Cover Story

Face to Face with

Mr. Justice Jonathan Harris

Court of First Instance of the High Court, Hong Kong SAR
『中國人民大學法學碩士課程』

由中國人民大學法學院與香港城市大學法律學院合辦

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

中國人民大學是以人文科學、社會科學、管理科學為主，兼有信息科學、環境科學等理工科中的綜合性研究型全國重點大學。人大法學院創立於1950年，是中華人民共和國成立後創辦的第一所正規高等法學教育機構。曾在2020年創辦的綜合大學排行榜，中國人民大學法律學科排名第一。由中國法學會憲法學研究會會長、著名法學家王大元教授擔任院長。

『中國人民大學法學碩士課程』由中國人民大學法學院專業教授以普通話在香港城市大學授課，科目包括：《民法原理》、《中國法律制度》、《憲法與行政法》、《刑法》、《商事法理》、《勞動法與社會保障》、《知識產權法》、《合同法》、《商法基本理論》、《商事訴訟法與民事訴訟法》、《物權法與債權責任法》、《公平交易法與稅財法》、《外資投資法與仲裁法》及《消費者保護與消費}基準法》等十二門法學科目。已獲得法學學士學位或其他非法律專業學士學位或以以上學歷的人士均可報讀。

學生在修滿十二門中國法學科目學分後，可獲由中國人民大學法學院頒發的課程結業證書，及後在專業導師指導下完成一篇碩士論文並參與論文答辯。學生成功通過論文答辯後，可獲得國家認可的法學碩士學位。本碩士課程具備學制，一般約需兩年四個月或兩年九個月時間完成（包括每年三個學期六門科目及論文答辯）。學生必須在中國人民大學研究生院碩士學位申請之規定時間內，在指定的教授指導下完成法學碩士論文的研究，及按中國人民大學教學規定參加論文答辯（『中國人民大學法學碩士課程』會為法學碩士學位論文的完成及答辯程序提供輔導材料）。報讀者亦可在取得香港城市大學法學碩士學位後，轉讀『中國人民大學法學碩士課程』，如已選修修大法學碩士五門指定科目中的任何科目，將可在『中國人民大學法學碩士課程』中獲豁免修讀最多四門科目。

學費及費用(港幣)：
1. 2017屆學生報名費為250元；
2. 2017屆學費每學年42,000元，兩年共計學費為84,000元；
3. 在規定時間內(即入學起計兩年四個月或兩年九個月)完成論文，指導及教務費為7,000元(只需繳付一次)；
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1. 每屆的學費及論文指導及教務費或會作出調整。以上費用不包括教科書及參考資料費。學生前往中國人民大學參加論文答辯的所有雜費，及出簡學位授予儀式的所有個人費用等。
2. 本課程設有分別於香港城市大學，本校不會為此項學生辦理學生簽證，報讀學生須持有有效香港居民身份證。

有興趣者可向香港城市大學法律學院索取有關本課程設置及報名的詳細資料，並可報名參加免費推廣講座。

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時間：下午2時-3時30分
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學術樓(一) 眾區5樓
法律學院G5353室
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Imagine for a moment that you are approached by Mr. I, a shareholder of a publicly traded company, TechCo, in Korea that had, at its peak, an estimated worth of billions. However, one morning, Mr. I awoke to learn that the company’s worth had vanished almost overnight as a result of a suspect transaction, allegedly made by the company’s founder, Mr. S, whereby Mr. S purchased PaperCo, which he also controlled, worth approximately US$2 million, for an astounding US$1 billion in TechCo’s shares. The transaction allegedly enriched Mr. S to the tune of US$100 million, while TechCo’s stock plummeted and its investors suffered billions in losses.

Korean criminal authorities launched investigations into this allegedly fraudulent transaction, during which time Mr. S fled to Hong Kong. According to reports, Mr. S is currently living in Hong Kong in one of the most affluent communities on the Island. Mr. I, a Korean business man, wants your help in a multijurisdictional enforcement action against Mr. S – as the Korean courts have issued a decision against Mr. S, ordering him to pay approximately US$5 million to Mr. I. In addition to being a US citizen, Mr. S is also apparently a large donor to a US Ivy League University, which his daughter also attends.

In Hong Kong, only limited pretrial discovery is available. There are no third-party pretrial depositions. Leave of court is often required. Meanwhile, US litigants have a robust array of discovery tools to choose from. So as a Hong Kong litigator, what discovery tools can you use to assist Mr. I in his Hong Kong proceedings? One system that could prove fruitful in exploring is the US discovery system. To find out more, including what information you can obtain and what you need to show to get it, check out the Evidence Feature (p. 34) included in this issue.

Elsewhere in the May issue, the Professions article (p. 39) first examines the decision of the Supreme Court of the United Kingdom in BPE Solicitors & Anor v Hughes-Holland [2017] UKSC 21, holding that a firm of solicitors is not liable to its client for losses arising from the client’s own commercial misjudgment, and then concludes by discussing the decision’s relevance to Hong Kong. The On China feature (p. 44) outlines major factors and the implication of those factors on different transaction structures for PRC-related offshore bond offerings, which issuers should keep in mind.

Also of interest is the Legal Markets piece (p. 70), which discusses the future for law firms in Hong Kong in the context of current market trends, and the Leisure contribution (p. 78), which recounts a trip to Lai Chi Wo in the northeastern New Territories, where local villagers, academics, volunteers, NGOs and others are working to revitalise the nearly-abandoned rural Hakka community through cultural restoration and environmental rehabilitation initiatives.

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Qualities that Strengthen Hong Kong’s Identity

Hong Kong is a blessed place. It is centrally located with good connectivity, well equipped with convenient international and regional links and served by an efficient transport system. Situated in the heart of Asia, we can reach half the world’s population from Hong Kong within five hours of flying time. Each day, some 1,000 flights connect Hong Kong with hundreds of destinations around the world. In February 2017, alone, the total flights amounted to 31,235.

Another unique advantage of Hong Kong is its strategic gateway location to the Pearl River Delta and the Mainland, a rapidly growing economy.

These enviable characteristics, coupled with a good infrastructure network and an abundance of world-class talent providing the necessary high-end professional service support have enabled Hong Kong to build up its global reputation as a leading financial centre and business hub.

The Index of Economic Freedom, an annual guide published by The Heritage Foundation, measures economic freedom based on various factors broadly categorised into Rule of Law, regulatory efficiency, open markets and government size. Hong Kong came first in the 2017 Index. Hong Kong has been found to have demonstrated a high degree of economic resilience, being one of the world’s most competitive financial and business hubs. The high quality legal framework providing strong support for the Rule of Law and effective protection of property rights has been identified as the pillar of strength for Hong Kong.

As part of the legal profession, we are proud that our respect for the Rule of Law has been widely recognised. Hong Kong is the only common law jurisdiction within China administering a legal system that is familiar to the international business community. The upholding of the Rule of Law in Hong Kong ensures a fair, just and transparent business environment for international investors to engage in business transactions in or through Hong Kong.

There are about 10,500 qualified Hong Kong solicitors, out of whom about 66 percent are in private practice. Together with 1,300 registered foreign lawyers from 32 different jurisdictions around the world, our solicitors capably provide a diversified range of legal services to fulfill the needs of domestic and international clients.

Hong Kong solicitors’ work involve a wide range of legal services relating to capital markets, banking and finance, cross-border mergers and acquisitions, real estate, construction, dispute resolution including court advocacy, arbitration and mediation and many others. We have the necessary legal expertise and experience to meet the demands from sophisticated service users including multilateral financial agencies, development banks, public sector investors, asset managers, commercial and investment banks, infrastructure developers and operators.

In 2016, Hong Kong came first in funds raised through initial public offerings ("IPOs"). The Hong Kong Stock Exchange raised US$25.1 billion in 120 IPOs, compared to US$14.7 billion raised in the New York Stock Exchange. As of the end of 2015, the overall value of the combined fund management business amounted to US$2.2 trillion, 7.3 times of the GDP in 2015.

Further, Hong Kong is the world’s leading offshore Renminbi business hub with a variety of Renminbi financial products and services on offer. Islamic finance is also growing in Hong Kong with a successful track record of two issuances of sukuk, Islamic bonds structured to bring investment returns that are compliant with interest prohibitions in Islamic laws.
突出香港的優勢

香港是片福地。

香港位處中心位置，四通八達，設備完善，連接國際及區域交通便利，擁有高效的運輸系統。香港位於亞洲的心臟地帶，從香港起飛5個小時內即可接觸到全球一半人口。每日有大約1,000班航機連接香港與全球數百個目的地。單在2017年2月，總航班架次就高達31,235。

香港另一個獨特優勢，是其位處經濟發展迅速的珠江三角洲和內地的戰略門戶。這些令人羨慕的特點，加上良好的基建網絡和豐富的世界級人才，提供必要的高端專業服務，使香港成為領先的金融和商業中心，在全球享負盛名。

美國傳統基金會每年公佈的《經濟自由度指數》，根據廣泛的因素，包括法治、監管效率、開放巿場及政府規模等，衡量經濟自由度。香港2017年的指數中，獲評為全球最自由經濟體。香港被形容為具有高度經濟復原力，是全球最具競爭力的金融和商業樞紐之一。優質的法律框架，為法治和有效保護財產權提供強而有力的支持，獲肯定為香港優勢的重要支柱。

作為法律界的一分子，我們對法治的尊重受廣泛認同，對此我們深感自豪。香港是中國境內唯一的普通法司法管轄區，法律制度備受國際商界熟悉。維護香港的法治，確保公平、公正、透明的營商環境，有助鼓勵國際投資者在香港或通過香港進行商業交易。

香港約有10,500名合資格律師，其中66%私人執業。加上來自世界各地32個司法管轄區的1,300位註冊外地律師，香港的律師團隊能提供多元化的法律服務，滿足本地及國際客戶的需求。

香港律師的工作涉及眾多範疇的法律服務，包括資本市場、銀行金融、跨境併購、房地產、建築、法庭辯論、仲裁和調解等爭議解決。我們擁有必需的法律專業知識和經驗，以滿足包括多邊金融機構、開發銀行、公共部門投資者、資產管理者、商業和投資銀行、基礎設施開發商和營運商等各種客戶的複雜需求。

2016年，香港首次公開招股(IPO)集資額冠絕全球。去年有逾120家新上市公司，香港聯交所IPO集資額達251億美元，而紐約證券交易所所集資額為147億美元。截至2015年底，基金管理業務合併資產的總值達2.2萬億美元，是2015年本地生產總值(GDP)的7.3倍。

此外，香港是世界領先的離岸人民幣業務樞紐，提供各種人民幣金融產品和服務。伊斯蘭金融在香港也不斷增長，已兩次成功發行投資回報符合伊斯蘭教義中利息限制的伊斯蘭債券。

這些成就有賴高質素的專業法律服務，以支援交易涉及的複雜工作，例如法律盡職調查、合同文件和監管合規等。

香港繼承了英國的法律制度，法律執業者分為律師和大律師兩系，後者專注於訟辯。

以往，法律界兩系之間的重要區別在於，大律師在較高級法院擁有出庭發言權(即原訟法庭及以上法院)，而律師並無此權利。然而，自2012年修訂法例及引入評估制度後，合資格律師獲豁免或通過評核後，可在高等法院及終審法院擔任訟辯律師。現時有49位訟辯律師。除了現有廣泛法律服務外，合資格的律師也可接受以往僅大律師可處理的訟辯工作。這擴大了訟辯律師的選擇，令法律服務使用者得以受惠。

簡而言之，香港擁有一切合適的條件，是營商、融資、資產管理和爭議解決的最佳地點。強大的法律專業服務團隊，是香港其中一個顯著的競爭優勢。律師會一直致力推廣會員的專業服務，於2017年5月12日所舉行的「一帶一路」會議，將有眾多海外與會者出席，屆時會進一步進行這項推廣工作。
John Han
*Kobre & Kim LLP (Hong Kong), Principal*

Mr. Han is a lawyer at Kobre & Kim and a dual-qualified Hong Kong and US civil litigator focusing on cross-border commercial disputes involving the US, Hong Kong and China. He regularly represents multinational corporations, state-owned enterprises and ultra high-net-worth individuals in matters involving coordinated strategies in multiple jurisdictions and venues, including the High Court of Hong Kong and US federal and state courts. He has been cited on topics involving Asia-US cross-border disputes by publications including *The New York Times* and *The Boston Globe*. Mr. Han is a Beijing native and speaks Mandarin.

Beau Barnes
*Kobre & Kim LLP (Washington, DC, US), Associate*

Mr. Barnes is a US-qualified lawyer with Kobre & Kim’s Washington DC office who focuses on US government enforcement defense matters, internal investigations and regulatory actions.
**Mark Lin**  
*Hogan Lovells, Partner*

Not your ordinary litigator, Mr. Lin has mastered the art of asking the right questions to find the right solutions. One of the first questions he asks is: ‘what do you want to get out of this dispute?’, rather than ‘will this go to the Court of Final Appeal?’ Mr. Lin has been using this solution-driven approach to help local and multi-national business clients, particularly those in financial services and the multi-media sectors, since the 1990s. He is recognised as a leader in commercial dispute resolution and contentious regulatory investigations in established legal directories, by clients and by peers.

**Angela Tsui**  
*Hogan Lovells, Associate*

Ms. Tsui is a newly-qualified associate in the commercial litigation team at Hogan Lovells. She graduated from the Bachelor of Laws and PCLL program at the Chinese University of Hong Kong with distinction, and went on to obtain a Master of Law degree from the University of Cambridge, Newnham College. Her current practice includes insolvency litigation, various advisory work for major financial institutions, employment and other general commercial litigation.

**Ling Wenjie**  
*Hogan Lovells, Partner*

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**Mark Lin**  
*Hogan Lovells, Partner*

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Arron Leale

Oliver James, Manager (Asia)

Mr. Leale specialises in the placement of legal professionals throughout the Asia-Pac region. His primary focus is supporting international law firms in their search for market-leading legal talent. His clients largely utilise his consultative service when seeking lawyers who have acquired experience in core transactional areas, including mergers & acquisitions, capital markets, private equity, restructuring & insolvency, and banking & finance. He has assisted with a number of business critical hires, ensuring his clients secure the right talent, quickly, to significantly enhance their practice throughout Hong Kong, Singapore and China.

Chris G. Tang

Latham & Watkins, Registered Foreign Lawyer (New York)

Mr. Tang is a registered foreign lawyer in the Hong Kong office of Latham & Watkins and a member of the firm’s Corporate Department. He offers corporates and investment banks his expertise in corporate and securities law, with an emphasis on debt capital markets transactions. He is experienced in advising on investment grade and high yield debt offerings, as well as general corporate issues.

Prior to joining Latham & Watkins, Mr. Tang practiced in the Beijing office of a leading PRC law firm, with a focus on capital markets transactions.

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Arbitration and Mediation Legislation (Third Party Funding) (Amendment) Bill 2016

The Law Society noted the recent discussion of the Legislative Council on the Arbitration and Mediation Legislation (Third Party Funding) (Amendment) Bill 2016 (the “Bill”). In the discussion, among other things, a Committee Stage Amendment was moved to delete s. 98G(2) of the Bill. Section 98G(2) provides that “... third party funding of arbitration does not include the provision of arbitration funding directly or indirectly by a person practising law, or providing legal services, whether in Hong Kong or elsewhere.”

The Law Society considered, inter alia, an exclusion of persons practising law or providing legal services from the provision of arbitration funding could inadvertently have a negative impact on (1) the quality of legal services available to arbitration funders, and (2) Hong Kong’s efforts to become a competitive hub for Third Party Funding for arbitration. The Law Society supported the deletion of that section.

A letter setting out the above was sent to the Hon. Dennis Kwok in mid April. A copy of that letter appears at http://www.hklawsoc.org.hk/pub_e/news/submissions/20170413.pdf.

Proposed Amendments to The Securities and Futures (Professional Investor) Rules

The Securities and Futures Commission (“SFC”) on 1 March launched a consultation on its proposed amendments to the Securities and Futures (Professional Investor) Rules (Cap. 571D) (“Consultation Paper”). The proposed amendments include expanding the categories of persons who will qualify as professional investors and allowing the aggregation of certain assets and alternative forms of evidence for determining and ascertaining whether a person meets the relevant asset or portfolio thresholds to qualify as a professional investor under the Professional Investor Rules. The SFC indicated that the comments it accepts will be incorporated into the proposed new rules, which will be subject to negative vetting by the Legislative Council before becoming effective.

With the assistance of the Investment Products and Financial Services Committee, the Law Society has reviewed the Consultation Paper and has prepared a submission. In the submission, the Law Society pointed out various salient issues which should merit further and closer examination by the SFC.


《2016年仲裁及調解法例(第三者資助) (修訂)條例草案》

律師會注意到，立法會最近就《2016年仲裁及調解法例(第三者資助) (修訂)條例草案》(《條例草案》)進行討論。在討論過程中，有一項委員會審議階段修正案動議刪除《條例草案》98G(2)條。該條規定「⋯⋯第三者資助仲裁不包括由在香港或其他地方從事法律執業或提供法律服務的人，直接或間接提供仲裁資助。」

律師會認為，除其他考量外，規定從事法律執業或提供法律服務的人士，不得提供仲裁資助，或無意中對(1)向仲裁資助者提供的法律服務之質素，及(2)香港成為具競爭力的第三方資助仲裁中心所作的努力，產生不良影響。律師會支持刪除該條。

Responsible Delivery of Cross-Border Legal Services

The Report on Global Regulation and Trade in Legal Services published by the International Bar Association in 2014 collated rich data set on a global scale on the regulation of domestic and cross-border legal services in 90 countries, or over 160 jurisdictions. It was found that 56 percent of jurisdictions covered by the study allow partnership or association between foreign and domestic lawyers; 77 percent do not have a nationality restriction on foreign lawyers re-qualifying as local lawyers; and in 47 percent of the jurisdictions, foreign law firms are present, facilitating cross-border trade and investment.

Hong Kong’s legal service industry adopts an open door policy and falls naturally within all three categories. As a legal service hub in Asia, Hong Kong’s strength draws on the availability of a diverse pool of legal talent around the world to meet the needs of international clients as well as a well-established regulatory regime for the protection of clients’ interests.

With a strong presence of over 1,300 foreign lawyers from 32 jurisdictions, Hong Kong is capable of providing the necessary legal service support for multi-jurisdictional cross-border transactions. Although the foreign lawyers are qualified in a jurisdiction outside Hong Kong, their practice of law in Hong Kong must comply with Hong Kong requirements to ensure that those receiving legal services are properly protected.

The Law Society governs the individual eligibility to practise foreign law, as well as the way the foreign legal services are delivered. Anyone who wishes to offer his or her services to the public as a practitioner of foreign law must first register as a foreign lawyer with the Law Society, unless he is a Hong Kong practising solicitor or barrister (s. 50B(1) of the Legal Practitioners Ordinance (“LPO”)). If a foreign lawyer does not have at least 2 years of post-qualification experience in the full-time practice of foreign law, he may only practise foreign law as an employee of a law firm subject to conditions as to supervision (r. 5 of the Foreign Lawyers Registration Rules).

Foreign lawyers can only advise on the laws of their own jurisdictions or international law (r. 12 of the Foreign Lawyers Registration Rules). For the protection of the public, they cannot advise on Hong Kong law as they are not qualified as Hong Kong solicitors.

The services provided to the public by a registered foreign lawyer as a practitioner of foreign law must be from within a Hong Kong firm or a registered foreign firm in Hong Kong (s. 50B(3) of the LPO).

In order to be registered, a foreign lawyer must have professional indemnity insurance (r. 4 of the Foreign Lawyers Registration Rules) in a manner and extent similar to the indemnity provided to a solicitor under the fund.
Monthly Statistics on the Profession
(updated as of 31 March 2017):

<table>
<thead>
<tr>
<th>Category</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Members (with or without practising certificate)</td>
<td>10,443</td>
</tr>
<tr>
<td>Members with practising certificate</td>
<td>9,076</td>
</tr>
<tr>
<td>(out of whom, 6,881 (76%) are in private practice)</td>
<td></td>
</tr>
<tr>
<td>Trainee Solicitors</td>
<td>1,043</td>
</tr>
<tr>
<td>Registered foreign lawyers</td>
<td>1,371</td>
</tr>
<tr>
<td>(from 32 jurisdictions)</td>
<td></td>
</tr>
<tr>
<td>Hong Kong law firms</td>
<td>876</td>
</tr>
<tr>
<td>(49% are sole proprietorships and 41% are firms with 2 to 5 partners, TI are limited liability partnerships formed pursuant to the Legal Practitioners Ordinance)</td>
<td></td>
</tr>
<tr>
<td>Registered foreign law firms</td>
<td>83</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>2,074</td>
</tr>
<tr>
<td>Reverse Mortgage Counsellors</td>
<td>445</td>
</tr>
<tr>
<td>Solicitor Advocates</td>
<td>49</td>
</tr>
<tr>
<td>(44 in civil proceedings, 5 in criminal proceedings)</td>
<td></td>
</tr>
<tr>
<td>Student Members</td>
<td>187</td>
</tr>
<tr>
<td>Registered Associations between Hong Kong law firms and registered foreign law firms (including Mainland law firms)</td>
<td>38</td>
</tr>
</tbody>
</table>
“I was initially thinking in terms of a two-year period,” said Justice Jonathan Harris, current Companies and Insolvency Judge of the High Court, when discussing his decision to move from London to Hong Kong in 1983 as a trainee solicitor. Thirty-four years later, he sits in his chambers reflecting on his work as a Hong Kong solicitor, barrister and judge. What becomes clear as he continues to describe his distinguished career is that he has remained flexible and curious throughout his journey, approaching each transition with a willingness to make and remake himself so that he can pursue the work he finds most interesting.

For instance, he shared that he left his practice at a major international firm to join the Bar because it appeared it would offer a much better opportunity to do a more varied selection of commercial work. Not only was his assessment correct, but his work at the Bar also led him to take up company and corporate insolvency and securities work, which he discovered he enjoyed more than the work he undertook as a solicitor. Equally fulfilling has been his move from the Bar to the Judiciary. “Advocacy and arguing with people had lost its novelty, so accepting the appointment was an obvious next step. It presented me with a worthwhile and valuable way to contribute to a place where I have spent for all practical purposes my entire working life,” he said.

In reflecting on his time with the Judiciary, he explained: “one of the things that I appreciate the longer I do this job is that what I find most satisfying is solving problems. Advocacy doesn’t involve solving problems – rather you are taking part in an intellectual competition. Whilst that was stimulating when I was younger, as I have gotten older, I have become more interested in identifying efficient and effective ways to solve the types of commercial problems companies’ activities give rise to and corporate insolvency, in particular. The corporate insolvency and restructuring field is about helping parties solve practical commercial issues.”

JIN Guidelines

One collaborative initiative in which Justice Harris has been involved is the Judicial Insolvency Network (“JIN”). JIN is a Singapore-led initiative that was launched in the face of a growing volume of international work insolvency courts have faced over the last decade to facilitate a sustained and continuous dialogue among judges from various jurisdictions. Through JIN, it is hoped that new ideas and areas for judicial cooperation can be identified and best practices can be developed. One of the network’s early successes is the JIN Guidelines, which were drafted last October at the culmination of JIN’s inaugural conference in Singapore. The conference attendees included judges from key jurisdictions that hear international insolvency matters, such as Singapore, Hong Kong, the Cayman Islands, British Virgin Islands, Australia, Canada, England & Wales, and the US.

In discussing the Guidelines, Justice Harris noted that they were drafted with the aim of improving the efficiency and effectiveness of cross-border proceedings relating to insolvency or adjustment of debt opened in more than one jurisdiction (parallel proceedings) by enhancing coordination and cooperation...
amongst courts under whose supervision such proceedings are being conducted. These Guidelines represent best practice for dealing with parallel proceedings and are in line with and further the objectives of the UNCITRAL Model Law on Cross-Border Insolvency, in that they both aim to reduce the amount of legal costs incurred during cross-border insolvency proceedings, and in doing so, preserve the value of financially distressed businesses and their assets.

To date, Singapore, Bermuda, Delaware (US) and the Southern District of New York (US) have adopted the JIN Guidelines. In addressing whether Hong Kong should also adopt the Guidelines by way of Practice Direction, Justice Harris indicated it was likely not necessary. “The Guidelines are mainly of assistance in that they spark discussion and get people to think creatively. Out of that process, people can come up with innovative solutions to issues and problems they are encountering including court-to-court communication. If practitioners and the court think that a protocol based on the Guidelines providing for court-to-court communication is sensible and desirable, then such a protocol can be adopted just as past protocols have been adopted in Hong Kong in cross-border insolvency matters.”

As for the utility of one of the most ambitious aspects of the Guidelines, the provision for joint hearings, Justice Harris’ views are similarly tempered. While useful, in that the provision encourages stakeholders and judges to be innovative, he explained that cases that may require joint hearings are extremely uncommon in Asia. First, he noted that many cases are non-contentious. For those, stakeholders are just trying to work out the best way forward as quickly and efficiently as possible. Second, he explained that even where there are contentious parallel proceedings, issues which arise and require a joint consideration by the judges of the most effective way of managing the proceedings can generally be resolved via email or a short telephone conversation. As for joint hearings to determine substantive issues, Justice Harris thought many things militate against these being realistic, such as differences in substantive or procedural law; different time zones and languages used by participants; as well as the possibility of different judges reaching different decisions. “Joint hearings sounds like a new and exciting initiative, but I think they will be very rare.”

Justice Harris noted that as far as he is aware the only joint trial that has taken place is the Nortel proceedings and that involved Delaware (US) and Ontario (Canada).

Elephant in the Room

Turning the focus to substantive issues, Justice Harris spoke of the law in Hong Kong on corporate rescue. In prefacing the discussion, he explained the impact of Re Legend Int’l Resorts Ltd [2006] 2 HKLRD 192 (“Legend”), a Court of Appeal decision issued in 2006 that held that the statutory power to appoint provisional liquidators under s. 193 of the Companies Ordinance (Cap. 32) to restructure a company’s debt is not permissible. Previously, it was thought that the courts had the inherent power to appoint provisional liquidators for the purpose of working out corporate rescue and this could be used to create a de facto moratorium. At present,
Hong Kong lags behind a number of jurisdictions that provide effective corporate rescue tools, such as the US with its “debtor-in-possession” Chapter 11 Bankruptcy Code and the UK with its administration to facilitate the rescue of an insolvent company. In Bermuda and the Cayman Islands, provisional liquidation can be used expressly for restructuring.

Many have called for the introduction of a statutory corporate rescue regime in Hong Kong (for quite some time), as demonstrated by the comments of speakers at the inaugural Annual Insolvency Law and Practice Conference hosted by the Hong Kong Law Society’s Academy of Law in early March. It is hoped such legislation will be introduced by 2018.

Turning back to Legend, Justice Harris explained that while the decision has generally been viewed as “unhelpful in terms of restructuring”, some of the restructuring-related problems that arose in its wake are not insurmountable. For the last decade, Legend has lurked like an “elephant in the room”, he said. If people had “directly addressed” the issues it created, instead of “fudging them”, it would have become apparent earlier that there are alternative techniques that can be used that are consistent with basic common law principles in Hong Kong. For instance, the recent case of Z-Obee Holdings Ltd (2016: No. 183) (“Z-Obee”) illustrates that solutions are available.

Cutting the Gordian Knot

Z-Obee is among Justice Harris’ recent series of judgments dealing with cross-border and restructuring issues that have attracted much praise for recognising and assisting foreign liquidators. In Z-Obee, his Lordship adjourned a petition to wind up a Bermuda company in Hong Kong so that the Hong Kong provisional liquidators could apply to Bermuda to be appointed as restructuring provisional liquidators. Subsequently, the Bermuda court appointed the Hong Kong provisional liquidators as the joint provisional liquidators of the company for the express purpose of initiating a restructuring, which is a permissible purpose under the law of Bermuda.

Justice Harris explained that the next step will be for the Hong Kong provisional liquidators to be discharged and for the joint provisional liquidators appointed in Bermuda to seek recognition of their appointment here and then introduce parallel schemes to effect the restructuring in Hong Kong and Bermuda. “That has never been done before. It illustrates how you can use recognition and assistance techniques as an alternative to a domestic winding up to mitigate the effects of the Legend decision in an intended restructuring of a foreign company listed in Hong Kong.”

In addressing the praise he has received for this judgment and others, he noted that it may be attractive to say these decisions are cutting edge, as it tends to suggest that that Hong Kong is being innovative. However, he does not describe his approach as such. “In reality, what has happened is that I have encouraged practitioners to focus on the underlying principles that govern winding up of foreign companies and consider creatively how judicial assistance and recognition can be used to find simpler and cheaper solutions to common issues that historically they have tried to address by issuing a winding-up petition in Hong Kong and appointing provisional liquidators. What has become apparent is that there are tools available within the common law that allow many of the issues that have historically been fudged, namely, jurisdiction and Legend to be avoided. In a few years’ time, this may all be book standard and people may ask why we have to do things initially in the Cayman Islands, BVI or Bermuda and then come
to Hong Kong. The answer is because we do not have a statutory regime which clearly states we can do what this particular technique allows us to do, because we do not have cross-border recognition provisions like they do in England, because we cannot rely on the UNCITRAL Model Law on Cross-Border Insolvency and we have Legend hovering over us."

“This is obviously not an ideal way to work. It would be better if we had a statutory framework which was crafted to meet the needs of companies, particularly transnational companies that need to restructure sizable amounts of debt, but we don’t have that and, therefore, we are left to work with the common law techniques when developing or crafting solutions. In the Hong Kong context, Z-Obée may appear a clever way of cutting this particular Gordian knot.”

A Greater Role for Hong Kong

In addressing the need for legislative reform, the conversation transitioned into a discussion about the future of restructuring work in the region and how well Hong Kong is positioning itself to capture new work.

“There’s a certain amount of work that you would expect to be dealt with in Hong Kong because it is naturally Hong Kong-based work. Restructuring debt of companies whose place of incorporation is Hong Kong would be an example. However, there are instances where people look overseas to see if there are jurisdictions that would provide them with a greater amount of assistance to achieve what they would like to achieve. Applying for Chapter 11 protection in the US would be one example, because Hong Kong currently does not have a comparable moratorium regime. Or, take Singapore for example, which is trying to recreate itself as a restructuring hub by introducing major law reforms. Their new regime adopts a number of concepts from the US’s Chapter 11 process (including concepts of super-priority debtor-in-possession financing, a strengthened and broad reaching ‘world-wide’ moratorium and a cram-down mechanism for approval over the dissent of certain creditors, among many others provisions), all designed to increase their jurisdictional appeal.”

