲、非洲及歐洲65個國家，以加強在基礎建設、貿易、政策、金融和人員五個領域的合作。

蘇先生解釋，內地實施「一帶一路」，香港可透過協助區內基建投資和融資，從中發揮重要作用。政府計劃繼續與其他成員國合作，推動發展香港作為基建和融資中心，並把握專業服務等領域的機遇。這些領域已被認定為中國及沿線第三市場的關鍵增長和投資領域。

環球展望
蘇先生於1月份出席了由瑞士政府主持的世界貿易組織(世貿)非正式部長部會議。會上他討論了全球經濟前景和保護主義情緒的崛起，後者為全球經濟帶來了不明朗因素。

香港作為一個以貿易和服務為本的開放型經濟，若保護主義趨勢加劇，以至妨礙全球貿易表現，香港將無可避免地受到影影響。蘇先生表示，政府會繼續密切注視各經濟體在貿易保護主義方面的政策動向，以減輕或保障本港的經濟免受影響。

政府創造穩定環境的方法之一，是與其他經濟體進行貿易時，提供明確的法律依據。除了訂立自由貿易協定及區域經濟合作安排外，亦繼續為經濟發展尋找新機遇。至今，香港已與中國內地、紐西蘭、歐洲自由貿易聯盟成員國(即冰島、列支敦士登、挪威和瑞士)及智利締結自由貿易協定，目前正與東南亞國家協會、馬爾代夫、格魯吉亞和澳門進行自由貿易協定談判。

作為亞太經濟合作組織(亞太組件組織)成員，香港繼續與其他成員國合作，研究實現亞太自由貿易區相關事宜，藉以加速區域經濟一體化，推動長期經濟發展。在最近的新聞稿中，蘇先生指出，香港計劃與亞太組件組織成員經濟體緊密合作，積極參與亞太組件組織開展的相關工作計劃，從而推進亞太自貿區的早日實現。

他又指，香港們一直密切關注區域性自貿協定的發展，其中包括作為實現亞太自貿區其中一個路徑的區域自貿夥伴協定(協定)。協定是當前泛亞洲地區規模最大的自貿協定談判，參與談判的16個成員的本地生產總值接近全球三分之一，亦是香港的重要貿易夥伴。香港會繼續在不同場合及平台與貿易夥伴就區域自貿協定的發展交流意見。

寄語律師
蘇先生不時從法律從業人士口中得悉香港法律市場一直保持競爭力，他鼓勵律師探索「一帶一路」為區域帶來的機遇。「我衷心相信，『一帶一路』將是未來20年工作和機遇的下一個重要來源。」

為協助香港的專業服務業探索外國市場的商機，商務及經濟發展局推出「專業服務協進支援計劃」(PASS)的資助計劃。蘇先生十分鼓勵法律專業團體申請資助。
The Hong Kong Academy of Law

The Hong Kong Academy of Law (“Academy”) organised 8 seminars in January.

A seminar entitled “Taxation of Costs” was held on 16 January. It provided participants with a general overview of the procedure on costs and the law. 287 participants attended the seminar.

The speakers of the seminar were Mr. Sean Frost, Sole Proprietor of Sean Frost & Co. (Hong Kong) and Mr. Alfonso Fung, Sole Proprietor of Alfonso Fung & Co.

Young Solicitors’ Group: Survey on Young Members’ Needs and Preferences in 2016

The Young Solicitors’ Group (“YSG”) highly values our members’ feedbacks and opinions as they are essential to the continuous improvement of our work. We launched the “Survey on Young Members’ Needs and Preferences” in May 2016, which was also made available through the Law Society’s mobile app from November until the end of December 2016. We received a total of 94 responses from our members. Some key feedback is summarised below:

### Activities / services our members would like YSG to organise / provide

<table>
<thead>
<tr>
<th>Activities / services</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Professional development programmes</td>
<td>82%</td>
</tr>
<tr>
<td>2. Personal development programmes</td>
<td>64%</td>
</tr>
<tr>
<td>3. Joint professional networking events</td>
<td>43%</td>
</tr>
<tr>
<td>4. Activities that enhance communications and exchanges among senior and junior members</td>
<td>55%</td>
</tr>
<tr>
<td>5. Social services and pro bono initiatives</td>
<td>57%</td>
</tr>
<tr>
<td>6. Other activities</td>
<td>15%</td>
</tr>
</tbody>
</table>

*Each member can tick more than one option. 每位會員可以選多於一個選項。“

年青會員的需求和偏好調查2016

年青律師組非常重視會員的反饋和意見，這些意見對我們不斷改善工作至關重要。我們於2016年5月進行了「年青會員的需求和偏好調查」，並於2016年11月在律師會的應用程式平台推出，讓會員可在2016年12月底前提供寶貴意見。我們共收到94份回覆，其中一些關鍵反饋總結如下：“
According to the survey results, the top four areas that young members would like to see activities organised for them and some brilliant suggestions for each of the areas are summarised as follows:

- **Programmes/platforms to further career and share life experiences** (82 percent of respondents), such as sharing sessions;
- **Activities that enhance communications and exchanges among senior and junior members** (77 percent of respondents), such as study tours, meet-and-greet events;
- **Professional development programmes** (64 percent of respondents), such as sharing practical tips on court practice and court etiquette; sharing how to change practice areas including moving to in-house practice; guided tours to quasi-legal organisations such as the Intellectual Property Department and the Independent Commission Against Corruption; and other practice and industry development related sharing sessions; and
- **Joint professional networking events** (57 percent of respondents), such as a joint professional art appreciation event and a joint professional concert.

The survey results have been invaluable in assisting us to formulate the YSG activities in 2017, including various new initiatives, such as:

1. The Macau study trip to encourage the understanding of the difference in common law and civil law systems, and offering networking opportunities with Macau counterparts;
2. A social awareness outreach & training programme on equal opportunities issues, to introduce anti-discrimination law related practice to our members;
3. An additional event for CONNECTED mentorship programme to foster sharing of career and life experiences, as well as exchanges among senior and junior members;
4. Supporting organisation of additional joint professional activities, to facilitate members’ exchange with other professionals; and
5. YSG Explore HK Series to encourage exchange among senior and junior members through fun and exciting activities. We will continue to take into account members’ feedback and suggestions in planning for our future initiatives.

In addition, we will explore the use of more social media to reach out to members in response to members’ feedback, in that 86 percent of the respondents are in favour of communicating via emails and 35 percent are in favour of using other social media such as Facebook.

In appreciation of our members’ support and to encourage their use of Law Society’s mobile app, as announced at the launch of the online survey at the Welcome Drins for Trainee Solicitors in November 2016, 10 members who completed the online survey prior to the deadline on 31 December 2016 were presented with YSG souvenirs.

YSG events would not be as successful without our members’ support and suggestions. We look forward to seeing you in our 2017 activities and we welcome your suggestions at all times! Please keep an eye on the weekly circulars for details of our events and/or contact us via our Facebook page (https://www.facebook.com/young.solicitorsgroup).

Serina Chan  
Council Member and Chairperson, Young Solicitors’ Group

Felix Yuen  
Committee Member, Young Solicitors’ Group

根據調查結果，年青成員最希望籌辦活動的4個領域，以及對每個領域的一些寶貴建議總結如下：

- 分享及推進事業發展及人生經驗的活動／平台（82%受訪者），例如分享會；
- 促進資深與年青會員之間溝通交流的活動（77%受訪者），例如學習團、見面會；
- 專業發展活動（64%受訪者），例如有關法庭實踐和法庭禮儀的實用提示分享；改變執業領域分享，包括轉任企業律師；輔助性法律組織，如知識產權署和廉政公署導賞參觀；和其他執業和行業發展相關的分享會；及
- 跨專業界別人際交流活動（57%受訪者），例如跨專業界別藝術欣賞活動和跨專業界別音樂會。

調查結果對我們非常寶貴，有助我們制定年青律師組2017年的活動，包括：(1)澳門學習之旅，以增進會員對普通法和大陸法系統差異的了解，並提供機會與澳門同業交流；(2)關於平等機會議題的社會意識宣傳和培訓計劃，向會員介紹反歧視法相關實踐；(3)額外一次「法友聯盟」活動，以增進事業發展和人生經驗分享，並促進資深和年青會員之間的交流；(4)擔任更多跨專業界別活動的支持組織，以促進成員與其他專業人士的交流；及(5)舉辦年青律師組探索香港系列，通過有趣精彩活動，鼓勵資深和年青會員進行交流。在策劃未來的計劃時，年青律師組會繼續參考會員的意見和建議。

此如，我們將研究如何更廣泛使用社交媒體來回應會員的意見，86%的受訪者贊成通過電子郵件溝通，35%贊成使用其他社交媒體，例如Facebook。

為答謝會員的支持，並鼓勵他們使用律師會的應用程式，正和於2016年11月舉行的實習律師歡迎酒會上所公佈，年青律師組從2016年12月31日前提交回覆者當中隨機抽出10位幸運兒，贈送年青律師組精美禮物乙份。

年青律師組的活動得以成功，有賴會員的支持和建議。我們期待在2017年的活動中見到各位，隨時歡迎各位提供建議！請密切留意每周通告，關注我們的活動詳情及 / 或透過Facebook聯繫我們（https://www.facebook.com/young.solicitorsgroup）。

陳潔心律師  
理事會成員兼年青律師組主席

阮沛恒律師  
年青律師組委員會成員
**TWGHs Volunteer Services Programme Co-organised by Law Week Organising Committee and YSG**

Since the launch of the Law Week in 1991, new initiatives have been introduced to meet the needs of different social segments throughout the years. For over a decade, the Young Solicitors Group (“YSG”) has been collaborating with the Tung Wah Group of Hospitals (“TWGHs”) in providing volunteer services to young children of under-resourced families. As a new initiative to stage its 25th Anniversary, the Law Week Organising Committee and the YSG co-organised a volunteer services programme to promote legal education and interest in the use of English to primary school students.

On 3 December 2016, over 20 Law Society volunteers travelled to Tuen Mun and were greeted by an enthusiastic group of around 40 primary school students at TWGHs Tuen Mun Integrated Services Centre. Immediate Past President Stephen Hung explained the role of lawyers as well as highlighted the legal rights and duties of citizens in the society. Council member and YSG Chairlady Serina Chan then led an interactive ice-breaking session and briefly introduced the key concepts of freedom and human rights.

Each volunteer then paired up with around two children to read and share the book entitled "We are all born free". The book includes a selection of articles in plain English from the Universal Declaration of Human Rights (“Universal Declaration”) with beautiful illustrations, and introduces the core values of natural justice and equality, procedural fairness of the judicial system, fundamental human rights as well as anti-discrimination protection.

To enable the students to have a better understanding of the Universal Declaration, they were divided into small groups and each group staged a role play based on an article selected from the Universal Declaration under the guidance of the volunteers. The best performing group and the group which best demonstrated the underlying meaning of the selected article were awarded winners of the contest.

As in past years, with the overwhelming support from Law Society members, the volunteer vacancies were filled up shortly after the recruitment had started. It is most encouraging to receive positive feedback from TWGHs and to work with the children during the programme. We look forward to continuing our collaboration with TWGHs providing more opportunities for interested members to take part in these meaningful programmes.

George K.H. Chan  
Committee Member, Young Solicitors’ Group

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Happy faces of the children after listening to the sharing by Law Society volunteers on the book "We are all born free".

小朋友聆聽律師會義工分享《We are all born free》的故事後流露出愉快的面孔。

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Happy faces of the children after listening to the sharing by Law Society volunteers on the book "We are all born free".

小朋友聆聽律師會義工分享《We are all born free》的故事後流露出愉快的面孔。
Law Week 2016

The first Law Week in 1991 evinced the aspiration of the Law Society to enhance the community's legal knowledge and to promote available legal services in the community. New features are introduced from time-to-time to gauge the needs of different social segments. This year, Law Week made use of popular media channels, including TV, radio and social media, to share legal knowledge with the general public. The President and Council members were invited to participate in the legal features broadcast on ViuTV and Commercial Radio. The President chatted with five children in one TV episode, discussing topics that ranged from pursuing a legal career, to solicitors' ethics and the legal aid system. Both programmes were well received.

Apart from the media broadcasts, Law Week held two legal community talks at Chiang Chen Studio Theatre on 8 and 20 December, attracting over 120 and 150 attendances respectively.

As in previous years, the opening of Law Week was held on the same day as Teen Talk on 17 December. We were honoured to have the Hon. C. Y. Leung, the Chief Executive of HKSAR; the Hon. Geoffrey Ma, the Chief Justice of the Court of Final Appeal; the Hon. Rimsky Yuen SC, the Secretary for Justice of HKSAR; Mr. Dennis Kwok, Legislative Council Member (Legal Functional Constituency); Mr. Thomas Edward Kwong, Director of Legal Aid; and Ms. Winnie Tam SC, then-Chairman of the Hong Kong Bar Association, joining our President Thomas So and Ms. Ann Yeung, Chairlady of Law Week 2016 Organising Committee, to kick-off the opening ceremony.

The huge success of Law Week 2016 was attributable to the tireless effort of the Organising Committee and the staunch support of the Council and the event’s officiating guests. The Law Society is also grateful for the sponsorship from the Legal Aid Department.
Ceremonial Opening of the 2017 Legal Year in Hong Kong

The 2017 Ceremonial Opening of the Legal Year was held on 9 January. Eminent bar leaders from abroad gathered in Hong Kong to experience and witness this solemn ceremony. The Law Society was honoured to have been invited by the Judiciary to organise a hospitality programme for the overseas guests. This year, we welcomed 76 delegates from 14 jurisdictions.

The day started with a visit to the Hong Kong Court of Final Appeal. The Hon. Chief Justice Geoffrey Ma welcomed the 41 head delegates. Registrar Kwang provided our guests with a historical overview of the Hong Kong Court of Final Appeal Building, which was followed by a guided tour.

One highlight of the Ceremonial Opening of the Legal Year’s programme was the Presidents’ Roundtable, which was co-chaired by Mr. Thomas So, President of the Law Society, and Ms. Winnie Tam SC, then-Chairman of the Hong Kong Bar Association (“HKBA”). The theme of this year was “Connectivity: Role of Professional Organisations in Promoting Connectivity for Members’ Benefit”. Fifty-one representatives from over 36 bar associations and law societies participated, sharing insights on how members of the legal profession around the world could connect through professional organisations and through harmonisation of laws. This was followed by a luncheon jointly hosted by the Law Society and HKBA.

In the afternoon, the delegates visited the Hong Kong Monetary Authority (“HKMA”). The visit was led by Council Members, Ms. Bonita Chan, Mr. Simon Lai and Mr. Roden Tong. Mr. Stefan Gannon, General Counsel of the HKMA, gave a presentation on the topic of Hong Kong as an International Financial Centre followed by a tour round the HKMA Information Centre.

At the Ceremonial Opening of the Legal Year, the Chief Justice, the Secretary for Justice, the President of the Law Society and the then-Chairman of HKBA all delivered enlightening speeches. The speech by the President of the Law Society was posted on the Law Society website. Nine Korean law students and young lawyers who were in Hong Kong for an internship programme were also invited to attend the annual event.

The day concluded with a dinner reception jointly hosted by the Law Society and HKBA with, the Chief Justice and the Secretary for Justice as our honourable guests.

Exchanges with overseas delegates continued on the following days. Representatives of the Law Society had meetings with representatives of the International Association of Young Lawyers, the Tokyo Bar Association and the Law Council of Australia. The Law Society also signed Memoranda of Understanding with the Bar Association of India and the Mongolian Bar Association on 9 and 10 January respectively.
2017年香港法律年度開啟典禮

2017年法律年度開啟典禮於1月9日隆重舉行。來自世界各地法律界代表雲集香港，見證此莊嚴的盛典。律師會有幸獲邀協助司法機構接待來自14個司法管轄區的76位嘉賓。

當天早上，代表團參觀香港終審法院，首席法官馬道立歡迎41位嘉賓。並由司法常務官鄺卓宏先生介紹香港終審法院大樓的歷史，及帶領隊伍參觀。

法律年度開啟典禮的亮點之一是會長圓桌會議，由律師會會長蘇紹聰律師與時任大律師公會主席譚允芝資深大律師一同主持，今年的主題為：「連通性：專業組織在促進連通性上，為會員謀求福祉的過程中所發揮的角色」。來自36個律師協會的51位代表參加了會議，探討如何透過各地法律的專業組織和融合不同司法區的法律，以及如何加強會員之間的連繫等課題，作深入討論。隨後，代表出席了由律師會與大律師公會合辦的午宴。

代表在當天下午由理事會成員陳寶儀律師、黎壽昌律師及湯文龍律師領導下，到訪香港金融管理局（「金管局」），並獲金管局首席法律顧問簡賢亮先生接待，並就香港國際金融中心為主題發表演説，隨後代表參觀了金管局資訊中心。

在法律年度開啟典禮上，終審法院首席法官、律政司司長、律師會會長及時任大律師公會會主席均發表發人深省的演說。律師會會長的講辭已上載至律師會網站。9名來港參加實習計劃的韓國法律學生及年輕律師亦出席了本港法律界的年度盛事。

最後，代表出席了由律師會與大律師公會合辦的晚宴，終審法院首席法官及律政司司長亦為座上嘉賓。

2017年法律年度開啟典禮翌日，交流活動繼續進行。律師會代表與The International Association of Young Lawyers、東京弁護士會及The Law Council of Australia會面。律師會亦於1月9日及10日分別與The Bar Association of India及Mongolian Bar Association簽訂諒解備忘錄。
YSG’s Macau Study Trip

The Young Solicitors Group (“YSG”) together with the Macau Lawyers Association (“MLA”) and Young Barristers’ Committee (“YBC”) of the Hong Kong Bar Association successfully co-organised a Macau Study Trip entitled “After Brexit: Capitalising on Market Opportunities of Hong Kong and Macau Lawyers in Portuguese-Speaking Countries / Territories” on 14 January which was attended by 30 Law Society, 16 YBC and 15 MLA members.

The one-day study trip began with a seminar on Post-Brexit market developments and Brexit’s impact on legal practice given by Dr. Vicente Manuel, Deputy Secretary General of the Forum for Economic and Trade Co-operation between China and the Portuguese-speaking Countries (Macau); Dr. José Luís de Sales Marques, President of the Institute of European Studies of Macau; and Dra. Maria João Bonifácio, Trade & Investment Commissioner of the Portuguese Trade and Investment Agency, Counselor for Economic and Commercial Affairs for the Consulate General of Portugal in Macao and Hong Kong.

Following the seminar was a panel discussion at which Dra. Joana Alves Cardoso, registered lawyer with MLA; Mr. Fred Kan, Former Council Member and Macau Sub-Group Chairman, Member of the Greater China Legal Affairs Committee; Ms. Serina Chan, Council Member and Chairlady of YSG; and Mr. Hugh Kam, Vice-Chairman of YBC shared their views and insights on Post-Brexit market opportunities and cooperation between Macau and Hong Kong lawyers.

The intellectually stimulating seminar was followed by a networking luncheon for our fellow young members to mingle with their professional overseas counterparts, as well as exchange insights on the practice of common law and civil law systems. In the afternoon, members were taken to a number of remarkable sites, where they visited hidden gems along the narrow winding streets of Macau, including the Museum of the Macau Holy House of Mercy, Dom Pedro V Theatre, and The Taipa Houses Museum.

This event was a great start to the New Year. We look forward to hosting more events in the near future for our young members to enhance their global awareness, as well as establishing a networking platform to foster closer relationships with our overseas counterparts.

Louise K. F. Wong
Committee Member, YSG

Exploring the cultural and historical sites of Macau.

年青律師組澳門學習之旅

年青律師組與澳門律師公會及香港大律師公會新晉大律師委員會於1月14日合辦了以「英國脫歐之後：香港及澳門律師在葡語系國家／地區的市場機遇」為題的澳門學習之旅，分別有30位香港律師會會員、16位香港大律師公會會員及15位澳門律師公會會員出席。

學習之旅為期一天，以「英國脫歐後的市場發展及其對法律執業的影響」專題研討會揭開序幕，由中國－葡語國家經貿合作論壇(澳門)副秘書長韋尚德先生、澳門歐洲研究學會主席麥健智先生及葡萄牙駐澳門及香港總領事館商務參贊布思麗女士擔任主講嘉賓。

研討會後進行小組討論，由澳門律師公會註冊律師賈欣娜女士、香港律師會前理事會成員及澳門專責小組主席兼大中華法律事務委員會簡家駿律師、理事會成員兼年青律師組主席陳潔心律師及新晉大律師委員會副主席金晉亭大律師，就英國脫歐後的市場機遇及港澳律師的合作分享見解。

研討會上大家互相交流、激發思考。會後參加者享用午宴，讓年青會員與外地專業同仁同樂，交流普通法及大陸法系執業的見解。當日下午，會員參觀多個澳門名勝景點，在蜿蜒的街道上尋幽探寶，包括參觀澳門仁慈堂、朗廈劇院及龍環葡韻住宅式博物館。

這次活動標誌著新一年的一個好開始。我們期待為年青會員舉辦更多活動，以加強他們的全球意識，為他們建立一個網絡平台，促進他們與海外同業建立更密切的關係。

黃金霏律師
年青律師組委員會成員
A Super Happy New Year 2017 for Hikers and Runners!

On New Year’s Day 2017, about a dozen members of the Hiking Team and Distance Running Team participated in a joint team outing in the north east New Territories to welcome the New Year in style.

Though it might have been a late night for some members celebrating New Year’s Eve, Mother Nature and the fine morning weather of the brand new year beckoned outdoor enthusiasts, who looked forward to enjoying a break from daily routines and burning off any festive excesses.

The adventure started and ended at Kai Kuk Shue Ha (near Fanling) and Tai Mei Tuk (near Tai Po), respectively. Members trekked or jogged the rugged country park trails in Pat Sin Leng and Wang Leng whilst enjoying the stunning mountain scenery and the blue skies.

For the hikers, the outing offered a refreshing workout and a chance to make a New Year’s resolution for a healthier lifestyle. For athletic minded members, the remote hills were a nice change of pace from the typical hustle and bustle of road running.

Despite the staggered start times, differing paces and non-identical routes of the two groups, members’ paths crossed along the way. While the brief encounter was not entirely unexpected, it was a pleasant and uplifting surprise for both the hikers and runners. Members exchanged warm greetings and encouraged each other along.

After participants had immersed themselves in the beautiful countryside and navigated the challenging terrain for several hours, they ended their journey at Tai Mei Tuk, gathering together for refreshments at a nearby cafe. All in all, the event was well received by members. It was a fantastic way to boost fitness and resilience!

The “super runner” trophy was bestowed at the finishing area upon one of our members who completed the trail run within the specified time.

Many thanks are due to fellow members for your wonderful support and participation. We are especially grateful to Mr. Andy Tang, Mr. William Tang, Past President and Hiking Captain Mr. Simon Ip, Hiking Convenor Ms. Wai Yin Chung for the expert guidance and planning.

Lee Yuen Chuen
Captain, Distance Running Team

Running took part in a trail run event, completing the course within the specified time.

非常感謝各位會員的大力支持和參與。特別感謝鄧滿喜律師、鄧樹彪先生、前會長兼遠足隊隊長葉成慶律師及遠足隊召集人鍾慧賢律師的指導和籌備。

李遠傳律師
長跑隊隊長
Teen Talk 2016: “Deconstructing Cyber Crime”

“Teen Talk” is one of the flagship events of the Law Society, focusing on serving young people and the broader community. The event set a new record with a total of 937 students from over 94 schools from 18 districts. This year also marks the first time that international schools have taken part in the event.

Teen Talk 2016 was held over three days, with round one, the “Moot Court Competition”, completed over two weekends in early November. Students gathered at the High Court and the University of Hong Kong to share personal views on social topics and engage in friendly debates. Teams were given either the role of defense or prosecution, presenting their case in front of real life judges and senior practitioners. Judges were impressed by the presentations, as well as the students’ analytical skills and ability to formulate arguments within 30 minutes preparation time with the coaching of prosecutors from the Department of Justice and Law Society members.

Encouraged by positive responses from the schools, the second round of Teen Talk 2016 was held at the Nursery Park in West Kowloon Cultural District on 17 December. The whole day event included discussions with guests to comprehensively explore legal issues on cybercrime and the Legal Knowledge Orienteering Race where lawyers and students collaborated to complete various tasks to learn legal knowledge in a creative way.

The Organising Committee (“OC”) would like to give special thanks to the Hon. Geoffrey Ma, Chief Justice of the Hong Kong Court of Final Appeal; the Hon. Rimsky Yuen SC, Secretary for Justice; and Mr. Chung Siu-yeung, Assistant Commissioner of Police (Crime), who officiated this year’s kick-off ceremony. Dr. Frank Law, Superintendent of Police, Cyber Security Division, Cyber Security and Technology Crime Bureau, President Thomas So, Past President and Council Member Junius Ho and Council Member and OC Chairman Nick Chan provided an informative talk on legal and cyber crime matters, enhancing students’ awareness on this issue.

The OC would also like to express their heartfelt thanks to over 100 Law Society member facilitators who volunteered to participate in the programme to pass legal knowledge to the younger generation. Same as in previous years, Teen Talk received funding support from the Committee on the Promotion of Civic Education to cover part of the expenses incurred.

Without the dedicated effort of the OC chaired by Mr. Nick Chan and vice-chaired by Ms. Nadine Lai and Mr. Roden Tong, all members, students, schools, volunteers and the Law Society Secretariat, Teen Talk 2016 would not have been so successful.

Please visit and “Like” the Law Society Teen Talk Facebook fan page (https://www.facebook.com/teentalkhk) to download your photos!
Legal Symposium in Taiwan

To celebrate the 72nd Taiwan Judicial Festival, the Judicial Yuan of Taiwan, the Ministry of Justice and the Taiwan Bar Association jointly held a symposium on 11 January which attracted about 250 attendees. Immediate Past President Stephen Hung was invited to speak in one of the seminars titled “Freedom of Speech in ongoing Trial and Investigation Cases”. Mr. Hung shared how Hong Kong balances freedom of the press and ensures fair trial procedures, by citing relevant legislation and cases. Mr. Henry Wai, Vice-Chairperson of the Greater China Legal Affairs Committee, and Mr. Lawrence Yeung, Member of the Committee, also joined the event.
Capturing the Moment

In our profession, there are always two sides to a story; the key is the ability to see it. What better way to capture the beautiful side of things than with a camera!