What does all of this mean for Hong Kong? First, these developments suggest that Hong Kong may lose out on work that it naturally would be expected to pick up, Justice Harris explained. "Implementing reforms would obviously stop some of the seepage Hong Kong currently faces and could generate a bit more work. However, not all restructuring is court supervised; some is consensual. What is fundamental if Hong Kong is to remain a competitive restructuring hub is for it to position itself to capture new work in the face of aggressive competition from other jurisdictions. It is unclear whether this is appreciated by the Administration. Of course, if Hong Kong can innovate and introduce the necessary tools, it will become the principle restructuring destination in Asia, particularly for work generated in the Greater China region.”

Expanding on the latter point, Justice Harris noted that there are currently a large number of large business groups from the Mainland with some form of listing in Hong Kong. “A number of these business groups will run into serious financial issues that will need to be addressed by sophisticated techniques. To address this issue, Mainland officials have been exploring what lessons they can learn from the restructuring tools available in the US under Chapter 11 (the US Bankruptcy Code) and from the UK’s schemes of arrangements (a statutory court supervised restructuring tool), with a view to formulating their own tools. This appears to be a priority for Mainland officials, who indicated their commitment to establishing and improving their bankruptcy system and mechanisms at the 2016 G20 Hangzhou Summit, held last September. While these officials are undertaking this research, it would make sense for Hong Kong to offer to help or think about whether it is in a position to restructure that type of debt here. There is potentially a large reservoir of work and it is an area where Hong Kong could find a constructive role to play in terms of its interface and relationship with the Mainland," Justice Harris said.

Thoughts on the Judiciary

In the wake of recent negative comments in the press about foreign judges and the role they should play in the Hong Kong judiciary, Justice Harris offered a few remarks. “These articles are unhelpful and disappointing to judges, who like myself, have lived here almost 34 years and think of Hong Kong as our home. However, the number of Caucasian judges in the High Court will decline over the next 5 or so years. I am the youngest and when I retire there may be no more of us. It is surprising anybody thinks our presence is an issue. My concern is not so much about the impact these comments have on current judges, but how they are interpreted by members of the profession who may be thinking of joining the High Court judiciary. It is well known that there is a shortage of judges in the High Court, and this reflects a difficulty in attracting talent. Criticism of any judge risks being interpreted as an attack on the type of Judiciary Hong Kong currently has: independent and apolitical. My impression is that there is a very strong desire on the part of practitioners to maintain the current type of Judiciary and if they are concerned that it is under attack they may be reluctant to join it.”

Readers interested in a recent lecture by Justice Harris on cross-border insolvency can read the published version in Hong Kong Law Journal at “Understanding Cross-Border Insolvency in the Hong Kong Context” (2017) 47 HKLJ 55–71.
高等法院原訟法庭夏利士法官現時專責審理公司法庭的公司及破產清盤案件。他講述自己1983年決定由倫敦來港任職實習律師，說：「起初我只想在這裡實習兩年」。三十四年過後，他坐在自己的內庭辦公室接受訪問，回想當年任職事務律師、大律師，以至今天擔任法官的工作生涯。聽著夏利士法官分享他卓越的法律生涯，我開始了解他是處事靈活，求知慾強的人，自出道以來到現在，始終如一，每次轉職都願意擺脫舊我，精益求精，好讓自己做到心目中認為極富趣味的工作。

例如，他提到自己原先是某間大型國際律師行的執業事務律師，因為覺得自己做大律師的工作機會將會好得多，所以辭了職，加入大律師行列。他的判斷正確，不僅如此，大律師的工作讓他有機會處理公司及法團無力償債及證券的事宜，他發現，相對於事務律師的工作，他較愛做大律師的工作。由大律師轉做法官，他同樣得到滿足感。他說：「出庭代訟和與人爭論已經失去了新鮮感，所以接受委聘明顯是我的出路。我一生的工作時間實實在在的全花在法律工作上，法官的工作意義重大，我只是換個方式繼續在法律領域略盡綿力。」

回望在司法機構任職的日子時，他娓娓說道：「這份工作做得越長，我越體會到最令我有滿足感的工作就是解決問題。出庭代訟不用解決問題 —— 你只是在庭上跟人鬥智。當我還年青的時候，這是叫人興奮的工作，不過隨著年紀漸長，我變得更有興趣找出有效實際的方法解決各類由公司活動引起的商業難題，特別是公司破產清盤。公司破產清盤或重組的問題所關乎的，是幫助各方解決實質的商業爭議。」

JIN指引

夏利士法官有份參與的一項合作計劃是Judicial Insolvency Network (JIN)。過去十年，各地法庭處理跨國公司破產清盤案的工作量日增，有見及此，新加坡牽頭推出JIN，目的是促進各地司法管轄區的法官持續交流，保持對話。推出JIN是希望在司法合作的概念和領域上開拓新意，發展最好的實務方法。JIN指引(「《指引》」)是JIN早期成果之
一，而擬備《指引》是去年10月在新加坡舉行的第一屆JIN會議上最矚目的事項。出席會議的包括來自主要司法管轄區的法官，有新加坡的，香港的，開曼群島的，英屬處女群島的，澳洲的，加拿大的，英格蘭及威爾斯的，以及美國的，出席法官所屬司法管轄區都審理跨境破產清盤案件。

談到《指引》，夏利士法官指出，擬備《指引》的目的，是當破產清盤或債務調整的訴訟在多過一個司法管轄區提起的時候(平衡法律程序)，加強各地監督平衡法律程序進行的法庭之間的協調和合作，改善跨境訴訟的效率和有效性。《指引》可說是處理平衡法律程序的最佳實務指引，符合《聯合國國際貿易法委員國際商事仲裁示範法》(「《示範法》」)的目的之餘，更進一步作出指引；《指引》與《示範法》的制定，同樣是為了減省跨境破產清盤法律程序所產生的法律費用，減省了法律費用，也就保留了財困公司及其資產的價值。

到目前為止，新加坡，百慕達，特拉華州(美國)及紐約南區(美國)已經採用《指引》。當問到香港應否同樣以《實務指引》方式採用《指引》時，夏利士法官表示可能無此需要。「《指引》的主要作用是挑起討論，啟發創新思想，想出創新的解決方案，解決他們當時正面對的爭議和難題，包括法庭之間的溝通。只要法律從業人員及法庭認為某項以《指引》為基礎的守則有理可取，該守則就可以被採用，情況就像過往香港在跨境破產清盤案件中採用法則一樣。」

《指引》有多個方面極具雄心，其中一項是聯合聆訊的規定，說到這個方面的效用，夏利士法官的看法同樣相當溫和。他解釋，這方面的規定雖然有用，但對廠商和法官創新思考，但亞洲區有必要進行聯合聆訊的案件少之又少。他指出，首先，很多案件都不具爭訟性。那些案件的居中人只想在可能情況下，儘快有效地找出最好的方法。其次，即使是具爭訟性的平衡法律程序，如果法官共同考慮管理法律程序的最有效方法是有用的，在這情況下產生的爭論點，通常可以透過電郵或簡短的電話通話就解決得到。至於就實質爭議點作決定而進行的聯合聆訊，夏利士法官認為有很多爭議不利此事實現，例如實體法與程序法有分別，時區不同及參與者所用的語言不同，還有，法官不同，裁決也有可能不同。「聯合聆訊聽起來甚有新意，夠刺激，不過我認為將來非常罕見。」

夏利士法官指出，就他所知，Nortel案是僅有的一宗進行聯合審訊的案件，案件涉及特拉華州(美國)與安大略省(加拿大)。

《指引》有多個方面極具雄心，其中一項是聯合聆訊的規定，說到這個方面的效用，夏利士法官的看法同樣相當溫和。他解釋，這方面的規定雖然有用，但對廠商和法官創新思考，但亞洲區有必要進行聯合聆訊的案件少之又少。他指出，首先，很多案件都不具爭訟性。那些案件的居中人只想在可能情況下，儘快有效地找出最好的方法。其次，即使是具爭訟性的平衡法律程序，如果法官共同考慮管理法律程序的最有效方法是有用的，在這情況下產生的爭論點，通常可以透過電郵或簡短的電話通話就解決得到。至於就實質爭議點作決定而進行的聯合聆訊，夏利士法官認為有很多爭議不利此事實現，例如實體法與程序法有分別，時區不同及參與者所用的語言不同，還有，法官不同，裁決也有可能不同。「聯合聆訊聽起來甚有新意，夠刺激，不過我認為將來非常罕見。」

我們把話題轉到實質的問題上。夏利士法官谈到香港關於企業拯救的法律。他先解釋Re Legend Int’l Resorts Ltd[2006] 2 HKLRD 192(「Legend案」)的影響。上訴法庭在2006年就Legend案頒布裁決，裁定不容許目的是重組公司債務的呈請人根據《公司(清盤及雜項條文)條例》(第32章)第193條的法定權力委任臨時清盤人。過往，有人以為法庭有固有權力委任臨時清盤人以找出拯救企業的方法，固有權力可以被用來設立事實上的延期償付權。目前，香港落後於多個提供有效企業拯救工具的司法管轄區，例如美國和英國，美國有《破產法典》(Bankruptcy Code)第11章「擁有控制權的債務人」(debtor in possession)，英國有加速拯救無力償債公司的主管機關。百慕達和開曼群島法庭容許明確地利用臨時清盤進行重組。

有很多人要求過(已要求了相當長的時間)在香港引進法定的企業拯救制度，正如在香港法律專業學會首次舉行的破產法與實務週年會議上，眾嘉賓所表達的意見一樣；有關法例有望最遲在2018年推行。

話題其後回到Legend案之上，夏利士法官說，雖然該案裁決一般被認為「對重組有幫助」，但隨之而來關乎重組的問題是無法解決的。他認為，Legend案十年來無人敢碰，困難揮之不去。要是有人一早「直接處理」Legend案產生的爭議，而不是「諸多迴避」，明顯會更早有其他可用的方法，而這些方法會更在香港普通法的基本原則。例如，最近的Z-Obee Holdings Ltd案(2016年：第183號)(「Z-Obee案」)就說明了可用的解決方案。

《指引》有多個方面極具雄心，其中一項是聯合聆訊的規定，說到這個方面的效用，夏利士法官的看法同樣相當溫和。他解釋，這方面的規定雖然有用，但對廠商和法官創新思考，但亞洲區有必要進行聯合聆訊的案件少之又少。他指出，首先，很多案件都不具爭訟性。那些案件的居中人只想在可能情況下，儘快有效地找出最好的方法。其次，即使是具爭訟性的平衡法律程序，如果法官共同考慮管理法律程序的最有效方法是有用的，在這情況下產生的爭論點，通常可以透過電郵或簡短的電話通話就解決得到。至於就實質爭議點作決定而進行的聯合聆訊，夏利士法官認為有很多爭議不利此事實現，例如實體法與程序法有分別，時區不同及參與者所用的語言不同，還有，法官不同，裁決也有可能不同。「聯合聆訊聽起來甚有新意，夠刺激，不過我認為將來非常罕見。」

夏利士法官指出，就他所知，Nortel案是僅有的一宗進行聯合審訊的案件，案件涉及特拉華州(美國)與安大略省(加拿大)。

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共同清盤人在香港要求法庭确认其已获委任，之后引入平衡计划使在香港进行的重组在香港有效。「以前从没有试过这样做。此例说明，你可以利用其他方法，即要求获得确认清盘人的身份并取得法庭的协助，不用在香港将公司清盘，以减轻Legend案的裁决给香港上市外国公司打算进行的重组所带来的影响。」

面对Z-Obee案及其他案件的判决所带来的挑战，他留意到，把这些案件形容为前卫的裁决，使人听起来觉得香港富有创意，相当不错。然而，他不会这样形容自己的裁决。「在现实中，我鼓励法律业人员聚焦于管理外国公司清盘的基本原则，并运用创造力仔细设想，司法协助及确认可以怎样用来找出更简单、更便宜的方案解决常见的争议，他们曾经尝试过在香港提出清盘呈请及委任临时清盘人，以解决这些争议。有一件事开始变得明显，就是普通法范围内是有可用的工具，这些工具让我们可以避谈许多过往一直被含混带过的争议，即司法管辖权及Legend案。

在几年时间里，这可能全是纸上谈兵，甚至可能有人问，我们是否一定要在开曼群岛、英属处女群岛或是百慕达做起，然后才到香港。答案是，因为没有清晰的法定机制，不清楚有些争议是难以解决的。实行改革明显会堵住香港目前的缺口，可以稍稍增加法律工作量。然而，不是所有重组都在法庭监督下进行；有些是在各方同意下进行的。归根结底，香港如果想成为具竞争力的重组中心地，历史悠久，就得给定个位置，纵使面对其他司法管辖地的激烈竞争，仍能争取到新工作。现在还不清楚主管机关是否了解这种情况。当然，香港如果能够依同行相让，引入必要的工具，将会成为亚洲区主要的公司债务重组目的地，更会成为处理大中华区法律工作的目的。」

「这种形式显然并不理想。我们最好有一套法定框架用以批准公司的需要，特别是跨国公司重组巨债债务的需要。」「有关文章毫无用处」，反而「令那些像我一样的法官感到失望」。夏利士法官解释说，首先，有关发展暗示香港有可能错过了想当然认为是随手可得的机会。「不……」「有关文章毫无用处」，反而「令那些像我一样的法官感到失望」。夏利士法官解释说，首先，有关发展暗示香港有可能错过了想当然认为是随手可得的机会。"
Risk Management Education Introductory Session

The Law Society was invited by the Shanghai Bar Association and the Guangdong Lawyers Association to host a Risk Management Education Introductory Session in Shanghai and Dongguan, Guangdong, on 15 February and 25 March, respectively. Ms Catherine Mun, member of the Greater China Legal Affairs Committee ("GCLAC"), spoke in the two-hour Shanghai session to more than 300 Shanghai lawyers about the Risk Management Education Programme of the Law Society and shared the basic concepts and relevant cases of risk management, which was helpful for local lawyers in understanding the importance of risk management to the legal profession.

President Thomas So was the keynote speaker in the Guangdong session, while Mr Patrick Mak, member of the GCLAC shared his views on the risks of cooperation and joint venture between the Mainland and Hong Kong legal profession. 80 representatives from lawyers associations in the Guangdong province, including their presidents and vice-presidents, attended the session and showed great interest in risk management and deepening cooperation. Besides, Ms Natalia Cheung, Ms Alexandra Lo, Ms Catherine Mun and Mr Lawrence Yeung also participated in the event that day and had a fruitful exchange with Guangdong lawyers.

Developing Legal Service to Support Free Trade Seminar

Invited by the Renmin University of China Law School, Mr Ambrose Lam, Past President and member of the Greater China Legal Affairs Committee, attended a seminar titled "Developing Legal Service to Support Free Trade" on 19 March in Shanghai. Mr Lam spoke on the topic "Legal Exchange: International Collaboration and Co-operation between Lawyers and Law Firms" and had fruitful discussions with the attendees. The seminar was attended by more than 50 local and foreign legal professionals and scholars. Their discussion focused on internationalisation of legal services under free trade.

風險管理教育課程推介會

應上海市律師協會和廣東省律師協會邀請，香港律師會分別於2月15日和3月25日假上海和廣東東莞舉辦風險管理教育課程推介會。

上海推介會由大中華法律事務委員會成員文理明律師擔任講者。在約兩小時的活動中，文律師向300多名上海律師介紹律師會的風險管理教育課程，並分享風險管理的基本概念和相關案例，向當地律師推廣良好的風險管理對法律專業的重要性。

而廣東推介會，由蘇紹聰會長主講，大中華法律事務委員會成員麥家榮律師則分享中港兩地法律業合作和聯繫的風險。參與推介會的80位廣東省地區的律師協會會長、副會長和代表表現投入，踴躍提問與風險管理和深化合作等相關問題。另外，大中華法律事務委員會成員張翹欣律師、羅德慧律師、文理明律師和楊先恒律師亦出席當日活動，與廣東省律師代表進行交流。

法律服務與自由貿易研討會

應人民大學法學院邀請，前會長暨大中華法律事務委員會成員林新強律師出席了3月19日假上海舉行的「提升法律服務 助力自由貿易」研討會，就「法律服務的國際化合作與交流」題目演講及參與討論。約50位中外法律界人士和學者出席是次研討會，共同探討自由貿易下法律服務的國際化發展。

Mr. Ambrose Lam spoke at the seminar.

林新強律師在研討會上演講。
YSG: CONNECTED 2017 Kick-off event - "Professional Zen: Connected De-stress Drinks"

On 10 March, a record-breaking number of more than 200 participants (out of the overwhelming 280 participants who signed up for the CONNECTED 2017) attended "Professional Zen: CONNECTED De-stress Drinks", the kick-off event of CONNECTED 2017 mentorship programme organised by the Young Solicitors' Group ("YSG").

As the name suggested, participants enjoyed a de-stressing, casual and relaxing evening while meeting and socialising with their fellow groupmates, as well as earning some tips at the health and happiness workshop.

We were honoured by the presence of our Immediate Past President Mr. Stephen Hung who gave a welcoming speech, and other Council Members Mr. CM Chan, Mr. Nick Chan, Ms. Serina Chan, Mr. Warren Ganesh and Mrs. Cecilia Wong. We would also like to express our heartfelt gratitude to the 45 mentors who serve in the programme this year, in particular, to those 31 who attended the kick-off event to introduce themselves and their practice areas to our mentees and buddies. We also thank all CONNECTED participants for their support without which we could not continue with such an amazing programme!

By way of background, "CONNECTED" is a mentorship and buddy programme organised by the YSG which provides a platform for mentees (trainee solicitors), buddies (young practitioners with less than 8 years PQE) and senior members (practitioners with PQE 8 years or above) to have fun, learn, all the while building long-term friendships with each other!

Please stay tuned for the next CONNECTED event which will be held in the summer 2017!

Members who are interested in joining the events organised/arranged by the YSG, please feel free to visit http://www.hklawsoc.org.hk/pub_e/ysg, add our Facebook page (https://www.facebook.com/young.solicitorsgroup) or contact Assistant Director, Member Services at adms@hklawsoc.org.hk.
Young Solicitors’ Group: Joint Professional Career Day 2017

Following the success of the two previous Joint Professional Career Days held respectively in 2015 and 2016, the Young Coalition Professional Group of the Hong Kong Coalition of Professional Services co-organised the third Career Day with the Education Bureau on 11 March. Held at Bellilios Public School, the Career Day was well received with 192 students from various secondary schools in Hong Kong attending the event.

The event began with an opening ceremony where Mr. Ma Siu-cheung, Eric, Secretary for Development gave an inspiring speech and shared his experience in career planning with the students. The opening ceremony was followed by two break-out sessions, where students had close interactions with practitioners from various professions. It was our pleasure to have four members, including Ms. Linda Ngan, Ms. Daphne Lo, Ms. Judy Wong and Ms. Minnie Chang representing us as speakers at the breakout-sessions. Together with two representatives from the Hong Kong Bar Association (“the Bar Association”), they gave students a broad introduction of what solicitors and barristers do and various practice areas in the legal field. They also shared their experience and insights on how students should prepare themselves if they wish to become a lawyer in future.

The event was concluded with a debriefing session. It was delightful and encouraging to know that the students found our speakers’ sharing informative and useful. With the success of this event, the YSG will continue to explore opportunities to organise interesting events to bring useful information about the profession to the next generation.

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

President Thomas So and representatives from the Greater China Legal Affairs Committee (“GCLAC”) of the Law Society of Hong Kong attended an exchange tour to Kaohsiung and Tainan, Taiwan from 16 to 19 March. Two young lawyers were also invited to join the delegation.

The exchange tour began with a visit to the Kaohsiung Juvenile and Family Court followed by a seminar jointly organised by the Law Society and Taiwan Bar Association on RME education and company law. Later, the Law Society representatives were brought to the beautiful ancient city of Tainan for guided tours and the 17th Taiwan Bar Association Networking Event. The highlight of the day was the banquet where the delegates had time to mingle with lawyers from all across Taiwan, share stories about our legal practices and enjoy performances put up by the extremely talented Taiwanese lawyers. Their enthusiasm surprised the Law Society representatives and it was the great pleasure of the delegation to get to know them.

The two young lawyers Jasmine Cheung and Ian Chu think that the exchange tour was definitely a fun and rewarding experience especially for young lawyers. They gained a better understanding about the legal system in Taiwan and made new friends; but beyond that, they were introduced to a community of lawyers with the vision to promote legal services and professionalism in the Greater China Region. Jasmine and Ian certainly see the potential for more interaction between lawyers in the region, and wish that our fellow young members will share the same goal as Jasmine and Ian and expand the community in the days to come.

Jasmine Cheung and Ian Chu shared their legal experiences and made friends with the young lawyers from Taiwan.

The Law Society visited the Kaohsiung Juvenile and Family Court.

A seminar was co-organised with the Taiwan Bar Association to promote the RME programme of the Law Society.

The Law Society exchanged experiences with Taiwan's legal profession.

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In-House Lawyers: Sweat & Glory Series 2017 – Fintech & In-House Lawyers

The In-House Lawyers Committee (“IHLC”) organised the panel discussion of In-House Lawyers: Sweat & Glory Series 2017 – “Fintech & In-House Lawyers” on 22 March. The seminar was attended by around 60 members comprising in-house members from a variety of backgrounds. The panel discussion was moderated by IHLC Member Ms. Cerin Yip.

Speakers on this panel included Dr. Henry Chang, Senior Manager, Fintech Facilitation Office of the Hong Kong Monetary Authority, Ms. Lisa Lam, Lead International Counsel, Ant Financial Services Group, and Mr. Alex Lau, Executive Director, Head of Digital Innovation, Institutional Banking Group, DBS Bank (HK). Our heartfelt thanks to the speakers who shared with us their experience from the perspective of a regulator and in-house lawyer on topics related to Fintech, including regulatory requirements, data privacy and security issues, and the Fintech environment in Hong Kong.

Singing Competition 2017

On 24 March, a record-breaking number of contestants participated in the annual Singing Competition organised by the Singing Group. The 24 contestants who performed singing and dancing dazzled the four judges of the night.

The winners of the solo competition were: Simon Chan (Champion), Angela Wu (1st runner up) and Hin Han Shum (2nd runner up). The winners of the group competition were: Simon Chan and Karen Lam (Champion), The Leagles - Sebastian Ko, Hin Han Shum and Louise Wong (1st runner up), Hilda Lam and Rita Tse (2nd runner up).

This Singing Competition is the prequel to the Joint Professional Singing Competition which will take place on 3 June at the Hong Kong Academy of Medicine. There will be teams from seven professional bodies: Hong Kong Bar Association, Hong Kong Dental Association, Hong Kong Institute of Architects, Hong Kong Institute of Certified Public Accountants, Hong Kong Institute of Surveyors, Hong Kong Medical Association and The Law Society of Hong Kong. The competition will be fierce. Some contestants of the past Joint Professional Singing Competition have later become professional artists and even published their own albums!

This year, Simon Chan and Angela Wu were selected to represent the Law Society to compete in the group competition at the Joint Professional Singing Competition while Hin Han Shum was selected to compete in its solo competition. In the coming weeks, they will undergo intensive training with the singing coach Mr. William Wong, who also coaches the Singing Group. Please support our representatives!
Rotary Hong Kong Ultramarathon 2017

The Distance Running Team recently competed in the Rotary Hong Kong Ultramarathon 2017 on 5 March. Attracting over 1,300 athletes, the race took place on Lung Wo Road in Central, where runners undertook 25 challenging two-km laps to complete a 50km race.

The race course, which extended from the International Finance Centre to Fenwick Pier traversing along Lung Wo Road, served as a scenic route for runners of all ages, offering a panoramic and majestic view of the Victoria Harbour skyline. With our team’s collective tempo effort and athleticism, they earned seventh place out of 43 teams in the corporate relay team entry. The team was led by Mr. Bernard Murphy and included Ms. Winnie Lui, Mr. Eric Tang, Distance Running Team Captain Mr. John Lee, Ms.Chionia Lau, Ms. Annette Chow, Ms. Wai Yin Chung and Ms. Sally Lam.

Rotary International District 3450 and the Hong Kong Amateur Athletic Association have co-organised this event for three consecutive years and, in that time, have watched the event go from strength to strength. Proceeds from the event will be donated to the Tung Wah Group of Hospitals in support of its provision of mental illness rehabilitation services in Hong Kong.

Special thanks go to the Law Society for its support for this worthwhile cause. We look forward to welcoming new members to join our team trainings and races in the future!
HKMA Joint Professional Invitation Relay
The Swimming Team participated in the joint-professional invitation relay organised by the Hong Kong Medical Association (“HKMA”) on 6 November 2016 at the Hong Kong Polytechnic University.

Mr. King Chan, Mr. Robert Sit, Mr. Pierre Lui and Swimming Convenor Ms. Agnes Chan represented the Law Society in the relay, which required a mixed team of four swimmers from each profession.

Congratulations to HKMA for being the relay champion and to the Hong Kong Institute of Engineers, who came in second place. Our team came third out-performing the Hong Kong Dental Association team by a small margin.

We extend our gratitude to HKMA for coordinating and organising this annual event which provides an opportunity for swimmers from different professions to gather, foster friendships and showcase team spirit.
Visits to Correctional Facilities for Phase 8 “Legal Pioneer” Mentorship Programme

“The Legal Pioneer” Mentorship Programme Working Group (“Working Group”) under the Community Relations Committee (“CRC”) organised two half-day visits to Lai King and Cape Collinson Correctional Institutions for students who participated in the Phase 8 of the Legal Pioneer Mentorship Programme on 28 and 31 March, respectively. A total of 30 students from Shatin Tsung Tsin Secondary School, Yuen Long Merchants Association Secondary School and Christian Alliance Cheng Wing Gee College attended the event together with Law Society members and mentors.

During the visits, students had the opportunities to see the facilities of the two institutions, including inmates’ dormitories, dining halls and workplaces, and also meet with inmates. Participants were deeply touched by the personal sharing of inmates. Both events went smoothly and were well-received by the attendees.
Together We Stride and Strive with Our Smiles…
Together we have stridden through our Monday night runs with guidance from our professional coaches and cheers from our teammates in Tamar Park in Central. Together we have striven to make it to our training sessions at Happy Valley each Friday night, in spite of impossible deadlines or having to rush back to our offices to finish work after a wonderful run in the wind.
And together we have proudly formed many different teams for a variety of races over the past few months, enjoying all that is possible with the extra pride from our Distance Running Team’s racing singlets. When running on the other side of the road, it was utterly surprising to hear by the exuberant cheers and see the glee-filled smiles from teammates, who were also striving hard to make their personal best times.
Running, especially for long distances, can be quite a solitary sport and many may not appreciate this sport’s uniqueness. However, it will not take one long or more than a few strides with us to feel the beauty of this sport and how we are building ourselves as a stronger team.
Together we will continue to stride and strive through many more miles for many more memorable moments...

The Law Society Distance Running Team

Finishing off another Friday training session in our team’s new racing singlets with Coach Gi Ka Man.

Stretching at Monday coaching sessions.

Ending the Friday night training with some core muscle training at Happy Valley Football pitch.

Teammates of a half marathon team running all the way together at AXA Hong Kong Streetathon 2017.

Teammates of a half marathon team winning a first runner-up award for the ladies’ half marathon teams of two at Geo Hero Run 2016.
Vivid accounts of the Distance Running Team’s initiatives from its members:
隊員對長跑隊活動的感言:

“No pain, no gain, No run, no fun, Happily we run under the emblem of the Law Society of Hong Kong, Day by day our bodies will go from strength to strength, Let us all join hand in hand for wonderful fun.”

– Past President Simon Ip

“I used to associate running with the nature of being tiring, boring and lonely until I signed up for the Monday coaching sessions which offers small group training exclusive for Law Society members. I had the privilege of listening to the coaches and more advanced classmates sharing experience on getting themselves physically and mentally prepared for races. ‘Coming tired, leaving alive’ is what I would like to say for these coaching sessions!”

– Sharon Leung

“I don’t even jog should I join the class? Definitely! Our coaches will show you how to stretch and give advice on correct running posture so as to reduce likelihood of straining your rusty body parts. Soon I found myself running faster but at ease which makes me want to run more. If you’re considering joining for good health, think no more, sign up!”

– Kate Chan

“Every Friday evening, I always feel happy and healthy after sweating it out in the 90-minute running training sessions at the end of a week’s work under air-conditioning. One can’t fathom how many miles one’s body and mind can go until one puts them into training and practice. Come and join us, and experience the liveliness in running inside and outside.”

– Edmond Lam

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“Running after a long week of work on hot summer nights is definitely a challenge for me. However, the Friday night training at Happy Valley has always been an exceptionally enjoyable event for me to look forward to. I will definitely keep it up and train myself to be a better runner.”

– Andrew Wong

“The beauty of running is that often while my body argues that there is no justifiable reason to continue, my mind beats that little voice inside me and reminds me about perseverance. Looking back at the person I once was who never ran nor raced, I take pride in my courage to make a change and to join the Distance Running Team.”

– Sally Lam

“Three other teammates and I took part in the half marathon race of AXA Hong Kong Streetathon. We supported each other throughout the race and boosted ourselves to keep running. The moment when we crossed the finish line together with smiling faces was priceless. I am delighted to have these friends becoming my comrades in life.”

– George Tam

“Started off as a casual jogger, I have met a lot of passionate and persistent runners in the team. In March, I completed my first full marathon in the Nagoya Women’s Marathon. I believe everyone can just do it – push your limits and check off your list of must-do items with people sharing the same vision.”

– Mona Yip

While I enjoyed running by myself, I wished to train with a team. With the guidance of my coach and teammates I met in the Distance Running Team, I have recently completed one of my life goals – a full marathon. As the saying goes “If you want to go fast, go alone. If you want to go far, go together.”

– Isabella Wong

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

Companies who attended the Hong Kong 2016 In-House Legal Summit:

Testimonials from last year’s delegates:
“Successful and fruitful event! Great work. Keep it up!”
“Conference was informative and practical. I’m satisfied with the style of presentation, course materials.”
“Great diversity of speakers who know their respective area.”
“The sessions on Cybersecurity and Data Protection are all very informative.”

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

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Using US Discovery in Hong Kong Cases

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Hong Kong lawyers have a powerful tool they may not be aware of: the (in)famous US discovery system. Under a little-known US law, parties to proceedings in Hong Kong can take discovery in the US for use in a Hong Kong case.

Taking discovery in the US can often have a decisive impact in Hong Kong matrimonial, commercial and criminal matters. This article explains how using US discovery can help you win your case, what information you can obtain and what you need to show to get discovery.

**Using US Discovery to Collect Critical Evidence**

In many cases, the discovery that a party really needs is found in the US, not where the litigation is being held. US dollar denominated wire transfers clear through correspondent banks in New York. Twitter-posts and Google data is stored on servers in California. Trade creditors hold accounts receivable in Texas. There is a way for Hong Kong litigants to obtain documents and testimony from each of these sources.

Under Section 1782 of Title 28 of the United States Code (entitled “Assistance to foreign and international tribunals and to litigants before such tribunals”), US courts are empowered to assist foreign litigants to obtain evidence in the US for use in foreign legal proceedings.