The Photography Interest Group was set up in 2016 and it has been a success so far! We have organised three activities, starting with a kick-off event in Tai O, where members took photos of Hong Kong’s rustic island life, capturing a kaleidoscope of images of the small fishing village.

Our second event was a guided tour at the Asia Society of the exhibit Picturing Asia: Double Take: The Photography of Brian Brake and Steve McCurry. On this insightful tour, we learnt about the history and documentary photography styles of these two famous photographers, who, over the years, filled the covers and pages of Life Magazine and National Geographic Magazine with renowned photos, such as the Monsoon Girl and Afghan Girl, respectively.

We ended the year with a Christmas cruise on the Aqua Luna Hong Kong Junk in a joint event organised with the Cookery, Food and Wine Appreciation Interest Group. Although it was a cold winter’s night, our hearts were filled with warmth as we gathered with friends and shared joy and laughter at sea whilst mesmerised by the sparkling Christmas decorations and Hong Kong’s light show. For members who are new to Hong Kong, this was the perfect way to admire the creativity of the masterminds behind Hong Kong’s amazing and famous Christmas lights. There was also plenty of good food and wine involved at this self-funded event, as we concluded the night with a feast at an award-winning restaurant!

For 2017, we have already set in motion some activities, the first of which is a five-session photography course in spring for members on the use of DSLR cameras for portrait photography.

Sign up for the Photography Interest Group to stay tuned for the upcoming activities!

Hin Han Shum
Convenor, Photography Interest Group
The Law Society of Hong Kong
Member Benefit

The Member Benefit Committee has sourced various year round offers for members of the Law Society. The offers are categorised into six categories and are now available on Law Society’s website and Law Society’s App under “Member Benefit”.

Law Society's website
To find out more about the offers, please visit the “Member Benefit” page on Law Society’s website at http://www.hklawsoc.org.hk/mem/member_benefits/

Law Society's App

Please download the App via the below QR code:
HKSAR v Chan Kam Shing: CFA Finds “No Wrong Turning”

By Michael Jackson, Consultant
Boase Cohen & Collins
Associate Professor
University of Hong Kong’s Faculty of Law
Late in 2016, the Court of Final Appeal (“CFA”) in HKSAR v Chan Kam Shing, FACC 5/2016 confirmed that joint enterprise liability remains part of Hong Kong criminal law. In so doing, the CFA upheld the 1985 decision of the Privy Council (on appeal from Hong Kong) in R v Chan Wing Siu [1985] AC 168 (PC), in which Sir Robin Cooke formulated a broader basis for the imposition of secondary liability on the parties to a joint criminal enterprise than had previously been clearly established (the “wide principle”).

CFA Rejects Jogee

In re-affirming Chan Wing Siu and the wide principle, the CFA declined to follow the lead of the UK Supreme Court in R v Jogee, R v Ruddock [2016] 2 WLR 681 (“Jogee”) earlier in 2016. In Jogee, the UK Supreme Court (“UKSC”) had somewhat surprisingly concluded, more than 20 years after the wide principle was unequivocally adopted in the criminal law of the UK, that Chan Wing Siu had “taken a wrong turning at law”. The UKSC concluded that the wide principle involved a misunderstanding of the prior case law dealing with the liability of participants in a common criminal purpose. “Foresight” of what the parties to a common purpose might do beyond their agreed purpose while carrying out that purpose had been wrongly elevated into a principle of secondary liability, rather than serving at best as an evidential foundation for liability. Having identified this “wrong turning”, the UKSC in Jogee unblinkingly abolished joint enterprise liability as a separate basis of secondary party liability. Rather, the UKSC held that the liability of participants in a common purpose must instead be established using traditional accessory principles of liability, based on assisting or encouraging, with intention (or at least conditional intent) to assist or encourage the commission of the relevant offence and knowledge of all essential matters relating to that offence. Foresight in a joint judgment is only relevant as evidence of intention and not as a basis for establishing complicity.

In Chan Kam Shing, the CFA unambiguously rejected the UKSC’s conclusion in Jogee, concluding that Chan Wing Siu had not taken any “wrong turning”.

However, the CFA was not the first superior court to reject Jogee. Four months earlier, the High Court of Australia similarly declined to follow Jogee in Miller v R [2016] HCA 30 for similar reasons.

Expansion of Joint Enterprise Liability

Prior to Chan Wing Siu, the liability of participants in a joint enterprise was commonly based on Lord Parker CJ’s formulation of principle in Anderson & Morris [1966] 2 QB 110, para. 118 in 1966, that “where two persons embark on a joint enterprise, each is liable for the acts done in pursuance of that joint enterprise, … [including] liability for unusual consequences if they arise from the execution of the agreed joint enterprise.” The “agreed” joint enterprise included such offences as had been “tacitly agreed”, but the wide principle of liability for offences which had been contemplated or foreseen as a possible incident of executing the joint enterprise clearly extended Lord Parker’s principle and exposed those who participated or continued to participate in a joint criminal enterprise with such contemplation to a wider potential liability.

The distinction between these two forms of joint enterprise liability is explicitly articulated by Ribeiro PJ in Chan Kam Shing. Further, he terms liability for offence(s) which parties to a joint enterprise set out or intended to commit pursuant to their agreed common purpose, whether expressly or tacitly agreed, as a “basic joint enterprise”. However, he states, Chan Wing Siu’s wide principle enables the conviction of the participants in a basic joint enterprise for such further offences as were contemplated or foreseen by them as possible incidents of carrying out the common purpose, but not otherwise “intended” as such. In Chan Kam Shing, Ribeiro PJ refers to this latter category as “extended joint enterprise”. He also emphasises how it provides an effective means of addressing the situational uncertainties which regularly arise when criminals operate in gangs and which may otherwise present difficulties in effectively prosecuting those participants, especially using traditional accessory principles.

The commonly stated justification for extending liability in this way builds on this concern about the unpredictability and momentum of group criminal activity and to give effective protection to the public against criminals operating in gangs (see R v Powell, R v English [1999] 1 AC 1 (“Powell, English”)).
It Must Have Been One of Them

In Chan Kam Shing, Ribeiro PJ identifies a further category of uncertainties which can arise in prosecuting group criminality which he refers to as “evidential uncertainties”. A clear example of this is the potential inability of prosecutors dealing with group criminal activity, especially fatal group attacks, to identify the principal. According to traditional accessory principles, liability of the accessories is derivative from that of the principal, who must therefore be identified. If he or she cannot be identified, then all must be acquitted.

Joint enterprise liability overcomes this by permitting a prosecutor to prove that the conduct giving rise to the offence in question (eg, the fatal blow giving rise to liability for murder), took place pursuant to a joint enterprise, and must have been performed by one of the parties to that joint enterprise (ie, could not have been done by anyone else).

Once this combination is proved, then the prosecutor’s case against each of the alleged parties rests on proof of their liability as a secondary party based on joint enterprise liability. If the offence was what the parties set out to commit, each is liable because they agreed or intended to commit that offence; but otherwise, liability rests on proof that the offence charged was at least “contemplated as a possible incident” (ie, extended joint enterprise). As such, this supports the view that joint enterprise liability, unlike traditional accessory liability, should be regarded as a distinct basis of liability, not derivative from that of the principal, and indeed, this viewpoint is strongly affirmed in Chan Kam Shing.

A Wrong Turning

Given the obvious and profound advantage enjoyed by a prosecutor via joint enterprise liability, why then did the UKSC in Jogee take such an adverse view of the doctrine, leading it ultimately to take the arguably unwelcome step of abolishing it?

One undoubted reason for doing so, as noted recently by Clare Montgomery QC in her inaugural lecture for the University of Hong Kong and Boase Cohen & Collins Lecture Series in Criminal Law, was an adverse political environment for the operation of joint enterprise liability in the UK. Unlike Hong Kong, where most group attacks resulting in homicide involve organised crime gangs, joint enterprise liability in the UK was said to have condemned increasing numbers of young men, especially black-British youths, to longer minimum terms of life imprisonment upon conviction for murder, largely due to little more than their “association” with those who became involved in violent attacks.

Attempts to find a legislative solution to this over-reach had signaly failed, and the task of rectifying common law’s creation eventually fell back onto the UKSC.

But more fundamentally, aside from these wider political concerns, the UKSC in Jogee chose to take objection to the very nature of the wide principle of liability.

Mindful of the advantages of joint enterprise liability, the UKSC had attempted to reassure prosecutors that all was not lost.

But neither these criticisms nor the proposed solutions found traction with the CFA. Ribeiro PJ, agreeing with the majority in Miller, rejected the Jogee decision for three reasons (para. 62).

First, he disagreed with the UKSC’s view of the secondary party’s culpability. Rather, he viewed joint enterprise liability as distinct from that of traditional accessors, stating the “liability of a party to a joint criminal enterprise is not derivative but arises independently by virtue of his or her participation in the joint criminal enterprise.” Second, he found “confining the secondary party’s liability to liability under the traditional accessorial liability rules and abolishing the joint criminal enterprise doctrine ... creates a serious gap in the law of complicity in crime.” Third, he found Jogee’s introduction of the concept of “conditional intent” could give rise to significant conceptual and practical problems.

Fundamental Difference

One of the less welcome features of the law relating to joint enterprise liability, as it had evolved in the UK, was the adoption of the notion of “fundamental difference” to deal with differences which may occur in the manner in which a contemplated offence is actually carried out. This notion was first introduced in R v English, and purported to recognise one restriction, at least, on the operation of the wide principle, as adopted in Powell, English. As formulated in R v English, differences in a homicide case in the dangerousness or lethality of the means used to kill the deceased during an “extended” joint enterprise potentially operated to limit the liability of those parties to the joint enterprise who could not be proved to have contemplated the use of weapons at all, or the use of weapons of such dangerousness or lethality.

This restriction had always been a feature of joint enterprise liability. In Anderson & Morris, Morris was acquitted of both murder and manslaughter when Anderson suddenly, and unexpectedly became involved in violent attacks.

This possibility was similarly recognised by Sir Robin Cooke in Chan Wing Siu, observing that parties to a joint enterprise would escape liability (i) if they had never contemplated the offence committed by the principal as a possible incident of carrying out the joint enterprise or (ii) if they had contemplated such an offence but dismissed it as “too remote”. But, if the party accused knew that lethal weapons, such as a knife or a loaded gun were to be carried on a criminal expedition, the defence should succeed only very rarely.

“Fundamental difference”, as formulated in R v English, in effect undermined this, by dictating that a jury could only acquit a party to a joint enterprise if an alleged difference related to the dangerousness or lethality of the means used to kill. This limitation was made explicit in R v Rahman [2009] 1 AC 129.

Regrettably, defining fundamental
difference in this way became an endless source of uncertainty and resulted in numerous appeals based on attempts to distinguish the lethality or dangerousness of various weapons or means of killing. The New Zealand Supreme Court declined to adopt this notion of fundamental difference into New Zealand law, noting the risk of legal principles that depend on a comparison of the dangerousness of weapons could encourage attempts to make unmeritorious (and perhaps faintly ludicrous) distinctions (see *R v Edmonds* [2011] NZSC 159).

Little mention was made of fundamental difference in *Chan Kam Shing*, and it is to be hoped that its abolition, along with joint enterprise liability, in Jogee provides a suitable opportunity to rid Hong Kong law of this notion.

### Application of the Principles in *Chan Kam Shing*

One of the features of Chan’s appeal is that it was dismissed on the evidence on the basis that it was not actually an instance of extended joint enterprise liability. Rather, as explained by Ribeiro PJ, Chan was liable both on a “basic” joint enterprise basis, and on traditional accessory liability principles.

### Where does this leave the law?

Returning to Ms. Montgomery QC’s views, it seems reasonably clear that “the law in Australia, New Zealand and Hong Kong is now settled”, save for residual problems relating to fundamental difference and withdrawal which remain to be solved. By contrast, as Ms. Montgomery QC succinctly stated: “the law in the United Kingdom and the Caribbean appears less certain.” More regrettably, Jogee, and its proposed solution to the problem of guilt by association which afflicted the joint enterprise doctrine in the UK, has, in her view, created as many legal problems as it solves. Jogee has prevented the continuing use of the doctrine but has provided no relief for those who have been disproportionately affected by it.

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終審法院不接納Jogee案

終審法院再次申明陳榮兆案和廣泛的原則，拒絕跟隨英國最高法院2016年初在*R v Jogee, R v Ruddock* [2016] 2 WLR 681(「Jogee案」)的帶領。英國刑事法20多年前以經明確採用廣泛的原則，英國最高法院(「最高法院」)卻在Jogee案斷定陳榮兆案「在法律上行了錯誤的一着」，真有點出人意外。最高法院斷定，廣泛的原則涉及一種對以前案例法的誤解，錯誤解讀了處理有共同犯罪目的的參與者法律責任的案例。至於預見有共同目的的各方在執行該目的時，有可能作出超越他們經同意的目的之事，這種「預見」被錯誤奉為次位參與者法律責任的原則，而不是好好地被用作為法律責任在證據方面的基礎。最高法院認為這是「錯誤的一着」，在Jogee案毅然廢除共同犯罪計劃法律責任，不以此作為次位參與者法律責任的個別基礎。最高法院裁定，用來確立有共同目的的參與者法律責任的，一定不是共同犯罪計劃法律責任，而是傳統的從犯法律責任原則，即基於參與者的協助或鼓勵的行為，並懷有協助或鼓勵干犯相關
罪行的意圖(或至少是有條件的意圖)，以及知悉所有與該罪行有關的關鍵事情，確立參與者的責任。聯合判詞中「預見」僅在證明意圖上具重要性，但不能作為證明同謀關係的依據。

在陳錦成案，終審法院法官一致拒絕接受最高法院在 Jogee 案的結論，斷定樞密院沒有在陳榮兆案「行了錯誤的一着」。然而，終審法院不是率先不接受 Jogee 案的高級法院。四個月前，澳洲高等法院同樣在 Miller v R [2016] HCA 30 拒絕遵從 Jogee 案的判決，所持理由相近。

擴大共同犯罪計劃法律責任


常任法官李義在陳錦成案精細地說明兩種共同計劃法律責任形式的分別。對於共同計劃各方打算或意圖依據他們經同意的(不論是明示還是默示同意)共同目的干犯罪行，常任法官李義亦把参与者就該罪行承擔的法律責任稱為基本共同犯罪計劃的法律責任。不過他指出，陳榮兆案的廣泛的原則令基本共同犯罪計劃參與者因為其他罪行被定罪，理由是這些罪行是他們預期或預見執行共同目的時可能發生的，而不是因為他們「有意圖」干犯這些罪行。在陳錦成案，常任法官李義稱後一類為「經擴大共同犯罪計劃」。他亦強調指出這個細節相稱提供有效方法應對情況方面的不確定性，這些不確定性通常在一黨人犯罪時出現，並在有效地檢控那些參與者的時候(特別是用傳統的從犯原則的時候)有可能產生其他問題。

必定是其中一項

在陳錦成案，常任法官李義識別多一類在檢控集體罪行時出現的不確定性，他稱之為「證據方面的不確定性」。明顯的例子是處理集體刑事活動的檢控員，特別是處理醜名命案的集體打鬥的檢控員，有可能無法識別主犯。按照傳統的從犯原則，從犯的法律責任是從主犯的法律責任衍生而來，因此一定要識別出誰是主犯。如果他或她識別不到主犯，所有人都應該獲判無罪釋放。共同犯罪計劃法律責任克服了這個難題，因為它容許檢控員證明有闡行為構成案中依據共同犯罪計劃而發生的罪行(例如致命一擊產生謀殺的法律責任)，並且定必由共同犯罪計劃中其中一方作出(即不可以是由其他人作出)。在共同犯罪計劃法律責任的基礎上，一旦上述兩項俱獲證明，檢控員針對各被控人士的案情就取決於他們作為次位參與者的法律責任的證明。要是該罪行是各方打算干犯的，各方均須承擔責任，因為他們協議或意圖干犯該罪行；但除此之外，法律責任會取決於被控罪行最低限度是「預期……可能會發生之事」(即是經擴大共同犯罪計劃)的法律責任。就此而論，這就支持了一個觀點：共同犯罪計劃法律責任與傳統的從犯法律責任並不一樣，應該被視為明確的法律責任基礎；這些法律責任不是從主犯的法律責任衍生而來的，事實上，這個觀點在陳錦成案中得到強而有力的肯定。

錯誤的一着

共同犯罪計劃法律責任明顯給檢控員帶來極大好處，既然這樣，為甚麼最高法院在 Jogee 案反其道而行，最終走出可能不受歡迎的一步，帶頭廢除共同犯罪計劃的法則呢？

正如英國御用大律師萬江儀最近在「港大—布高江律師行刑事法講座系列」首場講座上所言，毫無疑問，這是因為英國政治環境惡劣，不適合共同犯罪計劃法律責任的施行。香港大多數醜名命案的集體打鬥都是有組織幫會罪行，英國的情況與香港的不一樣，在英國，共同犯罪計劃法律責任被指加長了更多謀殺罪成被判處終身監禁的年青人(尤其是英籍黑人青年)的最低服刑期，究其原因，大部分只是因為他們與那些介入暴力打鬥的人「有關連」。很明顯，透過立法解決這種走過了頭的情況並不行，最終還是依靠英國最高法院做糾正普通法產物的工作。

不過更重要的是，除了這些更廣濶的政冶問題之外，最高法院在 Jogee 案選擇不接受法律責任廣泛原則的基本特質。

記着，共同犯罪計劃法律責任是有好處的，最高法院有嘗試向檢控員保證明它仍有用武之地。但是沒有任何批評或建議的解決方法得到終審法院的認同。常任法官李義認同 Miller案的大多數判決，拒絕接受 Jogee 案的判決，理由有三(第62段)。

首先，他不認同最高法院關於次位參與者的責任的看法。相反，他認為共同犯罪計劃法律責任有別於傳統的從犯法律責任，指出「同犯罪計劃中的一方的法律責任並非派生責任，而是憑藉其參與該共同犯罪計劃而獨立產生的責任」。其次，他認為「將次位參與者的法律責任限定於傳統的從犯法律責任規則下的法律責任以及取消共同犯罪計劃法則，將令關於同謀關係的法律出現嚴重缺
口。「第三，他認為Jogee案提出「有條件的意圖」概念，在概念上及實際上均產生重大難題。

基本分別

關於共同犯罪計劃法律責任的法律有好幾處特點，其中一項較不受人歡迎，就像在英國發展的情況一樣。這項特點採用了「基本分別」的概念，循逐概念處理實際進行預期的罪行所用的方式所可能出現的分別。這個概念首見於R v English案，大意是確認廣泛原則在運用上至少有一個限制Powell、English案也採納這個概念。正如在R v English案所確切地闡述，在「經擴大」的共同犯罪計劃進行期間殺人，而殺死死者所用的工具的危險性及殺傷力在殺人案件中是有分別的，那麼，要是證明不到共同犯罪計劃中某方絕對有預期會有人使用武器，或使用如此危險或高殺傷力的武器，這個分別就有可能限制共同犯罪計劃中該一方的法律責任。

這個限制過去一直是共同犯罪計劃法律責任的特點。在Anderson & Morris案，Anderson是突然用刀戳死受害人，按照Morris的說法，Anderson殺人是始料不及的，Morris因而被裁定謀殺和誤殺罪名不成立。

這個可能性同樣在陳錦成案得到Robin Cooke爵士的確認，他觀察到共同計劃各方(i)只要是從來沒有預期主犯所干犯的罪行在執行共同犯罪計劃期間所發生之事，或(ii)只要他們有預期這種罪行，但因為「極不可能發生」而不予理會，共同犯罪計劃各方會得以逃避法律責任。不過，如果被控一方知道有人攜帶具有殺傷力的武器(譬如說，刀或上了子彈的槍)犯案，辯方勝訴的機會是微乎其微。

在R v English案確切地闡述的「基本分別」事實上破壞了這個可能，因為它使得陪審團只在殺人工具被指稱在危險性或殺傷力方面有分別的情況下，才可以判一方無罪。這個限制在R v Rahman[2009] 1 AC 129有明確闡述。

現在的法律是甚麼情況？

說回英國御用大律師萬江儀的觀點。撇開與基本分別和退出有關的剩餘問題不提(這些問題仍然有待日後解決)，現時合理地清楚可見的似乎是「澳洲、新西蘭和香港的法律現時已有既定原則」。英國和加勒比的情況正好相反，正如英國御用大律師萬江儀所言：「看來英國和加勒比的法律更不明確。」更遺憾的是，Jogee案解決罪惡關係問題的建議方法折騰了英國的共同犯罪計劃法則，她認為Jogee案和案中建議的方法是功過參半，既解決了法律問題，但同時又創造了法律問題。Jogee案禁止繼續使用共同犯罪計劃法則，但沒有給那些不相稱地被法則影響的人提供任何濟助。
Court of Appeal Concludes that Certain Features in the Judgment Summons Procedure are Not Consistent with the Hong Kong Bill of Rights Ordinance
In matrimonial proceedings, it is quite common that the Family Court orders a husband to pay interim maintenance to his wife and/or children, pending the final determination of the divorce petition. This is what is known as a “maintenance pending suit”. If the husband refuses or fails to make payment, whether pursuant to a maintenance pending suit or a maintenance order, the wife can take out a judgment summons seeking an order for the husband to attend Court for oral examination (ie, to answer the questions from the judgment creditor (ie, the wife) and the court in relation to his failure to make payments) and be committed to prison for up to three months.

On 30 December 2016, the Court of Appeal handed down its Judgment (“Judgment”) in the case of YBL v LWC, CACV 244/2015 (“YBL v LWC”). In its Judgment, the Court of Appeal comprehensively reviewed the judgment summons procedure under r. 87 of the Matrimonial Causes Rules (Cap. 179A) and held that certain features of the procedure were incompatible with the Hong Kong human rights landscape under Arts. 10 and 11 of the Ordinance. The following factors and human rights considerations were taken into account:
• presumption of innocence;
• the right to be informed of the nature and cause of the charge;
• the right to be present and be legally represented;
• the need for segregation of the examination process and the committal process;
• non-compellability and the right against self-incrimination; and
• the use of affidavit and hearsay evidence for the purpose of a judgment summons.

The Court of Appeal concluded that various features under the judgment summons procedure were not compatible with the Ordinance on a variety of grounds (see para. 98).

**Compression of Two Processes Unfair**

First, the Court concluded that having the committal process heard at the same time as the examination process is unfair and incompatible with the right to a fair trial. One would recall that the husband in YBL v LWC gave evidence on oath before the Court on 26 October 2015 and the Court committed him to prison on the same day.

The Court explained that the purpose of an examination process is to facilitate a judgment creditor to obtain further information on the means of the judgment debtor and that the judgment creditor must take the information obtained through the process of examination to formulate his/her case against the judgment debtor at the time of default. This should be part of the judgment creditor’s case against the judgment debtor and until such information is available, the judgment debtor cannot properly prepare his defence.

Seen in this light, the court held that the compression of the two processes into one undermines the guarantees in Art. 11 of the Ordinance. At the start of the examination process, neither the judgment creditor nor the judgment debtor knows an essential element of the charge, viz the financial means of the judgment debtor at the time of default. As such, the Court found that it cannot be fair to require him to answer the charge during the same compressed proceedings.

The court also noted the risk of the judge overlooking the point that the burden and standard of proof are different in the two processes.

**Right to be Informed Compromised**

Second, the Court found that under the judgment summons procedure, there is no safeguard in terms of the judgment debtor, who is subject to the potential risk of being committed to prison, being informed of the nature and cause of the charge against him. This is best exemplified by the fact that the husband in YBL v LWC was imprisoned right after he gave evidence on oath on 26 October 2015.

In its Judgment, the Court referred to an explanation provided by Nowak in UN Convention on Civil and Political Rights: CCPR Commentary (2nd Ed) (p. 33) that the right to be informed of the nature and cause of the charge under Art. 11(2)(a) of the Ordinance “cover[s] ‘not only the exact legal description of the offence but also the facts underlying it’. ... [as such,] the information must be sufficient to allow preparation of a defence.” The Court also noted that the United Nation’s Human Rights Committee had interpreted the right under Art. 14(3)(a), the equivalent of Art. 11(2)(a) of the Ordinance, as the right to be informed of both the law and the alleged facts on which the charge is based (see para. 38).

In this case, the Court held that the information in the judgment summons
was inadequate in light of the relevant standards.

**Violation of Presumption of Innocence**

Third, the Court examined the reference in r. 87(5)(c) and Form 23 (ie, the prescribed form of judgment summons under the Matrimonial Causes Rules (Cap. 179A)) which requires the judgment debtor to show cause (ie, to explain why he should not be committed to prison for his default). The Court found the provision to reverse the burden of proof and the infringe presumption of innocence under Art. 11(1) of the Ordinance.

In considering the right under Art. 11(1), the Court noted that there is already a body of case law in Hong Kong holding that in the context of a judgment summons the burden of proof is on the judgment creditor and the standard of proof is beyond a reasonable doubt. Upon examining r. 87(5)(c) and Form 23, where there are references to the judgment debtor being summoned to show cause why he should not be committed to prison for his default, the Court found that their wording could be misleading (see para. 37). The Court also noted the risks of lapses on the part of Family Court judges when they do not have the benefit of assistance of legal representations for the parties.

The Court explained that it is wrong in principle to require the judgment debtor to show cause in the context of a committal application in light of Art. 11(1) and recommended those words be taken out from r. 87(5)(c) and Form 23 (see para. 37).

**Right of a Person to be Tried in His Presence Infringed**

Fourth, the Court considered automatic committal under r. 87(5)(c) (ie, if the judgment debtor fails to appear in Court despite being ordered he will be automatically committed to prison), finding it infringed the right of a person to be tried in his presence under Art. 11(2)(d) of the Ordinance.

The first part of r. 87(5)(c) empowers the court to commit a person who failed to attend the Court after an order had been made against him under r. 87(5)(b) for attendance at a specified day and time. It was submitted that this infringed the right of a person to be tried in his presence under Art. 11(2)(d) of the Ordinance.

The Court referred to G v S (2001) 4 HKCFAR 419, in which Nazareth NPJ commented on an order made after the hearing of a judgment summons that provided for warrant of committal to be issued upon an affidavit of non-compliance being filed:

“It cannot be right that a judgment debtor in default should be simply deprived of his liberty and subjected to a term of imprisonment in that way. There might by that time be good reason why he should not be imprisoned. ... The proper course would be at least for a Judge of the Family Court to assess the propriety of and to sanction the warrant...”

The Court found the same could be said with regard to the automatic committal of a judgment debtor on account of his absence. “There could be good reasons for his absence, e.g., he had not received notice of the appointment or he is met with sudden illness or other unforeseen circumstances. This is particularly so when an order under [r.] 87(5)(b) is also made in the absence of the judgment debtor. Hence, it could well be the case that the court has never heard from the judgment debtor in relation to the judgment summons when he is automatically committed under the first part of [r.] 87(5)(c)” (see para. 51).

While the Court acknowledged that the repeated absence of a judgment debtor is adequate justification for the court to issue a warrant for his arrest and have him brought before the court as soon as practicable after arrest, it found that such circumstances cannot justify automatic committal. It also acknowledged that if the court is satisfied that the judgment debtor failed to attend the hearing without good cause, the court can conclude that the judgment debtor has waived his right to be present at trial and proceed to hear evidence of the judgment creditor and determine whether a case for committal is established beyond reasonable doubt. In those instances, the Court found that if the court is so satisfied, it can make an order for committal in the judgment debtor’s absence (see para. 52).

**Ongoing Arrears Unacceptable for Committal Process**

Fifth, the Court considered the practice of expanding the scope of a judgment summons by including ongoing arrears in the amount in default (as opposed to the arrears up to the date of the judgment summons), holding that while this practice may be adopted for the examination process, it was unacceptable to adopt it for the committal process.

The Court began by noting that this practice is apparently adopted to dispense with multiple judgment summonses being issued for ongoing arrears. If an order of committal is made, the payment of this amount is set as the sum the judgment debtor must pay to have a committal suspended. Noting the utility of the practice in terms of the new order for payment in the examination process, the Court concluded that as a matter of principle, there is a serious problem if this is adopted as well for the committal process. The Court explained:

“The practice means that throughout the committal process, the charge is evolving. To establish a case of default up to the date of the judgment summons, the judgment creditor needs to establish the means of the judgment debtor during the defaulting period. However, if further arrears were added in the course of the committal proceedings, it effectively means that the judgment creditor can commit the judgment debtor on his means after the judgment summons. Thus, the charge is being constantly expanded and the judgment creditor can succeed even though he fails to establish the means of the judgment debtor for the pre-judgment summons period so long as he manages to establish the latter’s means for the post-judgment summons period” (see para. 58).
As such, the court found this practice in breach of Art. 11(2)(a) and (b) of the Ordinance.

The Way Forward
The Court of Appeal gave remedial interpretation to the relevant rule in order to make it compatible with the Ordinance. Under such remedial interpretation, there will be, amongst others, the following important changes to the judgment summons procedure:

- the examination process will be segregated from the committal application. Practically, it would mean that the judgment debtor would first have to attend court for oral examination and after that the judgment creditor, if so advised, would need to take out another application for committing the judgment debtor to prison;
- the words “and also to show cause why you should not be committed to prison for such default” (which contravenes the presumption of innocence) would be removed from the prescribed form for the judgment summons; and
- when taking out a Committal Summons (ie, seeking for an order to commit the judgment debtor to prison), copies of the Statement and the Supporting Affidavit together with exhibits are required to be served on the judgment debtor.

The Court of Appeal also urged the judge in charge of the Family Law List in the High Court and the judges in the Family Court to give the matter immediate attention and to issue practice directions setting out the procedures for the judgment summons regime having regard to Arts. 10 and 11 of the Ordinance. It also urged the Family Court to consider publishing leaflets and standard forms to assist and guide litigants in person in applying and defending judgment summons (see para. 113).

In the end, the husband’s appeal in YBL v LWC was allowed but the subject judgment summons was remitted back to the Family Court for determination before another judge having regard to the principles and procedures in the Judgment.
與《條例》有所抵觸

上訴法庭在其內容廣泛的判決中，根據《條例》第10條及第11條涉及香港人權保障的條文，審視了該判決傳票程序，並探究了以下各項因素和人權問題：

- 無罪推定原則；
- 獲告知控罪的性質及因由的權利；
- 到庭受審及獲得律師作為代表的權利；
- 將訊問程序及交付羈押程序分隔的必要；
- 不得被強制作證及享有免使自己入罪的權利；及
- 就判決傳票之目的，使用誓章和傳聞證據。

上訴法庭裁定，判決傳票程序中的若干規定，在某些方面與《條例》有所抵觸(參見第98段)。

侵犯出席審訊的權利

第四，上訴法庭審視了第87(5)(c)條規則下的自動交付羈押規定(即是說，假如判決債務人被命令出庭，但最後卻沒有，則他將會自動被交付監狱羈押)，並裁定它違反了《條例》第11(2)(d)條的規定，即任何人有權出席對他的審訊。

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違反無罪推定原則

第三，上訴法庭審視了第87(5)(c)條規則及第23號表格(即是《婚姻訴訟規則》第179A章)所指定的判決傳票表格)所載的內容，當中規定判決債務人需提出因由(即是解釋為何他不應因其違責而被交付監獄羈押)。上訴法庭認為，該項規定實際上是將舉證責任倒置，並違反了《條例》第11(1)條的無罪推定原則。

在審視第11(1)條下的權利時，上訴法庭指出，香港已有一系列的判例，規定在關於判決傳票的情況中，舉證責任需要由判決債務人承擔，而舉證標準則為無理懷疑。上訴法庭在審視了第87(5)(c)條規則及第23號表格後(當中提到被傳召的判決債務人，須就為何他不應因其違責而被交付監獄羈押提出因由)，裁定當中的措辭存在誇張成分(參見第37段)。上訴法庭亦指出，如果家事法庭的法官未能讓訟方獲得律師提供幫助，當中的處理方法恐怕會存在失誤。

損害獲告知的權利

第二點是，上訴法庭裁定在該判決傳票程序並沒有提供任何保障措施，讓面對可能被交付監獄羈押之風險的判決債務人，得以就他所面對的指控，獲得告知該指控的性質及因由。最佳的例證，就是在YBL v LWC一案中，該名丈夫於2015年10月26日經宣誓作供後，即被法庭下令囚禁。

上訴法庭在其判決中，提述了法官Nowak在 UN Convention on Civil and Political Rights: CCPR Commentary (2d Ed) (p. 331)一案中所提供的解釋。該解釋稱，根據《條例》第11(2)(a)條的規定，獲告知有關指控的性質及因由的權利，「不僅包含有關控罪在法律上的準確陳述，也包含該控罪的相關事實」。因此，該等資料必須充分，從而讓被告得以編撰其抗辯理由。上訴法庭亦指出，聯合國人權委員會已對第14(3)(a)條(相當於《條例》第11(2)(a)條)下的權利作出了解釋；也就是說，被告人享有獲得告知與其控罪相關的法律及所指稱的事實之權利(參見第38段)。

上訴法庭在本案中裁定，根據各項相關準則，該判決傳票中所載的資料並不充分。
判定債務人也許是基於合理的理由而未能出庭，例如：他没有收到有關通知；他突然患上了急病；又或是，基於一些他無法預見的情況。假如有判決定債務人因未能出庭而需要同時面對根據第87(5)(b)條規則所頒發的命令，則更加需要在這方面作出考慮。因此，有可能出現的情況是，判定債務人在根據第87(5)(c)條規則的第一部分被自動交付羈押之前，法庭根本從沒有就該判決傳票，聽取判定債務人所作的解釋(參見第51段)。

上訴法庭承認，倘若判定債務人一次又一次地不出庭，法庭便有充分理由向他發出拘捕令，並在將他拘捕後，於可行的情況下盡快將他帶上法庭。然而，上訴法庭亦認為，該等情況不足以成為將他自動交付羈押的理由。此外，上訴法庭同意，如果法庭信納判定債務人是在沒有合理因由的情況下不出庭，那麼法庭可以認定判定債務人是放棄了其出席審訊的權利，並可逕自聽取判定債權人的證供，及裁定交付羈押。因此，有關的控罪是在不斷地膨脹擴大，而只要判定債權人能夠證明判定債務人在判決傳票發出之後的經濟能力而將其交付羈押。因此，有關的控罪是在不斷地膨脹擴大，而只要判定債權人能夠證明判定債務人在判決傳票發出之後的經濟能力，他便可以取得勝訴，儘管他未能證明判定債務人在判決傳票發出之前的經濟能力」(參見第58段)。

有鑑於此，上訴法庭裁定上述做法實屬違反了《條例》第 11(2)(a) 及 (b)條。


後續措施

上訴法庭對相關規則作出了補救性的解釋，從而使其符合《條例》的規定。根據該補救性的解釋，判決傳票程序須(除其他以外)作出如下重大修訂：

• 訊問程序與交付羈押申請需要分開處理。在實際操作上，這意謂判定債務人必須先出庭接受口頭訊問；之後，判定債權人(若其獲得提供如此意見)如欲使判定債務人被交付監獄羈押，便需要另外提出申請。

• 將「並提出因由，說明為何你不應因拖欠該款項而被交付監獄」等字句，從指定的判決傳票表格中刪除(因其違反無罪推定原則)；及

• 在取得一份交付羈押傳票(即是要求法庭頒令，將判定債務人交付監獄羈押)時，需要將陳述書及作為支持的誓章，並連同證物一併送達判定債務人。

上訴法庭也要求管理高等法院家事法審訊表的法官，以及家事法庭的法官一同採取即時行動來處理有關事宜，並根據《條例》第10條及第11條的規定，發出實務指引，述明判決傳票機制的相關程序。此外，上訴法庭也要求家事法庭考慮印製小冊子及標準表格，就判決傳票的申請和抗辯，為沒有律師作為其代表的訴訟人提供協助和指引(參見第113段)。

YBL v LWC一案中的丈夫最終上訴得直，但作為該案標的之判決傳票須發回家事法庭，並由另一位法官根據上訴法庭在其判決中所述的原則和程序來作出裁定。 ■
Outbound Chinese Investment into the EU: What You Need to Know about Regulatory Roadblocks

By Héctor Armengod, Partner
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Latham & Watkins
Chinese outbound investment in the EU has been growing steadily, hitting a record €20 billion in 2015 and remaining strong in 2016. While most European economic actors perceive this trend as positive, there are some indications that regulators and policy makers are paying particular attention to EU M&A transactions by Chinese investors. Understanding existing regulatory structures – some of which may be implicated by Chinese outbound investment in non-intuitive ways – is necessary to effectively structure transactions in a manner that minimises deal-related regulatory risk.

**Foreign Ownership Restrictions**

Restrictions on foreign ownership in sensitive sectors are common in Europe. While some of the limitations are predictable (since they relate to sectors that are sensitive (eg, defence)), other limitations may be less intuitive. Below, we set out the main characteristics of foreign investment regimes in major European jurisdictions and also explain how, in some cases, investments in those jurisdictions could attract scrutiny by the Committee on Foreign Investment in the US (“CFIUS”) – particularly given the more aggressive approach recently taken by CFIUS.

**France**

Foreign investments in strategic sectors in France require prior authorisation by the French Finance Ministry. Strategic sectors include defence, information technology, energy, transport, water, public health and telecommunications but also more unusual sectors such as private security and the gambling industry.

For non-EU investors, the prior authorisation regime applies where a foreign investor (1) acquires control of or acquires a stake of 33.33 percent of the share capital of a French target, or (2) acquires all or part of a French business. The Finance Ministry has two months to complete its review and the transaction will be deemed as authorised if the Finance Ministry does not respond within this period.

If a transaction in a strategic sector is completed without the prior authorisation of the Finance Ministry it will be considered void. Criminal sanctions may also apply for non-compliance with the authorisation regime.

**Germany**

The German Federal Ministry for Economic Affairs and Energy (“BMWi”) may restrict or even prohibit investments by foreign companies in sensitive industries, namely in defence and encryption technology. Similar rules also apply to the acquisition of a company that operates a high-grade earth remote sensing system. Relevant investments must be notified to the BMWi and are suspended until the BMWi grants its approval. If the BMWi does not initiate a formal review within one month from notification, approval is deemed to be granted.

German laws also provide for a general foreign investment review. If a non-EU investor acquires 25 percent or more of the voting rights of a domestic company and the acquisition could threaten German public order or security, the investment could be restricted or blocked. These types of transactions do not need to be notified, but the BMWi may conduct an ex officio review within three months of the acquisition. The BMWi then has two months to review the transaction from the time that it has received all relevant information. Non-EU investors can request a certificate of non-objection from BMWi prior to closing to avoid uncertainty, although the BMWi’s certificate can be withdrawn if new information comes to light.

This happened recently when the Chinese Fujian Grand Chip Investment Fund tried to acquire German semiconductor equipment producer Aixtron. Fujian Grand Chip had obtained a certificate of non-objection from BMWi, only to see it withdrawn, because of new information that Aixtron had know-how in security-related technologies (that was particularly relevant for the defence sector). While in general, German policies and laws continue to welcome and encourage foreign investment, the Aixtron case demonstrates that certain foreign investments are attracting increased attention from the BMWi. In the case of Aixtron, Fujian Grand Chip Investment Fund withdrew its takeover offer following President Obama’s decision in December 2016 to block the US portion of the deal.

Finally, specific restrictions apply to both national and foreign investors regarding acquisitions of targets operating in certain regulated industries, such as financial services, insurance or media.

**Italy**

Under Italy’s foreign investment control regime, the Italian government has certain “golden” powers to veto or impose conditions on the purchase of interests by non-EU investors in certain Italian companies. The restriction relates to acquisitions of stakes in Italian companies that own strategic assets (eg, relating to telecommunications, energy, defence, aerospace and certain infrastructure).

Relevant transactions must be notified to the Italian government and cannot be completed pending the government’s review. Once a notification has been made, the government has 15 working days to review the transaction and raise any objections. This period may be extended if the government requests additional information. If the government does not exercise its powers during the review period, the proposed transaction can be completed.

In addition to foreign investment control, Italian law also limits the acquisition of equity stakes by foreign investors in supervised entities (eg, banks, payment institutions).

**Spain**

Acquisitions of Spanish companies by non-EU investors are generally unrestricted and, other than the exceptions described below, typically require only a post-closing declaration to the Spanish Ministry of Economy.

Pre-closing authorisation is required for investments in the Spanish defence sector. These investments require prior notification to the Ministry of Defence and
authorisation by the Council of Ministers, unless the investments represent an acquisition of a stake of less than 5 percent in a publicly-listed company (provided the investor does not acquire management rights).

A pre-closing declaration is required for investments originating in tax havens or for some investments in real estate destined for diplomatic or consular offices. Finally, certain sector-specific restrictions also apply to foreign investments in regulated sectors, such as telecommunications, radio and television, energy and financial services.

**United Kingdom**

Generally, the UK government does not restrict foreign ownership of businesses in the UK, although there are special rules relating to ownership in certain industries such as airlines and financial services.

Deal-making in the UK is generally free from political interference and government intervention has been limited. The government does have the power to regulate and potentially block acquisitions through a public interest review of transactions in strategic sectors (such as energy, media and defence) or in order to preserve the stability of the financial system. While the new Prime Minister, Theresa May, has signalled a more interventionist approach in takeovers of strategically important UK businesses by foreign acquirers, details remain unclear. However, it will be important to consider the implications of the potential new regime: foreign acquirers are acting mindfully of the potential new regime and undertaking informal discussions with the UK government in appropriate cases.

**United States**

Chinese investors in EU businesses must also consider the application of US foreign investment rules in cases where the EU target has operations in the US. For example, it is not uncommon for CFIUS – a committee of government agencies charged with reviewing certain transactions that may threaten US national security – to review transactions involving non-US buyers and sellers.

Indeed, CFIUS has broad jurisdiction and may review any transaction whereby a non-US entity may obtain control of a “US business” – where that term is specifically defined to include the US operations of a foreign parent.

If CFIUS has concerns about a deal, it may ask the parties to agree to mitigation measures, such as post-closing operational restrictions, and in rare cases may recommend that the US President block or suspend the US portion of an otherwise offshore acquisition. Notably, CFIUS concerns have effectively sculled several recent deals involving non-US parties, using relatively minor US operations of the target as a basis for jurisdiction.

For example, and as discussed above, President Obama recently decided to block the US portion of the acquisition of Aixtron by the Chinese Fujian Grand Chip Investment Fund. CFIUS had jurisdiction based on Aixtron’s US assets. CFIUS recommended that the US President block the US portion of the transaction because of concerns about the military applications of the technology Fujian would have obtained. Although decisions to block transactions are very uncommon (ie, this was only the third transaction ever blocked by a US President) this recent case illustrates CFIUS’s ability to cast a wide net, especially with respect to investments by Chinese buyers, which are increasingly subject to scrutiny.

The Aixtron case demonstrates why parties to deals involving Chinese investment in the EU should consider whether the target has assets or operations in the US and, if so, the nature of those operations. This analysis should inform the parties’ evaluation of deal risk and decisions with respect to allocation of that risk. This analysis should also inform expectations with respect to transaction timelines, which turns in part on whether the parties decide to proactively notify CFIUS of their transactions. Although filing a CFIUS notice is voluntary in the first instance, doing so is often prudent, particularly if the target’s business involves sensitive industries (eg, defence, energy assets, ports, airports, telecommunication systems). If CFIUS clears a transaction before closing, the transaction typically remains cleared forever. By contrast, in the absence of a clearance, CFIUS may initiate a review (and, in rare cases, force a divestiture) at any time – even years after closing.

**Merger Control Review**

Separate from foreign investment regimes, investments in European assets or businesses can trigger merger control reviews in a number of jurisdictions. In the EU, the merger review can be conducted either at EU level (by the Commission) or at Member State level (by national competition regulators). The purpose of merger control in Europe is to prohibit or impose conditions on transactions that would otherwise significantly impede competition.

Which regulator will review a transaction will generally depend on the buyer and target revenues. If the revenues are above the EU thresholds, then the Commission will conduct the merger review; otherwise national competition authorities will look at the transaction (assuming national review thresholds are met). When the Commission has jurisdiction to review a transaction, national competition authorities do not conduct a review: this “one-stop-shop” system is beneficial to companies since it reduces costs and red tape.

Particular attention is warranted where transactions involve Chinese state-owned enterprises (“SOEs”). These transactions can trigger EU merger control, even if the SOE in question has very limited activities in Europe. This is because the Commission has, recently, found that the turnover of a broader set of SOEs should be taken into account when considering whether a transaction qualifies for review under EU merger rules. In its EdF/China General Nuclear Power Corporation (“CGN”) decision, the Commission considered the revenues of CGN’s owner, the Central Chinese Assets Supervision and Administrative Commission (“SASAC”), for the purpose of determining jurisdiction, because CGN did not enjoy autonomy from SASAC in
its decision-making. The Commission’s approach in EdF/CGN decision means that the antitrust implications of SOE investments must be assessed carefully to avoid unexpected delays from regulatory concerns.

**Mandatory and Suspensory Notification**

When an acquisition meets the EU thresholds, notification is mandatory and the transaction cannot close before clearance. Failing to notify a reviewable transaction or implementing the transaction before clearance can attract significant fines in Europe (up to 10 percent of the aggregate turnover).

**Timetable**

The Commission has 25 working days from the formal submission of the notification to conclude its Phase I investigation (or 35 working days if the parties offer remedies). The Commission may open a Phase II review if it is concerned about the effects of the transaction on competition. A Phase II review lasts 90 working days (although this is often extended). At the end of a Phase II review, the merger is either approved, approved with remedies or prohibited.

**Conclusion**

Foreign investment and merger control reviews are “standard procedure” for many outbound Chinese investors. While for many types of investments these reviews are straightforward or even unnecessary, in certain instances obtaining regulatory approvals can be a complex exercise. Creating a plan at the early stages of investment is necessary to assist Chinese investors to effectively navigate the regulatory maze and avoid unexpected delays.

This article was prepared with the valuable assistance of the following Latham lawyers: Harald Seizner (Partner, Düsseldorf); Stefano Sciolla (Partner, Milan and Rome); Pierre-Louis Clero (Partner, Paris); Richard Butterwick (Partner, London); Martin Saywell (Partner, London); Jana Dammann (Counsel, Hamburg); Zachary Eddington (Associate, Washington DC) and Sophia Stephanou (Knowledge Management Lawyer, Brussels).

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業投資於敏感行業（例如：國防和加密技術產業），而類似規定，亦適用於收購運作「高等級技術產業」的企業。投資者必須就其相關投資向BMWi作出通報，而在得到BMWi給予核准之前，該等投資必須暫緩進行。倘若BMWi於接獲有關通知後一個月內，並未展開任何正式審查，投資者可視其投資已獲得該部門的核准。

此外，德國法例亦就一般性的外國投資審查作出了規定。任何非歐盟國家投資者若欲收購當地企業百分之二十五或以上的表決權，而此等表決權的取得，可能會危及德國的社會秩序與安全，則該等投資可能會受到限制或阻攔。此類交易並不需要投資者向有關部門提供額外信息，但BMWi可以在投資者取得表決權後的三個月內主動展開審查，並於取得所有相關資料後的兩個月內，完成審覈有關投資。

除了對外來投資作出監控外，外國投資者如欲收購一些必須接受監督的機構（例如：銀行、支付機構等），德國的法律也對相關的股權收購作出了一些限制。

西班牙
一般而言，非歐盟國家的投資者欲收購西班牙企業，通常沒有遭受甚麼限制，而是只需要向西班牙經濟部提交一份交易完成後的申報書，但下述情況則屬例外。

投資者如欲投資於西班牙的國防工業，必須事先獲得西班牙政府的核准。在完成有關交易前，投資者必須先給予西班牙國防部通知，並獲得「部長理事會」的核准，除非該等投資只涉及收購一家上市公司不足百分之五的股權（但前提是投資者不會取得該公司的管理權）。

如果投資的資金是來自美國，而某些擬進行的房地產投資，是作為外資經營的手段，則此等交易的需要在其完成之前作出申報。最後，外國投資者如投資於一些受監管的範疇（例如：電信、能源、媒體、金融服務等行業），它們也必須受關於某些針對特定範疇的規定。

英國
一般而言，英國政府對外商投資於英國企業，並沒有作出甚麼特殊限制（但對航空、金融服務等行業的所有權，則另有其他特別規定）。

投資者在英國進行投資，一般不受任何政治干預，但政府介入的程度亦有限。倘若有關交易涉及其國家利益的範疇（例如能源、媒體、國防等），英國政府有權對有關交易進行審查，又或是為了維持金融體系穩定的緣故，對相關投資作出規管或阻止有關收購的進行。英國政府反之其對外投資的政策，則是由英國政府作出決定。

數年前美國政府通過的《國家安全與投資法》（National Security and Investment Act, NSI Act），授權美國國家安全顧問（National Security Advisor, NSA）對某些投資交易進行審查，而此等投資交易的審查，可能涉及有關投資標的國防、能源、醫療、金融服務等行業。NSA有權於投資者作出投資決定之前，要求投資者提供額外資料，並於投資者獲得NSA的同意後，方可進行投資交易。倘若NSA於投資者作出投資決定後，發現投資交易對美國國家安全構成威脅，則可於投資交易完成後，要求投資者恢復投資交易前的狀態。

據報，美國政府於近期已對數宗投資交易進行審查，包括對中國投資者收購美國的航空公司及能源企業的投資交易。在最近便是一個例子，中國的「宏芯基金」有意收購美國的半導體設備生產商Aixtron。此事曾經引起美國政府的高度關注，最終中國政府亦表示不會收購Aixtron，投資者最終撤回其收購要約。

總括而言，不論是當地還是外國投資者，倘若它們有意收購一些受監管行業（例如：金融服務、保險、媒體）經營的企業，便須遵循其特定收購限制。
Aixtron所擁有的美國資產，作為其行使管轄權的依據。事緣CFIUS關注到，「宏芯基金」有可能會將所取得的技術運用於軍事上，因而建議奧巴馬總統阻止「宏芯基金」收購該項交易中所涉及的美國業務部分。雖然美國阻止收購交易的進行，是十分罕見的做法（包括這次在內，美國總統只曾三次阻止業務收購的進行），但這一近期個案亦顯示，CFIUS的影響力無遠弗屆——特別是對中國的對外投資（中國的對外投資正面對日益嚴格的審查）。

Aixtron一案亦說明，交易方在歐盟國家進行涉及中國投資的交易，必須考慮有關的投資標的，是否擁有任何在美國的資產或業務；若然，該等資產或業務的性質為何。此等分析可促使交易方對有關交易的風險進行評估，並就如何進行風險分配作出相關決定。此外，它亦有助交易方預計有關交易的進度，促使它考慮是否決定向CFIUS作出通知。

**企業合併管制審查**

除了實施外來投資制度外，投資於歐洲的資產或業務，亦有可能會引發當地若干司法管轄區進行企業合併管制審查。在歐盟，企業合併審查可以是在歐盟層面（歐盟委員會）作出的，亦可於在歐盟成員國的層面（國家競爭監管機構）進行。歐洲實行的企業合併管制，目的是禁止任何嚴重妨礙競爭的交易，又或是對此等交易施加限制條件。

至於應由哪一個監管機構負責審查有關交易，通常是取決於買方和收購標的所獲得的收入。該等收入如果高於歐盟的門檻，則將會由歐盟委員會來進行企業合併審查；否則，會是國家競爭管理部門對有關的收購進行審查（假定其能達到國家審查的門檻）。倘若歐盟委員會擁有審查某項交易的管轄權，則國家競爭管理部門將不會介入該等審查。由於這「一站式」機制能有助降低成本和減省一些繁文縟節，因此對企業而言是有所裨益的。

投資者所進行的投資，倘若涉及中國國有企業（下稱「國有企業」），那麼便需要加倍留心。即使該等中國國有企業在歐洲只進行有限範圍的活動，但它們仍有可能會引發歐盟對相關交易實施企業合併管制。在近期，歐盟委員會裁定，在研判某一項交易是否應當根據歐盟的企業合併規範進行審查時，必須對範圍更廣的國有企業的營業額作出審視。歐盟委員會在其於EdF/China General Nuclear Power Corporation（下稱「CGN」）一案的裁決中，由於他們需要對司法管轄權的問題作出裁決，因此也對CGN的擁有人大國院國有資產監督管理委員會（下稱「SASAC」）的收入作出了審視（原因是CGN在其自身的決策過程中，並不享有獨立於SASAC的自主權）。歐盟委員會在EdF/CGN一案中的取態，意味著投資者必須就中國國有企業的投資與反壟斷之間的含義，作出審慎的評估，以免因當地所實行的監管措施而造成無法預計的延誤。

**時間表**

從交易方正式提交通知的日期起計算，歐盟委員會須在25個工作日內完成第一階段的審查（倘若交易方提供補救措施，則延長至35個工作日）。歐盟委員會如顧及有關業務對競爭可能造成的影響，他們便棄採用上述第25個工作日的期限，而將審查時間延長，通常是有延長90個工作日（通常會獲得延長）。當審查完結後，歐盟委員會會決定是否批准有關的企業併購交易。這在幾種情況下會對有關的企業併購交易作出決定，包括：批准有關的企業併購交易；要求交易方提供補救措施；或是在未獲得補救措施前，不批准有關的企業併購交易。

**結論**

對許多中國境外投資者來說，外來投資與企業合併管制審查等舉措，均屬於「標準程序」。儘管對許多各類投資所作的審查只是相當簡略，甚至是沒有必要，但在某些情況下要取得當地監管部門的批核，過程有時也會相當繁複。因此，為了協助中國投資者有效遵守各項監管規定，從而避免出現無法預計的延誤，在投資初期及早制定有關計劃，實屬至關重要的舉措。
ANTI-MONEY LAUNDERING

Some Lessons from SFC’s Further Guidance to the Markets

The Securities and Futures Commission’s recent circular to licensed corporations and associated entities on anti-money laundering and counter financing of terrorism (“AMLCFT” or “AMLCTF”) comes at an opportune time with the AMLCTF practices of certain designated non-financial businesses and professions (“DNFBPs”) also in the news, following a related government consultation. At the time of writing, the formal phase of that consultation is due to conclude in early March 2017 (see Industry Insights, February 2017, “AML: DNFBPs”).