Take the example of Mirana Kwong and her estranged husband Joshua Kwan. According to papers filed by Mirana, the couple filed for divorce in Hong Kong after 24 years of marriage after she caught him cheating with another woman. When he declared only a relatively modest income, even though he came from a “wealthy family” and was a “successful businessman”, she knew he must be hiding something.

She filed a Section 1782 application in California to take discovery from 10 companies for which he served as a director. She was right: the discovery showed that he owned the companies and that they were extremely valuable (see *Kwong Mei Lan Mirana v Battery Tai-Shing Corp.*, No. 08-mc-80142 JF(RS), 2009 WL 290459 (N.D. Cal. Feb. 5, 2009)).

The statute was also recently used against billionaire American casino magnate and influential Republican political donor Sheldon Adelson. He sued a Hong Kong-based *Wall Street Journal* reporter in the High Court of Hong Kong for libel for describing him in an article as “a scrappy, foul-mouthed billionaire from working class Dorchester, [Massachusetts.]”

To defend the suit, the reporter took US discovery from Adelson’s friends, colleagues, bodyguard, driver and even his rabbi to prove that the description was true. The case settled in January this year with no payment by either side. The original article remains on the *Wall Street Journal* webpage (see *In re O’Keeffe*, 650 Fed. App’x 83 (2d Cir. 2016); *Adelson v O’Keeffe* [2014] HKCFI 1464).

**What Information Can I Obtain as a Hong Kong Litigant?**

In Hong Kong, only limited pretrial discovery is available. There are no third-party pretrial depositions. Leave of court is often required. US litigants, meanwhile, have many discovery tools to choose from. These powers are available to Hong Kong litigants, too.

**Any Relevant, Non-Privileged Document**

You can use Section 1782 to force third parties to hand over any non-privileged document relevant to your case in their “possession, custody, or control.” Properly subpoenaed, a party must produce any document it has the “legal right to obtain on demand.”

A witness can be compelled to bring documents into the jurisdiction from anywhere in the world. Thus, a German medical company can subpoena the consulting firm McKinsey in New York to produce documents kept in Germany (see *In re Gemeinschaftspraxis Dr. Med Schottdorf*, No. Civ. M19–88 (BSJ), 2006 WL 384446 (S.D.N.Y. 2006)).

**Up to Seven Hours of Sworn Testimony**

Section 1782 can also be used to compel testimony – up to seven hours, videotaped and under oath. Making a false statement knowingly is perjury. The witness can also be held in contempt of court for refusing to answer valid questions.
What Do I Need to Show to Get Discovery?

US courts have wide-ranging discretion to grant or deny Section 1782 applications. Applicants must show three things in the first instance:

**The target is a "person" who "resides" or "is found" where the court sits**

The “person” must be a human being or a legal entity. It cannot be a government agency. Thus, a court will deny an application to obtain information from the US Central Intelligence Agency (“CIA”) about the car crash that killed Princess Diana because the CIA is not a “person” (see Al Fayed v Central Intelligence Agency, 229 F.3d 272 (D.C. Cir. 2000)).

The “person” must also “reside” or be “found” where the court sits. A target can be “tagged” with a subpoena while “passing through” even though he has no connection there. He must then comply or risk contempt of court. For instance, a French citizen who is served with a subpoena at an art gallery in Manhattan must testify in New York in spite of having no other connection with the jurisdiction (see Edelman v Taittinger, 295 F.3d 171 (2d Cir. 2002)).

**The discovery is “for use” in a proceeding before a “foreign or international tribunal”**

The discovery must be relevant to – although not necessarily admissible in – the Hong Kong case. The statute says “tribunal” instead of “court” for a reason: beyond conventional civil or criminal cases, the statute can be used in aid of administrative hearings, public law arbitrations and, in some instances, private commercial arbitrations.

What is more, there is no need for an ongoing proceeding. Courts can grant applications for “contemplated” lawsuits. In practice, however, courts will only do so if an application is very specific about the proposed claim, evidence and venue.

**It is an “interested person” who seeks the discovery**

The party bringing the Section 1782 application must qualify as an “interested person” in the foreign case. A named party in a Hong Kong proceeding is an “interested person”. Others with “participation rights” in the case (for example, to submit evidence or to appeal the ultimate decision) can also be an “interested person” with the right to bring an application.

Third parties with no standing to participate in the Hong Kong case would not qualify as an “interested person”. Consequently, a non-party who only has “financial interests” in the outcome is not an “interested person” (see Certain Funds, Accounts and/or Investment Vehicles v KPMG, LLP, 798 F.2d 113 (2d Cir. 2015) (in dictum)).

How the Court Exercises Its Discretion

If you meet those requirements, the court can (but does not have to) grant the application.

It will consider four factors to make a decision:

**The discovery target should not also be a named party in the Hong Kong case**

US courts are reluctant to order discovery against named parties in the foreign proceeding even if the US court has jurisdiction over them. This is because the Hong Kong court can just as easily order those parties to produce evidence.

**There is no “authoritative proof” that the foreign court does not want the US discovery**

The US court can refuse the application if the Hong Kong court or government says that it does not want the discovery. Thus, the US court may not allow the discovery when a foreign prosecutor writes to the court that it would compromise an ongoing criminal investigation (see Schmitz v Bemstein Liebhard & Lifshitz, LLP, 376 F.3d 79, 84 (2d Cir. 2004)).

There is little risk of this in Hong Kong, however, where courts regularly welcome Section 1782 assistance.

The application does not circumvent foreign evidence rules

The question is whether the applicant asking for discovery is abusing Section 1782 to end run around Hong Kong court rules. Typically, this requires evidence that the applicant is taking the discovery in “bad faith.” In a rare example, a court denied a discovery application for “bad faith” where an application was pending before the foreign tribunal to take the exact same discovery (see In re Microsoft Corp., 428 F. Supp. 2d 188 (S.D.N.Y. 2006)).

There would be no “undue burden” on the target

US courts often deny applications that request nebulous categories of documents or documents covering vast spans of time. Thus, one US court rejected as unduly burdensome a request for documents that dated back nearly 30 years (see In re Aptex Inc., 2009 WL 618243 (S.D.N.Y. 2009)). In practice, requests should be laser-focused in the first instance.

Finally, judges are not robots. It is important to appeal to the court on an emotional level. Courts have wide discretion. Even if you meet the legal test, it is critical to show up front that your client is the “good guy”.

Procedure

Section 1782 applications are filed ex parte. In a typical case, the court will read the application and sign them as long as the application does not circumvent foreign evidence rules.

The true test comes later after a motion by the party to “quash” the subpoena.

Conclusion

To make this all go smoothly, your Hong Kong and US legal teams must work hand in glove. US lawyers with limited Hong Kong experience sometimes do things that alienate the Hong Kong courts. And Hong Kong lawyers run into similar pitfalls coordinating their actions with US discovery. The two cases must be planned and executed in concert so the discovery is collected at the right time and in the right way.
香

港的律師擁有一項他們可能並不

知悉，但卻是強而有力的法律工

具，那就是：知名(或惡名昭彰)的美國文

件透露制度。根據一項鮮為人知的美國

法例，香港的訴訟方可在美國提出文件

透露申請，並同意其運用於在香港進

行的訴訟。

訴訟人取得在香港提交的文件，這對於他

們在香港進行的婚姻、商業或刑事訴訟

能否取得勝訴，往往具有關鍵性的影響。本

文論述：如何才能透過美國的文件透露制

度，協助訴訟人取得勝訴？訴訟人透過這

制度可以取得甚麼資料？以及，訴訟人需

要提出甚麼證明，使其文件透露申請獲得

法庭接納？

從美國的文件透露取得重要證據

許多案件的情況是：某一方要求另一方作

出透露的文件，其所在地方經常會是美

國，而不是進行訴訟的地方。美元電匯往

往通過紐約的代理銀行進行；Twitter貼文

和Google資料，往往存放在加州的伺服器

上；供應商所持有的應收賬款，可能會是

在德克薩斯州。香港的訴訟人可透過一個

方法，取得存放這些源頭的文件資料和

證供。

《美國法典》第28卷第1782條(其標題

為：「向外國與國際審裁庭和向在該等

審裁庭進行訴訟的訴訟人提供協助」)規定，美國法院有權協助外國訴訟人取得存

放在美國的證據，從而讓他們得以運用於在

國進行的法律程序。

我們試以Mirana Kwong女士及其丈夫

Joshua Kwan先生的離婚案件作為例子。根

據Mirana Kwong女士向法庭提交的文

件，當她發現丈夫與其他女性來往後，夫

婦二人乃向法院提出離婚申請，結束雙

方24年的婚姻關係。Mirana Kwong女士

的丈夫供稱，他的收入並非十分豐厚，然

而，他是來自一個富裕家族，而他本人也

是一位成功商人，所以Mirana Kwong女

士相信其丈夫一定是有所隱瞞。

Mirana Kwong女士根據第1782條規定，

向加州的法庭提出申請，要求當地10間

公司(她的丈夫是該10間公司的董事)作出

相關的文件透露。後來證明，她的這一

做法十分正確，因為根據所透露的文件，

該些公司都是由其丈夫擁有，而且都是

價值不菲(參看Kwong Mei Lan Mirana v

Battery Tai-Shing Corp., No. 08-mc-80142

JF(RS), 2009 WL 290459 (N.D. Cal. Feb.

5, 2009))。

該項法例在近期也使用於一宗與億萬富

豪兼賭場大亨謝爾登.阿德爾森(Sheldon

Adelson)(他也是曾經擁有著強大影響力的

共和黨政治捐獻者)有關的訴訟。他在香

港高等法院提起訴訟，控告《華爾街日

報》一位派駐香港的記者，理由是該名記

者在其一篇報道中，將他形容為一位工

人階級出身，來自美國麻省的多賈斯特

(Dorchester)，生性好鬥，說話下流的億

萬富豪。

該名記者在其辯護過程中，向美國法院提

出文件透露申請，並從阿德爾森的朋友、

同事、保鑣、司機，甚至他的拉比那兒取

得證據，證明他所報道的內容屬實。該宗

案件於本年1月達成和解，雙方均無需向

對方作出賠償，而該名記者所作的報道，

仍登載於《華爾街日報》的網頁上(參看In

re O’Keeffe , 650 Fed. App’x 83 (2d

Cir. 2016); Adelson v O’ Keeffe [2014]

HKCFI 1464)。

香港的訴訟人可以取得甚麼資

料？

香港的法院只允許在審訊前作出有限度的

文件透露，不接納審訊進行之前的任何第

三方證人供詞，並且通常需要獲得法院的

許可。

美國提供多種文件透露工具給訴訟人選

擇，而香港的訴訟人也可以運用它們。

任何相關但並不享有保密權的文件

香港的訴訟人可以根據第1782條的規定，強制第三方交出任何與該訴訟人的案

件相關，由該第三方管有、保管或控制，

但並不享有保密權的文件。任何一方如被

妥為傳召，都必須交出任何他有「法定權

利取得的文件(倘有如此要求提出)」。

證人可被強制將文件從世界任何地方，

帶到相關的司法管轄區。因此，一間在

德國的醫藥公司，可以對於位於紐約的顧

問公司－麥肯錫公司－作出傳召，要求

後者將存放於德國的文件交出(參看In

re Gemeinshcaftspraxis Dr. Med Schottdorf,


3844464 (S.D.N.Y. 2006))。

長達七小時的宣誓證供

此外，第1782條也可以用來強制證人作

供－時間可長達七小時，並可以進行錄

像，以及要求證人在宣誓下作供。證人倘

明知而作出虛假陳述，可被視為在宣誓下

作假證供。此外，如果他拒絕回答任何向

他有效提出的問題，他也有可能被控藐視

法庭。
提出文件透露申請，需要一些甚麼證明？

美國法院擁有廣泛的酌情決定權，可以批准或拒絕接納任何人根據第1782條提出的申請。首先，申請人必須證明下列三點：

目標人士須為一名在相關法院的所在地居住，或又是可於相關法院的所在地找到他的人士。

該「人士」必須是一名自然人或法人，而非政府機關。因此，倘若有人提出申請，要求美國中央情報局(中情局)提供導致戴安娜王妃身亡的車禍資料，美國法院必然會拒絕接納有關申請，因為中情局並非一名「人士」(參看Al Fayed v Central Intelligence Agency, 229 F.3d 272 (D.C. Cir. 2000))。

此外，該「人士」必須在相關法院的所在地居住，或又是可於相關法院的所在地找到他的人士。

所透露的文件須「用於」在香港所進行的訴訟程序。

法院如何行使酌情決定權

訴訟人如果符合該等規定，法院便有可能(但並非必然)會批准有關申請。然而，在作出相關決定前，法院會先行考慮下列四項因素：

文件透露的目標人士在香港所進行的訴訟程序中，須為被指明的一方。

對於該等在外地法律程序中被指明的訴訟方，即使美國法院對他們具有司法管轄權，但也不會願意對他們作出文件透露命令，理由是香港法院事實上已可輕易地向他們下達提交證據的命令。

沒有任何「有力證明」顯示外國法院不欲在香港進行文件透露。

如果要求透露的文件類別曖昧不明，又或是文件所涵蓋的時間過於久遠，美國法院通常會因此拒絕接納有關申請。曾經有一項文件透露申請，其所涉及的文件，可以追溯至幾近30年前，美國法院認為這會對對方帶來太沉重的負擔，因而拒絕接納有關申請(參看In re Microsoft Corp., 428 F. Supp. 2d 188 (S.D.N.Y. 2006))。

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對於該等在外地法律程序中被指明的訴訟方，即使美國法院對他們具有司法管轄權，但也不會願意對他們作出文件透露命令，理由是香港法院事實上已可輕易地向他們下達提交證據的命令。

沒有任何「有力證明」顯示外國法院不欲在香港進行文件透露。

如果要求透露的文件類別曖昧不明，又或是文件所涵蓋的時間過於久遠，美國法院通常會因此拒絕接納有關申請。曾經有一項文件透露申請，其所涉及的文件，可以追溯至幾近30年前，美國法院認為這會對對方帶來太沉重的負擔，因而拒絕接納有關申請(參看In re Microsoft Corp., 428 F. Supp. 2d 188 (S.D.N.Y. 2006))。
Solicitors Not Liable for Clients’ Commercial Misjudgments

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This is a report on the decision in *BPE Solicitors and another v Hughes-Holland* [2017] UKSC 21.
In a decision sure to be welcome amongst legal professionals, the Supreme Court of the United Kingdom has recently held in *BPE Solicitors and another v Hughes-Holland* [2017] UKSC 21 (“*BPE Solicitors*”) that a firm of solicitors is not liable to its client for losses arising from the client’s own commercial misjudgment. In doing so, the Supreme Court essentially confirms the (up to now untested) principle in *South Australia Asset Management Corporation v York Montague Ltd* [1997] AC 191 (“*SAAMCO*”), which sets out the framework for professional advisors’ liability in negligence claims. This article will discuss the decision in *BPE Solicitors* and its relevance to Hong Kong.

**Background**

The facts of *BPE Solicitors* are as follows: Mr. Gabriel loaned £200,000 to Mr. Little, who said he would be using the loan to redevelop an old, run-down disused heating tower in an “unattractive location for developers” in Gloucestershire. However, it was shown that Mr. Little intended to use Mr. Gabriel’s funds to acquire the property (by paying off a mortgage from a bank). Mr. Gabriel knew nothing of those plans, and gave the loan without first getting a valuation of the property. His legal representatives, BPE Solicitors (“*BPE*”), were not instructed to undertake the usual searches against the property at the Land Registry.

An assistant solicitor at BPE, Mr. Spencer, drafted the facility letter and the charge documents over the building. However, over the course of work, Mr. Spencer received a call from Mr. Little informing him that the loan from Mr. Gabriel would go towards acquiring the building. Mr. Spencer did not clarify or confirm this information with Mr. Gabriel and used a template from another aborted transaction (which stated that loan monies would be used to assist with development costs) and unintentionally confirmed Mr. Gabriel’s incorrect understanding of Mr. Little’s actual plans. Ultimately, the transaction failed and Mr. Gabriel was unable to recover his loaned monies. He then sued BPE for dishonest assistance in a breach of implied trust and for professional negligence.

**What did the Courts below say?**

At first instance, the judge held that Mr. Gabriel had been misled about the loan and its purpose, and therefore was entitled to damages representing the entire loss. The Court of Appeal allowed BPE’s appeal that Mr. Gabriel’s loss in relation to the loan fell outside the scope of BPE’s duties, and held that the whole loss was attributable to Mr. Gabriel’s misjudgment, reducing damages to nil.

**The Supreme Court’s Decision**

Mr. Gabriel, by this time acting through his trustee in bankruptcy, appealed to the Supreme Court. His appeal was dismissed.

The Supreme Court essentially confirmed and reinforced the landmark decision of the House of Lords in *SAAMCO*: that a person under a duty to advise as to what course of action to take would be liable for all the foreseeable consequences of that action taken only if (1) the advice was relied on and (2) the advice was negligent, but this is different from a person who was under a duty to provide information for the purpose of enabling someone to decide on a course of action, in which case they would be liable for the consequences of the information being wrong and not all the consequences of the reliance (this is commonly known as the “*SAAMCO Principle*”). Lord Sumption’s judgment, which the Supreme Court agreed with unanimously, made the following key observations.

First, there is a clear distinction in the *SAAMCO Principle* between an “advice” case and an “information” case. An “advice” case is where the professional is responsible for guiding the whole decision-making process and is responsible for the ultimate decision itself. The professional will be liable for all the foreseeable consequences of a transaction entered into upon their negligent advice. Meanwhile, an “information” case is one where the professional contributes a limited part of the material on which his client will rely when making a decision, but the overall assessment of the commercial merits of the transaction rests with the client. The professional will be liable only for the financial consequences of the information which he provided, even if the information was critical to the decision of whether to enter into a transaction. The reason behind this is because professionals cannot ultimately “become the underwriter of the financial fortunes of the whole transaction by virtue of having assumed a duty of care in relation to just one element of someone else’s decision”. BPE, on the facts, was acting in an “information” case scenario.

Second, there was no basis for assessing Mr. Gabriel’s damages dependent on the gravity of the particular breach. Rather, the decision should be based on the scope of the defendant’s duty and whether the alleged wrongful course of action is outside that scope – this is for the claimant (ie, Mr. Gabriel) to show and he has not done so.

Third, on the evidence, Mr. Gabriel would not have recovered any more than had the loan been applied to develop the property. Experienced surveyors had advised that development costs would likely range from £400,000–£600,000, which is at least double or triple the original loan. The value of the property would not have been, and could not be, enhanced by the expenditure of the loan on its redevelopment.

Lord Sumption further observed that any damages contemplated under the *SAAMCO Principle* is the difference between the valuation and true value,
on the grounds that the recoverable loss could not exceed what the lender would have lost if the valuation had been correct (commonly referred to as the “SAAMCO cap”), which is essentially the distinction between (1) loss flowing from the fact that as a result of the defendant’s negligence, the information was wrong and (2) loss flowing from the decision to enter into the transaction at all.

The Supreme Court said it was clear that BPE did not assume the responsibility for Mr. Gabriel’s ultimate decision to make the loan to Mr. Little. BPE was expressly instructed to draw up the supporting documentation, and nothing more. Mr. Spencer did not know and did not need to know what had passed between Mr. Gabriel and Mr. Little, save that they had agreed upon a loan of £200,000 secured by a charge on the tower in Gloucestershire. Mr. Spencer knew nothing about the nature of the proposed redevelopment, its cost, the financial capacity of Mr. Little to fund redevelopment without the loan, or the value of the property in its developed / redeveloped state.

By an “unhappy chance”, the facility agreement contained language confirming Mr. Gabriel’s impression that the loan was to go towards redevelopment. But even if Mr. Gabriel’s assumption had been right, he would still have lost his money because the expenditure of £200,000 would not have enhanced the value of the property. None of the loss he suffered was within BPE’s scope of duty, which was confined to preparing the facility agreement and charge. Mr. Gabriel’s loss arose from his personal commercial misjudgment, which were of no concern to BPE.

Relevance to Hong Kong

There are only a handful of cases where the SAAMCO Principle has been considered in Hong Kong. The most recent case was about 10 years ago in Cheung Wei Man & Anor v Centaline Property Agency Ltd [2006] HKEC 1824, where the Court of First Instance heard an action brought by the victims of an abortive conveyancing transaction against their real estate agents. In that case, the Court considered the SAAMCO Principle to be applicable in the context of negligence only and dismissed its relevance to the case. However, in 2004, Reyes J (as he then was) applied the SAAMCO Principle extensively in Industrial and Commercial Bank of China (Asia) v BC Chow & Co [2004] HKEC 105 (“ICBC (Asia)”). He concluded that the spirit of the SAAMCO Principle (ie, if a loss suffered is within the scope of the solicitor’s duty and is properly recoverable, then that loss is recoverable) applies in a negligent “advice” type scenario in Hong Kong.

As at the date of writing, ICBC (Asia) remains good law and has not been appealed nor overturned. It would seem then, that despite not being applied in Hong Kong recently, the SAAMCO Principle holds true in Hong Kong and, as the decision of the Supreme Court shows, continues to hold true in the United Kingdom as well. Whether there will be any further clarifications to the SAAMCO Principle will depend on whether another case in a similar factual matrix reaches the Supreme Court, or even the Hong Kong appellate Courts; albeit the likelihood of this happening is low in the near future.
律師不須就其當事人所作的錯誤商業判斷承擔法律責任

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闡述BPE Solicitors and another v Hughes-Holland [2017] UKSC 21一案的裁決。

英

背景
BPE Solicitors一案的案情如下：Gabriel先生向Little先生提供了一筆金額達20萬英鎊的貸款，而Little先生稱，他計劃將該筆貸款用於重新發展一個日久失修和已被棄置的加熱水塔，其所在位置是格洛斯特郡（Gloucestershire）中，一個「對發展商並不具有吸引力的地方」。然而，實際情況卻是，Little先生計劃將該筆貸款用於購買該財產項目（透過向銀行償還一筆按揭貸款）。Gabriel先生對這計劃一無所知，並在沒有先行對該財產項目進行估值的情況下，將該筆款項貸出。此外，Gabriel先生亦沒有委託他的代表律師－BPE律師事務所（下稱“BPE”）－在土地註冊處為該財產項目進行慣常的物業查冊。

BPE的一名助理律師Spencer先生負責草擬該建築物的貸款確認函和抵押文件。然而，在先生Spencer先生處理該項交易的過程中，他接到Little先生的來電，告知他Gabriel先生所提供的貸款將會用來購買該建築物。Spencer先生並沒有要求Gabriel先生就該項消息作出澄清或確認，並使用了一份來自另一宗未完成的交易的文件範本（當中述明該筆貸款將會用來協助支付發展費用），以及在無心的情況下，確認了Gabriel先生對Little先生的實際計劃的不正確理解。

該項交易最後以失敗告終，而Gabriel先生亦未能取回他的貸款。Gabriel先生乃向BPE提起訴訟，指該律師事務所違反一項隱含信託，從而提供了不誠實的協助，以及犯了專業上的疏忽。

下級法院如何裁定？
在進行一審時，原審法官裁定，Gabriel先生在該筆貸款及其用途上被誤導，因此有權就其所蒙受的全部損失獲得損害賠償。英國上訴法院認為，Gabriel先生就其貸款所蒙受的損失，並不南BPE的職責範圍內，因此裁定BPE上訴得直，而Gabriel先生所蒙受的一切損失，都是由於他自身的錯誤判斷所造成，故不能獲得任何損害賠償。

最高法院的裁決
Gabriel先生這次透過其破產信託人，向英國最高法院提出上訴。最後，英國最高法院駁回他的上訴。

英國最高法院在該上訴案中，確認及鞏固了BPE Solicitors and another v Hughes-Holland [2017] UKSC 21一案的裁決。
項具里程碑意義的裁決，就是：任何人若有責任就其當事人所應當採取的行動，向其當事人提供意見，那麼，他將需要就採取該等行動所產生的可預見後果承擔法律責任。然而，上述情況與任何人有責任提供資料，讓某人可根據該等資料來決定其應當採取甚麼行動，卻是有所不同。負責提供資料的人，他只須就其提供的資料若有欠真確而產生的後果（有別於因倚賴他所提供的意見而產生的一切後果）承擔法律責任（這也就是一般所謂的「SAAMCO原則」）。Lord Sumption的該項裁決（其他的英國最高法院法官一致贊同），有以下數個值得我們關注的要點。

首先，根據「SAAMCO原則」，提供「意見」與提供「資料」之間，確實存在明顯的區別。若屬提供「意見」，則：負責任為整個決策過程提供指引的專業人員，須對所作的最終決定承擔責任。該專業人員在提供意見時倘若存在疏忽，而他的當事人確是根據他所提供的意見訂立有關交易，則該專業人員須對所產生的一切可預見後果承擔法律責任；然而，若屬提供「資料」，則：該專業人員所做的，其實只是向其當事人提供某些資料，作為其當事人的決策依據，但有關交易所具的商業價值，仍須由其當事人自行對它作出總體評估。即使該專業人員所提供的資料，對於其當事人是否決定訂立有關交易，這專業人員仍只須對其提供的資料所產生的財務後果承擔法律責任。其背後理據是：不管如何，專業人員不能「因他在某人所作的交易決定中，需要就其中某一項因素承擔謹慎責任（duty of care），便成為了整項交易所涉及之經濟利益的承保人」。根據本案的案情，BPE所擔當的，事實上只是一個提供「資料」的角色。

其次，我們不能僅僅根據某一違責行為的嚴重程度，來評定Gabriel先生應當獲得多少損害賠償；相反，我們應當根據被告人的職責範圍來作出有關決定。至於申索人所指稱的錯誤行動，它究竟是否在被告人的職責範圍內，這個需要由申索人（即Gabriel先生）來自行證明。然而，申索人並沒有作出如此證明。

第三，根據該案的證供，Gabriel先生能夠追討到的款項，無法超過將該筆貸款用於發展該財產項目的所得。根據具豐富經驗的測量師所提供的意見，該項目的發展費用，應當在40萬至60萬英鎊之間，這相當於原來貸款金額的兩至三倍，而該財產項目的價值，應當不會（亦不能）因為將該筆貸款用於該財產項目的重新發展而上升。

Lord Sumption進一步評論稱，根據「SAAMCO原則」，原告人可獲得的損害賠償，應當是對該財產項目所作的估計，與其真實價值之間的差額。理由是，該等可追討的損害，不能超過假如有關估計是正確的，貸款人所將蒙受的損害（這一般稱為「SAAMCO上限」），而它的計算，主要是是下列二者的差額：(1) 因被告人的疏忽而提供了錯誤的資料，從而導致蒙受的損失；及(2) 因原告人作出訂立有關交易的決定，從而導致蒙受的損失。

英國最高法院認為，很明顯，BPE不需對Gabriel先生最後決定向Little先生提供貸款，而須對Gabriel先生承擔法律責任。Gabriel先生除了委託BPE為他草擬相關文件外，並無作出其他指示。Mr. Spencer除了知悉Gabriel先生和Little先生曾就一筆為數達20萬英鎊的貸款達成協議，並以一個位於格洛斯特郡的水塔作為抵押外，對於Gabriel先生和Little先生相互之間傳遞了一些甚麼訊息，他個人是毫不知悉（亦沒有需要知悉）。此外，對於該建議重新發展的項目是屬何性質；所涉及的費用是多少；倘若Little先生不獲提供有關貸款，他有何財政能力為該重新發展項目提供資金；該財產項目在其已發展或重新發展的狀況下具有多少價值，等等，Mr. Spencer對此也全是一無所知。

在巧合的情況下，揹負貸款協議載有若干內容，確認Gabriel先生本人意識到該筆貸款將會運用於該重新發展項目之上。然而，即使Gabriel先生的假設正確，他依然會蒙受金錢上的損失，因為即使該筆20萬英鎊的貸款確實被動用，該財產項目的價值亦將不會得到提升。Gabriel先生所蒙受的損失，全不在BPE的職責範圍內，而該律師事務所的職責範圍，只是有限於為其當事人擬訂該份貸款協議及相關抵押文件。事實上，Gabriel先生所蒙受的損失，是由於他自身的錯誤商業判斷所造成，與BPE完全無關。

與香港的關係
Brief Discussion on Choice of Transaction Structures for PRC-related Offshore Bond Offerings

By Chris G. Tang, Registered Foreign Lawyer (New York)  Latham & Watkins
The issuance volume of PRC-related offshore bonds hit a record high of approximately US$103 billion in the year of 2016 and remained strong in the first quarter of 2017. Due to a variety of regulatory restrictions imposed by the PRC government in relation to offshore bond offerings, different types of transaction structures have been developed to comply with such restrictions. Understanding the major differences among the transaction structures is necessary to effectively structure transactions in a manner that best fits different circumstances and needs of issuers.

**Transaction Structures and Factors Affecting Choice of Transaction Structures**

Major transaction structures for PRC-related offshore bond offerings can be largely categorised into four types, namely, (i) issuance by offshore entities with downstream credit enhancement (mainly in the forms of cross-border guarantee ("Cross-border Guarantee") and keepwell and equity interests purchase undertaking (collectively, "Keepwell")) provided by onshore parent companies; (ii) direct issuance by onshore parent companies ("Direct Issuance"); (iii) direct issuance by offshore "red-chip" issuers ("Red-chip Issuance"), and (iv) issuance with standby letter of credit ("SBLC Issuance"). Certain major factors which should be taken into consideration for choice of transaction structure are set out below:

**NDRC Registrations**

Due to its wide jurisdiction, the requirement of registering offshore bond offerings with the National Development and Reform Commission of the PRC ("NDRC") is one of the most critical factors for PRC-related issuers.

**NDRC Notice**

On 14 September 2015, NDRC promulgated Notice on Pushing Forth Administrative Reform for Filing and Registration for Incurrence of Offshore Debt by Enterprises ("NDRC Notice"), which provides that PRC enterprises and any offshore enterprises or branches controlled by PRC enterprises which incur offshore debt with a maturity term of longer than one year shall complete registration with NDRC before incurrence of such debt ("NDRC Pre-registration"), and shall further complete filing with NDRC within 10 working days of each incurrence of offshore debt ("NDRC Post-incurrence Filing", collectively with NDRC Pre-registration, "NDRC Registrations"). Furthermore, according to the interpretation by NDRC, the requirement of NDRC Registrations also applies to "red-chip" issuers which are controlled by PRC nationals.