The SFC circular “Compliance with AMLCTF Requirements” follows its review of the practices of more than 290 licensed entities in 2016. That review identified more than 200 incidents of non-compliance with (among other things) the SFC’s Guideline on AMLCTF and Code of Conduct.

As with most industry standards, the general principles that underpin the SFC’s guidelines are rooted in the Financial Action Task Force’s key “40 Recommendations” (on the international standards for combating AMLCTF).

The SFC circular specifically gives examples of the different types of irregularities discovered as a result of its findings (Appendix 1 and 2 of the circular). These irregularities, together with the examples of good practice set out at Appendix 3, demonstrate two themes. First, deficiencies in licensed entities’ AMLCTF procedures are often a result of omissions (“failing to …”); these omissions are, in turn, often caused by a lack of proper resources. Second, good practices are led by a senior management team*.

While the SFC’s circular and guidelines are industry specific, the general principles relating to client due diligence and record-keeping are useful reminders for DNFBPs in Hong Kong (be they, among others, lawyers, accountants or estate agents).

With this in mind, the responsible partner(s) and/or AML compliance and reporting officer(s) within a law firm and a foreign law firm would do well to review the contents of the profession’s Practice Direction P (AMLCTF) and, in particular, its mandatory aspects. Practice P is the legal profession’s relevant regulatory standard and provides the most comprehensive guidance of all DNFBPs in Hong Kong*. Members in practice (and in-house lawyers with a current practising certificate) would also be well advised to attend the Academy of Law’s annual “Anti-Money Laundering Seminar for Lawyers” (run in conjunction with the Police, the Narcotics Division and the DOJ in October) and/or an accredited AML risk management education course (if they have not already done so).

In light of the government’s consultation document on “Enhancing AML Regulation of DNFBPs” it is likely that more attention will focus on the provisions of Practice Direction P; particularly, in the run-up to the FATF’s next mutual evaluation of Hong Kong (thought to be in the last quarter of 2018, for reporting in the summer of 2019).

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

* See Industry Insights, April 2015: “Internal Controls – No Passing the Buck or Turning a Blind-Eye”.
DATA PRIVACY

Preparing to Comply with The EU General Data Protection Regulation

The new European General Data Protection Regulation ("GDPR") will come into force throughout the European Union on 25 May 2018. The GDPR will replace existing data protection laws throughout Europe and introduce significant changes and additional requirements that will have a wide ranging impact on businesses around the world, irrespective of where they operate.

The GDPR: The Changes that Will Affect your Business

The key changes and additional requirements introduced by the GDPR are:

1. European data protection law will now apply worldwide. Both EU-established organisations and organisations that are located outside the EU that process EU personal data or monitor individuals within the EU, will now have to comply with European data protection law.

2. Tougher sanctions for non-compliance. The maximum fine for a breach will be substantially increased to 4 percent of an enterprise’s worldwide turnover or €20 million per infringement, whichever is higher.

3. A new data breach notification obligation. Organisations will now have to notify the relevant European data protection authority of a breach without undue delay and where feasible within 72 hours. A notification must also be made to the individuals affected without undue delay where there is a high risk to the individuals concerned.

4. New data privacy governance, data mapping and impact assessment requirements. Organisations will now need to appoint a data protection officer ("DPO") to implement and monitor compliance with the GDPR. Organisations will now also be required to map their processing of personal data and undertake privacy impact assessments for higher risk processing.

5. A requirement to implement “privacy by design”. Businesses must now take a proactive approach to ensure that an appropriate standard of data protection is the default position taken when personal data is being processed.

6. Strengthening of individuals’ rights to personal data. Individuals will have the right to have their personal data removed from systems or online content (the “right to be forgotten”), the right to avoid automated data profiling (where this would produce a legal effect), and the right to be given, or specify a recipient for, an accessible copy of their personal data (the “right to data portability”).

7. Enhanced requirements for the supply chain. Businesses must ensure that third-party data processors implement GDPR-compliant security measures. These service providers will now be held accountable for their own level of appropriate security, must document their processing and must obtain prior consent to employ sub-processors. Organisations may need to amend their contracts with these parties to address these issues.

Preparing for the GDPR: The 10 Steps Your Business Should Take to Get Ready to Comply

1. Inform your leadership and formulate a plan. Senior management should be made aware of the GDPR and how it will affect your business. Senior management should designate the individuals who will formulate a GDPR compliance and will educate others on its operational impact.

2. Appoint a DPO. Determine whether it is required under the GDPR or otherwise desirable to appoint a DPO to implement and monitor your GDPR compliance plan. This person should act as the head of your data protection governance structure and report directly to leadership.

3. Map your personal data. A detailed investigation should be conducted into and a record created of the personal data your business is collecting, the purposes...
for which it is being processed, how it was obtained and who it is being shared with.

4. Examine the impact. The information gathered from the personal data mapping exercise should be used to assess which of your business activities must comply with the GDPR.

5. Address the risks. Privacy impact assessments should be conducted to identify and minimise the risks associated with your processing of personal data, particularly where there are high risks to the rights of the individuals concerned.

6. Review the grounds under which personal data is being processed. The basis for collecting and processing personal data should be reviewed in light of the GDPR, particularly where “consent” and “legitimate interests” (which are more difficult to demonstrate under the GDPR) are being relied upon.

7. Update your data governance. Policies, procedures and governance controls should be updated to detail how your organisation will comply with the GDPR. Employees should receive regular training on this.

8. Implement new compliance systems. Plans must be put in place to comply with the new GDPR requirements and the additional rights that individuals can exercise in relation to their personal data.

9. Review your supply chain contracts. Contracts with third parties with whom personal data is shared should be reviewed and, where necessary, renegotiated to ensure appropriate supervision over personal data processing and compliance with the GDPR.

10. Assess your international transfers. Review your current mechanisms for cross-border transfers of personal data within your organisation or to third parties and assess whether updates are needed to comply with the GDPR.

- Charles-Albert Helleputte, Partner, and Oliver Yaros, Partner, Mayer Brown International LLP
10. Evaluate data transfers internationally. Review the current institution mechanism for transferring personal data internationally, and assess whether it needs to be updated to comply with GDPR requirements.

- Charles-Albert Helleputte partner and Oliver Yaros partner,孖士打律师行

GC AGENDA

MOJ and Others Call for Strengthening Foreign-Related Legal Services Industry

On 9 January 2017, the Ministry of Justice, Ministry of Foreign Affairs, Ministry of Commerce and the Legislative Affairs Office of the State Council jointly issued the Opinions on the Development of Foreign-related Legal Services.

The opinions aim to:

• Establish a system for developing an internationally competitive legal services industry by 2020, expand the number of foreign-related legal practitioners, and increase the quality of services they provide.

• Complement China’s national economic development strategies (such as “One Belt, One Road”) by developing legal services expertise in major infrastructure projects, international trade in goods and services, and innovative technologies and emerging industries.

• Meet the needs of China’s going global strategy regarding Chinese enterprises’ and citizens’ outbound investments by improving legal skills in foreign investment risk mitigation, foreign intellectual property rights protection and foreign dispute resolution.

• Promote China’s foreign affairs efforts through treaty negotiation, international trade dispute resolution, and the development of foreign economic and cultural cooperation.

• Combat transnational crimes, drugs and money laundering and strengthen multilateral anti-corruption efforts.

The opinions lay out the following steps for achieving these goals:

• Establish an information exchange platform for foreign-related legal service institutions and foreign-related enterprises and promote foreign-related legal services.

• Cultivate a number of foreign-related legal service agencies with strong international competitiveness and encourage domestic law firms to expand into foreign markets.

• Train foreign-related legal services talent to provide high quality commercial and public affairs legal services.

• Encourage legal services industry associations to self-discipline members and improve service standards and professional ethics in the foreign-related legal services field.

• Encourage and standardise business alliances between Chinese law firms and foreign law firms.

• Establish an inter-departmental coordination mechanism to study and solve problems in the foreign-related legal services field.


Market Reaction

Thomas Man, Professor from Practice, Peking University School of Transnational Law, Shenzhen

“As Chinese businesses and individuals expand their global portfolios they are increasingly in need of quality international legal assistance, including regulatory and transactional advice and defence in some criminal cases. In addition, China’s global trade and investment initiatives, as well as its desire to combat transnational crime and corruption, have increased the government’s risk profile and its interest in improving the competitiveness of its legal counsel in the global arena.”

Action Items

No specific action is required as a result of the opinions. Counsel for foreign legal service institutions and foreign law firms may want to follow this development and see if there is any favourable policy available to them for providing foreign-related legal services to Chinese enterprises and individuals or any opportunity in forming business alliances with Chinese law firms.
队伍的服务质素。

- 培养专才在基础设施重大工程、国际货物贸易、创新技术及新興產業提供法律服务，藉以推進中國國家经济发
  展战略(例如「一带一路」)。
- 改进海外投資風險防範、涉外知識產權的保護及涉外爭議解決等方面的法律專門技能，以迎合中國正在推行的
  中國企業「走出去」政策和公民境外投資政策的需要。
- 透過商議條約、解決國際貿易爭議及發展對外經濟合作、文化交流，推動中國對外事務工作。
- 打擊跨國犯罪、毒品、洗錢，加强多邊反腐敗的力度。

《意見》列出以下達成上述目的的步骤：

- 为涉外法律服務機構和涉外企業搭建信息交流平台，並向外推介涉外法律服務。
- 培養一批具有較強國際競爭力的涉外法律服務機構，鼓勵國內律師事務所擴展外國市場。
- 培養提供高質素商務及公眾事務法律服務的涉外法律服務人才。
- 鼓勵並規範中國律師事務所與外國律師事務所以業務聯盟等方式開展業務合作。
- 建立部門與部門之間的協調機制，以研究解決涉外法律服務工作的難題。
- 修訂2001年《外國律師事務所駐華代表機構管理條例》。

市場回應

滿運龍實務教授，深圳市北京大学國際法學院
「隨著中國企業及個人擴展全球業務或投資組合，他們越來越需要具質素的跨國法律協助，包括提供監管和交易意見，以
及協助在某些刑事訴訟答辯。此外，中國的全球貿易及投資舉措，以及打擊跨國刑事罪及貪腐情況的期望，都增強政府承擔
風險的能力，也令政府更有興趣提高其法律顧問在全球舞台的競爭力。」

跟進事項
現時不用為《意見》作出任何具體行動。為外國法律服務機構和外國律師事務所工作的法律顧問，可能有跟進這方面發展的
意思，看看有沒有任何可供運用，並有利他們向中國企業和個人提供涉外法律服務的政策，或有沒有以業務聯盟方式與中國
律師事務所合作的機會。

Practical Law China

GC AGENDA

SPC Issues 15th Batch of Guiding Cases

On 3 January 2017, the Supreme People’s Court (“SPC”) issued its 15th batch of
guiding cases.

Guiding cases are not binding as legal precedents, but they are considered to
have very strong persuasive value and judges in China are required to consider
and refer to relevant guiding cases in their rulings on similar issues.

This new batch of guiding cases addresses, among others, the following issues:

- **Food safety.** Even if an additive is not
  in the non-food substance blacklist or
  the health food additive blacklist, the
  additive can be recognised as a “toxic
  or harmful non-food raw material”
  under Art. 144 of the Criminal Law of
  the People’s Republic of China 1997
  (No. 70).

- **Failure to enforce a court ruling.** The
  criminal liability of refusing to carry
  out a people’s court ruling commences from the effective date of
  the court ruling (No. 71).

- **Conversion of loan contracts.** The
  principal and interest under a previous
  loan agreement may be converted
  into the paid purchase price in a real
  estate sale and purchase contract
  subsequently signed by the parties
  (No. 72).

- **Priority rights in bankruptcy.** The
  priority rights of a contractor run from
  the termination date of a construction contract if the contract is deemed to
  be terminated pursuant to Art. 18 of
  the Bankruptcy Law of the People’s
  Republic of China 2006 (No. 73).

- **Insurer’s subrogation right.** An
  insurer has a subrogation right
  against a third party who damaged
  the property insured due to breach of
  contract (No. 74).

- **Standing of whistleblowers.** A
  whistleblower has standing as a
  plaintiff where the whistleblower
  reports an actionable infringement
  of its rights or interests to an
  administrative agency and has a legal
  stake in the outcome of the matter
  reported (No. 77).

Market Reaction

Dr. Mei Gechlik, Founder and Director
of Stanford Law School’s China Guiding
Cases Project (“CGCP”)

“The release of the 15th batch of guiding cases brought the total number to 77, of
which four were released in 2011 (only in the fourth quarter), eight in 2012, 10
in 2013, 22 in 2014, 12 in 2015 and 21 in 2016. The revival of the upward trend in
guiding cases confirms what the CGCP has learned from our recent meeting with
the SPC: guiding cases will be released in greater number and frequency going forward. Of the newest batch, No. 70 is of
special significance for helping to clarify the crime of producing and selling toxic
and harmful foods. This is obviously a topic of ‘widespread concern to society’, a
criterion for selecting guiding cases.”

Action Items

Given the increasing number of guiding cases and impact on China’s judicial
practice, counsel for companies and individuals involved in litigation in
China should become familiar with the guiding cases generally, and ensure
that trial counsel reviews the full list of guiding cases and studies the content to
determine if any may apply.

- Practical Law China
法律顧問備忘錄
最高院發布第15批指導性案例
2017年1月3日，最高人民法院（「最高院」）發布第15批指導性案例。
指導性案例不像法律先例一樣具有約束力，但被視為具有極強的說服性價值，中國法官就同類案件作出裁定時，必須考慮並參考相關的指導性案例。
這批新的指導性案例處理(其中包括)下列問題：
・食品安全。即使添加的物質不在非食用物質的黑名單上，也不在保健食品添加物質的黑名單上，亦可以被認定為《中華人民共和國刑法》第一百四十四條規定的「有毒、有害的非食品原料」(指導案例70號)。
・不執行法院判決。拒絕執行人民法院的裁決，刑事責任從法院判決發生法律效力之時起算(指導案例71號)。
・轉變借款合同關係。先前借款協議的本金及利息可以轉化為協議雙方當事人其後簽訂的房產買賣合同的已付購房款(指導案例72號)。
・破產案的優先受償權。符合2006年《中華人民共和國破產法》第十八條規定的情形，建設工程施工合同視為解除的，承包人行使優先受償權的期限應自合同解除之日起計算(指導案例73號)。
・舉報人的資格。凡舉報人就其權利或權益受侵犯向行政機關進行舉報，而該侵犯行為依法可提起訴訟，並且舉報人在被舉報事情的結果在法律上具有利害關係的，舉報人具備原告主體資格(指導案例77號)。
市場回應
熊美英博士，創辦人兼總監，史丹福法學院中國指導性案例項目
「第15批指導性案例發布之後，指導性案例共有77宗，其中4宗在2011年（都在第四季度）發布，8宗在2012年，10宗在2013年，22宗在2014年，12宗在2015年，21宗在2016年。指導性案例增速上升的趨勢，肯定了中國指導性案例項目(China Guiding Cases Project)從我們最近與最高院會面所知悉的：最高院發布指導性案例的數目將會增加，次數也會增多。」
跟進事項
考慮到指導性案例數目不斷增加，以及對中國司法常規的影響，中國境內被捲入訴訟案的公司或人士的法律顧問，應當關注這些案例，確保原審大律師複查鑽研該77宗指導性案例，以決定當中可有案例適用。

LITIGATION FUNDING
Some “Winds of Change”?
As reported in Industry Insights in June 2016, in Persona Digital Telephony & Anor v The Minister for Public Enterprise & Ors [2016] IEHC 187, the Irish High Court confirmed that the offences and torts of maintenance and champerty survive under Irish law, so as to prohibit third party funding of litigation in the absence of a legitimate interest in the litigation. Therefore, there are similarities with the common law there and in jurisdictions such as (for example) Hong Kong and Singapore.

The case is headed for the Irish Supreme Court. The Irish Supreme Court has agreed with the applicants (the appellants) that the issues raised involve matters of public importance and that there are exceptional circumstances justifying a direct “leapfrog” appeal ([2016] IESCDET 106). At issue in the final appeal is whether the Irish High Court was correct in refusing to order a declaration that the applicants (the plaintiffs) would not be engaging in an abuse of process and/or not contravening rules on maintenance and champerty if they entered into a litigation funding arrangement with Harbour Fund III, L.P.
Some commentators have suggested that the appeal has a decent chance of success, given the Supreme Court’s acknowledgment of the importance of the issues raised in the context of the principle of access to justice. That said, the Irish High Court’s judgment in Persona Digital Telephony emphatically upheld the general prohibition against third party funding and did so after having been referred to the case law of other common law jurisdictions. Given similar common law principles in Hong Kong, the outcome in the case should be of significant interest.

In the meantime, jurisdictions such as England & Wales and Australia have well-developed litigation funding markets. As for New Zealand, the courts
there appear to take a pragmatic view of third party funding.

In Hong Kong, going forwards, it looks increasingly likely that if there is to be an expansion of the miscellaneous and limited exceptions to maintenance and champerty, say, in the next few years or so, it will come in the form of an appeal to the Court of Final Appeal as opposed to legislative reform.

For now, the debate about legislative reform for third party funding in Hong Kong is focused on arbitrations (and mediations) governed by the Arbitration Ordinance (Cap. 609) – for which readers are referred to the Arbitration and Mediation Legislation (Third Party Funding) (Amendment) Bill 2016, introduced into the Legislative Council on 11 January 2017 and based on the Law Reform Commission Sub-Committee’s Report on Third Party Funding for Arbitration (in October 2016).

In the current local circumstances of Hong Kong, this is probably as much as can be expected in 2017.

- Gary Yin, Partner, Smyth & Co in association with RPC

China Data Protection Update

In the rapidly evolving data protection environment in China, there has been some helpful (but unfortunately still limited) clarification around two areas of uncertainty.

New Cybersecurity Strategy Gives First Guidance on Application of PRC Cybersecurity Law

Following the recent enactment of the PRC Cybersecurity Law (“Cybersecurity Law”), China’s Internet regulator published the country’s first National Cyberspace Security Strategy (“Strategy”) on 27 December 2016. The Strategy offers few fresh initiatives but summarises goals within the Cybersecurity Law and other recent regulations. In particular, the Strategy emphasises the strategic need to safeguard key information infrastructure operators (“KIoOs”).

A KIO is defined in the Strategy as an operator of “information facilities that have an immediate bearing on national security, the national economy or people’s livelihoods such that, in the event of a data leakage, damage, or loss of functionality, national security and public interest would be jeopardized”.

This aligns with the definition in the Cybersecurity Law, and indicates the potential impact of a security breach is a key factor in determining who will be considered a KIO.

Further, while the Cybersecurity Law listed “public communications and information service, energy, transportation, hydropower, finance, public service, e-government and other critical information infrastructure”, the Strategy clarifies this by:

- listing “basic telecommunications networks that provide public communications, radio and television transmission and other such services” to expand on the definition of “public...
communications” operators;

• noting that important information systems in sectors and State bodies in the additional fields of “education”, “scientific research”, “industry and manufacturing”, “medicine and health” and “social security” will also be caught; and
• identifying that “important Internet application systems” will also be deemed to be KIIOs. Unofficial reports suggest that this is intended to catch popular apps such as Taobao and WeChat, which have millions of daily users potentially affected by a security breach.

Unfortunately it remains unclear whether all organisations within these specified industries will automatically be KIIOs if they operate networks (and potentially even just a website) in China. Further, other key uncertainties under the Cybersecurity Law (including the definition of “network operator” and “important business data”) remain.

Draft Regulations Protecting Minors Online

The State Council has published for public consultation draft Regulations on the Protection of the Use of Internet by Minors (the “Draft Regulations”). “Minors” means Chinese citizens under the age of eighteen. In particular, the Draft Regulations propose additional data protection obligations, with which “network information service providers” (which appears to catch anyone operating websites or processing online data in China) would need to comply.

Some of the key provisions include:

• Proactively reviewing sites/platforms and, if any content is deemed unsuitable for minors, placing prominent warnings before displaying the content. The authorities are encouraged to offer further guidance on how to manage such content.
• When collecting and using minors’ personal information (i.e., information, whether recorded electronically or through other means, that when alone or taken together with other information is sufficient to identify a minor’s identity online), clear data protection notices should be given and the minor’s or their parent/guardian’s consent obtained. This would require “specific privacy policies”, although it is unclear whether this would need to be separate to the general website privacy policy.
• Online search functions must not display search results that comprise minors’ personal information; and there would be rights to request deletion or blocking of minor’s personal information available online.

So what does this mean in practice?

While some significant uncertainties remain, the Chinese authorities are helpfully seeking to provide some more practical guidance and to highlight some more concrete steps that organisations need to take when updating their China data protection compliance programmes in anticipation of the Cybersecurity Law coming into force on 1 June 2017. Organisations operating networks and/or doing business online in China should take note and update their policies and practices accordingly, and continue to monitor developments as further guidance is published over the coming weeks and months.

- Carolyn Bigg, Of Counsel, DLA Piper Hong Kong
共通信」運營者的定義；
• 指出「教育」、「科研」、「工業製造」、「醫療衛生」、「社會保障」等領域和國家機關的重要信息系統亦屬於關鍵信息基礎設施；及
• 指出「重要互聯網應用系統」亦被視為關鍵信息基礎設施運營者。非官方報告認為，這是想把廣受歡迎的應用系統包括在內，例如淘寶和微訊；這些應用系統每日有數以百萬計用戶有可能受到安全漏洞的影響。

可惜有一點仍然未解釋清楚，就是這些指定行業機構要是都在中國經營網絡業務（甚至有可能只是運作一個網站），是否就會自動成為關鍵信息基礎設施運營者。此外，《網絡安全法》還有其他關係重大但仍未明確的地方（包括「網絡運營者」和「重要商業數據」的定義）。

未成年人網絡保護條例草案

國務院已經發布《未成年人網絡保護條例（草案徵求意見稿）》（「《條例草案》」）。《條例草案》建議更多數據保護責任，都是「網絡信息服務提供者」（看來任何在中國運作網站或處理在線數據的也包括在內）有需要遵守的責任。

其中主要的規定包括：
• 積極審查網站 / 平台，如有任何被視為不適宜未成年人接觸的內容，展示內容之前，先以顯著方式作出警示。鼓勵各部門就如何管理上述內容提供進一步指引。
• 收集、使用未成年人個人信息（即是以電子或者其他方式記錄的能夠單獨或與其他信息結合識別未成年人身份的各種信息）的時候，應在醒目位置標注警示標誌，並徵得未成年人或其父母 / 監護人的同意。這個規定有需要用上「明確的私隱政策」，雖然現時未清楚所需要有別於一般的網站私隱政策。
• 網上搜尋功能展示的搜尋結果絕不可以包含未成年人的個人信息；未成年人或其父母 / 監護人有權要求删除或屏蔽網上該未成年人的個人信息。

那麼，有何實際意義呢？

雖然《網絡安全法》仍有一些未確定的地方，但預見此法於2017年6月1日施行的機構都在更新它們在中国的數據保護合規計劃，其中包括中國各部門也正設法向各機構提供多一點有用的實用指引。在中國運營網絡及 / 或經營在線業務的機構，應當留意並相應地更新其政策和作業方式；由於進一步指引將在未來數週以至數個月內公布，因此亦應繼續密切注意相關發展。

REGULATORY

Section 213 – SFC Does It “Its Way”

As new and old Presidents move in and out of a “White House” and a “Blue House” respectively, to the tune of the song “My Way”, the Securities and Futures Commission in Hong Kong is doing things its way – particularly, as regards its fight against market misconduct type activity. This is no better demonstrated (for now) than by the SFC’s recent “s. 213” civil proceedings against China Forestry Holdings Co Ltd, two of its co-founders, two co-sponsors and former auditors, with respect to events said to have arisen in connection with the company’s IPO in 2009.