**Procedure of Application for NDRC Registrations**

Applicants should submit applications for NDRC Pre-registration to NDRC through provincial NDRC branches which supervise such applicants, except for (i) applicants which are supervised by the six local branches to which NDRC has delegated administrative authority of NDRC Registrations and (ii) "red-chip" applicants, which are not supervised by any provincial NDRC branches and therefore can directly submit applications to NDRC. Although NDRC Pre-registration was initially designed as procedural review, NDRC has subsequently implemented more substantive review in relation to NDRC Pre-registration, which usually prolongs the review process and brings about more uncertainty on execution of offshore bonds projects. In addition, NDRC may from time to time impose more stringent review standards on applicants in certain industries in accordance with relevant national industrial policies or guidance. According to NDRC Notice, NDRC will decide whether to accept an application within five working days of receipt of such application, and will issue a registration certificate of offshore bonds with specified quota and validity period within seven working days of acceptance of the application. Nevertheless, due to the prolonged review process, the aforementioned timeframes are usually not strictly followed by NDRC. Therefore, it is advisable for applicants to budget enough time for their applications for NDRC Pre-registration accordingly. Subsequently, after each issuance of offshore bonds, applicants should complete NDRC Post-incurrence Filing, which is generally considered as procedural rather than substantive, within 10 working days.

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1. For the purpose of this article, this excludes Hong Kong Special Administrative Region, Macao Special Administrative Region and Taiwan.
**Impact on Choice of Transaction Structure**

For Direct Issuance structure, NDRC Notice superseded the previous requirement of case-by-case approval, and replaced it with the more relaxed NDRC Registrations. Due to NDRC Registrations, Direct Issuance has become a more accessible transaction structure than before for PRC-related bond offerings and have since been frequently capitalised on by PRC-related issuers.

It is worth noting that, although choice of transaction structures generally has limited impact on NDRC Registrations, NDRC or its local branches may from time to time provide window guidance on choice of transaction structures in the course of their review for NDRC Pre-registrations.

**SAFE Registration**

Offshore bond offerings with Cross-Border Guarantee structure are subject to registration requirement imposed by the State Administration of Foreign Exchange of the PRC (“SAFE”).

**New SAFE Rules**

On 12 May 2014, SAFE promulgated the Provisions on the Administration of Foreign Exchange for Cross-Border Security and the Administration of Foreign Exchange for Cross-Border Security Implementation Guidelines (collectively, “New SAFE Rules”). Under the regime of New SAFE Rules, a PRC parent company can provide guarantees for bonds issued by an offshore entity without any prior approval from SAFE, provided that the PRC guarantor shall have an equity interest in the offshore issuer. After entering into a cross-border guarantee agreement, a PRC guarantor which is a non-bank financial institution or enterprise shall register the cross-border guarantee (“SAFE Registration”) with the local SAFE branch within 15 working days of the date of the guarantee agreement. Although it is generally believed that local SAFE branches will only conduct procedural review for SAFE Registration, it is advisable for PRC guarantors to consult with local SAFE branches prior to entering into cross-border guarantee agreements, as certain local SAFE branches may have limited experience in processing SAFE Registration.

**Impact on Choice of Transaction Structure**

Prior to the introduction of SAFE Registration, PRC guarantors were required to obtain prior approvals from SAFE for Cross-Border Guarantee for offshore bond offerings on a case-by-case basis. SAFE Registration, which only requires registration with the local SAFE branch after entering into a guarantee agreement, renders the Cross-Border Guarantee structure more accessible for PRC-related issuers. Nevertheless, as SAFE Registration does not apply to upstream cross-border guarantees under “red-chip” structure (ie, guarantees provided by PRC subsidiaries to their offshore parent companies), “red-chip” issuers cannot benefit from the easier accessibility of SAFE Registration.

**Credit Ratings**

Since credit ratings have direct impact on the marketability and financing cost of offshore bonds, implications of transaction structures on credit ratings should also be taken into consideration for choice of transaction structures.

For a SBLC issuance, the credit rating of the bonds is generally tied to the credit rating of the commercial bank providing the standby letter of credit, which is usually higher than the credit rating of the issuer or its parent company. For an issuance with Cross-Border Guarantee, a Direct Issuance or a Red-chip Issuance, the credit rating of the bonds is generally tied to the credit rating of the parent company. However, for a bond issuance with Keepwell, due to reasons such as the uncertainty on the effectiveness of the Keepwell structure, the credit rating of the bonds may be one or two notches lower than the credit rating of the parent company, subject to the package of Keepwell covenants.

**Use of Proceeds**

Whilst use of proceeds is a key factor for offshore bond offerings due to various restrictions and window guidance imposed by PRC government which may conflict with the needs of issuers, the government has put forward a trend of liberalisation on this matter.

**SAFE Circular No. 3**

On 26 January 2017, SAFE promulgated Notice on Improving the Check of Authenticity and Compliance to Further Promote Foreign Exchange Control (“SAFE Circular No. 3”), which allows offshore issuers to directly or indirectly repatriate proceeds of offshore bond offerings with Cross-Border Guarantee structure to onshore entities through means such as loans or equity investments (excluding investments in securities).

Prior to the promulgation of SAFE Circular No. 3 and under New SAFE Rules, issuers of offshore bond offerings with Cross-Border Guarantee structure were restricted from repatriating proceeds of offshore bond offerings to onshore entities. On the other hand, as Keepwell is generally not recognised as guarantee under New SAFE Rules, bond offerings with Keepwell structure were not subject to the abovementioned historical restriction on Cross-Border Guarantee. Therefore, prior to the promulgation of SAFE Circular No. 3, Keepwell structure were utilised as an alternative credit enhancement structure for issuers with an intention to transfer proceeds from offshore bond offerings to onshore entities.

**Impact on Choice of Transaction Structure**

SAFE Circular No. 3 largely supersedes the abovementioned restriction on use of proceeds and rendered the Cross-Border Guarantee structure more favourable for PRC-related issuers with an intention to transfer the proceeds to onshore entities.

It is also worth noting that use of proceeds of offshore bond offerings may be subject to window guidance by NDRC and/or SAFE and their local...
branches from time to time. Therefore, it is advisable for PRC-related issuers to consult with NDRC and SAFE or their local branches regarding use of proceeds beforehand, especially when any cross-border transfer of funds is or will be involved in relation to the offshore bonds.

**PRC Taxation**

A variety of PRC-related taxes, such as Enterprise Income Tax (“EIT”), Individual Income Tax (“IIT”) and Value-added Tax (“VAT”), may potentially have an impact on the overall financing cost of offshore bonds.

**EIT and IIT**

Pursuant to EIT Law and IIT Law of the PRC and the relevant implementation regulations, interest and/or premium on bonds paid by PRC residential enterprises to non-PRC residential enterprise or individual bondholders is subject to EIT or IIT. Therefore, for Direct Issuance structure, where the issuers are located within PRC and the bondholders’ interest and/or premium on the bonds paid by the issuers to non-PRC residential enterprise or individual bondholders may be subject to EIT or IIT (including applicable tax treaties). For bond offerings with other transaction structures, if the issuers are located outside of the PRC and are not regarded as PRC residential enterprises due to “de facto management bodies” located in PRC, interests and/or premium on the bonds paid by the issuers to non-PRC residential bondholders will not be subject to EIT or IIT.

**VAT**

On 23 March 2016, the Ministry of Finance and the State Administration of Taxation of the PRC jointly promulgated the Circular of Full Implementation of Business Tax to Value-added Tax Reform, which replaces business tax with VAT in relation to revenue derived from the provision of financial services. Therefore, interests and/or premium on bonds under Direct Issuance structure may be subject to VAT, because the issuers are located within PRC and the bondholders’ purchase of the bonds may be regarded as provision of financial services. For bond offerings with other transaction structures, if the issuers are located outside of the PRC and are not regarded as PRC residential enterprises due to “de facto management bodies” located in PRC, interests and/or premium on the bonds will not be subject to VAT.

**Impact on Choice of Transaction Structure**

It is usually provided in the terms of offshore bonds that, subject to certain exceptions, issuers shall assume PRC-related tax costs on the bonds. Such terms of the bonds may potentially increase the Issuer’s cost of servicing the debt, if any of EIT, IIT and VAT applies. Therefore, Direct Issuance, to which EIT/ IIT and VAT usually apply, may be less favourable for the issuers from a PRC tax perspective. On the other hand, for other types of transaction structures where the issuers are outside PRC, EIT, IIT or VAT may also be incurred for transactions among the issuers and its related parties in relation to use of proceeds and funding for repayment of the bonds, which may in turn increase the issuers’ overall financing costs.

### Conclusion

Issuers should take into consideration major factors such as NDRC Registrations, SAFE Registration, credit rating, use of proceeds and PRC taxation for choice of transaction structure of PRC-related bond offerings. The chart below sets out such factors and the implications of these factors on different transaction structures. As the regulatory restrictions imposed by the PRC government continue to evolve, the implications of such factors may change accordingly, which in turn will affect the decision-making on transaction structure of PRC-related offshore bond offerings.

<table>
<thead>
<tr>
<th></th>
<th>Issuance by an Offshore Subsidiary of PRC Parent Company</th>
<th>Direct Issuance</th>
<th>Red-chip Issuance</th>
<th>SBLC Issuance</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>NDRC Registrations</strong></td>
<td>Required</td>
<td>Required</td>
<td>Required</td>
<td>Required</td>
</tr>
<tr>
<td><strong>SAFE Registration</strong></td>
<td>Required</td>
<td>Not applicable</td>
<td>Not applicable</td>
<td>Not applicable for the issuer</td>
</tr>
<tr>
<td><strong>Credit Rating</strong></td>
<td>Tied to the credit rating of parent company</td>
<td>Potentially 1-2 notches lower than the credit rating of parent company</td>
<td>Tied to the credit rating of parent company</td>
<td>Tied to the credit rating of commercial bank/no need for credit rating of parent company</td>
</tr>
<tr>
<td><strong>Use of Proceeds</strong></td>
<td>Onshore and/or offshore, subject to window guidance</td>
<td>Onshore and/or offshore, subject to window guidance</td>
<td>Onshore and/or offshore, subject to window guidance</td>
<td>Onshore and/or offshore, subject to window guidance</td>
</tr>
<tr>
<td><strong>PRC Taxation</strong></td>
<td>EIT/IIT and VAT will not apply, if the issuer is not a PRC residential enterprise</td>
<td>EIT/IIT and VAT will not apply, if the issuer is not a PRC residential enterprise</td>
<td>EIT/IIT and VAT will apply</td>
<td>EIT/IIT and VAT will not apply, if the issuer is not a PRC residential enterprise</td>
</tr>
</tbody>
</table>
關於中國相關的離岸債券發行
交易結構選擇的簡要討論

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瑞生國際律師事務所

與中國相關的離岸債券的發行量在2016年全年達到約1,030億美元（為歷史新高），並在2017年第一季度繼續保持強勁勢頭。由於中國政府施加的與離岸債券發行相關的各類監管限制，不同類型的交易結構被發展並用以遵守該等限制。為了有效的設置交易結構以最好的適應發行人的不同情勢及需要，有必要理解交易結構之間的主要區別。

交易結構和影響交易結構選擇的因素

中國相關的離岸債券發行的主要交易結構大體上可以被歸入四類，即：(i)由離岸主體發行並由在岸母公司提供信用增級（主要以跨境擔保（「跨境擔保」）和維好及股權購買承諾（合稱，「維好」）的形式），(ii)由在岸母公司直接發行（「直接發行」），(iii)由離岸「紅籌」發行人直接發行（「紅籌發行」），及(iv)備用信用證支持的發行（「備用信用證發行」）。為交易結構選擇而應當予以考慮的某些主要因素如下：

國家發改委備案登記

由於其廣泛的管轄範圍，就離岸債券發行向中國國家發展和改革委員會（「國家發改委」）進行備案登記的要求對於中國相關的發行人而言是最緊要的因素之一。

國家發改委備案登記申請的程序

申請人應當通過監管該申請人的省級發改委向國家發改委提交關於國家發改委備案登記的申請，但(i)涉及地方政府申請以及(ii)「紅籌」申請人（不適用於由地方發改委監管的申請人）除外。
儘管國家發改委事前登記最初被設計為程序審核，國家發改委隨後就國家發改委事前登記適用了更為實質性的審核，從而延長了審核過程並對於離岸債券項目的執行帶來了更多的不確定性。並且，國家發改委可能不時根據國家產業政策或指引就特定行業內的申請人設定期更為嚴格的審核標準。根據國家發改委通知，國家發改委在收到申請之後的五個工作日內決定是否受理該申請，並自受理之日起七個工作日內出具一份標明額度及有效期的外債備案登記證明。然而，由於審核過程被延長，前述時間表通常並沒有被國家發改委嚴格遵循。因而，建議申請人為其國家發改委事前登記的申請相應預留足夠的時間。其後，在每次離岸債券發行後的10個工作日內，發行人應當完成國家發改委事後報送。若國家發改委事後報送，則發行人應當再向國家發改委事前登記機構報送。(該報送一般被視為程序性而非實質性)

**對於交易結構選擇的影響**

對於直接發行結構，國家發改委通知廢除了此前個案批准的要求，而以更為寬鬆的國家發改委備案登記取而代之。由於國家發改委備案登記的緣故，直接發行對於中國相關的債券發行而言成為了一種較之從前更為可行的交易結構，並自此被中國相關的發行人所經常使用。

值得注意的是，雖然交易結構的選擇通常對於國家發改委備案登記的影響有限，國家發改委及其地方分支機構可能在其審核國家發改委事前登記的過程中不時就交易結構的選擇提供窗口指導。

### 外管局備案登記

採用跨境擔保結構的離岸債券發行受限於中國國家外匯管理局(「國家外管局」)所引入的備案登記的要求。

#### 國家外管局新規

2014年5月12日，國家外管局發佈了《關於進一步推進外匯管理改革完善真實合規性審核的通知》(「國家外管局新規」)，允許離岸發行人將採用跨境擔保的離岸債券發行的募集資金通過放貸、股權投資(不包括證券投資)等方式直接或間接調回境內主體。

在外管局三號文發佈之前及按照外管局新規，採用跨境擔保的離岸債券發行的發行人不得將離岸債券發行的募集資金調回境內主體。另一方面，由於維好通常不被認定為外管局新規項下的擔保，採用維好結案的離岸債券發行不受限於上述歷史上海外傍的限制。因而，在外管局三號文發佈前，維好結構作為一種替代的信用增級結構而被有意將離岸債券發行的募集資金調回境內主體的發行人所使用。

#### 信用評級

鑑於信用評級對於離岸債券的行銷能力及融資成本具有直接的影響，交易結構對於信用評級的影響應當在選擇交易結構時予以考慮。

對於備用信用證發行，債券的信用評級通常對應於提供備用信用證的商業銀行的信用評級，而該評級通常高於發行人或其母公司的信用評級。對於採用跨境擔保的發行，直接發行或紅籌發行，債券的信用評級通常對應於母公司的信用評級。然而，對於維好的發行，由於針對維好結構有效性的不確定等因素，受限於維好的條款，債券的信用評級可能會比母公司的信用評級低一到兩個子級。

### 募集資金用途

由於中國政府引入的各類可能與發行人所需資金用途所衝突的限制及窗口指導，募集資金用途對於離岸債券發行而言是一個關鍵因素；而政府就該事項也已推動鬆綁的趨勢。

### 外管局三號文

2017年1月26日，國家外管局發佈了《關於進一步推進外匯管理改革完善真實合規性審核的通知》(「國家外管局三號文」)，允許離岸發行人將採用跨境擔保的離岸債券發行的募集資金通過放貸、股權投資(不包括證券投資)等方式直接或間接調回境內主體。

在外管局三號文發佈之前及按照外管局新規，採用跨境擔保的離岸債券發行的發行人不得將離岸債券發行的募集資金調回境內主體。另一方面，由於維好通常不被認定為外管局新規項下的擔保，採用維好結案的離岸債券發行不受限於上述歷史上海外傍的限制。因而，在外管局三號文發佈前，維好結構作為一種替代的信用增級結構而被有意將離岸債券發行的募集資金調回境內主體的發行人所使用。

### 外管局備案登記

### 信用評級

### 募集資金用途

### 中國稅務

各類中國相關的稅務，例如企業所得稅、個人所得稅及增值稅，可能對於離岸債券的總融資成本構成潛在影響。

#### 企業所得稅及個人所得稅

根據中國的企業所得稅法及個人所得稅法及相關實施條例，中國居民企業向非
中國居民企業或個人的債券持有人支付的債券利息和/或額外費用受限於企業所得稅或個人所得稅。因而，針對直接發行結構，由於發行人位於中國境外且不因為位於中國的「實際管理機構」而被認定為中國居民企業，則發行人向非中國居民企業或個人的債券持有人支付的債券利息和/或額外費用將不會受限於企業所得稅或個人所得稅。

對於交易結構選擇的影響
在離岸債券的條款中通常規定，受限於某些例外情形，發行人應當承擔債券之上的中國相關的稅務成本。如果企業所得稅、個人所得稅和增值稅中存在的任何一種適用，該等債券的條款可能潛在增加發行人償付債務的成本。因而，由於企業所得稅、個人所得稅和增值稅通常適用，直接發行就中國稅務的角度而言可能對於發行人較為不利。另一方面，針對發行人不在中國境內的其他類型的交易結構，企業所得稅、個人所得稅或增值稅也可能在發行人及其他關連方之間與募集資金使用及債券償付資金來源相關的交易中產生，且增加發行人的整體融資成本。

增值稅
2016年3月23日，中國財政部及國家稅務總局聯合發佈了《關於全面推開營業稅改徵增值稅試點的通知》，針對提供金融服務所產生的收入，以增值稅取代了營業稅。因而，由於發行人位於中國境外且債券持有人購買債券可能被視為提供金融服務，直接發行結構下的債券利息和/或額外費用可能受限於增值稅。針對其他的交易結構，如果發行人位於中國境外且不因為位於中國的「實際管理機構」而被認定為中國居民企業，債券利息和/或額外費用將不會受限於增值稅。

結論
就中國相關的債券發行的交易結構的選擇，發行人需要對例如國家發改委備案登記、外管局備案登記、信用評級、募集資金用途及中國稅務的主要因素予以考慮。以下表格列出了該等因素以及這些因素對不同交易結構的影響。由於中國政府引入的監管限制在持續變更，該等因素的影響可能相應變化，轉而影響針對中國相關的離岸債券發行的交易結構的決策。

<table>
<thead>
<tr>
<th></th>
<th>中國母公司的離岸子公司的發行</th>
<th>直接發行</th>
<th>紅籌發行</th>
<th>備用信用證發行</th>
</tr>
</thead>
<tbody>
<tr>
<td>國家發改委備案登記</td>
<td>離岸子公司的發行</td>
<td>必須</td>
<td>必須</td>
<td>必須</td>
</tr>
<tr>
<td>外管局備案登記</td>
<td>恆生</td>
<td>不適用</td>
<td>不適用</td>
<td>不適用於發行人</td>
</tr>
<tr>
<td>信用評級</td>
<td>對應於母公司評級</td>
<td>可能高於母公司評級低到兩個子級</td>
<td>對應於母公司評級</td>
<td>對應於商業銀行評級/無需母公司評級</td>
</tr>
<tr>
<td>募集資金用途</td>
<td>境內及/或離岸，受限於窗口指導</td>
<td>境內及/或離岸，受限於窗口指導</td>
<td>境內及/或離岸，受限於窗口指導</td>
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<td>國債務</td>
<td>如發行人不是中國居民企業，則企業所得稅、個人所得稅和增值稅將不適用</td>
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</tr>
</tbody>
</table>
COMMERCIAL DISPUTES

Third Party Funding Update

At the time of writing, the Irish Supreme Court judgment in Persona Digital Telephony & Anor v The Minister for Public Enterprise & Ors is awaited, the final appeal hearing having taken place on 3–4 April 2017. That judgment will examine whether the plaintiffs would contravene Irish laws of maintenance and champerty by entering into a litigation funding arrangement with a commercial litigation funder (see Industry Insights for March 2017).

Similar prohibitions (being torts and offences) survive in Hong Kong, save for those limited exceptions based on principles such as access to justice or having a legitimate interest in the litigation. Save for “pure funders” (for example, no financial motive) these exceptions in Hong Kong are best understood in an insolvency context and are subject to scrutiny by the courts.

In the meantime, related developments in Hong Kong are focused on third party funding for arbitrations, as the Arbitration and Mediation Legislation (Third Party Funding) (Amendment) Bill 2016 makes its way through the Legislative Council (“Legco”). The Bill seeks to amend the Arbitration Ordinance and the Mediation Ordinance to confirm that third party funding of arbitration and mediation is not prohibited by the common law doctrines of maintenance and champerty. The Bill is due a second reading in Legco; thought to be sometime in May 2017. Interestingly, during a Bills Committee meeting there was a proposal to delete s. 98G(2) of the Bill, which purports to exclude the provision of arbitration funding by any person practising law or providing legal services in Hong Kong or abroad. The proposal (to delete s. 98G(2)) appears to have some cross-party support in Legco, which may have taken the Department of Justice somewhat by surprise at the time.

Related issues to look out for include: (i) the relevance of s. 64 of the Legal Practitioners Ordinance and the interaction of Principle 4.17 of the Solicitors’ Guide to Professional Conduct (“Contingency fee arrangements”); and (ii) the draft “Third Party Funding of Arbitration Code of Practice”.

Not to be lost in all of this is the fact that the Bill focuses on third party funding for arbitration; arbitration being a key sector in Hong Kong’s status as an international disputes resolution hub. The Bill does not alter the general common law doctrines of maintenance and champerty with respect to litigation before a Hong Kong court. Indeed, given the local circumstances of Hong Kong, solicitors, barristers and foreign lawyers would do well not to confuse the proposals for third party funding of arbitration with the position as regards litigation, while noting the words of the Court of Appeal in HKSAR v Mui Kwok Keung [2014] 1 HKLRD 116 (para. 81):

“However, any member of either profession who enters into the kind of arrangements with which we have been concerned in this case must realise that he or she will, if convicted of a similar offence, inevitably go to prison for a substantial period of time, with the inevitable consequences on their professional careers.”

- Mike Allan, RPC

Also see para. 83 of Mui Kwok Keung and Secretary for Justice v Ip Hon Ming, CAAR 3/2014.
《仲裁條例》及《調解條例》，確保第三方資助仲裁及第三方資助調解，均不受助訟及包攬訟訟的普通法法則禁止。

現時，假如第三方出資協議涉及在並無訟明禁止助訟及包攬訟訟的公共政策的司法管轄區進行司法或仲裁程序，香港法庭不大可能以助訟及包攬訟訟為理由，將該協議推翻。然而，假如涉及在香港進行的仲裁，法庭的立場顯然不太清晰；因此制定《草案》。

《草案》即將在立法會進行二讀；料想會是2017年5月某個時候。有趣的是，草案委員會開會期間，有人建議要刪除《草案》第98G(2)條，看來是要禁止在香港或海外從事法律執業或提供法律服務的人為仲裁提供資助。建議(刪除第98G(2)條)似乎在立法會得到部分跨黨派人士支持，律政司當時可能對此感到有點意外。

有待思忖的相關問題包括：(i)《法律執業者條例》第64條的相關性及《香港事務律師專業操守指引》原則4.17（「按判決金額收費安排」）的相互作用；及(ii)《第三方資助仲裁實務守則》草擬稿。

可別忘記，《草案》的重點是第三方資助仲裁；仲裁是香港作為國際爭議解決中心的主要領域。就香港法庭席前的訴訟而言，《草案》沒有改變助訟及包攬訟訟的普通法整體法則。事實上，考慮到香港本地的情況，同時細讀上訴法庭在HKSAR v Mui Kwok Keung [2014] 1 HKLRD 116(第81段)：

「然而，任何一方的專業人員在訂立吾等在本案關注的那一類安排時，一定知道，他或她如果被裁定類似的罪行罪名成立，必然要面對長時間監禁，也就無可避免地同時斷送自己的專業生涯。」(非官方翻譯)

可以知道事務律師、大律師及外國律師最好不要把第三方資助仲裁建議，與法庭關於訴訟出資安排的立場混為一談。

- Mike Allan, RPC

* 亦見Mui Kwok Keung案第83段及Secretary for Justice v la Hon Ming案(CAAR 3/2014)。

### GC AGENDA

#### NPC Enacts General Provisions of Civil Code

On 15 March 2017, the National People’s Congress ("NPC") enacted the General Provisions of the Civil Code of the People’s Republic of China, which will take effect 1 October 2017.

The general provisions are comprised of existing civil norms and legal rules based on, and developed from, the General Principles of the Civil Law of the People’s Republic of China 1986. The civil code will be expanded in future to include more specific chapters governing property rights, contracts, tort liability, family law and inheritance.

Top highlights of the new or revised civil norms in this final version include:

- Providing civil capacity to protect the property and personal rights of a foetus, provided the foetus survives the pregnancy.
- Obligating adult children to care for, support and protect their parents, even where the parents have full civil capacity.
- Lowering the age for the limited civil capacity of minors to eight years old from ten years old.
- Clarifying the scope of non-profit legal persons to include foundations and social service organisations.
- Prohibiting any person from collecting, utilising, processing, transmitting personal data illegally or supplying, making public or selling personal data illegally.
- Providing increased protection for virtual property rights, including data information and networks.
- Increasing the statute of limitations to three years from two years.

### Market Reaction

**Paul McKenzie, Partner, Morrison & Foerster, Beijing and Shanghai**

“..."The General Provisions represent the first step in putting in place a comprehensive national civil code, which will ultimately supplant the patchwork of laws and regulations that currently comprise China’s civil law system. It is an important milestone in the development of China’s legal system. However, likely of greater concrete relevance to international businesses will be the legislative work still to come in completing the full civil code, which official commentary suggests will include chapters addressing matters such as property rights, contracts, infringement of rights, marriage and family, and inheritance. An aggressive legislative schedule has been set, with the various individual chapters to be submitted to the standing committee of the NPC for review and approval by 2018 and the full civil code to be presented to the NPC itself for approval by 2020.”

### Action Items

Counsel for companies that might be involved in litigation in China should note the extension of statute of limitations for protecting civil rights to three years from two years. Counsel will want to watch for circulation of draft chapters that address specific areas of Chinese law, such as property rights and contracts that may affect clients in China, particularly insofar as these developments impact the rights of customers, employees and other interested parties.

- Practical Law China
法律顧問備忘錄

全國人大制定民法總則

2017年3月15日，全國人民代表大會（「全國人大」）制定《中華人民共和國民法總則》（「《總則》」），將於2017年10月1日生效。

《總則》包含現有根據1986年《中華人民共和國民法通則》發展而成的民事規範和法規。民法在未來日子將會擴大，加入更多具體規管財產權、合同、侵權責任、家事法及財產繼承規定的篇章。

這份最終制定的民法載有新的或經修訂的民事規範，尤其重要的有以下幾項：

- 賦予胎兒民事權利能力，保護胎兒的產權及個人權利，不過胎兒必須在出生時存活。
- 成年子女對父母負有贍養、扶助和保護的義務，即使父母完全具有民事行為能力亦然。
- 限制民事行為能力人的年齡下限由十周歲降到八周歲。
- 釐清非營利法人包括基金會和社會服務機構在內。
- 禁止任何人士非法收集、使用、加工、傳輸他人個人訊息，或者非法提供、公開或買賣他人個人訊息。
- 加強保護虛擬財產權利，包括數據資料和網絡。
- 把現行兩年的訴訟時效期間延長為三年。

市場回應

麥保羅合夥人，美富律師事務所北京及上海辦事處

「《總則》代表中國已就落實涵蓋全面的國家民事法行出了第一步，最終會取代目前中國民法法系中東拼西湊的法律法規。《總則》的制定是中國法律體制發展的重要里程碑，將來對國際商務具有更實質相關性的，相當可能是完成整套民事法的過程中接踵而至的立法工作，官方社論認為這包括制訂更多篇章，以應對有關財產權、合同、權利的侵犯、婚姻及家庭等問題。當局相當進取，已經制定立法時間表，計劃在2018年之前，提交多份獨立篇章供全國人大常務委員會審評審批，並在2020年之前，提交民法全文供全國人大審批。」

跟進事項

如果公司有可能在中國被捲入訴訟案，公司的法律顧問應當留意，保護民事權利法定訴訟時效期間將由兩年延長為三年。法律顧問會希望一邊觀察，一邊等待當局傳閱用作對應中國法例中有可能影響國內客戶的特定領域（例如財產權和合同）的篇章草案，只要有關領域的發展影響到顧客、僱員及其他利益方的權利，更會如此。

- Practical Law China

GC AGENDA

SPC Publishes Mainland-Hong Kong Arrangement on Evidence Taking

On 28 February 2017, the SPC published the Arrangement between the Courts in the Mainland and the Hong Kong Special Administrative Region on Mutually Entrusted Taking of Evidence in Civil and Commercial Matters, which took effect from 1 March 2017.

The arrangement represents the latest in a series of reciprocal judicial arrangements between the Mainland and Hong Kong, and permits mutually entrusted taking of specified forms of evidence in civil and commercial matters between both sides with a letter of request ("LoR") addressed from one side to the other.

An entrusted taking request must be raised through designated liaison authorities of both sides, which means:

- Higher People’s Courts for the Mainland.
- The Administrative Wing of the Chief Secretary for Administration for Hong Kong.

Under the arrangement, evidence may only be used for the particular case specified in the LoR.

With the consent of a requested party, the judicial officials of a requesting party, as well as the parties and their legal representatives, may attend the taking of evidence.

The taking of evidence must be completed as far as practicable within six months from the date when the requested party receives the LoR.

Market Reaction

Robert Pe, Partner, Gibson Dunn, Hong Kong

“Taking evidence in Mainland China for use in proceedings outside the Mainland has historically been fraught with difficulties. The conduct of depositions for use in overseas proceedings is prohibited. Much publicised and broadly drafted state secrets laws mean it is risky to take documents out of the Mainland. This new arrangement is therefore to be welcomed and further strengthens Hong Kong’s position as the natural venue for the resolution of commercial disputes arising from investments in the Mainland.”

Action Items

General Counsel for clients involved in disputes with Mainland (or Hong Kong) counterparts will want to be aware of the reciprocal arrangement generally and work with trial counsel to consider any tactical advantages presented by the arrangement.

- Practical Law China
**“BELT AND ROAD”**

**Hong Kong as a Benchmark for Privileges and Immunities**

Business folk about to travel the "Belt and Road" might do well to compare certain privileges and immunities available in civil proceedings in Hong Kong with those available in a variety of other jurisdictions.

While civil litigation may not be at the forefront of the average business traveller's mind, it is worth noting that some jurisdictions have quite different adversarial or inquisitorial characteristics. For example, the state of certain privileges and immunities in some jurisdictions is in a terrible mess*. By comparison, Hong Kong adopts a generally traditional and, importantly, more consistent approach; therefore, making it an attractive and a leading jurisdiction for civil and commercial disputes. Features of Hong Kong’s approach are outlined below.

**Legal Advice Privilege**

Known as "solicitor client" or "attorney client" privilege in some parts of the world. The courts in Hong Kong give this privilege a wide meaning, as befits a fundamental right. A confidential document or communication is protected from inspection by another party where it is created for the sole or dominant purpose of obtaining legal advice. "Legal advice" has a wide meaning. The advice must be given by a qualified lawyer. Those English cases that adopt a restrictive approach to the meaning of "client" in a corporate context are not good law in Hong Kong**.