In January 2017, the SFC issued its writ of summons, pursuant to s. 213 of the Securities and Futures Ordinance (the “Ordinance”), seeking a number of injunctive and/or restorative type orders against the various defendants (or one or more of them)*. It is important to note that the proceedings are civil in nature and are quite different to proceedings in a criminal court or proceedings before the Market Misconduct Tribunal (“MMT”). Criminal proceedings involve market misconduct are generally prosecuted by the Department of Justice, although (as an alternative) the SFC can institute proceedings before the MMT (s. 252 of the Ordinance). Criminal proceedings can be problematic with respect to (for example) defendants who are not in the jurisdiction (and require a higher standard of proof); MMT proceedings are not generally known for their speed.

Ever since the landmark decision of the Court of Final Appeal in SFC v Tiger Asia Management LLC & Ors (2013) 16 HKCFAR 324, s. 213 civil proceedings offer the SFC a third option in order to pursue alleged transgressors. As some readers will recall, the Tiger Asia case decided that the Court of First Instance can make a determination in civil proceedings commenced by the SFC that a person has committed acts that contravene the relevant provisions of the Ordinance and, as a result, make certain final orders without there first being a finding of market misconduct by a criminal court or the MMT.

At the time, the Tiger Asia case was thought to be a ground-breaking decision and it has proved to be. The SFC has since generated something of an industry by its use of s. 213 proceedings in the civil courts. At the time of writing, the SFC’s writ in the China Forestry Holdings matter is one of the latest salvos, pursuant to s. 213 of the Ordinance, in its attempt to obtain final orders against alleged transgressors and/or to seek redress on behalf of those investors said to have lost out as a result of alleged market wrongdoing. What makes the writ unusual is that besides the normal principal targets (such as former directors) it names the co-sponsors and former auditors as additional defendants. None of this is to suggest that s. 213 proceedings are without their difficulties. It will be interesting to see how (if at all) the SFC seeks to justify the grant of final orders based on any alleged wrongdoing on the part of professional service providers. Furthermore, s. 213 civil proceedings may be a “third way”
but sometimes they may also be an acknowledgment that the SFC’s regulatory jurisdiction often stops at certain borders. As some seek to build walls in certain parts of the world, the SFC is seeking to work around them.

- **David Smyth, Partner, Smyth & Co in association with RPC**

*HCA No. 117 of 2017, 16 January 2017. Also see SFC’s legal proceedings – (i) for an “interim order” in the matter of a Ms Yik Fong Fong (SFC’s press release, 3 February 2017); and (ii) pursuant to s. 214 of the Ordinance, against various parties in the matter of Hanergy Thin Film Power Group Ltd (SFC’s press release, 23 January 2017).
**ARBITRATION**

A v D  
[2016] HKEC 2821
Court of First Instance
Miscellaneous Proceedings No. 1014 of 2016
Mimmie Chan J in Chambers
22 December 2016

**Arbitral award – setting aside – application to set aside under Sch. 2 s. 4 on ground of serious irregularity – where no express in agreement that Sch. 2 would apply, court had no jurisdiction – where non-compliance with O. 73 r. 5(4), abuse of process to argue application as if made under s. 81**

P1–3 and D, equity partners of a firm under an agreement dated 11 May 2007 (the “Agreement”), submitted a dispute over the amounts allegedly due from D as well as his entitlement to drawings and profits share under the Agreement to arbitration (the “Arbitration”) pursuant to an arbitration clause, expressly agreeing that the Arbitration Ordinance (Cap. 609) applied. However, the Agreement did not provide that Sch. 2 to the Ordinance was applicable or that the Arbitration was a domestic arbitration. Ps’ application to strike out D’s counterclaim was dismissed by the Arbitrator (the “Decision”) with costs to D (the “Costs Order”). Ps applied by originating summons to set aside the Decision and the Costs Order pursuant to O. 73 r. 5(4) of the Rules of the High Court (Cap. 4A, Sub. Leg.) and s. 4 of Sch. 2 to the Ordinance on the ground of serious irregularity (the “OS”). The Ordinance came into force on 1 June 2011 and under s. 100: “All the provisions in Sch. 2 apply, … to – (a) an arbitration agreement entered into before the commencement of this Ordinance which has provided that arbitration under the agreement is a domestic arbitration …”.

**Held**, dismissing the application, that:

- The Court had no jurisdiction to deal with the OS. The provisions of Sch. 2 of the Ordinance applied only if the parties opted for its application. Since the Agreement made no such express provision, there was no basis for Ps to apply to this Court to set aside the Decision and the Costs Order on the ground of serious irregularity under s. 4 of Sch. 2. Under s. 3(3) of the Ordinance, the court should interfere in the arbitration of the dispute only as expressly provided for in the Ordinance. Section 100 did not provide for Sch. 2 to apply to “domestic” arbitrations or agreements, but to an arbitration agreement which provides that the arbitration under the agreement was a domestic one. Further, an arbitration agreement could not by implication provide for domestic arbitration simply because the parties were Hong Kong residents and have a local place of business.

- In addition, it would be an abuse of process to permit Ps, as they had sought, to argue the application as if it were made under s. 81 of the Ordinance since the OS did not, as required by O. 73 r. 5(4) of the RHC, state any ground to set aside the Decision and Costs Order under s. 81.

- Even if the finding that s. 4 of Sch. 2 did not apply was wrong, Ps’ application lacked merit. There was no irregularity, either in the arbitral procedure or in the Arbitrator’s exercise of his powers.
裁 決 — 駁回申請：

• 法庭不具有司法管轄權處理涉案傳票。只有當各方選用附表2的條文時，該等條文才適用。鑑於涉案協議並無如此訂明，Ps沒有理據以附表2第4條所指的嚴重不當事件為由而向本庭申請撤銷涉案裁決及涉案訟費令。根據《仲裁條例》第3(3)條，法院應只在該條例明文規定的情況下，才干預爭議的仲裁。第100條並非規定附表2適用於「本地」仲裁或協議，而是規定附表2適用於規定協議所指的仲裁為本地仲裁的仲裁協議。此外，仲裁協議不能因各方是香港居民和在本地設有營業地點而被視為藉隱含方式訂明該協議所指的仲裁為本地仲裁。

• 再者，Ps尋求在申請中要求根據《仲裁條例》第81條提出的基礎上提出爭辯，而容許該做法將屬濫用司法程序。因為涉案傳票並無按照《高等法院規則》第73號命令第5(4)條規定的規定，述明根據第81條撤銷涉案裁決及涉案訟費令的理據。

• 即使關於附表2第4條不適用的裁斷錯誤，Ps的申請亦無法證明成立。不論是仲裁程序還是仲裁員行使其權力的方式，都沒有不當之處。

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CIVIL EVIDENCE

Secretary for Justice v Cheng Kam Mun
[2016] HKEC 2712
Court of First Instance
Miscellaneous Proceedings Nos. 2916–2932 of 2015
Anderson Chow J in Chambers
16 December 2016

Affidavits – direction made in proceedings for committal for criminal contempt that affidavits or affirmations of Secretary for Justice's witnesses stand as evidence-in-chief

The Secretary for Justice (the “SJ”) applied for a direction that the affidavits or affirmations filed on his behalf stand as the evidence-in-chief of the deponents at the trial of the proceedings for committal for criminal contempt provided that the deponents attend the trial to be cross-examined on their affidavits or affirmations by or on behalf of the respondents, Rs. Some of Rs supported the application, some of them opposed it and some of them adopted a neutral position. Counsel for the SJ advanced the following five reasons for making the direction sought: (a) there was power to give such a direction; (b) a similar direction had been given in the “Taxi Cases” by consent, and there was no rational reason for not giving the same direction in the present group of cases; (c) the current estimated length of trial of 40 days was based on the affidavits or affirmations standing as the deponents' evidence-in-chief. If the deponents were required to give oral evidence in the traditional manner, it was estimated that an additional 15 to 20 days would be required for the trial; (d) there was no clear or intelligible reason why the deponents should be required to give evidence-in-chief in the traditional manner. None of Rs had indicated which paragraphs of the deponents' affidavits or affirmations, or what areas of their evidence, was likely to be disputed. Nor had any of them been able to explain what tactical advantage he or she might obtain by requiring the deponents to give evidence-in-chief in the traditional manner; and (e) the mere fact that a witness's credibility might be in issue did not necessarily mean that his or her witness statement should not be allowed to stand as his or her evidence-in-chief. The objections made to the direction sought were as follows: (a) the SJ should, instead of seeking such a direction, put forward agreed facts for Rs' consideration, and use his prosecutorial discretion to identify witnesses who were necessary to prove his case so as to limit the number of witnesses required to give evidence at the trial; (b) Rs were not required to disclose or give any indication of their defence, because these were proceedings for criminal contempt with penal consequences. Hence, the SJ's fourth reason had no force or validity; (c) the present cases and the facts in issue were identical to summary offences of a criminal nature. So the safeguards in the criminal trial process to ensure the integrity and fairness of the system should be followed. And there were Australian authorities which explained the rationale behind the usual rule or practice of requiring witnesses to give their evidence orally in criminal trials; and (d) requiring the witnesses to give evidence-in-chief would promote the public interest in the transparency of the
proceedings.

Held, making the direction sought subject to any direction as might be given by the trial judge that the whole or any part of the evidence-in-chief of any particular witness be given orally, that:

- Of the five reasons which counsel for the SJ advanced for making the direction sought, the important ones were the third and fourth reasons. As to the objections made to the direction sought, the position was as set out in the second to fifth holdings below.

- The direction sought would not be an obstacle to the agreement of undisputed facts or the limitation of witnesses.

- If, as they were entitled to, Rs chose not to disclose their defence, the Court could only decide on the basis of the materials and arguments before it whether it was just to make the direction sought.

- What was critical was not whether the proceedings were treated as civil or criminal but whether the direction sought would cause any real prejudice to Rs or compromise the fairness of the trial. The direction sought would not do either of those things.

- Transparency would not be compromised by the making of the direction sought. The trial would be fully reported in the media. And a large part of the SJ’s case would be presented by video evidence rather than the oral evidence of witnesses.

- Whether the direction sought should be made was ultimately a matter of case management. The result to be arrived at was one which promoted the efficient administration of justice while seeing that Rs would not be prejudiced. The proper balance could be achieved by making the direction sought subject to an express proviso that the trial judge could direct the whole or any part of the evidence-in-chief of any particular witness be given orally.

**民事證據**

*Secretary for Justice v Cheng Kam Mun [2016] HKEC 2712*

原訟法庭

高等法院案件2015年第2916–2932號

原訟法庭法官周家明內庭聆訊

2016年12月16日

**誓章 — 在刑事藐視法庭的交付審判程序中作出的指示：把律政司司長的證人宗教式或非宗教式誓章用作主問證詞**

多名答辯人（「眾答辯人」）被控刑事藐視法庭，律政司司長在交付審判程序進行聆訊時提出申請，要求法庭頒發指示，假若作供詞人出席審訊，就他們的宗教式或非宗教式誓章（「誓章供詞」）接受眾答辯人或眾答辯人代表律師盤問，由律政司司長的代表送交法庭存檔的誓章供詞，被用作主問證詞。眾答辯人之中，有些支持申請，有些反對，有些則中立。律政司司長代表大律師提出五點理由，支持法庭作出律政司司長所申請的指示：

(a) 法庭有權作出這樣的指示；
(b) 法庭在「的士案件」（Taxi Cases）中按同意作出過類似的指示，而且並無合理理由支持不在這組案件中作出相同的指示；
(c) 現時估計，如果把誓章供詞用作作供詞人的主問證詞，審訊需時40天。如果作供詞人須以傳統方式在庭上作口供，估計審訊時間會增加15至20天；
(d) 為甚麼應當規定作供詞人以傳統方式作主問證詞？這個規定沒有清晰或明白易懂的理由解釋原因。眾答辯人中概無一人指出作供詞人的誓章供詞有哪一段，或他們的證供中有哪些地方很有可能受到爭議。眾答辯人之中也沒有人能夠說清楚，如果作供詞人以傳統方式在庭上作主問證詞，眾答辯人以在策上可能有甚麼好處；及
e) 誓章的可信性可能受到爭議，但單憑這點，他或她的證人陳述書也不一定不應該獲准用作他或她的主問證詞。部份答辯人反對律政司司長所申請的指示，理由如下：

- (a) 律政司司長當應當提出議定的指示，不應在議定的指示外增加其他容許性，都叫律政司司長的指示將不夠清晰；
- (b) 證人的可信性可能受到爭議，但單凭這點，他或她的證人陳述書也不一定不應該獲准用作他或她的主問證詞。部份答辯人反對律政司司長所申請的指示，理由如下：

裁決 — 作出律政司司長所申請的指示，但原審法官可以指示某證人的全部或任何部份主問證詞以口頭方式作出：

- 律政司司長的代表律師提出五點理由支持法庭作出律政司司長所申請的指示，其中第三和第四點為最重要。以下第二至五點所列出的，則是反對的理由。

- 群眾答辯人有權披露他們的辯護理由，但如果他們選擇不作披露，法庭只可以基於法庭席前的資料和論點去決定，法庭作出律政司司長所申請的指示是否公正之舉。

- 至關重要的不是要循民事程序還是刑程序處理案件，而是律政司司長所提出的指示會不會對眾答辯人造成任何真實的損害，或者會不會損害審訊的公平性。律政司司長所申請的指示兩樣都不損害。

- 法庭作出律政司司長所申請的指示不會損害透明度。媒體會全面報道審訊消息。律政司司長的案情大部份的呈示方式是錄影證供，而不是證人口供。

- 法庭應不應該作出律政司司長所申請的指示，畢竟是案件管理方面的問題。要達到的結果是眾答辯人不會受到損害之餘，同時提升執行司法工作的效率。要兩者平衡，恰到好處，法庭可以作出律政司司長所申請的指示，但表明原審法官可指示某證人的全部或任何部份主問證詞以口頭方式作出。
CONTRACT LAW

Li Ting Kit Tso v Cheung Tin Wah
[2016] HKEC 2720
Court of First Instance
High Court Action No. 2500 of 2013
Recorder Stewart Wong SC
16 December 2016

Illegality – illegal agreement to develop houses under Small House Policy – whether doctrine of locus poenitentiae applied – claim for return of land would fail where legal title to property no longer with defendant

P, a tso, owned land in the New Territories. P orally agreed to assign the land to D1 and/or his nominated persons who possessed the right to build small houses. If D1 failed to complete the application procedure under the Small House Policy within one year, P had the option to terminate the agreement and the land would be re-assigned to P. P subsequently entered into a written agreement with, and assigned title to, D2. Consideration for the assignment was HK$2.8 million which was never paid. The land was divided into 13 sections, and D2 was to assign each section to various nominees. However, D2 was unable to nominate enough persons who had the right to build small houses and development of the land did not proceed. P subsequently terminated the agreement due to the substantial delay in the development of the land and demanded the return of title to the land. Instead, D2 assigned the remaining sections such that all 13 sections were assigned. P secured the return of title to five sections from their current owners. P sought relief for the remaining eight sections “lost”: (a) for breach of contract; or (b) if the agreement was illegal, under the doctrine of locus poenitentiae; and (c) that the land was held on a resulting trust.

Held, ordering D2 to pay equitable compensation to P, that:

- The agreement was illegal and P was not entitled to sue for breach of contract. In the performance of the agreement, it was inevitable false representations were made by indigenous villagers to the Lands Department that they were legal and beneficial owners of land, when in fact they were merely nominees.
- The doctrine of locus poenitentiae was based on restitution of property only and did not apply. As all 13 sections of the land had been assigned, legal title was no longer with D2, and thus, P could not claim a return of the land.
- However, D2 held the land on a resulting trust. The transfer of land was for a specific purpose to develop the land within a deadline, the non-compliance of which would entitle P to the return of the land, and not an outright transfer. In addition, consideration was not provided. As D2 was no longer in a position to account for the land, or restore it to P, P was entitled to equitable compensation from D2 of the market value of the eight sections of the land “lost” at the date of the writ.

Contract法

Li Ting Kit Tso v Cheung Tin Wah
[2016] HKEC 2720
原訟法庭
高院民事訴訟案2013年第2500號
特委法官黃繼明資深大律師
2016年12月16日

不合法事情 – 非法協議根據丁屋政策發展丁屋 – 「悔改場合」原則是否適用 – 在土地業權不再屬於被告人的情況下，申索歸還土地會以失敗告終

原告人是祖堂，擁有新界土地。原告人口頭上協議轉讓該土地給第一被告人及／或他指定的人士（「指定人」），指定人間有興建丁屋的權利（「丁權」）。假若第一被告人未能在一年內辦妥丁屋政策規定的申建程序，原告人有權終止協議，而該土地會被轉讓歸還原告人。原告人其後與第二被告人訂立書面協議，把該土地的業權轉讓給第二被告人。轉讓代價為280萬港元，但第一及第二被告人沒有支付過代價。該土地被分割為13個分段，各分段經由第二被告人轉讓給不同指定人。然而，第二被告人無法湊足擁有丁權的人士做其指定人，因而沒有發展該土地。原告人其後因為該土地的發展被嚴重延誤而終止協議，並要求獲歸還該土地的業權。第二被告人沒有歸還業權，反而把剩餘未轉讓的分段轉讓出去，13個分段因而全部被轉讓了。原告人獲得5個地段現時的擁有人歸還業權。原告人因為「失去了」（lost）其餘8個分段，向法庭尋求補償，所持理由是：（a）協議方違約；或（b）如果協議並不符合，就以「悔改場合」原則（locus poenitentiae）為依據；及（c）該土地是以歸復信託的形式持有。

裁決– 命令第二被告人向原告人支付衡平法補償：

- 協議並不符合，原告人無權控告辯方違約。既然原居村民事實上只是指定人，他們履行合約就必然要向地政總
CRIMINAL EVIDENCE

HKSAR v Wong Hei Chit
[2016] HKEC 2646
Court of Appeal
Criminal Appeal No. 182 of 2015
Yuen, Macrae and Poon JJA
7 December 2016

Evidence of uncharged acts – could not be used to establish elements of offence or offences charged

D was convicted of two counts of unlawful trafficking in dangerous drugs, namely 1.66 kg of ketamine (Count 1) and 0.57 kg of ketamine (Count 2). Those dangerous drugs, which were being conveyed in a van driven by D on 27 February 2014, were in three iPhone boxes which someone collected from the van at about 6:50 pm and in nine iPhone boxes found by Customs officers in the van at about 7:00 pm. The prosecution’s case was based on the circumstantial evidence arising from those facts. D gave evidence denying that he knew that the boxes contained dangerous drugs rather than iPhones. He also gave and called evidence of his having delivered iPhones in the past. Prosecuting counsel cross-examined D suggesting that none of his previous deliveries were of iPhones and that those deliveries also involved drug trafficking. In putting the prosecution’s position, the Judge told the jury, “[Prosecuting counsel] said the purported transportation business of the defendant was merely a smokescreen to cover up his drug-trafficking activities. Even if there was a genuine transportation business, said [prosecuting counsel], the defendant could still engage in drug-trafficking activities to earn extra money. Members of the jury, you may agree or disagree with [prosecuting counsel].”

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

• In view of the way the prosecution was putting its case, it was necessary for the Judge to emphasise that: D’s evidence about his previous deliveries of iPhones was relevant to his defence that he did not know and had no reason to suspect that the consignment of iPhones which he was asked to deliver on 27 February contained dangerous drugs. The prosecution was entitled to question D’s account of the previous deliveries and challenge his credibility on the issue. However, even if the jury rejected D’s evidence on the matter, the previous deliveries and the imputation that he had previously trafficked in dangerous drugs formed no part of the specific allegations in the indictment and could not be used to establish the elements of the offence. No such warning or direction along those lines was given. Instead, it was left open to the jury to agree with prosecuting counsel’s proposition. In all the circumstances, the omission of such a direction was a material non-direction.

• The proviso should not be applied. There was a significant body of evidence adduced by D and his witness to the effect that he operated a genuine transportation business. It was a matter for the jury what they made of that evidence and of D. It could not be said that the jury must inevitably have convicted even if they had received an appropriate direction that they must not use the imputation that D had previously trafficked in dangerous drugs to decide whether the elements in the two specified counts in the indictment had been made out.

• There should be a retrial. The allegations were serious ones which had merited an overall sentence of 18½ years’ imprisonment. And since the error which obliged the Court of Appeal to allow the appeal was concerned with the approach to the evaluation of evidence rather than the quality of the evidence itself, it was appropriate that there should be a proper determination of that evidence by a jury properly instructed.

不被控告行為的證據 — 不可用來確立各被控罪行的元素

被告人被控非法販運危險藥物，即1.66公斤氯胺酮(罪名1)及0.57公斤氯胺酮(罪名2)，被裁定兩項罪名成立。2014年2月27日，被告人駕駛客貨車運送那些危險藥物：那些危險藥物當時被放在iPhone盒內，晚上6時50分左右，有人取走貨車上其中三盒，另有九盒在晚上7時左右被海關人員在客貨車內發現。控方案情以那些事實的環境證據為基礎。被告人作供否認他知道那些盒盛載的是危險藥物而不是iPhone。他亦作供指自己過去有運送過iPhone，也傳喚證人為他作供，控方代表
大律師盤問被告人，指他以往運送的都不是iPhone，更指他那幾次運送都涉及販運毒品。說到控方立場的時候，原審法官告訴陪審團：「[控方代表大律師]認為被告人的運輸生意只是煙幕，是用來掩飾他販毒。[控方代表大律師]認為，即使真的做運輸生意，被告人仍然可以販運毒品賺取外快。各位陪審員，你可以同意或不同意[控方代表大律師]的說法。」

裁決 一批予許可，把申請的聆訊當作上訴聆訊，判被告人上訴得直，撤銷定罪並下令案件重審：

- 考慮到控方提出其案情的方法，原審法官有必要強調：被告人關於他過往運送過iPhone的證供關係到他的抗辯理由，即他不知道，也沒有理由懷疑，他受託交付的iPhone之中，有危險藥物。控方有權懷疑被告人關於過往運送過iPhone的說法，質疑他在這爭議點上的可信性。然而，即使陪審團拒絕接納被告人這方面的證供，但他過往運送過iPhone因而被詆譭過往曾經販運毒品，並不構成公訴書中特定指控的任何部分，不可用來確立罪行元素。原審法官沒有循這幾方面作出提醒或指示，反而交給陪審團決定是否同意控方代表大律師的觀點。綜觀所有情況，遺漏指示即是沒有指示，關係重大。

- 不應運用但書。被告人和他的證人提出大量證據，以證明被告人真的經營運輸生意。陪審團怎樣理解證據和被告人，須由陪審團自行作決定。即使陪審團接獲指示，知道絕不能基於對被告人的詆譭，即詆譭他過往曾經販運危險藥物，而決定公訴書內兩項特定罪名有沒有罪行元素，陪審團也不能被認為一定難免判被告人罪名成立。

- 應當重審案件。被告人被指控的是嚴重罪行，合共18年監禁是應得的判刑。令上訴庭必須判被告人得直的是一項與證據評核方法有關的錯誤，不是證據本身質素的問題，因此，適當的做法是由得到恰當指示的陪審團對該證據作出正確的裁決。

CRIMINAL EVIDENCE

**HKSAR v Castaneda Ortiz Jairo**

[2016] HKEC 2611

Court of Appeal

Criminal Appeal No. 398 of 2015

Lunn V-P, Macrae and McWalters JJA

2 December 2016

Witness – law enforcement officer witness – rule that judge must not suggest to jury that law enforcement officers more unlikely than other witnesses to fabricate evidence

D was convicted of unlawfully trafficking in dangerous drugs consisting of 0.65 kg of cocaine. Those drugs were found in a suitcase upon examination by Customs officers at the airport.

The prosecution’s case, based on the evidence of two Customs officers, was that it was D’s suitcase. D neither gave nor called evidence. His case, put to the Customs officers by his counsel in cross-examination, was that they had mixed up D’s suitcase with the suitcase in which the dangerous drugs were found. Defence counsel suggested that the Customs officers were mistaken. He did not suggest that either of them was lying. But when summing-up, the Judge suggested that it was implicit in the defence’s case that the Customs officers were lying. And he in effect suggested that the defence’s allegation was not credible because it was an allegation of criminal conduct on the part of law enforcement officers who enforce the law rather than break it. D applied for leave to appeal against conviction.

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

- Since the Judge took the view that an allegation that the Customs officers were lying was implicit in the defence’s case even though defence counsel had explicitly disavowed any such allegation, he should have clarified with defence counsel the true nature of the defence before summing up to the jury.

- That inaccuracy was exacerbated by the suggestion in the summing-up that persons whose duty was to enforce the law would not deliberately breach it by misconducting themselves in the way in which the Judge incorrectly assumed the defence’s case implied. This suggestion was in breach of the rule laid down in HKSAR v Leung Ka Yin and approved by the Court of Final
Appeal in Lee Fuk Hing v HKSAR (2004) 7 HKCFAR 600 at p. 611B that a judge must not suggest to the jury that law enforcement officers as a category or otherwise were more unlikely than other witnesses to fabricate evidence.

• Coming at the end of the summing-up, that suggestion would not have been neutralised by the Judge’s direction, at the beginning of the summing-up, that the evidence of law enforcement officers was no more worthy of belief than that of any other witness.

• The defence argued that there was a discrepancy in the prosecution’s evidence which made it inappropriate to order a retrial. But it would be open to the jury at a retrial to resolve the discrepancy and be satisfied to the requisite standard of D’s guilt.

CRIMINAL LAW

HKSAR v Zhou Limei

FACC 10/2016 (on appeal from CACC 81/2014)

Court of Final Appeal

Ribeiro, Tang and Fok PJs, Chan and Millett NPJs

16 February 2017

Admissions – equivocal or ambiguous statements

The Appellant was directed to go through a customs inspection when she arrived at Hong Kong International Airport from Kuala Lumpur in 2012. During the inspection carried out in her presence, white powder was discovered in the lining of her suitcase. Tests conducted on the spot revealed that the white powder was discovered in the lining of her suitcase. Tests conducted on the spot revealed that the white powder was heroin and the Appellant was arrested and cautioned. Upon being asked what the white powder was, the Appellant responded orally in Cantonese, “我諗呢一啲係毒品啩”, translated in English as “I suppose this is dangerous drug”. Before the Court of First Instance, whether the Appellant’s response was capable of an admission as to knowledge was left to the jury. The jury convicted the Appellant of trafficking in a dangerous drug by a 5–2 majority.