**Litigation Privilege**

This privilege protects evidence collected for the sole or dominant purpose of adversarial proceedings. It can overlap with legal advice privilege but the two privileges are different and it is important not to confuse them. Both privileges are branches of what is called "legal professional privilege". Traditionally in Hong Kong, litigation privilege includes a wider range of persons but a narrower range of documents compared with legal advice privilege. A recent trend has been for the courts in Hong Kong to scrutinise claims to litigation privilege more carefully (see Industry Insights, November, 2015 “A Tale of Two Privileges”).

**Privilege Against Self-Incrimination**

Privilege Against Self-Incrimination ("PASI") (which applies in civil proceedings in Hong Kong) has been acknowledged to exist in two Court of Appeal judgments in 2016 and is also a creature of statute. There are some practical problems with claiming the privilege. However, the state of PASI in Hong Kong is in better shape than (for example) in England.

**Without Prejudice Privilege**

This rule of evidence (also referred to as "WPP" or "WP") is in rude health and goes from strength to strength as Hong Kong develops its mediation and disputes resolution capabilities. The privilege goes to the heart of the confidentiality of communications made in a genuine attempt at settlement. The confidentiality of "mediation communications" also has a statutory footing (Mediation Ordinance (Cap. 620)), although (for now) it may be a bit of a stretch to say that there is a wider common law concept of "Mediation Privilege" in Hong Kong. (Aside: WPP has nothing to do with WhatsApp ("WAPP"), although (for now) WAPP appears to be a relatively secure means of personal communication while on the move).

**Advocate’s Immunity**

An advocate's limited immunity from suit exists in Hong Kong, although is likely to feature in a major appeal case one day. When that day comes, the smart money is probably on the immunity surviving (although, perhaps, in a more restricted manner similar to the jurisprudence of the Australian High Court, as opposed to that of, for example, the UK Supreme Court).

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* - Practical Law China

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www.hk-lawyer.org
Expert Witness Immunity

The working assumption and convention is that this immunity exists in Hong Kong and any change to the position should be a matter for legislation.

Take-Away Points

Business folk should travel light and consider taking their lawyer with them. They should also consider whether they will be afforded similar privileges (not to mention hospitality) as they would in Hong Kong.

- Warren Ganesh, RPC

For example, see Charles Hollander QC on "Documentary Evidence in Hong Kong", Ch. 19.001 (fn 1), referring to the sorry state of the privilege against self-incrimination in England.

At the time, it was hoped that these English cases would be confined to history. However, it looks increasingly likely that it will take a well-resourced party to challenge these cases on an appeal to the UK Supreme Court. Until then, the state of legal advice privilege for corporates under English law is in something of a mess (and lags the development of fundamental rights for corporates).

**「一帶一路」

香港作為特權／保密權和豁免權的指標

願意走上「一帶一路」的生意人也許應該考慮比較一下民事法律程序某些特權／保密權和豁免權，看看在香港所得到的與在許許多多其他司法管轄區所得到的可有異同。

雖然民事訴訟可能不是一般商務客旅心中在意的事，但是值得留意的是，有些司法管轄區的對訴式或偵訊式訴訟的特點是大有分別的。譬如說，有些司法管轄區的某些特權／保密權及豁免權完全是一塌糊塗。相比之下，香港一般採用的是傳統的方法，也是更為一致的方法(這點是非常重要的)；因此，在民商爭議方面，香港是具有吸引力並重要的司法管轄區。下文概括香港所採用方法的特點。

法律諮詢保密權

全球有些地區稱之為「律師－當事人」或「代辯人－當事人」保密權。香港法庭賦予這種保密權廣泛的涵義，使之適合於任何一種基本權利。機密文件或通訊是受到保護的，如果文件或通訊只是或主要為了獲得法律意見而產生，另一方就不能查閱該等文件或通訊。「法律意見」涵義廣泛。獲得的法律意見一定是法律師提供的意見。在那些涉及公司法團的英美案件中，法庭採用限制性方式給「當事人」下定義，那些案件在香港不是有效的法律。

訴訟保密權

這種保密權保護那些只是或主要為了對訴式法律程序而蒐集的證據。訴訟保密權與法律諮詢保密權可能有重疊的時候，不過，兩種保密權是有所分別的，萬不可混淆。兩種都是「法律專業保密權」。傳統上，香港的訴訟保密權比較靈活，但會根據個案審慎考慮訴訟保密權的聲稱(見2015年11月《業界透視》「兩種保密權」)。

免使自己入罪的特權

一直以來，免使自己入罪的特權(在香港適用於民事法律程序)被公認為存在於2016年兩宗上訴法庭判決之中，而且是法規的產物。提出特權有一些現實的問題。但是免使自己入罪的特權在香港的情況比較(譬如說)在英國的更好。

無損權利特權

這項證據規則非常健康，隨著香港發展其調解及解決爭議的能力，更是愈發重要。無損權利特權適用於在誠意試圖和解時的通訊保密的核心。「調解通訊」的保密具有法定效力(《調解條例》(第620章)), 不過(現時來說)「調解保密權」在香港有更廣泛的普通法概念的說法，則可能有點牽強。現時來說(現時來說)似乎是一種相對安全的通訊方式，但無損權利特權與WhatsApp並無任何關係。

代訟人的豁免權

在香港，代訟人只在有限情況下獲豁免被起訴，不過這種豁免權相當可能有一天會在重大上訴案中起重要作用。當案日臨到時，醒目的人大有可能認為豁免權仍然存留下去(當然那時可能與澳洲高等法院而不是(譬如說)英國最高法院的判例相似，豁免權受到更大的限制)。

專家證人的豁免權

現時的假定及傳統看法是，這項豁免權是僅存於香港，豁免權的任何改動均應交由立法機關審議。

筆者後話

生意人應該輕裝上路並考慮與律師同行。他們亦應仔細想想，自己「一路」上會否享受到類似在香港享受到的特權／保密權(更不必說會否受到款待)。

- 莊偉倫，RPC

\* 例如，參閱Documentary Evidence in Hong Kong, 御用大律師Charles Hollander在第19章(附註1)提到英國的免使自己入罪的特權，情況堪憂。

\** 那時，這些英國案例有望局限於歷史框架之內。但現在看來，越來越可能當有案件上訴至英國最高法院的時候，這些案例就會是資源充裕的一方所要質疑的。此前，在英國法例下，適用於公司的法律諮詢保密權可以說是一塌糊塗的(並且公司適用的基本權利的發展落於人後)。
Chinese Outbound Real Estate Investment: More to Come

China’s total overseas investment in commercial real estate has been increasing – there was a 49 percent increase in 2016 compared to 2015. This article explores whether we can expect this increase to continue.

2016 was the year in which China officially overtook the US to become the largest cross-border real estate investor. In 2017, we see values and volumes continue to grow, while Chinese buyers continue to become more discerning, with even the smaller players making increasingly sophisticated and ambitious acquisitions.

We will continue to see significant outbound investment in the medium to long term, but this may slow in the short term as deal fluidity is affected by China’s restrictions on capital outflows.

Despite the recent tightening, the prospects for outbound investment remain positive. Last year the value of inter-Asia deals increased from US$51.7 billion in 2015 to US$69.3 billion, spurred by the rising middle class in China, India and Indonesia and, despite the current political headwinds, the ever increasing internationalisation of capital. Growth is extending beyond popular destinations such as Hong Kong to “second tier” markets in the region.

Outside of Asia, the US, UK and Germany were important overseas destinations for Chinese investors last year. Instability in the US and European markets, particularly now that the US has triggered Art. 50, could create favourable conditions for external investors with higher risk tolerances pursuing higher yields. For now, those investors appear to be gaining confidence about UK fundamentals, the precursor to deploying more capital for UK acquisitions.

In the US, questions remain about what to expect from President Trump’s administration, with foreign investors particularly focused on CFIUS (The Committee on Foreign Investment in the United States). The Committee appears focused on inbound Chinese transactions and it is unlikely that President Trump’s administration will alter that focus. High profile cases such as Anbang Insurance’s US$1.95 billion acquisition of Waldorf Astoria demonstrate that the property sector is rife with potential CFIUS issues. CFIUS’s applicability is not always clear and when deals are reviewed by CFIUS there is no requirement to publish CFIUS’s findings, posing a degree of uncertainty for investors looking at the US market (or, at least, for those investors that have not factored in a pre-acquisition CFIUS filing and review as part of their deal strategy).

China’s tightening of controls on Chinese companies acquiring overseas assets and its rules on capital outflows are also having an impact. The somewhat opaque approval process adds potential uncertainty to the Chinese investor’s ability to expatriate the capital necessary to close and may lead some sellers to look to alternative buyers who may have a greater ability to secure such funds.

That said, the Chinese government is still very committed to allowing Chinese companies to go global and to diversify their holdings. While there are concerns about Chinese outbound capital controls, we still expect deals to go through – but in the current climate there might not be as many high profile “trophy” deals as before.

- David Blumenfeld, Partner, and Paul Guan, Partner, Paul Hastings
正在觀望美國市場的投資者是個未知之數（至低限度，對於那些沒有以收購前提交CFIUS存檔並審查作為因素計入的投資者會是這樣）。

中國收緊對中資公司收購海外資產的控制並加強資本流出的規定，都會帶來影響。算不上透明的審批過程為中國投資者增添潛在變數，以致不能確定他們輸出必要資金達成交易的能力，並有可能導致有賣家物色其他可能更有能力得到資金的買家。

不過，中國政府仍然竭盡全力，推動中資公司走向世界，鼓勵多元化投資組合。正當中國境外資本控制受到關注之際，我們仍然期望投資交易暢通無阻——但是在目前的氣候中，高調完成的交易“佳績”(trophy)可能不及以前那麼多。

- David Blumenfeld 合夥人及管榮合夥人，普衡律師事務所

PROFESSION

Admission of Overseas Counsel (2017): Looking A Tad Rosier?

As previously noted (Industry Insights, December 2016), overall 2016 was a tougher year for overseas applicants (English QCs) looking to obtain ad hoc admission to the Hong Kong Bar, pursuant to s. 27(4) of the Legal Practitioners Ordinance. While statistics for 2017 are too early to collate, the first half of the year appears to have got off to a better start judged by reported cases (at the time of writing).

First, in re Girolami QC an application for ad hoc admission was approved by the court with respect to high profile constitutional proceedings headed for the CFA (HCMP 316/2017, 1 March 2017); the application having not been opposed by the local bar or the Secretary for Justice.

Second, in re Lord Pannick QC an application for ad hoc admission was approved by the court with respect to high profile constitutional proceedings headed for the CFA (HCMP 316/2017, 1 March 2017); the application having not been opposed by the local bar or the Secretary for Justice.

Third, in re Rose QC the court allowed the ad hoc admission of two leading QCs to represent an appellant and the Director of Immigration on an appeal to the Court of Appeal (HCMP Nos. 350 and 415/2017, 5 April 2017, and CACV 117/2016). At issue in the appeal is the lawfulness of the Director’s policy in refusing to grant “dependency visas” to same-sex couples and (among other things) the meaning of “spouse”. The fact that the case is likely to end-up in the CFA was an important factor in allowing the applications. That both applications were approved also represents a so-called "equality of arms".

While the public interest is the guiding principle in deciding applications for ad hoc admission, in re Rose QC the court suggests that the determination of whether a matter is unusually difficult or complex, such as to justify the admission of overseas counsel, "is a matter of feel and judgment" (paras. 19 and 38 of the judgment).

Although the jurisprudence surrounding the admission of overseas counsel has evolved over the last two decades, in re Rose QC one detects a more flexible approach. There is an interesting passage in the judgment (at para. 35):

"It is not invariably the case that overseas counsel are admitted to lead local Senior Counsel and junior counsel. There is ample precedent for overseas counsel to be admitted to lead local junior counsel without a local silk also being involved. [The appellant] is legally aided, and her solicitors formed the view that it would not be necessary or justified to engage both overseas Queen’s Counsel and local Senior Counsel. There is nothing improper about this."

Prospective applicants for ad hoc admission and their legal representatives would do well to stay on top of developments, keep calm and carry on in a timely manner (while having some protection against potential applications by the local bar for adverse costs orders).

- David Smyth, RPC
第一宗，在關於 Girolami QC 中，御用大律師 Girolami 提出申請，要求法院以專案性質認許他為大律師，結果申請獲批 (2017年1月23日HCMP 3657/2016)。是項申請是就複雜的商業法律程序提出，目的是要出席在終審法院上訴委員會席前進行的上訴許可聆訊(但上訴委員會後來拒絕批給準上訴人上訴許可)。

第二宗，在關於 Lord Pannick QC 中，御用大律師 Lord Pannick 就一宗廣受關注並即將在終審法院審理的憲制訴訟提出申請，要求法院以專案性質認許他為大律師，結果申請獲批(2017年3月1日HCMP 316/2017);本地大律師或律政司司長都沒有反對是項申請。

第三宗，在關於 Rose QC 中，法院准許以專案性質認許兩名出色的御用大律師，讓他們在一宗上訴法庭上訴案中代表上訴人及入境事務處處長(2017年4月5日HCMP 350及415/2017,以及CACV 117/2016)。上訴爭議的是，處長拒絕批給同性伴侶「受養人簽證」及(其中包括)給「配偶」下定義所用原則的合法性。該案大有可能在終審法院告終是批准申請時考慮的重要因素。兩項申請同時獲批，亦體現了所謂的「在裝備上平等」(equality of arms)。

雖然公眾利益是就專案認許作決定時的指導原則，但是在關於 Rose QC中，法院認為，要決定某件事是否異常困難或複雜，例如為了證明認許海外大律師是有理可據的，「是一個情理兼備的決定」(is a matter of feel and judgment)(判決書第19及38段)。

過去二十年，雖然環繞認許海外大律師一事的法理逐步成形，但是在關於 Rose QC中，法院認為，要決定某件事是否異常困難或複雜，例如為了證明認許海外大律師是有理可據的，「是一個情理兼備的決定」(is a matter of feel and judgment)(判決書第19及38段)。

施德偉，RPC

REGULATORY

A Questioning Mind: Standards for Negligence and Recklessness in Greencool

The Market Misconduct Tribunal (“MMT”) recently disagreed with the Securities and Futures Commission, holding that an executive director and a number of non-executive directors did not commit the market misconduct of dissemination of false or misleading information.

In its report, issued on 29 December 2016, the MMT came to different conclusions for each Specified Person, with its findings of culpability for negligence or recklessness not necessarily dependent upon actual knowledge of the fraud in each case.

Background

The allegations of culpability were based on accounting fraud over the course of the financial years 2000–2004 that took place within subsidiaries of Greencool Technology Holdings Limited (“Greencool”). Greencool was delisted from the Growth Enterprise Market (“GEM”) of the Stock Exchange of Hong Kong in 2007.

The Individual Findings

The MMT found that the executive director who did not have actual knowledge, Mr. Chen, had failed to act as a reasonably diligent director would have acted and failed to act as a person of his experience but that his negligence did not constitute a ground of culpability.

In contrast, the MMT found the Group Financial Controller, Mr. Mok, who also did not have actual knowledge of the fraud, guilty of market misconduct – despite not being a director. As the most senior financial officer in the Greencool Group and the Group Qualified Accountant and Company Secretary, Mr. Mok was found to be negligent as to whether the accounts and final results of the Greencool Group were false or misleading.

The MMT reiterated that executive and non-executive directors have the same responsibility in law as to matters important to the company. The MMT found that Mr. Mok’s role as the Group Financial Controller was to supervise the subsidiaries. Carried out properly, he may have picked up indications that all was not as it seemed to be, although it cannot be said that the fraud would have been uncovered.

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the management of the company’s business but in this case were satisfied that the non-executive directors were not culpable, as they had exercised reasonable diligence and were unable to unearth information undermining the integrity of the Greencool Group’s accounts.

Take-Away Points

This report is a useful reminder that executive and non-executive directors are held to the same standard in respect of the management of a company. Accordingly, even as a non-executive director who does not manage the day-to-day affairs of a company, it is important to always have a questioning mind.

The standard to which an individual is held in the context of whether or not he or she is negligent or reckless will depend on his or her role in the company or group of companies. As seen in this case, a senior financial officer who was not a director but was responsible for ensuring the financial integrity of the accounts, was held to a higher standard than a director.

- Jocelyn Kwan, Senior Associate and Mark Lin, Partner, Hogan Lovells

監管

求知精神：格林柯爾案的疏忽和罔顧事實的標準

一名執行董事及多名非執行董事最近獲市場失當行為審裁處裁定，未有確實知悉有人欺詐的執行董事陳先生算不上勤奮，沒有做董事本來要做的事，也沒有作出一個具備他的經驗的人所會做的事，但他的疏忽不構成負上罪責的理由。雖然他在集團賬目簽名時，沒有盡力了解賬目，但他經常到附屬公司商討業務問題，每次都沒有任何引起他留意或引致他懷疑有人誇大資產或不披露負債之事。陳先生在賬目簽名時，依照賬目已通過格林柯爾的核數委員會審批，因此沒有理由質疑賬目的準確性。

相反，審裁處裁定，同樣未有確實知悉有人欺詐的集團財務總監莫先生干犯市場失當行為罪——雖然他不是董事。身為格林柯爾集團最高級的財務人員並集團的合資格會計師兼公司秘書，莫先生被裁定疏忽職守，沒有就格林柯爾集團的賬目和終期業績進行監督工作，以致當中包含虛假或具誤導性資料。雖然莫先生查閱不到各附屬公司的財務記錄，監察不到附屬公司有否遵行合適的財務準則，但他作為集團財務總監，就有責任監督各附屬公司。雖然不可以說他早就發現有人欺詐，但是只要他妥善地履行職責，就可能發現到蛛絲馬跡，知道財務狀況其實是表裏不一。

審裁處重申在公司的業務管理方面，執行董事與非執行董事承擔的法律責任是一樣的，不過在這宗案件，由於非執行董事算盡過努力，只是發掘不到那些削弱格林柯爾集團賬目的完整性，資料，審裁處信納他們沒有罪責。

筆者後話

要有判定某人有否疏忽或罔顧事實時所用的標準，視乎他或她在公司或公司集團所擔當的角色而定。正如在這宗案件所見，高級財務人員，如果他或她不是董事但有責任確保賬目完整顯示財務狀況，所要符合的是相比董事所要符合的更高的標準。

- 關雅賢高級律師與林文傑合夥人，霍金路偉律師行
REGULATORY

Regulatory Minefield: What is on the Regulators’ Recent Agenda?

The Hong Kong market is presently faced with an increase in mainland private enterprises listing on the local exchange, resulting in shell planting and volatility in stock prices in the Growth Enterprise Market (the “GEM”). The regulators have taken up initiatives to address these issues and have introduced measures on accountability to better protect the market and the investors. These include the below.

1. HKEX and SFC’s Listing Regulation

In 2016 the Securities and Futures Commission (the “SFC”) and the Hong Kong Clearing Limited (the “HKEX”) issued a Joint Consultation Paper on Proposed Enhancements to The Stock Exchange of Hong Kong Limited’s (the “Exchange”) Decision-Making and Governance Structure for Listing Regulation.

The paper proposes to establish two new Committees on which the SFC and the Exchange have joint control. The SFC will have a bigger say in the listing approval process and an earlier and more direct input on listing policy matters and listing regulation going forward.

The proposal is considered by some long overdue. The lack of clarity in the roles of the SFC and the Exchange was highlighted in the penny stocks incident in 2002 which led to HK$10 billion wiped off the market value of affected companies. The joint consultation closed in November 2016.

2. Augmentation of Senior Management Accountability for Licensed Corporations

General Principle 9 of the Code of Conduct for Persons Licensed by or Registered with the SFC provides that the senior management of a licensed corporation should bear primary responsibility for ensuring the maintenance of appropriate standards of conduct and adherence to proper procedures by the corporation.

To clarify the duties and obligations of senior managers, the SFC has issued a circular to licensed corporations regarding measures for augmenting the accountability of senior management in December 2016.

Corporate licence applicants and existing licensed corporations will have to submit up-to-date management structure information and organisational charts to the SFC from 18 April 2017. The deadline for submission is 17 July 2017.

The augmentation of senior management accountability will broaden the category of officers coming under the supervision and disciplinary power of the SFC.

3. Price Volatility in Newly-Listed GEM Stocks

Recently, the SFC and the Exchange have seen unusually high price volatility in GEM stocks post-listing. In 2015, the top 25 placees took up 96 percent of the shares offered for placing and the average number of placees for the entire issue was 135. Some investors repeatedly appeared as the top placees in unconnected GEM IPOs. The concentration of shares in the hands of a few shareholders gives rise to the ability to manipulate the price of the stock, compromising the integrity of the market and prejudicing the interests of the investors.

The GEM Rule 11.23 requires an open market in the securities for which listing is sought and an adequate number of holders of such securities. The minimum requirement of 100 public holders of a security is merely a guideline and satisfaction of such requirement does not mean that the open market requirement has been satisfied. The SFC or the Exchange will take appropriate actions against new applicants, sponsors and underwriters or placing agents if they fail to comply with the relevant policies and procedures to ensure that GEM IPO placing is conducted in a fair and orderly manner.

In February, at least four GEM stocks were suspended from trading due to an SFC inquiry under GEM Rule 11.23. On 22 February, a GEM stock started trading in the morning and was suspended from trading by 1 PM. It is the first time that a GEM stock was listed for and suspended from trading on the same day.

The SFC and the Exchange’s joint statement warned that GEM stocks have a higher investment risk than companies listed in the Main Board, so potential investors should be aware of the potential risks of investing in these companies.

Action Items

We expect to see the SFC and the Exchange to work closer together to regulate the market and protect investors. The Exchange will continue to balance the conflict of being a listed company itself, interested in relaxing the control of the market, while encouraging more listings and being a frontline regulator of listed companies. Joint consultations and joint statements with the SFC will help address this conflict.

- Mun Yeow, Partner, Clyde & Co.
諮詢文件建議新成立兩個由證監會與聯交所共同控制的委員會，證監會日後在上市批准過程中將會有更大話事權，也會更直接地參與上市政策事宜及上市監管。

有人認為有關建議來得實在太遲。2002年「仙股事件」導致受影響公司股份被拋售，市場一日蒸發100億元，突顯證監會及聯交所的職責有欠清晰。聯合諮詢文件的諮詢期於2016年11月結束。

2. 加強持牌法團高級管理層的問責性

《證券及期貨事務監察委員會持牌人或註冊人操守準則》一般原則GP9規定，持牌法團的高級管理層應承擔的首要責任，是確保法團能夠維持適當的操守標準及遵守恰當的程序。

為了闡明高級經理的職責和責任，證監會在2016年12月向持牌法團發出通告，列明用作加強高級管理層問責性的措施。

自2017年4月18日起，法團牌照申請人及現有持牌法團必須向證監會提供最新的管理制度架構資料及組織架構圖。提交所需資料的截止日期為2017年7月17日。

加強高級管理層問責性將擴濱證監會所監督及行使紀律懲處權力所制裁的人員類別。

3. 創業板新上市股份價格波動

證監會及聯交所最近觀察到股份在創業板上市後，股價出現異乎尋常的波動。2015年，首25名承配人合共取得發售股份的96%，整體發行的平均承配人數目為135。有些投資者多次在表面上互不關連的創業板首次公開招股中成為首要承配人。股份集中由極少股東持有，於是出現股東有能力操控股價的情況，既危及市場的廉潔穩定，也損害投資者的權益。

創業板規則11.23規定，尋求上市的證券必須有公開市場，並且由足夠數量的持有人持有。證券由至少100名公眾人士持有的規定只是一項指引，符合這項規定並不意味已經符合必須有公開市場的規定。如果有新申請人、保薦人或包銷商不遵守相關政策和程序，沒有確保創業板首次公開招股的配售以公平有序的方式進行，證監會或聯交所會針對違反政策或程序者採取適當行動。

二月份，至少有四隻創業板股份因為被證監會根據創業板規則11.23條進行調查而停牌。2月22日，有一隻創業板股份早上開始買賣，下午1時起被停牌。這是第一次有創業板股份在同一日上市及被停牌。

證監會及聯交所同意有關規定提升投資者，相比其他在主板上市的公司股份，創業板上市公司的股份帶有較高投資風險。準投資者應了解清楚投資於該等公司的潛在風險。

筆者後話

我們期望將來見到證監會及聯交所加強合作，一起監管市場及保護投資者。本身作為上市公司，有志放寬市場控制，同時亦鼓勵更多公司上市，並且是走在前線監管上市公司的聯交所，將會在各種角色上的衝突。與證監會一起發布的聯合諮詢文件及聯合聲明，將有力建設這種衝突。

- 張敏合夥人，其禮律師行

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

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

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Held, dismissing the application, that:

• Here, unusually, it was the respondent and not the applicant, who relied on the Exception after unsuccessfully defending the Decision. The normal considerations as to whether the Exception was engaged therefore did not apply. The President was a public authority who had made an erroneous and unlawful decision. In any event, his opposition to the judicial review was based on the limited ground that he should not have been joined as a party, which was rejected by the Court. Thus, his participation could not be regarded as seeking “guidance on a point of general public importance of the benefit of the community as a whole”. Accordingly, the President’s opposition to these applications did not fall within the Exception. His application to vary costs should be refused on this basis alone.

• Further, the fact that both parties were litigating with public funds was irrelevant and did not justify a departure from the general rule on costs. For a public authority which was a party to judicial review proceedings to avoid an order of costs following an adverse judgment, it should usually remain neutral and abide by the result. When such a respondent positively and actively opposed the application (as here), there was no reason why it should not bear the costs like any other litigant, simply because it was a public body. Moreover, given the Decision and that it was a substantive one, it was necessary for the Applicants to bring the judicial review and the President should bear their costs to the extent of his opposition.
局。无论如何，他反对司法覆核是基于一个有限的理由，就是他不应被加入成为诉讼一方；法庭拒绝接纳这个理由。据此，主席就这些申请提出的反对并不属于例外情况。单单基于这点，法庭就应当拒绝他更改诉讼费的申请。

此外，双方以公帑进行诉讼，但这并不意味着不能成为支持偏移一般诉讼规则的理由。对于属司法覆核程序一方的公共当局来说，如要避免在被判败诉之后再被命令支付诉讼费，通常应当保持中立，并遵守诉讼结果。如果这个答辩人正面及积极地反对申请（就像这宗案一样），没有理由只因为它是公共机构，就应当不用它像任何其他诉讼人一样承担诉讼费。此外，基于该决定并考虑到该决定是一个重要决定，两名申请人有必要展开司法覆核程序，而主席应当分担他反对司法覆核一事所产生的诉讼费。

**COMPANY LAW**

*Karla Otto Ltd v Bulent Eren Bayram*  
*2017* HKEC 378  
*Court of First Instance*  
*High Court Action No. 821 of 2011*  
*Deputy Judge Hunsworth*  
*24 February 2017*

**De facto director – breach of fiduciary duty – defendant involved in plaintiff-company’s affairs and had control over its bank account – unauthorised incorporation of company in Hong Kong using plaintiff’s funds – defendant liable as de facto director of plaintiff but not as shadow director – power of court to order defendant to resign as director of Hong Kong company under s. 728, 729 of Companies Ordinance (Cap. 622)**

X was the founder of a group of companies (the “Group”) which included P, an English company. X had been in a personal relationship with D1 since July 2007 and from this time D1 played an increasingly important role in the Group’s affairs, with X’s agreement. D2 was a Hong Kong company which was incorporated by D1 and of which D1 was the sole shareholder and director. From February 2009, D1 became the sole administrator of a multi-currency bank account of P in the United Kingdom. After the relationship between X and D1 ended in July 2010, D1 continued to be involved in Group’s affairs. P contended that D1 misappropriated about €1.8 million from the Group’s bank accounts which ended up in accounts controlled by D1; that €200,000 was transferred from P’s account to a bank account in Hong Kong in D2’s name in December 2010 and January 2011. X claimed that she had not authorised D1 to establish any company in Hong Kong and did not know about D2’s existence until investigations started in March 2011. P claimed that D1 was its de facto director, a shadow director and a fiduciary and that Ds held the sum of €200,000 on trust for P.

**Held,** allowing P’s claim, that:

- D1 was acting as a de facto director of P and owed to P the same fiduciary duties as if he were an actual director, including the duty not to make a personal profit for himself at the expense of the company. Further, by assuming control of P’s account, D1 entered into a fiduciary relationship with P. However, D1 was not a shadow director of P. The essential element of being a shadow director was that of pulling strings from behind the stage in such a way that actual directors were essentially puppets who moved only in accordance with the way the strings were pulled. X ran the business and her companies through all the years of her relationship with D1. X was clearly not a puppet.
- X made no decision to incorporate a company in Hong Kong. Even if such a decision had been made, there could be no credible reason why such company should have D2 as its sole shareholder and director. D1 used P’s money to establish D2 and in so doing was in breach of his fiduciary duty to P. To the extent that D1 had profited thereby, he must disgorge that profit to P. D2, through the mind of D1, had knowledge of D1’s breaches of fiduciary duty and trust. Further, in allowing itself to be the vehicle into whose name P’s funds were sent, D2 knowingly assisted D1 in his breach of fiduciary duty and was thus liable to compensate P by way of equitable compensation for the loss it had suffered as a result of D1’s breach.
- Pursuant to s. 728 of the Companies Ordinance (Cap. 622), if a breach of fiduciary duty was established, the jurisdiction of the court under s. 729 vested in the court a wide power to make orders against a defaulting director who had been found to be in breach of a fiduciary duty, including a power to order the director to perform a positive act. The Court was satisfied that it had the power to order D1 to resign as D2’s director.
Accordingly, orders were made, inter alia: (a) for a declaration that Ds held the sum of €200,000 on trust for P; (b) that Ds pay P the sum of €200,000; (c) a declaration that D1 held on trust for P shares in D2 registered in his name and D2’s books and records; and (d) an order that D1 resign forthwith as director of D2.

Company Law

Karla Otta Ltd v Bulent Eren Bayram
[2017] HKEC 378

Original Court
High Court Case No. 821 of 2011
Temporary Judge: Hon.法官孔思和
February 24, 2017

Actual Director – Breach of Trust – Director who participated in the company’s business and controlled its bank account – Director who misappropriated the company’s funds in Hong Kong – Director who violated his fiduciary duty – Director is liable under the Companies Ordinance (Chapter 622) section 728, 729

X is the founder of a company group (the “Group”) and the Group owned companies including Plaintiff Company. X has a company in Hong Kong. D is the only shareholder and director of D1, a company established by D. D1 was appointed as director of D2. D2 is a company in Hong Kong. X and D1 entered into a contract with D2 to hold shares in D2 in trust for X. D was sentenced to prison for fraud.