Held, allowing the appeal and ordering a re-trial:

• The Appellant gave her response after her suitcase had been searched in her presence and had heard the drug results of the white powder testing positive. Furthermore, the addition of the “啩” (gwa) final particle was a non-committal response by the Appellant and was not intended to be an admission of knowledge.

• The Appellant’s response was incapable of being an admission. Even if the statement was treated as possibly being an admission, it was so equivocal and qualified that the probative value would be extremely
limited and outweighed by risk of unfair prejudice from leaving it to the jury. Thus, the trial judge should have considered exercising his residual discretion to exclude the ambiguous statement as a possible admission.

This case was prepared by Morley Chow Seto.

**TORT**

*Law Chi Ching v Apple Daily Ltd*

[2017] HKEC 37

Court of Appeal

Civil Appeal No. 221 of 2015

Cheung, Kwan and Poon JJA

13 January 2017

**Defamation – damages – general damages – libel action by plaintiff who was not named in article in question – trial judge plainly wrong in assessing number of people who would have read defamatory article and had requisite knowledge to link it to plaintiff – plaintiff not celebrity or well-known figure in her community – award reduced**

P was employed by the Hong Kong Government as a general worker. P worked in a team of nine workers in a police station in Kowloon and was responsible for cleaning, moving equipment and serving food and drinks. D1 was the publisher of the Apple Daily (the "Newspaper"). D2 was the Newspaper printer. D3 was the editor of the Newspaper and D4 was the reporter who wrote the article in question (the "Article"). In May 2008, D1 published the Article, reporting that a female civil servant attached to the police force was discovered to have stolen stationery from the police station and was given a verbal warning; it was suspected she frequently stole cleaning materials and tools from there and used them at dessert shops she operated; she was accused of frequently leaving her workplace which caused people to gossip or be discontent; and despite complaints to her superior, no action had been taken and it was suspected that someone covered for her. The Article did not name P, but gave the age and work period of the female civil servant. Prior to the publication of the Article, D4 had informed the police...
that P had been accused of stealing the items in question. Consequently, P and others in her team were interviewed by the police and P was cleared of any misconduct. P claimed that she was the person referred to in the Article; that after it was published, her colleagues had approached her and asked what had happened; and she had suffered from depression as a result. The Judge allowed P’s claim for defamation and ordered Ds to pay general damages of HK$700,000. Ds appealed on the quantum of the award.

Held, allowing the appeal and reducing the award to HK$450,000, that:

• The Judge’s assessment that there were a few hundred people who would be able to draw a link between P and the person referred to in the Article was not supported by evidence. There was no evidence that every one of the two to three hundred workers in the police station would have read the Article and those who read it had the requisite knowledge to link it to P. She was not a celebrity or a well-known figure in her community. A more realistic assessment of those readers who would be able to draw the link would be a few tens and not a few hundred. This was a “plainly wrong” situation where the Court of Appeal was entitled to interfere.

• The Court was not prepared to accede to Ds’ request to discount the general damages award to reflect the uncertainty over the causal connection between the Article and the psychiatric injuries P suffered. There was no evidence on the respective impact of the police investigation of P and the publication of the Article on her psychiatric illness. In the absence of such evidence, the Court would go into a realm of speculation as to whether the police interview had partially caused P’s psychiatric illness.
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GUEST OF HONOUR: The Honourable Mr Justice Kevin Zervos, SC
Judge
High Court of Hong Kong

KEYNOTE SPEAKER: William Tam, SC Deputy Director of Public Prosecutions, Head of the Commercial Crime Sub-Division, Prosecutions Division Department of Justice

WORKSHOP SPONSOR ASSOCIATE SPONSOR SUPPORTING ORGANISATION SUPPORTING MEDIA PARTNER PROUDLY PRESENTED BY
The following is the first in a two-part series of bulletins exploring issues facing small and medium-sized firms in the context of the broader competitive market and with specific reference to Hong Kong.

In this bulletin we highlight a series of strategic and operational considerations for small and medium-sized law firm leaders and how these are changing with intensifying competition. The second of these bulletins will explore what law firm leaders need to do including moving from cash flow management to revenue generation as an outgrowth of this and a structural shift in organisational mindset.

While the principles of law firm management apply to firms of all sizes, their execution differs according to a firm’s organisational capabilities. Many of the challenges facing small and medium-sized firms are consistent with those of larger firms. How they respond to these challenges can differ vastly and the “trickle down” effect (from large to small) can alter the nature of the challenge, including in some cases magnifying their impact.

What small and medium-sized firms lack in organisational capability, they can more than make up for in agility both in their approach to their clients and markets and in the way in which they manage their businesses. However, this requires a clear understanding of a firm’s strategic positioning and the management skills to compete and maintain that position.

One characteristic of small and medium-sized firms in most markets is their focus on SME clients. In part, this has been driven by localised buying decisions often where a family business has retained counsel for a range of private and corporate matters. (SMEs are more inclined to use their law firm for a “package of business law services” provided the firm is truly good at these. This may not be the case from the client’s perspective.) These are segments of the market that “big law” has generally avoided because of an abundance of other, more profitable work and because their cost bases would not support lower margin work. Hence, big law and small and medium-sized firms effectively coexisted in parallel markets.

In this respect, Hong Kong has differed because of the relationship between personal wealth, closely held family businesses and the largest publicly listed companies. Small and medium-sized firms have traditionally been able to advise larger companies than would necessarily be the case in other markets.

In some markets in which competition is intensifying and in which access to SMEs is increasing, including through more efficient delivery mechanisms and lower costs of production, the separation is blurring and a number of large professional services firms, notably the Big 4 accountancy firms, are actively targeting the SME sector.

According to the Hong Kong Government’s latest statistics, there are approximately 317,000 SMEs in the territory, constituting 98 percent of its business units and 46 percent of private sector employment. Despite the considerable size of this segment, it is not out of proportion, say, with the UK in which over 99 percent of businesses are SMEs, accounting for 60 percent of private sector employment and 47 percent of private sector turnover. However, the relative importance of SMEs in Hong Kong has been much greater for the reasons stated above including the way in which legal services are bought.

This raises a series of related issues in managing the business of small or medium-sized firms and questions for their leaders to consider.

**Client Focus**

A number of major business law firms (Global Elite and International Business Law (“IBL”) firms) that previously shunned private wealth services have altered their strategies in recent years. They are now investing in these areas and are actively targeting High-Net-Worth Individuals (“HNWIs”) through private wealth services as a means to secure
corporate instructions. The increasing flow of investment from Hong Kong and other large Asian economies into major international capital markets and business centres has been a catalyst in expanding this focus for some firms.

This is important for small and medium-sized Hong Kong firms whose diversified client bases include HNWIs targeted by business law firms. Local firms will increasingly compete directly with IBL firms particularly those with sizeable Hong Kong offices for specific medium and higher value work from these HNWIs and their corporate portfolios. There is an inherent strategic advantage for firms that are able to advise on private client matters and simultaneously provide public company advice in some cases in multiple jurisdictions. These firms will be able to invest in relationships including if necessary adopting a loss leader approach to private client services with the aim of securing more, higher margin corporate mandates.

In the past, small and medium-sized firms have been able to undercut competitors in other segments because their cost bases were lower. However, this is increasingly unsustainable as we discuss below.

Product Clarity

We are likely to see an increase in firm failures over the next decade as greater competition drives more underperforming firms to close. Invariably, lack of strategic focus coupled with poor management are the most common causes of law firm failures. This is particularly acute for small and medium-sized firms.

In our experience, small and medium-sized firms (as well as smaller offices of larger firms) often profess to specialise in a wide range of services and areas of law. In many cases, the number of services is greater than the number of lawyers employed by the firm or located in any one office. This relative lack of focus undermines the credibility of any such claims as to a firm or an individual’s actual expertise. This does not mean that all such firms should only specialise in a narrow range of services (although some may choose to do so) but rather that

(1) they should be able to compete for the work on which they are focused; and (2) it supports their preferred market position.

The Law Society of Hong Kong’s website lists 24 areas of practice. A large proportion of small and medium-sized member firms list themselves as experts in multiple areas of practice, often reinforced by marketing materials that make similar claims. As clients become more sophisticated in their buying behaviour, including as a result of greater choice of suppliers, the more likely this will be tested.

**Strategic Pathways**

Hong Kong continues to be an attractive market as a gateway to and from China. Regardless of the need or otherwise for mainland offices, international firms still see Hong Kong as a safe haven and a bridge to the mainland. Well-managed and profitable local firms who have strong client bases and/or operations in the mainland are potential targets for acquisitive international firms.

In the space of the last eight years, the largest 15 mainland Chinese firms have more than quadrupled in size from an average of 359 fee earners in 2009 to 1,450 fee earners in 2016. (In 2016, 14 of the largest 15 Asian firms were headquartered in the mainland.) Whilst a small number have gone some way towards developing their international strategies either via merger (Dacheng, King & Wood Mallesons), strategic partnership (Yingke with Memery Crystal (UK)), association (Jingtian & Gongcheng with Mayer Brown JSM), or network (JunHe (Lex Mundi)), the pressure on others to do so will intensify as they compete for complex cross-border work.

Similarly, mainland Chinese firms seeking to “go out” often begin with Hong Kong because of its importance as one of two major regional capital markets and a preferred route through which much of their clients' outbound investment is channelled. Eight of the ten largest mainland firms have a Hong Kong office and many others have a presence or relationships with domestic Hong Kong firms.

This becomes an important strategic consideration for small and medium-sized firms in Hong Kong whether they are committed to independence, are open to joining or are actively seeking a mainland or international law firm.

“Mid-Market Meltdown”

In recent years, “mid-market” business law firms in most countries have been the biggest “losers” as competition has intensified. The middle ground has contracted as IBL firms and disruptors (largely driven by technology) have taken market share from domestic business law firms. (These are typically large firms in their own markets but small by comparison with their international counterparts and increasingly unable to compete with them for higher value cross-border work.) Over time, their share of purely or predominantly domestic work has also been eroded as clients consolidate their suppliers. In the markets where this trend is most advanced, the mid-market segment is likely to disappear within the next five to 10 years.

The latest list of Hong Kong’s 25 largest law firms included only five local firms. Outside the top 25, the average size of Hong Kong’s remaining 846 law firms (both foreign and local) was less than eight lawyers, with many significantly smaller practices.

In some markets, a new generation of boutiques are emerging as a diaspora from larger firms’ established niche practices, including in higher value practice areas. One consequence of the trickle-down effect is that small and medium-sized firms will need to compete with more specialist boutiques in key areas.

**A question of scale?**

In the past, law firms as long as they have remained a certain size (particularly as founder-led firms), have been able to do so in the absence of robust systems and processes. Inevitably, practices develop organically as firms grow but typically lack the discipline required of a high functioning business. Once these firms reached a certain scale, it became
apparent that the existing systems and processes (or the lack thereof) were inadequate to enable these firms to transition into a new phase of growth. Start-up firms can avoid this by ensuring that scalable systems and processes are in place from the outset. This is made easier by the fact that many more off-the-shelf products and outsourced solutions now exist that are suited to smaller platforms and that would require lower capital investment than has been the case in the past.

An appropriate business model (including systems and processes) increasingly forms part of a firm’s organisational capabilities regardless of its scale. Greater compliance obligations are likely to amplify this.

**Increasing Price Pressure and Other New Sources of Competition**

Technology, including the fast pace of adoption of Artificial Intelligence ("AI") as part of wider process efficiency initiatives, is intensifying competition. For larger firms, technology is helping to drive down the cost and speed of production by automating tasks that would otherwise be performed by lawyers.

In the past, these tasks might have been “farmed out” by lead counsel or the client to small and medium-sized firms who could perform them at a lower cost. The emergence of Legal Process Outsourcing ("LPO") provided clients with an alternative model, albeit questions remained about the quality and consistency of work product in many cases. AI now promises more, cheaper and faster solutions with the additional benefit of continuous and systematised learning.

Small and medium-sized firms for whom this has been an important and often lucrative source of income will need to consider the impact of technology on the flow of referrals and direct instructions.

**Rising Cost of Doing Business**

A key measure of the health of any firm and its competitive performance is its cost multiple. In other words, the ratio of the revenue generated to the direct costs of the fee earners who generated it. The direct cost of fee earners is their salary and related costs and must include a cost of equity partners.

As a small or medium-sized firm, capital commitments are likely to be relatively low. In the past, this may not have been an issue at all. Capital costs for small firms are not generally onerous and, depending on the nature of those costs, are typically self-funded by partners. However, changes in the business model may require higher capital injections than previously have been the case.

Some of the larger international firms in Hong Kong have moved or are contemplating moving their back offices and in some cases their front offices out of Central. Rental costs in particular and their impact on firm margins have long been a source of concern but before now few have been prepared to relocate or have faced significant resistance from partners to avoid doing so.

With time, the adoption of more technology-led work processes will sufficiently alter the shape of their business models in some cases that they will be able to reduce their headcount and, hence, their need for expensive office space.

Small and medium-sized firms are not immune to the same cost pressures whether or not they are based in Central. However, nor are they likely to achieve the same technology-driven economies of scale even if they are able to fund the capital investment required.

Whilst local firms in Hong Kong as in other Asian markets have mostly benefitted from relatively low employee costs compared with some markets, the cost differential will shrink as larger firms drive down the cost of production including the cost per lawyer.

**The Tasks of the Owner-Manager**

As a small professional services firm, we understand the competing demands in your markets.

Inevitably, small and medium-sized firms lack the infrastructure and organisational capability that larger firms have in abundance. Administrative tasks that would ordinarily be delegated to professional managers naturally fall to the partners (often the founder) to juggle with fee earning, client relationship management and business development commitments.

Role clarity is key in terms of the responsibilities of partners, senior lawyers and associates as are the disciplines and accountability that go with managing these. How much time is allocated to business generation, fee earning work, supervision, etc. and whether or not routine tasks can be performed more efficiently (including potentially through outsourcing these) will come into sharper focus.

**Questions to consider:**

1. How clear is your strategic positioning? Who are your core clients? What are your core work types, values, volume positioning, competitive capabilities and organisational capabilities?
2. What are the implications of the changing nature of your client base?
3. How well is your strategic positioning understood in your core markets/by your core clients?
4. What is the optimum scale for your practice? Do you have the systems and processes in place to compete in five years’ time and, if not, what will you need to do to address this?
5. How adaptive is your business model to disruptive technology and/or to price pressure from traditional and non-traditional sources of competition?
6. How will you fund the capital investment required to achieve your strategic goals over the next three to five years?
7. How will your role change over the next five years and what additional support will you need in managing your firm?
中小型律師事務所如何管理其業務

這篇文章共為兩部分，下文屬於第一部 分，探討在競爭激烈的市場環境下（特別是香港目前所面對的情況），中小型律師事務所 面對的問題。

本文探討的重點，是一系列供中小型律師事務所 管理層參考的，在策略上和運作上的考慮因素； 以及，隨著競爭情況日趨激烈，這些因素正在產生 如何的變化。這篇文章的第二部分將會探討律 師事務所的管理層需要採取如何的舉措，而當中 包括從現金流的管理，過渡到收入的創造上（作 為此中的自然結果），以及在組織思維上的結構 性轉變。

儘管關於律師事務所的管理原則，可以適用於不 同規模的律師事務所，但在實際的運作上，則視 乎各律師事務所的組織能力而異。中小型律師事 務所面對的挑戰，在許多方面，均與大型律師事 務所面對的相同。然而，它們對此等挑戰如何作 出回應，當中可以存在很大差別，而「下滲」效 應（從大至小）亦會有可能令該等挑戰的性質發生 改變，包括在某些情況下將所產生的影響擴大。

中小型律師事務所在組織能力方面的不足，可 以憑著其於面對客戶和市場，以及在管理其業 務方面所具備的靈活性而予以補足。然而，要 達到這一目的，律師事務所必須對其策略性定 位有明確的了解，並具備進行競爭及維持該地 位的管理技能。

大多數市場的中小型律師事務所都 有一個共同特性，就是會把業務重 點放在中小企客戶上。當中的部分 原因，是因為許多家族企業都習慣 委託同一位律師來協助處理其私人 和公司的法律事務，所以這些客戶 的委託會很固定。（一家律師事務所 如果服務表現良好，中小企就較為 傾向讓該律師事務所繼續為其提供 「一籃子的商業法律服務」。從客 戶的角度看，也許並非必然如此。） 這些範疇，大型律師事務所一般都 不會觸及，因為它們擁有大量能帶 來可觀利潤的業務，而其成本基 礎亦不容許它們接受較低利潤的工 作。因此，大型律師事務所與中小 型律師事務所得以有效地，在兩個 並行的市場共存。

基於個人財富、封閉式的家族企 業、以及最大型上市公司之間的 關係，香港的情況在這方面有所不 同。與其他市場比較，香港的中小型 律師事務所向來比較可以為較大 型的企業提供法律服務。

在一些競爭日趨激烈，及與中小型企 業的接觸正在增多的市場（包括透過更 高效的交付機制和較低的生產成本）， 當中的分野已經變得越來越模糊，而 一些大型專業服務機構（尤其是四大會 計師事務所）亦正積極地瞄準中小型企 業，作為它們拓展業務的範疇。

根據香港政府的最新統計資料，目前 香港大約有317,000家中小型企業， 佔本地企業總數百分之九十八，所僱 用的人數，佔私營部門勞動人口的百 分之四十六。儘管百分比是如此高， 但若與例如英國比較，當地有超過百 分之九十九企業屬中小型企業，所僱 用的人數，佔私營部門勞動人口的百分 之六十 [而其私營部門營業額則佔 百分之四十七]。因此，香港的上述情 況也並非不成比例。然而，基於上述 原因（包括法律服務的運用情況），香 港的中小型企業相對而言顯然是重要很 多。

這引發了一連串與中小型律師事務所 的業務管理相關的議題，以及一連串 供其管理層思考的問題。
以客戶為中心
從前回避私人財富服務的一些主要商業法務事務所（環球菁英及國際商業法 (“IBL”) 事務所）已在近年開始改變其經營策略。現時，它們正在投資於此等領域，並正在透過私人財富服務，積極瞄準高淨值客戶（“HNWI”），希望藉此取得為企業提供法律服務的機會。現時從香港及亞洲其他大型經濟體流向主要國際資本市場及商業中心的投資正在上升，這亦成為一些律師事務所加強聚焦於這一方面的催化劑。

這對於其多元化的客戶基礎，包括商業法務事務所瞄準的高淨值客戶的香港中小型律師事務所來說，意義是十分重大。本地律師事務所會更為直接地，與商業法律事務所進行競爭（尤其是該些在香港設有大型辦事處，以處理高淨值客戶及其公司業務組合所提供的，具中等和較高價值工作的商業法律事務所）。一些能夠為私人客戶事務提供法律意見，又能同時在多個司管轄區就某些個案為上市公司提供法律意見的律師事務所，它們確是享有內在的戰略優勢。這些律師事務所將會投資於關係的建立上，包括（如有必要）在私人客戶服務方面採取虧本招徠方式，藉此取得數量更多、利潤更豐厚的企業委託業務。

在香港，由於中小型律師事務所的所需經營成本較低，因此它們能夠在其他服務範疇超越其競爭對手，然而，正如下文所討論的，這種情況將難以繼續維持下去。

產品清晰度
由於競爭日趨激烈，在未來十年我們將會看到，會有愈來愈多的律師事務所因經營不善而倒閉。律師事務所倒閉的最主要原因，往往是因為缺乏策略性的重點和管理不善。

根據我們的觀察，中小型律師事務所（及大型律師事務所的較小規模辦事處）均承認，它們所提供的服務和所涉及的法律範疇過於寬泛。很多時候，律師事務所的業務負荷，往往超過它們所僱用或是在其辦事處所配置的律師人數，street office 若欠缺發展重點，這將會使其難以建立自身的信譽，和發揮其律師的服務專長。這並不是說，所有的律師事務所都應該將其業務範疇收窄，並只是專攻某些範疇（雖然有些法律事務所確是如此選擇），而是應該

（1）在具專注的業務上具有競爭能力；
（2）能夠為其所選擇的市場定位提供支持。

香港律師會的網站共列出了24個法律執業範疇，而不少中小型律師事務所都聲稱其擅長多個法律執業範疇，在其市場推廣資料上，也是作出類似的聲稱。由於客戶現時的購買行為已變得越來越老練（服務提供者的數目增多是其中一個因素），律師事務所的此等聲稱因此將會受到考驗。

戰略途徑
香港是進出中國的大門，因此它仍然是一個具有吸引力的市場。國際律師事務所對在香港設立辦事處無論有何實際需要，它們仍然會視香港是一個安全港和通往內地的橋樑。具備良好的管理能力與盈利能力，擁有健全的客戶群，及/或在內地擁有業務的本地律師事務所，它們將會成為國際律師事務所有意收購的目標。

過去8年，中國最大的15家律師事務所的規模擴大了4倍，而所聘用的法律工作人員數目，也從2009年的平均359人，增至2016年的1,456人。（2016年，全亞洲規模最大的15家律師事務所，有14家的總部設在中國。）一些律師事務所通過合併（大成、金杜律師事務所）、戰略合作夥伴關係（盈科律師事務所與英國的Memery Crystal）、聯營（競天公誠律師事務所與香港孖士打律師行）或建立網絡（君合律師事務所（Lex Mundi））來實現其國際戰略，而其他有意爭取此等複雜跨境業務的律師事務所亦不甘示弱，群起效仿上述這些律師事務所的做法。

同樣地，計劃「走出去」的中國律師事務所，通常會基於香港是亞洲兩個主要資本市場之一，享有重要地位，因而選擇以香港作為他們的起步點，而香港也是他們的客戶進行對外投資的首選路線。內地10家最大的律師事務所，有8家在香港設有辦事處，而其他律師事務所，有許多也與香港的本地律師事務所建立了某種性質的聯繫或業務關係。

香港的中小型律師事務所是選擇獨立運作，願意結盟，還是正積極地尋求與內地或國際律師事務所進行合作？這對它們而言，都是重要的戰略性考慮。

「中端市場消失」
在近年，由於競爭加劇，大多數國家的「中端市場」商業法律事務所成為了最大的「輸家」。本地商業法律事務所的市場份額，被國際性的商業法律事務所及產業顛覆者（disruptors）（它們主要是受科技應用所推動）所奪取，以致中端市場萎縮（基本上，它們在自身所處的市場中，是屬於小型律師事務所；但與其競爭對手—一些大型律師事務所比較，它們只是屬於小規模，並且在一些具較高價值的跨境業務市場上，愈來愈難與這些對手競爭。）由於客戶慢慢開始固定使用某些服務提供者，這些律師事務所的純本地（或主要為本地的）業務份額，亦開始逐漸被侵蝕。在這一趨勢最顯著的市場中，其中端市場在未來5至10年將很可能會消失。

根據最新的資料顯示，香港首25家最大型的律師事務所，只有5家是屬於本地律師事務所。除了該25家最大型律師事務所外，其餘的846家律師事務所（包括外地和本地）平均聘有少於8名律師，而當中的執業規模有許多是屬於明顯較少。

新一代的精品式律師事務所，現時在某些法律服務市場中出現，並且脫離大型律師事務所確立的執業細分範疇（包括具較高價值業務的法律執業範疇），此等下滲效應所產生的一個結果是，中小型律師事務所需要在其主要業務範疇，與較為專精的精品式律師事務所進行競爭。

多大的規模？
在以往，只要律師事務所能維持一定的業務規模（尤其是該些由其建立者主導的律師事務所），它便可以繼續經營下去，而
需要加以考慮的問題：

1. 你的戰略定位是否清晰？你的核心客戶是誰？你的核心工作類別、價值、客源定位、競爭能力和組織能力如何？
2. 你的客戶群不斷變化的性質，會帶來甚麼樣的影響？
3. 你的核心市場/核心客戶對你的戰略定位理解有多深？
4. 甚麼是你的業務的最適切規模？在5年裡，你是否會建立起競爭的制度與程序？假如不行，你會如何處理這一問題？
5. 你所實行的業務模式，是否能有效適應顛覆性技術，及/或該等來自傳統和非傳統競爭來源的價格壓力？
6. 在未來的3至5年，你會如何投入所需的資金，以達成你的戰略目標？
7. 在未來5年你的角色將會有何變化；以及，在管理你的律師事務所方面，你將需要哪些額外支援？
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徐嘉怡
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TSUI TIEN HUA FLORA
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Partnerships and Firms
合夥人及律師行變動

changes received as from 1 January 2017
取自2017年1月1日起香港律師會所提供之最新資料

- AU MAN WAN TERESA
  commenced practice as the sole practitioner of Au Man Wan & Co. as from 20/01/2017.
  歐縵雲
  自2017年1月20日獨資經營歐縵雲律師事務所。

- BISHOP ANDREW JOHN
  joined White & Case as a partner as from 06/02/2017.
  自2017年2月6日加入偉凱律師事務所為合夥人。

- CHAN CHEUK WAH
  became a partner of Deannie Yew and Associates as from 01/02/2017.
  陳卓華
  自2017年2月1日成為姚逸華律師事務所合夥人。

- CHAN CHEUK WAH
  ceased to be a partner of Deannie Yew and Associates as from 01/02/2017
  and joined Pauline Wong & Co., Solicitors as an assistant solicitor on the same day.
  陳卓華
  自2017年2月1日不再出任姚逸華律師事務所合夥人，並於同日加入王婕妤律師事務所為助理律師。

- CHAN CHUNG YIN VICTOR
  commenced practice as the sole practitioner of Victor Chan & Co. as from 03/01/2017.
  陳仲然
  自2017年1月3日獨資經營陳仲然律師行。

- CHAN DUN CHAU KENNETH
  ceased to be a partner of Latham & Watkins as from 01/01/2017
  and remains as a consultant of the firm.
  陳端洲
  自2017年1月1日不再出任瑞生國際律師事務所合夥人一職，而轉任為該行顧問。

Editorial Note: the photo that appeared next to Chan Mei Mei Nicolette, Slaughter and May, in the February 2017 issue of Hong Kong Lawyer was incorrect.
編按：2017年2月號的《香港律師》內陳微微(司力達律師樓)的照片出錯，敬希垂注。
• CHAN GEOFFREY ceased to be a partner of Ropes & Gray as from 21/01/2017 and joined Skadden, Arps, Slate, Meagher & Flom as a partner on the same day.