Criminal Law & Procedure

HKSAR v Lo Shing Lok
[2017] HKEC 341

Court of Appeal
Criminal Appeal No. 5 of 2015
Macrae, McWalters and Pang JJA
February 22, 2017

Trial – summing-up – whether trial judge inaccurately portrayed defence case and used denigratory and dismissive language – whether summing-up unbalanced and unfair

D was convicted of trafficking in a dangerous drug, namely 1 kg of cocaine.

The prosecution case was that two police officers, PW1–2, intercepted D and his friend (“W”). A search of a bag D was carrying revealed three photo albums containing 41 laminated photographs. Suspecting there were dangerous drugs in the photographs, PW1 arrested and cautioned D who replied that he only carried the cocaine for someone, he had not yet been paid and it had nothing to do with W. The cocaine was later found impregnated in the tissue paper between the photographs. D and W were taken to a police station where D signed against a post-record. They were then taken to Police Headquarters (“HQ”), where W was left in a video recording interview (“VRI”) room and D was kept in a conference room for one hour and 25 minutes. At trial, D’s case was that W’s friend had passed the bag to W, who asked D to hold it a few times when he had to use WhatsApp, and D did not know the bag contained a dangerous drug.
drug. D alleged that the response to caution was fabricated by PW1; he only signed the post-record after being assaulted and threatened by PW1; he was told that if he cooperated, W would be released; and he was forced by PW1 to give a fictitious story in his interview. D, relying on the evidence of the exhibits officer, submitted that the testimony of police witnesses that D was put in a conference room because the VRI rooms were all occupied was untrue, relying on the evidence of the exhibits officer; and raised questions including as to the availability of VRI rooms and why D was kept in the conference room (“D’s Questions”). D sought leave to appeal against conviction on the ground, inter alia, that the Deputy Judge’s summing-up was unbalanced as it inaccurately portrayed the defence case and used denigratory and dismissive language when discussing it.

Held, granting leave, treating the hearing as the appeal and allowing the appeal by quashing the conviction, setting aside the sentence and ordering D to be retried on a fresh indictment before a different judge, that:

• The Deputy Judge inaccurately described the defence claim that a VRI room was in fact available when D arrived at HQ and did not fully appreciate the context in which D’s Questions were raised. His comment, “Why the big fuss about the conference room and the VRI room?” would have only confused the jury as to the real defence contention that the delay in interviewing D was unjustified and the prosecution witnesses lied about it, lending credence to the defence claim that the delay was needed to coerce and coach D for his interview. Had D been put in a VRI room instead, there would have been no reason for the police not to immediately interview him.

• The Deputy Judge also inaccurately portrayed the defence case as to whether PW1 administered the caution as documented in the post-record. D had highlighted the improbability of PW1’s evidence that in arresting and cautioning D, he stated, “there were a total of 41 laminated photographs containing suspected dangerous drugs”. The Deputy Judge appeared to have missed the precise number of photographs in the albums, his evidence at least about the caution must have been a lie which was relevant to the jury’s assessment of his credibility.

A more serious example occurred when the Deputy Judge suggested the jury take a “broad view” of the defence case, including the allegation that the entire police team and a Complaints Against Police Officer officer conspired to frame D, “Just to enable [W], the true culprit, to be exonerated?” This was not the defence case at all. Rather, it was that PW1’s evidence and case against D was all a lie. The Deputy Judge thereby unfairly misrepresented the defence case to the jury and having done so, his comments that were critical of it then assumed a legitimacy and force they should not have borne.

The Deputy Judge’s misunderstanding of certain elements of the defence case and his inaccurate portrayal of other elements of it were compounded by his adverse comments in respect of them and resulted in an unbalanced and unfair summing-up.

刑事法及刑事訴訟程序

HKSAR v Lo Shing Lok
[2017] HKEC 341
上訴法庭
刑事上訴案件2015年第5號
上訴法庭法官麥機智
上訴法庭法官麥偉德
上訴法庭法官彭偉昌
2017年2月22日

審訊 — 總結詞 — 原審法官是否不準確地描述辯方案情，並採用詆毀和輕蔑的語言 — 總結詞是否有欠平衡和公允

被告人被裁定販運危險藥物，即1公斤可卡因，罪名成立。控方案情是兩名警務人員，即控方第1及2證人，截查被告人和他的同行朋友（「同行友人」）。被告人當時手持的袋被搜出3本放有41張過膠相片的相簿。因為懷疑相片藏有危險藥物，控方第1證人拘捕並警誡被告人，被告人回答自己只是代人帶運可卡因，他未獲付款，並且這件事與同行友人無關。相紙其後被發現內藏有液態可卡因的吸水紙。被告人和同行友人被帶到警署，被告人在那裡簽署補錄。他們之後被帶到警察總部，在那裡，同行友人被帶到錄影會面室，被告人則被帶到會議室，並且被困在那裡1小時25分鐘。審訊時，被告人的案情是，同行友人的朋友交那個袋給同行友人；同行友人有幾次要用WhatsApp的時候，要求被告人拿着那個袋。被告人不知道袋裡藏有危險藥物。被告人聲稱，他對警誡的回應是控方第1證人捏造的；他是被控方第1證人襲擊和威脅之後才簽署補錄；有人告訴他，只要他合作，同行友人會被釋放；控方第1證人強逼他在會面中說出一個虛構的故事。被告人以證物人員的證供為依據，陳詞指警方證人的證供，即被告人被留在會議室的時間，控方證人捏造的；他是被控方第1證人襲擊和威脅之後才補錄；有人告訴他，只要他合作，同行友人會被釋放；控方第1證人強逼他在會面中說出一個虛構的故事。被告人以證物人員的證供為依據，陳詞指警方證人的證供，即被告人被留在會議室的時間，控方證人捏造的；他是被控方第1證人襲擊和威脅之後才補錄；有人告訴他，只要他合作，同行友人會被釋放；控方第1證人強逼他在會面中說出一個虛構的故事。被告人以證物人員的證供為依據，陳詞指警方證人的證供，即被告人被留在會議室的時間，控方證人捏造的；他是被控方第1證人襲擊和威脅之後才補錄；有人告訴他，只要他合作，同行友人會被釋放；控方第1證人強逼他在會面中說出一個虛構的故事。被告人以證物人員的證供為依據，陳詞指警方證人的證供，即被告人被留在會議室的時間，控方證人捏造的；他是被控方第1證人襲擊和威脅之後才補錄；有人告訴他，只要他合作，同行友人會被釋放；控方第1證人強逼他在會面中說出一個虛構的故事。被告人以證物人員的證供為依據，陳詞指警方證人的證供，即被告人被留在會議室的時間，控方證人捏造的；
Employees’ compensation – insurer’s and employer’s liability under Pt. IV of Employees’ Compensation Ordinance (Cap. 282) – approach in Law Lai Ha v Zurich Insurance Co [2011] 2 HKLRD 450 correct — what insurance policy provided under heading “Scope of cover” to be read together with what it provided in its schedule

P was injured while engaged in carpentry work in the course of his employment with NDL (the “Employer”). He obtained against the Employer a judgment for employees’ compensation and a judgment for damages at common law. Neither judgment was satisfied. P then sued the Employees Compensation Assistance Fund Board (the “Board”) and AXA (the “Insurers”) with which the Employer had taken out an insurance policy for the purpose of Pt. IV of the Employees’ Compensation Ordinance (Cap. 282) (the “Policy”) covering, among other risks, liability to pay employees’ compensation. Under the heading “Scope of cover”, the Policy referred to “any Employee in the Insured’s immediate employ”. On their own, those words would cover P. But the schedule to the Policy referred to employees’ compensation payable to one Creative Director, one Creative Director (Overseas), one Designer (Overseas), two Designers, one Clerk (Indoor) and one Coordinator, stating the total estimated earnings of each of them. P was not covered by that reference. As to s. 43 of the Ordinance, the Board contended that the Policy was, while the Insurers contended that the Policy was not, “in relation to” P. The Judge, following the approach in Law Lai Ha v Zurich Insurance Co [2011] 2 HKLRD 450, held that the Policy was not “in relation to” P, and entered judgment for him against the Board rather than the Insurers. The Board appealed.

Held, dismissing the appeal (by a majority consisting of Yuen and Kwan JJA, Cheung JA dissenting), that the approach in Law Lai Ha v Zurich Insurance was correct. What the Policy provided under the heading “Scope of cover” was to be read together with what it provided in its schedule. Thus read, the Policy was not “in relation to” P. Accordingly, the Insurers were not liable and the Board was liable (Law Lai Ha v Zurich Insurance Co [2011] 2 HKLRD 450, New World Harbourview Hotel Co Ltd v ACE Insurance Ltd (2012) 15 HKCFAR 120 applied).
履行。原告人於是控告僱員補償援助基金管理局(「管理局」)和AXA(「保險人」)
。《僱員補償條例》第IV部涵蓋(在其他風險之中)支付僱員補償的法律責任
，僱主就此投取的保單是由保險人發出的。根據標題「保障範圍」下的內容，保
單所指的是「任何獲受保人直接僱用的僱員」。這些字詞本身的意思是包括原告人
在內。不過，保單附表提述的應付僱員補償，是應付一名創作總監、一名創作總監
(海外)、一名設計師(海外)、兩名設計師、一名文員(室內)及一名協調人的補償；附
表有述明他們各自的估計總收入。原告人不是附表所指的僱員。至於《僱員補償
條例》第43條，管理局辯稱保單是一份「關於」原告人的保單，保險人則辯稱保
單不是「關於」原告人的保單。原審法官依循在Law Lai Ha v Zurich Insurance Co
[2011] 2 HKLRD 450的處理方法，裁定
保單不是「關於」原告人的保單。據此，保險人沒有法律責任，但管理局則有法律責任(Law Lai Ha v
Zurich Insurance Co [2011] 2 HKLRD 450、New World Harbourview Hotel Co Ltd
v ACE Insurance Ltd (2012) 15 HKCFAR 120適用)。

**LANDLORD & TENANT** 

**Rising Dragon Industrial Ltd v Cheng Mei Ling [2017] HKEC 374** 

Lands Tribunal  
Part IV Possession Application No. 168 of 2017  
Member Lawrence Pang  
24 February 2017

**Tenancy agreement – parties signed agreement and then another agreement at higher rent – whether first or second agreement prevailed – effect of non-stamping of first agreement – both agreements stamped after second agreement entered into – whether respective dates of stamping relevant**

In March 2016, T and L renewed a tenancy agreement for two years from 18 March 2016 at HK$18,000 per month (the “March Tenancy”). The Stamp Duty Office rejected T’s attempt to stamp the March Tenancy, because L’s company chop was missing from it. T initially paid three months’ rent and, in July 2016, paid four months’ rent to L. T agreed in August 2016 to another tenancy agreement at HK$19,000 per month from 18 August 2016 for two years (the “August Tenancy”). In September 2016, L had the August Tenancy e-Stamped via eTax, even though it did not bear L’s company chop. In December 2016, T had the March Tenancy e-Stamped, informed L and asserted that the March Tenancy prevailed. L applied for vacant possession of the premises based on “the current, valid tenancy agreement”, alleging that T had been underpaying rent by HK$1,000 per month under “an old, void tenancy agreement”.

Held, that the August Tenancy was binding on T, that:

- Both parties treated the March Tenancy as binding notwithstanding that T had not had it stamped. 
- Under s. 6 of the Conveyancing and Property Ordinance (Cap. 219), the March Tenancy, being for a term not exceeding three years, the lease could be created by parol without being put in writing. Even though the tenancy was un stamped, it could still be of legal effect. On T accepting its terms on 5 March 2016, it should have taken effect for two years from 18 March 2016.

- However, the August Tenancy took effect on 18 August 2016 and had superseded the March Tenancy. T had signed the August Tenancy voluntarily and had not shown any ground amounting to duress enabling her to avoid it. Further, as the respective tenancies took effect immediately on being signed, the date of stamping was irrelevant. The March Tenancy could not be resurrected by its more recent stamping.

- Accordingly, the August Tenancy was binding on T who should make pay all arrears of rent/mesne profits payments, failing which she must deliver vacant possession of the premises to L.
WILLS, PROBATE AND SUCCESSION

Re Estate of Ho Chi Yin [2017] HKEC 397
Court of Appeal
Civil Appeal No. 17 of 2016
Yuen, Kwan JJA and Godfrey Lam J
1 March 2017

Will – validity – whether will to take effect on satisfaction of condition – no express condition in will – whether valid as conditional will – whether requisite testamentary intent for will to have immediate dispositive effect on execution

D was the daughter and only child of the deceased ("X"), who died in 2007, and M. In 1990, X and M divorced and X was given custody of D. When D turned 18 in 1996, she left home and never contacted X again. On 15 June 2003, X made a homemade will (the "Will"), which had not been executed in accordance with s. 5(1)(c) or (d) of the Wills Ordinance (Cap. 30), bequeathing one flat to his father and another to P, his younger sister. P applied for a grant of letters of administration and brought a probate action. She gave evidence that on the day X began a long pre-retirement holiday to South Africa, she witnessed him write and sign the Will; X told her he was making the Will as he did not want M to use D to inherit his two flats; he was not leaving them anything; if he encountered a mishap, P was to take the Will to her close friend and her brother ("Ks") to sign. After X returned from the trip, P offered to return the Will to him but he told her to keep it safe. D argued that the Will was made to cater for the contingency that X might die unexpectedly on holiday and was intended to take effect only if and when that happened. The Deputy Judge accepted P’s evidence and rejected D’s defence. He held that the Will was “written in clear and unambiguous terms”; it contained no express condition and was not a conditional will; and it was duly executed under s. 5(2) of the Ordinance. He therefore pronounced for the Will in solemn form. D appealed.

Held, dismissing the appeal, that:

• The focal point on appeal should be whether the judgment showed that the judge had correctly understood and applied the relevant law and whether there was evidence to support his findings of fact. Here, the Deputy Judge correctly stated that s. 5(2) of the Ordinance required “the court’s satisfaction that there can be no reasonable doubt that the document embodies the testamentary intentions of the deceased”. Further, P’s evidence was in material parts consistent and convincing and the Deputy Judge was entitled to accept it in full.

• A conditionally executed document, even though entitled a will, was not valid as a will, due to a lack of testamentary intent (animus testandi) that it have immediate dispositive effect on execution, whereas an unconditionally executed will which, by its terms was conditional or contingent in its operation (a conditional will), was valid but only took effect on the satisfaction of the condition as expressed therein. Here, X had clearly stipulated his instructions for the disposition of his assets “when I died” without mentioning his holiday. There was no language which required the Deputy Judge to consider if that trip was: (a) only the reason for making the will; or (b) to limit the operation of the will. Only if there had been such language and it had been ambiguous, would the Deputy Judge have needed to consider extrinsic evidence. Accordingly, insofar as D alleged the Will was a conditional will contingent on X’s death during his trip, the absence of such condition in the Will was as a matter of law fatal to the argument.

• The Deputy Judge’s finding that X had the requisite testamentary intention when he executed the Will to make it immediately dispositive was not undermined by any of the doubts raised by D. Inter alia, as for X’s instructions about Ks signing the Will as witnesses if he had a mishap,
the evidence was not that X referred to a mishap “during this trip” or “in Africa”; and he continued to treat the Will as important after he returned home, which showed that he knew it was not limited or spent. Further, when X executed the Will, he intended it to operate immediately and be formalised when Ks signed it; and he never later reversed his intention. Further, unlike the insertion of a date as in Corbett v Newey, X was not purporting to reserve to himself a means of controlling the operative time of the Will.

• The judgment would not be set aside only because of a delay in its delivery after trial. However, the Court had considered the challenge with a “higher degree of scrutiny”. It remained for D to identify omissions, errors etc which invalidated the Deputy Judge’s findings, rendered the judgment unsafe and led to injustice to her. D had failed to do so.

遺囑、遺囑認證及繼承

Re Estate of Ho Chi Yin
[2017] HKEC 397

應承法庭
民事上訴案件2016年第17號
上訴法庭法官袁家寧
上訴法庭法官關淑馨
原訴法庭法官林雲浩
2017年3月1日

遺囑 - 有效性 - 是否在條件實現時生效 - 遺囑沒有明訂條件 - 是否一如附條件遺囑般具有效力 - 簽立之時是否已所有需要有 的遺願致使遺產會直接按照遺囑處置

被告人是死者與妻子（「被告人母親」）的獨生女。死者1990年與被告人母親離婚之後，獲判被告人的管養權。死者在2007年過世。被告人1966年18歲時離開家庭，自此再沒有與死者聯絡。死者2003年6月15日自立遺囑（「該遺囑」），把一個住宅單位遺贈給父親，另一個單位遺贈給原告人，原告人是他妹妹；該遺囑當時未有按照《遺囑條例》第5(1)(c)及第5(1)(d)條所規定訂立，原告人申請遺產管理書的授予，並提出遺囑認證訴訟。她作供稱，她在死亡前並非開始退休前長假當天，親眼見到死者寫該遺囑，並在該遺囑上簽名；死對告訴原告人，他訂立該遺囑是因為不想被告人母親利用被告人繼承他的兩個單位，他將不會留给母女二人任何東西，如果他「出咗事」，她得將該遺囑帶給她好友和那名好友的弟弟（「該二人」）簽名。死對結束旅程返港之後，原告人向死對建議交回該遺囑給他，但他叫原告人好好保存該遺囑。被告人辯稱，死者想到自己有可能在渡假時意外死亡，為保周全，才訂立遺囑。死對的意思是，只有在其意外死去時，該遺囑才生效。暫委法官接納原告人的證供，拒絕接納被告人的抗辯理由。他裁定該遺囑「用語清晰、毫不含糊」；該遺囑沒有明訂的條件，不是附條件遺囑；根據《遺囑條例》第5(2)條，它是一份已經妥為簽立的遺囑。他因此宣告該遺囑是以嚴謹的形式訂立，被告人上訴。

裁決 - 駁回上訴：

• 上訴焦點應該是，從判決是否看得出法官有正確理解並且應用相關的法例，他所作的事實裁決可有證據支持。在這宗案件，暫委法官正確地述明《遺囑條例》第5(2)條規定「法庭在無合理疑問的情況下信納該文件是體現立遺囑人的遺願」。此外，原告人證供的相關部分前後一致，具有說服力，暫委法官有權完全接納原告人的證供。

• 待條件實現後才完成訂明的正式手續的文件，即使被稱為遺囑，會由於立遺囑人在訂立遺囑時沒有列明遺願（animus testandi）是其遺產直接按照該份遺囑處置，而不像遺囑般具有效力。然而，已經無條件完成訂明的正式手續的遺囑，如按照其條文是有一個條件或待確定執行的（附條件遺囑），是一份有效的遺囑，只不過是在遺囑的明訂條件實現時才生效。在這宗案件，死者早已清楚講定如何處置他的資產，按照他的指示，資產是「在我死後」（when I died）才作處置，而他並沒有在指示中提到他的假期。遺囑的用語沒有令暫委法官有必

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

www.westlaw.com.hk 參閱Westlaw及《香港法律彙報與摘錄》。
The close of 2016 brought about unique patterns within Hong Kong’s legal sector, the effects of which we are still feeling. In this article, we will discuss the key trends and their impact on the legal industry from a commercial and recruitment standpoint.

Commercial Trends
Throughout 2015 and 2016, M&A activity remained very high, with 2015 being a record year with approximately US$3.8 trillion in M&A spending. Among other things, this is largely attributable to low interest rates globally, which made borrowing money more affordable. As a result, M&A specialists and corporate lawyers have, for the most part, remained in considerable demand. However, some US firms have been reluctant to hire in Q1 2017 as compared to Q3 2016. One reason is because of the increasing amount of geopolitical uncertainty, which has created a loss of investor confidence. This was most palpably reflected in Q4 2016 hiring patterns.

Investors’ loss of confidence is directly impacting the amount of business available in the market, and therefore creating a more competitive bidding process per deal. When scrutinising this landscape further, it becomes clear that the bulk of work undertaken thus far in 2017 is mostly regional, typically far less in terms of revenue-per-deal, and more focused on increasing the volume of transactions. This inherently creates numerous challenges for many US firms, who are typically designed to be satellite offices that assist with major cross-border Sino-US transactions. US law firms are generally not designed to compete in low-value, high-volume markets because their offerings are usually more bespoke and expensive. Furthermore, US headquarters generally will not allow their overseas colleagues to reduce rates to compete for this type of work, which significantly reduces their ability to take on the bulk of work currently available. All of these factors combined have resulted in a decreased appetite to hire within US firms, when compared to “local-international” firms that have more diversified and versatile practices.

Hiring Trends
Recruitment is often undertaken to replace outgoing lawyers rather than to expand one’s team. One trend affecting long-term candidate commitment is a general lack of clarity surrounding stability and career progression. The market remains very competitive in terms of options for quality associates, who are finding more transparent employment options elsewhere, and often with ease. Indeed, in-house opportunities are fast becoming the biggest threat to private practice, where candidates with over four years’ experience are seen to have accrued enough knowledge to move in-house. With an ever-increasing need for businesses to reduce legal spend, in-house options are becoming more common. Many private firms are unwilling to be more flexible in order to retain top talent, so the switch is often seen as painless by employees. The “grass is greener” mentality is creating both an imbalance in the market and an opportunity for local firms to supersede overseas investors.

As is clear to see, a trend of China-outbound work persists. Therefore, the demand for expat lawyers has decreased significantly, as without strong Mandarin skills they are not able to support the bulk of mid-size deals coming from China. In addition to the aforementioned changes in market conditions, fears surrounding the depreciation of the Renminbi have resulted in increased capital outflow regulations imposed by Beijing, which have further hindered
some firms’ transaction pipeline. Many firms are therefore being more selective in hiring due to genuine fears of overstaffing. On a staffing level, there is not only rising demand for Mandarin-speaking applicants, but a feeling that each candidate now needs to be more “deployable” within the firm on different transactions. So depending on the firm, varied experience can be seen in a positive light.

Another trend we are seeing in the legal industry is inadequate job development for associates. Firms want their lawyers to be versatile and engaged at work, but do not monitor case allocation enough to prevent a silo effect from taking hold. Such a structure focuses on specialization, rather than ambition and progression, therefore increasing tedium and staff attrition. Candidates pigeon-holed into ECM (equity capital markets) practices are now favouring the mix of work provided by less-established firms. Disciplines that offer crossover for such candidates include corporate (M&A – public and private, general corporate, compliance), in conjunction with capital markets (IPO, spin-offs, pre-IPO fund raising); banking & finance and DCM (debt capital markets); corporate (M&A)/private equity and fund formation. Firms that genuinely monitor work allocation for associates report higher interest in roles, high levels of productivity and greater retention; those that choose not to address this issue often experience high attrition rates and lose a significant amount of time and money on recruiting, on-boarding and integrating new hires.

There is also the trend of growing demand for training. Despite being a key driver for some associates, knowledge management coordinators are light on the ground in Hong Kong, and the material that is being adapted for businesses in Asia is not always specific enough for that jurisdiction. Suitable memorandums, a library of templates and guidance notes related to legal principles in bank lending, HK listing rules, cross-border standardisation initiatives relating to legal opinion and transactional matters, and regular lectures on judicial changes are all significantly under par in comparison to that which are provided by a select number of leading UK and US firms.

Work-life balance has been another key topic of conversation in Q1, with numerous candidates looking to optimise their lifestyle. Employers are already becoming aware of this rising trend, and the need to address issues concerning operating hours. Monitored working hours and adjustments in the following months have ensured that people are not stretched as far, so do not look to exit. It would appear that flexible working arrangements may become more prominent as we move further into 2017. Firms in London have successfully trialled and implemented the concept of working from home when needed, on a one day per week/month basis. Though this may seem minor in another industry, with the hours lawyers work, it makes a clear difference. The reduction in working days per week is also offset by lower pay and part-time options, resulting in greater savings for the firms.

**Red Circle Firms**

Without a shadow of a doubt, the biggest trend we noted in 2016/2017 was the rise of The Red Circle firms: that is, more and more China-headquartered firms moving into the Hong Kong market, and the subsequent appeal to legal talent as a result. We believe this is mostly due to cultural, societal and economic shifts towards a more “Chinese”-way of doing business, but also attributable to international firms not responding effectively to conditions on the ground.

It is worth pointing out that most firms in Hong Kong are international regardless of their demographics, which means all decisions are made by executive boards in the UK or US. Whether operational, managerial or strategic, we have found that slow or overly bureaucratic processes are resulting in less-agile business conditions. Executive committees based in Beijing are able to make decisions much more quickly, so, from a practical perspective, international firms are already on the back foot.

All of the above factors are creating a more regionalised working culture, which is attracting candidates to Chinese firms, and those international firms who have assimilated Hong Kong offices. We are now visibly seeing the impact of a gradual shift in power. International firms continue to cover their specialisms, but the institutions winning a large proportion of today’s commercial legal work are the firms headquartered in the PRC. The remuneration on offer at PRC firms is also making them a more attractive option for candidates and adding to the interesting market dynamic.

As these firms are growing organically, they have been able to manage their headcount effectively to ensure their revenue per lawyer remains high, ensuring they can re-invest these savings back into competitive remuneration packages for the Hong Kong market.

Overseas practices were not concerned about Chinese firms until five or six years ago, but as the landscape continues to change, there will be a point where Chinese law firms are able to compete on an international playing field. Already when we consider market share, there are a few areas where Chinese firms are penetrating deeply into their international competitor’s back yard, despite the traditional dominance of US and UK firms. Chinese firms, outside of Fangda, often choose to work purely within corporate and capital markets; as such, these seem to be the most hotly competed disciplines. Main board deals have wavered less so, as most Chinese firms are yet to genuinely compete outside of the GEM market for IPO transactions.

Interestingly, apart from King & Wood Mallesons, many of the Chinese firms in Hong Kong are actually quite new to the market, and the same goes for a number of US firms. The difference is, where US firms have no long-standing relationships to fall back on, Chinese firms have both the cultural advantage, and a mode of operating preferred by
today's clients. Another factor at play is that the majority of clients wanting to do deals within Hong Kong are Chinese, and therefore prefer to speak in Mandarin. It is unsurprising then that we are seeing US firms trying to undercut such firms in order to survive these market conditions.

In terms of talent, there is greater movement for candidates within a Chinese firm than within a US or UK alternative. They are seen as new and innovative firms with an abundance of opportunities, which add to their appeal. However, these firms are often less developed, in terms of lacking or having less sophisticated internal processes, administrative support, available databases, back-office knowledge, or operation functions than firms that have been in the region for a number of decades. These are often cited as sources of frustration. Nonetheless, the employment arena is being transformed by a new wave of opportunities, albeit operating and staying afloat will remain a tough balancing act for everyone in the market.

Looking into Our Crystal Ball

So what does the future hold for law firms in Hong Kong? We firmly believe that the dominance of international law firms is coming to an end. Fundamentally, if they don't re-invent themselves, they will become unable to retain top talent, and unable to compete for business, as a new regionally-focused, cost-conscious perspective becomes the dominant view in the legal market.