・ 陳傑鴻自2017年1月21日不再出任瑞格律師事務所合夥人一職，並於同日加入世達國際律師事務所為合夥人。

• CHAN KIN FUNG PHIL ceased to be the sole practitioner of Phillips as from 25/01/2017 due to the intervention in the practice of the firm by the Law Society on the same day.

・ 陳建豐自2017年1月25日不再出任Phillips獨資經營者一職，因該行於同日被律師會介入。

• CHAN LUNG JUNE ceased to be a partner of Orrick, Herrington & Sutcliffe as from 13/02/2017.

・ 陳璽自2017年2月13日不再出任奧睿律師事務所合夥人一職。

• CHIU CHO CHIU became a partner of Fairbairn Catley Low & Kong as from 01/02/2017.

・ 趙祖釗自2017年2月1日成為範紀羅江律師行合夥人。

• CHONG YI JANNEY ceased to be a partner of Sidley Austin as from 01/01/2017.

・ 莊怡自2017年1月1日不再出任盛德律師事務所合夥人一職。

• CHONG YIU KAM ceased to be a partner of Lily Fenn & Partners as from 01/02/2017.

・ 莊羅金自2017年2月1日不再出任范家碧律師行合夥人一職。

• GARDINER GORDON ASHLEY WYNNE became a partner of Holman Fenwick Willan as from 16/01/2017.

・ 加德納格倫阿什利溫納自2017年1月16日成為夏禮文律師行合夥人。

• GRIMM DAVID GRANT ceased to be a partner of Paul Hastings as from 01/02/2017.

・ 格里姆戴維葛蘭自2017年2月1日不再出任普衡律師事務所合夥人一職。

• HARRISON JAMIE EDWARD joined Francis & Co. as a partner as from 12/01/2017.

・ 哈里遜詹姆士愛德華自2017年1月12日加入Francis & Co.為合夥人。

• HO MAN YEE ESTHER joined Lam, Lee & Lai as a partner as from 01/02/2017.

・ 劉曉冰自2017年2月1日加入羅夏信律師事務所合夥人一職，並於同日成為長盛國際律師事務所為顧問。

• HOARE DAVID JOHN ceased to be a partner of Haldanes as from 01/02/2017 and remains as a consultant of the firm.

・ 何大衛自2017年2月1日不再出任何爵士律師事務所合夥人一職，而轉任為該行顧問。

• HSUI CHI HO JONATHAN ceased to be a partner of Ashurst Hong Kong as from 26/01/2017 and joined Allen & Overy as a partner on the same day.

・ 許智豪自2017年1月26日不再出任亞司特律師事務所合夥人一職，並於同日加入安理國際律師事務所為合夥人。

• KATARIA AMIT became a partner of Morrison & Foerster as from 26/01/2017.

・ 卡塔里亞阿密特自2017年1月26日成為美富律師事務所合夥人。

• KWOK WING FUNG commenced practice as the sole practitioner of W.F. Kwok & Co. as from 01/02/2017.

・ 郭榮豐自2017年2月1日獨資經營郭荣豐律師行。

• LAI SHUK KAI became a partner of K.Y. Lo & Co. as from 01/01/2017.

・ 賴淑姬自2017年1月1日成為勞潔儀律師行合夥人。

• LAM ROCKEY ceased to be a partner of Cheung & Liu, Solicitors as from 22/01/2017 and commenced practice as a partner of KCL & Partners on the same day.

・ 林樂丰自2017年1月22日不再出任張廖律師事務所合夥人一職，並於同日成為新開業廖廣志律師事務所合夥人。

• LAU HIU PING ceased to be a partner of Stephenson Harwood as from 10/02/2017 and joined Troutman Sanders as a consultant on the same day.

・ 劉曉冰自2017年2月10日不再出任陸夏信律師事務所合夥人一職，並於同日加入長盛國際律師事務所為顧問。
• LEE LINA joined Allen & Overy as a partner as from 05/01/2017.
李蓮娜自2017年1月5日加入安理國際律師事務所為合夥人。

• LEUNG CHUN CHEUNG JEFF became a partner of Cheung, Chan & Chung as from 01/02/2017.
梁振祥自2017年2月1日成為張陳鍾律師行合夥人。

• LEUNG HO YAN ceased to be a partner of Robin Bridge & John Liu as from 28/01/2017.
梁可欣自2017年1月28日不再出任喬立本廖依敏律師行合夥人一職。

• LIU KWONG CHI NELSON ceased to be a partner of Cheung & Liu, Solicitors as from 22/01/2017 and remains as a consultant of the firm. Mr. Liu commenced practice as a partner of KCL & Partners as from 22/01/2017.
廖廣志自2017年1月22日不再出任張廖律師事務所合夥人一職，而轉任為該行顧問。廖律師於2017年1月22日成為新開業廖廣志律師事務所合夥人。

• LUK KAI CHIANG EDWIN ceased to be a partner of Orrick, Herrington & Sutcliffe as from 13/02/2017.
陸繼鏘自2017年2月13日不再出任奧睿律師事務所合夥人一職。

• MA WAN HIN became a partner of Haldanes as from 26/01/2017.
馬允軒自2017年1月26日成為何敦，麥至理，鮑富律師行合夥人。

• MILLER JAMES PATRICK DUDWELL became a partner of Smyth & Co as from 23/01/2017.
自2017年1月23日成為Smyth & Co合夥人。

• MOHNANI DHEERAJ SURESH commenced practice as the sole practitioner of Mohnani & Associates as from 01/02/2017.
自2017年2月1日起獨資經營Mohnani & Associates。

• NG KA LAI ceased to be a partner of Tam, Pun & Yipp as from 01/02/2017 and remains as an assistant solicitor of the firm.
自2017年2月1日不再出任譚潘葉律師行合夥人一職，而轉任為該行助理律師。

• NG SHAN YUNG joined L & Y Law Office as a partner as from 01/01/2017.
自2017年1月1日期加入林余律師事務所為合夥人。

• PAYNE GREGORY DAVID ceased to be a partner of S.T. Cheng & Co. as from 03/02/2017.
彭格禮自2017年2月3日不再出任鄭瑞泰律師事務所合夥人一職。

• SHEN PENELOPE YEEMAN joined Kwok Yih & Chan as a partner as from 01/02/2017.
沈汶蒑自2017年2月1日加入郭葉陳律師事務所為合夥人。

• TAI CHI KEUNG ceased to be a partner of Yip, Tse & Tang as from 01/02/2017.
戴志強自2017年2月1日不再出任葉謝鄧律師事務所合夥人一職。

• WANG HO KEI RICKY became a partner of Yip, Tse & Tang as from 01/02/2017.
溫浩基自2017年2月1日成為葉謝鄧律師行合夥人。

• WONG PAK WAI MICHAEL ceased to be a partner of K&L Gates as from 21/01/2017 and joined Dechert as a partner as from 23/01/2017.
黃柏樵自2017年1月21日不再出任高蓋茨律師事務所合夥人一職。並於2017年1月23日加入德杰律師事務所為合夥。

• WONG SHING YEUNG BILLY ceased to be a partner of Orrick, Herrington & Sutcliffe as from 13/02/2017.
黃承揚自2017年2月13日不再出任奧睿律師事務所合夥人一職。

• WONG TAI LUN KENNETH ceased to be a partner of Nixon Peabody CWL as from 17/01/2017.
黃泰倫自2017年1月17日不再出任尼克松、鄭黃林律師行合夥人一職。

• YEU SOOK YOUNG became a partner of Orrick, Herrington & Sutcliffe as from 17/01/2017.
自2017年1月17日成為奧睿律師事務所合夥人。

• YEUNG SIN HANG joined ONC Lawyers as a partner as from 07/02/2017.
楊先恒自2017年2月7日加入柯伍陳律師事務所為合夥人。
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Cutting-Edge Research on the Legal Dimensions of China’s Belt and Road Initiative at the CUHK

The Belt and Road Initiative is a monumental development strategy launched by China’s President Xi Jinping in 2013. The Initiative has since been a topic of broad discussion at all levels. Although its tremendous significance for local, regional and global developments has been widely acknowledged, the discourse on the opportunities and challenges of the Initiative for the legal profession is only starting to emerge.

At the Chinese University of Hong Kong (“CUHK”), the Faculty of Law and the University’s Global China Research Programme have partnered to embark on a major research project that explores the legal and policy aspects of the Initiative. Joining hands with a distinguished team of internationally leading experts, seven CUHK Faculty of Law professors (Professors Jyh-An LEE, Michelle MIAO, Gonzalo VILLALTA PUIG, Lutz-Christian WOLFF, Chao XI, Yan XU and Mimi ZOU) have collectively engaged in an intellectual joint venture that leads to a recent milestone publication with Wolters Kluwer entitled Legal Dimensions of China’s Belt and Road Initiative. One of the first English-language volumes on this topic, this edited volume discusses many open questions from the legal point of view to establish a framework for policy initiatives and legislative projects. It also serves as a theoretical basis for future research, and offers practical up-to-date guidance on the current status of the Belt and Road Initiative. For details about the book, please refer to www.law.cuhk.edu.hk/OBOR_Book.

The volume has recently been launched at a CPD-point-bearing international conference on Legal Aspects of China’s Belt and Road Initiative, taking place at the Law Faculty’s Graduate Law Centre at
A new book “Legal Dimensions of China’s Belt and Road Initiative” with 9 out of the 24 chapters authored by CUHK Faculty of Law members has been released at the Symposium.

Having laid a solid foundation for research on the legal dimensions of the Initiative, the team at CUHK looks forward to opportunities to work with members of the legal profession in Hong Kong and beyond to take their research further forward.

CityU Hosted Conference on “Consumer Protection in Asia: Past, Present and Future”

From 13–14 of January, the School of Law, City University of Hong Kong hosted a conference on Consumer Protection in Asia. The conference was co-organised by the School of Law, City University of Hong Kong and Faculty of Law, University of Helsinki. Around 20 leading commercial law specialists and scholars from Mainland China, Hong Kong, Macau, Japan, Singapore, Australia, India, Vietnam, Thailand, and Malaysia gathered at CityU to share their views on consumer protection law in Asia from different perspectives.

The conference was kicked off by the welcome speech of Professor Geraint Howells (Dean of the School of Law, City University of Hong Kong and Chair Professor, Commercial Law). Professor Howells introduced the background and the aim of the conference. He also thanked all participants for their support, especially the overseas

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speakers who travelled a long way to Hong Kong.

The first day of conference was divided into two sessions. The first session, chaired by Dr. André Janssen (School of Law, City University of Hong Kong), was focused on national reports. Leading Asian scholars each gave a brief introduction to their consumer law systems with emphasis on case law, practice, reform debates and influences on their law. The speakers invited for this session were Dr. Jing Jin (School of Law, China Youth University for Political Sciences); Professor Ashok Patil (National Law School of India University); Professor Emeritus Hisakazu Hirose (Faculty of Law, University of Tokyo); Professor Dan Wei (Faculty of Law, Macau University); Dr. Mateja Durovic, Professor Geraint Howells and Dr. André Janssen (School of Law, City University of Hong Kong); Dr. Gary Low (School of Law, Singapore Management University); Dr. Zalina Zakaria (Department of Shariah and Law, University of Malaya); Dr. Cuong Van Nguyen (Institute of Legal Science, Ministry of Justice of Vietnam); and Dr. Aimpaga Techapikum (Faculty of Law, Thammasat University).

In the second session, which was chaired by Dr. Mateja Durovic, eight speakers from non-Asia countries, namely Dr. Eileen Webb (Curtin Law School); Professor Gail Pearson (Business School, the University of Sydney); Professor Luke Nottage (Sydney Law School); Professor James Nehf (Robert H. McKinney School of Law, Indiana University); Dr. Michel Cannarsa (Catholic University of Lyon Law School); Dr. Alberto De Franceschi (University of Ferrara); Professor Hans-Wolfgang Micklitz (European University Institute); and Dr. Marta Cantero Gamito (University of Helsinki), commented on the development of consumer protection law in Asia contrasting with EU, US and Australian perspectives. Topics covered in this session included “Information and right of withdrawal”, “Sale of Goods”, “Unfair Terms”, “Product Liability”, “Product Safety”, “Adaption to Digital Age”, “Unfair Commercial Practices” and “Access to Justice”.

Chaired by Professor Hans-Wolfgang Micklitz, the second day of the conference focused on Case Studies in Asian Consumer Protection with the aim being to find out how consumer issues are or are likely to be addressed in practice. Each Asian national reporter presented their report on three case studies, concerning (1) product liability and product safety; (2) consumer products; and (3) telecommunication services, from their national perspective.

The concluding session was chaired by Professor Howells with a focus on global perspectives on Asian Law. Global commentators reflected on Asian consumer law from perspectives of the EU, the US, Australia, South America, the UN, ASEAN and Africa. Professor Tjakie Naude of
HKU Law Launches the First-in-Asia Legal Drafting Course

Faculty of Law at The University of Hong Kong launched for the first time in Asia a dedicated course in legal and legislative drafting to undergraduate students in the second semester.

The course teaches students how to compose coherent and unambiguous legal text, and how to structure legal documents to ensure maximum comprehensibility. It includes an examination of the principles of statutory interpretation that influence the judicial interpretation of legal documents, and shows how to use those principles to ensure that legal documents will be given their intended meaning if challenged before the courts. Legislative and contractual provisions are also analysed in class, as a way of identifying and correcting typical drafting errors. Students are required to draft or redraft legal provisions and short legal documents as a way to master different aspects of drafting.

Through a combination of lectures, assignments, exercises and in-class review of assignments and exercises, attending students have mastered the skills required to draft complex legal documents, and improved their skills at analysing legislative and contractual provisions. They learned by way of problem solving to identify drafting problems that reduce comprehensibility or create ambiguity, and apply the principles of good legal drafting to correct these defects. With enhanced legal research skills, they are able to identify problematic provisions in statute databases of a variety of different jurisdictions. They are also capable of communicating complex legal concepts clearly and unambiguously, and using correct grammar and language suitable to complex legal documents and legislation.

Because the preparation of legal documents is essential to many areas of legal practice, students who have participated in the course should be better prepared to handle the real-world challenges that they will face as practising lawyers. In addition, their ability to identify sources of ambiguity in legal documents will assist them in their analysis of such documents and improve their ability to challenge contractual or statutory provisions on behalf of their clients.

The pioneering legal and legislative drafting course was convened by Mr. Paul Salembier. Mr. Salembier also teaches legal drafting at Queen’s University, Canada and is a consultant on drafting legislation and advising clients on legislative initiatives. In 2014, he was invited by the Law Drafting Division of the Hong Kong Department of Justice to conduct a law drafting course for law drafters on fundamental techniques and principles in legislative drafting.
This month we return to some Hong Kong legal history and trivia. The questions have been prepared by Douglas Clark, Barrister. Suggestions for questions to appear in next month’s journal are most welcome.

1. In what year did the Hong Kong Full Court first sit?
   A. 1898  
   B. 1900  
   C. 1913  
   D. 1921

2. Which Hong Kong court still has the British Coat of Arms on display on its exterior?
   A. Fanling Magistracy  
   B. The District Court  
   C. The High Court  
   D. The Court of Final Appeal

3. In what year was the first puisne judge appointed in Hong Kong?
   A. 1844  
   B. 1856  
   C. 1865  
   D. 1878

4. Which Governor of Hong Kong at one time served as the Chief Magistrate in Hong Kong?
   A. Alexander Grantham  
   B. Chris Patten  
   C. Henry Pottinger

5. In 1891, how many Chinese solicitors were practising in Hong Kong?
   A. 1  
   B. 2  
   C. 5  
   D. 15.

6. Which judge of the Court of Final Appeal was born in Shanghai?
   A. Geoffrey Ma  
   B. Joseph Fok  
   C. Robert Tang  
   D. Henry Litton

7. Who was the first local Hong Kong barrister to be appointed directly to the High Court?
   A. Archie Zimmern  
   B. Miles Jackson-Lipkin  
   C. Kemal Bokhary

8. (True or False) The Supreme Court (now the High Court) previously sat for a time in the Sun Hung Kai Centre.
   A. True  
   B. False

9. Aston and Bell, the architects of the current Court of Final Appeal Building (formerly the Supreme Court Building) also designed which of the following structures?
   A. The façade of Buckingham Palace  
   B. The original Hong Kong Club building  
   C. The Victoria and Albert Museum  
   D. Flagstaff House

10. When was the first Patents Ordinance enacted in Hong Kong?
    A. 1844  
    B. 1862  
    C. 1912  
    D. 1955

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**Answers to Legal Trivia Quiz #34**

1. C. The Election committee is made up of 1,200 members. (Schedule 1, Part 2 of the Chief Executive Election Ordinance).

2. B. A non-Chinese national who was not born in Hong Kong must be a resident in Hong Kong for seven years to be eligible to become a permanent resident. (Art. 24(4) of the Basic Law).

3. B. Members of any armed force are not eligible to be registered as electors in Hong Kong. (s. 31 Legislative Council Ordinance).

4. C. The minimum age requirement for the Chief Executive of Hong Kong is 40 years. (Art. 44 of the Basic Law).

5. B. A maximum of 20% of LegCo members may be non-Chinese nationals. (Art. 67 of the Basic Law).

6. D. 75%. The Chief Justice must be a Chinese national. The other three Permanent Judges are not required to be. (Art. 90(1) of the Basic Law).

7. B. Freedom of Expression is not a defence to a charge of desecrating the Hong Kong flag. (See HKSAR v Ng Kung Siu (1999) 3 HKLRD 907).

8. B. Under Art. 4 of the Garrison Law, the expenditure stationing the PLA garrison in Hong Kong is borne by the Chinese Central Government.

9. B. Under Art. 112 of the Basic Law, the HK government is prohibited from imposing foreign exchange controls.

10. B. Hong Kong is part of China, so even though they are both members of the New York Convention, it is not possible to enforce an arbitration award between HK and China under the New York Convention. However, there is a special arrangement to facilitate doing so.
### 法律知識測驗 #35

本月的問題圍繞香港法律史和逸事。
問題由馬錦德(Douglas Clark)大律師編製。歡迎建議下期問題。

1. **香港合議庭於何年首次組成？**
   - A. 1898
   - B. 1900
   - C. 1913
   - D. 1921

2. **哪個香港法院外仍展示英國國徽？**
   - A. 粉嶺裁判法院
   - B. 地區法院
   - C. 高等法院
   - D. 終審法院

3. **香港首位按察司於何年獲委任？**
   - A. 1844
   - B. 1856
   - C. 1865
   - D. 1878

4. **哪位港督曾同時擔任首席裁判司？**
   - A. 葛量洪
   - B. 彭定康
   - C. 砵甸乍

5. **1891年有多少位華籍律師在香港執業？**
   - A. 1
   - B. 2
   - C. 5
   - D. 15

6. **哪位終審法院法官在上海出生？**
   - A. 馬道立
   - B. 霍兆剛
   - C. 鄧國楨
   - D. 烈顯倫

7. **誰是首位被直接委任為高等法院法官的香港本地大律師？**
   - A. Archie Zimmern
   - B. 李栢儉
   - C. 包致金

8. **最高法院（現高等法院）曾位處新鴻基中心一段時間。**
   - A. 是
   - B. 非

9. **現終審法院大樓（前身為最高法院大樓）的建築師Aston & Bell也設計了下列哪個建築物？**
   - A. 白金漢宮的外觀
   - B. 原香港會所大廈
   - C. 維多利亞和艾伯特博物館
   - D. 三軍司令官邸

10. **香港最早的專利條例於何年制定？**
    - A. 1844
    - B. 1862
    - C. 1912
    - D. 1955

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

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**www.hk-lawyer.org**
Imagine you are a senior partner at a networking dinner with your colleagues. Over a glass of sauvignon blanc, your client starts rattling off all the extra-curricular activities he and his wife have enrolled their daughter in for the next school term. “We have to make sure she maintains a competitive edge,” he says while playfully prodding your colleague. “So, do you have kids?” he turns and asks, trying to bring you into the conversation.

Interactions like these are without a doubt the social glue that helps us forge close relationships in the business world. We share stories to get to know one another and form bonds outside of work – disclosing titbits about the real human stuff that comprise our lives.

While this question can prove uncomfortable for a variety of lawyers for a variety of reasons, imagine for a moment that you are a closeted lesbian, gay, bisexual or transgender (“LGBT”) lawyer who is fielding this question: someone who is wary of being discriminated against.

Under those circumstances, “Do you have kids?” becomes much more complicated to answer, as your response can lead to a deluge of other questions about your personal life.

While such a lawyer might want to open up about the trials and tribulations he and his partner have faced when juggling their son’s busy schedule, he likely won’t. Rather, he will likely offer a simple response, keeping any evidence of who he really is hidden away.

LGBT-Inclusive Law Firms
Eliminating this type of stressful situation in which one’s social and work lives collide is exactly what LGBT-inclusive law firms and businesses across Hong Kong are taking on, explains Justin D’Agostino, Global Head of Practice, Dispute Resolution and Managing Partner for Asia and Australia at Herbert Smith Freehills. “Our firm is very sensitive to local cultural norms, and as an employer, we are also very clear that we stand proudly for diversity and inclusion (or D&I). We have created an inclusive environment where people are welcomed, valued and rewarded on the basis of their talents and skills, without reference to their gender, culture, family status or sexual orientation,” he said. “It’s in our firm’s DNA and highly appropriate for the complex environment that is the typical Asian workplace.”

Mr. D’Agostino was named one of the world’s leading OUTstanding Executives in the Financial Times’ 2016 Global List of LGBT and Ally Ambassadors.
Walking the Walk

For a decade, Herbert Smith Freehills has been a pioneer on the diversity front. “In 2007, it was the first major international law firm to set up an LGBT network in London. At that time, I was a newly promoted partner,” Mr. D’Agostino recalled. “The firm had recently decided to spearhead diversity initiatives, so there was a lot of support from senior management and leaders in the firm. I saw getting involved as very important for me personally and for my colleagues – I have been openly gay since I joined the firm and have felt fully supported throughout my career. I also saw it as an opportunity to make a difference and a real change. Although it feels like so much has happened in the last 10 years, it really was not that long ago that firms avoided talking about diversity or LGBT issues. There also were not very many role models in senior positions or partners who were openly gay. It feels like a long way away from where we are now, as a society and as a firm.”

When Mr. D’Agostino relocated to Hong Kong in 2009, he helped the firm launch its LGBT network in Asia. Similarly, when Herbert Smith went through its big merger with Freehills in 2012, he supported the launch of its LGBT network in Australia. More recently, he was involved with rebranding and launching the LGBT network globally under the new name IRIS, which stands for Inclusion, Respecting Identity and Sexuality. The firm launched the IRIS network in Asia this February.

The IRIS network was established to complement regional LGBT efforts by connecting people across the firm, to make firm-wide communications easier and enable consultation on issues of global significance. Across the global network, Herbert Smith Freehills hopes to grow membership, including allies, and share best practices across different regions. Mr. D’Agostino also noted that the network’s name reflects its strong connection with the heart of the firm’s brand, elaborating that Herbert Smith Freehills uses an iris in its logo to reflect the firm’s curiosity, insight and openness. “Iris” also happens to be the Greek goddess of the rainbow, he added with a grin.

Diversity & Inclusion: Facts & Figures

In making his case for diversity, Mr. D’Agostino marshals facts and figures to show open, inclusive and diverse workplaces are better for a company’s bottom line.

“If you can create an inclusive workplace, you can attract and retain the best talent in the market,” he said. “If you do not get this right, that talent will go elsewhere or they will not join your firm in the first place. This goes to the heart of the business case for diversity.”

Another element of the business case is that clients in Asia expect firms to field a diverse team, he continued. When you pitch for work or when a client asks you to help them with an issue, this is the baseline expectation, he explained.

It is clear that when you have a diverse group of people sitting around the table, challenging each other, you get a better outcome, he added. “Each person is thinking about the issue differently and approaching the problem from a different angle, which strengthens your ideas and solutions. Diversity of thought is what diversity is all about. This is certainly necessary to be successful in Hong Kong, which is a fabulous international and cosmopolitan city with a huge amount of diversity. If your team only represents one part of the community, you will be at a distinct disadvantage.”

As for figures of interest, a report recently released by the Chinese University of Hong Kong and the Sexualities Research Programme found “about three-quarters of the Hong Kong public surveyed hold neutral or positive attitudes towards an LGB-friendly business [organisation]; only about one-quarter of the Hong Kong public surveyed see the LGB-friendly business [organisation] negatively.”

Making It Work

For D&I initiatives to succeed, it is important to adopt a multi-level approach. “These initiatives have to be driven from the top and supported from the bottom,” Mr. D’Agostino said.

However, garnering multi-level support and creating diverse teams, is not the...
締造多元共融的工作環境

作者 Cynthia G. Claytor

對香港的律師來說，社交和工作生活之間的界線通常是模糊不清的，有見及此，史密夫斐爾律師事務所爭議解決部全球業務主管兼區域主管合夥人（亞洲及澳洲）歐智樂（Justin D’Agostino）給我們解釋為甚麼坦誠開放、擁抱共融，促進多元的工作環境不僅是營商之道，而且是在亞洲市場取得成功的關鍵。

當你創造一個包容的環境，你得到的遠遠多於你付出的；而你的付出又得到了遠遠超出你預期的回報。這就是D&I的力量。這意味着確保多元在決策過程中的代表性，並不是對有不同能力的人視而不见。這是我認為我們都需要做得更好的地方——我非常專注於這個。創造一個讓人覺得每天都被包容的多元團隊，讓多元成為常態。

當你在營造一個包容的環境時，人與人之間的互動變得豐富多彩。大家分享自己的故事，彼此認識，在工作以外建立關係——大家細說趣聞軼事，共享生活點滴。

對於某一類律師，基於某一些原因，這個問題可以令人感覺很不舒服；試想一下你是回答這個問題的律師，而你是一個同性戀者：「你有兒女嗎？」他轉過頭來問你，想你也加入話題。

這一類交流互動在香港是常見的，在商業世界之中，更肯定是建立緊密社交關係的黏合劑。我們分享自己的故事，彼此認識，在工作以外建立關係——大家細說趣聞軼事，共享生活點滴。

然而，對於另一類律師，基於某一些原因，這一類問題就變得複雜多了，因為你的回應有可能引發一連串關於你私人生活的問題，令你應接不暇。儘管同性戀律師可能想公開他與伴侶應付兒女忙碌活動時所要面對的艱難困苦，但他多半會將秘密藏在心裡，不願泄露半點端倪。

Challenges Ahead

While firms that support D&I initiatives have made significant headway in Hong Kong, Mr. D’Agostino acknowledges that many challenges lie ahead for businesses and people who value diversity — from lobbying for legislative reforms and constantly challenging unconscious bias to continuing to make the business case for D&I.

“I think there is a positive obligation on employers – whether you are a large international player or a smaller organisation – to support your people. With access to so many different market sectors and industries, the legal profession is in a unique position to spearhead best-practice initiatives and promote the business case for D&I. We still have a long way to go, but we plan to keep at it,” he said.
同志共融的律師行

史密夫斐爾律師事務所(「史密夫斐爾」)爭議解決部全球業務主管兼區域合夥人(亞洲及澳洲)歐智樂*解釋，這種壓力存在於生活和工作互相衝擊的環境之中，而消除壓力正是實現同志共融的律師行，以至全香港各行各業著手要做的事。「儘管史密夫斐爾對本地文化框框具有敏銳的觸角，但作為僱主，我們亦非常清楚要滿有自信地支持多元共融。我們創建擁抱共融的環境，讓人人都因為自己的才能和己之長而受人歡迎、尊重並得到回報，不會因為性別、文化、家庭狀況或性取向而有所不同，」他說。「這是史密夫斐爾的DNA，亞洲企業通常都處於複雜的環境之中，因此極適合建立彼此共融的環境。」

說得出，做得到

史密夫斐爾十年來一直是推行多元化的先鋒。「史密夫斐爾2007年在倫敦設立同志網絡，是率先在當地設立同志網絡的大型國際律師行。那時候，我剛晉升為合夥人，」歐智樂律師回憶說。「律師行最近決定要做先頭部隊，帶路推廣多元化活動，律師行上下一呼百應，高級管理層和負責人紛紛表示支持。我知道自己的參與對我本人和各位同事具有重大意義——自從我加入律師行開始，己經公開承認自己是同性戀者，在整段職業生涯中，我覺得得到了百分百的支持。我亦視那一次為作出轉變，改轅易轍的機會。雖然過去十年好像發生了很多很多事，但其實不久之前，『多元化』或『同志』在律師行是一個忌諱的話題。那時願意站出來成為榜樣，公開承認自己是同性戀者的高層人士或合夥人寥寥可數。不論是我們的社會還是律師行，都像走過了漫漫長路才走到今天身處之地。」

當歐智樂律師2009年調職來到香港的時候，他協助律師行在亞洲區開設同志網絡。同樣地，當2012年史密夫律師事務所與斐爾律師事務所進行大規模合併的時候，他也支持律師行在澳洲開設同志網絡。近來，他參與重塑同志網絡的工作，為網絡冠上新名稱IRIS(Inclusion,Respecting Identity and Sexuality，意思是共融、尊重身份和性取向)，向全球推廣IRIS網絡。律師行今年二月在亞洲區設立了IRIS網絡。

設立IRIS網絡的目的是把律師行上下所有人員聯繫起來，補足地區同志網絡的工作，方便律師行全體員工溝通，讓大家能夠在全球關注的問題上有商有量。綜觀全球網絡，史密夫斐爾希望收納更多會員，包括支持者，並跨越地域界限，彼此分享最佳的實踐方式。歐智樂律師亦提到，網絡的名稱反映網絡與律師行品牌核心緊密扣連，而標誌的彩虹七色是史密夫斐爾用來反映律師行求知求真，洞悉世情，支持開放。他咧嘴一笑補充說，IRIS網絡碰巧與希臘彩虹女神同名，因為Iris一字也有彩虹之意。

多元化：事實和數據

在闡述自己的觀點時，歐智樂律師列舉事實和數據來證明，支持開放、促進共融、擁抱多元，公司會獲益良多。「你要是能夠創建和洽共融的工作環境，就吸納到市場最優秀的人才，也留得住他們，」他說。「如果這件事做得不好，人才就會另覓工作，擇良木而棲，或者不首先考慮加入你的律師行。這觸及企業的重心。」

他續說，另一個企業元素是，亞洲客戶期望律師行派上場的團隊具備多元化人才。他解釋，當你推銷工作的時候，或者客戶要求你忙着和解的問題的時候，這是一種基本的要求。

補充說，很明顯，當你有多元人才圍坐討論問題，互相提問求證，所得的結果會更勝一籌。「每個人思考問題的方法都不一樣，會分別從不同角度看待問題，有助進深你的想法和解決方法。多元化不外乎是思維多元化。香港是享負盛名的國際大都會，多元化非常盛行，在這裡，創建共融環境當然是成功的必備元素。如果你的團隊只是代表社區中的一撮人，你就明顯處於劣勢了。」

說到有意思的數據，香港中文大學與性小眾研究計劃最近公布研究報告，發現「香港受訪市民中，大約四分之三對同志友善企業[機構]態度中立或正面；香港受訪市民中，只有大約四分之一對同志友善企業[機構]態度負面。」

* 欧智樂律師2016年獲《金融時報》稱譽為全球同志及支持者之中傑出的主管人員。

使多元共融發揮果效

促进多元共融的活动要取得成功，必须采用层层推进的方法。欧智乐律师说：“这些活动一定要由上而下推行，而又由下而上给予支持。”

欧智乐律师继续说，即使得到了各阶层人员的支持，也设立了多元化团队，事情也并不就此结束。“从某些方面看，设立多元化团队是轻而易举之事。难处在于要令多元化每天奏效——那就是多元共融的其中一环。这个意思是要确保决策过程多元化，而并不是边缘化看你不顺眼的人。我想，这才是我们需要同心做得更好的事——我一直十分专注这事情：使我创建的环境拥抱共融，促进多元化，并最终以此成为每天业务运作的一部分。”

欧智乐律师补充说，当你创建共融环境的时候，从人所得的好处多不胜数，人从工作所得的好处也不可估量。“这不只是一个关乎同性的问题，我们建立的多元共融关系到来自不同文化背景的人创建适合的环境，为女性创建合适的平台，也为残疾人士创建无障碍环境。这三者都符合我们的标准。”

未来的挑战

虽然香港支持多元共融的公司已经迈出了很大一步，但欧智乐律师承认，重视多元化的企业和人士在未来还要面对一大堆挑战——游说透过立法进行改革，不断挑战无意识的偏见，以延缓多元共融的企业文化等等。

「我認為願意有一項必須履行的責任——不論你是大型國際企業還是規模較小的機構——就是支持你的員工。法律專業人員有機會接觸市場各行各業，因此處於優越位置帶領活動分享最佳實踐方法，以及推廣企業多元共融。」

欧智乐律师表示，史密夫斐爾亦与其他机构合作，例如香港的Community Business和环球机构Stonewall就分别给与我们提供实践多元共融的最佳方法，以及用来衡量自己的标准。“到处都可找到极为出色的机构，这些机构有能力帮助你成为众人心目中最能实践多元共融的雇主。”

未来的发展

虽然香港支持多元共融的公司已经迈出了很大一步，但欧智乐律师承认，重视多元化的企业和人士在将来还要面对一大堆挑战——游说透过立法进行改革，不断挑战无意识的偏见，以延缓多元共融的企业文化等等。

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Patricia Lui joins Taylor Root Hong Kong

Taylor Root is excited to announce the arrival of Patricia Lui to the business in Hong Kong. Patricia is a renowned specialist recruiter within the Hong Kong private practice sector and brings several years of experience and a wealth of knowledge and understanding of the Hong Kong legal market. Patricia joins our Hong Kong office to focus on search and recruitment for law firms across Hong Kong and North Asia.

If you are looking to hire or considering a career change, please get in touch with Patricia or a member of our Asia Private Practice team for a confidential discussion.
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.

Soraya Tennent, Consultant, Legal Support
Soraya specialises in the recruitment of finance and corporate support 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. Soraya 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.

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.

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.

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 legal leading law firm and a global insurance company before joining Michael Page.

Kamil Butt, 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.

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.

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.
**Legal Counsel**

- **3+ PQE**
- **Fast Growing Aviation Business**

Our client is a fast growing multinational company in the aviation industry. They have steadily expanded their networks and established a strong reputation in the industry. Currently seeking a Legal Counsel to join the team, the ideal candidate will be a Hong Kong qualified lawyer with at least 3 years’ PQE obtained in the areas of corporate commercial law, being well versed in drafting and reviewing commercial contracts and agreements. Prior experience as an in-house counsel is advantageous, as is exposure to aviation/transportation industries. Fluency in spoken and written English and Chinese (Mandarin and Cantonese) is required. Ref: H3854220

**In-House Corporate**

**Private Equity Lawyer**

- **4-7 PQE**
- **Asset Management House**

Our client is a leading asset management player in Asia being one of the more established houses in China. With a sizable business in Hong Kong, the Head of Legal is keen to take on a lawyer to join the team. You will advise on the setting up of private equity fund structures, conduct legal due diligence on investee companies and draft/review/ negotiate a variety of agreements such as fund formation documents, term sheets, investment agreements, subscription agreements, fund management agreements. You will be a 4+ years’ PQE lawyer, with solid experience gained in the area of private equity. Strong English and Chinese language skills are required. Ref: H3774040

**General Counsel**

- **9+ PQE**
- **Chinese Multinational Company**

Our client is rapidly growing company headquartered in China. With growing worldwide presence over the decade establishing operations in the U.S., Europe and North Asia, they are seeking to hire a seasoned lawyer to cope with their growth. Reporting to the Board of Directors, you will advise senior management on practical and commercial legal strategy, as well as to drive corporate transactions. You will be a senior lawyer specializing in US IPO transactions, with strong working knowledge of s144A, ideally working with a leading law firm. Strong education background is required, as is fluency in English, Cantonese and Mandarin. Ref: H38534800

**DCM Practice**

**DCM Associate**

- **1-3 PQE**
- **Leading UK firm**

A leading international law firm with established offices in Hong Kong and other Asian major cities created a new headcount to take on a junior debt capital markets and structured finance solicitor. In this role you will be exposed to a wide range of high-profile and award-winning transactions, covering DCM transactions, bonds and securitization matters. The ideal candidate is a Hong Kong or UK qualified solicitor with good English and Chinese language skills. Candidates with solid banking finance experience from international law firms who interested in exploring a career in the DCM will be considered. Ref: H3827680

**Corporate/Banking Lawyer**

- **4+ PQE**
- **Well-established Financial Institution**

Joining an established legal team and reporting to the Deputy Head of Legal, you will take on a focus on either corporate & private equity or banking finance matters based on your background, also with exposure to the other area. The ideal candidate will be a 4+ PQE Hong Kong qualified lawyer, with strong experience obtained in the areas of either corporate or banking, obtained with international/sizeable law firms. You will have willingness to pick up new work on top of your core focus and be a strong team player. Excellent communication skills are required, as is fluency in English and Chinese language skills. Ref: H3876570

**Private Equity Lawyer**

- **4-7 PQE**
- **Asset Management House**

Our client is a leading asset management player in Asia being one of the more established houses in China. With a sizable business in Hong Kong, the Head of Legal is keen to take on a lawyer to join the team. You will advise on the setting up of private equity fund structures, conduct legal due diligence on investee companies and draft/review/ negotiate a variety of agreements such as fund formation documents, term sheets, investment agreements, subscription agreements, fund management agreements. You will be a 4+ years’ PQE lawyer, with solid experience gained in the area of private equity. Strong English and Chinese language skills are required. Ref: H3774040

**Litigation Associate**

- **5+ PQE**
- **Hong Kong Law Firm**

A leading local law firm is seeking to take on a senior Dispute Resolution Lawyer, to cope with their expanding practice. This is an exciting opportunity for lawyers seeking for broader exposure and career progression. In this role you will be exposed to a broad range of dispute resolution matters, including shareholder disputes and a variety of cross border China-related disputes, as well as arbitration work. You will have at least 4 years’ PQE, qualified in Hong Kong, with significant hands on experience on dispute resolution. Chinese client facing experience will be highly regarded. Trilingual fluency in English, Cantonese and Mandarin is required. Ref: H3827670

**Banking Finance Lawyer**

- **5-9 PQE**
- **Investment Bank**

Our client is an established financial institution in Hong Kong. They are seeking for a seasoned banking lawyer to join the team, to report to the Head of Legal. You will support the Lending & Financing Business, and will advise on a variety of financing transactions, bilateral and syndicated loans, as well as other general banking matters. You will have the opportunity to gain exposure in fixed income and equity financing matters. The successful candidate will be a 5 to 9 years’ PQE banking lawyer being well versed in lending and financing work. You will speak and write excellent English and Chinese. Ref: H3828150

**Senior Counsel**

- **10+ PQE**
- **Reputable Hong Kong Conglomerate**

Our client is a reputable conglomerate with businesses in gaming, hospitality, retail and property sectors. Due to business expansion, they are seeking a Senior Legal Counsel to join as a member of the management team. You will work with different department heads to provide commercial legal advice to business teams in respect of their operations and projects. You will have a minimum of 10 years’ PQE with strong corporate commercial experience as well as excellent business acumen and analytical abilities. You should also demonstrate outstanding communications skills with fluency in spoken and written English and Chinese (Mandarin and Cantonese). Ref: H3857370

**Professional Support Lawyer**

- **3-10 PQE**
- **City Firm**

Our client is a very sizable City Firm now hiring a Professional Support Lawyer for the Dispute Resolution Practice. Reporting directly to the Practice Area Head, you will capture and analyze developments, practice from external and internal sources, as well as deliver practical know-how effectively to fee earners through a range of current awareness services. This is a good opportunity for an experienced litigator to explore a different career and to acquire managerial and project management skills. You will be a common law qualified lawyer with litigation experience obtained with an international law firm, ideally with successful buy-in and engagement of senior management. Ref: H3110850

To apply, visit [www.michaelpage.com.hk/apply](http://www.michaelpage.com.hk/apply) quoting the reference number or contact our consultants.
In-House

HEAD OF LEGAL HONG KONG 10-15 years
A listed conglomerate seeks a Head of Legal for its real estate business. You will advise senior management on legal & risk matters and manage the Group’s property development & M&A projects. Prior in-house experience & fluent English, Cantonese & Mandarin are required. HKL6343

FUNDS / PE HONG KONG 7+ years
Financial services company seeks a legal counsel to provide legal support to its investment function. Experience in asset management/private equity / M&A & regulatory/corporate governance matters required. Commonwealth qualification & ability to work independently are essential. HKL6336

AVP - DERIVATIVES HONG KONG 3+ years
Global bank seeks a derivatives lawyer with experience in the APAC region. You will cover a mix of transactional & regulatory work with an emphasis on equity derivatives & structured products distribution. Chinese language skills advantageous. HKL6339

PRIVATE PRACTICE

LITIGATION/ARBITRATION PARTNER HONG KONG 8-20 years
Reputable US firm seeks a seasoned arbitration/litigation partner to join its existing disputes team. You will have extensive APAC litigation & arbitration experience from an international firm. A portable book of business & fluent Mandarin language skills needed. HKL6169

LITIGATION HONG KONG 5-8 years
Top UK law firm seeks a senior disputes lawyer with HK qualification & experience in commercial litigation matters. Prior experience in contentious regulatory, tax disputes, high networth / contentious probate matters advantageous. Native Cantonese & Mandarin preferred. HKL6305

GENERAL CORPORATE HONG KONG 1-9 years
Law firm with strong global network & in expansion mode seeks senior & junior general corporate/commercial lawyers. You will focus on cross-border M&A transactions, commercial matters and post-IPO compliance work. Excellent work/life balance & career prospects on offer. HKL6337

BANKING & FINANCE HONG KONG 3+ years
International law firm is seeking a mid-level lawyer with strong general banking experience from an international or reputable HK law firm to join its team. This role will include a broad range of vanilla banking work. Fluent level Mandarin skills are essential. HKL1448

IP HONG KONG 3-5 years
Well-established international law firm is looking for a mid-level IP associate to join its team. Ideal candidates should have contentious and non-contentious IP experience particularly involving trademarks. HKL6342

DCM HONG KONG 2-4 years
Magic Circle firm seeks a junior to mid-level lawyer with DCM experience to join the DCM team. Great opportunity to join a strong practice with a good working environment. Those with UK qualifications will also be considered. Fluent English and Mandarin language skills are required. HKL6331

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

www.lewissanders.com

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

**SENIOR COMPLIANCE MANAGER**  
**SEcurities BRoKERAGE**  

WDM/ 546040  
A European headquartered securities firm and global leader in the brokerage industry is recruiting a Senior Compliance Manager for their Hong Kong office. This professional will report directly to the APAC Head of Compliance who sits elsewhere in the region and will have autonomy and ownership of the compliance function for Hong Kong. This role will involve working directly with the trading teams, regulatory compliance, and monitoring of trading activity.

**Key Requirements:**
- A minimum of 10 years’ experience in compliance role within investment banking or brokerage industry
- Expertise in local regulatory requirements and established relationships with regulatory bodies
- Strong interpersonal skills and ability to operate autonomously

**HEAD OF LEGAL & COMPLIANCE**  
**INVESTMENT FUND HOUSE**  

OAA/ 534180  
A Hong Kong based investment fund that has multiple product lines is looking to hire a first legal and compliance counsel. To date this work has been managed by the CFO and they now need to hire a dedicated lawyer to manage the legal function and build out the compliance offering. They currently have 20 employees in Hong Kong and are opening offices in Europe and the US.

**Key Requirements:**
- Hong Kong or commonwealth qualified lawyer with a minimum of six years’ PQE
- Extensive knowledge of funds and investment management from both a legal and compliance perspective
- Fluency in English and Mandarin Chinese is essential

**DIRECTOR, REGIONAL COMPLIANCE**  
**CREDIT INSTITUTION**  

WDM/ 542480  
European Credit Institution is growing their APAC team and is hiring a Director of Regional Compliance to lead the compliance function for the region covering 5 countries. This person will be a deputy and direct report to the regional CEO and have ownership in strategic implementation of a regional compliance regime.

**Key Requirements:**
- 10 to 15 years’ experience in compliance role within financial services industry, with exposure to regional level is highly preferred
- Background in advising senior leadership on development of regional level initiatives
- Strong knowledge of risk potentials within enterprise or regional level compliance regimes

**TRUST & TAX COUNSEL**  
**FAMILY OFFICE**  

OAA/ 541510  
A recently established family office with a very strong client base in mainland China is seeking an experienced tax/ trusts/ wealth lawyer to join the team. The business has a very strong platform, leveraging off the long established China business.

**Key Requirements:**
- Hong Kong, PRC or commonwealth qualified lawyer with a minimum of six years’ PQE
- Extensive knowledge of tax/ trusts/ private wealth management legal issues
- Fluency in English and Mandarin Chinese is essential

**VP CORPORATE BANKING COMPLIANCE**  
**GLOBAL INVESTMENT BANK**  

WDM/ 543270  
European bank with extensive operations in APAC is hiring within their Corporate Banking team. This group is seeking a well-rounded advisory professional with experience in a generalist group interfacing directly with the business and regulators. Regulatory compliance will be a key component to the role as this individual will be responsible for educating the front office on evolving regulatory landscape.

**Key Requirements:**
- Hong Kong qualified lawyer with a minimum of eight years’ experience in compliance role within banking industry
- Strong knowledge of corporate/ transaction banking products
- Experience in China facing or RMB transactions is highly preferred

**APAC LEGAL COUNSEL**  
**GLOBAL INSURER**  

OAA/ 543680  
A European insurer, recently restructured following a change of management, is seeking a legal manager to sit in Hong Kong and manage the APAC business. To date this work has been managed by the CFO and they now need to hire a dedicated lawyer to manage the legal function and build out the compliance offering. They currently have 20 employees in Hong Kong and are opening offices in Europe and the US.

**Key Requirements:**
- Hong Kong or commonwealth qualified lawyer with a minimum of six years’ PQE
- Prior experience in financial services law is essential
- Insurance experience will be highly advantageous
- Chinese languages are preferable but not essential

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

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Capital Markets

1-3 PQE Hong Kong

A very exciting opportunity for a litigation associate to join this leading practice. You will represent local and international clients on a range of disputes, contentious financial services regulatory and banking matters. You will be admitted in a common law jurisdiction. Language skills required. HKL4439

Dispute Resolution

2-4 PQE Hong Kong

This is a stellar opportunity for a senior associate to join this notable practice and work alongside a reputable partner. You will work on corporate finance transactions, including HK listings, merger and acquisition transactions, and more. Mandarin language skills essential. HKL4420

Debt Capital Markets

2-6 PQE Hong Kong

This is a fantastic opening for a lawyer to join a leading international practice and to work on a variety of global debt capital markets transactions advising issuers and underwriters, amongst a collegiate and professional team. US/ HK/E&W qualification required for this role; Mandarin required. HKL4449

Securities Litigation

1-3 PQE Hong Kong

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

Corporate PSL

3-5 PQE Hong Kong

Premier practice seeks a mid level associate looking for a broad mix of work. You will work for highly regarded partners on a range of complex M&A, Private Equity and Cap Market transactions for premier clients in a rewarding environment with manageable working hours. Mandarin essential. HKL4050

Corporate PSL

3-5 PQE Hong Kong

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

ECM/DCM

3-5 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. HKL4402

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**Private Practice**

**CORPORATE**

**HONG KONG**

**PARTNER**

Our client has ambitious growth plans and is keen to speak to partners within the M&A, capital markets, and restructuring sectors. Based in Hong Kong, this is an excellent opportunity for ambitious senior lawyers to join and develop/grow their business in Asia. (HKL 14864)

**INVESTMENT FUNDS**

**HONG KONG**

**5 – 10 PQE**

A leading funds team seeks a lawyer with solid experience in funds work. You will focus on structuring and the formation of PE and VC funds in Hong Kong and Greater China, and be comfortable in managing junior associates. (HKL 15010)

**M&A**

**HONG KONG**

**5 – 10 PQE**

This international law firm in expansion mode seeks to hire an M&A lawyer with strong transactional experience. Strong track in managing client relationships and handling deals independently. You will gain exposure to clients in a variety of industries, and work for household names. Chinese language skills essential. (HKL 12261)

**BANKING FINANCE**

**HONG KONG**

**4 – 6 PQE**

Leading offshore law firm is looking to hire a mid-level banking finance associate. Ideally Commonwealth qualified with a reputable law firm. Mandarin not required. (HKL 14970)

**RESTRUCTURING/INSOLVENCY**

**HONG KONG**

**2 – 5 PQE**

Well-established international law firm seeks a lawyer to work on contentious and non-contentious insolvency and restructuring deals as well as assist the disputes and banking practice. Mandarin required. (HKL 15006)

**ARBITRATION**

**HONG KONG**

**1 – 7 PQE**

This growing international arbitration team seeks a lawyer with solid experience gained within the region, where you will work with a team of highly regarded partners and collegiate team members on large-scale disputes. Mandarin language skills is beneficial. (HKL 15011)

**CONSTRUCTION**

**HONG KONG**

**1 – 4 PQE**

Top tier firm looking to add an additional associate to their construction team. Ideal candidates will be Hong Kong qualified with a mix of contentious and non-contentious construction work. (HKL 14932)

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**In-house**

**COMMERCIAL**

**HONG KONG**

**10+ PQE**

Conglomerate based in Hong Kong seeks an experienced commercial lawyer to advise on a wide range of commercial legal matters with legal implications for various business units within the company, and manage a medium-sized team of lawyers and support staff. Strong in-house experience handling commercial and contentious matters, as well as a proven track in people-management is necessary. Cantonese required. (HKL 14379)

**FUNDS**

**HONG KONG**

**8 – 10 PQE**

Investment firm seeks experienced senior funds lawyer to handle their asset management space. Funds experience essential (funds structures and distribution), Mandarin preferred but not essential. In-house experienced lawyers required. (HKL 14936)

**FMCG**

**HONG KONG**

**5 – 10 PQE**

UK listed company with significant growth plans for Asia Pac has headcount to appoint its first in-house counsel in Hong Kong to support the regional management team covering Asia Pac. Work will involve negotiating a range of commercial agreements and providing general in-house advice. Great opportunity to support a dynamic and young executive team in a business that is one of the sector’s best global performers. (HKL 11472)

**INSURANCE**

**HONG KONG**

**3 – 7 PQE**

Global insurance group is looking to expand their Hong Kong legal team. The position will advise on a wide range of business operational matters including policy, distribution and marketing. Fluency in Cantonese (written and spoken) is required. (HKL 14678)

**FINANCIAL SERVICES**

**HONG KONG**

**3 – 5 PQE**

Opportunity to join a well-regarded financial institution, provide legal support across the Asia region to the brokerage and its investment banking business. Ideal candidate will be a HK qualified lawyer with solid experience in advising financial services. Mandarin is required. (HKL 14752)

**TRUSTS AND ESTATES**

**HONG KONG**

**2 – 4 PQE**

Financial Institution seeks an experienced lawyer to work in-house within private wealth management. Ideally suited for lawyers with a tax, PWM, estate planning background. Opportunity to move in-house and take on a business/legal position managing trust relationships. (HKL 14745)

**FIXED INCOME**

**HONG KONG**

**1 – 4 PQE**

Investment bank seeks experienced junior lawyer to join their Fixed Income Derivatives legal team. Excellent opportunity to move from private practice to in-house. Mandarin preferred but not essential. (HKL 14917)

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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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