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他們對工作的厭惡感加深，並經常產生工作上的磨擦。被分派處理股本資本市場業務的律師，他們現時都選擇加入一些實力沒那麼雄厚的律師事務所，從性質混合的工作。能夠為這些律師事務所提供業務的領域包括：公司法務(併購-公眾及私人、一般性的公司法務、合規)，連同資本市場(首次公開招股、公司分拆、首次公開招股前的集資);銀行與金融及債務資本市場;公司法務(併購)/私募股權及基金設立。律師事務所要董事的工作分配方面，如果能夠認真進行監督，那麼員工對其工作的投入程度將會更強，而在生產力和留任比率方面，亦將會有更佳的成效。沒有進行此類監督的律師事務所，它們的員工之間會較易出現摩擦，從而導致需要花費更多時間在員工招聘、到職和融合等操作過程中。

律師事務所需要面對的另一個問題，是員工對培訓的需求增加。儘管對於某些律師來說，培訓是他們的一項重要驅動因素，香港的知識管理統籌員數目不多，而經過修整後用於亞洲區業務的法律材料，往往並非專門適用於某一特定司法管轄區。香港在銀行貸款的法律原則、香港上市規則、與法律意見和交易事宜有關的跨境標凖備忘錄、範本和指引資料庫，以及定期舉行的司法改革講座等，均遠遠落後於英、美的若干領先律師事務所。

另一個重要議題，是取得工作與生活之間的適當平衡。許多客戶都希望其生活方式能夠得到優化;另一方面，僱主亦開始關注到這一發展趨勢，以及對運作時間作出處理的需要。僱主如果能夠對未來數月的工作時間作出有效調整和監控，便可以確保員工的精神狀況不會過於繃緊，從而不致萌生去意。到了2017年的後期，彈性工作安排這一趨勢相信會更加顯著。現時，一些位於倫敦的律師事務所已經成功地試驗和實行「家居辦公」這一概念，當它們有需要時，會以每星期或每月一天的方式，讓其員工可以留在家中辦公。對於其他行業來說，每星期或每月一天留在家中工作，也許只是微不足道，但對於按工作時數計酬的法律行業來說，這又是另一番含義。儘管律師每週的工作日數可能會有所減少，但律師事務所可透過薪酬負擔得以減輕，和兼職工作的安排而減省更多支出。

「紅色圈」律所
2016年與2017年的一個最重要趨勢，毫無疑問是「紅色圈」律所的崛起，亦即是有越來越多總部設於中國的律師事務所正在進入香港市場;隨之而來的，就是對法律人才的需求。我們相信，此等現象的出現，主要是由於出現了在文化、社會、經濟上的轉變－亦即是，更為以「中國人」的做生意方式作主導;而另一方面，也是由於國際律師事務所並沒有對現實情況作出有效回應所致。需要指出的一點是，香港大多數的律師事務所都屬於國際性質(不論其成員結構如何)，而這意謂，它們的所有決策，都是由該等位於英、美等地的行政董事會議來拍板決定。但我們發現這樣的安排，無論是在運作、管理或策略方面，都會引致程序遲緩或過度官僚的情況出現，從而形成一個有欠靈活的業務環境。但是，該等位於北京的律師事務所，它們的行政委員會可以更快速地作出相關決策。這從實務的角度看，國際律師事務所已為被置於大為不利的境地。所有上述各項因素加在一起，創造出一種地區色彩更為濃厚的工作文化，並吸引更多律師加入中國律師事務所，又或是加入已融入該等文化的國際律師事務所香港辦事處工作。我們現時正目睹該等權力逐步轉移所帶來的影響。國際律師事務所現時在繼續涵蓋其專門範疇，但目前贏得大部份商業法律工作的律師事務所，是總部設在中國的律師事務所。它們所提供的待遇，對求職的律師極具吸引力，並增強了相關市場的動力。中國律師事務所是以自然增長的方式來擴大經營規模，因此能夠有效管控其員工人數，以確保其律師的人均產出能夠維持在高水平，並確保其得以將所積存的資金重新投放在香港市場，從而為本地員工提供更具競爭力的薪酬福利待遇。

過去五、六年間，外國律師事務所並沒有充分關注中國律師事務所的發展情況，但現在，香港銀行與金融及債務資本市場，仍然受英、美律師事務所主導，當然現時在某些法律服務範疇上，中國律師事務所已經深入其國際競爭對手的後花園。在香港市場，中國律師事務所及其它從事法律業務的企業，所面對的競爭亦日益激烈。在香港，許多律師事務所的業務亦日益多元化，務求能夠為客戶提供更多、更有效的服務。
Newly-Admitted Members

BURGE TANI
SYDEL
LINKLATER
年利達律師事務所

FOK WING SZE
CHRISTINE
霍詠詩
NORTON ROSE
FULBRIGHT HONG KONG
諾頓羅氏富布萊特香港

KWUN SIU LING
官小玲
LAU EDWARD, WONG & LOU
劉黃盧律師行

CHANG
XIAOXIAO
常逍逍
LINKLATER
年利達律師事務所

HO WING YIU
何榮耀

SIN MING WEI
陳明偉

CHENG YUN MEI
鄭潤楣
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HOWLETT
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TAM NICHOLAS
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譚柏榮
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CHIU LOK LAM
LOLLAINE
趙樂琳
STEPHENSON HARWOOD
羅夏信律師事務所

HSU HOWARD
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TSE SING YU
譚昇餘
HO ANGELA & ASSOCIATES
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年利達律師事務所

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佳利(香港)律師事務所

YUEN YIP KAN
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CHIU & PARTNERS
趙不渝·馬國強律師事務所

YUEN YUET LING ELAINE
袁悦羚
HAU, LAU, LI & YEUNG
侯劉李楊律師行

LAM TSZ WAI
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LAW WING YAN
羅詠欣
LOEB & LOEB LLP

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林洁

POON J S JACKSON
潘則辰
KING & WOOD MALLESONS
金杜律師事務所

SINHA VINITA
INTERNATIONAL FINANCE CORPORATION

SUN XIAOYA
孫瀟雅

YAU JANE
游靖
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YU CHEUK WA
余卓樺

YUNG KA YAU MICHELLE
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袁業芹
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Yuen Yuet Ling Elaine
袁悅羚
Hau, Lau, Li & Yeung
侯劉李楊律師行

Ahmed Hibban Rafique
Linklaters
年利達律師事務所

Au Tin Chi Adrian
區天智
Tanner De Witt
泰德威律師事務所

Boswall Rupert Richard
Torquil
Smyth & Co

Chan Hiu Mei
陳曉薇

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Partnerships and Firms
合夥人及律師行變動

changes received as from 1 March 2017
取自2017年3月1日起香港律師會所提供之最新資料

• AU YEUNG KIN LEUNG
became a partner of Angela Wang & Co. as from 01/04/2017.
歐陽健良
自2017年4月1日成為王培芬律師事務所合夥人。

• CHAN BOW YE BONITA
joined Miao & Co. as a partner as from 15/03/2017.
陳寶儀
自2017年3月15日加入繆氏律師所為合夥人。

• CHANG CHUN PONG
ceased to be a partner of Kong & Chang as from 20/03/2017 and the firm closed on the same day. Mr. Chang joined Au Yeung, Lo & Chung, Solicitors as a consultant as from 20/03/2017.
張振邦
自2017年3月20日不再出任江偉強張振邦律師行合夥人一職,而該行於同日結業。張律師於2017年3月20日加入歐陽、盧、鍾律師行為顧問。

• CHAO KWOK HSIEN WELLINGTON
commenced practice as a partner of Wellington Legal as from 02/03/2017.
趙國賢
自2017年3月2日成為新開業趙國賢律師事務所合夥人。

• CHEUNG CHEUK WA PERRY
ceased to be a partner of Oliver C.M. Chan & Co. as from 01/04/2017.
張焯華
自2017年4月1日不再出任陳之文律師行合夥人一職。

• CHEUNG JACKSON
ceased to be a partner of Tsui & Lok, Solicitors as from 01/04/2017.
張澤生
自2017年4月1日不再出任徐駱律師行合夥人一職。

• CHIH WAN SI VANESSA
commenced practice as the sole practitioner of Chih as from 09/03/2017.
支韻思
自2017年3月9日獨資經營支律師行。

• CHIU TUEN TING HENRY
ceased to be a partner of Henry Chiu & Partners as from 08/03/2017 and remains as a consultant of the firm. 趙端庭
自2017年3月8日不再出任趙端庭律師行合夥人一職，而轉任為該行顧問。

• CHOI KIN
ceased to be a partner of Ng & Co. as from 01/04/2017 and joined K.B. Chau & Co. as a partner on the same day. 蔡堅
自2017年4月1日不再出任吳伯仲律師行合夥人一職，並於同日加入周啟邦律師事務所為合夥人。

• CHOW SHIU WING JOSEPH
commenced practice as a partner of Wellington Legal as from 02/03/2017.
周紹榮
自2017年3月2日成為新開業趙國賢律師事務所合夥人。

• CHU HAI YAN OLIVIA
commenced practice as a partner of Wellington Legal as from 02/03/2017.
龔海欣
自2017年3月2日成為新開業趙國賢律師事務所合夥人。

• CHUNG SHUE KWAN
ceased to be a partner of Chan, Evans, Chung & To as from 01/03/2017 and remains as a consultant of the firm. 鍾淑鈞
自2017年3月1日不再出任陳伊鍾杜律師行合夥人一職，而轉任為該行顧問。

• FOK KIN LAM
became a partner of Y.C. Lee, Pang, Kwok & Ip as from 01/04/2017.
霍健琳
自2017年4月1日成為李宇祥、彭錦輝、郭威、葉澤深律師事務所合夥人。

• HO TAK YUN GRACE
ceased to be a partner of Gallant as from 01/04/2017.
何德欣
自2017年4月1日不再出任何耀棣律師事務所合夥人一職。

• IU PO SHING
commenced practice as a partner of Wellington Legal as from 02/03/2017.
姚寶誠
自2017年3月2日成為新開業趙國賢律師事務所合夥人。

• KAM FAI
became a partner of Hon & Co. as from 01/04/2017.
金輝
自2017年4月1日成為韓潤燊律師樓合夥人。

• KAM HUNG MING
ceased to be a partner of Woo, Kwan, Lee & Lo as from 01/04/2017 and remains as a consultant of the firm. 甘鴻明
自2017年4月1日不再出任胡國李ロー律師行合夥人一職，而轉任為該行顧問。

• KILNER PETER KENEML
ceased to be a partner of Clifford Chance as from 01/03/2017 and remains as a consultant of the firm. 自2017年3月1日不再出任高偉紳律師行合夥人一職，而轉任為該行顧問。

• KUNG HOI YAN OLIVIA
commenced practice as a partner of Wellington Legal as from 02/03/2017.
龔海欣
自2017年3月2日成為新開業趙國賢律師事務所合夥人。

• KWOK WAI MING
became a partner of Shum & Co., Solicitors as from 21/03/2017.
郭惠明
自2017年3月21日成為岑明才律師行合夥人。

• LAM CHUN SING
became a partner of Hastings & Co. as from 03/04/2017.
林俊昇
自2017年4月3日成為希仕廷律師行合夥人。

• LAM HO KONG ANTHONY
joined Tang, Lee & Co. as a partner as from 04/03/2017.
林浩剛
自2017年4月3日加入鄧耀榮律師行為合夥人。

• LAM HO KONG ANTHONY
joined Tang, Lee & Co. as a partner as from 04/03/2017.
林浩剛
自2017年4月3日加入鄧耀榮律師行為合夥人。

• LAU WING CHI GIGI
became a partner of Ivan Tang & Co. as from 01/04/2017.
劉穎芝
自2017年4月1日成為鄧耀榮律師行合夥人。
• LAU YI MEI WENDY
cased to be a partner of Michael Cheuk, Wong & Kee as from 16/04/2017 and remains as a consultant of the firm.
刘漪薇
自2017年4月16日不再出任卓黃紀律師事務所合夥人一職，而轉任為該行顧問。
• LEE SIU WAH EDWIN
cased to be a partner of Tang, Lee & Co. as from 04/03/2017 and ceased to be a partner of Simon Wong & Co. on the same day. Mr. Lee joined Huen & Cheung as a consultant as from 06/03/2017.
李少華
自2017年3月4日不再出任鄧李律師行合夥人一職，並於同日不再出任黃國康律師事務所合夥人一職。李律師於2017年3月6日加入禤張律師行為顧問。
• LEUNG CHEUK BUN
became a partner of Fairbairn Catley Low & Kong as from 13/03/2017.
梁卓斌
自2017年3月13日成為范紀羅江律師行合夥人。
• LEUNG YUNN KEI KELVIN
became a partner of Gallant as from 01/04/2017.
梁昕期
自2017年4月1日成為何耀棣律師事務所合夥人。
• LI HAN SHENG
ceased to be the sole practitioner of H.S. Li & Co. as from 31/03/2017 and the firm closed on the same day.
李漢生
自2017年3月31日不再出任李漢生律師樓獨資經營者一職，而該行於同日結業。
• LIM AI-LYN ANGELYN
ceased to be a partner of Dechert as from 11/03/2017.
林藹琳
自2017年3月11日不再出任德杰律師事務所合夥人一職。
• LIU LAI YUN AMANDA
cased to be a partner of Gallant as from 01/04/2017 and remains as a consultant of the firm.
廖麗茵
自2017年4月1日不再出任任何律師事務所合夥人一職，而轉任為該行顧問。
• LOK PO CHUEN
became a partner of Tsui & Lok, Solicitors as from 01/04/2017.
駱寶泉
自2017年4月1日成為徐駱律師行合夥人。
• MAK TUNG SHING ALRICK
cased to be a partner of Simon C.W. Yung & Co. as from 01/04/2017 and remains as a consultant of the firm.
麥東成
自2017年4月1日不再出任翁宗榮律師行合夥人一職，而轉任為該行顧問。
• NG SUI TUNG
commenced practice as the sole practitioner of STN Law Office as from 16/03/2017.
吳瑞東
自2017年3月16日獨資經營吳瑞東律師行。
• SIU CHOI FAT
ceased to be a partner of Chui and Lau as from 01/04/2017 and remains as a consultant of the firm.
蕭財發
自2017年4月1日不再出任徐伯鳴、陳鴻遠、劉永強律師行合夥人一職，而該行於同日結業。
• SMITH DAVID WILLIAM
ceased to be a partner of Baker & McKenzie as from 01/04/2017.
自2017年4月1日不再出任貝克麥堅時律師事務所合夥人一職。
• SO WAI FU MIKE
commenced practice as the sole practitioner of W.F. So & Co. as from 16/03/2017. Mr. So ceased to be a partner of Kong & Chang as from 20/03/2017 and the firm closed on the same day.
蘇偉富
自2017年3月16日獨資經營蘇偉富律師樓。蘇律師於2017年3月20日不再出任憑愛情律師行合夥人一職，而該行於同日結業。
• TAI TUST JONATHAN
ceased to be a partner of Hogan Lovells as from 01/04/2017.
自2017年4月1日不再出任霍金路偉律師行合夥人一職。
• TO PUI YIN
joined Pauline Wong & Co., Solicitors as a partner as from 03/04/2017.
杜佩賢
自2017年4月3日加入王婕妤律師事務所為合夥人。
• TONG CHYO TING STELLA
joined M.C.A. Lai Solicitors LLP as a partner as from 13/03/2017.
湯彩廷
自2017年3月13日加入賴文俊(有限責任合夥)律師行為合夥人。
• TONG KA YAN
ceased to be a partner of Paul C.K. Tang & Chiu as from 16/03/2017.
唐嘉欣
自2017年3月16日不再出任鄧賜強、趙貫之律師事務所合夥人一職。
• WONG KA LAM KING
joined CLY Lawyers as a partner as from 01/04/2017.
黃嘉霖
自2017年4月1日加入陳林梁余律師行為合夥人。
• YEUNG HOK MIN THOMAS
became a partner of Henry Chiu & Partners as from 08/03/2017.
楊學勉
自2017年3月8日成為趙端庭律師行合夥人。
• ZENG YAN
became a partner of Luk & Partners as from 30/03/2017.
曾燕
自2017年3月30日成為陸繼鏘律師事務所合夥人。
• ZIMMERMAN JOSHUA MORSE
ceased to be a partner of Proskauer Rose as from 01/04/2017.
自2017年4月1日不再出任普洛思律師事務所合夥人一職。
Lai Chi Wo, a village of nearly 400 years old whose name literally means “Lychee Nest”, rests deep in Plover Cove Country Park near the border of Sha Tau Kok, within sight of Mainland, China. While it no longer produces the delectable, red-skinned fruit that first gave this rural community its name, this enclave is still renowned for its rich Hakka culture and marine heritage. Its beach was designated as a Site of Special Scientific Interest (“SSSI”) and the entire village is a part of the Hong Kong UNESCO Global Geopark.

In spite of being nearly abandoned for decades, this village still hosts over 200 traditional Hakka houses that are surrounded at the back by feng shui woodlands and enclosed at the front by a feng shui wall. According to legend, the feng shui wall was built on the advice of a feng shui expert around 100 years ago to retain wealth and keep out evil spirits. Soon after the wall was built, the community’s luck dramatically improved, which fortified the local villagers’ belief in feng shui and their dedication in protecting the woodlands and banning its destruction.

As for the walled village, it comprises densely arranged houses, which were built in three vertical and nine horizontal alleys. The village houses, which boast Hakka-styled vernacular architecture, have distinctive Hakka tiled roofs, metal bar protected windows and ram earth and brick walls. The ground floor of a Hakka home typically contains a kitchen with a fire wood stove and chimney on one side and a bathroom on the other that are shielded from each other by a short wall; these are Character Defining Elements (“CDE”) of a Hakka-style home and are located near the structure’s entryway. Adhering to feng shui belief, the walled village is positioned west and faces east, with the main gate on the east and the side gate named “west gate”. According to village tradition, brides that married into the village were only allowed to enter the walled village through the west gate on their wedding day.

At its prime in the 1950s, Lai Chi Wo comprised 450 residents, who primarily supported themselves by farming, fishing and selling bamboo products. But by the 1960s, many villagers decided to move to urban areas or immigrate overseas, causing the population to sharply decrease. By the 1980s, Lai Chi Wo’s school was closed because there were no more students left to attend.

Lai Chi Wo Revitalisation Projects

Despite its fall into obscurity, Lai Chi Wo is once again attracting attention and inspiring hope as the site of an experimental revitalisation project, which was launched in 2013. It is managed by the Policy for Sustainability Lab of the University of Hong Kong, partnered with the Hong Kong Countryside Foundation, Produce Green Foundation and Conservancy Association with funds from HSBC. With the help of this project, some local villagers have moved back to farm and receive visitors. In December 2016, through another new project funded by the Hong Kong Jockey Club, a project team under the Hong Kong Countryside Foundation is proceeding to restore some of the old houses within the walled village. Their goal is to revitalise the village by referencing accredited international
guidelines. Currently, they are studying and identifying the CDE of the village, which include many of the Hakka-style architectural features described above. Other teams and stakeholders are working to revitalise the village through rehabilitating the abandoned farmland. Both projects are unique in that they take a multi-stakeholder, sustainable development approach in their attempts to transform Lai Chi Wo into an eco-agriculture, environmental education and heritage conservation hub. While these initiatives have shown much promise, they have also been met with a number of challenges.

The first obstacle came in the form of convincing the villagers and the Government that there are alternative options in rural development. Sources report that development of most remote villages within the boundaries but not part of country parks themselves has mostly stalled because the conflict between conservationists who want to protect these areas and landowners who are afraid of losing their development rights cannot be resolved.

Project leaders and participants have also faced a number of regulatory hurdles that many claim highlight the need for more flexibility in laws to ensure that businesses developed in small, rural communities can survive and thrive. For instance, Mr. David Au, the Project Director with the Hong Kong Countryside Foundation who is working with the Foundation and local villagers to restore the houses in a historically accurate way, noted that while keeping restoration work in line with the CDEs of the village, the houses have to be restored to satisfy modern hygiene, structure and fire safety standards so the restored structure will comply with current laws regulating guest houses for tourists. Mr. Au hopes that once restored, these Hakka-styled guest houses will attract a variety of users and tourists to visit Lai Chi Wo so that they can participate in the Hakka experiential learning programmes that will be a part of the village revitalisation project.

Challenges aside, when it comes to the future development of Lai Chi Wo, most villagers and stakeholders share the same aspiration of opening up the village and sharing it with the general public. Visiting Lai Chi Wo

Designed to maximise enjoyment of the natural scenery and appreciation of the scientific value of the Geopark sites, Hong Kong UNESCO Global Geopark has designed a boat-tour route and multiple land-tour routes to access Lai Chi Wo. We took the boat tour route from Ma Liu Shui, which passes through Tolo Channel to Bluff Head, where you can see interlayered red and white rock strata made up of the oldest rocks found in Hong Kong. After passing along the fire-red Hung Shek Mun coast, you enter the mirror-like Double Haven, where you can attempt to find its ‘Six Treasures’. The tour then heads on to Lai Chi Wo, where we exited to visit the Lai Chi Wo intertidal zone, the walled village and feng shui woodlands.

Upon arriving, Lai Chi Wo seemed just as magical as it had been described – bursting with local Hakka culture, from the flavourful dishes we ate (which included congee; braised pork belly with black fungus; Hakka salted chicken; and a variety of stuffed buns and local desserts, such as sweetened tofu) to the restored temple and monastery we visited to the walled village and abandoned houses we explored. Along the way, local villagers warmly welcomed us and openly spoke to us about the local culture and their ties to Lai Chi Wo. A local contingent of dogs, one of whom goes by ‘Panda’, escorted us on every leg of our journey. We also walked through a portion of the Geopark and the feng shui woodlands, which apparently is
荔枝窩：
香港的隱世珍寶

作者 Cynthia G. Claytor

荔枝窩是一條擁有近400年歷史的圍村，位於船灣郊野公園之內，毗鄰沙頭角禁區，可眺望中國內地。荔枝窩雖然沒有再產鮮紅多汁的荔枝，但仍保留了豐富的客家人及水上人傳統文化。荔枝窩海灘已被列作「具特殊科學價值地點」，而整條村落亦獲聯合國教科文組織列入世界地質公園名單。

儘管已荒廢幾十年，荔枝窩仍保留200多間傳統客家村屋，村後面的風水林和包圍整條村的風水牆。相傳百多年前，一名風水大師建議村民在村內興建風水牆以聚財及擋煞。自風水牆興建之後，荔枝窩村運勢果然轉佳。自此，村民更加相信風水之說，通過種種方法致力保護風水林，規定不得破壞樹林。

50年代全盛時期，荔枝窩約有450名村民，主要以務農、捕魚和售賣竹製品為生。但到了60年代，許多村民決定搬進市區或移民海外，荔枝窩人口急劇下降。到了80年代，荔枝窩學校因收生不足停辦。

Many thanks to the Hong Kong Law Society and the Hong Kong Countryside Foundation, including its Board Director, Mr. Huen Wong, its Project Director, Mr. David Au, and its Manager, Ms. Teresa Leung for arranging the guided tour and providing such a memorable visit to Lai Chi Wo.
荔枝窩活化計劃

荔枝窩荒廢多時，2013年成為實驗性活化項目的選址，再次受到注目。該項目由香港大學「策動永續發展坊」負責管理，與香港鄉郊基金、綠田園基金及長春社合作，香港匯豐銀行資助。在計劃的協助下，有些村民已回流復耕及接待遊客。2016年12月，透過香港賽馬會資助的另一個項目，香港鄉郊基金項目總監David Au先生正與基金和村民合作，以保存歷史的方式復修村屋。復修除了要保存圍村風貌外，亦要符合現代衛生、結構、消防標準，以便復修的村屋符合旅館法規，可供遊客居住，他希望，復修後的荔枝窩圍村將吸引不同遊客到訪，參與「客家文化體驗」新活化項目。

項目負責人和參與者也面臨許多監管障礙，許多人指出，法律需要更靈活，才能確保在小型鄉郊的企業能夠生存和發展。例如，香港鄉郊基金項目總監David Au先生正與基金和村民合作，以保存歷史的方式復修村屋。復修除了要保存圍村風貌外，亦要符合現代衛生、結構、消防標準，以便復修的村屋符合旅館法規，可供遊客居住，他希望，復修後的荔枝窩圍村將吸引不同遊客到訪，參與「客家文化體驗」新活化項目。

儘管面對各種挑戰，絕大多數村民和持份者同樣希望開放村莊，發展荔枝窩，與廣大市民分享。

一遊荔枝窩

為了能全面欣賞地質公園的自然景觀和科學價值，香港聯合國教科文組織世界地質公園設計了多條水路和陸路遊覽荔枝窩的路線。我們從馬料水乘船，穿過吐露港到達黃竹角，該處看到的紅、白色岩層，是香港最古老的岩石群，經過赤紅色的紅石門海岸，進入印洲塘，遊人可嘗試尋找「印塘六寶」，之後向荔枝窩進發。我們在荔枝窩下船參觀荔枝窩潮間帶、圍村和風水林。

聞名不如見面，我們在村內吃的豐富客家菜（生滾雞粥、炆五花腩、客家鹹雞、各式飽點和甜點，例如豆腐花）、復修的寺廟，以至整條圍村和村屋，荔枝窩的確洋溢著客家傳統文化。一路上，友善的村民向我們表示歡迎，他們均樂意向我們解釋當地文化和荔枝窩的淵源。村內一群「原住狗」（其中一隻叫「熊貓」），更全程護送我們。我們亦穿過了一部分地質公園，以及有逾100種植物的風水林，最令人印象深刻的是林中那些百年古樹，如空心樹、五指樟樹和濕地的紅樹林。

離開荔枝窩之前，我們參觀了一部分活化農地，其項目包括約5公頃的復耕農地和新建的灌溉系統。生態池和溼地整合，形成了鼓勵生物多樣性的農地環境。該處還採用了低生態影響的措施，如保護網和太陽能護柵，盡量減少野生動物損毀農作物。其他試驗，如生物炭和植物修復，也正在進行中。目前，該處每年種植兩造稻米，亦種植了各種蔬菜，每季均有收成。

今次觀參荔枝窩，確是一趟引人入勝的旅程，讓我有機會認識罕見的海洋生態系統、可持續發展的農業實踐、建築修復方法和充滿活力的客家文化。我也能夠親眼見證一群人渴望活化歷史和生態村落在的努力得以有效落實。我認為荔枝窩的確值得香港的隱世珍寶，希望這個項目能釋放這條圍村的潛力，將荔枝窩恢復原來的壯大。

非常感謝香港律師會和香港鄉郊基金安排是次難忘的活動，包括基金董事王桂壎先生、項目總監David Au和經理Teresa Leung女士。
We would like to congratulate Ada Chan, Group Legal Counsel, Shun Hing Electronic Trading Co. Ltd., the winner of our Legal Quiz #36.

**LEGAL TRIVIA #37**

This month’s questions focus on legal vacations and holidays. The questions have been prepared by Douglas Clark, Barrister. Suggestions for questions to appear in next month’s journal are most welcome.

1. Which of the following is not a court vacation provided for in the High Court Ordinance?
   - A. Summer
   - B. Christmas
   - C. Easter
   - D. Winter

2. How many official general holidays are there in Hong Kong?
   - A. 10
   - B. 13
   - C. 17
   - D. 19

3. True or False: One of the official general holidays in Hong Kong always falls on a Saturday?
   - A. True
   - B. False

4. If a court document (other than a writ or other originating process) is served on a general holiday, when is the document deemed to have been served?
   - A. On that day.
   - B. On the following day.
   - C. On the next working day.
   - D. On the next working day between Monday and Friday.

5. Which year was the final year in which the Queen’s birthday was a general holiday in Hong Kong?
   - A. 1996
   - B. 1997
   - C. 1998
   - D. It was never a holiday.

6. What year was Labour Day (1 May) first celebrated as a general holiday in Hong Kong?
   - A. 1949
   - B. 1997
   - C. 1998
   - D. 1999

7. May a writ be served in Hong Kong on Christmas Day without leave of the court?
   - A. Yes.
   - B. No.
   - C. Yes, but not if Christmas falls on a Sunday.

8. How many additional general holidays were there in Hong Kong in 1997 following the Handover?
   - A. 1
   - B. 2
   - C. 3
   - D. 4
   - E. 5

9. Which of the following is not vacation business in the Court of First Instance?
   - A. Application for summary judgment.
   - B. Application for an injunction.
   - C. Application to strike out pleadings.
   - D. Interpleader.

10. What year did the judiciary introduce the final phase of the five-day work week?
    - A. 1984
    - B. 1997
    - C. 2010
    - D. 2017

**Contest Rules:**

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

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**Answers to Legal Trivia Quiz #36**

1. C. The Hello Kitty murder case was given its name because parts of the victim’s body were found in a Hello Kitty doll.
2. A. Nancy Kissel drugged her husband with a strawberry milkshake.
3. B. Jutting graduated from Cambridge University.
4. A. Edith Carew poisoned her husband Walter with arsenic.
5. C. The jars murderer kept part of his victims’ bodies in various containers.
6. C. Johnson Lam was a junior counsel for the defence in the Braemar Hill murder case.
7. B. Atma Singh survived his hanging when the rope broke. His neck was stretched by 6 cm.
8. C. The badly decomposed body of a Cathay Pacific stewardess was found in the bath.
9. B. Big Spender was prosecuted in the Mainland of China for the kidnappings. He was convicted and executed.
10. B. Katherine Hadley had been prosecuted and acquitted of murder in 1930 in Tianjin. She had been investigated once before for murder but not prosecuted.
法律知識測驗 #37

本月的問題圍繞法定假期和休假。
問題由馬錦德大律師編製。歡迎建議下期問題。

1. 以下哪個不是《高等法院條例》規定的休庭期？
   A. 暑假
   B. 聖誕節
   C. 復活節
   D. 寒假

2. 香港的公眾假期有多少天？
   A. 10
   B. 13
   C. 17
   D. 19

3. 是非題：香港公眾假期的其中一天必定是星期六？
   A. 是
   B. 非

4. 如果法庭文件（傳訊令狀或其他原訴法律程序文件除外）在公眾假期送達，則該文件被視為何時送達？
   A. 當天
   B. 翌日
   C. 下一個工作天
   D. 星期一至星期五的下一個工作天

5. 英女皇壽辰何年最後一年在香港作為公眾假期？
   A. 1996
   B. 1997
   C. 1998
   D. 從來並非公眾假期。

競賽規則：
讀者如欲贏取一瓶由Global Vintage Wines Centre提供的2007年Ch. La Croizille葡萄酒，請將問題答案寄交cynthia.claytor@thomsonreuters.com。首位能提供最多正確答案（答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。

6. 勞動節（5月1日）於何年首度在香港成為公眾假期？
   A. 1949
   B. 1997
   C. 1998
   D. 1999

7. 在香港，未經法院許可，令狀可於聖誕日送達嗎？
   A. 可
   B. 不可
   C. 可，但聖誕日為星期日除外。

8. 1997年回歸後，香港的公眾假期多了幾天？
   A. 1
   B. 2
   C. 3
   D. 4
   E. 5

9. 以下哪項並非原訴法庭的休庭期內的事務？
   A. 申請簡易判決
   B. 申請禁令
   C. 申請罷免訴狀
   D. 互爭權利訴訟

10. 司法機構於何年實施五天工作周的最後階段？
    A. 1984
    B. 1997
    C. 2010
    D. 2017

法律知識測驗 #36的答案

1. C. 「Hello Kitty藏屍案」得此名因為受害人的部份殘肢被藏於Hello Kitty娃娃內。

2. A. Nancy Kissel用士多啤梨味的奶昔下藥迷魂丈夫。

3. B. Jutting畢業於劍橋大學。

4. A. Edith Carew以砒霜謀殺丈夫 Walter。

5. C. 「瓶子殺手」把受害人的殘肢存放於不同的容器內。

6. C. 林文瀚在寶馬山謀殺案中擔任辯方大律師。

7. B. Atma Singh被處繯首死刑途中繩子斷掉，因而倖存。他的頸被拉長了6厘米。

8. C. 國泰空姐的遺體被發現在浴缸裏溶解。

9. B. 「大富豪」於中國內地被判綁架罪成並被處決。

10. B. Katherine Hadley於1930年在天津被起訴，無罪釋放。之前她曾被調查謀殺過一次，但未被起訴。
CityU Hosts Public Lecture on “President Trump and the Future of Immigration in the United States”

As a nation of immigrants, US immigration policy attracts considerable public attention. Since Trump’s administration took office, he has made a series of sweeping changes on immigration and his new immigration policy has provoked wide-spread criticism.

On 10 March 2017, the School of Law of City University of Hong Kong was honoured to have Professor Robert Schapiro, Dean of Emory University School of Law, to deliver a public lecture on a contemporary topic “President Trump and the Future of Immigration in the United States”.

The lecture was kicked off by the welcoming remarks of Professor Geraint Howells, Dean of CityU School of Law, who greeted the audience and then introduced Professor Schapiro.

“Two-thirds of people who are in the United States illegally have been there for 10 years or more, which makes the policy issues dealing with immigration quite complex,” Professor Schapiro pointed out at the beginning of his presentation. Sketching the history of immigration in the United States and the background of immigration law, Professor Schapiro emphasised controversial US immigration policy issues, including President Barack Obama’s “Deferred Action” programme, and the latest “Executive Order” and “New Executive Order” issued by President Donald Trump.

Professor Schapiro also shed light on the key legal issues that will define US immigration policy moving forward, including the scope of the President’s powers to target specific countries for special treatment in the immigration area and to permit the continued residence of certain people who are in the country illegally, the authority of courts to review Presidential action in the immigration area, and the role of states, such as Washington and Virginia, in challenging the Trump administration’s immigration policies.

More than 60 scholars, legal practitioners and students attended the lecture. After Professor Schapiro’s lecture, participants asked questions actively, which led to vivid interaction. To conclude the event, Professor Howells presented Professor Schapiro with a souvenir, thanking him for his insightful and inspiring speech.
CUHK Hosts Workshop: “How do our laws protect the elderly in Hong Kong?”

In our aging society in Hong Kong, there has been growing public attention on the range of laws and policies that affect older persons’ needs and aspirations. Professor Mimi Zou and Ms. Jennifer Lee-Shoy at the Centre for Rights and Justice, Faculty of Law at The Chinese University of Hong Kong recently organised a workshop on “How do our laws protect the elderly?” Its main aim was to provide a multidisciplinary forum for different professionals and stakeholders to learn about how the law in Hong Kong affects older persons in diverse aspects of their lives. The workshop was funded by the CUHK Knowledge Transfer Project Fund (“KPF”) and United College’s Lee Hysan Foundation Research Grant and Endowment Fund Research Grant Schemes.

The event attracted nearly 150 participants, including social workers, health care professionals and administrators, leaders of local NGOs and community organisations, senior representatives from the Department of Justice, students, lawyers, and other stakeholders involved in the provision of various services to elderly persons in Hong Kong. A Legislative Council member was also in attendance.

The workshop had three speakers: Dr. Gabriel Hung, a Specialist in Psychiatry and a non-practising Solicitor of the High Court of Hong Kong; Mr. Azan Marwah, Barrister at Gilt Chambers; and Mr. Shaphan Marwah, Barrister at Baskerville Chambers. The speakers explored key issues, including the assessment of mental capacity underpinning guardianship and enduring power of attorney, prevention of financial, physical, and emotional abuse of older persons, as well as the relevance of human rights in Hong Kong’s Bill of Rights Ordinance and the Basic Law for older persons.

The workshop is a knowledge transfer activity that has emerged from a project that Prof. Mimi Zou has undertaken for the past two years. The project entails a comprehensive study of legal issues facing our aging population, drawing on comparative insights from nearly 50 countries. These issues include legal protections against age discrimination; work and retirement; capacity issues and substitute and supported decision making; end-of-life issues; estate planning and management; long-term care and healthcare; protections against elder abuse; and access to justice for older persons. In 2016, she started Elder Law at CUHK. The project won the Faculty of Law’s inaugural Innovation in Teaching Award.

It is hoped that the workshop and Prof. Zou’s project more generally will contribute to ongoing legal and policy developments in Hong Kong that will enable people to grow old in good health, live with dignity and autonomy, and participate as active and full members of society.
HKU’s Clinical Legal Education: From Law to Justice

The Faculty of Law at The University of Hong Kong (“HKU”) has introduced a live-client Clinical Legal Education (“CLE Programme”), which is the first in the history of Hong Kong, since January 2010. On 8 April 2017, we hosted our third annual reunion gathering at HKU for current and former CLE Programme students, volunteer duty lawyers and former clients. Some former clients were invited to share their experiences.

Mr. Singh had a civil dispute with his former employer, which ended in a long-drawn out legal saga, including his being petitioned for bankruptcy based on a default judgment, his successful application in person to set aside the petition and default judgment, his successful trial in the District Court with legal representation on legal aid, his losing the appeal before the Court of Appeal when both parties were represented by leading counsel, and his eventual success before the Court of Final Appeal. After losing at the Court of Appeal, he felt frustrated and disappointed as his leading counsel had advised the Legal Aid Department that there were no merits in his intended appeal to the Court of Final Appeal. Mr. Singh then sought assistance from the CLE Programme’s Centre, and he eventually obtained legal aid and won his appeal before the Court of Final Appeal. He thanked the CLE team for their dedicated effort, particularly he felt that the students and duty lawyers did not treat him as just one of the cases to be studied but shared his urge to pursue justice.

Ms. Lau, who has been working as a cleaner with meagre income, has lost basically all her savings after being lured into some financial investment by a staff of an investment company who purported to conduct some survey on the street and befriended her. She felt aggrieved and helpless when her application for legal aid to pursue civil claim against the investment company was rejected. She expressed her heartfelt thanks to our CLE Programme’s team and volunteer counsel, Mr. Wilson Leung, who helped her to obtain legal aid by successfully appealing before a Court Master. With legal aid, her civil claim was eventually settled satisfactorily.

Mr. Edmond Lam, Course Coordinator of the CLE Programme, advised students to always keep an open attitude to cases and leave no stone unturned in their research, instead of rigidly following some mechanical practice or policies. Mr. Eric Cheung, Director of CLE Programme, reminded the students that a case, though being run of the mill by a lawyer, might well be the lay client’s only encounter with the justice system in his or her life and be regarded as life and death. He hoped that through the sharing at the gathering, students could gain a better understanding of how lay clients viewed our justice system and the important contribution that dedicated pro bono lawyers could make to help achieve justice. He also hoped that more experienced lawyers in private practice could join us as volunteer duty lawyers to guide our students and to provide quality free legal advice to the public.

港大臨床法律教育：從法律到公義

香港大學法律學院自2010年1月起推出香港首個臨床法律教育（CLE）課程。2017年4月8日，港大舉行了CLE課程的第三次年度聚會，邀請了CLE課程的新、舊學生、義務律師和當事人出席，分享經驗。

Singh先生與前僱主發生民事糾紛，因而陷入冗長的官司。他因一項欠缺行動而作出的判決被頒令破產。他成功申請撤銷破產令及判決，透過法律援助代表在區域法院勝訴。後來在上訴法院雙方均派出領訟大律師代表下敗訴，最後在終審法院勝訴。在上訴法院敗訴後，他感到沮喪失望，因為他的領訟大律師向法律援助署表示，他向終審法院提出上訴並無任何理據。Singh先生其後向CLE課程中心尋求協助，最終獲得法律援助，在終審法院勝訴。他感謝CLE小組的努力，特別是他覺得學生和義務律師並沒有只把他視為研究案例，而是與他一起追求公義。

劉女士為清潔工人，收入微薄。投資公司職員在街上以問卷調查為名，哄騙她進行金融投資，結果令她失去畢生積蓄。她申請法律援助向投資公司作出民事索償被拒，感到不滿和無奈。她衷心感謝CLE小組和義務律師梁允信大律師，幫助她成功向聆案官提出上訴，獲得法律援助。通過法律援助，她的民事索償最終得到圓滿解決。

CLE課程協調員林勁豐先生建議學生對案件保持開放態度，在研究時想盡辦法，而不要只顧遵循機械化的方法或政策。CLE課程主任張達明先生提醒學生，一件案件對律師來說可能平凡不過，但對當事人來說，可能是人生中唯一一次與司法制度接觸，可能被視為生死攸關。透過聚會上的分享，他希望學生能更了解當事人如何看待我們的司法制度，以及無償律師協助達至公義的重要貢獻。他亦希望更多私人執業的資深律師能加入擔任義務律師，指導學生和向公眾提供免費法律意見。
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Our client is a premier US law firm who are looking for an International Arbitration Partner. You must have a track record of building a client base and a transferable book of business (although not a prerequisite). Experience in the energy, oil & gas, mining, infrastructure and projects sectors would be advantageous. Mandarin highly desirable but not required.

Partner

Geoff Denton
Head of Private Practice - North Asia
geoffdenton@taylorroot.com

M&A Associate /Counsel

Our client is a top-tier international law firm looking for a M&A Senior Associate/Counsel to join its growing team. Candidates with strong public M&A and PE experience from peer firms will be considered. Fluent English and Mandarin skills required. HK qualification preferred but also open to other common law qualifications.

5-8+ years’ PQE

Samantha Fong
Associate Director
samanthafong@taylorroot.com

Dispute Resolution Associate

Our client is a top-tier law firm seeking a mid-senior level Dispute Resolution Associate to join the team. HK qualification is preferred but not essential. International law firm candidates with strong commercial disputes experience in regulatory & financial services will be considered. Mandarin highly desirable but not required.

3-6+ years PQE

Patricia Lui
Senior Consultant
patricia@taylorroot.com

M&A/Disputes/ Project Finance

Exciting opportunities for corporate, disputes or project finance Counsel or Partner candidates to join this international law firm’s joint operation platform in Beijing or Shanghai. Open to both established Partners and lawyers with ambition to develop a book of business. Both Mandarin and English skills required.

Partner

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

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

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

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

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

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

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

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

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FINANCIAL SERVICES

Corporate Lawyer
- 3-7 PQE
- Well-established Financial Institution
Joining an established and sizable legal team, you will report to the head counsel supporting the Investment Banking business. You will negotiate on a variety of documents for the business, advise and vet all related transactions, as well as work closely with the internal stakeholders within the company. The ideal candidate will be a 3 to 7 years’ PQE Hong Kong qualified lawyer, with strong experience obtained in the areas of corporate, ideally with IPO / ECM exposure, from international / sizable law firms or other financial institutions. You will be a fast learner with eagerness to build on an in house career. Excellent communication skills are required, as fluency in English and Chinese. Ref: 3924075

Venture Capital / Private Equity Lawyer
- 3+ PQE
- Global Asset Manager
Working in a small team and reporting to the Lead Counsel, you will advise on a variety of venture capital and private equity deals, with a focus on China transactions. You will be relied upon in drafting, negotiating and advising on deals and related documentation, and to work in a close-knit environment with both internal and external stakeholders. The ideal candidate will possess at least 3 years’ PQE, with exposure in venture capital and/or private equity deals. Those without it but with a strong M&A background will also be considered. Whilst common law qualification is preferred, those with PRC qualification will also be considered. Strong English and Chinese language skills is mandatory. Ref: 3923720

COMMERCIAL

Group Legal Counsel
- 5+ PQE
- Chinese Conglomerate
Our client is well established Chinese conglomerate with their core business in property development, it is a stable company that has been active in Hong Kong for more than 15 years. They are now seeking a Legal Counsel to join their team at the group level. You will be reporting to the Head of Legal of Hong Kong and be responsible for reviewing contracts and providing legal advice to the group and its subsidiaries. You will also be the key person in guiding various M&A projects across Hong Kong and China. The successful candidate will have a minimum of 5 years’ PQE with a stable track record in managing M&A projects and contract negotiations. Fluency in both written and spoken English and Chinese (Mandarin) is required. Ref: 3876930

Construction Lawyer
- 3+ PQE
- Respectable Property Developer
A rare opportunity has arisen for a Construction Lawyer to join a large reputable property developer. Reporting to the General Counsel, you will provide legal advice on issues relating to construction matters and participate in the negotiating and drafting of project documentation. You will provide legal advice to the relevant businesses in relation to compliance issues. You will also manage general commercial matters including but not limited to intellectual property matters, managing the trademark portfolio and monitoring infringement activities. The successful candidate will be a 3+ years’ PQE lawyer with experience in contentious and non-contentious construction matters. Fluency in spoken and written English and Chinese (Mandarin and Cantonese) is required. Ref: 3923040

PRIVATE PRACTICE

Senior Associate / Counsel
- 4-6 PQE
- Banking & Finance
Our client is a large reputable international law firm looking for an experienced solicitor with solid banking experience. In this role you will focus on acquisition finance, cross border lending, structured finance and other mainstream banking matters. The ideal candidate will be common law qualified (US excluded) banking lawyer with experience in acquisition finance, margin loans or structured finance. You will have 4-6 years’ PQE, and have excellent Cantonese and English, including conversational Mandarin language skills. This position is able to offer a clear path progressing to Counsel within the firm as well as to take on a leadership responsibilities within the team. Ref: 3924803

Senior Associate / Counsel
- 5+ PQE
- Equity and Debt Capital Markets
A leading Hong Kong law firm with a growing practice is looking for a senior Capital Markets lawyer to join its capital markets practice. Reporting directly to the Managing Partner, you will advise clients on all legal issues and potential risks arising from the transactions. You will draft and review a variety of transactional documents, negotiate the terms and manage securities / listing compliance issues. Supervising and training junior associates, you will take on a leadership role within the team and build as well as maintain client relationships. The ideal candidate will possess at least 8 years’ PQE obtained in Hong Kong or China. Strong English and Chinese language skills are required. This is a great opportunity for senior candidates looking for career progression. Ref: 3884960

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In-House

**HEAD OF DATA PRIVACY**  
HONG KONG  
10+ years

Global bank seeks senior level lawyer with strong data privacy experience. You will provide legal leadership to the strategic regulatory initiative & implement data privacy requirements regionally. Chinese is not required. Overseas candidates are welcome to apply. HKL6437

**CORPORATE/COMMERCIAL**  
HONG KONG  
8-10 years

Media/telco company is looking for a senior in-house legal counsel with legal experience in telco, M&A, finance or commercial matters. The role will work very closely with senior management & so a strong entrepreneurial spirit is required. Chinese language skills not essential. HKL6432

**FUNDS**  
HONG KONG  
5-8 years

Well-known PRC asset manager is looking for a funds lawyer to join its in-house legal team. You should have experience in a range of investment products/financial services regulatory work (both retail & private). Business level Mandarin & ability to read & write in Chinese are essential. HKL6204

**LITIGATION**  
HONG KONG  
5-8 years

In-house opportunity for a mid-level litigator with experience in general commercial or financial services litigation. Interesting work & good work/life balance on offer. Strong analytical skills & ability to understand complex issues are required. Fluent English & Chinese essential. HKL5989

**M&A/COMMERCIAL**  
HONG KONG  
5+ years

Bio-medical technology listed company seeks an in-house lawyer. Sound knowledge of the Listing Rules and experience with commercial contracts & M&A required. Prior experience with PRC companies and VIE structures would be highly advantageous. Fluency in Chinese essential. HKL5785

**MEDIA/COMMERCIAL**  
HONG KONG  
4-7 years

Global music production company seeks a commercial lawyer to advise on its music publishing activities in APAC. You will be a mid-level HK qualified lawyer with a strong commercial background. Prior IP/entertainment experience preferred. Fluent Cantonese & Mandarin needed. HKL6442

**PROFESSIONAL SUPPORT LAWYER**  
HONG KONG  
2-5 years

MNC seeks a PSL to prepare legal templates and governance reports & assist in compliance matters. We will consider candidates with corporate, commercial or litigation background from international firms. Excellent English & Commonwealth qualification required. HKL6410

Private Practice

**BANKING PARTNER/COUNSEL**  
HONG KONG  
9-20 years

US law firm is seeking a banking partner, who is an experienced finance lawyer at reputable international law firm & already a junior partner/counsel with experience working with PRC clients. Fluent Mandarin language skills required. HKL6403

**M&A PARTNER/COUNSEL**  
HONG KONG  
8-15 years

Top tier international firm seeks a Counsel or Junior Partner to join its M&A practice. You will have extensive APAC M&A experience, fluency in English & top tier firm training. Excellent opportunity for a Counsel to step into a partnership role. No book of business needed. HKL6390

**LITIGATION**  
HONG KONG  
5-12 years

UK law firm looking for a senior litigator to expand its reputable disputes practice. You will be HK qualified with commercial litigation & regulatory investigations experience. Previous PRC client representation in litigation favourable. Fluent Mandarin language skills required. HKL6378

**INSOLVENCY LITIGATION**  
HONG KONG  
5-7 years

Reputable global law firm seeks litigator with strong insolvency litigation experience from an international or HK law firm. Prior experience with business development and client-facing responsibilities will be viewed favourably. Chinese language skills preferred but not essential. HKL6438

**CORPORATE**  
HONG KONG  
3+ years

Opportunity to join a leading UK law firm to do a broad, mixed corporate and finance role. Candidate will have at least 3 years’ experience in corporate finance and M&A transactions gained from an international or reputable HK law firm. Fluent Chinese language skills essential. HKL6387

**REGULATORY**  
HONG KONG  
3+ years

UK law firm seeks a regulatory associate to advise on matters including: setting up of regulated businesses in HK, corporate governance, AML and data privacy. Experience in regulatory advisory work and excellent drafting skills needed. Fluent Chinese language skills preferred. HKL6348

**ASSET FINANCE NQ**  
HONG KONG  
0-1 years

Leading UK law firm is looking for a 2nd year trainee or NQ with exposure to asset finance, either shipping &/or aviation, to join its top-tier asset finance team. English language skills required. No book of business needed. HKL6410

This is a small selection of our current vacancies. Please refer to our website for a more comprehensive list of openings.

Please contact Lindsey Sanders, lsanders@lewissanders.com  +852 2537 7409  or  Eleanor Cheung, echeung@lewissanders.com  +852 2537 7416  or  Karishma Khemaney, kkhemaney@lewissanders.com  +852 2537 0895  or  email recruit@lewissanders.com
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Partner, Tokyo
+81.3.3584.6356
llebrun@mlaglobal.com
### Private Practice

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<th>Practice Area</th>
<th>Location</th>
<th>PQE Range</th>
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<tbody>
<tr>
<td><strong>LITIGATION/REGULATORY</strong></td>
<td>Hong Kong</td>
<td>1-4 PQE</td>
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<tr>
<td><strong>COUNSEL/PARTNER</strong></td>
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<tr>
<td>US firm seeks a senior litigation lawyer with expertise in SFC/Regulatory matters to lead a thriving practice. The firm has an outstanding non-contentious team, but is now seeking to build out its litigation capability. (HKL 15206)</td>
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<tr>
<td><strong>CORPORATE/FUNDS</strong></td>
<td>Hong Kong</td>
<td>3-7 PQE</td>
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<tr>
<td>Off-shore firm is looking for mid-level corporate lawyers to join its team. Opportunity to handle a mix of corporate and funds work and training will be provided for lawyers wanting to focus on funds work. No language skills required. (HKL 15234)</td>
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<tr>
<td><strong>CORPORATE FINANCE</strong></td>
<td>Hong Kong</td>
<td>1-6 PQE</td>
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<tr>
<td>US law firm expanding its corporate practice and looking to bring on a junior to mid-level associate to work on M&amp;A and ECM transactions. Room to grow and lead transactions, solid career path to Counsel. Mandarin required. (HKL 15112)</td>
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<tr>
<td><strong>M&amp;A</strong></td>
<td>Hong Kong</td>
<td>5+ PQE</td>
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<tr>
<td>This international law firm seeks an experienced lawyer to join their M&amp;A practice. You will focus on cross-border M&amp;A and a variety of other corporate and commercial work for international and domestic clients. (HKL 15215)</td>
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<tr>
<td><strong>CONSTRUCTION LITIGATION</strong></td>
<td>Hong Kong</td>
<td>2-4 PQE</td>
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<tr>
<td>Strong disputes team with a focus on construction seeks an additional associate for their team. Ideal candidates will be Hong Kong qualified with experience in general commercial litigation, arbitration and/or contentious construction work. Mandarin not required. (HKL 15236)</td>
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<tr>
<td><strong>EMPLOYMENT</strong></td>
<td>Hong Kong</td>
<td>1-4 PQE</td>
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<td>US law firm is keen to expand its employment department with the addition of a junior associate. You will join a solid team focusing on non-contentious matters. Hong Kong qualification required. (HKL 15192)</td>
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<tr>
<td><strong>DEBT CAPITAL MARKETS</strong></td>
<td>Singapore</td>
<td>5-8 PQE</td>
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<tr>
<td>Top-tier UK law firm seeks a junior to mid-level debt capital markets lawyer to join their team. The lawyer will work closely with partner and senior associates and involve in high profile cross-border capital market transactions. Chinese fluency needed. (HKL 15094)</td>
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### In-house

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<tr>
<th>Role</th>
<th>Location</th>
<th>PQE Range</th>
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<tr>
<td><strong>SENIOR LEGAL COUNSEL</strong></td>
<td>Hong Kong</td>
<td>15+ PQE</td>
</tr>
<tr>
<td>Conglomerate seeks an experienced commercial lawyer to advise on a wide range of commercial legal matters. Strong in-house experience, handling commercial and a proven track record in people-management is necessary. Cantonese required. (HKL 14379)</td>
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<tr>
<td><strong>SENIOR LEGAL COUNSEL</strong></td>
<td>Hong Kong</td>
<td>10+ PQE</td>
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<td>Leading financial services provider seeks a senior lawyer to advise on all aspects of the business, including issues relating to asset management and global markets. You should possesses experience gained with a reputable financial institution. Fluency in Mandarin is required. (HKL 15109)</td>
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<tr>
<td><strong>COMPANY SECRETARY/LEGAL COUNSEL</strong></td>
<td>Hong Kong</td>
<td>5-10 PQE</td>
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<td>Well-established financial institution has a vacancy for a legal counsel to oversee company secretarial issues. Ideal candidate will have relevant experience gained from a reputable financial services firm or a HK-listed company. Fluency in Mandarin is required. Collegiate team environment. (HKL 15221)</td>
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<tr>
<td><strong>FMCG</strong></td>
<td>Hong Kong</td>
<td>5-10 PQE</td>
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<tr>
<td>UK listed company with significant growth plans for Asia Pac has headcount to appoint an 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 executive team. (HKL 15027)</td>
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<tr>
<td><strong>INTERNATIONAL LEGAL ADVISOR</strong></td>
<td>Hong Kong/China</td>
<td>4-8 PQE</td>
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<tr>
<td>Global technology company has a vacancy in its international legal team. The legal team advises on all aspects of the firm’s international business, including issues related to e-commerce, b2b commerce, digital data storage, and global regulatory matters. Solid experience in corporate and commercial law is required. Fluency in English and Mandarin required. (HKL 15135)</td>
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<tr>
<td><strong>LEGAL COUNSEL</strong></td>
<td>Guangzhou</td>
<td>5+ PQE</td>
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<tr>
<td>A well-known e-commerce group is looking for a lawyer to join the team in Guangzhou. This role will mainly cover commercial contracts with a particular focus on India and Indonesia. The ideal candidate should have enjoyed good experience at a reputable law firm. Fluency in Mandarin is essential. (HKL 15128)</td>
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<tr>
<td><strong>LEGAL COUNSEL</strong></td>
<td>Hong Kong</td>
<td>2-4 PQE</td>
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<tr>
<td>NASDAQ listed company seeks an experienced commercial lawyer to work in-house within their supply chain operations (commercial, supply, sourcing, procurement, employment). Hong Kong and/or PRC qualified lawyers required. (HKL 15178)</td>
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</table>

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

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Email: g.mok@alsrecruit.com

William Chan
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Email: w.chan@alsrecruit.com

www.alsrecruit.com
HEAD OF LEGAL, NORTHEAST ASIA
GLOBAL IT GROUP
OAA/561870
This household IT name is looking for a new Head of Legal for the Greater China region. The position comes with one report and will report to a senior counsel in a global management role. The position will focus on commercial, legal and contractual advice and solutions for all business in North East Asia. Support for other compliance, governance, litigation and employment matters may be required from time to time.

Key Requirements:
- A commonwealth qualified lawyer with eight to ten years’ PQE and managerial experience
- Substantial knowledge of business commercial contracts, especially in regards to the IT industry
- High level of commercial, legal, regulatory and business acumen
- Experience in China is highly advantageous
- Chinese languages are preferable but not essential

HEAD OF LEGAL & COMPLIANCE
GLOBAL LISTED COMPANY, KOWLOON
WDA/565120
Global listed corporation operating in electronics, manufacturing and technology development is hiring a Head of Legal & Compliance. There is a well established legal framework and this person will provide both legal advice but also will primarily ensure regional compliance with regulatory standards, ensuring all new AML, anti-corruption and risk management procedures are effective and up to date. This is a very stable team offering excellent work-life balance.

Key Requirements:
- A qualified solicitor with experience leading both legal & compliance functions (more junior candidates will also be considered)
- Strong knowledge of emerging compliance regulations (AML, anti-corruption, data-protection etc)
- Excellent poise and ability to build strong business relationships with senior stakeholders
- Chinese languages are preferable but not essential

PRIVATE WEALTH MANAGEMENT LAWYER
GLOBAL BANKING GROUP
OAA/551590
Part of a globally recognised banking group, this business line provides a full array of wealth management products such as sales and trading, structured products and derivatives, as well as asset classes in capital markets. Reporting directly to the Head of Legal for Private Wealth Management (Asia and EMEA), this role will support legal matters from both a products and regulatory perspective.

Key Requirements:
- Lawyer with a minimum of four to six years’ PQE
- A background in products, corporate or regulatory work from a top law firm or in-house institution
- Product experience (sales and trading, derivatives or funds), solid drafting and negotiation skills will be advantageous
- Chinese languages are preferable but not essential

INTERNATIONAL BANKING GROUP
ASSOCIATE DIRECTOR, COMPLIANCE
QPD/562210
This exciting European banking group is looking to hire an experienced compliance professional into a leading role on regulatory and business advisory compliance matters. They focus in Hong Kong on corporate banking, but also there is a market business. This role will report into the Head of Compliance and guide the Hong Kong business on compliance matters.

Key Requirements:
- A minimum of eight years’ experience in a senior compliance/ risk management role of a banking or financial institution
- Familiar with general products and services offered in Markets, Corporate Banking, Trade & Commodity Finance and Corporate Finance Advisory businesses
- Fluent English, Cantonese and Mandarin is essential, Mandarin preferred

GLOBAL BANKING GROUP
HEAD OF LEGAL & COMPLIANCE
QPD/558190
Exciting opportunity to join an established banking group as the Head of Compliance in Hong Kong. They offer a strong corporate banking platform and international clients, as well as a markets business. This role will report into the Head of Compliance for Greater China.

Key Requirements:
- At least 10 years experience in a senior compliance role of a banking or financial institution
- Strong grasp of regulatory requirements, in particular, of the HKMA and SFC
- Fluent English and Cantonese is essential, Mandarin preferred

GLOBAL LISTED COMPANY, KOWLOON
HEAD OF LEGAL & COMPLIANCE
WDA/565120
Global listed corporation operating in electronics, manufacturing and technology development is hiring a Head of Legal & Compliance. There is a well established legal framework and this person will provide both legal advice but also will primarily ensure regional compliance with regulatory standards, ensuring all new AML, anti-corruption and risk management procedures are effective and up to date. This is a very stable team offering excellent work-life balance.

Key Requirements:
- A qualified solicitor with experience leading both legal & compliance functions (more junior candidates will also be considered)
- Strong knowledge of emerging compliance regulations (AML, anti-corruption, data-protection etc)
- Excellent poise and ability to build strong business relationships with senior stakeholders
- Chinese languages are preferable but not essential

ASSOCIATE DIRECTOR, COMPLIANCE
BOUTIQUE EUROPEAN BANK
QPD/562210
This exciting European banking group is looking to hire an experienced compliance professional into a leading role on regulatory and business advisory compliance matters. They focus in Hong Kong on corporate banking, but also there is a market business. This role will report into the Head of Compliance and guide the Hong Kong business on compliance matters.

Key Requirements:
- A minimum of eight years’ experience in a senior compliance/ risk management role of a banking or financial institution
- Familiar with general products and services offered in Markets, Corporate Banking, Trade & Commodity Finance and Corporate Finance Advisory businesses
- Fluent English, Cantonese and Mandarin is essential for this role

To find out more about these exciting legal career opportunities, please contact:

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Tony Wilkey +852 2103 5338 tony.wilkey@robertwalters.com.hk
<table>
<thead>
<tr>
<th>Practice Area</th>
<th>PQE Range</th>
<th>Location</th>
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<tbody>
<tr>
<td><strong>Banking &amp; Finance</strong></td>
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<tr>
<td>Grandly recognised firm seeks an experienced lawyer to join their practice, assisting renowned partners and high profile clients. You will work on big ticket deals, including leveraged and acquisition financings. Exposure to energy, natural resources and infrastructure a plus. Common law qualification and Mandarin required. HKL 4487</td>
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<tr>
<td>4+ PQE</td>
<td>Hong Kong</td>
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<tr>
<td><strong>Securities Litigation</strong></td>
<td>1-3 PQE</td>
<td>Hong Kong</td>
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<tr>
<td>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</td>
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<td>1-3 PQE</td>
<td>Hong Kong</td>
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<tr>
<td><strong>Ship Finance</strong></td>
<td>3-5 PQE</td>
<td>Hong Kong</td>
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<tr>
<td>A global law firm with a well-established finance practice is looking for an associate to join its ranks to handle a number of matters including ship financing, sales and leasebacks, taxation and syndication matters. You will have solid experience gained within the international law firm arena. Mandarin skill preferred. HKL4485</td>
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<td>3-5 PQE</td>
<td>Hong Kong</td>
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<tr>
<td><strong>Funds</strong></td>
<td>3-5 PQE</td>
<td>Hong Kong</td>
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<td>This is a stellar opportunity for an ambitious lawyer to join the Funds team, in a tight knit team. The ideal candidate will have prior exposure to securitisation, mainstream syndicated lending, and leveraged finance. HKL4517</td>
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<td>3-5 PQE</td>
<td>Hong Kong</td>
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<tr>
<td><strong>Dispute Resolution</strong></td>
<td>3-4 PQE</td>
<td>Hong Kong</td>
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<tr>
<td>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</td>
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<td>3-4 PQE</td>
<td>Hong Kong</td>
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<tr>
<td><strong>Capital Markets</strong></td>
<td>4-6 PQE</td>
<td>Hong Kong</td>
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<tr>
<td>A fantastic opportunity for a lawyer to become part of this renowned practice with this US law firm. Your work will include focusing on a range of IPO and innovative merger and acquisition transactions on a global scale assisting highly-regarded partners. You will be common law qualified. Mandarin is essential. HKL 4469</td>
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<td>4-6 PQE</td>
<td>Hong Kong</td>
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<tr>
<td><strong>Commercial Litigation</strong></td>
<td>3+ PQE</td>
<td>Hong Kong</td>
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<tr>
<td>This is an excellent opportunity for a mandarin speaking litigator, keen to be involved in marketing and business development. The ideal candidate will have solid exposure to blue-chip shareholder disputes, insolvencies or restructurings and will be common law qualified. HKL4481</td>
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<td>3+ PQE</td>
<td>Hong Kong</td>
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<tr>
<td><strong>Banking &amp; Finance</strong></td>
<td>4+ PQE</td>
<td>Hong Kong</td>
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<tr>
<td>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&amp;W qualification required for this role; Mandarin required. HKL4449</td>
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<tr>
<td>4+ PQE</td>
<td>Hong Kong</td>
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<tr>
<td><strong>Debt Capital Markets</strong></td>
<td>2-4 PQE</td>
<td>Hong Kong</td>
</tr>
<tr>
<td>This is a fantastic opportunity for an ambitious lawyer to join the Funds team, in a tight knit team. The ideal candidate will have prior exposure to securitisation, mainstream syndicated lending, and leveraged finance. HKL4517</td>
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<td>2-4 PQE</td>
<td>Hong Kong</td>
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<tr>
<td><strong>Structured Finance</strong></td>
<td>3+ PQE</td>
<td>Australia</td>
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<tr>
<td>This eminent firm seeks a Common law qualified lawyer to join their practice, assisting renowned partners and high profile clients. You will work on big ticket deals, including corporate lending, equity-backed financing, restructuring and mainstream syndicated lending, and leveraged finance. HKL4486</td>
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<tr>
<td>3+ PQE</td>
<td>Australia</td>
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<tr>
<td><strong>Corporate M&amp;A/PE</strong></td>
<td>3+ PQE</td>
<td>Hong Kong</td>
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<tr>
<td>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&amp;A, Private Equity and Capital Market transactions for premier clients in a rewarding environment with manageable working hours. Mandarin essential. HKL4050</td>
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<tr>
<td>3+ PQE</td>
<td>Hong Kong</td>
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<tr>
<td><strong>ECM/DCM</strong></td>
<td>3-5 PQE</td>
<td>Sydney</td>
</tr>
<tr>
<td>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</td>
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<tr>
<td>3-5 PQE</td>
<td>Sydney</td>
<td></td>
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<tr>
<td><strong>Dispute Resolution</strong></td>
<td>2-3 PQE</td>
<td>Cayman Islands</td>
</tr>
<tr>
<td>This firm is providing an excellent opportunity for a UK qualified lawyer with commercial litigation, corporate governance cross-border restructuring and insolvency experience to take their career offshore for a few years before returning to Hong Kong. Mandarin and Cantonese essential. HKL4478</td>
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<tr>
<td>2-3 PQE</td>
<td>Cayman Islands</td>
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